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JANUARY 5, 2016

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## BY HAND DELIVERY

Federal Election Commission  
Office of the General Counsel  
Attn: Adav Noti, Esq.  
Acting Associate General Counsel for Policy  
999 E Street NW  
Washington, DC 20463

OFFICE OF GENERAL COUNSEL

2016 JAN -5 PM 3:54

RECEIVED  
FEDERAL ELECTION  
COMMISSION

**Re: Advisory Opinion Request**

Dear Mr. Noti:

This office represents Enable Midstream Services, LLC. This letter constitutes a request for an Advisory Opinion from the Federal Election Commission ("FEC" or "Commission").

### Question

Will Enable Midstream Services, LLC's planned separate segregated fund, ENABLE PAC, be affiliated with either CENTERPOINT ENERGY, INC. POLITICAL ACTION COMMITTEE ("CNP PAC"), an SSF established by CenterPoint Energy, Inc. ("CNP"), or OGE ENERGY CORP EMPLOYEE'S POLITICAL ACTION COMMITTEE ("OGE PAC"), an SSF established by OGE Energy Corporation ("OGE")?<sup>1</sup>

### Facts

Enable Midstream Services, LLC ("EMS") is a wholly-owned subsidiary of Enable Midstream Partners, LP ("ENBL"), a publicly traded master limited partnership ("MLP") formed by CNP, OGE and affiliates of private equity firm ArcLight Capital Partners, LLC ("ArcLight") to own, operate and develop midstream natural gas and crude oil infrastructure assets. ENBL's May 1, 2013 formation resulted from three transactions: 1) CNP converted its wholly-owned CenterPoint Energy Field Services, LLC into a Delaware limited partnership and changed its name to ENBL; 2) CNP contributed certain equity interests in its subsidiaries that conducted

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<sup>1</sup> Enable Midstream Services, LLC has elected to be treated as a corporation for tax purposes with the IRS. There is no affiliation between CNP PAC and OGE PAC.

the remaining portion of its midstream business to ENBL; and 3) OGE and ArcLight contributed 100% of their equity interest in Enogex, LLC to ENBL. As consideration, ENBL issued units representing a limited partnership interest to CNP, OGE and ArcLight. Further, a non-economic general partnership interest was granted to Enable GP, LLC. Management rights in the general partnership are equally controlled by CNP and OGE. Economic rights are controlled by CNP and OGE, 40% and 60% respectively. Enable GP holds all incentive distribution rights in ENBL.<sup>2</sup>

ENBL's common units began trading on the New York Stock Exchange ("NYSE") on April 11, 2014. As of September 30, 2015, those common units were held as follows: 94,151,707 by CNP (through CERC); 42,832,291 by OGE (through Enogex); and 77,744,889 by the general public. CNP and OGE held additional subordinated units, 139,704,916 and 68,150,514 respectively. The ownership distribution was as follows: 55.4% CNP, 26.3% OGE and 18.3% general public.

ENBL is managed entirely by Enable GP through its board of directors and executive officers who are employed by EMS. Enable GP's board initially consisted of four directors, two representatives of CNP (through CERC) and two representatives of OGE (through Enogex). As a condition for listing its MLP on the NYSE, ENBL has since satisfied an independent director requirement through the addition of three independent directors (the first on February 1, 2014; the second on June 1, 2014; and the third on February 1, 2015). As part of an active transition plan, a new CEO will be appointed January 1, 2016 and added to the board as its eighth director.

ENBL's formation involved the consolidation of approximately 1,900 employees from CNP, OGE and its various subsidiaries. EMS employs approximately 1,700 employees, who conduct the day-to-day operations of ENBL and its subsidiaries. The executive officers of Enable GP, who are also employed by EMS, manage the day-to-day operations of ENBL and its subsidiaries. In addition to the employees of EMS, approximately 175 employees of OGE have been seconded to ENBL and are managed by the officers of Enable GP. This is a temporary arrangement that will be phased out over time, though does not yet have a fixed wind-down schedule. Finally, fewer than 50 people are employed directly by ENBL.

CNP is a publicly traded company whose principal subsidiaries are CenterPoint Energy Houston Electric, LLC, an electric transmission and distribution company, and CenterPoint Energy Resources Corp., a natural gas distribution company. OGE is a publicly traded company whose principal subsidiary is Oklahoma Gas & Electric Company, an electric utility. The businesses in which CNP's and OGE's subsidiaries are involved are in different segments of the energy industry from the businesses in which ENBL and its subsidiaries are involved. As a midstream company, ENBL and its subsidiaries are involved in the gathering, processing, transportation, and storage of natural gas and crude oil.

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<sup>2</sup> CNP's involvement runs through its wholly-owned subsidiary, CenterPoint Energy Resources Corporation ("CERC"). OGE's involvement runs through its wholly-owned subsidiary, OGE Enogex Holdings, LLC ("Enogex").

For clarity, EMS is managed by its sole member, ENBL, and operated by ENBL's officers. ENBL is owned by its limited partners, and managed by the board of directors and executive officers of its general partner, Enable GP. Enable GP is owned by CNP (through CERC) and OGE (through Enogex), and managed by its board of directors (currently, two directors appointed by CNP, two directors appointed by OGE and three independent directors; and after January 1, 2016, ENBL's CEO, two directors appointed by CNP, two directors appointed by OGE and three independent directors).

Finally, the maintenance of ENABLE PAC will be completely separate from that of CNP PAC and OGE PAC. In addition to being established by EMS, which is not controlled by CNP or OGE, ENABLE PAC will be operated and maintained completely separate from CNP PAC and OGE PAC. The officers of ENBL, who are employed by EMS, will oversee EMS's SSF matters.

### Discussion

It appears that ENABLE PAC will not be affiliated with either CNP PAC or OGE PAC. Despite the involvement of CNP and OGE in establishing EMS's parent company, ENBL, through merging similar business lines and shared equity interests into a single corporate entity, ENBL has maintained a strong measure of operational separation from CNP and OGE and achieved a significant degree of boardroom independence.

Nonaffiliation appears to be evident in relation to each of the FEC's eight criteria indicating affiliation:

1. Owns a controlling interest in the voting stock or securities of another organization sponsoring a political committee;

EMS is wholly-owned by ENBL. ENBL is owned by its limited partners who have no rights to participate in the operation, management or control of the partnership (see Second Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP, Section 3.2). There is no consequential voting stock or security in ENBL.

CNP and OGE own all of the membership units in its general partner, Enable GP. CNP owns 40% and OGE owns 60% of the economic units (representative of an economic interest and signifying economic membership), and each owns 50% of the management units (representative of a management interest and signifying management membership). Certain governance functions are reserved for management members, including: 1. appointment and removal of directors to the board, including CNP and OGE representatives, as well as independent directors (see Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Section 9.02(b) – (c)); 2. alteration of the board count by unanimous approval, so long as CNP

and OGE retain two representative directors and maintain equal representation (see Enable GP's LLC agreement, Section 9.02(d)); 3. adjustment of organizational or governing documents by

unanimous approval (see Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Sections 12.03(b)(i) and 17.02); and 4. approval of any merger, sale, tax status modification, liquidation or bankruptcy filing (see Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Section 12.03(b)(ii) – (vi)). Apart from board selection (addressed below), the remaining enumerated management membership rights apply only in extraordinary circumstances. Viewed in the context of supermajority rights and the Federal Election Commission's determination in AO 2001-07 (NMC PAC), such rights, when limited and framed against the entirety of an organization's governance structure, should not indicate affiliation.

2. Has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through its constitution, bylaws, contracts or other rules, or through formal or informal practices or procedures;

EMS is governed as a wholly-owned operating subsidiary of ENBL. ENBL is governed exclusively by its general partner, Enable GP. See Second Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP, Section 7.1(a). Enable GP's board of directors and its executive officers conducts, directs and manages all activities of ENBL with the exception of the several functions listed above (see Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Section 9.01(a)). These activities include the issuance of additional membership interests and options, rights, warrants and appreciation rights relating to the membership interests for any purpose. See Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Section 3.01 (e). Each director is entitled to one vote, and an affirmative vote of at least a majority of directors is required for all matters brought before the board. See Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Section 9.04(a) – (b). The seven-person board is currently comprised of two representatives of CNP (the CEO and CFO of CNP), two representatives of OGE (the chairman of the board and CFO of OGE) and three independent directors. These three independent directors are a listing requirement of the NYSE. As a result, neither CNP nor OGE has the ability to unilaterally impact the affairs of or prevent an action by ENBL, and by extension EMS, from a two-sevenths (2/7) minority position (after January 1, 2016, a one-eighth (1/8) minority position). The FEC has ruled that the SSF of a 25% minority position holder does not automatically indicate affiliation with the SSF of a joint venture partner. See AO 1996-49.

3. Has the authority or ability to hire, appoint, demote or otherwise control the officers or employees of another sponsoring organization or committee;

As stated above, Enable GP's board of directors conducts, directs and manages all activities of ENBL with the exception of the several exceptional functions set aside for Enable GP's management members, CNP and OGE. None of the exceptions concern authority or control of officers or employees, functions that are reserved exclusively for the board. See Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Article X.

4. Has a common or overlapping membership, or common or overlapping officers or employees, with another sponsoring organization or committee, indicating a formal or ongoing relationship between them;

5. Has members, officers or employees who were members, officers or employees of another sponsoring organization or committee, indicating a formal or ongoing relationship or the creation of a successor;

As stated above, CNP and OGE each appoint two directors to Enable GP's seven-person board.

ENBL, through Enable GP, and by extension EMS, has no common or overlapping members or officers with CNP or OGE. As for former members or officers, three of ENBL's seven senior officers were employed by OGE (including its current interim CEO whose term is set to expire January 1, 2016) and one was employed by CNP. On January 1, 2016, ENBL's CFO (hired March 29, 2014 and with no prior ties to CNP or OGE) will assume the role of CEO and join the board as its eighth director.

EMS's employees were seconded by CNP and OGE on May 1, 2013, at which point it began reimbursing each corporation for all employee costs. By January 1, 2015, EMS had transitioned all employees to its organization, except for roughly 175 participants under OGE's defined benefit and retiree medical plans. As mentioned above, these seconded employee arrangements are set to be phased out over time. In the interim, OGE PAC has elected to forgo the solicitation of eligible members from this group of seconded employees.

According to AO 2012-12 (Primerica), "Corporations may be disaffiliated even when former officers, directors or employees of one corporate entity continue to serve as officers, directors, or employees of the spun-off entity." Citing AO 2007-12 (Tyco), the FEC concluded, "The presence of former directors or officers was 'merely a function of the division of a major corporation into three parts.'" The FEC went on to acknowledge that the high percentage of employee overlap between Primerica and Citigroup was the result of Primerica being a subsidiary of Citigroup, "no more than a function of a parent company spinning off a subsidiary corporation." In the case of EMS, overlap is the result of the consolidation of CNP and OGE subsidiaries under a single, independently directed corporate entity, ENBL, and not indicative of a formal or ongoing relationship, or the creation of a successor entity.

6. Provides or arranges for the provision of funds or goods in a significant amount or on an ongoing basis to another organization or committee, such as through payments for fundraising and administrative costs;

ENBL noted on its latest Form 10-Q \$363M in outstanding long-term notes payable to CNP, which mature in 2017. \$273M bears an interest rate of 2.1% while \$90M bears an interest rate of 2.45%. Such arm's length lending between the related parties is contemplated in governance

documents. *See* Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC, Section 7.03. These notes payable should be viewed in light of the FEC's ruling in AO 2007-12 (Tyco) that certain initial financial links "will simply be part of the normal corporate separation process," and should not indicate affiliation.

ENBL conducts a limited amount of business with CNP and OGE. Its revenues from these related parties vary by quarter, and typically account for less than 10% of total revenues. The FEC has established a precedent of permitting such an arrangement, stating in AO 1996-42 (Lucent), "disaffiliated companies have still maintained some customer-supplier relationships with each other. *See* Advisory Opinions 1995-36, n.3, and 1993-23. These arrangements may have created certain obligations and restrictions on the companies, but did not appear to be aimed at continuing one company's control over another."

ENBL makes regular distributions to its limited partners, and CNP and OGE are among them. Furthermore, CNP and OGE possess incentive distribution rights as economics members of Enable GP.<sup>3</sup> However, all decisions governing limited partner distributions and incentive distribution rights are controlled by ENBL's board.

Fundraising and administrative costs, both organizational and committee-related, are covered by EMS through ENBL.

**7. Had an active or significant role in the formation of another organization or committee;**

CNP and OGE were involved in the formation of EMS's parent, ENBL. However, the two corporations actively pursued an organizational strategy (a publicly traded master limited partnership) that required three independent directors, and resulted in not only a plurality of such directors, but also corporate covenants that invest the preponderance of decision-making in that board.

The FEC has shown its disinclination to determine affiliation from this criteria alone in cases of otherwise nonaffiliated spin-offs or joint venture partnerships. *See* AO 2007-12 (Tyco).

**8. Makes or receives contributions in a pattern similar to that of another organization or committee, indicating a formal or ongoing relationship between them.**

EMS PAC will only make or receive contributions in a pattern similar to that of CNP PAC or OGE PAC to the extent that their connected organizations are involved in the energy sector. EMS's parent, ENBL, owns, operates and develops natural gas and crude oil infrastructure assets, while CNP and OGE are utilities.

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<sup>3</sup> Economic rights include incentive distribution rights to an increasing share of ENBL's incremental distributable cash flow. *See* Second Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP, Article VI.

**Conclusion**

In conclusion, EMS PAC should not be considered affiliated with either CNP PAC or OGE PAC:

1. EMS is controlled, directed, managed and operated by ENBL and the board (with a plurality of independent directors) and executive officers of its managing partner Enable GP. CNP and OGE lack the authority to control, direct, manage or operate EMS.
2. Board, officer and employee overlap are the result of the formation of a new consolidated entity out of CNP and OGE subsidiaries.
3. Financial ties are limited to one-off formation financing and arms length service contracts that account for a fraction of total revenues.
4. EMS is engaged in a separate segment of the oil and gas sector and, through its parent ENBL, will conduct EMS PAC affairs independently of CNP and OGE.

