

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-4**  
**REGISTRATION STATEMENT**

*Under*  
*The Securities Act of 1933*

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

(Exact name of registrants as specified in their charters)

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

**5984**  
**5984**  
(Primary Standard Industrial  
Classification Code Number)

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

**Star Gas Partners, L.P.**  
**Star Gas Finance Company**  
**2187 Atlantic Street**  
**P.O. Box 120011**  
**Stamford, Connecticut 06912-0011**  
**(203) 328-7300**  
(Address, including zip code, and telephone number, including  
area code, of registrants' principal executive offices)

**Richard F. Ambury**  
**Vice President and Treasurer, Star Gas LLC**  
**2187 Atlantic Street**  
**P.O. Box 120011**  
**Stamford, Connecticut 06912-0011**  
**(203) 328-7300**  
(Name, address, including zip code, and telephone number,  
including area code, of agent for service)

*Copies to:*  
**Phillips Nizer LLP**  
**666 Fifth Avenue, 28th Floor**  
**New York, New York 10103-0084**  
**(212) 977-9700**  
**Attn: Alan Shapiro, Esq.**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (2)
Debt Securities	\$200,000,000	\$18,400

- (1) If any debt securities are issued at an original issue discount, then the offering price of those debt securities shall be in an amount that will result in an aggregate initial offering price not to exceed \$200,000,000 less the dollar amount of any registered securities previously issued.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(f). In no event will the aggregate initial offering price of all securities offered from time to time pursuant to this Registration Statement exceed \$200,000,000.

The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment specifically stating that the Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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**Information in this prospectus is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. We may not exchange these securities until the registration statement is effective. This prospectus is not an offer to sell or a solicitation of an offer to buy the securities in any state where the offer or sale is not permitted.**

Subject to completion, dated March 17, 2003

PROSPECTUS

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

**Offer to Exchange  
10¼% Senior Notes due 2013  
For Any and All Outstanding  
10¼% Senior Notes due 2013**



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This prospectus, the accompanying letter of transmittal and notice of guaranteed delivery relate to our proposed offer to exchange up to \$200,000,000 aggregate principal amount of new 10¼% senior notes due 2013, which we call the "Series B notes" in this prospectus, which will be freely transferable, for any and all outstanding 10¼% senior notes due 2013, which we call the "Series A notes" in this prospectus, issued in a private offering on February 6, 2003, and which have certain transfer restrictions. In this prospectus we sometimes refer to the Series A notes and the Series B notes collectively as the notes.

- The notes are the senior unsecured obligations of Star Gas Partners, L.P. and Star Gas Finance Company, our wholly owned subsidiary that has no material assets and was formed for the sole purpose of being a corporate co-issuer of some of our indebtedness, including the notes.
- The exchange offer expires at 5:00 p.m., New York City time, on \_\_\_\_\_, 2003 unless extended.
- The terms of the Series B notes are substantially identical to the terms of the Series A notes, except that the Series B notes will be freely transferable and issued free of any covenants regarding exchange and registration rights.
- All Series A notes that are validly tendered and not validly withdrawn will be exchanged.
- Tenders of Series A notes may be withdrawn at any time prior to expiration of the exchange offer.
- We will not receive any proceeds from the exchange offer.
- The exchange of Series A notes for Series B notes will not be a taxable event for United States federal income tax purposes.
- Holders of Series A notes do not have any appraisal or dissenters' rights in connection with the exchange offer.
- Series A notes not exchanged in the exchange offer will remain outstanding and be entitled to the benefits of the Indenture, but, except under certain circumstances, will have no further exchange or registration rights under the registration rights agreement discussed in this prospectus.

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**BEFORE PARTICIPATING IN THIS EXCHANGE OFFER, CAREFULLY CONSIDER THE "RISK FACTORS" BEGINNING ON PAGE 11 OF THIS PROSPECTUS.**

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**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THE NOTES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

We may amend or supplement this prospectus from time to time by filing amendments or supplements as required. You should read this entire prospectus, the accompanying letter of transmittal and related documents and any amendments or supplements to this prospectus carefully before making your investment decision.

The date of this prospectus is \_\_\_\_\_, 2003.

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The information contained in this prospectus was obtained from us and other sources we believe to be reliable. This prospectus also incorporates by reference important business and financial information about us that is not included in or delivered with this prospectus.

You should rely only on the information contained in this prospectus or any supplement and any information incorporated by reference in this prospectus or any supplement. We have not authorized anyone to provide you with any information that is different from such information. If you receive any unauthorized information, you must not rely on it. You should disregard anything we said in an earlier document that is inconsistent with what is included or incorporated by reference in this prospectus or any supplement.

You should not assume that the information in this prospectus or any supplement is current as of any date other than the date on the front page of this prospectus. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state or jurisdiction where the offer or sale is not permitted.

We include cross references in this prospectus to captions in these materials where you can find further related discussions. The above table of contents tells you where to find these captions.

**FORWARD-LOOKING STATEMENTS**

Many of the statements contained in this prospectus or incorporated by reference in this prospectus, including, without limitation, statements regarding our business strategy, plans and objectives of our management for future operations are forward-looking within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or “Exchange Act,” and Section 27A of the Securities Act of 1933, as amended, or “Securities Act.” These statements use forward-looking words, such as “anticipate,” “continue,” “expect,” “may,” “will,” “estimate,” “believe” or other similar words. These statements discuss future

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expectations or contain projections. Although we believe that the expectations reflected in the forward-looking statements are reasonable, actual results may differ from those suggested by the forward-looking statements for various reasons, including:

- the effect of weather conditions on our financial performance;
- our ability to obtain new customers and retain existing customers;
- the price and supply of home heating oil, propane, natural gas and electricity;
- our ability to successfully identify and close strategic acquisitions and make cost saving changes in operations;
- the effect of national and regional economic conditions;
- the condition of the capital markets in the United States; and
- the political and economic stability of the oil producing regions of the world.

When considering forward-looking statements, you should keep in mind the risk factors referred to in this prospectus. The risk factors could cause our actual results to differ materially from those contained in any forward-looking statement. We disclaim any obligation to update the above list or to announce publicly the result of any revisions to any of the forward-looking statements to reflect future events or developments.

This prospectus includes market share and industry data and forecasts that we obtained from industry publications and surveys, reports of governmental agencies and internal company surveys. We have not independently verified any of the data from third-party sources nor have we ascertained the underlying economic assumptions relied upon therein.

You should consider the above information when reading any forward-looking statement in this prospectus.

## SUMMARY

*This summary information is to help you understand the notes, our business and the exchange offer. It may not contain all the information that may be important to you. You should carefully read this prospectus and the documents incorporated by reference to understand fully the terms of the notes, as well as the tax and other considerations that are important to you in making your investment decision. You should pay special attention to the "Risk Factors" section beginning on page 11 of this prospectus to determine whether an investment in the notes is appropriate for you. For purposes of this prospectus, unless the context otherwise indicates, when we refer to "us," "we," "our," or "ours," we are describing Star Gas Partners, L.P., together with its subsidiaries, including Star Gas Finance Company.*

The exchange offer is intended to satisfy our obligations under the registration rights agreement, and we will not receive any cash proceeds from the issuance of the Series B notes offered by this prospectus. For further details, please read "Use of Proceeds" on page 20 of this prospectus.

### Who We Are

#### General

We are the largest retail distributor of home heating oil and one of the largest retail distributors of propane in the United States, based on volume. Our home heating oil operations serve customers in the Northeast and Mid-Atlantic regions and our propane operations serve customers in the Midwest and Northeast regions, Florida and Georgia. We are also an independent reseller of natural gas and electricity to residential customers in deregulated energy markets primarily in the Northeast and Mid-Atlantic regions. For the twelve months ended December 31, 2002, we sold 494.1 million gallons of heating oil, which represented approximately 8% of total heating oil sales in the United States. For the same period, we sold 153.3 million gallons of propane, which represented approximately 3% of total residential propane sales in the United States. For the twelve months ended December 31, 2002, we generated total sales of \$1.1 billion.

#### Home Heating Oil Operations

Through our subsidiary, Petro Holdings, Inc. or "Petro," we are engaged in delivering heating oil and providing heating equipment repair and maintenance services to approximately 510,000 home heating oil customers from 32 branch locations in eight states and the District of Columbia. Our heating oil operations are concentrated in the Northeast and Mid-Atlantic. These regions account for approximately two-thirds of the home heating oil sold annually in the United States.

Heating oil is almost exclusively used for space heating by residential and commercial customers. We believe that the sale of heating oil is a stable business due to three factors. First, home heating oil is an essential, non-discretionary product and sales are typically not impacted by general economic conditions. Second, the majority of our customers receive deliveries automatically without making affirmative purchase decisions. We enhance customer loyalty with our responsive at-home heating equipment repair and maintenance service, which we make available 24 hours per day, 7 days a week. Third, since we sell heating oil with a pass-through pricing mechanism and maintain relatively low levels of inventory, generally we are not affected by changes in the level of oil prices.

As the largest retail distributor of home heating oil, Petro realizes the benefits of economies of scale and customer service levels that are not available to most of our competitors. We also utilize sophisticated information and communications technology systems not affordable by most of our smaller, local competitors to enhance our customer response time and overall service quality.

For the twelve months ended December 31, 2002, approximately 74% of total sales from our heating oil operations were from sales of home heating oil, approximately 18% were from the installation and repair of heating and air conditioning equipment and approximately 8% were from the sale of other petroleum products, including diesel fuel and gasoline, primarily to commercial customers for fleet fuel service. During this period, our home heating oil operations generated total sales of \$863.0 million.

## **Propane Operations**

Through our subsidiary, Star Gas Propane, L.P., or “Star Gas Propane,” we are primarily engaged in the retail distribution of propane and related supplies and equipment to residential, commercial, industrial, agricultural and motor fuel customers. We serve approximately 305,000 propane customers in seventeen states from 116 branch locations and 64 satellite storage facilities in the Midwest and the Northeast regions, Florida and Georgia. In addition to our retail business, we also serve wholesale customers from our 21 million gallon storage facility in southern Indiana.

Star Gas Propane sells propane to residential customers to meet their space heating and cooking needs and to smaller commercial customers for general space heating purposes. For the twelve months ended December 31, 2002, approximately 72% of our retail propane sales were to residential customers. This provides us with a high level of customer stability and a relatively price insensitive customer base. Our customer stability is further enhanced by our ownership of approximately 95% of the propane tanks located at our customers’ homes since fire safety laws in the states in which we operate do not permit our tanks to be filled by other distributors. Similar to our heating oil operations, we sell propane with a pass-through pricing mechanism and maintain relatively low levels of inventory, making our operations generally unaffected by changes in underlying commodity prices.

For the twelve months ended December 31, 2002, approximately 95% of the total sales from our propane operations were to retail customers and approximately 5% were to wholesale customers. Our retail sales have historically had a greater profit margin, more stable customer base and less price sensitivity than our wholesale business. During this period, our propane operations generated total sales of \$217.5 million.

## **Electricity and Natural Gas Operations**

Through our subsidiary, Total Gas & Electric, Inc., or “Total Gas & Electric,” we are an independent reseller of natural gas and electricity to approximately 56,000 natural gas and 14,000 electricity customers in deregulated energy markets primarily in New York, New Jersey, Florida and Maryland. In deregulated energy markets, customers have a choice in selecting energy suppliers to power and/or heat their homes. Competitors range from independent resellers, similar to Total Gas & Electric, to large public utilities. Similar to our heating oil and propane operations, natural gas and electricity are sold to customers with a pass-through pricing mechanism.

For the twelve months ended December 31, 2002, Total Gas & Electric generated total sales of \$43.4 million. Total Gas & Electric has experienced losses which resulted primarily from its prior management’s customer solicitation and credit policies that resulted in lower than expected customer collection experience. During fiscal 2002, we appointed a new management team at Total Gas & Electric who instituted new credit policies and information systems that were completed by the spring of 2002. As a result of these actions, we have reduced our customer base by over 60,000 customers to approximately 70,000 by eliminating customers with poor credit history, and we now focus our customer marketing efforts in geographic markets where the local utility guarantees payment of at least 98% of our receivables.

## **Offices**

Our principal executive offices are located at 2187 Atlantic Street, P.O. Box 12001, Stamford, CT 06912-0011, and our phone number at this address is (203) 328-7300.

## **Investment Highlights**

*High Percentage of Sales to Stable, Higher Margin Residential Customers.* Our heating oil and propane operations concentrate on sales to residential customers who tend to generate higher margins and are generally more stable purchasers than commercial or industrial customers. Residential demand is typically not affected by the general economy, as space heating is considered a nondiscretionary item. For the twelve months ended December 31, 2002, sales to residential customers represented 83% of our heating oil volume and 67% of our propane volume.

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*Insulation from Commodity Price Changes.* We price our products either as a pass-through based upon market prices at the time of sale or on a maximum or fixed price basis that is set at the beginning of the heating season. We purchase heating oil and propane on average 10 days in advance of sale to the consumer at market prices. For our maximum or fixed price customers, we enter into forward contracts or market hedges in order to maintain our margins and minimize our exposure to commodity price fluctuations.

*Significant Economies of Scale and Operating Efficiencies.* Petro is now 200 times the size of its average competitor and over two and one-half times the size of its closest competitor and Star Gas Propane is one of the ten largest retail propane distributors in the nation, in each case based on volume. This size and the geographic scope of our operations permit us to achieve economies of scale in purchasing, operations, accounting, credit, collections, marketing and the use of information technology that are not generally available to our smaller competitors. Additionally, our size allows us to provide higher levels of customer service for significantly lower cost per customer than our competitors and employ product branding to enhance customer retention. For example, in our heating oil operations, we are utilizing customer call center operations and technology-based service vehicle dispatch in order to maximize customer responsiveness while reducing overall operating costs.

*High Barriers to Entry.* The heating oil and propane industries incorporate a number of characteristics which provide us with a competitive advantage over smaller competitors and new entrants. The labor-intensive nature of the business which consists of a large number of small transactions favors larger companies with economies of scale that are able to generate operating efficiencies and effectively manage distribution routes. Customer turnover is generally low and when it occurs, there is usually a triggering event such as a home sale or a service failure by a competitor. A highly fragmented industry with few large operators makes achieving size and scale challenging for new market entrants. Our use of technology to improve our product delivery and customer service is not easily affordable by our smaller heating oil competitors. In addition, we own approximately 95% of the propane tanks located at our customers' homes, which further enhances our profitability and customer stability since fire safety laws in the states in which we operate do not permit such tanks to be filled by other distributors.

*Strong Track Record of Disciplined Acquisition and Integration.* The heating oil and propane distribution industries are highly fragmented with approximately 5,500 market participants in heating oil and approximately 8,000 market participants in propane. These industries are characterized by a large number of relatively small, independently owned and operated local distributors. We have generally purchased family-owned or entrepreneurial operations where existing owners are seeking an exit strategy and where we could immediately incorporate their operations into our infrastructure. We have been successful in purchasing customer lists at attractive multiples and integrating the operations to further enhance our scale. Historically, we have financed these acquisitions using a combination of approximately 50% equity and 50% debt.

*Experienced Management Team.* We have an experienced and talented management team, representing a balance of diversified experiences, skills and orientations. Most of our senior managers have more than 25 years of experience in the heating oil industry and our Chairman and CEO, Irik Sevin, participated in the acquisition of Petro in 1979. In addition to seasoned industry professionals, we have added new talent from diversified functional and industrial areas to broaden our talents and business perspectives. Our success in attracting, motivating, and retaining key management is the result of a performance and profit-based incentive plan and an entrepreneurial work environment.

### **Business Strategy**

Our business strategy is to increase operating profits and cash flow by continuing to be a leading retail distributor of propane and home heating oil. The key elements of this strategy include the following:

*Continue Focus on Operating Efficiencies.* We will continue to reduce operating costs and streamline our operations primarily through the elimination of redundant systems and further reductions in overhead. As the largest retail distributor of home heating oil and a leading retail distributor of propane in the United States, we can further realize economies of scale in operations, marketing and information technology. By spreading costs

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over a larger customer base that we believe is difficult for most of our competitors to replicate, we believe that we will continue to generate strong financial results and maintain our industry leadership position.

*Further Improvement on Cash Flow Stability.* Along with our initiatives to improve operating efficiencies, we have purchased weather insurance to protect our heating oil business against weather conditions that are adverse to our business if temperatures are warmer than certain pre-established benchmarks. This strategy has proven beneficial for fiscal year 2002, generating \$6.4 million in net weather insurance recoveries. For fiscal year 2003, we have purchased \$20 million in weather insurance coverage from Hess Energy Trading Company, LLC and Mieco, Inc. and for each of fiscal years 2004 to 2007, we have purchased \$12.5 million per year in weather insurance coverage from Swiss Re Financial Products Corporation.

*Enhance Public Awareness of Our Heating Oil Brands.* Historically, our company has not had a consistent branding strategy in the various markets in which we operate. As part of our business strategy for the heating oil division, we have recently implemented a plan to pursue a branding and marketing initiative to distribute our heating oil products under our two leading brands, Petro and Meenan Oil. We believe that this strategy will allow our heating oil division to develop brand recognition and improve customer loyalty.

*Improve Customer Penetration and Retention.* We have begun to sell related and complementary products and services, such as air conditioning systems and water treatment products in order to leverage our organizational structure and improve our sales penetration with our existing customer base. We continue to increase the quality of our service offerings to our customers through the use of technology and by leveraging the scale of our operations. We believe that these actions in combination will further enhance our position with existing and potential customers and allow us to maintain or improve our customer retention.

*Pursue Selective Acquisitions.* Our senior management team has developed expertise in identifying acquisition opportunities and integrating acquired customer lists into our operations. Our position as a leading industry consolidator in the heating oil and propane industries provides us a competitive advantage in determining the appropriate price in evaluating acquisition opportunities. We have been able to consolidate and increase our presence in certain geographic markets, while selectively expanding into new markets, particularly for propane, while maintaining or improving our financial results. Our acquisition strategy has enabled us to achieve our current market position and offers us the ability to continue to achieve operating efficiencies and economies of scale.

### **Recent Developments**

*Weather.* For our fiscal year ended September 30, 2002, temperatures in our areas of operation were an average of 18.0% warmer than normal, as defined by the National Oceanic and Atmospheric Administration or, "NOAA," which adversely affected our results of operations. The abnormally warm weather made the past heating season the warmest in the past one hundred years with temperatures approximately 6% higher than the next warmest year in the past century. We have increased our weather insurance coverage in order to help minimize the future impact of weather volatility on our cash flows. For the three months ended December 31, 2002, temperatures in our areas of operation were an average of 7.5% colder than normal, as defined by the NOAA.

*Notes Offering.* In February 2003, we completed a Rule 144A offering of \$200 million in Series A Notes, which we refer to in this prospectus as "the notes offering." The notes were priced at 98.466% for total gross proceeds of \$196.9 million. We will use the net proceeds of \$189.3 million to repay senior secured indebtedness as well as for general partnership purposes including acquisitions. See "Capitalization."

Our general partner, Star Gas LLC, performs all management functions for us and our subsidiaries. Star Gas LLC owns an approximate 1% general partner interest in us and also owns an approximate 1% general partner interest in Star Gas Propane.

Our common units (SGU) and senior subordinated units (SGH) are traded on the New York Stock Exchange.



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**Structure**

Star Gas Propane is our operating subsidiary and, together with its direct and indirect subsidiaries, including Petro, accounts for substantially all of our assets, sales and earnings. Both we and Star Gas Propane are Delaware limited partnerships that were formed in October 1995 in connection with our initial public offering. We are the sole limited partner of Star Gas Propane with a 99% limited partnership interest.

Our propane operations are conducted through Star Gas Propane and its subsidiaries. Our heating oil operations are conducted through Petro and its direct and indirect subsidiaries. Petro is a Minnesota corporation that is an indirect wholly-owned subsidiary of Star Gas Propane. Our electricity and natural gas operations are conducted through Total Gas & Electric, a Florida corporation, that is a wholly-owned indirect subsidiary of Petro.

Our general partner, Star Gas LLC, performs all management functions for us and our subsidiaries. Star Gas LLC owns an approximate 1% general partner interest in us and also owns an approximate 1% general partner interest in Star Gas Propane.

Our common units (SGU) and senior subordinated units (SGH) are traded on the New York Stock Exchange.

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**Summary of the Exchange Offer**

You are entitled to exchange in the exchange offer your outstanding Series A notes for Series B notes having substantially identical terms. You should read the discussion under the heading “Description of Notes” beginning on page 38 of this prospectus for further information regarding the Series B notes.

We summarize the terms of the exchange offer below. You should read the discussion under the heading “The Exchange Offer” beginning on page 20 of this prospectus for further information regarding the exchange offer and resale of the Series B notes.

**Registration Rights Agreement**

We sold \$200 million in aggregate principal amount of Series A notes to JPMorgan Securities Inc., Wachovia Securities, Banc of America Securities LLC and Fleet Securities, Inc. as initial purchasers in a transaction exempt from the registration requirements of the Securities Act. We entered into a registration rights agreement dated as of February 6, 2003 with the initial purchasers which grants the holders of the Series A notes certain exchange rights and registration rights. This exchange offer satisfies those exchange rights.

**The Exchange Offer**

\$1,000 principal amount of Series B notes in exchange for each \$1,000 principal amount of Series A notes. As of the date of this prospectus, \$200 million aggregate principal amount of the Series A notes are outstanding. We will issue Series B notes to holders on the earliest practicable date following the Expiration Date (as that term is defined below).

**Resales of the Series B Notes**

Based on interpretations by the staff of the SEC set forth in no-action letters issued to third parties, we believe that, except as described below, the Series B notes issued pursuant to the exchange offer may be offered for resale, resold and otherwise transferred by holders of the Series B notes, other than a holder that is an “affiliate” of ours, within the meaning of Rule 405 under the Securities Act, without compliance with the registration and prospectus delivery requirements of the Securities Act, so long as the Series B notes are acquired in the ordinary course of the noteholder’s business and the noteholder has no arrangement or understanding with any person to participate in the distribution of the Series B notes.

Each broker-dealer who receives Series B notes pursuant to the exchange offer in exchange for Series A notes that the broker-dealer acquired for its own account as a result of market-making activities or other trading activities, other than Series A notes acquired directly from us or our affiliates, must acknowledge that it will deliver a prospectus in connection with any resale of the Series B notes. The letter of transmittal that accompanies this prospectus as Annex A states that by acknowledging and delivering a prospectus, a broker-dealer will not be deemed to have admitted that it is an “underwriter” within the meaning of the Securities Act.

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If we receive notices in the letter of transmittal, this prospectus (as it may be amended or supplemented from time to time) may be used by a broker-dealer in connection with resales of Series B notes received in exchange for Series A notes where the Series A notes were acquired by the broker-dealer as a result of market-making activities or other trading activities and not acquired directly from us.

The letter of transmittal requires broker-dealers tendering Series A notes in the exchange offer to indicate whether the broker-dealer acquired the Series A notes for its own account as a result of market-making activities or other trading activities, other than Series A notes acquired directly from us or any of our affiliates. If no broker-dealer indicates that the Series A notes were so acquired, we have no obligation under the registration rights agreement to maintain the effectiveness of the registration statement past the consummation of the exchange offer or to allow the use of this prospectus for such resales. See “The Exchange Offer—Registration Rights” and “—Resale of the Series B Notes; Plan of Distribution.”

Expiration Date	The exchange offer expires at 5:00 p.m., New York City time, on _____, 2003, unless we extend the exchange offer in our sole discretion, in which case the term “Expiration Date” means the latest date and time to which the exchange offer is extended.
Conditions to the Exchange Offer	The exchange offer is subject to certain conditions which we may waive. See “The Exchange Offer—Conditions to the Exchange Offer.”
Procedures for Tendering the Series A Notes	Each holder of Series A notes wishing to accept the exchange offer must complete, sign and date the accompanying letter of transmittal in accordance with the instructions, and mail or otherwise deliver the letter of transmittal together with the Series A notes and any other required documentation to the exchange agent identified below under “Exchange Agent” at the address set forth in this prospectus. By executing the letter of transmittal, a holder of Series A notes will make certain representations to us. See “The Exchange Offer—Registration Rights” and “—Procedures for Tendering Series A Notes.”
Special Procedures for Beneficial Owners	Any beneficial owner whose Series A notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee and who wishes to tender should contact the registered holder promptly and instruct the registered holder to tender the notes on behalf of the beneficial owner. See “The Exchange Offer—Procedures for Tendering Series A Notes.”
Guaranteed Delivery Procedures	A holder of Series A notes who desires to tender the Series A notes at a time when those securities are not immediately available or a holder who cannot deliver the Series A notes, the letter of transmittal or any other documents required by the letter of transmittal to the exchange agent prior to the Expiration Date, must tender the Series A notes to be exchanged according to the guaranteed delivery procedures set forth in “The Exchange Offer—Procedures for Tendering Series A Notes—Guaranteed Delivery.”

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Withdrawal Rights	Holders who have tendered any Series A notes pursuant to the exchange offer may withdraw any of the notes so tendered at any time prior to the Expiration Date.
Acceptance of Series A Notes and Delivery of Series B Notes	We will accept for exchange any and all Series A notes that are properly tendered in the exchange offer, and not withdrawn, prior to the Expiration Date. The Series B notes issued pursuant to the exchange offer will be issued on the earliest practicable date following our acceptance for exchange of Series A notes. See “The Exchange Offer—Terms of the Exchange Offer.”
Exchange Agent	Union Bank of California, N.A. is serving as exchange agent in connection with the exchange offer. See “The Exchange Offer—Exchange Agent.”
Federal Income Tax Considerations	The exchange of Series A notes for Series B notes pursuant to the exchange offer will not be treated as a taxable exchange for federal income tax purposes. See “U.S. Tax Consequences.”

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**Summary Consolidated Financial and Operating Data**

The following table sets forth our summary consolidated financial information that has been derived from (i) our audited consolidated statements of operations and cash flows for our business for each of the years ended September 30, 2000, 2001 and 2002, (ii) the unaudited condensed consolidated statements of operations and cash flows for our business for the three months ended December 31, 2001 and 2002 and the twelve months ended December 31, 2002 and (iii) the unaudited condensed consolidated balance sheet for our business as of December 31, 2002. You should read this financial information in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our historical consolidated financial statements and notes incorporated by reference in this prospectus. The information set forth below is not necessarily indicative of our future results.

	Fiscal year ended September 30,			Three months ended December 31,		Twelve months ended December 31,
	2000	2001	2002	2001	2002	2002
(in thousands)						
<b>Statement of operations data:</b>						
Sales	\$744,664	\$1,085,973	\$1,025,058	\$286,223	\$384,980	\$ 1,123,815
Costs and expenses:						
Cost of sales	501,589	771,317	661,978	184,247	255,347	733,078
Delivery and branch	156,862	200,059	235,708	56,321	74,514	253,901
General and administrative	20,511	39,086	40,771	8,825	12,235	44,181
Total Gas & Electric customer acquisition	2,082	1,868	1,228	221	614	1,621
Depreciation and amortization	34,708	44,396	59,049	14,503	12,848	57,394
Operating income	28,912	29,247	26,324	22,106	29,422	33,640
Interest expense, net	26,784	33,727	37,502	10,144	8,370	35,728
Net income (loss)	1,353	(5,249)	(11,169)	11,503	16,039	(6,633)
<b>Other financial data:</b>						
EBITDA(a)	63,620	73,643	85,373	36,609	42,270	91,034
Capital expenditures:						
Maintenance(b)	3,729	4,742	5,435	1,285	2,085	6,235
Growth	2,695	12,349(c)	7,753(c)	2,968	2,245	7,030
Total	6,424	17,091	13,188	4,253	4,330	13,265
Net cash provided by (used in):						
Operating activities	\$ 20,364	\$ 63,144	\$ 65,455	\$ 923	\$ (46,748)	\$ 17,784
Investing activities	(65,172)	(256,134)	(62,412)	(26,784)	(4,842)	(40,470)
Financing activities	51,226	199,308	41,210	31,352	633	10,491
<b>Operating data:</b>						
Retail propane gallons sold	107,557	137,031	140,324	39,689	52,617	153,252
Heating oil gallons sold	345,684	427,168	457,749	131,059	167,390	494,080

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	As of December 31, 2002	
	Actual	As adjusted (d)
	(in thousands)	
<b>Balance sheet data at end of period:</b>		
Cash and cash equivalents	\$ 10,524	\$ 50,524
Current assets	270,449	310,449
Total assets	974,951	1,022,596
Total long-term debt (e)	415,803	475,795
Working capital borrowings (f)	92,000	79,653
Partners' capital	231,806	231,046

- (a) We define "EBITDA" as operating income (loss) *plus* depreciation and amortization. You should not consider EBITDA as an alternative to net income (as an indicator of operating performance) or as an alternative to cash flow (as a measure of liquidity or ability to service debt obligations). Our EBITDA may not be comparable to EBITDA or similarly titled measures of other entities as other entities may not calculate EBITDA in the same manner we do. EBITDA provides additional information for evaluating our ability to make the minimum quarterly distributions required under the terms of our partnership agreement.

We calculate EBITDA as follows:

	Fiscal year ended September 30,			Three months ended December 31,		Twelve months ended December 31,
	2000	2001	2002	2001	2002	2002
	(in thousands)					
Operating income	\$28,912	\$29,247	\$26,324	\$ 22,106	\$ 29,422	\$ 33,640
Plus:						
Depreciation and amortization	34,708	44,396	59,049	14,503	12,848	57,394
EBITDA	\$63,620	\$73,643	\$85,373	\$ 36,609	\$ 42,270	\$ 91,034

- (b) The proceeds from the sales of fixed assets have been netted against maintenance capital expenditures as we use the cash received from these asset sales to finance maintenance capital expenditures. The proceeds from the sale of fixed assets were \$1.1 million, \$0.6 million, and \$1.9 million for the fiscal years ended September 30, 2000, 2001 and 2002, respectively. For the three months ended December 31, 2001 and December 31, 2002, the proceeds from the sales of fixed assets were \$1.1 million and \$0.2 million, respectively. For the twelve months ended December 31, 2002, the proceeds from the sale of fixed assets were \$0.9 million.
- (c) Includes investment by Petro in technology to reduce operating expenditures.
- (d) As adjusted to give effect to the application of net proceeds of the notes offering. See "Capitalization."
- (e) Long-term debt includes current portion.
- (f) Our working capital borrowings must be reduced to zero for a period of 45 days at Petro and 30 days at Star Gas Propane each year following the heating season.

## RISK FACTORS

*You should consider carefully the risk factors discussed below, as well as all other information in this prospectus and the documents incorporated herein by reference before you decide to exchange the notes. Investing in the notes is speculative and involves significant risk. Any of the risks described in this prospectus could impair our business, financial condition and operating results, could cause the trading price, if any, of the notes to decline or could result in a partial or total loss of your investment.*

### **Risks Related to the Exchange Offer**

#### ***The Market Value of Your Series A Notes May Be Lower if You Do Not Exchange Your Series A Notes or Fail to Properly Tender Your Series A Notes for Exchange.***

*Consequences of Failure to Exchange.* To the extent that Series A notes are tendered and accepted for exchange pursuant to the exchange offer, the trading market for Series A notes that remain outstanding may be significantly more limited, which might adversely affect the liquidity of the Series A notes not tendered for exchange. The extent of the market and the availability of price quotations for Series A notes would depend upon a number of factors, including the number of holders of Series A notes remaining at such time and the interest in maintaining a market in such Series A notes on the part of securities firms. An issue of securities with a smaller outstanding market value available for trading, or float, may command a lower price than would a comparable issue of securities with a greater float. Therefore, the market price for Series A notes that are not exchanged in the exchange offer may be affected adversely to the extent that the amount of Series A notes exchanged pursuant to the exchange offer reduces the float. The reduced float also may tend to make the trading price of the Series A notes that are not exchanged more volatile.

*Consequences of Failure to Properly Tender.* Issuance of the Series B notes in exchange for the Series A notes pursuant to the exchange offer will be made following the prior satisfaction, or waiver, of the conditions set forth in “The Exchange Offer—Conditions to the Exchange Offer” and only after timely receipt by the exchange agent of the Series A notes, a properly completed and duly executed letter of transmittal and all other required documents. Therefore, holders of Series A notes desiring to tender Series A notes in exchange for Series B notes should allow sufficient time to ensure timely delivery of all required documentation. Neither we, the exchange agent nor any other person is under any duty to give notification of defects or irregularities with respect to the tenders of Series A notes for exchange. Series B notes that may be tendered in the exchange offer but which are not validly tendered will, following the consummation of the exchange offer, remain outstanding and will continue to be subject to the same transfer restrictions currently applicable to the Series A notes.

#### ***We Cannot Assure You that an Active Trading Market for the Notes Will Develop.***

The Series A notes have not been registered under the Securities Act, and may not be resold by purchasers thereof unless the Series A notes are subsequently registered or an exemption from the registration requirements of the Securities Act is available. However, we cannot assure you that, even following registration or exchange of the Series A notes for Series B notes, that an active trading market for the Series A notes or the Series B notes will exist, and we will have no obligation to create such a market. At the time of the private placement of the Series A notes, the initial purchasers advised us that they intended to make a market in the Series A notes and, if issued, the Series B notes. The initial purchasers are not obligated, however, to make a market in the Series A notes or the Series B notes and any market-making may be discontinued at any time at their sole discretion. No assurance can be given as to the liquidity of or trading market for the Series A notes or the Series B notes.

The liquidity of any trading market for the notes and the market price quoted for the notes will depend upon the number of holders of the notes, the overall market for high yield securities, our financial performance or prospects, the prospects for companies in our industry generally, the interest of securities dealers in making a market in the notes and other factors.

**Risks Related to the Notes**

***Our Substantial Debt and Other Financial Obligations Could Impair Our Financial Condition and Our Ability to Fulfill Our Debt Obligations.***

We have substantial indebtedness and other financial obligations. As of December 31, 2002, as adjusted to give effect to the application of the net proceeds of the notes offering, we had:

- total indebtedness of approximately \$475.8 million, excluding working capital borrowings of \$79.7 million;
- availability under Petro's bank credit facilities of \$51.4 million under its working capital line, \$2.5 million under its letter of credit facility and \$46.5 million under its acquisition line; and
- availability under Star Gas Propane's bank credit facilities of \$10.0 million under its working capital line, \$25.0 million under its acquisition line and \$23.0 million under its parity debt facility.

Subject to the restrictions governing Petro's and Star Gas Propane's indebtedness and other financial obligations and the indenture governing the notes, we may incur significant additional indebtedness and other financial obligations, which may be secured and/or structurally senior to the notes.

***Our Substantial Indebtedness and Other Financial Obligations Could Have Important Consequences to You.***

For example, our indebtedness could:

- make it more difficult for us to satisfy our obligations with respect to the notes;
- impair our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, general corporate purposes or other purposes;
- result in higher interest expense in the event of increases in interest rates since some of our debt is, and will continue to be, at variable rates of interest;
- have a material adverse effect on us if we fail to comply with financial and restrictive covenants in our debt agreements and an event of default occurs as a result of that failure that is not cured or waived;
- require us to dedicate a substantial portion of our cash flow from Petro and Star Gas Propane to payments on our indebtedness and other financial obligations, thereby reducing the availability of our cash flow to fund working capital, capital expenditures and other general partnership requirements;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate; and
- place us at a competitive disadvantage compared to our competitors that have proportionately less debt.

If we or Petro or Star Gas Propane are unable to meet our debt service obligations and other financial obligations, we could be forced to restructure or refinance our indebtedness and other financial transactions, seek additional equity capital or sell our assets. We may then be unable to obtain such financing or capital or sell our assets on satisfactory terms, if at all.

***We Are a Holding Company and Have No Material Operations or Assets. Accordingly, We are Dependent on Distributions from Petro and Star Gas Propane to Service Our Debt Obligations. These Distributions are Not Guaranteed and May Be Restricted. In Addition, the Notes Will be Non-Recourse to Petro and Star Gas Propane.***

We are a holding company for our direct and indirect subsidiaries, including Petro and Star Gas Propane. We have no material operations and only limited assets. Accordingly, we are dependent on cash distributions from Petro and Star Gas Propane and their subsidiaries to service our debt obligations. Noteholders will not receive payments required by the notes unless Petro and Star Gas Propane are able to make distributions to us after they first satisfy their obligations under the terms of their own borrowing arrangements and reserve any necessary amounts to meet their own financial obligations.



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In addition, the various agreements governing Petro's and Star Gas Propane's indebtedness permit quarterly distributions only so long as they meet a specified financial ratio and no default exists or would result from such distribution. Each of these agreements contain various negative and affirmative covenants applicable to Petro and Star Gas Propane and some of these agreements require them to maintain specified financial ratios. If Petro or Star Gas Propane violate any of these covenants or requirements, a default may result and distributions would be limited. These covenants limit Petro's and Star Gas Propane's ability to, among other things:

- incur additional indebtedness;
- engage in transactions with affiliates;
- incur liens;
- sell assets;
- make restricted payments, loans and investments;
- enter into business combinations and asset sale transactions; and
- engage in other lines of business.

Additionally, our obligations under the notes will be non-recourse to Petro and Star Gas Propane. Therefore, if we should fail to pay interest or principal on the notes or breach any of our other obligations under the notes or the indenture, you will not be able to obtain any such payments or obtain any other remedy from Petro and Star Gas Propane or their subsidiaries, which will not be liable for any of our obligations under the indenture or the notes.

***We Are Required to Distribute All of Our Available Cash to Our Unitholders and We Are Not Required to Accumulate Cash for the Purpose of Meeting Our Future Obligations to Our Noteholders, Which May Limit the Cash Available to Service the Notes.***

Subject to the limitations on restricted payments contained in the indenture governing the notes, our partnership agreement requires us to distribute all of our available cash each quarter to our limited partners and our general partner. As a result of these distribution requirements, we do not expect to accumulate significant amounts of cash. Our general partner will determine the timing and amount of our distributions and has broad discretion to establish and make additions to our reserves for any proper purpose, including, but not limited to, reserves:

- to comply with the terms of any of our agreements or obligations (including the establishment of reserves to fund the payment of interest and principal in the future);
- to provide for level distributions of cash notwithstanding the seasonality of our business; and
- to provide for future capital expenditures and other payments deemed by our general partner to be necessary or advisable.

Depending on the timing and amount of our cash distributions, these distributions could significantly reduce the cash available to us in subsequent periods to make payments on the notes.

***The Notes are Structurally Subordinated to All Indebtedness and Other Liabilities of Petro and Star Gas Propane and Their Subsidiaries.***

The notes are structurally subordinated to all existing and future claims of creditors of Petro and Star Gas Propane and their subsidiaries, including the lenders under Petro's and Star Gas Propane's indebtedness and all possible future creditors of Petro and Star Gas Propane and their subsidiaries. This is because these creditors will have priority as to the assets of Petro and Star Gas Propane and their subsidiaries over our claims as a direct or indirect equity holder in Petro and Star Gas Propane and, thereby, indirectly, your claims as holders of the notes.

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As a result, upon any distribution to these creditors in a bankruptcy, liquidation or reorganization or similar proceeding relating to us or our property, these creditors will be entitled to be paid in full before any payment may be made with respect to the notes. Thereafter, the holders of the notes will participate with our trade creditors and all other holders of senior indebtedness in the assets remaining, if any. In any of these cases, we may have insufficient funds to pay all of our creditors and noteholders may therefore receive less, ratably, than creditors of Petro and Star Gas Propane and their subsidiaries. As of December 31, 2002, on a pro forma basis after giving effect to the private placement of the Series A notes and the application of the proceeds thereof, the notes would have ranked structurally junior to \$591.8 million of Petro's and Star Gas Propane's indebtedness and other liabilities.

### ***Restrictive Covenants in the Agreements Governing Our Indebtedness and Other Financial Obligations of Petro and Star Gas Propane May Reduce Our Operating Flexibility.***

The indenture governing these notes and the agreements governing Petro's and Star Gas Propane's indebtedness and other financial obligations contain various covenants that limit our ability and the ability of specified subsidiaries of ours to, among other things:

- incur additional indebtedness;
- make distributions to our unitholders;
- purchase or redeem our outstanding equity interests or subordinated debt;
- make specified investments;
- create liens;
- sell assets;
- engage in specified transactions with affiliates;
- restrict the ability of our subsidiaries to make specified payments, loans, guarantees and transfers of assets or interests in assets;
- engage in sale-leaseback transactions;
- effect a merger or consolidation with or into other companies or a sale of all or substantially all of our properties or assets; and
- engage in other lines of business.

These restrictions could limit our ability and the ability of Petro and Star Gas Propane and their subsidiaries to obtain future financings, make needed capital expenditures, withstand a future downturn in our business or the economy in general, conduct operations or otherwise take advantage of business opportunities that may arise. Some of the agreements governing Petro's and Star Gas Propane's indebtedness and other financial obligations also require them to maintain specified financial ratios and satisfy other financial conditions. The ability of Petro and Star Gas Propane to meet those financial ratios and conditions can be affected by events beyond their control, such as weather conditions and general economic conditions. Accordingly, they may be unable to meet those ratios and conditions. For example, due to the impact on operations of the record warm weather conditions experienced during fiscal 2002, Petro did not meet certain of its credit facility agreement covenants. This non-compliance was resolved with an amendment to Petro's credit facility agreement that was signed in April 2002. As a result, Petro is currently in compliance with these covenants.

However, any future breach of any of these covenants or Petro's and Star Gas Propane's failure to meet any of these ratios or conditions could result in a default under the terms of the relevant indebtedness or other financial obligations, which could cause such indebtedness or other financial obligations, and by reason of cross-default provisions, the notes, to become immediately due and payable. If we were unable to repay those amounts,

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the lenders could initiate a bankruptcy proceeding or liquidation proceeding or proceed against the collateral, if any. If the lenders of Petro's and Star Gas Propane's indebtedness or other financial obligations accelerate the repayment of borrowings or other amounts owed, we may not have sufficient assets to repay our indebtedness or other financial obligations, including the notes.

### ***We May be Unable to Repurchase the Notes Upon a Change of Control and It May be Difficult to Determine if a Change of Control Has Occurred.***

Upon the occurrence of "change of control" events specified in the section entitled "Description of notes—Change of control," we or a third party will be required to make a change of control offer to repurchase your notes at 101% of their principal amount, plus accrued and unpaid interest. The terms of Petro's and Star Gas Propane's indebtedness limit our ability to repurchase your notes in those circumstances. Any of our future debt agreements may contain similar restrictions and provisions. Accordingly, we may be unable to satisfy our obligations to purchase your notes unless we are able to refinance or obtain waivers under our indebtedness and that of Petro and Star Gas Propane with similar restrictions. We may not have the financial resources to purchase your notes, particularly if a change of control event triggers a similar repurchase requirement for, or results in the acceleration of, other indebtedness. Some of the agreements governing Petro's indebtedness currently provide that specified change of control events will constitute a default and could result in the acceleration of the indebtedness under those agreements. Also, some of the agreements governing Star Gas Propane's indebtedness provide that specified changes of control will result in the rerating of the indebtedness issued under those agreements which could lead to an increase in the interest rate for such indebtedness. Our failure to make or consummate a change of control repurchase offer or pay the change of control purchase price when due will give the trustee and the holders of the notes the rights described under the section entitled "Description of Notes—Events of Default."

In addition, one of the events that trigger a change of control is a sale of all or substantially all of our assets. The meaning of "substantially all" varies according to the facts and circumstances of the subject transaction and has no clearly established meaning under New York law, which is the law that governs the indenture. This ambiguity as to when a sale of substantially all of our assets has occurred may make it difficult for holders of the notes to determine whether we have properly identified, or failed to identify, a change of control.

### **Risks Inherent in Our Businesses**

#### ***Since Weather Conditions May Adversely Affect the Demand for Propane, Home Heating Oil, Natural Gas and Electricity, Our Financial Condition is Vulnerable to Warm Winters.***

Weather conditions have a significant impact on the demand for both propane and home heating oil because our customers depend on these products principally for space heating purposes. As a result, weather conditions may materially adversely impact our operating results and financial condition. During the peak heating season of October through March, sales of propane represent approximately 70% to 75% of our annual retail propane volume and sales of home heating oil represent approximately 75% to 80% of our annual home heating oil volume. Actual weather conditions can vary substantially from year to year, significantly affecting our financial performance. Furthermore, warmer than normal temperatures in one or more regions in which we operate can significantly decrease the total volume we sell and the gross profit realized on those sales and, consequently, our results of operations. For example, in fiscal 2000 and especially fiscal 2002, temperatures were significantly warmer than normal for the areas in which we sell propane and home heating oil, which adversely affected the amount of net income that we generated during these periods. In fiscal year 2002, temperatures in our areas of operation were an average of 18.4% warmer than in fiscal year 2001 and 18.0% warmer than normal. We have purchased weather insurance to help minimize the adverse effect of weather volatility on our cash flows, of which there can be no assurance. Weather variations also affect demand for propane from agricultural customers, because dry weather during the harvest season reduces demand for propane used in crop drying. Weather conditions also have a significant impact on the demand for both natural gas and electricity because Total Gas & Electric's customers depend on these products in part for space heating purposes.

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### ***Petro's Operating Results Will Be Adversely Affected if It Experiences Significant Customer Losses That Are Not Offset or Reduced by Customer Gains.***

Petro's net attrition of home heating oil customers averaged approximately 5% per year over the five years through 1998. This rate represents the net of its annual gross customer loss rate of approximately 15% offset by customer gains of approximately 10% per year. In fiscal 1999, Petro had net customer attrition equal to approximately 2.2%. From 2000 to 2002, Petro's average annual net customer attrition was less than 1%. Customer losses are the result of various factors, including:

- customer relocations;
- supplier changes based primarily on price and service;
- natural gas conversions; and
- credit problems.

Petro may not be able to achieve net gains of home heating oil customers and may continue to experience customer attrition in the future.

### ***Sudden and Sharp Oil and Propane Price Increases and Substantial Fluctuations in Natural Gas and Electricity Commodity Prices or the Cost of Transmitting and Distributing These Commodities That Cannot be Passed on to Customers May Adversely Affect Our Operating Results.***

The retail propane and home heating oil industries are "margin-based" businesses in which gross profits depend on the excess of retail sales prices over supply costs. Consequently, our profitability is sensitive to changes in wholesale prices of propane and heating oil caused by changes in supply or other market conditions. Many of these factors are beyond our control and thus, when there are sudden and sharp increases in the wholesale costs of propane and heating oil, we may not be able to pass on these increases to our customers through retail sales prices. In addition, the timing of cost pass-throughs can significantly affect margins. Wholesale price increases could reduce our gross profits and could, if continuing over an extended period of time, reduce demand by encouraging conservation or conversion to alternative energy sources. We may from time to time engage in transactions, such as options or fixed price contracts to purchase heating oil and propane, to hedge product costs in an attempt to reduce cost volatility.

Substantial fluctuations in energy commodity prices or the cost of transmitting and distributing those energy commodities could increase Total Gas & Electric's costs of operations.

### ***A Significant Portion of Our Home Heating Oil and Propane Volume is Sold to Price-Protected Customers and Our Operating Results Could be Adversely Affected by Changes in the Cost of Supply That We Cannot Pass on to These Customers or Otherwise Protect Against.***

A portion of our home heating oil volume is sold to individual customers under an agreement pre-establishing the maximum sales price or a fixed price of home heating oil over a twelve-month period. The maximum price at which home heating oil is sold to these price-protected customers is generally renegotiated prior to the heating season of each year based on current market conditions. We currently enter into forward purchase contracts, futures contracts and option contracts for a substantial majority of the heating oil we sell to these price-protected customers in advance and at a fixed cost. Should events occur after a price-protected sales price is established that increase the cost of home heating oil above the amount anticipated, margins for the price-protected customers whose heating oil was not purchased in advance would be lower than expected, while those customers whose heating oil was purchased in advance would be unaffected. Conversely, should events occur during this period that decrease the cost of heating oil below the amount anticipated, margins for the price-protected customers whose heating oil was purchased in advance could be lower than expected, while margins for those customers whose heating oil was not purchased in advance would be unaffected or higher than expected. Approximately 25% of our home heating oil customers and 7% of our propane customers are currently under a price plan.

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### ***If We Do Not Make Acquisitions on Economically Acceptable Terms, Our Future Financial Performance Will Be Limited.***

Neither the propane nor the home heating oil industry is a growth industry because of increased competition from alternative energy sources. A significant portion of our growth in the past decade has been directly tied to the success of our acquisition programs. Accordingly, our future financial performance will depend on our ability to continue to make acquisitions at attractive prices. We cannot assure you that we will be able to identify attractive acquisition candidates, whether in the home heating oil or propane sector, in the future or that we will be able to acquire businesses on economically acceptable terms. In particular, competition for acquisitions in the propane business has intensified and become more costly. Factors that may adversely affect our propane and home heating oil operating and financial results, such as warm weather patterns, may limit our access to capital and adversely affect our ability to make acquisitions. Any acquisition may involve potential risks, including:

- an increase in our indebtedness;
- the inability to integrate the operations of the acquired business;
- the inability to successfully expand our operations into new territories;
- the diversion of management's attention from other business concerns; and
- an excess of customer loss or loss of key employees from the acquired business.

In addition, acquisitions may be dilutive to earnings and distributions to the unitholders and any additional debt incurred to finance acquisitions may affect our ability to make distributions to the unitholders.

### ***Because of the Highly Competitive Nature of the Retail Propane and Home Heating Oil Businesses, We May Not Be Able to Retain Existing Customers or Acquire New Customers, Which Would Have an Adverse Impact on Our Operating Results and Financial Condition.***

In both our propane and home heating oil businesses, if we are unable to compete effectively, we may lose existing customers or fail to acquire new customers, which would have a material adverse effect on our results of operations and financial condition.

Many of our propane competitors and potential competitors are larger or have substantially greater financial sources than we do, which may provide them with some advantages. Generally, competition in the past few years has intensified, partly as a result of warmer-than-normal weather and general economic conditions. Most of our propane retail branch locations compete with five or more marketers or distributors. The principal factors influencing competition with other retail marketers are:

- price;
- reliability and quality of service;
- responsiveness to customer needs;
- safety concerns;
- long-standing customer relationships;
- the inconvenience of switching tanks and suppliers; and
- the lack of growth in the industry.

We can make no assurances that we will be able to compete successfully on the basis of these factors. If a competitor attempts to increase market share by reducing prices, our operating results and financial condition could be materially and adversely affected. In addition, competition from alternative energy sources has been increasing as a result of reduced regulation of many utilities, including natural gas and electricity.

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Our home heating oil business competes with heating oil distributors offering a broad range of services and prices, from full service distributors, like Petro, to those offering delivery only. Competition with other companies in the home heating oil industry is based primarily on customer service and price. Long-standing customer relationships are typical in the industry. It is customary for companies to deliver home heating oil to their customers based upon weather conditions and historical consumption patterns, without the customer making an affirmative purchase decision. Most companies provide home heating equipment repair service on a 24-hour per day basis. In some cases, homeowners have formed buying cooperatives to purchase fuel oil from distributors at a price lower than individual customers are otherwise able to obtain. As a result of these factors, it may be difficult for Petro to acquire new customers.

Our home heating oil business also competes for customers with suppliers of alternative energy products, principally natural gas. We could face additional price competition from alternative heating sources such as electricity and natural gas as a result of deregulation in those industries. Over the past five years, conversions by Petro's customers from heating oil to other sources have averaged approximately 1% per year of the homes it serves.

***Total Gas & Electric Faces Strong Competition from Incumbent Utilities and Other Competitors with Greater Resources and Is Required to Rely on Utilities, with Which It Competes, to Perform Some Functions for Its Customers.***

Total Gas & Electric faces strong competition from incumbent utilities and other competitors with greater resources, which may limit its ability to acquire customers and materially adversely affect its financial results. Total Gas & Electric is required to rely on utilities, with which it competes, to perform some functions for its customers. Because of this reliance, service failures that are beyond Total Gas & Electric's control may still lead to poor customer satisfaction and unforeseen costs of operation.

***We Are Subject to Operating and Litigation Risks that Could Adversely Affect Our Operating Results to the Extent Not Covered by Insurance.***

Our operations are subject to all operating hazards and risks normally incidental to handling, storing, transporting and otherwise providing customers with combustible liquids such as propane and home heating oil. As a result, we may be a defendant in various legal proceedings and litigation arising in the ordinary course of business. We maintain insurance policies with insurers in amounts and with coverages and deductibles as we believe are reasonable. However, there can be no assurance that this insurance will be adequate to protect us from all material expenses related to potential future claims for personal and property damage or that these levels of insurance will be available in the future at economical prices. In addition, the occurrence of an explosion, whether or not we are involved, may have an adverse effect on the public's desire to use our products.

***We Are Dependent on Principal Suppliers and Carriers, Increasing the Risk of an Interruption in Supply that Might Result in a Loss of Revenues and/or Customers.***

During fiscal year 2002, 9% of our propane purchases in the Midwest were purchased on the spot market from various Mont Belvieu, Texas sources, 18% of our propane purchases were from a refinery in Kentucky owned by MarkWest Hydrocarbon, Inc. and 13% were purchased from a refinery in Illinois owned by BP Canada Energy Marketing Corporation. Collectively, our fiscal 2002 propane purchases were purchased from over 30 sources. Although we believe that alternative sources of propane are readily available, if we are unable to purchase propane from our usual sources, the failure to obtain alternate sources at competitive prices and on a timely basis could have a material adverse effect on our business.

Historically, a substantial portion of the propane we purchase has originated in Mont Belvieu, Texas and has been shipped to us through a major common carrier pipeline. Any significant interruption in the service at Mont Belvieu or on the common carrier pipeline could have a material adverse effect on our business.

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***Our Results of Operations and Financial Condition May Be Adversely Affected by Governmental Regulation and Associated Environmental and Regulatory Costs.***

Our home heating oil business is subject to a wide range of federal and state laws and regulations related to environmental and other regulated matters. Petro has implemented environmental programs and policies designed to avoid potential liability and costs under applicable environmental laws. It is possible, however, that Petro will have increased costs due to stricter pollution control requirements or liabilities resulting from noncompliance with operating or other regulatory permits. New environmental regulations might adversely impact Petro's operations, including underground storage and transportation of home heating oil. In addition, the environmental risks inherently associated with our home heating oil operations, such as the risks of accidental release or spill, are greater than those associated with our propane operations. It is possible that material costs and liabilities will be incurred, including those relating to claims for damages to property and persons.

***In Our Acquisition of Meenan, We Assumed All of Meenan's Environmental Liabilities.***

In our acquisition of Meenan Oil Co., Inc., or "Meenan," in August 2001, we assumed all of Meenan's environmental liabilities, including those related to the cleanup of contaminated properties, in consideration of a reduction of the purchase price. We established a reserve of \$2.8 million upon the closing of the acquisition to cover potential costs associated with remediating known environmental liabilities. While we believe this reserve will be adequate, it is possible that the extent of the contamination at issue or the expense of addressing it could exceed our estimates and thus the costs of remediating these known liabilities could materially exceed the amounts reserved.

***If Total Gas & Electric Fails to Comply with State Consumer Protection Laws and Other State Laws and Regulations to Which It is Subject, It May Have a Material Adverse Effect on Total Gas & Electric's Operations.***

Total Gas & Electric is subject to state consumer protection laws and other state laws and regulations. From time to time, Total Gas & Electric has been subject to investigations by the authorities in various jurisdictions into its practices for soliciting customers. To date, Total Gas & Electric has been able to resolve these investigations on a satisfactory basis. Total Gas & Electric has adopted a comprehensive sales compliance program to comply with applicable regulations. However, if Total Gas & Electric fails to comply with these regulations in the future, it may have a material adverse effect on Total Gas & Electric's operations.

***A Reversal of or Delay in the Trend Towards Competitive Restructuring of the Electric and Natural Gas Markets Could Materially Adversely Affect Total Gas & Electric's Business Prospects and Financial Condition.***

If the trend towards competitive restructuring of the electric and natural gas markets is delayed or reversed, Total Gas & Electric's business prospects and financial condition could be materially adversely affected.

***Total Gas & Electric Has Experienced Significant Customer Credit Deficiencies that Have Adversely Affected Its Operations.***

Since our acquisition of Total Gas & Electric in April 2000, Total Gas & Electric has experienced significant customer credit deficiencies and problems collecting its receivables that we believe were primarily due to the customer solicitation and credit approval policies adopted by prior management. As a result, during the fiscal year ended September 30, 2001, Total Gas & Electric increased its reserve for bad debts by \$6.4 million, of which \$5.7 million related to terminated accounts. An additional \$6.1 million of reserve was provided during the fiscal year ended September 30, 2002, of which \$5.8 million was for those terminated accounts, leaving an unreserved accounts receivable balance for the terminated accounts of approximately \$0.4 million as of September 30, 2002. While we believe that Total Gas & Electric's delinquency and bad debt levels will improve and will ultimately approximate those at our home heating oil and propane segments as a result of our institution of new credit policies and information systems, we cannot assure you that these new initiatives will be successful.

***The General Partner Has Conflicts of Interest that May Permit the General Partner to Favor its Own Interests to the Detriment of Noteholders.***

Conflicts of interest have arisen and could arise in the future as a result of relationships between the general partner and its affiliates, on the one hand, and Star Gas Partners or any of the limited partners, on the other hand. As a result of these conflicts, the general partner may favor its own interests and those of its affiliates over the interests of the holders of the notes offered hereby. The nature of these conflicts is ongoing and includes the following considerations:

- Except for Irik P. Sevin, who is subject to a non-competition agreement, the general partner's affiliates are not prohibited from engaging in other business or activities, including direct competition with us.
- The general partner determines the amount and timing of asset purchases and sales, capital expenditures, borrowings and reserves, each of which can impact the amount of cash that is distributed to unitholders and available to pay the notes.
- The general partner controls the enforcement of obligations owed to us by the general partner.
- The general partner decides whether to retain separate counsel, accountants or others to perform services for us.
- In some instances the general partner may borrow funds in order to permit the payment of distributions.

**USE OF PROCEEDS**

The exchange offer is intended to satisfy our obligations under the registration rights agreement. We will not receive any cash proceeds from the issuance of the Series B notes offered by this prospectus. In consideration for issuing the Series B notes as contemplated in this prospectus, we will receive Series A notes in like principal amount, the form and terms of which are the same as the form and terms of the Series B notes, except as otherwise described herein under "The Exchange Offer—Terms of the Exchange Offer." The Series A notes surrendered in exchange for the Series B notes will be retired and canceled and cannot be reissued. Accordingly, issuance of the Series B notes will not result in any increase in our indebtedness.

**THE EXCHANGE OFFER**

For the purposes of this section, "we" means Star Gas Partners, L.P., and Star Gas Finance Company.

**Registration Rights**

At the closing of the offering of the Series A notes, we entered into a registration rights agreement with the initial purchasers pursuant to which we agreed, for the benefit of the holders of the Series A notes, at our cost, to do the following:

- file an exchange offer registration statement with the SEC with respect to the exchange offer for the Series B notes, and
- use our best efforts to cause the exchange offer registration statement to be declared effective under the Securities Act by August 5, 2003.

Upon the SEC's declaring the exchange offer registration statement effective, we agreed to offer the Series B notes in exchange for surrender of the Series A notes. We agreed to use our best efforts to cause the exchange offer registration statement to be effective continuously, to keep the exchange offer open for a period of not less than 20 business days and to use our best efforts to cause the exchange offer to be consummated no later than 60 days after the exchange offer registration statement is declared effective by the SEC.



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For each Series A note surrendered to us pursuant to the exchange offer, the holder of such Series A note will receive a Series B note having a principal amount equal to that of the surrendered Series A note. Interest on each Series B note will accrue from the last interest payment date on which interest was paid on the surrendered Series A note or, if no interest has been paid on such Series A note, from the date of its original issue. The registration rights agreement also provides an agreement to include in the prospectus for the exchange offer certain information necessary to allow a broker-dealer who holds Series A notes that were acquired for its own account as a result of market-making activities or other ordinary course trading activities (other than Series A notes acquired directly from us or one of our affiliates) to exchange such Series A notes pursuant to the exchange offer and to satisfy the prospectus delivery requirements in connection with resales of Series B notes received by such broker-dealer in the exchange offer. We agreed to use our best efforts to maintain the effectiveness of the exchange offer registration statement for these purposes for a period of 180 days after the completion of the exchange offer, which period may be extended under certain circumstances.

The preceding agreement is needed because any broker-dealer who acquires Series A notes for its own account as a result of market-making activities or other trading activities is required to deliver a prospectus meeting the requirements of the Securities Act. This prospectus covers the offer and sale of the Series B notes pursuant to the exchange offer and the resale of Series B notes received in the exchange offer by any broker-dealer who held Series A notes acquired for its own account as a result of market-making activities or other trading activities other than Series A notes acquired directly from us or one of our affiliates.

Based on interpretations by the staff of the SEC set forth in no-action letters issued to third parties, we believe that the Series B notes issued pursuant to the exchange offer would in general be freely tradable after the exchange offer without further registration under the Securities Act. However, any purchaser of Series A notes who is an “affiliate” of ours or who intends to participate in the exchange offer for the purpose of distributing the related Series B notes:

- will not be able to rely on the interpretation of the staff of the SEC;
- will not be able to tender its Series A notes in the exchange offer; and
- must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any sale or transfer of the Series A notes unless such sale or transfer is made pursuant to an exemption from such requirements.

Each holder of the Series A notes (other than certain specified holders) who desires to exchange Series A notes for the Series B notes in the exchange offer will be required to make certain representations, including a representation:

- that it is not an affiliate of Star Gas Partners, L.P.;
- that it is not engaged in and does not intend to engage in, and has no arrangement or understanding with any person to participate in, a distribution of the Series B notes; and
- that it is acquiring the Series B notes in the exchange offer in its ordinary course of business.

We further agreed to file with the SEC a shelf registration statement to register for public resale of notes held by any holder who provides us with certain information for inclusion in the shelf registration statement if:

- the exchange offer is not permitted by applicable law or SEC policy; or
- the exchange offer is not for any reason completed by August 4, 2003; or
- upon completion of the exchange offer, any initial purchaser shall so request in connection with any offering or sale of notes.

We have agreed to use our reasonable best efforts to keep the shelf registration statement continuously effective until expiration of the period referred to in Rule 144(k) under the Securities Act with respect to the notes or such shorter period that will terminate when all the notes covered by the shelf registration statement have been sold pursuant to the shelf registration statement. We refer to this period as the “shelf effectiveness period.”

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The registration rights agreement provides that, in the event that either the exchange offer is not completed or the shelf registration statement, if required, is not declared effective on or prior to August 5, 2003 (September 4, 2003 in the case of a shelf registration statement requested by the initial purchasers following the completion of the exchange offer), the interest rate on the notes will be increased by 1.00% per annum until the exchange offer is completed or the shelf registration statement, if required, is declared effective by the SEC or the notes become freely tradable under the Securities Act, at which time the increased interest shall cease to accrue.

If the shelf registration statement has been declared effective and thereafter either ceases to be effective or the prospectus contained therein ceases to be usable at any time during the shelf effectiveness period, and such failure to remain effective or usable exists for more than 30 days (whether or not consecutive) in any 12-month period (two suspensions not to exceed 30 days each in any 365-day period if we notify holders of notes to suspend disposition of notes due to either (1) a stop order suspending the effectiveness of such registration statement (or proceedings initiated therefor) or (2) the happening of any event making any statement in such registration statement or the related prospectus untrue in any material respect or requiring any change therein in order to make the statements therein not misleading), then the interest rate on the notes will be increased by 1.00% per annum commencing on the 31<sup>st</sup> day in such 12-month period and ending on such date that the shelf registration statement has again been declared effective or the prospectus again becomes usable, at which time the increased interest shall cease to accrue.

All accrued liquidated damages shall be paid by us to holders entitled thereto by wire transfer to the accounts specified by them or by mailing checks to their registered address if no such accounts have been specified.

Holders of the notes will be required to make certain representations to us (as described in the registration rights agreement) in order to participate in the exchange offer and will be required to deliver information to be used in connection with the shelf registration statement and to provide comments on the shelf registration statement within the time periods set forth in the registration rights agreement in order to have their notes included in the shelf registration statement.

If we effect the registered exchange offer, we will be entitled to close the registered exchange offer 20 business days after its commencement as long as we have accepted all notes validly rendered in accordance with the terms of the exchange offer and no brokers or dealers continue to hold any notes.

This summary of the material provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement, a copy of which is filed as an exhibit to the registration statement which includes this prospectus.

Except as set forth above, after consummation of the exchange offer, holders of Series A notes which are the subject of the exchange offer have no registration or exchange rights under the registration rights agreement. See “—Consequences of Failure to Exchange,” and “—Resale of the Series B Notes; Plan of Distribution.”

### **Consequences of Failure to Exchange**

Any Series A notes that are not exchanged for Series B notes pursuant to the exchange offer and are not included in a resale prospectus (which, if required, will be filed as part of an amendment to the registration statement which includes this prospectus), will remain restricted securities and subject to restrictions on transfer. Accordingly, such Series A notes may only be resold:

- (1) to us, upon redemption thereof or otherwise,
- (2) so long as the Series A notes are eligible for resale pursuant to Rule 144A under the Securities Act, to a person whom the seller reasonably believes is a qualified institutional buyer within the meaning of Rule 144A, purchasing for its own account or for the account of a qualified institutional buyer to whom notice is given that the resale, pledge or other transfer is being made in reliance on Rule 144A,

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- (3) in an offshore transaction in accordance with Regulation S under the Securities Act,
- (4) pursuant to an exemption from registration in accordance with Rule 144, if available, under the Securities Act,
- (5) in reliance on another exemption from the registration requirements of the Securities Act, or
- (6) pursuant to an effective registration statement under the Securities Act.

In all of the situations discussed above, the resale must be in accordance with any applicable securities laws of any state of the United States and subject to certain requirements of the registrar or co-registrar being met, including receipt by the registrar or co-registrar of a certification and, in the case of (3), (4) and (5) above, an opinion of counsel reasonably acceptable to us and the registrar.

To the extent Series A notes are tendered and accepted in the exchange offer, the principal amount of outstanding Series A notes will decrease with a resulting decrease in the liquidity in the market therefor. Accordingly, the liquidity of the market of the Series A notes could be adversely affected. See “Risk Factors—Risks Related to the Exchange Offer.”

### **Terms of the Exchange Offer**

Upon the terms and subject to the conditions set forth in this prospectus and in the accompanying letter of transmittal, attached to this prospectus as Annex A, we will accept any and all Series A notes validly tendered and not withdrawn prior to the Expiration Date. We will issue \$1,000 principal amount of Series B notes in exchange for each \$1,000 principal amount of Series A notes accepted in the exchange offer. Holders may tender some or all of their Series A notes pursuant to the exchange offer. However, Series A notes may be tendered only in integral multiples of \$1,000 principal amount.

The form and terms of the Series B notes are the same as the form and terms of the Series A notes, except that:

- the Series B notes will have been registered under the Securities Act and will not bear legends restricting their transfer pursuant to the Securities Act, and
- except as otherwise described above, holders of the Series B notes will not be entitled to the rights of holders of Series A notes under the registration rights agreement.

The Series B notes will evidence the same debt as the Series A notes which they replace, and will be issued under, and be entitled to the benefits of, the indenture which governs all of the notes.

Solely for reasons of administration and for no other purpose, we have fixed the close of business on \_\_\_\_\_, 2003 as the record date for the exchange offer for purposes of determining the persons to whom this prospectus and the letter of transmittal will be mailed initially. Only a registered holder of Series A notes or such holder’s legal representative or attorney-in-fact as reflected on the records of the trustee under the indenture may participate in the exchange offer. There will be no fixed record date for determining registered holders of the Series A notes entitled to participate in the exchange offer.

Holders of the Series A notes do not have any appraisal or dissenters’ rights under Delaware law or the indenture in connection with the exchange offer. We intend to conduct the exchange offer in accordance with the applicable requirements of the Exchange Act and the rules and regulations of the SEC thereunder.

We shall be deemed to have accepted validly tendered Series A notes when, as and if we have given oral or written notice thereof to the exchange agent. The exchange agent will act as agent for the tendering holders of the

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Series A notes for the purpose of receiving the Series B notes. The Series B notes delivered pursuant to the exchange offer will be issued on the earliest practicable date following our acceptance of Series A notes for such exchange.

If any Series A notes are not accepted for exchange because of an invalid tender, the occurrence of certain other events set forth herein or otherwise, certificates for any such unaccepted Series A notes will be returned, without expense, to the tendering holder thereof as promptly as practicable after the Expiration Date.

Holders who tender Series A notes in the exchange offer will not be required to pay brokerage commissions or fees or, subject to the instructions in the accompanying letter of transmittal, transfer taxes with respect to the exchange of the Series A notes pursuant to the exchange offer. We will pay all charges and expenses, other than certain applicable taxes, in connection with the exchange offer. See “—Fees and Expenses.”

### **Expiration Date; Extensions; Amendments**

The term “Expiration Date” with respect to the exchange offer means 5:00 p.m., New York City time, on \_\_\_\_\_, 2003 unless we, in our sole discretion, extend the exchange offer, in which case “Expiration Date” shall mean the latest date and time to which the exchange offer is extended.

In order to extend the exchange offer, we will notify the exchange agent of any extension by oral or written notice and will make a public announcement thereof, each prior to 9:00 a.m., New York City time, on the next business day after the previously scheduled Expiration Date.

We reserve the right, in our sole discretion, to:

- delay accepting any Series A notes,
- extend the exchange offer,
- if any of the conditions set forth below under “—Conditions to the Exchange Offer” have not been satisfied, terminate the exchange offer, or
- amend the terms of the exchange offer in any manner.

We may effect any such delay, extension or termination by giving oral or written notice thereof to the exchange agent.

Except as specified in the second paragraph under this heading, any such delay in acceptance, extension, termination or amendment will be followed as promptly as practicable by a public announcement thereof. If the exchange offer is amended in a manner determined by us to constitute a material change, we will promptly disclose such amendment by means of a prospectus supplement that will be distributed to the registered holders of the Series A notes. The exchange offer will then be extended for a period of 5 to 10 business days, as required by law, depending upon the significance of the amendment and the manner of disclosure to the registered holders, if the exchange offer would otherwise expire during such period.

Without limiting the manner in which we may choose to make a public announcement of any delay, extension, termination or amendment of the exchange offer, we shall not have an obligation to publish, advertise, or otherwise communicate any such public announcement, other than by making a timely release thereof to the Dow Jones News Service.

### **Procedures for Tendering Series A Notes**

*Tenders of Series A Notes.* The tender by a holder of Series A notes pursuant to any of the procedures set forth below will constitute the tendering holder’s acceptance of the terms and conditions of the exchange offer.

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Our acceptance for exchange of Series A notes tendered pursuant to any of the procedures described below will constitute a binding agreement between such tendering holder and us in accordance with the terms and subject to the conditions of the exchange offer. Only holders are authorized to tender their Series A notes. The procedures by which Series A notes may be tendered by beneficial owners that are not holders will depend upon the manner in which the Series A notes are held.

DTC has authorized DTC participants that are beneficial owners of Series A notes through DTC to tender their Series A notes as if they were holders. To effect a tender, DTC participants should either (1) complete and sign the accompanying letter of transmittal or a facsimile thereof, have the signature thereon guaranteed if required by Instruction 1 of the letter of transmittal, and mail or deliver the signed letter of transmittal or such facsimile pursuant to the procedures for book-entry transfer set forth below under “—Book-Entry Delivery Procedures,” or (2) transmit their acceptance to DTC through the DTC Automated Tender Offer Program (“ATOP”), for which the transaction will be eligible, and follow the procedures for book-entry transfer, set forth below under “—Book-Entry Delivery Procedures.”

*Tender of Series A Notes Held in Physical Form.* To effectively tender Series A notes held in physical form pursuant to the exchange offer:

- a properly completed letter of transmittal applicable to such notes (or a facsimile thereof) duly executed by the holder thereof, and any other documents required by the letter of transmittal, must be received by the exchange agent at one of its addresses set forth below, and tendered Series A notes must be received by the exchange agent at such address (or delivery effected through the deposit of Series A notes into the exchange agent’s account with DTC and making book-entry delivery as set forth below) on or prior to the Expiration Date, or
- the tendering holder must comply with the guaranteed delivery procedures set forth below.

Letters of transmittal for Series A notes should be sent only to the exchange agent and should not be sent to us.

*Tender of Series A Notes Held Through a Custodian.* To effectively tender Series A notes that are held of record by a custodian bank, depository, broker, trust company or other nominee, the beneficial owner thereof must instruct such holder to tender the Series A notes on the beneficial owner’s behalf. A letter of instructions from the record owner to the beneficial owner may be included in the materials provided along with this prospectus which may be used by the beneficial owner in this process to instruct the registered holder of such owner’s Series A notes to effect the tender.

*Tender of Series A Notes Held Through DTC.* To effectively tender Series A notes that are held through DTC, DTC participants should either:

- properly complete and duly execute the accompanying letter of transmittal (or a facsimile thereof), and any other documents required by the letter of transmittal, and mail or deliver the executed letter of transmittal or such facsimile pursuant to the procedures for book-entry transfer set forth below, or
- transmit their acceptance through ATOP, for which the transaction will be eligible, and DTC will then edit and verify the acceptance and send an Agent’s Message to the exchange agent for its acceptance.

The term “Agent’s Message” means a message transmitted by DTC to, and received by, the exchange agent and forming a part of the Book-Entry Confirmation, which states that DTC has received an express acknowledgment from each participant in DTC tendering the Series A notes and that such participant has received the letter of transmittal and agrees to be bound by the terms of the letter of transmittal and we may enforce such agreement against such participant.

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Delivery of Series A notes held through DTC must be made to the exchange agent pursuant to the book-entry delivery procedures set forth below or the tendering DTC participant must comply with the guaranteed delivery procedures set forth below.

The method of delivery of Series A notes and letters of transmittal, any required signature guarantees and all other required documents, including delivery through DTC and any acceptance or Agent's Message transmitted through ATOP, is at the election and risk of the person tendering Series A notes and delivering letters of transmittal. Except as otherwise provided in the letter of transmittal, delivery will be deemed made only when actually received by the exchange agent. If delivery is by mail, it is suggested that the holder use properly insured, registered mail with return receipt requested, and that the mailing be made sufficiently in advance of the Expiration Date to permit delivery to the exchange agent prior to such date.

Except as provided below, unless the Series A notes being tendered are deposited with the exchange agent on or prior to the Expiration Date (accompanied by a properly completed and duly executed letter of transmittal or a properly transmitted Agent's Message), we may, at our option, reject such tender. Any exchange of Series B notes for Series A notes will be made only against deposit of the tendered Series A notes and delivery of all other required documents.

*Book-Entry Delivery Procedures.* The exchange agent will establish accounts with respect to the Series A notes at DTC for purposes of the exchange offer within two business days after the date of this prospectus, and any financial institution that is a participant in DTC may make book-entry delivery of the Series A notes by causing DTC to transfer such Series A notes into the exchange agent's account in accordance with DTC's procedures for such transfer. However, although delivery of Series A notes may be effected through book-entry at DTC, the letter of transmittal (or facsimile thereof), with any required signature guarantees or an Agent's Message in connection with a book-entry transfer, and any other required documents, must, in any case, be transmitted to and received by the exchange agent at one or more of its addresses set forth in this prospectus on or prior to the Expiration Date, or compliance must be made with the guaranteed delivery procedures described below. Delivery of documents to DTC does not constitute delivery to the exchange agent. The confirmation of a book-entry transfer into the exchange agent's account at DTC as described above is referred to herein as a "Book-Entry Confirmation."

*Signature Guarantees.* Signatures on all letters of transmittal must be guaranteed by a recognized member of the Medallion Signature Guarantee Program or by any other "eligible guarantor institution," as such term is defined in Rule 17Ad-15 promulgated under the Exchange Act (each of the foregoing, an "Eligible Institution"), unless the Series A notes tendered thereby are tendered (1) by a registered holder of Series A notes (or by a participant in DTC whose name appears on a DTC security position listing as the owner of such Series A notes) who has not completed either the box entitled "Special Issuance Instructions" or "Special Delivery Instructions" on the letter of transmittal, or (2) for the account of an Eligible Institution. See Instruction 1 of the letter of transmittal. If the Series A notes are registered in the name of a person other than the signer of the letter of transmittal or if Series A notes not accepted for exchange or not tendered are to be returned to a person other than the registered holder, then the signatures on the letter of transmittal accompanying the tendered Series A notes must be guaranteed by an Eligible Institution as described above. See Instructions 1 and 5 of the accompanying letter of transmittal.

*Guaranteed Delivery.* If a holder desires to tender Series A notes pursuant to the exchange offer and time will not permit the letter of transmittal, certificates representing such Series A notes and all other required documents to reach the exchange agent, or the procedures for book-entry transfer cannot be completed, on or prior to the Expiration Date, such Series A notes may nevertheless be tendered if all the following conditions are satisfied:

- (1) the tender is made by or through an Eligible Institution;

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- (2) a properly completed and duly executed notice of guaranteed delivery, substantially in the form provided by us herewith, or an Agent's Message with respect to guaranteed delivery that is accepted by us, is received by the exchange agent on or prior to the Expiration Date, as provided below; and
- (3) the certificates for the tendered Series A notes, in proper form for transfer (or a Book-Entry Confirmation of the transfer of such Series A notes into the exchange agent's account at DTC as described above), together with the letter of transmittal (or facsimile thereof), properly completed and duly executed, with any required signature guarantees and any other documents required by the letter of transmittal or a properly transmitted Agent's Message, are received by the exchange agent within two business days after the date of execution of the notice of guaranteed delivery.

The notice of guaranteed delivery may be sent by hand delivery, telegram, facsimile transmission or mail to the exchange agent and must include a guarantee by an Eligible Institution in the form set forth in the notice of guaranteed delivery.

Notwithstanding any other provision hereof, delivery of Series B notes by the exchange agent for Series A notes tendered and accepted for exchange pursuant to the exchange offer will, in all cases, be made only after timely receipt by the exchange agent of such Series A notes (or Book-Entry Confirmation of the transfer of such Series A notes into the exchange agent's account at DTC as described above), and the letter of transmittal (or facsimile thereof) with respect to such Series A notes, properly completed and duly executed, with any required signature guarantees and any other documents required by the letter of transmittal, or a properly transmitted Agent's Message.

*Determination of Validity.* All questions as to the validity, form, eligibility (including time of receipt), acceptance and withdrawal of tendered Series A notes will be determined by us in our sole discretion, which determination will be final and binding. We reserve the absolute right to reject any and all Series A notes not properly tendered or any Series A notes our acceptance of which, in the opinion of our counsel, would be unlawful.

We also reserve the right to waive any defects, irregularities or conditions of tender as to particular Series A notes. The interpretation of the terms and conditions of our exchange offer (including the instructions in the letter of transmittal) by us will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of Series A notes must be cured within such time as we shall determine.

Although we intend to notify holders of defects or irregularities with respect to tenders of Series A notes through the exchange agent, neither we, the exchange agent nor any other person is under any duty to give such notice, nor shall they incur any liability for failure to give such notification. Tendere of Series A notes will not be deemed to have been made until such defects or irregularities have been cured or waived.

Any Series A notes received by the exchange agent that are not validly tendered and as to which the defects or irregularities have not been cured or waived, or if Series A notes are submitted in a principal amount greater than the principal amount of Series A notes being tendered by such tendering holder, such unaccepted or non-exchanged Series A notes will either be:

- (1) returned by the exchange agent to the tendering holders, or
- (2) in the case of Series A notes tendered by book-entry transfer into the exchange agent's account at the Book-Entry Transfer Facility pursuant to the book-entry transfer procedures described below, credited to an account maintained with such Book-Entry Transfer Facility.

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By tendering, each registered holder will represent to us that, among other things:

- the Series B notes to be acquired by the holder and any beneficial owner(s) of the Series A notes in connection with the exchange offer are being acquired by the holder and any beneficial owner(s) in the ordinary course of business of the holder and any beneficial owner(s),
- the holder and each beneficial owner are not participating, do not intend to participate, and have no arrangement or understanding with any person to participate, in a distribution of the Series B notes,
- the holder and each beneficial owner acknowledge and agree that (x) any person participating in the exchange offer for the purpose of distributing the Series B notes must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction with respect to the Series B notes acquired by such person and cannot rely on the position of the Staff of the SEC set forth in no-action letters that are discussed herein under “—Resale of the Series B Notes; Plan of Distribution,” and (y) any broker-dealer that receives Series B notes for its own account in exchange for Series A notes pursuant to the exchange offer must deliver a prospectus in connection with any resale of such Series B notes, but by so acknowledging, the holder shall not be deemed to admit that, by delivering a prospectus, it is an “underwriter” within the meaning of the Securities Act,
- neither the holder nor any beneficial owner is an “affiliate” (as defined under Rule 405 of the Securities Act), of ours except as otherwise disclosed to us in writing, and
- the holder and each beneficial owner understands, that a secondary resale transaction described in clause (3) above should be covered by an effective registration statement containing the selling securityholder information required by Item 507 of Regulation S-K of the SEC.

Each broker-dealer that receives Series B notes for its own account in exchange for Series A notes, where such Series A notes were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such Series B notes. See “—Resale of the Series B Notes; Plan of Distribution.”

### **Withdrawal of Tenders**

Except as otherwise provided herein, tenders of Series A notes pursuant to the exchange offer may be withdrawn, unless accepted for exchange as provided in the exchange offer, at any time prior to the Expiration Date.

To be effective, a written or facsimile transmission notice of withdrawal must be received by the exchange agent at its address set forth herein prior to the Expiration Date. Any such notice of withdrawal must:

- specify the name of the person having deposited the Series A notes to be withdrawn;
- identify the Series A notes to be withdrawn, including the certificate number or numbers of the particular certificates evidencing the Series A notes (unless such Series A notes were tendered by book-entry transfer), and aggregate principal amount of such Series A notes; and
- be signed by the holder in the same manner as the original signature on the letter of transmittal (including any required signature guarantees) or be accompanied by documents of transfer sufficient to have the trustee under the indenture register the transfer of the Series A notes into the name of the person withdrawing such Series A notes.

If Series A notes have been delivered pursuant to the procedures for book-entry transfer set forth in “—Procedures for Tendering Series A Notes—Book-Entry Delivery Procedures,” any notice of withdrawal must specify the name and number of the account at the appropriate book-entry transfer facility to be credited with such withdrawn Series A notes and must otherwise comply with such book-entry transfer facility’s procedures.



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If the Series A notes to be withdrawn have been delivered or otherwise identified to the exchange agent, a signed notice of withdrawal meeting the requirements discussed above is effective immediately upon written or facsimile notice of withdrawal even if physical release is not yet effected. A withdrawal of Series A notes can only be accomplished in accordance with these procedures.

All questions as to the validity, form and eligibility (including time of receipt) of such notices will be determined by us in our sole discretion, which determination shall be final and binding on all parties. No withdrawal of Series A notes will be deemed to have been properly made until all defects or irregularities have been cured or expressly waived. Neither we, the exchange agent nor any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal or revocation, nor shall we or they incur any liability for failure to give any such notification. Any Series A notes so withdrawn will be deemed not to have been validly tendered for purposes of the exchange offer and no Series B notes will be issued with respect thereto unless the Series A notes so withdrawn are retendered. Properly withdrawn Series A notes may be retendered by following one of the procedures described above under “—Procedures for Tendering Series A Notes” at any time prior to the Expiration Date.

Any Series A notes which have been tendered but which are not accepted for exchange due to the rejection of the tender due to uncured defects or the prior termination of the exchange offer, or which have been validly withdrawn, will be returned to the holder thereof unless otherwise provided in the letter of transmittal, as soon as practicable following the Expiration Date or, if so requested in the notice of withdrawal, promptly after receipt by us of notice of withdrawal without cost to such holder.

### **Conditions to the Exchange Offer**

The exchange offer shall not be subject to any conditions, other than that:

- (1) the SEC has issued an order or orders declaring the indenture governing the notes qualified under the Trust Indenture Act of 1939,
- (2) the exchange offer, or the making of any exchange by a holder, does not violate applicable law or any applicable interpretation of the staff of the SEC,
- (3) no action or proceeding shall have been instituted or threatened in any court or by or before any governmental agency with respect to the exchange offer, which, in our judgment, might impair our ability to proceed with the exchange offer,
- (4) there shall not have been adopted or enacted any law, statute, rule or regulation which, in our judgment, would materially impair our ability to proceed with the exchange offer, or
- (5) there shall not have occurred any material change in the financial markets in the United States or any outbreak of hostilities or escalation thereof or other calamity or crisis the effect of which on the financial markets of the United States, in our judgment, would materially impair our ability to proceed with the exchange offer.

If we determine in our sole discretion that any of the conditions to the exchange offer are not satisfied, we may:

- (1) refuse to accept any Series A notes and return all tendered Series A notes to the tendering holders,
- (2) extend the exchange offer and retain all Series A notes tendered prior to the Expiration Date applicable to the exchange offer, subject, however, to the rights of holders to withdraw such Series A notes (see “—Withdrawal of Original Tenders”), or
- (3) waive such unsatisfied conditions with respect to the exchange offer and accept all validly tendered Series A notes which have not been withdrawn.

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If such waiver constitutes a material change to the exchange offer, we will promptly disclose such waiver by means of a prospectus supplement that will be distributed to the registered holders, and will extend the exchange offer for a period of 5 to 10 business days, depending upon the significance of the waiver and the manner of disclosure to the registered holders, if the exchange offer would otherwise expire during such 5 to 10 business day period.

**Exchange Agent**

Union Bank of California, N.A., the trustee under the indenture governing the notes, has been appointed as exchange agent for the exchange offer. Questions and requests for assistance, requests for additional copies of this prospectus or of the letter of transmittal and requests for notices of guaranteed delivery and other documents should be directed to the exchange agent addressed as follows:

By Mail:  
Union Bank of California, N.A.  
Attention: Corporate Trust Department  
120 South San Pedro, Suite 410  
Los Angeles, California 90012

By Facsimile:  
(213) 972-5695  
Attention: Corporate Trust Department

Confirm by Telephone:  
(213) 972-5660  
Attention: Corporate Trust Department

By Hand:  
Union Bank of California, N.A.  
Attention: Corporate Trust Department  
120 South San Pedro, Suite 410  
Los Angeles, California 90012

**Fees and Expenses**

We will bear the expenses of soliciting tenders. The principal solicitation is being made by mail. However, additional solicitation may be made by telegraph, telecopy, telephone or in person by our officers and regular employees, our general partner and our affiliates.

No dealer-manager has been retained in connection with the exchange offer and no payments will be made to brokers, dealers or others soliciting acceptance of the exchange offer. However, reasonable and customary fees will be paid to the exchange agent for its services and it will be reimbursed for its reasonable out-of-pocket expenses in connection therewith.

Our out-of-pocket expenses for the exchange offer will include fees and expenses of the exchange agent and the trustee under the indenture, accounting and legal fees and printing costs, among others.

We will pay all transfer taxes, if any, applicable to the exchange of the Series A notes pursuant to the exchange offer. If, however, a transfer tax is imposed for any reason other than the exchange of the Series A notes pursuant to the exchange offer, then the amount of any such transfer taxes (whether imposed on the registered holder or any other persons) will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption therefrom is not submitted with the letter of transmittal, the amount of such transfer taxes will be billed directly to such tendering holder.

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**Accounting Treatment**

The Series B notes will be recorded at the carrying value of the Series A notes and no gain or loss for accounting purposes will be recognized. The expenses of the exchange offer will be charged to income as incurred.

**Resale of the Series B Notes; Plan of Distribution**

Each broker-dealer that receives Series B notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of Series B notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Series B notes received in exchange for Series A notes where such Series A notes were acquired as a result of market-making activities or other trading activities.

We will not receive any proceeds from any sale of Series B notes by broker-dealers. Series B notes received by broker-dealers for their own account pursuant to the exchange offer may be sold from time to time in one or more transactions in any of the following ways:

- (1) in the over-the-counter market,
- (2) in negotiated transactions,
- (3) through the writing of options on the Series B notes or a combination of such methods of resale,
- (4) at market prices prevailing at the time of resale,
- (5) at prices related to such prevailing market prices, or
- (6) at negotiated prices.

Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer or the purchasers of any such Series B notes.

Any broker-dealer that resells Series B notes that were received by it for its own account pursuant to the exchange offer and any broker or dealer that participates in a distribution of such Series B notes may be deemed to be an “underwriter” within the meaning of the Securities Act and any profit on any such resale of Series B notes and any commission on concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that, by acknowledging that it will deliver a prospectus and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act.

We agreed to permit the use of this prospectus by such broker-dealers to satisfy this prospectus delivery requirement. To the extent necessary to ensure that the prospectus is available for sales of Series B notes by broker-dealers, we agreed to use our best efforts to keep the exchange offer registration statement continuously effective, supplemented, amended and current for a period of 180 days after the completion of the exchange offer, which period may be extended under certain circumstances.

**CAPITALIZATION**

The following table sets forth our historical capitalization as of December 31, 2002 on an actual basis and as adjusted to give effect to the notes offering and the application of the net proceeds of such offering:

	As of December 31, 2002	
	Actual	As Adjusted(d)
	(in thousands)	
Cash and cash equivalents	\$ 10,524	\$ 50,524
Long-term debt:		
<b>Star Gas Partners:</b>		
10¼% Senior Notes due 2013 (net of discount of \$3,068)	—	\$ 196,932
<b>Propane Segment:</b>		
8.04% First Mortgage Notes due September 15, 2009	\$ 74,375	\$ 61,499
7.87% First Mortgage Notes due April 1, 2011 (c)	29,500	17,500
7.17% First Mortgage Notes due September 15, 2010	11,000	—
8.70% First Mortgage Notes due March 30, 2015 (c)	27,500	27,500
Acquisition facility borrowings (a)	20,400	—
Parity facility borrowings (a)	14,200	2,000
Working capital facility borrowings	8,000	8,000
Total debt of propane segment	\$ 184,975	\$ 116,499
<b>Heating Oil Segment:</b>		
8.96% Senior Notes due November 1, 2010 (c)	\$ 40,000	\$ 30,000
8.25% Senior Notes due August 1, 2013 (c)	103,000	77,000
7.92% Senior Notes due April 1, 2014 (c)	90,000	61,000
Acquisition facility borrowings (b)	—	—
Working capital facility borrowings	84,000	71,653
Other debt	5,828	2,364
Total debt of heating oil segment	\$ 322,828	\$ 242,017
Total debt	\$ 507,803	\$ 555,448
Less working capital borrowings	(92,000)	(79,653)
Total long-term debt	\$ 415,803	\$ 475,795
Total partners' capital	\$ 231,806	\$ 231,046
Total capitalization	\$ 647,609	\$ 706,841

- (a) The Star Gas Propane Bank credit facilities currently include a \$25 million acquisition facility and a \$25 million parity debt facility that can be used to fund maintenance capital expenditures. These facilities contain various restrictive and affirmative covenants. The most restrictive of these covenants relate to the incurrence of additional indebtedness, and restrictions on dividends, certain investments, guarantees, loans, sales of assets and other transactions.
- (b) The Petro bank credit facilities currently include a \$50 million acquisition and capital expenditure facility. These facilities contain various restrictive and affirmative covenants. The most restrictive of these covenants relate to the incurrence of additional indebtedness, and restrictions on dividends, certain investments, guarantees, loans, sales of assets and other transactions.
- (c) Represents weighted average interest rate and final maturity rather than specific coupons and maturity schedules applicable to each series of notes issued. See "Description of Other Indebtedness."
- (d) Reflects the application of the \$189.3 million in net proceeds of the notes offering as follows: \$32.6 million to repay amounts outstanding under Star Gas Propane's credit facilities; \$79.6 million to repurchase senior secured notes of Petro and Star Gas Propane; \$24.7 million to repay current indebtedness of Petro and Star Gas Propane; \$12.4 million to repay amounts outstanding under Petro's working capital facility; and \$40 million to increase cash pending the use of such funds for general partnership purposes, including acquisitions.

