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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): December 14, 2011

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**Rose Rock Midstream, L.P.**

(Exact name of registrant as specified in its charter)

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

**001-35365**  
(Commission  
File Number)

**45-2934823**  
(I.R.S. Employer  
Identification No.)

**Two Warren Place**  
**6120 S. Yale Avenue, Suite 700**  
**Tulsa, Oklahoma 74136-4216**  
(Address of principal executive offices)

**(918) 524-8100**  
(Registrant's telephone number, including area code)

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

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

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

On December 14, 2011, Rose Rock Midstream, L.P. (the “Partnership”) completed its initial public offering (the “Offering”) of 7,000,000 common units representing limited partner interests in the Partnership (“Common Units”) at \$20.00 per Common Unit, pursuant to a Registration Statement on Form S-1, as amended (File No. 333-176260) (the “Registration Statement”), initially filed by the Partnership with the Securities and Exchange Commission (the “Commission”) pursuant to the Securities Act of 1933, as amended (the “Securities Act”), on August 12, 2011. The material terms of the Offering are described in the prospectus (the “Prospectus”) filed with the Commission on December 9, 2011 pursuant to Rule 424(b)(1) under the Securities Act.

*Omnibus Agreement*

On December 14, 2011, in connection with the closing of the Offering, the Partnership entered into an Omnibus Agreement (the “Omnibus Agreement”) by and among the Partnership, Rose Rock Midstream GP, LLC, the general partner of the Partnership (the “General Partner”), and SemGroup Corporation (“SemGroup”).

The Omnibus Agreement governs certain aspects of the Partnership’s relationship with SemGroup and the General Partner, including:

- the Partnership’s use of the names “Rose Rock” and “SemCrude” and related marks; and
- certain indemnification obligations, including, among others, the following:
  - SemGroup’s obligation to indemnify the Partnership for losses relating to certain environmental matters relating to the Partnership’s assets arising on or prior to December 14, 2011;
  - the Partnership’s obligation to indemnify SemGroup for losses relating to certain environmental matters relating to the Partnership’s assets arising after December 14, 2011;
  - SemGroup’s obligation to indemnify the Partnership for losses relating to or arising from (i) certain title and rights-of-way matters, (ii) the Partnership’s failure to have certain necessary governmental consents and permits, (iii) assets previously owned by SemCrude, L.P. and retained by SemGroup, (iv) certain environmental liabilities retained by SemGroup, (v) certain scheduled matters and claims relating to SemGroup’s bankruptcy, (vi) certain regulatory matters and (vii) certain tax liabilities; and
  - the Partnership’s obligation to indemnify SemGroup for losses attributable to the ownership or operation of the Partnership’s assets and the assets of its subsidiaries after the closing of the Offering.

SemGroup’s obligations to indemnify the Partnership as described in the first and third bullets above are subject to a deductible of \$500,000. SemGroup’s obligations to indemnify the Partnership with respect to environmental liabilities relating to the Partnership’s assets, title and rights-of-way matters, failure to have certain necessary governmental consents and permits, retained assets and retained environmental liabilities terminate after three years, and its obligation to indemnify the Partnership with respect to certain regulatory matters terminates after five years. SemGroup’s indemnity related to tax matters terminates upon the expiration of the statute of limitations. SemGroup’s obligation to indemnify the Partnership with respect to environmental liabilities relating to the Partnership’s assets and regulatory matters is capped at \$20 million. In no event will SemGroup be obligated to indemnify the Partnership for any claims, losses, expenses or liabilities to the extent any such amounts are reserved for in the Partnership’s financial statements as of the closing of the Offering. No party will be obligated to indemnify any other party for losses to the extent that such losses are recovered by the indemnified party under available insurance coverage or from a third party.

The Omnibus Agreement can be amended by written agreement of all parties to the agreement. However, the Partnership may not agree to any amendment or modification that would, in the determination of the General Partner, be adverse in any material respect to the holders of the Common Units without prior approval of the conflicts committee of the board of directors of the General Partner. In the event of (i) a “change in control” (as defined in the Omnibus Agreement) of the General Partner or (ii) the removal of Rose Rock Midstream GP, LLC as

general partner in circumstances where cause (as defined in the Partnership Agreement (as defined in Item 5.03 below)) does not exist and the Common Units held by SemGroup and its affiliates were not voted in favor of such removal, the Omnibus Agreement (other than the indemnification provisions if the triggering event is a change of control) will be terminable by SemGroup, and the Partnership will have a 90-day transition period to cease its use of the name “Rose Rock” and related marks.

SemGroup and its affiliates will not be restricted, under either the Partnership Agreement or the Omnibus Agreement, from competing with the Partnership. SemGroup will be permitted to compete with the Partnership and may acquire or dispose of midstream or other assets in the future without any obligation to offer the Partnership the opportunity to purchase those assets.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the Omnibus Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

#### *Credit Agreement*

On December 14, 2011, in connection with the closing of the Offering, the Partnership’s Credit Agreement, dated November 10, 2011 (the “Credit Agreement”), became effective. The Credit Agreement was entered into among the Partnership, as borrower, The Royal Bank of Scotland, as administrative agent, and a syndicate of lenders. A description of the Credit Agreement is included in the Prospectus under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Revolving Credit Facility” and is incorporated herein by reference.

The description of the Credit Agreement included in the Prospectus is not complete and is qualified in its entirety by reference to the full text of the Credit Agreement, which was filed as Exhibit 10.1 to Amendment No. 4 to the Registration Statement on November 18, 2011, and is incorporated herein by reference.

#### *Relationships*

Each of the Partnership, the General Partner, Rose Rock Midstream Corporation and Rose Rock Midstream Holdings, LLC is a direct or indirect subsidiary of SemGroup. As a result, certain individuals serve as officers and directors of both SemGroup and such other entities. As described in Item 3.02 below, the General Partner holds 342,437 notional general partner units, representing a 2.0% general partner interest in the Partnership, and the incentive distribution rights (as defined in the Partnership Agreement), and SemGroup, through Rose Rock Midstream Holdings, LLC and Rose Rock Midstream Corporation, holds 339,709 Common Units and 8,389,709 subordinated units representing limited partner interests in the Partnership (“Subordinated Units”), representing an aggregate 57.1% limited partner interest in the Partnership.

Several of the lenders under the credit facility and/or their affiliates have in the past performed, and may in the future perform, investment banking, commercial banking, advisory and other services for the Partnership, SemGroup and their respective affiliates from time to time for which they have received, and may in the future receive, customary fees and expenses. Affiliates of Barclays Capital Inc., Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Natixis Securities Americas LLC, RBS Securities Inc., Scotia Capital (USA) Inc. and UBS Securities LLC, each of which served as an underwriter of the Offering, are lenders under the credit facility. Affiliates of certain of the lenders under the credit facility were lenders to SemGroup prior to its filing for bankruptcy. Pursuant to SemGroup’s plan of reorganization related to its emergence from bankruptcy on November 30, 2009, the debt held by such lenders, or their affiliates, was converted to equity in SemGroup. As a result, such lenders (or their affiliates) own shares of common stock of SemGroup.

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

The description of the Credit Agreement incorporated by reference into Item 1.01 above is also incorporated into this Item 2.03 by reference. A copy of the Credit Agreement was filed as Exhibit 10.1 to Amendment No. 4 to the Registration Statement on November 18, 2011, and is incorporated herein by reference.

### Item 3.02 Unregistered Sales of Equity Securities.

On December 14, 2011, in connection with the closing of the Offering, (i) the General Partner exchanged its existing 2.0% general partner interest in the Partnership for 342,437 notional general partner units, representing a continuation of its 2.0% general partner interest, and the incentive distribution rights, (ii) Rose Rock Midstream Holdings, LLC exchanged its existing 97.0% limited partner interest in the Partnership for 168,491 Common Units, 8,389,709 subordinated units representing limited partner interests in the Partnership (“Subordinated Units”) and the right to receive additional Common Units as described below (or cash in lieu thereof), and (iii) Rose Rock Midstream Corporation exchanged its existing 1.0% limited partner interest in the Partnership for 171,218 Common Units. In connection with the Offering, the Partnership granted the underwriters a 30-day option to purchase up to an additional 1,050,000 Common Units, which will be issued to such underwriters upon the exercise of such option, if any. Upon the earlier to occur of the expiration of the over-allotment option period or the exercise of the over-allotment option in full, Rose Rock Midstream Holdings, LLC will be issued a number of additional Common Units equal to the excess, if any, of (x) 1,050,000 over (y) the aggregate number of Common Units, if any, actually purchased by the underwriters pursuant to the exercise of the over-allotment option.

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

Each Subordinated Unit will convert into one Common Unit on the first business day following the distribution of available cash (as defined in the Partnership Agreement) in respect of any quarter beginning with the quarter ending December 31, 2014, that each of the following tests are met:

- distributions of available cash from operating surplus (as defined in the Partnership Agreement) on each of the outstanding Common Units, Subordinated Units and general partner units equaled or exceeded the annualized minimum quarterly distribution (as defined in the Partnership Agreement) for each of the three consecutive, non-overlapping four-quarter periods immediately preceding that date;
- the adjusted operating surplus (as defined in the Partnership Agreement) generated during each of the three consecutive, non-overlapping four-quarter periods immediately preceding that date equaled or exceeded the sum of the minimum quarterly distributions on all of the outstanding Common Units, Subordinated Units and general partner units during those periods on a fully diluted basis; and
- there are no arrearages in payment of the minimum quarterly distribution on the Common Units.

In addition, each Subordinated Unit will convert into one Common Unit on the first business day following the distribution of available cash in respect of any quarter beginning with the quarter ending December 31, 2012, that each of the following tests are met:

- distributions of available cash from operating surplus on each of the outstanding Common Units, Subordinated Units and general partner units equaled or exceeded \$2.175 (150% of the annualized minimum quarterly distribution) for the four-quarter period immediately preceding that date;
- the adjusted operating surplus generated during the four-quarter period immediately preceding that date equaled or exceeded the sum of (i) \$2.175 (150% of the annualized minimum quarterly distribution) on all of the outstanding Common Units, Subordinated Units and general partner units during that period on a fully diluted basis and (ii) the distributions made on the incentive distribution rights; and
- there are no arrearages in payment of the minimum quarterly distributions on the Common Units.

Finally, each Subordinated Unit will convert into one Common Unit upon the removal of the General Partner other than for cause (as defined in the Partnership Agreement) if the units held by the General Partner and its affiliates are not voted in favor of such removal.

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**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.***Second Amended and Restated Agreement of Limited Partnership of Rose Rock Midstream, L.P.*

On December 14, 2011, in connection with the closing of the Offering, the Partnership amended and restated its agreement of limited partnership and entered into its Second Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement"). A description of the Partnership Agreement is included in the Prospectus under the headings "Provisions of our Partnership Agreement Relating to Cash Distributions" and "The Partnership Agreement" and is incorporated herein by reference.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the Partnership Agreement, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

*First Amended and Restated Limited Liability Company Agreement of Rose Rock Midstream GP, LLC*

On December 14, 2011, in connection with the closing of the Offering, the General Partner amended and restated its limited liability company agreement and entered into its First Amended and Restated Limited Liability Company Agreement (the "GP LLC Agreement"). The GP LLC Agreement governs, among other things, the rights of Rose Rock Midstream Holdings, LLC, as sole member of the General Partner and the management of the General Partner.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the GP LLC Agreement, which is filed as Exhibit 3.2 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 8.01 Other Events.**

On December 14, 2011, the Partnership closed the Offering.

**Item 9.01 Financial Statements and Exhibits.****(d) Exhibits .**

<u>Exhibit Number</u>	<u>EXHIBIT</u>
Exhibit 3.1	Second Amended and Restated Agreement of Limited Partnership of Rose Rock Midstream, L.P., dated December 14, 2011.
Exhibit 3.2	First Amended and Restated Limited Liability Company Agreement of Rose Rock Midstream GP, LLC, dated December 14, 2011.
Exhibit 10.1	Omnibus Agreement, dated December 14, 2011, by and among Rose Rock Midstream, L.P., Rose Rock Midstream GP, LLC and SemGroup Corporation.
Exhibit 10.2	Credit Agreement, dated November 10, 2011, among Rose Rock Midstream, L.P., as borrower, The Royal Bank of Scotland PLC, as administrative agent and collateral agent, the other agents party thereto and the lenders and issuing banks party thereto (incorporated by reference to Exhibit 10.1 to Amendment No. 4 to the Partnership's Registration Statement on Form S-1 (File No. 333-176260), filed with the Commission on November 18, 2011).

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**SIGNATURES**

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

ROSE ROCK MIDSTREAM, L.P.

By: Rose Rock Midstream GP, LLC  
its general partner

Date: December 20, 2011

By: \_\_\_\_\_ /s/ Candice L. Cheeseman

Name: Candice L. Cheeseman

Title: General Counsel and Secretary

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## EXHIBIT INDEX

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Exhibit 10.2	Credit Agreement, dated November 10, 2011, among Rose Rock Midstream, L.P., as borrower, The Royal Bank of Scotland PLC, as administrative agent and collateral agent, the other agents party thereto and the lenders and issuing banks party thereto (incorporated by reference to Exhibit 10.1 to Amendment No. 4 to the Partnership's Registration Statement on Form S-1 (File No. 333-176260), filed with the Commission on November 18, 2011).

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**SECOND AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP**

**OF**

**ROSE ROCK MIDSTREAM, L.P.**

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EXHIBITA Certificate Evidencing Common Units Representing Limited Partner Interests in Rose Rock Midstream, L.P.

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**SECOND AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP OF  
ROSE ROCK MIDSTREAM, L.P.**

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ROSE ROCK MIDSTREAM, L.P., dated as of December 14, 2011, is entered into by and among Rose Rock Midstream GP, LLC, a Delaware limited liability company (the “**General Partner**”), Rose Rock Midstream Holdings, LLC, a Delaware limited liability company (“**Holdings**”), and Rose Rock Midstream Corporation, a Delaware corporation (“**RRMC**”), together with any other Persons who are now 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:

**ARTICLE I  
DEFINITIONS**

**Section 1.1 Definitions .**

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

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

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

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

“**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

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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. With respect to a Disposed of Adjusted Property, the Additional Book Basis Derivative Items shall be the amount of Additional Book Basis taken into account in computing gain or loss from the disposition of such Disposed of Adjusted Property.

“ **Additional Limited Partner** ” means a Person admitted to the Partnership as a Limited Partner pursuant to Section 10.1(b) 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 taxable period 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 taxable period, are reasonably expected to be allocated to such Partner in subsequent taxable periods 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 taxable period, are reasonably expected to be made to such Partner in subsequent taxable periods 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 taxable period in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 6.1(d)(i) or Section 6.1(d)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith. The “Adjusted Capital Account” of a Partner in respect of a Partnership Interest shall be the amount that such Adjusted Capital Account would be if such Partnership Interest were the only interest in the Partnership held by such Partner from and after the date on which such Partnership Interest was first issued.

“ **Adjusted Operating Surplus** ” means, with respect to any period, (a) Operating Surplus generated with respect to such period, less (b) (i) the amount of any net increase in Working Capital Borrowings (or the Partnership’s proportionate share of any net increase in Working Capital Borrowings in the case of Subsidiaries that are not wholly owned) with respect to that period and (ii) the amount of any net decrease in cash reserves (or the Partnership’s proportionate share of any net decrease in cash reserves in the case of Subsidiaries that are not wholly owned) for Operating Expenditures with respect to such period not relating to an Operating Expenditure made with respect to such period, and plus (c) (i) the amount of any net decrease in Working Capital Borrowings (or the Partnership’s proportionate share of any net decrease in Working Capital Borrowings in the case of Subsidiaries that are not wholly owned) with respect to that period, (ii) the amount of any net decrease made in subsequent periods in cash reserves for Operating Expenditures initially established with respect to such period to the extent such decrease results in a reduction in Adjusted Operating Surplus in subsequent periods pursuant to clause (b)(ii) above and (iii) any net increase in cash reserves (or the Partnership’s proportionate share of any net increase in cash reserves in the case of Subsidiaries that are not wholly owned) for Operating Expenditures with respect to such period required by any debt instrument for the repayment of principal, interest or premium. Adjusted Operating Surplus does not include that portion of Operating Surplus included in clause (a)(i) of the definition of Operating Surplus.

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

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

“**Aggregate Quantity of IDR Reset Common Units**” has the meaning assigned to such term in Section 5.11(a).

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

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

“**Agreed Value**” of any Contributed Property means the fair market value of such property or asset at the time of contribution and, in the case of an Adjusted Property, the fair market value of such Adjusted Property on the date of the revaluation event as described in Section 5.5(d), in both cases as determined by the General Partner.

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

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

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

(a) the sum of:

(i) all cash and cash equivalents of the Partnership Group (or the Partnership’s proportionate share of cash and cash equivalents in the case of Subsidiaries that are not wholly owned) on hand at the end of such Quarter; and

(ii) if the General Partner so determines, all or any portion of any additional cash and cash equivalents of the Partnership Group (or the Partnership's proportionate share of cash and cash equivalents in the case of Subsidiaries that are not wholly owned) on hand on the date of determination of Available Cash with respect to such Quarter resulting from Working Capital Borrowings made subsequent to the end of such Quarter;

(b) less the amount of any cash reserves established by the General Partner (or the Partnership's proportionate share of cash reserves established by Subsidiaries that are not wholly owned) to:

(i) provide for the proper conduct of the business of the Partnership Group (including reserves for future capital expenditures and for anticipated future credit needs of the Partnership Group) subsequent to such Quarter;

(ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which any Group Member is a party, by which it is bound or to which its assets are subject; or

(iii) provide funds for distributions under Section 6.4 or Section 6.5 in respect of any one or more of the next four Quarters;

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

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

"**Board of Directors**" means the board of directors or similar governing body of the General Partner.

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

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

"**Book-Tax Disparity**" means, with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Partner's share of the Partnership's Book-Tax



Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner's Capital Account balance as maintained pursuant to Section 5.5 and the hypothetical balance of such Partner's Capital Account computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

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

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

“**Capital Account**” means the capital account maintained for a Partner pursuant to Section 5.5. The “Capital Account” of a Partner in respect of a Partnership Interest shall be the amount that such Capital Account would be if such Partnership Interest were the only interest in the Partnership held by such Partner from and after the date on which such Partnership Interest was first issued.

“**Capital Contribution**” means (a) any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes to the Partnership or that is contributed or deemed contributed to the Partnership on behalf of a Partner (including, in the case of an underwritten offering of Units, the amount of any underwriting discounts or commissions) or (b) current distributions that a Partner is entitled to receive but otherwise waives.

“**Capital Improvement**” means any (a) addition to or improvement or replacement of the capital assets owned by any Group Member, (b) acquisition (through an asset acquisition, merger, stock acquisition or other form of investment) of existing, or the construction of new, capital assets (including gathering systems, pipelines, storage facilities and related or similar midstream assets) by a Group Member or (c) capital contribution by a Group Member to a Person that is not a Subsidiary in which a Group Member has, or after such capital contribution will have, directly or indirectly, an equity interest to fund such Group Member's pro rata share of the cost of the addition to or improvement or replacement of such Person's capital assets, or the acquisition (through an asset acquisition, merger, stock acquisition or other form of investment) of existing, or the construction of new, capital assets (including gathering systems, pipelines, storage facilities and related or similar midstream assets) by such Person, in each case if and to the extent such addition, improvement, replacement, acquisition or construction is made to increase the long-term operating capacity or operating income of the Partnership Group, in the case of clauses (a) and (b), or such Person, in the case of clause (c), from the operating capacity or operating income of the Partnership Group or such Person, as the case may be, existing immediately prior to such addition, improvement, replacement, acquisition or construction.

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

“**Carrying Value**” means (a) with respect to a Contributed Property or an Adjusted Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and cost recovery deductions charged to the Partners' Capital Accounts in respect of such Contributed Property or Adjusted 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 Section 5.5(d) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

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

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

“ **Certificate of Limited Partnership** ” means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 7.2, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

“ **Citizenship Eligibility Trigger** ” has the meaning assigned to such term in Section 4.9(a)(ii).

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

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

“ **Closing Price** ” means, in respect of any class of Limited Partner Interests, as of the date of determination, 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 on which the respective Limited Partner Interests are listed or admitted to trading or, if such Limited Partner Interests are not listed or admitted to trading on any National Securities Exchange, 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 primary reporting system then in use in relation to such Limited Partner Interests of such class, or, if on any such day such Limited Partner Interests of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined by the General Partner.

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

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

“ **Commences Commercial Service** ” means the date a Capital Improvement is first put into or commences commercial service following completion of construction, acquisition, development or testing, as applicable.

“ **Commission** ” means the United States Securities and Exchange Commission or any successor agency having jurisdiction under the Securities Act.

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

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

“ **Conflicts Committee** ” means a committee of the Board of Directors composed entirely of two or more Independent Directors.

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

“ **Contribution Agreement** ” means that certain Contribution, Conveyance and Assumption Agreement, dated as of November 29, 2011, among SemGroup Corporation, the General Partner, Holdings, RRMC, the Partnership, the Operating Company and certain other parties, together with the additional conveyance documents and instruments contemplated or referenced thereunder, as it may be amended, supplemented and/or restated from time to time.

“ **Contribution Date** ” means the date of the Contribution Agreement.

“ **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 of the Common Unit Arrearages with respect to an Initial Common Unit for each of the Quarters within the Subordination Period ending on or before the last day of such Quarter *over* (b) the sum of any distributions theretofore made pursuant to Section 6.4(a)(ii) and the second sentence of Section 6.5 with respect to an Initial Common Unit (including any distributions to be made in respect of the last of such Quarters).

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

“ **Current Market Price** ” means, in respect of any class of Limited Partner Interests, as of the date of determination, the average of the daily Closing Prices per Limited Partner Interest of such class for the 20 consecutive Trading Days immediately prior to such date.

“ **Deferred Issuance and Distribution** ” means both (a) the issuance by the Partnership of a number of additional Common Units that is equal to the excess, if any, of (x) 1,050,000 over (y) the aggregate number of Common Units, if any, actually purchased by and issued to the Underwriters pursuant to the Over-Allotment Option on the Option Closing Date(s), and (b) a distribution of cash in an amount equal to the aggregate amount of cash, if any, contributed by the Underwriters to the Partnership on the Option Closing Date(s) with respect to Common Units issued by the Partnership, less offering expenses, underwriting discounts and commissions and structuring fees, upon each exercise of the Over-Allotment Option in accordance with Section 5.3(e), if any.

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

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

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

“ **Disposed of Adjusted Property** ” has the meaning assigned to such term in Section 6.1(d)(xii)(B).

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

“ **Eligibility Certificate** ” has the meaning assigned to such term in Section 4.9(b).

“ **Eligible Holder** ” means a Limited Partner whose (a) federal income tax status is not reasonably likely to have the material adverse effect described in Section 4.9(a)(i) or (b) nationality, citizenship or other related status would not create a substantial risk of cancellation or forfeiture as described in Section 4.9(a)(ii), in each case as determined by the General Partner with the advice of counsel.

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

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

“ **Excess Additional Book Basis** ” has the meaning assigned to such term in the definition of “Additional Book Basis Derivative Items.”

“ **Excess Distribution** ” has the meaning assigned to such term in Section 6.1(d)(iii)(A).

“ **Excess Distribution Unit** ” has the meaning assigned to such term in Section 6.1(d)(iii)(A).

“ **Expansion Capital Expenditures** ” means cash expenditures for Capital Improvements, and shall not include Maintenance Capital Expenditures or Investment Capital Expenditures. Expansion Capital Expenditures shall include interest (and related fees) on debt incurred to finance the construction, acquisition or development of a Capital Improvement and paid in respect of the period beginning on the date that a Group Member enters into a binding obligation to commence construction, acquisition or development of a Capital Improvement and ending on the earlier to occur of the date that such Capital Improvement Commences Commercial Service and the date that such Capital Improvement is abandoned or disposed of. Debt incurred to fund (a) such construction-, acquisition- or development-period interest payments or (b) distributions on equity issued to fund the construction, acquisition or development of a Capital Improvement as described in clause (a)(iv) of the definition of Operating Surplus shall also be deemed to be debt incurred to finance the construction, acquisition or development of a Capital Improvement. Expansion Capital Expenditures will include cash contributed by a Group Member to a Person in which such Group Member has, or after such contribution will have, directly or indirectly, an equity interest to be used by such Person for Capital Improvements. Where capital expenditures are made in part for Expansion Capital Expenditures and in part for other purposes, the General Partner shall determine the allocation of such expenditures between Expansion Capital Expenditures and expenditures made for other purposes.

“ **FERC** ” means the Federal Energy Regulatory Commission, or any successor to the powers thereof.

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

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

“ **First Target Distribution** ” means 115% of the Minimum Quarterly Distribution per Unit (or, with respect to the Quarter that includes the Closing Date, it means the product of 115% of the Minimum Quarterly Distribution per Unit multiplied by a fraction, the numerator of which is the number of days in such Quarter after the Closing Date, and the denominator of which is the total number of days in such Quarter), subject to adjustment in accordance with Section 5.11, Section 6.6 and Section 6.9.

“ **Fully Diluted Weighted Average Basis** ” means, when calculating the number of Outstanding Units for any period, a basis that includes (a) the weighted average number of Outstanding Units plus (b) all Partnership Interests and options, rights, warrants, phantom units

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

“ **General Partner** ” means Rose Rock Midstream GP, LLC, a Delaware limited liability company, and any successor or permitted assign that is admitted to the Partnership as general partner of the Partnership, in its capacity as general partner of the Partnership (except as the context otherwise requires).

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

“ **Gross Liability Value** ” means, with respect to any Liability of the Partnership described in Treasury Regulation Section 1.752-7(b)(3) (i), the amount of cash that a willing assignor would pay to a willing assignee to assume such Liability in an arm’s length transaction.

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

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

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

“ **Hedge Contract** ” means any exchange, swap, forward, cap, floor, collar, option or other similar agreement or arrangement entered into for the purpose of reducing the exposure of the Partnership Group to fluctuations in interest rates or commodity prices, and not for speculative purposes.

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

“ **Holdings** ” means Rose Rock Midstream Holdings, LLC, a Delaware limited liability company.

“ **IDR Reset Common Unit** ” has the meaning assigned to such term in Section 5.11(a).

“ **IDR Reset Election** ” has the meaning assigned to such term in Section 5.11(a).

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

“ **Incentive Distributions** ” means any amount of cash distributed to the holders of the Incentive Distribution Rights (in such capacity, but not in any other capacity) pursuant to Section 6.4.

“ **Incremental Income Taxes** ” has the meaning assigned to such term in Section 6.9.

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

“ **Indemnitee** ” means (a) the General Partner, (b) any Departing General Partner, (c) any Person who is or was an Affiliate of the General Partner or any Departing General Partner, (d) any Person who is or was a manager, managing member, general partner, director, officer, fiduciary or trustee of any Group Member, the General Partner or any Departing General Partner or any Affiliate of any Group Member, the General Partner or any Departing General Partner, (e) any Person who is or was serving at the request of the General Partner or any Departing General Partner or any Affiliate of the General Partner or any Departing General Partner as a manager,

managing member, general partner, director, officer, employee, agent, fiduciary or trustee of another Person owing a fiduciary duty to any Group Member; *provided* that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services, (f) any Person who controls a General Partner or Departing General Partner and (g) any Person the General Partner designates in its sole discretion as an Indemnitee for purposes of this Agreement, including any employee or agent of any Group Member, the General Partner or any Departing General Partner or any Affiliate of any Group Member, the General Partner or any Departing General Partner and any Person whose service, status or relationship exposes such Person to potential claims, demands, actions, suits or proceedings relating to the Partnership Group's business or affairs.

“**Independent Director**” means any director that (a) is not an officer or employee of the General Partner, (b) is not an officer or employee of any Affiliate of the General Partner or a director of any Affiliate of the General Partner (other than a Group Member), (c) is not a holder of any ownership interest in the General Partner or any of its Affiliates, including any Group Member, other than Common Units and awards that may be granted to such director under any long term incentive plan, equity compensation plan or similar plan implemented by the General Partner or the Partnership and (d) meets the independence standards required of directors who serve on an audit committee of a board of directors established by the Securities Exchange Act and the rules and regulations of the Commission promulgated thereunder and by any National Securities Exchange on which the Common Units are listed or admitted to trading.