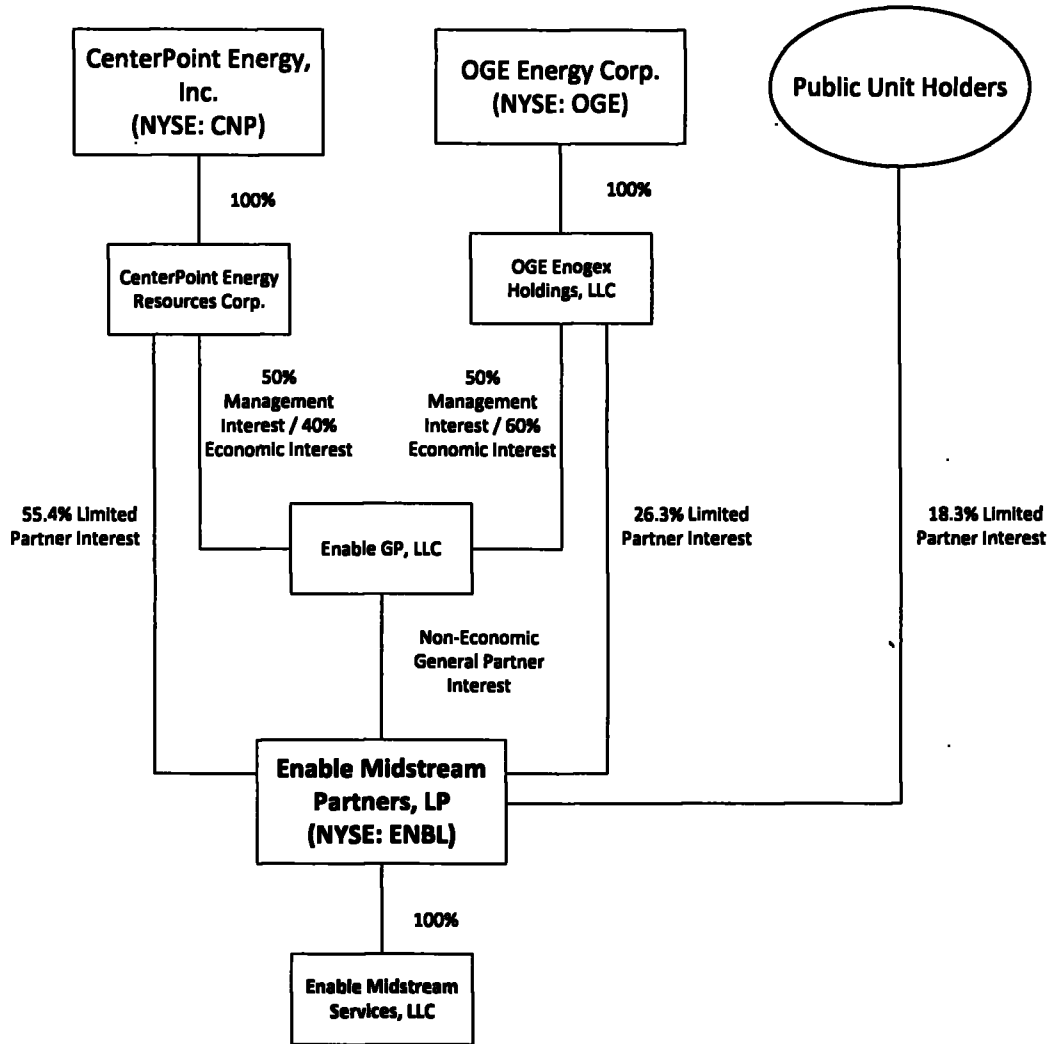
Please contact the undersigned for any additional information.

Sincerely yours,

Meredith Leshner

**Enclosures:**

1. Organizational Structure Chart of Enable Midstream Services, LLC
2. Limited Liability Company Agreement of Enable Midstream Service, LLC
3. Second Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP
4. Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC





THE INTERESTS DESCRIBED IN THIS DOCUMENT ARE SUBJECT TO RESTRICTIONS ON ASSIGNMENT AND TRANSFER SET FORTH HEREIN. THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAW AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED UNTIL REGISTERED OR UNTIL THE COMPANY HAS RECEIVED AN OPINION OF LEGAL COUNSEL, OR OTHER ASSURANCES SATISFACTORY TO THE COMPANY, THAT AN INTEREST MAY LEGALLY BE SOLD OR OTHERWISE TRANSFERRED WITHOUT REGISTRATION.

**LIMITED LIABILITY COMPANY AGREEMENT**  
**OF**  
**ENABLE MIDSTREAM SERVICES, LLC**

**dated as of**

**Dated as of September 25, 2013**

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ENABLE MIDSTREAM SERVICES, LLC  
TABLE OF CONTENTS**

		<u>Page</u>
<b>ARTICLE I</b>	<b>ORGANIZATIONAL MATTERS .....</b>	<b>1</b>
Section 1.1	Formation of the Company; Term .....	1
Section 1.2	Name .....	1
Section 1.3	Purpose of the Company; Business.....	1
Section 1.4	Principal Place of Business, Office and Agent .....	1
Section 1.5	Fictitious Business Name Statement; Other Certificates .....	2
Section 1.6	Original Member and Admission of Additional Members .....	2
<b>ARTICLE II</b>	<b>DEFINITIONS.....</b>	<b>2</b>
<b>ARTICLE III</b>	<b>CAPITALIZATION; MEMBER INTERESTS; DISTRIBUTIONS.....</b>	<b>3</b>
Section 3.1	Capital .....	3
Section 3.2	Interests in the Company as Securities; Security Interest.....	3
Section 3.3	Withdrawal.....	4
Section 3.4	Income Tax Classification .....	4
Section 3.5	Limitations on Distributions .....	4
Section 3.6	Other Distributions.....	4
Section 3.7	Transfer of Interests .....	5
<b>ARTICLE IV</b>	<b>MANAGEMENT.....</b>	<b>5</b>
Section 4.1	Management by Member .....	5
Section 4.2	Authority of the Member .....	5
Section 4.3	Manner of Action.....	5
Section 4.4	Delegation .....	5
Section 4.5	Officers of the Company.....	5
Section 4.6	Standard of Care .....	6
Section 4.7	Tax Returns.....	6
<b>ARTICLE V</b>	<b>GENERAL PROVISIONS .....</b>	<b>6</b>
Section 5.1	Limited Liability of the Member .....	6
Section 5.2	No Dissolution .....	6
Section 5.3	No Resignation.....	6

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
Section 5.4	Amendments ..... 6
Section 5.5	Further Assurances..... 7
Section 5.6	Notices ..... 7
Section 5.7	Waiver..... 7
Section 5.8	Whole Agreement ..... 7
Section 5.9	Governing Law ..... 7
Section 5.10	Binding Nature..... 7
Section 5.11	Invalidity ..... 7
Section 5.12	Counterparts..... 8
Section 5.13	Construction..... 8

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ENABLE MIDSTREAM SERVICES, LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT (the "*Agreement*") of Enable Midstream Services, LLC, a Delaware limited liability company (the "*Company*"), is made effective as of the 25 day of September, 2013 by Enable Midstream Partners, LP, a Delaware limited partnership (the "*Member*"). Terms that are capitalized and not otherwise defined have the meanings set forth in Article II of this Agreement.

**RECITALS:**

WHEREAS, the Member formed the Company as a limited liability company by filing a Certificate of Formation dated September 24, 2013 (the "*Certificate*") with the Secretary of State of Delaware; and

WHEREAS, the Member desires to adopt this Agreement to provide for the conduct of the business and affairs of the Company in accordance with the terms and conditions of this Agreement, as it may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the Member hereby agrees as follows:

**ARTICLE I ORGANIZATIONAL MATTERS**

**Section 1.1 Formation of the Company; Term.** The Company was formed as of September 24, 2013 by filing the Certificate of Formation with the Secretary of State of the State of Delaware. The rights and liabilities of the Member shall be determined pursuant to the provisions of the Certificate of Formation, the Delaware Limited Liability Company Act (the "*Act*") and this Agreement. Unless sooner dissolved and liquidated in accordance with this Agreement, the Company is to continue in perpetuity.

**Section 1.2 Name.** The name of the Company is: "Enable Midstream Services, LLC."

**Section 1.3 Purpose of the Company; Business.** The purpose of the Company is to: (a) carry on any business permitted by the Act and (b) perform all things necessary or incidental to or connected with or growing out of those activities in accordance with this Agreement.

**Section 1.4 Principal Place of Business, Office and Agent.** The Company's principal place of business, which is also the mailing address and the office where the Company's records are kept, is Enable Midstream Services, LLC, One Leadership Square, 211 North Robinson Avenue, Suite 950, Oklahoma City, Oklahoma 73102. The registered office of the Company in the State of Delaware is the office of the registered agent of the Company in the State of Delaware. The registered agent of the Company in the State of Delaware is The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The Member, from time to time as it finds necessary or appropriate, may change the registered agent in the State of Delaware or the principal place of

business of the Company, and may establish additional places of business or offices for maintenance of records. The Member shall amend the Certificate of Formation of the Company and this Section 1.4 to reflect each change in the identity or address of the registered agent in the State of Delaware.

**Section 1.5 Fictitious Business Name Statement; Other Certificates.** The Member may, from time to time, register the Company as a foreign limited liability company and file fictitious or trade name statements, certificates or similar filings in those jurisdictions and offices as the Member considers necessary or appropriate. The Company may do business under any fictitious business names approved by the Member. The Member will, from time to time, file or cause to be filed certificates of amendment, certificates of cancellation or other certificates as the Member reasonably considers necessary or appropriate under the Act as an authorized person of the Company within the meaning of the Act, or under the laws of any jurisdiction in which the Company is doing business to establish and continue the Company as a limited liability company or to protect the limited liability of the Member.

**Section 1.6 Original Member and Admission of Additional Members.** Subject to Section 3.7, the original Member has the right to admit additional Members. Until the admission of an additional Member, the original Member has all the power and authority of the Members under this Agreement. Upon the admission of an additional Member, this Agreement shall be amended in accordance with Section 5.4 to reflect the rights and responsibilities of the Members.

## ARTICLE II DEFINITIONS

When capitalized in this Agreement, the terms and phrases set forth in this Article have the following definitions:

**“Act”** means the Delaware Limited Liability Company Act (6 Del.C. §18-101 *et seq.*), as amended from time to time. Any reference to the Act automatically includes a reference to any subsequent or successor limited liability company law of the State of Delaware.

**“Affiliate”** means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the specified Person. A Person controls another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the “controlled” Person, whether through ownership of voting securities, by contract or otherwise. Affiliate also includes any Person who is related by blood or marriage to the Person in question.

**“Agreement”** means this Limited Liability Company Agreement, as it may be amended from time to time.

**“Bankruptcy”** means, with respect to any Person, that Person’s filing a petition or otherwise voluntarily commencing a case or proceeding, or filing an answer not denying the material allegations of a complaint in any proceeding seeking relief under any federal or state bankruptcy, insolvency or debtors’ reorganization law; being the voluntary or involuntary subject of an order for relief by any court under any such law; or being adjudicated a “bankrupt,” “debtor” or “insolvent” under any such law; or there being appointed under any such law a “trustee,” “receiver” or “custodian” to manage his, her or its business or properties; or there

being commenced under any such law a case or proceeding proposing such an order for relief, adjudication or appointment with respect to that Person or its business, which proceeding is consented to by that Person or which is not dismissed within 90 days after being commenced. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"*Code*" means the Internal Revenue Code of 1986, as amended. References to specific sections of the Code include references to corresponding provisions of any succeeding internal revenue law of the United States of America.

"*Company*" means Enable Midstream Services, LLC.

"*Interest*" means a Member's limited liability company interest in the Company, measured in Shares, and shall include any and all benefits to which a Member may be entitled under this Agreement and the obligations of a Member under this Agreement.

"*Majority Vote*" means the vote of the Members holding more than a 50 percent Share.

"*Member*" means Enable Midstream Partners, LP executing this Agreement as the original member of the Company and its successors in interest and other Persons, in each case, who are admitted as members of the Company, each in its capacity as a member of the Company. Reference to a "Member" means any one of the Members so long as that Person is a member of the Company.

"*Officers*" means the officers of the Company, if any, appointed and acting, from time to time, under Section 4.5 of this Agreement.

"*Person*" means and includes any natural person and any corporation, firm, partnership, trust, estate, limited liability company or other entity resulting from any form of association.

"*Share*" means a percentage of all Interests in the Company. The original Member holds a 100% Share, and will continue to do so until such time, if ever, as another Member is admitted with an Interest, at which time the Members shall agree to their respective Shares.

"*Transfer*" means any sale, assignment, pledge, hypothecation, encumbrance, disposition, transfer (including, without limitation, a transfer by will or intestate distribution), gift or attempt to create or grant a security interest in any Interest or interest therein or portion thereof, whether voluntary or involuntary, by operation of law or otherwise.

### **ARTICLE III CAPITALIZATION; MEMBER INTERESTS; DISTRIBUTIONS**

**Section 3.1 Capital.** The Member may, but shall have no obligation to, make additional capital contributions to the Company. The Company is to finance its operations independently of the Member and without the Member's financial support. No Member will be paid interest on capital contributions to the Company.

**Section 3.2 Interests in the Company as Securities; Security Interest.** Each Member's Interest, and the relative rights, privileges, preferences and obligations with respect to the Member's Interest shall be determined under this Agreement and the Act based upon the

Share of the Member with respect to the Member's Interest. For purposes of providing for transfer of, perfection of a security interest in, and other relevant matters related to, Interests in the Company, each Interest shall constitute a "security" within the meaning of, and shall be governed by, Article 8, (including, without limitation, Sections 8-102 and 8-103) of the Uniform Commercial Code in effect in the States of New York and Delaware and Chapter 8 or Article 8, as applicable, of the Uniform Commercial Code in effect in any other relevant jurisdiction. The Company shall maintain books for the purpose of registering the transfer of Interests. The transferor and transferee of Interests must provide notification to the Company to register a transfer of Interests. A transfer of Interests is effective upon registration of transfer in the Company's books. Transferees of Interests shall be notified of restrictions on transfers (whether by virtue of their execution of the Agreement or by the Company notifying the transferee of the restrictions on the transfer of Interests).

**Section 3.3 Withdrawal.** No Member is entitled to withdraw any portion of its paid-in capital contribution, and no Member has any right to a return of capital except through distributions as provided in Section 3.6.

**Section 3.4 Income Tax Classification.** The Company intends to be treated as a corporation for federal and state income tax purposes and shall take such actions as may be necessary to receive such treatment, including without limitation making a timely filing of IRS Form 8832 (Entity Classification Election) electing to be treated as a corporation for federal income tax purposes effective on or before the date hereof. No Member shall take any position or file any election contrary to such treatment.