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**SELECTED FINANCIAL DATA**

Our selected consolidated financial and operating data at the end of and for each of the years in the five year period ended September 30, 2002 are derived from our audited consolidated financial statements. Our selected consolidated financial and operating data at December 31, 2001 and 2002 and for the three month periods ended December 31, 2001 and 2002 are derived from our unaudited condensed consolidated financial statements, but include, in our management's opinion, all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of such data. You should read our selected consolidated financial and operating data in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes incorporated by reference in this prospectus. The information set forth below is not necessarily indicative of future results.

	Fiscal year ended September 30,					Three months ended December 31,	
	1998	1999(g)	2000	2001	2002	2001	2002
(in thousands, except per unit data or as otherwise indicated)							
<b>Statement of operations data:</b>							
Sales	\$ 111,685	\$ 224,020	\$ 744,664	\$ 1,085,973	\$ 1,025,058	\$ 286,223	\$ 384,980
Costs and expenses:							
Cost of sales	49,498	131,649	501,589	771,317	661,978	184,247	255,347
Delivery and branch	37,216	86,489	156,862	200,059	235,708	56,321	74,514
Depreciation and amortization	11,462	22,713	34,708	44,396	59,049	14,503	12,848(h)
General and administrative	6,336	11,717	20,511	39,086	40,771	8,825	12,235
Total Gas & Electric customer acquisition	—	—	2,082	1,868	1,228	221	614
Operating income (loss)	7,173	(28,548)	28,912	29,247	26,324	22,106	29,422
Interest expense, net	7,927	15,435	26,784	33,727	37,502	10,144	8,370
Amortization of debt issuance costs	176	347	534	737	1,447	312	437
Income (loss) before income taxes, minority interest and cumulative effect of change in accounting principle	(930)	(44,330)	1,594	(5,217)	(12,625)	11,650	20,615
Minority interest in net loss of Total Gas & Electric	—	—	251	—	—	—	—
Income tax expense (benefit)	25	(14,780)	492	1,498	(1,456)	147	675
Income (loss) before cumulative effect of change in accounting principle	(955)	(29,550)	1,353	(6,715)	(11,169)	11,503	19,940
Cumulative effect of change in accounting principle	—	—	—	1,466(a)	—	—	(3,901)(h)
Net income (loss)	\$ (955)	\$ (29,550)	\$ 1,353	\$ (5,249)	\$ (11,169)	\$ 11,503	\$ 16,039
Basic weighted average number of limited partner units							
outstanding	6,035	11,447	18,288	22,439	28,790	26,760	32,449
Dilutive number of limited partner units outstanding	6,035	11,447	18,288	22,439	28,790	26,988	32,564
<b>Per unit data:</b>							
Basic and diluted net income (loss) per unit (b)	\$ (0.16)	\$ (2.53)	\$ 0.07	\$ (0.23)	\$ (0.38)	\$ 0.42	\$ 0.49
Cash distribution declared per:							
Common unit	\$ 2.20	\$ 2.25	\$ 2.30	\$ 2.30	\$ 2.30	\$ 0.58	\$ 0.58
Senior subordinated unit	\$ —	\$ —	\$ 0.25	\$ 1.98	\$ 1.65	\$ 0.58	\$ 0.25
<b>Summary cash flow data:</b>							
Net cash provided by (used in):							
Operating activities	\$ 9,264	\$ 10,795	\$ 20,364	\$ 63,144	\$ 65,455	\$ 923	\$ (46,748)
Investing activities	(13,276)	(2,977)	(65,172)	(256,134)	(62,412)	(26,784)	(4,842)
Financing activities	4,238	(4,441)	51,226	199,308	41,210	31,352	633
<b>Other data:</b>							
EBITDA(c)	\$ 18,635	\$ (5,835)	\$ 63,620	\$ 73,643	\$ 85,373	\$ 36,609	\$ 42,270
Retail propane gallons sold	98,870	99,457	107,557	137,031	140,324	39,689	52,617
Heating oil gallons sold	—	74,039	345,684	427,168	457,749	131,059	167,390
Ratio of earnings to fixed charges (d)			1.1x			2.0x	3.1x
<b>Balance sheet data at end of period:</b>							
Cash and cash equivalents	\$ 1,115	\$ 4,492	\$ 10,910	\$ 17,228	\$ 61,481	\$ 22,719	\$ 10,524
Current assets	17,947	86,868	126,990	185,262	222,201	232,207	270,449
Total assets	179,607	539,344	618,976	898,819	943,766	958,109	974,951
Total long-term debt (e)	105,000	278,029	326,929	468,972	468,846	467,940	415,803
Working capital borrowings (f)	4,770	3,150	24,400	13,866	26,195	61,822	92,000
Partners' capital	57,347	150,176	139,178	198,264	232,264	197,507	231,806

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- (a) Reflects impact of adopting Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, in fiscal 2001.
- (b) Basic and diluted net income (loss) per unit is computed by dividing the limited partners' interest in net income (loss) by the weighted average number of limited partner units outstanding at the date of determination.
- (c) We define "EBITDA" as operating income (loss) plus depreciation and amortization. You should not consider EBITDA as an alternative to net income (as an indicator of operating performance) or as an alternative to cash flow (as a measure of liquidity or ability to service debt obligations). Our EBITDA may not be comparable to EBITDA or similarly titled measures of other entities as other entities may not calculate EBITDA in the same manner as we do. EBITDA provides additional information for evaluating our ability to make the minimum quarterly distributions required under the terms of our partnership agreement.

We calculate EBITDA as follows:

	Fiscal Year ended September 30,					Three Months ended December 31,	
	1998	1999(g)	2000	2001	2002	2001	2002
	(in thousands)						
Operating income	\$ 7,173	\$ (28,548)	\$ 28,912	\$ 29,247	\$ 26,324	\$ 22,106	\$ 29,422
Plus:							
Depreciation and amortization	11,462	22,713	34,708	44,396	59,049	14,503	12,848
EBITDA	\$ 18,635	\$ (5,835)	\$ 63,620	\$ 73,643	\$ 85,373	\$ 36,609	\$ 42,270

- (d) For purposes of determining the ratio of earnings to fixed charges, earnings are defined as earnings (loss) from continuing operations before income taxes, plus fixed charges. Fixed charges consist of interest expense on all indebtedness, the amortization of deferred debt issuance costs and the portion of operating rental expense that is representative of an interest factor. Earnings were inadequate to cover fixed charges by \$0.9 million for the fiscal year ended September 30, 1998, by \$44.3 million for the fiscal year ended September 30, 1999, by \$5.2 million for the fiscal year ended September 30, 2001 and by \$12.6 million for the fiscal year ended September 30, 2002.
- (e) Long term debt includes current portion. Included in long-term debt is the cost to finance certain acquisitions completed after the heating season and whose results are not reflected for a full year. For example, in fiscal 2001 we purchased Meenan Oil after the heating season on August 1, 2001 and increased our debt by \$60.0 million.
- (f) Our working capital borrowings must be reduced to zero for a period of 45 days at Petro and 30 days at Star Gas Propane each year following the heating season.
- (g) The results of operations for the year ended September 30, 1999 include Petro's results of operations from March 26, 1999. Since Petro was acquired after the heating season, the results for the year ended September 30, 1999, include typical third and fourth fiscal quarter losses but do not include the profits from the heating season. Accordingly, results of operations for the year ended September 30, 1999, presented are not indicative of the results to be expected for a full year.
- (h) Reflects a charge relating to the adoption of Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets* (SFAS No. 142), in fiscal 2003. Additionally, depreciation and amortization expense is reduced due to the impact of no longer amortizing goodwill in accordance with SFAS No. 142. Goodwill amortization expense for the three months ended December 31, 2001 was \$2.1 million. Goodwill amortization expense for the year ended September 30, 2002 was \$8.3 million.

## DESCRIPTION OF OTHER INDEBTEDNESS

### Heating Oil Segment

#### *Petro Senior Secured Notes*

Petro issued \$90.0 million of senior secured notes, with a weighted average interest rate of 7.92% in six separate series in a private placement to institutional investors as part of its acquisition by us in March 1999. The senior secured notes are guaranteed by us and are secured equally and ratably with Petro's existing senior debt and bank credit facilities by Petro's cash, accounts receivable, notes receivable, inventory, customer lists, trademarks, pledged securities and general intangibles. Each series of 7.92% senior secured notes will mature between April 1, 2003 and April 1, 2014. Only interest on each series is due semiannually. On the last interest payment date for each series, the outstanding principal amount is due and payable in full.

The note agreements for the 7.92% senior secured notes contain various negative and affirmative covenants, the most restrictive of the covenants include restrictions on incurrence of additional indebtedness and on payment of dividends or other distributions by us on any partnership interest if our ratio of consolidated pro forma operating cash flow to consolidated pro forma interest expense, does not meet the requirements in the agreement for the period of the four most recent fiscal quarters ending on or prior to the date of the dividend or distribution.

Petro has also issued \$103 million of senior secured notes, with a weighted average interest rate of 8.25%, in two separate series, which pay interest semiannually under agreements that are substantially identical to the agreement under which the 7.92% senior secured notes were issued. These notes are also guaranteed by us. The largest series has a maturity date of August 1, 2006 in the amount of \$73.0 million. The remaining series are due in equal sinking fund payments due August 1, 2009 and ending on August 1, 2013.

In addition, Petro has issued \$40 million of senior secured notes, with a weighted average interest rate of 8.96%, which pay interest semiannually, under agreements that are substantially identical to the agreements under which the 7.92% senior secured notes were issued. These notes are also guaranteed by us. These notes were issued in three separate series. The largest series has annual sinking fund payments of \$2.8 million due beginning November 1, 2004 and ending November 1, 2010. The other two series are due on November 1, 2004 and November 1, 2005.

If Petro fails to make any principal or interest payment under its senior secured notes, any noteholder may accelerate the maturity of the senior secured notes. If any event of default exists under the note agreement, holders of a majority of the outstanding principal amount of the senior secured notes may accelerate the maturity of the notes. The maturity of the senior secured notes is automatically accelerated if Petro, Star Gas Partners, Petro Holdings or any of their subsidiaries are generally unable to pay their debts as they become due or become subject to any bankruptcy or reorganization proceedings.

#### *Petro Bank Credit Facilities*

Petro's bank facilities consist of three separate facilities: a \$123 million working capital facility, a \$20 million insurance letter of credit facility and a \$50 million acquisition facility. At December 31, 2002, there was \$84 million outstanding under the working capital facility and \$17.5 million of the insurance letter of credit facility was used. The Petro bank credit facilities are guaranteed by us. There were no borrowings outstanding under the acquisition facility other than \$3.1 million outstanding in the form of letter of credits. The working capital facility and letter of credit facility will expire on June 30, 2004. The acquisition facility will convert to a term loan on June 30, 2004 which will be payable in eight equal quarterly principal payments. Amounts borrowed under the working capital facility are subject to a requirement to maintain a zero balance for 45 consecutive days during the period from April 1 to September 30 of each year. In addition, each facility will bear an interest rate that is based on either the London Interbank Offer Rate or another base rate plus a set percentage.

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The bank facilities agreement contains covenants and default provisions generally similar to those contained in the note agreement for Petro's senior secured notes as well as additional covenants. Due to the impact on operations of the record warm weather conditions experienced during the 2001–2002 heating season, Petro did not meet one of these additional covenants. The noncompliance was resolved with an amendment to Petro's bank facility agreements, signed on April 25, 2002. As a result, Petro is currently in compliance with these covenants. Petro is required to pay a commitment fee, which amounted to \$0.5 million and \$1.0 million for the years ended September 30, 2001 and 2002, respectively. For the years ended September 30, 2001 and 2002, the weighted average interest rate for borrowings under these facilities was 8.46% and 4.09%, respectively. As of December 31, 2002, the interest rate on the borrowings outstanding was 3.5%.

### *Other Petro Debt*

Petro also had outstanding as of December 31, 2002 an aggregate of \$2.7 million of notes, primarily in connection with the purchase of fuel oil dealers, which notes are due variously in monthly, quarterly and annual installments with interest at various rates ranging from 7% to 15% maturing at various dates through 2007.

In addition, Petro has outstanding \$1.3 million of 10 1/8% subordinated debentures due 2003, \$0.7 million of 9 3/8% subordinated notes due 2006 and \$1.1 million of 12 1/4% subordinated notes due 2005. In October 1998, the indentures under which the 10 1/8%, 9 3/8% and 12 1/4% subordinated debentures and notes were issued were amended to eliminate substantially all of the covenant protection provided by the indentures.

## **Propane Segment**

### *Star Gas Propane First Mortgage Notes*

In December 1995, Star Gas Propane assumed \$85.0 million of first mortgage notes with an annual interest rate of 8.04% in connection with its initial formation. In January 1998, Star Gas Propane issued an additional \$11.0 million of first mortgage notes with an annual interest rate of 7.17%. In March 2000, Star Gas Propane issued \$27.5 million of 8.70% first mortgage notes. In March 2001, Star Gas Propane issued \$29.5 million of senior notes with an average annual interest rate of 7.87% per year.

Obligations under the first mortgage note agreements are secured, on an equal and ratable basis with Star Gas Propane's obligations under the Star Gas Propane bank credit facilities, by a mortgage on substantially all of the real property and liens on substantially all of the operating facilities, equipment and other assets of Star Gas Propane.

The first mortgage notes require semi-annual prepayments, without premium on the principal thereof, beginning on March 15, 2001 and have a final maturity of March 30, 2015. Interest on the first mortgage notes is payable semiannually in March and September. The first mortgage note agreements contain various restrictive and affirmative covenants applicable to Star Gas Propane; the most restrictive of these covenants relate to the incurrence of additional indebtedness and restrictions on dividends, certain investments, guarantees, loans, sales of assets and other transactions.

Under the first mortgage note agreements, so long as no default exists or would result, Star Gas Propane is permitted to make cash distributions to Star Gas Partners not more frequently than quarterly in an amount not to exceed available cash, as defined in the first mortgage note agreements for the immediately preceding calendar quarter. If an event of default exists on the first mortgage notes, the noteholders may accelerate the maturity of the first mortgage notes and exercise other rights and remedies, including foreclosures upon the mortgaged property.

### *Star Gas Propane Bank Credit Facilities*

The Star Gas Propane bank credit facilities currently consist of a \$25 million acquisition facility, a \$25 million parity debt facility that can be used to fund maintenance capital expenditures and an \$18 million working capital facility. At December 31, 2002, \$20.4 million was borrowed under the acquisition facility, \$14.2 million



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under the parity debt facility and \$8.0 million under the working capital facility. The agreements governing the bank credit facilities contains covenants and default provisions generally similar to those contained in the first mortgage note agreements. The bank credit facilities bear interest at a rate based upon, at our option, either the London Interbank Offered Rate plus a margin or a Base Rate (each as defined in the bank credit facilities). We are required to pay a fee for unused commitments which amounted to \$0.1 million \$0.1 million and \$0.2 million during fiscal 2000, 2001 and 2002, respectively. For fiscal 2001 and 2002, the weighted average interest rate on borrowings under these facilities was 8.0% and 4.2%, respectively. At December 31, 2002, the interest rate on the borrowings outstanding was 4.1%.

The working capital facility expires on June 30, 2003, but may be extended annually thereafter with the consent of the banks. Borrowings under the acquisition facility and parity debt facility will revolve until September 30, 2003, after which time any outstanding loans thereunder, will amortize in quarterly principal payments with a final payment due on September 30, 2005. However, there must be no amount outstanding under the working capital facility for at least 30 consecutive days during each fiscal year.

The agreement governing the bank credit facilities contains default provisions generally similar to those contained in the first mortgage note agreements.

## DESCRIPTION OF NOTES

You will find the definitions of capitalized terms used in this description under the subheading “—Certain Definitions.” For purposes of this description, references to the “Company” refer only to Star Gas Partners, L.P. and not to its subsidiaries and references to the “Issuers” mean collectively Star Gas Partners, L.P. and Star Gas Finance Company. As used in this section, unless the context otherwise requires, “notes” means the Series A notes, the Series B notes offered hereby and any other notes issued under the Indenture.

The Issuers issued the Series A notes under an Indenture dated as of February 6, 2003 (the “Indenture”) between the Issuers and Union Bank of California, N.A., as trustee (the “Trustee”) and will issue the Series B notes under the same Indenture. The form and terms of the Series B notes will be the same as those of the Series A notes, except that the Series B notes (1) will be registered under the Securities Act and will not bear legends restricting their transfer and (2) will not, except as is described in this prospectus under the heading “The Exchange Offer—Registration Rights,” entitle the holders thereof to the rights of holders of Series A notes under the registration rights agreement. The terms of the notes include those expressly set forth in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”). The Indenture is unlimited in aggregate principal amount, although the issuance of Series A notes thereunder was, and the issuance of Series B notes in this exchange offer shall be, limited to \$200 million. We may issue an unlimited principal amount of additional notes having identical terms and conditions as the notes, which we will refer to as the “additional notes.” We will only be permitted to issue such additional notes if at the time of such issuance we are in compliance with the covenants contained in the Indenture. Any additional notes will be part of the same issue as the notes that we are currently offering and will vote on all matters with the holders of the notes.

This description of notes is intended to be a useful overview of the material provisions of the notes and the Indenture. Since this description is only a summary, you should refer to the Indenture for a complete description of the obligations of the Company and your rights.

### General

The notes:

- are general unsecured, senior obligations and rank senior in right of payment to all subordinated Indebtedness of the Issuers;
- are limited to an aggregate principal amount of \$200 million, subject to our ability to issue additional notes;
- mature on February 15, 2013;
- were (as to the Series A notes) and shall be (as to the Series B notes) issued in denominations of \$1,000 and integral multiples of \$1,000;
- were (as to the Series A notes) and shall be (as to the Series B notes) represented by one or more registered notes in global form, but in certain circumstances may be represented by notes in definitive form. See “Book-Entry Settlement and Clearance”;
- rank equally in right of payment to any future senior Indebtedness of the Issuers, without giving effect to collateral arrangements.

### Interest

Interest on the notes will compound semi-annually and:

- accrue at the rate of 10¼% per annum;
- accrue from the date of original issuance or, if interest has already been paid, from the most recent interest payment date;

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- be payable in cash semi-annually in arrears on February 15 and August 15, commencing on August 15, 2003;
- be payable to the holders of record on the February 1 and August 1 immediately preceding the related interest payment dates; and
- be computed on the basis of a 360-day year comprised of twelve 30-day months.

### **Payments on the Notes; Paying Agent and Registrar**

We will pay principal of, premium, if any, and interest on the notes at the office or agency designated by the Company in the Borough of Manhattan, the City of New York, except that we may, at our option, pay interest on the notes by check mailed to holders of the notes at their registered addresses as they appear in the register books. We have initially designated the corporate trust office of the Trustee in New York, New York to act as our Paying Agent and Registrar. We may, however, change the Paying Agent or Registrar without prior notice to the holders of the notes, and the Company or any of its Restricted Subsidiaries may act as Paying Agent or Registrar.

We will pay principal of, premium, if any, and interest on, notes in global form registered in the name of or held by the Depository or its nominee in immediately available funds to the Depository or its nominee, as the case may be, as the registered holder of such global note.

### **Transfer and Exchange**

A holder of notes may transfer or exchange notes at the office of the Registrar in accordance with the Indenture. The Registrar and the Trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by the Company, the Trustee or the Registrar for any registration of transfer or exchange of notes, but the Company may require a holder to pay a sum sufficient to cover any transfer tax or other similar governmental charge required by law or permitted by the Indenture. The Company is not required to transfer or exchange any note selected for redemption. Also, the Company is not required to transfer or exchange any note for a period of 15 days before a selection of notes to be redeemed.

The registered holder of a note will be treated as the owner of it for all purposes.

### **Optional Redemption**

Except as described below, the notes are not redeemable until February 15, 2008. On and after February 15, 2008, the Issuers may redeem all or, from time to time, a part of the notes upon not less than 30 nor more than 60 days notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on February 15 of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2008	105.125%
2009	103.417%
2010	101.780%
2011 and thereafter	100.000%

Prior to February 15, 2006, the Issuers may on any one or more occasions redeem up to 35% of the original principal amount of the notes with the Net Cash Proceeds of one or more Public Equity Offerings at a redemption price of 110.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); provided that:

- (1) there is a Public Market at the time of such redemption;

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- (2) at least 65% of the original principal amount of the notes remains outstanding after each such redemption; and
- (3) the redemption occurs within 60 days after the closing of such Public Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the note is registered at the close of business on such record date, and no additional interest will be payable to holders whose notes will be subject to redemption by the Issuers.

In the case of any partial redemption, the Trustee will select the notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the notes are listed or, if the notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no note of \$1,000 in original principal amount or less will be redeemed in part. If any note is to be redeemed in part only, the notice of redemption relating to that note will state the portion of the principal amount thereof to be redeemed. A new note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original note.

The Issuers are not required to make mandatory redemption payments or sinking fund payments with respect to the notes.

### **Ranking**

The Series A notes are, and the Series B notes shall be, general unsecured obligations of the Issuers that rank senior in right of payment to all existing and future Indebtedness that is expressly subordinated in right of payment to the notes. The Series A notes rank, and the Series B notes will rank, equally in right of payment with all existing and future liabilities of the Issuers that are not so subordinated. In the event of bankruptcy, liquidation, reorganization and winding up of the Company or Star Gas Finance Company, or upon a default in payment with respect to, or the acceleration of, any Indebtedness under any secured Indebtedness, the assets of the Company or Star Gas Finance Company that secure such secured Indebtedness will be available to pay obligations on the notes only after all Indebtedness under such secured Indebtedness has been repaid in full from such assets. You should be aware that there may not be sufficient assets remaining to pay amounts due on any or all the notes then outstanding.

### **Change of Control**

If a Change of Control occurs, each registered holder of notes will have the right to require the Issuers to repurchase all or any part (equal to \$1,000 or an integral multiple thereof) of such holder's notes at a purchase price in cash equal to 101% of the principal amount of the notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

Within 30 days following any Change of Control, the Issuers will mail a notice (the "Change of Control Offer") to each registered holder with a copy to the Trustee stating:

- (1) that a Change of Control has occurred and that such holder has the right to require the Company to purchase such holder's notes at a purchase price in cash equal to 101% of the principal amount of such notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on a record date to receive interest on the relevant interest payment date) (the "Change of Control Payment");
- (2) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "Change of Control Payment Date"); and
- (3) the procedures determined by the Issuers, consistent with the Indenture, that a holder must follow in order to have its notes repurchased.

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On the Change of Control Payment Date, the Issuers will, to the extent lawful:

- (1) accept for payment all notes or portions of notes (in integral multiples of \$1,000) properly tendered under the Change of Control Offer;
- (2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all notes or portions of notes so tendered; and
- (3) deliver or cause to be delivered to the Trustee the notes so accepted together with an Officers' Certificate stating the aggregate principal amount of notes or portions of notes being purchased by the Issuers.

The paying agent will promptly mail to each holder of notes so tendered the Change of Control Payment for such notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new note equal in principal amount to any unpurchased portion of the notes surrendered, if any; provided that each such new note will be in a principal amount of \$1,000 or an integral multiple of \$1,000.

If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a note is registered at the close of business on such record date, and no additional interest will be payable to holders who tender pursuant to the Change of Control Offer.

The Change of Control provisions described above will be applicable whether or not any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the holders to require that the Company repurchase or redeem the notes in the event of a takeover, recapitalization or similar transaction.

Prior to mailing a Change of Control Offer, and as a condition to such mailing (i) the requisite holders of each issue of Indebtedness issued under an indenture or other agreement that may be violated by such payment shall have consented to such Change of Control Offer being made and waived the event of default, if any, caused by the Change of Control or (ii) the Company will repay all outstanding Indebtedness issued under an indenture or other agreement that may be violated by a payment to the holders of notes under a Change of Control Offer or the Company must offer to repay all Indebtedness and make payment to the holders of such Indebtedness that accept such offer and obtain waivers of any event of default from the remaining holders of such Indebtedness. The Issuers covenant to effect such repayment or obtain such consent and waiver within 30 days following any Change of Control, it being a default of the Change of Control provision of the Indenture if the Company fails to comply with such covenant.

The Issuers will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Issuers and purchases all notes validly tendered and not withdrawn under such Change of Control Offer.

The Issuers will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with provisions of the Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations described in the Indenture by virtue of the conflict.

The Issuers' ability to repurchase notes pursuant to a Change of Control Offer may be limited by a number of factors. Future Indebtedness of the Company and its Subsidiaries may contain prohibitions of certain events that would constitute a Change of Control or require such Indebtedness to be repurchased upon a Change of Control. Moreover, the exercise by the holders of their right to require the Issuers to repurchase the notes could cause a default under such Indebtedness, even if the Change of Control itself does not, due to the financial effect

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of such repurchase obligation on the Company. Finally, the Company's ability to pay cash to the holders upon a repurchase may be limited by the Company's then existing financial resources. There can be no assurance that sufficient funds will be available when necessary to make any required repurchases.

Even if sufficient funds were otherwise available, the terms of future Indebtedness may prohibit the Company's prepayment of notes before their scheduled maturity. Consequently, if the Company is not able to prepay any such other Indebtedness containing similar restrictions or obtain requisite consents, as described above, the Company will be unable to fulfill its repurchase obligations if holders of notes exercise their repurchase rights following a Change of Control, resulting in a default under the Indenture.

The Change of Control provisions described above may deter certain mergers, tender offers and other takeover attempts involving the Company by increasing the capital required to effectuate such transactions. The definition of "Change of Control" includes a disposition of all or substantially all of the property and assets of the Company and its Restricted Subsidiaries taken as a whole to any Person other than a Permitted Holder. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of "all or substantially all" of the property or assets of a Person. As a result, it may be unclear as to whether a Change of Control has occurred and whether a holder of notes may require the Company to make an offer to repurchase the notes as described above.

### **Asset Sales**

The Company and its Restricted Subsidiaries may complete an Asset Sale if the Company or its Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the fair market value, as determined in good faith by the Board of Directors, of the assets sold or otherwise disposed of, and at least 80% of the consideration received by the Company or the Restricted Subsidiary is in the form of cash. For purposes of determining the amount of cash received in an Asset Sale, the following will be deemed to be cash:

- (1) the amount of any liabilities on the Company's or any Restricted Subsidiary's balance sheet that are assumed by the transferee of the assets; and
- (2) the amount of any notes or other obligations received by the Company or the Restricted Subsidiary from the transferee that is converted within 180 days by the Company or the Restricted Subsidiary into cash, to the extent of the cash received.

If the Company or any of its Restricted Subsidiaries receives Net Proceeds exceeding \$10 million from one or more Asset Sales in any fiscal year, then within 360 days after the date the aggregate amount of Net Proceeds exceeds \$10 million, the Company must apply the amount of such Net Proceeds to the extent not already so applied either (1) to reduce Indebtedness of the Company or any of its Restricted Subsidiaries, with a permanent reduction of availability in the case of revolving Indebtedness, or (2) to make an investment in assets or capital expenditures useful to the Company's or any of its Subsidiaries' business as in effect on the Issue Date or any Related Business. Any Net Proceeds that are not applied or invested in either of these ways will be considered "Excess Proceeds."

Pending the final application of any Net Proceeds, the Company or any Restricted Subsidiary may temporarily reduce borrowings under any Credit Facilities, or otherwise invest the Net Proceeds in any manner that is not prohibited by the Indenture.

When the aggregate amount of Excess Proceeds exceeds \$10 million, we will make an offer to all noteholders to purchase for cash that number of notes that may be purchased out of the Excess Proceeds at a purchase price equal to 100% of the principal amount of the note plus accrued and unpaid interest to the date of purchase. We will follow the procedures set forth in the Indenture and we will comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws.

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To the extent that the aggregate amount of notes tendered in response to our purchase offer is less than the Excess Proceeds, the Company or any Restricted Subsidiary may use such excess amounts for general business purposes. If the aggregate principal amount of notes surrendered by the noteholders exceeds the amount of Excess Proceeds, the Trustee shall select the notes to be purchased in accordance with the procedures for selection and notice of redemption set forth under “Optional Redemption” above. Notwithstanding the foregoing, if we make this purchase offer at any time when we have securities outstanding ranking equally in right of payment with the notes and the terms of those securities provide that a similar offer must be made with respect to those other securities, then our offer to purchase the notes will be made concurrently with the other offers, and securities of each issue will be accepted on a pro rata basis in proportion to the aggregate principal amount of securities of each issue which their holders elect to have purchased. Upon completion of the offer to the noteholders, the amount of Excess Proceeds will be reset at zero.

### **Certain Covenants**

#### *Limitation on Indebtedness*

The Company and its Restricted Subsidiaries may incur more debt only under specified circumstances. The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, Guarantee or in any manner become directly or indirectly liable, contingently or otherwise, for the payment, in each case, an incurrence, of any Indebtedness, unless at the time of the incurrence and after giving pro forma effect to the receipt and application of the proceeds of the Indebtedness, the Consolidated Fixed Charge Coverage Ratio of the Company would be greater than 2.00 to 1.00.

In addition to any Indebtedness that may be incurred as set forth above, the Company and its Restricted Subsidiaries may incur “Permitted Indebtedness.” The term Permitted Indebtedness is defined in the Indenture and includes:

- (1) Indebtedness evidenced by the notes (but not additional notes);
- (2) Indebtedness outstanding as of the Issue Date;
- (3) Indebtedness of the Company or a Restricted Subsidiary (i) Incurred for the purpose of making of capital expenditures by the Company or a Restricted Subsidiary or (ii) for the purpose of funding acquisitions of Related Businesses, in an aggregate principal amount of Indebtedness pursuant to this paragraph (3) not to exceed \$100 million at any one time outstanding.
- (4) Indebtedness of the Company owed to our general partner or an Affiliate of our general partner that is unsecured and that is subordinated in right of payment to the notes; provided that the aggregate principal amount of this Indebtedness outstanding at any time under this clause may not exceed \$10 million and this Indebtedness has a final maturity date later than the final maturity date of the notes;
- (5) Indebtedness (a) owed by the Company or any Restricted Subsidiary to any Restricted Subsidiary or (b) owed by any Restricted Subsidiary to the Company or to any other Restricted Subsidiary;
- (6) Permitted Refinancing Indebtedness (including, for the avoidance of doubt, the refinancing of Indebtedness Incurred under the Consolidated Fixed Charge Coverage Ratio set forth in the second sentence of this section entitled “—Limitation on Indebtedness”);
- (7) the Incurrence by the Company or a Restricted Subsidiary of Indebtedness owing directly to its insurance carriers, without duplication, in connection with the Company’s, its Subsidiaries’ or its Affiliates’ self-insurance programs or other similar forms of retained insurable risks for their respective businesses, consisting of reinsurance agreements and indemnification agreements, and Guarantees of the foregoing, secured by letters of credit;
- (8) Indebtedness of the Company and its Restricted Subsidiaries in respect of “Capital Leases,” meaning, generally, any lease of any property which would be required to be classified and accounted for as a capital lease on a balance sheet of the lessor; provided that the aggregate amount of this Indebtedness outstanding at any time may not exceed \$7.5 million;

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- (9) Indebtedness of the Company and its Restricted Subsidiaries represented by letters of credit supporting (a) obligations under workers' compensation laws, (b) obligations to suppliers of propane or energy commodity derivative providers in the ordinary course of business consistent with past practices, not to exceed \$10 million at any one time outstanding, and (c) the repayment of Indebtedness permitted to be Incurred under the Indenture;
- (10) surety bonds and appeal bonds required in the ordinary course of business or in connection with the enforcement of rights or claims of the Company or any of its Subsidiaries or in connection with judgments that do not result in a "Default" or "Event of Default" (which terms are defined in "—Events of Default");
- (11) any Guarantee by any Restricted Subsidiary in respect of Indebtedness of any other Restricted Subsidiary;
- (12) any Guarantee by the Company of Indebtedness in respect of (x) Indebtedness of its Restricted Subsidiaries, or (y) guarantees of trade credit of Restricted Subsidiaries; and
- (13) Indebtedness Incurred by any Restricted Subsidiary pursuant to any Credit Facilities Incurred solely for working capital purposes not to exceed, in the aggregate at any time outstanding, the Borrowing Base.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness or is entitled to be incurred in compliance with the Consolidated Fixed Charge Coverage Ratio in the first paragraph of this section, the Company may, in its sole discretion, classify (or later reclassify) in whole or in part such items of Indebtedness in any manner that complies with this covenant, and such item of Indebtedness or a portion thereof may be classified (or later reclassified) in whole or in part as having been incurred under more than one of the applicable clauses of Permitted Indebtedness or in compliance with the Consolidated Fixed Charge Coverage Ratio in the first paragraph of this section.

### *Limitation on Restricted Payments*

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make a Restricted Payment, that is, to:

- (1) declare or pay any dividend or any other distribution or payment on or with respect to Capital Stock of the Company or any of its Restricted Subsidiaries or any payment made to the direct or indirect holders, in their capacities as such, of Capital Stock of the Company or any of its Restricted Subsidiaries, other than (a) dividends or distributions payable solely in Capital Stock of the Company (including Common Stock or Senior Units, but excluding Redeemable Capital Stock), or in options, warrants or other rights to purchase Capital Stock of the Company (including Common Stock or Senior Units, but excluding Redeemable Capital Stock); (b) dividends or other distributions to the extent declared or paid to the Company or any Restricted Subsidiary of the Company; or (c) dividends or other distributions by any Restricted Subsidiary of the Company to all holders of Capital Stock of that Restricted Subsidiary on a pro rata basis;
- (2) purchase, redeem, defease or otherwise acquire or retire for value any Capital Stock of the Company or any of its Restricted Subsidiaries, other than any Capital Stock owned by a Restricted Subsidiary;
- (3) make any principal payment on, or purchase, defease, repurchase, redeem or otherwise acquire or retire for value, prior to any scheduled maturity, scheduled repayment, scheduled sinking fund payment or other Stated Maturity, any subordinated Indebtedness of the Company, other than any such Indebtedness owed by the Company or a Restricted Subsidiary; or
- (4) make any investment, other than a Permitted Investment, in any entity, unless, at the time of and after giving effect to the proposed Restricted Payment, no Default or Event of Default shall have occurred and be continuing, and the Restricted Payment, together with the aggregate of all other Restricted



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Payments made by the Company and its Restricted Subsidiaries during the fiscal quarter during which the Restricted Payment is made, will not exceed:

- (a) if the Consolidated Fixed Charge Coverage Ratio of the Company is greater than 1.75 to 1.00, an amount equal to Available Cash for the immediately preceding fiscal quarter; or
- (b) if the Consolidated Fixed Charge Coverage Ratio of the Company is equal to or less than 1.75 to 1.00, an amount equal to the sum of \$15 million, less the aggregate amount of all Restricted Payments made by the Company and its Restricted Subsidiaries in accordance with this clause during the period ending on the last day of the fiscal quarter of the Company immediately preceding the date of the Restricted Payment and beginning on the Issue Date plus the aggregate net cash proceeds of capital contributions to the Company from any Person other than a Restricted Subsidiary of the Company, or issuance and sale of shares of Capital Stock, other than Redeemable Capital Stock, of the Company to any entity other than to a Restricted Subsidiary of the Company, in any case made during the period ending on the last day of the fiscal quarter of the Company immediately preceding the date of the Restricted Payment and beginning on the Issue Date.

The Restricted Payment may be made in assets other than cash, in which case the amount will be the fair market value, as determined in good faith by the Board of Directors on the date of the Restricted Payment of the assets proposed to be transferred.

The above provisions will not prohibit:

- (1) the payment of any dividend or distribution within 60 days after the date of its declaration if, at the date of declaration, the payment would be permitted as summarized above;
- (2) the redemption, repurchase or other acquisition or retirement of any shares of any class of Capital Stock of the Company or any Restricted Subsidiary of the Company in exchange for, or out of the net cash proceeds of, a substantially concurrent capital contribution to the Company from any entity other than a Restricted Subsidiary of the Company; or issuance and sale of other Capital Stock, other than Redeemable Capital Stock, of the Company to any entity other than to a Restricted Subsidiary of the Company; provided, however, that the amount of any net cash proceeds that are utilized for any redemption, repurchase or other acquisition or retirement will be excluded from the calculation of Available Cash;
- (3) the repurchase of any Common Stock or the payment of any dividend or distribution under any employment agreement, stock or unit option agreement, or restricted stock agreement not to exceed \$1 million in any calendar year and not to exceed \$5 million in the aggregate amount since the Issue Date; or
- (4) any redemption, repurchase or other acquisition or retirement of subordinated Indebtedness of the Company in exchange for, or out of the net cash proceeds of, a substantially concurrent capital contribution to the Company from any entity other than a Restricted Subsidiary of the Company; or issuance and sale of Indebtedness of the Company issued to any entity other than a Restricted Subsidiary or the Company, so long as the Indebtedness is Permitted Refinancing Indebtedness; provided, however, that the amount of any net cash proceeds that are utilized for any redemption, repurchase or other acquisition or retirement will be excluded from the calculation of Available Cash.

In computing the amount of Restricted Payments previously made for purposes of the Restricted Payments test above, Restricted Payments made under the first and third points above will be included and Restricted Payments made under the second and fourth points above shall not be so included.

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### *Limitation on Liens*

The Company will not, and will not permit any of its Restricted Subsidiaries to, incur any liens or other encumbrance, unless the lien is a Permitted Lien or the notes are directly secured equally and ratably with the obligation or liability secured by such lien.

### *Limitation on Affiliate Transactions*

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or suffer to exist any transaction or series of related transactions, including the sale, transfer, disposition, purchase, exchange or lease of assets, property or services, other than as provided for in our partnership agreement, with, or for the benefit of any Affiliates of the Company unless:

- (1) the transaction or series of related transactions are between the Company and its Restricted Subsidiaries or between two Restricted Subsidiaries; or
- (2) the transaction or series of related transactions are on terms that are no less favorable to the Company or the Restricted Subsidiary, as the case may be, than those which would have been obtained in a comparable transaction at such time from an entity that is not an Affiliate of the Company or Restricted Subsidiary, and, with respect to transaction(s) involving aggregate payments or value equal to or greater than \$5 million, the Company shall have delivered an Officers' Certificate to the Trustee certifying that the transaction(s) is on terms that are no less favorable to the Company or the Restricted Subsidiary than those which would have been obtained from an entity that is not an Affiliate of the Company or Restricted Subsidiary and has been approved by a majority of the Board of Directors, including a majority of the disinterested directors.

However, the covenant limiting transactions with Affiliates will not restrict the Company, any Restricted Subsidiary or the general partner from entering into: any employment agreement, stock option agreement, restricted stock agreement, employee stock ownership plan related agreements, or similar agreement and arrangements, in the ordinary course of business; transactions not prohibited by the provisions described in “—Certain Covenants—Limitation on Restricted Payments;” transactions in the ordinary course of business in connection with reinsuring the self-insurance programs or other similar forms of retained insurable risks of the business operated by the Company, its Subsidiaries and Affiliates; any Affiliate trading transactions done in the ordinary course of business; and any transaction that is a Flow-Through Acquisition.

### *Limitation on Distributions from Restricted Subsidiaries*

The Company will not, and will not permit any of its Restricted Subsidiaries to, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary to:

- (1) pay dividends, in cash or otherwise, or make any other distributions on or with respect to its Capital Stock or any other interest or participation in, or measured by, its profits;
- (2) pay any Indebtedness owed to the Company or any other Restricted Subsidiary;
- (3) make loans or advances to, or any investment in, the Company or any other Restricted Subsidiary;
- (4) transfer any of its properties or assets to the Company or any other Restricted Subsidiary; or
- (5) Guarantee any Indebtedness of the Company or any other Restricted Subsidiary.

Collectively, these restrictions are called the “Payment Restrictions.” However, some encumbrances or restrictions are permissible, including those existing under or by reason of:

- (1) applicable law;

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- (2) any agreement in effect at the Issue Date or any agreement relating to any Indebtedness permitted to be incurred under the Indenture (including agreements or instruments evidencing Indebtedness incurred after the Issue Date);
- (3) customary non-assignment provisions of any contract or any lease governing a leasehold interest of the Company or any Restricted Subsidiary;
- (4) purchase money obligations or Capital Leases the lien of which is limited to the property acquired pursuant to such obligations;
- (5) any agreement of an entity (or any of its Restricted Subsidiaries) acquired by the Company or any Restricted Subsidiary, in existence at the time of the acquisition but not created in contemplation of the acquisition, which encumbrance or restriction is not applicable to any third party other than the entity; or
- (6) provisions contained in instruments relating to Indebtedness which prohibit the transfer of all or substantially all of the assets of the obligor of the Indebtedness unless the transferee shall assume the obligations of the obligor under the agreement or instrument.

### *Limitation on Sale and Leaseback Transactions*

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any “Sale and Leaseback Transaction” with respect to their properties. The term “Sale and Leaseback Transaction” is defined in the Indenture and, generally, means any arrangement (other than between the Company and a Restricted Subsidiary or between Restricted Subsidiaries) whereby property has been or will be disposed of by a transferor to another entity with the intent of taking back a lease on the property pursuant to which the rental payments are calculated to amortize the purchase price of the property over its life.

The Company and its Restricted Subsidiaries may, however, enter into a Sale and Leaseback Transaction; provided that the Company or the Restricted Subsidiary would be permitted under the Indenture to incur Indebtedness secured by a lien on the property in an amount equal to the Attributable Debt with respect to the Sale and Leaseback Transaction.

### **SEC Reports**

Whether or not required by the rules and regulations of the SEC, so long as any notes are outstanding, we will furnish to the noteholders all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if we were required to file those Forms, including a “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” In addition, we will furnish to such noteholders all reports that would be required to be filed with the SEC on Form 8-K if we were required to file the reports. Finally, whether or not required by the rules and regulations of the SEC, we will file a copy of all the information described in the preceding sentences with the SEC unless the SEC will not accept the filing. We will also make the information available to investors who request it in writing. Currently, we are required to and do file quarterly and annual reports on Forms 10-Q and 10-K. Furthermore, we will promptly furnish to the noteholders notices of (a) any payment default under any instrument evidencing Indebtedness for borrowed money, and (b) any acceleration of such Indebtedness prior to its express maturity.

### **Merger, Consolidation or Sale of Assets**

The Indenture provides that the Company may not consolidate or merge with or into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, another entity unless:

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- (1) the Company is the surviving entity or the entity formed by or surviving the transaction, if other than the Company, or the entity to which the sale was made is a corporation or partnership organized or existing under the laws of the United States, any state thereof or the District of Columbia;
- (2) the entity formed by or surviving the transaction, if other than the Company, or the entity to which the sale was made assumes all the obligations of the Company in accordance with a supplemental indenture in a form reasonably satisfactory to the Trustee, under the notes and the Indenture;
- (3) immediately after the transaction no Default or Event of Default exists; and
- (4) at the time of the transaction and after giving pro forma effect to it as if the transaction had occurred at the beginning of the applicable four-quarter period, the Company or such other entity or survivor is permitted to incur at least \$1.00 of additional Indebtedness in accordance with the Consolidated Fixed Charge Coverage Ratio as described in “—Certain Covenants—Limitation on Indebtedness.”

### **Limitation on Lines of Business**

The Company will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Related Business.

### **Restrictions on Activities of Star Gas Finance Company**

In addition to the restrictions set forth under “—Certain Covenants—Limitation on Indebtedness,” Star Gas Finance Company may not incur any Indebtedness unless the Company is a co-obligor or guarantor of the Indebtedness; or the net proceeds of the Indebtedness are either lent to the Company, used to acquire outstanding debt securities issued by the Company, or used, directly or indirectly, to refinance or discharge Indebtedness permitted under this paragraph. Star Gas Finance Company may not engage in any business not related, directly or indirectly, to obtaining money or arranging financing for the Company.

### **Payments for Consent**

Neither the Company, Star Gas Finance Company, nor any of the Company’s Restricted Subsidiaries will, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fees or otherwise, to any holder of any notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the notes unless such consideration is offered to be paid or is paid to all holders of the notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

### **Events of Default**

Each of the following is an Event of Default:

- (1) default in any payment of interest or additional interest (including as required by the Registration Rights Agreement) on any note when due, continued for 30 days;
- (2) default in the payment of principal of or premium, if any, on any note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
- (3) failure by the Company to comply with its obligations under “—Certain Covenants —Merger, Consolidation or Sale of Assets;”
- (4) failure by the Issuers to comply for 30 days after notice with any of their obligations under the covenants described under “—Change of Control” or “—Asset Sales” above or under the covenants described under “—Certain Covenants” above (in each case, other than a failure to purchase notes which will constitute an Event of Default under clause (2) above and other than a failure to comply with “—Certain Covenants—Merger, Consolidation or Sale of Assets” which is covered by clause (3));

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- (5) failure by the Issuers to comply for 60 days after notice with their other agreements contained in the Indenture;
- (6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default:
  - (a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of any applicable grace period provided (“payment default”) which payment default has not been waived; or
  - (b) results in the acceleration of such Indebtedness prior to its maturity (the “cross acceleration provision”);and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates \$5 million or more;
- (7) certain events of bankruptcy, insolvency or reorganization of the Company or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary (the “bankruptcy provisions”); or
- (8) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary, to pay final judgments aggregating in excess of \$5 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the “judgment default provision”).

However, a default under clauses (4) and (5) of this paragraph will not constitute an Event of Default until the Trustee or the holders of 25% in principal amount of the outstanding notes notify the Company of the default and the Company does not cure such default within the time specified in clauses (4) and (5) of this paragraph after receipt of such notice.

If an Event of Default (other than an Event of Default described in clause (7) above) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, if any, on all the notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest will be due and payable immediately. In the event of a declaration of acceleration of the notes because an Event of Default described in clause (6) under “—Events of Default” has occurred and is continuing, the declaration of acceleration of the notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) shall be remedied or cured by the Company or a Restricted Subsidiary of the Company or waived by the holders of the relevant Indebtedness within 20 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the notes that became due solely because of the acceleration of the notes, have been cured or waived. If an Event of Default described in clause (7) above occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of the outstanding notes may waive all past defaults (except with

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respect to nonpayment of principal, premium or interest) and rescind any such acceleration with respect to the notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the notes that have become due solely by such declaration of acceleration, have been cured or waived.

Subject to the provisions of the Indenture relating to the duties of the Trustee, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the holders unless such holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no holder may pursue any remedy with respect to the Indenture or the notes unless:

- (1) such holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) holders of at least 25% in principal amount of the outstanding notes have requested the Trustee to pursue the remedy;
- (3) such holders have offered the Trustee reasonable security or indemnity against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and
- (5) the holders of a majority in principal amount of the outstanding notes have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the holders of a majority in principal amount of the outstanding notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Indenture provides that in the event an Event of Default has occurred and is continuing, the Trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

The Indenture provides that if a Default occurs and is continuing and is known to the Trustee, the Trustee must mail to each holder notice of the Default within 90 days after it occurs. Except in the case of a Default in the payment of principal of, premium, if any, or interest on any note, the Trustee may withhold notice if and so long as a committee of trust officers of the Trustee in good faith determines that withholding notice is in the interests of the holders. In addition, the Company is required to deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate indicating whether the signers thereof know of any Default that occurred during the previous year. The Company also is required to deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any events which would constitute certain Defaults, their status and what action the Company is taking or proposes to take in respect thereof.

In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuers with the intention of avoiding payment of the premium that the Issuers would have had to pay if the Issuers then had elected to redeem the notes pursuant to the optional redemption provisions of the Indenture or was required to repurchase the notes, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law upon the acceleration of the notes. If an Event of Default occurs prior to February 15, 2008 by reason of any willful action (or inaction) taken (or not taken) by or

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on behalf of the Issuers with the intention of avoiding the prohibition on redemption of the notes prior to February 15, 2008, the premium that would otherwise be payable on February 15, 2008 in respect of an optional redemption shall also become immediately due and payable to the extent permitted by law upon the acceleration of the notes.

### **Amendments and Waivers**

Subject to certain exceptions, the Indenture and the notes may be amended or supplemented with the consent of the holders of a majority in principal amount of the notes then outstanding (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes). However, without the consent of each holder of an outstanding note affected, no amendment may, among other things:

- (1) reduce the principal amount of notes whose holders must consent to an amendment;
- (2) reduce the stated rate of or extend the stated time for payment of interest on any note;
- (3) reduce the principal of or extend the Stated Maturity of any note;
- (4) reduce the premium payable upon the redemption or repurchase of any note or change the time at which any note may be redeemed or repurchased as described above under “—Optional Redemption,” “—Change of Control,” “—Asset Sales” or any similar provision, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (5) make any note payable in money other than that stated in the note;
- (6) impair the right of any holder to receive payment of, premium, if any, principal of and interest on such holder’s notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder’s notes; or
- (7) make any change in the amendment provisions which require each holder’s consent or in the waiver provisions.

Notwithstanding the foregoing, without the consent of any holder, the Issuers and the Trustee may amend the Indenture and the notes to:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) provide for the assumption by a successor corporation, partnership, trust or limited liability company of the obligations of the Issuers under the Indenture;
- (3) provide for uncertificated notes in addition to or in place of certificated notes (provided that the uncertificated notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated notes are described in Section 163(f) (2) (B) of the Code);
- (4) add Guarantees with respect to the notes;
- (5) secure the notes;
- (6) add to the covenants of the Issuers for the benefit of the holders or surrender any right or power conferred upon the Issuers;
- (7) make any change that does not adversely affect the rights of any holder;
- (8) comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act; or

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- (9) provide for the issuance of exchange securities which shall have terms substantially identical in all respects to the notes (except that the transfer restrictions contained in the notes shall be modified or eliminated as appropriate) and which shall be treated, together with any outstanding notes, as a single class of securities.

The consent of the holders is not necessary under the Indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. A consent to any amendment or waiver under the Indenture by any holder of notes given in connection with a tender of such holder's notes will not be rendered invalid by such tender. After an amendment under the Indenture becomes effective, the Issuers are required to mail to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

### **Defeasance**

The Issuers at any time may terminate all their obligations under the notes and the Indenture ("legal defeasance"), except for certain obligations, including those respecting the defeasance trust and obligations to register the transfer or exchange of the notes, to replace mutilated, destroyed, lost or stolen notes and to maintain a registrar and paying agent in respect of the notes.

The Issuers at any time may terminate their obligations under covenants described under "—Certain Covenants" (other than "—Merger, Consolidation or Sale of Assets"), the operation of the cross-default upon a payment default, cross acceleration provisions, the bankruptcy provisions with respect to Significant Subsidiaries, and the judgment default provision described under "—Events of Default" above and the limitations contained in clause (3) and clause (4) under "—Certain Covenants—Merger, Consolidation or Sale of Assets" above ("covenant defeasance").

The Issuers may exercise their legal defeasance option notwithstanding their prior exercise of their covenant defeasance option. If the Issuers exercise their legal defeasance option, payment of the notes may not be accelerated because of an Event of Default with respect to the notes. If the Issuers exercise their covenant defeasance option, payment of the notes may not be accelerated because of an Event of Default specified in clause (4), (5), (6), (7) (with respect only to Significant Subsidiaries), (8) or (9) under "—Events of Default" above or because of the failure of the Company to comply with clause (3) and clause (4) under "—Certain Covenants—Merger, Consolidation or Sale of Assets" above.

In order to exercise either defeasance option, the Issuers must irrevocably deposit in trust (the "defeasance trust") with the Trustee money or U.S. Government Obligations for the payment of principal, premium, if any, and interest on the notes to redemption or maturity, as the case may be, and must comply with certain other conditions, including delivery to the Trustee of an Opinion of Counsel (subject to customary exceptions and exclusions) to the effect that holders of the notes will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred. In the case of legal defeasance only, such Opinion of Counsel must be based on a ruling of the Internal Revenue Service or other change in applicable Federal income tax law.

### **No Personal Liability of Directors, Officers, Employees, Partners and Stockholders**

No director, officer, employee, incorporator, partner or stockholder of the Company or Star Gas Finance Company, as such, shall have any liability for any obligations of the Issuers under the notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.



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**Concerning the Trustee**

Union Bank of California, N.A. is the Trustee under the Indenture and has been appointed by the Issuers as Registrar and Paying Agent with regard to the notes.

If the Trustee becomes a creditor of an Issuer, the Indenture limits its right to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days.

The holders of a majority in principal amount of the then outstanding notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee, subject to certain exceptions. The Indenture provides that in case an Event of Default shall occur and be continuing, the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent person in the conduct of his own affairs. Subject to such provisions, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any holder of notes, unless such holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

**Governing Law**

The Indenture provides that it and the notes will be governed by, and construed in accordance with, the laws of the State of New York.

**Certain Definitions**

“Acquired Indebtedness” means Indebtedness (i) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such acquisition. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (i) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (ii) of the preceding sentence, on the date of consummation of such acquisition of assets.

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing; provided that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control.

“Asset Acquisition” means the following (in all cases, including assets acquired through a Flow-Through Acquisition):

- (1) an Investment by the Company or any Restricted Subsidiary in any other Person pursuant to which the Person shall become a Restricted Subsidiary, or shall be merged with or into the Company or any Restricted Subsidiary;
- (2) the acquisition by the Company or any Restricted Subsidiary of the assets of any Person, other than a Restricted Subsidiary, which constitute all or substantially all of the assets of such Person; or
- (3) the acquisition by the Company or any Restricted Subsidiary of any division or line of business of any Person, other than a Restricted Subsidiary.

“Asset Sale” means either of the following, whether in a single transaction or a series of related transactions:

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- (1) the sale, lease, conveyance or other disposition of any assets other than sales, leases or transfers of assets in the ordinary course of business (including but not limited to the sales of inventory in the ordinary course of business and the sale of receivables and accounts pursuant to a Credit Facility); or
- (2) the issuance or sale of Capital Stock of any direct Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

- (1) any sale or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to the Company or a Restricted Subsidiary;
- (2) any sale or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to any entity in exchange for other assets used in a related business and/or cash (provided that such cash portion is at least 80% of the difference between the value of the assets being transferred and the value of the assets being received) and having a fair market value, as determined in good faith by the Board of Directors, reasonably equivalent to the fair market value of the assets so transferred;
- (3) any sale, lease or transfer of assets in accordance with Permitted Investments;
- (4) the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company; provided that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company will be governed by the provisions described under “—Change of Control” and/or the provisions described under “—Certain Covenants—Merger, Consolidation or Sale of Assets” and not the Asset Sales Covenant;
- (5) the transfer or disposition of assets that are permitted Restricted Payments; and
- (6) any sale, lease or transfer of assets pursuant to a Sale and Leaseback Transaction otherwise permitted by the Indenture.

“Attributable Debt” means, with respect to any Sale and Leaseback Transactions not involving a Capital Lease, as of any date of determination, the total obligation, discounted to present value at the rate of interest implicit in the lease included in the transaction, of the lessee for rental payments during the remaining portion of the term of the lease, including extensions which are at the sole option of the lessor, of the lease included in the transaction. For purposes of this definition, the rental payments shall not include amounts required to be paid on account of property taxes, maintenance, repairs, insurance, assessments, utilities, operating and labor costs and other items which do not constitute payments for property rights. In the case of any lease which is terminable by the lessee upon the payment of a penalty, the rental obligation shall also include the amount of the penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated.

“Available Cash” as to any quarter means:

- (1) the sum of:
  - (a) all cash receipts of the Company during such quarter from all sources (including, without limitation, distributions of cash received from Subsidiaries and cash proceeds from Interim Capital Transactions, but excluding cash proceeds from Termination Capital Transactions); and
  - (b) any reduction with respect to such quarter in a cash reserve previously established pursuant to clause (2)(b) below (either by reversal or utilization) from the level of such reserve at the end of the prior quarter;
- (2) less the sum of:
  - (a) all cash disbursements of the Company during such quarter, including, without limitation, disbursements for operating expenses, taxes, if any, debt service (including, without limitation, the payment of principal, premium and interest), redemption of Capital Stock of the Company, capital

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expenditures, contributions, if any, to any Subsidiaries and cash distributions to partners of the Company (but only to the extent that such cash distributions to partners exceed Available Cash for the immediately preceding quarter); and

- (b) any cash reserves established with respect to such quarter, and any increase with respect to such quarter in a cash reserve previously established pursuant to this clause (2)(b) from the level of such reserve at the end of the prior quarter, in such amounts as the Board of Directors determines in its reasonable discretion to be necessary or appropriate (i) to provide for the proper conduct of the business of the Company (including, without limitation, reserves for future capital expenditures), (ii) to provide funds for distributions with respect to Capital Stock of the Company in respect of any one or more of the next four quarters or (iii) because the distribution of such amounts would be prohibited by applicable law or by any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Company is a party or by which it is bound or its assets are subject;
- (3) plus the lesser of:
- (a) an amount as calculated in accordance with clauses (1) and (2) above for the Company or its Restricted Subsidiaries for the first 45 days of the quarter during which such Restricted Payment is made (rather than the quarter for which clauses (1) and (2) were calculated); and
  - (b) an amount of working capital Indebtedness that the Company or its Restricted Subsidiaries could have Incurred on or before the 45th day after the last day of the quarter used to calculate clauses (1) and (2) above;

provided, however, that Available Cash attributable to any Restricted Subsidiary pursuant to this sub-paragraph (3)(b) will be excluded to the extent dividends or distributions of Available Cash by the Restricted Subsidiary are not at the date of determination permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or other regulation.

Notwithstanding the foregoing, "Available Cash" shall not include any cash receipts or reductions in reserves or take into account any disbursements made or reserves established in each case after the date of liquidation of the Company. Taxes paid by the Company on behalf of, or amounts withheld with respect to, all or less than all of the partners shall not be considered cash disbursements of the Company that reduce Available Cash, but the payment or withholding thereof shall be deemed to be a distribution of Available Cash to the partners other than the limited partners holding Senior Units. Alternatively, in the discretion of the Board of Directors, such taxes (if pertaining to all partners) may be considered to be cash disbursements of the Company which reduce Available Cash, but the payment or withholding thereof shall not be deemed to be a distribution of Available Cash to such partners.

"Board of Directors" means, as to any Person, the board of directors of such Person or any duly authorized committee thereof; provided that so long as the Company is a limited partnership, as to the Company, "Board of Directors" means the board of directors of Star Gas LLC, its general partner, or any duly authorized committee thereof.

"Borrowing Base" means, as of any date of determination, an amount equal to the sum, without duplication, of (1) 85% of the net book value of all of the Company's and its Restricted Subsidiaries' accounts receivable at such date and (2) 60% of the net book value of the Company's and its Restricted Subsidiaries' inventories at such date. Net book value shall be determined in accordance with GAAP and shall be reflected on the most recent available consolidated balance sheet of the Company (it being understood that the accounts receivable and inventories of an acquired business may be included if such acquisition has been completed on or prior to the date of the determination).

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“Business Day” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“Change of Control” means:

- (1) any transaction or series of related transactions pursuant to which any “person” or “group” or “groups” of related persons (as defined in the Exchange Act) other than the Permitted Holders, becoming beneficial owners, in the aggregate, directly or indirectly, of 50% or more of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) and the Permitted Holders beneficially owning at any time, in the aggregate, a lesser percentage of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) than such other person or group;
- (2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder;
- (3) the adoption of a plan or proposal for the liquidation or dissolution of the Company or the general partner of the Company; or
- (4) Star Gas LLC or any affiliated entity shall fail to own beneficially 100% of the general partnership interest in the Company.

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

“Common Stock” means with respect to any Person, any and all shares, units, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person’s securities whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common stock, and, in the case of the Company, means the units representing limited partner interests of the Company whether or not outstanding on the Issue Date.

“Consolidated Cash Flow Available for Fixed Charges” means, with respect to the Company and its Restricted Subsidiaries, for any period, the sum of, without duplication, the amounts for the period, taken as single accounting, of:

- (1) Consolidated Net Income;
- (2) Consolidated Non-Cash Charges;
- (3) Consolidated Interest Expense; and
- (4) Consolidated Income Tax Expense.

“Consolidated Fixed Charge Coverage Ratio” means, with respect to the Company and its Restricted Subsidiaries, the ratio of (x) the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of the Person for the four full fiscal quarters immediately preceding the date of the transaction (the “Transaction Date”) giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (the “Four Quarter Period”), to (y) the aggregate amount of Consolidated Fixed Charges of the Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated Cash Flow Available for Fixed Charges” and “Consolidated Fixed Charges” shall be calculated after giving effect on a pro forma basis for the period of the calculation to, without duplication:

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- (1) the Incurrence or repayment of any Indebtedness, excluding revolving credit borrowings and repayments of revolving credit borrowings (other than any revolving credit borrowings the proceeds of which are used for Asset Acquisitions or Growth Related Capital Expenditures of the Company or any of its Restricted Subsidiaries and in the case of any Incurrence, the application of the net proceeds thereof) during the period commencing on the first day of the Four Quarter Period to and including the Transaction Date (the "Reference Period"), including, without limitation, the Incurrence of the Indebtedness giving rise to the need to make the calculation (and the application of the net proceeds thereof), as if the Incurrence (and application) or repayment occurred on the first day of the Reference Period; and
- (2) any Asset Sales or Asset Acquisitions (including, without limitation, any Asset Acquisition giving rise to the need to make the calculation as a result of the Company or one of its Restricted Subsidiaries, including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition, Incurring, assuming or otherwise being liable for Acquired Indebtedness) occurring during the Reference Period, as if the Asset Sale or Asset Acquisition occurred on the first day of the Reference Period; provided, however, that:
  - (a) Consolidated Fixed Charges will be reduced by amounts attributable to businesses or assets that are so disposed of or discontinued only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to the Consolidated Fixed Charges subsequent to the date of determination of the Consolidated Fixed Charge Coverage Ratio;
  - (b) Consolidated Cash Flow Available for Fixed Charges generated by an acquired business or asset shall be determined by the actual gross profit, which is equal to revenues minus cost of goods sold, of the acquired business or asset during the immediately available preceding four full fiscal quarters occurring in the Reference Period, minus the pro forma expenses that would have been Incurred by the Company and its Restricted Subsidiaries in the operation of the acquired business or asset during the period computed on the basis of personnel expenses for employees retained or to be retained by the Company and its Restricted Subsidiaries in the operation of the acquired business or asset and non-personnel costs and expenses Incurred by or to be Incurred by the Company and its Restricted Subsidiaries based upon the operation of the Company's business, all as determined in good faith by the Board of Directors; and
  - (c) Consolidated Cash Flow Available for Fixed Charges shall not include the impact of any non-recurring cash charges Incurred in connection with a restructuring, reorganization or other similar transaction, as determined in good faith by the Board of Directors.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the "Consolidated Fixed Charge Coverage Ratio":

- (1) interest on outstanding Indebtedness, other than Indebtedness referred to in paragraph (2) below, determined on a fluctuating basis as of the last day of the Four Quarter Period and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on that date;
- (2) only actual interest payments associated with Indebtedness Incurred in accordance with clause (4) of the definition of Permitted Indebtedness and all Permitted Refinancing Indebtedness in respect thereof, during the Four Quarter Period shall be included in the calculation; and
- (3) if interest on any Indebtedness actually Incurred on the date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the last day of the Four Quarter Period will be deemed to have been in effect during the period.

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“Consolidated Fixed Charges” means, with respect to the Company and its Restricted Subsidiaries for any period, the sum of, without duplication:

- (1) the amounts for such period of Consolidated Interest Expense; and
- (2) the product of:
  - (a) the aggregate amount of dividends and other distributions paid or accrued during the period in respect of Preferred Stock and Redeemable Capital Stock of the Company and its Restricted Subsidiaries on a consolidated basis; and
  - (b) a fraction, the numerator of which is one and the denominator of which is one less the then applicable current combined federal, state and local statutory tax rate, expressed as a percentage.

“Consolidated Income Tax Expense” means, with respect to the Company and its Restricted Subsidiaries for any period, the provision for federal, state, local and foreign income taxes of the Company and its Restricted Subsidiaries for the period as determined on a consolidated basis in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to the Company and its Restricted Subsidiaries, for any period, without duplication, the sum of:

- (1) the interest expense of the Company and its Restricted Subsidiaries for the period as determined on a consolidated basis in accordance with GAAP, net of interest income in an amount not to exceed \$3 million;
- (2) any amortization of debt discount;
- (3) the net cost under Interest Rate Agreements;
- (4) the interest portion of any deferred payment obligation;
- (5) all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing;
- (6) all accrued interest for all instruments evidencing Indebtedness; and
- (7) the interest component of Capital Leases paid or accrued or scheduled to be paid or accrued by the Company and its Restricted Subsidiaries during the period as determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means the net income (loss) of the Company and its Restricted Subsidiaries, as determined on a consolidated basis in accordance with GAAP and as adjusted to exclude:

- (1) net after-tax extraordinary gains or losses;
- (2) net after-tax gains or losses attributable to Asset Sales;
- (3) the net income or loss of any Person which is not a Restricted Subsidiary and which is accounted for by the equity method of accounting; provided that Consolidated Net Income shall include the amount of dividends or distributions actually paid to the Company or any Restricted Subsidiary;
- (4) the net income or loss prior to the date of acquisition of any Person combined with the Company or any Restricted Subsidiary in a pooling of interest;
- (5) the net income of any Restricted Subsidiary to the extent that dividends or distributions of that net income are not at the date of determination permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or other regulation; and
- (6) the cumulative effect of any changes in accounting principles.

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“Consolidated Non-Cash Charges” means, with respect to the Company and its Restricted Subsidiaries for any period, the aggregate of (1) depreciation, (2) amortization, (3) non-cash employee compensation expenses of the Company or its Restricted Subsidiaries for such period, and (4) any other non-cash charges, in each case which reduces the Consolidated Net Income of the Company and its Restricted Subsidiaries for the period, as determined on a consolidated basis in accordance with GAAP, and excluding any such non-cash charge or expense to the extent it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period, and also excluding the non-cash impact of Statement of Financial Accounting Standards No. 133.

“Credit Facilities” means, one or more debt facilities or commercial paper facilities, in each case with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Flow-Through Acquisition” means an acquisition by the general partner from a Person that is not an Affiliate of the general partner or the Company, of property (real or personal), assets or equipment (whether through the direct purchase of assets or the Capital Stock of the Person owning such assets) in a Related Business, which is promptly sold, transferred or contributed by the general partner to the Company or one of its Restricted Subsidiaries.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in the Indenture will be computed in conformity with GAAP.

“Growth Related Capital Expenditures” means, with respect to any Person, all capital expenditures by such Person made to improve or enhance the existing capital assets or to increase the customer base of such Person or to acquire or construct new capital assets (but excluding capital expenditures made to maintain, up to the level thereof that existed at the time of such expenditure, the operating capacity of the capital assets of such Person as such assets existed at the time of such expenditure).

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or
- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Incur” means issue, create, assume, Guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Restricted

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Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms “Incurred” and “Incurrence” have meanings correlative to the foregoing.

“Indebtedness” means, as applied to any Person, without duplication:

- (1) (a) any indebtedness for borrowed money and (b) all obligations evidenced by any (i) bond, note, debenture or other similar instrument or (ii) letter of credit, or reimbursement agreements in respect thereof, but only for any drawings that are not reimbursed within five Business Days after the date of such drawings, which in each case the Person has, directly or indirectly, created or Incurred;
- (2) any indebtedness for borrowed money and all obligations evidenced by any bond, note, debenture or other similar instrument secured by any lien in respect of property owned by the Person, whether or not the Person has assumed or become liable for the payment of the indebtedness; provided that the amount of the indebtedness, if the Person has not assumed the same or become liable therefor, shall in no event be deemed to be greater than the fair market value from time to time, as determined in good faith by the Person, of the property subject to the lien;
- (3) any indebtedness, whether or not for borrowed money (excluding trade payables and accrued expenses arising in the ordinary course of business) with respect to which the Person has become directly or indirectly liable and which represents the deferred purchase price, or a portion thereof, or has been Incurred to finance the purchase price, or a portion thereof, of any property or business acquired by, or service performed on behalf of, the Person, whether by purchase, consolidation, merger or otherwise;
- (4) the principal component of any obligations under Capital Leases to the extent the obligations would, in accordance with GAAP, appear on the balance sheet of the Person;
- (5) all Attributable Debt of the Person in respect of Sale and Leaseback Transactions not involving a Capital Lease;
- (6) any indebtedness of any other Person of the character referred to in the foregoing clauses (1) through (5) of this definition with respect to which the Person whose indebtedness is being determined has become liable by way of a Guarantee; and
- (7) all Redeemable Capital Stock of the Person valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued dividends.

For purposes hereof, the “maximum fixed repurchase price” of any Redeemable Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of the Redeemable Capital Stock as if it were purchased on any date on which Indebtedness shall be required to be determined pursuant to the Indenture and if the price is based upon, or measured by, the fair market value of the Redeemable Capital Stock, the fair market value shall be determined in good faith by the board of directors of the issuer of the Redeemable Capital Stock. For purposes hereof, the term “Indebtedness” shall not include (x) accrual of interest, the accretion of accreted value and the payment of interest or any other similar Incurrence by the Company or its Restricted Subsidiaries related to Indebtedness otherwise permitted in the Indenture or (y) indebtedness under any hedging arrangement which provides for the right or obligation to purchase, sell or deliver any currency, commodity or security at a future date for a specified price entered into to protect such Person from fluctuations in prices or rates, including currencies, interest rates, commodity prices and securities prices, including, without limitation, indebtedness under any interest rate or commodity price swap agreement, interest rate cap agreement, interest rate collar agreement or any forward sales arrangements, calls, options, swaps, or other similar transactions or any combination thereof.

“Interest Rate Agreement” means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.



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“Interim Capital Transactions” means (1) borrowings, refinancings or refundings of Indebtedness and sales of debt securities (other than for working capital purposes and other than for items purchased on open account in the ordinary course of business) by the Company, (2) sales of Capital Stock of the Company by the Company and (3) sales or other voluntary or involuntary dispositions of any assets of the Company (other than (x) sales or other dispositions of inventory in the ordinary course of business, (y) sales or other dispositions of other current assets excluding receivables and accounts and (z) sales or other dispositions of assets as a part of normal retirements or replacements), in each case prior to the commencement of the dissolution and liquidation of the Company.

“Investment” means as applied to any Person:

- (1) any direct or indirect purchase or other acquisition by the Person of stock or other securities of any other Person; or
- (2) any direct or indirect loan, advance or capital contribution by the Person to any other Person and any other item which would be classified as an “investment” on a balance sheet of the Person prepared in accordance with GAAP, including without limitation any direct or indirect contribution by the Person of property or assets to a joint venture, partnership or other business entity in which the Person retains an interest, it being understood that a direct or indirect purchase or other acquisition by the Person of assets of any other Person, other than stock or other securities, shall not constitute an “Investment” for purposes of the Indenture.

The amount classified as Investments made during any period shall be the aggregate cost to the Company and its Restricted Subsidiaries of all the Investments made during the period, determined in accordance with GAAP, but without regard to unrealized increases or decreases in value, or write-ups, write-downs or write-offs, of the Investments and without regard to the existence of any undistributed earnings or accrued interest with respect thereto accrued after the respective dates on which the Investments were made, less any net return of capital realized during the period upon the sale, repayment or other liquidation of the Investments, determined in accordance with GAAP, but without regard to any amounts received during the period as earnings (in the form of dividends not constituting a return of capital, interest or otherwise) on the Investments or as loans from any Person in whom the Investments have been made.

“Issue Date” means the date on which the notes are originally issued.

“Net Proceeds” means, with respect to any Asset Sale or sale of Capital Stock, the proceeds therefrom in the form of cash or cash equivalents including payments in respect of deferred payment obligations when received in the form of cash or cash equivalents, except to the extent that the deferred payment obligations are financed or sold with recourse to the Company or any of its Restricted Subsidiaries, net of:

- (1) brokerage commissions and other fees and expenses related to the Asset Sale, including, without limitation, fees and expenses of legal counsel and accountants and fees, expenses, discounts or commissions of underwriters, placement agents and investment bankers;
- (2) provisions for all taxes payable as a result of the Asset Sale;
- (3) amounts required to be paid to any Person, other than the Company or any Restricted Subsidiary, owning a beneficial interest in the assets subject to the Asset Sale;
- (4) appropriate amounts established by the Company or any Restricted Subsidiary, as the case may be, as a reserve required in accordance with GAAP against any liabilities associated with the Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after the Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with the Asset Sale; and
- (5) amounts applied to the repayment of Indebtedness in connection with the asset or assets sold in the Asset Sale, including any transaction costs and expenses associated therewith and any make-whole or other premium owed in connection with such repayment.

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“Officer” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Issuers or, so long as the Company is a limited partnership, of the Company’s general partner.

“Officers’ Certificate” means a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Issuers or, so long as the Company is a limited partnership, of the Company’s general partner.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“Permitted Holders” means Irik Sevin and Audrey Sevin:

- (1) any immediate family member or lineal descendant of either of them;
- (2) any trust established for the benefit of any of the foregoing; or
- (3) any Person controlled by any of them.

“Permitted Investments” means any of the following:

- (1) Investments made or owned by the Company or any Restricted Subsidiary in:
  - (a) marketable obligations issued or unconditionally guaranteed by the United States, or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing one year or less from the date of acquisition thereof;
  - (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and having as at such date the highest rating obtainable from either Standard & Poor’s Ratings Group (“S&P”) and its successors or Moody’s Investors Service, Inc. (“Moody’s”) and its successors;
  - (c) commercial paper maturing no more than 270 days from the date of creation thereof and having as at the date of acquisition thereof one of the two highest ratings obtainable from either S&P or Moody’s;
  - (d) certificates of deposit maturing one year or less from the date of acquisition thereof issued by commercial banks incorporated under the laws of the United States or any state thereof or the District of Columbia or Canada; the commercial paper or other short term unsecured debt obligations of which are as at such date rated either “A-2” or better (or comparably if the rating system is changed) by S&P or “Prime-2” or better (or comparably if the rating system is changed) by Moody’s; the long-term debt obligations of which are, as at such date, rated either “A” or better (or comparably if the rating system is changed) by either S&P or Moody’s (“Permitted Banks”);
  - (e) eurodollar time deposits having a maturity of less than 270 days from the date of acquisition thereof purchased directly from any Permitted Bank;
  - (f) bankers’ acceptances eligible for rediscount under requirements of the Board of Governors of the Federal Reserve System and accepted by Permitted Banks;
  - (g) obligations of the type described in clauses (a) through (e) above purchased from a securities dealer designated as a “primary dealer” by the Federal Reserve Bank of New York or from a Permitted Bank as counterparty to a written repurchase agreement obligating such counterparty to repurchase such obligations not later than 14 days after the purchase thereof and which provides that the obligations which are the subject thereof are held for the benefit of the Company or a Restricted Subsidiary by a custodian which is a Permitted Bank and which is not a counterparty to the repurchase agreement in question; and

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- (h) securities issued by money market mutual funds which (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated “AAA” by S&P “Aaa” by Moody’s and (iii) have portfolio assets in excess of \$500 million;
- (2) the acquisition by the Company or any Restricted Subsidiary of Capital Stock or other ownership interests, whether in a single transaction or in a series of related transactions, of a Person located in the United States and engaged in a Related Business such that, upon the completion of such transaction or series of transactions, the Person becomes a Restricted Subsidiary;
- (3) the making or ownership by the Company or any Restricted Subsidiary of Investments (in addition to any other Permitted Investments) in any Person incorporated or otherwise formed pursuant to the laws of the United States or any state thereof; provided that the aggregate amount of all such Investments made by the Company and its Restricted Subsidiaries following the Issue Date and outstanding pursuant to this third clause shall not at any date of determination exceed \$20 million;
- (4) the making or ownership by the Company or any Restricted Subsidiary of Investments:
  - (a) arising out of loans and advances to employees Incurred in the ordinary course of business;
  - (b) arising out of extensions of trade credit or advances to third parties in the ordinary course of business; or
  - (c) acquired by reason of the exercise of customary creditors’ rights upon default or pursuant to the bankruptcy, insolvency or reorganization of a debtor;
- (5) the creation or Incurrence of liability by the Company or any Restricted Subsidiary, with respect to any Guarantee constituting an obligation, warranty or indemnity, not guaranteeing Indebtedness of any Person, which is undertaken or made in the ordinary course of business;
- (6) the creation or Incurrence of liability by the Company or any Restricted Subsidiary with respect to any hedging agreements or arrangements;
- (7) the making by any Restricted Subsidiary of Investments in the Company or another Restricted Subsidiary and the making by the Company of Investments in any Restricted Subsidiary; and
- (8) Investments in any Person pursuant to joint venture arrangements, in an aggregate amount not to exceed \$10 million outstanding at any one time; provided that such Person is engaged in a Related Business.

“Permitted Liens” means any of the following:

- (1) liens for taxes, assessments or other governmental charges, the payment of which is not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and as to which reserves or other appropriate provision, if any, as shall be required by GAAP, shall have been made therefor and be adequate in the good faith judgment of the obligor;
- (2) liens of lessors, landlords and carriers, vendors, warehousemen, mechanics, materialmen, repairmen and other like liens incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and as to which reserves or other appropriate provisions, if any, as shall be required by GAAP, shall have been made therefor and be adequate in the good faith judgment of the obligor, in each case:
  - (a) not Incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property; or
  - (b) Incurred in the ordinary course of business securing the unpaid purchase price of property or services constituting current accounts payable;

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- (3) liens, other than any lien imposed by the Employee Retirement Income Security Act of 1974, as may be amended from time to time, Incurred or deposits made in the ordinary course of business:
  - (a) in connection with workers' compensation, unemployment insurance and other types of social security; or
  - (b) to secure or to obtain letters of credit that secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, performance bonds, purchase, construction or sales contracts and other similar obligations, in each case not Incurred or made in connection with the borrowing of money;
- (4) other deposits made to secure liability to insurance carriers under insurance or self-insurance arrangements;
- (5) liens securing reimbursement obligations under letters of credit, provided in each case that such liens cover only the title documents and related goods and any proceeds thereof covered by the related letter of credit;
- (6) any attachment or judgment lien, unless the judgment it secures shall not, within 60 days after notice of the entry thereof, have been discharged or execution thereof stayed pending appeal or review, or shall not have been discharged within 60 days after expiration of any such stay;
- (7) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, which, in each case either have been granted, entered into or created in the ordinary course of the business of the Company or any Restricted Subsidiary or do not materially impair the value or intended use of the property covered thereby;
- (8) liens on property or assets of any Restricted Subsidiary securing Indebtedness of the Restricted Subsidiary owing to the Company or a Restricted Subsidiary;
- (9) liens on assets of the Company or any Restricted Subsidiary existing on the Issue Date;
- (10) liens on personal property leased under leases entered into by the Company or its Restricted Subsidiaries which are accounted for as operating leases in accordance with GAAP;
- (11) liens securing Indebtedness incurred in accordance with:
  - (a) clauses (4), (5) and (7) of the definition of Permitted Indebtedness; and
  - (b) Indebtedness otherwise permitted to be incurred under the "Limitation on Indebtedness" covenant to the extent incurred:
    - (i) to finance the making of expenditures for the improvement or repair (to the extent the improvements and repairs may be capitalized on the books of the Company and the Restricted Subsidiaries in accordance with GAAP) of, or additions including additions by way of acquisitions of businesses and related assets to, the assets and property of the Company and its Restricted Subsidiaries; or
    - (ii) by assumption in connection with additions including additions by way of acquisition or capital contributions of businesses and related assets to the property and assets of the Company and its Restricted Subsidiaries; provided that the principal amount of the Indebtedness does not exceed the lesser of the cost to the Company and its Restricted Subsidiaries of the additional property or assets and the fair market value of the additional property or assets at the time of the acquisition thereof, as determined in good faith by the Board of Directors;
- (12) liens existing on any property of any Person at the time it becomes a Subsidiary of the Company, or existing at the time of acquisition upon any property acquired by the Company or any Subsidiary through purchase, merger or consolidation or otherwise, whether or not assumed by the Company or

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the Subsidiary, or created to secure Indebtedness incurred to pay all or any part of the purchase price (a “Purchase Money Lien”) of property including, without limitation, Capital Stock and other securities acquired by the Company or a Restricted Subsidiary; provided that:

- (a) the lien shall be confined solely to the item or items of property and, if required by the terms of the instrument originally creating the lien, other property which is an improvement to or is acquired for use specifically in connection with the acquired property;
  - (b) in the case of a Purchase Money Lien, the principal amount of the Indebtedness secured by the Purchase Money Lien shall at no time exceed an amount equal to the lesser of:
    - (i) the cost to the Company and the Restricted Subsidiaries of the property; and
    - (ii) the fair market value of the property at the time of the acquisition thereof as determined in good faith by the Board of Directors;
  - (c) the Purchase Money Lien shall be created not later than 360 days after the acquisition of the property; and
  - (d) the lien, other than a Purchase Money Lien, shall not have been created or assumed in contemplation of the Person’s becoming a Subsidiary of the Company or the acquisition of property by the Company or any Subsidiary;
- (13) easements, exceptions or reservations in any property of the Company or any Restricted Subsidiary granted or reserved for the purpose of pipelines, roads, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which are incidental to, and do not materially interfere with, the ordinary conduct of the business of the Company or any Restricted Subsidiary; and
- (14) any lien renewing, extending or replacing any lien permitted by clauses (9) through (12) above; provided that, the principal amount of the Indebtedness secured by any such lien shall not exceed the principal amount of the Indebtedness outstanding immediately prior to the renewal or extension of the lien, and no assets encumbered by the lien other than the assets encumbered immediately prior to the renewal or extension shall be encumbered thereby. The foregoing provisions of this clause (14) shall not be interpreted to limit the ability of the Company or any Restricted Subsidiary to incur additional Indebtedness or grant liens in respect thereof as contemplated in clause (13) of “—Limitation on Indebtedness.”

“Permitted Refinancing Indebtedness” means Indebtedness incurred by the Company or any Restricted Subsidiary to substantially concurrently (excluding any notice period on redemptions) repay, refund, renew, replace, extend or refinance, in whole or in part, any Permitted Indebtedness of the Company or any Restricted Subsidiary or any other Indebtedness incurred by the Company or any Restricted Subsidiary pursuant to the “Limitation on Indebtedness” covenant, to the extent:

- (1) the principal amount of the Permitted Refinancing Indebtedness does not exceed the principal or accreted amount plus the amount of accrued and unpaid interest of the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced (plus the amount of all expenses and premiums incurred in connection therewith);
- (2) with respect to any repayment, refunding, renewal, replacement, extension or refinancing of Indebtedness, the Permitted Refinancing Indebtedness ranks no more favorably in right of payment with respect to the notes than the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced; and
- (3) with respect to the repayment, refunding, renewal, replacement, extension or refinancing of our Indebtedness, the Permitted Refinancing Indebtedness has a Weighted Average Life to Stated Maturity and Stated Maturity equal to, or greater than, and has no fixed mandatory redemption or sinking fund

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requirement in an amount greater than or at a time prior to the amounts set forth in, the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced; provided, however, that Permitted Refinancing Indebtedness shall not include Indebtedness incurred by a Restricted Subsidiary to repay, refund, renew, replace, extend or refinance Indebtedness of the Company.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

“Preferred Stock” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of distributions or dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

“Public Equity Offering” means a public offering or private placement of partnership interests (other than interests that are mandatorily redeemable) of:

- (1) any entity that directly or indirectly owns equity interests in the Company, to the extent the net proceeds are contributed to the Company;
- (2) any Subsidiary of the Company to the extent the net proceeds are distributed, paid, lent or otherwise transferred to the Company that results in the net proceeds to the Company of at least \$10 million; or
- (3) the Company.

A private placement of partnership interests will not be deemed a Public Equity Offering unless net proceeds of at least \$10 million are received.

A “Public Market” exists at any time with respect to the Common Stock of the Company if:

- (1) the Common Stock of the Company is then registered with the SEC pursuant to Section 12(b) or 12(g) of Exchange Act and traded either on a national securities exchange or in the National Association of Securities Dealers Automated Quotation System; and
- (2) at least 15% of the total issued and outstanding Common Stock of the Company has been and remains distributed prior to such time by means of an effective registration statement under the Securities Act.

“Redeemable Capital Stock” means any shares of any class or series of Capital Stock (excluding, but not limited to, the Senior Units and Common Stock issued by the Company), that, either by the terms thereof, by the terms of any security into which it is convertible or exchangeable or by contract or otherwise, is or upon the happening of an event or passage of time would be, required to be redeemed prior to the Stated Maturity of the principal of the notes or is redeemable at the option of the holder thereof at any time prior to the Stated Maturity of the principal of the notes, or is convertible into or exchangeable for debt securities at any time prior to the Stated Maturity of the principal of the notes.

“Registration Rights Agreement” means that certain registration rights agreement dated as of the Issue Date by and among the Company and the initial purchasers set forth therein.

“Related Business” means any business which is the same as or related, ancillary or complementary to any of the businesses of the Company or any Restricted Subsidiary as carried out on the Issue Date.

“Related Person” with respect to any Permitted Holder means:

- (1) any controlling stockholder or a majority (or more) owned Subsidiary of such Permitted Holder or, in the case of an individual, any spouse or immediate family member of such Permitted Holder, any trust

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created for the benefit of such individual or such individual's estate, executor, administrator, committee or beneficiaries; or

- (2) any trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons beneficially holding a majority (or more) controlling interest of which consist of such Permitted Holder and/or such other Persons referred to in the immediately preceding clause (1).

"Restricted Subsidiary" means any Subsidiary of the Company other than an Unrestricted Subsidiary.

"SEC" means the United States Securities and Exchange Commission.

"Senior Units" means the units representing limited partner interests of the Company, having the rights and obligations specified with respect to Senior Subordinated Units of the Company.

"Significant Subsidiary" means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"Subsidiary" of any Person means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership and joint venture interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Company.

"Termination Capital Transactions" means any sale, transfer or other disposition of property of the Company occurring upon or incident to the liquidation and winding up of the Company.

"Unrestricted Subsidiary" means any Person that is designated as such by the Board of Directors; provided that no portion of the Indebtedness of such Person:

- (1) is Guaranteed by the Company or any Restricted Subsidiary;
- (2) is recourse to or obligates the Company or any Restricted Subsidiary in any way; or
- (3) subjects any property or assets of the partnership or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof.

Notwithstanding the foregoing, the Company or a Restricted Subsidiary may Guarantee or agree to provide funds for the payment or maintenance of, or otherwise become liable with respect to Indebtedness of an Unrestricted Subsidiary, but only to the extent that the Company or a Restricted Subsidiary would be permitted to:

- (1) make an Investment in the Unrestricted Subsidiary pursuant to the third clause of the definition of Permitted Investments; and
- (2) incur the Indebtedness represented by the Guarantee or agreement pursuant to the first paragraph of "~~Certain Covenants—Limitation on Indebtedness.~~" The Board of Directors may designate an Unrestricted Subsidiary to be a Restricted Subsidiary; provided that immediately after giving effect to the designation there exists no Default or Event of Default, and if the Unrestricted Subsidiary has, as of

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the date of the designation, outstanding Indebtedness other than Permitted Indebtedness, the Company could incur at least \$1.00 of Indebtedness other than Permitted Indebtedness.

Notwithstanding the foregoing, no Subsidiary may be designated an Unrestricted Subsidiary if the Subsidiary, directly or indirectly, holds Capital Stock of a Restricted Subsidiary.

“U.S. Government Obligations” means securities that are (a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

“Weighted Average Life to Stated Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

- (1) The sum of the products obtained by multiplying:
  - (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by
  - (b) the number of years, calculated to the nearest one-twelfth, that will elapse between the date and the making of the payment, by
- (2) The then outstanding principal amount of the Indebtedness;

provided, however, that with respect to any revolving Indebtedness, the foregoing calculation of Weighted Average Life to Stated Maturity shall be determined based upon the total available commitments and the required reductions of commitments in lieu of the outstanding principal amount and the required payments of principal, respectively.

#### U.S. TAX CONSEQUENCES

The following is a summary of certain U.S. federal income tax consequences of the purchase, ownership and disposition of the notes as of the date hereof. Except where noted, this summary deals only with notes held as capital assets by initial purchasers that purchase the notes at their original issue price, and it does not deal with special situations. For example, this summary does not address tax consequences to holders who may be subject to special tax treatment, such as dealers in securities or currencies, financial institutions, regulated investment companies, real estate investment trusts, tax-exempt entities, insurance companies, persons holding notes as a part of a hedging, integrated, conversion or constructive sale transaction or a straddle, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings, persons liable for alternative minimum tax, investors in pass-through entities, or U.S. holders (as defined below) of notes whose “functional currency” is not the U.S. dollar. In addition, this summary does not represent a detailed description of the U.S. federal income tax consequences applicable to you if you are subject to special treatment under the U.S. federal



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income tax laws (including if you are a U.S. expatriate, “controlled foreign corporation,” “passive foreign investment company,” “foreign personal holding company,” or a corporation that accumulates earnings to avoid U.S. federal income tax).

This summary is based upon provisions of the Internal Revenue Codes of 1986, as amended (the “Code”), and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in U.S. federal income tax consequences different from those summarized below.

If a partnership holds our notes, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our notes, you should consult your tax advisors.

If you are considering the purchase of notes, you should consult your own tax advisors concerning the particular U.S. federal income tax consequences to you of the ownership of the notes, as well as the consequences to you arising under the laws of any other taxing jurisdiction.