“**Ineligible Holder**” has the meaning assigned such term in Section 4.9(c).

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

“**Initial Limited Partners**” means Holdings and RRMC (with respect to the Common Units and Subordinated Units received by them pursuant to Section 5.3(b) and Section 5.3(c), respectively), the General Partner (with respect to the Incentive Distribution Rights received by it pursuant to Section 5.2(b)) and the Underwriters, in each case upon being admitted to the Partnership in accordance with Section 10.1.

“**Initial Public Offering**” means the initial offering and sale of Common Units to the public (including any Common Units issued pursuant to the exercise of the Over-Allotment Option), as described in the Registration Statement.

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

“**Interim Capital Transactions**” means the following transactions if they occur prior to the Liquidation Date: (a) borrowings, refinancings or refundings of indebtedness (other than Working Capital Borrowings and other than for items purchased on open account or for a deferred purchase price in the ordinary course of business) by any Group Member and sales of debt securities of any Group Member; (b) sales or issuances of equity interests of any Group



Member (including the Common Units sold to the Underwriters in the Initial Public Offering); (c) sales or other voluntary or involuntary dispositions of any assets of any Group Member other than (i) sales or other dispositions of inventory, accounts receivable and other assets in the ordinary course of business, and (ii) sales or other dispositions of assets as part of normal asset retirements or replacements; and (d) capital contributions received by a Group Member.

“**Investment Capital Expenditures**” means capital expenditures by a Group Member other than Maintenance Capital Expenditures and Expansion Capital Expenditures. Investment Capital Expenditures will include cash contributed by a Group Member to a Person that is not a Subsidiary in which such Group Member has, or after such contribution will have, directly or indirectly, an equity interest to be used by such Person for capital expenditures other than Maintenance Capital Expenditures and Expansion Capital Expenditures.

“**IPO Price**” means the price per Common Unit at which the Underwriters offered the Common Units for sale to the public as set forth on the cover page of the final prospectus filed pursuant to Rule 424(b) of the rules and regulations of the Commission with respect to the Initial Public Offering.

“**Liability**” means any liability or obligation of any nature, whether accrued, contingent or otherwise.

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

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

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

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“ **Liquidator** ” means one or more Persons selected pursuant to Section 12.3 to perform the functions described in Section 12.4 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

“ **Maintenance Capital Expenditures** ” means cash expenditures by a Group Member for Maintenance Capital Projects, and shall not include Expansion Capital Expenditures and Investment Capital Expenditures. Where capital expenditures are made in part for Maintenance Capital Expenditures and in part for other purposes, the General Partner shall determine the allocation of such expenditures between Maintenance Capital Expenditures and expenditures made for other purposes.

“ **Maintenance Capital Project** ” means any (a) addition to or improvement or replacement of the capital assets owned by any Group Member, (b) acquisition (through an asset acquisition, merger, stock acquisition or other form of investment) of existing, or the construction of new, capital assets (including gathering systems, pipelines, storage facilities and related or similar midstream assets) or (c) capital contribution by a Group Member to a Person that is not a Subsidiary in which a Group Member has, or after such capital contribution will have, directly or indirectly, an equity interest to fund such Group Member’s pro rata share of the cost of the addition to or improvement or replacement of such Person’s capital assets, or the acquisition (through an asset acquisition, merger, stock acquisition or other form of investment) of existing, or the construction of new, capital assets (including gathering systems, pipelines, storage facilities and related or similar midstream assets) by such Person, in each case if and to the extent such addition, improvement, replacement, acquisition or construction is made to maintain the long-term operating capacity or operating income of the Partnership Group, in the case of clauses (a) and (b), or such Person, in the case of clause (c).

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

“ **Minimum Quarterly Distribution** ” means \$0.3625 per Unit per Quarter (or with respect to the Quarter that includes the Closing Date, it means the product of such amount multiplied by a fraction, the numerator of which is the number of days in such Quarter after the Closing Date and the denominator of which is the total number of days in such Quarter)), subject to adjustment in accordance with Section 5.11, Section 6.6 and Section 6.9.

“ **National Securities Exchange** ” means an exchange registered with the Commission under Section 6(a) of the Securities Exchange Act (or any successor to such statute), and any other securities exchange (whether or not registered with the Commission) that the General Partner shall designate as a National Securities Exchange for purposes of this Agreement.

“ **Net Agreed Value** ” means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any Liability 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 5.5(d)(ii)) at the time such property is distributed, reduced by any Liability 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 and required by Treasury Regulations promulgated under Section 704(b) of the Code.

“ **Net Income** ” means, for any taxable period, 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 period 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 period. The items included in the calculation of Net Income shall be determined in accordance with Section 5.5(b) and shall not include any items specially allocated under Section 6.1(d); *provided*, that the determination of the items that have been specially allocated under Section 6.1(d) shall be made without regard to any reversal of such items under Section 6.1(d)(xii).

“ **Net Loss** ” means, for any taxable period, 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 period 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 period. The items included in the calculation of Net Loss shall be determined in accordance with Section 5.5(b) and shall not include any items specially allocated under Section 6.1(d); *provided*, that the determination of the items that have been specially allocated under Section 6.1(d) shall be made without regard to any reversal of such items under Section 6.1(d)(xii).

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

“ **Net Termination Gain** ” means, for any taxable period, the sum, if positive, of all items of income, gain, loss or deduction (a) recognized by the Partnership (i) after the Liquidation Date or (ii) upon the sale, exchange or other disposition of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or series of related transactions (excluding any disposition to a member of the Partnership Group) or (b) deemed recognized by the Partnership Group pursuant to Section 5.5(d); *provided, however*, that the items included in the determination of Net Termination Gain shall be determined in accordance with Section 5.5(b) and shall not include any items of income, gain or loss specially allocated under Section 6.1(d).

“ **Net Termination Loss** ” means, for any taxable period, the sum, if negative, of all items of income, gain, loss or deduction (a) recognized by the Partnership (i) after the Liquidation Date or (ii) upon the sale, exchange or other disposition of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or series of related transactions (excluding any disposition to a member of the Partnership Group) or (b) deemed recognized by the Partnership Group pursuant to Section 5.5(d); *provided, however*, the items included in the determination of Net Termination Loss shall be determined in accordance with Section 5.5(b) and shall not include any items of income, gain or loss specially allocated under Section 6.1(d).

“ **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 Section 6.2(b), if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

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

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

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

“ **Notional General Partner Unit** ” means a notional unit used solely to calculate the General Partner’s Percentage Interest. Notional General Partner Units shall not constitute “Units” for any purpose of this Agreement. There shall initially be 342,437 Notional General Partner Units (resulting in the General Partner’s Percentage Interest being 2% after giving effect to any exercise of the Over-Allotment Option and the Deferred Issuance and Distribution). If the General Partner makes additional Capital Contributions pursuant to Section 5.2(c) to maintain its Percentage Interest, the number of Notional General Partner Units shall be increased proportionally to reflect the maintenance of such Percentage Interest.

“ **Omnibus Agreement** ” means that certain Omnibus Agreement, dated as of the Closing Date, among SemGroup Corporation, the General Partner and the Partnership, as it may be amended, supplemented and/or restated from time to time.

“ **Operating Company** ” means Rose Rock Midstream Operating, LLC, a Delaware limited liability company, and any successors thereto.

“ **Operating Expenditures** ” means all Partnership Group cash expenditures (or the Partnership’s proportionate share of expenditures in the case of Subsidiaries that are not wholly owned), including taxes, compensation of officers, employees and directors of the General Partner, reimbursements of expenses of the General Partner and its Affiliates, debt service payments, payments made in the ordinary course of business under Hedge Contracts ( *provided* that (i) with respect to amounts paid in connection with the initial purchase of a Hedge Contract, such amounts shall be amortized over the life of such Hedge Contract and (ii) payments made in connection with the termination of any Hedge Contract prior to its stipulated settlement or termination date shall be included in Operating Expenditures in equal quarterly installments over the remaining scheduled life of such Hedge Contract), Maintenance Capital Expenditures and repayment of Working Capital Borrowings, subject to the following:

(a) repayments of Working Capital Borrowings deducted from Operating Surplus pursuant to clause (b)(iii) of the definition of “Operating Surplus” shall not constitute Operating Expenditures when actually repaid;

(b) payments (including prepayments and prepayment penalties) of principal of and premium on indebtedness other than Working Capital Borrowings shall not constitute Operating Expenditures when actually repaid;

(c) Operating Expenditures shall not include (i) Expansion Capital Expenditures, (ii) Investment Capital Expenditures, (iii) payment of transaction expenses (including taxes) relating to Interim Capital Transactions, (iv) distributions to Partners, or (v) repurchases of Partnership Interests other than repurchases of Partnership Interests to satisfy obligations under employee benefit plans, or reimbursement of expenses of the General Partner for such purchases; and

(d) where capital expenditures are made in part for Maintenance Capital Expenditures and in part for other purposes, the General Partner shall determine the allocation of such capital expenditures between Maintenance Capital Expenditures and capital expenditures made for other purposes.

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

(a) the sum of:

(i) \$25 million;

(ii) all cash receipts of the Partnership Group (or the Partnership’s proportionate share of cash receipts in the case of Subsidiaries that are not wholly owned) for the period beginning on the Closing Date and ending on the last day of such period, but excluding cash receipts from Interim Capital Transactions (except to the extent specified in Section 6.5 and *provided* that cash receipts from the termination of a Hedge Contract prior to its specified settlement or termination date shall be included in Operating Surplus in equal quarterly installments over the remaining scheduled life of such Hedge Contract);

(iii) all cash receipts of the Partnership Group (or the Partnership’s proportionate share of cash receipts in the case of Subsidiaries that are not wholly owned) 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; and

(iv) cash distributions paid on equity issued (other than equity issued in the Initial Public Offering) to finance all or a portion of the construction, acquisition or development of a Capital Improvement or Maintenance Capital Project in respect of the period beginning on the date that a Group Member enters into a binding obligation to commence the construction, acquisition or development of a Capital Improvement or Maintenance Capital Project and ending on the earlier to occur of the date the Capital Improvement or Maintenance Capital Project Commences Commercial Service and the date that it is abandoned or disposed of (equity issued (other than equity issued in the Initial Public Offering) to fund construction-, acquisition- or development-period interest payments on debt incurred, or construction-, acquisition- or development-period distributions on equity issued, to finance the construction, acquisition or development of a Capital Improvement or Maintenance Capital Project shall also be deemed to be equity issued to finance the construction, acquisition or development of a Capital Improvement or Maintenance Capital Project for purposes of this clause (iv)); *less*

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(b) the sum of:

- (i) Operating Expenditures for the period beginning on the Closing Date and ending on the last day of such period;
- (ii) the amount of cash reserves established by the General Partner, or the Partnership's proportionate share of cash reserves established by Subsidiaries that are not wholly owned, to provide funds for future Operating Expenditures;
- (iii) all Working Capital Borrowings incurred on or after the Closing Date and not repaid within twelve months after having been incurred; and
- (iv) any cash loss realized on the disposition of an Investment Capital Expenditure;

*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. Cash receipts from an Investment Capital Expenditure shall be treated as cash receipts only to the extent they are a return on principal, but in no event shall a return of principal be treated as cash receipts.

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

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

"*Outstanding*" means, with respect to Partnership Interests, all Partnership Interests that are issued by the Partnership and reflected as outstanding on the Partnership's books and records as of the date of determination; *provided, however*, that if at any time any Person or Group (other than the General Partner or its Affiliates) beneficially owns 20% or more of the Partnership Interests of any class then Outstanding, none of the Partnership Interests of any class owned by such Person or Group shall be entitled to be voted on any matter or shall be considered to be Outstanding when sending notices of a meeting of Limited Partners to vote on any matter (unless otherwise required by law), calculating required votes, determining the presence of a quorum or for other similar purposes under this Agreement, except that Partnership Interests so owned shall be considered to be Outstanding for purposes of Section 11.1(b)(iv) (such Partnership Interests shall not, however, be treated as a separate class or group of Partnership Interests for purposes of this Agreement or the Delaware Act); and *provided, further*, that the foregoing limitation shall not apply to (a) any Person or Group that acquired 20% or more of the Partnership Interests of any class then Outstanding directly from the General Partner or its Affiliates (other than the Partnership), (b) any Person or Group that acquired 20% or more of the Partnership Interests of any class then Outstanding directly or indirectly from a Person or Group described in clause (a),

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provided that the General Partner shall have notified such Person or Group in writing that such limitation shall not apply, or (c) any Person or Group that acquired 20% or more of any Partnership Interests issued by the Partnership with the prior approval of the Board of Directors.

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

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

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

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

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

“ **Partnership** ” means Rose Rock Midstream, L.P., a Delaware limited partnership.

“ **Partnership Group** ” means, collectively, the Partnership and its Subsidiaries.

“ **Partnership Interest** ” means any class or series of equity interest in the Partnership, which shall include any General Partner Interest and Limited Partner Interests but shall exclude any options, rights, warrants, appreciation rights, tracking and phantom interests, and other economic interests relating to the Partnership Interests.

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

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

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

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

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

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

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

“ **Rate Eligibility Trigger** ” has the meaning assigned to such term in Section 4.9(a)(i).

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

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

“ **Record Holder** ” means (a) with respect to Partnership Interests of any class for which a Transfer Agent has been appointed, the Person in whose name a Partnership Interest of such class is registered on the books of the Transfer Agent as of the closing of business on a particular Business Day, or (b) with respect to other classes of Partnership Interests, the Person in whose name any such other Partnership Interest is registered on the books that the General Partner has caused to be kept as of the closing of business on such Business Day.

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

“ **Registration Statement** ” means the Registration Statement on Form S-1 (Registration No. 333-176260) 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 Common Units in the Initial Public Offering.



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

“ **Required Allocations** ” means any allocation of an item of income, gain, loss or deduction pursuant to Section 6.1(d)(i), Section 6.1(d)(ii), Section 6.1(d)(iv), Section 6.1(d)(v), Section 6.1(d)(vi), Section 6.1(d)(vii) or Section 6.1(d)(ix).

“ **Reset MQD** ” has the meaning assigned to such term in Section 5.11(e).

“ **Reset Notice** ” has the meaning assigned to such term in Section 5.11(b).

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

“ **RRMC** ” means Rose Rock Midstream Corporation, a Delaware corporation.

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

“ **Second Target Distribution** ” means 125% of the Minimum Quarterly Distribution (or, with respect to the Quarter which includes the Closing Date, it means the product of 125% of the Minimum Quarterly Distribution multiplied by a fraction, the numerator of which is the number of days in such Quarter after the Closing Date, and the denominator of which is the total number of days in such Quarter), subject to adjustment in accordance with Section 5.11, Section 6.6 and Section 6.9.

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

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

“ **Share of Additional Book Basis Derivative Items** ” means, in connection with any allocation of Additional Book Basis Derivative Items for any taxable period, (a) with respect to the Unitholders holding Common Units or Subordinated Units, the amount that bears the same

ratio to such Additional Book Basis Derivative Items as the Unitholders' Remaining Net Positive Adjustments as of the end of such period bear to the Aggregate Remaining Net Positive Adjustments as of that time, (b) with respect to the General Partner (as holder of the Notional General Partner Units), the amount that bears the same ratio to such Additional Book Basis Derivative Items as the General Partner's Remaining Net Positive Adjustments as of the end of such period bear to the Aggregate Remaining Net Positive Adjustment as of that time, and (c) with respect to the Partners holding Incentive Distribution Rights, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Remaining Net Positive Adjustments of the Partners holding the Incentive Distribution Rights as of the end of such period bear to the Aggregate Remaining Net Positive Adjustments as of that time.

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

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

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

(a) the first Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter beginning with the Quarter ending December 31, 2014 in respect of which:

(i) distributions of Available Cash from Operating Surplus on each of (A) the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding at the time such distributions were paid, and (B) the General Partner Interest, in each case with respect to each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date, equaled or exceeded the sum of the Minimum Quarterly Distribution for each such four-Quarter period on all Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding at the time such distributions were paid, and the related distributions on the General Partner Interest;

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

(iii) there are no Cumulative Common Unit Arrearages;

(b) the first Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter (beginning with the Quarter ending December 31, 2012) in respect of which:

(i) distributions of Available Cash from Operating Surplus on each of (A) the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding when such distributions were paid, and (B) the General Partner Interest, in each case with respect to the four-Quarter period immediately preceding such date, equaled or exceeded 150% of the sum of the Minimum Quarterly Distribution for such four-Quarter period on all Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding at the time such distributions were paid, and the related distributions on the General Partner Interest and the corresponding Incentive Distributions; and

(ii) the Adjusted Operating Surplus for the four-Quarter period immediately preceding such date equaled or exceeded 150% of the sum of the Minimum Quarterly Distribution for such four-Quarter period on all Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding during such period on a Fully Diluted Weighted Average Basis, and the related distributions on the General Partner Interest and the corresponding Incentive Distributions; and

(iii) there are no Cumulative Common Unit Arrearages; and

(c) the date on which the General Partner is removed as general partner of the Partnership upon the requisite vote by holders of Outstanding Units under circumstances where Cause does not exist and no Units held by the General Partner and its Affiliates are voted in favor of such removal.

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

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

“ **Target Distributions** ” means each of the Minimum Quarterly Distribution, the First Target Distribution, the Second Target Distribution and the Third Target Distribution.

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

“ **Third Target Distribution** ” means 150% of the Minimum Quarterly Distribution (or, with respect to the Quarter which includes the Closing Date, it means the product of 150% of the Minimum Quarterly Distribution multiplied by a fraction, the numerator of which is the number of days in such Quarter after the Closing Date and the denominator of which is the total number of days in such Quarter), subject to adjustment in accordance with Section 5.11, Section 6.6 and Section 6.9.

“ **Trading Day** ” means, for the purpose of determining the Current Market Price of any class of Limited Partner Interests, a day on which the principal National Securities Exchange on which such class of Limited Partner Interests is listed is open for the transaction of business or, if Limited Partner Interests of a class are not listed on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

“ **Transaction Documents** ” has the meaning assigned to such term in Section 7.1(b).

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

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

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

“ **Underwriting Agreement** ” means that certain Underwriting Agreement, dated December 8, 2011, among the Underwriters, the Partnership, the General Partner and the other parties thereto, providing for the purchase of Common Units by the Underwriters in connection with the Initial Public Offering.

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

“ **Unitholders** ” means the holders of Units.

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

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

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

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

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

“ **Unrestricted Person** ” means (a) each Indemnatee, (b) each Partner, (c) each Person who is or was a member, partner, director, officer, employee or agent of any Group Member, a General Partner or any Departing General Partner or any Affiliate of any Group Member, a General Partner or any Departing General Partner and (d) any Person the General Partner designates as an Unrestricted Person for purposes of this Agreement.

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

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

“ **Working Capital Borrowings** ” means borrowings used solely for working capital purposes or to pay distributions to Partners, made pursuant to a credit facility, commercial paper facility or other similar financing arrangements; *provided* that when such borrowings are incurred it is the intent of the borrower to repay such borrowings within 12 months other than from additional Working Capital Borrowings.

#### **Section 1.2 Construction .**

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

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**ARTICLE II**  
**ORGANIZATION**

**Section 2.1 Formation .**

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

**Section 2.2 Name .**

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

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

Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Corporation Trust Company. The principal office of the Partnership shall be located at Two Warren Place, 6120 S. Yale Avenue, Suite 700, Tulsa, Oklahoma 74136-4216, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner shall determine necessary or appropriate. The address of the General Partner shall be Two Warren Place, 6120 S. Yale Avenue, Suite 700, Tulsa, Oklahoma 74136-4216, or such other place as the General Partner may from time to time designate by notice to the Limited Partners.

**Section 2.4 Purpose and Business .**

The purpose and nature of the business to be conducted by the Partnership shall be to (a) engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the General Partner, in its sole discretion, and that lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity, and (b) do anything necessary or

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appropriate to the foregoing, including the making of capital contributions or loans to a Group Member; *provided, however*, that the General Partner shall not cause the Partnership to engage, directly or indirectly, in any business activity that the General Partner determines would be reasonably likely to cause the Partnership to be treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes. To the fullest extent permitted by law, the General Partner shall have no duty (including any fiduciary duty) or obligation whatsoever to the Partnership, any Limited Partner, any Person who acquires an interest in a Partnership Interest or any other Person bound by this Agreement to propose or approve the conduct by the Partnership of any business, and may, in its sole discretion, decline to propose or approve the conduct by the Partnership of any business free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to so propose or approve, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.

**Section 2.5 Powers .**

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

**Section 2.6 Power of Attorney .**

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

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements hereof or thereof) that the General Partner or the Liquidator determines to be necessary or appropriate to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (B) all certificates, documents and other instruments that the General Partner or the Liquidator determines to be necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the General Partner or the Liquidator determines to be necessary or appropriate to reflect the dissolution, winding up and termination of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article IV, Article X, Article XI or Article XII; (E) all certificates, documents and other

instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Interests issued pursuant to Section 5.6; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger or conversion) relating to a merger, consolidation or conversion of the Partnership pursuant to Article XIV; and

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

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

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

#### **Section 2.7 Term.**

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



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**Section 2.8 Title to Partnership Assets .**

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

**ARTICLE III**

**RIGHTS OF LIMITED PARTNERS**

**Section 3.1 Limitation of Liability.**

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

**Section 3.2 Management of Business .**

No Limited Partner, in its capacity as such, shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. No action taken by any Affiliate of the General Partner or any officer, director, employee, manager, member, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, manager, member, general partner, agent or trustee of a Group Member, in its capacity as such, shall be deemed to be participating in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) nor shall any such action affect, impair or eliminate the limitations on the liability of the Limited Partners under this Agreement.

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

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

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

(a) In addition to other rights provided by this Agreement or by applicable law (other than Section 17-305(a) of the Delaware Act, the obligations of which are to the fullest extent permitted by law expressly replaced in their entirety by the provisions below), and except as limited by Section 3.4(b) and Section 3.4(c), each Limited Partner shall have the right, for a purpose that is reasonably related, as determined by the General Partner, to such Limited Partner's interest as a Limited Partner in the Partnership, upon reasonable written demand stating the purpose of such demand and at such Limited Partner's own expense to obtain:

(i) true and full information regarding the status of the business and financial condition of the Partnership ( *provided* that the requirements of this Section 3.4(a)(i) shall be satisfied to the extent the Limited Partner is furnished the Partnership's most recent annual report and any subsequent quarterly or periodic reports required to be filed (or which would be required to be filed) with the Commission pursuant to Section 13 of the Securities Exchange Act);

(ii) a current list of the name and last known business, residence or mailing address of each Record Holder;

(iii) a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto; and

(iv) such other information regarding the affairs of the Partnership as the General Partner determines in its sole discretion is just and reasonable.

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

(c) Notwithstanding any other provision of this Agreement or Section 17-305 of the Delaware Act, each of the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person bound by this Agreement hereby agrees to the fullest extent permitted by law that they do not have rights to receive information from the Partnership or any Indemnitee for the purpose of determining whether to pursue litigation or assist in pending litigation against the Partnership or any Indemnitee relating to the affairs of the Partnership except pursuant to the applicable rules of discovery relating to litigation commenced by such Person.

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## ARTICLE IV

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

#### Section 4.1 *Certificates* .

Upon the Partnership's issuance of Common Units to any Person, the Partnership shall issue, upon the request of such Person, one or more Certificates in the name of such Person evidencing the number of such Common Units being so issued. Notwithstanding anything otherwise to the contrary herein, unless the General Partner shall determine otherwise in respect of any particular class of Partnership Interests other than Common Units, such class of Partnership Interests shall not be evidenced by certificates. Certificates that may be issued shall be executed on behalf of the Partnership by the Chairman of the Board, President or any Executive Vice President, Senior Vice President or Vice President and the Chief Financial Officer or the Secretary or any Assistant Secretary of the General Partner. No Certificate for a class of Partnership Interests shall be valid for any purpose until it has been countersigned by the Transfer Agent for such class of Partnership Interests; *provided, however*, that if the General Partner elects to cause the Partnership to issue Partnership Interests of such class in global form, the Certificate shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Partnership Interests have been duly registered in accordance with the directions of the Partnership.

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

(a) If any mutilated Certificate is surrendered to the Transfer Agent (if a Transfer Agent has been appointed for the class of Partnership Interests represented by such Certificate) or the General Partner (if no Transfer Agent has been appointed for the class of Partnership Interests represented by such Certificate), the appropriate officers of the General Partner on behalf of the Partnership shall execute, the Transfer Agent (if applicable) shall countersign, and the General Partner or the Transfer Agent (if applicable) shall deliver in exchange therefor, a new Certificate (or, if requested by the holder thereof, other evidence of the issuance of uncertificated Partnership Interests) evidencing the same number and type of Partnership Interests as the Certificate so surrendered.

(b) The appropriate officers of the General Partner on behalf of the Partnership shall execute, the Transfer Agent (if applicable) shall countersign, and the General Partner or the Transfer Agent (if applicable) shall deliver a new Certificate in place of any Certificate previously issued (or, if requested by the holder thereof, other evidence of the issuance of uncertificated Partnership Interests), if the Record Holder of such Certificate:

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

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

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

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

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

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

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

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

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

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

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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 IV. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article IV shall be, to the fullest extent permitted by law, null and void.

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any stockholder, member, partner or other owner of any Partner of any or all of the shares of stock, membership or limited liability company interests, partnership interests or other ownership interests in such Partner, and the term “transfer” shall not mean any such disposition.

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

(a) The General Partner shall keep or cause to be kept on behalf of the Partnership a register in which, subject to such reasonable regulations as it may prescribe and subject to the provisions of Section 4.5(b), the Partnership will provide for the registration and transfer of Limited Partner Interests. Mellon Investor Services, LLC is hereby appointed as the initial Transfer Agent for the purpose of registering Common Units and transfers of such Common Units as herein provided.

(b) Neither the General Partner nor the Partnership shall recognize any transfer of Limited Partner Interests evidenced by Certificates until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer. No charge shall be imposed by the General Partner for such transfer; *provided* that as a condition to the issuance of any new Certificate under this Section 4.5, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto. Upon surrender of a Certificate for registration of transfer of any Limited Partner Interests evidenced by a Certificate, subject to the provisions hereof, the appropriate officers of the General Partner on behalf of the General Partner on behalf of the Partnership shall execute, the Transfer Agent (if applicable) shall countersign and deliver, and the General Partner or the Transfer Agent (if applicable) shall deliver, in the name of the holder or the designated transferee or transferees, as required pursuant to the holder’s instructions, one or more new Certificates (or, if requested by the holder, other evidence of the issuance of uncertificated Limited Partner Interests) evidencing the same aggregate number and type of Limited Partner Interests as was evidenced by the Certificate so surrendered.

(c) Upon the receipt of proper transfer instructions from the Record Holder of uncertificated Limited Partner Interests, such transfer of uncertificated Limited Partner Interests shall be recorded upon the Partnership’s register.

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

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(e) The General Partner and its Affiliates shall have the right at any time to transfer their Subordinated Units, Common Units and Incentive Distribution Rights to one or more Persons.

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

(a) Subject to Section 4.6(c) below, prior to December 31, 2021, the General Partner shall not transfer all or any part of its General Partner Interest to a Person unless such transfer (i) has been approved by the prior written consent or vote of the holders of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates), (ii) is of all, but not less than all, of its General Partner Interest to (A) an Affiliate of the General Partner (other than an individual) or (B) another Person (other than an individual) in connection with the merger or consolidation of the General Partner with or into such other Person or the transfer by the General Partner of all or substantially all of its assets to such other Person or (iii) is pursuant to a bona fide foreclosure by the lenders under any debt instrument with respect to which the General Partner is an obligor or guarantor.

(b) Subject to Section 4.6(c) below, on or after December 31, 2021, the General Partner may transfer all or any of its General Partner Interest without Unitholder approval.