**Section 3.5 Limitations on Distributions.** The Company will not make any distribution of cash, except to the extent that the Company then has cash available in excess of the sum of (a) amounts required to pay or make provision for all Company expenses, plus (b) all reserves that are considered necessary or appropriate by the Member. To the extent that the Member reasonably foresees that the Company will receive cash or other consideration to satisfy liabilities not yet due and payable, the Company is not required to establish reserves or make other provision to satisfy such liabilities prior to making distributions under Section 3.6. Prior to the dissolution of the Company, distributions of cash are only to be made to the extent cash is available to the Company without requiring (i) the sale of Company assets or the pledge of Company assets at a time or on terms that the Member believes are not in the best interests of the Company or (ii) a reduction in reserves that the Member believes are necessary or desirable for working capital or other Company purposes. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to a Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

**Section 3.6 Other Distributions.** Subject to Section 3.5, from time to time, prior to the commencement of winding-up and liquidation of the Company, the Member may, in its sole discretion, cause the Company to make distributions of cash or other assets of the Company to the Member (or any other Members) in proportion to the number of Shares held, unless the Member agrees otherwise. The Member is a creditor of the Company with respect to any distributions made under this Section 3.6 and is entitled to all remedies available to a third-party creditor to enforce the Company's obligation to make distributions under this Section 3.6.

**Section 3.7 Transfer of Interests.** A Member may assign in whole or in part its Interest in the Company upon the Company's receipt of an opinion of legal counsel, or other assurances to the Company, that an Interest may legally be sold or otherwise transferred without registration under the Securities Act of 1933 or any state securities law. The transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its Interest in the Company pursuant to this Section 3.7, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to a Member by merger or consolidation shall, without further act, be a Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

#### **ARTICLE IV MANAGEMENT**

**Section 4.1 Management by Member.** The Company shall be managed by the Member.

**Section 4.2 Authority of the Member.** The Member has all power and authority to manage, and direct the management of, the business and affairs of the Company, both ordinary and extraordinary.

**Section 4.3 Manner of Action.** The Member may, but shall not be required to, authorize, approve and/or ratify any action by a writing placed with the records of the Company. No action authorized, approved and/or ratified by the Member shall be invalid because such authorization, approval and/or ratification is not recorded in a writing.

**Section 4.4 Delegation.** The Member may delegate to such officers, other employees and agents of the Company and such officers, directors, employees and agents of the Member or its subsidiaries, as the Member may from time to time cause the Company to employ, all or any portion of the authority to conduct the business of the Company in the ordinary course in accordance with this Agreement and any policy of delegation that the Member may adopt and revise from time to time. Any power not delegated by the Member remains with the Member.

**Section 4.5 Officers of the Company.**

(a) The Company may have such Officers as are appointed, who shall have such duties, responsibilities and authorities as are established from time to time by the Member, or, in the absence of specifically established duties, responsibilities and authority, as would be usual and customary for a corporate Officer of like title. Except as provided in Section 4.5(c) below, the officers shall not be "managers" of the Company within the meaning of the Act.

(b) Each Officer shall serve until the earliest of his or her death, resignation or removal. An Officer may be removed at any time by the Member. Any Officer may resign at any time by delivering his or her written resignation to the Member.



(c) Solely for purposes of the execution and delivery of contracts, agreements and other documents to be entered into by the Company in connection with the acquisition, mortgage or disposition of real or personal property of the Company, such Officers shall be deemed "managers" of the Company that may execute and deliver such documents on behalf of the Company; provided, however, that such Officers shall not be "managers" of the Company for any other purposes within the meaning of Section 18-101(10) of the Act.

**Section 4.6 Standard of Care.** Any Member and any Officer or employee of the Company in the performance of his, her or its duties, is entitled to rely in good faith on information, opinions, reports or other statements, including financial statements, books of account and other financial data, if prepared or presented by (a) one or more Officers or employees of the Company if the Person relying on the statements reasonably believes that the Person preparing or presenting the material is reliable and competent in that matter or (b) legal counsel, public accountants or other Persons as to matters that the Person relying on the statements reasonably believes are within the Person's professional or expert competence.

**Section 4.7 Tax Returns.** The Member shall prepare, or cause to be prepared, at the expense of the Company, for each taxable year or other period (or part thereof), federal, state and local tax returns required to be filed with respect to the Company. Upon request by the Member, the Company shall furnish to the Member all pertinent information in its possession that is necessary to enable the tax returns of the Company to be timely prepared and filed.

## **ARTICLE V GENERAL PROVISIONS**

**Section 5.1 Limited Liability of the Member.** Except for contributions specifically required under Section 3.1 or agreed to by a Member as contemplated by Section 3.1 or as otherwise required by the Act, no Member (solely in its capacity as a Member) has any obligation to contribute to the Company or any liability for any Company obligations. Any liability to return distributions made by the Company is limited to mandatory requirements of the Act or of any other applicable law.

**Section 5.2 No Dissolution.** Only an event that would cause a dissolution under the Act shall cause a dissolution of the Company.

**Section 5.3 No Resignation.** No Member has any right to resign from the Company. Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause such Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

**Section 5.4 Amendments.**

(a) Any amendment to this Agreement that would further limit a Member's ability to hold or make a Transfer of that Member's Interest, is effective with respect to a Member only if the Member does not act to disapprove the amendment by returning, within 30 days after the request is made, an executed counterpart of a proposed consent to the amendment, indicating disapproval of the action;

(b) Except as stated in Section 5.4(a), any amendment to this Agreement is effective if approved by a Majority Vote.

**Section 5.5 Further Assurances.** Each Member is to execute all documents and instruments necessary to evidence his, her or its approval of all actions, including, without limitation, amendments to this Agreement, taken or authorized by the Members by Majority Vote or otherwise as provided in this Agreement.

**Section 5.6 Notices.** All notices to the Company are to be sent by registered or certified mail, return receipt requested, or by recognized overnight courier or facsimile addressed to the Company at the Company's principal place of business at Enable Midstream Services, LLC, One Leadership Square, 211 North Robinson Avenue, Suite 950, Oklahoma City, Oklahoma 73102. All notices to a Member are to be sent addressed to such Member at the address as may be specified by the Member from time to time in a notice to the Company. All notices are effective the next day, if sent by recognized overnight courier or facsimile, or five days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

**Section 5.7 Waiver.** To the fullest extent permitted by law, the Member hereby irrevocably waives any and all rights, duties, obligations and benefits with respect to any action for partition of any Company assets or to compel any sale or appraisal of any Company assets or any deceased Member's Interest therein. Further, to the fullest extent permitted by law, all applicable rights, duties, benefits and obligations, including those relating to the appraisal, inventory or sale of Company assets or the sale of a deceased Member's Interest therein, are hereby waived.

**Section 5.8 Whole Agreement.** This Agreement contains the entire understanding between the parties and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no agreements, arrangements or understandings, oral or written, between or among the parties relating to the subject matter of this Agreement that are not set forth or expressly referred to in this Agreement.

**Section 5.9 Governing Law.** This Agreement is governed by and is to be construed in accordance with the laws of the State of Delaware without giving effect to its rules concerning conflict of laws.

**Section 5.10 Binding Nature.** Except as otherwise provided in this Agreement, this Agreement is binding upon and inures to the benefit of the Member and its successors, personal representatives, heirs, devisees, guardians and assigns.

**Section 5.11 Invalidity.** In the event that any provision of this Agreement is invalid, the validity of the remaining provisions of the Agreement are not in any way to be affected thereby.

**Section 5.12 Counterparts.** This Agreement and any amendment to it may be executed in multiple counterparts, each of which is an original and all of which constitute one agreement or amendment, as the case may be, whether or not all of the parties are signatories to the original or the same counterpart, or that signature pages from different counterparts are

combined, and the signature of any party to any counterpart is a signature to and may be appended to any other counterpart.

**Section 5.13 Construction.** The headings contained in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, include all other genders; the singular includes the plural and vice versa. "Includes" and "including" mean without limitation. Unless otherwise specifically stated, references to Sections or Articles refer to the Sections or Articles of this Agreement.

**[Signatures on the Following Page]**

The undersigned has executed this Agreement as of the date first written above.

**Enable Midstream Partners, LP**

By: Enable GP, LLC, its general partner

By:   
E. Keith Mitchell  
Chief Operating Officer

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**SECOND AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
ENABLE MIDSTREAM PARTNERS, LP**

## TABLE OF CONTENTS

### ARTICLE I

#### DEFINITIONS

Section 1.1	Definitions.....	1
Section 1.2	Construction.....	26

### ARTICLE II

#### ORGANIZATION

Section 2.1	Formation; Conversion .....	26
Section 2.2	Name .....	27
Section 2.3	Registered Office; Registered Agent; Principal Office; Other Offices .....	27
Section 2.4	Purpose and Business.....	27
Section 2.5	Powers.....	28
Section 2.6	Term .....	28
Section 2.7	Title to Partnership Assets .....	28
Section 2.8	Power of Attorney.....	28

### ARTICLE III

#### RIGHTS OF LIMITED PARTNERS

Section 3.1	Limitation of Liability.....	30
Section 3.2	Management of Business .....	30
Section 3.3	Rights of Limited Partners .....	30

### ARTICLE IV

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

Section 4.1	Certificates .....	31
Section 4.2	Mutilated, Destroyed, Lost or Stolen Certificates .....	32
Section 4.3	Record Holders .....	33
Section 4.4	Transfer Generally .....	33
Section 4.5	Registration and Transfer of Limited Partner Interests.....	34
Section 4.6	Transfer of the General Partner's General Partner Interest .....	35
Section 4.7	Transfer of Incentive Distribution Rights .....	36
Section 4.8	Restrictions on Transfers .....	36
Section 4.9	Eligibility Certifications; Ineligible Holders .....	37
Section 4.10	Redemption of Partnership Interests of Ineligible Holders.....	39
Section 4.11	Sponsor Party Right of First Offer.....	40
Section 4.12	Sponsor Party Right of First Refusal.....	41

## ARTICLE V

### CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

Section 5.1	Organizational Contributions.....	43
Section 5.2	Initial Contributions; Percentage Interests.....	43
Section 5.3	Contributions by Limited Partners.....	43
Section 5.4	Interest and Withdrawal.....	44
Section 5.5	Capital Accounts.....	44
Section 5.6	Issuances of Additional Partnership Interests; Derivative Partnership Interests; Call and Put Rights.....	48
Section 5.7	Conversion of Subordinated Units.....	49
Section 5.8	Limited Preemptive Right.....	49
Section 5.9	Splits and Combinations.....	49
Section 5.10	Fully Paid and Non-Assessable Nature of Limited Partner Interests.....	50
Section 5.11	Issuance of Common Units in Connection with Reset of Incentive Distribution Rights.....	50

## ARTICLE VI

### ALLOCATIONS AND DISTRIBUTIONS

Section 6.1	Allocations for Capital Account Purposes.....	52
Section 6.2	Allocations for Tax Purposes.....	63
Section 6.3	Requirement and Characterization of Distributions; Distributions to Record Holders.....	64
Section 6.4	Distributions of Available Cash from Operating Surplus.....	65
Section 6.5	Distributions of Available Cash from Capital Surplus.....	67
Section 6.6	Adjustment of Minimum Quarterly Distribution and Target Distribution Levels.....	67
Section 6.7	Special Provisions Relating to the Holders of Subordinated Units.....	67
Section 6.8	Special Provisions Relating to the Holders of Incentive Distribution Rights.....	68
Section 6.9	Entity-Level Taxation.....	69

## ARTICLE VII

### MANAGEMENT AND OPERATION OF BUSINESS

Section 7.1	Management.....	69
Section 7.2	Certificate of Limited Partnership.....	72
Section 7.3	Restrictions on the General Partner's Authority to Sell Assets of the Partnership Group.....	72
Section 7.4	Reimbursement of the General Partner.....	72
Section 7.5	Outside Activities.....	73
Section 7.6	Loans from the General Partner; Loans or Contributions from the Partnership or Group Members.....	75

Section 7.7	Indemnification .....	75
Section 7.8	Liability of Indemnitees .....	77
Section 7.9	Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties .....	78
Section 7.10	Other Matters Concerning the General Partner .....	80
Section 7.11	Purchase or Sale of Partnership Interests .....	81
Section 7.12	Reliance by Third Parties .....	81
Section 7.13	Pension Plan Liabilities .....	82

## ARTICLE VIII

### BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 8.1	Records and Accounting .....	82
Section 8.2	Fiscal Year .....	82
Section 8.3	Reports .....	82

## ARTICLE IX

### TAX MATTERS

Section 9.1	Tax Returns and Information .....	83
Section 9.2	Tax Elections .....	83
Section 9.3	Tax Controversies .....	84
Section 9.4	Withholding .....	84

## ARTICLE X

### ADMISSION OF PARTNERS

Section 10.1	Admission of Limited Partners .....	84
Section 10.2	Admission of Successor General Partner .....	85
Section 10.3	Amendment of Agreement and Certificate of Limited Partnership .....	86

## ARTICLE XI

### WITHDRAWAL OR REMOVAL OF PARTNERS

Section 11.1	Withdrawal of the General Partner .....	86
Section 11.2	Removal of the General Partner .....	87
Section 11.3	Interest of Departing General Partner and Successor General Partner .....	88
Section 11.4	Termination of Subordination Period, Conversion of Subordinated Units and Extinguishment of Cumulative Common Unit Arrearages .....	89
Section 11.5	Withdrawal of Limited Partners .....	90



## ARTICLE XII

### DISSOLUTION AND LIQUIDATION

Section 12.1	Dissolution .....	90
Section 12.2	Continuation of the Business of the Partnership After Dissolution .....	90
Section 12.3	Liquidator.....	91
Section 12.4	Liquidation .....	91
Section 12.5	Cancellation of Certificate of Limited Partnership .....	92
Section 12.6	Return of Contributions .....	92
Section 12.7	Waiver of Partition.....	92
Section 12.8	Capital Account Restoration .....	93

## ARTICLE XIII

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

Section 13.1	Amendments to be Adopted Solely by the General Partner .....	93
Section 13.2	Amendment Procedures .....	94
Section 13.3	Amendment Requirements.....	95
Section 13.4	Special Meetings .....	95
Section 13.5	Notice of a Meeting .....	96
Section 13.6	Record Date .....	96
Section 13.7	Postponement and Adjournment.....	96
Section 13.8	Waiver of Notice; Approval of Meeting .....	97
Section 13.9	Quorum and Voting .....	97
Section 13.10	Conduct of a Meeting.....	97
Section 13.11	Action Without a Meeting .....	98
Section 13.12	Right to Vote and Related Matters.....	98
Section 13.13	Voting of Incentive Distribution Rights .....	99

## ARTICLE XIV

### MERGER, CONSOLIDATION OR CONVERSION

Section 14.1	Authority .....	99
Section 14.2	Procedure for Merger, Consolidation or Conversion.....	100
Section 14.3	Approval by Limited Partners.....	102
Section 14.4	Certificate of Merger or Certificate of Conversion.....	103
Section 14.5	Effect of Merger, Consolidation or Conversion .....	103

## ARTICLE XV

### RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS

Section 15.1	Right to Acquire Limited Partner Interests .....	104
--------------	--	-----

**ARTICLE XVI**

**GENERAL PROVISIONS**

Section 16.1 Addresses and Notices; Written Communications ..... 106  
Section 16.2 Further Action ..... 107  
Section 16.3 Binding Effect ..... 107  
Section 16.4 Integration ..... 107  
Section 16.5 Creditors ..... 107  
Section 16.6 Waiver ..... 107  
Section 16.7 Third-Party Beneficiaries ..... 107  
Section 16.8 Counterparts ..... 107  
Section 16.9 Applicable Law; Forum, Venue and Jurisdiction; Waiver of Trial by  
Jury ..... 107  
Section 16.10 Invalidation of Provisions ..... 108  
Section 16.11 Consent of Partners ..... 108  
Section 16.12 Facsimile and Email Signatures ..... 108

**EXHIBITS**

Exhibit A Form of Certificate Evidencing Common Units

**SECOND AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP OF ENABLE MIDSTREAM PARTNERS, LP**

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ENABLE MIDSTREAM PARTNERS, LP, dated as of April 16, 2014, is entered into by and among ENABLE GP, LLC, a Delaware limited liability company, as the General Partner, and the Initial Limited Partners (as defined herein), together with any other Persons who become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

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

*“Acquisition”* means any transaction in which any Group Member acquires (through an asset acquisition, stock acquisition, merger or other form of investment) control over all or a portion of the assets, properties or business of another Person for the purpose of increasing, over the long-term, the asset base, operating capacity or operating income of the Partnership Group from the asset base, operating capacity or operating income of the Partnership Group existing immediately prior to such transaction. For purposes of this definition, “long-term” generally refers to a period of not less than twelve months.