### **Consequences to U.S. Holders**

The following is a summary of certain U.S. federal income tax consequences that will apply to you if you are a U.S. holder of the notes. Certain consequences to “non-U.S. holders” of the notes, which are beneficial owners of the notes who are not U.S. holders, are described under “—Consequences to Non-U.S. Holders” below.

A “U.S. holder” means a person that is for U.S. federal income tax purposes one of the following:

- a citizen or resident of the U.S.;
- a corporation created or organized in or under the laws of the U.S. or any political subdivision thereof;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the U.S. and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

### **Payments of Interest**

Stated interest on a note will generally be taxable to you as ordinary income at the time it is paid or accrued in accordance with your regular method of accounting for tax purposes.

### **Sale, Exchange or Other Taxable Disposition of Notes**

Your tax basis in a note will, in general, be your cost therefor, reduced by any principal payments you receive. Subject to the discussion under “Exchange Offer,” upon the sale, exchange, retirement or other disposition of a note, you will recognize gain or loss equal to the difference between the amount realized upon the sale, exchange, retirement or other disposition (not including an amount equal to any accrued and unpaid interest which will be treated as a payment of interest for U.S. federal income tax purposes) and your adjusted tax basis of the note. Such gain or loss will generally be capital gain or loss. Capital gains of individuals derived in respect of capital assets held for more than one year are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations.

### **Exchange Offer**

In satisfaction of the registration rights of holders of Series A notes as provided for herein under the heading, “The Exchange Offer—Registration Rights,” we are offering the Series B notes in exchange for the

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Series A notes. Because the Series B notes will not differ materially in kind or extent from the notes, your exchange of Series A notes for Series B notes will not constitute a taxable disposition of the notes for the United States federal income tax purposes. As a result, (1) you will not recognize taxable income, gain or loss on such exchange, (2) your holding period for the Series B notes will generally include the holding period for the Series A notes so exchanged, and (3) your adjusted tax basis in the Series B notes will generally be the same as your adjusted tax basis in the Series A notes so exchanged.

### **Liquidated Damages**

As described under “Registration Rights” we may be required to pay you liquidated damages in certain circumstances. Although the matter is not free from doubt, we intend to take the position that a U.S. holder of a note should be required to report any liquidated damages as ordinary income for U.S. federal income tax purposes at the time it accrues or is received in accordance with your regular method of accounting. It is possible, however, that the Internal Revenue Service may take a different position, in which case the timing and amount of income may be different.

### **Information Reporting and Backup Withholding**

In general, information reporting requirements will apply to payments of principal and interest paid on the notes and to the proceeds of sales of notes paid to you (unless you are an exempt recipient such as a corporation). A backup withholding tax will apply to such payments if you fail to provide a taxpayer identification number or certification of exempt status, or fail to report in full dividend and interest income.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against such holder’s U.S. federal income tax liability provided the required information is furnished to the IRS.

### **Consequences to Non-U.S. Holders**

#### *U.S. Federal Withholding Tax*

The 30% U.S. federal withholding tax will not apply to any payment of principal or interest on a note owned by a non-U.S. holder, under the portfolio interest rule, provided that:

- interest paid on the note is not effectively connected with your conduct of a trade or business in the U.S.;
- you do not actually (or constructively) own 10% or more of the total combined voting power of all classes of our voting stock within the meaning of Section 871(h)(3) of the Code and the regulations thereunder;
- you are not a controlled foreign corporation that is related to us through stock ownership;
- you are not a bank whose receipt of interest on the notes is described in Section 881(c)(3)(A) of the Code; and
- either (a) you provide your name and address on an IRS Form W-8BEN (or other applicable form), and certify, under penalties of perjury, that you are not a U.S. person or (b) you hold your notes through certain foreign intermediaries and satisfy the certification requirements of applicable U.S. Treasury regulations.

Special certification and other rules apply to certain non-U.S. holders that are entities rather than individuals.

If you cannot satisfy the requirements of the portfolio interest rule described above, payments of interest made to you will be subject to the 30% U.S. federal withholding tax, unless you provide us with a properly

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executed (1) IRS Form W-8BEN (or other applicable form) claiming an exemption from or reduction in withholding under the benefit of an applicable income tax treaty or (2) IRS Form W-8ECI (or other applicable form) stating that interest paid on a note is not subject to withholding tax because it is effectively connected with your conduct of a trade or business in the U.S. (as discussed below under “U.S. Federal Income Tax”).

As described under “Registration Rights,” we may be required to pay you liquidated damages in certain circumstances. It is possible that such payments might be subject to U.S. federal withholding tax.

The 30% U.S. federal withholding tax generally will not apply to any gain that you realize on the sale, exchange, retirement or other disposition of a note.

### *U.S. Federal Income Tax*

If you are engaged in a trade or business in the U.S. and interest on the notes is effectively connected with the conduct of that trade or business, you will be subject to U.S. federal income tax on that interest on a net income basis (although exempt from the 30% withholding tax, provided you comply with certain certification and disclosure requirements discussed above in “U.S. Federal Withholding Tax”) in the same manner as if you were a U.S. holder. In addition, if you are a foreign corporation, you may be subject to a branch profits tax equal to 30% (or lower applicable income tax treaty rate) of such amount, subject to adjustments.

Any gain realized on the sale, exchange, retirement or other disposition of a note (other than gain representing accrued but unpaid interest, which will be treated as such) generally will not be subject to federal income tax unless:

- the gain is effectively connected with the conduct of a trade or business in the U.S. by you, or
- you are an individual who is present in the U.S. for 183 days or more in the taxable year of that sale, exchange, retirement or other disposition, and certain other conditions are met.

### *U.S. Federal Estate Tax*

Your estate will not be subject to U.S. federal estate tax on the notes beneficially owned by you at the time of your death, provided that any payment to you on the notes would be eligible for exemption from the federal withholding tax under the portfolio interest rules described above under “U.S. Federal Withholding Tax” without regard to the statement requirement described in the last bullet under that heading.

### *Information Reporting and Backup Withholding*

Generally, we must report to the Internal Revenue Service and to you the amount of interest paid to you and the amount of tax, if any, withheld with respect to those payments. Copies of the information returns reporting such interest payments and any withholding may also be made available to the tax authorities in the country in which you reside under the provisions of an applicable income tax treaty.

In general, you will not be subject to backup withholding with respect to payments that we make to you provided that we do not have actual knowledge or reason to know that you are a U.S. person, as defined under the Code, and we have received from you the statement described above in the last bullet point under “U.S. Federal Withholding Tax.” In addition, information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of the sale of a note within the U.S. or conducted through U.S.-related financial intermediaries unless the payor receives the statement described above and does not have actual knowledge or reason to know that you are a U.S. person, as defined under the Code, or you otherwise establish an exemption.

## CERTAIN ERISA CONSIDERATIONS

The following is a summary of certain considerations associated with the purchase of the notes by employee benefit plans that are subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”), plans, individual retirement accounts and other arrangements that are subject to Section 4975 of the Code or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, “Similar Laws”), and entities whose underlying assets are considered to include “plan assets” of such plans, accounts and arrangements (each, a “Plan”).

### General Fiduciary Matters

ERISA and the Code impose certain duties on persons who are fiduciaries of a Plan subject to Title I of ERISA or Section 4975 of the Code (an “ERISA Plan”) and prohibit certain transactions involving the assets of an ERISA Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of an ERISA Plan or the management or disposition of the assets of an ERISA Plan, or who renders investment advice for a fee or other compensation to an ERISA Plan, is generally considered to be a fiduciary of the ERISA Plan.

In considering an investment in the notes of a portion of the assets of any Plan, a fiduciary should determine whether the investment is in accordance with the documents and instruments governing the plan and the applicable provisions of ERISA, the Code or any Similar Law relating to a fiduciary’s duties to the Plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code and any other applicable Similar Laws.

### Prohibited Transaction Issues

Section 406 of ERISA and Section 4975 of the Code prohibit ERISA Plans from engaging in specified transactions involving plan assets with persons or entities who are “parties in interest,” within the meaning of ERISA, or “disqualified persons,” within the meaning of Section 4975 of the Code, unless an exemption is available. A party in interest or disqualified person who engaged in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. In addition, the fiduciary of the ERISA Plan that engaged in such a non-exempt prohibited transaction may be subject to penalties and liabilities under ERISA and the Code.

Whether or not the underlying assets of the issuers were deemed to include “plan assets” as described below, the acquisition and/or holding of notes by an ERISA Plan with respect to which we, the initial purchasers, or any of our or their affiliates is considered a party in interest or a disqualified person may constitute or result in a direct or indirect prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code, unless the investment is acquired and is held in accordance with an applicable statutory, class or individual prohibited transaction exemption. In this regard, the United States Department of Labor (the “DOL”) has issued prohibited transaction class exemptions, or “PTCEs,” that may apply to the acquisition and holding of the notes. These class exemptions include, without limitation, PTCE 84-14 respecting transactions determined by independent qualified professional asset managers, PTCE 90-1 respecting insurance company pooled separate accounts, PTCE 91-38 respecting bank collective investment funds, PTCE 95-60 respecting life insurance company general accounts and PTCE 96-23 respecting transactions determined by in-house asset managers, although there can be no assurance that all of the conditions of any such exemptions will be satisfied.

Because of the foregoing, the notes should not be purchased or held by any person investing “plan assets” of any Plan, unless such purchase and holding will not constitute a non-exempt prohibited transaction under ERISA and the Code or violation of any applicable Similar Laws.

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**Plan Asset Issues**

ERISA and the Code do not define “plan assets.” However, regulations (the “Plan Assets Regulation”) promulgated under ERISA by the DOL generally provide that when an ERISA Plan acquires an “equity” interest in an entity that is neither a “publicly-offered security” nor a security issued by an investment company registered under the Investment Company Act of 1940, the ERISA Plan’s assets include both the equity interest and an undivided interest in each of the underlying assets of the entity unless it is established either that equity participation in the entity by “benefit plan investors” is not “significant” (i.e., it is significant if 25% or more of any class of equity is held by benefit plan investors) or that the entity is an “operating company,” in each case as defined in the Plan Assets Regulation.

It is not anticipated that (i) the notes will constitute “publicly-offered securities” for purposes of the Plan Assets Regulation, (ii) the issuers will be an investment company registered under the Investment Company Act of 1940, (iii) the Issuers would be in a position to monitor whether investment in the notes by benefit plan investors will be “significant” for purposes of the Plan Assets Regulation or (iv) Star Gas Finance Company will qualify as an operating company within the meaning of the Plan Assets Regulation. It is anticipated that Star Gas Partners, L.P. will qualify as an operating company within the meaning of the Plan Assets Regulation, although no assurance can be given in this regard.

The Plan Assets Regulation defines an “equity interest” as any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. Although there is little authority on the subject, we believe that the notes will be debt rather than equity interests. However, there can be no assurance that the DOL or others would characterize the notes as indebtedness on the date of issuance or at any given time thereafter.

**Plan Asset Consequences**

If our assets were deemed to be “plan assets” under ERISA, this would result, among other things, in (i) the application of the prudence and other fiduciary responsibility standards of ERISA to investments made by us and (ii) the possibility that certain transactions in which we might seek to engage could constitute “prohibited transactions” under ERISA and the Code. (Whether or not our assets are deemed to be “plan assets” under ERISA, see discussion under “Prohibited Transaction Issues” above.)

**Representation**

Accordingly, by its acceptance of a note, each purchaser and subsequent transferee of a note (or any interest therein) will be deemed to have represented and warranted that either (i) no portion of the assets used by such purchaser or transferee to purchase and hold the notes (or any interest therein) constitutes assets of any Plan or (ii) the purchase and holding of the notes (or any interest therein) by such purchaser or transferee will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or violation under any applicable Similar Laws.

The foregoing discussion is general in nature and is not intended to be all-inclusive. Due to the complexity of these rules and the penalties that may be imposed upon persons involved in nonexempt prohibited transactions, it is particularly important that fiduciaries, or other persons considering purchasing the notes on behalf of, or with the assets of, any Plan, consult with their counsel regarding the potential applicability of ERISA, Section 4975 of the Code and any Similar Laws to such investment and whether an exemption would be applicable to the purchase and holding of the notes.

## BOOK-ENTRY SETTLEMENT AND CLEARANCE

### Global Note

Certificates representing the Series B notes will be issued in fully registered form, without coupons. Except as described below, the registered notes will be deposited with, or on behalf of, The Depository Trust Company (“DTC”), and registered in the name of Cede & Co., as nominee of DTC, in the form of a global note. Holders of the registered notes will own book-entry interests in the global note evidenced by records maintained by DTC.

Ownership of beneficial interests in the global note will be limited to persons who have accounts with DTC (“DTC participants”) or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

- upon deposit of the global note with DTC’s custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the initial purchasers; and
- ownership of beneficial interests in the global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the global note).

Beneficial interests in the global note may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

### Book-Entry Procedures for the Global Note

All interests in the global note will be subject to the operations and procedures of DTC. We provide the following summaries of those operations and procedures solely for the convenience of investors. The operations and procedures of DTC are controlled by DTC and may be changed at any time. Neither we nor the initial purchasers are responsible for those operations or procedures.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York;
- a “banking organization” within the meaning of the New York State Banking Law;
- a member of the Federal Reserve System;
- a “clearing corporation” within the meaning of the Uniform Commercial Code; and
- a “clearing agency” registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC’s participants include securities brokers and dealers, including the initial purchasers; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC’s system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

So long as DTC’s nominee is the registered owner of the global note, that nominee will be considered the sole owner or holder of the notes represented by the global note for all purposes under the indenture. Except as provided below, owners of beneficial interests in the global note:

- will not be entitled to have notes represented by the global note registered in their names;
- will not receive or be entitled to receive physical, certificated notes; and

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- will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to the giving of any direction, instruction or approval to the Trustee under the indenture.

As a result, each investor who owns a beneficial interest in the global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the DTC participant through which the investor owns its interest).

Payments of principal, premium (if any) and interest with respect to the notes represented by the global note will be made by the Trustee to DTC's nominee as the registered holder of the global note. Neither we nor the Trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in the global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Payments by participants and indirect participants in DTC to the owners of beneficial interests in the global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same-day funds.

### **Certificated Notes**

Notes in physical, certificated form will be issued and delivered to each person that DTC identifies as a beneficial owner of the related notes only if:

- DTC notifies us at any time that it is unwilling or unable to continue as depository for the global note and a successor depository is not appointed within 90 days;
- DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days;
- we, at our option, notify the Trustee that we elect to cause the issuance of certificated notes; or
- certain other events provided in the indenture should occur.

### **VALIDITY OF THE NOTES**

Certain legal matters with respect to the validity of the Series B notes will be passed upon for us by Phillips Nizer LLP, New York, New York.

### **EXPERTS**

The consolidated financial statements of Star Gas Partners, L.P., as of September 30, 2001 and 2002 and for each of the years in the three-year period ended September 30, 2002, have been incorporated by reference to our Current Report on Form 8-K filed on March 17, 2003 in this prospectus in reliance upon the report of KPMG LLP, independent certified public accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The balance sheets of Star Gas LLC as of September 30, 2001 and 2002 have been incorporated by reference to our Current Report on Form 8-K filed on March 17, 2003 in this prospectus in reliance upon the report of KPMG LLP, independent certified public accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of Meenan Oil Co., L.P. as of June 30, 2001 and 2000 and for each of the years in the three-year period ended June 30, 2001, have been incorporated by reference to our Current Report on Form 8-K filed on March 17, 2003 in this prospectus in reliance upon the report of KPMG LLP, independent certified public accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational requirements of the Exchange Act. Accordingly, we file annual, quarterly and current reports, proxy statements and other information with the SEC. We also furnish to our unitholders, annual reports, which include financial statements audited by our independent certified public accountants and other reports which the law requires us to send to our unitholders. The public may read and copy any reports, proxy statements or other information that we file at the SEC's public reference room at Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549 and at the SEC's regional offices at Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661, and at 233 Broadway, New York, New York 10279. The public may obtain information on the public reference room by calling the SEC at 1-800-SEC-0330. Our SEC filings are also available to the public from commercial document retrieval services and at the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov). Our common units and senior subordinated units are listed on the New York Stock Exchange under the symbols "SGU" and "SGH," respectively. You can inspect and copy reports, proxy statements and other information about us at the New York Stock Exchange's office at 20 Broad Street, New York, New York 10005.

## INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to "incorporate by reference" the information we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act until the termination of this offering, other than information furnished under Item 9 of any Current Report on Form 8-K or Form 8-K/A that is listed below or filed in the future and which is not deemed filed under the Exchange Act and is not incorporated in this prospectus:

The following documents that we filed with the SEC are incorporated by reference in this prospectus:

- Star Gas Partners' Annual Report on Form 10-K for the fiscal year ended September 30, 2002.
- Star Gas Partners' Quarterly Report on Form 10-Q for the fiscal quarter ended December 31, 2002.
- Star Gas Partners' Current Report on Form 8-K, dated January 30, 2003.
- Star Gas Partners' Current Report on Form 8-K, dated March 17, 2003.

In addition, all other reports and documents we file under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and before the termination of this offering shall be deemed incorporated by reference in this prospectus from the date of filing of those reports and documents. If information in incorporated documents conflicts with information in this prospectus you should rely on the most recent information. If information in an incorporated document conflicts with information in another incorporated document, you should rely on the most recent incorporated document.

This prospectus incorporates documents by reference that are not included with this prospectus. These documents, excluding exhibits to the documents, are available without charge, upon oral or written request by any person to whom this prospectus is delivered. Contact Star Gas LLC, 2187 Atlantic Street, Stamford, Connecticut 06902, Attention: Richard F. Ambury, Vice President and Treasurer, telephone (203) 328-7313.

We will provide you without charge a copy of any document incorporated by reference in this prospectus, any exhibit specifically incorporated by reference in those documents, the notes, the indenture governing the notes and the registration rights agreement relating to the notes. You may request copies of these documents by contacting us at: Star Gas LLC, 2187 Atlantic Street, Stamford, Connecticut 06902 (telephone number: (203) 328-7313), Attention: Richard F. Ambury, Vice President and Treasurer.

TO OBTAIN TIMELY DELIVERY, YOU MUST REQUEST THIS INFORMATION NO LATER THAN \_\_\_\_\_, 2003.



**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**ITEM 20. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

*Star Gas Partners, L.P.*

The Partnership Agreement of Partners and the Partnership Agreement (“Operating Partnership Agreement”) of Star Gas Propane, Partners’ operating partnership, provide that Partners or its operating partnership, as the case may be, will indemnify (to the fullest extent permitted by applicable law) certain persons from and against any and all losses, claims, damages, liabilities (joint or several), expenses (including, without limitation, legal fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by such indemnitee in connection with any claim, demand, action, suit or proceeding to which the indemnitee is or was an actual or threatened party and which relates to the Partnership Agreement or the Operating Partnership Agreement or its property, business, affairs or management of Partners or the operating partnership. This indemnity is available only if the indemnitee acted in good faith, in a manner in which such indemnitee believed to be in, or not opposed to, the best interests of Partners and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful. Indemnitees include the general partner of Partners, any departing partner, any affiliate of the general partner or any departing partner or any affiliate of either, or any person who is or was serving at the request of the general partner, any departing partner, or any such affiliate as a director, officer, partner, trustee, employee or agent of another person. Expenses subject to indemnity will be paid by the applicable partnership to the indemnitee in advance, subject to receipt of an undertaking by or on behalf of the indemnitee to repay such amount if it is ultimately determined by a court of competent jurisdiction that the indemnitee is not entitled to indemnification. Partners will, to the extent commercially reasonable, purchase and maintain insurance on behalf of the indemnitees, whether or not Partners would have the power to indemnify such indemnitees against liability under the applicable partnership agreement. The general partner maintains a policy of directors’ and officers’ liability insurance on behalf of its officers and directors.

*Star Gas Finance Company*

The Certificate of Incorporation of Star Gas Finance Company permits it to indemnify its directors, officers, employees and agents to the extent permitted by Section 145 of the Delaware General Corporation Law, as amended.

With respect to actions other than those by or in the right of Star Gas Finance Company, Section 145(a) of the Delaware General Corporation Law permits Star Gas Finance Company to indemnify any person who was, is or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was (i) a director, officer, employee or agent of Star Gas Finance Company, or (ii) serving at the request of Star Gas Finance Company as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Star Gas Finance Company may indemnify the person against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement that are actually and reasonably incurred in connection with such an action, suit or proceeding if it is determined that such person acted in good faith and in a manner s/he reasonably believed to be in or not opposed to the best interests of the corporation. With respect to any criminal action or proceeding, the person must also have had no reasonable cause to believe his or her conduct was unlawful.

With respect to actions by or in the right of Star Gas Finance Company, Section 145(b) permits Star Gas Finance Company to indemnify any person who was, is or is threatened to be made a party (by reason of the same facts as in the preceding paragraph) to any threatened, pending or completed action or suit to procure judgment in favor of Star Gas Finance Company. Star Gas Finance Company may indemnify the person against expenses (including attorneys’ fees) that are actually and reasonably incurred in connection with the defense or

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settlement of the action or suit. However, if the person is adjudged liable, Star Gas Finance Company may not indemnify the person unless a court of competent jurisdiction determines that even though the person was adjudged liable, the circumstances fairly and reasonably entitle the person to indemnity, but then only to the extent that the court deems proper.

Pursuant to Section 145(c), Star Gas Finance Company must indemnify any present or former director or officer who was successful on the merits or otherwise in defense of any of the above described proceedings or in defense of any claim, issue or matter in any such proceeding against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection therewith.

Pursuant to Section 145(e), Star Gas Finance Company may pay advance of a final disposition the expenses (including attorneys' fees) of an officer or director to defend a proceeding if the person (or some other person on his or her behalf) undertakes to repay the advanced expenses in the event that it is ultimately determined that the person is not entitled to indemnification by Star Gas Finance Company.

Section 145(f) provides that indemnification or advancement of expenses under other provisions of Section 145 are not exclusive of other rights that a person seeking the same may have under any bylaw, provision of any other agreement, or vote of stockholders or disinterested directors or otherwise.

Section 145(g) permits Star Gas Finance Company to purchase insurance on behalf of its directors and officers against any liability asserted against and incurred by them in such capacity, or arising out of their status as such, whether or not Star Gas Finance Company would have the power to indemnify directors and officers against the liability for which the insurance is purchased.

Star Gas Finance Company will, to the extent commercially reasonable, purchase and maintain insurance on behalf of its indemnitees, whether or not it would have the power to indemnify such indemnitees against liability under its Certificate of Incorporation or By-Laws.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling Star Gas Finance Company pursuant to the foregoing provisions, Star Gas Finance Company has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

The Certificate of Incorporation also provides that, to the fullest extent permitted by Section 102(b)(7) of the Delaware General Corporation Law, the directors of Star Gas Finance Company shall not be liable to the company for monetary damages for the breach of fiduciary duty as a director. Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its Certificate of Incorporation that a director shall not be personally liable to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except for (i) any breach of the duty of loyalty, (ii) any acts or omissions either not in good faith or involving either intentional misconduct or a knowing violation of law, (iii) certain unlawful dividend payments or stock redemptions or repurchases as provided in Section 174 of the Delaware General Corporation Law or (iv) any transaction from which the director derived an improper personal benefit.

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**ITEM 21. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) Exhibits

The following is a complete list of Exhibits filed or incorporated by reference as part of this Registration Statement.

<u>Exhibit</u>	<u>Description</u>
3.1	Amended and Restated Agreement of Limited Partnership of Star Gas Partners, L.P. (1)
3.2	Amended and Restated Agreement of Limited Partnership of Star Gas Propane, L.P. (1)
3.3	Amendment No. 1 to Amended and Restated Partnership Agreement of Star Gas Partners, L.P. (2)
3.4	Certificate of Incorporation of Star Gas Finance Company. (1)
3.5	By-Laws of Star Gas Finance Company. (1)
4.1	Indenture, dated February 6, 2003, among Star Gas Partners, L.P., Star Gas Finance Company and Union Bank of California, N.A. as trustee, in respect of 10¼% Senior Notes due 2013. (1)
4.2	Form of 10¼% Senior Note due 2013 (contained in Indenture filed as Exhibit 4.1 to this Registration Statement). (1)
4.3	Registration Rights Agreement, dated February 6, 2003, among Star Gas Partners, L.P., Star Gas Finance Company and J.P. Morgan Securities, Inc. as Representative of the Initial Purchasers. (1)
5.1	Opinion of Phillips Nizer LLP as to the validity of the notes being registered. (1)
12.1	Statement of Computation of Ratio of Earnings to Fixed Charges. (1)
23.1	Consents of KPMG LLP. (1)
23.2	Consent of Phillips Nizer LLP (included in opinion filed as Exhibits 5.1). (1)
24.1	Powers of Attorney (included on pages II-6 to II-7 of the Registration Statement Signature Page). (1)
25.1	Form T-1 Statement of Eligibility and Qualification under the Trust Indenture Act of 1939, as amended, of Union Bank of California, N.A., as trustee. (1)
99.1	Form of Letter of Transmittal. (1)
99.2	Form of Notice for Guaranteed Delivery. (1)

(1) Filed herewith.

(2) Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K, filed with the Commission on April 17, 2001.

(b) Financial Statement Schedules

None.

**ITEM 22. UNDERTAKINGS**

(a) Regulation S-K, Item 512 Undertakings

(1) The undersigned registrant hereby undertakes:

(i) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(a) To include any prospectus required by section 10(a)(3) of the Securities Act;

(b) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(c) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(ii) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(iii) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(2) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of either registrant pursuant to the foregoing provisions, or otherwise, the registrants have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(b) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11 or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(c) The undersigned hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

**SIGNATURES**

**Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement or amendment thereto to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Stamford, State of Connecticut, on March 17, 2003.**

STAR GAS PARTNERS, L.P.  
(Registrant)

By: STAR GAS LLC, its general partner

By: /s/ IRIK P. SEVIN

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**Irik P. Sevin**  
**Chairman of the Board and Chief Executive Officer**

**POWER OF ATTORNEY**

Each person whose signature appears below appoints Irik P. Sevin, Richard F. Ambury and Ami Trauber and each of them, any of whom may act without the joinder of the other, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including any pre- or post-effective amendment) of and supplements to this Registration Statement on Form S-4, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or would do in person, hereby ratifying and confirming all that said attorney-in-fact and agents or any of them or their or his or her substitute and substitutes, may lawfully do or cause to be done by virtue hereof.

**Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.**

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ IRIK P. SEVIN</u> Irik P. Sevin	Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)	March 17, 2003
<u>/s/ AMI TRAUBER</u> Ami Trauber	Chief Financial Officer (Principal Financial and Accounting Officer)	March 17, 2003
<u>/s/ AUDREY L. SEVIN</u> Audrey L. Sevin	Director	March 17, 2003
<u>/s/ WILLIAM NICOLETTI</u> William Nicoletti	Director	March 17, 2003
<u>/s/ PAUL BIDDELMAN</u> Paul Biddelman	Director	March 17, 2003
<u>/s/ THOMAS J. EDELMAN</u> Thomas J. Edelman	Director	March 17, 2003
<u>/s/ I. JOSEPH MASSOUD</u> I. Joseph Massoud	Director	March 17, 2003
<u>/s/ STEPHEN RUSSELL</u> Stephen Russell	Director	March 17, 2003

**Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement or amendment thereto to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Stamford, State of Connecticut, on March 17, 2003.**

STAR GAS FINANCE COMPANY  
(Registrant)

By: /s/ IRIK P. SEVIN  
Irik P. Sevin  
Chairman of the Board and Chief Executive Officer

**POWER OF ATTORNEY**

Each person whose signature appears below appoints Irik P. Sevin, Richard F. Ambury and Ami Trauber and each of them, any of whom may act without the joinder of the other, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including any pre- or post-effective amendment) of and supplements to this Registration Statement on Form S-4, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or would do in person, hereby ratifying and confirming all that said attorney-in-fact and agents or any of them or their or his or her substitute and substitutes, may lawfully do or cause to be done by virtue hereof.

**Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.**

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ IRIK P. SEVIN</u> Irik P. Sevin	Chairman of the Board, Chief Executive and Officer and Director (Principal Executive and Financial Officer)	March 17, 2003
<u>/s/ AUDREY L. SEVIN</u> Audrey L. Sevin	Director	March 17, 2003

**EXHIBIT INDEX**

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99.2	Form of Notice for Guaranteed Delivery.(1)

(1) Filed herewith.

(2) Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K, filed with the Commission on April 17, 2001.



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

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

THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF STAR GAS PARTNERS, L.P. dated as of March 26, 1999, is entered into by and among STAR GAS LLC, a Delaware limited liability company, as the General Partner, and those Persons who are or become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

RECITALS:

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

WHEREAS, the Partnership, the Operating Partnership, Petro and Mergeco have entered into that Merger Agreement dated as of October 22, 1998, as amended and restated as of February 3, 1999 and as further amended from time to time (the "Petro Merger Agreement"), providing for the merger (the "Merger") of Mergeco with and into Petro; and

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

WHEREAS, the Petro Merger Agreement and the transactions contemplated thereby (including, without limitation, the form of this Agreement and the amendments effected hereby and the withdrawal of the Initial General Partner as the general partner of the Partnership and the Operating Partnership and the election of Star Gas LLC as the successor general partner of the Partnership and the Operating Partnership) have been submitted to, and approved by the requisite vote of, the Limited Partners; and

WHEREAS, the General Partner has the authority to adopt certain amendments to this Agreement without the approval of any Limited Partner or Assignee to reflect, among other things: (i) subject to the terms of Section 4.4, any change that is necessary or desirable in connection with the authorization for issuance of any class or series of Partnership Securities pursuant to Section 4.4 and (ii) a change that, in the sole discretion of the General Partner, does not adversely affect the Limited Partners in any material respect.

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

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ARTICLE I  
ORGANIZATIONAL MATTERS

Section 1.1 *Formation and Continuation.*

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

Section 1.2 *Name.*

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

Section 1.3 *Registered Office; Principal Office.*

Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 32 Lookerman Square, Suite L-100, Dover, Delaware 19904, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Prentice-Hall Corporation System, Inc. The principal office of the Partnership shall be located at, and the address of the General Partner shall be, 2187 Atlantic Street, Stamford, Connecticut 06902, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems necessary or appropriate.

Section 1.4 *Power of Attorney.*

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

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



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

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

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

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

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days after receipt of the General Partner's or the Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 1.5 *Term.*

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

Section 1.6 *Possible Restrictions on Transfer.*

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

ARTICLE II  
DEFINITIONS

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

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

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

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

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

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

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

*"Adjusted Capital Account"* means the Capital Account maintained for each Partner as of the end of each fiscal year of the Partnership, (a) increased by any amounts that such Partner is obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(i)(c) (or is deemed obligated to restore under Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5)) and (b) decreased by (i) the amount or all losses and deductions that, as of the end of such fiscal year, are reasonably expected to be allocated to such Partner in subsequent years under Sections 704(e)(2) and 706(d) of the Code and Treasury Regulation Section 1.751-1(b)(2)(ii), and (ii) the amount of all distributions that, as of the end of such fiscal year, are reasonably expected to be made to such Partner in subsequent years in accordance with the terms of this Agreement or otherwise to the extent they exceed offsetting increases to such Partner's Capital Account that are reasonably expected to occur during (or prior to) the year in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 5.1(d)(i) or 5.1(d)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(i)(d) and shall be interpreted consistently therewith. The "Adjusted Capital Account" in respect of Common Unit, Senior Subordinated Unit, Junior Subordinated Unit, General Partner Unit or any other specified interest in the Partnership shall be the amount which such Adjusted Capital Account would be if such Common Unit, a Senior Subordinated Unit, a Junior Subordinated Unit, a General Partner Unit or other interest in the Partnership were the only interest in the Partnership held by a Partner.

*"Adjusted Operating Surplus"* for any period means Operating Surplus generated during such period as adjusted to (a) decrease Operating Surplus by (i) any net increase in Working

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

“*Adjusted Property*” means any property the Carrying Value of which has been adjusted pursuant to Section 4.9(d)(i) or 4.9(d)(ii).

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

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

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

“*Agreed Value*” of any Contributed Property means the fair market value of such property or other consideration at the time of contribution as determined by the General Partner using such reasonable method of valuation as it may adopt. Subject to Section 4.9(c)(i), the General Partner shall, in its sole discretion, use such method as it deems reasonable and appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Partnership in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

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

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

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

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“*Audit Committee*” means a committee of the Board of Directors of the General Partner composed entirely of two or more directors who are neither members, officers nor employees of the General Partner or members, stockholders (other than holders of Common Units or Senior Subordinated Units), officers, directors or employees of any Affiliate of the General Partner.

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

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

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

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

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

“*Book-Down Event*” means an event which triggers a negative adjustment to the Capital Accounts of the Partners pursuant to Section 4.9(d).

“*Book-Tax Disparity*” means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Partner’s share of the Partnership’s Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner’s Capital Account balance as maintained pursuant to Section 4.9 and the hypothetical balance of such Partner’s Capital Account computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

“*Book-Up Event*” means an event which triggers a positive adjustment to the Capital Accounts of the Partners pursuant to Section 4.9(d).

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

“*Capital Account*” means the capital account maintained for a Partner pursuant to Section 4.9. The “Capital Account” in respect of a Common Unit, a Senior Subordinated Unit, a Junior Subordinated Unit, a General Partner Unit or any other specified interest in the Partnership shall be the amount which such Capital Account would be if such Common Unit, Senior Subordinated Unit, Junior Subordinated Unit, General Partner Unit or other interest in the Partnership were the only interest in the Partnership held by a Partner.

“*Capital Contribution*” means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes or has contributed to the Partnership pursuant to this Agreement and the Conveyance and Contribution Agreements.

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

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

“*Carrying Value*” means (a) with respect to a Contributed Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and cost recovery deductions charged to the Partners’ and Assignees’ Capital Accounts in respect of such Contributed Property, and (b) with respect to any other Partnership property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with Sections 4.9(d)(i) and 4.9(d)(ii) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

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

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

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as the case may be, or a certificate in such form as may be adopted by the General Partner in its sole discretion, issued by the Partnership evidencing ownership of one or more other Units.

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

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

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

“*Class A Common Unit*” means a Unit representing a fractional part of the Partnership Interests of all Limited Partners and Assignees and having the rights and obligations specified with respect to Class A Common Units in this Agreement; no Class A Common Units shall be outstanding until the expiration of the Subordination Period, at which time all Common Units Outstanding immediately prior to the expiration of the Subordination Period shall be redesignated as Class A Common Units.

“*Class B Common Unit*” means a Unit representing a “fractional part of the Partnership Interests of all Limited Partners and Assignees and having the rights and obligations specified with respect to Class B Common Units in this Agreement; no Class B Common Units shall be outstanding until the expiration of the Subordination Period, at which time each Outstanding Senior Subordinated Unit and Junior Subordinated Unit shall convert into one Class B Common Unit.

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

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

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

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

“*Common Unit*” means a Unit representing a fractional part of the Partnership Interests of all Limited Partners and Assignees and having the rights and obligations specified with respect to Common Units in this Agreement. All references herein to Common Units after the expiration of the Subordination Period shall be deemed to be references to both Class A Common Units and Class B Common Units, unless otherwise indicated.

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

“*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 (or deemed contributed to the Partnership on termination and reconstitution thereof pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 4.9(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

“*Conveyance and Contribution Agreements*” means collectively, (a) that certain Conveyance and Contribution Agreement, dated as of the Effective Time, among the Partnership, the Operating Partnership, Petro and the General Partner and (b) that certain Conveyance and Contribution Agreement among the Partnership, the Operating Partnership, Petro and Petro Holdings, 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 a Unit issued in the Initial Offering 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 5.4(a)(ii) with respect to such Common Unit (including any distributions to be made in respect of the last of such Quarters).

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

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

“*Debt Offering*” means the private offering and sale by Petro of \$90 million Senior Secured Notes due 2003 through 2014.



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

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

“*Depository*” means with respect to any Units issued in book-entry 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).

“*Effective Time*” means the effective time of the Merger, which shall be the later to occur of (a) the filing in the office of the Secretary of State of the State of Delaware of a properly executed certificate of merger and (b) the filing with the Department of State of Minnesota of properly executed articles of merger, or such later date and time as may be set forth in such certificate of merger and articles of merger.

“*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.

“*Equity Offering*” means the offering and sale by the Partnership of Common Units to the public, as described in the Equity Registration Statement.

“*Equity Registration Statement*” means the Registration Statement on Form S-3 (Registration No. 68329), 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 Equity Offering.

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

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

“*First Target Distribution*” means \$0.604 per Unit, subject to adjustment in accordance with Sections 5.6 and 5.8.

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

“*General Partner Interest*” means the ownership interest of the General Partner in the Partnership (in its capacity as a general partner without reference to any Limited Partner Interest held by it) which is evidenced by General Partner Units and includes any and all benefits to

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which the General Partner is entitled as provided in this Agreement, together with all obligations of the General Partner to comply with the terms and provisions of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

“*Initial Registration Statement*” means the Registration Statement on Form S-1 (Registration No. 33-98490), as amended or supplemented from time to time, filed by the

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Partnership with the Commission under the Securities Act to register the offering and sale of the Initial Common Units in the Initial Offering.

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

“*Initial Unit Price*” means (a) with respect to each Common Unit, Senior Subordinated Unit, Junior Subordinated Unit and General Partner Unit, \$22.00 or (b) with respect to any other class or series of Units, the price per Unit at which such class or series of Units is initially sold by the Partnership, as determined by the General Partner, in each case adjusted as the General Partner determines to be appropriate to give effect to any distribution, subdivision or combination of Units.

“*Interim Capital Transactions*” means the following transactions if they occur prior to the Liquidation Date: (a) borrowings, refinancings or refundings of indebtedness and sales of debt securities (other than Working Capital Borrowings and other than for items purchased on open account in the ordinary course of business) by any Group Member; (b) sales of equity interests (including Common Units sold to the Underwriters pursuant to the exercise of the Overallotment Option) by any Group Member; and (c) sales or other voluntary or involuntary dispositions of any assets of any Group Member other than (x) sales or other dispositions of inventory in the ordinary course of business, (y) sales or other dispositions of other current assets, including receivables and accounts in the ordinary course of business, and (z) sales or other dispositions of assets as part of normal retirements or replacements.

“*Junior Subordinated Unit*” means a 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 Junior Subordinated Units in this Agreement.

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

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

“*Liquidation Date*” means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 14.2, the date on which the applicable time period during which the holders of Outstanding Units have the right to elect to 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 the General Partner or other Person approved pursuant to Section 14.3 who performs the functions described therein.

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

“*Merger*” has the meaning assigned to such term in the introductory paragraph to this Agreement.

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

“*Minimum Quarterly Distribution*” means, (a) for the period from the Initial Closing Date through March 31, 1996, \$0.6225 per Common Unit and Old Subordinated Unit, (b) for the period April 1, 1996 through December 31, 1998, \$0.55 per Common Unit and Old Subordinated Unit per Quarter and (c) for each Quarter thereafter \$0.575 per Unit, subject to adjustment in accordance with Sections 5.6 and 5.8.

“*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 4.9(d)(ii)) at the time such property is distributed, reduced by any indebtedness either assumed by such Partner or Assignee upon such distribution or to which such property is subject at the time of distribution, in either case, as determined under Section 752 of the Code.

“*Net Income*” means, for any taxable year, the excess, if any, of the Partnership’s items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership’s items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Income shall be determined in accordance with Section 4.9(b) and shall not include any items specially allocated under Section 5.1(d); provided that the determination of the items that have been specially allocated under Section 5.1(d) shall be made as if Section 5.1(d)(xii) were not in the Agreement.

“*Net Loss*” means, for any taxable year, the excess, if any, of the Partnership’s items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership’s items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Loss shall be determined in accordance with Section 4.9(b) and shall not include any items specially allocated under Section 5.1(d); provided that the determination of the items that have been specially allocated under Section 5.1(d) shall be made as if Section 5.1(d)(xii) were not in the Agreement.

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

“*Net Termination Gain*” means, for any taxable year, the sum, if positive, of all items of income, gain, loss or deduction recognized by the Partnership (including, without limitation, such amounts recognized through the Operating Partnership) after the Liquidation Date. The items included in the determination of Net Termination Gain shall be determined in accordance with Section 4.9(b) and shall not include any items of income, gain or loss specially allocated under Section 5.1(d).

“*Net Termination Loss*” means, for any taxable period, the sum, if negative, of all items of income, gain, loss or deduction recognized by the Partnership (including, without limitation, such amounts recognized through the Operating Partnership) after the Liquidation Date. The items included in the determination of Net Termination Loss shall be determined in accordance with Section 4.9(b) and shall not include any items of income, gain or loss specially allocated under Section 5.1(d).

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

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

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

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

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

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

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

“*Operating Expenditures*” means all Partnership Group expenditures, including taxes, reimbursements of the General Partner, debt service payments, and capital expenditures, subject to the following:

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

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

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

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

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

(a) the sum of (i) \$20,340,600 plus all cash of the Partnership Group on hand as of the close of business on the Initial Closing Date, (ii) all the cash receipts of the Partnership Group for the period beginning on the Initial 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 5.5) and (iii) all cash receipts of the Partnership Group after the end of such period but on or before the date of determination of Operating Surplus with respect to such period resulting from Working Capital Borrowings, less

(b) the sum of (i) Operating Expenditures for the period beginning on the Initial 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.

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

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

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

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

“*Overallotment Option*” means the overallotment option granted to the Underwriters by the Partnership pursuant to the Underwriting Agreement.

“*Parity Units*” means Common Units and all other Units having rights to distributions or in liquidation ranking on a parity with the Common 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 Star Gas Partners, L.P., a Delaware limited partnership, and any successors thereto.

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

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

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

“*Partnership Security*” means any class or series of Unit, any option, right, warrant or appreciation rights relating thereto, or any other type of equity interest that the Partnership may

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lawfully issue, or any unsecured or secured debt obligation of the Partnership that is convertible into any class or series of equity interests of the Partnership.

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

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

“*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.

“*Petro*” means Petroleum Heat and Power Co., Inc., a Minnesota corporation, an indirect subsidiary of the Operating Partnership.

“*Petro Adjusted Operating Surplus*” means, with respect to any four-Quarter period, the Adjusted Operating Surplus generated by Petro (which for purposes of this definition includes all subsidiaries of the Partnership primarily engaged in the home heating oil business) during such four-Quarter period, as determined in good faith by a majority of the members of the Board of Directors of the General Partner (with the concurrence of the Audit Committee). In calculating Petro Adjusted Operating Surplus, (a) debt service (including the payment of principal, interest and premium) on all debt incurred or assumed by Petro or any of its Affiliates, the proceeds of which are used by or for the benefit of Petro (including the proceeds from the Debt Offering), shall be included to the extent such debt service is included in the calculation of Operating Surplus, and (b) debt service (including the payment of principal, interest and premium) on all debt incurred or assumed by Petro or any of its Affiliates, the proceeds of which are not used by or for the benefit of Petro, shall be excluded.

“*Petro Class A Common Stock*” means the Class A Common Stock, par value \$.10 per share, of Petro.

“*Petro Class C Common Stock*” means the Class C Common Stock, par value \$.10 per share, of Petro.

“*Petro Holdings*” means Petro Holdings, Inc., a Minnesota corporation, a wholly-owned indirect subsidiary of the Operating Partnership.

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

“*Petro Units*,” with respect to any date, means the sum of (a) the excess of the number of Units outstanding at the Effective Time over the number of Units outstanding immediately prior to the Effective Time (assuming the simultaneous closing of the Equity Offering), (b) the number of Units issued by the Partnership thereafter to the extent the net proceeds of which are contributed to Petro (which for purposes hereof includes all subsidiaries of the Partnership



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primarily engaged in the home heating oil business), (c) the number of Senior Subordinated Units or Class B Common Units issued pursuant to Section 4.6, and (d) the deemed number of Units outstanding based upon a contribution of capital to Petro by the Partnership or any Affiliate thereof after the Effective Time (which contribution is not covered by (b) above or traceable to debt proceeds), which number of deemed Units is obtained by dividing (i) the amount of such contribution by (ii) the Current Market Price of a Common Unit. If Petro pays down debt of Petro or debt allocated to Petro from internally generated funds of Petro and if those internally generated funds exist at Petro only because Petro has not paid dividends up to the Partnership in an amount equal to the distributions that would have been paid on the Petro Units had they been actual outstanding Units of the Partnership, then the amount used to pay down such debt will be treated as if it were contributed to Petro by the Partnership. The distribution per Senior Subordinated Unit of the Partnership shall be the amount that the Partnership would have been deemed to have distributed per Petro Unit had they been actual outstanding Units of the Partnership. For purposes of the number of deemed outstanding Units in (d) above, such Units shall be deemed to be issued on the date of such Capital Contribution. For purposes of determining the number of Outstanding Petro Units for any period of time, the number of Units issued in (b), (c) and (d) above shall be determined on a weighted average basis based on the amount of time they have been Outstanding. For this purpose, Common Unit means Class A Common Unit upon expiration of the Subordination Period.

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

“*Proxy Statement*” means the Registration Statement on Form S-4 (Registration No. 333-66005) as it has been or as it may be amended or supplemented from time to time, filed jointly by the Partnership and Petro relating to the Merger and the transactions contemplated thereby.

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

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

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

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

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“*Record Holder*” means the Person in whose name a Common Unit or a Senior Subordinated 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 a holder of a Junior Subordinated Unit or General Partner Unit or other Partnership Security, the Person in whose name such Junior Subordinated Unit or General Partner Unit or other Partnership Security is registered on the books of the General Partner as of the opening of business on such Business Day.

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

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

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

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

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

“*Second Target Distribution*” means \$0.711 per Unit, subject to adjustment in accordance with Sections 5.6 and 5.8.

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

“*Senior Subordinated Unit*” means 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 Senior Subordinated Units in this Agreement.

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

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and (b) with respect to the General Partner, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the General Partner's Remaining Net Positive Adjustments as of the end of such period bears to the Aggregate Remaining Net Positive Adjustments as of that time.

"*Shelf Registration Statement*" has the meaning assigned to such term in Section 6.13(f).

"Special Approval" means approval by the Audit Committee.

"*Star Gas*" means Star Gas Corporation, a Delaware corporation.

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

(a) the first day of any Quarter beginning on or after July 1, 2002 in respect of which (A) (i) distributions of Available Cash from Operating Surplus on each of the Outstanding Common Units, Senior Subordinated Units, Junior Subordinated Units and General Partner Units equaled or exceeded the Minimum Quarterly Distribution for each of the three non-overlapping four-Quarter periods immediately preceding such date and (ii) the Adjusted Operating Surplus generated during each of the three immediately preceding non-overlapping four-Quarter periods equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Common Units, Senior Subordinated Units, Junior Subordinated Units and General Partner Units that were Outstanding during such periods on a fully diluted basis with respect to employee options or other employee incentive compensation (*i.e.*, taking into account for purposes of such determination all Outstanding Common Units, Senior Subordinated Units, Junior Subordinated Units and General Partner Units and all Common Units issuable upon exercise of employee options that have, as of the date of determination, already vested or are scheduled to vest prior to the end of the Quarter immediately following the Quarter with respect to which determination is made, and all Units that have as of the date of determination been earned by but not yet issued to management of the Partnership in respect of incentive compensation) and (B) 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 Limited Partners under circumstances where Cause does not exist; *provided, however*, that if the General Partner is removed during the Subordination Period within 12 months after the end of a six-Quarter period in which the Minimum Quarterly Distribution was not made on the Common Units with respect to more than one of such Quarters (excluding for this purpose the payment of any Common Unit Arrearages) and the first Quarter in such six-Quarter period that the Minimum Quarterly Distribution on Common Units was not made occurs after March 31, 2001, then the Subordination Period will not end. In the event that the General Partner is removed under the circumstances set forth above, the Junior Subordinated Units shall convert into Senior Subordinated Units on a one-for-one basis and the distribution rights on the General Partner Units will rank *pari passu* with the Senior Subordinated Units.

"*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

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or indirectly, by such Person, by one or more Subsidiaries of such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Subsidiary of such Person is, at the date of determination, a general or limited partner of such partnership, but only if more than 50% of the partnership interests of such partnership (considering all of the partnership interests of the partnership as a single class) is owned or controlled, directly or indirectly, by such Person, by one or more Subsidiaries of such Person, or a combination thereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, directly or indirectly, at the date of determination, has (i) at least a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

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

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

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

“*Third Target Distribution*” means \$0.926 per Unit, subject to adjustment in accordance with Sections 5.6 and 5.8.

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

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

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

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

“*Underwriter*” means each Person named as an underwriter in Schedule 1 to the Underwriting Agreement who purchases Common Units pursuant thereto.

“*Underwriting Agreement*” means the Underwriting Agreement, relating to the Equity Offering, dated March 23, 1999, among the Underwriters, the Partnership and other parties providing for the purchase of Common Units by such Underwriters.

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“Unit” means a Partnership Interest of a Partner or Assignee in the Partnership representing a fractional part of the Partnership Interests of all Partners and Assignees and shall include Common Units (Class A Common Units and Class B Common Units after the expiration of the Subordination Period), Senior Subordinated Units, Junior Subordinated Units and General Partner Units; provided, that each Unit at any time Outstanding shall represent the same fractional part of the Partnership Interests of all Partners and Assignees holding Units as each other Unit. A Unit shall not include a Petro Unit.

“Unit Majority” means, (a) during the Subordination Period, at least (i) a majority of the Outstanding Common Units voting as a class and (ii) a majority of the Outstanding Senior Subordinated Units and Junior Subordinated Units voting as a single class, in each case excluding Units owned by the General Partner or any Affiliate, and (b) after the Subordination Period, at least a majority of the Outstanding Common Units.

“Unrealized Gain” attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the fair market value of such property as of such date (as determined under Section 4.9(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.9(d) as of such date).

“Unrealized Loss” attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.9(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 4.9(d)).

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

“Withdrawal Opinion of Counsel” has the meaning assigned to such term in Section 13.1(b).

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

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## ARTICLE III

### PURPOSE

#### Section 3.1 *Purpose and Business.*

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

#### Section 3.2 *Powers.*

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

## ARTICLE IV

### CONTRIBUTIONS AND UNITS

#### Section 4.1 *Organization Contributions and Return.*

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

#### Section 4.2 *Contributions by Initial Limited Partners.*

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

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Section 4.3 *Contributions at the Effective Time; General Partner Contributions.*

(a) (i) At the Effective Time and pursuant to the Conveyance and Contribution Agreements, Petro contributed to the Partnership all of its general partner interest in the Operating Partnership (other than a portion of such interest with a value of \$1,000), all of its general partner interest in the Partnership (other than a portion of such interest with a value of \$1,000) and all 2,396,078 Old Subordinated Units (all of which it purchased from Star Gas in exchange for a note of equivalent value) in exchange for 102,848 newly issued Common Units, 1,706,246 newly issued Senior Subordinated Units and a promissory note in an amount equal to the excess of the value of the Old Subordinated Units and general partner interests assigned to the Partnership over the value of the Common Units and Senior Subordinated Units issued in exchange therefor. The Old Subordinated Units were cancelled.

(ii) At the Effective Time and pursuant to the Conveyance and Contribution Agreements, the General Partner contributed 11,370 shares of Petro Class A and Class C Common Stock to the Operating Partnership in exchange for a .01% general partner interest in the Operating Partnership and contributed 2,263,584 shares of Petro Class A and Class C Common Stock to the Partnership in exchange for a 1.99% general partner interest in the Partnership represented by 324,100 General Partner Units. At such time, the general partner interests in the Partnership and the Operating Partnership held by the Partnership were cancelled.

(iii) At the Effective Time and pursuant to the Exchange Agreement, certain stockholders of Petro contributed (A) 2,769,653 shares of Petro Class A and Class C Common Stock to the Partnership in exchange for 396,559 Junior Subordinated Units and (B) 6,595,477 shares of Petro Class A and Class C Common Stock to the Partnership in exchange for 775,496 Senior Subordinated Units.

(iv) At the Effective Time and pursuant to the Merger, the remaining holders of Petro Class A and Class C Common Stock received 1,706,246 Senior Subordinated Units from Petro in exchange for their shares of Petro Class A and Class C Common Stock and the holders of Petro's 1998 Junior Convertible Preferred Stock received 102,848 Common Units from Petro in exchange for their shares of 1998 Junior Convertible Preferred Stock.

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

Section 4.4 *Issuances of Additional Partnership Securities.*

(a) Subject to Section 4.5, the General Partner is authorized to cause the Partnership to issue additional Partnership Securities for any Partnership purpose at any time and

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

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

*Section 4.5 Limitations on Issuance of Additional Partnership Securities.*

The issuance of Partnership Securities pursuant to Section 4.4 shall be subject to the following restrictions and limitations:

(a) During the Subordination Period, the Partnership shall not issue an aggregate of more than 2,500,000 additional Parity Units without 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). In applying this limitation, there shall be excluded Common Units issued (i) in the Equity Offering, (ii) in accordance with Section 4.5(b) and 4.5(c) and (iii) in connection with the issuance of Senior Subordinated Units or Class B Common Units pursuant to Section 4.6.

(b) The Partnership may also issue an unlimited number of Parity Units prior to the end of the Subordination Period without the 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



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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

(i) 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) over

(ii) 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 Quarters.

The amount in clause (i) shall be determined on a pro forma basis assuming that (A) 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, (B) 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 offering) had been incurred or assumed, in each case as of the commencement of such four-Quarter period, (C) 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 (D) 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.

(c) The Partnership may also issue an unlimited number of Parity Units prior to the end of the Subordination Period without the approval of the Unitholders if the use of proceeds from such issuance is exclusively to repay up to \$20 million of indebtedness of the Partnership or the Operating Partnership.

(d) During the Subordination Period, the Partnership shall not issue additional Partnership Securities having rights to distributions or in liquidation ranking prior or senior to the Common Units, without the prior approval of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates).

(e) During the Subordination Period, the Partnership shall not issue additional Partnership Securities that would reduce the percentage of distributions allocable to all Units under Sections 5.4(a)(vi)(A), 5.4(a)(vii)(A) or 5.4(a)(viii)(A), and Sections 5.4(b)(iii)(A), 5.4(b)(iv)(A) or 5.4(b)(v)(A), without 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).

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

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Section 4.6 *Special Issuance of Senior Subordinated Units and Conversion of Senior Subordinated Units and Junior Subordinated Units.*

(a) For each full non-overlapping four-Quarter period ending on or after the first anniversary of the Effective Time, but prior to the fifth anniversary of the Effective Time, in which the dollar amount of Petro Adjusted Operating Surplus per Petro Unit equals or exceeds \$2.90, the Partnership will issue (i) during the Subordination Period, 303,000 Senior Subordinated Units to the holders of the Senior Subordinated Units, Junior Subordinated Units and the General Partner Units on the Record Date in respect of the distribution for the final Quarter of such non-overlapping four Quarter period, Pro Rata, and (ii) after the Subordination Period, 303,000 Class B Common Units to the holders of the Class B Common Units and the General Partner Units on the Record Date in respect of the distribution for the final Quarter of such non-overlapping four-Quarter period, Pro Rata; *provided*, that the Partnership may not issue more than 909,000 Senior Subordinated Units and Class B Common Units in the aggregate pursuant to this Section 4.6; and *provided, further*, that the Partnership may not issue more than 303,000 Senior Subordinated Units and Class B Common Units pursuant to this Section 4.6 within any 365-day period.

(b) The Partnership shall not issue any fractional Senior Subordinated Units or Class B Common Units. Each holder who would otherwise be entitled to a fractional Senior Subordinated Unit or Class B Common Unit shall receive an amount in cash determined by multiplying such fraction by the Current Market Price of a Senior Subordinated Unit or a Class B Common Unit, as the case may be, as of the date three days prior to the date on which Senior Subordinated Units or Class B Common Units, as the case may be, are issued pursuant to this Section 4.6.

(c) Each Senior Subordinated Unit and Junior Subordinated Unit shall convert into one Class B Common Unit on the first day following the Record Date for distributions in respect of the final Quarter of the Subordination Period.

Section 4.7 *Limited Preemptive Rights.*

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

Section 4.8 *Splits and Combinations.*

(a) Subject to Sections 4.9(d), 5.6 and 5.8 (dealing with adjustments of distribution levels), the General Partner may make a pro rata distribution of Partnership Securities to all Record Holders or may effect a subdivision or combination of Partnership Securities so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis (including the number of Class B Common Units issuable upon conversion of the Senior Subordinated Units and Junior Subordinated Units, the number of Senior Subordinated Units or

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Class B Common Units issuable pursuant to Section 4.6, and the number of additional Parity Units that may be issued pursuant to Section 4.5 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 the date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Units to be held by each Record Holder after giving effect to such distribution, subdivision or combination. The General Partner shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

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

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions this Section 4.8(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

#### Section 4.9 *Capital Accounts.*

(a) The Partnership shall maintain for each Partner (or a beneficial owner of Partnership Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner in its sole discretion) owning a Partnership Interest a separate Capital Account with respect to such Partnership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions made to the Partnership with respect to such Partnership Interest pursuant to this Agreement and (ii) all items of Partnership income and gain (including, without limitation, income and gain exempt from tax) computed in accordance with Section 4.9(b) and allocated with respect to such Partnership Interest pursuant to Section 5.1, and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest pursuant to this Agreement and (y) all items of Partnership deduction and loss computed in accordance with Section 4.9(b) and allocated with respect to such Partnership Interest pursuant to Section 5.1.

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

(i) Solely for purposes of this Section 4.9, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner based upon the provisions of the Operating Partnership Agreement) of all property owned by the Operating Partnership.

(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 5.1.

(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.

(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 4.9(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

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48(q)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the year such property is placed in service and shall be allocated among the Partners pursuant to Section 5.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

(c) (i) Except as otherwise provided in Section 4.9(ii)-(v), 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) If and when a Senior Subordinated Unit is issued pursuant to Section 4.6 with respect to one or more Senior Subordinated Units, the Capital Accounts associated with the existing Senior Subordinated Units shall be reallocated as required to make the Capital Account associated with each Senior Subordinated Unit be the same.

(iii) If and when a Class B Common Unit is issued pursuant to Section 4.6 with respect to one or more Class B Common Units, the Capital Accounts associated with the existing Class B Common Units shall be reallocated as required to make the Capital Account associated with each Class B Common Unit be the same.

(iv) If and when a Senior Subordinated Unit or a Class B Common Unit is issued pursuant to Section 4.6 with respect to one or more Junior Subordinated Units or General Partner Units, the Capital Accounts associated with the existing Units shall be reallocated to the new Unit until the Capital Account of the new Unit is the same as all other Units of the same class or until the Capital Account associated with the existing Units is reduced to zero.

(v) If at the time of conversion of a Junior Subordinated Unit, the Per Unit Capital Amount attributable to a Junior Subordinated Unit exceeds the existing Per Unit Capital Amount of Senior Subordinated Units, the amount of excess shall be reallocated to the Capital Accounts attributable to the General Partner Units through contribution of such excess to the General Partner.

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

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the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines in its sole discretion to be reasonable) to arrive at a fair market value for individual properties.

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

#### Section 4.10 *Interest and Withdrawal.*

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

### ARTICLE V

#### ALLOCATIONS AND DISTRIBUTIONS

#### Section 5.1 *Allocations for Capital Account Purposes.*

For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss and deduction (computed in accordance with Section 4.9(b)) shall be allocated among the Partners in each taxable year (or portion thereof) as provided hereinbelow.

(a) *Net Income.* After giving effect to the special allocations set forth in Section 5.1(d), Net Income for each taxable period and all items of income, gain, loss and

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

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

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

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

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

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

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

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

(i) If a Net Termination Gain is recognized (or deemed recognized pursuant to Section 4.9(d)) from Termination Capital Transactions, such Net Termination

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Gain shall be allocated among the General Partner and the Limited Partners in the following manner (and the Capital Accounts of the Partners shall be increased by the amount so allocated in each of the following subclauses, in the order listed, before an allocation is made pursuant to the next succeeding subclause):

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

(B) Second, 100% to all Partners holding Common Units, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price plus (2) the Minimum Quarterly Distribution for the Quarter during which such Net Termination Gain is recognized, reduced by any distribution pursuant to Sections 5.4(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 Termination Capital Transaction occurs (or is deemed to occur) prior to the expiration of the Subordination Period, 100% to all Partners holding Senior Subordinated Units, Pro Rata, until the Capital Account in respect of each Senior Subordinated Unit then Outstanding is equal to the sum of (1) the Unrecovered Initial Unit Price plus (2) the Minimum Quarterly Distribution for the Quarter during which such Net Termination Gain is recognized, reduced by any distribution pursuant to Section 5.4(a)(iii) with respect to such Senior Subordinated Unit for such Quarter;

(D) Fourth, if such Termination Capital Transaction occurs (or is deemed to occur) prior to the expiration of the Subordination Period, 100% to all Partners holding Junior Subordinated Units and General Partner Units, Pro Rata, until the Capital Account in respect of each Junior Subordinated Unit then Outstanding is equal to the sum of (1) the Unrecovered Initial Unit Price plus (2) the Minimum Quarterly Distribution for the Quarter during which such Net Termination Gain is recognized, reduced by any distribution pursuant to Section 5.4(a)(iv) with respect to such Junior Subordinated Unit for such Quarter;

(E) Fifth, 100% to all Partners, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding (if such Termination Capital Transaction occurs, or is deemed to occur, prior to the expiration of the Subordination Period) or Class A Common Unit then Outstanding (if such Termination Capital Transaction occurs, or is deemed to occur, after the expiration of the Subordination Period) is equal



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to the sum of (1) its Unrecovered Initial Unit Price, plus (2) the Unpaid MQD, if any, for such Common Unit with respect to the Quarter during which such Net Termination Gain is recognized, plus (3) any then existing Cumulative Common Unit Arrearage, plus (4) the excess of (aa) the First Target Distribution less the Minimum Quarterly Distribution for each Quarter of the Partnership's existence over (bb) the amount of any distributions of Operating Surplus that was distributed pursuant to Sections 5.4(a)(v) or 5.4 (b)(i) (the sum of (1) plus (2) plus (3) plus (4) is hereinafter defined as the "First Liquidation Target Amount");

(F) Sixth, 86.7% to all Partners, Pro Rata, and 13.3% to the Senior Subordinated Units, Junior Subordinated Units and General Partner Units, Pro Rata (if such Termination Capital Transaction occurs, or is deemed to occur, prior to the expiration of the Subordination Period), or 13.3% to the Class B Common Units and General Partner Units, Pro Rata (if such Termination Capital Transaction occurs, or is deemed to occur, after the expiration of the Subordination Period), until the Capital Account in respect of each Common Unit then Outstanding (if such Termination Capital Transaction occurs, or is deemed to occur, prior to the expiration of the Subordination Period) or Class A Common Unit then Outstanding (if such Termination Capital Transaction occurs, or is deemed to occur, after the expiration of the Subordination Period) 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 amount of any distributions of Operating Surplus that was distributed pursuant to Section 5.4(a)(vi) or 5.4(b)(iii) (the sum of (1) plus (2) is hereinafter defined as the "Second Liquidation Target Amount");

(G) Seventh, 76.5% to all Partners, Pro Rata, and 23.5% to the Senior Subordinated Units, Junior Subordinated Units and General Partner Units, Pro Rata (if such Termination Capital Transaction occurs, or is deemed to occur, prior to the expiration of the Subordination Period), or 23.5% to the Class B Common Units and General Partner Units, Pro Rata (if such Termination Capital Transaction occurs, or is deemed to occur, after the expiration of the Subordination Period), until the Capital Account in respect of each Common Unit then Outstanding (if such Termination Capital Transaction occurs, or is deemed to occur, prior to the expiration of the Subordination Period) or Class A Common Unit then Outstanding (if such Termination Capital Transaction occurs, or is deemed to occur, after the expiration of the Subordination Period) 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 amount of any distributions of Operating Surplus that was distributed pursuant to Section 5.4(a)(vii) or 5.4(b)(iv); and

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(H) Finally, any remaining amount 51% to all Partners, Pro Rata, and 49% to the Senior Subordinated Units, Junior Subordinated Units and General Partner Units, Pro Rata, (if such Termination Capital Transaction occurs, or is deemed to occur, prior to the expiration of the Subordination Period), or 49% to the Class B Common Units and General Partner Units, Pro Rata (if such Termination Capital Transaction occurs, or is deemed to occur, after the expiration of the Subordination Period).

(ii) If a Net Termination Loss is recognized (or deemed recognized pursuant to Section 4.9(d)) from Termination Capital Transactions, such Net Termination Loss shall be allocated to the Partners in the following manner:

(A) First, if such Termination Capital Transaction occurs (or is deemed to occur) prior to the conversion of the last outstanding Junior Subordinated Unit, 100% to the Partners holding Junior Subordinated Units and General Partner Units, Pro Rata, until the Capital Account in respect of each Junior Subordinated Unit has been reduced to zero;

(B) Second, if such Termination Capital Transaction occurs (or is deemed to occur) prior to the conversion of the last outstanding Senior Subordinated Unit, 100% to the Partners holding Senior Subordinated Units, Pro Rata, until the Capital Account in respect of each Senior Subordinated Unit then Outstanding has been reduced to zero;

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

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

(E) Fifth, the balance, if any, 100% to the General Partner.

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

(i) *Partnership Minimum Gain Chargeback.* Notwithstanding any other provision of this Section 5.1, if there is a net decrease in Partnership Minimum Gain during any Partnership taxable period, each Partner shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of this Section

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5.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.1(d) with respect to such taxable period (other than an allocation pursuant to Sections 5.1(d)(vi) and 5.1(d)(vii)). This Section 5.1(d)(i) is intended to comply with the Partnership Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

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

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

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

(v) *Gross Income Allocations.* In the event any Partner has a deficit balance in its Capital Account at the end of any Partnership taxable period in excess of

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

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

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

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

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

(x) *Economic Uniformity.* Upon the issuance of any Unit pursuant to Section 4.6 or upon the conversion of any Unit into another class after application of Section 4.9(c)(iii), gross income shall be allocated to the holder of such Unit until the

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Capital Account of such Unit is the same as the Capital Account per Unit of all other Units of the same class.

(xi) *Curative Allocation.*

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

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

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

(A) In the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 4.9(d) hereof), the General Partner shall allocate additional items of gross income and gain to the Limited Partners or additional items of deduction and loss to the General Partner to the extent that the Additional Book Basis Derivative Items allocated to the Limited Partners exceeds their Share of those Additional Book Basis Derivative Items. For this purpose, the Limited Partners shall be treated as being allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Limited Partners under the Partnership Agreement (e.g., Additional Book Basis Derivative Items taken

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into account in computing cost of goods sold would reduce the amount of book income otherwise available for allocation among the Partners). Any allocation made pursuant to this Section 5.1(d)(xii)(A) shall be made after all of the other Agreed Allocations have been made as if this Section 5.1(d)(xii) were not in the Partnership Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

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

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

(xiii) *Depreciation.* Depreciation deductions of the Partnership for each period shall be allocated among the Partners in accordance with their relative Capital Account balances as they existed immediately after the most recent book adjustments pursuant to Section 4.9(d) of this Agreement that occurred prior to such period and without regard to allocations made after such adjustment.

#### Section 5.2 *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 5.1.

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

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

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(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code that takes into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 4.9(d)(i) or (ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 5.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of “book” gain or loss is allocated pursuant to Section 5.1.

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

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

(d) The General Partner in its sole discretion may determine to depreciate or amortize the portion of an adjustment under Section 743(b) of the Code attributable to unrealized appreciation in any Adjusted Property (to the extent of the unamortized Book-Tax Disparity) using a predetermined rate derived from the depreciation or amortization method and useful life applied to the Partnership’s common basis of such property, despite the inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6) and Proposed Treasury Regulation Section 1.197-2(g)(3) or any successor regulations thereto. If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Units in the same month would receive depreciation and amortization deductions, based upon the same applicable rate as if they had purchased a direct interest in the Partnership’s property. If the General Partner chooses not to utilize such aggregate method, the General Partner may use any other reasonable depreciation and amortization conventions to preserve the uniformity of the intrinsic tax characteristics of any Units that would not have a material adverse effect on the Limited Partners or the Record Holders of any class or classes of Units.

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

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have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

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

(g) Each item of Partnership income, gain, loss and deduction attributable to a transferred Partnership Interest shall, for federal income tax purposes, be determined on an annual basis and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of each month; *provided, however*, that (i) if the Overallotment Option is not exercised, such items for the period beginning on the Closing Date and ending on the last day of the month in which the Effective Time occurs shall be allocated to Partners as of the opening of the New York Stock Exchange on the first Business Day of the next succeeding month or (ii) if the Overallotment Option is exercised, such items for the period beginning on the Closing Date and ending on the last day of the month in which the closing of the Overallotment 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 other than in the ordinary course of business shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the month in which such gain or loss is recognized for federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation as it determines necessary, to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

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

*Section 5.3 Requirement and Characterization of Distributions.*

(a) Subject to (b) below, within 45 days following the end of (i) the period beginning on the Initial Closing Date and ending on March 31, 1996 and (ii) each Quarter commencing with the Quarter beginning on April 1, 1996 an amount equal to 100% of Available Cash with respect to such period or Quarter shall be distributed in accordance with this Article V by the Partnership to the Partners, as of the Record Date selected by the General Partner in its reasonable discretion; *provided, however*, that the Partnership shall not make any distributions of Available Cash to the holders of Senior Subordinated Units, Junior Subordinated Units and General Partner Units with respect to any Quarter during the Partnership's fiscal year 1999. 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



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distributed by the Partnership to Partners pursuant to Section 5.4 equals the Operating Surplus from the Initial 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 5.5, be deemed to be from Capital Surplus.

(b) Beginning with the distribution for the Quarter ending on December 31, 1999, no distributions will be made on the Senior Subordinated Units, Junior Subordinated Units and General Partner Units, unless the aggregate amount of distributions on all Units with respect to all Quarters, beginning with the Quarter ending on December 31, 1999 shall be equal to or less than the total Operating Surplus generated by the Partnership since October 1, 1999 (which does not include that portion of Operating Surplus included in clause (a)(i) of the definition of Operating Surplus).

(c) Notwithstanding the definitions of Available Cash and Operating Surplus contained herein, disbursements (including, without limitation, contributions to the Operating Partnership or disbursements on behalf of the Operating Partnership) made or cash reserves established, increased or reduced (including, without limitation, cash reserves established, increased or reduced by the Operating Partnership) after the end of any Quarter but on or before the date on which the Partnership makes its distribution of Available Cash in respect of such Quarter pursuant to Section 5.3(a) shall be deemed to have been made, established, increased or reduced for purposes of determining Available Cash and Operating Surplus, within such Quarter if the General Partner so determines. Notwithstanding the foregoing, in the event of the dissolution and liquidation of the Partnership, all proceeds of such liquidation shall be applied and distributed in accordance with, and subject to the terms and conditions of, Section 14.4.

(d) Nothing in this Section 5.3 prohibits the holders of the Senior Subordinated Units, Junior Subordinated Units or General Partner Units from receiving distributions from Capital Surplus in a partial liquidation during the Subordination Period.

*Section 5.4 Distributions of 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 5.3 or 5.5 shall, subject to Section 5.3 and subject to Section 17-607 of the Delaware Act, be distributed, as follows, except as otherwise required by Section 4.4(b) in respect of additional Partnership Securities issued pursuant thereto:

- (i) First, 100% to the Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Minimum Quarterly Distribution;
- (ii) Second, 100% to the Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage, if any, existing with respect to any prior Quarter;
- (iii) Third, 100% to the Senior Subordinated Units, Pro Rata, until there has been distributed in respect of each Senior Subordinated Unit then Outstanding an amount equal to the Minimum Quarterly Distribution;

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

(v) Fifth, 100% to all Units, Pro Rata, 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;

(vi) Sixth, (A) 86.7% to all Units, Pro Rata, and (B) 13.3% to all Senior Subordinated Units, Junior Subordinated Units and General Partner Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution;

(vii) Seventh, (A) 76.5% to all Units, Pro Rata, and (B) 23.5% to all Senior Subordinated Units, Junior Subordinated Units and General Partner Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution; and

(viii) Thereafter, (A) 51% to all Units, Pro Rata, and (B) 49% to all Senior Subordinated, Junior Subordinated and General Partner Units, Pro Rata;

*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 5.6(a), the distributions of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made in accordance with Section 5.4(a)(viii).

(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 5.3 or 5.5 shall, subject to Section 17-607 of the Delaware Act, be distributed as follows, except as otherwise required by Section 4.4(b) in respect of additional Partnership Securities issued pursuant thereto:

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

(ii) Second, 100% to all Units, Pro Rata, 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;

(iii) Third, (A) 86.7% to all Units, Pro Rata, and (B) 13.3% to all Class B Common Units and General Partner Units, Pro Rata, until there has been distributed in respect of each Class A Common Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution;

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(iv) Fourth, (A) 76.5% to all Units, Pro Rata, and (B) 23.5% to all Class B Common Units and General Partner Units, Pro Rata, until there has been distributed in respect of each Class A Common Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution; and

(v) Thereafter, (A) 51% to all Units, Pro Rata, and (B) 49% to all Class B Common Units and General Partner Units, Pro Rata;

*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 5.6(a), the distributions of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made in accordance with Section 5.4(b)(v).

*Section 5.5 Distributions of Cash from Capital Surplus.*

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

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

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

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

*Section 5.7 Special Provisions Relating to the Senior Subordinated Units and Junior Subordinated Units.*

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

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participate in allocations of income, gain, loss and deduction and distributions of cash made with respect to Common Units pursuant to this Article V, and except as provided in Section 6.12 and Section 17.1, the holder of a Senior Subordinated Unit or a Junior Subordinated Unit shall have all of the rights and obligations of a Limited Partner holding Common Units hereunder; *provided, however*, that immediately upon the end of the Subordination Period, the holder of a Senior Subordinated Unit or Junior Subordinated Unit shall possess all of the rights and obligations of a Limited Partner holding Class B 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 of cash made with respect to Common Units pursuant to this Article V (but such converted Senior Subordinated Units and Junior Subordinated Units shall remain subject to the provisions of Sections 4.9(c)(ii) and 5.1(d)(x)).

*Section 5.8 Entity-Level Taxation.*

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

ARTICLE VI

MANAGEMENT AND OPERATION OF BUSINESS

*Section 6.1 Management.*

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner or Assignee shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or which are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 6.3, shall have full

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power and authority to do all things and on such terms as it, in its sole discretion, may deem necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 and to effectuate the purposes set forth in Section 3.1, including the following:

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

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

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

(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 or the Operating Partnership, the lending of funds to other Persons (including Group Members), the repayment of obligations of the Partnership and the Operating Partnership and the making of capital contributions to the Operating Partnership;

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

(vi) the distribution of Partnership cash;

(vii) the selection and dismissal of employees, including those of the Operating Partnership (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

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relationships (including the acquisition of interests in, and the contributions of property to, the Operating Partnership from time to time);

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

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

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Units from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 1.6);

(xiii) the purchase, sale or other acquisition or disposition of Units (subject to Section 6.12 and Section 17.1); and

(xiv) the undertaking of any action in connection with the Partnership's participation in the Operating Partnership as the limited partner.

(b) Notwithstanding any other provision of this Agreement, the Operating Partnership Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners and Assignees and each other Person who may acquire an interest in Units hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of the Operating Partnership Agreement, the Underwriting Agreement, the Conveyance and Contribution Agreements, the agreements and other documents filed as exhibits to the Proxy Statement and the Equity Registration Statement, and the other agreements described in or filed as a part of the Proxy Statement and the Equity 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 Proxy Statement and the Equity 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 Units; 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 XVII), shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or the Assignees or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

*Section 6.2 Certificate of Limited Partnership.*

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

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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 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 7.5(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner or Assignee.

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

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

(b) Except as provided in Articles XIV and XVI, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the Partnership's assets in a single transaction or a series of related transactions or approve on behalf of the Partnership the sale, exchange or other disposition of all or substantially all of the assets of the Operating Partnership, without the approval of holders of a Limit 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 Operating Partnership and shall not apply to any forced sale of any or all of the assets of the Partnership or Operating Partnership 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 Partnership Agreement or, except as expressly permitted by Section 6.9(d), take any action permitted to be taken by a partner of the Operating Partnership, in either case, that would have a material adverse effect on the Partnership as a partner of the Operating Partnership or (ii) except as permitted under Sections 11.2, 13.1 and 13.2, elect or cause the Partnership to elect a successor general partner of the Operating Partnership.

*Section 6.4 Reimbursement of the General Partner.*

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

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(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine in its sole discretion, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership (including salary, bonus, incentive compensation and other amounts paid to any Person to perform services for the Partnership, the Operating Partnership or for the General Partner in the discharge of its duties to the Partnership), and (ii) all other necessary or appropriate expenses allocable to the Partnership or otherwise reasonably incurred by the General Partner in connection with operating the Partnership's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership in any reasonable manner determined by the General Partner in its sole discretion. Reimbursements pursuant to this Section 6.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 6.7.

(c) Subject to Section 4.5, the General Partner, in its sole discretion and without the approval of the Limited Partners (who shall have no right to vote in respect thereof), may propose, adopt and amend on behalf of the Partnership employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Units), or issue Partnership Securities pursuant to any employee benefit plan, employee program or employee practice maintained or sponsored by the General Partner or any of its Affiliates, in each case for the benefit of employees of the General Partner, any Group Member or any Affiliate, or any of them, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group. The Partnership agrees to issue and sell to the General Partner or any of its Affiliates any Units or other Partnership Securities that the General Partner or such Affiliate is obligated to provide to any employees pursuant to any such employee benefit plans, employee programs or employee practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliate of Units or other Partnership Securities purchased by the General Partner or such Affiliate from the Partnership to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 6.4(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices adopted by the General Partner as permitted by this Section 6.4(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 13.1 or 13.2 or the transferee of or successor to all of the General Partner's Partnership Interest (which is represented by the General Partner Units) as a general partner in the Partnership pursuant to Section 11.2.

#### Section 6.5 *Outside Activities.*

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

(b) Certain Affiliates of the General Partner have entered into the Non-competition Agreement with the Partnership and the Operating Partnership, which agreement sets forth certain restrictions on the ability of such Affiliates to compete with the Partnership and



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the Operating Partnership. Any amendments or waivers to the Non-competition Agreement must be approved by the Audit Committee.

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

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

(e) The General Partner and any of its Affiliates may acquire Units or other Partnership Securities in addition to those acquired at the Effective Time and, except as otherwise provided in this Agreement, shall be entitled to exercise all rights of an Assignee or Limited Partner, as applicable, relating to such Units or Partnership Securities.

(f) The term "Affiliates" when used in Section 6.5(b) with respect to the General Partner shall not include any Group Member or any Subsidiary of the Group Member.

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

(a) The General Partner or any Affiliate thereof may lend to any Group Member, and any Group Member may borrow, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; *provided, however*, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arms'-length basis (without reference to the lending party's financial abilities or guarantees). The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 6.6(a) and Section

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6.6(b), the term “Group Member” shall include any Affiliate of the Group Member that is controlled by the Group Member. No Group Member may lend funds to the General Partner or any of its Affiliates.

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

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

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

(e) Neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to, or purchase any property from, the Partnership, directly or indirectly, except pursuant to transactions that are fair and reasonable to the Partnership; *provided, however*, that the requirements of this Section 6.6(e) shall be deemed to be satisfied as to (i) the transactions effected pursuant to Sections 4.1, 4.2 and 4.3, the Conveyance and Contribution Agreements and any other transactions described in or contemplated by the Proxy Statement, (ii) any transaction approved by Special Approval, (iii) any transaction, the terms of which are no less favorable to the Partnership than those generally being provided to or available from unrelated third parties, or (iv) any transaction that, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership), is equitable to the Partnership. With respect to any contribution of assets to the Partnership in exchange for Units, the Audit Committee, in determining whether the appropriate number of Units are being issued, should take into account, among other things, the fair market value of the assets, the liquidated and contingent liabilities assumed, the tax basis in the assets, the extent to which tax-only allocations to the transferor will protect the existing partners of the Partnership against a low tax basis, and such other factors as the Audit Committee deems relevant under the circumstances.

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

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

Section 6.7 *Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee; *provided*, that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful; *provided, further*, no indemnification pursuant to this Section 6.7 shall be available to the General Partner or Petro with respect to their respective obligations incurred pursuant to the Underwriting Agreement or the Conveyance and Contribution Agreements (other than obligations incurred by the General Partner on behalf of the Partnership or the Operating Partnership). The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 6.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

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

(c) The indemnification provided by this Section 6.7 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Units, as a matter of law or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity (including any capacity under the Underwriting Agreement), and shall continue as to an Indemnitee who has

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ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

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

(e) For purposes of this Section 6.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 6.7(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is in, or not opposed to, the best interests of the Partnership.

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

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

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

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

#### Section 6.8 *Liability of Indemnitees.*

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

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

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

*Section 6.9 Resolution of Conflicts of Interest.*

(a) Unless otherwise expressly provided in this Agreement or the Operating Partnership Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates, on the other hand, and the Partnership, the Operating Partnership, any Partner or any Assignee, on the other hand, any resolution or course of action in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, of the Operating Partnership Agreement, of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action is, or by operation of this Agreement is deemed to be, fair and reasonable to the Partnership. The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of a resolution of such conflict or course of action. Any conflict of interest and any resolution of such conflict of interest shall be conclusively deemed fair and reasonable to the Partnership if such conflict of interest or resolution is (i) approved by Special Approval, (ii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iii) fair to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner may also adopt a resolution or course of action that has not received Special Approval. The General Partner (including the Audit 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 Audit 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 Audit 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

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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, the Operating Partnership, any Limited Partner or any Assignee, (ii) it may make such decision in its sole discretion (regardless of whether there is a reference to “sole discretion” or “discretion”) unless another express standard is provided for, or (iii) in “good faith” or under another express standard, the General Partner or such Affiliate shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement, the Operating Partnership Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation. In addition, any actions taken by the General Partner or such Affiliate consistent with the standards of “reasonable discretion” set forth in the definitions of Available Cash or Operating Surplus shall not constitute a breach of any duty of the General Partner to the Partnership or the Limited Partners. The General Partner shall have no duty, express or implied, to sell or otherwise dispose of any asset of the Partnership Group. No borrowing by any Group Member or the approval thereof by the General Partner shall be deemed to constitute a breach of any duty of the General Partner to the Partnership or the Limited Partners by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to (A) enable distributions on the General Partner Units to exceed the General Partner’s Percentage Interest of the total amount distributed or (B) hasten the expiration of the Subordination Period or the conversion of any Senior Subordinated Units or Junior Subordinated Units into Class B 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 Limited Partners hereby authorize the General Partner, on behalf of the Partnership as a partner of a Group Member, to approve of actions by the general partner of such Group Member similar to those actions permitted to be taken by the General Partner pursuant to this Section 6.9.

*Section 6.10 Other Matters Concerning the General Partner.*

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

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers

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selected by it, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of Counsel) of such Persons as to matters that the General Partner reasonably believes to be with a such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

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

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

Section 6.11 *Title to Partnership Assets.*

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

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Section 6.12 *Purchase or Sale of Limits.*

The General Partner may cause the Partnership to purchase or otherwise acquire Units; provided that, except as permitted pursuant to Section 11.6 and Section 17.1(a), the General Partner may not cause the Partnership to purchase Units other than Common Units during the Subordination Period. As long as Units are held by any Group Member, such Units shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner (other than a Group Member) may also purchase or otherwise acquire and sell or otherwise dispose of Units for its own account, subject to the provisions of Articles XI and XII.

Section 6.13 *Registration Rights.*

(a) If (i) the General Partner or any Affiliate of the General Partner (including for purposes of this Section 6.13, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner) holds Units or other Partnership Securities that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Units (the "Holder") to dispose of the number of Units or other Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then upon the request of the General Partner or any of its Affiliates, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Units or other Partnership Securities covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Units or other Partnership Securities specified by the Holder, *provided however*, that the Partnership shall not be required to effect more than three registrations pursuant to this Section 6.13(a); and *provided, further, however*, that if the Audit Committee determines in its good faith judgment that a postponement of the requested registration for up to six months would be in the best interests of the Partnership and its Partners due to a pending transaction, investigation or other event, the filing of such registration statement or the effectiveness thereof may be deferred for up to six months, but not thereafter. In connection with any registration pursuant to the immediately preceding sentence, the Partnership shall promptly prepare and file (x) such documents as may be necessary to register or qualify the Partnership Securities subject to such registration under the securities laws of such states as the Holder shall reasonably request: *provided, however*, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction, and (y) such documents as may be necessary to apply for listing or to list the Partnership Securities subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and do any and all other acts and things that may reasonably be necessary or advisable to enable the Holder to consummate a public sale of such Units in such states. Except as set forth in Section 6.13(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(b) If the Partnership shall at any time propose to file a registration statement under the Securities Act for an offering of equity securities of the Partnership for cash (other than



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

(c) If underwriters are engaged in connection with any registration referred to in Section 6.13(a) or (f), the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under Section 6.7, the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder, its officers, directors, and each Person who controls the Holder (within the meaning of the Securities Act) and any agent thereof (collectively, "Indemnified Persons") against any losses, claims, demands, actions, causes of action, assessments, damages, liabilities (joint or several), costs and expenses (including interest, penalties and reasonable attorneys' fees and disbursements), resulting to, imposed upon, or incurred by the Indemnified Persons, directly or indirectly, under the Securities Act or otherwise (hereinafter referred to in this Section 6.13(c) as a "claim" and in the plural as "claims") based upon, arising out of or resulting from any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any Units were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; *provided, however*, that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or such amendment or supplement in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof. For purposes of this Section 6.13(c), the term "Holder" shall also include Affiliates or former Affiliates of Petro holding Common Units and Senior Subordinated Units.

(d) The provisions of Section 6.13(a) and (b) shall continue to be applicable with respect to the General Partner (and any of the General Partner's Affiliates) after it ceases to be a Partner of the Partnership, during a period of two years subsequent to the effective date of such cessation and for so long thereafter as is required for the Holder to sell all of the Units or other Partnership Securities with respect to which it has requested during such two year period

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that a registration statement be filed; *provided however*, that the Partnership shall not be required to file successive registration statements covering the same Partnership Securities for which registration was demanded during such two-year period. The provisions of Section 6.1 3(c) shall continue in effect thereafter.

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

(f) Prior to the Effective Time, the Partnership shall have filed with the Commission a registration statement (the "Shelf Registration Statement") on an appropriate form under the Securities Act relating to the resale of Common Units and Senior Subordinated Units issued to Affiliates or former Affiliates of Petro. The Partnership shall use all reasonable efforts to cause the Shelf Registration Statement to become effective and remain effective for a period of not less than one year from the Effective Time or such shorter period as shall terminate when all Common Units and Senior Subordinated Units covered by the Shelf Registration Statement have been sold pursuant to such registration statement; *provided, however*, that if the Audit Committee determines in its good faith judgment that the sale or distribution of Common Units or Senior Subordinated Units pursuant to the Shelf Registration Statement would not be in the best interests of the Partnership and its Partners due to a pending transaction, investigation or other event, the Audit Committee may elect that the Shelf Registration Statement may not be used for a reasonable period of time, not to exceed 120 days in any 365-day period.

Section 6.14 *Reliance by Third Parties.*

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

do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

ARTICLE VII  
RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

*Section 7.1 Limitation of Liability.*

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

*Section 7.2 Management of Business.*

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

*Section 7.3 Outside Activities.*

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

*Section 7.4 Return of Capital.*

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

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

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

(i) to obtain true and full information regarding the status of the business and financial condition of the Partnership;

(ii) promptly after becoming available, to obtain a copy of the Partnership's federal, state and local tax returns for each year;

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

(iv) to have furnished to him, upon notification to the General Partner, a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with a copy of the executed copies of all powers of attorney pursuant to which this Agreement, the Certificate of Limited Partnership and all amendments thereto have been executed;

(v) to obtain true and full information regarding the amount of cash and a description and statement of the Net Agreed Value of any other Capital Contribution by each Partner and which each Partner has agreed to contribute in the future, and the date on which each became a Partner; and

(vi) to obtain such other information regarding the affairs of the Partnership as is just and reasonable.

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

ARTICLE VIII

BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 8.1 *Records and Accounting.*

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including

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

Section 8.2 *Fiscal Year*.

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

Section 8.3 *Reports*.

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

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

ARTICLE IX  
TAX MATTERS

Section 9.1 *Tax Returns and Information*.

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

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Section 9.2 *Tax Elections.*

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

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

Section 9.4 *Withholding.*

Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines in its sole discretion to be necessary or appropriate to cause the Partnership and the Operating Partnership to comply with any withholding requirements established under the Code or any other federal, state, or local law including, without limitation, pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner or Assignee (including, without limitation, by reason of Section 1446 of the Code), the amount withheld shall be treated as a distribution of cash pursuant to Section 5.3 in the amount of such withholding from such Partner.

ARTICLE X  
CERTIFICATES

Section 10.1 *Certificates.*

Upon the Partnership's issuance of Common Units or Senior 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. Certificates shall be executed on behalf of the Partnership by the General Partner. No Common Unit or Senior Subordinated Unit

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Certificate shall be valid for any purpose until it has been countersigned by the Transfer Agent, *provided, however*, that if the General Partner elects to issue Units in global form, the Certificates shall be valid upon receipt of a certificate from the Transfer Agent certifying that such Units have been duly registered in accordance with the directions of the Partnership and the Underwriters. The Partners holding Certificates evidencing Senior Subordinated Units may exchange such Certificates for Certificates evidencing Class B Common Units on or after the expiration of the Subordination Period.

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 10.4 *Record Holder.*

In accordance with Section 10.2(b), the Partnership shall be entitled to recognize the Record Holder as the Limited Partner or Assignee with respect to any Units and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Units on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed for trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Units, as between the Partnership on the one hand, and such other Persons, on the other, such representative Person (a) shall be the Limited Partner or Assignee (as the case may be) of record and beneficially, (b) must execute and deliver a Transfer Application and (c) shall be bound by this Agreement and shall have the rights and obligations of a Limited Partner or Assignee (as the case may be) hereunder and as provided for herein.



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ARTICLE XI  
TRANSFER OF INTERESTS

Section 11.1 *Transfer.*

(a) The term “transfer,” when used in this Article XI with respect to a Partnership Interest, shall be deemed to refer to a transaction by which the General Partner assigns its General Partner Interest (which is represented by the General Partner Units) to another Person or by which the holder of a Limited Partner Interest assigns such Limited Partner Interest to another Person who is or becomes 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 XI. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article XI shall be null and void.