(c) Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and to be bound by the provisions of this Agreement, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability of any Limited Partner under the Delaware Act or cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed) and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the partnership or limited liability company membership interest held by the General Partner as the general partner or managing member, if any, of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.2, be admitted to the Partnership as the General Partner effective immediately prior to the transfer of the General Partner Interest, and the business of the Partnership shall continue without dissolution.

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

The General Partner or any other holder of Incentive Distribution Rights may transfer any or all of its Incentive Distribution Rights without Unitholder approval.

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

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

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

(c) The transfer of a Common Unit that was issued upon conversion of a Subordinated Unit shall be subject to the restrictions imposed by Section 6.7(c) .

(d) The transfer of an IDR Reset Common Unit that was issued in connection with an IDR Reset Election pursuant to Section 5.11 shall be subject to the restrictions imposed by Section 6.8(b) .

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

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

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF ROSE ROCK MIDSTREAM, L.P. THAT THIS SECURITY MAY NOT BE SOLD, OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED IF SUCH TRANSFER WOULD (A) VIOLATE THE THEN APPLICABLE FEDERAL OR STATE SECURITIES LAWS OR RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY WITH JURISDICTION OVER SUCH TRANSFER, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF ROSE ROCK MIDSTREAM, L.P. UNDER THE LAWS OF THE STATE OF DELAWARE OR (C) CAUSE ROSE ROCK MIDSTREAM, L.P. TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR

TAXED). ROSE ROCK MIDSTREAM GP, LLC OR ITS SUCCESSOR, THE GENERAL PARTNER OF ROSE ROCK MIDSTREAM, L.P., MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE NECESSARY OR ADVISABLE TO AVOID A SIGNIFICANT RISK OF ROSE ROCK MIDSTREAM, L.P. BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR U.S. FEDERAL INCOME TAX PURPOSES. THE RESTRICTIONS SET FORTH ABOVE SHALL NOT PRECLUDE THE SETTLEMENT OF ANY TRANSACTIONS INVOLVING THIS SECURITY ENTERED INTO THROUGH THE FACILITIES OF ANY NATIONAL SECURITIES EXCHANGE ON WHICH THIS SECURITY IS LISTED OR ADMITTED TO TRADING.

**Section 4.9 Eligibility Certifications; Ineligible Holders .**

(a) If at any time the General Partner determines, with the advice of counsel, that

(i) the U.S. federal income tax status (or lack of proof of the U.S. federal income tax status) of one or more Limited Partners has or is reasonably likely to have a material adverse effect on the rates that can be charged to customers by any Group Member on assets that are subject to regulation by FERC or analogous regulatory body (a “ **Rate Eligibility Trigger** ”); or

(ii) any Group Member is subject to any federal, state or local law or regulation that would create a substantial risk of cancellation or forfeiture of any property in which the Group Member has an interest based on the nationality, citizenship or other related status of one or more Limited Partners (a “ **Citizenship Eligibility Trigger** ”);

then, (x) in the case of a Rate Eligibility Trigger, the General Partner may obtain such proof of the U.S. federal income tax status of the Limited Partners and, to the extent relevant, their beneficial owners, as the General Partner determines to be necessary to establish those Limited Partners whose U.S. federal income tax status does not or would not have a material adverse effect on the rates that can be charged to customers by any Group Member or (y) in the case of a Citizenship Eligibility Trigger, the General Partner may obtain such proof of the nationality, citizenship or other related status of the Limited Partners (or, if any Limited Partner is a nominee holding for the account of another Person, the nationality, citizenship or other related status of such Person) as the General Partner determines to be necessary to establish those Limited Partners whose nationality, citizenship or other related status does not or would not subject any Group Member to a significant risk of cancellation or forfeiture of any of its properties or interests therein.

(b) Without limitation of the foregoing, the General Partner may require all Limited Partners to certify as to their (and their beneficial owners’) status as Eligible Holders upon demand and on a regular basis, as determined by the General Partner, and may require transferees of Units to so certify prior to being admitted to the Partnership as a Limited Partner (any such required certificate, an “ **Eligibility Certificate** ”).



(c) If any Limited Partner fails to furnish to the General Partner an Eligibility Certificate or other requested proof of its (and its beneficial owners') status as an Eligible Holder within thirty (30) days (or such other period as the General Partner may determine) of receipt of a request from the General Partner to furnish an Eligibility Certificate or other such proof, or if upon receipt of such Eligibility Certificate or other requested proof the General Partner determines that a Limited Partner is not an Eligible Holder (such a Partner, an "**Ineligible Holder**"), the Partnership Interests owned by such Limited Partner shall be subject to redemption in accordance with the provisions of Section 4.10. In addition, the General Partner shall be substituted for all Limited Partners that are Ineligible Holders as the Limited Partner in respect of the Ineligible Holders' Partnership Interests.

(d) The General Partner shall, in exercising voting rights in respect of Partnership Interests held by it on behalf of Ineligible Holders, distribute the votes in the same ratios as the votes of Partners (including the General Partner and its Affiliates) in respect of Partnership Interests other than those held by Ineligible Holders are cast, either for, against or abstaining as to the matter.

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

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

#### **Section 4.10 Redemption of Partnership Interests of Ineligible Holders .**

(a) If at any time a Limited Partner fails to furnish an Eligibility Certificate or other information requested within thirty (30) days (or such other period as the General Partner may determine) of receipt of a request from the General Partner to furnish an Eligibility Certificate or such other information, or if upon receipt of such Eligibility Certificate or other information the General Partner determines, with the advice of counsel, that a Limited Partner is not an Eligible Holder, the Partnership may, unless the Limited Partner establishes to the satisfaction of the General Partner that such Limited Partner is an Eligible Holder or has transferred his Partnership Interests to a Person who is an Eligible Holder and who furnishes an Eligibility Certificate to the General Partner prior to the date fixed for redemption as provided below, redeem the Limited Partner Interest of such Limited Partner as follows:

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

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(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Partnership Interests of the class to be so redeemed multiplied by the number of Partnership Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, as determined by the General Partner, in cash or by delivery of a promissory note of the Partnership in the principal amount of the redemption price, bearing interest at the rate of 5% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) The Limited Partner or his duly authorized representative shall be entitled to receive the payment for the Redeemable Interests at the place of payment specified in the notice of redemption on the redemption date (or, if later in the case of Redeemable Interests evidenced by Certificates, upon surrender by or on behalf of the Partner at the place specified in the notice of redemption, of the Certificates evidencing the Redeemable Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank).

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

(b) The provisions of this Section 4.10 shall also be applicable to Partnership Interests held by a Limited Partner as nominee of a Person determined to be an Ineligible Holder.

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

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## ARTICLE V

### CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

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

In connection with the formation of the Partnership under the Delaware Act, the General Partner made an initial Capital Contribution to the Partnership in the amount of \$20.00 in exchange for a General Partner Interest equal to a 2% Percentage Interest, and has been admitted as the general partner of the Partnership, Holdings made an initial Capital Contribution to the Partnership in the amount of \$970.00 in exchange for a Limited Partner Interest equal to a 97% Percentage Interest, and has been admitted as a limited partner of the Partnership, and RRMC made an initial Capital Contribution to the Partnership in the amount of \$10.00 in exchange for a Limited Partner Interest equal to a 1% Percentage Interest, and has been admitted as a limited partner of the Partnership. On the Contribution Date, pursuant to and as described in the Contribution Agreement, the respective initial Capital Contributions of the General Partner, Holdings and RRMC were returned with two percent (2%), ninety-seven percent (97%) and one percent (1%), respectively of any interest or other profit that may have resulted from the investment or other use of such initial Capital Contributions.

#### **Section 5.2 *Contributions by the General Partner* .**

(a) On the Contribution Date, pursuant to and as described in the Contribution Agreement, Holdings contributed to the Partnership on behalf of the General Partner, as a Capital Contribution, 2% of the Interests (as defined in the Contribution Agreement), in exchange for a continuation of the General Partner's 2% General Partner Interest and a right to receive a reimbursement for certain capital expenditures incurred with respect to the Interests.

(b) Effective upon the execution of this Agreement, the General Partner's 2% General Partner Interest that existed immediately prior to the execution of this Agreement shall be exchanged for (i) 342,437 Notional General Partner Units representing a continuation of its 2% General Partner Interest, subject to all of the rights, privileges and duties of the General Partner under this Agreement and (ii) the Incentive Distribution Rights.

(c) Upon the issuance of any additional Limited Partner Interests by the Partnership (other than (i) the Common Units, Subordinated Units and Incentive Distribution Rights issued in connection with the Initial Public Offering, (ii) any Common Units issued upon conversion of Subordinated Units and (iii) Common Units issued pursuant to [Section 5.11](#)), the General Partner may, in order to maintain the Percentage Interest with respect to its General Partner Interest, make additional Capital Contributions in an amount equal to the product obtained by multiplying (i) the quotient determined by dividing (A) the Percentage Interest with respect to the General Partner Interest immediately prior to the issuance of such additional Limited Partner Interests by the Partnership by (B) 100 less the Percentage Interest with respect to the General Partner Interest immediately prior to the issuance of such additional Limited Partner Interests by the Partnership times (ii) the amount contributed to the Partnership by the Limited Partners in exchange for such additional Limited Partner Interests. Except as set forth in [Article XII](#), the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

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

(a) On the Contribution Date, pursuant to and as described in the Contribution Agreement, Holdings contributed to the Partnership on behalf of itself and RRMC, as a Capital Contribution, 97% and 1%, respectively, of the Interests (as defined in the Contribution Agreement), in exchange for a continuation of their 97% and 1% Limited Partner Interests in the Partnership, respectively, and a right to receive a reimbursement for certain capital expenditures incurred with respect to the Interests.

(b) Effective upon the execution of this Agreement, Holdings' 97% Limited Partner Interest that existed immediately prior to the execution of this Agreement shall be exchanged for (i) 168,491 Common Units, (ii) 8,389,709 Subordinated Units and (iii) the right to receive the Deferred Issuance and Distribution upon the earlier to occur of (A) the expiration of the Over-Allotment Option or (B) the exercise in full of the Over-Allotment Option.

(c) Effective upon the execution of this Agreement, RRMC's 1% Limited Partner Interest that existed immediately prior to the execution of this Agreement shall be exchanged for 171,218 Common Units.

(d) On the Closing Date, pursuant to and as described in the Underwriting Agreement, each Underwriter is contributing cash to the Partnership in exchange for the issuance by the Partnership of Common Units to such Underwriter, as set forth in the Underwriting Agreement.

(e) Upon the exercise, if any, of the Over-Allotment Option, each Underwriter shall contribute cash to the Partnership in exchange for the issuance by the Partnership of Common Units to each Underwriter, as set forth in the Underwriting Agreement.

(f) No Limited Partner Interests were or will be issued or issuable as of or at the Closing Date other than (i) the Common Units and Subordinated Units issued to Holdings and RRMC pursuant to subparagraphs (b) and (c) of this Section 5.3, (ii) the Common Units issued to the Underwriters as described in subparagraphs (d) and (e), if applicable, of this Section 5.3 and (iii) the Incentive Distribution Rights issued to the General Partner pursuant to subparagraph (b) of Section 5.2.

(g) No Limited Partner will be required to make any Capital Contribution to the Partnership pursuant to this Agreement.

### **Section 5.4 Interest on and Withdrawal of Capital Contributions .**

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

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## Section 5.5 Capital Accounts .

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

(b) For purposes of computing the amount of any item of income, gain, loss or deduction that is to be allocated pursuant to Article VI and is to be reflected in the Partners' Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income tax purposes (including any method of depreciation, cost recovery or amortization used for that purpose); *provided that*:

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

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

(iii) Except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code that 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 U.S. federal income tax purposes. To the extent an

adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

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

(v) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Partnership were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 5.5(d) to the Carrying Value of any Partnership property subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such property shall be determined, under the rules prescribed by Treasury Regulation Section 1.704-3(d)(2), as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment.

(vi) The Gross Liability Value of each Liability of the Partnership described in Treasury Regulation Section 1.752-7(b)(3)(i) shall be adjusted at such times as provided in this Agreement for an adjustment to Carrying Values. The amount of any such adjustment shall be treated for purposes hereof as an item of loss (if the adjustment increases the Carrying Value of such Liability of the Partnership) or an item of gain (if the adjustment decreases the Carrying Value of such Liability of the Partnership).

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

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

(iii) Upon the issuance of IDR Reset Common Units pursuant to Section 5.11(a), (A) first, the Capital Account maintained with respect to the Incentive Distribution Rights will be allocated to IDR Reset Common Units in an amount equal to the product of (x) the Aggregate Quantity of IDR Reset Common Units and (y) the Per Unit Capital Amount for an Initial Common Unit, and (B) second, any remaining balance in such Capital Account will be retained by the holder of the Incentive Distributions Rights. In the event that there is not a sufficient Capital Account associated with the Incentive Distribution Rights to allocate the full Per Unit Capital Amount for an Initial Common Unit to the IDR Reset Common Units in accordance with clause (A) of this Section 5.5(c)(iii), the IDR Reset Common Units shall be subject to Section 6.1(d)(x)(B) and Section 6.1(d)(x)(C).

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Partnership Interests for cash or Contributed Property, an issuance of Partnership Interests as consideration for the provision of services or a conversion of the Combined Interest to Common Units pursuant to Section 11.3(b), the Capital Account of each Partner 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 for an amount equal to its fair market value and had been allocated to the Partners at such time pursuant to Section 6.1(c) and Section 6.1(d) in the same manner as any item of gain or loss actually recognized following an event giving rise to the dissolution of the Partnership would have been allocated; *provided, however*, that in the event of an issuance of Partnership Interests for a de minimis amount of cash or Contributed Property, or in the event of an issuance of a de minimis amount of Partnership Interests as consideration for the provision of services, the General Partner may determine that such adjustments are unnecessary for the proper administration of the Partnership. In determining such Unrealized Gain or Unrealized Loss, the aggregate fair market value of all Partnership assets (including cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests shall be determined by the General Partner using such method of valuation as it may adopt; *provided, however*, that the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines) to arrive at a fair market value for individual properties.

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any actual or deemed distribution to a Partner of any Partnership property (other than a distribution of cash that is not in redemption or retirement of a Partnership Interest), the Capital Accounts of all Partners and the Carrying Value of all Partnership property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized in a sale of such property immediately prior to such distribution for an amount equal to its fair market value, and had been allocated to the Partners, at such time, pursuant to Section 6.1(c) and Section 6.1(d) in the same manner as any item of gain or loss actually recognized following an

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event giving rise to the dissolution of the Partnership would have been allocated. In determining such Unrealized Gain or Unrealized Loss, the aggregate fair market value of all Partnership assets (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of an actual distribution that is not made pursuant to Section 12.4 or in the case of a deemed distribution, be determined and allocated in the same manner as that provided in Section 5.5(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined and allocated by the Liquidator using such method of valuation as it may adopt.

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

(a) The Partnership may issue additional Partnership Interests and options, rights, warrants, appreciation rights, tracking and phantom interests, and other economic interests relating to the Partnership Interests (including pursuant to Section 7.4(c)) for any partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the General Partner shall determine, all without the approval of any Limited Partners.

(b) Each additional Partnership Interest or other security authorized to be issued by the Partnership pursuant to Section 5.6(a) or Section 7.4(c) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership Interests or other securities), as shall be fixed by the General Partner, including (i) the right to share in Partnership profits and losses or items thereof; (ii) the right to share in Partnership distributions; (iii) rights upon dissolution and liquidation of the Partnership; (iv) whether, and the terms and conditions upon which, the Partnership may or shall be required to redeem the Partnership Interest or other security (including sinking fund provisions); (v) whether such Partnership Interest or other security is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Interest or other security will be issued, evidenced by certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Partnership Interest; and (viii) the right, if any, of such Partnership Interest to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Interest.

(c) The General Partner shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Partnership Interests and options, rights, warrants, appreciation rights, tracking and phantom interests, and other economic interests in the Partnership or relating to Partnership Interests pursuant to this Section 5.6 or Section 7.4(c); (ii) the conversion of the General Partner Interest (represented by Notional General Partner Units) or any Incentive Distribution Rights into Units pursuant to the terms of this Agreement; (iii) the issuance of Common Units pursuant to Section 5.11; (iv) the admission of Additional Limited Partners; and (v) all additional issuances of Partnership Interests. The General Partner shall determine the relative rights, powers and duties of the holders of the Units or other Partnership Interests or other securities being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Partnership Interests or other securities or in connection with the conversion of the General Partner Interest or any



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Incentive Distribution Rights into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Interests are listed or admitted to trading.

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

**Section 5.7 Conversion of Subordinated Units .**

(a) All of the Subordinated Units shall automatically convert into Common Units on a one-for-one basis on the expiration or termination of the Subordination Period.

(b) A Common Unit that has been issued upon conversion of a Subordinated Unit shall be subject to the provisions of Section 6.7.

**Section 5.8 Limited Preemptive Right .**

Except as provided in this Section 5.8 and in Section 5.2 or as otherwise provided in a separate agreement by the Partnership, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Interest or other security, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Interests from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Interests to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Interests. Any determination by the General Partner whether to exercise its right pursuant to the immediately preceding sentence shall be a determination made in its individual capacity and not as the general partner of the Partnership, and such determination may be made in accordance with Section 7.9(c).

**Section 5.9 Splits and Combinations .**

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

(b) Whenever such a distribution, subdivision or combination of Partnership Interests is declared, the General Partner shall select a Record Date as of which the distribution, subdivision or combination shall be effective and shall send notice thereof at least 20 days prior to such Record Date to each Record Holder as of a date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Partnership Interests 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) If a Pro Rata distribution of Partnership Interests, or a subdivision or combination of Partnership Interests, is made as contemplated in this Section 5.9, the number of Notional General Partner Units constituting the Percentage Interest of the General Partner (as determined immediately prior to the Record Date for such distribution, subdivision or combination) shall be appropriately adjusted as of the date of payment of such distribution, or the effective date of such subdivision or combination, to maintain such Percentage Interest of the General Partner.

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

(e) The Partnership shall not issue fractional Units or Notional General Partner 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 or fractional Notional General Partner Units but for the provisions of this Section 5.9(e), each fractional Unit or fractional Notional General Partner Unit shall be rounded to the nearest whole Unit or Notional General Partner Unit (and a 0.5 Unit or Notional General Partner Unit shall be rounded to the next higher Unit or Notional General Partner Unit).

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

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

**Section 5.11 Issuance of Common Units in Connection with Reset of Incentive Distribution Rights .**

(a) Subject to the provisions of this Section 5.11, the holder of the Incentive Distribution Rights (or, if there is more than one holder of the Incentive Distribution Rights, the holders of a majority in interest of the Incentive Distribution Rights) shall have the right, exercisable at its option at any time when there are no Subordinated Units Outstanding and the Partnership has made a distribution pursuant to Section 6.4(b)(v) for each of the four most recently completed Quarters and the amount of each such distribution did not exceed Adjusted Operating Surplus for such Quarter, to make an election (the “**IDR Reset Election**”) to cause the Target Distributions to be reset in accordance with the provisions of Section 5.11(e) and, in connection therewith, the holder or holders of the Incentive Distribution Rights will become

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entitled to receive their respective proportionate share of a number of Common Units (the “**IDR Reset Common Units**”) determined by dividing (i) the average of the aggregate cash distributions made by the Partnership in respect of the Incentive Distribution Rights for the two full Quarters immediately preceding the giving of the Reset Notice (as defined in Section 5.11(b)) by (ii) the average of the cash distributions made by the Partnership in respect of each Common Unit for the two full Quarters immediately preceding the giving of the Reset Notice (the number of Common Units determined by such quotient is referred to herein as the “**Aggregate Quantity of IDR Reset Common Units**”). If at the time of any IDR Reset Election the General Partner and its Affiliates are not the holders of a majority in interest of the Incentive Distribution Rights, then the IDR Reset Election shall be subject to the prior written concurrence of the General Partner that the conditions described in the immediately preceding sentence have been satisfied. The Percentage Interest of the General Partner, with respect to the General Partner Interest, after the issuance of the Aggregate Quantity of IDR Reset Common Units shall equal the Percentage Interest of the General Partner, with respect to the General Partner Interest, prior to the issuance of the Aggregate Quantity of IDR Reset Common Units, and the General Partner shall not be obligated to make any additional Capital Contribution to the Partnership in order to maintain its Percentage Interest in connection therewith and shall be issued an additional number of Notional General Partner Units as is required to maintain such Percentage Interest at the time the IDR Reset Common Units are issued. The making of the IDR Reset Election in the manner specified in Section 5.11(b) shall cause each of the Target Distributions to be reset in accordance with the provisions of Section 5.11(e) and, in connection therewith, the holder or holders of the Incentive Distribution Rights will become entitled to receive IDR Reset Common Units on the basis specified above, without any further approval required by the General Partner or the Unitholders, at the time specified in Section 5.11(c) unless the IDR Reset Election is rescinded pursuant to Section 5.11(d).

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

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

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

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

(f) The IDR Reset Common Units shall be subject to the provisions of Section 6.8(b).

## ARTICLE VI

### ALLOCATIONS AND DISTRIBUTIONS

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

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

(a) *Net Income* . After giving effect to the special allocations set forth in Section 6.1(d), Net Income for each taxable 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, to the General Partner until the aggregate of the Net Income allocated to the General Partner pursuant to this Section 6.1(a)(i) and the Net Termination Gain allocated to the General Partner pursuant to Section 6.1(c)(i)(A) or Section 6.1(c)(iv)(A) for the current and all previous taxable periods is equal to the aggregate of the Net Loss allocated to the General Partner pursuant to Section 6.1(b)(ii) for all previous taxable periods and the Net Termination Loss allocated to the General Partner pursuant to Section 6.1(c)(ii)(D) or Section 6.1(c)(iii)(B) for the current and all previous taxable periods; and

(ii) The balance, if any, (x) to the General Partner in accordance with its Percentage Interest, and (y) to all Unitholders, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x).

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

(i) *First* , to the General Partner and the Unitholders, Pro Rata; *provided, however* , that Net Losses shall not be allocated pursuant to this Section 6.1(b)(i) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable period (or increase any existing deficit balance in its Adjusted Capital Account); and

(ii) The balance, if any, 100% to the General Partner.

(c) *Net Termination Gains and Losses* . After giving effect to the special allocations set forth in Section 6.1(d), Net Termination Gain or Net Termination Loss (including a pro rata part of each item 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 manner set forth in this Section 6.1(c). All allocations under this Section 6.1(c) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 6.1 and after all distributions of Available Cash provided under Section 6.4 and Section 6.5 have been made; *provided, however*, that solely for purposes of this Section 6.1(c), Capital Accounts shall not be adjusted for distributions made pursuant to Section 12.4.

(i) Except as provided in Section 6.1(c)(iv), Net Termination Gain (including a pro rata part of each item of income, gain, loss, and deduction taken into account in computing Net Termination Gain) shall be allocated:

(A) *First* , to the General Partner until the aggregate of the Net Termination Gain allocated to the General Partner pursuant to this Section 6.1(c)(i)(A) or Section 6.1(c)(iv)(A) and the Net Income allocated to the General Partner pursuant to Section 6.1(a)(i) for the current and all previous taxable periods is equal to the aggregate of the Net Loss allocated to the General Partner pursuant to Section 6.1(b)(ii) for all previous taxable periods and the Net Termination Loss allocated to the General Partner pursuant to Section 6.1(c)(ii)(D) or Section 6.1(c)(iii)(B) for all previous taxable periods;

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

(C) *Third*, if such Net Termination Gain is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Subordinated Unit, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Subordinated Units, Pro Rata, a percentage equal to 100% less the General Partner's Percentage Interest, until the Capital Account in respect of each Subordinated Unit then Outstanding equals the sum of (1) its Unrecovered Initial Unit Price, determined for the taxable period (or portion thereof) to which this allocation of gain relates, and (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(a)(iii) with respect to such Subordinated Unit for such Quarter;

(D) *Fourth*, to the General Partner and all Unitholders, 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, (2) the Unpaid MQD, (3) any then existing Cumulative Common Unit Arrearage, and (4) the excess of (aa) the First Target Distribution less the Minimum Quarterly Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Section 6.4(a)(iv) and Section 6.4(b)(ii) (the sum of (1), (2), (3) and (4) being referred to herein as the "**First Liquidation Target Amount**");

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

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

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

(ii) Except as otherwise provided by Section 6.1(c)(iii), Net Termination Loss (including a pro rata part of each item of income, gain, loss, and deduction taken into account in computing Net Termination Loss) shall be allocated:

(A) *First*, if Subordinated Units remain Outstanding, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Subordinated Units, Pro Rata, a percentage equal to 100% less the General Partner's Percentage Interest, until the Capital Account in respect of each Subordinated Unit then Outstanding has been reduced to zero;

(B) *Second*, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Common Units, Pro Rata, a percentage equal to 100% less the General Partner's Percentage Interest, until the Capital Account in respect of each Common Unit then Outstanding has been reduced to zero;

(C) *Third*, to the General Partner and the Unitholders, Pro Rata; *provided, however*, that Net Termination Loss shall not be allocated pursuant to this Section 6.1(c)(ii)(C) to the extent such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account (or increase any existing deficit in its Adjusted Capital Account); and

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

(iii) Any Net Termination Loss deemed recognized pursuant to Section 5.5(d) prior to the Liquidation Date shall be allocated:

(A) *First*, to the General Partner and the Unitholders, Pro Rata; *provided, however*, that Net Termination Loss shall not be allocated pursuant to this Section 6.1(c)(iii)(A) to the extent such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable period (or increase any existing deficit in its Adjusted Capital Account); and

(B) The balance, if any, to the General Partner.

(iv) If a Net Termination Loss has been allocated pursuant to Section 6.1(c)(iii), any subsequent Net Termination Gain deemed recognized pursuant to Section 5.5(d) prior to the Liquidation Date shall be allocated:

(A) *First*, to the General Partner until the aggregate Net Termination Gain allocated to the General Partner pursuant to this Section 6.1(c)(iv)(A) is equal to the aggregate Net Termination Loss previously allocated pursuant to Section 6.1(c)(iii)(B);

(B) *Second*, to the General Partner and the Unitholders, Pro Rata, until the aggregate Net Termination Gain allocated pursuant to this Section 6.1(c)(iv)(B) is equal to the aggregate Net Termination Loss previously allocated pursuant to Section 6.1(c)(iii)(A); and

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(C) The balance, if any, pursuant to the provisions of Section 6.1(c)(i).

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

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

(ii) *Chargeback of Partner Nonrecourse Debt Minimum Gain* . Notwithstanding the other provisions of this Section 6.1 (other than Section 6.1(d)(i) ), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Partnership taxable period, any Partner with a share of Partner Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Section 6.1(d) , each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(d) , other than Section 6.1(d)(i) and other than an allocation pursuant to Section 6.1(d)(vi) and Section 6.1(d)(vii) , with respect to such taxable period. This Section 6.1(d)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Priority Allocations* .

(A) If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 12.4 ) with respect to a Unit exceeds the amount of cash or the Net Agreed Value of property distributed with respect to another Unit (the amount of the excess, an “**Excess Distribution** ” and the Unit with respect to which the greater distribution is paid, an “**Excess Distribution Unit** ”), then (1) there shall be allocated gross income and gain to each Unitholder receiving an Excess Distribution with respect to the Excess Distribution Unit until the aggregate amount of such items allocated with respect to such Excess Distribution Unit pursuant to this Section 6.1(d)(iii)(A) for the current taxable period and all previous taxable periods is equal to the amount of the Excess Distribution; and (2) the General Partner shall be allocated gross income and gain



with respect to each such Excess Distribution in an amount equal to the product obtained by multiplying (aa) the quotient determined by dividing (x) the General Partner's Percentage Interest at the time when the Excess Distribution occurs by (y) a percentage equal to 100% less the General Partner's Percentage Interest at the time when the Excess Distribution occurs, times (bb) the total amount allocated in clause (1) above with respect to such Excess Distribution.