*“Additional Book Basis”* means, with respect to any Adjusted Property, the portion of the Carrying Value of such Adjusted Property that is attributable to positive adjustments made to such Carrying Value as determined in accordance with the provisions set forth below in this definition of Additional Book Basis. For purposes of determining the extent to which 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; and

(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 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; *provided* that the provisions of the immediately preceding sentence shall apply to the determination of the Additional Book Basis Derivative Items attributable to Disposed of Adjusted Property.

***“Adjusted Capital Account”*** means, with respect to any Partner, the balance in such Partner’s Capital Account at the end of each taxable period of the Partnership, after giving effect to the following adjustments: (a) credit to such Capital Account any amounts that such Partner is (x) obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(ii)(c) or (y) deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (b) debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). 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 any 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 such 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 such 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) the amount of 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; *provided*, that to the extent that actual volumes of natural gas

delivered to the gathering systems of the Partnership (associated with a Minimum Volume Commitment) in a particular Quarter or Quarters are less than the prorated (in Quarterly amounts) Minimum Volume Commitment amount for such period, the General Partner may add to Adjusted Operating Surplus for such period an amount equal to such shortfall multiplied by the applicable gathering rate as set forth in the gathering or similar agreement (the "**Quarterly Estimated Shortfall Payment**"). The Quarterly Estimated Shortfall Payment shall be adjusted each subsequent Quarter based on the level of actual volumes delivered for such subsequent Quarter and the preceding Quarters of the period that remain subject to a Minimum Volume Commitment (as compared to the prorated Minimum Volume Commitment for such period). If the sum of Quarterly Estimated Shortfall Payments in respect of a Minimum Volume Commitment Period is greater than the aggregate shortfall amount actually paid with respect to a Minimum Volume Commitment period as finally determined, and Subordinated Units remain outstanding, then Adjusted Operating Surplus shall be adjusted in each such Quarter to give effect to the shortfall amount actually paid as if it had been paid in such Quarter to cover the shortfall in such Quarter. With respect to a Quarter in which a shortfall amount under a Minimum Volume Commitment is actually paid, Adjusted Operating Surplus shall be reduced by an amount equal to the amount of Adjusted Operating Surplus previously added by the General Partner with respect to such Minimum Volume Commitment Period pursuant to this proviso.

**"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. Without limiting the foregoing, for purposes of this Agreement, any Person that, individually or together with its Affiliates, has the direct or indirect right to designate or cause the designation of at least one member to the Board of Directors of the General Partner, and any such Person's Affiliates, shall be deemed to be an Affiliate of the General Partner. Notwithstanding anything in the foregoing to the contrary, CERC and its Affiliates (other than the General Partner or any Group Member), on the one hand, and OGEH and its Affiliates (other than the General Partner or any Group Member), on the other hand, will not be deemed to be Affiliates of one another hereunder unless there is a basis for such Affiliation independent of their respective Affiliation with any Group Member, the General Partner or any Affiliate (disregarding the immediately preceding sentence) of any Group Member or the General Partner.

**"Aggregate Quantity of IDR Reset Common Units"** is defined 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 (a) a Contributed Property means the fair market value of such property or other consideration at the time of contribution and (b) an Adjusted Property means the fair market value of such Adjusted Property on the date of the Revaluation Event, in each case as determined by the General Partner. The General Partner shall use such method as it determines to be appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Partnership in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

**"Agreement"** means this Second Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP, 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 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, less;

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

(i) provide for the proper conduct of the business of the Partnership Group (including cash reserves for future capital expenditures, future acquisitions, and for anticipated future debt service requirements of the Partnership Group and for refunds of collected rates reasonably likely to be refunded as a result of a settlement or hearing relating to FERC rate proceedings) subsequent to such Quarter;

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

(iii) provide funds for distributions under Section 6.4 or 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 subclause (iii) above if the effect of such reserves would be that the Partnership is unable to distribute the Minimum Quarterly Distribution on all Common Units, plus any Cumulative Common Unit Arrearage on all Common Units, with respect to such Quarter; and, provided further, that disbursements made by a Group Member or cash reserves established, increased or reduced after the end of such Quarter but on or before the date of determination of Available Cash with respect to such Quarter shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if the General Partner so determines.

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

"*BMI*" means Bronco Midstream Infrastructure LLC, a Delaware limited liability company.

"*Board of Directors*" means, with respect to the General Partner, its board of directors or board of managers, as applicable, if the General Partner is a corporation or limited liability company, or the board of directors or board of managers of the general partner of the General Partner, if the General Partner is a limited partnership, as applicable.

"*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 a Revaluation Event that gives rise to a Net Termination Loss.

"*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 a Revaluation Event that gives rise to a Net Termination Gain.

"*Bronco*" means Enogex Holdings LLC, a Delaware limited liability company.

"*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 New York shall not be regarded as a Business Day.

**"Call Right"** has the meaning set forth in Annex B to the Master Formation Agreement.

**"Capital Account"** means the capital account maintained for a Partner pursuant to Section 5.5. The "Capital Account" of a Partner in respect of any 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 (a) the acquisition of existing, or the construction or development of new, capital assets by a Group Member, (b) the replacement, improvement or expansion of existing capital assets by a Group Member or (c) a 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 construction or development of new, or the replacement, improvement or expansion of existing, capital assets by such Person, in each case if and to the extent such construction, development, replacement, improvement or expansion is made to increase over the long-term, the asset base, 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 asset base, operating capacity or operating income of the Partnership Group or such Person, as the case may be, existing immediately prior to such construction, development, replacement, improvement, expansion or Capital Contribution. For purposes of this definition, "long-term" generally refers to a period of not less than twelve months.

**"Capital Surplus"** means Available Cash distributed by the Partnership in excess of Operating Surplus, as described in Section 6.3(a).

**"Carrying Value"** means (a) with respect to a Contributed Property or Adjusted Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and other cost recovery deductions charged to the Partners' Capital Accounts in respect of such 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; *provided* that 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 to the Partnership or any Limited Partner for actual fraud or willful misconduct in its capacity as a general partner of the Partnership.

**"CERC"** means CenterPoint Energy Resources Corp., a Delaware corporation.



**"Certificate"** means a certificate in such form (including global form if permitted by applicable rules and regulations) as may be adopted by the General Partner, issued by the Partnership evidencing ownership of one or more classes of Partnership Interests. The initial form of certificate approved by the General Partner for Common Units is attached as Exhibit A to this Agreement.

**"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.

**"Change in Control"** of any Person means (i) a person or group (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of all of the then outstanding Voting Securities of such Person, except in a merger or consolidation that would not constitute a Change in Control under clause (ii) below, or (ii) the Person consolidates or merges with another Person, other than any such consolidation or merger where (1) the outstanding Voting Securities of the subject Person are changed into or exchanged for Voting Securities of the surviving Person or its parent and (2) the holders of the Voting Securities of the subject Person immediately prior to such transaction own, directly or indirectly, not less than a majority of the outstanding Voting Securities of the surviving Person or its parent immediately after such transaction in substantially the same proportions as their ownership of outstanding Voting Securities in the subject Person immediately prior to such consolidation or merger.

**"Citizenship Eligibility Trigger"** is defined in Section 4.9(a)(ii).

**"Closing Price"** for any day, means in respect of any class of Limited Partner Interests the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the last closing bid and ask prices on such day, regular way, in either case as reported on the principal National Securities Exchange on which such 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 average of the high bid and low ask prices on such day in the over-the-counter market, as reported by such other system then in use, or, if on any such day such Limited Partner Interests are not quoted by any such organization, the average of the closing bid and ask prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests, the fair value of such Limited Partner Interests on such day as determined by the General Partner.

**"CNP"** means CenterPoint Energy, Inc., a Texas corporation.

**"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"** is defined in Section 11.3(a).

**“Commences Commercial Service”** means the date upon which a Capital Improvement is first put into commercial service by a Group Member following completion of construction, replacement, improvement or expansion and testing, as applicable.

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

**“Common Unit”** means a Limited Partner Interest 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 of the General Partner composed of two or more directors, each of whom (a) is not an officer or employee of the General Partner, (b) is not an officer, director or employee of any Affiliate of the General Partner (other than Group Members), (c) is not a holder of any ownership interest in the General Partner or its Affiliates or the Partnership Group other than (i) Common Units and (ii) awards that are granted to such director in his capacity as a director under any long-term incentive plan, equity compensation plan or similar plan implemented by the General Partner or the Partnership and (d) is determined by the Board of Directors of the General Partner to be independent under the independence standards for directors who serve on an audit committee of a board of directors established by the Exchange Act and the rules and regulations of the Commission thereunder and by the National Securities Exchange on which the Common Units are listed or admitted to trading (or if no such National Securities Exchange, the New York Stock Exchange).

**“Construction Debt”** means debt incurred to fund (a) all or a portion of a Capital Improvement, (b) interest payments (including periodic net payments under related interest rate swap agreements) and related fees on other Construction Debt or (c) distributions (including incremental Incentive Distributions) on Construction Equity.

**“Construction Equity”** means equity issued to fund (a) all or a portion of a Capital Improvement, (b) interest payments (including periodic net payments under related interest rate swap agreements) and related fees on Construction Debt or (c) distributions (including incremental Incentive Distributions) on other Construction Equity. Construction Equity does not include equity issued in the Initial Public Offering.

**“Construction Period”** means the period beginning on the date that a Group Member enters into a binding obligation to commence a Capital Improvement and ending on the earlier to occur of the date that such Capital Improvement Commences Commercial Service and the date that the Group Member abandons or disposes of such Capital Improvement.

**“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 or other asset shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

***"Cumulative Common Unit Arrearage"*** means, with respect to any Common Unit, whenever issued, and as of the end of any Quarter, the excess, if any, of (a) the sum of the Common Unit Arrearages with respect to an IPO 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 IPO Common Unit (including any distributions to be made in respect of the last of such Quarters).

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

***"Current Market Price"*** as of any date of any class of Limited Partner Interests, means 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.

***"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.

***"Delaware LLC Act"*** means the Delaware Limited Liability Company Act, 6 Del. C. Section 18-101, 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 from and after the effective date of any withdrawal or removal of such former general partner pursuant to Section 11.1 or Section 11.2.

***"Derivative Partnership Interests"*** means any options, rights, warrants, appreciation rights, tracking, profit and phantom interests and other derivative securities (other than interests that are treated as equity in the Partnership for federal income tax purposes) relating to, convertible into or exchangeable for Partnership Interests.

***"Disposed of Adjusted Property"*** is defined in Section 6.1(d)(xiii)(B).

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

***"EH IP"*** has the meaning set forth in the Master Formation Agreement.

***"EH Management Units"*** has the meaning set forth in the Master Formation Agreement.

***"Eligibility Certificate"*** is defined 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.

**"Encumbrances"** means pledges, restrictions on transfer, proxies and voting or other agreements, liens, claims, charges, mortgages, security interests or other legal or equitable encumbrances, limitations or restrictions of any nature whatsoever.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"Estimated Incremental Quarterly Tax Amount"** is defined in Section 6.9.

**"Event Issue Value"** means, with respect to any Common Unit as of any date of determination, (i) in the case of a Revaluation Event that includes the issuance of Common Units pursuant to a public offering and solely for cash, the price paid for such Common Units or (ii) in the case of any other Revaluation Event, the Closing Price of the Common Units on the date of such Revaluation Event or, if the General Partner determines that a value for the Common Unit other than such Closing Price more accurately reflects the Event Issue Value, the value determined by the General Partner.

**"Event of Withdrawal"** is defined in Section 11.1(a).

**"Excess Additional Book Basis"** is defined in the definition of "Additional Book Basis Derivative Items."

**"Excess Distribution"** is defined in Section 6.1(d)(iii)(A).

**"Excess Distribution Unit"** is defined in Section 6.1(d)(iii)(A).

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

**"Expansion Capital Expenditures"** means cash expenditures for Acquisitions or Capital Improvements. Expansion Capital Expenditures shall include interest (including periodic net payments under related interest rate swap agreements) and related fees paid during the Construction Period on Construction Debt. Where cash expenditures are made in part for Expansion Capital Expenditures and in part for other purposes, the General Partner shall determine the allocation between the amounts paid for each.

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

**"Final Subordinated Units"** is defined in Section 6.1(d)(x)(A).

**"First Liquidation Target Amount"** is defined in Section 6.1(c)(i)(D).

**"First Target Distribution"** means \$0.330625 per Unit per Quarter (or, with respect to the period commencing on the IPO Closing Date and ending on June 30, 2014, it means the product of \$0.330625 multiplied by a fraction of which the numerator is the number of days in such period, and of which the denominator is 91), subject to adjustment in accordance with Sections 5.11, 6.6 and 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 during such period plus (b) all Partnership Interests and Derivative Partnership Interests (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, if any, 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 Subordinated Units are entitled to convert into Common Units pursuant to Section 5.7, such Partnership Interests and Derivative Partnership Interests shall be deemed to have been Outstanding Units only for the four Quarters that comprise the last four Quarters of the measurement period; *provided, further*, that if consideration will be paid to any Group Member in connection with such conversion, exercise or exchange, the number of Units to be included in such calculation shall be that number equal to the difference between (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 Enable GP, LLC, a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Partnership as general partner of the Partnership, in their capacity as general partner of the Partnership (except as the context otherwise requires).