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

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

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

Except for a transfer by the General Partner of all, but not less than all, of its General Partner Interest to (a) an Affiliate of the General Partner or (b) another Person in connection with the merger or consolidation of the General Partner with or into another Person, which in either case, shall only be limited by the provisions of this Section 11.2, the transfer by the General Partner of all or any part of its General Partner Interest to a Person prior to December 31, 2005 shall be subject to the prior approval of holders of a Unit Majority. 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 the Operating Partnership Agreement and to be bound by the provisions of this Agreement and the Operating Partnership Agreement, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability of any Limited Partner or of any limited partner of any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the partnership interest of the General Partner as the general partner of each Group Member. In the case of a transfer pursuant to and in compliance with this Section 11.2, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 12.3, be admitted to the Partnership as

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a General Partner immediately prior to the transfer of the General Partner Interest, and the business of the Partnership shall continue without dissolution.

Section 11.3 *Transfer of Units.*

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

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

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

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

Section 11.4 *Restrictions on Transfers.*

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

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

(a) If any Group Member is or becomes subject to any federal, state or local law or regulation that, in the reasonable determination of the General Partner, creates a substantial risk of cancellation or forfeiture of any property in which the Group Member has an interest based on the nationality, citizenship or other related status of a Limited Partner or Assignee, the General Partner may request any Limited Partner or Assignee to furnish to the General Partner, within 30 days after receipt of such request, an executed Citizenship Certification or such other information concerning his nationality, citizenship or other related

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

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

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

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

#### Section 11.6 *Redemption of Interests.*

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

(i) The General Partner shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Limited Partner or Assignee, at his last address designated on the records of the Partnership or the Transfer Agent, by

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registered or certified mail, postage prepaid. The notice shall be deemed to have been given when so mailed. The notice shall specify the Redeemable Units, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the Certificate evidencing the Redeemable Units and that on and after the date fixed for redemption no further allocations or distributions to which the Limited Partner or Assignee would otherwise be entitled in respect of the Redeemable Units will accrue or be made.

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

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

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

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

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

## ARTICLE XII

### ADMISSION OF PARTNERS

#### Section 12.1 *Admission of Initial Limited Partners.*

Upon the issuance by the Partnership of the Old Subordinated Units to the Initial General Partner in connection with the Initial Offering, the Initial General Partner was admitted to the Partnership as a Limited Partner. Upon the issuance by the Partnership of Common Units to the

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Initial Underwriters in connection with the Initial Offering and the execution by the Initial Underwriters of a Transfer Application, the Initial Underwriters were admitted to the Partnership as Initial Limited Partners.

*Section 12.2 Admission of Substituted Limited Partners*

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

*Section 12.3 Admission of Successor General Partner.*

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

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Section 12.4 *Admission of Additional Limited Partners.*

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

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

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

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

ARTICLE XIII

WITHDRAWAL OR REMOVAL OF PARTNERS

Section 13.1 *Withdrawal of the General Partner.*

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

(i) the General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners (and it shall be deemed that the General Partner has withdrawn pursuant to this Section 13.1(a)(i) if the General Partner voluntarily withdraws as general partner of the Operating Partnership);

(ii) the General Partner transfers all of his rights as General Partner pursuant to Section 11.2;

(iii) the General Partner is removed pursuant to Section 13.2;

(iv) the General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a

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

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

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

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

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on the Initial Closing Date and ending at 12:00 midnight, Eastern Standard Time, on December 31, 2005, 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 Limited Partners holding at least a Unit Majority 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 of the limited partner of any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes; (ii) at any time after 12:00 midnight, Eastern Standard Time, on December 31, 2005, the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Limited Partners, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be a General Partner pursuant to Section 13.1(a)(ii) or is removed pursuant to Section 13.2; 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 of the other Group Members. If the General Partner gives a notice of withdrawal pursuant to Section 13.1 (a)(i), holders of a Unit Majority may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become

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the successor general partner of the other Group Members. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Limited Partners as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 14.1. Any successor General Partner elected in accordance with the terms of this Section 13.1 shall be subject to the provisions of Section 12.3.

*Section 13.2 Removal of the General Partner.*

The General Partner may be removed if such removal is approved by Limited Partners holding at least two-thirds of the Outstanding Units voting together as a single class (excluding those Units held by the General Partner and its Affiliates). Any such action by such Limited Partners for removal of the General Partner must also provide for the election of a successor General Partner by Limited Partners holding at least a majority of the Outstanding Units (excluding for purposes of such determination Units owned by the General Partner and its Affiliates). Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Article XII. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner of the other Group Members. If a person is elected as a successor General Partner in accordance with the terms of this Section 13.2, such person shall, upon admission pursuant to Article XII, automatically become the successor general partner of the other Group Members. The right of the Limited Partners holding Outstanding Units to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion 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 13.2 shall be subject to the provisions of Section 12.3.

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

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



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For purposes of this Section 13.3(a), the fair market value of the Departing Partner's Combined Interest shall be determined by agreement between the Departing Partner and its successor or, failing agreement within 30 days after the effective date of such Departing 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 shall determine the fair market value of the Combined Interest. In making its determination, such independent investment banking firm or other independent expert shall consider the then current trading price of Units on any National Securities Exchange on which Units are then listed, the value of the Partnership's assets, the rights and obligations of the General Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 13.3(a), the Departing Partner shall become a Limited Partner and the Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 13.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing Partner as to all debts and liabilities of the Partnership arising on or after the date on which the Departing Partner becomes a Limited Partner. For purposes of this Agreement, conversion of the General Partner's Combined Interest to Common Units will be characterized as if the General Partner contributed its Combined Interest to the Partnership in exchange for the newly issued Common Units. For purposes of this Section 13.3(b), in the event that the Subordination Period has expired, the Combined Interest shall be converted into Class A Common Units.

(c) If a successor General Partner is elected in accordance with the terms of Section 13.1 or 13.2 and the option described in Section 13.3(a) is not exercised by the party entitled to do so, the successor General Partner shall, at the effective date of its admission to the Partnership, contribute to the Partnership cash in an amount equal to the fair market value of the Combined Interest on such date. In such event, such successor General Partner shall, subject to the following sentence, be entitled to such Percentage Interest of all Partnership allocations and distributions and any other allocations and distributions to which the Departing Partner was entitled.

#### Section 13.4 *Withdrawal of Limited Partners.*

No Limited Partner shall have any right to withdraw from the Partnership; *provided however*, that when a transferee of a Limited Partner's Units becomes a Record Holder, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Units so transferred.

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ARTICLE XIV  
DISSOLUTION AND LIQUIDATION

Section 14.1 *Dissolution.*

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 13.1 or 13.2, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 14.2) its affairs shall be wound up, upon:

(a) the expiration of its term as provided in Section 1.5;

(b) an Event of Withdrawal of the General Partner as provided in Section 13.1(a) (other than Section 13.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 13.1(b) or 13.2 and such successor is admitted to the Partnership pursuant to Section 12.3;

(c) an election to dissolve the Partnership by the General Partner that is approved by holders of at least a Unit Majority;

(d) entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or

(e) the sale of all or substantially all of the assets and properties of the Partnership Group.

Section 14.2 *Continuation of the Business of the Partnership After Dissolution.*

Upon (a) dissolution of the Partnership following an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 13.1(a)(i) or (iii) and the failure of the Partners to select a successor to such Departing Partner pursuant to Section 13.1 or 13.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 13.1(a)(iv), (v) or (vi), then within 180 days thereafter, holders of at least a majority of the Outstanding Units (excluding for purposes of such determination any Units held by the General Partner or its Affiliates) may elect to 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 holders of at least a majority of the Outstanding Units (excluding for purposes of such determination any Units held by the General Partner or its Affiliates). Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

(i) the reconstituted Partnership shall continue until the end of the term set forth in Section 1.5 unless earlier dissolved in accordance with this Article XIV;

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(ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be dealt with in the manner provided in Section 13.3(b); and

(iii) 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 1.4; provided, that the right of holders of at least a majority of Outstanding Units to approve a successor General Partner and to reconstitute and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that (x) the exercise of the right would not result in the loss of limited liability of any Limited Partner and (v) neither the Partnership, the reconstituted limited partnership nor any other Group Member would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of such right to continue.

Section 14.3 *Liquidator.*

Upon dissolution of the Partnership, unless the Partnership is continued under an election to reconstitute and continue the Partnership pursuant to Section 14.2, the General Partner, or in the event the dissolution is the result of an Event of Withdrawal, a liquidator or liquidating committee approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests. The Liquidator shall agree not to resign at any time without 15 days' prior notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XIV, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers other than the limitation on sale set forth in Section 6.3(b)) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided for herein.

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Section 14.4 *Liquidation.*

The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as the Liquidator determines to be in the best interest of the Partners, subject to the following:

(a) *Disposition of Assets.* The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 14.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. For purposes of computing Net Termination Gain, gain or loss on distributed property shall be recognized as if such property had been sold for its fair market value.

(b) *Discharge of Liabilities.* Liabilities of the Partnership include amounts owed to Partners otherwise than in respect of their distribution rights under Article V. With respect to any liability that is contingent or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) *Liquidation Distributions.* All property and all cash in excess of that required to discharge liabilities as provided in Section 14.4(b) shall be distributed to the Partners in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of this clause) for the taxable year of the Partnership during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

Section 14.5 *Cancellation of Certificate of Limited Partnership.*

Upon the completion of the distribution of Partnership cash and property as provided in Sections 14.3 and 14.4 in connection with the liquidation of the Partnership, the Partnership shall be terminated and the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 14.6 *Return of Capital Contributions.*

The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

Section 14.7 *Waiver of Partition.*

To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

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Section 14.8 *Capital Account Restoration.*

No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

ARTICLE XV  
AMENDMENT OF PARTNERSHIP  
AGREEMENT; MEETINGS; RECORD DATE

Section 15.1 *Amendment to be Adopted Solely by General Partner.*

Each Limited Partner agrees that the General Partner (pursuant to its powers of attorney from the Limited Partners and Assignees), without the approval of any Limited Partner or Assignee, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that, in the sole discretion of the General Partner, is necessary or advisable to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the limited partners have limited liability under the laws of any state or to ensure that neither the Partnership nor the Operating Partnership will be treated as an association taxable as a corporation or otherwise taxed as an entity for federal income tax purposes;

(d) a change that, in the sole discretion of the General Partner, (i) does not adversely affect the Limited Partners in any material respect, (ii) is necessary or advisable to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are or will be listed for trading, compliance with any of which the General Partner determines in its sole discretion to be in the best interests of the Partnership and the Limited Partners, (iii) is necessary or advisable in connection with action taken by the General Partner pursuant to Section 4.8, or (iv) is required to effect the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;

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(e) a change in the fiscal year or taxable year of the Partnership and any changes that, in the sole discretion of the General Partner, are necessary or advisable as a result of a change in the fiscal year or taxable year of the Partnership including, if the General Partner shall so determine, a change in the definition of “Quarter” and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership or the General Partner or its directors or officers from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or “plan asset” regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) subject to the terms of Section 4.4, an amendment that, in the sole discretion of the General Partner, is necessary or advisable in connection with the authorization of issuance of any class or series of Partnership Securities pursuant to Section 4.4;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 16.3;

(j) an amendment that, in the sole discretion of the General Partner is necessary or advisable to reflect, account for and deal with appropriately the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity other than the Operating Partnership, in connection with the conduct by the Partnership of activities permitted by the terms of Section 3.1; or

(k) any other amendments substantially similar to the foregoing.

#### Section 15.2 *Amendment Procedures.*

Except as provided in Sections 15.1 and 15.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by or with the consent of the General Partner. A proposed amendment shall be effective upon its approval by the holders of at least a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Limited Partners to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments.

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Section 15.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Sections 15.1 and 15.2 no provision of this Agreement that establishes a percentage of Outstanding Units required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have either (i) the effect of reducing such voting percentage or (ii) more than an immaterial effect on a Unitholder unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Sections 15.1 and 15.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 15.3(c), (ii) enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner without its consent, which may be given or withheld in its sole discretion, (iii) change Section 14.1(a) or (c), or (iv) change the term of the Partnership or, except as set forth in Section 14.1(c), give any Person the right to dissolve the Partnership.

(c) Except as otherwise provided, and without limitation of the General Partner's authority to adopt amendments to this Agreement as contemplated in Section 15.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Outstanding Units in relation to other classes of Units must be approved by the holders of not less than a majority of the Outstanding Units of the classes affected (excluding, during the Subordination Period, Common Units owned by the General Partner and its Affiliates).

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 6.3 or 15.1 and except as otherwise provided by Section 16.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Outstanding Units unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner or any limited partner of the other Group Members under applicable law.

(e) This Section 15.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Units.

Section 15.4 *Meetings.*

All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XV. Meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited Partners shall call a meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a meeting and indicating the general or specific purposes for which the meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer

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Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting.

Section 15.5 Notice of a Meeting.

Notice of a meeting called pursuant to Section 15.4 shall be given to the Record Holders in writing by mail or other means of written communication in accordance with Section 18.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

Section 15.6 *Record Date.*

For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 15.11, the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals.

Section 15.7 *Adjournment.*

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XV.

Section 15.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.*

The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, Limited Partners representing such quorum who were present in person or by proxy and entitled to vote, sign a written waiver of notice or an approval of the holding of the meeting or an approval of the minutes thereof. All waivers and approvals shall be filed with the Partnership records or made a part of the minutes of the meeting. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner does not approve, at the beginning of the meeting, of the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.



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Section 15.9 *Quorum.*

The holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called represented in person or by proxy shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage (excluding, in either case, if such are to be excluded from the vote, Outstanding Units owned by the General Partner and its Affiliates). At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote and be present in person or by proxy at such meeting shall be deemed to constitute the act of all Limited Partners, unless a greater or different percentage is required with respect to such action, under the provisions of this Agreement, in which case the act of the Limited Partners holding Outstanding Units that in the aggregate represent at least such greater or different percentage shall be required. The Limited Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement. In the absence of a quorum any meeting of Limited Partners may be adjourned from time to time by the affirmative vote of holders of at least a majority of the Outstanding Units represented either in person or by proxy, but no other business may be transacted, except as provided in Section 15.7.

Section 15.10 *Conduct of Meeting.*

The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 15.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with the applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

Section 15.11 *Action Without a Meeting.*

Any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage of the Outstanding Units that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted. Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days.

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specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Units held by the Limited Partner, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and (c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partnership to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

Section 15.12 *Voting and Other Rights.*

(a) Only those Record Holders of the Units on the Record Date set pursuant to Section 15.6 (and also subject to the limitations contained in the definition of "Outstanding") shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Units have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Units.

(b) With respect to Units that are held for a Person's account by another Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), in whose name such Units are registered, such other Person shall, in exercising the voting rights in respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this Section 15.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 10.4.

ARTICLE XVI  
MERGER

Section 16.1 *Authority.*

The Partnership may merge or consolidate with one or more corporations, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership, limited partnership or limited liability company, former under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation ("Merger Agreement") in accordance with this Article XVI.

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Section 16.2 *Procedure for Merger or Consolidation.*

Merger or consolidation of the Partnership pursuant to this Article XVI requires the prior approval of the General Partner. If the General Partner shall determine, in the exercise of its sole discretion, to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

- (a) The names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;
- (b) The name and jurisdictions of formation or organization of the business entity that is to survive the proposed merger or consolidation (the “Surviving Business Entity”);
- (c) The terms and conditions of the proposed merger or consolidation;
- (d) The manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their general or limited partner interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;
- (e) A statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, certificate of limited liability company or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;
- (f) The effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 16.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of the certificate of merger, the effective time shall be fixed no later than the time of the filing of the certificate of merger and stated therein); and
- (g) Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or appropriate by the General Partner.

Section 16.3 *Approval by Limited Partners of Merger or Consolidation.*

(a) The General Partner, upon its approval of the Merger Agreement, shall direct that the Merger Agreement be submitted to a vote of Limited Partners, whether at a meeting or by written consent, in either case in accordance with the requirements of Article XV.

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A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a meeting or the written consent.

(b) The Merger Agreement shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority unless the Merger Agreement contains any provision that, if contained in an amendment to this Agreement, the provisions of this Agreement or the Delaware Act would require the vote or consent of a greater percentage of the Outstanding Units or of any class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement.

(c) After such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 16.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

Section 16.3 *Certificate of Merger.*

Upon the required approval by the General Partner and the Limited Partners of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

Section 16.3 *Effect of Merger.*

(a) At the effective time of the certificate of merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) A merger or consolidation effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another having occurred.

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ARTICLE XVII  
RIGHT TO ACQUIRE UNITS

Section 17.1 *Right to Acquire Units.*

(a) Notwithstanding any other provision of this Agreement, if at any time not more than 20% of the total Units of any class then Outstanding are held by Persons other than the General Partner and its Affiliates, the General Partner shall then have the right, which right it may assign and transfer to the Partnership or any Affiliate of the General Partner, exercisable in its sole discretion, to purchase all, but not less than all, of the Units of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 17.1(c) is mailed, and (y) the highest cash price paid by the General Partner or any of its Affiliates for any such Unit purchased during the 90-day period preceding the date that the notice described in Section 17.1(c) is mailed.

(b) Notwithstanding any other provision of this Agreement, if at any time after the expiration of the Subordination Period and the earlier to occur of (i) the fifth anniversary of the Effective Time or (ii) the issuance of 909,000 Senior Subordinated Units and Class B Common Units in the aggregate pursuant to Section 4.6, the Partnership acquired through purchase or exchange, in a twelve-month period, 66 2/3% or more of the total Class B Common Units, the Partnership shall then have the right, which it may not assign or transfer, exercisable in its sole discretion, to purchase all, but not less than all, of the remaining Class B Common Units then Outstanding during the following twelve-month period, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 17(c) is mailed, and (y) the highest cash price paid by the Partnership for any such Unit purchased during the 90-day period preceding the date that the notice described in Section 17(c) is mailed.

(c) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Units granted pursuant to Section 17.1(a) or the Partnership elects to exercise the right granted pursuant to Section 17(b) to purchase Class B Common Units, the General Partner or the Partnership, as the case may be, shall deliver to the Transfer Agent notice of such election to purchase (the "Notice of Election to Purchase") and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of such Units (as of a Record Date selected by the General Partner) at least 10, but not more than 60 days prior to the Purchase Date. Such Notice of Election to Purchase shall also be published for a period of at least three consecutive days in at least two daily newspapers of general circulation printed in the English language and published in the Borough of Manhattan, New York. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 17.1(a)) at which Units will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Units, upon surrender of Certificates representing such Units in exchange for payment at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which the Units are listed or admitted to trading. Any such Notice of Election to Purchase mailed to a Record Holder of Units at his

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address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of the Units to be purchased in accordance with this Section 17.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Units subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Units (including any rights pursuant to Articles IV, V and XIV) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 17.1(a)) for Units therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Units, and such Units shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the owner of all such Units from and after the Purchase Date and shall have all rights as the owner of such Units (including all rights as owner of such Units pursuant to Articles IV, V and XIV).

(d) At any time from and after the Purchase Date, a holder of an Outstanding Unit subject to purchase as provided in this Section 17.1 may surrender his Certificate evidencing such Unit to the Transfer Agent in exchange for payment of the amount described in Section 17.1(a), therefor, without interest thereon.

## ARTICLE XVIII GENERAL PROVISIONS

### Section 18.1 *Addresses and Notices.*

Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner or Assignee at the address described below. Any notice, payment or report to be given or made to a Partner or Assignee hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Unit at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Unit or the Partnership Interest of a General Partner by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 18.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it,

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such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner or Assignee at the principal office of the Partnership for a period of one year from the date of the giving or making of such notice, payment or report to the other Partners and Assignees. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 1.3. The General Partner may rely and shall be protected in relying on any notice or other document from a Partner, Assignee or other Person if believed by it to be genuine.

Section 18.2 *References.*

Except as specifically provided otherwise, references to “Articles” and “Sections” are to Articles and Sections of this Agreement.

Section 18.3 *Pronouns and Plurals.*

Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 18.4 *Further Action.*

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 18.5 *Binding Effect.*

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 18.6 *Integration.*

This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 18.7 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of or shall be enforceable by, any creditor of the Partnership.

Section 18.8 *Waiver.*

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a

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breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 18.9 *Counterparts*.

This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Unit, upon accepting the certificate evidencing such Unit or executing and delivering a Transfer Application as herein described, independently of the signature of any other party.

Section 18.10 *Applicable Law*.

This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 18.11 *Invalidity of Provisions*.

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 18.12 *Consent of Partners*.

Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

STAR GAS LLC

By:           /s/ Joseph P. Cavanaugh          

Name: Joseph P. Cavanaugh  
Title: Executive Vice President

**LIMITED PARTNERS:**

All Limited Partners now and hereafter admitted as limited partners of the Partnership, pursuant to the Powers of Attorney now and hereafter executed in favor of and granted and delivered to, the General Partner.

By: STAR GAS LLC

General Partner, as attorney-in-fact for all Limited Partners pursuant to the Powers of Attorney granted pursuant to Section 1.4

By:           /s/ Joseph P. Cavanaugh          

Name: Joseph P. Cavanaugh  
Title: Executive Vice President

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EXHIBIT A

**to the Amended and Restated  
Agreement of Limited Partnership of  
STAR GAS PARTNERS, L.P.**

**Certificate Evidencing Common Units  
Representing Limited Partner Interests  
STAR GAS PARTNERS, L.P.**

No. Common Units

**STAR GAS, LLC**, a Delaware limited liability company, as the General Partner of **STAR GAS PARTNERS, L.P.**, a Delaware limited partnership (the "*Partnership*"), hereby certifies that \_\_\_\_\_ (the "*Holder*") is the registered owner of \_\_\_\_\_ Common Units representing limited partner interests in the Partnership (the "*Common Units*") transferable on the books of the Partnership, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed and accompanied by a properly executed application for transfer of the Common Units represented by this Certificate. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Agreement of Limited Partnership of STAR GAS PARTNERS, L.P., as amended, supplemented or restated from time to time (the "*Partnership Agreement*"). Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at 2187 Atlantic Street, Stamford, Connecticut 06912-0011. Capitalized terms used herein but not defined shall have the meaning given them in the Partnership Agreement.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (iii) granted the powers of attorney provided for in the Partnership Agreement and (iv) made the waivers and given the consents and approvals contained in the Partnership Agreement.

This Certificate shall not be valid for any purpose unless it has been countersigned and registered by the Transfer Agent and Registrar.

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Date: \_\_\_\_\_

**STAR GAS LLC,**  
as General Partner

Countersigned and Registered by:

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

President

\_\_\_\_\_  
as Transfer Agent and Registrar

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

Secretary

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

Authorized Signature

**[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 IN ACT
TEN ENT-	as tenants by the entireties	Custodian
JT TEM-	as joint tenants with right of survivorship and not as tenants in common	_____
		(Cust) (Minor)
		under Uniform Gifts to Minors Act
		_____
		State

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF COMMON UNITS  
in  
STAR GAS PARTNERS, L.P.**

**IMPORTANT NOTICE REGARDING INVESTOR RESPONSIBILITIES  
DUE TO TAX SHELTER STATUS OF STAR GAS PARTNERS, L.P.**

You have acquired an interest in Star Gas Partners, L.P., 2187 Atlantic Street, Stamford, Connecticut 06912-0011, whose taxpayer identification number is 06-1437793. The Internal Revenue Service has issued Star Gas Partners, L.P. the following tax shelter registration number: \_\_\_\_\_

**YOU MUST REPORT THIS REGISTRATION NUMBER TO THE INTERNAL REVENUE SERVICE IF YOU CLAIM ANY DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME BY REASON OF YOUR INVESTMENT IN STAR GAS PARTNERS, L.P.**

You must report the registration number as well as the name and taxpayer identification number of Star Gas Partners, L.P. on Form 8271. FORM 8271 MUST BE ATTACHED TO THE RETURN ON WHICH YOU CLAIM THE DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOMES BY REASON OF YOUR INVESTMENT IN STAR GAS, PARTNERS, L.P.

If you transfer your interest in Star Gas Partners, L.P. to another person, you are required by the Internal Revenue Service to keep a list containing (a) that person's name, address and taxpayer identification number, (b) the date on which you transferred the interest and (c) the name, address and tax shelter registration number of Star Gas Partners, L.P. If you do not want to keep such a list, you must (1) send the information specified above to the Partnership, which will keep the list for this tax shelter, and (2) give a copy of this notice to the person to whom you transfer your interest. Your failure to comply with any of the above-described responsibilities

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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.

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**FOR VALUE RECEIVED,** \_\_\_\_\_ hereby assigns, conveys, sells and transfers unto

\_\_\_\_\_  
(Please print or typewrite name and address of Assignee)

\_\_\_\_\_  
(Please print or typewrite name and address of Assignee)

\_\_\_\_\_ Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact with full power of substitution to transfer the same on the books of Star Gas Partners. L.P.

Date: \_\_\_\_\_

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular, without alteration, enlargement or change.

**SIGNATURE(S) MUST BE GUARANTEED  
BY A MEMBER FIRM OF THE NATIONAL  
ASSOCIATION OF SECURITIES DEALERS,  
INC. OR BY A COMMERCIAL BANK OR  
TRUST COMPANY**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

**SIGNATURE(S) GUARANTEED**

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer and an Application for Transfer of Common Units has been executed by a transferee either (a) on the form set forth below or (b) on a separate application that the Partnership will furnish on request without charge. A transferor of the Common Units shall have no duty to the transferee with respect to execution of the transfer application in order for such transferee to obtain registration of the transfer of the Common Units.

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APPENDIX A

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer and an Application for Transfer of Common Units has been executed by a transferee either (a) on the form set forth below or (b) on a separate application that the Partnership will furnish on request without charge. A transferor of the Common Units shall have no duty to the transferee with respect to execution of the transfer application in order for such transferee to obtain registration of the transfer of the Common Units.

APPLICATION FOR TRANSFER OF COMMON UNITS

The undersigned ("Assignee") hereby applies for transfer to the name of the Assignee of the Common Units evidenced hereby.

The Assignee (a) requests admission as a Substituted Limited Partner and agrees to comply with and be bound by, and hereby executes, the Amended and Restated Agreement of Limited Partnership of Star Gas Partners, L.P., as amended, supplemented or restated to the date hereof (the "Partnership Agreement"), (b) represents and warrants that the Assignee has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (c) appoints the General Partner and, if a Liquidator shall be appointed, the Liquidator of the Partnership as the Assignee's attorney-in-fact to execute, swear to, acknowledge and file any document, including, without limitation, the Partnership Agreement and any amendment thereto and the Certificate of Limited Partnership of the Partnership and any amendment thereto, necessary or appropriate for the Assignee's admission as a Substituted Limited Partner and as a party to the Partnership Agreement, (d) gives the powers of attorney provided for in the Partnership Agreement and (e) makes the waivers and gives the consents and approvals contained in the Partnership Agreement. Capitalized terms not defined herein have the meanings assigned to such terms in the Partnership Agreement.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignee

\_\_\_\_\_  
Social Security or other identifying number of Assignee

\_\_\_\_\_  
Name and Address of Assignee

\_\_\_\_\_  
Purchase Price including commissions, if any

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Type of Entity (check one):

Individual Trust                  Partnership Other (specify) \_\_\_\_\_                  Corporation

Nationality (check one):

U.S. Citizen. Resident or Domestic Entity                  Non-resident Alien  
Foreign Corporation

If the U.S. Citizen. Resident or Domestic Entity box is checked, the following certification must be completed.

Under Section 1445(e) of the Internal Revenue Code of 1986, as amended (the "Code"), the Partnership must withhold tax with respect to certain transfers of property if a holder of an interest in the Partnership is a foreign person. To inform the Partnership that no withholding is required with respect to the undersigned interestholder's interest in it, the undersigned hereby certifies the following (or, if applicable, certifies the following on behalf of the interestholder).

Complete Either A or B:

A. Individual Interestholder

1. I am not a non-resident alien for purposes of U.S. income taxation.
2. My U.S. taxpayer identification number (Social Security Number) is
3. My home address is

B. Partnership, Corporation or Other Interestholder

1. \_\_\_\_\_ is not a foreign  
(Name of Interestholder)

corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Treasury Regulations).

2. The interestholder's U.S. employer identification number is
3. The interestholder's office address and place of incorporation (if applicable) is

The interestholder agrees to notify the Partnership within sixty (60) days of the date the interestholder becomes a foreign person. The interestholder understands that this certificate may



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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

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(Name of Interestholder)

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Signature and Date

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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.

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**EXHIBIT B**

**to the Amended and Restated  
Agreement of Limited Partnership of  
STAR GAS PARTNERS, L.P.**

**Certificate Evidencing Senior, Subordinated Units  
Representing Limited Partner Interests'  
STAR GAS PARTNERS, L.P.**

No. Senior Subordinated Units

**STAR GAS, LLC**, a Delaware limited liability company, as the General Partner of **STAR GAS PARTNERS, L.P.**, a Delaware limited partnership (the "*Partnership*"), hereby certifies that \_\_\_\_ (the "*Holder*") is the registered owner of \_\_ Senior Subordinated Units representing limited partner interests in the Partnership (the "*Senior Subordinated 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 Senior Subordinated Units represented by this Certificate. The rights, preferences and limitations of the Senior Subordinated Units are set forth in, and this Certificate and the Senior Subordinated Units represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Agreement of Limited Partnership of STAR GAS PARTNERS, L.P., as amended, supplemented or restated from time to time (the "*Partnership Agreement*"). Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at 2187 Atlantic Street, Stamford, Connecticut 06912-0011. Capitalized terms used herein but not defined shall have the meaning given them in the Partnership Agreement.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (iii) granted the powers of attorney provided 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.

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Date: \_\_\_\_\_

**STAR GAS LLC,**  
as General Partner

Countersigned and Registered by:

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

President

\_\_\_\_\_  
as Transfer Agent and Registrar

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

Secretary

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

Authorized Signature

**[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 IN ACT-
TEN ENT-	as tenants by the entireties	Custodian
JT TEM-	as joint tenants with right of survivorship and not as tenants in common	<hr/>
		(Cust) (Minor)
		under Uniform Gifts to Minors Act
		<hr/>
		State

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF SENIOR SUBORDINATED UNITS  
in  
STAR GAS PARTNERS, L.P.**

**IMPORTANT NOTICE REGARDING INVESTOR RESPONSIBILITIES  
DUE TO TAX SHELTER STATUS OF STAR GAS PARTNERS, L.P.**

You have acquired an interest in Star Gas Partners, L.P., 2187 Atlantic Street, Stamford, Connecticut 06912-0011, whose taxpayer identification number is 06-1437793. The Internal Revenue Service has issued Star Gas Partners, L.P. the following tax shelter registration number: \_\_\_\_\_

YOU MUST REPORT THIS REGISTRATION NUMBER TO THE INTERNAL REVENUE SERVICE IF YOU CLAIM ANY DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME BY REASON OF YOUR INVESTMENT IN STAR GAS PARTNERS, L.P.

You must report the registration number as well as the name and taxpayer identification number of Star Gas Partners, L.P. on Form 8271. FORM 8271 MUST BE ATTACHED TO THE RETURN ON WHICH YOU CLAIM THE DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOMES BY REASON OF YOUR INVESTMENT IN STAR GAS, PARTNERS, L.P.

If you transfer your interest in Star Gas Partners, L.P. to another person, you are required by the Internal Revenue Service to keep a list containing (a) that person's name, address and taxpayer identification number, (b) the date on which you transferred the interest and (c) the name, address and tax shelter registration number of Star Gas Partners, L.P. If you do not want to keep such a list, you must (1) send the information specified above to the Partnership, which will keep the list for this tax shelter, and (2) give a copy of this notice to the person to whom you transfer your interest. Your failure to comply with any of the above-described responsibilities

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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.

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**FOR VALUE RECEIVED,** \_\_\_\_\_ hereby assigns, conveys, sells and transfers unto

\_\_\_\_\_  
(Please print or typewrite name  
and address of Assignee)

\_\_\_\_\_  
(Please print or typewrite name  
and address of Assignee)

\_\_\_\_\_ Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact with full power of substitution to transfer the same on the books of Star Gas Partners, L.P.

Date: \_\_\_\_\_

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular, without alteration, enlargement or change.

**SIGNATURE(S) MUST BE GUARANTEED  
BY A MEMBER FIRM OF THE NATIONAL  
ASSOCIATION OF SECURITIES DEALERS,  
INC. OR BY A COMMERCIAL BANK OR  
TRUST COMPANY**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

**SIGNATURE(S) GUARANTEED**

No transfer of the Senior Subordinated Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Senior Subordinated Units to be transferred is surrendered for registration or transfer and an Application for Transfer of Senior Subordinated 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 Senior Subordinated 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 Senior Subordinated Units.

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APPENDIX A

No transfer of the Senior Subordinated Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Senior Subordinated Units to be transferred is surrendered for registration or transfer and an Application for Transfer of Senior Subordinated 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 Senior Subordinated 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 Senior Subordinated Units.

APPLICATION FOR TRANSFER OF SENIOR SUBORDINATED UNITS

The undersigned ("Assignee") hereby applies for transfer to the name of the Assignee of the Senior Subordinated 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 Star Gas Partners, L.P., as amended, supplemented or restated to the date hereof (the "Partnership Agreement"), (b) represents and warrants that the Assignee has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (c) appoints the General Partner and, if a Liquidator shall be appointed, the Liquidator of the Partnership as the Assignee's attorney-in-fact to execute, swear to, acknowledge and file any document, including, without limitation, the Partnership Agreement and any amendment thereto and the Certificate of Limited Partnership of the Partnership and any amendment thereto, necessary or appropriate for the Assignee's admission as a Substituted Limited Partner and as a party to the Partnership Agreement, (d) gives the powers of attorney provided for in the Partnership Agreement and (e) makes the waivers and gives the consents and approvals contained in the Partnership Agreement. Capitalized terms not defined herein have the meanings assigned to such terms in the Partnership Agreement.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignee

\_\_\_\_\_  
Social Security or other identifying number of Assignee

\_\_\_\_\_  
Name and Address of Assignee

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Purchase Price including commissions, if any

Type of Entity (check one):

Individual          Partnership          Corporation  
Trust              Other (specify) \_\_\_\_\_

Nationality (check one):

U.S. Citizen, Resident or Domestic Entity          Non-resident Alien  
Foreign Corporation

If the U.S. Citizen, Resident or Domestic Entity box is checked, the following certification must be completed.

Under Section 1445(e) of the Internal Revenue Code of 1986, as amended (the "Code"), the Partnership must withhold tax with respect to certain transfers of property if a holder of an interest in the Partnership is a foreign person. To inform the Partnership that no withholding is required with respect to the undersigned interestholder's interest in it, the undersigned hereby certifies the following (or, if applicable, certifies the following on behalf of the interestholder).

Complete Either A or B:

A. Individual Interestholder

1. I am not a non-resident alien for purposes of U.S. income taxation.
2. My U.S. taxpayer identification number (Social Security Number) is
3. My home address is

B. Partnership, Corporation or Other Interestholder

1. \_\_\_\_\_ is not a foreign  
(Name of Interestholder)

corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Treasury Regulations).

2. The interestholder's U.S. employer identification number is
3. The interestholder's office address and place of incorporation (if applicable) is

The interestholder agrees to notify the Partnership within sixty (60) days of the date the interestholder becomes a foreign person. The interestholder understands that this certificate may



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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

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(Name of Interestholder)

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Signature and Date

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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.

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

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**AMENDED AND RESTATED AGREEMENT OF LIMITED  
PARTNERSHIP OF STAR GAS PROPANE, L.P.**

**THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF STAR GAS PROPANE, L.P.**, dated as of March 26, 1999, is entered into by and among Star Gas LLC, a Delaware limited liability company, as the General Partner, and Star Gas Partners, L.P., a Delaware limited partnership, as the Limited Partner, together with any other Persons who become Partners in the Partnership as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**RECITALS:**

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

*WHEREAS*, the Partnership, the MLP, Petro and Mergeco have entered into that Merger Agreement dated as of October 22, 1998, as amended and restated as of February 3, 1999 as further amended from time to time (the "Petro Merger Agreement") providing for the merger (the "Merger") of Mergeco with and into Petro; and

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

*WHEREAS*, the Merger Agreement and the transactions contemplated thereby (including, without limitation, the form of this Agreement and the amendments effected hereby and the withdrawal of Star Gas as the general partner of the Partnership and the MLP and the election of Star Gas LLC as the successor general partner of the Partnership and the MLP) have been submitted to, and approved by the requisite vote of, the Limited Partners and the limited partners of the MLP; and

*WHEREAS*, the General Partner has the authority to adopt certain amendments to this Agreement without the approval of any Limited Partner or limited partner of the MLP to reflect, among other things: (i) subject to the terms of Section 4.4, any change that is necessary or desirable in connection with the authorization for issuance of any class or series of Partnership Securities pursuant to Section 4.4 of the MLP Agreement and (ii) a change that, in the sole discretion of the General Partner, does not adversely affect the limited partner of the MLP in any material respect.

*NOW, THEREFORE*, the Original Agreement is hereby amended and, as so amended, is restated in its entirety as follows:

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ARTICLE I  
ORGANIZATIONAL MATTERS

Section 1.1 *Formation and Continuation.*

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

Section 1.2 *Name.*

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

Section 1.3 *Registered Office; Principal Office.*

Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 32 Loockerman Square, Suite L-100, Dover, Delaware 19904, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Prentice-Hall Corporation System, Inc. The principal office of the Partnership shall be located at, and the address of the General Partner shall be, 2187 Atlantic Street, Stamford, Connecticut 06902, or such other place as the General Partner may from time to time designate by notice to the Limited Partner. 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.

Section 1.4 *Power of Attorney.*

(a) The Limited Partner hereby constitutes and appoints each of the General Partner and, if a Liquidator shall have been selected pursuant to Section 13.3, the Liquidator, severally (and any successor to either thereof by merger, transfer, assignment, election or otherwise) and each of their authorized officers and attorneys-in-fact, with full power of



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substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead, to:

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

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

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

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of the Limited Partner and the transfer of all or any portion of the Limited Partner's Partnership Interest and shall extend to the Limited Partner's heirs, successors, assigns and personal representatives. The

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Limited Partner hereby agrees to be bound by any representation made by the General Partner or the Liquidator acting in good faith pursuant to such power of attorney; and the Limited Partner 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. The Limited Partner shall execute and deliver to the General Partner or the Liquidator, within 15 days after receipt of the General Partner's or the Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 1.5 *Term*.

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

Section 1.6 *Possible Restrictions on Transfer*.

The General Partner may impose restrictions on the transfer of Partnership Interests if a subsequent Opinion of Counsel determines that such restrictions are necessary to avoid a significant risk of the Partnership's becoming taxable as a corporation or otherwise as an entity for federal income tax purposes. The restrictions may be imposed by making such amendments to this Agreement as the General Partner in its sole discretion may determine to be necessary or appropriate to impose such restrictions.

ARTICLE II  
DEFINITIONS

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

*"Additional Limited Partner"* means a Person admitted to the Partnership as a Limited Partner pursuant to Section 1.5 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

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of this Agreement or otherwise to the extent they exceed offsetting increases to such Partner's Capital Account that are reasonably expected to occur during (or prior to) the year in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 5.1(d)(i) or 5.1(d)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

*"Adjusted Property"* means any property the Carrying Value of which has been adjusted pursuant to Section 4.5(d)(i) or 4.5(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.

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

*"Agreed Value"* of any Contributed Property means the fair market value of such property or other consideration at the time of contribution as determined by the General Partner using such reasonable method of valuation as it may adopt. Subject to Section 4.5(d)(i), the General Partner shall, in its sole discretion, use such method as it deems reasonable and appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Partnership in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

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

*"Audit Committee"* means a committee of the Board of Directors of the General Partner composed entirely of two or more directors who are neither members, officers nor employees of the General Partner or members, stockholders (other than holders of Common Units or Senior Subordinated Units) officers, directors or employees of any Affiliate of the General Partner.

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

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

(b) the amount of cash reserves that is necessary or appropriate in the reasonable discretion of the General Partner to (i) provide for the proper conduct of the business

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of the Partnership Group (including reserves for future capital expenditures) subsequent to such Quarter, (ii) provide funds for distributions under Sections 5.4(a)(i), (ii), and (iii) or 5.4(b)(i) of the MLP Agreement in respect of any one or more of the next four Quarters, or (iii) comply with applicable law or any debt instrument or other agreement or obligation to which any member of the Partnership Group is a party or its assets are subject; *provided, however*, that the General Partner may not establish cash reserves for distributions pursuant to Section 5.4(a)(iii) of the MLP Agreement unless the General Partner has determined that in its judgment the establishment of reserves will not prevent the MLP from distributing the Minimum Quarterly Distribution on all Common Units and any Common Unit Arrearages thereon with respect to the next four Quarters. Notwithstanding the foregoing (x) disbursements (including, without limitation, contributions to an OLP Subsidiary or disbursements on behalf of an OLP Subsidiary) made or reserves established, increased or reduced after the end of any Quarter but on or before the date on which the Partnership makes its distribution of Available Cash in respect of such Quarter pursuant to Section 5.3(a) shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, with respect to such Quarter if the General Partner so determines and (y) "Available Cash" with respect to any period shall not include any cash receipts or reductions in reserves or take into account any disbursements made or reserves established after the Liquidation Date.

*"Book-Tax Disparity"* means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Partner's share of the Partnership's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner's Capital Account balance as maintained pursuant to Section 4.5 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.

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

*"Capital Account"* means the capital account maintained for a Partner pursuant to Section 4.5.

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

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

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

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“*Common Unit*” means a unit representing a fractional part of the partnership interests of all limited partners and assignees and having the rights and obligations specified with respect to Common Units in the MLP Agreement. All references herein to Common Units after the expiration of the Subordination Period shall be deemed to be references to both Class A Common Units and Class B Common Units, unless otherwise indicated.

“*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 (or deemed contributed to the Partnership on termination and reconstitution thereof pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 4.5(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

“*Conveyance and Contribution Agreements*” means collectively, (a) that certain Conveyance and Contribution Agreement, dated as of the Effective Time, among the Partnership, the MLP, Petro and the General Partner and (b) that certain Conveyance and Contribution Agreement among the Partnership, the MLP, Petro and Petro Holdings, 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 5.1(d)(x).

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

“*Departing Partner*” means a former General Partner, from and after the effective date of any withdrawal or removal of such former General Partner pursuant to Section 12.1 or Section 12.2, including the Initial General Partner from and after the Initial Closing Date.

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

“*Effective Time*” means the effective time of the Merger, which shall be the later to occur of (i) the filing in the office of the Secretary of State of the State of Delaware of a properly executed certificate of merger and (ii) the filing with the Department of State of Minnesota of properly executed articles of merger, or such later date and time as may be set forth in such certificate of merger and articles of merger.

“*Equity Registration Statement*” means the Registration Statement on Form S-3 (Registration No. 333-68329), 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 Equity Offering.

“*Event of Withdrawal*” has the meaning assigned to such term in Section 12.1(a).

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

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

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

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

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

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

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

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

“*Limited Partner*” means the MLP, each Substituted Limited Partner, if any, each Additional Limited Partner and any Departing Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 12.3, but excluding any such Person from and after the time it withdraws from the Partnership.

“*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 13.2, the date on which the applicable time period during which the Partners 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 the General Partner or other Person approved pursuant to Section 13.3 who performs the functions described therein.

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

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

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*“Merger Agreement”* has the meaning assigned to such term in Section 15.1.

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

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

*“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 by the Partnership, the Partnership’s Carrying Value of such property (as adjusted pursuant to Section 4.5(d)(ii)) at the time such property is distributed, reduced by any indebtedness either assumed by such Partner upon such distribution or to which such property is subject at the time of distribution, in either case, as determined under Section 752 of the Code.

*“Net Income”* means, for any taxable year, the excess, if any, of the Partnership’s items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership’s items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Income shall be determined in accordance with Section 4.5(b) and shall not include any items specially allocated under Section 5.1(d).

*“Net Loss”* means, for any taxable year, the excess, if any, of the Partnership’s items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership’s items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Loss shall be determined in accordance with Section 4.5(b) and shall not include any items specially allocated under Section 5.1(d).

*“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 (including, without limitation, such amounts recognized through an OLP Subsidiary, if applicable) after the Liquidation Date. The items included in the determination of Net Termination Gain shall be determined in accordance with Section 4.5(b) and shall not include any items of income, gain or loss specially allocated under Section 5.1(d).

*“Net Termination Loss”* means, for any taxable period, the sum, if negative, of all items of income, gain, loss or deduction recognized by the Partnership (including, without limitation,

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such amounts recognized through an OLP Subsidiary, if applicable) after the Liquidation Date. The items included in the determination of Net Termination Loss shall be determined in accordance with Section 4.5(b) and shall not include any items of income, gain or loss specially allocated under Section 5.1(d).

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

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

*“Nonrecourse Deductions”* means any and all items of loss, deduction or 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).

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

*“OLP Subsidiary”* means a Subsidiary of the Partnership.

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

*“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 Partner.

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



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

*“Partnership Interest”* means the interest of a Partner in the Partnership.

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

*“Percentage Interest”* means (a) as to the General Partner, in its capacity as such, 0.01% and (b) as to the Limited Partner, 99.99%.

*“Person”* means an individual or a corporation, partnership, trust, unincorporated organization, association or other entity.

*“Petro”* means Petroleum Heat and Power Co., Inc., a Minnesota corporation, an indirect subsidiary of the Partnership.

*“Petro Class A Common Stock”* means the Class A Common Stock, par value \$.10 per share, of Petro.

*“Petro Class C Common Stock”* means the Class C Common Stock, par value \$.10 per share, of Petro.

*“Proxy Statement”* means the Registration Statement on Form S-4 (Registration No. 333-66005) as it has been or as it may be amended or supplemented from time to time, filed jointly by the Partnership and Petro relating to the Merger and the transactions contemplated thereby.

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

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

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

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

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

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

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

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

“*Substituted Limited Partner*” means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 11.3 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 15.2(b).

“*Underwriter*” means each Person named as an underwriter in Schedule 1 to the Underwriting Agreement who purchases Common Units pursuant thereto.

“*Underwriting Agreement*” means the Underwriting Agreement, relating to the Equity Offering, dated March 26, 1999, among the Underwriters, the MLP and other parties providing for the purchase of Common Units by such Underwriters.

“*Unit*” has the meaning assigned to such term in the MLP Agreement.

“*Unrealized Gain*” attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the fair market value of such property as of such date (as determined under Section 4.5(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.5(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 4.5(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 4.5(d)).

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*“Withdrawal Opinion of Counsel”* has the meaning assigned to such term in Section 12.1(b).

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

### ARTICLE III

#### PURPOSE

##### Section 3.1 *Purpose and Business.*

The purpose and nature of the business to be conducted by the Partnership shall be to (a) acquire, manage and operate the assets of the Partnership and any similar assets or properties, and to engage directly in, or to enter into or form any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any type of business or activity engaged in by Star Gas or its Affiliates immediately prior to the Initial Closing Date 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, (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 is approved by the General Partner and which may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity, and (c) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to the MLP or any Subsidiary of the Partnership or the MLP. The General Partner has no obligation or duty to the Partnership or the Limited Partner to propose or approve, and in its sole discretion may decline to propose or approve, the conduct by the Partnership of any business.

##### Section 3.2 *Powers.*

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

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ARTICLE IV  
CONTRIBUTIONS

Section 4.1 *Initial Contributions.*

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

Section 4.2 *Contributions at the Initial Closing Date; Contributions at the Effective Time.*

(a) On the Initial Closing Date, Star Gas, Silgas, Inc. and Silgas of Illinois, Inc. conveyed substantially all of their assets (other than \$83.9 million in cash and certain non-operating assets) into the Partnership and received consideration consisting of (i) the continuation of Star Gas' general partner interest in the Partnership consisting of a Partnership Interest representing a 1.0101% Percentage Interest, (ii) a limited partner interest in the Partnership, which was contributed by Star Gas, Silgas, Inc. and Silgas of Illinois, Inc. to the MLP, and (iii) the Partnership's assumption of, or taking of assets subject to, certain indebtedness and other liabilities, including the Partnership's assumption of the payment obligations of certain indebtedness of Star Gas. The Partnership Interest contributed by Star Gas, Silgas, Inc. and Silgas of Illinois, Inc. pursuant to the provisions of Sections 4.2(a) to the MLP, represented a 98.9899% Percentage Interest in the Partnership.

(b) On the Initial Closing Date, the MLP contributed to the Partnership in respect of its Partnership Interest the net proceeds to the MLP from the issuance of the Common Units pursuant to the Initial Offering.

(c) (i) At the Effective Time and pursuant to the Conveyance and Contribution Agreements, Petro contributed to the MLP all of its general partner interest in the Partnership (other than a portion of such interest with a value of \$1,000), all of its general partner interest in the MLP (other than a portion of such interest with a value of \$1,000) and all 2,396,078 Old Subordinated Units (all of which it purchased from Star Gas in exchange for a note of equivalent value) in exchange for 102,848 newly issued Common Units, 1,706,246 newly issued Senior Subordinated Units and a promissory note in an amount equal to the excess of the value of the Old Subordinated Units and general partner interests assigned to the MLP over the value of the Common Units and Senior Subordinated Units issued in exchange therefor. The Old Subordinated Units were cancelled.

(ii) At the Effective Time and pursuant to the Conveyance and Contribution Agreements, the General Partner contributed 11,370 shares of Petro Class A and Class C Common Stock to the Partnership in exchange for a .01% general partner interest in the Partnership and contributed 2,263,584 shares of Petro Class A and Class C Common Stock to the MLP in exchange for a 1.99% general partner interest in the

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MLP represented by 324,100 General Partner Units. At such time, the general partner interests in the MLP and the Partnership held by the MLP were cancelled.

(iii) At the Effective Time and pursuant to the Exchange Agreement, certain stockholders of Petro contributed (A) 2,769,653 shares of Petro Class A and Class C Common Stock to the MLP in exchange for 396,559 Junior Subordinated Units and (B) 6,595,477 shares of Petro Class A and Class C Common Stock to the MLP in exchange for 775,496 Senior Subordinated Units.

(iv) At the Effective Time and pursuant to the Merger, the remaining holders of Petro Class A and Class C Common Stock received 1,706,246 Senior Subordinated Units from Petro in exchange for their shares of Petro Class A and Class C Common Stock and the holders of Petro's 1998 Junior Convertible Preferred Stock received 102,848 Common Units from Petro in exchange for their shares of 1998 Junior Convertible Preferred Stock.

#### Section 4.3 *Additional Contributions.*

(a) With the consent of the General Partner, the Limited Partner may, but shall not be obligated to, make additional Capital Contributions to the Partnership. Contemporaneously with the making of any such additional Capital Contributions by the Limited Partner, the General Partner may but shall not be obligated to make an additional Capital Contribution to the Partnership in an amount equal to 0.01% of the Net Agreed Value of the additional Capital Contribution then made by the Limited Partner. Except as set forth in the immediately preceding sentence and Article XIII, the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

(b) The Partnership may not issue additional limited partner interests.

#### Section 4.4 *No Preemptive Rights.*

No Person shall have any preemptive, preferential or other similar right with respect to issuance or sale of any class or series of Partnership Interests, any option, right, warrant or appreciation rights relating thereto, or any other type of equity interest that the Partnership may lawfully issue, or any unsecured or secured debt obligation of the Partnership that is convertible into any class or series of equity interests of the Partnership.

#### Section 4.5 *Capital Accounts.*

(a) The Partnership shall maintain for each Partner owning a Partnership Interest a separate Capital Account with respect to such Partnership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions made to the Partnership with respect to such Partnership Interest pursuant to this Agreement and (ii) all items of Partnership income and gain (including, without limitation, income and gain exempt from tax) computed in accordance with Section 4.5(b) and allocated with respect to such Partnership Interest pursuant to Section

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5.1, and decreased by (x) the amount of cash or the Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest pursuant to this Agreement and (y) all items of Partnership deduction and loss computed in accordance with Section 4.5(b) and allocated with respect to such Partnership Interest pursuant to Section 5.1.

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

(i) Solely for purposes of this Section 4.5, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner) of all property owned by any OLP 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 5.1.

(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.

(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 4.5(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;

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*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 5.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

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

(d) (i) Consistent with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional 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 5.1(c). In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to the issuance of additional 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 sole discretion to be reasonable) to arrive at a fair market value for individual properties.

(ii) In accordance with Treasury Regulation Section 1.704-1 (b)(2)(iv)(f), immediately prior to any actual or deemed distribution to a Partner of any Partnership property (other than a distribution of cash that is not in redemption or retirement of a Partnership Interest), the Capital Accounts of all Partners and the Carrying Value of all Partnership property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized in a sale of such property immediately prior to such distribution for an amount equal to its fair market value, and had been allocated to the Partners, at such time, pursuant to Section 5.1(c). Any Unrealized Gain or Unrealized Loss attributable to such property shall be allocated in the same manner as Net Termination Gain or Net Termination Loss

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pursuant to Section 5.1(c); *provided, however* that, in making any such allocation, Net Termination Gain or Net Termination Loss actually realized shall be allocated first. In determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to a distribution shall (A) in the case of an actual distribution which is not made pursuant to Section 13.4, be determined and allocated in the same manner as that provided in Section 4.5(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 13.3 or 13.4, be determined and allocated by the Liquidator using such reasonable method of valuation as it may adopt.

Section 4.6 *Interest and Withdrawal.*

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

ARTICLE V  
DISTRIBUTIONS

Section 5.1 *Allocations for Capital Account Purposes.*

For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss and deduction (computed in accordance with Section 4.5(b)) shall be allocated among the Partners in each taxable year (or portion thereof) as provided hereinbelow.

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

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

(ii) *Second*, the balance, if any, 100% to the General Partner and the Limited Partner in accordance with their respective Percentage Interests.

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

(i) *First*, 100% to the General Partner and the Limited Partner in accordance with their respective Percentage Interests; *provided*, that Net Losses shall not



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be allocated pursuant to this Section 5.1(b)(i) to the extent that such allocation would cause any Limited Partner to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account); and

(ii) *Second*, the balance, if any, 100% to the General Partner.

(c) *Net Termination Gains and Losses*. After giving effect to the special allocations set forth in Section 5.1(d), all items of income, gain, loss and deduction taken into account in computing Net Termination Gain or Net Termination Loss for such taxable period shall be allocated in the same manner as such Net Termination Gain or Net Termination Loss is allocated hereunder. All allocations under this Section 5.1(c) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 5.1 and after all distributions of Available Cash provided under Section 5.3 have been made with respect to the taxable period ending on the date of the Partnership's liquidation pursuant to Sections 13.3 and 13.4.

(i) If a Net Termination Gain is recognized (or deemed recognized pursuant to Section 4.5(d)), such Net Termination Gain shall be allocated between the General Partner and the Limited Partner 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; and

(B) *Second*, 100% to the General Partner and the Limited Partner in accordance with their respective Percentage Interests.

(ii) If a Net Termination Loss is recognized (or deemed recognized pursuant to Section 4.5(d)), such Net Termination Loss shall be allocated to the Partners in the following manner:

(A) *First*, 100% to the General Partner and the Limited Partner in proportion to, and to the extent of, the positive balances in their respective Capital Accounts; and

(B) *Second*, the balance, if any, 100% to the General Partner.

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

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

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

(iii) *Allocation of Deductions.* This section is intentionally deleted.

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

(v) *Gross Income Allocations.* In the event any Partner has a deficit balance in its Capital Account at the end of any Partnership taxable period in excess of the sum of (A) the amount such Partner is required to restore pursuant to the provisions of this Agreement and (B) the amount such Partner is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Partner shall be

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pecially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 5.1(d)(v) shall be made only if and to the extent that such Partner would have a deficit balance in its Capital Account as adjusted after all other allocations provided in this Section 5.1 have been tentatively made as if this Section 5.1(d)(v) were not in this Agreement.

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

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

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

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

(x) *Curative Allocation*.

(A) Notwithstanding any other provision of this Section 5.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net

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

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

*Section 5.2 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 5.1.

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

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

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(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 4.5(d)(i) or (ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 5.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of “book” gain or loss is allocated pursuant to Section 5.1.

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

(c) For the proper administration of the Partnership and for the preservation of uniformity of Units of the MLP (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 Units of the MLP (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 5.2(c) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Units of the MLP issued and outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(d) The General Partner in its sole discretion may determine to depreciate or amortize the portion of an adjustment under Section 743(b) of the Code attributable to unrealized appreciation in any Adjusted Property (to the extent of the unamortized Book-Tax Disparity) using a predetermined rate derived from the depreciation or amortization method and useful life applied to the Partnership’s common basis of such property, despite the inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6) and Proposed Treasury Regulation Section 1.197-2(g)(3). If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Units of the MLP 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 class or classes of Units of the MLP that would not have a material adverse effect on the Limited Partner or the holders of any class or classes of Units of the MLP.

(e) Any gain allocated to the Partners upon the sale or other taxable disposition of any Partnership asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 5.2, be characterized as Recapture Income in

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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) The General Partner may adopt such methods of allocation of income, gain, loss or deduction between a transferor and a transferee of a Partnership Interest as it determines necessary, to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

*Section 5.3 Requirement of Distributions.*

(a) Within 45 days following the end of (i) the period beginning on the Initial Closing Date and ending on March 31, 1996 and (ii) each Quarter commencing with the Quarter beginning on April 1, 1996, an amount equal to 100% of Available Cash with respect to such period or Quarter shall be distributed in accordance with this Article V by the Partnership to the Partners in accordance with their respective Percentage Interests. The immediately preceding sentence shall not require any distribution of cash if and to the extent such distribution would be prohibited by applicable law or by any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Partnership is a party or by which it is bound or its assets are subject.

(b) Notwithstanding the foregoing, in the event of the dissolution and liquidation of the Partnership, all proceeds of such liquidation shall be applied and distributed in accordance with, and subject to the terms and conditions of, Section 13.4.

ARTICLE VI

MANAGEMENT AND OPERATION OF BUSINESS

*Section 6.1 Management.*

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and the Limited Partner shall have no right of control or management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or which are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 6.3, shall

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have full power and authority to do all things and on such terms as it, in its sole discretion, may deem necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 and to effectuate the purposes set forth in Section 3.1, including the following:

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

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

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

(iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership, the lending of funds to other Persons (including the MLP, the General Partner and its Affiliates), the repayment of obligations of the Partnership and the making of capital contributions to a Subsidiary;

(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 (including the assets of the Partnership) 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

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partnerships, joint ventures, corporations, limited liability companies or other relationships;

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

(xi) 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.

(b) Notwithstanding any other provision of this Agreement, the MLP Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement, the MLP Agreement, the Underwriting Agreement, the Conveyance and Contribution Agreements, the agreements and other documents filed as exhibits to the Proxy Statement and the Equity Registration Statement, and the other agreements described in or filed as a part of the Proxy Statement and the Equity 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 Proxy Statement and the Equity Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners; and (iii) agrees that the execution, delivery or performance by the General Partner, the MLP, any Group Member or any Affiliate of any of them, of this Agreement or any agreement authorized or permitted under this Agreement, shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partner or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

*Section 6.2 Certificate of Limited Partnership.*

The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act and shall use all reasonable efforts to cause to be filed such other certificates or documents as may be determined by the General Partner in its sole discretion to be reasonable and necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the Limited Partner has 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 in which the Limited Partner has 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 7.4(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 the Limited Partner.



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

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

(b) Except as provided in Articles XIII and XV, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the Partnership's assets in a single transaction or a series of related transactions without the approval of the Limited Partner; *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 Partnership's assets and shall not apply to any forced sale of any or all of the Partnership's assets pursuant to the foreclosure of, or other realization upon, any such encumbrance.

Section 6.4 *Reimbursement of the General Partner.*

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

(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine in its sole discretion, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership (including salary, bonus, incentive compensation and other amounts paid to any Person to perform services for the Partnership or for the General Partner in the discharge of its duties to the Partnership) and (ii) all other necessary or appropriate expenses allocable to the Partnership or otherwise reasonably incurred by the General Partner in connection with operating the Partnership's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership in any reasonable manner determined by the General Partner in its sole discretion. Reimbursements pursuant to this Section 6.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 6.7.

(c) The General Partner, in its sole discretion and without the approval of the Limited Partner (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 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. Expenses incurred by the General Partner in connection with any such plans, programs and practices shall be reimbursed in accordance with Section 6.4(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices

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adopted by the General Partner as permitted by this Section 6.4(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 12.1 or 12.2 or the transferee of or successor to all of the General Partner's Partnership Interest as a general partner in the Partnership pursuant to Section 11.3.

Section 6.5 *Outside Activities.*

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

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

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

(e) The term "Affiliates" when used in this Section 6.5 with respect to the General Partner shall not include any Group Member, the MLP or any Subsidiary of any Group Member or the MLP.

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

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

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

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

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

(e) Neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to, or purchase any property from, the Partnership, directly or indirectly, except pursuant to transactions that are fair and reasonable to the Partnership; *provided, however*,

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that the requirements of this Section 6.6(e) shall be deemed to be satisfied as to (i) the transactions effected pursuant to the Conveyance and Contribution Agreements and any other transactions described in or contemplated by the Proxy Statement, (ii) any transaction approved by Special Approval, (iii) any transaction, the terms of which are no less favorable to the Partnership than those generally being provided to or available from unrelated third parties, or (iv) any transaction that, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership), is equitable to the Partnership.

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

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

#### Section 6.7 *Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee, provided, that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Partnership and, with, respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful; provided, further, no indemnification pursuant to this Section 6.7 shall be available to the General Partner or Petro with respect to their respective obligations incurred pursuant to the Underwriting Agreement or the Conveyance and Contribution Agreements (other than obligations incurred by the General Partner on behalf of the Partnership or the MLP). The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 6.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 6.7(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the

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Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 6.7.

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

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

(e) For purposes of this Section 6.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 6.7(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is in, or not opposed to, the best interests of the Partnership.

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

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

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

(i) No amendment, modification or repeal of this Section 6.7 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnitee under and in accordance with the provisions of this Section 6.7

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as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

*Section 6.8 Liability of Indemnitees.*

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

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

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

*Section 6.9 Resolution of Conflicts of Interest.*

(a) Unless otherwise expressly provided in this Agreement or the MLP Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership, the MLP or the Limited Partner, on the other hand, any resolution or course of action in respect of such conflict of interest shall be permitted and deemed approved by the Limited Partner, and shall not constitute a breach of this Agreement, of the MLP Agreement or of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action is, or by operation of this Agreement is deemed to be, fair and reasonable to the Partnership. The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of a resolution of such conflict or course of action. Any conflict of interest and any resolution of such conflict of interest shall be conclusively deemed fair and reasonable to the Partnership if such conflict of interest or resolution is (i) approved by Special Approval, (ii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iii) fair to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner may also adopt a resolution or course of action that has not received Special Approval. The General Partner (including the Audit 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

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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 or engineering principles or practices; and (D) such additional factors as the General Partner (including the Audit 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 Audit 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, the MLP Agreement or any other agreement contemplated herein or therein 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, 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, the Limited Partner or any limited partner of the Limited Partner, (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 MLP Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation. In addition, any actions taken by the General Partner or such Affiliate consistent with the standards of “reasonable discretion” set forth in the definition of Available Cash shall not constitute a breach of any duty of the General Partner to the Partnership, the Limited Partner or any limited partner of the Limited Partner. The General Partner shall have no duty, express or implied, to sell or otherwise dispose of any asset of the Partnership Group. No borrowing by any Group Member or the approval thereof by the General Partner shall be deemed to constitute a breach of any duty of the General Partner to the Partnership, the Limited Partner or any limited partner of the Limited Partner by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to (A) enable distributions on the General Partner Units under the MLP Agreement to exceed the General Partner’s Percentage Interest or (B) hasten the expiration of the “Subordination Period” under the MLP Agreement or the conversion of any “Senior Subordinated Units” or “Junior Subordinated Units” in the MLP into Class B 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.

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

*Section 6.10 Other Matters Concerning the General Partner.*

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

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of Counsel) of such Persons as to matters that the General Partner reasonably believes to be 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 6.11 Title to Partnership Assets.*

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



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practicable, the General Partner shall use reasonable efforts to effect the transfer of record title to the Partnership and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to the Partnership. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such Partnership assets is held. The General Partner covenants and agrees that at the Effective Time, the Partnership Group shall have all licenses, permits, certificates, franchises, or other governmental authorizations or permits necessary for the ownership of their properties or for the conduct of their businesses, except for such licenses, permits, certificates, franchises, or other governmental authorizations or permits, failure to have obtained which will not, individually or in the aggregate, have a material adverse effect on the Partnership Group.

*Section 6.12 Reliance by Third Parties.*

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

ARTICLE VII

RIGHTS AND OBLIGATIONS OF THE LIMITED PARTNER

*Section 7.1 Limitation of Liability.*

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

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Section 7.2 *Management of Business.*

The Limited Partner, in its capacity as such, shall not participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by the General Partner, any of its Affiliates or any member, officer, director, employee, partner, agent or trustee of the General Partner or any of its Affiliates, in its capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partner under this Agreement.

Section 7.3 *Return of Capital.*

The Limited Partner shall not 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.

Section 7.4 *Right of the Limited Partner Relating to the Partnership.*

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 7.4(b), the Limited Partner shall have the right, for a purpose reasonably related to the Limited Partner's interest as a limited partner in the Partnership, upon reasonable demand and at the Limited Partner's own expense:

(i) to obtain true and full information regarding the status of the business and financial condition of the Partnership;

(ii) promptly after becoming available, to obtain a copy of the Partnership's federal, state and local tax returns for each year;

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

(iv) to have furnished to it, upon notification to the General Partner, a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with a copy of the executed copies of all powers of attorney pursuant to which this Agreement, the Certificate of Limited Partnership and all amendments thereto have been executed;

(v) to obtain true and full information regarding the amount of cash and a description and statement of the Net Agreed Value of any other Capital Contribution by each Partner and which each Partner has agreed to contribute in the future, and the date on which each became a Partner; and

(vi) to obtain such other information regarding the affairs of the Partnership as is just and reasonable.

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(b) The General Partner may keep confidential from the Limited Partner 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 the Partnership Group is required by law or by agreements with third parties to keep confidential (other than agreements with Affiliates the primary purpose of which is to circumvent the obligations set forth in this Section 7.4).

#### 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 Partner any information required to be provided pursuant to Section 7.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device, provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with generally accepted accounting principles.

##### Section 8.2 *Fiscal Year.*

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

#### ARTICLE XI

#### TAX MATTERS

##### Section 9.1 *Preparation of Tax Returns.*

The General Partner shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and a taxable year ending on December 31. The tax information reasonably required by the 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, deductions and other items shall be on the accrual method of accounting for federal income tax purposes.

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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.

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

Section 9.4 *Withholding.*

Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines in its sole discretion to be necessary or appropriate to cause the Partnership to comply with any withholding requirements established under the Code or any other federal, state or local law including, without limitation, pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner (including, without limitation, by reason of Section 1446 of the Code), the amount withheld shall be treated as a distribution of cash pursuant to Section 5.3 in the amount of such withholding from such Partner.

ARTICLE X  
TRANSFER OF INTERESTS

Section 10.1 *Transfer.*

(a) The term "transfer," when used in this Article X with respect to a Partnership Interest, shall be deemed to refer to a transaction by which a Partner assigns its Partnership Interest to another Person and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise.

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(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 X. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article X shall be null and void.

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

*Section 10.2 Transfer of the General Partner's Partnership Interest.*

If the general partner of the MLP transfers its partnership interest as the general partner therein to any Person in accordance with the provisions of the MLP Agreement, the General Partner shall contemporaneously therewith transfer its Partnership Interest as the general partner of the Partnership to such Person, and the Limited Partner hereby expressly consents to such transfer. Except as set forth in the immediately preceding sentence, or in connection with any pledge of (or any related foreclosure on) the General Partner's general partner interest in the Partnership solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP or the General Partner's guarantee obligations under that certain Guarantee Agreement dated March 25, 1999 between the General Partner and Marine Midland Bank, as such agreement may be amended, supplemented, refinanced or modified from time to time, the General Partner may not transfer all or any part of its Partnership Interest as the general partner in the Partnership.

*Section 10.3 Transfer of the Limited Partner's Partnership Interest.*

If the Limited Partner merges, consolidates or otherwise combines with or into any other Person or transfers all or substantially all of its assets to another Person, such Person may become a Substituted Limited Partner pursuant to Article XI. Except as set forth in the immediately preceding sentence, or in connection with any pledge of (or any related foreclosure on) the Limited Partner's limited partner interest in the Partnership solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP, and except for the transfers contemplated by Sections 4.2 and 11.1, the Limited Partner may not transfer all or any part of its Partnership Interest or withdraw from the Partnership.

ARTICLE XI  
ADMISSION OF PARTNERS

*Section 11.1 Admission of Star Gas as a Limited Partner.*

Upon the making by Star Gas of the Capital Contributions described in Section 4.2, Star Gas was admitted to the Partnership as a limited partner. Upon the transfer by Star Gas of its Partnership Interest as limited partner to the MLP, Star Gas shall withdraw and cease to be a limited partner of the Partnership.

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Section 11.2 *Admission of Substituted Limited Partners.*

Any person that is the successor in interest to a Limited Partner as described in Section 10.3 shall be admitted to the Partnership as a limited partner upon (a) furnishing to the General Partner (i) acceptance in form satisfactory to the General Partner of all of the terms and conditions of this Agreement and (ii) such other documents or instruments as may be required to effect its admission as a limited partner in the Partnership and (b) obtaining the consent of the General Partner, which consent may be given or withheld in the General Partner's sole discretion. Such Person shall be admitted to the Partnership as a limited partner immediately prior to the transfer of the Partnership Interest, and the business of the Partnership shall continue without dissolution.

Section 11.3 *Admission of Successor General Partner.*

A successor General Partner approved pursuant to Section 12.1 or 12.2 or the transferee of or successor to all of the General Partner's Partnership Interest as the general partner in the Partnership pursuant to Section 10.2 who is proposed to be admitted as a successor General Partner shall, subject to compliance with the terms of Section 12.3, if applicable, be admitted to the Partnership as the successor General Partner, effective immediately prior to the withdrawal or removal of the General Partner pursuant to Section 12.1 or 12.2 or the transfer of the General Partner's Partnership Interest as the general partner of the Partnership pursuant to Section 10.2. Any such successor shall, subject to the terms hereof, carry on the business of the Partnership without dissolution. In each case, the admission of such successor General Partner to the Partnership shall, subject to the terms hereof, be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect such admission.

Section 11.4 *Amendment of Agreement and Certificate of Limited Partnership.*

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

Section 11.5 *Admission of Additional Limited Partners.*

(a) Person (other than the General Partner, the MLP 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 granting of the power of attorney granted in Section 1.4, and (ii) such other documents or instruments as may be

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

ARTICLE XIII  
WITHDRAWAL OR REMOVAL OF PARTNERS

Section 12.1 *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 Limited Partner;
- (ii) the General Partner transfers all of its rights as General Partner pursuant to Section 10.2;
- (iii) the General Partner is removed pursuant to Section 12.2; or
- (iv) the general partner of the MLP withdraws from, or is removed as the general partner of, the MLP.

If an Event of Withdrawal specified in Section 12.1(a)(iv) occurs, the withdrawing General Partner shall give notice to the Limited Partner within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 12.1 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 Initial Closing Date and ending at 12:00 midnight, Eastern Standard Time, on December 31, 2005, the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partner, *provided* that prior to the effective date of such withdrawal, the Limited Partner approves such withdrawal 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 the Limited Partner, any limited partner of the Limited Partner, or any limited partner of any Group Member, or cause the Limited Partner or any Group Member to be treated as an

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association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes; (ii) at any time after 12:00 midnight, Eastern Standard Time, on December 31, 2005, the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Limited Partner, 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 12.1(a)(ii), (iii) or (iv). If the General Partner gives a notice of withdrawal pursuant to Section 12.1(a)(i) or Section 13.1(a)(i) of the MLP Agreement, the Limited Partner may, prior to the effective date of such withdrawal or removal, elect a successor General Partner, *provided* that such successor shall be the same Person, if any, that is elected by the limited partners of the MLP pursuant to Section 13.1 of the MLP Agreement as the successor to the General Partner in its capacity as general partner of the MLP. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Limited Partner as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 13.1. Any successor General Partner elected in accordance with the terms of this Section 12.1 shall be subject to the provisions of Section 11.3.

*Section 12.2 Removal of the General Partner.*

The General Partner shall be removed if such General Partner is removed as a general partner of the MLP pursuant to Section 13.2 of the MLP Agreement. Such removal shall be effective concurrently with the effectiveness of the removal of such General Partner as the general partner of the MLP pursuant to the terms of the MLP Agreement. If a successor General Partner is elected in connection with the removal of such General Partner as a general partner of the MLP, such successor General Partner shall, upon admission pursuant to Article XI, automatically become a successor General Partner of the Partnership. The admission of any such successor General Partner to the Partnership shall be subject to the provisions of Section 11.3.

*Section 12.3 Interest of Departing Partner and Successor General Partner.*

The Partnership Interest of a Departing Partner departing as a result of withdrawal or removal pursuant to Section 12.1 or 12.2 shall (unless it is otherwise required to be converted into Common Units pursuant to Section 13.3(b) of the MLP Agreement) be purchased by the successor to the Departing Partner for cash in the manner specified in the MLP Agreement. Such purchase (or conversion into Common Units, as applicable) shall be a condition to the admission to the Partnership of the successor as the General Partner. Any successor General Partner shall indemnify the Departing General Partner as to all debts and liabilities of the Partnership arising on or after the effective date of the withdrawal or removal of the Departing Partner.

*Section 12.4 Reimbursement of Departing Partner.*

The Departing Partner shall be entitled to receive all reimbursements due such Departing Partner pursuant to Section 6.4, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by such Departing Partner for the benefit of the Partnership.



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Section 12.5 *Withdrawal of the Limited Partner.*

Without the prior consent of the General Partner, which may be granted or withheld in its sole discretion, and except as provided in Section 11.1, the Limited Partner shall not have the right to withdraw from the Partnership.

ARTICLE XIII  
DISSOLUTION AND LIQUIDATION

Section 13.1 *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, any successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve and, subject to Section 13.2, its affairs should be wound up, upon:

- (a) the expiration of its term as provided in Section 1.5;
- (b) an Event of Withdrawal of the General Partner as provided in Section 12.1(a) (other than Section 12.1 (a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 12.1(b) or 12.2 and such successor is admitted to the Partnership pursuant to Section 11.3;
- (c) an election to dissolve the Partnership by the General Partner that is approved by the Limited Partner;
- (d) entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act;
- (e) the sale of all or substantially all of the assets and properties of the Partnership Group; or
- (f) the dissolution of the MLP.

Section 13.2 *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 12.1(a)(i) or (iii) and following a failure of the Limited Partner to appoint a successor General Partner as provided in Section 12.1 or 12.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 13.1(a)(iv), (v) or (vi) of the MLP Agreement, then within 180 days thereafter, the Limited Partner 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 a general partner a Person approved by the Limited Partner. In

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addition, upon dissolution of the Partnership pursuant to Section 13.1(f), if the MLP is reconstituted pursuant to Section 14.2 of the MLP Agreement, the reconstituted MLP may, within 180 days after such event of dissolution, as the Limited Partner, elect to reconstitute the Partnership in accordance with the immediately preceding sentence. Upon any such election by the Limited Partner, all Partners shall be bound thereby and shall be deemed to have approved same. 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 until the end of the term set forth in Section 1.5 unless earlier dissolved in accordance with this Article XIII;

(ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be purchased by the successor General Partner or converted into Common Units of the MLP as provided in the MLP Agreement; 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 1.4; *provided*, that the right 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 the Limited Partner or any limited partner of the Limited Partner and (y) neither the Partnership, the reconstituted limited partnership nor any Group Member would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of such right to continue.

#### Section 13.3 *Liquidator.*

Upon dissolution of the Partnership, unless the Partnership is continued under an election to reconstitute and continue the Partnership pursuant to Section 13.2, the General Partner, or in the event the dissolution is the result of an Event of Withdrawal, a liquidator or liquidating committee approved by the Limited Partner, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by the Limited Partner. The Liquidator shall agree not to resign at any time without 15 days' prior notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by the Limited Partner. 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 the Limited Partner. 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 XIII, the Liquidator approved in the manner provided herein shall have and may exercise,

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without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 6.3(b)) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding-up and liquidation of the Partnership as provided for herein.

*Section 13.4 Liquidation.*

The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as the Liquidator determines to be in the best interest of the Partners, subject to the following:

*(a) Disposition of Assets.* The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 13.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners.

*(b) Discharge of Liabilities.* Liabilities of the Partnership include amounts owed to Partners otherwise in respect of their distribution rights under Article V. With respect to any liability that is contingent or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

*(c) Liquidation Distributions.* All property and all cash in excess of that required to discharge liabilities as provided in Section 13.4(b) shall be distributed to the Partners in accordance with the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of this clause) for the taxable year of the Partnership during which the liquidation of the Partnership occurs (with the date of such 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 13.5 Cancellation of Certificate of Limited Partnership.*

Upon the completion of the distribution of Partnership cash and property as provided in Sections 13.3 and 13.4 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.

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Section 13.6 *Return of Capital Contributions.*

The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Contributions of the Limited Partner, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

Section 13.7 *Waiver of Partition.*

Each Partner hereby waives any right to partition of the Partnership property.

Section 13.8 *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 XIV

AMENDMENT OF PARTNERSHIP AGREEMENT

Section 14.1 *Amendment to be Adopted Solely by General Partner.*

The Limited Partner agrees that the General Partner (pursuant to its powers of attorney from the Limited Partner), without the approval of the Limited Partner, may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that, 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 neither the Partnership nor the MLP will be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes;

(d) a change that, in the sole discretion of the General Partner, (i) does not adversely affect the Limited Partner in any material respect, (ii) is necessary or advisable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal

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or state statute (including the Delaware Act), compliance with any of which the General Partner determines in its sole discretion to be in the best interests of the Partnership and the Limited Partner, (iii) is required to effect the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement or (iv) is required to conform the provisions of this Agreement with the provisions of the MLP Agreement as the provisions of the MLP Agreement may be amended, supplemented or restated from time to time;

(e) a change in the fiscal year or taxable year of the Partnership and any changes that, in the sole discretion of the General Partner, are necessary or advisable as a result of a change in the fiscal year or taxable year of the Partnership, including, if the General Partner shall so determine, a change in the definition of "Quarter" and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership or the General Partner or its directors or officers from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(h) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 15.3;

(i) an amendment that, in the sole discretion of the General Partner, is necessary or advisable to reflect, account for and deal with appropriately the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 3.1; or

(j) any other amendments substantially similar to the foregoing.

#### Section 14.2 *Amendment Procedures.*

Except with respect to amendments of the type described in Section 14.1, 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. Each such proposal shall contain the text of the proposed amendment. A proposed amendment shall be effective upon its approval by the Limited Partner.

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ARTICLE XV

MERGER

Section 15.1 *Authority*.

The Partnership may merge or consolidate with one or more corporations, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership, limited partnership or limited liability company, formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation ("*Merger Agreement*") in accordance with this Article XV.

Section 15.2 *Procedure for Merger or Consolidation*.

Merger or consolidation of the Partnership pursuant to this Article XV requires the prior approval of the General Partner. If the General Partner shall determine, in the exercise of its sole discretion, to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

(a) The names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;

(b) The name and jurisdictions of formation or origination of the business entity that is to survive the proposed merger or consolidation (the "*Surviving Business Entity*");

(c) The terms and conditions of the proposed merger or consolidation;

(d) The manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of, their general or limited partner interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

(e) A statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, certificate of limited liability

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company or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;

(f) The effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 15.4 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 15.3 *Approval by Limited Partner of Merger or Consolidation.*

(a) The General Partner, upon its approval of the Merger Agreement, shall direct that a copy or a summary of the Merger Agreement be submitted to the Limited Partner for its approval.

(b) The Merger Agreement shall be approved upon receiving the approval of the Limited Partner. After such approval by the Limited Partner, and at any time prior to the filing of the certificate of merger pursuant to Section 15.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

Section 15.4 *Certificate of Merger.*

Upon the required approval by the General Partner and the Limited Partner 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 15.5 *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

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(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) A merger or consolidation effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another having occurred.

ARTICLE XVI  
GENERAL PROVISIONS

Section 16.1 *Addresses and Notices.*

Any notice, demand, request or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when received by it at the principal office of the Partnership referred to in Section 1.3.

Section 16.2 *References.*

Except as specifically provided otherwise, references to “Articles” and “Sections” are to Articles and Sections of this Agreement.

Section 16.3 *Pronouns and Plurals.*

Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 16.4 *Further Action.*

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 16.5 *Binding Effect.*

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 16.6 *Integration.*

This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.



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Section 16.7 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

Section 16.8 *Waiver.*

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

Section 16.9 *Counterparts.*

This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto, independently of the signature of any other party.

Section 16.10 *Applicable Law.*

This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 16.11 *Invalidity of Provisions.*

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

STAR GAS LLC

By: /s/ Joseph P. Cavanaugh

Name: Joseph P. Cavanaugh

Title: Executive Vice President

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**LIMITED PARTNER:**

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, as General Partner

By: /s/ Joseph P. Cavanaugh

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Name: Joseph P. Cavanaugh  
Title: Executive Vice President

CERTIFICATE OF INCORPORATION  
OF  
STAR GAS FINANCE COMPANY

FIRST: The name of the corporation is Star Gas Finance Company (hereinafter referred to as the "Corporation").

SECOND: The registered office of the Corporation is to be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The Corporation shall be authorized to issue one thousand (1,000) shares of capital stock, all of which shall have a par value of \$0.01 per share, all of which are of the same class and all of which are to be designated as Common Stock.

FIFTH: The name and the mailing address of the incorporator is James Kim, c/o Phillips Nizer LLP, 666 Fifth Avenue, New York, New York 10103.

SIXTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The number of directors of the Corporation shall be such as from time to time shall be fixed by, or in the manner provided in, the by-laws. Election of directors need not be by ballot unless the by-laws so provide.

(2) The Board of Directors shall have power without the assent or vote of the stockholders to adopt, amend or repeal the by-laws of the Corporation.

(3) In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the statutes of Delaware, of this certificate, and to any by-laws from time to time made by the stockholders; provided, however, that no by-laws so made shall invalidate any prior act of the directors which would have been valid if such by-laws had not been made.

SEVENTH: The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (7) of subsection (b) of Section 102 of the Delaware General Corporation Law, as the same may be amended and supplemented from time to time.

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EIGHTH: The Corporation shall, to the fullest extent permitted by the provisions Section 145 of the Delaware General Corporation Law, as the same may be amended and supplemented from time to time, indemnify any and all persons whom it may indemnify under said section.

NINTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred herein on stockholders, directors and officers are subject to this reserved power.

I, the undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 15th day of January, 2003.

/s/ James Kim

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James Kim, Sole Incorporator  
c/o Phillips Nizer LLP  
666 Fifth Avenue  
New York, New York 10103

**BY-LAWS**  
**OF**  
**STAR GAS FINANCE COMPANY**  
**(A Delaware Corporation)**

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**ARTICLE I.**  
**REGISTERED OFFICE AND REGISTERED AGENT**

1.1 Offices. The Corporation shall have and continuously maintain in the State of Delaware a registered office that may be, but not need be, the same as one of its places of business, and a registered agent, which agent may be either an individual resident in the State of Delaware, or a domestic corporation, or a foreign corporation, authorized to transact business in the State of Delaware.

1.2 Addresses. The registered office of the Corporation is to be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The name of its registered agent at that address is Corporation Service Company. The registered office and the registered agent may be changed from time to time by the Board of Directors of the Corporation (the "Board").

**ARTICLE II.**  
**MEETINGS OF STOCKHOLDERS**

2.1 Annual Meetings. The annual meeting of stockholders to elect directors shall be held at such place (within or without the State of Delaware), date and time as shall be designated by a resolution of the Board and stated in the notice of the meeting. Stockholders may act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action may be in lieu of an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such actions. Any other proper business may be transacted at the annual meeting.

2.2 Special Meetings. Special meetings of the stockholders may be called at any time by the Chairman or Vice Chairman of the Board, if any, or by the President or, in his or her absence, any Vice President, or by a majority of the Board, or at the request in writing of the holders of record of a majority of the capital stock outstanding and entitled to vote.

2.3 Proxies. Each stockholder entitled to vote shall, at every meeting of the stockholders, be entitled in person or by proxy signed by him to one vote for each share of voting stock, such proxy to be valid for three years from its date, unless it provides for a longer period. Such right to vote shall be subject to the right of the Board to fix a record date for determining stockholders entitled to vote, as hereinafter provided, and if the directors shall not have exercised such right, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders, or for any other purpose, shall be the date prescribed by the laws of the Delaware General Corporation Law then in effect (the "DGCL").

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2.4 Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The written notice shall be given not less than ten and not more than sixty days prior to the date of the meeting to each stockholder entitled to vote as such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation, except where a longer or shorter period of notice is required by the DGCL.

2.5 Required Vote: Action Without Meeting. Whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of stockholders may be dispensed with if holders of a majority of the outstanding stock who would have been entitled to vote upon the action if such a meeting were held shall consent in writing to such corporate action being taken.

2.6 Quorum: Adjournment. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present or represented and any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.7 Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, or to express consent to any corporate action in writing without a meeting, or to receive payment of any dividend or other distribution or allotment of any rights, or to exercise any rights in respect of any changes, conversion or exchange of stock or for any other lawful purpose, the Board may fix a record date which, in the case of a meeting, shall not be more than sixty nor less than ten days before the date of such meeting; in the case of an action by written consent, shall not be more than ten days after the date upon which the resolution fixing such record date is adopted by the Board; and in the case of making any other determination or taking any other action, shall not be more than sixty days prior to any such determination or action. In no event shall the record date precede the date of adoption of the applicable Board resolution. A determination of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

2.8 Stockholders of Record. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, to vote as the owner of such shares and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the DGCL.

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**ARTICLE III.**  
**DIRECTORS**

**3.1 Duties and Powers: Number.** The property and business of the Corporation shall be managed and controlled by its Board, the exact number of which shall be fixed from time to time by resolution of the Board. The directors need not be stockholders. "Majority vote" shall mean in the case of meetings of the directors, an affirmative vote of a majority of the directors present and voting, provided that a quorum is present.

**3.2 Election of Directors: Term.** The directors, following the initial Board, shall be elected at the annual meeting of the stockholders, except as provided in this Article, and each director elected shall hold office until such director's successor shall have been duly elected and shall have qualified or until his or her earlier resignation or removal.

**3.3 Vacancies.** Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority vote of the stockholders, and a director so chosen shall hold office until the next annual election of directors or until such director's successor shall have been duly elected and shall have qualified or until his or her earlier resignation or removal.

**3.4 Annual Meeting.** After each annual election of directors, the newly elected directors may meet for the purpose of organization, the election of officers, and the transaction of other business, at such time and place as shall be fixed by the stockholders at the annual meeting, and, if a majority of the directors shall be present at such time and place, no prior notice of such meeting need be given to the directors.

**3.5 Regular Meetings.** The directors may meet regularly on such date and at such time as shall be designated from time to time by the Board. No notice of these meetings shall be required.

**3.6 Special Meetings.** Special meetings of the directors may be called by the Chairman or Vice Chairman of the Board, if any, or by the President or, in his or her absence, any Vice President or by a majority of the directors then in office. Notice of a special meeting shall be given so as to be received at least one calendar day prior to the day on which such meeting is to be held.

**3.7 Manner and Place of Meetings.** Meetings may be held at such place within or without the State of Delaware as shall be fixed by the Board. Members of the Board, or any committee designated by the Board, may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participate in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

**3.8 Quorum: Vote.** A majority of the entire Board shall constitute a quorum, but a smaller number may adjourn from time to time, without further notice, until a quorum is secured. At all meetings of the Board, each director is to have one vote.

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3.9 Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of the proceedings of the Board or committee.

3.10 Committees. The Board may designate one or more committees, each consisting of one or more of the directors of the Corporation, and may also designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution or resolutions adopted by the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation to the extent permitted by statute, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority to approve or adopt, or recommend to the stockholders of the Corporation, any action or matter expressly required, pursuant to the DGCL, to be submitted to the stockholders for approval, or to adopt, amend or repeal any By-law of the Corporation.

**ARTICLE IV.**  
**OFFICERS OF THE CORPORATION**

4.1 Titles. The officers of the Corporation shall be a President, a Secretary, a Treasurer, and such other officers as may from time to time be chosen by the Board. One person may hold the offices of President or Vice President and the additional offices of Secretary and/or Treasurer. A Chairman of the Board and a Vice Chairman of the Board may also be elected by the Board and a person holding the office of Chairman or Vice Chairman of the Board may hold the additional offices of President or Vice President (if any), Secretary and/or Treasurer.

4.2 Term. Each officer shall hold office until such officer's successor shall have been duly elected and shall have qualified or until his or her earlier resignation or removal. Any officer elected by the Board may be removed either with or without cause at any time by majority vote of the Board. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by majority vote of the Board.

4.3 Chairman of the Board. The Chairman of the Board, if any, shall preside over all meetings of the stockholders and directors, and shall have such other duties as may be assigned to him or her from time to time by the Board.

4.4 Vice Chairman of the Board. The Vice Chairman of the Board, if any, shall be vested with all the powers to perform all the duties of the Chairman of the Board in his or her absence or disability, and shall have such other duties as may be assigned to him or her from time to time by the Board.

4.5 President. The President shall be the chief executive officer of the Corporation. The President shall have general and active management of the business of the Corporation; to see that all orders and resolutions of the Board are carried into effect; to execute all contracts,



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agreements, deeds, bonds, mortgages, and other obligations and instruments, for the Corporation, in the name of the Corporation, and to affix the corporate seal thereto when so authorized by the Board. The President shall have the general supervision and direction of all the other officers of the Corporation and shall see that their duties are properly performed. Unless there is a Chairman of the Board, it shall be the President's duty to preside over all meetings of the stockholders and directors.

4.6 Vice President(s). The Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation by the Board, then in the order of their election), shall be vested with all the powers to perform all the duties of the President in his or her absence or disability and shall perform such other duties as may be prescribed by the Board from time to time.

4.7 President Pro Tem. In the absence or disability of the President and all of the Vice Presidents, if any, the Board may appoint from their own number a President Pro Tem.

4.8 Secretary. The Secretary shall attend all meetings of the Board and all meetings of the stockholders and record all the proceedings of such meetings of the Corporation and of the Board in a book to be kept for that purpose and shall perform like duties for the executive committee and for any standing committees, if any, when required. He or she shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision he or she shall act. He or she shall have custody of the Corporation's seal and he or she, or an Assistant Secretary, shall have authority to affix the seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature.