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

(iv) *Qualified Income Offset* . In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership gross income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; *provided* , that an allocation pursuant to this Section 6.1(d)(iv) shall be made only if and to the extent that such Partner would have a deficit balance in its Adjusted Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(d)(iv) were not in this Agreement.

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

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

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

(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; Changes in Law* .

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

(B) With respect to an event triggering an adjustment to the Carrying Value of Partnership property pursuant to Section 5.5(d) during any taxable period of the Partnership ending upon, or after, the issuance of IDR Reset Common Units pursuant to Section 5.11, after the application of Section 6.1(d)(x)(A), any Unrealized Gains and Unrealized Losses shall be allocated among the Partners in a manner that to the nearest extent possible results in the Capital Accounts maintained with respect to such IDR Reset Common Units issued pursuant to Section 5.11 equaling the product of (x) the Aggregate Quantity of IDR Reset Common Units and (y) the Per Unit Capital Amount for an Initial Common Unit.

(C) With respect to any taxable period during which an IDR Reset Common Unit is transferred to any Person who is not an Affiliate of the transferor, all or a portion of the remaining items of Partnership gross income or gain for such taxable period shall be allocated 100% to the transferor Partner of such transferred IDR Reset Common Unit until such transferor Partner has been allocated an amount of gross income or gain that increases the Capital Account maintained with respect to such transferred IDR Reset Common Unit to an amount equal to the Per Unit Capital Amount for an Initial Common Unit.

(D) For the proper administration of the Partnership and for the preservation of uniformity of the Limited Partner Interests (or any class or classes thereof), the General Partner shall (x) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (y) make special allocations of income, gain, loss, deduction, Unrealized Gain or Unrealized Loss; and (z) amend the provisions of this Agreement as appropriate (1) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (2) otherwise to preserve or achieve uniformity of the Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.1(d)(x)(D) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Limited Partner Interests issued and Outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(xi) *Curative Allocation* .

(A) Notwithstanding any other provision of this Section 6.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of gross income, gain, loss and deduction allocated to each Partner pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Partner under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in

this Section 6.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain and (2) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Nonrecourse Debt Minimum Gain. In exercising its discretion under this Section 6.1(d)(xi)(A), the General Partner may take into account future Required Allocations that, although not yet made, are likely to offset other Required Allocations previously made. Allocations pursuant to this Section 6.1(d)(xi)(A) shall only be made with respect to Required Allocations to the extent the General Partner determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners. Further, allocations pursuant to this Section 6.1(d)(xi)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) hereof to the extent the General Partner determines that such allocations are likely to be offset by subsequent Required Allocations.

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

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

(A) Except as provided in Section 6.1(d)(xii)(B), in the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 5.5(d)), the General Partner shall allocate such Additional Book Basis Derivative Items (1) to the holders of Incentive Distribution Rights and the General Partner to the same extent that the Unrealized Gain or Unrealized Loss giving rise to such Additional Book Basis Derivative Items was allocated to them pursuant to Section 5.5(d) and (2) to all Unitholders, Pro Rata, to the extent that the Unrealized Gain or Unrealized Loss giving rise to such Additional Book Basis Derivative Items was allocated to any Unitholders pursuant to Section 5.5(d).

(B) In the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 5.5(d) or an allocation of Net Termination Gain or Net Termination Loss pursuant to Section 6.1(c) as a result of a sale or other taxable disposition of any Partnership asset that is an Adjusted Property (“***Disposed of Adjusted Property***”), the General Partner shall allocate (1) additional items of gross income and gain (aa) away from the holders of Incentive Distribution Rights and (bb) to the Unitholders, or (2) additional items of deduction and loss (aa) away from the Unitholders and (bb) to the holders of Incentive Distribution Rights, to the extent that the Additional Book Basis Derivative Items allocated to the Unitholders exceed their Share of Additional Book Basis Derivative Items with respect to such Disposed of Adjusted Property. Any allocation made pursuant to this Section 6.1(d)(xii)(B) shall be made after all of the other Agreed Allocations have been made as if this Section 6.1(d)(xii) were not in this Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

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

(D) For purposes of this Section 6.1(d)(xii), the Unitholders shall be treated as being allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Unitholders under this Agreement. Without limiting the foregoing, if an Adjusted Property is contributed by the Partnership to another entity classified as a partnership for federal income tax purposes (the “lower tier partnership”), the General Partner may make allocations similar to those described in Sections (d)(xii)(A)-(C) to the extent the General Partner determines such allocations are necessary to account for the Partnership’s allocable share of income, gain, loss and deduction of the lower tier partnership that relate to the contributed Adjusted Property in a manner that is consistent with the purpose of this Section 6.1(d)(xii).

(xiii) *Special Curative Allocation in Event of Liquidation Prior to End of Subordination Period.* Notwithstanding any other provision of this Section 6.1 (other than the Required Allocations), if the Liquidation Date occurs prior to the conversion of the last Outstanding Subordinated Unit, then items of income, gain, loss and deduction for the taxable period that includes the Liquidation Date (and, if necessary, items arising in previous taxable periods to the extent the General Partner determines such items may be so allocated), shall be specially allocated among the Partners in the manner determined appropriate by the General Partner so as to cause, to the maximum extent possible, the Capital Account in respect of each Common Unit to equal the amount such Capital Account would have been if all prior allocations of Net Termination Gain and Net Termination Loss had been made pursuant to Section 6.1(c)(i) or Section 6.1(c)(ii), as applicable.

### **Section 6.2 Allocations for Tax Purposes .**

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

(b) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for federal income tax purposes among the Partners in the manner provided under Section 704(c) of the Code, and the Treasury Regulations promulgated

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under Section 704(b) and 704(c) of the Code, as determined appropriate by the General Partner (taking into account the General Partner's discretion under Section 6.1(d)(x)(D)); *provided* that the General Partner shall apply the principles of Treasury Regulation Section 1.704-3(d) in all events.

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

(d) In accordance with Treasury Regulation Sections 1.1245-1(e) and 1.1250-1(f), any gain allocated to the Partners upon the sale or other taxable disposition of any Partnership asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 6.2, be characterized as Recapture Income in the same proportions and to the same extent as such Partners (or their predecessors in interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

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

(f) Each item of Partnership income, gain, loss and deduction, for federal income tax purposes, shall be determined for each taxable period and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the National Securities Exchange on which the Partnership Interests are listed or admitted to trading on the first Business Day of each month; *provided, however*, that such items for the period beginning on the Closing Date and ending on the last day of the month in which the Option Closing Date or the expiration of the Over-Allotment Option occurs shall be allocated to the Partners as of the opening of the National Securities Exchange on which the Partnership Interests are listed or admitted to trading on the first Business Day of the next succeeding month; and *provided, further*, that gain or loss on a sale or other disposition of any assets of the Partnership or any other extraordinary item of income or loss realized and recognized other than in the ordinary course of business, as determined by the General Partner, shall be allocated to the Partners as of the opening of the

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National Securities Exchange on which the Partnership Interests are listed or admitted to trading on the first Business Day of the month in which such gain or loss is recognized for federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

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

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

(a) Except as described in Section 6.3(b) or Section 6.3(c), within 45 days following the end of each Quarter, an amount equal to 100% of Available Cash with respect to such Quarter shall be distributed in accordance with this Article VI by the Partnership to the Partners as of the Record Date selected by the General Partner. All amounts of Available Cash distributed by the Partnership on any date following the Closing Date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash distributed by the Partnership to the Partners following the Closing Date pursuant to Section 6.4 equals the Operating Surplus from the Closing Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Partnership on such date shall, except as otherwise provided in Section 6.5, be deemed to be "Capital Surplus." Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not be required to make a distribution to any Partner on account of its interest in the Partnership if such distribution would violate the Delaware Act or any other applicable law.

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

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

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

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

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

(i) *First* , (x) to the General Partner in accordance with its Percentage Interest and (y) to the Unitholders holding Common Units, Pro Rata, a percentage equal to 100% less the General Partner's Percentage Interest until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(ii) *Second* , (x) to the General Partner in accordance with its Percentage Interest and (y) to the Unitholders holding Common Units, Pro Rata, a percentage equal to 100% less the General Partner's Percentage Interest until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage existing with respect to such Common Unit;

(iii) *Third* , (x) to the General Partner in accordance with its Percentage Interest and (y) to the Unitholders holding Subordinated Units, Pro Rata, a percentage equal to 100% less the General Partner's Percentage Interest until there has been distributed in respect of each Subordinated Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

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

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

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

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



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

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

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

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

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

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

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

*provided, however*, that if the Target Distributions have been reduced to zero pursuant to the second sentence of Section 6.6(a), the distribution of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made solely in accordance with Section 6.4(b)(v).

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

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

### **Section 6.6 Adjustment of Target Distribution Levels.**

(a) The Target Distributions, Common Unit Arrearages and Cumulative Common Unit Arrearages shall be proportionately adjusted in the event of any distribution, combination or subdivision (whether effected by a distribution payable in Units or otherwise) of Units or other Partnership Interests. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the then applicable Target Distributions shall be adjusted proportionately downward to equal the product obtained by multiplying the otherwise applicable Target Distribution by a fraction, the numerator of which is the Unrecovered Initial Unit Price of the Common Units immediately after giving effect to such distribution, and the denominator of which is the Unrecovered Initial Unit Price of the Common Units immediately prior to giving effect to such distribution. If the Common Units are publicly traded on a National Securities Exchange, the fair market value will be the Current Market Price before the ex-dividend date. If the Common Units are not publicly traded, the fair market value will be determined by the Board of Directors.

(b) The Target Distributions shall also be subject to adjustment pursuant to Section 5.11 and Section 6.9.

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

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

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

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

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

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

(b) A Unitholder holding an IDR Reset Common Unit that was issued in connection with an IDR Reset Election pursuant to Section 5.11 shall not be issued a Common Unit Certificate pursuant to Section 4.1 (if the Common Units are evidenced by Certificates) or evidence of the issuance of uncertificated Common Units, and shall not be permitted to transfer such Common Unit to a Person that is not an Affiliate of the holder, until such time as the General Partner determines, based on advice of counsel, that each such IDR Reset Common Unit should have, as a substantive matter, like intrinsic economic and federal income tax characteristics, in all material respects, to the intrinsic economic and federal income tax characteristics of an Initial Common Unit. In connection with the condition imposed by this Section 6.8(b), the General Partner may take whatever steps are required to provide economic uniformity to such IDR Reset Common Units in preparation for a transfer of such IDR Reset Common Units, including the application of Section 5.5(c)(iii), Section 6.1(d)(x)(B), or Section 6.1(d)(x)(C); *provided, however*, that no such steps may be taken that would have a material adverse effect on the Unitholders holding Common Units.

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

If legislation is enacted or the official interpretation of existing legislation is modified by a governmental authority, after giving effect to which a Group Member becomes subject to federal, state or local or non-U.S. income or withholding taxes in excess of the amount of such taxes due from the Group Member prior to such enactment or modification (including, for the avoidance of doubt, any increase in the rate of such taxation applicable to the Group Member), then the General Partner may, in its sole discretion, reduce the Target Distributions to take account of the income or withholding taxes that are payable by reason of any such new legislation or interpretation (the “**Incremental Income Taxes**”), or any portion thereof selected by the General Partner, in the manner provided in this Section 6.9. If the General Partner elects to reduce the Target Distributions for any Quarter with respect to all or a portion of any Incremental Income Taxes, the General Partner shall estimate for such Quarter the Partnership Group’s aggregate liability (the “**Estimated Incremental Quarterly Tax Amount**”) for all (or the relevant portion of) such Incremental Income Taxes; *provided* that any difference between such estimate and the actual liability for Incremental Income Taxes (or the relevant portion thereof) for such Quarter may, to the extent determined by the General Partner, be taken into account in determining the Estimated Incremental Quarterly Tax Amount with respect to each Quarter in which any such difference can be determined. For each such Quarter, the Target Distributions shall be the product obtained by multiplying (a) the amounts therefor that are set out herein prior to the application of this Section 6.9 times (b) the quotient obtained by dividing (i) Available Cash with respect to such Quarter by (ii) the sum of Available Cash with respect to such Quarter and the Estimated Incremental Quarterly Tax Amount for such Quarter, as determined by the General Partner. For purposes of the foregoing, Available Cash with respect to a Quarter will be deemed reduced by the Estimated Incremental Quarterly Tax Amount for that Quarter.

## **ARTICLE VII**

### **MANAGEMENT AND OPERATION OF BUSINESS**

#### **Section 7.1 Management.**

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, but without limitation on the ability of the General Partner to delegate its rights and powers to other Persons, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 7.3, shall have full power and authority to do all things, on such terms, as it determines to be necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

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

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

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

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

(v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if the 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, employment, retention and dismissal of employees (including employees having titles such as “president,” “vice president,” “secretary” and “treasurer”) and agents, outside attorneys, accountants, consultants and contractors of the General Partner or the Partnership Group and the determination of their compensation and other terms of employment or hiring;

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

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

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

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- (xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;
  - (xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Limited Partner Interests from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 4.8);
  - (xiii) the purchase, sale or other acquisition or disposition of Partnership Interests, or the issuance of options, rights, warrants, appreciation rights, tracking or phantom interests or other economic interests in the Partnership or relating to Partnership Interests;
  - (xiv) the undertaking of any action in connection with the Partnership's participation in any Group Member; and
  - (xv) the entering into of agreements with any of its Affiliates to render services to a Group Member or to itself in the discharge of its duties as General Partner of the Partnership.

(b) Notwithstanding any other provision of this Agreement, any Group Member Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners and each other Person who may acquire an interest in Partnership Interests or is otherwise bound by this Agreement hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement, any Group Member Agreement, the Underwriting Agreement, the Omnibus Agreement, the Contribution Agreement and the other agreements described in or filed as exhibits to the Registration Statement that are related to the transactions contemplated by the Registration Statement (collectively, the “*Transaction Documents*”) (in each case other than this Agreement, without giving effect to any amendments, supplements or restatements after the date hereof); (ii) agrees that the General Partner (on its own or on behalf of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners or the other Persons who may acquire an interest in Partnership Interests or are otherwise bound by this Agreement; and (iii) agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XV) shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement (or any other agreements) or of any duty existing at law, in equity or otherwise.

**Section 7.2 Certificate of Limited Partnership.**

The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents

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

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

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

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

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

(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership Group (including salary, bonus, incentive compensation, employment benefits and other amounts paid to any Person, including Affiliates of the General Partner, to perform services for the Partnership Group or for the General Partner in the discharge of its duties to the Partnership Group), and (ii) all other expenses allocable to the Partnership Group or otherwise incurred by the General Partner in connection with operating the Partnership Group's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the General Partner or the Partnership Group. Reimbursements pursuant to this Section 7.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.7. Any allocation of expenses to the Partnership by Affiliates of the General Partner in a manner consistent with past business practices and, in the case of assets regulated by FERC, then applicable accounting and allocation methodologies generally permitted by FERC for rate-making purposes (or in the absence of then-applicable methodologies permitted by FERC, consistent with the most-recently applicable methodologies), shall be deemed to be fair and reasonable to the Partnership.

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

**Section 7.5 Outside Activities.**

(a) The General Partner, for so long as it is the General Partner of the Partnership (i) agrees that its sole business will be to act as a general partner or managing member, as the case may be, of the Partnership and any other partnership or limited liability company of which the Partnership is, directly or indirectly, a partner or member and to undertake activities that are ancillary or related thereto (including being a Limited Partner in the Partnership) and (ii) shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (A) its performance as general partner or managing member, if any, of one or more Group Members or as described in or contemplated by the Registration Statement, (B) the acquiring, owning or disposing of debt securities or equity interests in any Group Member or (C) the guarantee of, and mortgage, pledge, or encumbrance of any or all of its assets in connection with, any indebtedness of any Affiliate of the General Partner.

(b) Each Unrestricted Person (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 otherwise existing at law, in equity or otherwise, to any Group Member



or any Partner. None of the Group Members, any Limited Partner or any other Person shall have any rights by virtue of this Agreement, any Group Member Agreement, or the partnership relationship established hereby in any business ventures of any Unrestricted Person.

(c) Subject to the terms of Section 7.5(a) and Section 7.5(b), but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Unrestricted Person (other than the General Partner) in accordance with the provisions of this Section 7.5 is hereby approved by the Partnership and all Partners, (ii) it shall be deemed not to be a breach of any fiduciary duty or any other obligation of any type whatsoever of the General Partner or any other Unrestricted Person for any Unrestricted Person (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership and (iii) no Unrestricted Person shall have any obligation hereunder or as a result of any duty otherwise existing at law, in equity or otherwise, to present business opportunities to the Partnership. Notwithstanding anything to the contrary in this Agreement, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any Unrestricted Person (including the General Partner). No Unrestricted Person (including the General Partner) who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for any Group Member shall have any duty to communicate or offer such opportunity to any Group Member, and such Unrestricted Person (including the General Partner) shall not be liable to the Partnership, any Limited Partner, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement for breach of any fiduciary or other duty by reason of the fact that such Unrestricted Person (including the General Partner) pursues or acquires such opportunity for itself, directs such opportunity to another Person or does not communicate such opportunity or information to any Group Member; *provided* that such Unrestricted Person does not engage in such business or activity as a result of or using confidential or proprietary information provided by or on behalf of the Partnership to such Unrestricted Person.

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

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

(a) The General Partner or any of its Affiliates may, but shall be under no obligation to, lend to any Group Member, and any Group Member may, but shall be under no obligation to, borrow from the General Partner or any of its Affiliates, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; *provided*, *however*, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party, or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party, by unrelated lenders on comparable loans made on an arm's-length basis (without reference to the lending party's financial abilities or guarantees), all as determined by the General Partner. The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 7.6(a) and Section 7.6(b), the term “*Group Member*” shall include any Affiliate of a Group Member that is controlled by the Group Member.

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

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

#### **Section 7.7 Indemnification.**

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, 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 and its having acted (or refrained from acting) in such capacity; *provided, however*, that the Indemnitee shall not be indemnified and held harmless pursuant to this Agreement if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Agreement, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful; and *provided, further*, that no indemnification pursuant to this Section 7.7 shall be available to the General Partner, any of its Affiliates or any other Indemnitee (other than a Group Member) with respect to its obligations pursuant to the Underwriting Agreement or the Omnibus Agreement. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.7(a) in appearing at, participating in or defending or preparing to defend against any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of

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the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.7, the Indemnitee is not entitled to be indemnified upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be ultimately determined that the Indemnitee is not entitled to be indemnified as authorized by this Section 7.7.

(c) Notwithstanding Section 7.7(a) and Section 7.7(b), the Partnership shall be required to indemnify and advance expenses to an Indemnitee in connection with any action, suit or proceeding commenced by such Indemnitee only if the commencement of such action, suit or proceeding by such Indemnitee was authorized by the General Partner in its sole discretion.

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

(e) The Partnership may purchase and maintain (or reimburse the General Partner or its Affiliates for the cost of) insurance, on behalf of the General Partner, its Affiliates, the Indemnitees 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, any such Person in connection with the Partnership's activities or such Person's activities on behalf of the Partnership, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

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

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

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

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

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

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

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Partners, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement for losses sustained or liabilities incurred as a result of any act or omission of an Indemnitee unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Indemnitee acted in bad faith or engaged in fraud or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was criminal. Each Limited Partner, each other Person who acquires an interest in a Partnership Interest and each other Person who is bound by this Agreement, on its own behalf and on behalf of the Partnership, waives, to the fullest extent permitted by law, any and all rights to claim punitive damages or damages based upon the federal or state income taxes paid or payable by any such Limited Partner or other Person.

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

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

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

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

(a) Unless otherwise expressly provided in this Agreement or any Group Member Agreement, whenever a potential conflict of interest exists or arises between the General Partner (in its individual capacity or its capacity as general partner, a limited partner or the holder of Incentive Distribution Rights) or any of its Affiliates, on the one hand, and the Partnership, any Group Member or any Partner, on the other, any resolution or course of action by the General Partner or its Affiliates in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, any Group Member Agreement, any agreement contemplated herein or therein, or any duty hereunder or stated or implied by law or equity or otherwise, if the resolution of or course of action taken with respect to such conflict of interest is (i) approved by Special Approval, (ii) approved by the vote of a majority of the Outstanding Common Units (excluding Common Units owned by the General Partner and its Affiliates), (iii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iv) fair and reasonable to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner shall be authorized but not required in connection with its resolution of or course of action taken with respect to such conflict of interest to seek Special Approval or Unitholder approval of such resolution or course of action, and the General Partner may also adopt a resolution or course of action that has not received Special Approval or Unitholder approval. Notwithstanding any other provision of this Agreement or any provision of applicable law, if Special Approval is sought or obtained, then it shall be presumed that, in making its decision, the Conflicts Committee acted in good faith, and if neither Special Approval nor Unitholder approval is sought or obtained and the Board of Directors determines that the resolution of or course of action taken with respect to a conflict of interest satisfies either of the standards set forth in clauses (iii) or (iv) above, then it shall be presumed that, in making its decision, the Board of Directors acted in good faith, and in any proceeding brought by any Limited Partner or by or on behalf of such Limited Partner or any other Limited Partner or the Partnership challenging such approval, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or in equity, when making any determination in connection with the resolution of or course of action taken with respect to a conflict of interest, the Conflicts Committee and the Board of Directors shall be authorized in connection with such determination to consider any and all factors as the Board of Directors or the Conflicts Committee, as applicable, deems to be relevant or appropriate under the circumstances and shall have no duty or obligation to consider any other factors. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or in equity, the existence of the conflicts of interest described in the Registration Statement and any actions of the General Partner taken in connection therewith are hereby approved by all Partners and shall not constitute a breach of this Agreement or of any duty hereunder or existing at law, in equity or otherwise.

(b) Whenever the General Partner, the Board of Directors or any committee thereof (including the Conflicts Committee) makes a determination or takes or declines to take any other action, or any Affiliate of the General Partner or other Indemnatee causes it to do so, in the General Partner's capacity as the general partner of the Partnership as opposed to in its individual capacity, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then, unless another express standard is provided for in this Agreement, the General Partner, the Board of Directors, such committee or such Affiliate or Indemnatee shall make such determination, take or decline to take such other action

or cause the General Partner to do so in good faith, and shall not be subject to any other or different standards (including fiduciary standards) imposed by this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise existing at law, in equity or otherwise. A determination, other action or failure to act by the General Partner, the Board of Directors or any committee thereof (including the Conflicts Committee) will be deemed to be in “good faith” if the General Partner, the Board of Directors or such committee subjectively believed that such determination, other action or failure to act was in, or not opposed to, the interests of the Partnership. In any proceeding brought by the Partnership, any Limited Partner, any Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement challenging such determination, other action or failure to act, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or failure to act was not in good faith.

(c) Whenever the General Partner (including the Board of Directors or any committee thereof) makes a determination or takes or declines to take any other action, or any Affiliate of the General Partner or any other Indemnitee causes it to do so, (i) under any provision that permits or requires a determination to be made in its “discretion” or “sole discretion,” regardless of whether it is acting in its capacity as the general partner of the Partnership or in its individual capacity or (ii) in its individual capacity as opposed to in its capacity as the general partner of the Partnership, in any case, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then the General Partner (including the Board of Directors or any committee thereof) or such Affiliate or Indemnitee, to the fullest extent permitted by law, shall not be subject to any duty or obligation (fiduciary or otherwise) to the Partnership, any Partner or any other Person and shall be entitled to consider only such interests and factors as it desires, including its own interests and the interests of its Affiliates, and shall have no duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Partnership, the Partners, or any other Person, and shall not be subject to any other or different standards (including fiduciary standards) imposed by this Agreement or otherwise existing at law, in equity or otherwise. By way of illustration and not of limitation, whenever the phrase, “at the option of the General Partner” or “at its option,” or some variation of those phrases, is used in this Agreement, it indicates that the General Partner is acting in its individual capacity. For the avoidance of doubt, whenever the General Partner votes or transfers its Partnership Interests, refrains from voting or transferring its Partnership Interests, exercises or refrains from exercising its right to acquire Partnership Interests or otherwise acts in its capacity as a Limited Partner or holder of Limited Partnership Interests, it shall be acting in its individual capacity.

(d) The General Partner’s organizational documents may provide that determinations to take or decline to take any action in its individual, rather than representative, capacity or in its “discretion” or “sole discretion” may or shall be determined by its members, if the General Partner is a limited liability company, stockholders, if the General Partner is a corporation, or the members or stockholders of the General Partner’s general partner, if the General Partner is a partnership.

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

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(f) The Limited Partners, each Person who acquires an interest in a Partnership Interest and each other Person who is bound by this Agreement hereby authorize the General Partner, on behalf of the Partnership as a partner or member of a Group Member, to approve of actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the General Partner, the Board of Directors or any committee thereof pursuant to this Section 7.9.

(g) No borrowing by any Group Member or the approval thereof shall be deemed to constitute a breach of any fiduciary or other duty existing at law, in equity or otherwise, or obligation of any type whatsoever, of the General Partner or any other Indemnitee to the Partnership, the Limited Partners, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement, by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to (i) enable distributions to the General Partner or any other Indemnitee (including in their capacities as Limited Partners) to exceed the General Partner's Percentage Interest of the total amount distributed to all Partners, (ii) hasten the expiration of the Subordination Period or the conversion of any Subordinated Units into Common Units or (iii) hasten the ability of the holder or holders of the Incentive Distribution Rights to make an IDR Reset Election.

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

(a) The General Partner may rely upon, and shall be protected in acting upon or refraining from acting based 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 advice or opinion (including an Opinion of Counsel) of any such Person 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 advice or 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 or any Group Member.

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

The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Interests; *provided* that, except as permitted pursuant to Section 4.10, the General Partner may not cause any Group Member to purchase Subordinated Units during the Subordination Period. As long as Partnership Interests are held by any Group Member, such Partnership Interests shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner may also purchase or otherwise acquire and sell or otherwise dispose of Partnership Interests for its own account, subject to the provisions of Article IV and Article X.

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

(a) If (i) the General Partner or any Affiliate of the General Partner (including for purposes of this Section 7.12, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner, but excluding any individual who is an Affiliate of the General Partner based on such individual's status as an officer, director or employee of the General Partner or an Affiliate of the General Partner) holds Partnership Interests that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Partnership Interests (the "**Holder**") to dispose of the number of Partnership Interests it desires to sell at the time it desires to do so without registration under the Securities Act, then at the option and upon the request of the Holder, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all commercially reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Interests covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Partnership Interests specified by the Holder; *provided, however*, that the Partnership shall not be required to effect more than three registrations pursuant to this Section 7.12(a); and *provided, further*, that if the General Partner determines in good faith that the requested registration would be materially detrimental to the Partnership and its Partners because such registration would (x) materially interfere with a significant acquisition, reorganization or other similar transaction involving the Partnership, (y) require premature disclosure of material information that the Partnership has a bona fide business purpose for preserving as confidential or (z) render the Partnership unable to comply with requirements under applicable securities laws, then the Partnership shall have the right to postpone or suspend the filing of such registration statement or the effectiveness thereof for a period of not more than six months; *provided, however*, that the Partnership shall not exercise such right to postpone or suspend the filing of such registration statement or the effectiveness thereof more than once in any twelve-month period. In connection with any registration pursuant to the immediately preceding sentence, the Partnership shall (i) promptly prepare and file (A) such documents as may be necessary to register or qualify the securities subject to such registration under the securities laws of such states as the Holder shall reasonably request; *provided, however*, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such registration, and (B) such documents as may be necessary to apply for listing or to list the Partnership Interests subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and (ii) do any and all other acts and things that may be necessary or appropriate to enable the Holder to consummate a public sale of such Partnership Interests in such states. Except as set forth in Section 7.12(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.



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

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

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made in such registration statement, such preliminary, summary or final prospectus or any free writing prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

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

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

(f) Any request to register Partnership Interests pursuant to this Section 7.12 shall (i) specify the Partnership Interests intended to be offered and sold by the Person making the request, (ii) express such Person's present intent to offer such Partnership Interests for distribution, (iii) describe the nature or method of the proposed offer and sale of Partnership Interests, 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 Interests.