**"General Partner Interest"** means the non-economic management 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) 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. Except as expressly set forth in Section 6.1, the General Partner Interest does not include any rights to profits or losses or any rights to receive distributions from operations or upon the liquidation or winding up of the Partnership.

**"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 two or more Persons that with or through any of their respective Affiliates or Associates have 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 over 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 a Group Member to fluctuations in interest rates, the price of hydrocarbons, basis differentials or currency exchange rates in their operations or financing activities and not for speculative purposes.

**"IDR Reset Common Units"** is defined in Section 5.11(a).

**"IDR Reset Election"** is defined in Section 5.11(a).

**"Incentive Distribution Right"** means a Limited Partner Interest having the rights and obligations specified with respect to Incentive Distribution Rights in this Agreement.

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

**"Incremental Income Taxes"** is defined in Section 6.9.

**"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 (i) any Group Member, the General Partner or any Departing General Partner or (ii) 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, 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) solely with respect to matters occurring prior to the IPO Closing Date, Bronco, BMI and any of their Affiliates and their respective members, partners, directors and officers and (g) any Person the General Partner designates as an "Indemnitee" for purposes of this Agreement because such Person's status, service or relationship exposes such Person to potential claims, demands, suits or proceedings relating to the Partnership Group's business and affairs.

**"Ineligible Holder"** is defined in Section 4.9(c).

**"Initial Limited Partners"** means CERC, OGEH, Bronco and BMI (with respect to the Common Units and Subordinated Units, as applicable, owned or to be owned by them as set forth in Section 5.2), and the General Partner (with respect to the Incentive Distribution Rights).

**"Initial Public Offering"** means the initial offering and sale of Common Units to the public (including the offer and sale of Common Units pursuant to 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 initial public offering price per Common Unit at which the Common Units were first offered to the public for sale as set forth on the cover page of the IPO Prospectus, 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) issuances of equity interests of any Group Member (including the Common Units sold to the IPO Underwriters in the Initial Public Offering) to anyone other than the Partnership Group; (c) sales or other voluntary or involuntary dispositions of any assets of any Group Member other than (i) sales or other dispositions of inventory, accounts receivable and other assets in the ordinary course of business and (ii) sales or other dispositions of assets as part of normal retirements or replacements; and (d) capital contributions received by a Group Member.

**"Interim Closing Date"** means May 1, 2013, which is the date on which the transactions contemplated by the Master Formation Agreement were consummated.

**"Investment Capital Expenditures"** means capital expenditures that are neither Expansion Capital Expenditures nor Maintenance Capital Expenditures.

**"IPO Closing Date"** means the closing date of the first sale of Common Units in the Initial Public Offering pursuant to the Underwriting Agreement.

**"IPO Common Unit"** means the Outstanding Common Units immediately after the Initial Public Offering.

**“IPO Prospectus”** means the final prospectus filed pursuant to Rule 424(b) of the rules and regulations of the Commission under the Securities Act with respect to the Initial Public Offering.

**“IPO Underwriters”** means each Person named as an underwriter in the Underwriting Agreement who purchases Common Units pursuant thereto.

**“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 Person that becomes a Limited Partner pursuant to the terms of this Agreement 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.

**“Limited Partner Interest”** means an interest of a Limited Partner in the Partnership, which may be evidenced by Common Units, Subordinated Units, Incentive Distribution Rights or other Partnership Interests (other than a General Partner Interest) or a combination thereof (but excluding Derivative Partnership Interests), and includes any and all benefits to which such Limited Partner is entitled as provided in this Agreement, together with all obligations of such Limited Partner pursuant to the terms and provisions of this Agreement.

**“Liquidation Date”** means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 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.

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

**“Maintenance Capital Expenditure”** means cash expenditures (including expenditures for the construction or development of new capital assets or the replacement, improvement or expansion of existing capital assets) by a Group Member made to maintain, over the long-term, the asset base, operating capacity or operating income of the Partnership Group. For purposes of this definition, “long-term” generally refers to a period of not less than twelve months. 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 the amounts paid for each.

**“Master Formation Agreement”** means that certain Master Formation Agreement, dated as of March 14, 2013, by and among CNP, OGE, Bronco Midstream Holdings, LLC, a Delaware limited liability company, and Bronco Midstream Holdings II, LLC, a Delaware limited liability company, and to which the Partnership and the General Partner are bound, together with the additional conveyance documents and instruments contemplated or referenced thereunder, as it may be amended, supplemented or restated from time to time.



**"Merger Agreement"** is defined in Section 14.1.

**"Minimum Quarterly Distribution"** means \$0.2875 per Unit per Quarter (or with respect to the period commencing on the IPO Closing Date and ending on June 30, 2014, it means the product of \$0.2875 multiplied by a fraction of which the numerator is the number of days in such period and the denominator is 91), subject to adjustment in accordance with Sections 5.11, 6.6 and 6.9.

**"Minimum Volume Commitment"** means, pursuant to a gathering or similar agreement, a commitment of a third party to deliver specified minimum volumes of natural gas in a twelve month period to the gathering systems of the Partnership.

**"National Securities Exchange"** means an exchange registered with the Commission under Section 6(a) of the Exchange Act (or any successor to such Section).

**"Net Agreed Value"** means, (a) in the case of any Contributed Property, the Agreed Value of such property or other consideration reduced by any Liabilities either assumed by the Partnership upon such contribution or to which such property or other consideration 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 Liabilities 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 the 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)(xiii).

**"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)(xiii).

**"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, (a) the sum, if positive, of all items of income, gain, loss or deduction (determined in accordance with Section 5.5(b)) that are 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 a series of related transactions (excluding any disposition to a member of the Partnership Group), or (b) the excess, if any, of the aggregate amount of Unrealized Gain over the aggregate amount of Unrealized Loss deemed recognized by the Partnership pursuant to Section 5.5(d) on the date of a Revaluation Event; *provided, however*, that the items included in the determination of Net Termination Gain 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, (a) the sum, if negative, of all items of income, gain, loss or deduction (determined in accordance with Section 5.5(b)) that are 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 a series of related transactions (excluding any disposition to a member of the Partnership Group), or (b) the excess, if any, of the aggregate amount of Unrealized Loss over the aggregate amount of Unrealized Gain deemed recognized by the Partnership pursuant to Section 5.5(d) on the date of a Revaluation Event; *provided, however*, that items included in the determination of Net Termination Loss shall not include any items of income, gain or loss specially allocated under Section 6.1(d).

**"Noncompensatory Option"** has the meaning set forth in Treasury Regulation Section 1.721-2(f).

**"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"** is defined in Section 15.1(b).

**"OGE"** means OGE Energy Corp., an Oklahoma corporation.

**"OGEH"** means OGE Enogex Holdings LLC, a Delaware limited liability company.

**"Omnibus Agreement"** has the meaning set forth in the Master Formation Agreement.

**"Operating Expenditures"** means, with respect to any period after the IPO Closing Date, 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 employees, officers and directors of the General Partner, reimbursement of expenses of the General Partner and its Affiliates, debt service payments, Maintenance Capital Expenditures, repayment of Working Capital Borrowings, payments made in the ordinary course of business under any Hedge Contracts, 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;

(c) Operating Expenditures shall not include (i) Expansion Capital Expenditures or Investment Capital Expenditures, (ii) payment of transaction expenses (including taxes) relating to Interim Capital Transactions, (iii) distributions to Partners, (iv) repurchases of Partnership Interests, other than repurchases of Partnership Interests by the Partnership to satisfy obligations under employee benefit plans or reimbursement of expenses of the General Partner for purchases of Partnership Interests by the General Partner to satisfy obligations under employee benefit plans, or (v) any expenditures to fund demand fees using a portion of the proceeds of the Initial Public Offering as described under "Use of Proceeds" in the IPO Prospectus; and

(d) (i) amounts paid in connection with the initial purchase of a Hedge Contract 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 the expiration of its scheduled settlement or termination date shall be included in equal quarterly installments over the remaining scheduled life of such Hedge Contract.

**"Operating Surplus"** means, with respect to any period after the IPO Closing Date and ending prior to the Liquidation Date, on a cumulative basis and without duplication,

(a) the sum of (i) \$300 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 IPO Closing Date and ending on the last day of such period, but excluding cash receipts from Interim Capital Transactions and the termination of Hedge Contracts (provided that cash receipts from the termination of a Hedge Contract prior to its scheduled 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) the amount of cash distributions paid during the Construction Period (including incremental Incentive Distributions) on Construction Equity, less

(b) the sum of (i) Operating Expenditures for the period beginning on the IPO Closing Date and ending on the last day of such period, (ii) the amount of cash reserves (or the Partnership's proportionate share of cash reserves in the case of Subsidiaries that are not wholly owned) established by the General Partner to provide funds for future Operating Expenditures, (iii) all Working Capital Borrowings not repaid within twelve months after having been incurred, or repaid within such 12-month period with the proceeds of additional Working Capital Borrowings, and (iv) any cash loss realized on 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 return of principal shall not be treated as cash receipts.

"*Opinion of Counsel*" means a written opinion of counsel (who may be regular counsel to, or the general counsel or other inside counsel of, the Partnership or the General Partner or any of its Affiliates) reasonably acceptable to the General Partner or to such other person selecting such counsel or obtaining such opinion.

"*Organizational Limited Partner*" means CERC, in its capacity as the organizational limited partner of the Partnership pursuant to this Agreement.

"*Outstanding*" means, with respect to Partnership Interests, all Partnership Interests that are issued by the Partnership and reflected as outstanding in the Register 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 Outstanding Partnership Interests of any class then Outstanding, none of the Partnership Interests owned by such Person or Group shall be entitled to be voted on any matter or 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) (such Partnership Interests shall not, however, be treated as a separate class of Partnership Interests for purposes of this Agreement or the Delaware Act); *provided, further*, that the foregoing limitation shall not apply to (i) any Person or Group who acquired 20% or more of the Outstanding Partnership Interests of any class directly from the General Partner or its Affiliates (other than the Partnership), (ii) any Person or Group who acquired 20% or more of the Outstanding Partnership Interests of any class then Outstanding directly or indirectly from a Person or Group described in clause (i) *provided*

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

**"Over-Allotment Option"** means the over-allotment option granted to the Underwriters 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 Enable Midstream Partners, LP, 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 Limited Partner Interests and the General Partner Interest but shall exclude any Derivative Partnership Interests.

**"Partnership Minimum Gain"** means that amount determined in accordance with the principles of Treasury Regulation Sections 1.704-2(b)(2) and 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 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 Units held by such Unitholder by (B) the total number of Outstanding Units, and (b) as to the holders of the other Partnership Interests issued by the Partnership in accordance with Section 5.6, the percentage established as part of such issuance. The Percentage Interest with respect to an Incentive Distribution Right shall be zero. The Percentage Interest with respect to the General Partner Interest shall at all times be zero.

**"Permitted Transfer"** means:

(a) with respect to CERC, a transfer by such Limited Partner of a Limited Partner Interest to a wholly owned Subsidiary of CNP; and

(b) with respect to OGEH, a transfer by such Limited Partner of a Limited Partner Interest to a wholly owned Subsidiary of OGE;

*provided* that (i) with respect to Permitted Transfers by CERC, the Subsidiary transferee remains a wholly owned Subsidiary of CNP (or any successor Person), at all times following such transfer, and (ii) with respect to Permitted Transfers by OGEH, the Subsidiary transferee remains a wholly owned Subsidiary of OGE (or any successor Person), at all times following such transfer, it being acknowledged that any transfer resulting in the Subsidiary transferee no longer being wholly owned shall be deemed a transfer of such Limited Partner Interest that is subject to the restrictions set forth in Section 4.11 and Section 4.12. References herein to CERC and OGEH shall include any transferee of a Limited Partner Interest pursuant to a Permitted Transfer.

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

*“Plan of Conversion”* is defined in Section 14.1.

*“Privately Placed Units”* means any Common Units issued for cash or property other than pursuant to a public offering.

*“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 or Record Holders, apportioned among all Partners 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.

*“Proposed Transferee”* is defined in Section 4.12(b)(iv).

*“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.

*“Put Right”* has the meaning set forth in Annex B to the Master Formation Agreement.

*“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 IPO Closing Date, the portion of such fiscal quarter after the IPO Closing Date.

*“Quarterly Estimated Shortfall Payment”* is defined in the definition of “Adjusted Operating Surplus.”

**“Rate Eligibility Trigger”** is defined 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 receive notice of, or entitled to exercise rights in respect of, any lawful action of Limited Partners (including voting) 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 any class of Partnership Interests 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 and the Register as of the Partnership’s close 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 in the Register as of the Partnership’s close of business on a particular 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.

**“Register”** is defined in Section 4.5(a) of this Agreement.

**“Registration Statement”** means the Registration Statement on Form S-1 (File No. 333-192542) as it has been or as it may be amended or supplemented from time to time, filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Common Units in the Initial Public Offering.

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

**“Required Allocations”** means 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”** is defined in Section 5.11(e).

**“Reset Notice”** is defined in Section 5.11(b).

***“Retained Converted Subordinated Unit”*** is defined in Section 5.5(c)(ii).

***“Revaluation Event”*** means an event that results in adjustment of the Carrying Value of each Partnership property pursuant to Section 5.5(d).

***“ROFO Acceptance Notice”*** is defined in Section 4.11(b)(i).

***“ROFO Accepting Limited Partner”*** is defined in Section 4.11(b)(i).

***“ROFO Non-Selling Limited Partner”*** is defined in Section 4.11(a).

***“ROFO Notice”*** is defined in Section 4.11(a).

***“ROFO Offer Notice”*** is defined in Section 4.11(b)(i).

***“ROFO Price”*** is defined in Section 4.11(a).

***“ROFO Seller”*** is defined in Section 4.11(a).

***“ROFO Units”*** is defined in Section 4.11(a).

***“ROFR Acceptance Notice”*** is defined in Section 4.12(b)(i).

***“ROFR Non-Transferring Limited Partner”*** is defined in Section 4.12(a).

***“ROFR Offer”*** is defined in Section 4.12(a).

***“ROFR Period”*** is defined in Section 4.12(a).

***“ROFR Sale Price”*** is defined in Section 4.12(a).

***“ROFR Seller”*** is defined in Section 4.12(a).

***“ROFR Seller’s Notice”*** is defined in Section 4.12(a).

***“ROFR Units”*** is defined in Section 4.12(a).

***“Second Liquidation Target Amount”*** is defined in Section 6.1(c)(i)(E).

***“Second Target Distribution”*** means \$0.359375 per Unit per Quarter (or, with respect to the period commencing on the IPO Closing Date and ending on June 30, 2014, it means the product of \$0.359375 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with 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.