4.9 Assistant Secretary. The Assistant Secretary, if any (or if there be more than one, the Assistant Secretaries in the order determined by the Board or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary, or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

4.10 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name of and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board taking proper vouchers for such disbursements, and shall render to the President and the Board, at its regular meetings, or when the Board so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall keep an account of stock registered and transferred in such manner and subject to such regulations as the Board may prescribe. The Treasurer shall give the Corporation a bond, if required by the Board for the faithful performance of the duties of his or her office and the restoration to the Corporation, in case of his or her death, resignation or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession, belonging to the

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Corporation. He or she shall also perform such other duties as the Board or the President may from time to time prescribe or require.

4.11 Assistant Treasurer. The Assistant Treasurer, if any (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board, if any or if there be no such determination then in the order of their election), in the absence of the Treasurer or in the event of his or her inability or refusal to act, shall perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board or President may from time to time prescribe or require.

4.12 Delegation of Duties of Officers. In the case of the absence or disability of any officer of the Corporation, the Board may delegate the powers or duties of any such officer to any other officer or to any director of the Corporation on a temporary basis.

## ARTICLE V.

### STOCK

5.1 Stock Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of, the Corporation, by the President or a Vice President and by the Treasurer and/or the Secretary, certifying the number of shares owned by him or her in the Corporation.

5.2 Replacement of Stock Certificates. The Board may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed, upon the making of an Affidavit of the fact by the person claiming the certificate being lost, stolen or destroyed as the Board may deem satisfactory. When authorizing such issue of a new certificate or certificates, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a satisfactory bond of indemnity in an amount sufficient to indemnify the Corporation against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed. A new certificate may be issued without requiring bond when, in the judgment of the Board, it is proper to do so.

5.3 Transfers of Stock. Upon surrender to the Corporation or to the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer the shares, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon the Corporation's books.

5.4 Dividends. Dividends upon the capital stock of the Corporation may be declared by the Board at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock at such rate as may be fixed by the Board consistent with any limitations found within the Corporation's Certificate of Incorporation or these By-laws.

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5.5 Reserves for Payment of Dividends. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purposes as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

**ARTICLE VI.  
LIABILITY OF DIRECTORS**

No director shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that to the extent required by the provisions of Section 102(b)(7) of the DGCL or any successor statute, or any other laws of the State of Delaware, this provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL hereafter is amended to authorize the further elimination or limitation on personal liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this Article VI by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

**ARTICLE VII.  
INDEMNIFICATION AND ADVANCEMENTS**

7.1 Indemnification. All directors, officers, employees or agents of the Corporation or anyone serving as a director, officer, employee or agent of another corporation at the request of the Corporation shall be indemnified by the Corporation to the fullest extent and in the manner permitted by Section 145 of the DGCL.

7.2 Advances. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be advanced by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt from such person of the undertaking required by the DGCL.

**ARTICLE VIII.  
GENERAL**

8.1 Notices. Whenever, under the provisions of the statutes or of these By-laws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his or her address as it appears on the records of the Corporation, with postage

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thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors and to members of any committee of the Board may also be given by courier or messenger, by telegraph, facsimile, electronic mail or other recorded form of communication, or may be delivered personally or by telephone.

8.2 Waivers. Whenever any notice is required to be given under the provisions of the statutes or of these By-laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

8.3 Contracts. In addition to, and specifically not in limitation of, such authority as may be granted to them under the DGCL, the Board may authorize any officer or officers or any agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances.

8.4 Books and Records. The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its stockholders, Board, and standing committees. The books, accounts and records of the Corporation, except as otherwise required by the DGCL, may be kept within or without the State of Delaware, at such place or places as may from time to time be designated by resolution of the Board.

STAR GAS PARTNERS, L.P.,  
STAR GAS FINANCE COMPANY,  
AND  
UNION BANK OF CALIFORNIA, N.A.  
AS TRUSTEE

10¼% Senior Notes due 2013

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INDENTURE

Dated as of February 6, 2003

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(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.8; 7.10
(c)	N.A.
311 (a)	7.11
(b)	7.11
(c)	N.A.
312 (a)	2.5
(b)	10.3
(c)	10.3
313 (a)	7.6
(b)(1)	N.A.
(b)(2)	7.6
(c)	7.6
(d)	N.A.
314 (a)	3.2,10.2,10.5
(b)	N.A.
(c)(1)	10.4
(c)(2)	10.4
(c)(3)	N.A.
(d)	N.A.
(e)	10.5
315 (a)	7.1
(b)	7.5,10.2
(c)	7.1
(d)	7.1
(e)	6.11
316 (a)(last sentence)	2.10
(a)(1)(A)	6.5
(a)(1)(B)	6.4
(a)(2)	N.A.
(b)	6.7
(c)	2.13
317 (a)(1)	6.8
(a)(2)	6.9
(b)	2.4
318 (a)	10.1
(b)	N.A.
(c)	10.1

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

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INDENTURE dated as of February 6, 2003, among STAR GAS PARTNERS, L.P., a Delaware limited partnership (the “Company”), STAR GAS FINANCE COMPANY, a Delaware corporation (the “Co-Issuer”, together with the Company, the “Issuers”) and UNION BANK OF CALIFORNIA, N.A. (the “Trustee”) as Trustee.

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Securityholders of (i) the Issuers’ 10¼% Senior Notes due 2013, issued on the date hereof (the “Initial Securities”), (ii) if and when issued, an unlimited principal amount of additional 10¼% Senior Notes due 2013 in a non-registered offering or in a registered offering of the Issuers that may be offered from time to time subsequent to the Issue Date (the “Additional Securities”) and (iii) if and when issued, the Issuers’ 10¼% Senior Notes due 2013 that may be issued from time to time in exchange for Initial Securities or any Additional Securities in an offer registered under the Securities Act as provided in the Registration Rights Agreement (as hereinafter defined the “Exchange Securities,” and together with the Initial Securities and the Additional Securities, the “Securities”).

## ARTICLE I

### DEFINITIONS AND INCORPORATION BY REFERENCE

#### Section 1.1. *Definitions.*

“*Acquired Indebtedness*” means Indebtedness (i) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such acquisition. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (i) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (ii) of the preceding sentence, on the date of consummation of such acquisition of assets.

“*Additional Securities*” shall have the meaning assigned to such term in the second introductory paragraph to this Indenture.

“*Affiliate*” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control.

“*Asset Acquisition*” means the following (in all cases, including assets acquired through a Flow-Through Acquisition):

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(1) an Investment by the Company or any Restricted Subsidiary in any other Person pursuant to which the Person shall become a Restricted Subsidiary, or shall be merged with or into the Company or any Restricted Subsidiary;

(2) the acquisition by the Company or any Restricted Subsidiary of the Company of the assets of any Person, other than a Restricted Subsidiary, which constitute all or substantially all of the assets of such Person; or

(3) the acquisition by the Company or any Restricted Subsidiary of any division or line of business of any Person, other than a Restricted Subsidiary.

“*Asset Sale*” means either of the following, whether in a single transaction or a series of related transactions:

(1) the sale, lease, conveyance or other disposition of any assets other than sales, leases or transfers of assets in the ordinary course of business (including but not limited to the sales of inventory in the ordinary course of business and the sale of receivables and accounts pursuant to a Credit Facility); or

(2) the issuance or sale of Capital Stock of any direct Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any sale, lease or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to the Company or a Restricted Subsidiary;

(2) any sale or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to any entity in exchange for other assets used in a related business and/or cash (*provided* that such cash portion is at least 80% of the difference between the value of the assets being transferred and the value of the assets being received) and having a fair market value, as determined in good faith by the Board of Directors, reasonably equivalent to the fair market value of the assets so transferred;

(3) any sale, lease or transfer of assets in accordance with Permitted Investments;

(4) the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company;

(5) the transfer or disposition of assets that are permitted Restricted Payments; and

(6) any sale, lease or transfer of assets pursuant to a Sale and Leaseback Transaction otherwise permitted by this Indenture.

“*Attributable Debt*” means, with respect to any Sale and Leaseback Transactions not involving a Capital Lease, as of any date of determination, the total obligation, discounted to present value at the rate of interest implicit in the lease included in the transaction, of the lessee

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for rental payments during the remaining portion of the term of the lease, including extensions which are at the sole option of the lessor, of the lease included in the transaction. For purposes of this definition, the rental payments shall not include amounts required to be paid on account of property taxes, maintenance, repairs, insurance, assessments, utilities, operating and labor costs and other items which do not constitute payments for property rights. In the case of any lease which is terminable by the lessee upon the payment of a penalty, the rental obligation shall also include the amount of the penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated.

“*Available Cash*” as to any quarter means the amount resulting from:

- (1) the sum of:
  - (a) all cash receipts of the Company during such quarter from all sources (including, without limitation, distributions of cash received from Subsidiaries and cash proceeds from Interim Capital Transactions, but excluding cash proceeds from Termination Capital Transactions); and
  - (b) any reduction with respect to such quarter in a cash reserve previously established pursuant to clause (2)(b) below (either by reversal or utilization) from the level of such reserve at the end of the prior quarter;
- (2) less the sum of:
  - (a) all cash disbursements of the Company during such quarter, including, without limitation, disbursements for operating expenses, taxes, if any, debt service (including, without limitation, the payment of principal, premium and interest), redemption of Capital Stock of the Company, capital expenditures, contributions, if any, to any Subsidiaries and cash distributions to partners of the Company (but only to the extent that such cash distributions to partners exceed Available Cash for the immediately preceding quarter); and
  - (b) any cash reserves established with respect to such quarter, and any increase with respect to such quarter in a cash reserve previously established pursuant to this clause (2)(b) from the level of such reserve at the end of the prior quarter, in such amounts as the Board of Directors determines in its reasonable discretion to be necessary or appropriate (i) to provide for the proper conduct of the business of the Company (including, without limitation, reserves for future capital expenditures), (ii) to provide funds for distributions with respect to Capital Stock of the Company in respect of any one or more of the next four quarters or (iii) because the distribution of such amounts would be prohibited by applicable law or by any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Company is a party or by which it is bound or its assets are subject;
- (3) plus the lesser of (a) an amount as calculated in accordance with clauses (1) and (2) above for the Company or its Restricted Subsidiaries for the first 45 days of the quarter during which such Restricted Payment is made (rather than the quarter for

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which clauses (1) and (2) were calculated) and (b) an amount of working capital Indebtedness that the Company or its Restricted Subsidiaries could have Incurred on or before the 45<sup>th</sup> day after the last day of the quarter used to calculate clauses (1) and (2) above; *provided, however*, that Available Cash attributable to any Restricted Subsidiary will be excluded to the extent dividends or distributions of Available Cash by the Restricted Subsidiary are not at the date of determination permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or other regulation.

Notwithstanding the foregoing, "Available Cash" shall not include any cash receipts or reductions in reserves or take into account any disbursements made or reserves established in each case after the date of liquidation of the Company. Taxes paid by the Company on behalf of, or amounts withheld with respect to, all or less than all of the partners shall not be considered cash disbursements of the Company that reduce Available Cash, but the payment or withholding thereof shall be deemed to be a distribution of Available Cash to the partners other than the limited partners holding Senior Units. Alternatively, in the discretion of the Board of Directors, such taxes (if pertaining to all partners) may be considered to be cash disbursements of the Company which reduce Available Cash, but the payment or withholding thereof shall not be deemed to be a distribution of Available Cash to such partners.

"*Average Life*" means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (2) the sum of all such payments.

"*Bankruptcy Law*" means Title 11, *United States Code* or any similar Federal or state law for the relief of debtors.

"*Board of Directors*" means, as to any Person, the board of directors of such Person or any duly authorized committee thereof; *provided* that so long as the Company is a limited partnership, "Board of Directors" means the board of directors of Star Gas LLC, its general partner, or any duly authorized committee thereof.

"*Borrowing Base*" means, as of any date of determination, an amount equal to the sum, without duplication, of (1) 85% of the net book value of all of the Company's and its Restricted Subsidiaries' accounts receivable at such date and (2) 60% of the net book value of the Company's and its Restricted Subsidiaries' inventories at such date. Net book value shall be determined in accordance with GAAP and shall be reflected on the most recent available consolidated balance sheet of the Company (it being understood that the accounts receivable and inventories of an acquired business may be included if such acquisition has been completed on or prior to the date of the determination).

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

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“*Capital Lease*” means any lease of property, real or personal, that, in accordance with GAAP, would be required to be capitalized on the balance sheet of the lessee.

“*Capital Stock*” of any Person means any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“*Change of Control*” means:

- (1) any transaction or series of related transactions pursuant to which any “person” or “group” or “groups” of related persons (as defined in the Exchange Act) other than the Permitted Holders, becoming beneficial owners, in the aggregate, directly or indirectly, of 50% or more of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) and the Permitted Holders beneficially owning at any time, in the aggregate, a lesser percentage of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) then such other person or group;
- (2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder;
- (3) the adoption of a plan or proposal for the liquidation or dissolution of the Company or the general partner of the Company; or
- (4) Star Gas LLC or an affiliated entity shall fail to own beneficially 100% of the general partnership interest in the Company.

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

“*Co-Issuer*” shall have the meaning assigned to such term in the preamble to this Indenture.

“*Common Stock*” means with respect to any Person, any and all shares, units, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person’s securities whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common stock, and, in the case of the Company, means the units representing limited partner interests of the Company whether or not outstanding on the Issue Date.

“*Company*” shall have the meaning assigned to such term in the first introductory paragraph to this Indenture.

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“*Consolidated Cash Flow Available for Fixed Charges*” means, with respect to the Company and its Restricted Subsidiaries, for any period, the sum of, without duplication, the amounts for the period, taken as single accounting, of:

- (1) Consolidated Net Income;
- (2) Consolidated Non-Cash Charges;
- (3) Consolidated Interest Expense; and
- (4) Consolidated Income Tax Expense.

“*Consolidated Fixed Charge Coverage Ratio*” means, with respect to the Company and its Restricted Subsidiaries, the ratio of (x) the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of the Person for the four full fiscal quarters immediately preceding the date of the transaction (the “*Transaction Date*”) giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (the “*Four Quarter Period*”), to (y) the aggregate amount of Consolidated Fixed Charges of the Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated Cash Flow Available for Fixed Charges” and “Consolidated Fixed Charges” shall be calculated after giving effect on a pro forma basis for the period of the calculation to, without duplication:

- (1) the Incurrence or repayment of any Indebtedness, excluding revolving credit borrowings and repayments of revolving credit borrowings (other than any revolving credit borrowings the proceeds of which are used for Asset Acquisitions or Growth Related Capital Expenditures of the Company or any of its Restricted Subsidiaries and in the case of any Incurrence, the application of the net proceeds thereof) during the period commencing on the first day of the Four Quarter Period to and including the Transaction Date (the “*Reference Period*”), including, without limitation, the Incurrence of the Indebtedness giving rise to the need to make the calculation (and the application of the net proceeds thereof), as if the Incurrence (and application) or repayment occurred on the first day of the Reference Period; and
- (2) any Asset Sales or Asset Acquisitions (including, without limitation, any Asset Acquisition giving rise to the need to make the calculation as a result of the Company or one of its Restricted Subsidiaries, including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition, Incurring, assuming or otherwise being liable for Acquired Indebtedness) occurring during the Reference Period, as if the Asset Sale or Asset Acquisition occurred on the first day of the Reference Period; *provided, however*, that:
  - (a) Consolidated Fixed Charges will be reduced by amounts attributable to businesses or assets that are so disposed of or discontinued only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to the Consolidated Fixed Charges subsequent to the date of determination of the Consolidated Fixed Charge Coverage Ratio;



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(b) Consolidated Cash Flow Available for Fixed Charges generated by an acquired business or asset shall be determined by the actual gross profit, which is equal to revenues minus cost of goods sold, of the acquired business or asset during the immediately available preceding four full fiscal quarters occurring in the Reference Period, minus the pro forma expenses that would have been Incurred by the Company and its Restricted Subsidiaries in the operation of the acquired business or asset during the period computed on the basis of personnel expenses for employees retained or to be retained by the Company and its Restricted Subsidiaries in the operation of the acquired business or asset and non-personnel costs and expenses Incurred by or to be Incurred by the Company and its Restricted Subsidiaries based upon the operation of the Company's business, all as determined in good faith by the Board of Directors; and

(c) Consolidated Cash Flow Available for Fixed Charges shall not include the impact of any non-recurring cash charges Incurred in connection with a restructuring, reorganization or other similar transaction, as determined in good faith by the Board of Directors.

In calculating "Consolidated Fixed Charges" for purposes of determining the "Consolidated Fixed Charge Coverage Ratio":

(1) interest on outstanding Indebtedness, other than Indebtedness referred to in sub-paragraph (2) below, determined on a fluctuating basis as of the last day of the Four Quarter Period and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on that date;

(2) only actual interest payments associated with Indebtedness Incurred in accordance with clause (4) of the definition of Permitted Indebtedness and all Permitted Refinancing Indebtedness in respect thereof, during the Four Quarter Period shall be included in the calculation; and

(3) if interest on any Indebtedness actually Incurred on the date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the last day of the Four Quarter Period will be deemed to have been in effect during the period.

"Consolidated Fixed Charges" means, with respect to the Company and its Restricted Subsidiaries for any period, the sum of, without duplication:

(1) the amounts for such period of Consolidated Interest Expense; and

(2) the product of:

(a) the aggregate amount of dividends and other distributions paid or accrued during the period in respect of Preferred Stock and Redeemable Capital Stock of the Company and its Restricted Subsidiaries on a consolidated basis; and

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(b) a fraction, the numerator of which is one and the denominator of which is one less than the then applicable current combined federal, state and local statutory tax rate, expressed as a percentage.

“*Consolidated Income Tax Expense*” means, with respect to the Company and its Restricted Subsidiaries for any period, the provision for federal, state, local and foreign income taxes of the Company and its Restricted Subsidiaries for the period as determined on a consolidated basis in accordance with GAAP.

“*Consolidated Interest Expense*” means, with respect to the Company and its Restricted Subsidiaries, for any period, without duplication, the sum of:

(1) the interest expense of the Company and its Restricted Subsidiaries for the period as determined on a consolidated basis in accordance with GAAP, net of interest income in an amount not to exceed \$3 million;

(2) any amortization of debt discount;

(3) the net cost under Interest Rate Agreements;

(4) the interest portion of any deferred payment obligation;

(5) all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;

(6) all accrued interest for all instruments evidencing Indebtedness; and

(7) the interest component of Capital Leases paid or accrued or scheduled to be paid or accrued by the Company and its Restricted Subsidiaries during the period as determined on a consolidated basis in accordance with GAAP.

“*Consolidated Net Income*” means the net income (loss) of the Company and its Restricted Subsidiaries, as determined on a consolidated basis in accordance with GAAP and as adjusted to exclude:

(1) net after-tax extraordinary gains or losses;

(2) net after-tax gains or losses attributable to Asset Sales;

(3) the net income or loss of any Person which is not a Restricted Subsidiary and which is accounted for by the equity method of accounting; *provided* that Consolidated Net Income shall include the amount of dividends or distributions actually paid to the Company or any Restricted Subsidiary;

(4) the net income or loss prior to the date of acquisition of any Person combined with the Company or any Restricted Subsidiary in a pooling of interest;

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(5) the net income of any Restricted Subsidiary to the extent that dividends or distributions of that net income are not at the date of determination permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or other regulation; and

(6) the cumulative effect of any changes in accounting principles.

“*Consolidated Non-Cash Charges*” means, with respect to the Company and its Restricted Subsidiaries for any period, the aggregate (1) depreciation, (2) amortization, (3) non-cash employee compensation expenses of the Company or its Restricted Subsidiaries for such period, and (4) any non-cash charges, in each case which reduces the Consolidated Net Income of the Company and its Restricted Subsidiaries for the period, as determined on a consolidated basis in accordance with GAAP and excluding any such non-cash charge or expense to the extent it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period, and also excluding the non-cash impact of Statement of Financial Accounting Standards No. 133.

“*Credit Facilities*” means, one or more debt facilities or commercial paper facilities, in each case with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

“*Custodian*” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“*Default*” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“*Definitive Securities*” means certificated Securities.

“*DTC*” means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depository institution hereinafter appointed by the Company.

“*Event of Default*” means any of the events specified in *Section 6.1*.

“*Excess Proceeds*” shall have the meaning assigned to such term in *Section 3.7(d)*.

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

“*Exchange Offer*” shall have the meaning assigned to such term in the Registration Rights Agreement.

“*Exchange Securities*” shall have the meaning assigned to such term in the second introductory paragraph to this Indenture.

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“*Fiscal Year*” shall mean the fiscal year of the Company as set forth in the audited financial statements of the Company, which as of the Issue Date was the period from October 1 through September 30 of each year.

“*Flow-Through Acquisition*” means an acquisition by the general partner from a Person that is not an Affiliate of the general partner or the Company, of property (real or personal), assets or equipment (whether through the direct purchase of assets or the Capital Stock of the Person owning such assets) in a Related Business, which is promptly sold, transferred or contributed by the general partner to the Company or one of its Restricted Subsidiaries.

“*GAAP*” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Indenture will be computed in conformity with GAAP.

“*Growth Related Capital Expenditures*” means, with respect to any Person, all capital expenditures by such Person made to improve or enhance the existing capital assets or to increase the customer base of such Person or to acquire or construct new capital assets (but excluding capital expenditures made to maintain, up to the level thereof that existed at the time of such expenditure, the operating capacity of the capital assets of such Person as such assets existed at the time of such expenditure).

“*Guarantee*” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or
- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided, however*, that the term “Guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“*Incur*” means issue, create, assume, Guarantee, incur or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms “Incurred” and “Incurrence” have meanings correlative to the foregoing.

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“*Indebtedness*” means, as applied to any Person, without duplication:

(1) (a) any indebtedness for borrowed money and (b) all obligations evidenced by any (i) bond, note, debenture or other similar instrument or (ii) letter of credit, or reimbursement agreements in respect thereof, but only for any drawings that are not reimbursed within five Business Days after the date of such drawings, which in each case the Person has, directly or indirectly, created or Incurred;

(2) any indebtedness for borrowed money and all obligations evidenced by any bond, note, debenture or other similar instrument secured by any Lien in respect of property owned by the Person, whether or not the Person has assumed or become liable for the payment of the indebtedness; *provided* that the amount of the indebtedness, if the Person has not assumed the same or become liable therefor, shall in no event be deemed to be greater than the fair market value from time to time, as determined in good faith by the Person, of the property subject to the Lien;

(3) any indebtedness, whether or not for borrowed money (excluding trade payables and accrued expenses arising in the ordinary course of business) with respect to which the Person has become directly or indirectly liable and which represents the deferred purchase price, or a portion thereof, or has been Incurred to finance the purchase price, or a portion thereof, of any property or business acquired by, or service performed on behalf of, the Person, whether by purchase, consolidation, merger or otherwise;

(4) the principal component of any obligations under Capital Leases to the extent the obligations would, in accordance with GAAP, appear on the balance sheet of the Person;

(5) all Attributable Debt of the Person in respect of Sale and Leaseback Transactions not involving a Capital Lease;

(6) any indebtedness of any other Person of the character referred to in the foregoing clauses (1) through (5) of this definition with respect to which the Person whose indebtedness is being determined has become liable by way of a Guarantee; and

(7) all Redeemable Capital Stock of the Person valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued dividends.

For purposes hereof, the “maximum fixed repurchase price” of any Redeemable Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of the Redeemable Capital Stock as if it were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture and if the price is based upon, or measured by, the fair market value of the Redeemable Capital Stock, the fair market value shall be determined in good faith by the board of directors of the issuer of the Redeemable Capital Stock. Furthermore, for purposes hereof, the term “Indebtedness” shall not include (x) accrual of interest, the accretion of accreted value and the payment of interest or any other similar Incurrence by the Company or its Restricted Subsidiaries related to Indebtedness otherwise permitted in this Indenture or (y) indebtedness under any hedging arrangement which provides for the right or

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obligation to purchase, sell or deliver any currency, commodity or security at a future date for a specified price entered into to protect such Person from fluctuations in prices or rates, including currencies, interest rates, commodity prices, and securities prices, including without limitation indebtedness under any interest rate or commodity price swap agreement, interest rate cap agreement, interest rate collar agreement or any forward sales arrangements, calls, options, swaps, or other similar transactions or any combination thereof.

“*Indenture*” means this Indenture as amended or supplemented from time to time.

“*Initial Securities*” shall have the meaning assigned to such term in the second introductory paragraph of this Indenture.

“*Interest Rate Agreement*” means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.

“*Interim Capital Transactions*” means (1) borrowings, refinancings or refundings of Indebtedness and sales of debt securities (other than for working capital purposes and other than for items purchased on open account in the ordinary course of business) by the Company, (2) sales of Capital Stock of the Company by the Company and (3) sales or other voluntary or involuntary dispositions of any assets of the Company (other than (x) sales or other dispositions of inventory in the ordinary course of business, (y) sales or other dispositions of other current assets excluding receivables and accounts and (z) sales or other dispositions of assets as a part of normal retirements or replacements), in each case prior to the commencement of the dissolution and liquidation of the Company.

“*Investment*” means as applied to any Person:

(1) any direct or indirect purchase or other acquisition by the Person of stock or other securities of any other Person; or

(2) any direct or indirect loan, advance or capital contribution by the Person to any other Person and any other item which would be classified as an “investment” on a balance sheet of the Person prepared in accordance with GAAP, including without limitation any direct or indirect contribution by the Person of property or assets to a joint venture, partnership or other business entity in which the Person retains an interest, it being understood that a direct or indirect purchase or other acquisition by the Person of assets of any other Person, other than stock or other securities, shall not constitute an “Investment” for purposes of this Indenture.

The amount classified as Investments made during any period shall be the aggregate cost to the Company and its Restricted Subsidiaries of all the Investments made during the period, determined in accordance with GAAP, but without regard to unrealized increases or decreases in value, or write-ups, write-downs or write-offs, of the Investments and without regard to the existence of any undistributed earnings or accrued interest with

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respect thereto accrued after the respective dates on which the Investments were made, less any net return of capital realized during the period upon the sale, repayment or other liquidation of the Investments, determined in accordance with GAAP, but without regard to any amounts received during the period as earnings (in the form of dividends not constituting a return of capital, interest or otherwise) on the Investments or as loans from any Person in whom the Investments have been made.

“*Issue Date*” means the date on which the Notes are originally issued.

“*Issuers*” shall have the meaning assigned to such term in the preamble to this Indenture.

“*Issuers’ Order*” shall have the meaning assigned to such term in *Section 2.2*.

“*Lien*” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“*Net Proceeds*” means, with respect to any Asset Sale or sale of Capital Stock, the proceeds therefrom in the form of cash or cash equivalents including payments in respect of deferred payment obligations when received in the form of cash or cash equivalents, except to the extent that the deferred payment obligations are financed or sold with recourse to the Company or any of its Restricted Subsidiaries, net of:

(1) brokerage commissions and other fees and expenses related to the Asset Sale, including, without limitation, fees and expenses of legal counsel and accountants and fees, expenses, discounts or commissions of underwriters, placement agents and investment bankers;

(2) provisions for all taxes payable as a result of the Asset Sale;

(3) amounts required to be paid to any Person, other than the Company or any Restricted Subsidiary, owning a beneficial interest in the assets subject to the Asset Sale;

(4) appropriate amounts established by the Company or any Restricted Subsidiary, as the case may be, as a reserve required in accordance with GAAP against any liabilities associated with the Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after the Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with the Asset Sale; and

(5) amounts applied to the repayment of Indebtedness in connection with the asset or assets sold in the Asset Sale, including any transaction costs and expenses associated therewith and any make-whole or other premium owed in connection with such repayment.

“*Non-U.S. Person*” means a person who is not a U.S. person, as defined in Regulation S.

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“*Note Register*” means the register of Securities, maintained by the Trustee, pursuant to *Section 2.3*.

“*Officer*” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Issuers or, so long as the Company is a limited partnership, of the Company’s general partner.

“*Officers’ Certificate*” means (i) in the case of the Company, a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company or, so long as the Company is a limited partnership, of the Company’s general partner or (ii) in the case of Star Gas Finance Company, a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of Star Gas Finance Company.

“*Opinion of Counsel*” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“*Permitted Holders*” means Irik Sevin and Audrey Sevin and:

- (1) any immediate family member or lineal descendant of either of them;
- (2) any trust established for the benefit of any of the foregoing; or
- (3) any Person controlled by any of them.

“*Permitted Indebtedness*” shall mean any of the following:

- (1) Indebtedness evidenced by the Notes (but not Additional Notes);
- (2) Indebtedness outstanding as of the Issue Date;
- (3) Indebtedness of the Company or a Restricted Subsidiary Incurred for (i) the making of capital expenditures by the Company or its Restricted Subsidiaries, or (ii) for the purpose of funding acquisitions of Related Businesses, in an aggregate amount of Indebtedness pursuant to this paragraph (3) not to exceed \$100 million at any one time outstanding.
- (4) Indebtedness of the Company owed to the general partner or an Affiliate of the general partner that is unsecured and that is subordinated in right of payment to the Notes; *provided* that the aggregate principal amount of this Indebtedness outstanding at any time under this clause may not exceed \$10 million and this Indebtedness has a final maturity date later than the final maturity date of the Notes;
- (5) Indebtedness (a) owed by the Company or any Restricted Subsidiary to any Restricted Subsidiary or (b) owed by any Restricted Subsidiary to the Company or to any other Restricted Subsidiary;



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(6) Permitted Refinancing Indebtedness (including, for the avoidance of doubt, Indebtedness Incurred as permitted under the Consolidated Fixed Charge Coverage Ratio;

(7) the Incurrence by the Company or a Restricted Subsidiary of Indebtedness owing directly to its insurance carriers, without duplication, in connection with the Company's, its Subsidiaries' or its Affiliates' self-insurance programs or other similar forms of retained insurable risks for their respective businesses, consisting of reinsurance agreements and indemnification agreements, and Guarantees of the foregoing, secured by letters of credit;

(8) Indebtedness of the Company and its Restricted Subsidiaries in respect of Capital Leases; *provided* that the aggregate amount of this Indebtedness outstanding at any time may not exceed \$7.5 million;

(9) Indebtedness of the Company and its Restricted Subsidiaries represented by letters of credit supporting (a) obligations under workers' compensation laws, (b) obligations to suppliers of propane or energy commodity derivative providers in the ordinary course of business consistent with past practices, not to exceed \$10 million at any one time outstanding, and (c) the repayment of Indebtedness permitted to be Incurred under this Indenture;

(10) surety bonds and appeal bonds required in the ordinary course of business or in connection with the enforcement of rights or claims of the Company or any of its Subsidiaries or in connection with judgments that do not result in a Default or Event of Default;

(11) any Guarantee by any Restricted Subsidiary in respect of Indebtedness of any other Restricted Subsidiary;

(12) any Guarantee by the Company of Indebtedness in respect of (x) senior indebtedness of its Restricted Subsidiaries, or (y) trade credit of Restricted Subsidiaries; and

(13) Indebtedness Incurred by any Restricted Subsidiary pursuant to any Credit Facility Incurred solely for working capital purposes not to exceed in the aggregate at any one time outstanding the Borrowing Base.

"*Permitted Investments*" means any of the following:

(1) Investments made or owned by the Company or any Restricted Subsidiary in:

(a) marketable obligations issued or unconditionally guaranteed by the United States, or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing one year or less from the date of acquisition thereof;

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(b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and having as at such date the highest rating obtainable from either Standard & Poor's Ratings Group ("*S&P*") and its successors or Moody's Investors Service, Inc. ("*Moody's*") and its successors;

(c) commercial paper maturing no more than 270 days from the date of creation thereof and having as at the date of acquisition thereof one of the two highest ratings obtainable from either S&P or Moody's;

(d) certificates of deposit maturing one year or less from the date of acquisition thereof issued by commercial banks incorporated under the laws of the United States or any state thereof or the District of Columbia or Canada; the commercial paper or other short term unsecured debt obligations of which are as at such date rated either "A-2" or better (or comparably if the rating system is changed) by S&P or "Prime-2" or better (or comparably if the rating system is changed) by Moody's; the long-term debt obligations of which are, as at such date, rated either "A" or better (or comparably if the rating system is changed) by either S&P or Moody's ("*Permitted Banks*");

(e) eurodollar time deposits having a maturity of less than 270 days from the date of acquisition thereof purchased directly from any Permitted Bank;

(f) bankers' acceptances eligible for rediscount under requirements of the Board of Governors of the Federal Reserve System and accepted by Permitted Banks;

(g) obligations of the type described in clauses (a) through (e) above purchased from a securities dealer designated as a "primary dealer" by the Federal Reserve Bank of New York or from a Permitted Bank as counterparty to a written repurchase agreement obligating such counterparty to repurchase such obligations not later than 14 days after the purchase thereof and which provides that the obligations which are the subject thereof are held for the benefit of the Company or a Restricted Subsidiary by a custodian which is a Permitted Bank and which is not a counterparty to the repurchase agreement in question; and

(h) securities issued by money market mutual funds which (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated "AAA" by S&P and "Aaa" by Moody's and (iii) have portfolio assets in excess of \$500 million.

(2) the acquisition by the Company or any Restricted Subsidiary of Capital Stock or other ownership interests, whether in a single transaction or in a series of related transactions, of a Person located in the United States and engaged in a Related Business

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such that, upon the completion of such transaction or series of transactions, the Person becomes a Restricted Subsidiary;

(3) the making or ownership by the Company or any Restricted Subsidiary of Investments (in addition to any other Permitted Investments) in any Person incorporated or otherwise formed pursuant to the laws of the United States or any state thereof, *provided* that the aggregate amount of all such Investments made by the Company and its Restricted Subsidiaries following the Issue Date and outstanding pursuant to this third clause shall not at any date of determination exceed \$20 million;

(4) the making or ownership by the Company or any Restricted Subsidiary of Investments:

(a) arising out of loans and advances to employees Incurred in the ordinary course of business;

(b) arising out of extensions of trade credit or advances to third parties in the ordinary course of business; or

(c) acquired by reason of the exercise of customary creditors' rights upon default or pursuant to the bankruptcy, insolvency or reorganization of a debtor;

(5) the creation or Incurrence of liability by the Company or any Restricted Subsidiary, with respect to any Guarantee constituting an obligation, warranty or indemnity, not guaranteeing Indebtedness of any Person, which is undertaken or made in the ordinary course of business;

(6) the creation or Incurrence of liability by the Company or any Restricted Subsidiary with respect to any hedging agreements or arrangements;

(7) the making by any Restricted Subsidiary of Investments in the Company or another Restricted Subsidiary and the making by the Company of Investments in any Restricted Subsidiary; and

(8) Investments in any Person pursuant to joint venture arrangements, in an aggregate amount not to exceed \$10 million outstanding at any one time; *provided* that such Person is engaged in a Related Business.

"*Permitted Liens*" means any of the following:

(1) Liens for taxes, assessments or other governmental charges, the payment of which is not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and as to which reserves or other appropriate provision, if any, as shall be required by GAAP, shall have been made therefor and be adequate in the good faith judgment of the obligor;

(2) Liens of lessors, landlords and carriers, vendors, warehousemen, mechanics, materialmen, repairmen and other like Liens Incurred in the ordinary course of business

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for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and as to which reserves or other appropriate provisions, if any, as shall be required by GAAP, shall have been made therefor and be adequate in the good faith judgment of the obligor, in each case:

(a) not Incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property; or

(b) Incurred in the ordinary course of business securing the unpaid purchase price of property or services constituting current accounts payable;

(3) Liens, other than any Lien imposed by the Employee Retirement Income Security Act of 1974, as may be amended from time to time, Incurred or deposits made in the ordinary course of business:

(a) in connection with workers' compensation, unemployment insurance and other types of social security; or

(b) to secure or to obtain letters of credit that secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, performance bonds, purchase, construction or sales contracts and other similar obligations, in each case not Incurred or made in connection with the borrowing of money;

(4) other deposits made to secure liability to insurance carriers under insurance or self-insurance arrangements;

(5) Liens securing reimbursement obligations under letters of credit, provided in each case that such Liens cover only the title documents and related goods and any proceeds thereof covered by the related letter of credit;

(6) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after notice of the entry thereof, have been discharged or execution thereof stayed pending appeal or review, or shall not have been discharged within 60 days after expiration of any such stay;

(7) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, which, in each case either are granted, entered into or created in the ordinary course of the business of the Company or any Restricted Subsidiary or do not materially impair the value or intended use of the property covered thereby;

(8) Liens on property or assets of any Restricted Subsidiary securing Indebtedness of the Restricted Subsidiary owing to the Company or a Restricted Subsidiary;

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(9) Liens on assets of the Company or any Restricted Subsidiary existing on the Issue Date;

(10) Liens on personal property leased under leases entered into by the Company or its Restricted Subsidiaries which are accounted for as operating leases in accordance with GAAP;

(11) Liens securing Indebtedness Incurred in accordance with:

(a) clauses (4), (5) and (7) of the definition of Permitted Indebtedness; and

(b) Indebtedness otherwise permitted to be Incurred under *Section 3.3*, to the extent Incurred:

(i) to finance the making of capital expenditures for the improvement or repair (to the extent the improvements and repairs may be capitalized on the books of the Company and the Restricted Subsidiaries in accordance with GAAP) of, or additions including additions by way of acquisitions of businesses and related assets to, the assets and property of the Company and its Restricted Subsidiaries; or

(ii) by assumption in connection with additions including additions by way of acquisition or capital contributions of businesses and related assets to the property and assets of the Company and its Restricted Subsidiaries; *provided that*, in the case of Indebtedness Incurred in accordance with clauses (b) and (c) above, the principal amount of the Indebtedness does not exceed the lesser of the cost to the Company and its Restricted Subsidiaries of the additional property or assets and the fair market value of the additional property or assets at the time of the acquisition thereof, as determined in good faith by the Board of Directors;

(12) Liens existing on any property of any Person at the time it becomes a Subsidiary of the Company, or existing at the time of acquisition upon any property acquired by the Company or any Subsidiary through purchase, merger or consolidation or otherwise, whether or not assumed by the Company or the Subsidiary, or created to secure Indebtedness Incurred to pay all or any part of the purchase price (a "*Purchase Money Lien*") of property including, without limitation, Capital Stock and other securities acquired by the Company or a Restricted Subsidiary; *provided that*:

(a) the Lien shall be confined solely to the item or items of property and, if required by the terms of the instrument originally creating the Lien, other property which is an improvement to or is acquired for use specifically in connection with the acquired property;

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(b) in the case of a Purchase Money Lien, the principal amount of the Indebtedness secured by the Purchase Money Lien shall at no time exceed an amount equal to the lesser of:

(i) the cost to the Company and the Restricted Subsidiaries of the property; and

(ii) the fair market value of the property at the time of the acquisition thereof as determined in good faith by the Board of Directors;

(c) the Purchase Money Lien shall be created not later than 360 days after the acquisition of the property; and

(d) the Lien, other than a Purchase Money Lien, shall not have been created or assumed in contemplation of the Person's becoming a Subsidiary of the Company or the acquisition of property by the Company or any Subsidiary;

(13) easements, exceptions or reservations in any property of the Company or any Restricted Subsidiary granted or reserved for the purpose of pipelines, roads, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which are incidental to, and do not materially interfere with, the ordinary conduct of the business of the Company or any Restricted Subsidiary; and

(14) any Lien renewing, extending or replacing any Lien permitted by clauses (9) through (12) above; *provided* that, the principal amount of the Indebtedness secured by any such Lien shall not exceed the principal amount of the Indebtedness outstanding immediately prior to the renewal or extension of the Lien, and no assets encumbered by the Lien other than the assets encumbered immediately prior to the renewal or extension shall be encumbered thereby. The foregoing provisions of this clause (14) shall not be interpreted to limit the ability of the Company or any Restricted Subsidiary to incur additional Indebtedness or grant Liens in respect thereof as contemplated in clause (13) of the definition of Permitted Indebtedness.

*"Permitted Refinancing Indebtedness"* means Indebtedness Incurred by the Company or any Restricted Subsidiary to substantially concurrently (excluding any notice period on redemptions) repay, refund, renew, replace, extend or refinance, in whole or in part, any Permitted Indebtedness of the Company or any Restricted Subsidiary or any other Indebtedness Incurred by the Company or any Restricted Subsidiary pursuant to *Section 3.3*, to the extent:

(1) the principal amount of the Permitted Refinancing Indebtedness does not exceed the principal or accreted amount plus the amount of accrued and unpaid interest of the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced (plus the amount of all expenses and premiums Incurred in connection therewith);

(2) with respect to any repayment, refunding, renewal, replacement, extension or refinancing of the Company's and its Restricted Subsidiaries' Indebtedness, the Permitted

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Refinancing Indebtedness ranks no more favorably in right of payment with respect to the Notes than the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced; and

(3) with respect to the repayment, refunding, renewal, replacement, extension or refinancing of the Company's and its Restricted Subsidiaries' Indebtedness, the Permitted Refinancing Indebtedness has a Weighted Average Life to Stated Maturity and Stated Maturity equal to, or greater than, and has no fixed mandatory redemption or sinking fund requirement in an amount greater than or at a time prior to the amounts set forth in, the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced; *provided, however*, that Permitted Refinancing Indebtedness shall not include Indebtedness Incurred by a Restricted Subsidiary to repay, refund, renew, replace, extend or refinance Indebtedness of the Company.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

"*Preferred Stock*" as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of distributions or dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"*Public Equity Offering*" means a public offering or private placement of partnership interests (other than interests that are mandatorily redeemable) of:

(a) any entity that directly or indirectly owns equity interests in the Company, to the extent the net proceeds are contributed to the Company;

(b) any Subsidiary of the Company to the extent the net proceeds are distributed, paid, lent or otherwise transferred to the Company that results in the net proceeds to the Company of at least \$10 million; or

(c) the Company;

*provided* that a private placement of partnership interests will not be deemed a Public Equity Offering unless net proceeds of at least \$10 million are received.

A "*Public Market*" exists at any time with respect to the Common Stock of the Company if:

- (1) the Common Stock of the Company is then registered with the SEC pursuant to Section 12(b) or 12(g) of the Exchange Act and traded either on a national securities exchange or in the National Association of Securities Dealers Automated Quotation System; and

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- (2) at least 15% of the total issued and outstanding Common Stock of the Company has been and remains distributed prior to such time by means of an effective registration statement under the Securities Act of 1933, as amended.

“*Redeemable Capital Stock*” means any shares of any class or series of Capital Stock (excluding, but not limited to, the Senior Units and Common Stock issued by the Company), that, either by the terms thereof, by the terms of any security into which it is convertible or exchangeable or by contract or otherwise, is or upon the happening of an event or passage of time would be, required to be redeemed prior to the Stated Maturity of the principal of the Notes or is redeemable at the option of the holder thereof at any time prior to the Stated Maturity of the principal of the Notes, or is convertible into or exchangeable for debt securities at any time prior to the Stated Maturity of the principal of the Notes.

“*Redemption Date*” means the date selected by the Issuers for the redemption of Securities consistent with the provisions of Exhibits A and B to this Indenture.

“*Refinancing Indebtedness*” means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) (collectively, “refinance,” “refinances,” and “refinanced” shall have a correlative meaning) any Indebtedness existing on the date of this Indenture or Incurred in compliance with this Indenture (including Indebtedness of the Issuers that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness, *provided, however*, that:

- (1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Securities, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Securities, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Securities;
- (2) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced;
- (3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of Indebtedness being refinanced plus (y) without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and fees, underwriting discounts, commissions and other expenses incurred in connection the issuance of the Refinancing Indebtedness and the repayment of the Indebtedness being refinanced); and



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- (4) if the Indebtedness being refinanced is subordinated in right of payment to the Securities, such Refinancing Indebtedness is subordinated in right of payment to the Securities on terms at least as favorable to the Securityholders of Securities as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

“*Registration Rights Agreement*” means that certain registration rights agreement dated as of the Issue Date by and among the Company and the initial purchasers set forth therein.

“*Related Business*” means any business which is the same as or related, ancillary or complementary to any of the businesses of the Company on the Issue Date.

“*Related Person*” with respect to any Permitted Holder means:

- (1) any controlling stockholder or a majority (or more) owned Subsidiary of such Permitted Holder or, in the case of an individual, any spouse or immediate family member of such Permitted Holder, any trust created for the benefit of such individual or such individual’s estate, executor, administrator, committee or beneficiaries; or
- (2) any trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons beneficially holding a majority (or more) controlling interest of which consist of such Permitted Holder and/or such other Persons referred to in the immediately preceding clause (1).

“*Restricted Subsidiary*” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“*Restricted Payment*” shall have the meaning assigned to such term in *Section 3.4(a)*.

“*Sale and Leaseback Transaction*” means any arrangement (other than between the Company and a Restricted Subsidiary or between Restricted Subsidiaries) whereby property has been or will be disposed of by a transferor to another entity with the intent of taking back a lease on the property pursuant to which the rental payments are calculated to amortize the purchase price of the property over its life.

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

“*Secured Indebtedness*” means Indebtedness that is secured by a Lien on the property or assets of the relevant obligor.

“*Securities*” shall have the meaning assigned to such term in the second introductory paragraph to this Indenture.

“*Securityholders*” means any holder from time to time of the Securities issued pursuant to this Indenture.

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

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“*Securities Custodian*” means the custodian with respect to the Global Security (as appointed by DTC), or any successor Person thereto and shall initially be the Trustee.

“*Senior Units*” means the units representing limited partner interests of the Company, having the rights and obligations specified with respect to Senior Subordinated Units of the Company.

“*Significant Subsidiary*” means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“*Stated Maturity*” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“*Subsidiary*” of any Person means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership and joint venture interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Company.

“*Termination Capital Transactions*” means any sale, transfer or other disposition of property of the Company occurring upon or incident to the liquidation and winding up of the Company.

“*TIA*” or “*Trust Indenture Act*” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as in effect on the date of this Indenture.

“*Trustee*” means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

“*Trust Officer*” shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“*Unrestricted Subsidiary*” means any Person that is designated as such by the Board of Directors; *provided* that no portion of the Indebtedness of such Person:

- (1) is Guaranteed by the Company or any Restricted Subsidiary;

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(2) is recourse to or obligates the Company or any Restricted Subsidiary in any way; or

(3) subjects any property or assets of the partnership or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof.

Notwithstanding the foregoing, the Company or a Restricted Subsidiary may Guarantee or agree to provide funds for the payment or maintenance of, or otherwise become liable with respect to Indebtedness of an Unrestricted Subsidiary, but only to the extent that the Company or a Restricted Subsidiary would be permitted to:

(1) make an Investment in the Unrestricted Subsidiary pursuant to the third clause of the definition of Permitted Investments; and

(2) Incur the Indebtedness represented by the Guarantee or agreement pursuant to *Section 3.3*. The Board of Directors may designate an Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to the designation there exists no Default or Event of Default, and if the Unrestricted Subsidiary has, as of the date of the designation, outstanding Indebtedness other than Permitted Indebtedness, the Company could Incur at least \$1.00 of Indebtedness other than Permitted Indebtedness.

Notwithstanding the foregoing, no Subsidiary may be designated an Unrestricted Subsidiary if the Subsidiary, directly or indirectly, holds Capital Stock of a Restricted Subsidiary.

“*U.S. Government Obligations*” means securities that are (a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

“*Voting Stock*” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

“*Weighted Average Life to Stated Maturity*” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) The sum of the products obtained by multiplying:

(a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by

(b) the number of years, calculated to the nearest one-twelfth, that will elapse between the date and the making of the payment, by

(2) The then outstanding principal amount of the Indebtedness;

*provided, however*, that with respect to any revolving Indebtedness, the foregoing calculation of Weighted Average Life to Stated Maturity shall be determined based upon the total available commitments and the required reductions of commitments in lieu of the outstanding principal amount and the required payments of principal, respectively.

Section 1.2. *Other Definitions.*

<u>Term</u>	<u>Defined in Section</u>
“Additional Global Securities”	2.1(b)
“Agent Members”	2.1(e)
“Authenticating Agent”	2.2
“Change of Control Offer”	3.9
“Change of Control Payment”	3.9
“Change of Control Payment Date”	3.9
“Corporate Trust Office”	3.14
“covenant defeasance option”	8.1(b)
“cross acceleration provision”	6.1(6)(b)
“Defaulted Interest”	2.13
“Excess Proceeds”	3.7(c)
“Exchange Global Security”	2.1(b)
“Global Securities”	2.1(b)
“IAIs”	2.1(b)
“Institutional Accredited Investor Security”	2.1(b)
“Institutional Accredited Investor Global Securities”	2.1(b)
“judgment default provision”	6.1(8)
“legal defeasance option”	8.1(b)
“payment default”	6.1(6)
“Paying Agent”	2.3
“Private Placement Legend”	2.1(d)
“QIB”	2.1(b)
“Registrar”	2.3
“Regulation S”	2.1(d)
“Regulation S Global Security”	2.1(b)
“Regulation S Legend”	2.1(d)
“Regulation S Securities”	2.1(b)
“Resale Restriction Termination Date”	2.6(a)

“Restricted Payment”	3.4
“Rule 144A”	2.1(b)
“Rule 144A Global Security”	2.1(b)
“Rule 144A Securities”	2.1(b)
“Special Interest Payment Date”	2.13(a)
“Special Record Date”	2.13(a)

Section 1.3. *Incorporation by Reference of Trust Indenture Act.* This Indenture is subject to the mandatory provisions of the TIA which are incorporated by reference in and made a part of this Indenture. The following TIA terms have the following meanings:

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

“*indenture securities*” means the Securities.

“*indenture security holder*” means a Securityholder.

“*indenture to be qualified*” means this Indenture.

“*indenture trustee*” or “*institutional trustee*” means the Trustee.

“*obligor*” on this Indenture securities means the Company and any other obligor on this Indenture securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined in the TIA by reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

Section 1.4. *Rules of Construction.* Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) “or” is not exclusive;

(4) “including” means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular;

(6) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(7) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP; and

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(8) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater.

## ARTICLE II

### THE SECURITIES

#### Section 2.1. *Form, Dating and Terms.*

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Initial Securities issued on the date hereof will be in an aggregate principal amount of \$200,000,000. In addition, the Company may issue, from time to time in accordance with the provisions of this Indenture (including, without limitation, *Section 3.3* hereof), Additional Securities and Exchange Securities. Furthermore, Securities may be authenticated and delivered upon registration or transfer, or in lieu of, other Securities pursuant to *Sections 2.6, 2.9, 2.11* or *9.5* or in connection with a Change of Control Offer pursuant to *Section 3.9*.

With respect to any Additional Securities, the Issuers shall set forth in Board Resolutions and Officers' Certificates, the following information:

- (1) the aggregate principal amount of such Additional Securities to be authenticated and delivered pursuant to this Indenture;
- (2) the issue price and the issue date of such Additional Securities, including the date from which interest shall accrue; and

(3) whether such Additional Securities shall be Global Securities issued in the form of Exhibit A hereto and/or shall be issued in the form of Exhibit B hereto.

The Initial Securities, the Additional Securities and the Exchange Securities shall be considered collectively as a single class for all purposes of this Indenture. Securityholders of the Initial Securities, the Additional Securities and the Exchange Securities will vote and consent together on all matters to which such Securityholders are entitled to vote or consent as one class, and none of the Securityholders of the Initial Securities, the Additional Securities or the Exchange Securities shall have the right to vote or consent as a separate class on any matter to which such Securityholders are entitled to vote or consent.

(b) The Initial Securities are being offered and sold by the Company pursuant to a Purchase Agreement, dated February 3, 2003, among the Issuers, J.P. Morgan Securities Inc. and the other initial purchasers named therein. The Initial Securities and any Additional Securities (if issued as restricted Global Securities) (the "*Additional Global Securities*") will be resold initially only to (A) qualified institutional buyers (as defined in Rule 144A under the Securities Act ("*Rule 144A*") in reliance on Rule 144A ("*QIBs*") and (B) Persons other than U.S. Persons (as defined in Regulation S under the Securities Act ("*Regulation S*") in reliance

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on Regulation S. Such Initial Securities and Additional Global Securities may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and institutional “accredited investors” (as defined in Rules 501(a)(1), (2), (3) and (7) under the Securities Act) who are not QIBs (“*IAIs*”) in accordance with Rule 501 of the Securities Act in accordance with the procedure described herein.

Initial Securities and Additional Global Securities offered and sold to qualified institutional buyers in the United States of America in reliance on Rule 144A (the “*Rule 144A Securities*”) shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of *Exhibit A*, which is hereby incorporated by reference and made a part of this Indenture, including appropriate legends as set forth in *Section 2.1(d)* (the “*Rule 144A Global Security*”), deposited with the Trustee, as custodian for DTC, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Rule 144A Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Rule 144A Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Securities and Additional Securities offered and sold outside the United States of America (the “*Regulation S Securities*”) in reliance on Regulation S shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of *Exhibit A* (the “*Regulation S Global Security*”) deposited with the Trustee, as custodian for DTC, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided. The Regulation S Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Regulation S Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Securities and Additional Securities resold to IAIs (the “*Institutional Accredited Investor Securities*”) in the United States of America shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of *Exhibit A* (the “*Institutional Accredited Investor Global Security*”) deposited with the Trustee, as custodian for DTC, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Institutional Accredited Investor Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Institutional Accredited Investor Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Exchange Securities exchanged for interests in the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities will be issued in the form of a permanent global Security, without interest coupons, substantially in the form of *Exhibit B*, which is hereby incorporated by reference and made a part of this Indenture, deposited with the Trustee as hereinafter provided, including the appropriate legend set forth in

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*Section 2.1(d)* (the “*Exchange Global Security*”). The Exchange Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate.

The Rule 144A Global Security, the Regulation S Global Security, the Institutional Accredited Investor Global Security and the Exchange Global Security are sometimes collectively herein referred to as the “*Global Securities*.”

The principal of (and premium, if any) and interest on the Securities shall be payable at the office or agency of the Issuers maintained for such purpose in The City of New York, or at such other office or agency of the Issuers as may be maintained for such purpose pursuant to *Section 2.3*; *provided, however*, that, at the option of the Issuers, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Note Register or (ii) wire transfer to an account located in the United States maintained by the payee. Payments in respect of Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by DTC.

The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage, in addition to those set forth on *Exhibit A* and *Exhibit B* and in *Section 2.1(d)*. The Issuers and the Trustee shall approve the forms of the Securities and any notation, endorsement or legend on them. Each Security shall be dated the date of its authentication. The terms of the Securities set forth in *Exhibit A* and *Exhibit B* are part of the terms of this Indenture and, to the extent applicable, the Issuers and the Trustee, by their execution and delivery of this Indenture, expressly agree to be bound by such terms.

(c) *Denominations*. The Securities shall be issueable only in fully registered form, without coupons, and only in denominations of \$1,000 and any integral multiple thereof.

(d) *Restrictive Legends*. Unless and until (i) the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities are sold under an effective registration statement or (ii) the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities are exchanged for an Exchange Security in connection with an effective registration statement, in each case pursuant to the Registration Rights Agreement or a similar agreement,

(A) the Rule 144A Global Security and the Institutional Accredited Investor Global Security shall bear the following legend (the “*Private Placement Legend*”) on the face thereof:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “*SECURITIES ACT*”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION UNLESS SUCH



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TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF \$250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS' AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) AND (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

BY ITS ACQUISITION OF THIS SECURITY THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE AND HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OF PLANS, INDIVIDUAL RETIREMENT ACCOUNTS OR OTHER ARRANGEMENTS THAT ARE SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR PROVISIONS UNDER ANY FEDERAL,

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STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (“SIMILAR LAWS”), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF SUCH PLANS, ACCOUNTS OR ARRANGEMENTS, OR (II) THE PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS.”

(B) the Regulation S Global Security shall bear the following legend (the “*Regulation S Legend*”) on the face thereof:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “*SECURITIES ACT*”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (“*REGULATION S*”), (2) BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “*RESALE RESTRICTION TERMINATION DATE*”) THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S, (E) TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF \$250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE

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ISSUERS' AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM AND IN THE CASE OF THE FOREGOING CLAUSE (E), A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE ISSUERS AND THE TRUSTEE. THIS LEGEND WILL BE REMOVED AFTER 40 CONSECUTIVE DAYS BEGINNING ON AND INCLUDING THE LATER OF (A) THE DAY ON WHICH THE SECURITIES ARE OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN REGULATION S) AND (B) THE DATE OF THE CLOSING OF THE ORIGINAL OFFERING. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATIONS UNDER THE SECURITIES ACT."

(C) The Global Securities, whether or not an Initial Security, shall bear the following legend on the face thereof:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THIS INDENTURE REFERRED TO ON THE REVERSE HEREOF."

(e) *Book-Entry Provisions.*

- (i) This *Section 2.1(e)* shall apply only to Global Securities deposited with the Trustee, as custodian for DTC.
- (ii) Each Global Security initially shall (x) be registered in the name of DTC for such Global Security or the nominee of DTC, (y) be delivered to the

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Trustee as custodian for DTC and (z) bear legends as set forth in *Section 2.1(d)*.

- (iii) Members of, or participants in, DTC (“*Agent Members*”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by DTC or by the Trustee as the custodian of DTC or under such Global Security, and DTC may be treated by the Issuers, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a Securityholder of a beneficial interest in any Global Security.
- (iv) In connection with any transfer of a portion of the beneficial interest in a Global Security pursuant to subsection (f) of this *Section 2.1* to beneficial owners who are required to hold Definitive Securities, the Securities Custodian shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Issuers shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Securities of like tenor and amount.
- (v) In connection with the transfer of an entire Global Security to beneficial owners pursuant to subsection (f) of this *Section 2.1*, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuers shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations.
- (vi) The registered Securityholder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Securityholder is entitled to take under this Indenture or the Securities.

(f) *Definitive Securities.* (i) Except as provided below, owners of beneficial interests in Global Securities will not be entitled to receive Definitive Securities. If required to do so pursuant to any applicable law or regulation, beneficial owners may obtain Definitive Securities in exchange for their beneficial interests in a Global Security upon written request in accordance with DTC’s and the Registrar’s procedures. In addition, Definitive Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global

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Security if (a) DTC notifies the Issuers that it is unwilling or unable to continue as depository for such Global Security or DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depository, and in each case a successor depository is not appointed by the Issuers within 90 days of such notice or, (b) the Company executes and delivers to the Trustee and Registrar an Officers' Certificate stating that such Global Security shall be so exchangeable or (c) an Event of Default has occurred and is continuing and the Registrar has received a request from DTC.

- (ii) Any Definitive Security delivered in exchange for an interest in a Global Security pursuant to *Section 2.1(e)(iv) or (v)* shall, except as otherwise provided by *Section 2.6(c)*, bear the applicable legend regarding transfer restrictions applicable to the Definitive Security set forth in *Section 2.1(d)*.
- (iii) In connection with the exchange of a portion of a Definitive Security for a beneficial interest in a Global Security, the Trustee shall cancel such Definitive Security, and the Issuers shall execute, and the Trustee shall authenticate and deliver, to the transferring Securityholder a new Definitive Security representing the principal amount not so transferred.

SECTION 2.2. *Execution and Authentication.* One Officer of each of the Issuers shall sign the Securities for the Issuers by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless, after giving effect to any exchange of Initial Securities for Exchange Securities.

A Security shall not be valid until an authorized signatory of the Trustee manually authenticates the Security. The signature of the Trustee on a Security shall be conclusive evidence that such Security has been duly and validly authenticated and issued under this Indenture. A Security shall be dated the date of its authentication.

At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery: (1) Initial Securities for original issue on the Issue Date in an aggregate principal amount of \$200,000,000, (2) Additional Securities for original issue and (3) Exchange Securities for issue only in an Exchange Offer pursuant to the Registration Rights Agreement, and only in exchange for Initial Securities or Additional Securities of an equal principal amount, in each case upon a written order of the Issuers signed by two Officers of each of the Issuers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of each of the Issuers (the "*Issuers' Order*"). Such Issuers' Order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and whether the Securities are to be Initial Securities, Additional Securities or Exchange Securities.

The Trustee may appoint an agent (the "*Authenticating Agent*") reasonably acceptable to the Issuers to authenticate the Securities. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent.

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In case any Issuer, pursuant to *Article IV*, shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which any Issuer shall have been merged, or the Person which shall have received a conveyance, transfer, lease or other disposition as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to *Article IV*, any of the Securities authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may, from time to time, at the request of the successor Person, be exchanged for other Securities executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Issuers' Order of the successor Person, shall authenticate and deliver Securities as specified in such order for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this *Section 2.2* in exchange or substitution for or upon registration of transfer of any Securities, such successor Person, at the option of the Securityholders but without expense to them, shall provide for the exchange of all Securities at the time outstanding for Securities authenticated and delivered in such new name.

*Section 2.3. Registrar and Paying Agent.* The Issuers shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "*Registrar*") and an office or agency where Securities may be presented for payment (the "*Paying Agent*"). The Registrar shall keep a register of the Securities and of their transfer and exchange (the "*Note Register*"). The Issuers may have one or more co-registrars and one or more additional paying agents. The term "*Paying Agent*" includes any additional paying agent.

The Issuers shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuers shall notify the Trustee of the name and address of each such agent. If the Issuers fail to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to *Section 7.7*. The Issuers or any of their Restricted Subsidiaries may act as Paying Agent, Registrar, co-registrar or transfer agent.

The Issuers initially appoint the Trustee as Registrar and Paying Agent for the Securities.

*Section 2.4. Paying Agent to Hold Money in Trust.* By no later than 10:00 a.m. (New York City time) on the date on which any principal of or interest on any Security is due and payable, the Issuers shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal or interest when due. The Issuers shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit the Securityholders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Securities and shall notify the Trustee in writing of any default by any of the Issuers in making any such payment. If either Issuer or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuers at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent.

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Upon complying with this Section, the Paying Agent (if other than any Issuer or a Subsidiary) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to each Issuer, the Trustee shall serve as Paying Agent for the Securities.

SECTION 2.5. *Securityholder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, or to the extent otherwise required under the TIA, the Issuers shall furnish to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.6. *Transfer and Exchange.*

(a) The following provisions shall apply with respect to any proposed transfer of a Rule 144A Security or an Institutional Accredited Investor Security prior to the date which is two years after the later of the date of its original issue and the last date on which the Issuers or any affiliate of the Company was the owner of such Securities (or any predecessor thereto) (the “*Resale Restriction Termination Date*”):

(i) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to a QIB shall be made upon the representation of the transferee in the form as set forth on the reverse of the Security that it is purchasing for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.7* from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.8* from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them.

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(b) The following provisions shall apply with respect to any proposed transfer of a Regulation S Security prior to the expiration of the Restricted Period:

(i) a transfer of a Regulation S Security or a beneficial interest therein to a QIB shall be made upon the representation of the transferee, in the form of assignment on the reverse of the certificate, that it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Regulation S Security or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.7* from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Regulation S Security or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.8* hereof from the proposed transferee and, if requested by the Issuers or the Trustee, receipt by the Trustee or its agent of an opinion of counsel, certification and/or other information satisfactory to each of them.

After the expiration of the Restricted Period, interests in the Regulation S Security may be transferred without requiring the certification set forth in *Section 2.7*, *Section 2.8* or any additional certification.

(c) *Restricted Global Securities Legend.* Upon the transfer, exchange or replacement of Securities not bearing a restricted Global Securities Legend, the Registrar shall deliver Securities that do not bear a restricted Global Securities Legend. Upon the transfer, exchange or replacement of Securities bearing a restricted Global Securities Legend, the Registrar shall deliver only Securities that bear a restricted Global Securities Legend unless there is delivered to the Registrar an Opinion of Counsel to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(d) The Registrar shall retain copies of all letters, notices and other written communications received pursuant to *Section 2.1* or this *Section 2.6*. The Issuers shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable prior written notice to the Registrar.

(e) *Obligations with Respect to Transfers and Exchanges of Securities.*

(i) To permit registrations of transfers and exchanges, the Issuers shall, subject to the other terms and conditions of this *Article II*, execute and the Trustee shall



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authenticate Definitive Securities and Global Securities at the Registrar's or co-registrar's request.

(ii) No service charge shall be made to a Securityholder for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to *Sections 3.7, 3.9 or 9.5*).

(iii) The Registrar or co-registrar shall not be required to register the transfer of or exchange of any Security for a period beginning (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Securities and ending at the close of business on the day of such mailing or (2) 15 days before an interest payment date and ending on such interest payment date.

(iv) Prior to the due presentation for registration of transfer of any Security, the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

(v) Any Definitive Security delivered in exchange for an interest in a Global Security pursuant to *Section 2.1(e)* shall, except as otherwise provided by *Section 2.6(c)*, bear the applicable legend regarding transfer restrictions applicable to the Definitive Security set forth in *Section 2.1(d)*.

(vi) All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

(f) *No Obligation of the Trustee.*

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in, DTC or other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Securities (or other security or property) under or with respect to such Securities. All notices and communications to be given to the Securityholders and all payments to be made to Securityholders in respect of the Securities shall be given or made only to or upon the order of the registered Securityholders (which shall be DTC or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon

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information furnished by DTC with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among DTC participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.7. *Form of Certificate to be Delivered in Connection with Transfers to IAIs.*

[Date]

Star Gas Partners, L.P.  
Star Gas Finance Company  
c/o Union Bank of California, N.A.  
[Address]  
[Address]  
[Address]

Ladies and Gentlemen:

This certificate is delivered to request a transfer of \$\_\_\_\_\_ principal amount of the 10¼% Senior Notes due 2013 (the "*Securities*") of Star Gas Partners, L.P. and Star Gas Finance Company (together, the "*Issuers*").

Upon transfer, the Securities would be registered in the name of the new beneficial owner as follows:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer ID Number: \_\_\_\_\_

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "*Securities Act*")) purchasing for our own account or for the account of such an institutional "accredited investor" at least \$250,000 principal amount of the Securities, and we are acquiring the Securities not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Securities and we invest in or purchase

securities similar to the Securities in the normal course of our business. We and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

2. We understand that the Securities have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Securities to offer, sell or otherwise transfer such Securities prior to the date that is two years after the later of the date of original issue and the last date on which the Issuers or any affiliate of the Issuers was the owner of such Securities (or any predecessor thereto) (the “*Resale Restriction Termination Date*”) only (a) to the Issuers, (b) pursuant to a registration statement which has been declared effective under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person we reasonably believe is a qualified institutional buyer under Rule 144A (a “*QIB*”) that purchases for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act, (e) to an institutional “accredited investor” within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is purchasing for its own account or for the account of such an institutional “accredited investor,” in each case in a minimum principal amount of Securities of \$250,000 or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Securities is proposed to be made pursuant to clause (e) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuers and the Trustee, which shall provide, among other things, that the transferee is an institutional “accredited investor” (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and that it is acquiring such Securities for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuers and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Securities pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuers and the Trustee.

TRANSFeree: \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_

Section 2.8. *Form of Certificate to be Delivered in Connection with Transfers Pursuant to Regulation S.*

[Date]

Star Gas Partners, L.P.  
Star Gas Finance Company

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c/o Union Bank of California, N.A.

[Address]

[Address]

[Address]

Re: Star Gas Partners, L.P.  
Star Gas Finance Company  
10¼% Senior Notes due 2013 (the "Securities")

Ladies and Gentlemen:

In connection with our proposed sale of \$ \_\_\_\_\_ aggregate principal amount of the Securities, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the United States Securities Act of 1933, as amended (the "*Securities Act*"), and, accordingly, we represent that:

(a) the offer of the Securities was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable; and

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(c)(3) or Rule 904(c)(1) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(c)(3) or Rule 904(c)(1), as the case may be.

You and the Issuers are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

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

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Authorized Signature

Section 2.9. *Mutilated, Destroyed, Lost or Stolen Securities.* If a mutilated Security is surrendered to the Registrar or if the Securityholder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuers shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Securityholder (a) satisfies the Issuers or the Trustee within a reasonable time after such Securityholder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuers or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (c) satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Company, such Securityholder shall furnish an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Issuers, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Security is replaced, and, in the absence of notice to the Issuers or the Trustee that such Security has been acquired by a bona fide purchaser, the Issuers shall execute and upon Issuers' Order the Trustee shall authenticate and make available for delivery, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Issuers in their discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Issuers may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Security issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Issuers (if applicable) and any other obligor upon the Securities, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.10. *Outstanding Securities.* Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Security ceases to be outstanding in the event the Issuers or a Subsidiary of the Issuers holds the Security, *provided, however*, that (i) for purposes of determining which are outstanding for consent or voting

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purposes hereunder, the provisions of *Section 10.6* shall apply and (ii) in determining whether the Trustee shall be protected in making a determination whether the Securityholders of the requisite principal amount of outstanding Securities are present at a meeting of Securityholders of Securities for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Securities which a Trust Officer of the Trustee actually knows to be held by the Issuers or an Affiliate of the Issuers shall not be considered outstanding.

If a Security is replaced pursuant to *Section 2.9*, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a bona fide purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, and the Paying Agent is not prohibited from paying such money to the Securityholders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

*Section 2.11. Temporary Securities.* In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Issuers may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Issuers consider appropriate for temporary Securities. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate Definitive Securities. After the preparation of Definitive Securities, the temporary Securities shall be exchangeable for Definitive Securities upon surrender of the temporary Securities at any office or agency maintained by the Issuers for that purpose and such exchange shall be without charge to the Securityholder. Upon surrender for cancellation of any one or more temporary Securities, the Issuers shall execute, and the Trustee shall authenticate and make available for delivery in exchange therefor, one or more Definitive Securities representing an equal principal amount of Securities. Until so exchanged, the Securityholder of temporary Securities shall in all respects be entitled to the same benefits under this Indenture as a Securityholder of Definitive Securities.

*Section 2.12. Cancellation.* The Issuers at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and destroy such Securities in accordance with its internal policies including delivery of a certificate (a "*Certificate of Destruction*") describing such Securities disposed (subject to the record retention requirements of the Exchange Act). The Issuers may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a transfer or exchange.

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Section 2.13. *Payment of Interest; Defaulted Interest.* Interest on any Security which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the Person in whose name such Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for such interest at the office or agency of the Issuers maintained for such purpose pursuant to *Section 2.3*.

Any interest on any Security which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days shall forthwith cease to be payable to the Securityholder on the regular record date by virtue of having been such Securityholder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Securities (such defaulted interest and interest thereon herein collectively called "*Defaulted Interest*") shall be paid by the Issuers, at its election in each case, as provided in clause (a) or (b) below:

(a) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuers shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date (not less than 30 days after such notice) of the proposed payment (the "*Special Interest Payment Date*"), and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a record date (the "*Special Record Date*") for the payment of such Defaulted Interest, which date shall be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuers of such Special Record Date, and in the name and at the expense of the Issuers, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in *Section 10.2*, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Issuers may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

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Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of, transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 2.14. *Computation of Interest.* Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 2.15. *CUSIP Numbers.* The Issuers in issuing the Securities may use “CUSIP” numbers (if then generally in use) and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Securityholders; *provided, however,* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuers shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

### ARTICLE III COVENANTS

Section 3.1. *Payment of Securities.* The Issuers shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal and interest shall be considered paid on the date due to the extent on such date the Trustee or the Paying Agent holds in accordance with this Indenture immediately available funds sufficient to pay all principal and interest then due.

The Issuers shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Issuers may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder.

Section 3.2. *SEC Reports.* Notwithstanding that the Issuers may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, to the extent permitted by the Exchange Act, the Company shall file with the Commission, and make available to the Trustee and the registered Securityholders of the Securities, all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K, and any successor or substitute forms thereto, if the Issuers were required to file reports on such forms, including a Management’s Discussion and Analysis of Financial Condition and Results of Operations, and all current reports that are required to be filed with the Commission on Form 8-K, and any successor or substitute form thereto, if the Issuers were required to file such reports on such form, and proxy statements if the Issuers were required to file proxy statements, and any other reports required to be filed pursuant



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to Sections 13 and 15(d) of the Exchange Act, in each case, within the time periods specified therein. In the event that the Issuers are not permitted to file such reports, documents and information with the Commission pursuant to the Exchange Act, the Issuers will nevertheless provide such Exchange Act information to the Trustee and, upon request, to the Securityholders of the Securities as if the Issuers were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act within the time periods specified therein.

Section 3.3. *Incurrence of Indebtedness and Issuance of Preferred Stock.* The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or in any manner become directly or indirectly liable, contingently or otherwise, for the payment, in each case, to incur, any Indebtedness, unless at the time of the Incurrence and after giving pro forma effect to the receipt and application of the proceeds of the Indebtedness, the Consolidated Fixed Charge Coverage Ratio of the Company is greater than 2.00 to 1.00; *provided* that the foregoing restrictions will not prohibit the Incurrence by the Company and its Restricted Subsidiaries of Permitted Indebtedness.

Section 3.4. *Limitation on Restricted Payments.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to (all such payments and other actions set forth in the following clauses (1) through (4) are collectively the “*Restricted Payments*”):

(1) declare or pay any dividend or any other distribution or payment on or with respect to Capital Stock of the Company or any of its Restricted Subsidiaries or any payment made to the direct or indirect holders, in their capacities as such, of Capital Stock of the Company or any of its Restricted Subsidiaries, other than (a) dividends or distributions payable solely in Capital Stock of the Company (including Common Stock or Senior Units, but excluding Redeemable Capital Stock), or in options, warrants or other rights to purchase Capital Stock of the Company (including Common Stock or Senior Units, but excluding Redeemable Capital Stock); (b) dividends or other distributions to the extent declared or paid to the Company or any Restricted Subsidiary of the Company; or (c) dividends or other distributions by any Restricted Subsidiary of the Company to all holders of Capital Stock of that Restricted Subsidiary on a pro rata basis;

(2) purchase, redeem, defease or otherwise acquire or retire for value any Capital Stock of the Company or any of its Restricted Subsidiaries, other than any Capital Stock owned by a Restricted Subsidiary;

(3) make any principal payment on, or purchase, defease, repurchase, redeem or otherwise acquire or retire for value, prior to any scheduled maturity, scheduled repayment, scheduled sinking fund payment or other Stated Maturity, any subordinated Indebtedness of the Company, other than any such Indebtedness owed by the Company or a Restricted Subsidiary; or

(4) make any investment, other than a Permitted Investment, in any entity,  
unless, at the time of and after giving effect to the proposed Restricted Payment,

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(i) no Default or Event of Default shall have occurred and be continuing, and

(ii) the Restricted Payment, together with the aggregate of all other Restricted Payments made by the Company and its Restricted Subsidiaries during the fiscal quarter during which the Restricted Payment is made, will not exceed:

(A) if the Consolidated Fixed Charge Coverage Ratio of the Company is greater than 1.75 to 1.00, an amount equal to Available Cash for the immediately preceding fiscal quarter; or

(B) if the Consolidated Fixed Charge Coverage Ratio of the Company is equal to or less than 1.75 to 1.00, an amount equal to the sum of \$15 million, less the aggregate amount of all Restricted Payments made by the Company and its Restricted Subsidiaries in accordance with this clause during the period ending on the last day of the fiscal quarter of the Company immediately preceding the date of the Restricted Payment and beginning on the Issue Date plus the aggregate net cash proceeds of capital contributions to the Company from any Person other than a Restricted Subsidiary of the Company, or issuance and sale of shares of Capital Stock, other than Redeemable Capital Stock, of the Company to any entity other than to a Restricted Subsidiary of the Company, in any case made during the period ending on the last day of the fiscal quarter of the Company immediately preceding the date of the Restricted Payment and beginning on the Issue Date.

(b) The foregoing provisions of this *Section 3.4* will not prohibit:

(1) the payment of any dividend or distribution within 60 days after the date of its declaration if, at the date of declaration, the payment would be permitted as summarized above;

(2) the redemption, repurchase or other acquisition or retirement of any shares of any class of Capital Stock of the Company or any Restricted Subsidiary of the Company in exchange for, or out of the net cash proceeds of, a substantially concurrent capital contribution to the Company from any entity other than a Restricted Subsidiary of the Company; or issuance and sale of other Capital Stock, other than Redeemable Capital Stock, of the Company to any entity other than to a Restricted Subsidiary of the Company; *provided, however*, that the amount of any net cash proceeds that are utilized for any redemption, repurchase or other acquisition or retirement will be excluded from the calculation of Available Cash;

(3) the repurchase of any Common Stock or the payment of any dividend or distribution under any employment agreement, stock or unit option agreement, or restricted stock agreement not to exceed \$1 million in any calendar year and not to exceed \$5 million in the aggregate amount since the Issue Date; or

(4) any redemption, repurchase or other acquisition or retirement of subordinated Indebtedness of the Company in exchange for, or out of the net cash

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proceeds of, a substantially concurrent capital contribution to the Company from any entity other than a Restricted Subsidiary of the Company; or issuance and sale of Indebtedness of the Company issued to any entity other than a Restricted Subsidiary or the Company, so long as the Indebtedness is Permitted Refinancing Indebtedness; *provided, however*, that the amount of any net cash proceeds that are utilized for any redemption, repurchase or other acquisition or retirement will be excluded from the calculation of Available Cash;

*provided* that, in each case set forth above, in computing the amount of Restricted Payments previously made for purposes of the Restricted Payments test above, Restricted Payments made under clauses (1) and (3) above will be included and Restricted Payments made under clauses (2) and (4) above shall not be so included. The amount of all Restricted Payments (other than cash) will be the fair market value on the date of the Restricted Payment of the assets proposed to be transferred by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

Section 3.5. *Limitation on Liens.* The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Liens, unless the Lien is a Permitted Lien or the Notes are directly secured equally and ratably with the obligation or liability secured by such Lien.

Section 3.6. *Limitation on Distributions from Restricted Subsidiaries.* (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary to (all such restrictions and other actions set forth in the following clauses (1) through (5) being collectively referred to as the "*Payment Restrictions*");

(1) pay dividends, in cash or otherwise, or make any other distributions on or with respect to its Capital Stock or any other interest or participation in, or measured by, its profits;

(2) pay any Indebtedness owed to the Company or any other Restricted Subsidiary;

(3) make loans or advances to, or any investment in, the Company or any other Restricted Subsidiary;

(4) transfer any of its properties or assets to the Company or any other Restricted Subsidiary; or

(5) Guarantee any Indebtedness of the Company or any other Restricted Subsidiary.

(b) The provisions of *Section 3.6(a)* will not apply to encumbrances or restrictions existing under or by reason of:

(1) applicable law;

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(2) any agreement in effect at the Issue Date or any agreement relating to any Indebtedness permitted to be Incurred under this Indenture (including agreements or instruments evidencing Indebtedness Incurred after the Issue Date);

(3) customary non-assignment provisions of any contract or any lease governing a leasehold interest of the Company or any Restricted Subsidiary;

(4) specific purchase money obligations or Capital Leases for property subject to such obligations;

(5) any agreement of an entity (or any of its Restricted Subsidiaries) acquired by the Company or any Restricted Subsidiary, in existence at the time of the acquisition but not created in contemplation of the acquisition, which encumbrance or restriction is not applicable to any third party other than the entity; or

(6) provisions contained in instruments relating to Indebtedness which prohibit the transfer of all or substantially all of the assets of the obligor of the Indebtedness unless the transferee shall assume the obligations of the obligor under the agreement or instrument.

Section 3.7. *Limitation on Asset Sales.* (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, undertake an Asset Sale unless:

(1) the Company or its Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the fair market value, as determined in good faith by the Board of Directors, of the assets sold or otherwise disposed of; and

(2) at least 80% of the consideration received by the Company or the Restricted Subsidiary is in the form of cash.

(b) For purposes of determining the amount of cash received in an Asset Sale, the following will be deemed to be cash:

(1) the amount of any liabilities on the Company's or any Restricted Subsidiary's balance sheet that are assumed by the transferee of the assets; and

(2) the amount of any notes or other obligations received by the Company or the Restricted Subsidiary from the transferee that is converted within 180 days by the Company or the Restricted Subsidiary into cash, to the extent of the cash received.

(c) The 80% limitation set forth in *Section 3.7(a)(2)* will not apply to any Asset Sale in which the cash portion of the consideration received is equal to or greater than the after-tax proceeds would have been had the Asset Sale complied with such limitation.

(d) If the Company or any of its Restricted Subsidiaries receives Net Proceeds exceeding \$10 million from one or more Asset Sales in any fiscal year, then within 360 days after the date the aggregate amount of Net Proceeds exceeds \$10 million, the Company must

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apply the amount of such Net Proceeds, to the extent not already so applied, either (i) to reduce Indebtedness of the Company or any Restricted Subsidiary, with a permanent reduction of availability, in the case of revolving Indebtedness, or (ii) to make an investment in assets or capital expenditures useful to the Company's or any of its Subsidiaries' business as in effect on the Issue Date or any Related Business. Any Net Proceeds that are not applied or invested as set forth above, will be considered "Excess Proceeds".

(e) If the aggregate amount of Excess Proceeds exceeds \$10 million, within 360 days the Issuers will make an offer to all Securityholders to purchase for cash that number of Notes that may be purchased out of the Excess Proceeds at a purchase price equal to 100% of the principal amount of the Notes plus accrued and unpaid interest to the date of purchase pursuant to the procedures set forth in the terms of this Indenture and in compliance with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws notwithstanding any provision of this Indenture to the contrary.

(f) To the extent that the aggregate amount of Notes tendered in response to any such purchase offer is less than the Excess Proceeds, the Company or any Restricted Subsidiary may use such deficiency for general business purposes. If the aggregate principal amount of Notes surrendered by the Securityholders exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased in accordance with the procedures for selection and notice of redemption set forth herein. Notwithstanding the foregoing, if the Issuers make this purchase offer at any time when the Issuers have securities outstanding ranking equally in right of payment with the Notes and the terms of those securities provide that a similar offer must be made with respect to those other securities, then the Issuers' offer to purchase the Notes will be made concurrently with the other offers, and securities of each issue will be accepted on a pro rata basis in proportion to the aggregate principal amount of securities of each issue which their holders elect to have purchased. Upon completion of the offer to the Securityholders, the amount of Excess Proceeds will be reset at zero.

Section 3.8. *Limitation on Affiliate Transactions.* (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or suffer to exist any transaction or series of related transactions, including the sale, transfer, disposition, purchase, exchange or lease of assets, property or services, other than as provided for in the Company's partnership agreement, with, or for the benefit of any Affiliates of the Company unless:

(1) the transaction or series of related transactions are between the Company and its Restricted Subsidiaries or between two Restricted Subsidiaries; or

(2) the transaction or series of related transactions are on terms that are no less favorable to the Company or the Restricted Subsidiary, as the case may be, than those which would have been obtained in a comparable transaction at such time from an entity that is not an Affiliate of the Company or Restricted Subsidiary, and, with respect to transaction(s) involving aggregate payments or value equal to or greater than \$5 million, the Company shall have delivered an Officers' Certificate to the Trustee certifying that the transaction(s) is on terms that are no less favorable to the Company or the Restricted Subsidiary than those which would have been obtained from an entity that is not an

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Affiliate of the Company or Restricted Subsidiary and has been approved by a majority of the Board of Directors, including a majority of the disinterested directors.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of *Section 3.8(a)* or otherwise be restricted by this Indenture or the Notes:

- (1) any employment agreement, stock option agreement, restricted stock agreement, employee stock ownership plan related agreements, or similar agreement and arrangements, or synthetic leases, in the ordinary course of business;
- (2) transactions permitted by *Section 4.07* hereof;
- (3) transactions in the ordinary course of business in connection with reinsuring the self-insurance programs or other similar forms of retained insurance risks of the retail propane business operated by the Company, its Subsidiaries and Affiliates;
- (4) any affiliate trading transactions done in the ordinary course of business; and
- (5) any transaction that is a Flow-Through Acquisition.

*Section 3.9. Offer to Repurchase Upon Change of Control.*

(a) Upon the occurrence of a Change of Control, the Issuers will make an offer (a “*Change of Control Offer*”) to each Securityholder to repurchase, in cash, all or any part (equal to \$1,000 or an integral multiple of \$1,000) of that Securityholder at a purchase price equal to 101% of the aggregate principal amount of the Notes or portion of Notes validly tendered for payment thereof plus accrued and unpaid interest on the Notes repurchased, if any, to the date of purchase (the “*Change of Control Payment*”). Within 30 days following any Change of Control, the Issuers will mail a notice to each Securityholder describing the transaction or transactions that constitute the Change of Control and stating:

- (1) that the Change of Control Offer is being made pursuant to this *Section 3.9* and that all Notes tendered will be accepted for payment;
- (2) the purchase price and the purchase date, which shall be no later than 30 Business Days from the date such notice is mailed (the “*Change of Control Payment Date*”);
- (3) that any Note not tendered will continue to accrue interest;
- (4) that, unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;
- (5) that Securityholders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled

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“Option of Securityholder to Elect Purchase” on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Securityholders will be entitled to withdraw any election to have their Notes purchased if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Securityholder, the principal amount of Notes delivered for purchase, and a statement that such Securityholder is withdrawing his election to have the Notes purchased; and

(7) that Securityholders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under the applicable provisions of this Indenture by virtue of such conflict.

(b) On the Change of Control Payment Date, the Issuers will, to the extent lawful:

(1) accept for payment all Notes or portions thereof properly tendered in accordance with the Change of Control Offer;

(2) deposit an amount equal to the Change of Control Payment for the Notes with the Paying Agent in respect of all Notes or portion of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being tendered to the Issuers.

The Paying Agent will promptly mail to each Securityholder properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Securityholder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a principal amount of \$1,000 or an integral multiple thereof. The Issuers will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

If the Change of Control Payment Date is on or after an interest record date, and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid to the Person in whose a Security is registered at the close business on such record date, and

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no additional interest will be payable to Securityholders who tender pursuant to the Change of Control Offer.

Prior to mailing a Change of Control Offer, and as a condition to such mailing, (i) the requisite holders of each issue of Indebtedness issued under an indenture or other agreement that may be violated by such payment shall have consented to such Change of Control Offer being made and waived the event of default, if any, caused by the Change of Control or (ii) the Company will repay all outstanding Indebtedness issued under an indenture or other agreement that may be violated by a payment to the Securityholders under a Change of Control Offer or the Company must offer to repay all Indebtedness and make payment to the holders of such Indebtedness that accepts such offer and obtain waivers of any event of default from the remaining holders of such Indebtedness. The Issuers covenant to effect such repayment or obtain such consent and waiver within 30 days following Change of Control.

(c) Notwithstanding anything to the contrary in this *Section 3.9*, the Issuers will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this *Section 3.9* and *Section 3.7* hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer.

*Section 3.10. Limitation on Sale and Leaseback Transactions.* The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale and Leaseback Transaction with respect to their properties unless the Company or the Restricted Subsidiary would be permitted under this Indenture to Incur Indebtedness secured by a Lien on the property in an amount equal to the Attributable Debt with respect to the Sale and Leaseback Transaction.

*Section 3.11. Limitation on Lines of Business.* The Company will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Related Business.

*Section 3.12. Limitation on Co-Issuer.* In addition to the other restrictions set forth in this Indenture, the Co-Issuer will not Incur any Indebtedness unless:

(a) the Company is a co-obligor or guarantor of the Indebtedness; or

(b) the net proceeds of the Indebtedness are either lent to the Company, used to acquire outstanding debt securities issued by the Company, or used, directly or indirectly, to refinance or discharge Indebtedness permitted under the limitation of this *Section 3.12*.

Co-Issuer will not engage in any business not related, directly or indirectly, to obtaining money or arranging financing for the Company.

*Section 3.13. Maintenance of Office or Agency.* The Issuers will maintain an office or agency where the Securities may be presented or surrendered for payment, where, if applicable, the Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuers in respect of the Securities and this Indenture may be served. The principal corporate trust office of the Trustee, or if the Trustee's principal corporate



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trust office is not located in The City of New York, any other office or agency maintained by the Trustee in The City of New York (the “*Corporate Trust Office*”), shall be such office or agency of the Issuers, unless the Issuers shall designate and maintain some other office or agency for one or more of such purposes. The Issuers will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuers hereby appoint the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Issuers may also from time to time designate one or more other offices or agencies (in or outside of The City of New York) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation. The Issuers will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

Section 3.14. *Partnership and Corporate Existence.* Subject to Article IV, the Company and the Co-Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its partnership or corporate existence and that of the Co-Issuer and each Restricted Subsidiary and the partnership or corporate rights (charter and statutory) licenses and franchises of the Company and each Restricted Subsidiary; *provided, however*, that the Company shall not be required to preserve any such existence (except the Company and the Co-Issuer), right, license or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and each of its Restricted Subsidiaries, taken as a whole, and that the loss thereof would not have a material adverse effect on the ability of the Company to perform its obligations under the Securities or this Indenture, *provided, further*, the Company may merge in accordance with *Section 4.1*.

Section 3.15. *Payment of Taxes and Other Claims.* The Issuers will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary and (ii) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a material liability or Lien upon the property of the Company or any Restricted Subsidiary, except for any Lien permitted to be Incurred pursuant to the definition of “Permitted Liens”; *provided, however*, that the Issuers shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of management of the Company), are being maintained in accordance with GAAP or where the failure to pay or discharge the same would not have a material adverse effect on the ability of the Issuers to perform their obligations under the Securities or this Indenture.

Section 3.16. *Payments for Consent.* Neither the Company, the Co-Issuer, nor any of the Company’s Restricted Subsidiaries will, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fees or otherwise, to any holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions

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of this Indenture or the Notes unless such consideration is offered to be paid or is paid to all holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

SECTION 3.17. *Compliance Certificate.* The Issuers shall deliver to the Trustee within 120 days after the end of each Fiscal Year of each of the Issuers an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during such period. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company also shall comply with TIA § 314(a)(4).

SECTION 3.18. *Further Instruments and Acts.* Upon the reasonable request of the Trustee, the Issuers will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 3.19. *Statement by Officers as to Default.* The Issuers shall deliver to the Trustee, as soon as possible and in any event within fifteen days after the Issuers become aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, Officers' Certificates setting forth the details of such Event of Default or default and the action which the Issuers propose to take with respect thereto.

SECTION 3.20. *Stay, Extension and Usury Laws.* The Issuers covenant (to the extent they may lawfully do so) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, nor or any time hereafter in force, that may affect the covenant or performance of this Indenture; and the Issuers (to the extent they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### ARTICLE IV

#### SUCCESSOR COMPANY

SECTION 4.1. *Merger, Consolidation or Sale of Assets.* The Company may not consolidate or merge with or into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, another entity unless:

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(1) the Company is the surviving entity or the entity formed by or surviving the transaction, if other than the Company, or the entity to which the sale was made is a corporation or partnership organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(2) the entity formed by or surviving the transaction, if other than the Company, or the entity to which the sale was made assumes all the obligations of the Company in accordance with a supplemental indenture in a form reasonably satisfactory to the Trustee, under the Notes and this Indenture;

(3) immediately after the transaction no Default or Event of Default exists; and

(4) at the time of the transaction and after giving pro forma effect to it as if the transaction had occurred at the beginning of the applicable four-quarter period, the Company or such other entity or survivor is permitted to Incur at least \$1.00 of additional Indebtedness in accordance with the Consolidated Fixed Charge Coverage Ratio as described in *Section 3.3*.