(g) The Partnership may enter into separate registration rights agreements with the General Partner or any of its Affiliates.

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

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner or any such officer in connection with any such dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the

terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

**Section 7.14 *Modification of Duties.***

Except as expressly set forth in this Agreement, none of the General Partner, the Board of Directors, any committee thereof or any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Partnership, any Limited Partner, any Person who acquires an interest in a Partnership Interest or any other Person bound by this Agreement. Notwithstanding any other provision of this Agreement, to the extent that any provision of this Agreement (i) replaces, restricts or eliminates the duties (including fiduciary duties) that might otherwise, as a result of Delaware or other applicable law, be owed by the General Partner, its Affiliates, the Board of Directors, any committee thereof or any other Indemnitee to the Partnership, the Limited Partners, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement, or (ii) constitutes a waiver or a consent by the Partnership, the Limited Partners, any other Person who acquires an interest in a Partnership Interest or any other Person who is bound by this Agreement to any such replacement, restriction or elimination, such provision is hereby approved by the Partnership, all the Partners, each other Person who acquires an interest in a Partnership Interest and each other Person who is bound by this Agreement.

**ARTICLE VIII**

**BOOKS, RECORDS, ACCOUNTING AND REPORTS**

**Section 8.1 *Records and Accounting.***

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders of Units or other Partnership Interests, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, magnetic tape, photographs, micrographics or any other information storage device; *provided*, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP. The Partnership shall not be required to keep books maintained on a cash basis and the General Partner shall be permitted to calculate cash-based measures, including Operating Surplus and Adjusted Operating Surplus, by making such adjustments to its accrual basis books to account for non-cash items and other adjustments as the General Partner determines to be necessary or appropriate.

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**Section 8.2 Fiscal Year.**

The fiscal year of the Partnership shall be a fiscal year ending December 31.

**Section 8.3 Reports.**

(a) As soon as practicable, but in no event later than 105 days after the close of each fiscal year of the Partnership, the General Partner shall cause to be mailed or made available, by any reasonable means, to each Record Holder of a Unit or other Partnership Interest as of a date selected by the General Partner, an annual report containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with U.S. GAAP, including a balance sheet and statements of operations, Partnership equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the General Partner.

(b) As soon as practicable, but in no event later than 50 days after the close of each Quarter except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available, by any reasonable means, to each Record Holder of a Unit or other Partnership Interest as of a date selected by the General Partner, a report containing unaudited financial statements of the Partnership and such other information as may be required by applicable law, regulation or rule of any National Securities Exchange on which the Units are listed or admitted to trading, or as the General Partner determines to be necessary or appropriate.

(c) The General Partner shall be deemed to have made a report available to each Record Holder as required by this Section 8.3 if it has either (i) filed such report with the Commission via its Electronic Data Gathering, Analysis and Retrieval system, or any successor system, and such report is publicly available on such system or (ii) made such report available on any publicly available website maintained by the Partnership.

**ARTICLE IX****TAX MATTERS****Section 9.1 Tax Returns and Information.**

The Partnership shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and the taxable period or years that it is required by law to adopt, from time to time, as determined by the General Partner. In the event the Partnership is required to use a taxable period other than a year ending on December 31, the General Partner shall use reasonable efforts to change the taxable period of the Partnership to a year ending on December 31. The tax information reasonably required by Record Holders for federal, state and local income tax reporting purposes with respect to a taxable period shall be furnished to them within 90 days of the close of the calendar year in which the Partnership's taxable period ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for U.S. 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. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Limited Partner Interest will be deemed to be the lowest quoted closing price of the Limited Partner Interests on any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading during the calendar month in which such transfer is deemed to occur pursuant to Section 6.2(f) without regard to the actual price paid by such transferee.

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

**Section 9.3 Tax Controversies.**

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

**Section 9.4 Withholding.**

(a) The General Partner may treat taxes paid by the Partnership on behalf of all or less than all of the Partners, either as a distribution of cash to such Partners or as a general expense of the Partnership, as determined appropriate under the circumstances by the General Partner.

(b) Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that may be required to cause the Partnership and other Group Members to comply with any withholding requirements established under the Code or any other federal, state or local law including pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner (including by reason of Section 1446 of the Code), the General Partner may treat the amount withheld as a distribution of cash pursuant to Section 6.3 in the amount of such withholding from such Partner.

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## ARTICLE X

### ADMISSION OF PARTNERS

#### **Section 10.1 Admission of Limited Partners.**

(a) Upon the issuance by the Partnership of Common Units, Subordinated Units and Incentive Distribution Rights to the General Partner, Holdings, RRMC and the Underwriters as described in Article V in connection with the Initial Public Offering, such parties shall automatically be admitted to the Partnership as Limited Partners in respect of the Common Units, Subordinated Units and/or Incentive Distribution Rights issued to them.

(b) By acceptance of the transfer of any Limited Partner Interests in accordance with Article IV or the acceptance of any Limited Partner Interests issued pursuant to Article V or pursuant to a merger or consolidation pursuant to Article XIV, except as provided in Section 4.9 or Section 7.11, each transferee of, or other such Person acquiring, a Limited Partner Interest (including any nominee holder or an agent or representative acquiring such Limited Partner Interests for the account of another Person) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred or issued to it when any such transfer, issuance or admission is reflected in the books and records of the Partnership and such Limited Partner becomes the Record Holder of the Limited Partner Interests so transferred or issued, (ii) shall become bound, and shall be deemed to have agreed to be bound, by the terms of this Agreement, (iii) represents that it has the capacity, power and authority to enter into this Agreement and (iv) makes the consents, acknowledgements and waivers contained in this Agreement, all with or without execution of this Agreement by such Person. The transfer of any Limited Partner Interests and the admission of any new Limited Partner shall not constitute an amendment to this Agreement. A Person may become a Record Holder of a Limited Partner Interest without the consent or approval of any of the Partners. A Person may not become a Limited Partner without acquiring a Limited Partner Interest and until such Person is reflected on the books and records of the Partnership as the Record Holder of such Limited Partner Interest. The rights and obligations of a Person who is an Ineligible Holder shall be determined in accordance with Section 4.9.

(c) The name and mailing address of each Record Holder shall be listed on the books and records of the Partnership maintained for such purpose by the Partnership or the Transfer Agent. The General Partner shall update the books and records of the Partnership from time to time as necessary to reflect accurately the information therein (or shall cause the Transfer Agent to do so, as applicable). A Limited Partner Interest may be represented by a Certificate, as provided in Section 4.1.

(d) Any transfer of a Limited Partner Interest shall not entitle the transferee to share in profits and losses, to receive distributions, to receive allocations of income, gain, loss, deduction or credit or any similar item or to any other rights to which the transferor was entitled until the transferee becomes a Limited Partner pursuant to Section 10.1(b).

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**Section 10.2 Admission of Successor General Partner.**

A successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner Interest pursuant to Section 4.6 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the predecessor or transferring General Partner, pursuant to Section 11.1 or Section 11.2 or the transfer of the General Partner Interest pursuant to Section 4.6; *provided, however*, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor is hereby authorized to and shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

**Section 10.3 Amendment of Agreement and Certificate of Limited Partnership.**

To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary or appropriate under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership.

**ARTICLE XI**

**WITHDRAWAL OR REMOVAL OF PARTNERS**

**Section 11.1 Withdrawal of the General Partner.**

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

- (i) The General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners;
- (ii) The General Partner transfers all of its General Partner Interest pursuant to Section 4.6;
- (iii) The General Partner is removed pursuant to Section 11.2;

(iv) The General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A)-(C) of this Section 11.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;

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

(vi) (A) in the event the General Partner is a corporation, a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) in the event the General Partner is a partnership or a limited liability company, the dissolution and commencement of winding up of the General Partner; (C) in the event the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) in the event the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise in the event of the termination of the General Partner.

If an Event of Withdrawal specified in Section 11.1(a)(iv), Section 11.1(a)(v), Section 11.1(a)(vi)(A), Section 11.1(a)(vi)(B), Section 11.1(a)(vi)(C) or Section 11.1(a)(vi)(E) occurs, the withdrawing General Partner shall give notice to the Limited Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at or before 12:00 a.m., Central Time, on December 31, 2021, the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners; *provided* that prior to the effective date of such withdrawal, the withdrawal is approved by Unitholders holding at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) and the General Partner delivers to the Partnership an Opinion of Counsel (“*Withdrawal Opinion of Counsel*”) that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability under the Delaware Act of any Limited Partner or any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not already so treated or taxed); (ii) at any time after 12:00 a.m., Central Time, on December 31, 2021, the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Unitholders, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be the General Partner pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2; or (iv) notwithstanding clause (i) of this sentence, at any time that the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners, such withdrawal to take effect on the date specified in the notice, if at the time such notice is given one Person and its Affiliates (other than the General Partner and its Affiliates) own beneficially or of record or control at least 50% of the Outstanding Units. The withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the General Partner as general partner or managing member, if any, to the extent applicable, of



the other Group Members. If the General Partner gives a notice of withdrawal, the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall, upon admission pursuant to Section 10.2, automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If, prior to the effective date of the General Partner's withdrawal pursuant to Section 11.1(a)(i), a successor is not selected by the Unitholders as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 12.1 unless the Partnership is continued without dissolution pursuant to Section 12.2. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.2.

### **Section 11.2 Removal of the General Partner.**

The General Partner may be removed if such removal is approved by the Unitholders holding at least  $66 \frac{2}{3} \%$  of the Outstanding Units (including Units held by the General Partner and its Affiliates) voting as a single class. Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the Unitholders holding a majority of the Outstanding Common Units, voting as a separate class, and a majority of the Outstanding Subordinated Units (if any Subordinated Units are then Outstanding), voting as a separate class (including, in each case, Units held by the General Partner and its Affiliates). Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.2. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If a Person is elected as a successor General Partner in accordance with the terms of this Section 11.2, such Person shall, upon admission pursuant to Section 10.2, automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. The right of the holders of Outstanding Units to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion opining as to the matters covered by a Withdrawal Opinion of Counsel. Any successor General Partner elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.2.

### **Section 11.3 Interest of Departing General Partner and Successor General Partner.**

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the General Partner by the holders of Outstanding Units under circumstances where Cause does not exist, if the successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2, the Departing General Partner shall have the option, exercisable prior to the effective date of the withdrawal or removal of such Departing General Partner, to require its successor to purchase its General Partner Interest and its or its Affiliates' general partner interest (or equivalent interest), if any, in the other Group Members and all of its or its Affiliates' Incentive Distribution Rights (collectively, the "**Combined Interest**") in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the

effective date of its withdrawal or removal. If the General Partner is removed by the Unitholders under circumstances where Cause exists or if the General Partner withdraws under circumstances where such withdrawal violates this Agreement, and if a successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the Partnership is continued without dissolution pursuant to Section 12.2 and the successor General Partner is not the former General Partner), such successor shall have the option, exercisable prior to the effective date of the withdrawal or removal of such Departing General Partner (or, in the event the Partnership is continued without dissolution pursuant to Section 12.2, prior to the date the Partnership is continued), to purchase the Combined Interest for such fair market value of such Combined Interest. In either event, the Departing General Partner shall be entitled to receive all reimbursements due such Departing General Partner pursuant to Section 7.4, including any employee-related liabilities (including severance liabilities) incurred in connection with the termination of any employees employed by the Departing General Partner or its Affiliates (other than any Group Member) for the benefit of the Partnership or the other Group Members.

For purposes of this Section 11.3(a), the fair market value of the Combined Interest shall be determined by agreement between the Departing General Partner and its successor or, failing agreement within 30 days after the effective date of such Departing General Partner's withdrawal or removal, by an independent investment banking firm or other independent expert selected by the Departing General Partner and its successor, which, in turn, may rely on other experts, and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such withdrawal or removal, then the Departing General Partner shall designate an independent investment banking firm or other independent expert, the Departing General Partner's successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually select a third independent investment banking firm or independent expert, which third independent investment banking firm or other independent expert shall determine the fair market value of the Combined Interest. In making its determination, such third independent investment banking firm or other independent expert may consider the value of the Units, including the then current trading price of Units on any National Securities Exchange on which Units are then listed or admitted to trading, the value of the Partnership's assets, the rights and obligations of the Departing General Partner, the value of the Incentive Distribution Rights and the General Partner Interest and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing General Partner (and its Affiliates, if applicable) 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 11.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing General Partner as to all debts and liabilities of the Partnership arising on or after the date on which the Departing General Partner becomes a Limited Partner. For purposes of this Agreement, conversion of the Combined Interest to Common Units will be characterized as if the Departing General Partner (and its Affiliates, if applicable) contributed the Combined Interest to the Partnership in exchange for the newly issued Common Units.

(c) If a successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the business of the Partnership is continued pursuant to Section 12.2 and the successor General Partner is not the former General Partner) and the option described in Section 11.3(a) is not exercised by the party entitled to do so, the successor General Partner shall, at the effective date of its admission to the Partnership, contribute to the Partnership cash in the amount equal to the product of (x) the quotient obtained by dividing (A) the Percentage Interest of the General Partner Interest of the Departing General Partner by (B) a percentage equal to 100% less the Percentage Interest of the General Partner Interest of the Departing General Partner and (y) the Net Agreed Value of the Partnership's assets on such date. In such event, such successor General Partner shall, subject to the following sentence, be entitled to its Percentage Interest of all Partnership allocations and distributions to which the Departing General Partner was entitled in respect of its General Partner Interest. In addition, the successor General Partner shall cause this Agreement to be amended to reflect that, from and after the date of such successor General Partner's admission, the successor General Partner's interest in all Partnership distributions and allocations shall be its Percentage Interest.

**Section 11.4 Termination of Subordination Period, Conversion of Subordinated Units and Extinguishment of Cumulative Common Unit Arrearages.**

Notwithstanding any provision of this Agreement, if the General Partner is removed as general partner of the Partnership under circumstances where Cause does not exist and Units held by the General Partner and its Affiliates are not voted in favor of such removal, (a) the Subordination Period will end and all Outstanding Subordinated Units will immediately and automatically convert into Common Units on a one-for-one basis ( *provided, however* , that such converted Subordinated Units shall remain subject to the provisions of Section 5.5(c)(ii), Section 6.1(d)(x) and Section 6.7(c) ), (b) all Cumulative Common Unit Arrearages on the Common Units will be extinguished and (c) the General Partner will have the right to convert its General Partner Interest and its Incentive Distribution Rights into Common Units or to receive cash in exchange therefor in accordance with Section 11.3.

**Section 11.5 Withdrawal of Limited Partners .**

No Limited Partner shall have any right to withdraw from the Partnership; *provided, however* , that when a transferee of a Limited Partner's Limited Partner Interest becomes a Record Holder of the Limited Partner Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Limited Partner Interest so transferred.

**ARTICLE XII**

**DISSOLUTION AND LIQUIDATION**

**Section 12.1 Dissolution.**

The Partnership shall not be dissolved by the admission of Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 11.1 , Section 11.2 or Section 12.2 , the Partnership shall not be dissolved and such successor General Partner is hereby authorized to, and shall, continue the business of the Partnership. Subject to Section 12.2 , the Partnership shall dissolve, and its affairs shall be wound up, upon:

(a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) , unless a successor is admitted to the Partnership pursuant to this Agreement;

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- (b) an election to dissolve the Partnership by the General Partner that is approved by the holders of a Unit Majority;
  - (c) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or
  - (d) there being no Limited Partners, unless the Partnership is continued without dissolution in accordance with the Delaware Act.

**Section 12.2 Continuation of the Business of the Partnership After Dissolution.**

Upon an Event of Withdrawal caused by (a) the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or Section 11.1(a)(iii) and the failure of the Partners to select a successor to such Departing General Partner pursuant to Section 11.1 or Section 11.2, then within 90 days thereafter, or (b) an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), Section 11.1(a)(v) or Section 11.1(a)(vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a Unit Majority may elect to continue the business of the Partnership on the same terms and conditions set forth in this Agreement by appointing, effective as of the date of the Event of Withdrawal, as a successor General Partner a Person approved by the holders of a Unit Majority. Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

- (i) the Partnership shall continue without dissolution unless earlier dissolved in accordance with this Article XII;
- (ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be treated in the manner provided in Section 11.3; and
- (iii) the successor General Partner shall be admitted to the Partnership as General Partner, effective as of the Event of Withdrawal, by agreeing in writing to be bound by this Agreement;

*provided* that the right of the holders of a Unit Majority to approve a successor General Partner and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that (x) the exercise of the right would not result in the loss of limited liability under the Delaware Act of any Limited Partner and (y) neither the Partnership nor any Group Member would be treated as an association taxable as a corporation or otherwise be taxable as an entity for U.S. federal income tax purposes upon the exercise of such right to continue (to the extent not already so treated or taxed).

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### **Section 12.3 Liquidator .**

Upon dissolution of the Partnership, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units, if any, voting as a single class. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units, if any, voting as a single class. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units, if any, voting as a single class. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.3) necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Partnership as provided for herein.

### **Section 12.4 Liquidation.**

The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 17-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its fair market value, and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may defer liquidation or distribution of the Partnership's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Partnership's assets would be impractical or would cause undue loss to the Partners. The Liquidator may distribute the Partnership's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) Liabilities of the Partnership include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.3) and amounts owed to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be applied as additional liquidation proceeds.

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(c) All property and all cash in excess of that required to discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) for the taxable period 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 period (or, if later, within 90 days after said date of such occurrence).

**Section 12.5 Cancellation of Certificate of Limited Partnership.**

Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the winding up of the Partnership, the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

**Section 12.6 Return of Contributions.**

The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

**Section 12.7 Waiver of Partition.**

To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

**Section 12.8 Capital Account Restoration.**

No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable period of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

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**ARTICLE XIII**

**AMENDMENT OF PARTNERSHIP AGREEMENT;  
MEETINGS; RECORD DATE**

**Section 13.1 Amendments to be Adopted Solely by the General Partner .**

Each Partner agrees that the General Partner, without the approval of any Partner, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

- (a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;
- (b) the admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;
- (c) a change that the General Partner determines to be necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the Limited Partners have limited liability under the laws of any state or to ensure that the Group Members will not be treated as associations taxable as corporations or otherwise taxed as entities for federal income tax purposes;
- (d) a change that the General Partner determines (i) does not adversely affect the Limited Partners considered as a whole (or any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect (except as permitted by subsection (g) hereof); *provided, however*, that for purposes of determining whether an amendment satisfies the requirements of this Section 13.1(d)(i), the General Partner may in its sole discretion disregard any adverse effect on any class or classes of Partnership Interests the holders of which have approved such amendment pursuant to Section 13.3(c); (ii) to be necessary or appropriate to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of any class or classes of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which any class of Partnership Interests are or will be listed or admitted to trading; (iii) to be necessary or appropriate in connection with action taken by the General Partner pursuant to Section 5.9; or (iv) is required to effect the intent expressed in the Registration Statement or the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;
- (e) a change in the fiscal year or taxable period of the Partnership and any other changes that the General Partner determines to be necessary or appropriate as a result of a change in the fiscal year or taxable period of the Partnership including, if the General Partner shall so determine, a change in the definition of “*Quarter*” and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, as set forth in an Opinion of Counsel, to prevent the Partnership, the General Partner or the General Partner's directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) an amendment that the General Partner determines to be necessary or appropriate in connection with (i) the creation, authorization or issuance of any class or series of Partnership Interests or options, rights, warrants, appreciation rights, tracking or phantom interests or other economic interests in the Partnership or relating to Partnership Interests pursuant to Section 5.6, or (ii) the implementation of the provisions of Section 5.11 ;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3 ;

(j) an amendment that the General Partner determines to be necessary or appropriate to reflect and account for the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 2.4 or Section 7.1(a) ;

(k) a merger, conveyance or conversion pursuant to Section 14.3(d) ; or

(l) any other amendments substantially similar to the foregoing.

**Section 13.2 Amendment Procedures.**

Except as provided in Section 13.1 and Section 13.3 , all amendments to this Agreement shall be made in accordance with the requirements contained in this Section 13.2 . Amendments to this Agreement may be proposed only by the General Partner; *provided, however* , that, to the fullest extent permitted by law, the General Partner shall have no duty or obligation to propose or approve any amendment to this Agreement and may decline to do so free of any duty (including any fiduciary duty) or obligation whatsoever to the Partnership, any Limited Partner, or any other Person bound by this Agreement and, in declining to propose or approve an amendment, to the fullest extent permitted by law shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement or any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. A proposed amendment shall be effective upon its approval by the General Partner and, except as otherwise provided by Section 13.1 and Section 13.3 , the holders of a Unit Majority, unless a greater or different percentage is required under this Agreement. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of



Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments. The General Partner shall be deemed to have notified all Record Holders as required by this Section 13.2 if it has either (i) filed such amendment with the Commission via its Electronic Data Gathering, Analysis and Retrieval system, or any successor system, and such amendment is publicly available on such system or (ii) made such amendment available on any publicly available website maintained by the Partnership.

**Section 13.3 Amendment Requirements.**

(a) Notwithstanding the provisions of Section 13.1 and Section 13.2, no provision of this Agreement that establishes a percentage of Outstanding Units (including Units deemed owned by the General Partner) or requires a vote or approval of Partners (or a subset of the Partners) holding a specified Percentage Interest required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of, in the case of any provision of this Agreement other than Section 11.2 or Section 13.4, reducing such percentage, unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced, or the affirmative vote of Partners whose aggregate Percentage Interest constitutes not less than the voting requirement sought to be reduced or increased, as applicable.

(b) Notwithstanding the provisions of Section 13.1 and Section 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner (including requiring any holder of a class of Partnership Interests to make additional Capital Contributions to the Partnership) without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3 (c), or (ii) enlarge the obligations of, restrict, change or modify in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld at its option.

(c) Except as provided in Section 14.3, and without limitation of the General Partner's authority to adopt amendments to this Agreement without the approval of any Partners as contemplated in Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must be approved by the holders of not less than a majority of the Outstanding Partnership Interests of the class affected. If the General Partner determines an amendment does not satisfy the requirements of Section 13.1(d)(i) because it adversely affects one or more classes of Partnership Interests, as compared to other classes of Partnership Interests, in any material respect, such amendment shall only be required to be approved by the adversely affected class or classes.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Percentage Interests of all Limited Partners voting as a single class unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner under the Delaware Act or the applicable partnership law of any other state under the laws of which the Partnership is organized.

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of Partners (including the General Partner and its Affiliates) holding at least 90% of the Percentage Interests of all Limited Partners.

**Section 13.4 *Special Meetings.***

All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Partnership Interests of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the general or specific purposes for which the special meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the time notice of the meeting is given as provided in Section 16.1. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

**Section 13.5 *Notice of a Meeting .***

Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Partnership Interests for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

**Section 13.6 *Record Date.***

For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11, the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading or U.S. federal securities laws, in which case the rule, regulation, guideline or requirement of such National Securities Exchange or U.S. federal securities laws shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such

approvals. If the General Partner does not set a Record Date, then (i) the Record Date for determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners shall be the close of business on the day next preceding the day on which notice is given, and (ii) the Record Date for determining the Limited Partners entitled to give approvals without a meeting shall be the date the first written approval is deposited with the Partnership in care of the General Partner in accordance with Section 13.11.

**Section 13.7 *Adjournment.***

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

**Section 13.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.***

The transaction of any business at any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if they had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

**Section 13.9 *Quorum and Voting.***

The holders of a majority, by Percentage Interest, of the Partnership Interests of the class or classes for which a meeting has been called (including Partnership Interests deemed owned by the General Partner) represented in person or by proxy shall constitute a quorum at a meeting of Partners of such class or classes unless any such action by the Partners requires approval by holders of a greater Percentage Interest, in which case the quorum shall be such greater Percentage Interest. At any meeting of the Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Partners holding Partnership Interests that in the aggregate represent a majority of the Percentage Interest of those present in person or by proxy at such meeting shall be deemed to constitute the act of all 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 Partners holding Partnership Interests that in the aggregate represent at least such greater or different percentage shall be required; *provided, however*, that if, as a matter of law or amendment to this Agreement, approval by plurality vote of Partners (or any class thereof) is required to approve any action, no minimum quorum shall be required. The 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

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Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by Partners holding the required Percentage Interest specified in this Agreement. In the absence of a quorum any meeting of Partners may be adjourned from time to time by the affirmative vote of Partners with at least a majority, by Percentage Interest, of the Partnership Interests entitled to vote at such meeting (including Partnership Interests deemed owned by the General Partner) represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

**Section 13.10 *Conduct of a Meeting.***

The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

**Section 13.11 *Action Without a Meeting.***

If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting, without a vote and without prior notice, if consented to in writing or by electronic transmission by Limited Partners owning not less than the minimum percentage, by Percentage Interest, of the Partnership Interests of the class or classes for which a meeting has been or would have been called (including Partnership Interests deemed owned by the General Partner), as the case may be, that would be necessary to authorize or take such action at a meeting at which all the Limited Partners entitled to vote at such meeting were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading, in which case the rule, regulation, guideline or requirement of such National Securities Exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not consented. The General Partner may specify that any written ballot, if any, submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Units held by a 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, any written approvals or approvals transmitted by electronic transmission shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner and (b) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such

right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners. Nothing contained in this Section 13.11 shall be deemed to require the General Partner to solicit all Limited Partners in connection with a matter approved by the holders of the requisite Percentage Interest acting by written consent or consent by electronic transmission without a meeting.

**Section 13.12 *Right to Vote and Related Matters.***

(a) Only those Record Holders of the Outstanding Partnership Interests on the Record Date set pursuant to Section 13.6 shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Partnership Interests have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Partnership Interests shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Partnership Interests.

(b) With respect to Partnership Interests 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 Partnership Interests are registered, such other Person shall, in exercising the voting rights in respect of such Partnership Interests on any matter, and unless the arrangement between such Persons provides otherwise, vote such Partnership Interests on behalf of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this Section 13.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 4.3.

**ARTICLE XIV**

**MERGER, CONSOLIDATION OR CONVERSION**

**Section 14.1 *Authority.***

The Partnership may merge or consolidate with or into one or more corporations, limited liability companies, statutory trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a partnership (whether general or limited (including a limited liability partnership)) or convert into any such entity, whether such entity is formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written plan of merger or consolidation ("*Merger Agreement*") or a written plan of conversion ("*Plan of Conversion*"), as the case may be, in accordance with this Article XIV.

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**Section 14.2 Procedure for Merger, Consolidation or Conversion.**

(a) Merger, consolidation or conversion of the Partnership pursuant to this Article XIV requires the prior consent of the General Partner; *provided, however*, that, to the fullest extent permitted by law, the General Partner shall have no duty or obligation to consent to any merger, consolidation or conversion of the Partnership and may decline to do so free of any duty (including any fiduciary duty) or obligation whatsoever to the Partnership, any Limited Partner or any other Person bound by this Agreement and, in declining to consent to a merger, consolidation or conversion, to the fullest extent permitted by law shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement or any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.

(b) If the General Partner shall determine to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

- (i) the name and jurisdiction of formation or organization of each of the business entities proposing to merge or consolidate;
- (ii) the name and jurisdiction of formation or organization of the business entity that is to survive the proposed merger or consolidation (the “**Surviving Business Entity**”);
- (iii) the terms and conditions of the proposed merger or consolidation;
- (iv) the manner and basis of exchanging or converting the equity interests, securities or rights of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity; and (A) if any equity interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity, then the cash, property or interests, rights, securities or obligations of any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity) that the holders of such equity interests, securities or rights are to receive in exchange for, or upon conversion of their equity interests, securities or rights, and (B) in the case of equity interests represented by certificates, upon the surrender of such certificates, which cash, property or interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;
- (v) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, certificate of formation or limited liability company agreement or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;
- (vi) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.5 or a later date specified in or determinable in accordance with the Merger Agreement (*provided* that if the effective time of the merger is to be later than the date of the filing of such certificate of merger, the effective time shall be fixed at a date or time certain and stated in the certificate of merger); and
- (vii) such other provisions with respect to the proposed merger or consolidation that the General Partner determines to be necessary or appropriate.