***“SEPH”*** has the meaning set forth in the Master Formation Agreement.



**"SESH"** has the meaning set forth in the Master Formation Agreement.

**"Share of Additional Book Basis Derivative Items"** means in connection with any allocation of Additional Book Basis Derivative Items for any taxable period, (i) with respect to a Unitholder, 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 taxable period bears to the Aggregate Remaining Net Positive Adjustments as of that time, and (ii) 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 taxable period bears to the Aggregate Remaining Net Positive Adjustments as of that time.

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

**"Sponsor Parties"** means each of CERC and OGEH (and their successors), in their capacities as Limited Partners.

**"Subordinated Unit"** means a Limited Partner Interest 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 IPO Closing Date and expiring 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 June 30, 2017 in respect of which (i) (A) distributions of Available Cash from Operating Surplus on each of the Outstanding Common Units, Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units, 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 on all Outstanding Common Units, Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units, in each case in respect of such periods and (B) 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 the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding during such periods on a Fully Diluted Weighted Average Basis, and (ii) 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 June 30, 2015 in respect of which (i) (A) distributions of Available Cash from Operating Surplus on each of the Outstanding Common Units, Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units, in each case with respect to the

four-consecutive-Quarter period immediately preceding such date equaled or exceeded 150% of the Minimum Quarterly Distribution on all of the Outstanding Common Units, Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units, in each case in respect of such period, and (B) the Adjusted Operating Surplus for the four-consecutive-Quarter period immediately preceding such date equaled or exceeded 150% of the sum of the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding during such period on a Fully Diluted Weighted Average Basis, plus the corresponding Incentive Distributions and (ii) there are no Cumulative Common Unit Arrearages.

(c) the date on which the General Partner is removed in a manner described in Section 11.4.

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

**"Surviving Business Entity"** is defined in Section 14.2(b)(ii).

**"Target Distributions"** means, collectively, the First Target Distribution, Second Target Distribution and Third Target Distribution.

**"Third Target Distribution"** means \$0.431250 per Unit per Quarter (or, with respect to the period commencing on the IPO Closing Date and ending on June 30, 2014, it means the product of \$0.431250 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with Section 5.11, Section 6.6 and Section 6.9.

**"Trading Day"** means a day on which the principal National Securities Exchange on which the referenced Partnership Interests of any class are listed or admitted for trading is open for the transaction of business or, if such Partnership Interests are not listed or admitted for trading on any National Securities Exchange, a day on which banking institutions in New York City are not legally required to be closed.

**"Transaction Documents"** is defined in Section 7.1(b).

**“transfer”** is defined in Section 4.4(a).

**“transferee”** means a Person who has received Partnership Interests by means of a transfer.

**“Transfer Agent”** means such bank, trust company or other Person (including the General Partner or one of its Affiliates) as may be appointed from time to time by the General Partner to act as registrar and transfer agent for any class of Partnership Interests in accordance with the Exchange Act and the rules of the National Securities Exchange on which such Partnership Interests are listed (if any); *provided* that, if no such Person is appointed as registrar and transfer agent for any class of Partnership Interests, the General Partner shall act as registrar and transfer agent for such class of Partnership Interests.

**“Treasury Regulation”** means the United States Treasury regulations promulgated under the Code.

**“Underwriting Agreement”** means that certain Underwriting Agreement dated as of April 10, 2014 among the IPO Underwriters, the General Partner and the Partnership in connection with the Initial Public Offering providing for the purchase of Common Units by the IPO Underwriters.

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

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

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

**“Unpaid MQD”** is defined 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 IPO 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 IPO Common Unit, adjusted as the General Partner determines to be appropriate to give effect to any distribution, subdivision or combination of such Units. The Unrecovered Initial Unit Price shall be determined by reference to the Initial Unit Price per Common Unit in the Initial Public Offering.

**“Unrestricted Person”** means (a) each Indemnitee, (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 from time to time.

**“U.S. GAAP”** means United States generally accepted accounting principles, as in effect from time to time, consistently applied.

**“Voting Securities”** of a Person shall mean 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, Voting Securities of such Person shall be the general partner interest in such Person.

**“Withdrawal Opinion of Counsel”** is defined in Section 11.1(b).

**“Working Capital Borrowings”** means borrowings incurred pursuant to a credit facility, commercial paper facility or similar financing arrangement that are used solely for working capital purposes or to pay distributions to the Partners; *provided* that when such borrowings are incurred it is the intent of the borrower to repay such borrowings within 12 months from the date of such borrowings 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. The General Partner has the power to construe and interpret this Agreement and to act upon any such construction or interpretation. Any construction or interpretation of this Agreement by the General Partner and any action taken pursuant thereto and any determination made by the General Partner in good faith shall, in each case, be conclusive and binding on all Record Holders and all other Persons for all purposes.

## ARTICLE II

### ORGANIZATION

**Section 2.1 Formation; Conversion.** The Partnership was formed as a limited liability company pursuant to the provisions of the Delaware LLC Act on December 31, 2010. The

General Partner and the Organizational Limited Partner caused the Partnership to be converted from a limited liability company to a limited partnership in accordance with Section 17-217 of the Delaware Act. The General Partner and the Initial Limited Partners hereby amend and restate the First Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP, as amended, in its entirety. 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, 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 record owner thereof for all purposes.

**Section 2.2 *Name.*** The name of the Partnership shall be "Enable Midstream Partners, LP". Subject to applicable law, 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," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The General Partner 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 One Leadership Square, 211 North Robinson Avenue, Suite 950, Oklahoma City, Oklahoma 73102, or such 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 determines to be necessary or appropriate. The address of the General Partner shall be One Leadership Square, 211 North Robinson Avenue, Suite 950, Oklahoma City, Oklahoma 73102, or such 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 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 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 or obligation to propose or

approve the conduct by the Partnership of any business and may decline to do so free of any 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 and the General Partner in determining whether to propose or approve the conduct by the Partnership of any business shall be permitted to do so in its sole and absolute discretion.

**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 Term.** The term of the Partnership commenced upon the filing of its certificate of limited liability company in accordance with the Delaware LLC Act, was uninterrupted by the filing of its Certificate of Limited Partnership in accordance with Section 17-217 of the Delaware Act and shall continue until the dissolution of the Partnership in accordance with the provisions of Article XII. The existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate of Limited Partnership as provided in the Delaware Act.

**Section 2.7 Title to Partnership Assets.** Title to the assets of the Partnership, 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 assets of the Partnership or any portion thereof. Title to any or all assets of the Partnership may be held in the name of the Partnership, the General Partner, one or more of its Affiliates or one or more nominees of the General Partner or its Affiliates, as the General Partner may determine. The General Partner hereby declares and warrants that any assets of the Partnership 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 of the General Partner or its Affiliates 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 or one or more of the Partnership's designated Affiliates 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 assets of the Partnership shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such assets of the Partnership is held.

**Section 2.8 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 its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements 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 and liquidation of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Articles IV, X, XI or XII; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership 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 2.8(a)(ii) only after the necessary vote, consent or approval of the Limited Partners or of the Limited Partners of such class or series, as applicable.

Nothing contained in this Section 2.8(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 Limited Partner 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.

### **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.

**Section 3.3 *Rights of Limited Partners.***

(a) Each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a Limited Partner in the Partnership, upon reasonable written demand stating the purpose of such demand, and at such Limited Partner's own expense:

(i) to obtain from the General Partner either (A) the Partnership's most recent filings with the Commission on Form 10-K and any subsequent filings on Form 10-Q and 8-K or (B) if the Partnership is no longer subject to the reporting requirements of the Exchange Act, the information specified in, and meeting the requirements of, Rule 144A(d)(4) under the Securities Act or any successor or similar rule or regulation under the Securities Act (provided that the foregoing materials shall be deemed to be available to a Limited Partner in satisfaction of the requirements of this Section 3.3(a)(i) if posted on or accessible through the Partnership's or the Commission's website);



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

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

(b) The rights to information granted the Limited Partners pursuant to Section 3.3(a) replace in their entirety any rights to information provided for in Section 17-305(a) of the Delaware Act and each of the Partners and each other Person or Group who acquires an interest in Partnership Interests hereby agrees to the fullest extent permitted by law that they do not have any rights as Partners to receive any information either pursuant to Sections 17-305(a) of the Delaware Act or otherwise except for the information identified in Section 3.3(a).

(c) 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 regulation 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 3.3).

(d) Notwithstanding any other provision of this Agreement or Section 17-305 of the Delaware Act, each of the Partners, each other Person or Group 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 or Group.

#### ARTICLE IV

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

Section 4.1 *Certificates.* Owners of Partnership Interests and, where appropriate, Derivative Partnership Interests, shall be recorded in the Register and ownership of such interests shall be evidenced by a physical certificate or book entry notation in the Register. Notwithstanding anything to the contrary in this Agreement, unless the General Partner shall determine otherwise in respect of some or all of any or all classes of Partnership Interests and Derivative Partnership Interests, Partnership Interests and Derivative Partnership Interests shall not be evidenced by physical certificates. Certificates, if any, shall be executed on behalf of the Partnership by the Chief Executive Officer, President, Chief Financial Officer or any Vice President and the Secretary, any Assistant Secretary, or other authorized officer of the General Partner, and shall bear the legend set forth in Section 4.8(f). The signatures of such officers upon a certificate may be facsimiles. In case any officer who has signed or whose signature has been

placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Partnership with the same effect as if he were such officer at the date of its issuance. If a Transfer Agent has been appointed for a class of Partnership Interests, no Certificate for such class of Partnership Interests shall be valid for any purpose until it has been countersigned by the Transfer Agent; *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. Subject to the requirements of Section 6.7(b) and Section 6.7(c), if Common Units are evidenced by Certificates, on or after the date on which Subordinated Units are converted into Common Units pursuant to the terms of Section 5.7, the Record Holders of such Subordinated Units (i) if the Subordinated Units are evidenced by Certificates, may exchange such Certificates for Certificates evidencing the Common Units into which such Record Holder's Subordinated Units converted, or (ii) if the Subordinated Units are not evidenced by Certificates, shall be issued Certificates evidencing the Common Units into which such Record Holders' Subordinated Units converted. With respect to any Partnership Interests that are represented by physical certificates, the General Partner may determine that such Partnership Interests will no longer be represented by physical certificates and may, upon written notice to the holders of such Partnership Interests and subject to applicable law, take whatever actions it deems necessary or appropriate to cause such Partnership Interests to be registered in book entry or global form and may cause such physical certificates to be cancelled or deemed cancelled.

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

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

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

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

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

(iii) if requested by the General Partner, delivers to the General Partner a bond, in form and substance satisfactory to the General Partner, with surety or sureties and with fixed or open penalty as the General Partner may 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 or the Transfer Agent.

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, to the fullest extent permitted by law, 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.

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

**Section 4.3 *Record Holders.*** The names and addresses of Unitholders as they appear in the Register shall be the official list of Record Holders of the Partnership Interests for all purposes. The Partnership and the General Partner 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 or Group, regardless of whether the Partnership or the General Partner 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 or Group in acquiring and/or holding Partnership Interests, as between the Partnership on the one hand, and such other Person on the other, such representative Person shall be the Limited Partner with respect to such Partnership Interest upon becoming the Record Holder in accordance with Section 10.1(b) and have the rights and obligations of a Partner hereunder as, and to the extent, provided herein, including Section 10.1(c).

**Section 4.4 *Transfer Generally.***

(a) The term "transfer," when used in this Agreement with respect to a Partnership Interest, shall mean a transaction (i) by which the General Partner assigns all or any part of its General Partner Interest to another Person or by which a holder of Incentive Distribution Rights assigns all or any part of its Incentive Distribution Rights to another Person, and includes a transfer, sale, assignment, gift, Encumbrance, hypothecation, exchange or any other disposition by law or otherwise or (ii) by which the holder of a Limited Partner Interest (other than an Incentive Distribution Right) makes any direct or indirect transfer, sale, assignment, gift, Encumbrance, hypothecation, exchange or any other disposition by law or otherwise and, without limiting the generality of the foregoing, any distribution, transfer, assignment or other disposition of any Limited Partner Interest, whether voluntary, involuntary or pursuant to any dissolution, liquidation or termination of such Person, to such Person's members, stockholders, partners or other interestholders shall constitute a "transfer" of a Limited Partner Interest (for the

avoidance of doubt, with respect to a Limited Partner, any transfer, sale, assignment, gift, Encumbrance, hypothecation, exchange or other disposition of any interest in such Limited Partner, by such Limited Partner or any interestholder of such Limited Partner shall be deemed to be an indirect Transfer of a Limited Partner Interest hereunder); *provided, however*, that any transfer of all or substantially all the assets, or a Change in Control, of CNP or OGE shall not be a "transfer" hereunder.

(b) No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IV. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article IV shall be null and void, and the Partnership shall have no obligation to effect or recognize any such transfer or purported transfer. The Partnership may issue stop transfer instructions to any Transfer Agent in order to implement any restriction on transfer contemplated by this Agreement.

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

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

(a) The General Partner shall keep, or cause to be kept by the Transfer Agent on behalf of the Partnership, one or more registers in which, subject to such reasonable regulations as it may prescribe and subject to the provisions of Section 4.5(b), the registration and transfer of Limited Partner Interests, and any Derivative Partnership Interests as applicable, shall be recorded (the "*Register*").

(b) The General Partner shall not 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 and any other expenses (including the fees and expenses of the Transfer Agent) reasonably connected therewith. Upon surrender of a Certificate for registration of transfer of any Limited Partner Interests evidenced by a Certificate, and subject to the provisions of this Section 4.5(b), the appropriate officers of the General Partner on behalf of the Partnership shall execute and deliver, and in the case of Certificates evidencing Limited Partner Interests for which a Transfer Agent has been appointed, the Transfer Agent shall countersign and deliver, in the name of the holder or the designated transferee or transferees, as required pursuant to the holder's instructions, one or more new Certificates evidencing the same aggregate number and type of Limited Partner Interests as was evidenced by the Certificate so surrendered. Upon the proper surrender of a Certificate, such transfer shall be recorded in the Register.

(c) Except as provided in Section 4.9, by acceptance of any Limited Partner Interests pursuant to a transfer in accordance with this Article IV, each transferee of a Limited Partner Interest (including any nominee, or agent or representative acquiring such Limited Partner

Interests for the account of another Person or Group) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred to such Person when any such transfer or admission is reflected in the Register and such Person becomes the Record Holder of the Limited Partner Interests so transferred, (ii) shall become bound, and shall be deemed to have agreed to be bound, by the terms of this Agreement, (iii) shall be deemed to represent that the transferee has the capacity, power and authority to enter into this Agreement and (iv) shall be deemed to make any consents, acknowledgements or 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.