The Co-Issuer may not consolidate or merge with or into, whether or not it is the surviving entity, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, another entity except under conditions described in the paragraph above.

## ARTICLE V

### REDEMPTION OF SECURITIES

*SECTION 5.1. Optional Redemption.* The Securities may be redeemed, as a whole or from time to time in part, subject to the conditions and at the redemption prices specified in the form of Securities set forth in Exhibits A and B hereto, which are hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date.

*SECTION 5.2. Applicability of Article.* Redemption of Securities at the election of the Issuers or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

*SECTION 5.3. Election to Redeem; Notice to Trustee.* The election of the Issuers to redeem any Securities pursuant to *Section 5.1* shall be evidenced by a Board Resolution. In case of any redemption at the election of the Issuers, the Issuers shall, upon not later than the earlier of the date that is 45 days prior to the Redemption Date fixed by the Issuers or the date on which notice is given to the Securityholders (except as provided in *Section 5.5* or unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities to be redeemed and shall deliver to

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the Trustee such documentation and records as shall enable the Trustee to select the Securities to be redeemed pursuant to *Section 5.4*.

SECTION 5.4. *Selection by Trustee of Securities to Be Redeemed*. If less than all the Securities are to be redeemed at any time pursuant to an optional redemption, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the outstanding Securities not previously called for redemption, in compliance with the requirements of the principal securities exchange, if any, on which such Securities are listed, or, if such Securities are not so listed, on a *prorata* basis, by lot or by such other method as the Trustee shall deem fair and appropriate (and in such manner as complies with applicable legal requirements) and which may provide for the selection for redemption of portions of the principal of the Securities; *provided, however*, that no such partial redemption shall reduce the portion of the principal amount of a Security not redeemed to less than \$1,000.

The Trustee shall promptly notify the Issuers in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

SECTION 5.5. *Notice of Redemption*. Notice of redemption shall be given in the manner provided for in *Section 10.2* not less than 30 nor more than 60 days prior to the Redemption Date, to each Securityholder of Securities to be redeemed. The Trustee shall give notice of redemption in the Issuers' names and at the Issuers' expense; *provided, however*, that the Issuers shall deliver to the Trustee, at least 45 days prior to the Redemption Date, an Officers' Certificate requesting that the Trustee give such notice at the Issuers' expense and setting forth the information to be stated in such notice as provided in the following items.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the redemption price and the amount of accrued interest to the Redemption Date payable as provided in *Section 5.7*, if any,
- (3) if less than all outstanding Securities are to be redeemed, the identification of the particular Securities (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption,
- (4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Securityholder will receive, without charge,

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a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,

- (5) that on the Redemption Date the redemption price (and accrued interest, if any, to the Redemption Date payable as provided in *Section 5.7*) will become due and payable upon each such Security, or the portion thereof, to be redeemed, and, unless the Issuers default in making the redemption payment, that interest on Securities called for redemption (or the portion thereof) will cease to accrue on and after said date,
- (6) the place or places where such Securities are to be surrendered for payment of the redemption price and accrued interest, if any,
- (7) the name and address of the Paying Agent,
- (8) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price,
- (9) the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Securities, and
- (10) the paragraph of the Securities pursuant to which the Securities are to be redeemed.

*SECTION 5.6. Deposit of Redemption Price.* Prior to any Redemption Date, the Issuers shall deposit with the Trustee or with a Paying Agent (or, if either of the Issuers is acting as its own Paying Agent, segregate and hold in trust as provided in *Section 2.4*) an amount of money sufficient to pay the redemption price of, and accrued interest on, all the Securities which are to be redeemed on that date.

*SECTION 5.7. Securities Payable on Redemption Date.* Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Issuers shall default in the payment of the redemption price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Issuers at the redemption price, together with accrued interest, if any, to the Redemption Date (subject to the rights of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date).

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Securities.

*SECTION 5.8. Securities Redeemed in Part.* Any Security which is to be redeemed only in part (pursuant to the provisions of this Article) shall be surrendered at the office or agency of the Issuers maintained for such purpose pursuant to *Section 3.13* (with, if the

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Issuers or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers and the Trustee duly executed by, the Securityholder thereof or such Securityholder's attorney duly authorized in writing), and the Issuers shall execute, and the Trustee shall authenticate and make available for delivery to the Securityholder of such Security at the expense of the Issuers, a new Security or Securities, of any authorized denomination as requested by such Securityholder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered, *provided*, that each such new Security will be in a principal amount of \$1,000 or integral multiple thereof.

## ARTICLE VI

### DEFAULTS AND REMEDIES

SECTION 6.1. *Events of Default*. Each of the following is an Event of Default:

- (1) default in any payment of interest or additional interest (including as required by the Registration Rights Agreement) on any Note when due, continued for 30 days;
- (2) default in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
- (3) failure by the Company to comply with its obligations under *Article IV*;
- (4) default in the performance of any of the obligations described under *Section 3.9* or *Section 3.7* above or under the covenants described under *Article III* above and such default shall have continued for a period of 30 days after the Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (2) above and other than a failure to comply with *Section 4.1* which is covered by clause (3));
- (5) default in the performance of any of the other agreements contained in this Indenture and such default shall have continued for a period of 60 days after the Issuers shall have been given notice;
- (6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default:

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- (a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the applicable grace period provided (“*payment default*”) which payment default has not been waived; or
- (b) results in the acceleration of such Indebtedness prior to its maturity (the “*cross acceleration provision*”);
- and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates \$5 million or more;
- (7) the Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law):
- (a) commences a voluntary insolvency proceeding;
- (b) consents to the entry of an order for relief against it in an involuntary insolvency proceeding;
- (c) consents to the appointment of a custodian of it or for any substantial part of its property; or
- (d) makes a general assignment for the benefit of its creditors;  
or takes any comparable action under any foreign laws relating to insolvency; provided however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (7);
- (8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (a) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding;
- (b) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or
- (c) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or
- (d) grants any similar relief under any foreign laws;

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and in each case the order or decree remains unstayed and in effect for 60 days; or

- (9) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of \$5 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the “*judgment default provision*”).

However, a default under clauses (4) and (5) of this paragraph will not constitute an Event of Default until the Trustee or the holders of 25% in principal amount of the outstanding Notes notify the Company of the default and the Company does not cure such default within the time specified in clauses (4) and (5) of this paragraph after receipt of such notice.

Section 6.2. *Acceleration*. If an Event of Default (other than an Event of Default described in clause (7) above) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding Notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest will be due and payable immediately. In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (6) under “Events of Default” has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) shall be remedied or cured by the Company or a Restricted Subsidiary of the Company or waived by the holders of the relevant Indebtedness within 20 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived. If an Event of Default described in clause (7) above occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of the outstanding Notes may waive all past defaults (except with respect to nonpayment of principal, premium or interest) and rescind any such acceleration with respect to the Notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived.

Section 6.3. *Other Remedies*. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of (or premium,



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if any) or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.4. *Waiver of Past Defaults.* The Securityholders of a majority in principal amount of the outstanding Securities by notice to the Trustee may (a) waive, by their consent (including, without limitation consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities), an existing Default or Event of Default and its consequences except (i) a Default or Event of Default in the payment of the principal of, or premium, if any, or interest on a Security or (ii) a Default or Event of Default in respect of a provision that under *Section 9.2* cannot be amended without the consent of each Securityholder affected and (b) rescind any such acceleration with respect to the Securities and its consequences if such rescission would not conflict with any judgment or decree of a court of competent jurisdiction. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

Section 6.5. *Control by Majority.* The Securityholders of a majority in principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to *Sections 7.1* and *7.2*, that the Trustee determines is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

Section 6.6. *Limitation on Suits.* Subject to *Section 6.7*, a Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (1) such Securityholder has previously given to the Trustee written notice stating that an Event of Default is continuing;
- (2) Securityholders of at least 25% in principal amount of the outstanding Securities have requested in writing that the Trustee pursue the remedy;
- (3) such Securityholders have offered to the Trustee reasonable security or indemnity against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after receipt of the request and the offer of security or indemnity; and

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- (5) the Securityholders of a majority in principal amount of the outstanding Securities have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder.

Section 6.7. *Rights of Securityholders to Receive Payment.* Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the right of any Securityholder to receive payment of principal of, premium (if any) or interest on the Securities held by such Securityholder, on or after the respective due dates expressed in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Securityholder.

Section 6.8. *Collection Suit by Trustee.* If an Event of Default specified in clauses (1) or (2) of Section 6.1 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.7.

Section 6.9. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Securityholders allowed in any judicial proceedings relative to the Issuers, the Company's Subsidiaries or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may vote on behalf of the Securityholders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Securityholder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.7.

Section 6.10. *Priorities.* If the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: to Securityholders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Issuers.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. At least 15 days before such record date, the Issuers shall mail to each Securityholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

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Section 6.11. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by the Issuers, a suit by a Securityholder pursuant to *Section 6.7* or a suit by Securityholders of more than 10% in outstanding principal amount of the Securities.

Section 6.12. *Additional Payments.* In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuers with the intention of avoiding payment of the premium that the Issuers would have had to pay if the Issuers then had elected to redeem the Notes pursuant to the optional redemption provisions of this Indenture or was required to repurchase the Notes, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law upon the acceleration of the Notes. If an Event of Default occurs prior to February 15, 2008 by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuers with the intention of avoiding the prohibition on redemption of the Notes prior to February 15, 2008, the premium specified in this Indenture shall also become immediately due and payable to the extent permitted by law upon the acceleration of the Notes.

## ARTICLE VII

### TRUSTEE

Section 7.1. *Duties of Trustee.* (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs; provided that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise the rights or powers under this Indenture at the request or direction of any of the Securityholders unless such Securityholders have offered to the Trustee reasonable indemnity or security against loss, liability or expense.

(b) Except during the continuance of an Event of Default:

- (1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
- (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, opinions or orders furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provisions

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hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

- (1) this paragraph does not limit the effect of paragraph (b) of this Section;
- (2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and
- (3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to *Section 6.5*.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.

(i) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from each Issuer shall be sufficient if signed by an Officer of such Issuer.

(j) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Securityholders unless such Securityholders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

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(k) The Trustee shall not be deemed to have knowledge of any Default or Event of Default unless and until an officer at the Trustee's corporate trust office responsible for the administration of its duties hereunder shall have actual knowledge thereof or the Trustee shall have received written notice thereof at such office.

Section 7.2. *Rights of Trustee.* Subject to Section 7.1:

(a) The Trustee may conclusively rely on any document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, unless the Trustee's conduct constitutes willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

Section 7.3. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with respect to such Securities with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

Section 7.4. *Trustee's Disclaimer.* The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Issuers' use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuers in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

Section 7.5. *Notice of Defaults.* If a Default or Event of Default occurs and is continuing and if a Trust Officer has actual knowledge thereof, the Trustee shall mail to each Securityholder notice of the Default or Event of Default within the earlier of 90 days after it occurs or 30 days after the Trustee has knowledge of such default. Except in the case of a Default or Event of Default in payment of principal of, premium (if any), or interest on any Security (including payments pursuant to the optional redemption or required repurchase provisions of such Security, if any), the Trustee may withhold the notice if and so long a

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committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Securityholders.

Section 7.6. *Reports by Trustee to Securityholders.* If required, as promptly as practicable after each May 15 beginning with the May 15, following the date of this Indenture, and in any event prior to July 15 in each year, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA § 313(a). The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports required by TIA § 313(c).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each stock exchange (if any) on which the Securities are listed. The Company agrees to notify promptly the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

Section 7.7. *Compensation and Indemnity.* The Issuers shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder as the Issuers and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Securityholders, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuers shall indemnify the Trustee against any and all loss, liability, damages, claims or expense (including reasonable attorneys' fees and expenses) incurred by it without negligence or willful misconduct on its part in connection with the administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.7) and of defending itself against any claims (whether asserted by any Securityholder, the Issuers or otherwise). The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee shall provide reasonable cooperation at the Issuers' expense in the defense. The Trustee may have separate counsel and the Issuers shall pay the fees and expenses of such counsel provided that the Issuers shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Issuers and the Trustee in connection with such defense. The Issuers shall not be under any obligation to pay for any written settlement without its consent, which consent shall not be unreasonably delayed, conditioned or withheld. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence.

To secure the Issuers' payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities.

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The Issuers' payment obligations pursuant to this Section shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in clause (7) of *Section 6.1* with respect to the Company, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

*Section 7.8. Replacement of Trustee.* The Trustee may resign at any time by so notifying the Issuers. The Securityholders of a majority in principal amount of the Securities may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Issuers shall remove the Trustee if:

- (1) the Trustee fails to comply with *Section 7.10*;
- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Issuers or by the Securityholders of a majority in principal amount of the Securities and such Securityholders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in *Section 7.7*.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Securityholders of at least 10% in principal amount of the Securities may petition, at the Issuers' expense, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with *Section 7.10*, unless the Trustee's duty to resign is stayed as provided in Section 310(b) of the TIA, any Securityholder who has been a bona fide Securityholder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under *Section 7.7* shall continue for the benefit of the retiring Trustee.

*Section 7.9. Successor Trustee by Merger.* If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

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In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

Section 7.10. *Eligibility; Disqualification.* The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least \$100 million as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b); *provided, however,* that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Issuers are outstanding if the requirements for such exclusion set forth in TIA § 310(b)(1) are met. This Indenture will always have a Trustee that satisfies the requirements of TIA § 310(a)(1), (2) and (5).

Section 7.11. *Preferential Collection of Claims Against Company.* The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

## ARTICLE VIII

### DISCHARGE OF INDENTURE; DEFEASANCE

Section 8.1. *Discharge of Liability on Securities; Defeasance.* (a) Subject to *Section 8.1(c)*, when (i)(x) the Issuers deliver to the Trustee all outstanding Securities (other than Securities replaced pursuant to *Section 2.9*) for cancellation or (y) all outstanding Securities not theretofore delivered for cancellation have become due and payable, whether at maturity or upon redemption or will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption pursuant to *Article V* hereof and the Issuers irrevocably deposit or cause to be deposited with the Trustee as trust funds in trust solely for the benefit of the Securityholders money in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption; (ii) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which each of the Issuers is a party or by which each of the Issuers is bound; (iii) the Issuers have paid or caused to be paid all sums payable under this Indenture and the Securities; and (iv) the Issuers have



delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of such Securities at maturity or the Redemption Date, as the case may be, then the Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Issuers (accompanied by an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent specified herein relating to the satisfaction and discharge of this Indenture have been complied with) and at the cost and expense of the Issuers.

(b) Subject to *Sections 8.1(c)* and *8.2*, the Issuers at any time may terminate (i) all its obligations under the Securities and this Indenture (“*legal defeasance option*”), and after giving effect to such legal defeasance, any omission to comply with such obligations shall no longer constitute a Default or Event of Default or (ii) its obligations under *Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.15, 3.17* and *4.1* and the Issuers may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply with such covenants shall no longer constitute a Default or an Event of Default under *Section 6.1(3), 6.1(4)* and *6.1(5)* and the operation of *Sections 6.1(6), 6.1(7), 6.1(8)* (but only with respect to a Significant Subsidiary or group of Restricted Subsidiaries that would constitute a Significant Subsidiary), or *6.1(9)*, and the events specified in such Sections shall no longer constitute an Event of Default (clause (ii) being referred to as the “*covenant defeasance option*”), but except as specified above, the remainder of this Indenture and the Securities shall be unaffected thereby. The Issuers may exercise their legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Issuers exercise their legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default. If the Issuers exercise their covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in *Section 6.1(3), 6.1(4)* (as such Section relates to *Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11* and *3.16*), *6.1(5), 6.1(6), 6.1(7), 6.1(8)* (but only with respect to a Significant Subsidiary or group of Restricted Subsidiaries that would constitute a Significant Subsidiary), *6.1(9)* or because of the failure of the Issuers to comply with *Section 4.1*.

Upon satisfaction of the conditions set forth herein and upon request of the Issuers, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuers terminate.

(c) Notwithstanding the provisions of *Sections 8.1(a)* and *(b)*, the Issuers' obligations in *Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, 2.10, 2.11, 3.1, 3.13, 3.13, 3.14, 3.15, 3.17, 3.18, 3.19, 6.7, 7.7, 7.8* and in this *Article 8* shall survive until the Securities have been paid in full. Thereafter, the Issuers' obligations in *Sections 7.7, 8.4* and *8.5* shall survive.

*Section 8.2. Conditions to Defeasance.* The Issuers may exercise their legal defeasance option or their covenant defeasance option only if:

(1) the Issuers irrevocably deposit in trust with the Trustee for the benefit of the Securityholders money in U.S. dollars or U.S. Government Obligations or a combination

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thereof for the payment of principal, premium, if any, and interest on the Securities to maturity or redemption, as the case may be;

(2) the Issuers deliver to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Securities to maturity;

(3) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or, with respect to certain bankruptcy or insolvency Events of Default, on the 91st day after such date of deposit;

(4) such legal defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a Default under, this Indenture or any other material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(5) the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) to the effect that (A) the Securities and (B) assuming no intervening bankruptcy of the Issuers between the date of deposit and the 91st day following the deposit and that no Securityholder of the Securities is an insider of the Issuers, after the 91st day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' right generally;

(6) the Issuers deliver to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(7) in the case of the legal defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) in the United States stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred;

(8) in the case of the covenant defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) in the United States to the effect that the Securityholders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant

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defeasance and will be subject to federal income tax on the same amount, in the same manner and at the same times as would have been the case if such deposit and covenant defeasance had not occurred; and

(9) the Issuers deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities and this Indenture as contemplated by this *Article VIII* have been complied with.

Section 8.3. *Application of Trust Money.* The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this *Article VIII*. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

Section 8.4. *Repayment to Company.* The Trustee and the Paying Agent shall promptly turn over to the Issuers upon request any excess money, U.S. Government Obligations or securities held by them upon payment of all the obligations under this Indenture.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Issuers upon request any money held by them for the payment of principal of or interest on the Securities that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Issuers for payment as general creditors.

Section 8.5. *Indemnity for U.S. Government Obligations.* The Issuers shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

Section 8.6. *Reinstatement.* If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this *Article VIII* by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuers under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this *Article VIII* until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this *Article VIII*; *provided, however*, that, if the Issuers have made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Securityholders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

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ARTICLE IX  
AMENDMENTS

Section 9.1. *Without Consent of Securityholders.* The Issuers and the Trustee may amend this Indenture or the Securities without notice to or consent of any Securityholder:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) provide for the assumption by a successor corporation, partnership, trust or limited liability company of the obligations of the Issuers under this Indenture;
- (3) provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f) (2) (B) of the Code);
- (4) add Guarantees with respect to the Notes;
- (5) secure the Notes;
- (6) add to the covenants of the Issuers for the benefit of the holders or surrender any right or power conferred upon the Issuers;
- (7) make any change that does not adversely affect the rights of any holder;
- (8) comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act; or
- (9) provide for the issuance of exchange securities which shall have terms substantially identical in all respects to the Notes (except that the transfer restrictions contained in the Notes shall be modified or eliminated as appropriate) and which shall be treated, together with any outstanding Notes, as a single class of securities.

After an amendment under this Section becomes effective, the Issuers shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

Section 9.2. *With Consent of Securityholders.* The Issuers may amend this Indenture or the Securities without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the Securities then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities). However, without the consent of each Securityholder affected, an amendment may not:

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- (1) reduce the principal amount of Securities whose Securityholders must consent to an amendment;
  - (2) reduce the rate of or extend the time for payment of interest on any Security;
  - (3) reduce the principal of or extend the Stated Maturity of any Security;
  - (4) reduce the premium payable upon the redemption or repurchase of any Security or change the time at which any Security may or shall be redeemed or repurchased as described under *Section 3.7*, *Section 3.9* and *Article V*;
  - (5) make any Security payable in currency other than that stated in the Security;
  - (6) impair the right of any Securityholder to receive payment of principal of, premium, if any, and interest on such Securityholder's Securities on or after the due dates therefor (other than a repurchase required under *Section 3.7* or *Section 3.9*) or to institute suit for the enforcement of any payment on or with respect to such Securityholder's Securities; or
  - (7) make any change to the amendment provisions which require each Securityholder's consent or to the waiver provisions.

It shall not be necessary for the consent of the Securityholders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment or waiver under this Indenture by any Securityholder of the Securities given in connection with a tender of such Securityholder's Securities will not be rendered invalid by such tender.

After an amendment under this Section becomes effective, the Issuers shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

*Section 9.3. Compliance with Trust Indenture Act.* Every amendment to this Indenture or the Securities shall comply with the TIA as then in effect.

*Section 9.4. Revocation and Effect of Consents and Waivers.* A consent to an amendment or a waiver by a Securityholder of a Security shall bind the Securityholder and every subsequent Securityholder of that Security or portion of the Security that evidences the same debt as the consenting Securityholder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Securityholder or subsequent Securityholder may revoke the consent or waiver as to such Securityholder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver shall become effective upon receipt by the Trustee of the requisite number of written consents under *Section 9.1* or *Section 9.2* as applicable.

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The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Securityholders after such record date. No such consent shall become valid or effective more than 120 days after such record date.

Section 9.5. *Notation on or Exchange of Securities.* If an amendment changes the terms of a Security, the Trustee may require the Securityholder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Securityholder. Alternatively, if the Issuers or the Trustee so determines, the Issuers in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

Section 9.6. *Trustee to Sign Amendments.* The Trustee shall sign any amendment authorized pursuant to this *Article IX* if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to *Sections 7.1* and *7.2*) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

#### ARTICLE X

#### MISCELLANEOUS

Section 10.1. *Trust Indenture Act Controls.* If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the provision required by the TIA shall control.

Section 10.2. *Notices.* Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:  
if to the Issuers:

Star Gas Partners, L.P.  
2187 Atlantic Street  
Stamford, Connecticut 06902  
Attention: Irik Sevin, Chief Executive Officer  
FAX: (203) 325-7470

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with a copy to:

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

if to the Trustee:

Union Bank of California, N.A.  
Attention: Corporate Trust  
120 South San Pedro, 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
FAX:

with a copy to:

Jensen Law Office  
Attention: Philip K. Jensen  
Suite 120  
3708 Mount Diablo Boulevard  
Lafayette, CA 94549-3630  
FAX: (925) 284-7079

The Issuers or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a registered Securityholder shall be mailed to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 10.3. *Communication by Securityholders with other Securityholders.* Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Issuers, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 10.4. *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by the Issuers to the Trustee to take or refrain from taking any action under this Indenture, the Issuers shall furnish to the Trustee:

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(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 10.5. *Statements Required in Certificate or Opinion.* Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that the individual making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving an Opinion of Counsel, counsel may rely as to factual matters on an Officers' Certificate or on certificates of public officials.

Section 10.6. *When Securities Disregarded.* In determining whether the Securityholders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuers or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuers shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

Section 10.7. *Rules by Trustee, Paying Agent and Registrar.* The Trustee may make reasonable rules for action by, or a meeting of, Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

Section 10.8. *Legal Holidays.* A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.



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Section 10.9. *GOVERNING LAW.* THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 10.10. *No Recourse Against Others.* An incorporator, director, officer, employee, stockholder, limited partner or controlling person, as such, of the Issuers or of Star Gas LLC shall not have any liability for any obligations of the Issuers under the Securities, this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 10.11. *Successors.* All agreements of the Issuers in this Indenture and the Securities shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 10.12. *Multiple Originals.* The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

Section 10.13. *Qualification of Indenture.* The Issuers shall qualify this Indenture under the TIA in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Company, the Trustee and the Securityholders) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Securities and printing this Indenture and the Securities. The Trustee shall be entitled to receive from the Company any such Officers' Certificates or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the TIA.

Section 10.14. *Table of Contents; Headings.* The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

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IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its General Partner

By: /s/ Richard F. Ambury

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Name: Richard F. Ambury  
Title: Vice President and Treasurer

STAR GAS FINANCE COMPANY

By: /s/ Richard F. Ambury

\_\_\_\_\_  
Name: Richard F. Ambury  
Title: Vice President and Treasurer

UNION BANK OF CALIFORNIA, N.A.  
as Trustee

By: /s/ Andrew R. Ball

\_\_\_\_\_  
Name: Andrew R. Ball  
Title: Vice President

[FORM OF FACE OF SECURITY]  
[Applicable Restricted Global Securities Legend]  
[Depository Legend, if applicable]

No. [       ]

Principal Amount No.\$[       ]  
CUSIP NO. [       ]

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

10¼% Senior Note due 2013

Star Gas Partners, L.P., a Delaware limited partnership (such partnership herein called the “*Company*”), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, herein called the “*Issuers*”), promise to pay to [       ], or registered assigns, the principal sum of [       ] Dollars or such greater or lesser amount as shall be reflected on the books and records of the custodian with respect to the Global Security (as appointed by DTC) (the “*Securities Custodian*”), 1 on February 15, 2013 pursuant to the Indenture (as defined below).

Interest Payment Dates: February 15 and August 15  
Record Dates: February 1 and August 1

Additional provisions of this Security are set forth on the other side of this Security.

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<sup>1</sup> Global Security only

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STAR GAS PARTNERS, L.P.

STAR GAS LLC, its General Partner

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

STAR GAS FINANCE COMPANY

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

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

UNION BANK OF CALIFORNIA, N.A.

as Trustee, certifies that this is one of the Securities referred to in the  
Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Date:

[FORM OF REVERSE SIDE OF SECURITY]

10¼% Senior Note due 2013

1. Interest

Star Gas Partners, L.P., a Delaware limited partnership (such partnership being herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, under the Indenture hereinafter referred to, being herein called the "Issuers"), promise to pay interest on the principal amount of this Security at the rate per annum shown above.

The Issuers will pay interest semiannually on February 15 and August 15 of each year commencing August 15, 2003. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from February 6, 2003. The Issuers shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Securities to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal of or interest on any Security is due and payable, the Issuers shall deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Securityholders of Securities at the close of business on the February 1 or August 1 next preceding the interest payment date even if Securities are cancelled, repurchased or redeemed after the record date and on or before the interest payment date. Securityholders must surrender Securities to a Paying Agent to collect principal payments. The Issuers will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal, premium, if any, and interest) will be made by the transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Issuers will make all payments in respect of a Definitive Security (including principal, premium, if any, and interest) by mailing a check to the registered address of each Securityholder thereof.

3. Paying Agent and Registrar

Initially, Union Bank of California, N.A. (the "Trustee"), will act as Trustee, Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Issuers or any of the Restricted Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Issuers issued the Securities under an Indenture dated as of February 6, 2003 (as it may be amended or supplemented from time to time in accordance with the terms thereof,

the “Indenture”), among the Issuers and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb) as in effect on the date of the Indenture (the “Act”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured senior obligations of the Issuers. The aggregate principal amount of securities that may be authenticated and delivered under the Indenture is unlimited.

The Indenture imposes certain limitations, among other things, on the ability of the Issuers and the Restricted Subsidiaries, to incur additional debt; pay dividends on stock; redeem stock or redeem subordinated debt; make investments; create Liens in favor of other senior subordinated debt and subordinated debt; enter into agreements that restrict dividends from Restricted Subsidiaries; sell assets; enter into transactions with Affiliates; sell Capital Stock of Restricted Subsidiaries; merge or consolidate; enter into different lines of business and pay consent fees.

#### 5. Redemption

Except as described below, the Notes are not redeemable until February 15, 2008. On and after February 15, 2008, the Issuers may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days’ notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on February 15 of the years indicated below:

Year	Percentage
2008	105.125%
2009	103.417%
2010	101.708%
2011 and thereafter	100.000%

Prior to February 15, 2006, the Issuers may on any one or more occasions redeem up to 35% of the original principal amount of the Notes with the Net Cash Proceeds of one or more Public Equity Offerings at a redemption price of 110.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided that*

- (1) there is a Public Market at the time of such redemption;
- (2) at least 65% of the original principal amount of the Notes remains outstanding after each such redemption; and

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(3) the redemption occurs within 60 days after the closing of such Public Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to Securityholders whose Notes will be subject to redemption by the Issuers.

In the case of any partial redemption, the Trustee will select the Notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of \$1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to that Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note.

#### 6. Repurchase Provisions

(a) Upon a Change of Control any Securityholder will have the right to cause the Issuers to repurchase all or any part of the Securities of such Securityholder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.

(b) In the event of an Asset Sale that requires the purchase of Securities pursuant to Section 3.7(f) of the Indenture, the Company will be required to apply such Excess Proceeds to the repayment of the Securities and any pari passu notes in accordance with the procedures set forth in Section 3.7 of the Indenture.

#### 7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of \$1,000 and whole multiples of \$1,000. A Securityholder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Securityholder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange (i) any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of this Security not to be redeemed) or (ii) any Securities for a period beginning 15 days before an interest payment date and ending on such interest payment date.

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8. Persons Deemed Owners

The registered Securityholder of this Security may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuers at their request unless an abandoned property law designates another Person. After any such payment, Securityholders entitled to the money must look only to the Issuers and not to the Trustee for payment.

10. Defeasance

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Securities and the Indenture if the Issuers deposit with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the then outstanding Securities and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Securityholder affected) or noncompliance with any provision may be waived with the written consent of the Securityholders of a majority in principal amount of the then outstanding Securities. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Issuers and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, to secure the Securities, or to add additional covenants of the Issuers, or surrender rights and powers conferred on the Issuers, or to comply with any request of the SEC in connection with qualifying the Indenture under the Act, or to make any change that does not materially adversely affect the rights of any Securityholder, or to provide for the issuance of Exchange Securities.

12. Defaults and Remedies

Under the Indenture, Events of Default include in summary form: (i) default for 30 days in payment of interest or additional interest when due on the Securities; (ii) default in payment of principal or premium, if any, on the Securities at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraphs 5 and 6 of the Securities, upon declaration or otherwise; (iii) the failure by the Issuers to comply with its obligations under Article IV of the Indenture; (iv) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 inclusive or under the covenants described under Article III inclusive of the Indenture and such default shall have continued for a period of 30 days after the



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Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (ii) above and other than a failure to comply with Section 4.1 which is covered by clause (iii); (v) default in the performance of any of the agreements contained in the Indenture and such default shall have continued for a period of 60 days after the Issuers shall have been given notice; (vi) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Issuers or any of their Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to each of the Issuers or a Restricted Subsidiary of such Issuer, whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default (a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the applicable grace period provided ("Payment Default") which payment default has not been waived or (b) results in the acceleration of such Indebtedness prior to its maturity (the "cross acceleration provision") and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$5.0 million or more; (vii) the Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law): (a) commences a voluntary insolvency proceeding; (b) consents to the entry of an order for relief against it in an involuntary insolvency proceeding; (c) consents to the appointment of a custodian of it or for any substantial part of its property; or (d) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency; provided however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (vii); (viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (a) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding; (b) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or (c) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or (d) grants any similar relief under any foreign laws; and in each case the order or decree remains unstayed and in effect for 60 days; or (ix) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of \$5.0 million (net of any amounts with respect to which a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the "judgment default provision"). However, a default under clauses (iv) and (v) will not constitute an Event of Default until the Trustee or the Securityholders of at least 25% in principal amount of the outstanding Securities notify the Issuers and the Trustee, in the case of a notice given by the Securityholders, of the default and the Issuers does not cure such default within the time specified in clauses (iv) and (v) hereof after receipt of such notice.

If an Event of Default occurs and is continuing (other than an Event of Default described in clause (vii) above), the Trustee or the Securityholders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

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Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Securityholders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuers

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

No director, officer, employee, incorporator, partner, stockholder, limited partner or controlling person of the Issuers, or of Star Gas Partners LLC as such, shall have any liability for any obligations of the Issuers under the Securities, the Indenture, or for any claim based on, in respect of, or by reason of, such obligations of their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Security.

16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

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18. Governing Law

This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

The Issuers will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture, which has in it the text of this Security in larger type. Requests may be made to:

Star Gas Partners, L.P.  
Star Gas Finance Company  
1287 Atlantic Street  
Stamford, Connecticut 06902  
Attention: Chief Financial Officer

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

\_\_\_\_\_  
(Print or type assignee's name, address and zip code)

\_\_\_\_\_  
(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

\_\_\_\_\_  
Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed)

\_\_\_\_\_  
Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

In connection with any transfer or exchange of any of the Securities evidenced by this certificate occurring prior to the date that is two years after the later of the date of original issuance of such Securities and the last date, if any, on which such Securities were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Securities are being:

CHECK ONE BOX BELOW:

- 1  acquired for the undersigned's own account, without transfer; or
- 2  transferred to the Issuers; or
- 3  transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"); or
- 4  transferred pursuant to an effective registration statement under the Securities Act; or
- 5  transferred pursuant to and in compliance with Regulation S under the Securities Act; or

- 
- 6  transferred to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act), that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter appears as Section 2.7 of the Indenture); or
  - 7  transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Securityholder thereof; *provided, however*, that if box (5), (6) or (7) is checked, the Trustee or the Issuers may require, prior to registering any such transfer of the Securities, in their sole discretion, such legal opinions, certifications and other information as the Trustee or the Issuers may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

Signature Guarantee:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Signature must be guaranteed)

\_\_\_\_\_  
Signature

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The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

TO BE COMPLETED BY PURCHASER IF (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

\_\_\_\_\_  
Dated:

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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Issuers pursuant to Section 3.8 or 3.10 of the Indenture, check either box:

3.8 3.10

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 3.8 or 3.10 of the Indenture, state the amount in principal amount (must be integral multiple of \$1,000): \$ \_\_\_\_\_

Date: \_\_\_\_\_ Your Signature \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

[FORM OF FACE OF EXCHANGE SECURITY]

[Depository Legend, if applicable]

No. [       ]

Principal Amount \$ [       ]  
CUSIP NO. [       ]

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

10¼% Senior Note due 2013

Star Gas Partners, L.P., a Delaware limited partnership (such partnership herein called the “Company”), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, herein called the “Issuers”), promise to pay to [       ], or registered assigns, the principal sum of [       ] Dollars or such greater or lesser amount as shall be reflected on the books and records of the of the custodian with respect to the Global Security (as appointed by DTC) (the “Securities Custodian”),<sup>1</sup> on February 15, 2013 pursuant to the Indenture (as defined below).

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

Additional provisions of this Security are set forth on the other side of this Security.

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<sup>1</sup> Global Security only

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STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its General Partner

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

STAR GAS FINANCE COMPANY

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

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

UNION BANK OF CALIFORNIA, N.A. as Trustee,  
certifies that this is one of the Securities referred to in  
the Indenture.

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

Authorized Signatory

Date:



[FORM OF REVERSE SIDE OF EXCHANGE SECURITY]

10¼% Senior Subordinated Note due 2013

1. Interest

Star Gas Partners, L.P., a Delaware limited partnership (such partnership being herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, under the Indenture hereinafter referred to, being herein called the "Issuers"), promise to pay interest on the principal amount of this Security at the rate per annum shown above.

The Issuers will pay interest semiannually on February 15 and August 15 of each year commencing August 15, 2003. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from February 6, 2003. The Issuers shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Securities to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal of or interest on any Security is due and payable, the Issuers shall deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Securityholders of Securities at the close of business on the February 1 or August 1 next preceding the interest payment date even if Securities are cancelled, repurchased or redeemed after the record date and on or before the interest payment date. Securityholders must surrender Securities to a Paying Agent to collect principal payments. The Issuers will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal, premium, if any, and interest) will be made by the transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Issuers will make all payments in respect of a Definitive Security (including principal, premium, if any, and interest) by mailing a check to the registered address of each Securityholder thereof.

3. Paying Agent and Registrar

Initially, Union Bank of California, N.A. (the "Trustee"), will act as Trustee, Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Issuers or any of the Restricted Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Issuers issued the Securities under an Indenture dated as of February 6, 2003 (as it may be amended or supplemented from time to time in accordance with the terms thereof,

the “Indenture”), among the Issuers and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb) as in effect on the date of the Indenture (the “Act”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured senior obligations of the Issuers. The aggregate principal amount of securities that may be authenticated and delivered under the Indenture is unlimited. The Indenture imposes certain limitations, among other things, on the ability of the Issuers and the Restricted Subsidiaries, to incur additional debt; pay dividends on stock; redeem stock or redeem subordinated debt; make investments; create Liens in favor of other senior subordinated debt and subordinated debt; enter into agreements that restrict dividends from Restricted Subsidiaries; sell assets; enter into transactions with Affiliates; sell Capital Stock of Restricted Subsidiaries; merge or consolidate; enter into different lines of business and pay consent fees.

#### 5. *Redemption*

Except as described below, the Notes are not redeemable until February 15, 2008. On and after February 15, 2008, the Issuers may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days’ notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on February 15 of the years indicated below:

Year	Percentage
2008	105.125%
2009	103.417%
2010	101.708%
2011 and thereafter	100.000%

Prior to February 15, 2006, the Issuers may on any one or more occasions redeem up to 35% of the original principal amount of the Notes with the Net Cash Proceeds of one or more Public Equity Offerings at a redemption price of 110.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided that*

- (1) there is a Public Market at the time of such redemption;
- (2) at least 65% of the original principal amount of the Notes remains outstanding after each such redemption; and

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(3) the redemption occurs within 60 days after the closing of such Public Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to holders whose Notes will be subject to redemption by the Issuers.

In the case of any partial redemption, the Trustee will select the Notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of \$1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to that Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note.

#### 6. Repurchase Provisions

(a) Upon a Change of Control any Securityholder of Securities will have the right to cause the Issuers to repurchase all or any part of the Securities of such Securityholder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.

(b) In the event of an Asset Disposition that requires the purchase of Securities pursuant to Section 3.7 (f) of the Indenture, the Company will be required to apply such Excess Proceeds to the repayment of the Securities and any pari passu notes in accordance with the procedures set forth in Section 3.7 of the Indenture.

#### 7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of \$1,000 and whole multiples of \$1,000. A Securityholder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Securityholder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange (i) any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of this Security not to be redeemed) or (ii) any Securities for a period beginning 15 days before an interest payment date and ending on such interest payment date.

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8. Persons Deemed Owners

The registered Securityholder of this Security may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuers at their request unless an abandoned property law designates another Person. After any such payment, Securityholders entitled to the money must look only to the Issuers and not to the Trustee for payment.

10. Defeasance

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Securities and this Indenture if the Issuers deposit with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the then outstanding Securities and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Securityholder affected) or noncompliance with any provision may be waived with the written consent of the Securityholders of a majority in principal amount of the then outstanding Securities. Subject to certain exceptions set forth in this Indenture, without the consent of any Securityholder, the Issuers and the Trustee may amend this Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, to secure the Securities, or to add additional covenants of the Issuers, or surrender rights and powers conferred on the Issuers, or to comply with any request of the SEC in connection with qualifying the Indenture under the Act, or to make any change that does not materially adversely affect the rights of any Securityholder, or to provide for the issuance of Exchange Securities.

12. Defaults and Remedies

Under the Indenture, Events of Default include in summary form: (i) default for 30 days in payment of interest or additional interest when due on the Securities; (ii) default in payment of principal or premium, if any, on the Securities at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraphs 5 and 6 of the Securities, upon declaration or otherwise; (iii) the failure by the Issuers to comply with its obligations under Article IV of the Indenture; (iv) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 inclusive or under the covenants described under Article III inclusive of the Indenture and such default shall have continued for a period of 30 days after the

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Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (ii) above and other than a failure to comply with Section 4.1 which is covered by clause (iii); (v) default in the performance of any of the agreements contained in the Indenture and such default shall have continued for a period of 60 days after the Issuers shall have been given notice; (vi) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Issuers or any of their Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to each of the Issuers or a Restricted Subsidiary of such Issuer, whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default (a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the applicable grace period provided ("Payment Default") which payment default has not been waived or (b) results in the acceleration of such Indebtedness prior to its maturity (the "cross acceleration provision") and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$5.0 million or more; (vii) the Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law): (a) commences a voluntary insolvency proceeding; (b) consents to the entry of an order for relief against it in an involuntary insolvency proceeding; (c) consents to the appointment of a custodian of it or for any substantial part of its property; or (d) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency; provided however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (vii); (viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (a) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding; (b) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or (c) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or (d) grants any similar relief under any foreign laws; and in each case the order or decree remains unstayed and in effect for 60 days; or (ix) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of \$5.0 million (net of any amounts with respect to which a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the "judgment default provision"). However, a default under clauses (iv) and (v) will not constitute an Event of Default until the Trustee or the Securityholders of at least 25% in principal amount of the outstanding Securities notify the Issuers and the Trustee, in the case of a notice given by the Securityholders, of the default and the Issuers does not cure such default within the time specified in clauses (iv) and (v) hereof after receipt of such notice.

If an Event of Default occurs and is continuing (other than an Event of Default described in clause (vii) above), the Trustee or the Securityholders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

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Securityholders may not enforce the Indenture or the Securities except as provided in this Indenture. The Trustee may refuse to enforce this Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Securityholders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuers

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

No director, officer, employee, incorporator, partner, stockholder, limited partner or controlling person of the Issuers or Star Gas LLC, as such, shall have any liability for any obligations of the Issuers under the Securities, the Indenture, the Subsidiary Guarantees or for any claim based on, in respect of, or by reason of, such obligations of their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Security.

16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

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18. Governing Law

This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

The Issuers will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture, which has in it the text of this Security in larger type. Requests may be made to:

Star Gas Partners, L.P.  
Star Gas Finance Company  
1287 Atlantic Street  
Stamford, Connecticut 06902

Attention: Chief Financial Officer

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ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

\_\_\_\_\_ (Print or type assignee's name, address and zip code)

\_\_\_\_\_ (Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Your Signature: \_\_\_\_\_

\_\_\_\_\_  
Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed)

\_\_\_\_\_  
Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.



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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Issuers pursuant to Section 3.8 or 3.10 of the Indenture, check either box:

3.8 3.10

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 3.8 or 3.10 of the Indenture, state the amount in principal amount (must be integral multiple of \$1,000): \$\_\_\_\_\_

Date: \_\_\_\_\_ Your Signature \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

**REGISTRATION RIGHTS AGREEMENT**

**Dated as of February 6, 2003**

**by and among**

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

**STAR GAS FINANCE COMPANY**

**and**

**J.P. MORGAN SECURITIES, INC.,**

**as Representative of the Initial Purchasers**

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This REGISTRATION RIGHTS AGREEMENT dated as of February 6, 2003 (the "Agreement") is entered into by and among Star Gas Partners, L.P., a Delaware limited partnership (the "Company"), and Star Gas Finance Company, a Delaware corporation ("SGFC"), and together with the Company, the "Issuers"), and J.P. Morgan Securities Inc., as representative of the initial purchasers named on Schedule 1 hereto (collectively, the "Initial Purchasers").

The Issuers and the Initial Purchasers are parties to the Purchase Agreement dated February 3, 2003 (the "Purchase Agreement"), which provides for the sale by the Issuers to the Initial Purchasers of \$200,000,000 aggregate principal amount of the Issuers' 10<sup>1</sup>/<sub>4</sub>% Senior Notes due 2013 (the "Securities"). As an inducement to the Initial Purchasers to enter into the Purchase Agreement, the Issuers have agreed to provide to the Initial Purchasers and their direct and indirect transferees the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the closing under the Purchase Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Closing Date" shall mean the Closing Date as defined in the Purchase Agreement.

"Issuers" shall have the meaning set forth in the preamble and shall also include the Issuers' successors.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

"Exchange Dates" shall have the meaning set forth in Section 2(a)(ii) hereof.

"Exchange Offer" shall mean the exchange offer by the Issuers of Exchange Securities for Registrable Securities pursuant to Section 2(a) hereof.

"Exchange Offer Registration" shall mean a registration under the Securities Act effected pursuant to Section 2(a) hereof.

"Exchange Offer Registration Statement" shall mean an exchange offer registration statement on Form S-4 (or, if applicable, on another appropriate form) and all amendments and supplements to such registration statement, in each case including the Prospectus contained therein, all exhibits thereto and any document incorporated by reference therein.

"Exchange Securities" shall mean senior notes issued by the Issuers under the Indenture containing terms identical to the Securities (except that the Exchange Securities

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will not be subject to restrictions on transfer or to any increase in annual interest rate for failure to comply with this Agreement) and to be offered to Holders of Securities in exchange for Securities pursuant to the Exchange Offer.

“Holders” shall mean the Initial Purchasers, for so long as they own any Registrable Securities, and each of their successors, assigns and direct and indirect transferees who become owners of Registrable Securities under the Indenture; provided that for purposes of Sections 4 and 5 of this Agreement, the term “Holders” shall include Participating Broker-Dealers.

“Initial Purchasers” shall have the meaning set forth in the preamble.

“Indenture” shall mean the Indenture relating to the Securities dated as of February 6, 2003 among the Issuers and Union Bank of California, N.A., as trustee, and as the same may be amended from time to time in accordance with the terms thereof.

“Majority Holders” shall mean the Holders of a majority of the aggregate principal amount of outstanding Registrable Securities; provided that whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities owned directly or indirectly by the Issuers or any of their affiliates shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage or amount.

“Participating Broker-Dealers” shall have the meaning set forth in Section 4(a) hereof.

“Person” shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

“Prospectus” shall mean the prospectus included in a Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, including a prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by a Shelf Registration Statement, and by all other amendments and supplements to such prospectus, and in each case including any document incorporated by reference therein.

“Purchase Agreement” shall have the meaning set forth in the preamble.

“Registrable Securities” shall mean the Securities; provided that the Securities shall cease to be Registrable Securities (i) when a Registration Statement with respect to such Securities has been declared effective under the Securities Act and such Securities have been exchanged or disposed of pursuant to such Registration Statement, (ii) when such Securities are eligible to be sold pursuant to Rule 144(k) (or any similar provision then in force, but not Rule 144A) under the Securities Act or (iii) when such Securities cease to be outstanding.

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“Registration Expenses” shall mean any and all expenses incident to performance of or compliance by the Issuers with this Agreement, including without limitation: (i) all SEC, stock exchange or National Association of Securities Dealers, Inc. registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state securities or blue sky laws (including reasonable fees and disbursements of counsel for any Underwriters or Holders in connection with blue sky qualification of any Exchange Securities or Registrable Securities), (iii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing any Registration Statement, any Prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement, (iv) all rating agency fees, (v) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws, (vi) the fees and disbursements of the Trustee and its counsel, (vii) the fees and disbursements of counsel for the Issuers and, in the case of a Shelf Registration Statement, the fees and disbursements of one counsel for the Holders (which counsel shall be selected by the Majority Holders and which counsel may also be counsel for the Initial Purchasers) and (viii) the fees and disbursements of the independent public accountants and independent petroleum engineers of the Issuers, including the expenses of any special audits, “comfort” letters or letters concerning oil and gas reserve estimates, as applicable, required by or incident to the performance of and compliance with this Agreement, but excluding fees and expenses of counsel to the Underwriters (other than fees and expenses set forth in clause (ii) above) or the Holders and underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder.

“Registration Statement” shall mean any registration statement of the Issuers that covers any of the Exchange Securities or Registrable Securities pursuant to the provisions of this Agreement and all amendments and supplements to any such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and any document incorporated by reference therein.

“SEC” shall mean the Securities and Exchange Commission.

“Securities Act” shall mean the Securities Act of 1933, as amended from time to time.

“Shelf Effectiveness Period” shall have the meaning set forth in Section 2(b) hereof.

“Shelf Registration” shall mean a registration effected pursuant to Section 2(b) hereof.

“Shelf Registration Statement” shall mean a “shelf” registration statement of the Issuers that covers all the Registrable Securities (but no other securities unless approved by the Holders whose Registrable Securities are to be covered by such Shelf Registration Statement) on an appropriate form under Rule 415 under the Securities Act, or any

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similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and any document incorporated by reference therein.

“Trust Indenture Act” shall mean the Trust Indenture Act of 1939, as amended from time to time.

“Trustee” shall mean the trustee with respect to the Securities under the Indenture.

“Underwriter” shall have the meaning set forth in Section 3 hereof.

“Underwritten Offering” shall mean an offering in which Registrable Securities are sold to an Underwriter for reoffering to the public.

2. Registration Under the Securities Act. (a) To the extent not prohibited by any applicable law or applicable interpretations of the staff of the SEC, the Issuers shall use their reasonable best efforts to (i) cause to be filed an Exchange Offer Registration Statement covering an offer to the Holders to exchange all the Registrable Securities for Exchange Securities and (ii) have such Registration Statement remain effective until 180 days after the closing of the Exchange Offer. The Issuers shall commence the Exchange Offer promptly after the Exchange Offer Registration Statement is declared effective by the SEC and use their reasonable best efforts to complete the Exchange Offer not later than 60 days after such effective date.

The Issuers shall commence the Exchange Offer by mailing the related Prospectus, appropriate letters of transmittal and other accompanying documents to each Holder stating, in addition to such other disclosures as are required by applicable law:

(i) that the Exchange Offer is being made pursuant to this Agreement and that all Registrable Securities validly tendered and not properly withdrawn will be accepted for exchange;

(ii) the dates of acceptance for exchange (which shall be a period of at least 20 Business Days from the date such notice is mailed) (the “Exchange Dates”);

(iii) that any Registrable Security not tendered will remain outstanding and continue to accrue interest but will not retain any rights under this Agreement;

(iv) that any Holder electing to have a Registrable Security exchanged pursuant to the Exchange Offer will be required to surrender such Registrable Security, together with the appropriate letters of transmittal, to the institution and at the address and in the manner specified in the notice, prior to the close of business on the last Exchange Date; and

(v) that any Holder will be entitled to withdraw its election, not later than the close of business on the last Exchange Date, by sending to the institution and at the address specified in the notice, a telegram, telex, facsimile transmission or letter setting forth the name of such Holder, the principal amount of Registrable Securities delivered

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for exchange and a statement that such Holder is withdrawing its election to have such Securities exchanged.

As a condition to participating in the Exchange Offer, a Holder will be required to represent to the Issuers that (i) any Exchange Securities to be received by it will be acquired in the ordinary course of its business, (ii) at the time of the commencement of the Exchange Offer it has no arrangement or understanding with any Person to participate in the distribution (within the meaning of the Securities Act) of the Exchange Securities in violation of the provisions of the Securities Act, (iii) it is not an "affiliate" (within the meaning of Rule 405 under Securities Act) of the Issuers and (iv) if such Holder is a broker-dealer that will receive Exchange Securities for its own account in exchange for Registrable Securities that were acquired as a result of market-making or other trading activities, then such Holder will deliver a Prospectus in connection with any resale of such Exchange Securities.

As soon as practicable after the last Exchange Date, the Issuers shall:

(i) accept for exchange Registrable Securities or portions thereof validly tendered and not properly withdrawn pursuant to the Exchange Offer; and

(ii) deliver, or cause to be delivered, to the Trustee for cancellation all Registrable Securities or portions thereof so accepted for exchange by the Issuers and issue, and cause the Trustee to promptly authenticate and deliver to each Holder, Exchange Securities equal in principal amount to the principal amount of the Registrable Securities surrendered by such Holder.

The Issuers shall use their reasonable best efforts to complete the Exchange Offer as provided above and shall comply with the applicable requirements of the Securities Act, the Exchange Act and other applicable laws and regulations in connection with the Exchange Offer. The Exchange Offer shall not be subject to any conditions, other than that the Exchange Offer does not violate any applicable law or applicable interpretations of the Staff of the SEC.

(b) In the event that (i) the Issuers determine that the Exchange Offer Registration provided for in Section 2(a) above is not available or may not be completed as soon as practicable after the last Exchange Date because it would violate any applicable law or applicable interpretations of the Staff of the SEC, (ii) the Exchange Offer is not for any other reason completed by August 4, 2003 or (iii) upon completion of the Exchange Offer any Initial Purchaser shall so request in connection with any offering or sale of Registrable Securities, the Issuers shall use their reasonable best efforts to cause to be filed as soon as practicable after such determination, date or request, as the case may be, a Shelf Registration Statement providing for the sale of all the Registrable Securities by the Holders thereof and to have such Shelf Registration Statement declared effective by the SEC.

If the Issuers are required to file a Shelf Registration Statement pursuant to clause (iii) of the preceding paragraph, the Issuers shall use their reasonable best efforts to file and have declared effective by the SEC both an Exchange Offer Registration Statement pursuant to Section 2(a) with respect to all Registrable Securities and a Shelf Registration Statement (which may be a combined Registration Statement with the Exchange Offer Registration Statement)

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with respect to offers and sales of Registrable Securities held by the Initial Purchasers after completion of the Exchange Offer.

The Issuers agree to use their reasonable best efforts to keep the Shelf Registration Statement continuously effective until expiration of the period referred to in Rule 144(k) under the Securities Act with respect to the Registrable Securities or such shorter period that will terminate when all the Registrable Securities covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement (the "Shelf Effectiveness Period"). The Issuers further agree to supplement or amend the Shelf Registration Statement and the related Prospectus if required by the rules, regulations or instructions applicable to the registration form used by the Issuers for such Shelf Registration Statement or by the Securities Act or by any other rules and regulations thereunder for shelf registration or if reasonably requested by a Holder of Registrable Securities with respect to information relating to such Holder, and to use their reasonable best efforts to cause any such amendment to become effective and such Shelf Registration Statement and Prospectus to become usable as soon as thereafter practicable. The Issuers agree to furnish to the Holders of Registrable Securities copies of any such supplement or amendment promptly after its being used or filed with the SEC.

(c) The Issuers shall pay all Registration Expenses in connection with the registration provided in Sections 2(a) and 2(b). Each Holder shall pay all underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Shelf Registration Statement.

(d) An Exchange Offer Registration Statement pursuant to Section 2(a) or a Shelf Registration Statement pursuant to Section 2(b) will not be deemed to have become effective unless it has been declared effective by the SEC.

In the event that either the Exchange Offer is not completed or the Shelf Registration Statement, if required hereby, is not declared effective on or prior to August 5, 2003 (September 4, 2003 in the case of a Shelf Registration Statement pursuant to Section 2(b)(iii) above), the interest rate on the Registrable Securities will be increased by 1.00% per annum until the Exchange Offer is completed or the Shelf Registration Statement, if required hereby, is declared effective by the SEC or the Securities become freely tradable under the Securities Act, at which time the increased interest shall cease to accrue.

If the Shelf Registration Statement has been declared effective and thereafter either ceases to be effective or the Prospectus contained therein ceases to be usable at any time during the Shelf Effectiveness Period, and such failure to remain effective or usable exists for more than 30 days (whether or not consecutive) in any 12-month period (two suspensions not to exceed 30 days each in any 365-day period in the case of a Suspension described in Section 3), then the interest rate on the Registrable Securities will be increased by 1.00% per annum commencing on the 31<sup>st</sup> day in such 12-month period and ending on such date that the Shelf Registration Statement has again been declared effective or the Prospectus again becomes usable, at which time the increased interest shall cease to accrue.

(e) Without limiting the remedies available to the Initial Purchasers and the Holders, the Issuers acknowledge that any failure by the Issuers to comply with their obligations



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under Sections 2(a) and 2(b) hereof may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Issuers' obligations under Sections 2(a) and 2(b) hereof.

3. Registration Procedures. In connection with their obligations pursuant to Sections 2(a) and 2(b) hereof, the Issuers shall as expeditiously as possible:

(a) prepare and file with the SEC a Registration Statement on the appropriate form under the Securities Act, which form (x) shall be selected by the Issuers, (y) shall, in the case of a Shelf Registration, be available for the sale of the Registrable Securities by the selling Holders thereof and (z) shall comply as to form in all material respects with the requirements of the applicable form and include all financial statements and oil and gas reserve information required by the SEC to be filed therewith; and use their reasonable best efforts to cause such Registration Statement to become effective and remain effective for the applicable period in accordance with Section 2 hereof;

(b) prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement effective for the applicable period in accordance with Section 2 hereof and cause each Prospectus to be supplemented by any required prospectus supplement and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act; and keep each Prospectus current during the period described in Section 4(3) of and Rule 174 under the Securities Act that is applicable to transactions by brokers or dealers with respect to the Registrable Securities or Exchange Securities;

(c) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, to counsel for the Initial Purchasers, to counsel for such Holders and to each Underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, as many copies of each Prospectus, including each preliminary Prospectus, and any amendment or supplement thereto as they may reasonably request, in order to facilitate the sale or other disposition of the Registrable Securities thereunder; and the Issuers consent to the use of such Prospectus and any amendment or supplement thereto in accordance with applicable law by each of the selling Holders of Registrable Securities and any such Underwriters in connection with the offering and sale of the Registrable Securities covered by and in the manner described in such Prospectus or any amendment or supplement thereto in accordance with applicable law;

(d) use their reasonable best efforts to register or qualify the Registrable Securities under all applicable state securities or blue sky laws of such jurisdictions as any Holder of Registrable Securities covered by a Registration Statement shall reasonably request in writing by the time the applicable Registration Statement is declared effective by the SEC; cooperate with the Holders in connection with any filings required to be made with the National Association of Securities Dealers, Inc.; and do any and all other acts and things that may be reasonably necessary or advisable to enable each Holder to complete the disposition in each such jurisdiction of the Registrable Securities owned by such Holder; provided that the Issuers shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in

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any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not so subject;

(e) in the case of a Shelf Registration, notify each Holder of Registrable Securities, counsel for such Holders and counsel for the Initial Purchasers promptly and, if requested by any such Holder or counsel, confirm such advice in writing (i) when a Registration Statement has become effective and when any post-effective amendment thereto has been filed and becomes effective, (ii) of any request by the SEC or any state securities authority for amendments and supplements to a Registration Statement and Prospectus or for additional information after the Registration Statement has become effective, (iii) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (iv) if, between the effective date of a Registration Statement and the closing of any sale of Registrable Securities covered thereby, the representations and warranties of the Issuers contained in any underwriting agreement, securities sales agreement or other similar agreement, if any, relating to an offering of such Registrable Securities cease to be true and correct in all material respects or if the Issuers receive any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, (v) of the happening of any event during the period a Shelf Registration Statement is effective that makes any statement made in such Registration Statement or the related Prospectus untrue in any material respect or that requires the making of any changes in such Registration Statement or Prospectus in order to make the statements therein not misleading and (vi) of any determination by the Issuers that a post-effective amendment to a Registration Statement would be appropriate;

(f) use their reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement at the earliest possible moment and provide immediate notice to each Holder of the withdrawal of any such order;

(g) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto (without any documents incorporated therein by reference or exhibits thereto, unless requested);

(h) in the case of a Shelf Registration, cooperate with the selling Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be issued in such denominations and registered in such names (consistent with the provisions of the Indenture) as the selling Holders may reasonably request at least one Business Day prior to the closing of any sale of Registrable Securities;

(i) in the case of a Shelf Registration, upon the occurrence of any event contemplated by Section 3(e)(v) hereof, use their reasonable best efforts to prepare and file with the SEC a supplement or post-effective amendment to a Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities, such Prospectus will not contain any untrue statement of a material fact or omit to state a material fact

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necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Issuers shall notify the Holders of Registrable Securities to suspend use of the Prospectus as promptly as practicable after the occurrence of such an event, and such Holders hereby agree to suspend use of the Prospectus until the Issuers have amended or supplemented the Prospectus to correct such misstatement or omission;

(j) a reasonable time prior to the filing of any Registration Statement, any Prospectus, any amendment to a Registration Statement or amendment or supplement to a Prospectus or of any document that is to be incorporated by reference into a Registration Statement or a Prospectus after initial filing of a Registration Statement (and prior to the completion of an Exchange Offer in the case of an Exchange Offer Registration Statement), provide copies of such document to the Initial Purchasers and their counsel (and, in the case of a Shelf Registration Statement, to the Holders of Registrable Securities and their counsel) and make such of the representatives of the Issuers as shall be reasonably requested by the Initial Purchasers or their counsel (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) available for discussion of such document; and the Issuers shall not, at any time after initial filing of a Registration Statement, file any Prospectus, any amendment of or supplement to a Registration Statement or a Prospectus, or any document that is to be incorporated by reference into a Registration Statement or a Prospectus, of which the Initial Purchasers and their counsel (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities and their counsel) shall not have previously been advised and furnished a copy or to which the Initial Purchasers or their counsel (and, in the case of a Shelf Registration Statement, the Holders or their counsel) shall reasonably and timely object;

(k) obtain a CUSIP number for all Exchange Securities or Registrable Securities, as the case may be, not later than the effective date of a Registration Statement;

(l) cause the Indenture to be qualified under the Trust Indenture Act in connection with the registration of the Exchange Securities or Registrable Securities, as the case may be; cooperate with the Trustee and the Holders to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and execute, and use their reasonable best efforts to cause the Trustee to execute, all documents as may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner;

(m) in the case of a Shelf Registration, make available for inspection by a representative of the Holders of the Registrable Securities (an "Inspector"), any Underwriter participating in any disposition pursuant to such Shelf Registration Statement, and attorneys and accountants designated by the Holders, at reasonable times and in a reasonable manner, all pertinent financial and other records, documents and properties of the Issuers, and cause the respective officers, directors and employees of the Issuers to supply all information reasonably requested by any such Inspector, Underwriter, attorney or accountant in connection with a Shelf Registration Statement; provided that if any such information is identified by the Issuers as being confidential or proprietary, each Person receiving such information shall take such actions as are reasonably necessary to protect the confidentiality of such information to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of any Inspector, Holder or Underwriter;

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(n) in the case of a Shelf Registration, use their reasonable best efforts to cause all Registrable Securities to be listed on any securities exchange or any automated quotation system on which similar securities issued or guaranteed by the Issuers are then listed if requested by the Majority Holders, to the extent such Registrable Securities satisfy applicable listing requirements;

(o) if reasonably requested by any Holder of Registrable Securities covered by a Registration Statement, promptly incorporate in a Prospectus supplement or post-effective amendment such information with respect to such Holder as such Holder reasonably requests to be included therein and make all required filings of such Prospectus supplement or such post-effective amendment as soon as the Issuers have received notification of the matters to be incorporated in such filing; and

(p) in the case of a Shelf Registration, enter into such customary agreements and take all such other actions in connection therewith (including those requested by the Holders of a majority in principal amount of the Registrable Securities being sold) in order to expedite or facilitate the disposition of such Registrable Securities including, but not limited to, an Underwritten Offering and in such connection, (i) to the extent possible, make such representations and warranties to the Holders and any Underwriters of such Registrable Securities with respect to the business of the Issuers and its subsidiaries, the Registration Statement, Prospectus and documents incorporated by reference or deemed incorporated by reference, if any, in each case, in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings and confirm the same if and when requested, (ii) obtain opinions of counsel to the Issuers (which counsel and opinions, in form, scope and substance, shall be reasonably satisfactory to the Holders and such Underwriters and their respective counsel) addressed to each selling Holder and Underwriter of Registrable Securities, covering the matters customarily covered in opinions requested in underwritten offerings, (iii) obtain "comfort" letters from the independent certified public accountants of the Issuers (and, if necessary, any other certified public accountant of any subsidiary of the Issuers, or of any business acquired by the Issuers for which financial statements and financial data are or are required to be included in the Registration Statement) addressed to each selling Holder and Underwriter of Registrable Securities, such letters to be in customary form and covering matters of the type customarily covered in "comfort" letters in connection with underwritten offerings, (iv) deliver such documents and certificates as may be reasonably requested by the Holders of a majority in principal amount of the Registrable Securities being sold or the Underwriters, and which are customarily delivered in underwritten offerings, to evidence the continued validity of the representations and warranties of the Issuers made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in an underwriting agreement.

In the case of a Shelf Registration Statement, the Issuers may require each Holder of Registrable Securities to furnish to the Issuers such information regarding such Holder and the proposed disposition by such Holder of such Registrable Securities as the Issuers may from time to time reasonably request in writing.

In the case of a Shelf Registration Statement, each Holder of Registrable Securities agrees that, upon receipt of any notice from the Issuers of the happening of any event of the kind described in Section 3(e)(iii) or 3(e)(v) hereof, such Holder will forthwith discontinue

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disposition of Registrable Securities pursuant to a Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3(i) hereof and, if so directed by the Issuers, such Holder will deliver to the Issuers all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

If the Issuers shall give any such notice to suspend the disposition of Registrable Securities pursuant to a Registration Statement, the Issuers shall extend the period during which the Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from and including the date of the giving of such notice to and including the date when the Holders shall have received copies of the supplemented or amended Prospectus necessary to resume such dispositions. The Issuers may give any such notice only twice during any 365-day period and any such suspensions shall not exceed 30 days for each suspension and there shall not be more than two suspensions in effect during any 365-day period.

The Holders of Registrable Securities covered by a Shelf Registration Statement who desire to do so may sell such Registrable Securities in an Underwritten Offering. In any such Underwritten Offering, the investment banker or investment bankers and manager or managers (the "Underwriters") that will administer the offering will be selected by the Majority Holders of the Registrable Securities included in such offering.

4. Participation of Broker-Dealers in Exchange Offer. (a) The Staff of the SEC has taken the position that any broker-dealer that receives Exchange Securities for its own account in the Exchange Offer in exchange for Securities that were acquired by such broker-dealer as a result of market-making or other trading activities (a "Participating Broker-Dealer") may be deemed to be an "underwriter" within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Securities.

The Issuers understand that it is the Staff's position that if the Prospectus contained in the Exchange Offer Registration Statement includes a plan of distribution containing a statement to the above effect and the means by which Participating Broker-Dealers may resell the Exchange Securities, without naming the Participating Broker-Dealers or specifying the amount of Exchange Securities owned by them, such Prospectus may be delivered by Participating Broker-Dealers to satisfy their prospectus delivery obligation under the Securities Act in connection with resales of Exchange Securities for their own accounts, so long as the Prospectus otherwise meets the requirements of the Securities Act.

(b) In light of the above, and notwithstanding the other provisions of this Agreement, the Issuers agree to amend or supplement the Prospectus contained in the Exchange Offer Registration Statement, as would otherwise be contemplated by Section 3(i), for a period of up to 180 days after the last Exchange Date (as such period may be extended pursuant to the penultimate paragraph of Section 3 of this Agreement), if requested by the Initial Purchasers or by one or more Participating Broker-Dealers, in order to expedite or facilitate the disposition of any Exchange Securities by Participating Broker-Dealers consistent with the positions of the Staff recited in Section 4(a) above. The Issuers further agree that Participating Broker-Dealers

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shall be authorized to deliver such Prospectus during such period in connection with the resales contemplated by this Section 4.

(c) The Initial Purchasers shall have no liability to the Issuers or any Holder with respect to any request that they may make pursuant to Section 4(b) above.

**5. Indemnification and Contribution.** (a) Each of the Issuers, jointly and severally, agree to indemnify and hold harmless each Initial Purchaser and each Holder, their respective affiliates, directors and officers and each Person, if any, who controls any Initial Purchaser or any Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any Prospectus or any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Initial Purchaser or any Holder furnished to the Issuers in writing through J.P. Morgan Securities Inc. or any selling Holder expressly for use therein. In connection with any Underwritten Offering permitted by Section 3, the Issuers, jointly and severally, will also indemnify the Underwriters, if any, selling brokers, dealers and similar securities industry professionals participating in the distribution, their respective affiliates and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above with respect to the indemnification of the Holders, if requested in connection with any Registration Statement.

(b) Each Holder agrees, severally and not jointly, to indemnify and hold harmless the Issuers, the Initial Purchasers and the other selling Holders, their respective affiliates, the directors of the Issuers, each officer of the Issuers who signed the Registration Statement and each Person, if any, who controls the Issuers, any Initial Purchaser and any other selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Holder furnished to the Issuers in writing by such Holder expressly for use in any Registration Statement and any Prospectus.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such Person (the "Indemnified Person") shall promptly notify the Person against whom such indemnification may be sought (the "Indemnifying Person") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 5 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying

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Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 5. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 5 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm (x) for any Initial Purchaser, its affiliates, directors and officers and any control Persons of such Initial Purchaser shall be designated in writing by J.P. Morgan Securities Inc., (y) for any Holder, its affiliates, directors and officers and any control Persons of such Holder shall be designated in writing by the Majority Holders and (z) in all other cases shall be designated in writing by the Issuers. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by the Indemnifying Person of such request; and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (A) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (B) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable

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by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuers from the offering of the Securities and the Exchange Securities, on the one hand, and by the Holders from receiving Securities or Exchange Securities registered under the Securities Act, on the other hand, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Issuers on the one hand and the Holders on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Issuers on the one hand and the Holders on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuers or by the Holders and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Issuers and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 5, in no event shall a Holder be required to contribute any amount in excess of the amount by which the total price at which the Securities or Exchange Securities sold by such Holder exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(f) The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

(g) The indemnity and contribution provisions contained in this Section 5 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Initial Purchasers or any Holder, their respective affiliates or any Person controlling any Initial Purchaser or any Holder, or by or on behalf of the Issuers, their respective affiliates or the officers or directors of or any Person controlling the Issuers, (iii) acceptance of any of the Exchange Securities and (iv) any sale of Registrable Securities pursuant to a Shelf Registration Statement.

#### 6. General.

(a) *No Inconsistent Agreements.* The Issuers represent, warrant and agree that (i) the rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of any other outstanding securities issued or



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guaranteed by the Issuers under any other agreement and (ii) the Issuers have not entered into, or on or after the date of this Agreement will enter into, any agreement that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless the Issuers have obtained the written consent of Holders of at least a majority in aggregate principal amount of the outstanding Registrable Securities affected by such amendment, modification, supplement, waiver or consent; *provided* that no amendment, modification, supplement, waiver or consent to any departure from the provisions of Section 5 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder. Any amendments, modifications, supplements, waivers or consents pursuant to this Section 6(b) shall be by a writing executed by each of the parties hereto.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, telex, telecopier, or any courier guaranteeing overnight delivery (i) if to a Holder, at the most current address given by such Holder to the Issuers by means of a notice given in accordance with the provisions of this Section 6(c), which address initially is, with respect to the Initial Purchasers, the address set forth in the Purchase Agreement; (ii) if to the Issuers, initially at the Issuers's address set forth in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c); and (iii) to such other persons at their respective addresses as provided in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c). All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt is acknowledged, if telecopied; and on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery. Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee, at the address specified in the Indenture.

(d) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without limitation and without the need for an express assignment, subsequent Holders; *provided* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Registrable Securities in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof. The Initial Purchasers (in their capacity as Initial Purchasers) shall have no liability or obligation to the Issuers with respect to any failure by a Holder to comply with, or any breach by any Holder of, any of the obligations of such Holder under this Agreement.

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(e) *Third Party Beneficiaries.* Each Holder shall be a third party beneficiary to the agreements made hereunder between the Issuers, on the one hand, and the Initial Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of other Holders hereunder.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only, are not a part of this Agreement and shall not limit or otherwise affect the meaning hereof.

(h) *Severability.* The remedies provided herein are cumulative and not exclusive of any remedies provided by law. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

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

(j) *Miscellaneous.* This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions, covenants and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The Issuers and the Initial Purchasers shall endeavor in good faith negotiations to replace the invalid, void or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, void or unenforceable provisions.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Very truly yours,

STAR GAS PARTNERS, L.P

BY: STAR GAS LLC, as General Partner

By: /s/ Richard F. Ambury

\_\_\_\_\_  
Name: Richard F. Ambury  
Vice President and Treasurer

STAR GAS FINANCE COMPANY

By: /s/ Richard F. Ambury

\_\_\_\_\_  
Name: Richard F. Ambury  
Vice President and Treasurer

Accepted: February 6, 2003  
For itself and on behalf of the  
several Initial Purchasers

J.P. MORGAN SECURITIES INC.

By: /s/ Geoffrey S. Benson

\_\_\_\_\_  
Authorized Signatory

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Schedule 1

Wachovia Securities, Inc.

Banc of America Securities LLC

Fleet Securities, Inc.

**PHILLIPS NIZER LLP**  
**666 Fifth Avenue**  
**New York, New York 10103**

February 6, 2003

J.P. Morgan Securities Inc.  
As Representative of the several  
Initial Purchasers listed in Schedule  
1 to the Purchase Agreement

c/o J.P. Morgan Securities Inc.  
270 Park Avenue  
New York, New York 10017

Union Bank of California, N.A.  
Attention: Corporate Trust  
120 South San Pedro, 4th Fl.  
Los Angeles, CA 90012

Re: Star Gas Partners, L.P. and Star Gas Finance Company Rule 144A  
and Regulation S Private Placement of 10¼% Senior Notes Due 2013

Dear Sirs:

We have acted as counsel to Star Gas Partners, L.P., a Delaware limited partnership (the "**Company**"), Star Gas Finance Company, a Delaware corporation ("**SGFC**" and, together with the Company, the "**Issuers**"), and Star Gas LLC, a Delaware limited liability company and the sole general partner of the Company (the "**General Partner**"), in connection with the offering by the Issuers of \$200,000,000 aggregate principal amount of 10¼% Senior Notes due 2013 (the "**Securities**") pursuant to the Indenture, dated as of February 6, 2003 (the "**Indenture**") between the Company and SGFC, on one hand, and Union Bank of California, N.A., on the other hand, as Trustee (the "**Trustee**"), and the purchase of the Securities pursuant to the Purchase Agreement, dated February 3, 2003 (the "**Purchase Agreement**"), among the Initial Purchasers named therein and the Issuers.

This opinion is being delivered to you at the request of the Issuers pursuant to Section 5(f) of the Purchase Agreement. Capitalized terms used herein and not defined have the meanings ascribed to them in the Purchase Agreement.

In our capacity as counsel, we have examined such statutes, rules, partnership, limited liability company and corporate records, agreements, instruments, certificates and other documents as we have deemed appropriate for purposes of rendering such opinions. In such examination, we have assumed the following: (i) the genuineness of all signatures and the authenticity and completeness of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies; (ii) that the Transaction Documents constitute valid and binding obligations of each party thereto (other than the Company, the General Partner and SGFC) and are enforceable in accordance with their respective terms (other than with respect to the Company, the General Partner and SGFC); (iii) the absence of evidence extrinsic to the provisions of the Transaction Documents and any related documents between or among the parties thereto that they or any of them intended a meaning contrary to that expressed by the provisions thereof; (iv) that there has been no modification of any provision of any Transaction Document or any document related thereto and no waiver of any right or remedy relating thereto; and (v) that each of the Trustee and the Initial Purchasers is qualified to do business in the State of New York to the extent necessary to avail itself of the courts of the State of New York.

Our opinion does not take account of, and we express no opinion with respect to, (i) any requirement of law which may be applicable to any of the Trustee and the Initial Purchasers by reason of the legal or regulatory status of any of the Trustee and the Initial Purchasers or by reason of other facts particularly pertaining to any of the Trustee and the Initial Purchasers, or (ii) any approval or consent which the Trustee or any Initial Purchaser may be required to obtain from any third party.

Based on the foregoing and subject to the qualifications and limitations set forth below, we are of the opinion that:

(a) Each of the Issuers and each of their respective subsidiaries listed on Schedule 2 to the Purchase Agreement have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect.

(b) The Company has an authorized capitalization as set forth in the Offering Memorandum under the heading "Capitalization," and all the outstanding shares of capital stock or other equity interests of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable.

(c) Each of the Issuers has full right, power and authority to execute and deliver each of the Transaction Documents to which each is party and to perform their respective obligations thereunder; and all action required to be taken for the due and proper authorization, execution and delivery of each of the Transaction Documents and the consummation of the transactions contemplated thereby has been duly and validly taken.

(d) The Indenture has been duly authorized, executed and delivered by each of the Issuers and, assuming due execution and delivery thereof by the Trustee, constitutes a valid and legally binding agreement of each of the Issuers enforceable against each of the Issuers in accordance with its terms, subject to the Enforceability Exceptions; and the Indenture conforms in all material respects with the requirements of the Trust Indenture Act and the rules and regulations of the Commission applicable to an indenture that is qualified thereunder.

(e) The Securities have been duly authorized, executed and delivered by each of the Issuers and, when duly authenticated as provided in the Indenture and paid for as provided in the Purchase Agreement, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of each of the Issuers enforceable against each of the Issuers in accordance with their respective terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(f) The Exchange Securities have been duly authorized by each of the Issuers and, when duly executed, authenticated, issued and delivered as contemplated by the Registration Rights Agreement, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of each of the Issuers, enforceable against each of the Issuers in accordance with their respective terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(g) The Purchase Agreement and the Registration Rights Agreement have each been duly authorized, executed and delivered by each of the Issuers and, when duly executed and delivered by the other parties thereto, will constitute valid and legally binding agreements of each of the Issuers enforceable against each of the Issuers in accordance with their respective terms, subject to the Enforceability Exceptions.

(h) Each Transaction Document conforms in all material respects to the description thereof contained in the Preliminary Offering Memorandum and the Offering Memorandum.

(i) The execution, delivery and performance by each of the Issuers of each of the Transaction Documents to which each is a party, the issuance and sale of the Securities and compliance by each of the Issuers with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation

or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement is a party or by which the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement is bound or to which any of the property or assets of the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement is subject, (ii) result in any violation of the provisions of the charter, by-laws or similar organizational documents of the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement or (iii) result in the violation of any law or statute or any judgment, order or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(j) No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by each of the Issuers of each of the Transaction Documents to which each is a party, the issuance and sale of the Securities and compliance by each of the Issuers with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, except for such consents, approvals, authorizations, orders and registrations or qualifications as may be required (i) under applicable state securities laws in connection with the purchase and resale of the Securities by the Initial Purchasers and (ii) with respect to the Exchange Securities under the Securities Act and applicable state securities laws as contemplated by the Registration Rights Agreement.

(k) To our best knowledge, except as described in the Offering Memorandum, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement is or may be party or to which any property of the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement is or may be subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries listed on Schedule 2 to the Purchase Agreement, could reasonably be expected to have a Material Adverse Effect; and no such investigations, actions, suits or proceedings are threatened or, to our best knowledge, contemplated by any governmental or regulatory authority or threatened by others.

(l) The descriptions in the Offering Memorandum of statutes, legal, governmental and regulatory proceedings and contracts and other documents are accurate in all material respects as of the date of the Offering Memorandum; and the statements in the Offering Memorandum under the heading "U.S. tax consequences," to the extent that they constitute summaries of matters of law or regulation or legal conclusions, fairly summarize the matters described therein in all material respects as of the date of the Offering Memorandum.



(m) Neither the Company nor any of its subsidiaries listed on Schedule 2 to the Purchase Agreement is, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Offering Memorandum none of them will be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act.

(n) Neither the issuance, sale and delivery of the Securities nor the application of the proceeds thereof by the Issuers as described in the Offering Memorandum will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(o) Assuming the accuracy of the representations, warranties and agreements of the Issuers and the Initial Purchasers contained in the Purchase Agreement, it is not necessary, in connection with the issuance and sale of the Securities to the Initial Purchasers and the offer, resale and delivery of the Securities by the Initial Purchasers in the manner contemplated by the Purchase Agreement and the Offering Memorandum, to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act.

We have participated in conferences with representatives of the Issuers and with representatives of their independent accountants at which conferences the contents of the Preliminary Offering Memorandum and the Offering Memorandum and any amendment and supplement thereto and related matters were discussed and, although we assume no responsibility for the accuracy, completeness or fairness of the Preliminary Offering Memorandum and the Offering Memorandum and any amendment or supplement thereto (except as expressly provided above), nothing has come to our attention to cause us to believe that the Preliminary Offering Memorandum, as of its date, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or that the Offering Memorandum, or any amendment or supplement thereto, as of its date and the Closing Date, contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that we express no opinion as to financial statements, financial schedules and other financial information contained in the Preliminary Offering Memorandum or the Offering Memorandum, or in any amendment or supplement thereto).

In rendering such opinions, we relied as to matters of fact on certificates of responsible officers of the Issuers and the General Partner, in its capacity as the sole general partner of the Company, and public officials that were furnished to us. Our opinion as to the existence and good standing of each of the Issuers, the General Partner and their subsidiaries listed on Schedule 2 to the Purchase Agreement is based solely upon good standing certificates certified by public officials of their respective jurisdictions of organization.

Notwithstanding anything herein to the contrary, we express no opinion regarding (i) except as otherwise provided herein, the title of any of the Company, the General Partner and SGFC to any of their respective real or personal properties, and (ii) the effect of the laws of any jurisdiction other than federal laws, the Delaware Revised Uniform Partnership Act, the Delaware General Corporation Law, the Delaware Limited Liability Company Act, and the laws of the State of New York.

Insofar as the matters covered herein are governed by the laws of any state other than the State of New York or the specific state statutes referenced above, we have based our opinions with regard thereto on the assumption, without independent investigation, that the laws of each such state are in all relevant aspects identical to the laws of the State of New York.

The qualification of any opinion stated herein by use of the words "to our knowledge" or similar such words refers to the best actual knowledge of those attorneys of this firm who have represented the Company, the General Partner and SGFC either generally or in connection with the transactions contemplated by the Transaction Documents without independent investigation. In rendering this opinion, we have relied solely upon the documents and inquiries referred to herein or within our knowledge and have not undertaken any investigation to determine the existence or absence of such matters, documents or facts.

Without limiting the affect of the Enforceability Exceptions, the opinions expressed in Paragraphs (d), (e), (f) and (g) are subject to and affected by the following qualifications:

(i) applicable bankruptcy, insolvency, reorganization, receivership, moratorium, or assignment for the benefit of creditors law and other laws affecting the rights and remedies of creditors generally, including (without limitation) laws regarding fraudulent transfers, fraudulent conveyances, preferences, avoidances, marshallings of assets, automatic stays and turn-overs;

(ii) general principles of equity, including (without limitation) those governing the availability of equitable remedies, affording equitable defenses, requiring good faith, fair dealing and reasonableness in the performance and enforcement of a contract, and affording defenses based upon unconscionability, lack of notice, impracticability or impossibility of performance;

(iii) the qualification that certain provisions of the Transaction Documents and any document related thereto might be unenforceable in whole or in part if such enforcement would be unreasonable under the circumstances or would otherwise be limited by applicable federal or state law, but in our opinion, such laws would not materially interfere with the practical realization of the benefits or security intended to be provided by the Transaction Documents and any document related thereto;



**STAR GAS PARTNERS, L.P.**  
**STATEMENT OF COMPUTATION OF EARNINGS TO FIXED CHARGES**  
(In Thousands of Dollars, Except Ratio)

	Fiscal Years Ended September 30,					Three Months Ended December 31,	
	1998	1999	2000	2001	2002	2001	2002
<b>Earnings:</b>							
Income (loss) before income taxes and cumulative effect of change in accounting principle	\$ (930)	\$(44,330)	\$ 1,845	\$ (5,217)	\$(12,625)	\$11,650	\$20,615
<b>Add:</b>							
Interest expense	8,103	15,782	27,318	34,464	40,881	10,456	8,807
Interest component of rent expense(a)	400	1,467	2,667	3,000	4,333	1,031	1,111
	<u>\$7,573</u>	<u>\$(27,081)</u>	<u>\$31,830</u>	<u>\$32,247</u>	<u>\$ 32,589</u>	<u>\$23,137</u>	<u>\$30,533</u>
<b>Fixed charges:</b>							
Interest expense	\$8,103	\$ 15,782	\$27,318	\$34,464	\$ 40,881	\$10,456	\$ 8,807
Interest component of rent expense(a)	400	1,467	2,667	3,000	4,333	1,031	1,111
	<u>\$8,503</u>	<u>\$ 17,249</u>	<u>\$29,985</u>	<u>\$37,464</u>	<u>\$ 45,214</u>	<u>\$11,487</u>	<u>\$ 9,918</u>
<b>Ratio</b>	<u>*</u>	<u>*</u>	<u>1.1x</u>	<u>*</u>	<u>*</u>	<u>2.0x</u>	<u>3.1x</u>

(a) One third of rent expense is the portion deemed representative of the interest component.

\* Ratio is less than 1:1. Deficiencies are \$930, \$44,330, \$5,217 and \$12,625 for the fiscal years ended September 30, 1998, 1999, 2001 and 2002, respectively.

**Consent of Independent Auditors**

The Board of Directors  
Star Gas Partners, L.P.:

We consent to incorporation by reference in this registration statement on Form S-4 of Star Gas Partners, L.P. of our report dated November 26, 2002, except as to note 20, which is as of February 3, 2003, relating to the consolidated balance sheets of Star Gas Partners, L.P. and subsidiaries as of September 30, 2001 and 2002, and the related consolidated statements of operations, comprehensive income (loss), partners' capital, and cash flows for each of the years in the three-year period ended September 30, 2002, which report appears in the Form 8-K of Star Gas Partners, L.P. dated March 17, 2003.

Additionally, we consent to the incorporation by reference in this registration statement on Form S-4 of Star Gas Partners, L.P. of our report dated November 26, 2002, with respect to the balance sheets of Star Gas LLC as of September 30, 2001 and 2002, which report appears in the Form 8-K of Star Gas Partners, L.P. dated March 17, 2003.

We also consent to the reference to our firm under the heading "Experts" in the prospectus.

Stamford, Connecticut  
March 17, 2003

**Consent of Independent Auditors**

The Board of Directors  
Star Gas Partners, L.P.:

We consent to the incorporation by reference in this registration statement on Form S-4 of Star Gas Partners, L.P. of our report dated August 27, 2001, with respect to the consolidated balance sheets of Meenan Oil Co., L.P. and Subsidiaries as of June 30, 2001 and 2000, and the related consolidated statements of income and partners' equity (deficit), comprehensive income and cash flows for each of the years in the three-year period ended June 30, 2001, which report appears in the Form 8-K of Star Gas Partners, L.P. dated March 17, 2003.

We also consent to the reference to our firm under the heading "Experts" in the prospectus.

Melville, New York  
March 17, 2003

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

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**FORM T-1**

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**STATEMENT OF ELIGIBILITY UNDER THE  
TRUST INDENTURE ACT OF 1939 OF A CORPORATION  
DESIGNATED TO ACT AS TRUSTEE**

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CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE  
PURSUANT TO SECTION 305(b)(2)

**UNION BANK OF CALIFORNIA, N.A.**

(Exact name of trustee as specified in its charter)

**350 California Street  
San Francisco, CA**  
(Address of principal executive offices)

**94104**  
(Zip Code)

**94-0304228**  
(I.R.S. employer identification no.)

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**General Counsel  
Union Bank of California, N.A.  
400 California Street  
San Francisco, CA 94104  
(415) 765-2945**  
(Name, address and telephone number of agent for service)

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**Star Gas Partners, L.P.**

(Exact name of obligor as specified in its charter)

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

**06-1437793**  
(IRS Employer Identification no.)

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

**06902**  
(Zip Code)

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**Star Gas Partners, L.P.  
Star Gas Finance Company  
10.25% Senior Notes Due 2013**

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Item 1. General Information.

Furnish the following information as to the trustee —

Name and address of each examining or supervising authority to which it is subject.

Board of Governors of the Federal Reserve System  
District Analyst, M/A 155  
Washington, DC 20551

Federal Reserve Bank of San Francisco  
101 Market Street  
San Francisco, CA 94105

Deputy Comptroller for Large Bank Supervision  
Office of the Comptroller of the Currency  
Mail Stop 6-1  
Washington, DC 20219-001

Federal Deposit Insurance Corporation  
Analysis and Monitoring Section  
550 17th Street, NW  
Washington, DC 20429

Office of the Comptroller of the Currency  
Western District Office  
50 Fremont Street  
San Francisco, CA 94105-2292

Whether it is authorized to exercise corporate trust powers: Yes

Item 2. Affiliations with obligor.

If the obligor is an affiliate of the trustee, describe each such affiliation.

NONE

Items 3-15 are not applicable because to the best of the Trustee's knowledge the obligor is not in default under any Indenture for which the Trustee acts as Trustee.



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Item 16. List of Exhibits.

List below all exhibits filed as a part of this statement of eligibility.

1. A copy of the articles of association of the trustee now in effect.
2. A copy of the authorization of the trustee to exercise corporate trust powers
3. A copy of the existing bylaws of the trustee, or instruments corresponding thereto.
4. The consent of United States institutional trustees required by Section 321(b) of the Act.
5. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939 the trustee, Union Bank of California, N.A., a national banking association formed under the laws of the United States, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Los Angeles, and State of California, on the seventh day of March, 2003.

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Union Bank of California, N.A.

By: /s/ Andrew R. Ball

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Andrew R. Ball  
Vice President

**ARTICLES OF ASSOCIATION  
OF  
UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION**  
(Restated as of December 4, 2002)

FIRST. The name of this Association shall be "Union Bank of California, National Association."

SECOND. The head office of this Association shall be in the City and County of San Francisco, State of California. The general business of the Association shall be conducted at its head office and its legally established branches.

THIRD. The board of directors of this Association shall consist of not less than five (5) nor more than twenty-five (25) individuals, the exact number of directors within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of the shareholders at any annual or special meeting thereof. Unless otherwise provided by the laws of the United States, any vacancy in the board of directors for any reason, including an increase in the number thereof, may be filled by action of the board of directors, though less than a quorum.

FOURTH. The annual meeting of the shareholders for the election of directors and the transaction of whatever other business may be brought before said meeting shall be held at the head office or such other place as the board of directors may designate, on the date of each year specified therefor in the Bylaws, but if no election is held on that day, it may be held on any subsequent day according to the provisions of laws; and all elections shall be held according to such lawful regulations as may be prescribed by the board of directors.

Nominations for election to the board of directors may be made by the board of directors or by any shareholder of any outstanding class of capital stock of the Association entitled to vote for election of directors.

FIFTH. The amount of authorized capital stock of this Association shall be \$675,000,000, consisting of 45,000,000 shares of common stock of the par value of \$15 each, but said capital stock may be increased or decreased from time to time, in accordance with the provisions of the laws of the United States.

SIXTH. The board of directors shall appoint one of its members president of this Association, who shall be chairman of the board, unless the board appoints another director to be chairman. The board of directors shall have the power to appoint one or more vice presidents, and to appoint a cashier and such other officers and employees as may be required to transact the business of this Association.

The board of directors shall have the power to define the duties of the officers and employees of the Association; to fix the compensation to be paid to them; to dismiss them; to require bonds from them and to fix the penalty thereof; to regulate the manner in which any increase of the capital of the Association shall be made; to manage and administer the business and affairs of the Association; to make all Bylaws that it may be lawful for them to make; and generally to do and perform all acts that it may be legal for a board of directors to do and perform.