(c) If the General Partner shall determine to consent to the conversion, the General Partner shall approve the Plan of Conversion, which shall set forth:

- (i) the name of the converting entity and the converted entity;
- (ii) a statement that the Partnership is continuing its existence in the organizational form of the converted entity;
- (iii) a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed or organized;
- (iv) the manner and basis of exchanging or converting the equity interests or other rights or securities of the converting entity for, or into, cash, property, rights, securities or interests of the converted entity, or, in addition to or in lieu thereof, cash, property, rights, securities or interests of another entity;
- (v) in an attachment or exhibit, the certificate of conversion;
- (vi) in an attachment or exhibit, the articles of incorporation or other organizational documents of the converted entity;
- (vii) the effective time of the conversion, which may be the date of the filing of the certificate of conversion or a later date specified in or determinable in accordance with the Plan of Conversion ( *provided* that if the effective time of the conversion is to be later than the date of the filing of such certificate of conversion, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such certificate of conversion and stated therein); and
- (viii) such other provisions with respect to the proposed conversion that the General Partner determines to be necessary or appropriate.

**Section 14.3 Approval by Limited Partners .**

(a) Except as provided in Section 14.3(d), the General Partner, upon its approval of the Merger Agreement or the Plan of Conversion, as the case may be, shall direct that the Merger Agreement or the Plan of Conversion, as applicable, be submitted to a vote of Limited Partners, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement or the Plan of Conversion, as the case may be, shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) Except as provided in Section 14.3(d) and Section 14.3(e), the Merger Agreement or the Plan of Conversion, as the case may be, shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority unless the Merger Agreement or the Plan of Conversion, as the case may be, effects an amendment to any provision of this Agreement that, if contained in an amendment to this Agreement adopted pursuant to Article XIII, would require for its approval the vote or consent of the holders of a greater percentage of the Outstanding Units or of any other class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement or the Plan of Conversion, as the case may be.

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(c) Except as provided in Section 14.3(d) and Section 14.3(e), after such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger or certificate of conversion pursuant to Section 14.5, the merger, consolidation or conversion may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement or the Plan of Conversion, as the case may be.

(d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to convert the Partnership or any Group Member into a new limited liability entity, to merge the Partnership or any Group Member into, or convey all of the Partnership's assets to, another limited liability entity that shall be newly formed and shall have no assets, liabilities or operations at the time of such merger, conveyance or conversion other than those it receives from the Partnership or other Group Member if (i) the General Partner has received an Opinion of Counsel that the merger, conveyance or conversion, as the case may be, would not result in the loss of the limited liability of any Limited Partner as compared to its limited liability under the Delaware Act or cause the Partnership or any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not already treated as such), (ii) the sole purpose of such merger, conveyance or conversion is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the General Partner determines that the governing instruments of the new entity provide the Limited Partners and the General Partner with substantially the same rights and obligations as are herein contained.

(e) Additionally, notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to merge or consolidate the Partnership with or into another entity if (i) the General Partner has received an Opinion of Counsel that the merger or consolidation, as the case may be, would not result in the loss of the limited liability of any Limited Partner as compared to its limited liability under the Delaware Act or cause the Partnership or any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for U.S. federal income tax purposes (to the extent not already treated as such), (ii) the merger or consolidation would not result in an amendment to this Agreement, other than any amendments that could be adopted pursuant to Section 13.1, (iii) the Partnership is the Surviving Business Entity in such merger or consolidation, (iv) each Partnership Interest outstanding immediately prior to the effective date of the merger or consolidation is to be an identical Partnership Interest of the Partnership after the effective date of the merger or consolidation, and (v) the number of Partnership Interests to be issued by the Partnership in such merger or consolidation does not exceed 20% of the Partnership Interests (other than the Incentive Distribution Rights) Outstanding immediately prior to the effective date of such merger or consolidation.



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**Section 14.4 *Amendment of Partnership Agreement*** . Pursuant to Section 17-211(g) of the Delaware Act, an agreement of merger or consolidation approved in accordance with this Article XIV may (a) effect any amendment to this Agreement or (b) effect the adoption of a new partnership agreement for the Partnership if it is the Surviving Business Entity. Any such amendment or adoption made pursuant to this Section 14.4 shall be effective at the effective time or date of the merger or consolidation.

**Section 14.5 *Certificate of Merger or Certificate of Conversion*** .

Upon the required approval by the General Partner and the Unitholders of a Merger Agreement or the Plan of Conversion, as the case may be, a certificate of merger or certificate of conversion, as applicable, shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

**Section 14.6 *Effect of Merger, Consolidation or Conversion*** .

(a) At the effective time of the 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 or be in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) At the effective time of the conversion:

(i) the Partnership shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(ii) all rights, title, and interests in and to all real estate and other property owned by the Partnership shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(iii) all liabilities and obligations of the Partnership shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(iv) all rights of creditors or other parties with respect to or against the interest holders or other owners of the Partnership in their capacities as such in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if the conversion did not occur;

(v) a proceeding pending by or against the Partnership or by or against any of Partners in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior Partners without any need for substitution of parties; and

(vi) the Partnership Units or other rights, securities or interests of the Partnership that are to be converted into cash, property, rights, securities or interests in the converted entity, or rights, securities or interests in any other entity, as provided in the Plan of Conversion shall be so converted, and Partners shall be entitled only to the rights provided in the Plan of Conversion.

## ARTICLE XV

### RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS

#### **Section 15.1 *Right to Acquire Limited Partner Interests.***

(a) Notwithstanding any other provision of this Agreement, if at any time the General Partner and its Affiliates hold more than 80% of the total Limited Partner Interests of any class then Outstanding, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General Partner, exercisable in its sole discretion, to purchase all, but not less than all, of such Limited Partner Interests of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 15.1(b) is mailed and (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Limited Partner Interests granted pursuant to Section 15.1(a), the General Partner shall deliver to the Transfer Agent notice of such election to purchase (the “**Notice of Election to Purchase**”) and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited Partner Interests of such class or classes (as of a Record Date selected by the General Partner) at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be published for a period of at least three consecutive days in at least two daily newspapers of general circulation printed in the English language and published in the Borough of Manhattan,

New York. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of such Limited Partner Interests (including the Certificates representing such Limited Partner Interests in the case of Limited Partner Interests evidenced by Certificates) in exchange for payment of the purchase price, at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any such Limited Partner Interest shall not have been surrendered for purchase, all rights of the holders of such Limited Partner Interests shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) therefor, without interest, upon surrender to the Transfer Agent of such Limited Partner Interests (including the Certificates representing such Limited Partner Interests in the case of Limited Partner Interests evidenced by Certificates), and such Limited Partner Interests shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner, its Affiliate or the Partnership, as the case may be, shall be deemed to be the owner of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the owner of such Limited Partner Interests.

(c) In the case of Limited Partner Interests evidenced by Certificates, at any time from and after the Purchase Date, a holder of an Outstanding Limited Partner Interest subject to purchase as provided in this Section 15.1 may surrender his Certificate evidencing such Limited Partner Interest to the Transfer Agent in exchange for payment of the amount described in Section 15.1(a), therefor, without interest thereon.

## ARTICLE XVI

### GENERAL PROVISIONS

#### **Section 16.1 *Addresses and Notices; Written Communications* .**

(a) Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner at the address described below. Any notice, payment or report to be given or made to a Partner hereunder shall be deemed conclusively to have been

given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Partnership Interests at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Interests by reason of any assignment or otherwise. Notwithstanding the foregoing, if (i) a Partner shall consent to receiving notices, demands, requests, reports or proxy materials via electronic mail or by the Internet or (ii) the rules of the Commission shall permit any report or proxy materials to be delivered electronically or made available via the Internet, any such notice, demand, request, report or proxy materials shall be deemed given or made when delivered or made available via such mode of delivery. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report given or made in accordance with the provisions of this Section 16.1 is returned marked to indicate that such notice, payment or report was unable to be delivered, such notice, payment or report and, in the case of notices, payments or reports returned by the United States Postal Service (or other physical mail delivery mail service outside the United States of America), 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) or other delivery if they are available for the Partner at the principal office of the Partnership for a period of one year from the date of the giving or making of such notice, payment or report to the other Partners. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 2.3. The General Partner may rely and shall be protected in relying on any notice or other document from a Partner or other Person if believed by it to be genuine.

(b) The terms “in writing”, “written communications,” “written notice” and words of similar import shall be deemed satisfied under this Agreement by use of e-mail and other forms of electronic communication.

**Section 16.2 *Further Action* .**

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

**Section 16.3 *Binding Effect* .**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

**Section 16.4 *Integration*.**

This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

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**Section 16.5 Creditors .**

None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

**Section 16.6 Waiver.**

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

**Section 16.7 Third-Party Beneficiaries.**

Each Partner agrees that (a) any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnitee and (b) any Unrestricted Person shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Unrestricted Person.

**Section 16.8 Counterparts.**

This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement (a) immediately upon affixing its signature hereto, (b) in the case of the General Partner and the holders of Limited Partner Interests outstanding immediately prior to the closing of the Initial Public Offering, immediately upon the closing of the Initial Public Offering, without the execution hereof, or (c) in the case of a Person acquiring a Limited Partner Interest pursuant to Section 10.1(b), immediately upon the acquisition of such Limited Partner Interest, without execution hereof.

**Section 16.9 Applicable Law; Forum; Venue and Jurisdiction; Waiver of Trial by Jury.**

(a) 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.

(b) Each of the Partners and each Person holding any beneficial interest in the Partnership (whether through a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing or otherwise):

(i) irrevocably agrees that any claims, suits, actions or proceedings (A) arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce the provisions of this Agreement or the duties, obligations or liabilities of the Partnership, among Partners or of Partners to the Partnership, or the rights or powers of, or restrictions on, the Partners or the Partnership), (B) brought in a derivative manner on behalf of

the Partnership, (C) asserting a claim of breach of duty (including any fiduciary duty) owed by any director, officer, or other employee of the Partnership or the General Partner, or owed by the General Partner, to the Partnership or the Partners, (D) asserting a claim arising pursuant to or to interpret or enforce any provision of the Delaware Act or (E) asserting a claim governed by the internal affairs doctrine, shall be exclusively brought in the Court of Chancery of the State of Delaware (or, if such court does not have subject matter jurisdiction, any other court located in the State of Delaware with subject matter jurisdiction), in each case regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims;

(ii) irrevocably submits to the exclusive jurisdiction of such courts in connection with any such claim, suit, action or proceeding;

(iii) irrevocably agrees not to, and waives any right to, assert in any such claim, suit, action or proceeding that (A) it is not personally subject to the jurisdiction of such courts or of any other court to which proceedings in such courts may be appealed, (B) such claim, suit, action or proceeding is brought in an inconvenient forum, or (C) the venue of such claim, suit, action or proceeding is improper;

(iv) expressly waives any requirement for the posting of a bond by a party bringing such claim, suit, action or proceeding;

(v) consents to process being served in any such claim, suit, action or proceeding by mailing, certified mail, return receipt requested, a copy thereof to such party at the address in effect for notices hereunder, and agrees that such services shall constitute good and sufficient service of process and notice thereof; *provided* that nothing in this clause (v) shall affect or limit any right to serve process in any other manner permitted by law; and

(vi) **IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT.**

#### **Section 16.10 *Invalidity of Provisions* .**

If any provision or part of a provision of this Agreement is or becomes, for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and part thereof contained herein shall not be affected thereby and this Agreement shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

#### **Section 16.11 *Consent of Partners*.**

Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner and each other Person bound by the provisions of this Agreement shall be bound by the results of such action.

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**Section 16.12 *Facsimile Signatures* .**

The use of facsimile signatures affixed in the name and on behalf of the transfer agent and registrar of the Partnership on Certificates representing Partnership Interests is expressly permitted by this Agreement.

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**IN WITNESS WHEREOF** , the General Partner has executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

ROSE ROCK MIDSTREAM GP, LLC

By: /s/ Norman J. Szydlowski

Name: Norman J. Szydlowski

Title: President and Chief Executive Officer

**LIMITED PARTNERS:**

All Limited Partners now and hereafter admitted as limited partners of the Partnership without execution hereof pursuant to Section 10.1(b).

*[Signature Page — Second Amended and Restated Agreement  
of Limited Partnership of Rose Rock Midstream, L.P.]*



**EXHIBIT A**  
**to the Second Amended and Restated**  
**Agreement of Limited Partnership of**  
**Rose Rock Midstream Partners, L.P.**

**Certificate Evidencing Common Units**  
**Representing Limited Partner Interests in**  
**Rose Rock Midstream, L.P.**

Certificate No. \_\_\_\_\_

Number of Common Units: \_\_\_\_\_

In accordance with Section 4.1 of the Second Amended and Restated Agreement of Limited Partnership of Rose Rock Midstream, L.P., as amended, supplemented or restated from time to time (the "**Partnership Agreement**"), Rose Rock Midstream, 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. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Partnership Agreement. Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at Two Warren Place, 6120 S. Yale Avenue, Suite 700, Tulsa, Oklahoma 74136-4216. Capitalized terms used herein but not defined shall have the meanings given them in the Partnership Agreement.

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

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by the terms of the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (iii) granted the powers of attorney provided for in the Partnership Agreement and (iv) made the waivers and given the consents and approvals contained in the Partnership Agreement.

This Certificate shall not be valid for any purpose unless it has been countersigned and registered by the Transfer Agent and Registrar.

Dated: Rose Rock Midstream, L.P.  
Countersigned and Registered by: By: Rose Rock Midstream GP, LLC,  
its General Partner

\_\_\_\_\_  
as Transfer Agent and Registrar By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties

UNIF GIFT/TRANSFERS MIN ACT  
\_\_\_\_Custodian\_\_\_\_  
(Cust) (Minor)

JT TEN - as joint tenants with right of survivorship and not as tenants in common

under Uniform Gifts/Transfers to CD Minors Act (State)

Additional abbreviations, though not in the above list, may also be used.

FOR VALUE RECEIVED, \_\_\_\_\_ hereby assigns, conveys, sells and transfers unto

\_\_\_\_\_  
(Please print or typewrite name and address of assignee)

\_\_\_\_\_  
(Please insert Social Security or other identifying number of assignee)

\_\_\_\_\_ Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact with full power of substitution to transfer the same on the books of Rose Rock Midstream, L.P.

Date:

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular, without alteration, enlargement or change.

**THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration.

**FIRST AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ROSE ROCK MIDSTREAM GP, LLC**

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FIRST AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ROSE ROCK MIDSTREAM GP, LLC

THIS FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF ROSE ROCK MIDSTREAM GP, LLC, dated as of December 14, 2011, is entered into by Rose Rock Midstream Holdings, LLC, a Delaware limited liability company (“*Holdings*”), as Sole Member of the Company as of the date hereof.

RECITALS :

WHEREAS, Holdings formed the Company (as herein defined) as a limited liability company under the Delaware Limited Liability Company Act by filing a Certificate of Formation with the Secretary of State of the State of Delaware on August 5, 2011;

WHEREAS, the Company was previously governed by that certain Limited Liability Company Agreement of the Company dated as of August 8, 2011 (the “*Original LLC Agreement*”);

WHEREAS, Holdings now desires to amend and restate the Original LLC Agreement as set forth in this Agreement and

NOW THEREFORE, in consideration of the covenants, conditions and agreements contained herein, Holdings hereby enters into this Agreement:

ARTICLE I.  
DEFINITIONS

Section 1.1 *Definitions* . The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

“*Act*” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

“*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.

“*Agreement*” means this First Amended and Restated Limited Liability Company Agreement of Rose Rock Midstream GP, LLC, as it may be amended, supplemented or restated from time to time. The Agreement constitutes a “limited liability company agreement” as such term is defined in the Act.

“*Audit Committee*” has the meaning assigned to such term in Section 5.1(d)(ii).

“*Board*” means the board of directors of the Company.

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“ *Capital Contribution* ” means any cash, cash equivalents or the value of Contributed Property contributed to the Company.

“ *Certificate of Formation* ” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware as referenced in Section 2.1, as such Certificate of Formation may be amended, supplemented or restated from time to time.

“ *Chairman* ” has the meaning assigned to such term in Section 5.1(e).

“ *Common Units* ” has the meaning assigned to such term in the Partnership Agreement.

“ *Company* ” means Rose Rock Midstream GP, LLC, a Delaware limited liability company, and any successors thereto. For the avoidance of doubt, references in this Agreement to the Company shall not include the Partnership or any of its Subsidiaries.

“ *Conflicts Committee* ” has the meaning assigned to such term in the Partnership Agreement.

“ *Contributed Property* ” means each property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed to the Company.

“ *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.

“ *Directors* ” has the meaning assigned to such term in Section 5.1(c).

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

“ *Holdings* ” has the meaning assigned to such term in the preamble of this Agreement.

“ *Indemnitee* ” means (a) the Sole Member; (b) any Person who is or was an Affiliate of the Company (other than any Group Member); (c) any Person who is or was a Director or Officer of the Company or any Affiliate of the Company (other than any Group Member); and (d) any Person who is or was serving at the request of the Company or any Affiliate of the Company (other than any Group Member) as a director, officer, fiduciary or trustee of another Person owing a fiduciary duty to the Company, *provided* that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services (but Directors or Officers shall not be deemed to be providing fiduciary services on a fee-for-services basis based on their compensation for acting as a Director or Officer of the Company).

“ *Independent Director* ” has the meaning assigned to such term in Section 5.1(d)(ii).

“ *Initial Public Offering* ” means the initial offering and sale of Common Units to the public.

“ *Listing Date* ” means the first day upon which the Common Units are listed or admitted to trading on the New York Stock Exchange or another national securities exchange.



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“ *Membership Interests* ” means the membership interests in the Company as provided in the Certificate of Formation, this Agreement and the Act, including, without limitation, the related interest in the capital, income, gain, deductions, losses and credits of the Company.

“ *Officer* ” has the meaning assigned to such term in Section 6.1(a).

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

“ *Partnership* ” means Rose Rock Midstream, L.P., a Delaware limited partnership.

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

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

“ *Partnership Interest* ” means any class or series of equity interest in the Partnership, which shall include any General Partner Interest and Limited Partner Interests but shall exclude any options, rights, warrants, appreciation rights, tracking and phantom interests, and other economic interests relating to the Partnership Interests.

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

“ *SemGroup Entities* ” means SemGroup and its Affiliates and Subsidiaries, but excluding the Company and the Partnership Group.

“ *SemGroup* ” means SemGroup Corporation, a Delaware corporation.

“ *Sole Member* ” means Holdings or any successor member of the Company.

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

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

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Section 1.2 *Construction* .

(a) Unless the context requires otherwise: (i) capitalized terms used herein but not otherwise defined shall have the meanings assigned to such terms in the Partnership Agreement; (ii) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; (iii) references to Articles and Sections refer to Articles and Sections of this Agreement; and (iv) the term “include” or “includes” means includes, without limitation, and “including” means including, without limitation.

(b) A reference to any Person includes such Person’s successors and permitted assigns.

ARTICLE II.  
ORGANIZATION

Section 2.1 *Formation* . On August 5, 2011, Holdings formed the Company as a limited liability company pursuant to the provisions of the Act by virtue of the filing of the Certificate of Formation with the Secretary of State of the State of Delaware.

Section 2.2 *Name* . The name of the Company shall be “Rose Rock Midstream GP, LLC”. The Company’s business may be conducted under any other name or names deemed necessary or appropriate by the Board in its discretion, including, if consented to by the Board, the name of the Partnership. The words or letters “Limited Liability Company,” “L.L.C.” or “LLC” or similar words or letters shall be included in the Company’s name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The Board in its discretion may change the name of the Company at any time and from time to time, and amend this Agreement to reflect such change, and shall promptly notify the Sole Member of such change.

Section 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices* . Unless and until changed by the Board, the registered office of the Company in the State of Delaware shall be located at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be The Corporation Trust Company. The principal office of the Company shall be located at Two Warren Place, 6120 S. Yale Avenue, Suite 700, Tulsa, Oklahoma 74136, or such other place as the Board may from time to time designate. The Company may maintain offices at such other place or places within or outside the State of Delaware as the Board deems necessary or appropriate.

Section 2.4 *Purpose and Business* . The purpose and nature of the business to be conducted by the Company shall be to (a) serve as the general partner of the Partnership and, in connection therewith, to exercise all rights conferred upon the Company as the general partner of the Partnership in accordance with the Partnership Agreement, (b) engage directly or indirectly in any business activity that the Company is permitted to engage in and, in connection therewith, to exercise all of the rights and powers conferred upon the Company pursuant to the agreements relating to such business activity, (c) engage directly or indirectly in any business activity that is approved by the Sole Member and that lawfully may be conducted by a limited liability company organized pursuant to the Act and, in connection therewith, to exercise all of the rights and

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powers conferred upon the Company pursuant to the agreements relating to such business activity, (d) guarantee, mortgage, pledge or encumber any or all of its assets in connection with any indebtedness of any Affiliate of the Company and (e) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to any Subsidiary of the Company.

Section 2.5 *Powers* . The Company shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Company.

Section 2.6 *Term* . The term of the Company commenced upon the filing of the Certificate of Formation in accordance with the Act and shall continue in existence in perpetuity or until the dissolution of the Company in accordance with the provisions of Article VIII. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the Act.

Section 2.7 *Title to Company Assets* . Title to Company assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity, and the Sole Member shall not have any ownership interest in such Company assets or any portion thereof.

Section 2.8 *Certain Undertakings Relating to Separateness* .

(a) *Separateness Generally*. The Company shall, and shall cause each Group Member to, conduct their respective businesses and operations separate and apart from those of any other Person (including the SemGroup Entities), except as provided in this Section 2.8.

(b) *Separate Records*. The Company shall, and shall cause the Partnership to, (i) maintain their respective books and records and their respective accounts separate from those of any other Person, (ii) maintain their respective financial records, which will be used by them in their ordinary course of business, showing their respective assets and liabilities separate and apart from those of any other Person, except their consolidated Subsidiaries, and (iii) file their respective own tax returns separate from those of any other Person, except (A) to the extent that the Partnership or the Company (1) is treated as a “disregarded entity” for tax purposes or (2) is not otherwise required to file tax returns under applicable law or (B) as may otherwise be required by applicable law.

(c) *Separate Assets*. The Company shall not, and shall cause the Partnership to not, commingle or pool its funds or other assets with those of any other Person, except its consolidated Subsidiaries, and shall maintain its assets in a manner in which it is not costly or difficult to segregate, ascertain or otherwise identify its assets as separate from those of any other Person.

(d) *Separate Name*. The Company shall, and shall cause each Group Member to, (i) conduct their respective businesses in their respective own names or in the names of their respective Subsidiaries, (ii) use its or their separate stationery, invoices and checks, (iii) correct any known misunderstanding regarding their respective separate identities as members of the Partnership Group from that of any other Person (including the SemGroup Entities), and (iv) generally hold themselves and the Partnership Group out as entities separate from any other Person (including the SemGroup Entities).

(e) *Separate Formalities*. The Company shall, and shall cause the Partnership to, (i) observe all limited liability company or limited partnership formalities, as the case may be, and other formalities required by its organizational documents, the laws of the jurisdiction of its formation and other applicable laws and (ii) subject to the terms of the Partnership Agreement, promptly pay, from its own funds, and on a current basis, its allocable share of general and administrative services and costs for services performed, and capital expenditures made, by any of the SemGroup Entities or their respective members, shareholders or partners, as applicable. Each material contract between the Company or the Partnership, on the one hand, and any of the SemGroup Entities or their respective members, shareholders or partners, as applicable, on the other hand, shall be in writing.

(f) *No Effect*. Failure by the Company to comply with any of the obligations set forth above shall not affect the status of the Company as a separate legal entity, with its separate assets and separate liabilities, or restrict or limit the Company from engaging or contracting with the SemGroup Entities for the provision of services or the purchase or sale of products.

### ARTICLE III. RIGHTS OF SOLE MEMBER

Section 3.1 *Voting* . Unless otherwise granted to the Board by this Agreement, the Directors shall not have any voting or management rights with respect to the Company and the Sole Member shall possess all voting rights in all matters relating to the Company, including, without limitation, matters relating to the amendment of this Agreement (except as provided in Section 2.2), any merger, consolidation or conversion of the Company, any sale of all or substantially all of the assets of the Company and the termination, dissolution and liquidation of the Company. The Sole Member may act by written consent without a meeting with respect to any action it could act upon at a meeting.

Section 3.2 *Distribution* . Distributions by the Company of cash or other property shall be made to the Sole Member at such time as the Sole Member deems appropriate.

### ARTICLE IV. CAPITAL CONTRIBUTIONS; PREEMPTIVE RIGHTS; NATURE OF MEMBERSHIP INTEREST

Section 4.1 *Initial Capital Contribution* . On August 5, 2011, in connection with the formation of the Company, RDC made a contribution to the capital of the Company in the amount of \$1,000 in exchange for all of the outstanding Membership Interests.

Section 4.2 *Additional Capital Contributions* . The Sole Member shall not be obligated to make additional Capital Contributions to the Company.

Section 4.3 *No Preemptive Rights* . No Person shall have preemptive, preferential or other similar rights with respect to (a) additional Capital Contributions, (b) the issuance or sale of any class or series of Membership Interests, whether unissued, held in the treasury or hereafter created, (c) the issuance of any obligations, evidences of indebtedness or other securities of the Company convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any such Membership Interests, (d) the issuance of any right of subscription to or right to receive, or any warrant or option for the purchase of, any such Membership Interests or (e) the issuance or sale of any other securities that may be issued or sold by the Company.

Section 4.4 *Fully Paid and Non-Assessable Nature of Membership Interests* . All Membership Interests issued pursuant to, and in accordance with, the requirements of this Article IV shall be fully paid and non-assessable Membership Interests, except as such non-assessability may be affected by Sections 18-607 and 18-804 of the Act.

ARTICLE V.  
MANAGEMENT; INDEMNIFICATION; LIABILITY OF INDEMNITEES; OTHER  
BUSINESS OF MEMBERS

Section 5.1 *Management; Delegation of Authority and Duties* .

(a) *Sole Member*. Except as otherwise provided in this Agreement, the business and affairs of the Company shall be managed under the direction of the Sole Member, who, except as expressly provided otherwise in this Agreement, shall make all decisions and take all actions for the Company. The Sole Member shall have the power and authority to delegate to one or more other Persons the Sole Member's rights and power to manage and control the business and affairs of the Company.

(b) *The Board* .

(i) Subject to Section 5.1(b)(ii), (iii) and (iv), to the fullest extent permitted under Delaware law, the Board shall have all power and authority related to the Company's management and control of the business and affairs of the Partnership and its Subsidiaries.

(ii) Notwithstanding anything herein to the contrary, without obtaining approval of the Sole Member, neither the Board nor the Company shall take any action to cause the Partnership to (A) sell all or substantially all of the assets of the Partnership and its Subsidiaries, viewed on a consolidated basis, in one or a series of related transactions, (B) merge, consolidate, recapitalize or enter into a similar transaction involving the Partnership, (C) dissolve or liquidate the Partnership, (D) make or consent to a general assignment for the benefit of the creditors of the Partnership or (E) commence any action relating to bankruptcy, insolvency, reorganization or relief of debtors by the Partnership.

(iii) Notwithstanding anything herein to the contrary, the Sole Member shall have exclusive authority over the internal business and affairs of the Company that do not relate to management and control of the Partnership and its Subsidiaries. For illustrative purposes, the internal business and affairs of the Company where the Sole

Member shall have exclusive authority include (A) the amount and timing of distributions to be paid by the Company, (B) the issuance or repurchase of any equity interests in the Company, (C) the prosecution, settlement or management of any action or claim made by or against the Company, including, without limitation, the commencement of any action relating to bankruptcy, insolvency, reorganization or relief of debtors by the Company, (D) the sale, conveyance, transfer or pledge of any asset of the Company, (E) the amendment, modification or waiver of any rights relating to the assets of the Company, (F) the making of, or the consent to, a general assignment for the benefit of the creditors of the Company, (G) the merger, consolidation, recapitalization or entry into similar transactions involving the Company, (H) the dissolution or liquidation of the Company and (I) the entry into any agreement to incur an obligation of the Company other than an agreement entered into for and on behalf of the Partnership or any of its Affiliates for which the Company is liable exclusively by virtue of the Company's capacity as general partner of the Partnership or of any of its Affiliates.