(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.

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

(a) Subject to Section 4.6(b) and (c), the General Partner may at its option transfer all or any part of its General Partner Interest without Unitholder approval or the approval of the holders of the Incentive Distribution Rights.

(b) Subject to Section 4.6(c), the General Partner shall not transfer all or any part of its General Partner Interest to any Person without the prior approval of all members of the Board of Directors.

(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 membership interest of the General Partner as the general partner or managing member, if any, of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.2, 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.

(d) The General Partner shall not transfer all or any EH Management Units to any Person without the prior approval of all members of the Board of Directors; provided, that the General Partner shall transfer all of the EH Management Units to any successor General Partner

elected in accordance with the terms of this Agreement as a condition to the election of such successor.

**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.

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

(a) Except as provided in Section 4.8(e), 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 federal income tax purposes (to the extent not already so treated or taxed).

(b) Except for a Permitted Transfer or as provided in Section 4.11(c) or Section 4.12(c), no Common Units or Subordinated Units may be transferred, in whole or in part, by a Sponsor Party unless the Sponsor Party purporting to transfer such Common Units or Subordinated Units first complies with the applicable provisions of Sections 4.11 and 4.12.

(c) The General Partner may impose restrictions on the transfer of Partnership Interests if it receives an Opinion of Counsel that such restrictions are necessary to (i) avoid a significant risk of the Partnership becoming taxable as a corporation or otherwise becoming taxable as an entity for federal income tax purposes (to the extent not already so treated or taxed) 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.

(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) and 6.8(c). The transfer of a Subordinated Unit or a Common Unit issued upon conversion of a Subordinated Unit shall be subject to the restrictions imposed by Section 6.7(b) and Section 6.7(c).

(e) Except for Section 4.9, nothing contained in this Article IV, or elsewhere in this Agreement, shall preclude the settlement of any transactions involving Partnership Interests entered into through the facilities of any National Securities Exchange on which such Partnership Interests are listed or admitted to trading.

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

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF ENABLE MIDSTREAM PARTNERS, LP 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 ENABLE MIDSTREAM PARTNERS, LP UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE ENABLE MIDSTREAM PARTNERS, LP 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). ENABLE GP, LLC, THE GENERAL PARTNER OF ENABLE MIDSTREAM PARTNERS, LP, MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE NECESSARY TO (A) AVOID A SIGNIFICANT RISK OF ENABLE MIDSTREAM PARTNERS, LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES OR (B) IN THE CASE OF LIMITED PARTNER INTERESTS, TO PRESERVE THE UNIFORMITY THEREOF (OR ANY CLASS OR CLASSES OF LIMITED PARTNER INTERESTS). THIS SECURITY MAY BE SUBJECT TO ADDITIONAL RESTRICTIONS ON ITS TRANSFER PROVIDED IN THE PARTNERSHIP AGREEMENT. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS SECURITY TO THE SECRETARY OF THE GENERAL PARTNER AT THE PRINCIPAL OFFICE OF THE PARTNERSHIP. 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 the FERC or an 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 Limited Partner Interests 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 information 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 requested information, or if upon receipt of such Eligibility Certificate or other requested information the General Partner determines that a Limited Partner or a transferee of a Limited Partner is not an Eligible Holder (such a Partner, an "*Ineligible Holder*"), the Limited Partner Interests owned by such Limited Partner shall be subject to redemption in accordance with the provisions of Section 4.10 or the General Partner may refuse to effect the transfer of the Limited Partner Interests to such transferee. In addition, the General Partner shall be substituted for any Limited Partner that is an Ineligible Holder as the Limited Partner in respect of the Ineligible Holder's Limited Partner Interests.

(d) The General Partner shall, in exercising voting rights in respect of Limited Partner Interests held by it on behalf of Ineligible Holders, distribute the votes in the same ratios as the votes of Limited Partners (including the General Partner and its Affiliates) in respect of Limited Partner Interests other than those of 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 its Limited Partner Interest (representing the right to receive its share of such distribution in kind).

(f) At any time after an Ineligible Holder can and does certify that it no longer is an Ineligible Holder, it may, upon application to the General Partner, request that with respect to any Limited Partner 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 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 Limited Partner 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 any 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 if upon receipt of such Eligibility Certificate or such other information the General Partner determines, with the advice of counsel, that a Limited Partner is an Ineligible Holder, the Partnership may, unless the Limited Partner establishes to the satisfaction of the General Partner that such Limited Partner is not an Ineligible Holder or has transferred his Limited Partner Interests to a Person who is not an Ineligible 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 in the Register 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.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Limited Partner Interests of the class to be so redeemed multiplied by the number of Limited Partner Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, 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 Limited Partner or transferee 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 Limited Partner Interests.

(b) The provisions of this Section 4.10 shall also be applicable to Limited Partner Interests held by a Limited Partner as nominee, agent or representative 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 Limited Partner Interest before the redemption date if such transfer is otherwise permitted under this Agreement and the transferor provides notice of such transfer to the General Partner. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, provided that the transferee of such Limited Partner Interest certifies to the satisfaction of the General Partner that such transferee is not an Ineligible Holder. If the transferee fails to make such certification within 30 days after the request, and, in any event, before the redemption date, such redemption shall be effected from the transferee on the original redemption date.

**Section 4.11 *Sponsor Party Right of First Offer.***

(a) Subject to Section 4.8 and Section 4.11(c), except for a Permitted Transfer or a transfer to which Section 4.12 applies, if a Sponsor Party (a "**ROFO Seller**") wishes to solicit proposals from third parties to acquire all or any portion of the ROFO Seller's Common Units or Subordinated Units, the ROFO Seller shall first provide a written notice (the "**ROFO Notice**") to each other Sponsor Party (or, in the case of a transfer of Subordinated Units, only to the other Sponsor Parties holding Subordinated Units), with a copy to the Partnership, containing: (i) the number of Common Units or Subordinated Units proposed to be transferred (the "**ROFO Units**") and (ii) a request for each other Sponsor Party entitled to receive such notice (each, a "**ROFO Non-Selling Limited Partner**") to specify the purchase price (the "**ROFO Price**") and other terms and conditions on which such ROFO Non-Selling Limited Partner is willing to purchase the ROFO Units.

(b) The following procedures shall apply:

(i) Within thirty (30) days after receiving the ROFO Notice, one or more ROFO Non-Selling Limited Partners (each, a "**ROFO Accepting Limited Partner**" and, collectively, the "**ROFO Accepting Limited Partners**") may elect in writing (the "**ROFO Offer Notice**") to purchase all, but not less than all, of the ROFO Units. The ROFO Offer Notice shall specify the ROFO Price and other terms and conditions on which such ROFO Non-Selling Limited Partner is willing to purchase the ROFO Units. If any ROFO Accepting Limited Partner submits a ROFO Offer Notice within the time period specified herein, the ROFO Seller shall have thirty (30) days from the date it received the ROFO Offer Notice to elect in writing (the "**ROFO Acceptance Notice**") to accept the ROFO Accepting Limited Partner's offer to purchase the ROFO Units.

(ii) If the ROFO Seller accepts a ROFO Accepting Limited Partner's offer, the ROFO Accepting Limited Partner must purchase the ROFO Units in the manner, and subject to the terms and conditions, described in Section 4.11(d). If the ROFO Seller

does not accept any offer from a ROFO Accepting Limited Partner or fails to make such election within thirty (30) days after receiving the ROFO Offer Notice, or if there are no ROFO Accepting Limited Partners, then the ROFO Seller may, during the next one hundred twenty (120) days, transfer the ROFO Units to a third-party transferee (i) at a purchase price not less than 105% of the highest offered ROFO Price and upon terms no more favorable to the proposed transferee than those specified in the ROFO Notice and (ii) subject to the applicable terms and restrictions of this Agreement, including Section 4.8.

(iii) If more than one ROFO Accepting Limited Partner submits a ROFO Offer Notice and the ROFO Seller decides to accept any of such ROFO Offer Notices, then the ROFO Seller shall be obligated to accept such ROFO Offer Notice containing the highest offered ROFO Price. If the highest offered ROFO Price is submitted by more than one ROFO Accepting Limited Partner, each such ROFO Accepting Limited Partner shall be allocated a number of ROFO Units on a Pro Rata basis in accordance with the number of Common Units or Subordinated Units, as applicable, owned by such ROFO Accepting Limited Partner in relation to the total number of Common Units or Subordinated Units, as applicable, owned by all ROFO Accepting Limited Partners, or in such other proportion as such ROFO Accepting Limited Partners shall otherwise agree.

(c) The obligations in this Section 4.11 shall apply only to any proposed transfer of Common Units or Subordinated Units, or series of such transfers to the same Person, by a Sponsor Party involving more than 5% of the aggregate of the Common Units and Subordinated Units held by such Sponsor Party.

(d) Sales of the ROFO Units to the applicable ROFO Accepting Limited Partner pursuant to this Section 4.11 shall be made at the offices of the Partnership within sixty (60) days of the delivery of ROFO Acceptance Notice, or on such other date as the participating parties may agree in writing. Such sales shall be effected by the ROFO Seller's delivery of the ROFO Units, free and clear of all Encumbrances (other than restrictions imposed by the governing documents of the Partnership and securities laws), to the applicable ROFO Accepting Limited Partner, against payment to the ROFO Seller of the ROFO Price by the applicable ROFO Accepting Limited Partner and on the terms and conditions specified in the applicable ROFO Offer Notice.

#### Section 4.12 *Sponsor Party Right of First Refusal.*

(a) Subject to Section 4.8 and Section 4.12(c), except for a Permitted Transfer or a transfer to which Section 4.11 applies, if a Sponsor Party (a "*ROFR Seller*") receives an unsolicited *bona fide* offer from a third party for a transfer of all or any portion of the ROFR Seller's Common Units or Subordinated Units, and the ROFR Seller wishes to accept such offer, the ROFR Seller shall first provide a written notice (the "*ROFR Seller's Notice*") to each other Sponsor Party (or, in the case of a transfer of Subordinated Units, only to the other Sponsor Parties holding Subordinated Units), with a copy to the Partnership, containing: (i) the number of Common Units or Subordinated Units proposed to be transferred (the "*ROFR Units*") and the per Unit purchase price offered therefor, which may only be in cash (the "*ROFR Sale Price*"), and (ii) the material terms and conditions of such proposed transfer. Delivery of the ROFR

Seller's Notice to the Sponsor Parties entitled to receive such notice (each, a "**ROFR Non-Transferring Limited Partner**") shall constitute an offer (a "**ROFR Offer**") by the ROFR Seller to sell the ROFR Units at the ROFR Sale Price to each other ROFR Non-Transferring Limited Partner, which shall remain outstanding for a period of thirty (30) days after the delivery of the ROFR Seller's Notice (subject to extension as provided below, the "**ROFR Period**").

(b) The following procedures shall apply:

(i) During the ROFR Period, each ROFR Non-Transferring Limited Partner shall have the right to accept the ROFR Offer in full but not in part, by delivering a written notice to the ROFR Seller (a "**ROFR Acceptance Notice**"), with a copy to each other ROFR Non-Transferring Limited Partner (if applicable) and the Partnership of its acceptance of the ROFR Offer with respect to all of the ROFR Units at the ROFR Sale Price and on the same terms specified in the ROFR Seller's Notice.

(ii) If more than one ROFR Acceptance Notice is timely delivered to the ROFR Seller, each ROFR Non-Transferring Limited Partner that submitted a ROFR Acceptance Notice shall be entitled to purchase a portion of the ROFR Units determined on a pro rata basis in accordance with the number of Common Units or Subordinated Units, as applicable, owned by each such participating ROFR Non-Transferring Limited Partner in relation to the total number of Common Units or Subordinated Units, as applicable, owned by all such participating ROFR Non-Transferring Limited Partners, or in such other proportion as such ROFR Non-Transferring Limited Partners may agree.

(iii) A failure by a ROFR Non-Transferring Limited Partner to validly deliver a ROFR Acceptance Notice during the ROFR Period shall be deemed a rejection of the ROFR Offer and a waiver of such ROFR Non-Transferring Limited Partner's right to purchase any portion of the ROFR Units.

(iv) If no ROFR Non-Transferring Limited Partner timely delivers a ROFR Acceptance Notice, then the ROFR Seller shall be free, for a period of one hundred twenty (120) days from the date of the expiration of the ROFR Period, to sell such ROFR Units to a third party (the "**Proposed Transferee**") (x) at a price per Unit equal to or greater than the ROFR Price and upon terms no more favorable to the Proposed Transferee than those specified in the ROFR Seller's Notice and (y) subject to the applicable terms and restrictions of this Agreement, including Section 4.8.

(c) The obligations in this Section 4.12 shall apply only to any proposed transfer of Common Units or Subordinated Units, or series of such transfers to the same Person, by a Sponsor Party involving more than 5% of the aggregate of the Common Units or Subordinated Units held by such Sponsor Party.

(d) Sales of the ROFR Units to be sold to the participating ROFR Non-Transferring Limited Partners pursuant to this Section 4.12 shall be made at the offices of the Partnership within sixty (60) days of the delivery of ROFR Seller's Notice, or on such other date as the participating parties may agree in writing. Such sales shall be effected by the ROFR Seller's delivery of the ROFR Units, free and clear of all Encumbrances (other than restrictions imposed

by the governing documents of the Partnership and securities laws), to the participating ROFR Non-Transferring Limited Partners, against payment to the ROFR Seller of the purchase consideration therefor by the participating ROFR Non-Transferring Limited Partners and on the terms and conditions specified in the ROFR Seller's Notice.

## ARTICLE V

### CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

**Section 5.1 *Organizational Contributions.*** In connection with the conversion of the Partnership from a limited liability company to a limited partnership as described in Section 2.1, (a) the General Partner was admitted as the General Partner of the Partnership, (b) the Organizational Limited Partner was admitted as a Limited Partner of the Partnership and (c) the Organizational Limited Partner received 291,002,583 Common Units in exchange for the previously outstanding limited liability company membership interests that were held by the Organizational Limited Partner at the time of such conversion.

**Section 5.2 *Initial Contributions; Percentage Interests.***

(a) On the Interim Closing Date and pursuant to the Master Formation Agreement, the Partnership issued 141,956,176 Common Units to OGE and 65,908,224 Common Units to Bronco and the Incentive Distribution Rights to the General Partner. Effective August 15, 2013, Bronco transferred 55,750,000 Common Units to BMI. On March 25, 2014, the Partnership effected a 1 for 1.279082616 Common Unit reverse split.