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SEVENTH. The board of directors shall have the power to change the location of the head office to any other place within the limits of the City of San Francisco, without the approval of the shareholders but subject to the approval of the Comptroller of the Currency; and shall have the power to establish or change the location of any branch or branches of the Association to any other location, without the approval of the shareholders but subject to the approval of the Comptroller of the Currency.

EIGHTH. The corporate existence of this Association shall continue until terminated in accordance with the laws of the United States.

NINTH. Special meetings of the shareholders of this Association may be called for any purpose at any time by the board of directors, the chairman of the board, the deputy chairman of the board, the president or by the majority shareholder. Unless otherwise provided by the laws of the United States, a notice of the time, place and purpose of every annual and special meeting of the shareholders shall be given by first-class mail, postage prepaid, mailed at least ten (10) days prior to the date of such meeting to each shareholder of record at his address as shown upon the books of this Association, provided that said notice may be waived by a majority shareholder.

TENTH. These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this Association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount, voting in person or by proxy.

ELEVENTH. (a) This Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was an officer, employee or agent of the Association, or is or was serving at the request of the Association as an officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. 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, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) This Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was an officer, employee or agent of the Association, or is or was serving at the request of the Association as an officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees and expenses) actually or reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Association

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unless and only to the extent that the Superior Court of the State of California or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that an officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and expenses) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the shareholders of the Association.

(e) Expenses incurred by an officer in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such officer to repay such amounts if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized in this article. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) The Association shall indemnify, to the fullest extent permitted by applicable law as then in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a member of the board of directors of the Association, or is or was serving at the request of the Association as a member of the board of directors or any committee thereof of another corporation, partnership, joint venture, trust or other enterprise (any such person, for the purposes of this subsection (f), a "director"), against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding; provided, however, that the Association is not authorized to provide indemnification of any director for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL"). The Association shall advance expenses incurred or to be incurred in defending any such proceeding to any such director.

(1) The following procedures shall apply with respect to advancement of expenses and the right to indemnification under this subsection (f):

(i) **Advancement of Expenses.** All reasonable expenses incurred by or on behalf of a director in connection with any proceeding shall be advanced to the director by the Association within twenty days after the receipt by the Association of a statement or statements from the director requesting such advance or advances from time to time, whether prior to or after final disposition of such proceeding.

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Such statement or statements shall reasonably evidence the expenses incurred or to be incurred by the director and, if required by law at the time of such advance, shall include or be accompanied by an undertaking by or on behalf of the director to repay the amounts advanced if it should ultimately be determined that the director is not entitled to be indemnified against such expenses.

(ii) Written Request for Indemnification. To obtain indemnification under this subsection (f), a director shall submit to the Secretary of the Association a written request, including such documentation and information as is reasonably available to the director and reasonably necessary to determine whether and to what extent the director is entitled to indemnification (the "Supporting Documentation"). Any claim for indemnification under this Article Eleventh shall be paid in full within thirty days after receipt by the Association of the written request for indemnification together with the Supporting Documentation unless independent legal counsel to the Association, acting at the request of the Board of Directors of the Association (or a committee of the Board designated by the Board for such purpose), shall have determined, in a written legal opinion to the Association without material qualification, that the director is not entitled to indemnification by reason of any of the circumstances specified in the proviso to the first sentence of this subsection (f) or in subsection (k) of this Article Eleventh. The Secretary of the Association shall, promptly upon receipt of such a request for indemnification, advise the board of directors in writing that the director has requested indemnification and shall promptly, upon receipt of any such opinion, advise the Board in writing that such determination has been made.

Notwithstanding the foregoing, the Association shall not be required to advance such expenses to a director who is a party to an action, suit or proceeding brought by the Association and approved by a majority of the board of directors which alleges willful misappropriation of corporate assets by such director, a transaction in which the director derived an improper personal benefit or any other willful and deliberate breach in bad faith of such director's duty to the Association or its shareholders.

(2) The rights to indemnification and to the advancement of expenses conferred in this subsection (f) shall be contract rights. If a claim under this subsection (f) is not paid in full by the Association within thirty days after a written claim has been received by the Association, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the director may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Association to recover an advancement of expenses pursuant to the terms of an undertaking, the director shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by a director to enforce a right to indemnification hereunder (but not in a suit brought by the director to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit by the Association to recover an advancement of expenses pursuant to the terms of an undertaking the Association shall be entitled to recover such expenses upon a final adjudication that, the director has not met any applicable standard for indemnification under the applicable law then in effect. Neither the failure of the Association to have made payment in full of the claim for indemnification prior to the commencement of such suit, nor an actual determination by independent legal counsel to the Association that the director is not entitled to such indemnification, shall create a presumption that the director has not met the applicable standard of conduct or, in

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the case of such a suit brought by the director, be a defense to such suit. In any suit brought by the director to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Association to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the director is not entitled to be indemnified, or to such advancement of expenses, under this subsection (f) or otherwise shall be on the Association.

(g) The indemnification provided by this article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in this official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(h) This Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this article.

(i) For purposes of this article, references to “the Association” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this article with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(j) For purposes of this article, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Association” shall include any service as a director, officer, employee or agent of the Association which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Association” as referred to in this article.

(k) Notwithstanding anything in this article to the contrary, the Association shall not indemnify any director, officer or employee nor purchase and maintain insurance on behalf of any director, officer or employee in circumstances not permitted by 12 C.F.R. Part 359.

(l) If any provision or provisions of this article shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions (including, without limitation, each portion of this article containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or

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unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.”

TWELFTH To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Association shall not be personally liable to the Association, its shareholders or otherwise for monetary damage for breach of his or her duty as a director. Any repeal or modification of this article shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Association existing at the time of such repeal or modification.

[LOGO APPEARS HERE]

Comptroller of the Currency  
Administrator of National Banks

Washington, D.C. 20219

**Certificate of Corporate Existence and Fiduciary Powers**

I, John D. Hawke, Jr., Comptroller of the Currency, do hereby certify that:

1. The Comptroller of the Currency, pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., as amended, has possession, custody and control of all records pertaining to the chartering of all National Banking Associations.
2. "Union Bank of California, National Association," San Francisco, California, (Charter No. 21541) is a National Banking Association formed under the laws of the United States and is authorized thereunder to transact the business of banking and exercise Fiduciary Powers on the date of this Certificate.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department in the City of Washington and District of Columbia, this Wednesday, January 08, 2003.

[CURRENCY BUREAU SEAL APPEARS HERE]

/s/ John D. Hawke, Jr.

**Comptroller of the Currency**



BYLAWS  
of  
UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION  
(Restated as of January 27, 1999)

ARTICLE I

Meetings of Shareholders

Section 1.1. Annual Meeting. The annual meeting of the shareholders shall be held each year on the date and at the time specified by the Board of Directors. At each annual meeting the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Notice of such meeting shall be mailed, postage prepaid, at least ten days and no more than 60 days prior to the date thereof by first class mail addressed to each shareholder at his address appearing on the books of the Association; provided, however, that the shareholders may waive notice of the annual meeting.

If for any cause an election of directors is not made on said day, the board of directors shall order the election to be held on some subsequent day, as soon thereafter as practicable, according to the provisions of law; and notice thereof shall be given in the manner herein provided for the annual meeting.

Section 1.2. Special Meetings. Except as otherwise specifically provided by statute, special meetings of the shareholders of this Association may be called for any purpose at any time by the board of directors, the chairman of the board, the deputy chairman of the board, the president or by the majority shareholder of this Association. Every such special meeting unless otherwise provided by law shall be called by mailing, first-class postage prepaid, not less than ten days prior to the date fixed for such meeting to each shareholder at his address appearing on the books of this Association, a notice stating the purpose of the meeting, provided that said notice may be waived by a majority shareholder.

Section 1.3. Nomination for Director. Nominations for election to the board of directors may be made by the board of directors or by any shareholder of any outstanding capital stock of the Association entitled to vote for the election of directors.

Section 1.4. Proxies. Shareholders may vote at any meeting of the shareholders by proxies duly authorized in writing, but no officer or employee of this Association shall act as proxy.

Section 1.5. Quorum. The presence in person or by proxy of persons entitled to vote a majority of the issued and outstanding stock of this Association shall constitute a quorum for the

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transaction of business at any annual or special meeting of the shareholders, unless otherwise provided by law; but less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting unless otherwise provided by law of by the Articles of Association.

Section 1.6. Action by Shareholders. Except as provided by law, any action required to be taken at any annual or special meetings of the shareholders of this Association, or any action which may be taken at any annual or special meetings of the shareholders may be taken without a meeting and without a vote, if a consent in writing, setting forth the actions so taken, shall be signed by holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at the meeting at which all shareholders entitled to vote thereon were present and voted.

## ARTICLE II

### Directors

Section 2.1. Board of Directors. The board of directors (henceforth referred to as the board) shall have the power to manage and administer the business and affairs of the Association. Except as specifically limited by law, all corporate powers of the Association shall be vested in and may be exercised by said board.

Section 2.2. Number. The board shall consist of not less than five nor more than twenty-five individuals, the exact number within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the full board or by resolution of the shareholders at any meeting thereof; provided, however, that a majority of the full board may not increase the number of directors to a number which; (i) exceeds by more than two the number of directors last elected by shareholders where such number was fifteen or less; or (ii) to a number that exceeds by more than four the number of directors last elected by shareholders where such number was sixteen or more, but in no event shall the number of directors exceed twenty-five.

Section 2.3. Organizational Meeting. There shall be a meeting of the board immediately following the election of the board at the annual meeting of shareholders which meeting shall be held for the purpose of organization; no notice of such meeting need be given. If at the time fixed for such meeting there shall not be a quorum present, the directors present may adjourn the meeting from time to time until a quorum is obtained.

At such meeting, the board shall elect a chairman of the board, a president, a deputy chairman of the board and one or more vice chairmen of the board. The chairman shall preside

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at all directors' meetings and in his absence, the president and, then, in his absence, the deputy chairman and, in his absence, a vice chairman of the board shall preside at such meetings. In the absence of the chairman of the board, the president, the deputy chairman and the vice chairmen of the board, the board may appoint a chairman pro-tempore.

Section 2.4. Place, Date and Time of Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such places within or without the State of California and on such dates and at such times as the Board may from time to time determine by resolution or written consent.

Section 2.5. Special Meetings. Special meetings of the board may be called by the chairman, the president, the deputy chairman or by a majority of the board, of which notice shall be given to each director personally by telephone or facsimile, electronic mail or other electronic means or by leaving a written or printed notice at, or by mailing such notice to, the Director's residence or place of business at least 24 hours before the time appointed for such meeting, provided that said notice may be waived by a written consent by all the directors entitled to vote at such meeting.

Section 2.6. Quorum. A majority of the board then in office shall constitute a quorum for the transaction of business at any meeting except when otherwise provided by law; but a less number may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice.

Section 2.7. Participation by Communications Equipment. Members of the Board may participate in a meeting through use of conference telephone, electronic video screen communication or other communications equipment, so long as all members participating in such meetings can communicate with all of the other members concurrently and are provided the means of participating in all matters before the Board, and the Association confirms that the person communicating by telephone, electronic video screen or other communications equipment is a director entitled to participate in the Board meeting and that all statements, actions and votes were made by such director. Such participation constitutes presence in person at such meeting.

Section 2.8. Action Without A Meeting. Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board eligible to vote shall individually or collectively consent to such action. The written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same effect as a unanimous vote of directors.

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Section 2.9. Vacancies. The directors shall hold office for one year or until their successors are elected and have qualified. Any vacancies occurring in the membership of the board shall be filled by appointment for the unexpired term by the remaining members of the board, though less than a quorum, in accordance with the laws of the United States.

### ARTICLE III

#### Committees of the Board

Section 3.1. Executive Committee. There shall be an executive committee composed of the chairman of the board, the president, the deputy chairman and not less than four (4) other directors who shall be appointed by the board to serve during its pleasure. Subject at all times to the control of the board, the committee shall have and may exercise all the powers of the board, except powers to amend the Articles of Association, to adopt an agreement of merger or consolidation, to recommend to the shareholders the sale, lease or exchange of all or substantially all of the Association's property and assets, to recommend to the shareholders a dissolution of the Association or a revocation of a dissolution, to amend the bylaws of the Association, to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger. The chairman of the committee may from time to time designate directors to act as alternate members of the committee in the place of any members absent from a meeting thereof. The committee shall meet at such times as it or the board may designate and shall make its own rules of procedure. A majority of its members shall constitute a quorum. The affirmative vote of the majority of its members shall be necessary for the adoption of any resolution. The committee shall keep minutes of its meetings and such minutes shall be submitted to the next regular meeting of the board at which a quorum is present, and any action taken by the board with respect thereto shall be entered into the minutes of the board.

Section 3.2. Other Committees. The Board of Directors may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees from time to time, each consisting of two or more directors to serve at the pleasure of the Board. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not the member or members present constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors shall have all the authority of the Board, except powers to amend the Articles of Association, to adopt an agreement of merger or consolidation, to recommend to the shareholders the sale, lease or exchange of all or substantially all of the Association's property and assets, to recommend to the shareholders a

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dissolution of the Association or a revocation of a dissolution, to amend the bylaws of the Association, to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger.

#### ARTICLE IV

##### Officers

Section 4.1. Officers. The officers of this Association shall be a chairman of the board, a president and chief executive officer, a deputy chairman, one or more vice chairmen of the board, a chief financial officer, a chief credit officer, a general auditor, a chief credit examiner, a chief compliance officer, one or more executive vice presidents, one or more senior vice presidents, one or more vice presidents, one or more assistant vice presidents, a secretary, one or more assistant secretaries, one or more trust officers, one or more assistant trust officers, a manager and one or more assistant managers for each of the branches of this Association, and such other officers as may be required from time to time for the prompt and orderly transaction of its business, to be elected or appointed by the board; provided, however, that the board may assign by resolution the authority to appoint, define duties, reassign and dismiss such officers as it shall from time to time determine. Such officers shall respectively exercise such powers and perform such duties as pertain to their several offices, or as may be conferred upon, or assigned to, them by the board or by other officers to whom such authority has been delegated and assigned.

Section 4.2. Certain Officers to be Directors. The chairman of the board, the president, the deputy chairman of the board and the vice chairmen of the board of the Association shall be members of the board.

Section 4.3. Chairman, President, Deputy Chairman and Vice Chairmen. The chairman of the board shall preside at all shareholders' meetings and all meetings of the board unless he delegates this duty to the President or Deputy Chairman. In the absence or disability of the chairman of the board, the following shall perform the duties and have the powers of the chairman of the board in the order set forth:

President and Chief Executive Officer

Deputy Chairman

Vice Chairmen in the order designated by the Board.

Section 4.4. President and Chief Executive Officer. The president shall have general and active management of the business of the Association, and shall have and may exercise any and all other powers and duties pertaining by law, regulation, or practice, to the office of president or prescribed by these bylaws. The president shall be the chief executive officer.

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Section 4.5. Chief Financial Officer. The Chief Financial Officer shall be the principal financial officer of the Association and shall perform the duties imposed upon him by these Bylaws or the Board of Directors.

Section 4.6. Tenure. The chairman of the board, the president, the deputy chairman of the board and the vice chairmen of the board shall hold their offices for the current year for which the board, of which they are members, was elected and qualified, unless they shall resign, become disqualified or be removed. Any vacancy occurring in any of such offices shall be filled by appointment by the remaining members of the board, though not a quorum. All other officers shall be elected to hold their offices respectively during the pleasure of the board; provided, however, that the board may assign by resolution the dismissing of such officers as it shall from time to time determine.

Section 4.7. Secretary. The secretary shall keep a record of all votes, meetings and proceedings of the board and of the shareholders and of all other matters required to be placed in the minute book, shall enter all bylaws and all amendments thereto and note all changes or repeals thereof in the book of bylaws, shall have charge of the corporate seal of this Association and affix the same to all certificates of stock and as directed by the board, and shall care for and preserve all papers, documents and books placed in his custody. The secretary shall have the power to take any action and execute any document required by law to be taken or executed by a cashier. Duplicates of the corporate seal of this Association shall be placed in the charge of such managers and assistant managers of branches of this Association as are designated by the Secretary; and any one of the managers or assistant managers so designated may affix the corporate seal to documents or papers requiring the same. The assistant secretaries shall have all the powers, and, in the absence of the secretary, duties of the secretary.

## ARTICLE V

### Emergency Provisions

Section 5.1. Emergency Defined. "Emergency" as used in this Article VI means disorder, disturbance or damage caused by disaster, war, enemy attack or other warlike acts which prevent conduct and management of the affairs and business of the Association by the Board of Directors and officers. The powers and duties conferred and imposed by this Article and any resolutions adopted pursuant hereto shall be effective only during an emergency. This Article may be implemented from time to time by resolutions adopted by the Board of Directors before or during an emergency, or during an emergency by the Executive Committee of the Board of Directors constituted and then acting pursuant thereto. During an emergency, the

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provisions of this Article and any implementing resolutions shall supercede any conflicting provision of any Article of these Bylaws or resolutions adopted pursuant thereto.

Section 5.2. Alternate Locations. During an emergency, the business ordinarily conducted at the principal executive office of the Association shall, if so permitted by applicable statutes or regulations, be relocated elsewhere in suitable quarters, as may be designated by the board of directors or by the Executive Committee of the Board of Directors or by such persons as are then, in accordance with these bylaws or resolutions adopted from time to time by the board of directors, dealing with the exercise of authority in a time of such emergency, conducting the affairs of this Association. Any temporarily relocated place of business of this Association shall be returned to its legally authorized location as soon as practicable and such temporary place of business shall then be discontinued.

Section 5.3. Alternate Management.

(a) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs of business of this Association by its directors and officers as contemplated by these bylaws, any available members of the then incumbent Executive Committee of the Board shall constitute an Interim Executive Committee for the full conduct and management of the affairs and business of the Association.

(b) If as a result of a state of disaster as described under 5.3(a) above, the chief executive officer is unable or unavailable to act, then until such chief executive officer becomes able and available to act or a new chief executive officer is appointed or elected, the senior surviving officer who is able and available to act shall act as the chief executive officer of this Association. If a person in good faith assumes the powers of the chief executive officer pursuant to these provisions in the belief he is the senior surviving officer and the office of the chief executive officer is vacant, the acts of such a person shall be valid and binding although it may subsequently develop that he was not in fact the senior surviving officer or that the office was not in fact vacant.

(c) No officer, director or employee acting in accordance with these Emergency Provisions shall be liable except for willful misconduct.

ARTICLE VI

Certificates and Transfer of Stock

Section 6.1. Stock Certificates. Certificates of stock in the form adopted by the board shall be issued to the shareholders of this Association according to the number of shares belonging to each respectively. Such certificates shall be transferable by endorsement and

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delivery thereof, but the transfer shall not be complete and binding on this Association until recorded upon the books of the Association, or its transfer agent, if any.

All certificates of stock shall bear the corporate seal of this Association which may be in the form of a facsimile of such seal imprinted or otherwise reproduced thereon and shall be signed by the chairman of the board or the deputy chairman of the board and the secretary, or an assistant secretary, provided that such signatures upon the certificates may be but need not be facsimiles of the signatures of said officers imprinted or otherwise reproduced upon the certificates.

All certificates of stock which have been transferred as aforesaid shall be properly canceled and preserved.

Section 6.2. Transfer of Stock. No new certificate shall be issued in lieu of an old one unless the latter is surrendered and canceled at the same time. If, however, a certificate be lost or destroyed the board may order a new certificate issued upon such terms, conditions and guaranties as the board may see fit to impose.

Section 6.3. Fractional Shares. The Association shall not be obliged to issue any certificates of stock evidencing, either singly or with other shares, any fractional part of a share, or any undivided interests in shares, but it may do so if the board shall so resolve.

Section 6.4. Ownership. The person, firm or corporation in whose name shares of stock stand on the books of the Association, whether individually or as trustee, pledgee or otherwise, may be recognized and treated by the Association as the absolute owner of the shares, and the Association shall in no event be obligated to deal with or to recognize the rights or interests of other persons in such shares, or in any part thereof.

Section 6.5. Fixing Record Date. The board may by resolution fix a record date for determining the shareholders entitled to notice of and to vote at any meeting of shareholders, which date shall be in reasonable proximity to the date of giving notice to the shareholders of such meeting.

## ARTICLE VII

### Records

Section 7.1. The organization papers of this Association, the proceedings of all regular and special meetings of the board and of the shareholders and reports of the committees of directors shall be recorded in the minute book; and the minutes of each meeting shall be signed by the secretary and attested by the presiding officer.

Section 7.2. Books and records of account and minutes of the proceedings of the shareholders, Board and committees of the Board and a record of the shareholders, giving the



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names and address of all shareholders and the number of shares held by each, shall be kept at the Head Office or at the office of the Association's transfer agent and shall be open to inspection upon the written demand on the Association of any shareholder at any reasonable time during usual business hours, for a purpose reasonably related to such holder's interests as a shareholder.

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Association and its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and includes the right to copy and make extracts.

ARTICLE VIII

Corporate Seal

Section 8.1.

The Association shall have a corporate seal upon which shall be inscribed:

UNION BANK OF CALIFORNIA,  
NATIONAL  
ASSOCIATION  
Incorporated 1864  
San Francisco

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ARTICLE IX

Bylaws

Section 9.1. Bylaw Amendments. These Bylaws may be amended, changed, or repealed by a majority of the directors acting at any meeting of the board regularly called and held.

ARTICLE X

Governance

Section 10.1. Governance. To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, this Association will follow the corporate governance procedures of the Delaware General Corporation Law, Del. Code Ann. tit.8 (1991, as amended 1994, and as amended thereafter).

CONSENT OF TRUSTEE

Pursuant to the requirements of Section 321(b) of the Trust Indenture Act of 1939 in connection with the proposed issuance of Senior Notes of Star Gas Partners, L.P., Union Bank of California, N.A., hereby consents that reports of examinations by Federal, State, Territorial or District Authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

UNION BANK OF CALIFORNIA, N.A.

By: /s/ Andrew R. Ball

\_\_\_\_\_  
Name: Andrew R. Ball

Title: Vice President

Board of Governors of the Federal Reserve System  
OMB Number: 7100-0036  
Federal Deposit Insurance Corporation  
OMB Number: 3064-0052  
Office of the Comptroller of the Currency  
OMB Number: 1557-0081  
Expires March 31, 2005

**Federal Financial Institutions Examination Council**

Please refer to page i,  
Table of Contents, for  
the required disclosure  
of estimated burden.

**Consolidated Reports of Condition and Income for  
A Bank With Domestic and Foreign Offices—FFIEC 031**

**Report at the close of business      December 31, 2002**

This report is required by law: 12 U.S.C. §324 (State member banks); 12 U.S.C. §1817 (State nonmember banks); and 12 U.S.C. §161 (National banks).

(20021231)  
(RCRI 9999)

This report form is to be filed by banks with branches and consolidated subsidiaries in U.S. territories and possessions, Edge or Agreement subsidiaries, foreign branches, consolidated foreign subsidiaries, or International Banking Facilities.

NOTE: The Reports of Condition and Income must be signed by an authorized officer and the Report of Condition must be attested to by not less than two directors (trustees) for State nonmember banks and three directors for State member and National banks.

I, David A. Anderson, SVP / Controller  
Name and Title of Officer Authorized to Sign Report

of the named bank do hereby declare that the Reports of Condition and Income (including the supporting schedules) for this report date have been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and are true to the best of my knowledge and belief.

/s/ David A. Anderson  
Signature of Officer Authorized to Sign Report

February 6, 2003  
Date of Signature

The Reports of Condition and Income are to be prepared in accordance with Federal regulatory authority instructions.

We, the undersigned directors (trustees), attest to the correctness of the Report of Condition (including the supporting schedules) for this report date and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true and correct.

Norimichi Kanari /s/ Norimichi Kanari  
Director (Trustee)

Takaharu Saegusa /s/ Takaharu Saegusa  
Director (Trustee)

Robert M. Walker /s/ Robert M. Walker  
Director (Trustee)

**Submission of Reports**

Each bank must prepare its Reports of Condition and Income either:

- (a) in electronic form and then file the computer data file directly with the banking agencies' collection agent, Electronic Data Systems Corporation (EDS), by modem or on computer diskette; or
- (b) in hard-copy (paper) form and arrange for another party to convert the paper report to electronic form. That party (if other than EDS) must transmit the bank's computer data file to EDS.

For electronic filing assistance, contact EDS Call Report Services, 2150 N. Prospect Ave., Milwaukee, WI 53202, telephone (800) 255-1571.

To fulfill the signature and attestation requirement for the Reports of Condition and Income for this report date, attach this signature page (or a photocopy or

a computer-generated version of this page) to the hard-copy record of the completed report that the bank places in its files.

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FDIC Certificate Number 22826  
(RCRI 9050)

http:// www.UBOC.com  
Primary Internet Web Address of Bank (Home Page), if any (TEXT 4087)  
(Example: www.examplebank.com)

Union Bank of California, N. A.  
Legal Title of Bank (TEXT 9010)

San Francisco  
City (TEXT 9130)

CA 94104-1302  
State Abbrev.(TEXT 9200) ZIP Code (TEXT 9220)

Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency

Consolidated Reports of Condition and Income for  
A Bank With Domestic and Foreign Offices

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**Disclosure of Estimated Burden**

The estimated average burden associated with this information collection is 36.8 hours per respondent and is estimated to vary from 15 to 550 hours per response, depending on individual circumstances. Burden estimates include the time for reviewing instructions, gathering and maintaining data in the required form, and completing the information collection, but exclude the time for compiling and maintaining business records in the normal course of a respondent's activities. A Federal agency may not conduct or sponsor, and an organization (or a person) is not required to respond to a collection of information, unless it displays a currently valid OMB control number. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to one of the following:

Secretary  
Board of Governors of the Federal Reserve System  
Washington, D.C. 20551

Legislative and Regulatory Analysis Division  
Office of the Comptroller of the Currency  
Washington, D.C. 20219

Assistant Executive Secretary  
Federal Deposit Insurance Corporation  
Washington, D.C. 20429

For information or assistance, National and State nonmember banks should contact the FDIC's Reports Analysis and Quality Control Section, 550 17th Street, NW, Washington, D.C. 20429, toll free on (800) 688-FDIC(3342), Monday through Friday between 8:00 a.m. and 5:00 p.m., Eastern time. State member banks should contact their Federal Reserve District Bank.

Union Bank of California, N. A.

Legal Title of Bank

San Francisco

City

CA

94104-1302

State

Zip Code

FDIC Certificate Number 22826

Consolidated Report of Income  
for the period January 1, 2002 - December 31, 2002

All Report of Income schedules are to be reported on a calendar year-to-date basis in thousands of dollars.

Schedule RI—Income Statement

Dollar Amounts in Thousands

RIAD

<b>1. Interest income:</b>			
a. Interest and fee income on loans:			
(1) In domestic offices:			
(a) Loans secured by real estate	4011	721,116	1.a.(1)(a)
(b) Loans to finance agricultural production and other loans to farmers	4024	11,379	1.a.(1)(b)
(c) Commercial and industrial loans	4012	644,902	1.a.(1)(c)
(d) Loans to individuals for household, family, and other personal expenditures:			
(1) Credit cards	B485	9	1.a.(1)(d)(1)
(2) Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards)	B486	52,965	1.a.(1)(d)(2)
(e) Loans to foreign governments and official institutions	4056	0	1.a.(1)(e)
(f) All other loans in domestic offices	B487	7,506	1.a.(1)(f)
(2) In foreign offices, Edge and Agreement subsidiaries, and IBFs	4059	27,255	1.a.(2)
(3) Total interest and fee income on loans (sum of items 1.a.(1)(a) through 1.a.(2))	4010	1,465,132	1.a.(3)
b. Income from lease financing receivables	4065	28,172	1.b.
c. Interest income on balances due from depository institutions <sup>1</sup>	4115	2,633	1.c.
d. Interest and dividend income on securities:			
(1) U.S. Treasury securities and U.S. Government agency obligations (excluding mortgage-backed securities)	B488	129,539	1.d.(1)
(2) Mortgage-backed securities	B489	174,953	1.d.(2)
(3) in the U.S.)	4060	10,244	1.d.(3)
e. Interest income from trading assets	4069	4,398	1.e.
f. Interest income on federal funds sold and securities purchased under agreements to resell	4020	13,479	1.f.
g. Other interest income	4518	2,947	1.g.
h. Total interest income (sum of items 1.a.(3) through 1.g)	4107	1,831,497	1.h.
<b>2. Interest expense:</b>			
a. Interest on deposits:			
(1) Interest on deposits in domestic offices:			
(a) Transaction accounts (NOW accounts, ATS accounts, and telephone and preauthorized transfer accounts)	4508	7,407	2.a.(1)(a)
(b) Nontransaction accounts:			
(1) Savings deposits (includes MMDAs)	0093	94,462	2.a.(1)(b)(1)
(2) Time deposits of \$ 100,000 or more	A517	63,552	2.a.(1)(b)(2)
(3) Time deposits of less than \$ 100,000	A518	48,841	2.a.(1)(b)(3)
(2) Interest on deposits in foreign offices, Edge and Agreement subsidiaries, and IBFs	4172	46,195	2.a.(2)
b. Expense of federal funds purchased and securities sold under agreements to repurchase	4180	6,030	2.b.
c. Interest on trading liabilities and other borrowed money	4185	10,160	2.c.

<sup>1</sup> Includes interest income on time certificates of deposit not held for trading.

Schedule RI—Continued

Dollar Amounts in Thousands	Year-to-date			
	RIAD			
2. Interest expense (continued):				
d. Interest on subordinated notes and debentures	4200	2,158	2.d.	
e. Total interest expense (sum of items 2.a through 2.d)	4073	278,805	2.e.	
3. Net interest income (item 1.h minus 2.e)			4074	1,552,692 3.
4. Provision for loan and lease losses			4230	139,787 4.
5. Noninterest income:				
a. Income from fiduciary activities <sup>1</sup>	4070	119,840	5.a.	
b. Service charges on deposit accounts in domestic offices	4080	272,650	5.b.	
c. Trading revenue <sup>2</sup>	A220	34,305	5.c.	
d. Investment banking, advisory, brokerage, and underwriting fees and commissions	B490	36,436	5.d.	
e. Venture capital revenue	B491	0	5.e.	
f. Net servicing fees	B492	935	5.f.	
g. Net securitization income	B493	0	5.g.	
h. Insurance commissions and fees	B494	27,848	5.h.	
i. Net gains (losses) on sales of loans and leases	5416	164	5.i.	
j. Net gains (losses) on sales of other real estate owned	5415	-56	5.j.	
k. Net gains (losses) on sales of other assets (excluding securities)	B496	-7,988	5.k.	
l. Other noninterest income *	B497	243,802	5.l.	
m. Total noninterest income (sum of items 5.a through 5.l)			4079	727,936 5.m.
6. a. Realized gains (losses) on held-to-maturity securities			3521	0 6.a.
b. Realized gains (losses) on available-for-sale securities			3196	989 6.b.
7. Noninterest expense:				
a. Salaries and employee benefits	4135	717,871	7.a.	
b. Expenses of premises and fixed assets (net of rental income)	4217	173,026	7.b.	
c. (1) <b>Goodwill impairment losses</b>	C216	0	7.c.(1)	
(2) <b>Amortization expense and impairment losses for other intangible assets</b>	C232	5,485	7.c.(2)	
d. Other noninterest expense *	4092	437,196	7.d.	
e. Total noninterest expense (sum of items 7.a through 7.d)			4093	1,333,578 7.e.
8. Income (loss) before income taxes and extraordinary items and other adjustments (item 3 plus or minus items 4, 5.m, 6.a, 6.b, and 7.e)			4301	808,252 8.
9. Applicable income taxes (on item 8)			4302	260,787 9.
10. Income (loss) before extraordinary items and other adjustments (item 8 minus item 9)			4300	547,465 10.
11. Extraordinary items and other adjustments, net of income taxes*			4320	0 11.
12. Net income (loss) (sum of items 10 and 11)			4340	547,465 12.

\* Describe on Schedule RI-E-Explanations

<sup>1</sup> For banks required to complete Schedule RC-T, items 12 through 19, income from fiduciary activities reported in Schedule RI, item 5.a, must equal the amount reported in Schedule RC-T, item 19.

<sup>2</sup> For banks required to complete Schedule RI, Memorandum item 8, trading revenue reported in Schedule RI, item 5.c, must equal the sum of Memorandum items 8.a through 8.d.



Union Bank of California, N. A.

Legal Title of Bank

FDIC Certificate Number 22826

Schedule RI—Continued

Memoranda

Dollar Amounts in Thousands

	Year-to-date				
	RIAD				
1. Interest expense incurred to carry tax-exempt securities, loans, and leases acquired after August 7, 1986, that is not deductible for federal income tax purposes	4513		300		M.1.
2. Income from the sale and servicing of mutual funds and annuities in domestic offices (included in Schedule RI, item 8)	8431		22,751		M.2.
3. Income on tax-exempt loans and leases to states and political subdivisions in the U.S. (included in Schedule RI, items 1.a and 1.b)	4313		180		M.3.
4. Income on tax-exempt securities issued by states and political subdivisions in the U.S. (included in Schedule RI, item 1.d.(3))	4507		2,186	Number	M.4.
5. Number of full-time equivalent employees at the end of current period (round to nearest whole number)	4150		9,195		M.5.
6. Not applicable					
				CC YY MM DD	
7. If the reporting bank has restated its balance sheet as a result of applying push down accounting this calendar year, report the date of the bank's acquisition <sup>1</sup>	9106				M.7.
8. Trading revenue (from cash instruments and derivative instruments) (sum of Memorandum items 8.a through 8.d must equal Schedule RI, item (To be completed by banks that reported average trading assets (Schedule RC-K, item 7) of \$2 million or more for any quarter of the preceding calendar year.):					
	RIAD				
a. Interest rate exposures	8757		5,758		M.8.a.
b. Foreign exchange exposures	8758		28,548		M.8.b.
c. Equity security and index exposures	8759		0		M.8.c.
d. Commodity and other exposures	8760		0		M.8.d.
	RIAD				
9. Impact on income of derivatives held for purposes other than trading:					
a. Net increase (decrease) to interest income	8761		116,266		M.9.a.
b. Net (increase) decrease to interest expense	8762		0		M.9.b.
c. Other (noninterest) allocations	8763		0		M.9.c.
10. Credit losses on derivatives (see instructions)	A251		3,389		M.10.
				YES NO	
11. Does the reporting bank have a Subchapter S election in effect for federal income tax purposes for the current tax year?	A530		X		M.11.

<sup>1</sup> For example, a bank acquired on June 1, 2001, would report 20010601.

## Schedule RI-A—Changes in Equity Capital

Indicate decreases and losses in parentheses.

Dollar Amounts in Thousands	RIAD		
1. Total equity capital most recently reported for the December 31, 2001, Reports of Condition and Income (i.e., after adjustments from amended Reports of Income)	3217	3,554,964	1.
2. Restatements due to corrections of material accounting errors and changes in accounting principles *	B507	0	2.
3. Balance end of previous calendar year as restated (sum of items 1 and 2)	B508	3,554,964	3.
4. Net income (loss) (must equal Schedule RI, item 12)	4340	547,465	4.
5. Sale, conversion, acquisition, or retirement of capital stock, net (excluding treasury stock transactions)	B509	196	5.
6. Treasury stock transactions, net	B510	0	6.
7. Changes incident to business combinations, net	4356	54,830	7.
8. LESS: Cash dividends declared on preferred stock	4470	0	8.
9. LESS: Cash dividends declared on common stock	4460	489,100	9.
10. Other comprehensive income <sup>1</sup>	B511	107,129	10.
11. Other transactions with parent holding company* (not included in items 5, 6, 8, or 9 above)	4415	0	11.
12. Total equity capital end of current period (sum of items 3 through 11) (must equal Schedule RC, item 28)	3210	3,775,484	12.

\* Describe on Schedule RI-E—Explanations.

<sup>1</sup> Includes changes in net unrealized holding gains (losses) on available-for-sale securities, changes in accumulated net gains (losses) on cash flow hedges, foreign currency translation adjustments, and changes in minimum pension liability adjustments.

## Schedule RI-B—Charge-offs and Recoveries on Loans and Leases

Part I. Charge-offs and Recoveries on Loans and Leases

**Part I excludes charge-offs and recoveries through the allocated transfer risk reserve.**

Dollar Amounts in Thousands	(Column A) Charge-offs <sup>1</sup>		(Column B) Recoveries		
	Calendar year-to-date				
	RIAD		RIAD		
1. Loans secured by real estate:					
a. Construction, land development, and other land loans in domestic offices	3582	0	3583	40	1.a.
b. Secured by farmland in domestic offices	3584	0	3585	850	1.b.
c. Secured by 1-4 family residential properties in domestic offices:					
(1) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	5411	99	5412	151	1.c.(1)
(2) Closed-end loans secured by 1-4 family residential properties					
(a) Secured by first liens	C234	2,518	C217	45	1.c.(2)(a)
(b) Secured by junior liens	C235	1,684	C218	211	1.c.(2)(b)
d. Secured by multifamily (5 or more) residential properties in domestic offices	3588	0	3589	0	1.d.
e. Secured by nonfarm nonresidential properties in domestic offices	3590	1,620	3591	226	1.e.
f. In foreign offices	B512	0	B513	0	1.f.
2. Loans to depository institutions and acceptances of other banks:					
a. To R.P. banks and other R.P. depository institutions	4653	0	4663	0	2.a.
b. To foreign banks	4654	0	4664	0	2.b.
3.	4655	21,618	4665	2,787	3.
4. Commercial and industrial loans:					
a. To R.P. addressees (domicile)	4645	174,837	4617	28,972	4.a.
b. To non-R.P. addressees (domicile)	4646	0	4618	0	4.b.
5. Loans to individuals for household, family, and other personal expenditures:					
a. Credit cards	B514	0	B515	0	5.a.
b. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards)	B516	9,485	B517	4,207	5.b.

<sup>1</sup> Include write-downs arising from transfers of loans to a held-for-sale account.

Union Bank of California, N. A.

Legal Title of Bank

FDIC Certificate Number 22826

Schedule RI-B—Continued

Part I. Continued

Dollar Amounts in Thousands	(Column A) Charge-offs <sup>1</sup>		(Column B) Recoveries	
	Calendar year-to-date			
	RIAD		RIAD	
6. Loans to foreign governments and official institutions	4643	0	4627	0 6.
7. All other loans	4644	13,725	4628	1,458 7.
8. Lease financing receivables:				
a. To U.S. addressees (domicile)	4658	2,702	4668	590 8.a.
b. To non-U.S. addressees (domicile)	4659	0	4669	0 8.b.
9. Total (sum of items 1 through 8)	4635	228,288	4605	39,537 9.

Memoranda

Dollar Amounts in Thousands	(Column A) Charge-offs <sup>1</sup>		(Column B) Recoveries	
	Calendar year-to-date			
	RIAD		RIAD	
1. Loans to finance commercial real estate, construction, and land development activities ( <b>not secured by real estate</b> ) included in Schedule RI-B, part I, item 4 and 7, above	5409	0	5410	0 M.1.
2. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RI-B, part I, item 1, above)	4652	0	4662	0 M.2.

<sup>1</sup> Include write-downs arising from transfers of loans to a held-for-sale account.

Part II. Changes in Allowance for Loan and Lease Losses

Dollar Amounts in Thousands	RIAD	
1. Balance most recently reported for the December 31, 2001, Reports of Condition and Income (i.e., after adjustments from amended Reports of Income)	B522	623,468 1.
2. Recoveries (must equal part I, item 9, column B above)	4605	39,537 2.
3. LESS: Charge-offs ( <b>must equal part I, Item 9, column A above less Schedule RI-B, part II, item 4</b> )	C079	203,320 3.
4.	5523	24,968 4.
5. Provision for loan and lease losses (must equal Schedule RI, item 4)	4230	139,787 5.
6. <b>Adjustments*</b> (see instructions for this schedule)	C233	5,476 6.
7. Balance end of current period (sum of items 1, 2, 5, and 6, less items 3 and 4) (must equal Schedule RC, item 4.c.)	3123	579,980 7.

\* Describe on Schedule RI-E—Explanations.

## Schedule RI-D—Income from International Operations

For all banks with foreign offices, Edge or Agreement subsidiaries, or IBFs where international operations account for more than 10 percent of total revenues, total assets, or net income.

Dollar Amount in Thousands	Year-to-date	
	RIAD	
1. Interest income and expense attributable to international operations		
a. Gross interest income	B523	0 1.a.
b. Gross interest expense	B524	0 1.b.
2. Net interest income attributable to international operations (item 1.a minus 1.b.)	B525	0 2.
3. Noninterest income and expense attributable to international operations:		
a. Noninterest income attributable to international operations	4097	0 3.a.
b. Provision for loan and lease losses attributable to international operations.	4235	0 3.b.
c. Other noninterest expense attributable to international operations	4239	0 3.c.
d. Net noninterest income (expense) attributable to international operations (item 3.a minus 3.b and 3.c)	4843	0 3.d.
4. Estimated pretax income attributable to international operations before capital allocation adjustment (sum of items 2 and 3.d)	4844	0 4.
5. Adjustment to pretax income for internal allocations to international operations to reflect the effects of equity capital on overall bank funding costs	4845	0 5.
6. Estimated pretax income attributable to international operations after capital allocation adjustment (sum of items 4 and 5)	4846	0 6.
7. Income taxes attributable to income from international operations as estimated in item 6	4797	0 7.
8. Estimated net income attributable to international operations (item 6 minus 7)	4341	0 8.

Schedule RI-E—Explanations

**Schedule RI-E is to be completed each quarter on a calendar year-to-date basis.**

Detail all adjustments in Schedule RI-A and RI-B, all extraordinary items and other adjustments in Schedule RI, and all significant items of other noninterest income and other noninterest expense in Schedule RI. (See instructions for details.)

Dollar Amounts in Thousands	Year-to-date	
	RIAD	
<b>1. Other noninterest income (from Schedule RI, item 5.1)</b>		
Itemize and describe amounts that exceed 1% of the sum of Schedule RI, items 1.h and 5.m:		
a. Income and fees from the printing and sale of checks	C013	0 1.a.
b. Earnings on/increase in value of cash surrender value of life insurance	C014	0 1.b.
c. Income and fees from automated teller machines (ATMs)	C016	0 1.c.
d. Rent and other income from other real estate owned	4042	0 1.d.
e. Safe deposit box rent	C015	0 1.e.
f. TEXT 4461 Merchant transaction processing fees	4461	86,019 1.f.
g. TEXT 4462 International commissions and fees	4462	76,956 1.g.
h. TEXT 4463 Merchant banking fees	4463	31,581 1.h.
<b>2. Other noninterest expense (from Schedule RI, item 7.d)</b>		
Itemize and describe amounts that exceed 1% of the sum of Schedule RI, items 1.h and 5.m:		
a. Data processing expenses	C017	32,554 2.a.
b. Advertising and marketing expenses	0497	37,464 2.b.
c. Directors' fees	4136	0 2.c.
d. Printing, stationery, and supplies	C018	0 2.d.
e. Postage	8403	0 2.e.
f. Legal fees and expenses	4141	0 2.f.
g. FDIC deposit insurance assessments	4146	0 2.g.
h. TEXT 4464 Merchant transaction processing	4464	55,767 2.h.
i. TEXT 4467 Other Professional services	4467	34,712 2.i.
j. TEXT 4468 Software	4468	42,544 2.j.
<b>3. Extraordinary items and other adjustments and applicable income tax effect (from Schedule RI, item 11)</b>		
(itemize and describe all extraordinary items and other adjustments):		
a. (1) Effect of adopting FAS 142, 'Goodwill and Other Intangible Assets'	C231	0 3.a.(1)
(2) Applicable income tax effect	4486	0 3.a.(2)
b. (1) TEXT 4487	4487	0 3.b.(1)
(2) Applicable income tax effect	4488	0 3.b.(2)
c. (1) TEXT 4489	4489	0 3.c.(1)
(2) Applicable income tax effect	4491	0 3.c.(2)

Schedule RI-E—Continued

Dollar Amounts in Thousands	RIAD	Year-To-Date
4. Restatements due to corrections of material accounting errors and changes in accounting principles (from Schedule RI-A, item 2) (itemize and describe all restatements):		
a. TEXT B526	B526	0 4.a.
b. TEXT B527	B527	0 4.b.
5. Other transactions with parent holding company (from Schedule RI-A, item 11) (itemize and describe all such transactions):		
a. TEXT 4498	4498	0 5.a.
b. TEXT 4499	4499	0 5.b.
6. Adjustments to allowance for loan and lease losses (from Schedule RI-B, part II, item 6) (itemize and describe all adjustments):		
a. TEXT 4521	4521	0 6.a.
b. TEXT 4522 Other adjustments FX translation	4522	5,476 6.b.
7. Other explanations (the space below is provided for the bank to briefly describe, at its option, any other significant items affecting the Report of Income):		

No Comment  (RIAD 4769)

Other explanations (please type or print clearly)  
(TEXT 4769)

Union Bank of California, N. A.

Legal Title of Bank

San Francisco

City

CA

94104-1302

State

Zip Code

FDIC Certificate Number 22826

Consolidated Report of Condition for Insured Commercial and  
State-Chartered Savings Banks for December 31, 2002

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

Schedule RC—Balance Sheet

<u>Dollar Amounts in Thousands</u>	<u>RCFD</u>		
<b>ASSETS</b>			
1. Cash and balances due from depository institutions (from Schedule RC-A) :			
a. Noninterest-bearing balances and currency and coin <sup>1</sup>	0081	2,831,120	1.a.
b. Interest-bearing balances <sup>2</sup>	0071	271,235	1.b.
2. Securities:			
a. Held-to-maturity securities (from Schedule RC-B, column A)	1754	0	2.a.
b. Available-for-sale securities (from Schedule RC-B, column D)	1773	7,265,731	2.b.
3. Federal funds sold and securities purchased under agreements to resell			
a. <b>Federal funds sold in domestic offices</b> <sup>3</sup>	RCON	B987	1,049,700 3.a.
b. <b>Securities purchased under agreements to resell</b>	RCFD	B989	0 3.b.
4. Loans and lease financing receivables (from Schedule RC-C):			
a. Loans and leases held for sale		5369	54,557 4.a.
b. Loans and leases, net of unearned income	B528	26,066,251	4.b.
c. LESS: Allowance for loan and lease losses	3123	579,980	4.c.
d. Loans and leases, net of unearned income and allowance (item 4.b minus 4.c)		B529	25,486,271 4.d.
5. Trading assets (from Schedule RC-D)		3545	308,701 5.
6. Premises and fixed assets (including capitalized leases)		2145	490,980 6.
7. Other real estate owned (from Schedule RC-M)		2150	715 7.
8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)		2130	148 8.
9. Customers' liability to this bank on acceptances outstanding		2155	62,469 9.
10. Intangible assets:			
a. Goodwill		3163	150,542 10.a.
b. Other intangible assets (from Schedule RC-M)		0426	40,717 10.b.
11. Other assets (from Schedule RC-F)		2160	1,590,190 11.
12. Total assets (sum of items 1 through 11)		2170	39,603,076 12.

<sup>1</sup> Includes cash items in process of collection and unposted debits.

<sup>2</sup> Includes time certificates of deposit not held for trading.

<sup>3</sup> Includes all securities resale agreements in domestic and foreign offices, regardless of maturity.

Schedule RC—Continued

Dollar Amounts in Thousands

LIABILITIES

13. Deposits:						
a. In domestic offices (sum of totals of columns A and C from Schedule RC-E, part I)				<b>RCON</b>		
				2200	30,827,465	13.a.
(1) Noninterest-bearing <sup>1</sup>	RCON	6631	15,569,031			13.a.(1)
(2) Interest-bearing	RCON	6636	15,258,434			13.a.(2)
b. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from Schedule RC-E, part II)				<b>RCFN</b>		
				2200	3,495,645	13.b.
(1) Noninterest-bearing	RCFN	6631	583,922			13.b.(1)
(2) Interest-bearing	RCFN	6636	2,911,723	RCFD		13.b.(2)
14. Federal funds purchased and securities sold under agreements to repurchase						
a. Federal funds purchased in domestic offices <sup>2</sup>	RCON			B993	165,104	14.a.
b. Securities sold under agreements to repurchase <sup>3</sup>	RCFD			B995	169,275	14.b.
15. Trading liabilities (from Schedule RC-D)	RCFD			3548	142,576	15.
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from Schedule RC-M)				<b>RCFD</b>		
				3190		
17. Not applicable						
18. Bank's liability on acceptances executed and outstanding				2920	62,469	18.
19. Subordinated notes and debentures <sup>4</sup>				3200	100,000	19.
20. Other liabilities (from Schedule RC-G)				2930	598,122	20.
21. Total liabilities (sum of items 13 through 20)				2948	35,827,592	21.
22. Minority interest in consolidated subsidiaries				3000	0	22.
EQUITY CAPITAL						
23. Perpetual preferred stock and related surplus				3838	0	23.
24. Common stock				3230	604,577	24.
25. Surplus (exclude all surplus related to preferred stock)				3839	1,077,524	25.
26. a. Retained earnings				3632	1,853,403	26.a.
b. Accumulated other comprehensive income <sup>5</sup>				B530	239,980	26.b.
27. Other equity capital components <sup>6</sup>				A130	0	27.
28. Total equity capital (sum of items 23 through 27)				3210	3,775,484	28.
29. Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28)				3300	39,603,076	29.

Memorandum

To be reported with the March Report of Condition.

1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2001

1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank	RCFD	Number	M.1.
2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)	6724		
3 = Attestation on bank management's assertion on the effectiveness of the bank's internal control over financial reporting by a certified public accounting firm			
4 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state chartering authority)			
5 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)			
6 = Review of the bank's financial statements by external auditors			
7 = Compilation of the bank's financial statements by external auditors			
Other audit procedures (excluding tax preparation work)			
9 = No external audit work			

<sup>1</sup> Includes total demand deposits and noninterest-bearing time and savings deposits.

<sup>2</sup> Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, 'Other borrowed money'.

<sup>3</sup> Includes all securities repurchase agreements in domestic and foreign office, regardless of maturity.

<sup>4</sup> Includes limited-life preferred stock and related surplus.

<sup>5</sup> Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.

<sup>6</sup> Includes treasury stock and unearned Employee Stock Ownership Plan shares.



Union Bank of California, N. A.

Legal Title of Bank

FDIC Certificate Number 22826

Schedule RC-A—Cash and Balances Due From Depository Institutions

Exclude assets held for trading.

Dollar Amounts in Thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
	RCFD		RCON		
1. Cash items in process of collection, unposted debits, and currency and coin	0022	2,442,912			1.
a. Cash items in process of collection and unposted debits			0020	1,706,108	1.a.
b. Currency and coin			0080	736,694	1.b.
2. Balances due from depository institutions in the U.S.			0082	60,135	2.
a. U.S. branches and agencies of foreign banks (including their IBFs)	0083	21,115			2.a.
b. Other commercial banks in the U.S. and other depository institutions in the U.S. (including their IBFs)	0085	59,169			2.b.
3. Balances due from banks in foreign countries and foreign central banks			0070	19,237	3.
a. Foreign branches of other U.S. banks	0073	92			3.a.
b. Other banks in foreign countries and foreign central banks	0074	422,367			3.b.
4. Balances due from Federal Reserve Banks	0090	156,700	0090	134,320	4.
5. Total (sum of items 1 through 4) (total of column A must equal Schedule RC, sum of items 1.a and 1.b)	0010	3,102,355	0010	2,656,494	5.

Schedule RC-B—Securities

Exclude assets held for trading.

Dollar Amounts in Thousands	Held-to-maturity				Available-for-sale				
	(Column A) Amortized Cost		(Column B) Fair Value		(Column C) Amortized Cost		(Column D) Fair Value		
	RCFD		RCFD		RCFD		RCFD		
1. U.S. Treasury securities	0211	0	0213	0	1286	332,168	1287	344,389	1.
2. U.S. Government agency obligations (exclude mortgage-backed securities):									
a. Issued by U.S. Government agencies <sup>1</sup>	1289	0	1290	0	1291	0	1293	0	2.a.
b. Issued by U.S. Government-sponsored agencies <sup>2</sup>	1294	0	1295	0	1297	2,560,421	1298	2,687,306	2.b.
3. Securities issued by states and political subdivisions in the U.S.	8496	0	8497	0	8498	42,917	8499	49,091	3.

<sup>1</sup> Includes Small Business Administration "Guaranteed Loan Pool Certificates," U.S. Maritime Administration obligations, and Export-Import Bank participation certificates.

<sup>2</sup> Includes obligations (other than mortgage-backed securities) issued by the Farm Credit System, the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Financing Corporation, Resolution Funding Corporation, the Student Loan Marketing Association, and the Tennessee Valley Authority.

Schedule RC-B—Continued

Dollar Amounts in Thousands	Held-to-maturity				Available-for-sale				
	(Column A) Amortized Cost		(Column B) Fair Value		(Column C) Amortized Cost		(Column D) Fair Value		
	RCFD		RCFD		RCFD		RCFD		
<b>4. Mortgage-backed securities (MBS):</b>									
a. Pass-through securities:									
(1) Guaranteed by GNMA	1698	0	1699	0	1701	4,545	1702	4,963	4.a.(1)
(2) Issued by FNMA and FHLMC	1703	0	1705	0	1706	1,220,293	1707	1,294,826	4.a.(2)
(3) Other pass-through securities	1709	0	1710	0	1711	0	1713	0	4.a.(3)
b. Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS):									
(1) Issued or guaranteed by FNMA, FHLMC, or GNMA	1714	0	1715	0	1716	2,678,041	1717	2,718,748	4.b.(1)
(2) Collateralized by MBS issued or guaranteed by FNMA, FHLMC, or GNMA	1718	0	1719	0	1731	0	1732	0	4.b.(2)
(3) All other mortgage-backed securities	1733	0	1734	0	1735	41,391	1736	41,331	4.b.(3)
<b>5. Asset-backed securities (ABS):</b>									
a. Credit card receivables	B838	0	B839	0	B840	0	B841	0	5.a.
b. Home equity lines	B842	0	B843	0	B844	0	B845	0	5.b.
c. Automobile loans	B846	0	B847	0	B848	0	B849	0	5.c.
d. Other consumer loans	B850	0	B851	0	B852	0	B853	0	5.d.
e. Commercial and industrial loans	B854	0	B855	0	B856	134,214	B857	108,727	5.e.
f. Other	B858	0	B859	0	B860	0	B861	0	5.f.
<b>6. Other debt securities:</b>									
a. Other domestic debt securities	1737	0	1738	0	1739	458	1741	458	6.a.
b. Foreign debt securities	1742	0	1743	0	1744	6,425	1746	6,462	6.b.
<b>7. Investments in mutual funds and other equity securities with readily determinable fair values <sup>1</sup></b>									
					A510	6,258	A511	9,430	7.
<b>8. Total (sum of items 1 through 7) (total of column A must equal Schedule RC, item 2.a) (total of column D must equal Schedule RC, item 2.b)</b>									
	1754	0	1771	0	1772	7,027,131	1773	7,265,731	8.

<sup>1</sup> Report Federal Reserve stock, Federal Home Loan Bank stock, and bankers' bank stock in Schedule RC-F, item 4.

Legal Title of Bank

FDIC Certificate Number 22826

## Schedule RC-B—Continued

## Memoranda

Dollar Amounts in Thousands	RCFD		
1. Pledged securities <sup>1</sup>	0416	2,241,986	M.1.
2. Maturity and repricing data for debt securities <sup>1,2</sup> (excluding those in nonaccrual status):			
a. Securities issued by the U.S. Treasury, U.S. Government agencies, and states and political subdivisions in the U.S.; other non-mortgage debt securities; and mortgage pass-through securities other than those backed by closed-end first lien 1-4 family residential mortgages with a remaining maturity or next repricing date of: <sub>3,4</sub>			
(1) Three months or less	A549	204,919	M.2.a.(1)
(2) Over three months through 12 months	A550	159,370	M.2.a.(2)
(3) Over one year through three years	A551	1,862,313	M.2.a.(3)
(4) Over three years through five years	A552	939,303	M.2.a.(4)
(5) Over five years through 15 years	A553	20,954	M.2.a.(5)
(6) Over 15 years	A554	9,574	M.2.a.(6)
b. Mortgage pass-through securities backed by closed-end first lien 1-4 family residential mortgages with a remaining maturity or next repricing date <sup>3</sup> :			
(1) Three months or less	A555	0	M.2.b.(1)
(2) Over three months through 12 months	A556	3,322	M.2.b.(2)
(3) Over one year through three years	A557	27,470	M.2.b.(3)
(4) Over three years through five years	A558	28,129	M.2.b.(4)
(5) Over five years through 15 years	A559	1,240,868	M.2.b.(5)
(6) Over 15 years	A560	0	M.2.b.(6)
c. Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS; exclude mortgage pass-through securities) with an expected average life of: <sup>6</sup>			
(1) Three years or less	A561	616,323	M.2.c.(1)
(2) Over three years	A562	2,143,756	M.2.c.(2)
d. Memorandum items 2.a through 2.c above)	A248	543,795	M.2.d.
3. Amortized cost of held-to-maturity securities sold or transferred to available-for-sale or trading securities during the calendar year-to-date (report the amortized cost at date of sale or transfer)	1778	0	M.3.
4. Structured notes (included in the held-to-maturity and available-for-sale accounts in Schedule RC-B, items 2, 3, 5, and 6):			
a. Amortized cost	8782	0	M.4.a.
b. Fair value	8783	0	M.4.b.

<sup>1</sup> Includes held-to-maturity securities at amortized cost and available-for-sale securities at fair value.

<sup>2</sup> Exclude investments in mutual funds and other equity securities with readily determinable fair values.

<sup>3</sup> Report fixed rate debt securities by remaining maturity and floating rate debt securities by next repricing date.

<sup>4</sup> Sum of Memorandum items 2.a.(1) through 2.a.(6) plus any nonaccrual debt securities in the categories of debt securities reported in Memorandum item 2.a that are included in Schedule RC-N, item 9, column C, must equal Schedule RC-B, sum of items 1, 2, 3, 5, and 6, columns A and D, plus mortgage pass-through securities other than those backed by closed-end first lien 1-4 family residential mortgages included in Schedule RC-B, item 4.a, columns A and D.

<sup>5</sup> Sum of Memorandum items 2.b.(1) through 2.b.(6) plus any nonaccrual mortgage pass-through securities backed by closed-end first lien 1-4 family residential mortgages included in Schedule RC-N, item 9, column C, must equal Schedule RC-B, item 4.a, sum of columns A and D, less the amount of mortgage pass-through securities other than those backed by closed-end first lien 1-4 family residential mortgages included in Schedule RC-B, item 4.a, columns A and D.

<sup>6</sup> Sum of Memorandum items 2.c.(1) and 2.c.(2) plus any nonaccrual "Other mortgage-backed securities" included in Schedule RC-N, item 9, column C, must equal Schedule RC-B, item 4.b, sum of columns A and D.

## Schedule RC-C—Loans and Lease Financing Receivables

### Part I. Loans and Leases

Do not deduct the allowance for loan and lease losses from amounts reported in this schedule. Report (1) loans and leases held for sale at the lower of cost or market value and (2) other loans and leases, net of unearned income. Report loans and leases net of any applicable allocated transfer risk reserve. Exclude assets held for trading and commercial paper.

Dollar Amounts in Thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
	RCFD		RCON		
1. Loans secured by real estate	1410	13,512,819			1.
a.			1415	1,225,336	1.a.
b. Secured by farmland (including farm residential and other improvements)			1420	22,419	1.b.
c. Secured by 1-4 family residential properties:					
(1) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit			1797	956,832	1.c.(1)
(2) Closed-end loans secured by 1-4 family residential properties:					
(a) Secured by first liens			5367	6,481,203	1.c.(2)(a)
(b) Secured by junior liens			5368	430,799	1.c.(2)(b)
d. Secured by multifamily (5 or more) residential properties			1460	571,047	1.d.
e. Secured by nonfarm nonresidential properties			1480	3,824,211	1.e.
2. Loans to depository institutions and acceptances of other banks:					
a. To commercial banks in the U.S.			B531	304,378	2.a.
(1) To U.S. branches and agencies of foreign banks	B532	315,878			2.a.(1)
(2) To other commercial banks in the U.S.	B533	0			2.a.(2)
b. To other depository institutions in the U.S.	B534	24,242	B534	24,242	2.b.
c. To banks in foreign countries			B535	278,333	2.c.
(1) To foreign branches of other U.S. banks	B536	0			2.c.(1)
(2) To other banks in foreign countries	B537	1,081,712			2.c.(2)
3.	1590	239,534	1590	239,534	3.
4. Commercial and industrial loans:					
a. To U.S. addressees (domicile)	1763	9,256,483	1763	9,241,483	4.a.
b. To non-U.S. addressees (domicile)	1764	270,093	1764	65,046	4.b.
5. Not applicable					
6. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):					
a. Credit cards	B538	0	B538	0	6.a.
b. Other revolving credit plans	B539	145,775	B539	145,775	6.b.
c. Other consumer loans (includes single payment, installment, and all student loans)	2011	462,744	2011	462,252	6.c.
7. Loans to foreign governments and official institutions (including foreign central banks)	2081	40,956	2081	0	7.
8. Obligations (other than securities and leases) of states and political subdivisions in the U.S.	2107	12,990	2107	12,990	8.
9. Other loans	1563	564,812			9.
a. Loans for purchasing or carrying securities (secured and unsecured)			1545	15,417	9.a.
b. All other loans (exclude consumer loans)			1564	491,973	9.b.
10. Lease financing receivables (net of unearned income)			2165	237,670	10.
a. Of U.S. addressees (domicile)	2182	237,670			10.a.
b. Of non-U.S. addressees (domicile)	2183	0			10.b.
11. LESS: Any unearned income on loans reflected in items 1-9 above	2123	44,900	2123	44,639	11.
12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (total of column A must equal Schedule RC, sum of items 4.a and 4.b)	2122	26,120,808	2122	24,986,301	12.

Schedule RC-C—Continued

Part I. Continued

Memoranda

<u>Dollar Amounts in Thousands</u>	<u>RCFD</u>		
1. Loans and leases restructured and in compliance with modified terms (included in Schedule RC-C, part I, and not reported as past due or nonaccrual in Schedule RC-N, Memorandum item 1) (exclude loans secured by 1-4 family residential properties and loans to individuals for household, family, and other personal expenditures)	1616	0	M.1.
2. Maturity and repricing data for loans and leases (excluding those in nonaccrual status):			
a. Closed-end loans secured by first liens on 1-4 family residential properties in domestic offices (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B) with a remaining maturity or next repricing date of: <sup>1, 2</sup>	<u>RCON</u>		
(1) Three months or less	A564	137,111	M.2.a.(1)
(2) Over three months through 12 months	A565	251,534	M.2.a.(2)
(3) Over one year through three years	A566	683,769	M.2.a.(3)
(4) Over three years through five years	A567	2,764,670	M.2.a.(4)
(5) Over five years through 15 years	A568	2,021,743	M.2.a.(5)
(6) Over 15 years	A569	622,352	M.2.a.(6)
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column A) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties in domestic offices (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B) with a remaining maturity or next repricing date <sup>1, 3</sup>	<u>RCFD</u>		
(1) Three months or less	A570	12,108,113	M.2.b.(1)
(2) Over three months through 12 months	A571	3,388,823	M.2.b.(2)
(3) Over one year through three years	A572	1,199,960	M.2.b.(3)
(4) Over three years through five years	A573	810,457	M.2.b.(4)
(5) Over five years through 15 years	A574	1,737,586	M.2.b.(5)
(6) Over 15 years	A575	139,195	M.2.b.(6)
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column A) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	A247	7,182,105	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities ( <b>not secured by real estate</b> ) included in Schedule RC-C, part I, items 4 and 9, column <sup>4</sup>	2746	122,513	M.3.
	<u>RCON</u>		
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties in domestic offices (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	5370	5,027,022	M.4.
	<u>RCFD</u>		
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, item 1, column A)	B837	972	M.5.

<sup>1</sup> Report fixed rate loans and leases by remaining maturity and floating rate loans by next repricing date.

<sup>2</sup> Sum of Memorandum items 2.a.(1) through 2.a.(6) plus total nonaccrual closed-end loans secured by first liens on 1-4 family residential properties in domestic offices included in Schedule RC-N, item 1.c.(2)(a), column C, must equal total closed-end loans secured by first liens on 1-4 family residential properties from Schedule RC-C, part I, item 1.c.(2)(a), column B.

<sup>3</sup> Sum of Memorandum items 2.b.(1) through 2.b.(6), plus total nonaccrual loans and leases from Schedule RC-N, sum of items 1 through 8, column C, minus nonaccrual closed-end loans secured by first liens on 1-4 family residential properties in domestic offices included in Schedule RC-N, item 1.c.(2)(a), column C, must equal total loans and leases from Schedule RC-C, part I, sum of items 1 through 10, column A, minus total closed-end loans secured by first liens on 1-4 family residential properties in domestic offices from Schedule RC-C, part I, item 1.c.(2)(a), column B.

<sup>4</sup> Exclude loans secured by real estate that are included in Schedule RC-C, part I, item 1, column A.

Schedule RC-C—Continued

Part II. Loans to Small Businesses and Small Farms

Schedule RC-C, Part II is to be reported only with the June Report of Condition.

Report the number and amount currently outstanding as of June 30 of business loans with “original amounts” of \$1,000,000 or less and farm loans with “original amounts” of \$500,000 or less. The following guidelines should be used to determine the “original amount” of a loan: (1) For loans drawn down under lines of credit or loan commitments, the “original amount” of the loan is the size of the line of credit or loan commitment when the line of credit or loan commitment was most recently approved, extended, or renewed prior to the report date. However, if the amount currently outstanding as of the report date exceeds this size, the “original amount” is the amount currently outstanding on the report date. (2) For loan participations and syndications, the “original amount” of the loan participation or syndication is the entire amount of the credit originated by the lead lender. (3) For all other loans, the “original amount” is the total amount of the loan at origination or the amount currently outstanding as of the report date, whichever is larger.

Loans to Small Businesses

	<u>RCON</u>	<u>YES</u>	<u>NO</u>
1. Indicate in the appropriate box at the right whether all or substantially all of the dollar volume of your bank’s “Loans secured by nonfarm nonresidential properties” in domestic offices reported in Schedule RC-C, part I, item 1.e, column B, and all or substantially all of the dollar volume of your bank’s “Commercial and industrial loans to U.S. addressees” in domestic offices reported in Schedule RC-C, part I, item 4.a, column B, have original amounts of \$100,000 or less (If your bank has no loans outstanding in both of these two loan categories, place an “X” in the box marked “NO.”)	6999		1.

If YES, complete items 2.a and 2.b below, skip items 3 and 4, and go to item 5.

If NO and your bank has loans outstanding in either loan category, skip items 2.a and 2.b, complete items 3 and 4 below, and go to item 5.

If NO and your bank has no loans outstanding in both loan categories, skip items 2 through 4, and go to item 5.

	<u>Number of Loans</u>	
	<u>RCON</u>	
2. Report the total number of loans currently outstanding for each of the following Schedule RC-C, part I, loan categories:		
a. “Loans secured by nonfarm nonresidential properties” in domestic offices reported in Schedule RC-C, part I, item 1.e, column B (Note: Item 1.e, column B, divided by the number of loans should NOT exceed \$100,000.)	5562	0 2.a.
b. “Commercial and industrial loans to U.S. addressees” in domestic offices reported in Schedule RC-C, part I, item 4.a, column B (Note: Item 4.a, column B, divided by the number of loans should NOT exceed \$100,000.)	5563	0 2.b.

<u>Dollar Amounts in Thousands</u>	<u>(Column A) Number of Loans</u>		<u>(Column B) Amount Currently Outstanding</u>	
	<u>RCON</u>		<u>RCON</u>	
3. Number and amount currently outstanding of “Loans secured by nonfarm nonresidential properties” in domestic offices reported in Schedule RC-C, part I, item 1.e, column B (sum of items 3.a through 3.c must be less than or equal to Schedule RC-C, part I, item 1.e, column B):				
a. With original amounts of \$100,000 or less	5564	0	5565	0 3.a.
b. With original amounts of more than \$100,000 through \$250,000	5566	0	5567	0 3.b.
c. With original amounts of more than \$250,000 through \$1,000,000	5568	0	5569	0 3.c.
4. Number and amount currently outstanding of “Commercial and industrial loans to U.S. addressees” in domestic offices reported in Schedule RC-C, part I, item 4.a, column B (sum of items 4.a through 4.c must be less than or equal to Schedule RC-C, part I, item 4.a, column B):				
a. With original amounts of \$100,000 or less	5570	0	5571	0 4.a.
b. With original amounts of more than \$100,000 through \$250,000	5572	0	5573	0 4.b.
c. With original amounts of more than \$250,000 through \$1,000,000	5574	0	5575	0 4.c.

Legal Title of Bank

FDIC Certificate Number 22826

Schedule RC-C—Continued

Part II. Continued

**Agricultural Loans to Small Farms**

	<u>RCON</u>	<u>YES</u>	<u>NO</u>
5. Indicate in the appropriate box at the right whether all or substantially all of the dollar volume of your bank's "Loans secured by farmland (including farm residential and other improvements)" in domestic offices reported in Schedule RC-C, part I, item 1.b, column B, and all or substantially all of the dollar volume of your bank's "Loans to finance agricultural production and other loans to farmers" in domestic offices reported in Schedule RC-C, part I, item 3, column B, have original amounts of \$100,000 or less (If your bank has no loans outstanding in both of these two loan categories, place an "X" in the box marked "NO.")	6860		5.

If YES, complete items 6.a and 6.b below, and do not complete items 7 and 8.

If NO and your bank has loans outstanding in either loan category, skip items 6.a and 6.b and complete items 7 and 8 below.

If NO and your bank has no loans outstanding in both loan categories, do not complete items 6 through 8.

	<u>Number of Loans</u>	
	<u>RCON</u>	
6. Report the total number of loans currently outstanding for each of the following Schedule RC-C, part I, loan categories:		
a. "Loans secured by farmland (including farm residential and other improvements)" in domestic offices reported in Schedule RC-C, part I, item 1.b, column B (Note: Item 1.b, column B, divided by the number of loans should NOT exceed \$100,000.)	5576	0 6.a.
b. "Loans to finance agricultural production and other loans to farmers" in domestic offices reported in Schedule RC-C, part I, item 3, column B (Note: Item 3, column B, divided by the number of loans should NOT exceed \$100,000.)	5577	0 6.b.

<u>Dollar Amounts in Thousands</u>	<u>(Column A) Number of Loans</u>	<u>(Column B) Amount Currently Outstanding</u>
7. Number and amount currently outstanding of "Loans secured by farmland (including farm residential and other improvements)" in domestic offices reported in Schedule RC-C, part I, item 1.b, column B (sum of items 7.a through 7.c must be less than or equal to Schedule RC-C, part I, item 1.b, column B):	<u>RCON</u>	<u>RCON</u>
a. With original amounts of \$100,000 or less	5578 0	5579 0 7.a.
b. With original amounts of more than \$100,000 through \$250,000	5580 0	5581 0 7.b.
c. With original amounts of more than \$250,000 through \$500,000	5582 0	5583 0 7.c.
8. Number and amount currently outstanding of "Loans to finance agricultural production and other loans to farmers" in domestic offices reported in Schedule RC-C, part I, item 3, column B (sum of items 8.a through 8.c must be less than or equal to Schedule RC-C, part I, item 3, column B):		
a. With original amounts of \$100,000 or less	5584 0	5585 0 8.a.
b. With original amounts of more than \$100,000 through \$250,000	5586 0	5587 0 8.b.
c. With original amounts of more than \$250,000 through \$500,000	5588 0	5589 0 8.c.

Union Bank of California, N. A.

Legal Title of Bank

FDIC Certificate Number 22826

Schedule RC-D—Trading Assets and Liabilities

Schedule RC-D is to be completed by banks that reported average trading assets (Schedule RC-K, item 7) of \$2 million or more for any quarter of the preceding calendar year.

Dollar Amounts in Thousands	RCN			
<b>ASSETS</b>				
1. U.S. Treasury securities in domestic offices		3531	1,031	1.
2. U.S. Government agency obligations in domestic offices (exclude mortgage-backed securities)		3532	30,442	2.
3. Securities issued by states and political subdivisions in the U.S. in domestic offices		3533	4,624	3.
4. Mortgage-backed securities (MBS) in domestic offices:				
a. Pass-through securities issued or guaranteed by FNMA, FHLMC, or GNMA		3534	0	4.a.
b. Other mortgage-backed securities issued or guaranteed by FNMA, FHLMC, or GNMA (include CMOs, REMICs, and stripped MBS)		3535	0	4.b.
c. All other mortgage-backed securities		3536	0	4.c.
5. Other debt securities in domestic offices		3537	0	5.
6. - 8. Not applicable				
9. Other trading assets in domestic offices		3541	123,690	9.
10. Trading assets in foreign offices	RCFN	3542	0	10.
11. Revaluation gains on interest rate, foreign exchange rate, and other commodity and equity contracts:				
a. In domestic offices	RCN	3543	147,474	11.a.
b. In foreign offices	RCFN	3543	1,440	11.b.
12. Total trading assets (sum of items 1 through 11) (must equal Schedule RC, item 5)	RCFD	3545	308,701	12.
			<b>RCFD</b>	
<b>LIABILITIES</b>				
13. Liability for short positions		3546	0	13.
14. Revaluation losses on interest rate, foreign exchange rate, and other commodity and equity contracts		3547	142,576	14.
15. Total trading liabilities (sum of items 13 and 14) (must equal Schedule RC, item 15)		3548	142,576	15.



Schedule RC-E—Deposit Liabilities

Part I. Deposits in Domestic Offices

Dollar Amounts in Thousands	Transaction Accounts				Nontransaction Accounts	
	(Column A) Total transaction accounts (including total demand deposits)		(Column B) Memo: Total demand deposits (included in column A)		(Column C) Total nontransaction accounts (including MMDAs)	
	RCON		RCON		RCON	
<b>Deposits of:</b>						
1. Individuals, partnerships, and corporations (include all certified and official checks)	B549	7,048,429			B550	21,568,115 1.
2. U.S. Government	2202	78,062			2520	0 2.
3. States and political subdivisions in the U.S.	2203	312,834			2530	1,049,926 3.
4. Commercial banks and other depository institutions in the U.S.	B551	670,939			B552	1,633 4.
5. Banks in foreign countries	2213	97,527			2236	0 5.
6. Foreign governments and official institutions (including foreign central banks)	2216	0			2377	0 6.
7. Total (sum of items 1 through 6) (sum of columns A and C must equal Schedule RC, item 13.a)	2215	8,207,791	2210	6,953,259	2385	22,619,674 7.

Memoranda

Dollar Amounts in Thousands	RCON		
<b>1. Selected components of total deposits (i.e., sum of item 7, columns A and C):</b>			
a. Total Individual Retirement Accounts (IRAs) and Keogh Plan accounts		6835	502,383 M.1.a.
b. Total brokered deposits		2365	0 M.1.b.
c. Fully insured brokered deposits (included in Memorandum item 1.b above):			
(1) Issued in denominations of less than \$100,000		2343	0 M.1.c.(1)
(2) \$100,000 and participated out by the broker in shares of \$100,000 or less		2344	0 M.1.c.(2)
d. Maturity data for brokered deposits:			
(1) Brokered deposits issued in denominations of less than \$100,000 with a remaining maturity of one year or less (included in Memorandum item 1.c.(1) above)		A243	0 M.1.d.(1)
(2) Brokered deposits issued in denominations of \$100,000 or more with a remaining maturity of one year or less (included in Memorandum item 1.b above)		A244	0 M.1.d.(2)
e. Preferred deposits (uninsured deposits of states and political subdivisions in the U.S. reported in item 3 above which are secured or collateralized as required under state law) <b>(to be completed for the December report only)</b>		5590	1,329,401 M.1.e.
<b>2. Components of total nontransaction accounts (sum of Memorandum items 2.a through 2.c must equal item 7, column C above):</b>			
a. Savings deposits:			
(1) Money market deposit accounts (MMDAs)		6810	16,629,720 M.2.a.(1)
(2) Other savings deposits (excludes MMDAs)		0352	1,913,057 M.2.a.(2)
b. Total time deposits of less than \$100,000		6648	1,698,448 M.2.b.
c. Total time deposits of \$100,000 or more		2604	2,378,449 M.2.c.

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Schedule RC-E—Continued

Part I. Continued

Memoranda (continued)

Dollar Amounts in Thousands	RCON		
<b>3. Maturity and repricing data for time deposits of less than \$100,000:</b>			
a. Time deposits of less than \$100,000 with a remaining maturity... next repricing date of: <sup>1,2</sup>			
(1) Three months or less	A579	787,187	M.3.a.(1)
(2) Over three months through 12 months	A580	645,467	M.3.a.(2)
(3) Over one year through three years	A581	175,108	M.3.a.(3)
(4) Over three years	A582	90,686	M.3.a.(4)
b.			
or less (included in Memorandum items 3.a.(1) through 3.a.(4) above) <sup>3</sup>	A241	1,384,121	M.3.b.
<b>4. Maturity and repricing data for time deposits of \$100,000 or more:</b>			
a. Time deposits of \$100,000 or more with a remaining maturity or next repricing date of: <sup>1,4</sup>			
(1) Three months or less	A584	1,519,828	M.4.a.(1)
(2) Over three months through 12 months	A585	542,653	M.4.a.(2)
(3) Over one year through three years	A586	266,199	M.4.a.(3)
(4) Over three years	A587	49,769	M.4.a.(4)
b. Time deposits of \$100,000 or more with a REMAINING MATURITY of one year or less (included in Memorandum items 4.a.(1) through 4.a.(4) above) <sup>3</sup>			
	A242	2,059,017	M.4.b.

1 Report fixed rate time deposits by remaining maturity and floating rate time deposits by next repricing date.

2 Sum of Memorandum items 3.a.(1) through 3.a.(4) must equal Schedule RC-E, Memorandum item 2.b.

3 Report both fixed and floating rate time deposits by remaining maturity. Exclude floating rate time deposits with a next repricing date of one year or less that have a remaining maturity of over one year.

4 Sum of Memorandum items 4.a.(1) through 4.a.(4) must equal Schedule RC-E, Memorandum item 2.c.

Part II. Deposits in Foreign Offices (including Edge and Agreement subsidiaries and IBFs)

Dollar Amounts in Thousands	RCFN	
<b>Deposits of:</b>		
1. Individuals, partnerships, and corporations	B553	2,008,082 1.
2. U.S. banks (including IBFs and foreign branches of U.S. banks) and other U.S. depository institutions	B554	484 2.
3. Foreign banks (including U.S. branches and agencies of foreign banks, including their IBFs)	2625	1,481,125 3.
4. Foreign governments and official institutions (including foreign central banks)	2650	5,954 4.
5. U.S. Government and states and political subdivisions in the U.S	B555	0 5.
6. Total (sum of items 1 through 5) (must equal Schedule RC, item 13.b)	2200	3,495,645 6.

Memorandum

Dollar Amounts in Thousands	RCFN	
1. Time deposits with a remaining maturity of one year or less (included in Part II, item 6 above)	A245	2,910,381 M.1.

## Schedule RC-F—Other Assets

Dollar Amounts in Thousands	RCFD		
1. Accrued interest receivable <sup>1</sup>	B556	188,450	1.
2. Net deferred tax assets <sup>2</sup>	2148	0	2.
3. Interest-only strips receivable (not in the form of a security) <sup>3</sup> on:			
a. Mortgage loans	A519	0	3.a.
b. Other financial assets	A520	0	3.b.
4. Equity securities that DO NOT have readily determinable fair values <sup>4</sup>	1752	49,625	4.
5. Other (itemize and describe amounts greater than \$25,000 that exceed 25% of this item)	2168	1,352,115	5.
a. Prepaid expenses	2166	0	5.a.
b. Cash surrender value of life insurance	C009	0	5.b.
c. Repossessed personal property (including vehicles)	1578	0	5.c.
d. Derivatives with a positive fair value held for purposes other than trading	C010	170,881	5.d.
e. TEXT 3549	3549	0	5.e.
f. TEXT 3550	3550	0	5.f.
g. TEXT 3551	3551	0	5.g.
6. Total (sum of items 1 through 5) (must equal Schedule RC, item 11)	2160	1,590,190	6.

## Schedule RC-G—Other Liabilities

Dollar Amounts in Thousands	RCFD		
a. Interest accrued and unpaid on deposits in domestic offices <sup>5</sup>	3645	14,138	1.a.
b. Other expenses accrued and unpaid (includes accrued income taxes payable)			
	3646	244,009	1.b.
2. Net deferred tax liabilities <sup>2</sup>	3049	871	2.
3. Allowance for credit losses on off-balance sheet credit exposures	B557	0	3.
4. Other (itemize and describe amounts greater than \$25,000 that exceed 25% of this item)	2938	339,104	4.
a. Accounts payable	3066	85,198	4.a.
b. Deferred compensation liabilities	C011	0	4.b.
c. Dividends declared but not yet payable	2932	0	4.c.
d. Derivatives with a negative fair value held for purposes other than trading	C012	443	4.d.
e. TEXT 3552	3552	0	4.e.
f. TEXT 3553	3553	0	4.f.
g. TEXT 3554	3554	0	4.g.
5. Total (sum of items 1 through 4 ) (must equal Schedule RC, item 20)	2930	598,122	5.

1 Include accrued interest receivable on loans, leases, debt securities, and other interest-bearing assets.

2 See discussion of deferred income taxes in Glossary entry on "income taxes."

3 Report interest-only strips receivable in the form of a security as available-for-sale securities in Schedule RC, item 2.b, or as trading assets in Schedule RC, item 5, as appropriate.

4 Include Federal Reserve stock, Federal Home Loan Bank stock, and bankers' bank stock.

5 For savings banks, include "dividends" accrued and unpaid on deposits.

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### Schedule RC-H—Selected Balance Sheet Items for Domestic Offices

Dollar Amounts in Thousands

	Domestic Offices		
	RCON		
1. Customers' liability to this bank on acceptances outstanding	2155	50,208	1.
2. Bank's liability on acceptances executed and outstanding	2920	50,208	2.
3. Securities purchased under agreements to resell	B989	0	3.
4. Securities sold under agreements to repurchase	B995	169,275	4.
5. Other borrowed money	3190	266,936	5.
<i>EITHER</i>			
6. Net due from own foreign offices, Edge and Agreement subsidiaries, and IBFs	2163	0	6.
<i>OR</i>			
7. Net due to own foreign offices, Edge and Agreement subsidiaries, and IBFs	2941	1,915,741	7.
8. Total assets (excludes net due from foreign offices, Edge and Agreement subsidiaries, and IBFs)	2192	37,980,691	8.
9. Total liabilities (excludes net due to foreign offices, Edge and Agreement subsidiaries, and IBFs)	3129	32,289,466	9.
	RCON		
<b>In items 10–17, report the amortized (historical) cost of both held-to-maturity and available-for-sale securities in domestic offices.</b>			
10. U.S. Treasury securities	1039	332,168	10.
11. U.S. Government agency obligations (exclude mortgage-backed securities)	1041	2,560,421	11.
12. Securities issued by states and political subdivisions in the U.S.	1042	42,917	12.
13. Mortgage-backed securities (MBS):			
a. Pass-through securities:			
(1) Issued or guaranteed by FNMA, FHLMC, or GNMA	1043	1,224,838	13.a.(1)
(2) Other pass-through securities	1044	0	13.a.(2)
b.			
(1) Issued or guaranteed by FNMA, FHLMC, or GNMA	1209	2,678,041	13.b.(1)
(2) All other mortgage-backed securities	1280	41,391	13.b.(2)
14. Other domestic debt securities (include domestic asset-backed securities)	1281	134,672	14.
15. Foreign debt securities (include foreign asset-backed securities)	1282	0	15.
16. Investments in mutual funds and other equity securities with readily determinable fair values	A510	6,258	16.
17. Total amortized (historical) cost of both held-to-maturity and available-for-sale securities (sum of items 10 through 16)	1374	7,020,706	17.
18. Equity securities that do not have readily determinable fair values	1752	49,532	18.

### Schedule RC-I—Assets and Liabilities of IBFs

To be completed only by banks with IBFs and other "foreign" offices.

Dollar Amounts in Thousands

	RCFN	
1. Total IBF assets of the consolidated bank (component of Schedule RC, item 12)	2133	602,580 1.
2. Total IBF liabilities (component of Schedule RC, item 21)	2898	201,091 2.

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**Schedule RC-K—Quarterly Averages <sup>1</sup>**

Dollar Amounts in Thousands

	RCFD		
<b>ASSETS</b>			
1. Interest-bearing balances due from depository institutions	3381	149,544	1.
2. U.S. Treasury securities and U.S. Government agency obligations <sup>2</sup> (excluding mortgage backed-securities)	B558	2,696,776	2.
3. Mortgage-backed securities <sup>2</sup>	B559	3,223,010	3.
4. All other securities <sup>2,3</sup> (includes securities issued by states and political subdivisions in the U.S.)	B560	220,915	4.
5. Federal funds sold and securities purchased under agreements to resell	3365	925,253	5.
6. Loans:			
a. Loans in domestic offices:	RCFN		
(1) Total loans	3360	24,421,536	6.a.(1)
(2) Loans secured by real estate	3385	13,117,054	6.a.(2)
(3) Loans to finance agricultural production and other loans to farmers	3386	241,000	6.a.(3)
(4) Commercial and industrial loans	3387	9,577,655	6.a.(4)
(5)			
(a) Credit cards	B561	225	6.a.(5)(a)
(b)			
credit plans other than credit cards)	B562	628,351	6.a.(5)(b)
b. Total loans in foreign offices, Edge and Agreement subsidiaries, and IBFs	RCFN	3360	1,084,104
7. Trading assets	RCFD	3401	367,161
8. Lease and financing receivables (net of unearned income)	RCFD	3484	255,537
9. Total assets <sup>4</sup>	RCFD	3368	37,208,388
<b>LIABILITIES</b>			
10. Interest-bearing transaction accounts in domestic offices (NOW accounts, ATS accounts, and telephone and preauthorized transfer accounts) (exclude demand deposits)		RCFN	
		3485	1,738,927
11. Nontransaction accounts in domestic offices:			
a. Savings deposits (includes MMDAs)	B563	17,939,060	11.a.
b. Time deposits of \$100,000 or more	A514	2,460,571	11.b.
c. Time deposits of less than \$100,000	A529	1,780,945	11.c.
12. Interest-bearing deposits in foreign offices, Edge and Agreement subsidiaries, and IBFs	RCFN	3404	2,824,783
13. Federal funds purchased and securities sold under agreements to repurchase	RCFD	3353	322,394
14. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	RCFD	3355	249,241

<sup>1</sup> For all items, banks have the option of reporting either (1) an average of DAILY figures for the quarter, or (2) an average of WEEKLY figures (i.e., the Wednesday of each week of the quarter).

<sup>2</sup> Quarterly averages for all debt securities should be based on amortized cost.

<sup>3</sup> Quarterly averages for all equity securities should be based on historical cost.

<sup>4</sup> The quarterly average for total assets should reflect all debt securities (not held for trading) at amortized cost, equity securities with readily determinable fair values at the lower of cost or fair value, and equity securities without readily determinable fair values at historical cost.

## Schedule RC-L—Derivatives and Off-Balance Sheet Items

Please read carefully the instructions for the preparation of Schedule RC-L. Some of the amounts reported in Schedule RC-L are regarded as volume indicators and not necessarily as measures of risk.

Dollar Amounts in Thousands	RCFD					
<b>1. Unused commitments:</b>						
a. Revolving, open-end lines secured by 1—4 family residential properties, e.g., home equity lines			3814	1,456,374	1.a.	
b. Credit card lines			3815	0	1.b.	
c. Commercial real estate, construction, and land development:						
(1) Commitments to fund loans secured by real estate			3816	883,404	1.c.(1)	
(2) Commitments to fund loans not secured by real estate			6550	18,426	1.c.(2)	
d. Securities underwriting			3817	0	1.d.	
e. Other unused commitments			3818	10,422,303	1.e.	
<b>2. Financial standby letters of credit and foreign office guarantees</b>						
a. Amount of financial standby letters of credit conveyed to others	3820	218,130			2.a.	
<b>3. Performance standby letters of credit and foreign office guarantees</b>						
a. Amount of performance standby letters of credit conveyed to others	3822	32,009	3821	324,803	3.	
<b>4. Commercial and similar letters of credit</b>						
			3411	279,653	4.	
<b>5. Participations in acceptances (as described in the instructions) conveyed to others by the reporting bank</b>						
			3428	63,084	5.	
<b>6. Securities lent (including customers' securities lent where the customer is indemnified against loss by the reporting bank)</b>						
			3433	1,520,848	6.	
<b>7. Credit derivatives:</b>						
<b>a. Notional amount of credit derivatives on which the reporting bank is the guarantor</b>						
(1) Gross positive fair value			A534	0	7.a.	
(2) Gross negative fair value			C219	0	7.a.(1)	
(2) Gross negative fair value			C220	0	7.a.(2)	
<b>b. Notional amount of credit derivatives on which the reporting bank is the beneficiary</b>						
(1) Gross positive fair value			A535	0	7.b.	
(2) Gross negative fair value			C221	0	7.b.(1)	
(2) Gross negative fair value			C222	0	7.b.(2)	
<b>8. Spot foreign exchange contracts</b>						
			8765	254,225	8.	
<b>9. All other off-balance sheet liabilities (exclude derivatives) (itemize and describe each component of this item over 25% of Schedule RC, item 28, "Total equity capital")</b>						
a. Securities borrowed	3432	0		3430	0	9.
b. Commitments to purchase when-issued securities	3434	0				9.a.
c. TEXT 3555	3555	0				9.b.
d. TEXT 3556	3556	0				9.c.
e. TEXT 3557	3557	0				9.d.
<b>10. All other off-balance sheet assets (exclude derivatives) (itemize and describe each component of this item over 25% of Schedule RC, item 28, "Total equity capital")</b>						
a. Commitments to sell when-issued securities	3435	0		5591	0	9.e.
b. TEXT 5592	5592	0				10.
c. TEXT 5593	5593	0				10.a.
d. TEXT 5594	5594	0				10.b.
e. TEXT 5595	5595	0				10.c.
						10.d.
						10.e.
<b>11. Year-to-date merchant credit card sales volume:</b>						
a. Sales for which the reporting bank is the acquiring bank			C223	2,931,742	11.a.	
b. Sales for which the reporting bank is the agent bank with risk			C224	0	11.b.	