(iv) Notwithstanding anything herein to the contrary, the Sole Member shall have exclusive authority to cause the Company to exercise the rights of the Company as general partner of the Partnership (or those exercisable after the Company ceases to be the general partner of the Partnership) where (A) the Company makes a determination or takes or declines to take any other action in its individual capacity under the Partnership Agreement, as opposed to its capacity as the General Partner of the Partnership or (B) where the Partnership Agreement permits the Company to make a determination or take or decline to take any other action in its sole discretion. For illustrative purposes, a non-exclusive list of provisions with respect to which, in accordance with the terms of the Partnership Agreement, the Company would be acting in its individual capacity or is permitted to act in its sole discretion is contained in Exhibit A hereto.

(c) *Directors*. The number of directors (the "*Directors*") constituting the Board shall be at least three and not more than nine, as may be fixed from time to time pursuant to action by the Sole Member. The Directors shall be elected or approved by the Sole Member. The initial Directors of the Company in office at the date of this Agreement, as approved by the Sole Member, are set forth on Exhibit B hereto. Once elected or approved pursuant to this Section 5.1(c), a Director shall continue in office until the resignation or removal of such Director as provided below or until the death of such Director. Any Director may resign at any time by giving written notice of such Director's resignation to the Board. Any such resignation shall take effect at the time the Board receives such notice or at any later effective time specified in such notice. Unless otherwise specified in such notice, the acceptance by the Board of such Director's resignation shall not be necessary to make such resignation effective. Notwithstanding anything herein or under applicable law to the contrary, any Director may be removed at any time with or without cause by the Sole Member. Any vacancies on the Board may be filled by the Sole Member.

(d) *Committees* .

(i) The Board may establish committees of the Board and may delegate any of its responsibilities to such committees.

(ii) On or before the Listing Date, the Board shall have an audit committee (the “*Audit Committee*”) comprised of at least three Directors, at least one of which shall be an Independent Director as of the Listing Date and at least two of which shall be Independent Directors within 90 days following the Listing Date. As of one year following the Listing Date, the Audit Committee shall be comprised entirely of Independent Directors. The Audit Committee shall establish a written audit committee charter in accordance with the rules of the principal national securities exchange on which a class of Common Units are listed or admitted to trading, as amended from time to time. “*Independent Director*” shall mean Directors meeting independence standards required of directors who serve on an audit committee of a board of directors established by the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission thereunder and by the national securities exchange on which any class of Common Units are listed or admitted to trading.

(iii) The Board may, from time to time, establish a Conflicts Committee which shall be composed entirely of two or more Directors meeting the requirements under the Partnership Agreement. The Conflicts Committee shall function in the manner described in the Partnership Agreement. Notwithstanding any duty otherwise existing at law or in equity, any matter approved by the Conflicts Committee in accordance with the provisions, and subject to the limitations, of the Partnership Agreement, shall not be deemed to be a breach of any fiduciary or other duties owed hereunder, at law, in equity or otherwise by the Board or any Director to the Company or the Sole Member.

(e) *Chairman of the Board.* The Board may elect a chairman (the “*Chairman*”) of the Board. The Chairman of the Board, if elected, shall be a member of the Board and shall preside at all meetings of the Board and of the Partners of the Partnership. The Chairman of the Board shall not be an Officer by virtue of being the Chairman of the Board but may otherwise be an Officer. The Chairman of the Board may be removed either with or without cause at any time by the affirmative vote of a majority of the Board. No removal or resignation as Chairman of the Board shall affect such Chairman’s status as a Director.

#### Section 5.2 *Meetings of the Board and Committees .*

(a) *Meetings.* The Board (or any committee of the Board) shall meet at such time and at such place as the Chairman of the Board (or the chairman of such committee) may designate. If no Chairman has been elected or is serving the Board shall meet at such time and at such place as a majority of the Directors may designate. Written notice of all regular meetings of the Board (or any committee of the Board) must be given to all Directors (or all members of such committee) at least two days prior to the regular meeting of the Board (or such committee). Special meetings of the Board (or any committee of the Board) shall be held at the request of the Chairman or a majority of the Directors (or a majority of the members of such committee) upon at least two days (if the meeting is to be held in person) or twenty-four hours (if the meeting is to be held telephonically) oral or written notice to the Directors (or the members of such committee) or upon such shorter notice as may be approved by the Directors (or the members of such committee), which approval may be given before, at or after the relevant meeting. All notices and other communications to be given to Directors shall be sufficiently given for all

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purposes hereunder if in writing and delivered by hand, courier or overnight delivery service or three days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid, or when received by facsimile or e-mail, and shall be directed to the address, facsimile number or e-mail address as such Director shall designate by notice to the Company. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board (or committee) need be specified in the notice of such meeting. Any Director may waive the requirement of such notice as to such Director.

(b) *Conduct of Meetings.* Any meeting of the Board (or any committee of the Board) may be held in person or by telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

(c) *Quorum.* Fifty percent or more of all Directors (or members of a committee of the Board), present in person or participating in accordance with Section 5.2(b), shall constitute a quorum for the transaction of business at any meeting of the Board (or any committee of the Board), but if at any meeting of the Board (or committee) there shall be less than a quorum present, a majority of the Directors (or members of a committee) present may adjourn the meeting without further notice. The Directors (or members of a committee) present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors (or members of a committee) to leave less than a quorum; *provided, however*, that only the acts of the Directors (or members of a committee) meeting the requirements of Section 5.3 shall be deemed to be acts of the Board (or such committee).

(d) *Procedures.* To the extent not inconsistent with this Agreement or the Act, the procedures governing meetings of the Board and its committees, and actions of Directors acting by written consent without a meeting, shall be as provided for the board of directors and its committees of a corporation incorporated under the General Corporation Law of the State of Delaware.

Section 5.3 *Voting*. Except as otherwise provided in this Agreement, the effectiveness of any vote, consent or other action of the Board (or any committee of the Board) in respect of any matter shall require either (a) the presence of a quorum and the affirmative vote of at least a majority of the Directors (or members of such committee) present at a meeting or (b) the written consent (in lieu of meeting) of at least a majority of the Directors (or members of such committee) who are then in office.

Section 5.4 *Responsibility and Authority of the Board*. Except as otherwise provided in this Agreement, the relative authority and functions of the Board, on the one hand, and the Officers, on the other hand, shall be identical to the relative authority and functions of the board of directors and officers, respectively, of a corporation organized under the General Corporation Law of the State of Delaware. The Officers shall be vested with such powers and duties as are set forth in Section 6.1.



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Section 5.5 *Compensation* . The Directors shall receive such compensation for their services as may be designated by the Board or any committee thereof established for the purpose of setting compensation.

Section 5.6 *Devotion of Time* . The Directors shall not be obligated and shall not be expected to devote all of their time or business efforts to the affairs of the Company (except, to the extent appropriate, in their capacity as employees of the Company).

Section 5.7 *Certificate of Formation* . The Sole Member caused the Certificate of Formation to be filed with the Secretary of State of the State of Delaware as required by the Act and certain other certificates or documents it determined in its discretion to be necessary or appropriate for the qualification and operation of the Company in certain other states, which filings are hereby ratified in all respects. The Sole Member shall use all reasonable efforts to cause to be filed such additional certificates or documents as may be determined by the Sole Member to be necessary or appropriate for the formation, continuation, qualification and operation of a limited liability company in the State of Delaware or any other state in which the Company may elect to do business or own property. To the extent that such action is determined by the Sole Member to be necessary or appropriate, the Sole Member, as an authorized person of the Company, may file amendments to and restatements of the Certificate of Formation and do all things to maintain the Company as a limited liability company under the laws of the State of Delaware or of any other state in which the Company may elect to do business or own property.

Section 5.8 *Benefit Plans* . The Board may propose and adopt on behalf of the Company employee benefit plans, employee programs and employee practices, or cause the Company to cause the Partnership to issue Partnership Interests, in connection with or pursuant to any employee benefit plan, employee program or employee practice maintained or sponsored by the Company or any Affiliate thereof (including any Group Member), in each case for the benefit of employees of the Company or any Affiliate thereof (including any Group Member), or any of them, in respect of services performed, directly or indirectly, for the benefit of the Company or any Affiliate thereof (including any Group Member).

Section 5.9 *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 Company from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, 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 and having acted (or refrained from acting) in such capacity on behalf of or for the benefit of the Company; *provided* , that the Indemnitee shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 5.9, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's

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conduct was unlawful. Any indemnification pursuant to this Section 5.9 shall be made only out of the assets of the Company, it being agreed that the Sole Member shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 5.9(a) in appearing at, participating in or defending or preparing to defend against any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 5.9, the Indemnitee is not entitled to be indemnified upon receipt by the Company of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be ultimately determined that the Indemnitee is not entitled to be indemnified as authorized by this Section 5.9.

(c) Notwithstanding Section 5.9(a) and Section 5.9(b), the Company shall be required to indemnify and advance expenses to an Indemnitee in connection with any action, suit or proceeding commenced by such Indemnitee only if the commencement of such action, suit or proceeding by such Indemnitee was authorized by the Sole Member in its sole discretion.

(d) The indemnification provided by this Section 5.9 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement or, as a matter of law, in equity or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(e) The Company may purchase and maintain (or reimburse the Sole Member or its Affiliates for the cost of) insurance, on behalf of the Directors, the Officers, the Sole Member, its Affiliates, the Indemnitees and such other Persons as the Sole Member shall determine, against any liability that may be asserted against, or expense that may be incurred by, any such Person in connection with the Company's activities or such Person's activities on behalf of the Company, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement. In addition, the Company may enter into additional indemnification agreements with any Indemnitee.

(f) For purposes of this Section 5.9, the Company shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by such Indemnitee of its duties to the Company 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 5.9(a); and action taken or omitted by an Indemnitee with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Company.

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

(h) An Indemnitee shall not be denied indemnification in whole or in part under this Section 5.9 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.

(i) The provisions of this Section 5.9 are for the benefit of the Indemnitees and their heirs, successors, assigns, executors and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(j) No amendment, modification or repeal of this Section 5.9 or any other provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Company, nor the obligations of the Company to indemnify any such Indemnitee under and in accordance with the provisions of this Section 5.9 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

#### Section 5.10 *Liability of Indemnitees* .

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

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

(c) Except as expressly set forth in this Agreement, neither the Sole Member nor any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Company or any of its members or other Persons bound by this Agreement. Notwithstanding any other provision of this Agreement, to the extent that any provision of this Agreement (i) replaces, restricts or eliminates the duties (including fiduciary duties) that might otherwise, as a result of Delaware or other applicable law, be owed by the Sole Member or any other Indemnitee to the Company or any of its members or other Persons bound by this Agreement, or (ii) constitutes a waiver of such duties or a consent to any such replacement, restriction or elimination by the Company or any of its members or other Persons bound by this Agreement, such provision is hereby approved by the Company, each of its members and each other Person bound by this Agreement.

(d) Any amendment, modification or repeal of this Section 5.10 shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Section 5.10 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 5.11 *Other Business of Members* .

(a) *Existing Business Ventures.* The Sole Member, each Director and their respective Affiliates may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company or the Partnership, and the Company, the Partnership, the Directors and the Sole Member shall have no rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Company or the Partnership, shall not be deemed wrongful or improper or a breach of any duty.

(b) *Business Opportunities.* None of the Sole Member, any Director or any of their respective Affiliates shall be obligated to present any particular investment opportunity to the Company or the Partnership even if such opportunity is of a character that the Company, the Partnership or any of their respective Subsidiaries might reasonably be expected to have an interest in pursuing it or had the ability or desire to pursue it if granted the opportunity to do so, and the Sole Member, each Director or any of their respective Affiliates shall have the right to take for such Person's own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment opportunity, and any such action shall not constitute a breach of any duty otherwise existing at law, in equity or otherwise.

ARTICLE VI.  
OFFICERS

Section 6.1 *Officers* .

(a) *Generally.* Subject to Sections Section 5.1(b)(ii), (iii) and (iv), the officers of the Company (the "*Officers*") shall be responsible, on behalf of the Company, for the day-to-day business affairs of the Partnership and its Subsidiaries, subject to the overall direction and control of the Board. Unless provided otherwise by the Board, the Officers shall have the titles, power, authority and duties described below in this Section 6.1.

(b) *Titles and Number.* The Officers may consist of a Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice Presidents, a Chief Operating Officer, a General Counsel, a Secretary, one or more Assistant Secretaries, and such other officers as the Board from time to time may deem proper. Any Person may hold two or more offices.

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(i) *Chief Executive Officer*. The Board shall appoint a Chief Executive Officer. The Chief Executive Officer, subject to the direction and supervision of the Board, shall be the chief executive officer of the Company with respect to the Company's management of the Partnership and its Subsidiaries and, on behalf of the Company, shall have general and active management and control of the day-to-day affairs and business and general supervision of the Partnership and its Subsidiaries, and their respective officers, agents and employees, and shall perform all duties incident thereto and such other duties as may be prescribed from time to time by the Board.

(ii) *Chief Financial Officer*. The Board shall appoint a Chief Financial Officer. The Chief Financial Officer shall perform all duties and have all powers incident to the office of the Chief Financial Officer and in general have, on behalf of the Company, overall supervision of the financial operations of the Partnership and its Subsidiaries. The Chief Financial Officer, on behalf of the Company, shall receive and deposit all moneys and other valuables belonging to the Partnership or its Subsidiaries in the name and to the credit of the Partnership or its Subsidiaries, as applicable, and shall disburse the same and only in such manner as the Board or the appropriate Officer of the Company may from time to time determine. The Chief Financial Officer shall render to the Board and the Chief Executive Officer, whenever either of them request it, an account of all of the transactions of the Partnership and its Subsidiaries and of the financial condition of the Partnership and its Subsidiaries, and shall perform such other duties and may exercise such other powers as may be delegated by the Chief Executive Officer or as may be prescribed by the Board from time to time.

(iii) *President*. The Board, in its discretion, may appoint a President. The Chief Executive Officer may serve as President. If the Chief Executive Officer does not so serve, the President shall, on behalf of the Company, subject to the control of the Board and the Chief Executive Officer, in general, supervise and control all of the business and affairs of the Partnership and its Subsidiaries, and shall perform such other duties as may be prescribed by the Board from time to time.

(iv) *Vice Presidents*. The Board, in its discretion, may appoint one or more Vice Presidents. Any Executive Vice President, Senior Vice President and Vice President, in the order of seniority, unless otherwise determined by the Board, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. They shall also perform the usual and customary duties and have the powers that pertain to such office and generally assist the President by executing contracts and agreements and exercising such other powers and performing such other duties as may be delegated by the Chief Executive Officer or President or as may be prescribed by the Board from time to time.

(v) *Chief Operating Officer*. The Board, in its discretion, may appoint a Chief Operating Officer. The Chief Operating Officer shall, on behalf of the Company, subject to the control of the Board, the Chief Executive Officer and the President, supervise the day-to-day operations of the Partnership and its Subsidiaries, and shall perform such other duties as may be delegated by the Chief Executive Officer or President or as may be prescribed by the Board from time to time.

(vi) *General Counsel.* The Board shall appoint a General Counsel. The General Counsel shall be the principal legal officer of the Company with respect to the business and affairs of the Partnership and its Subsidiaries. The General Counsel, on behalf of the Company, shall have general direction of and supervision over the legal affairs of the Partnership and its Subsidiaries and shall advise the Board and the Officers of the Company on all Partnership legal matters. The General Counsel shall perform such other duties and may exercise such other powers as may be delegated by the Chief Executive Officer or President or as may be prescribed by the Board from time to time.

(vii) *Secretary and Assistant Secretaries.* The Board shall appoint a Secretary and, in its discretion, may appoint one or more Assistant Secretaries. The Secretary shall record or cause to be recorded in books provided for that purpose the minutes of the meetings or actions of the Board, the committees of the Board and the Partners of the Partnership, shall see that all notices are duly given in accordance with the provisions of this Agreement and as required by law, shall be custodian of all records (other than financial), shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may be delegated by the Chief Executive Officer or President or as may be prescribed by the Board from time to time. The Assistant Secretaries shall exercise the powers of the Secretary during that Officer's absence or inability or refusal to act.

(c) *Other Officers and Agents.* The Board may appoint such other Officers and agents as may from time to time appear to be necessary or advisable in the conduct by the Company of the affairs of the Partnership and its Subsidiaries, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

(d) *Appointment and Term of Office.* The names and titles of the Officers in office as of the date of this Agreement are set forth on Exhibit C hereto. From and after the date of this Agreement, the Officers shall be appointed by the Board at such time and for such terms as the Board shall determine. Any Officer may be removed, with or without cause, only by the Board. Vacancies in any office may be filled only by the Board.

(e) *Signing Authority.* Subject to any restrictions on such authority imposed by the Board or the Chief Executive Officer of the Company, each Officer shall have the authority to sign on behalf of the Company any deeds, mortgages, leases, bonds, notes, certificates, contracts or other instruments, except in cases where the execution thereof shall be expressly delegated by the Board or by this Agreement to the Sole Member or some other Officer or agent of the Company or shall be required by law to be otherwise executed.

(f) *Powers of Attorney.* The Board may grant powers of attorney or other authority as appropriate to establish and evidence the authority of the Officers and other Persons.

(g) *Officers' Delegation of Authority.* Unless otherwise provided by resolution of the Board, no Officer shall have the power or authority to delegate to any Person such Officer's rights and powers as an Officer to manage, on behalf of the Company, the business and affairs of the Partnership and its Subsidiaries.

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Section 6.2 *Compensation* . The Officers shall receive such compensation for their services as may be designated by the Board or any committee thereof established for the purpose of setting compensation.

ARTICLE VII.  
BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 7.1 *Records and Accounting* . The Board shall keep or cause to be kept at the principal office of the Company appropriate books and records with respect to the Company's business. The books of account of the Company shall be (i) maintained on the basis of a fiscal year that ends December 31 of each year and (ii) maintained on an accrual basis in accordance with U.S. GAAP, consistently applied.

Section 7.2 *Reports* . The Board shall prepare, or cause to be prepared, and deliver, or cause to be delivered, to the Sole Member such reports or other information as the Sole Member may reasonably request from time to time.

Section 7.3 *Bank Accounts* . Funds of the Company shall be deposited in such banks or other depositories as shall be designated from time to time by the Board. All withdrawals from any such depository shall be made only as authorized by the Board and shall be made only by check, wire transfer, debit memorandum or other written instruction.

ARTICLE VIII.  
DISSOLUTION AND LIQUIDATION

Section 8.1 *Dissolution* .

(a) The Company shall dissolve, and its affairs shall be wound up, upon:

- (i) an election to dissolve the Company by the Sole Member;
- (ii) the entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Act; or
- (iii) at any time that there are no members of the Company, unless the Company is continued without dissolution as provided in the Act.

(b) No other event shall cause a dissolution of the Company.

Section 8.2 *Effect of Dissolution* . Except as otherwise provided in this Agreement, upon the dissolution of the Company, the Sole Member shall take such actions as may be required pursuant to the Act and shall proceed to wind up, liquidate and terminate the business and affairs of the Company. In connection with such winding up, the Sole Member shall have the authority to liquidate and reduce to cash (to the extent necessary or appropriate) the assets of the Company as promptly as is consistent with obtaining fair value therefor, to apply and distribute the proceeds of such liquidation and any remaining assets in accordance with the provisions of Section 8.3, and to do any and all acts and things authorized by, and in accordance with, the Act and other applicable laws for the purpose of winding up and liquidation.

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Section 8.3 *Application of Proceeds* . Upon dissolution and liquidation of the Company, the assets of the Company shall be applied and distributed in the following order of priority:

(a) First, to the payment of debts and liabilities of the Company (including to the Sole Member to the extent permitted by applicable law), including the expenses of liquidation, including the setting up of such reserves as the Person required or authorized by law to wind up the Company's affairs may reasonably deem necessary or appropriate for any disputed, contingent, conditional or unmatured liabilities or obligations of the Company, *provided* that any such reserves shall be paid over by such Person to an escrow agent appointed by the Sole Member, to be held by such agent or its successor for such period as such Person shall deem advisable for the purpose of applying such reserves to the payment of such liabilities or obligations and, at the expiration of such period, the balance of such reserves, if any, shall be applied as provided in this Section 8.3; and

(b) Thereafter, the remainder to the Sole Member.

ARTICLE IX.  
GENERAL PROVISIONS

Section 9.1 *Addresses and Notices* . Any notice, demand, request, report or proxy materials required or permitted to be given or made to the Sole Member 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 facsimile to the Sole Member at the address or facsimile number described below. Any notice to the Company shall be deemed given if received by the Sole Member at the principal office of the Company designated pursuant to Section 2.3. The Company may rely and shall be protected in relying on any notice or other document from the Sole Member or other Person if believed by it to be genuine.

If to the Sole Member:

Rose Rock Midstream Holdings, LLC  
Two Warren Place  
6120 S. Yale Avenue, Suite 700  
Tulsa, Oklahoma 74136  
Facsimile: (918) 524-8687  
Attention: General Counsel and Secretary

Section 9.2 *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 9.3 *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.



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Section 9.4 *Third Party Beneficiaries* . The Sole Member agrees that any Indemnatee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnatee. Except as provided in the preceding sentence, none of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Company or any other Person.

Section 9.5 *Amendment* . Except as provided in Section 2.2, this Agreement may be amended only by a written instrument executed by the Sole Member.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

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IN WITNESS WHEREOF, the Sole Member has executed this Agreement as of the date first written above.

SOLE MEMBER:

ROSE ROCK MIDSTREAM HOLDINGS, LLC

By: /s/ Norman J. Szydlowski

Name: Norman J. Szydlowski

Title: President and Chief Executive Officer

*[First Amended and Restated Limited Liability Company Agreement of General Partner]*

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Exhibit A

The provisions of the Partnership Agreement which permit the Company to act in its sole discretion or in its individual capacity include:

- (a) Section 2.4 (Purpose and Business);
- (b) Section 3.4(a)(iv) (Rights of Limited Partners);
- (c) Sections 4.6(a) and (b) (Transfer of the General Partner Interest), including with respect to the decision by the Company to transfer its general partner interest in the Partnership;
- (d) Section 5.6(a), (b) and (c) (Issuance of Additional Partnership Interests);
- (e) Section 5.8 (Preemptive Right);
- (f) Section 6.9 (Entity-Level Taxation);
- (g) Section 7.6(a) (Loans from the General Partner; Loans or Contributions from the Partnership or Group Members);
- (h) Section 7.11 (Purchase or Sale of Partnership Interests);
- (i) Section 7.12 (Registration Rights of the General Partner and its Affiliates);
- (j) Section 11.1 (Withdrawal of the General Partner), with respect to the decision by the Company to withdraw as General Partner of the Partnership and giving notices required thereunder;
- (k) Section 11.3 (Interest of Departing General Partner and Successor General Partner);
- (l) Section 13.2 (Amendment Procedures); and
- (m) Section 15.1 (Right to Acquire Limited Partner Interests).

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Exhibit B

Norman J. Szydlowski

Peter L. Schwiering

Robert N. Fitzgerald

Timothy O'Sullivan

Mark Monroe

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Exhibit C

Norman J. Szydowski – President and Chief Executive Officer

Peter L. Schwiering – Chief Operating Officer

Robert N. Fitzgerald – Senior Vice President and Chief Financial Officer

Timothy O’Sullivan – Vice President

Candice L. Cheeseman – General Counsel and Secretary

Paul Largess – Vice President, Controller and Chief Accounting Officer

Deborah S. Fleming – Vice President and Treasurer

**OMNIBUS AGREEMENT**  
**among**  
**SEMGROUP CORPORATION,**  
**ROSE ROCK MIDSTREAM GP, LLC**  
**and**  
**ROSE ROCK MIDSTREAM, L.P.**

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## OMNIBUS AGREEMENT

THIS OMNIBUS AGREEMENT is entered into on, and effective as of, the Closing Date (as defined herein), by and among SemGroup Corporation, a Delaware corporation (“*SemGroup*”), Rose Rock Midstream GP, LLC, a Delaware limited liability company (the “*General Partner*”), and Rose Rock Midstream, L.P., a Delaware limited partnership (the “*Partnership*”). The above-named entities are sometimes referred to in this Agreement singularly as a “*Party*” and collectively as the “*Parties*.”

### RECITALS:

The Parties desire by their execution of this Agreement to evidence their understanding:

1. As more fully set forth in Article II, with respect to the license to use certain Marks (as defined herein) of SemGroup; and
2. As more fully set forth in Article III, with respect to certain indemnification rights and obligations among the Parties.

In consideration of the premises and the covenants, conditions, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I DEFINITIONS

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

“*Affiliate*” has the meaning given such term in the Partnership Agreement.

“*Agreement*” means this Omnibus Agreement, as it may be amended, modified or supplemented from time to time in accordance with the terms hereof.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which banking institutions in Tulsa, Oklahoma are authorized or are obligated by law, executive order or governmental decree to be closed.

“*Cause*” has the meaning given such term in the Partnership Agreement.

“*Change of Control*” means SemGroup ceases to control, directly or indirectly, the general partner of the Partnership.

“*Closing Date*” means the date of the closing of the initial public offering of the Common Units.

“*Common Unit*” has the meaning given such term in the Partnership Agreement.

“*Conflicts Committee*” has the meaning given such term in the Partnership Agreement.



“ **Contribution Agreement** ” means that certain Contribution, Conveyance and Assumption Agreement, dated as of November 29, 2011, by and among SemGroup, certain subsidiaries of SemGroup, the General Partner, the Partnership and the Operating Company, together with the additional conveyance documents and instruments contemplated or referenced thereunder, as such may be amended, supplemented or restated from time to time.

“ **Covered Environmental Losses** ” means any and all Losses (including, without limitation, the costs and expenses associated with any Environmental Activity or of any environmental or toxic tort pre-trial, trial or appellate legal or litigation work) related to or arising out of or in connection with:

(a) any violation or correction of a violation of any Environmental Law related to the Partnership Assets; and

(b) any event, circumstance, action, omission, condition or matter that has an adverse impact on the environment and is associated with or arising from the ownership or operation of the Partnership Assets (including, without limitation, the presence of Hazardous Substances at, on, under, about or migrating to or from the Partnership Assets or the exposure to or Release of Hazardous Substances arising out of the operation of Partnership Assets, including at non-Partnership Asset locations).

“ **Environmental Activities** ” means any investigation, study, assessment, evaluation, sampling, testing, monitoring, containment, removal, disposal, closure, corrective action, remediation (whether active or passive), natural attenuation, restoration, bioremediation, response, repair, cleanup or abatement that is required or necessary under any Environmental Law or to satisfy any Voluntary Cleanup Program, including, without limitation, the establishment of institutional or engineering controls and the performance of or participation in a supplemental environmental project in partial or whole mitigation of a fine or penalty.

“ **Environmental Laws** ” means all federal, state, and local laws, statutes, rules, regulations, orders, ordinances, judgments, codes, injunctions, decrees, Environmental Permits and other legally enforceable requirements and rules of common law relating to (a) pollution or protection of the environment or natural resources, (b) any Release or threatened Release of, or any exposure of any Person or property to, any Hazardous Substance and (c) the generation, manufacture, processing, distribution, use, treatment, storage, transport or handling of any Hazardous Substance, including, without limitation, the federal Comprehensive Environmental Response, Compensation, and Liability Act, the Superfund Amendments Reauthorization Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, the Oil Pollution Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act and other environmental conservation and protection laws, each as amended through and existing on the Closing Date.

“ **Environmental Permits** ” means any permit, approval, identification number, license, registration, certification, consent, exemption, variance or other authorization required under or issued pursuant to any applicable Environmental Law.

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

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“ **GAAP** ” means generally accepted accounting principles in the United States, consistently applied.

“ **General Partner** ” has the meaning given such term in the preamble to this Agreement.

“ **Hazardous Substance** ” means (a) any substance that is designated, defined or classified as a hazardous waste, solid waste, hazardous material, pollutant, contaminant or toxic or hazardous substance, or terms of similar meaning, or that is otherwise regulated under any Environmental Law, including, without limitation, any hazardous substance as such term is defined under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (b) petroleum, petroleum products, natural gas, crude oil, gasoline, fuel oil, motor oil, waste oil, diesel fuel, jet fuel and other petroleum hydrocarbons, whether refined or unrefined, and (c) radioactive materials, asbestos, whether in a friable or a non-friable condition, and polychlorinated biphenyls.

“ **Indemnified Party** ” means either one or more members of the Partnership Group or one or more SemGroup Entities, as the case may be, each in its capacity as a party entitled to indemnification in accordance with Article III hereof.

“ **Indemnifying Party** ” means either one or more members of the Partnership Group or SemGroup, as the case may be, each in its capacity as a party from whom indemnification may be required in accordance with Article III hereof.

“ **Licensees** ” means, for purposes of Article II hereof, the Partnership Group.

“ **Licensor** ” means, for purposes of Article II hereof, SemGroup.

“ **Losses** ” means all losses, damages, liabilities, injuries, claims, demands, causes of action, judgments, settlements, fines, penalties, costs and expenses of any and every kind or character (including, without limitation, court costs and reasonable attorneys’ and experts’ fees).

“ **Marks** ” means all trademarks, trade names, logos and/or service marks identified on Schedule 3.1 hereto, which schedule may be amended from time to time with the approval of SemGroup and the Conflicts Committee.

“ **Operating Company** ” has the meaning given such term in the definition of the Partnership Group.

“ **Organizational Documents** ” means certificates or articles of incorporation, by-laws, certificates of formation, limited liability company operating agreements, certificates of limited partnership, limited partnership agreements or other formation or governing documents of a particular entity.

“ **Partnership** ” has the meaning given to such term in the preamble to this Agreement.

“ **Partnership Agreement** ” means the Second Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of the Closing Date, as amended from time to time, to which reference is hereby made for all purposes of this Agreement.

“ **Partnership Assets** ” means the assets conveyed, contributed or otherwise transferred, directly or indirectly (including through the transfer of equity interests), or intended to be conveyed, contributed or otherwise transferred, to the Partnership Group pursuant to the Contribution Agreement, including, without limitation, crude oil storage tanks and related contracts, crude oil gathering and transportation pipelines and related contracts, crude oil marketing operations and related contracts, crude oil tanker trucks, crude oil truck unloading facilities and related contracts and other related equipment and assets, including leases of real property.

“ **Partnership Group** ” means the Partnership, Rose Rock Midstream Operating, LLC, a Delaware limited liability company (the “ **Operating Company** ”), and any Subsidiary of the Partnership or the Operating Company.

“ **Party** ” and “ **Parties** ” have the meanings given such terms in the preamble to this Agreement.

“ **Person** ” has the meaning given such term in the Partnership Agreement.

“ **Registration Statement** ” means the Registration Statement on Form S-1, as amended (No. 333-176260), filed with the Securities and Exchange Commission with respect to the proposed initial public offering of Common Units by the Partnership.

“ **Release** ” means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping or disposing into the environment.

“ **Retained Assets** ” means the assets and investments owned by SemCrude, L.P. as of November 29, 2011 and Eaglwing, L.P. that were not conveyed, contributed or otherwise transferred to the Partnership Group pursuant to the Contribution Agreement; *provided, however*, that any Retained Asset shall cease to be a Retained Asset upon its conveyance, contribution or transfer to the Partnership Group after the date hereof.

“ **SemGroup** ” has the meaning given such term in the preamble to this Agreement.

“ **SemGroup Entities** ” means SemGroup and any Person (other than the members of the Partnership Group) controlled, directly or indirectly, by SemGroup; and “ **SemGroup Entity** ” means any one of the SemGroup Entities.

“ **Subsidiary** ” has the meaning given such term in the Partnership Agreement.

“ **Voluntary Cleanup Program** ” means a program of the United States or a state of the United States enacted pursuant to Environmental Laws that provides for a mechanism for the written approval of, or authorization to conduct, voluntary remedial action for the clean-up, removal or remediation of contamination that exceeds actionable levels established pursuant to Environmental Laws.

“ **Voting Securities** ” of a Person means securities of any class of such Person entitling the holders thereof to vote in the election of, or to appoint, members of the board of directors or other similar governing body of the Person; *provided* that if such Person is a limited partnership, the Voting Securities of such Person shall be the general partner interest in such Person.

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**ARTICLE II**  
**LICENSE**

**Section 2.1 Grant of License .** Upon the terms and conditions set forth in this Article II, Licensor hereby grants and conveys to Licensees a non-transferable, non-exclusive, royalty-free license to use the Marks in connection with the Licensees' current and future businesses and the current and future services performed therewith during the term of this Agreement. Licensees shall not have the right to assign, transfer or sublicense any of the rights granted hereunder, except upon the written consent of the Licensor, which consent shall be given or withheld at the sole discretion of Licensor and which shall be limited by such conditions as Licensor may require at its sole discretion.

**Section 2.2 Restrictions on Marks .** In order to ensure the quality of the uses under the Marks, and to protect the goodwill of the Marks, Licensees agree as follows:

(a) Licensees will only use the Marks in formats approved by Licensor and only in strict association with Licensees' businesses and the services performed therewith;

(b) Licensees will use the Marks only in accordance with such quality standards and specifications as may be established by Licensor and communicated to Licensees from time to time, it being understood that Licensor has evaluated Licensees' businesses and services and determined that they are of a quality that justifies this grant of a license. Licensees recognize that through proper use of the Marks, goodwill will become associated with the Marks. Therefore, Licensees will maintain the quality of the businesses and services with respect to which Licensees use the Marks, and will not permit such quality to deteriorate so as to affect adversely the Marks and the goodwill that becomes associated therewith. If the quality of the businesses or services with respect to which Licensees use the Marks so deteriorates so as to affect adversely the goodwill associated with the Marks, Licensees shall at their expense immediately cease further use of the Marks and shall immediately cause the Marks to be removed from all materials associated with the businesses and services until rectified and from all marketing materials. Licensees shall promptly report to Licensor any material changes in the quality of the businesses or services with which Licensees use the Marks. Licensees will not take any action, or permit or fail to prevent any action by Licensees' Affiliates or any other Person under Licensees' control, that is deemed to injure, harm or dilute the distinctiveness or goodwill of the Marks;

(c) Prior to publishing any new format or appearance of the Marks or any new advertising or promotional materials that incorporate the Marks, Licensees shall first provide such format, appearance or materials to Licensor for its approval. If Licensor does not inform Licensees in writing within fourteen (14) days from the date of the receipt of such new format, appearance, or materials that such new format, appearance, or materials is or are unacceptable, then such new format, appearance or materials shall be deemed to be acceptable and approved by Licensor. Licensor may withhold approval of any new format or appearance of the Marks or materials incorporating the Marks which Licensees propose to use in Licensor's sole discretion;

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(d) Licensees shall not use any other trademarks, service marks, trade names or logos in connection with the Marks without prior written approval from Licensee during the term of this Agreement; and

(e) Licensees shall notify Licensor prior to using the Marks for any services for which the Marks are not currently registered at the U.S. Patent and Trademark Office. Licensees shall not use the Marks for any services for which the Marks are not currently registered without Licensor's prior approval, which approval shall be given in Licensor's sole discretion. If Licensor does not inform Licensees in writing within fourteen (14) days from the date of the receipt of such notice that such use of the Marks is unacceptable, then such use of the Marks shall be deemed to be acceptable and approved by Licensor.

**Section 2.3 Ownership .** Licensor owns and shall retain all right, title and interest in and to the Marks, including all goodwill relating thereto, and all trademark rights embodied therein are and shall at all times be solely vested in Licensor. Licensees have no right, title, interest or claim of ownership in the Marks, except for the licenses granted in this Agreement. All use of the Marks shall inure to the benefit of Licensor. Licensees agree that they will not attack, challenge or assist any third party in attacking or challenging the title of Licensor in and to the Marks. All rights not expressly granted by Licensor herein are reserved. No implied licenses are granted by Licensor pursuant to the terms of this Agreement. Licensees shall, if requested by Licensor at any time, at Licensor's expense, execute such documents as reasonably requested by Licensor in order to confirm, consistent with the terms of this Agreement, the ownership or the licensing of such rights or to maintain the validity of the Marks or obtain or maintain registrations thereof for the goods or services applicable to the licensed uses herein.

**Section 2.4 Protection of the Marks .** Licensor shall have the exclusive right, but not the obligation, to protect the Marks (including monitoring potentially infringing uses, and initiating, prosecuting and defending litigation), and any rights therein and thereto, in its own name against all potential infringements and unauthorized uses of the Marks. Licensees shall provide any information and assistance reasonably requested by Licensor and/or join as a party in any such action at the reasonable request and at the sole cost and expense of Licensor. Licensor shall be entitled to all settlement amounts, damages or other monetary relief and costs and attorneys' fees recovered in any such action, and Licensor shall have full discretion in determining whether, and upon what terms and conditions, to settle any such action. Licensees shall cooperate fully in the enforcement of rights in any infringement action brought against a third party or in the defense of any infringement or other action respecting the Marks brought or initiated by a third party. In the event Licensor determines, in its sole discretion, that it is not in the best interests of Licensor to initiate any legal proceedings on account of any such infringements, claims or actions, or in the event Licensor settles or resolves any such proceedings which may be initiated, Licensees shall have no claim against Licensor for damages or otherwise, nor shall the same affect the validity or enforceability of this Agreement. If Licensor elects not to initiate or pursue legal action in connection with a potential or actual infringement or unauthorized use of the Marks, upon prior written approval of Licensor, Licensees may take such legal action as they deem appropriate, and Licensor agrees to support such legal action at the cost and expense of Licensees. In such case, Licensees shall be entitled to all settlement amounts, damages or other monetary relief and costs and attorneys' fees recovered in any such action.

**Section 2.5 New Registration .** Licensor shall have the sole right to seek additional registrations of the Marks in the U.S. Patent and Trademark Office or similar offices in different jurisdictions, whether for additional services or for additional formats and appearances of the Marks. Licensees shall not file for additional registrations unless requested to do so by Licensor. Licensees shall fully cooperate with Licensor's efforts to seek additional registrations of the Marks and provide all reasonable assistance requested by Licensor, including executing any documents necessary for such registrations. Licensor shall own all rights, title and interest in and to such additional registrations.

**Section 2.6 Confidentiality .** Licensees shall maintain in strictest confidence all confidential or nonpublic information or material disclosed by Licensor and in the materials supplied hereunder in connection with the license of the Marks, whether in writing or orally and whether or not marked as confidential. Such confidential information includes, but is not limited to, algorithms, inventions, ideas, processes, computer system architecture and design, operator interfaces, operational systems, technical information, technical specifications, training and instruction manuals, and the like. In furtherance of the foregoing confidentiality obligation, Licensees shall limit disclosure of such confidential information to those of their employees, contractors or agents having a need to access the confidential information for the purpose of exercising rights granted hereunder.

**Section 2.7 Estoppel .** Nothing in this Agreement shall be construed as conferring by implication, estoppel, or otherwise upon Licensees (a) any license or other right under the intellectual property rights of Licensor other than the license granted herein with respect to the Marks as set forth expressly herein or (b) any license rights other than those expressly granted herein.

**Section 2.8 Warranties; Disclaimers .**

(a) Licensor represents and warrants that (i) Licensor owns, and Licensor has the right to license or sublicense, the Marks licensed under this Agreement and (ii) the Marks do not infringe upon the rights of any third parties.

(b) EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS DESCRIBED IN SECTION 2.8(a), LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SUBJECT MATTER HEREOF, OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER ANY LICENSEE KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE) WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING.

**Section 2.9 In the Event of Termination .** In the event of termination of this Agreement pursuant to Section 4.4 or otherwise, Licensees' right to utilize or possess the Marks licensed under this Agreement shall automatically cease, and no later than ninety (90) days following such termination, (a) the Licensees shall cease all use of the Marks and shall adopt

trademarks, service marks, and trade names that are not confusingly similar to the Marks, (b) at Licensor's request, the Licensees shall destroy all materials and content upon which the Marks continue to appear (or otherwise modify such materials and content such that the use or appearance of the Marks ceases) that are under Licensees' control, and certify in writing to Licensor that Licensees have done so, and (c) each of the Licensees shall change its legal name so that there is no reference therein to the name "Rose Rock," "SemCrude," any name or d/b/a then used by any SemGroup Entity or any variation, derivation or abbreviation thereof, and in connection therewith, shall make all necessary filings of certificates with the Secretary of State of the State of Delaware and to otherwise amend its Organizational Documents by such date.

### **ARTICLE III INDEMNIFICATION**

#### **Section 3.1 Environmental Indemnification .**

(a) Subject to the provisions of Section 3.4 and Section 3.5, SemGroup shall indemnify, defend and hold harmless the Partnership Group from and against any Covered Environmental Losses suffered or incurred by the Partnership Group and relating to the Partnership Assets to the extent that the violation, event, circumstance, action, omission, condition or matter giving rise to such Covered Environmental Losses occurred or existed on or before the Closing Date.

(b) Notwithstanding the foregoing, in no event shall SemGroup have any indemnification obligations under this Agreement with respect to any claims based on additions to or modifications of Environmental Laws enacted or promulgated after the Closing Date.

**Section 3.2 Additional Indemnification .** In addition to and not in limitation of the indemnification provided under Section 3.1(a), subject to the provisions of Section 3.4 and Section 3.5, SemGroup shall indemnify, defend and hold harmless the Partnership Group from and against any Losses suffered or incurred by the Partnership Group and related to or arising out of or in connection with:

(a) any failure of the Partnership Group to be the owner on the Closing Date of valid and indefeasible easement rights, rights-of-way, leasehold and/or fee ownership interests in and to the lands on which any Partnership Assets are located to the extent that such failure renders the Partnership Group liable to a third party or unable to use or operate the Partnership Assets in substantially the same manner as they were used or operated by SemCrude, L.P. or any SemGroup Entity immediately prior to the Closing Date;

(b) any failure of the Partnership Group to have on the Closing Date any consent or governmental permit or waiver necessary to allow (A) the transfer of any of the Partnership Assets to the Partnership Group or (B) any such Partnership Assets to cross the roads, waterways, railroads and other areas upon which any such Partnership Assets are located on the Closing Date, which failure, in the case of clause (B), renders the Partnership liable to a third party or unable to use or operate the Partnership Assets in substantially the same manner as they were used or operated by SemCrude, L.P. or any SemGroup Entity immediately prior to the Closing Date;

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(c) any event or condition associated with the Retained Assets, whether occurring before, on or after the Closing Date;

(d) any of the matters identified on Schedule 3.2(d) hereto or any claims made before, on or after the Closing Date relating to the bankruptcy and reorganization of SemGroup and certain of its subsidiaries under Chapter 11 of the U.S. Bankruptcy Code;

(e) Losses (other than Covered Environmental Losses) arising out of or related to (a) FERC regulation, under the Interstate Commerce Act, of the Kansas and Oklahoma gathering pipeline system and (b) Kansas Corporation Commission regulation of the Kansas and Oklahoma gathering pipeline system which lowers the transportation rates that the Partnership Group may charge its customers to the extent that the event, circumstance, action, omission, condition or matter giving rise to such Losses occurred or existed on or before the Closing Date; *provided, however*, that in no event shall SemGroup have any indemnification obligations under this Agreement with respect to any claims based on additions to or modifications of any such regulations enacted or promulgated after the Closing Date; and

(f) any federal, state or local income tax liabilities attributable to the ownership and operation of the Partnership Assets prior to the Closing Date, including (a) any income tax liabilities of SemGroup that may result from the consummation of the formation transactions for the Partnership Group and (b) any income tax liabilities arising under Treasury Regulation Section 1.1502-6 and any similar provision of applicable state, local or foreign law, or by contract, as successor, transferee or otherwise, and which income tax liability is attributable to having been a member of any consolidated, combined or unitary group prior to the Closing Date.

**Section 3.3 Indemnification by the Partnership Group .** Subject to the provisions of Section 3.4 and Section 3.5, the Partnership Group shall indemnify, defend and hold harmless the SemGroup Entities from and against any Losses (including Covered Environmental Losses) suffered or incurred by the SemGroup Entities and related to or arising out of or in connection with the ownership or operation of the Partnership Assets after the Closing Date, except to the extent that any member of the Partnership Group is entitled to indemnification hereunder or unless such indemnification would not be permitted under the Partnership Agreement.

**Section 3.4 Limitations Regarding Indemnification .**

(a) The indemnification obligations set forth in Section 3.1(a) and Sections 3.2(a), (b), and (c) shall terminate on the third anniversary of the Closing Date, the indemnification obligation set forth in Section 3.2(e) shall terminate on the fifth anniversary of the Closing Date and the indemnification obligation set forth in Section 3.2(f) shall terminate on the 60th day after the termination of any applicable statute of limitations; *provided, however*, that any such indemnification obligation with respect to a Loss shall survive the time at which it would otherwise expire pursuant to this Section 3.4(a) if notice of such Loss is properly given to SemGroup prior to such time.

(b) The aggregate liability of SemGroup under Section 3.1(a) and Section 3.2(e) shall not exceed \$20 million.



(c) No claims may be made against SemGroup for indemnification pursuant to Section 3.1(a) or Section 3.2 unless the aggregate dollar amount of the Losses suffered or incurred by the Partnership Group exceeds \$500,000, after which SemGroup shall be liable for the full amount of such claims in excess of \$500,000, subject to the limitations of Section 3.4(a).

(d) In no event shall SemGroup be obligated to the Partnership Group under Section 3.1(a) or Section 3.2 for any Losses or income tax liabilities to the extent such Losses or liabilities reserved for in the Partnership Group's financial statements as of the Closing Date.

### **Section 3.5 Indemnification Procedures.**

(a) The Indemnified Party agrees that promptly after it becomes aware of facts giving rise to a claim for indemnification under this Article III, it will provide notice thereof in writing to the Indemnifying Party, specifying the nature of and specific basis for such claim; *provided, however*, that the Indemnified Party shall not submit claims more frequently than once a calendar quarter (or twice in the case of the calendar quarter in which the applicable indemnity coverage under this Agreement expires) unless such Indemnified Party believes in good faith that such a delay in notice to the Indemnifying Party would cause actual prejudice to the Indemnifying Party's ability to defend against the applicable claim. Notwithstanding anything in this Article III to the contrary, a delay by the Indemnified Party in notifying the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Article III, except to the extent that such failure shall have caused actual prejudice to the Indemnifying Party's ability to defend against the applicable claim.

(b) The Indemnifying Party shall have the right to control all aspects of the defense of (and any counterclaims with respect to) any claims brought against the Indemnified Party that are covered by the indemnification under this Article III, including, without limitation, the selection of counsel, the determination of whether to appeal any decision of any court and the settlement of any such matter or any issues relating thereto; *provided, however*, that no such settlement shall be entered into without the consent of the Indemnified Party (with the concurrence of the Conflicts Committee in the case of the Partnership Group) unless it includes a full release of the Indemnified Party from such matter or issues, as the case may be, and does not include any admission of fault, culpability or a failure to act, by or on behalf of such Indemnified Party.

(c) The Indemnified Party agrees to cooperate fully with the Indemnifying Party with respect to all aspects of the defense of any claims covered by the indemnification under this Article III, including, without limitation, the prompt furnishing to the Indemnifying Party of any correspondence or other notice relating thereto that the Indemnified Party may receive, permitting the name of the Indemnified Party to be utilized in connection with such defense, the making available to the Indemnifying Party of any files, records or other information of the Indemnified Party that the Indemnifying Party considers relevant to such defense and the making available to the Indemnifying Party, at no cost to the Indemnifying Party, of any employees of the Indemnified Party; *provided, however*, that in connection therewith the Indemnifying Party agrees to use reasonable efforts to minimize the impact thereof on the operations of the Indemnified Party and further agrees to maintain the confidentiality of all files, records and other information furnished by the Indemnified Party pursuant to this Section 3.5. In no event shall the obligation of the Indemnified Party to cooperate with the Indemnifying Party as set forth in the

immediately preceding sentence be construed as imposing upon the Indemnified Party an obligation to hire and pay for counsel in connection with the defense of any claims covered by the indemnification set forth in this Article III; *provided, however*, that the Indemnified Party may, at its own option, cost and expense, hire and pay for counsel in connection with any such defense. The Indemnifying Party agrees to keep any such counsel hired by the Indemnified Party informed as to the status of any such defense, but the Indemnifying Party shall have the right to retain sole control over such defense.

(d) In determining the amount of any Losses for which the Indemnified Party is entitled to indemnification under this Agreement, the gross amount of the indemnification will be reduced by (i) any insurance proceeds realized by the Indemnified Party and (ii) all amounts recovered by the Indemnified Party under contractual indemnities from third Persons. The Indemnified Party shall use commercially reasonable efforts to realize any applicable insurance proceeds or amounts recoverable under such contractual indemnities.

(e) The date on which the Indemnifying Party receives notification of a claim for indemnification shall determine whether such claim is timely made.

(f) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL ANY PARTY'S INDEMNIFICATION OBLIGATION HEREUNDER COVER OR INCLUDE CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR SIMILAR DAMAGES OR LOST PROFITS SUFFERED BY ANY OTHER PARTY ENTITLED TO INDEMNIFICATION UNDER THIS AGREEMENT.

#### **ARTICLE IV MISCELLANEOUS**

**Section 4.1 Choice of Law; Submission to Jurisdiction .** This Agreement shall be subject to and governed by the laws of the State of Oklahoma, excluding any conflicts-of-law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Each Party hereby submits to the jurisdiction of the state and federal courts in the Oklahoma and to venue in Oklahoma.

**Section 4.2 Notice .** All notices, requests or consents provided for or permitted to be given pursuant to this Agreement must be in writing and must be given by depositing same in the United States mail, addressed to the Person to be notified, postpaid, and registered or certified with return receipt requested, or by delivering such notice in person or by facsimile to such Party. Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours. All notices to be sent to a Party pursuant to this Agreement shall be sent to or made at the address set forth below or at such other address as such Party may stipulate to the other Parties in the manner provided in this Section 4.2.

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For notices to any of the SemGroup Entities :

SemGroup Corporation  
Two Warren Place  
6120 S. Yale St., Suite 700  
Tulsa, Oklahoma 74136-4216  
Phone: 918-524-8100  
Fax: 918-524-8687  
Attention: General Counsel

For notices to any of the Partnership Group :

Rose Rock Midstream GP, LLC  
Two Warren Place  
6120 S. Yale St., Suite 700  
Tulsa, Oklahoma 74136-4216  
Phone: 918-524-8100  
Fax: 918-524-8687  
Attention: General Counsel

**Section 4.3 Entire Agreement .** This Agreement constitutes the entire agreement of the Parties relating to the matters contained herein, superseding all prior contracts or agreements, whether oral or written, relating to the matters contained herein.

**Section 4.4 Termination .** Notwithstanding any other provision of this Agreement, (a) if the General Partner is removed as general partner of the Partnership under circumstances where Cause does not exist and the Common Units held by the General Partner and its Affiliates are not voted in favor of such removal, then this Agreement, other than the provisions set forth in Section 2.9 and Article IV, may at any time thereafter be terminated by SemGroup by written notice to the other Parties, and (b) if a Change of Control occurs, then this Agreement, other than the provisions set forth in Section 2.9, Article III and Article IV, may at any time thereafter be terminated by SemGroup by written notice to the other Parties.

**Section 4.5 Effect of Waiver or Consent .** No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party hereunder. Failure on the part of a Party to complain of any act of any other Party or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder until the applicable statute of limitations period has run.

**Section 4.6 Amendment or Modification .** This Agreement may be amended or modified from time to time only by the written agreement of all the Parties; *provided, however*, that the Partnership may not, without the prior approval of the Conflicts Committee, agree to any amendment or modification of this Agreement that the General Partner determines will adversely affect the holders of Common Units.

**Section 4.7 Assignment; Third Party Beneficiaries** . No Party may assign its rights or obligations under this Agreement without the consent of the other Parties. Each of the Parties hereto specifically intends that each SemGroup Entity and each member of the Partnership Group, as applicable, whether or not a Party to this Agreement, shall be entitled to assert rights and remedies hereunder as third-party beneficiaries hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to a Party that is a SemGroup Entity or member of the Partnership Group, respectively.

**Section 4.8 Counterparts** . This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if all signatory Parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument.

**Section 4.9 Severability** . If any provision of this Agreement or the application thereof to any Person or circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 4.10 Gender, Parts, Articles and Sections** . Whenever the context requires, the gender of all words used in this Agreement shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural. All references to Article numbers and Section numbers refer to Articles and Sections of this Agreement.

**Section 4.11 Further Assurances** . In connection with this Agreement and all transactions contemplated by this Agreement, each Party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all such transactions.

**Section 4.12 Withholding or Granting of Consent** . Except as otherwise expressly provided in this Agreement, each Party may, with respect to any consent or approval that it is entitled to grant pursuant to this Agreement, grant or withhold such consent or approval in its sole and uncontrolled discretion, for any reason, and subject to such conditions as it shall deem appropriate.

**Section 4.13 Laws and Regulations** . Notwithstanding any provision of this Agreement to the contrary, no Party shall be required to take any act, or fail to take any act, under this Agreement if the effect thereof would be to cause such Party to be in violation of any applicable law, statute, rule or regulation.

**Section 4.14 Negation of Rights of Limited Partners, Assignees and Third Parties** . Except as provided in Section 4.7, the provisions of this Agreement are enforceable solely by the Parties, and no shareholder, limited partner, member, or assignee of SemGroup, the General Partner or the Partnership or other Person shall have the right, separate and apart from SemGroup, the General Partner or the Partnership, to enforce any provision of this Agreement or to compel any Party to comply with the terms of this Agreement.

**Section 4.15 No Recourse Against Officers and Directors** . For the avoidance of doubt, the provisions of this Agreement shall not give rise to any right of recourse against any officer or director of any SemGroup Entity or any member of the Partnership Group.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on, and effective as of, the Closing Date.

**SEMGROUP CORPORATION**

By: /s/ Candice L. Cheeseman  
Name: Candice L. Cheeseman  
Title: General Counsel and Secretary

**ROSE ROCK MIDSTREAM GP, LLC**

By: /s/ Candice L. Cheeseman  
Name: Candice L. Cheeseman  
Title: General Counsel and Secretary

**ROSE ROCK MIDSTREAM, L.P.**

By: Rose Rock Midstream GP, LLC, its  
general partner

By: /s/ Candice L. Cheeseman  
Name: Candice L. Cheeseman  
Title: General Counsel and Secretary

*[Signature Page to Omnibus Agreement]*

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**Schedule 3.1**

**Marks**

SemCrude

SemCrude SSS



Rose Rock Midstream

Rose Rock Midstream (logo)



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**Schedule 3.2(d)**

**Specified Matters**

1. Appeal by Manchester Securities Corporation of Confirmation Order entered October 28, 2009 in the U.S. District Court for the District of Delaware (1:09-cv-00935-JJF) and subsequent appeal to the U.S. Third Circuit.
2. Appeal by Luke Oil Company, C&S Oil/Cross Properties, Inc., Wayne Thomas Oil and Gas and William R. Earnhardt Company of Confirmation Order entered October 28, 2009 in the U.S. District Court for the District of Delaware (1:09-cv-00994-JJF).
3. The settlement of claims against SemGroup identified in that certain bankruptcy court order, dated September 15, 2010, in amounts that in the aggregate exceed the amount of restricted cash set aside by SemGroup for the settlement of such claims.
4. Dispute(s) with Blueknight Energy Partners, L.P. (“Blueknight”) relating to or arising under the Shared Services Agreement, dated April 7, 2009, between Blueknight, certain affiliates of Blueknight, SemCrude, L.P. and SemManagement, L.L.C.