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Schedule RC-L—Continued

Dollar Amounts in Thousands	(Column A) Interest Rate Contracts	(Column B) Foreign Exchange Contracts	(Column C) Equity Derivative Contracts	(Column D) Commodity and Other Contracts
<b>Derivatives Position Indicators</b>				
12. Gross amounts (e.g., notional amounts) (for each column, sum of items 12.a through 12.e must equal sum of items 13 and 14):				
a. Futures contracts	RCFD 8693 0	RCFD 8694 0	RCFD 8695 0	RCFD 8696 12. 0 a.
b. Forward contracts	RCFD 8697 0	RCFD 8698 1,756,783	RCFD 8699 0	RCFD 8700 0 12.b.
c. Exchange-traded option contracts:				
(1) Written options	RCFD 8701 0	RCFD 8702 38,854	RCFD 8703 0	RCFD 8704 12.c. 0 (1)
(2) Purchased options	RCFD 8705 0	RCFD 8706 38,854	RCFD 8707 0	RCFD 8708 12.c. 0 (2)
d. Over-the-counter option contracts:				
(1) Written options	RCFD 8709 2,486,341	RCFD 8710 0	RCFD 8711 0	RCFD 8712 12.d. 0 (1)
(2) Purchased options	RCFD 8713 4,436,341	RCFD 8714 0	RCFD 8715 0	RCFD 8716 12.d. 0 (2)
e. Swaps	RCFD 3450 8,139,783	RCFD 3826 102,878	RCFD 8719 0	RCFD 8720 0 12.e.
13. Total gross notional amount of derivative contracts held for trading	RCFD A126 8,482,465	RCFD A127 1,916,196	RCFD 8723 0	RCFD 8724 0 13.
14. Total gross notional amount of derivative contracts held for purposes other than trading	RCFD 8725 6,580,000	RCFD 8726 21,173	RCFD 8727 0	RCFD 8728 0 14.
a. Interest rate swaps where the bank has agreed to pay a fixed rate	RCFD A589 0			14.a
15. Gross fair values of derivative contracts:				
a. Contracts held for trading:				
(1) Gross positive fair value	RCFD 8733 201,391	RCFD 8734 40,559	RCFD 8735 0	RCFD 8736 15.a. 0 (1)
(2) Gross negative fair value	RCFD 8737 193,515	RCFD 8738 41,711	RCFD 8739 0	RCFD 8740 15.a. 0 (2)
b. Contracts held for purposes other than trading:				
(1) Gross positive fair value	RCFD 8741 170,373	RCFD 8742 508	RCFD 8743 0	RCFD 8744 15.b. 0 (1)
(2) Gross negative fair value	RCFD 8745 443	RCFD 8746 0	RCFD 8747 0	RCFD 8748 15.b. 0 (2)





**Schedule RC-N—Past Due and Nonaccrual Loans, Leases, and Other Assets**

Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days and still accruing		(Column B) Past due 90 days or more and still accruing		(Column C) Nonaccrual	
	RCN		RCN		RCN	
<b>1. Loans secured by real estate:</b>						
a. Construction, land development, and other land loans in domestic offices	2759	888	2769	679	3492	0 1.a.
b. Secured by farmland in domestic offices	3493	0	3494	0	3495	0 1.b.
c. Secured by 1—4 family residential properties in domestic offices:						
(1) Revolving, open-end loans secured by 1—4 family residential properties and extended under lines of credit	5398	5,111	5399	386	5400	0 1.c.(1)
(2) Closed-end loans secured by 1—4 family residential properties:						
(a) Secured by first Liens	C236	37,129	C237	3,211	C229	24 1.c.(2)(a)
(b) Secured by junior liens	C238	2,370	C239	388	C230	18,225 1.c.(2)(b)
d. Secured by multifamily (5 or more) residential properties in domestic offices	3499	272	3500	0	3501	0 1.d.
e. Secured by nonfarm nonresidential properties in domestic offices	3502	17,552	3503	506	3504	16,822 1.e.
	<u>RCFN</u>		<u>RCFN</u>		<u>RCFN</u>	
f. In foreign offices	B572	0	B573	0	B574	0 1.f.
<b>2. Loans to depository institutions and acceptances of other banks:</b>						
a. To U.S. banks and other U.S. depository institutions						
	<u>RCFD</u>		<u>RCFD</u>		<u>RCFD</u>	
b. To foreign banks	5377	0	5378	0	5379	0 2.a.
	5380	0	5381	0	5382	0 2.b.
3. Loans to finance agricultural production and other loans to farmers	1594	701	1597	0	1583	2,039 3.
<b>4. Commercial and industrial loans:</b>						
a. To U.S. addressees (domicile)	1251	32,786	1252	1,694	1253	242,094 4.a.
b. To non-U.S. addressees (domicile)	1254	0	1255	0	1256	0 4.b.
<b>5. Loans to individuals for household, family, and other personal expenditures:</b>						
a. Credit cards	B575	0	B576	0	B577	0 5.a.
b. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards)	B578	9,802	B579	985	B580	0 5.b.
6. Loans to foreign governments and official institutions	5389	0	5390	0	5391	0 6.
7. All other loans	5459	3,213	5460	11	5461	21,191 7.
<b>8. Lease financing receivables:</b>						
a. Of U.S. addressees (domicile)	1257	1,831	1258	314	1259	0 8.a.
b. Of non-U.S. addressees (domicile)	1271	0	1272	0	1791	0 8.b.
9. Debt securities and other assets (exclude other real estate owned and other repossessed assets)	3505	0	3506	0	3507	0 9.

Schedule RC-N—Continued

Amounts reported in Schedule RC-N, items 1 through 8, above include guaranteed and unguaranteed portions of past due and nonaccrual loans and leases. Report in item 10 below certain guaranteed loans and leases that have already been included in the amounts reported in items 1 through 8.

Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days and still accruing		(Column B) Past due 90 days or more and still accruing		(Column C) Nonaccrual
	RCFD		RCFD		RCFD
10. Loans and leases reported in items 1 through 8 above which are wholly or partially guaranteed by the U.S. Government	5612	0	5613	0	5614 0 10.
a. Guaranteed portion of loans and leases included in item 10 above	5615	0	5616	0	5617 0 10.a.

Memoranda Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days and still accruing		(Column B) Past due 90 days or more and still accruing		(Column C) Nonaccrual
	RCFD		RCFD		RCFD

1. Restructured loans and leases included in Schedule RC-N, items 1 through 8, above (and not reported in Schedule RC-C, Part I, Memorandum item 1)	1658	0	1659	0	1661 0 M.1.
2. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-N, items 4 and 7, above	6558	0	6559	0	6560 0 M.2.
3. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-N, item 1, above)	1248	0	1249	0	1250 0 M.3.
4. Not applicable					
5. Loans and leases held for sale (included in Schedule RC-N, items 1 through 8, above)	C240	0	C241	0	C226 0 M.5.

	(Column A) Past due 30 through 89 days		(Column B) Past due 90 days or more		
	RCFD		RCFD		
6. Interest rate, foreign exchange rate, and other commodity and equity contracts: Fair value of amounts carried as assets	3529	0	3530	0	M.6.

Person to whom questions about the Reports of Condition and Income should be directed:

Carmen Wong, Vice President

Name and Title (TEXT 8901)

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FAX: Area code/phone number (TEXT 9116)

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Schedule RC-O—Other Data for Deposit Insurance and FICO Assessments

Dollar Amounts in Thousands	RCON	
1. Unposted debits (see instructions):		
a. Actual amount of all unposted debits	0030	0 1.a.
<i>OR</i>		
b. Separate amount of unposted debits:		
(1) Actual amount of unposted debits to demand deposits	0031	0 1.b.(1)
(2) Actual amount of unposted debits to time and savings deposits <sup>1</sup>	0032	0 1.b.(2)
2. Unposted credits (see instructions):		
a. Actual amount of all unposted credits	3510	4,177 2.a.
<i>OR</i>		
b. Separate amount of unposted credits:		
(1) Actual amount of unposted credits to demand deposits	3512	0 2.b.(1)
(2) Actual amount of unposted credits to time and savings deposits <sup>1</sup>	3514	0 2.b.(2)
3. Uninvested trust funds (cash) held in bank's own trust department (not included in total deposits in domestic offices)	3520	0 3.
4. Deposits of consolidated subsidiaries in domestic offices and in insured branches in Puerto Rico and U.S. territories and possessions (not included in total deposits):		
a. Demand deposits of consolidated subsidiaries	2211	2,880 4.a.
b. Time and savings deposits <sup>1</sup> of consolidated subsidiaries	2351	0 4.b.
c. Interest accrued and unpaid on deposits of consolidated subsidiaries	5514	0 4.c.
5. Deposits in insured branches in Puerto Rico and U.S. territories and possessions:		
a. Demand deposits in insured branches (included in Schedules RC-E, Part II)	2229	0 5.a.
b. Time and savings deposits <sup>1</sup> in insured branches (included in Schedule RC-E, Part II)	2383	0 5.b.
c. Interest accrued and unpaid on deposits in insured branches (included in Schedule RC-G, item 1.b.)	5515	0 5.c.
6. Reserve balances actually passed through to the Federal Reserve by the reporting bank on behalf of its respondent depository institutions that are also reflected as deposit liabilities of the reporting bank:		
a.		
column B)	2314	0 6.a.
b. Amount reflected in time and savings deposits <sup>1</sup> (included in Schedule RC-E, Part I, item 7, column A or C, but not column B)	2315	0 6.b.
7. Unamortized premiums and discounts on time and savings deposits: <sup>1,2</sup>		
a. Unamortized premiums	5516	0 7.a.
b. Unamortized discounts	5517	0 7.b.
8. To be completed by banks with "Oakar deposits."		
a. Deposits purchased or acquired from other FDIC-insured institutions during the quarter (exclude deposits purchased or acquired from foreign offices other than insured branches in Puerto Rico and U.S. territories and possessions):		
(1) Total deposits purchased or acquired from other FDIC-insured institutions during the quarter	A531	0 8.a.(1)
(2) Amount of purchased or acquired deposits reported in item 8.a.(1) above attributable to a secondary fund (i.e., BIF members report deposits attributable to SAIF; SAIF members report deposits attributable to BIF)	A532	0 8.a.(2)
b. Total deposits sold or transferred to other FDIC-insured institutions during the quarter (exclude sales or transfers by the reporting bank of deposits in foreign offices other than insured branches in Puerto Rico and U.S. territories and possessions)	A533	0 8.b.

<sup>1</sup> For FDIC insurance and FICO assessment purposes, "time and savings deposits" consists of nontransaction accounts and all transaction accounts other than demand deposits.

<sup>2</sup> Exclude core deposit intangibles.

Schedule RC-O—Continued

Dollar Amounts in Thousands	RCON	
9. Deposits in lifeline accounts	5596	9.
10. Benefit-responsive 'Depository Institution Investment Contracts' (included in total deposits in domestic offices)	8432	0 10.
11. Adjustments to demand deposits in domestic offices and in insured branches in Puerto Rico and U.S. territories and possessions reported in Schedule RC-E for certain reciprocal demand balances:		
a. Amount by which demand deposits would be reduced if the reporting bank's reciprocal demand balances with the domestic offices of U.S. banks and savings associations and insured branches in Puerto Rico and U.S. territories and possessions that were reported on a gross basis in Schedule RC-E had been reported on a net basis	8785	0 11.a.
b. Amount by which demand deposits would be increased if the reporting bank's reciprocal demand balances with foreign banks and foreign offices of other U.S. banks (other than insured branches in Puerto Rico and U.S. territories and possessions) that were reported on a net basis in Schedule RC-E had been reported on a gross basis	A181	0 11.b.
c. Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of the reporting bank's net reciprocal demand balances with the domestic offices of U.S. banks and savings associations and insured branches in Puerto Rico and U.S. territories and possessions in Schedule RC-E	A182	0 11.c.
12. Amount of assets netted against deposit liabilities in domestic offices and in insured branches in Puerto Rico and U.S. territories and possessions on the balance sheet (Schedule RC) in accordance with generally accepted accounting principles (exclude amounts related to reciprocal demand balances):		
a. Amount of assets netted against demand deposits	A527	0 12.a.
b. Amount of assets netted against time and savings deposits	A528	0 12.b.

Memoranda (to be completed each quarter except as noted)

Dollar Amounts in Thousands	RCON	
<b>1. Total deposits in domestic offices of the bank and in insured branches in Puerto Rico and U.S. territories and possessions (sum of Memorandum items 1.a.(1) and 1.b.(1) must equal the sum of Schedule RC, item 13.a, and Schedule RC-O, items 5.a and 5.b)</b>		
a. Deposit account of \$100,000 or less:		
(1) Amount of deposit accounts of \$100,000 or less	2702	9,158,333 M.1.a.(1)
	<u>Number</u>	
(2) Number of deposit accounts of \$100,000 or less (to be completed for the June report only)	3779	0 M.1.a.(2)
b. Deposit accounts of more than \$100,000:		
(1) Amount of deposit accounts of more than \$100,000	2710	21,669,132 M.1.b.(1)
	<u>Number</u>	
(2) Number of deposit accounts of more than \$100,000	2722	34,322 M.1.b.(2)
<b>2. Memorandum item 2 is to be completed by all banks</b>		
<b>Estimated amount of uninsured deposits in domestic offices of the bank and in insured</b>	5597	13,212,913 M.2
3. Has the reporting institution been consolidated with a parent bank or savings association in that parent bank's or parent saving association's Call Report or Thrift Financial Report? If so, report the legal title and FDIC Certificate Number of the parent bank or parent savings association:		
	<u>RCON</u>	<u>FDIC Cert No.</u>
TEXT A545	A545	M.3.

Legal Title of Bank

FDIC Certificate Number 22826

## Schedule RC-R—Regulatory Capital

Dollar Amounts in Thousands

RCFD

**Tier 1 capital**

1. Total equity capital (from Schedule RC, item 28)	3210	3,775,484	1.
2. LESS: Net unrealized gains (losses) on available-for-sale securities <sup>1</sup> (if a gain, report as a positive value; if a loss, report as a negative value)	8434	147,336	2.
3. LESS: Net unrealized loss on available-for-sale <b>EQUITY</b> securities <sup>1</sup> (report loss as a positive value)	A221	0	3.
4. LESS: Accumulated net gains (losses) on cash flow hedges <sup>1</sup> (if a gain, report as a positive value; if a loss, report as a negative value)	4336	104,368	4.
5. LESS: Nonqualifying perpetual preferred stock	B588	0	5.
6. Qualifying minority interests in consolidated subsidiaries	B589	0	6.
7. LESS: Disallowed goodwill and other disallowed intangible assets	B590	189,060	7.
<b>8. Subtotal (sum of items 1 and 6, less items 2, 3, 4, 5, and 7)</b>	<b>C227</b>	<b>3,334,720</b>	<b>8.</b>
9. a. LESS: Disallowed servicing assets and purchased credit card relationships	B591	0	9.a.
b. LESS: Disallowed deferred tax assets	B5610	0	9.b.
10. Other additions to (deductions from) Tier 1 capital	B592	0	10.
<b>11. Tier 1 capital (sum of items 8 and 10 less items 9.a and 9.b)</b>	<b>8274</b>	<b>3,334,720</b>	<b>11.</b>

**Tier 2 capital**

12. Qualifying subordinated debt and redeemable preferred stock	5306	80,000	12.
13. Cumulative perpetual preferred stock includible in Tier 2 capital	B593	0	13.
14. Allowance for loan and lease losses includible in Tier 2 capital	5310	404,210	14.
15. Unrealized gains on available-for-sale equity securities includible in Tier 2 capital	2221	0	15.
16. Other Tier 2 capital components	B594	0	16.
17. Tier 2 capital (sum of items 12 through 16)	5311	484,210	17.
18. Allowable Tier 2 capital (lesser of item 11 or 17)	8275	484,210	18.
19. Tier 3 capital allocated for market risk	1395	0	19.
20. LESS: Deductions for total risk-based capital	B595	148	20.
<b>21. Total risk-based capital (sum of items 11, 18, and 19, less item 20)</b>	<b>3792</b>	<b>3,818,782</b>	<b>21.</b>

**Total assets for leverage ratio**

22. Average total assets (from Schedule RC-K, item 9)	3368	37,208,388	22.
23. LESS: Disallowed goodwill and other disallowed intangible assets (from item 7 above)	B590	189,060	23.
24. LESS: Disallowed servicing assets and purchased credit card relationships (from item 9.a above)	B591	0	24.
25. LESS: Disallowed deferred tax assets (from item 9.b above)	5610	0	25.
26. LESS: Other deductions from assets for leverage capital purposes	B596	0	26.
<b>27. Average total assets for leverage capital purposes (item 22 less items 23 through 26)</b>	<b>A224</b>	<b>37,019,328</b>	<b>27.</b>

**Adjustments for financial subsidiaries**

28. a. <b>Adjustment to Tier 1 capital reported in item 11</b>	C228	0	28.a.
b. Adjustment to total risk-based capital reported in item 21	B503	0	28.b.
29. Adjustment to risk-weighted assets reported in item 62	B504	0	29.
30. Adjustment to average total assets reported in item 27	B505	0	30.

**Capital ratios**

(Column B is to be completed by all banks. Column A is to be completed by banks with financial subsidiaries.)

	(Column A)		(Column B)	
	RCFD	Percentage	RCFD	Percentage
31. Tier 1 leverage ratio <sup>2</sup>	7273	0.00	7204	9.01
32. Tier 1 risk-based capital ratio <sup>3</sup>	7274	0.00	7206	10.37
33. Total risk-based capital ratio <sup>4</sup>	7275	0.00	7205	11.87

<sup>1</sup> Report amount included in Schedule RC, item 26.b, "Accumulated other comprehensive income."<sup>2</sup> The ratio for column B is item 11 divided by item 27. The ratio for column A is item 11 minus one half of item 28 divided by (item 27 minus item 30).<sup>3</sup> The ratio for column B is item 11 divided by item 62. The ratio for column A is item 11 minus one half of item 28 divided by (item 62 minus item 29).<sup>4</sup> The ratio for column B is item 21 divided by item 62. The ratio for column A is item 21 minus item 28 divided by (item 62 minus item 29).

Schedule RC-R—Continued

Banks are not required to risk-weight each on-balance sheet asset and the credit equivalent amount of each off-balance sheet item that qual [ILLEGIBLE] 100 percent (50 percent for derivatives) at its lower risk weight. When completing items 34 through 54 of Sch[ILLEGIBLE] risk-weight analysis it wishes to perform. In other words, a bank can choose from among its assets and off-balance sheet items that have a r [ILLEGIBLE] which ones to risk-weight at an appropriate lower risk weight, or it can simply risk-weight some or all of these items at a 100 percent risk weight (50 perc [ILLEGIBLE])

Dollar Amounts in Thousands	(Column A) Totals (from Schedule RC)	(Column B) Items Not Subject to Risk-Weighting	(Column C)	(Column D)	(Column E)	(Column F)
			Allocation by Risk Weight Category			
			0%	20%	50%	100%
<b>Balance Sheet Asset Categories</b>						
34. Cash and balances due from depository institutions (Column A equals the sum of Schedule RC, items 1.a and 1.b)	RCFD 0010 3,102,355		RCFD B600 893,500	RCFD B601 2,208,855		RCFD B602 0 34.
35. Held-to-maturity securities	RCFD 1754 0	RCFD B603 0	RCFD B604 0	RCFD B605 0	RCFD B606 0	RCFD B607 0 35.
36. Available-for-sale securities	RCFD 1773 7,265,731	RCFD B608 238,600	RCFD B609 336,713	RCFD B610 6,484,386	RCFD B611 58,677	RCFD B612 147,355 36.
37. Federal funds sold and securities purchased under agreements to resell	RCFD C225 1,049,700		RCFD C063 0	RCFD C064 1,049,700		RCFD B520 0 37.
38. Loans and leases held for sale	RCFD 5369 54,557	RCFD B617 0	RCFD B618 0	RCFD B619 0	RCFD B620 0	RCFD B621 54,557 38.
39. Loans and leases, net of unearned income <sup>1</sup>	RCFD B528 26,066,251	RCFD B622 0	RCFD B623 118,887	RCFD B624 1,540,064	RCFD B625 7,163,657	RCFD B626 17,243,643 39.
40. LESS: Allowance for loan and lease losses	RCFD 3123 579,980	RCFD 3123 579,980				40.
41. Trading assets	RCFD 3545 308,701	RCFD B627 148,914	RCFD B628 1,031	RCFD B629 90,089	RCFD B630 4,624	RCFD B631 64,043 41.
42. All other assets <sup>2</sup>	RCFD B639 2,335,761	RCFD B640 359,558	RCFD B641 69,748	RCFD B642 57,802	RCFD B643 426	RCFD 5339 1,848,227 42.
43. Total assets (sum of items 34 through 42)	RCFD 2170 39,603,076	RCFD B644 167,092	RCFD 5320 1,419,879	RCFD 5327 11,430,896	RCFD 5334 7,227,384	RCFD 5340 19,357,825 43.

1 Include any allocated transfer risk reserve in column B.

2 Includes premises and fixed assets, other real estate owned, inve[ILLEGIBLE] and other assets.

Schedule RC-R—Continued

Dollar Amounts in Thousands	(Column A) Face Value or Notional Amount	Credit Conversion Factor	(Column B) Credit Equivalent Amount <sup>1</sup>	(Column C)	(Column D)	(Column E)	(Column F)
				Allocation by Risk Weight Category			
				0%	20%	50%	100%
<b>Derivatives and Off-Balance Sheet Items</b>							
44. Financial standby letters of credit	RCFD B546 2,409,207	1.00 or 12.5 <sup>2</sup>	RCFD B547 2,409,207	RCFD B548 0	RCFD B581 229,976	RCFD B582 0	RCFD B583 2,179,231 44.
45. Performance standby letters of credit	RCFD 3821 324,803	.50	RCFD B650 162,402	RCFD B651 0	RCFD B652 16,069	RCFD B653 0	RCFD B654 146,332 45.
46. Commercial and similar letters of credit	RCFD 3411 279,653	.20	RCFD B655 55,931	RCFD B656 713	RCFD B657 17,243	RCFD B658 0	RCFD B659 37,975 46.
47. Risk participations in bankers acceptances acquired by the reporting institution	RCFD 3429 63,084	1.00	RCFD B660 63,084	RCFD B661 0	RCFD B662 0		RCFD B663 63,084 47.
48. Securities lent	RCFD 3433 1,520,848	1.00	RCFD B664 1,520,848	RCFD B665 1,520,848	RCFD B666 0	RCFD B667 0	RCFD B668 0 48.
49. Retained recourse on small business obligations sold with recourse	RCFD A250 0	1.00	RCFD B669 0	RCFD B670 0	RCFD B671 0	RCFD B672 0	RCFD B673 0 49.
50. Recourse and direct credit substitutes (other than financial standby letters of credit) subject to the low-level exposure rule and residual interests subject to a dollar-for-dollar capital requirement	RCFD B541 0	12.50 <sup>3</sup>	RCFD B542 0				RCFD B543 0 50.
51. All other financial assets sold with recourse	RCFD B675 0	1.00	RCFD B676 0	RCFD B677 0	RCFD B678 0	RCFD B679 0	RCFD B680 0 51.
52. All other off-balance sheet liabilities	RCFD B681 0	1.00	RCFD B682 0	RCFD B683 0	RCFD B684 0	RCFD B685 0	RCFD B686 0 52.
53. Unused commitments with an original maturity exceeding one year	RCFD 3833 8,938,198	.50	RCFD B687 4,469,099	RCFD B688 0	RCFD B689 0	RCFD B690 0	RCFD B691 4,469,099 53.
54. Derivative contracts			RCFD A167 395,171	RCFD B693 0	RCFD B694 222,811	RCFD B695 172,360	54.

<sup>1</sup> Column A multiplied by credit conversion factor.

<sup>2</sup> For financial standby letters of credit to which the low-level exposure rule applies, use a credit conversion factor of 12.5 or an institution-specific factor. For other financial standby letters of credit, use a credit conversion factor of 1.00. See instructions for further information.

<sup>3</sup> Or institution-specific factor.

Schedule RC-R—Continued

Dollar Amounts in Thousands	(Column C)	(Column D)	(Column E)	(Column F)
	Allocation by Risk Weight Category			
	0%	20%	50%	100%
<b>Totals</b>	<b>RCFD B696</b>	<b>RCFD B697</b>	<b>RCFD B698</b>	<b>RCFD B699</b>
55. Total assets, derivatives, and off-balance sheet items by risk weight category (for each column, sum of items 43 through 54)	2,941,440	11,916,995	7,399,744	26,253,546
56. Risk weight factor	× 0%	× 20%	× 50%	× 100%
	<b>RCFD B700</b>	<b>RCFD B701</b>	<b>RCFD B702</b>	<b>RCFD B703</b>
57. Risk-weighted assets by risk weight category (for each column, item 55 multiplied by item 56)	0	2,383,399	3,699,872	26,253,546
				<b>RCFD 1651</b>
58. Market risk equivalent assets				0
				<b>RCFD B704</b>
59. Risk-weighted assets before deductions for excess allowance for loan and lease losses and allocated transfer risk reserve (sum of item 57, columns C through F, and item 58)				32,336,817
				<b>RCFD A222</b>
60. LESS: Excess allowance for loan and lease losses				175,770
				<b>RCFD 3128</b>
61. LESS: Allocated transfer risk reserve				0
				<b>RCFD A223</b>
62. Total risk-weighted assets (item 59 minus items 60 and 61)				32,161,047

Memoranda

Dollar Amounts in Thousands	RCFD					
1. Current credit exposure across all derivative contracts covered by the risk-based capital standards				8764	320,192	M.1.
	With a remaining maturity of					
	(Column A) One year or less	(Column B) Over one year through five years	(Column C) Over five years			
	<b>RCFD</b>	<b>RCFD</b>	<b>RCFD</b>			
2. Notional principal amounts of derivative contrac... <sup>1</sup>						
a. Interest rate contracts	3809	3,061,678	8766	8,293,308	8767	1,221,138
b. Foreign exchange contracts	3812	1,660,639	8769	71,208	8770	0
c. Gold contracts	8771	0	8772	0	8773	0
d. Other precious metals contracts	8774	0	8775	0	8776	0
e. Other commodity contracts	8777	0	8778	0	8779	0
f. Equity derivative contracts	A000	0	A001	0	A002	0

<sup>1</sup> Exclude foreign exchange contracts with an original maturity of 14 days or less and all futures contracts.



Union Bank of California, N. A.

Legal Title of Bank

FDIC Certificate Number 22826

Schedule RC-S—Servicing, Securitization, and Asset Sale Activities

Dollar Amounts in Thousands	(Column A) 1-4 Family Residential Loans	(Column B) Home Equity Lines	(Column C) Credit Card Receivables	(Column D) Auto Loans	(Column E) Other Consumer Loans	(Column F) Commercial and Industrial Loans	(Column G) All Other Loans and All Leases
<b>Bank Securitization Activities</b>							
1. Outstanding principal balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller-provided credit enhancements	RCFD B705 0	RCFD B706 0	RCFD B707 0	RCFD B708 0	RCFD B709 0	RCFD B710 0	RCFD B711 0
2. Maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements provided to structures reported in item 1 in the form of:							1.
a. Retained interest—only strips (included in Schedules RC-B or RC-F or in Schedule RC, item 5)	RCFD B712 0	RCFD B713 0	RCFD B714 0	RCFD B715 0	RCFD B716 0	RCFD B717 0	RCFD B718 0
b. Standby letters of credit, sub-ordinated securities, and other enhancements	RCFD B719 0	RCFD B720 0	RCFD B721 0	RCFD B722 0	RCFD B723 0	RCFD B724 0	RCFD B725 0
3. Reporting bank's unused commitments to provide liquidity to structures reported in item 1	RCFD B726 0	RCFD B727 0	RCFD B728 0	RCFD B729 0	RCFD B730 0	RCFD B731 0	RCFD B732 0
4. Past due loan amounts included in item 1:							3.
a. 30-89 days past due	RCFD B733 0	RCFD B734 0	RCFD B735 0	RCFD B736 0	RCFD B737 0	RCFD B738 0	RCFD B739 0
b. 90 days or more past due	RCFD B740 0	RCFD B741 0	RCFD B742 0	RCFD B743 0	RCFD B744 0	RCFD B745 0	RCFD B746 0
5. Charge-offs and recoveries on assets sold and securitized with servicing retained or with recourse or other seller-provided credit enhancements (calendar year-to-date):							4.a.
a. Charge-offs	RIAD B747 0	RIAD B748 0	RIAD B749 0	RIAD B750 0	RIAD B751 0	RIAD B752 0	RIAD B753 0
b. Recoveries	RIAD B754 0	RIAD B755 0	RIAD B756 0	RIAD B757 0	RIAD B758 0	RIAD B759 0	RIAD B760 0

**Schedule RC-S—Continued**

Dollar Amounts in Thousands	(Column A) 1-4 Family Residential Loans	(Column B) Home Equity Lines	(Column C) Credit Card Receivables	(Column D) Auto Loans	(Column E) Other Consumer Loans	(Column F) Commercial and Industrial Loans	(Column G) All Other Loans and All Leases	
6. Amount of ownership (or seller's) interests carried as:		<u>RCFD B761</u>	<u>RCFD B762</u>			<u>RCFD B763</u>		
a. Securities (included in Schedule RC-B or in Schedule RC, item 5)		0	0			0	6.a.	
		<u>RCFD B50</u>	<u>RCFD B501</u>			<u>RCFD B502</u>		
b. Loans (included in Schedule RC-C)		0	0			0	6.b.	
7. Past due loan amounts included in interests reported in item 6.a:		<u>RCFD B764</u>	<u>RCFD B765</u>			<u>RCFD B766</u>		
a. 30– 89 days past due		0	0			0	7.a.	
		<u>RCFD B767</u>	<u>RCFD B768</u>			<u>RCFD B769</u>		
b. 90 days or more past due		0	0			0	7.b.	
8. Charge-offs and recoveries on loan amounts included in interests reported in item 6.a (calendar year-to-date):		<u>RIAD B770</u>	<u>RIAD B771</u>			<u>RIAD B772</u>		
a. Charge-offs		0	0			0	8.a.	
		<u>RIAD B773</u>	<u>RIAD B774</u>			<u>RIAD B775</u>		
b. Recoveries		0	0			0	8.b.	
<b>For Securitization Facilities Sponsored By or Otherwise Established By Other Institutions</b>		<u>RCFD B776</u>	<u>RCFD B777</u>	<u>RCFD B778</u>	<u>RCFD B779</u>	<u>RCFD B780</u>	<u>RCFD B781</u>	<u>RCFD B782</u>
9. Maximum amount of credit exposure arising from credit enhancements provided by the reporting bank to other institutions' securitization structures in the form of standby letters of credit, purchased subordinated securities, and other enhancements		0	0	0	0	0	0	0 9.
		<u>RCFD B783</u>	<u>RCFD B784</u>	<u>RCFD B785</u>	<u>RCFD B786</u>	<u>RCFD B787</u>	<u>RCFD B788</u>	<u>RCFD B789</u>
10. Reporting bank's unused commitments to provide liquidity to other institutions' securitization structures		0	0	0	0	0	0	0 10.

**Schedule RC-S—Continued**

Dollar Amounts in Thousands	(Column A) 1- 4 Family Residential Loans	(Column B) Home Equity Lines	(Column C) Credit Card Receivables	(Column D) Auto Loans	(Column E) Other Consumer Loans	(Column F) Commercial and Industrial Loans	(Column G) All Other Loans and All Leases
<b>Bank Asset Sales</b>							
	RCFD B790	RCFD B791	RCFD B792	RCFD B793	RCFD B794	RCFD B795	RCFD B796
11. Assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank	0	0	0	0	0	0	0
	RCFD B797	RCFD B798	RCFD B799	RCFD B800	RCFD B801	RCFD B802	RCFD B803
12. Maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements provided to assets reported in item 11	0	0	0	0	0	0	0

**Memoranda**

Dollar Amounts in Thousands	RCFD		
1. Small business obligations transferred with recourse under Section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994:			
a. Outstanding principal balance	A249	0	M.1.a.
b. Amount of retained recourse on these obligations as of the report date	A250	0	M.1.b.
2. Outstanding principal balance of assets serviced for others:			
a. 1—4 family residential mortgages serviced with recourse or other servicer-provided credit enhancements	B804	0	M.2.a.
b. 1—4 family residential mortgages serviced with no recourse or other servicer-provided credit enhancem[ILLEGIBLE]	B805	624,727	M.2.b.
c. Other financial assets <sup>1</sup>	A591	0	M.2.c.
3. Asset-backed commercial paper conduits:			
a. Maximum amount of credit exposure arising from credit enhancements provided to conduit structures in the form of standby letters of credit, subordinated securities, and other enhancements:			
(1) Conduits sponsored by the bank, a bank affiliate, or the bank's holding company	B806	0	M.3.a.(1)
(2) Conduits sponsored by other unrelated institutions	B807	0	M.3.a.(2)
b. Unused commitments to provide liquidity to conduit structures:			
(1) Conduits sponsored by the bank, a bank affiliate, or the bank's holding company	B808	0	M.3.b.(1)
(2) Conduits sponsored by other unrelated institutions	B809	0	M.3.b.(2)

<sup>1</sup> Memorandum item 2.c is to be completed if the principal balance of other financial assets serviced for others is more than \$10 million.

Union Bank of California, N. A.

Legal Title of Bank

FDIC Certificate Number 22826

### Schedule RC-T—Fiduciary and Related Services

Items 12 through 23 and Memorandum item 4 will not be made available to the public on an individual institution basis.

	RCFD	Yes	No	
1. Does the institution have fiduciary powers? (If "NO," do not complete Schedule RC-T.)	A345	X		1.
	RCFD	Yes	No	
2. Does the institution exercise the fiduciary powers it has been granted?	A346	X		2.
	RCFD	Yes	No	
3. Does the institution have any fiduciary or related activity (in the form of assets or accounts)? (If "NO," do not complete the rest of Schedule RC-T.)	B867	X		3.

If the answer to item 3 is "YES," complete the applicable items of Schedule RC-T, as follows:

Institutions with total fiduciary assets (item 9, sum of columns A and B) greater than \$250 million (as of the preceding December 31) or with gross fiduciary and related services income greater than 10% of revenue (net interest income plus noninterest income) for the preceding calendar year must complete:

- Items 4 through 19.a quarterly,
- Items 20 through 23 annually with the December report, and
- Memorandum items 1 through 4 annually with the December report.

Institutions with total fiduciary assets (item 9, sum of columns A and B) greater than \$100 million but less than or equal to \$250 million (as of the preceding December 31) that do not meet the fiduciary income test for quarterly reporting must complete:

- Items 4 through 23 annually with the December report, and
- Memorandum items 1 through 4 annually with the December report.

Institutions with total fiduciary assets (item 9, sum of columns A and B) of \$100 million or less (as of the preceding December 31) that do not meet the fiduciary income test for quarterly reporting must complete:

- Items 4 through 11 annually with the December report, and
- Memorandum items 1 through 3 annually with the December report.

Dollar Amounts in Thousands	(Column A) Managed Assets	(Column B) Non-Managed Assets	(Column C) Number of Managed Accounts	(Column D) Number of Non- Managed Accounts	
<b>FIDUCIARY AND RELATED ASSETS</b>					
	RCFD B868	RCFD B869	RCFD B870	RCFD B871	
4. Personal trust and agency accounts	4,125,141	680,199	4,621	235	4.
5. Retirement related trust and agency accounts:	RCFD B872	RCFD B873	RCFD B874	RCFD B875	
a. Employee benefit-defined contribution	2,126,583	4,088,014	94	2,480	5.a.
	RCFD B876	RCFD B877	RCFD B878	RCFD B879	
b. Employee benefit-defined benefit	1,645,261	21,472,199	92	966	5.b.
	RCFD B880	RCFD B881	RCFD B882	RCFD B883	
c. Other retirement accounts	409,339	3,352,758	321	2,091	5.c.
	RCFD B884	RCFD B885	RCFD C001	RCFD C002	
6. Corporate trust and agency accounts	32,064	15,793,669	7	1,196	6.
	RCFD B886		RCFD B888		
7. Investment management agency accounts	2,829,024		336		7.
	RCFD B890	RCFD B891	RCFD B892	RCFD B893	
8. Other fiduciary accounts	63,670	154,100	3	47	8.

**Schedule RC-T—Continued**

	(Column A) Managed Assets	(Column B) Non-Managed Assets	(Column C) Number of Managed Accounts	(Column D) Number of Non-Managed Accounts
<b>Dollar Amounts in Thousands</b>				
FIDUCIARY AND RELATED ASSETS—Continued				
	RCFD B894	RCFD B895	RCFD B896	RCFD B897
9. Total fiduciary accounts (sum of items 4 through 8)	11,231,082	45,540,939	5,474	7,015
		RCFD B898		RCFD B899
10. Custody and safekeeping accounts		74,140,512		6,070
	RCFN B900	RCFN B901	RCFN B902	RCFN B903
11. Fiduciary accounts held in foreign offices (included in items 9 and 10)	0	0	0	0

	RIAD	
<b>Dollar Amounts in Thousands</b>		
FIDUCIARY AND RELATED SERVICES INCOME		
12. Personal trust and agency accounts	B904	31,342
13. Retirement related trust and agency accounts:		
a. Employee benefit-defined contribution	B905	21,881
b. Employee benefit-defined benefit	B906	18,615
c. Other retirement accounts	B907	1,325
14. Corporate trust and agency accounts	A479	7,842
15. Investment management agency accounts	B908	6,549
16. Other fiduciary accounts	A480	8
17. Custody and safekeeping accounts	B909	26,422
18. Other fiduciary and related services income	B910	5,856
19. Total gross fiduciary and related services income (sum of items 12 through 18) (must equal Schedule RI, item 5.a)	4070	119,840
a. Fiduciary and related services income— foreign offices (included in item 19)	B912	0
20. Less: Expenses	C058	106,189
21. Less: Net losses from fiduciary and related services	A488	899
22. Plus: Intracompany income credits for fiduciary and related services	B911	0
23. Net fiduciary and related services income	A491	12,752

	Managed Assets		
<b>Memoranda</b>			
<b>Dollar Amounts in Thousands</b>			
	RCFD		
1. Managed assets held in personal trust and agency accounts:			
a. Noninterest-bearing deposits	B913	0	M.1.a.
b. Interest-bearing deposits	B914	6,034	M.1.b.
c. U.S. Treasury and U.S. Government agency obligations	B915	246,613	M.1.c.
d. State, county and municipal obligations	B916	701,843	M.1.d.
e. Money market mutual funds	B917	456,073	M.1.e.
f. Other short-term obligations	B918	20,427	M.1.f.
g. Other notes and bonds	B919	275,812	M.1.g.
h. Common and preferred stocks	B920	2,197,177	M.1.h.
i. Real estate mortgages	B921	0	M.1.i.
j. Real estate	B922	22,133	M.1.j.
k. Miscellaneous assets	B923	199,029	M.1.k.
l. Total managed assets held in personal trust and agency accounts (sum of Memorandum items 1.a through 1.k) (must equal Schedule RC-T, item 4, column A)	B868	4,125,141	M.1.l.

**Schedule RC-T—Continued**

Memoranda—Continued	(Column A) Number of Issues		(Column B) Principal Amount Outstanding	
	RCFD		RCFD B928	
2. Corporate trust and agency accounts:				
a. Corporate and municipal trusteeships	B927	761	15,018,679	M.2.a.
b. Transfer agent, registrar, paying agent, and other corporate agency	B929	442		M.2.b.

Dollar Amounts in Thousands	(Column A) Number of Funds		(Column B) Market Value of Fund Assets	
	RCFD		RCFD	
3. Collective investment funds and common trust funds:				
a. Domestic equity	B931	17	B932	167,805 M.3.a.
b. International/Global equity	B933	0	B934	0 M.3.b.
c. Stock/Bond blend	B935	4	B936	16,291 M.3.c.
d. Taxable bond	B937	3	B938	150,393 M.3.d.
e. Municipal bond	B939	2	B940	51,742 M.3.e.
f. Short term investments/Money market	B941	2	B942	590,189 M.3.f.
g. Specialty/Other	B943	1	B944	582,304 M.3.g.
h. Total collective investment funds (sum of Memorandum items 3.a through 3.g)	B945	29	B946	1,558,724 M.3.h.

Dollar Amounts in Thousands	(Column A) Gross Losses Managed Accounts		(Column B) Gross Losses Non-Managed Accounts		(Column C) Recoveries	
	RIAD		RIAD		RIAD	
4. Fiduciary settlements, surcharges, and other losses:						
a. Personal trust and agency accounts	B947	62	B948	0	B949	0 M.4.a.
b. Retirement related trust and agency accounts	B950	18	B951	432	B952	2 M.4.b.
c. Investment management agency accounts	B953	0	B954	0	B955	0 M.4.c.
d. Other fiduciary accounts and related services	B956	0	B957	489	B958	100 M.4.d.
e. Total fiduciary settlements, surcharges, and other losses (sum of Memorandum items 4.a through 4.d) (sum of columns A and B minus column C must equal Schedule RC-T, item 21)	B959	80	B960	921	B961	102 M.4.e.

Person to whom questions about Schedule RC-T—Fiduciary and Related Services should be directed:

Carmen Wong

Name and Title (TEXT B962)

carmen.wong\_at\_uboc.com

E-mail Address (TEXT B926)

415-765-2326

Telephone: Area code/phone number/extension (TEXT B963)

415-765-2230

FAX: Area code/phone number (TEXT B964)

**Optional Narrative Statement Concerning the Amounts  
Reported in the Reports of Condition and Income**

at close of business on December 31, 2002

Union Bank of California, N. A.  
Legal Title of Bank

San Francisco,  
City

CA  
State

The management of the reporting bank m... *if it wishes* , submit a brief narrative statement on the amounts reported in the Reports of Condition and Income. This optional statement will be made available to the public, along with the publicly available data in the Reports of Condition and Income, in response to any request for individual bank report data. However, the information reported in Schedule RC-T, items 12 through 23 and Memorandum item 4, is regarded as confidential and will not be released to the public. BANKS CHOOSING TO SUBMIT THE NARRATIVE STATEMENT SHOULD ENSURE THAT THE STATEMENT DOES NOT CONTAIN THE NAMES OR OTHER IDENTIFICATIONS OF INDIVIDUAL BANK CUSTOMERS, REFERENCES TO THE AMOUNTS REPORTED IN THE CONFIDENTIAL ITEMS IN SCHEDULE RC-T, OR ANY OTHER INFORMATION THAT THEY ARE NOT WILLING TO HAVE MADE PUBLIC OR THAT WOULD COMPROMISE THE PRIVACY OF THEIR CUSTOMERS. Banks choosing not to make a statement may check the "No comment" box below and should make no entries of any kind in the space provided for the narrative statement; i.e., DO NOT enter in this space such phrases as "No statement," "Not applicable," "N/A," "No comment," and "None."

The optional statement must be entered on this sheet. The statement should not exceed 100 words. Further, regardless of the number of words, the statement must not exceed 750 characters, including punctuation, indentation, and standard spacing between words and sentences. If any submission should exceed 750 characters, as defined, it will be truncated at 750 characters with no notice to the submitting bank and the truncated statement will

appear as the bank's statement both on agency computerized records and in computer-file releases to the public.

All information furnished by the bank in the narrative statement must be accurate and not misleading. Appropriate efforts shall be taken by the submitting bank to ensure the statement's accuracy. The statement must be signed, in the space provided below, by a senior officer of the bank who thereby attests to its accuracy.

If, subsequent to the original submissi... *material* changes are submitted for the data reported in the Reports of Condition and Income, the existing narrative statement will be deleted from the

a statement, under signature, appropriate to the amended data.

The optional narrative statement will appear in agency records and in release to the public exactly as submitted (or amended as described in the preceding paragraph) by the management of the bank (except for the truncation of statements exceeding the 750-character limit described above). THE STATEMENT WILL NOT BE EDITED OR SCREENED IN ANY WAY BY THE SUPERVISORY AGENCIES FOR ACCURACY OR RELEVANCE. DISCLOSURE OF THE STATEMENT SHALL NOT SIGNIFY THAT ANY FEDERAL SUPERVISORY AGENCY HAS VERIFIED OR CONFIRMED THE ACCURACY OF THE INFORMATION CONTAINED THERE IN. A STATEMENT TO THIS EFFECT WILL APPEAR ON ANY PUBLIC RELEASE OF THE OPTIONAL STATEMENT SUBMITTED BY THE MANAGEMENT OF THE REPORTING BANK.

No comment  (RCON 6979)

*BANK MANAGEMENT STATEMENT (please type or print clearly):*  
(TEXT 6980)

\_\_\_\_\_  
*Signature of Executive Officer of Bank*

\_\_\_\_\_  
*Date of Signature*

**THIS PAGE IS TO BE COMPLETED BY ALL BANKS**

NAME AND ADDRESS OF BANK  
 Union Bank of California, N.A.  
 400 California Street  
 San Francisco CA 94104-1302

OMB No. For OCC: 1557-0081  
 OMB No. For FDIC: 3064-0052  
 OMB No. for Federal Reserve: 7100-0036  
 Expiration Date: 3/31/2005

SPECIAL REPORT  
 (Dollar Amount in Thousands)

**CLOSE OF BUSINESS DATE**  
 12/3/02

**FDIC Certificate Number**  
 22826

**LOANS TO EXECUTIVE OFFICERS** (Complete as of each Call Report Date)

The following information is required by Public Laws 90-44 and 102-242, but does not constitute a part of the Report of Condition. With each Report of Condition, these laws require all banks to furnish a report of all loans or other extensions of credit to their executive officers made **since the date of the previous Report of Condition**. Data regarding individual loans or other extensions of credit are not required. If no such loans or other extensions of credit were made during the period, insert 'none' against subitem (a). *(Exclude the first \$15,000 of indebtedness of each executive officer under bank credit card plan)*. See Sections 215.2 and 215.3 of Title 12 of the Code of Federal Regulations (Federal Reserve Board Regulation O) for the definitions of "executive officer" and "extension of credit", respectively. Exclude loans and other extensions of credit to directors and principal shareholders who are not executive officers.

a. Number of loans made to executive officers since the previous Call Report date			RCFD			
			3561			0 a.
b. Total dollar amount of above loans (in thousand of dollars)			RCFD			
			3562			0 b.
c. Range of Interest charged on above loans (example: 9% = 9.75)			RCFD			
			7701	0.00	% to	RCFD
						7702 0.00 % c.

**SIGNATURE AND TITLE OF OFFICER AUTHORIZED TO SIGN REPORT**

/s/ DAVID A. ANDERSON  
 David A. Anderson, SVP / Controller

DATE (Month, Day, Year)  
 February 6, 2003

**Emergency Contact Information**

This information is being requested so the Agencies can distribute critical, time sensitive information to emergency contacts at banks. Please provide primary contact information for a senior official of the bank who has decision-making authority. Also provide information for a secondary contact if available. Enter "none" for the contact's e-mail address or fax number if not available. Emergency contact information is for the confidential use of the Agencies and will not be released to the public.

**Primary Contact**

Carmen Wong  
 \_\_\_\_\_  
 Name (TEXT C366)

Vice President  
 \_\_\_\_\_  
 Title (TEXT C367)

carmen.wong\_at\_uboc.com  
 \_\_\_\_\_  
 E-mail Address (TEXT C368)

(415) 765-2326  
 \_\_\_\_\_  
 Telephone: Area code/phone number/extension (TEXT C369)

(415) 765-2230  
 \_\_\_\_\_  
 FAX: Area code/phone number (TEXT C370)

**Secondary Contact**

Philip Ngai  
 \_\_\_\_\_  
 Name (TEXT C371)

Assistant Vice President  
 \_\_\_\_\_  
 Title (TEXT C372)

philip.ngai\_at\_uboc.com  
 \_\_\_\_\_  
 E-mail Address (TEXT C373)

(415) 765-2328  
 \_\_\_\_\_  
 Telephone: Area code/phone number/extension (TEXT C374)

(415) 765-2230  
 \_\_\_\_\_  
 FAX: Area code/phone number (TEXT C375)



**Letter of Transmittal**  
**to Tender for Exchange**  
**10¼% Senior Notes Due 2013**  
**of**  
**STAR GAS PARTNERS, L.P.**  
**and**  
**STAR GAS FINANCE COMPANY**

Pursuant to the Prospectus dated \_\_\_\_\_, 2003

**THIS OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON \_\_\_\_\_, 2003 UNLESS EXTENDED BY STAR GAS PARTNERS, L.P. AND STAR GAS FINANCE COMPANY IN THEIR SOLE DISCRETION (THE "EXPIRATION DATE"). TENDERS OF NOTES MAY BE WITHDRAWN AT ANY TIME PRIOR TO THE EXPIRATION DATE.**

*The Exchange Agent for the Exchange Offer is:*

**Union Bank of California, N.A.**

*By Mail:*

Union Bank of California, N.A.  
 Corporate Trust Department  
 120 South San Pedro Street  
 Suite 410  
 Los Angeles, CA 90012

*By Facsimile:*

Union Bank of California, N.A.  
 Corporate Trust Department  
 Fax No. 213-972-5695

*By Hand:*

Union Bank of California, N.A.  
 Corporate Trust Department  
 120 South San Pedro Street  
 Suite 410  
 Los Angeles, CA 90012

**DELIVERY OF THIS LETTER OF TRANSMITTAL TO AN ADDRESS, OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION OF INSTRUCTIONS VIA FACSIMILE TO A NUMBER OTHER THAN AS LISTED ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.**

**HOLDERS WHO WISH TO BE ELIGIBLE TO RECEIVE SERIES B NOTES PURSUANT TO THE EXCHANGE OFFER MUST VALIDLY TENDER (AND NOT WITHDRAW) THEIR SERIES A NOTES TO THE EXCHANGE AGENT ON OR PRIOR TO THE EXPIRATION DATE.**

This Letter of Transmittal is to be used by holders ("Holders") of 10¼% Series A Senior Notes due 2011 (the "Series A Notes") of Star Gas Partners, L.P. and Star Gas Finance Company (together, the "Issuers") to receive 10¼% Series B Senior Notes due 2011 (the "Series B Notes") if: (i) certificates representing Series A Notes are to be physically delivered to the Exchange Agent herewith by such Holders; (ii) tender of Series A Notes is to be made by book-entry transfer to the Exchange Agent's account at The Depository Trust Company ("DTC") pursuant to the procedures set forth under the caption "The Exchange Offer—Procedures for Tendering Series A Notes Book-Entry Delivery Procedures" in the Prospectus dated \_\_\_\_\_, 2003, to which this Letter of Transmittal is annexed (the "Prospectus"); or (iii) tender of Series A Notes is to be made according to the guaranteed delivery procedures set forth under the caption "The Exchange Offer—Procedures for Tendering Series A Notes—Guaranteed Delivery" in the Prospectus, and, in each case, instructions are not being transmitted through the DTC Automated Tender Offer Program ("ATOP"). The undersigned hereby acknowledges receipt of the Prospectus. All capitalized terms used herein and not defined shall have the meanings ascribed to them in the Prospectus.

Holders of Series A Notes that are tendering by book-entry transfer to the Exchange Agent's account at DTC can execute the tender through ATOP, for which the transaction will be eligible. DTC participants that are accepting the exchange offer as set forth in the Prospectus and this Letter of Transmittal (together, the "Exchange Offer") must transmit their acceptance to DTC which will edit and verify the acceptance and execute a book-entry delivery to the Exchange Agent's account at DTC. DTC will then send an Agent's Message to the Exchange Agent for its acceptance. Delivery of the Agent's Message by DTC will satisfy the terms of the Offer as to execution and delivery of a Letter of Transmittal by the participant identified in the Agent's Message. DTC participants may also accept the Exchange Offer by submitting a notice of guaranteed delivery through ATOP.

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**DELIVERY OF DOCUMENTS TO DTC DOES NOT CONSTITUTE DELIVERY TO THE EXCHANGE AGENT.**

If a Holder desires to tender Series A Notes pursuant to the Exchange Offer and time will not permit this Letter of Transmittal, certificates representing such Series A Notes and any other required document to reach the Exchange Agent, or the procedures for book-entry transfer cannot be completed on or prior to the Expiration Date, then such Holder must tender such Series A Notes according to the guaranteed delivery procedures set forth in the Prospectus under the caption "The Exchange Offer—Procedures for Tendering Series A Notes—Guaranteed Delivery." See Instruction 2.

The undersigned should complete, execute and deliver this Letter of Transmittal to indicate the action the undersigned desires to take with respect to the Exchange Offer.

**TENDER OF SERIES A NOTES**

- CHECK HERE IF TENDERED SERIES A NOTES ARE ENCLOSED HEREWITH.
- CHECK HERE IF TENDERED SERIES A NOTES ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER MADE TO THE ACCOUNT MAINTAINED BY THE EXCHANGE AGENT WITH DTC AND COMPLETE THE FOLLOWING:

Name of Tendering Institution: \_\_\_\_\_

Account Number: \_\_\_\_\_

Transaction Code Number: \_\_\_\_\_

- CHECK HERE IF TENDERED SERIES A NOTES ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE EXCHANGE AGENT AND COMPLETE THE FOLLOWING:

Name(s) of Registered Holder(s): \_\_\_\_\_

Window Ticket Number (if any): \_\_\_\_\_

Date of Execution of Notice of Guaranteed Delivery: \_\_\_\_\_

Name of Eligible Institution that Guaranteed Delivery: \_\_\_\_\_



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**NOTE: SIGNATURES MUST BE PROVIDED BELOW.  
PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.**

Ladies and Gentlemen:

The undersigned hereby tenders to Star Gas Partners, L.P. and Star Gas Finance Company (together, the “Issuers”), upon the terms and subject to the conditions set forth in their Prospectus dated \_\_\_\_\_, 2003 (the “Prospectus”), receipt of which is hereby acknowledged, and in accordance with this Letter of Transmittal (which together with the Prospectus constitutes the “Exchange Offer”), the principal amount of Series A Notes indicated in the foregoing table entitled “Description of Series A Notes” under the column heading “Principal Amount Tendered.” The undersigned represents that it is duly authorized to tender all of the Series A Notes tendered hereby which it holds for the account of beneficial owners of such Series A Notes (each, a “Beneficial Owner”) and to make the representations and statements set forth herein on behalf of each such Beneficial Owner.

Subject to and effective upon the acceptance for purchase of the principal amount of Series A Notes tendered herewith in accordance with the terms and subject to the conditions of the Exchange Offer, the undersigned hereby sells, assigns and transfers to, or upon the order of, the Issuers, all right, title and interest in and to all of the Series A Notes tendered hereby. The undersigned hereby irrevocably constitutes and appoints the Exchange Agent the true and lawful agent and attorney-in-fact of the undersigned (with full knowledge that the Exchange Agent also acts as the agent of the Issuers) with respect to such Series A Notes, with full powers of substitution and revocation (such power of attorney being deemed to be an irrevocable power coupled with an interest) to (i) present such Series A Notes and all evidences of transfer and authenticity to, or transfer ownership of, such Series A Notes on the account books maintained by DTC to, or upon the order of, the Issuers, (ii) present such Series A Notes for transfer of ownership on the books of the Issuers, and (iii) receive all benefits and otherwise exercise all rights of beneficial ownership of such Series A Notes, all in accordance with the terms and conditions of the Exchange Offer as described in the Prospectus.

By accepting the Exchange Offer, the undersigned hereby represents and warrants as follows:

(1) The Series B Notes to be acquired by the undersigned and any Beneficial Owner in connection with the Exchange Offer are being acquired by the undersigned and any such Beneficial Owner in the ordinary course of business of the undersigned and any such Beneficial Owner.

(2) The undersigned and each Beneficial Owner are not participating, do not intend to participate, and have no arrangement or understanding with any person to participate, in any distribution of the Series B Notes.

(3) Except as indicated below, neither the undersigned nor any Beneficial Owner is an “affiliate,” as defined in Rule 405 under the Securities Act of 1933, as amended (together with the rules and regulations promulgated thereunder, the “Securities Act”), of the Issuers.

(4) The undersigned and each Beneficial Owner acknowledge and agree that (i) any person participating in the Exchange Offer with the intention or for the purpose of distributing the Series B Notes must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale of the Series B Notes acquired by such person with a registration statement containing the selling securityholder information required by Item 507 of Regulation S-K of the Securities and Exchange Commission (the “SEC”) and cannot rely on the interpretation of the Staff of the SEC set forth in the no-action letters that are noted in the section of the Prospectus entitled “The Exchange Offer—Registration Rights” and (ii) any broker-dealer that pursuant to the Exchange Offer receives Series B Notes for its own account in exchange for Series A Notes which it acquired for its own account as a result of market-making activities or other trading activities must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Series B Notes.

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If the undersigned is a broker-dealer that will receive Series B Notes for its own account in exchange for Series A Notes that were acquired as the result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus in connection with any resale of such Series B Notes. By so acknowledging and by delivering a prospectus, a broker-dealer shall not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act.

The undersigned understands it may withdraw any tenders of Series A Notes by written notice of withdrawal received by the Exchange Agent at any time prior to the Expiration Date in accordance with the Prospectus. In the event of a termination of the Exchange Offer, the Series A Notes tendered pursuant to the Exchange Offer will be returned to the tendering Holders promptly (or, in the case of Series A Notes tendered by book-entry transfer, such Series A Notes will be credited to the account maintained at DTC from which such Series A Notes were delivered). If the Issuers make a material change in the terms of the Exchange Offer or the information concerning the Exchange Offer or waive a material condition of such Exchange Offer, the Issuers will disseminate additional Exchange Offer materials and extend such Exchange Offer, to the extent required by law.

The undersigned understands that the tender of Series A Notes pursuant to any of the procedures set forth in the Prospectus and in the instructions hereto will constitute the undersigned’s acceptance of the terms and conditions of the Exchange Offer. The Issuers’ acceptance for exchange of Series A Notes tendered pursuant to any of the procedures described in the Prospectus will constitute a binding agreement between the undersigned and the Issuers in accordance with the terms and subject to the conditions of the Exchange Offer. For purposes of the Exchange Offer, the undersigned understands that validly tendered Series A Notes (or defectively tendered Series A Notes if the Issuers have waived such defect) will be deemed to have been accepted by the Issuers if, as and when the Issuers give oral or written notice thereof to the Exchange Agent.

The undersigned hereby represents and warrants that the undersigned has full power and authority to tender, sell, assign and transfer the Series A Notes tendered hereby, and that when such tendered Series A Notes are accepted for purchase by the Issuers, the Issuers will acquire good title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim or right. The undersigned and each Beneficial Owner will, upon request, execute and deliver any additional documents deemed by the Exchange Agent or by the Issuers to be necessary or desirable to complete the sale, assignment and transfer of the Series A Notes tendered hereby.

All authority conferred or agreed to be conferred by this Letter of Transmittal shall not be affected by and shall survive the death or incapacity of the undersigned and any Beneficial Owner, and any obligation of the undersigned or any Beneficial Owner hereunder shall be binding upon the heirs, executors, administrators, trustees in bankruptcy, personal and legal representatives, successors and assigns of the undersigned and any such Beneficial Owner.

The undersigned understands that the delivery and surrender of any Series A Note is not effective, and the risk of loss of the Series A Notes does not pass to the Exchange Agent or the Issuers, until receipt by the Exchange Agent of this Letter of Transmittal, or a manually signed facsimile hereof, properly completed and duly executed, together with all accompanying evidences of authority and any other required documents in form satisfactory to the Issuers. All questions as to form of all documents and the validity (including time of receipt) and acceptance of tenders and withdrawals of Series A Notes will be determined by the Issuers, in their discretion, which determination shall be final and binding.

Unless otherwise indicated herein under “Special Issuance Instructions,” the undersigned hereby requests that any Series A Notes representing principal amounts not tendered or not accepted for exchange be issued in the name(s) of the undersigned (and in the case of Series A Notes tendered by book-entry transfer, by credit to the account of DTC), and Series B Notes issued in exchange for Series A Notes pursuant to the Exchange Offer be issued to the undersigned. Similarly, unless otherwise indicated herein under “Special Delivery Instructions,”

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the undersigned hereby requests that any Series A Note representing principal amounts not tendered or not accepted for exchange and Series B Notes issued in exchange for Series A Notes pursuant to the Exchange Offer be delivered to the undersigned at the address shown below the undersigned. In the event that either or both of the "Special Issuance Instructions" box and "Special Delivery Instructions" box are completed, the undersigned hereby requests that any Series A Notes representing principal amounts not tendered or not accepted for purchase be issued in the name(s) of and certificates for such Series A Notes be delivered to, and Series B Notes issued in exchange for Series A Notes pursuant to the Exchange Offer be issued in the name(s) of, and be delivered to, the person(s) at the address(es) so indicated, as applicable. The undersigned recognizes that the Issuers have no obligation pursuant to the "Special Issuance Instructions" box or "Special Delivery Instructions" box to transfer any Series A Notes from the name of the registered Holder(s) thereof if the Issuers do not accept for exchange any of the principal amount of such Series A Notes so tendered.

- CHECK HERE IF YOU OR ANY BENEFICIAL OWNER FOR WHOM YOU HOLD SERIES A NOTES IS AN AFFILIATE OF THE ISSUERS.
- CHECK HERE IF YOU OR ANY BENEFICIAL OWNER FOR WHOM YOU HOLD SERIES A NOTES TENDERED HEREBY IS A BROKER-DEALER WHO ACQUIRED SUCH NOTES DIRECTLY FROM THE ISSUERS OR AN AFFILIATE OF THE ISSUERS.
- CHECK HERE AND COMPLETE THE LINES BELOW IF YOU OR ANY BENEFICIAL OWNER FOR WHOM YOU HOLD SERIES A NOTES TENDERED HEREBY IS A BROKER-DEALER WHO ACQUIRED SUCH NOTES IN MARKET-MAKING OR OTHER TRADING ACTIVITIES. IF THIS BOX IS CHECKED, THE ISSUERS WILL SEND 10 ADDITIONAL COPIES OF THE PROSPECTUS AND 10 COPIES OF ANY AMENDMENTS OR SUPPLEMENTS THERETO TO YOU OR SUCH BENEFICIAL OWNER AT THE ADDRESS SPECIFIED IN THE FOLLOWING LINES.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

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**SPECIAL ISSUANCE INSTRUCTIONS**  
(See Instructions 1, 5, 6 and 7)

To be completed **IF AND ONLY IF** Series A Notes in a principal amount not tendered or not accepted for exchange are to be issued in the name of, or Series B Notes are to be issued in the name of, someone other than the person(s) whose signature(s) appear(s) within this Letter of Transmittal or issued to an address different from that shown in the box entitled "Description of Series A Notes" within this Letter of Transmittal.

Issue:  Series A Notes  Series B Notes  
(check as applicable)

Name:

\_\_\_\_\_  
(Please Print)

Address:

\_\_\_\_\_  
(Please Print)

\_\_\_\_\_  
(Zip Code)

\_\_\_\_\_  
(Tax Identification or Social Security Number)  
(See Substitute Form W-9 herein)

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**SPECIAL DELIVERY INSTRUCTIONS**  
(See Instructions 1, 5, 6 and 7)

To be completed **IF AND ONLY IF** Series A Notes in a principal amount not tendered or not accepted for exchange or Series B Notes are to be sent to someone other than the person(s) whose signature(s) appear(s) within this Letter of Transmittal or to an address different from that shown in the box entitled "Description of Series A Notes" within this Letter of Transmittal.

Issue:  Series A Notes  Series B Notes  
(check as applicable)

Name:

\_\_\_\_\_  
(Please Print)

Address:

\_\_\_\_\_  
(Please Print)

\_\_\_\_\_  
(Zip Code)

\_\_\_\_\_  
(Tax Identification or Social Security Number)  
(See Substitute Form W-9 herein)

\_\_\_\_\_  
Please Sign Here  
\_\_\_\_\_  
\_\_\_\_\_

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(TO BE COMPLETED BY ALL TENDERING HOLDERS OF SERIES A NOTES REGARDLESS OF WHETHER SERIES A NOTES ARE BEING PHYSICALLY DELIVERED HEREWITH)

This Letter of Transmittal must be signed by each registered Holder exactly as such Holder's name appears on certificate(s) for Series A Notes or, if tendered by a participant in DTC, exactly as such participant's name appears on a security position listing as owner of Series A Notes, or by the person(s) authorized to become registered Holder(s) by endorsements and documents transmitted herewith. If the signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, please set forth full title and see Instruction 5.

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**Signature(s) of Registered Holder(s) or Authorized Signatory**  
(See guarantee requirement below)

Dated: \_\_\_\_\_

Name(s): \_\_\_\_\_  
(Please Print)

Capacity (Full Title): \_\_\_\_\_

Address: \_\_\_\_\_  
(Include Zip Code)

Area Code and Telephone No.: \_\_\_\_\_

Tax Identification or Social Security Number: \_\_\_\_\_

**COMPLETE ACCOMPANYING SUBSTITUTE FORM W-9**

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**Signature Guarantee**  
(If Required – See Instructions 1 and 5)

Authorized Signature: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

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(Place Seal Here)



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**INSTRUCTIONS  
FORMING PART OF THE TERMS AND CONDITIONS OF THE EXCHANGE OFFER**

1. **Signature Guarantees.** Signatures of this Letter of Transmittal must be guaranteed by a recognized member of the Medallion Signature Guarantee Program or by any other “eligible guarantor institution,” as such term is defined in Rule 17Ad-15 promulgated under the Exchange Act (each of the foregoing, an “Eligible Institution”), unless the Series A Notes tendered hereby are tendered (i) for the account of an Eligible Institution, or (ii) by a registered Holder of Series A Notes (or by a participant in DTC whose name appears on a security position listing as the owner of such Series A Notes) that has not completed either the box entitled “Special Issuance Instructions” or the box entitled “Special Delivery Instructions” on this Letter of Transmittal. If (x) the Series A Notes are registered in the name of a person other than the signer of this Letter of Transmittal, or (y) Series A Notes not accepted for exchange or not tendered are to be returned to a person other than the registered Holder, or (z) Series B Notes are to be issued in the name of or sent to a person other than the registered Holder, then the signatures on this Letter of Transmittal accompanying the tendered Series A Notes must be guaranteed by an Eligible Institution as described above. See Instruction 5.

2. **Delivery of Letter of Transmittal and Series A Notes.** This Letter of Transmittal is to be completed by Holders if (i) certificates representing Series A Notes are to be physically delivered to the Exchange Agent herewith by such Holders; (ii) tender of Series A Notes is to be made by book-entry transfer to the Exchange Agent’s account at DTC pursuant to the procedures set forth under the caption “The Exchange Offer—Procedures for Tendering Series A Notes—Book-Entry Delivery Procedures” in the Prospectus; or (iii) tender of Series A Notes is to be made according to the guaranteed delivery procedures set forth under the caption “The Exchange Offer—Procedures for Tendering Series A Notes—Guaranteed Delivery” in the Prospectus. All physically delivered Series A Notes, or a confirmation of a book-entry transfer into the Exchange Agent’s account at DTC of all Series A Notes delivered electronically, as well as a properly completed and duly executed Letter of Transmittal (or manually signed facsimile thereof), any required signature guarantees and any other documents required by this Letter of Transmittal, must be received by the Exchange Agent at one of its addresses set forth on the cover page hereto on or prior to the Expiration Date, or the tendering Holder must comply with the guaranteed delivery procedures set forth below.

**DELIVERY OF DOCUMENTS TO DTC DOES NOT CONSTITUTE DELIVERY TO THE EXCHANGE AGENT.**

If a Holder desires to tender Series A Notes pursuant to the Exchange Offer and time will not permit this Letter of Transmittal, certificates representing such Series A Notes and any other required document to reach the Exchange Agent, or the procedures for book-entry transfer cannot be completed, on or prior to the Expiration Date, then such Holder must tender such Series A Notes pursuant to the guaranteed delivery procedures set forth under the caption “The Exchange Offer—Procedures for Tendering Series A Notes—Guaranteed Delivery” in the Prospectus. Pursuant to such procedures, (i) such tender must be made by or through an Eligible Institution; (ii) a properly completed and duly executed Notice of Guaranteed Delivery, substantially in the form provided by the Issuers, or an Agent’s Message with respect to guaranteed delivery that is accepted by the Issuers, must be received by the Exchange Agent, either by hand delivery, mail, telegram, or facsimile transmission, on or prior to the Expiration Date; and (iii) the certificates for all tendered Series A Notes, in proper form for transfer (or confirmation of a book-entry transfer or all Series A Notes delivered electronically into the Exchange Agent’s account at DTC pursuant to the procedures for such transfer set forth in the Prospectus), together with a properly completed and duly executed Letter of Transmittal (or manually signed facsimile thereof) and any other documents required by this Letter of Transmittal, or in the case of a book-entry transfer, a properly transmitted Agent’s Message, must be received by the Exchange Agent within two business days after the date of the execution of the Notice of Guaranteed Delivery.

**THE METHOD OF DELIVERY OF THIS LETTER OF TRANSMITTAL, THE SERIES A NOTES AND ALL OTHER REQUIRED DOCUMENTS, INCLUDING DELIVERY THROUGH DTC AND ANY ACCEPTANCE OR AGENT’S MESSAGE DELIVERED THROUGH ATOP, IS AT THE ELECTION AND RISK OF THE TENDERING HOLDER AND, EXCEPT AS OTHERWISE PROVIDED IN THIS INSTRUCTION 2, DELIVERY WILL BE DEEMED MADE ONLY WHEN ACTUALLY RECEIVED BY THE EXCHANGE AGENT.**

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**IF DELIVERY IS BY MAIL, IT IS SUGGESTED THAT THE HOLDER USE PROPERLY INSURED, REGISTERED MAIL WITH RETURN RECEIPT REQUESTED, AND THAT THE MAILING BE MADE SUFFICIENTLY IN ADVANCE OF THE EXPIRATION DATE TO PERMIT DELIVERY TO THE EXCHANGE AGENT PRIOR TO SUCH DATE.**

No alternative, conditional or contingent tenders will be accepted. All tendering Holders, by execution of this Letter of Transmittal (or a facsimile thereof), waive any right to receive any notice of the acceptance of their Series A Notes for exchange.

3. ***Inadequate Space.*** If the space provided herein is inadequate for listing the certificate numbers and/or the principal amount represented by Series A Notes, they should be listed on separate signed schedule attached hereto.

4. ***Partial Tenders.*** (Not applicable to Holders who tender by book-entry transfer). If a Holder desires to tender less than the entire principal amount evidenced by a Series A Note submitted, such Holder must fill in the principal amount that is to be tendered in the column entitled "Principal Amount Tendered." The minimum permitted tender is \$1,000 in principal amount of Series A Notes. All other tenders must be in integral multiples of \$1,000 in principal amount. In the case of a partial tender of Series A Notes, as soon as practicable after the Expiration Date, new certificates for the remainder of the Series A Notes that were evidenced by such Holder's old certificates will be sent to such Holder, unless otherwise provided in the appropriate box on this Letter of Transmittal. The entire principal amount that is represented by Series A Notes delivered to the Exchange Agent will be deemed to have been tendered, unless otherwise indicated.

5. ***Signatures on Letter of Transmittal, Instruments of Transfer and Endorsements.*** If this Letter of Transmittal is signed by the registered Holder of Series A Notes tendered hereby, the signature must correspond with the name as written on the face of the certificate(s) without alteration, enlargement or any change whatsoever. If this Letter of Transmittal is signed by a participant in DTC whose name is shown as the owner of the Series A Notes tendered hereby, the signature must correspond with the name shown on the security position listing as the owner of the Series A Notes.

If any of the Series A Notes tendered hereby is registered in the name of two or more Holders, each such Holder must sign this Letter of Transmittal. If any of the Series A Notes tendered hereby registered in different names on several certificates, it will be necessary to complete, sign and submit as many separate Letters of Transmittal as there are different registrations of certificates.

If this Letter of Transmittal or any Series A Note or instrument of transfer is signed by a trustee, executor, administrator, guardian, attorney-in-fact, agent, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing, and proper evidence satisfactory to the Issuers of such person's authority to so act must be submitted.

When this Letter of Transmittal is signed by one or more registered Holders of the Series A Notes listed herein and transmitted hereby, no endorsement of Series A Notes or separate instruments of transfer is required unless Series B Notes are to be issued, or Series A Notes not tendered or exchanged are to be issued, to a person other than the registered Holder(s), in which case signatures on such Series A Notes or instruments of transfer must be guaranteed by an Eligible Institution.

**IF THIS LETTER OF TRANSMITTAL IS SIGNED OTHER THAN BY THE REGISTERED HOLDER(S) OF THE SERIES A NOTES LISTED HEREIN, THE SERIES A NOTES MUST BE ENDORSED OR ACCOMPANIED BY APPROPRIATE INSTRUMENTS OF TRANSFER, IN EITHER CASE SIGNED EXACTLY AS THE NAME(S) OF THE REGISTERED HOLDER(S) APPEAR ON THE SERIES A NOTES AND SIGNATURES ON SUCH SERIES A NOTES OR INSTRUMENTS OF TRANSFER ARE REQUIRED AND MUST BE GUARANTEED BY AN ELIGIBLE INSTITUTION, UNLESS THE SIGNATURE IS THAT OF AN ELIGIBLE INSTITUTION.**

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6. **Special Issuance and Delivery Instructions.** If certificates for Series B Notes or unexchanged or untendered Series A Notes are to be issued in the name of a person other than the signer of this Letter of Transmittal, or if Series B Notes or such Series A Notes are to be sent to someone other than the signer of this Letter of Transmittal or to an address other than that shown herein, the appropriate boxes on this Letter of Transmittal should be completed. All Series A Notes tendered by book-entry transfer and not accepted for payment will be returned by crediting the account at DTC designated herein as the account for which such Series A Notes were delivered.

7. **Transfer Taxes.** Except as set forth in this Instruction 7, the Issuers will pay or cause to be paid any transfer taxes with respect to the transfer and sale of Series A Notes to it, or to its order, pursuant to the Exchange Offer. If Series B Notes, or Series A Notes not tendered or exchanged are to be registered in the name of any persons other than the registered owners, or if tendered Series A Notes are registered in the name of any persons other than the persons signing this Letter of Transmittal, the amount of any transfer taxes (whether imposed on the registered Holder or such other person) payable on account of the transfer to such other person must be paid to the Issuers or the Exchange Agent (unless satisfactory evidence of the payment of such taxes or exemption therefrom is submitted) before the Series B Notes will be issued.

8. **Waiver of Conditions.** The conditions of the Exchange Offer may be amended or waived by the Issuers, in whole or in part, at any time and from time to time in the Issuers' discretion, in the case of any Series A Notes tendered.

9. **Substitute Form W-9.** Each tendering owner of a Note (or other payee) is required to provide the Exchange Agent with a correct taxpayer identification number ("TIN"), generally the owner's social security or federal employer identification number, and with certain other information, on Substitute Form W-9, which is provided hereafter under "Important Tax Information," and to certify that the owner (or other payee) is not subject to backup withholding. Failure to provide the information on the Substitute Form W-9 may subject the tendering owner (or other payee) to a \$50 penalty imposed by the Internal Revenue Service and 30% federal income tax withholding. The box in Part 3 of the Substitute Form W-9 may be checked if the tendering owner (or other payee) has not been issued a TIN and has applied for a TIN or intends to apply for a TIN in the near future. If the box in Part 3 is checked and the Exchange Agent is not provided with a TIN within 60 days of the date on the Substitute Form W-9, the Exchange Agent will withhold 30% until a TIN is provided to the Exchange Agent. Backup withholding may also apply to all or a portion of the payments made during such 60 day period.

10. **Broker-Dealers Participating in the Exchange Offer.** If no broker-dealer checks the last box on page 6 of this Letter of Transmittal, the Issuers have no obligation under the Registration Rights Agreement to allow the use of the Prospectus for resales of the Series B Notes by broker-dealers or to maintain the effectiveness of the Registration Statement of which the Prospectus is a part after the consummation of the Exchange Offer.

11. **Requests for Assistance or Additional Copies.** Any questions or requests for assistance or additional copies of the Prospectus, this Letter of Transmittal or the Notice of Guaranteed Delivery may be directed to the Exchange Agent at the telephone numbers and location listed above. A Holder or owner may also contact such Holder's or owner's broker, dealer, commercial bank or trust company or nominee for assistance concerning the Exchange Offer.

**IMPORTANT: THIS LETTER OF TRANSMITTAL (OR A FACSIMILE HEREOF), TOGETHER WITH CERTIFICATES REPRESENTING THE SERIES A NOTES AND ALL OTHER REQUIRED DOCUMENTS OR THE NOTICE OF GUARANTEED DELIVERY, MUST BE RECEIVED BY THE EXCHANGE AGENT ON OR PRIOR TO THE EXPIRATION DATE.**

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## **IMPORTANT TAX INFORMATION**

Under federal income tax law, an owner of Series A Notes whose tendered Series A Notes are accepted for exchange is required to provide the Exchange Agent with such owner's current TIN on Substitute Form W-9 below. If such owner is an individual, the TIN is his or her social security number. If the Exchange Agent is not provided with the correct TIN, the owner or other recipient of Series B Notes may be subject to a \$50 penalty imposed by the Internal Revenue Service. In addition, any interest on Series B Notes paid to such owner or other recipient may be subject to 30% backup withholding tax.

Certain owners of Notes (including, among others, all corporations and certain foreign individuals) are not subject to these backup withholding and reporting requirements. In order for a foreign individual to qualify as an exempt recipient, that owner must submit to the Exchange Agent properly completed W-8 Internal Revenue Service Forms, signed under penalties of perjury, attesting to that individual's exempt status. The relevant W-8 forms can be obtained from the Exchange Agent. See the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9" for additional instructions.

Backup withholding is not an additional tax. Rather, the federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained from the Internal Revenue Service.

### **PURPOSE OF SUBSTITUTE FORM W-9**

To prevent backup withholding the owner is required to notify the Exchange Agent of the owner's current TIN (or the TIN of any other payee) by completing the following form, certifying that the TIN provided on Substitute Form W-9 is correct (or that such owner is awaiting a TIN), and that (i) the owner is exempt from withholding, (ii) the owner has not been notified by the Internal Revenue Service that the owner is subject to backup withholding as a result of failure to report all interest or dividends or (iii) the Internal Revenue Service has notified the owner that the owner is no longer subject to backup withholding.

### **WHAT NUMBER TO GIVE THE EXCHANGE AGENT**

The Holder is required to give the Exchange Agent the TIN (e.g., social security number or employer identification number) of the owner of the Series A Notes. If the Series A Notes are registered in more than one name or are not registered in the name of the actual owner, consult the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9," for additional guidance on which number to report.

SUBSTITUTE

Form **W-9**

Department of the Treasury  
Internal Revenue Service

Payer's Request For Taxpayer  
Identification No. ("TIN")

**Part 1**—TAXPAYER IDENTIFICATION  
NUMBER. PLEASE PROVIDE YOUR TIN IN  
THE BOX AT RIGHT AND CERTIFY BY  
SIGNING AND DATING BELOW.

Social Security Number  
OR

Employer Identification  
Number

**Part 2—Certification.** Under Penalties of  
Perjury, I certify that:  
(1) The number shown on this form is my  
correct Taxpayer Identification Number (or I am  
waiting for a number to be issued to me), and  
(2) I am not subject to backup withholding  
because: (a) I am exempt from backup  
withholding, (b) I have not been notified by the  
Internal Revenue Service ("IRS") that I am  
subject to backup withholding as a result of  
failure to report all interest or dividends, or (c)  
the IRS has notified me that I am no longer  
subject to backup withholding, and  
(3) I am a U.S. person (including a U.S. resident  
alien).

**Part 3**—  
Awaiting TIN

**Certification Instructions**—You must cross out item (2) above if you have been notified by the IRS  
that you are currently subject to backup withholding because of under-reporting interest or dividends  
on your tax return.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN A \$50 PENALTY IMPOSED BY THE INTERNAL  
REVENUE SERVICE AND BACKUP WITHHOLDING OF 30%. PLEASE REVIEW THE ENCLOSED GUIDELINES FOR  
CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9 FOR ADDITIONAL DETAILS.**

**YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU CHECKED  
THE BOX IN PART 3 OF SUBSTITUTE FORM W-9.**

**CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER**

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (1) I have mailed or delivered an  
application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office, or (2) I  
intend to mail or deliver an application in the near future. I understand that if I do not provide a taxpayer identification number within 60 days of the date in  
this form, 30 percent of all reportable cash payments made to me will be withheld until I provide a taxpayer identification number. Backup withholding  
may also apply to all or a portion of the payments made during such 60 day period.

Signature \_\_\_\_\_ Date \_\_\_\_\_

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## GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

**Guidelines for Determining the Proper Identification Number to Give the Payer.** Social Security Numbers have nine digits separated by two hyphens: i.e. 000-00-0000. Employer Identification Numbers have nine digits separated by only one hyphen: i.e. 00-0000000. The table below will help determine the number to give the payer.

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For this type of account:	Give the SOCIAL SECURITY NUMBER of:
1. An individual's account	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account(1)
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)
4. Adult and minor (joint account)	The adult or, if the minor is the only contributor, the minor(1)
5. Account in the name of guardian or committee for a designated ward, minor or incompetent person	The ward, minor, or incompetent person(3)
6. (a) A revocable savings trust account (in which grantor is also trustee)	The grantor-trustee(1)
(b) Any "trust" account that is not a legal or valid trust under State law	The actual owner(1)
7. Sole proprietorship or single-owner LLC	The owner(4)

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For this type of account:	Give the EMPLOYER IDENTIFICATION NUMBER of:
8. A valid, trust, estate, or pension	The legal entity (do not furnish the identifying number of the personal representative or trustee unless the legal entity itself is not designated in the account title)(5)
9. Corporation or LLC electing corporate status on form 8832	The corporation or entity
10. Religious, charitable or educational organization account	The organization
11. Partnership account or multi-member LLC	The partnership or entity
12. Association, club, or other tax-exempt organization	The organization
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district, or prison) that receives agricultural program payments	The public entity

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- (1) List first and circle the name of the person whose number you furnish. If only one person on a joint account has a Social Security Number that person's Number must be furnished.
- (2) Circle the minor's name and furnish the minor's Social Security Number.
- (3) Circle the ward's, minor's or incompetent person's name and furnish such person's social security number.
- (4) Show the name of the owner. If the owner does not have an employer identification number, furnish the owner's social security number.
- (5) List first and circle the name of the legal trust, estate, or pension trust.

**Note:** If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.

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## GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

### Obtaining a Number

If you do not have a taxpayer identification number or you do not know your number, obtain Form SS-5, Application for a Social Security Number Card (for resident individuals), Form SS-4, Application for Employer Identification Number (for businesses and all other entities), or Form W-7 for International Taxpayer Identification Number (for alien individuals required to file U.S. tax returns), at an office of the Social Security Administration or the Internal Revenue Service.

To complete Substitute Form W-9, if you do not have a taxpayer identification number, write "Applied For" in the space for the taxpayer identification number in Part 1, sign and date the Form, and give it to the requester. Generally, you will then have 60 days to obtain a taxpayer identification number and furnish it to the requester. If the requester does not receive your taxpayer identification number within 60 days, backup withholding, if applicable, will begin and will continue until you furnish your taxpayer identification number to the requester. Backup withholding may also apply to all or certain payments made during such 60 day period.

Unless otherwise noted herein, all references to section numbers or to regulations are references to the Internal Revenue Code and the regulations promulgated thereunder.

### Payees Exempt from Backup Withholding

Payees specifically exempt from backup withholding on ALL payments include the following:

- A corporation.
- A financial institution.
- An organization exempt from tax under section 501(a), or an individual retirement plan, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).
- The United States or any agency or instrumentality thereof.
- A state, the District of Columbia, a possession of the United States, or any political subdivision or instrumentality thereof.
- foreign government or a political subdivision, agency or instrumentality thereof.
- An international organization or any agency or instrumentality thereof.
- A registered dealer in securities or commodities registered in the United States, the District of Columbia or a possession of the United States.
- A real estate investment trust.
- A common trust fund operated by a bank under section 584(a).
- An entity registered at all times during the tax year under the Investment Company Act of 1940.
- A foreign central bank issue.

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### Other Payees That May Be Exempt From Backup Withholding

- A trust exempt from tax under section 664, or a non-exempt trust described in section 4947(a)(1).

EXEMPT PAYEES DESCRIBED ABOVE SHOULD FILE SUBSTITUTE FORM W-9 TO AVOID POSSIBLE ERRONEOUS BACKUP WITHHOLDING. FILE THIS FORM WITH THE PAYER, FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, WRITE "EXEMPT" ON THE FACE OF THE FORM, AND RETURN IT TO THE PAYER.

Certain payments that are not subject to information reporting are also not subject to backup withholding. For details, see sections 6041, 6041(A), 6044, 6045, 6049, 6050A, and 6050(N) and the regulations thereunder.

**Privacy Act Notice**—Section 6109 requires most recipients of dividends, interest, or other payments to give taxpayer identification numbers to payers who must report the payments to the IRS. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. This information may also be disclosed to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism. Payers must be given the numbers whether or not recipients are required to file tax returns. Payers must generally withhold 30% of taxable interest, dividends, and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

### Penalties

- (1) *Penalty For Failure To Furnish Taxpayer Identification Number.* If you fail to furnish your taxpayer identification number to a payer, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.
- (2) *Failure To Report Certain Dividend And Interest Payments.* If you fail to include any portion of an includible payment for interest, dividends, or patronage dividends in gross income and such failure is due to negligence, a penalty of 20% is imposed on any portion of an underpayment attributable to such failure.
- (3) *Civil Penalty For False Statements With Respect To Withholding.* If you make a false statement with no reasonable basis which results in no imposition of backup withholding, you are subject to a penalty of \$500.
- (4) *Criminal Penalty For Falsifying Information.* Willfully falsifying certifications or affirmations, may subject you to criminal penalties including fines and/or imprisonment.

**FOR ADDITIONAL INFORMATION CONTACT YOUR TAX CONSULTANT OR THE INTERNAL REVENUE SERVICE.**

**Notice of Guaranteed Delivery****Star Gas Partners, L.P.  
Star Gas Finance Company****Offer to Exchange  
10¼% Series B Senior Notes Due 2013 for any and all  
Outstanding 10¼% Series A Senior Notes Due 2013**

As set forth in the Prospectus, dated \_\_\_\_\_, 2003 (as the same may be amended from time to time, the "*Prospectus*"), of Star Gas Partners, L.P. and Star Gas Finance Company (together, the "*Issuers*"), under the caption in the Prospectus entitled "The Exchange Offer—Procedures for Tendering Series A Notes—Guaranteed Delivery," this form or one substantially equivalent hereto must be used to accept the Issuers' offer to exchange (the "*Exchange Offer*") new 10¼% Senior Notes due 2013 (the "*Series B Notes*"), which have been registered under the Securities Act of 1933, as amended (the "*Securities Act*"), for an equal principal amount of their outstanding 10¼% Senior Notes due 2013 (the "*Series A Notes*"), if (i) certificates representing the Series A Notes to be exchanged are not lost but are not immediately available, or (ii) time will not permit all required documents to reach the Exchange Agent prior to the Expiration Date. This form may be delivered by an eligible institution by mail or hand delivery or transmittal, via facsimile, to the Exchange Agent at its address set forth below not later than 5:00 p.m., New York City time, on \_\_\_\_\_, 2003. Capitalized terms used in this Notice of Guaranteed Delivery but not defined shall have the meanings ascribed to them in the Prospectus.

*The Exchange Agent for the Exchange Offer is:*

**Union Bank of California, N.A.**

*By Mail:*  
Union Bank of California, N.A.  
Corporate Trust Department  
120 South San Pedro Street  
Suite 410  
Los Angeles, CA 90012

*By Facsimile:*  
Union Bank of California, N.A.  
Corporate Trust Department  
Fax No. 213-972-5695

**DELIVERY OR TRANSMISSION VIA FACSIMILE OF THIS NOTICE OF GUARANTEED DELIVERY TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.**



Ladies and Gentlemen:

The undersigned hereby tender(s) for exchange to the Issuers, upon the terms and subject to the conditions set forth in the Prospectus and the Letter of Transmittal, receipt of which is hereby acknowledged, the principal amount of the Series A Notes as set forth below pursuant to the guaranteed delivery procedures set forth in the Prospectus under the caption, "The Exchange Offer—Procedures for Tendering Series A Notes—Guaranteed Delivery."

The undersigned understands and acknowledges that the Exchange Offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 2003, unless extended by the Issuers. With respect to the Exchange Offer, the term, "Expiration Date" means such time and date, or if the Exchange Offer is extended, the latest time and date to which the Exchange Offer is so extended by the Issuers.

All authority conferred in or agreed to be conferred by this Notice of Guaranteed Delivery shall survive the death or incapacity of the undersigned and every obligation of the undersigned under this Notice of Guaranteed Delivery shall be binding upon the heirs, personal representatives, executors, administrators, successors and assigns, trustees in bankruptcy and other legal representatives of the undersigned.

SIGNATURES

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Owner (if more than one)

Dated: \_\_\_\_\_, 2003

Principal Amount of Series A Notes Exchanged:

\$ \_\_\_\_\_

Certificate Nos. of Series A Notes (if available)

\_\_\_\_\_  
\_\_\_\_\_

Name(s): \_\_\_\_\_

\_\_\_\_\_  
(Please Print)

Address: \_\_\_\_\_

\_\_\_\_\_  
(Include Zip Code)

Area Code and Telephone No.: \_\_\_\_\_

Capacity (full title), if signing in a representative capacity: \_\_\_\_\_

Employer Identification or Social Security Number: \_\_\_\_\_

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**GUARANTEE**  
**(NOT TO BE USED FOR SIGNATURE GUARANTEE)**

The undersigned, a financial institution that is a participant in the Securities Transfer Agents Medallion Program, the New York Stock Exchange Medallion Signature Program or the Stock Exchanges Medallion Program, hereby guarantees that, within two business days from the date of this Notice of Guaranteed Delivery, a properly completed and duly executed Letter of Transmittal (or a facsimile thereof), together with certificates representing the Series A Notes tendered hereby in proper form for transfer (or confirmation of the book-entry transfer of such Series A Notes into the Exchange Agent's account at the Depository Trust Company, pursuant to the procedure for book-entry transfer set forth in the Prospectus under the caption in the Prospectus entitled, "The Exchange Offer—Procedures for Tendering Series A Notes—Book-Entry Delivery Procedures,") and any other required documents will be deposited by the undersigned with the Exchange Agent.

Name of Firm:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

Area Code and Telephone No.:

Date:

\_\_\_\_\_

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DO NOT SEND SERIES A NOTES WITH THIS FORM. ACTUAL SURRENDER OF SERIES A NOTES MUST BE MADE PURSUANT TO, AND BE ACCOMPANIED BY, THE LETTER OF TRANSMITTAL.**