(b) Immediately prior to the effectiveness of the Registration Statement, 61.4063723% of the Common Units held by each of CERC and OGE were converted (and any fractional Units were rounded in the same manner as contemplated by Section 5.9(d)) into Subordinated Units. Upon completion of and as a result of the transactions described in this Section 5.2, the ownership of the Common Units and Subordinated Units by the Initial Limited Partners on the IPO Closing Date is as follows:

<u>Initial Limited Partner</u>	<u>Common Units</u>	<u>Subordinated Units</u>
CERC .....	87,803,909	139,704,916
OGE .....	42,832,291	68,150,514
Bronco .....	7,941,804	—
BMI .....	43,585,926	—

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

(a) On the IPO Closing Date and pursuant to the Underwriting Agreement, each IPO Underwriter contributed cash to the Partnership in exchange for the issuance by the Partnership of Common Units to each IPO Underwriter, all as set forth in the Underwriting Agreement.

(b) Upon the exercise, if any, of the Over-Allotment Option, each Underwriter shall contribute cash to the selling unitholder(s) noted in the Underwriting Agreement in exchange for

the sale by such selling unitholder(s) of Common Units to each Underwriter, all as set forth in the Underwriting Agreement.

(c) No Limited Partner Interests will be issued or issuable as of or at the IPO Closing Date other than (i) the Common Units and Subordinated Units issued to the Initial Limited Partners as described in Sections 5.1 and 5.2, (ii) the Common Units issued to the IPO Underwriters as described in subparagraphs (a) and (b) of this Section 5.3 and (iii) the Incentive Distribution Rights issued to the General Partner as described in Section 5.2.

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

**Section 5.4 *Interest and Withdrawal.*** 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 termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Partner 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.

**Section 5.5 *Capital Accounts.***

(a) The Partnership shall maintain for each Partner (or a beneficial owner of Partnership Interests held by a nominee, agent or representative in any case in which the nominee, agent or representative 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). As of the IPO Closing Date, the Capital Account balance attributable to the Common Units issued to the Organizational Limited Partner, OGEH, and Bronco pursuant to Sections 5.1 and 5.2(a) shall equal the product of the number of Common Units issued to the Organizational Limited Partner, OGEH, and Bronco, respectively, and the Initial Unit Price for each such Common Unit (and the Capital Account balance attributable to each such Common Unit shall equal its Initial Unit Price). As of the IPO Closing Date, the Capital Account attributable to the Incentive Distribution Rights shall be zero. 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 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 federal income tax purposes and (y) any other partnership, limited liability company, unincorporated business or other entity classified as a partnership for 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) The computation of all items of income, gain, loss and deduction shall be made (x) except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), without regard to any election under Section 754 of the Code that may be made by the Partnership and (y) 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.

(iv) To the extent an adjustment to the adjusted basis of any Partnership asset pursuant to Section 734(b) of the Code (including pursuant to Treasury Regulation Section 1.734-2(b)(1)) 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.

(v) In the event the Carrying Value of Partnership property is adjusted pursuant to Section 5.5(d), any Unrealized Gain resulting from such adjustment shall be treated as an item of gain and any Unrealized Loss resulting from such adjustment shall be treated as an item of loss.

(vi) 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.

(vii) 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.

(viii) 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) Except as otherwise provided in this Section 5.5(c), a transferee of a Partnership Interest shall succeed to a Pro Rata portion of the Capital Account of the transferor relating to the Partnership Interest so transferred.

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

(iii) Subject to Section 6.8(b), immediately prior to the transfer of an IDR Reset Common Unit by a holder thereof (other than a transfer to an Affiliate unless the General Partner elects to have this subparagraph (iii) apply), the Capital Account maintained for such Person with respect to its IDR Reset Common Units will (A) first, be allocated to the IDR Reset Common Units to be transferred in an amount equal to the product of (x) the number of such IDR Reset Common 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 IDR Reset Common Units. Following any such allocation, the transferor's Capital Account, if any, maintained with respect to the retained IDR Reset Common 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 IDR Reset Common Units will have a balance equal to the amount allocated under clause (A) above.

(d)

(i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Partnership Interests for cash or Contributed Property, the issuance of Partnership Interests as consideration for the provision of services, the issuance of IDR Reset Common Units pursuant to Section 5.11, or the conversion of the General Partner's 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; *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. If upon the occurrence of a Revaluation Event described in this Section 5.5(d), a Noncompensatory Option of the Partnership is outstanding, the Partnership shall adjust the Carrying Value of each Partnership property in accordance with Treasury Regulation Sections 1.704-1(b)(2)(iv)(f)(1) and 1.704-1(b)(2)(iv)(h)(2). In determining such Unrealized Gain or Unrealized Loss, the aggregate fair market value of all Partnership property (including cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests (or, in the case of an issuance of a Noncompensatory Option, immediately after such issuance if required pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(s)(1)) shall be determined by the General Partner using such method of valuation as it may adopt. In making its determination of the fair market values of individual properties, the General Partner may first determine an aggregate value for the assets of the Partnership that takes into account the current trading price of the Common Units, the fair market value of all other Partnership Interests at such time and the amount of Partnership Liabilities. The General Partner may allocate such aggregate value among the individual properties of the Partnership (in such manner as it determines appropriate). Absent a contrary determination by the General Partner, the aggregate fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to a Revaluation Event shall be the value that would result in the Capital Account for each Common Unit that is Outstanding prior to such Revaluation Event being equal to the Event Issue Value.

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any 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. In determining such Unrealized Gain or Unrealized Loss the aggregate fair market value of all Partnership property (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of a distribution that is not made pursuant to Section 12.4, be determined 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 by the Liquidator using such method of valuation as it may adopt.

**Section 5.6 *Issuances of Additional Partnership Interests; Derivative Partnership Interests; Call and Put Rights.***

(a) The Partnership may issue additional Partnership Interests (other than General Partner Interests) and Derivative Partnership Interests 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 authorized to be issued by the Partnership pursuant to Section 5.6(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership Interests), 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) the 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; (v) whether such Partnership Interest 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 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 each 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 Derivative Partnership Interests pursuant to this Section 5.6, (ii) the conversion of the Combined Interest into Units pursuant to the terms of this Agreement, (iii) the issuance of Common Units pursuant to Section 5.11, (iv) reflecting admission of such additional Limited Partners in the Register as the Record Holders of such Limited Partner Interests 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 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 in connection with the conversion of the Combined Interest into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Interests are listed or admitted to trading.

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

(e) If a Call Right or a Put Right is exercised, in exchange for the Partnership purchasing an additional interest in SESH as provided in Annex B to the Master Formation Agreement, the Partnership shall issue to SEPH a number of additional Common Units as determined pursuant to Annex B to the Master Formation Agreement.

**Section 5.7 Conversion of Subordinated Units.**

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

(b) In the event that Subordinated Units shall convert into Common Units pursuant to Section 5.7(a) at a time when there shall be more than one holder of Subordinated Units, then, unless all of the holders of the Subordinated Units shall agree to a different allocation, the Subordinated Units that are to be converted into Common Units shall be allocated among the holders of the Subordinated Units pro rata based on the number of Subordinated Units held by each such holder.

(c) A Subordinated Unit that has converted into a Common 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 Section 5.11 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, whether unissued, held in the treasury or hereafter created. For so long as a Person remains an Affiliate of the General Partner, each Affiliate of 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, up to the extent necessary to maintain the Percentage Interests of such Person equal to that which existed immediately prior to the issuance of such Partnership Interests.

**Section 5.9 Splits and Combinations.**

(a) Subject to Section 5.9(d), Section 6.6 and Section 6.9 (dealing with adjustments of distribution levels), 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 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 (or such shorter periods as required by applicable law). 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) Promptly following any such distribution, subdivision or combination, the Partnership may issue Certificates or uncertificated Partnership Interests to the Record Holders of Partnership Interests as of the applicable Record Date representing the new number of Partnership Interests held by such Record Holders, 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 Partnership Interests represented by Certificates, the surrender of any Certificate held by such Record Holder immediately prior to such Record Date.

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions of Section 5.6(d) and this Section 5.9(d), each fractional Unit shall be rounded to the nearest whole Unit (with fractional Units equal to or greater than a 0.5 Unit being rounded to the next higher 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 Sections 17-303, 17-607 or 17-804 of 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, 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 Minimum Quarterly Distribution and 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 their respective proportionate share of a number of Common Units (the "**IDR Reset Common Units**") derived by dividing (i) the average amount of cash distributions made by the Partnership for the two full Quarters immediately preceding the giving of the Reset Notice (as defined in Section 5.11(b)) in respect of the Incentive Distribution Rights 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 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 making of the IDR Reset Election in the manner specified in this Section 5.11 shall cause the Minimum Quarterly Distribution and 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 Unitholders other than as set forth in this Section 5.11(a), 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 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 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 IDR Reset 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 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 Minimum Quarterly Distribution and the Target Distributions, shall be adjusted at the time of the issuance of IDR Reset 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) Upon the issuance of IDR Reset Common Units pursuant to Section 5.11(a), the Capital Account maintained with respect to the Incentive Distribution Rights will (i) first, be allocated to IDR Reset Common Units in an amount equal to the product of (A) the Aggregate Quantity of IDR Reset Common Units and (B) the Per Unit Capital Amount for an IPO Common Unit, and (ii) second, as to any remaining balance in such Capital Account, will be retained by the holder of the Incentive Distribution Rights. If there is not sufficient capital associated with the Incentive Distribution Rights to allocate the full Per Unit Capital Amount for an IPO Common Unit to the IDR Reset Common Units in accordance with clause (i) of this Section 5.11(f), the IDR Reset Common Units shall be subject to Sections 6.1(d)(x)(B) and (C).

## 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 (other than any taxable period (or portion thereof) ending on or prior to the IPO Closing Date, with respect to which the First Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP shall govern) 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 amount of Net Income allocated to the General Partner pursuant to this Section 6.1(a)(i) for the current and all previous taxable periods is equal to the aggregate amount of Net Loss allocated to the General Partner pursuant to Section 6.1(b)(ii) for all previous taxable periods; and

(ii) The balance, if any, to all Unitholders, Pro Rata.

(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 Unitholders, Pro Rata; *provided*, 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), and subject to the provisions set forth in the last sentence of this Section 6.1(c)(i), 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 in the following order and priority:

(A) First, to each Partner having a deficit balance in its Adjusted Capital Account, in the proportion that such deficit balance bears to the total deficit balances in the Adjusted Capital Accounts of all Partners, until each such Partner has been allocated Net Termination Gain equal to any such deficit balance in its Adjusted Capital Account;

(B) Second, to all Unitholders holding Common Units, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price, (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) is hereinafter referred to 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 into a Common Unit, to all Unitholders holding Subordinated Units, Pro Rata, 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 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 after the Closing Date or the date of the most recent IDR Reset Election, if any, 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) for such period (the sum of (1), (2), (3) and (4) is hereinafter referred to as the "**First Liquidation Target Amount**");

(E) Fifth, (x) 15% to the holders of the Incentive Distribution Rights, Pro Rata, and (y) 85% to all Unitholders, Pro Rata, 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 after the Closing Date or the date of the most recent IDR Reset Election, if any, 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) for such period (the sum of (1) and (2) is hereinafter referred to as the "**Second Liquidation Target Amount**");

(F) Sixth, (x) 25% to the holders of the Incentive Distribution Rights, Pro Rata, and (y) 75% to all Unitholders, Pro Rata, 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 after the Closing Date or the date of the most recent IDR Reset Election, if any, 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) for such period; and

(G) Finally, (x) 50% to the holders of the Incentive Distribution Rights, Pro Rata, and (y) 50% to all Unitholders, Pro Rata.

Notwithstanding the foregoing provisions in this Section 6.1(c)(i), the General Partner may adjust the amount of any Net Termination Gain arising in connection with a Revaluation Event that is allocated to the holders of Incentive Distribution Rights in a manner that will result (i) in the Capital Account for each Common Unit that is Outstanding prior to such Revaluation Event being equal to the Event Issue Value and (ii) to the greatest extent possible, the Capital Account with respect to the Incentive Distribution Rights that are Outstanding prior to such Revaluation Event being equal to the amount of Net Termination Gain that would be allocated to the holders of the Incentive Distribution Rights pursuant to this Section 6.1(c)(i) if the Capital Accounts with respect to all Partnership Interests that were Outstanding immediately prior to such Revaluation Event and the Carrying Value of each Partnership property were equal to zero.



(ii) Except as otherwise provided by Section 6.1(c)(iii) or Section 6.1(c)(iv), 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, to all Unitholders holding Subordinated Units, Pro Rata, until the Adjusted Capital Account in respect of each Subordinated Unit then Outstanding has been reduced to zero;

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

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

(iii) Net Termination Loss deemed recognized pursuant to clause (b) of the definition of Net Termination Loss as a result of a Revaluation Event prior to the conversion of the last Outstanding Subordinated Unit and prior to the Liquidation Date shall be allocated:

(A) First, to the Unitholders, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding equals the Event Issue Value; *provided* 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);

(B) Second, to all Unitholders holding Subordinated Units, Pro Rata; *provided, however*, that Net Termination Loss shall not be allocated pursuant to this Section 6.1(c)(iii)(B) 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

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

(iv) If (A) a Net Termination Loss has been allocated pursuant to Section 6.1(c)(iii), (B) a Net Termination Gain or Net Termination Loss subsequently occurs (other than as a result of a Revaluation Event) prior to the conversion of the last Outstanding Subordinated Unit and (C) after tentatively making all allocations of such Net Termination Gain or Net Termination Loss provided for in Section 6.1(c)(i) or Section 6.1(c)(ii), as applicable, the Capital Account in respect of each Common Unit does not equal the amount such Capital Account would have been if Section 6.1(c)(iii) had not been part of this Agreement and 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, then items of income, gain, loss and deduction included in such Net Termination Gain or Net Termination Loss, as applicable, shall be specially allocated to the General Partner and all Unitholders in a manner that will, to the maximum extent possible, cause the Capital Account in respect of each Common Unit to equal the amount

such Capital Account would have been if all 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.

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

(i) **Partnership Minimum Gain Chargeback.** Notwithstanding any other provision of this Section 6.1, if there is a net decrease in Partnership Minimum Gain during any Partnership taxable period, each Partner shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of this Section 6.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(d) with respect to such taxable period (other than an allocation pursuant to 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 with respect to a taxable period exceeds the amount of cash or the Net Agreed Value of property distributed with respect to another Unit with respect to the same taxable period (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 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.

(B) After the application of Section 6.1(d)(iii)(A), all or any portion of the remaining items of Partnership gross income or gain for the taxable period, if any, shall be allocated 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 IPO Closing Date to a date 45 days after the end of the current taxable period.

(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 Allocation.** 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, such Partner Nonrecourse Deductions attributable thereto shall be allocated between or among such Partners in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) **Nonrecourse Liabilities.** For purposes of Treasury Regulation Section 1.752-3(a)(3), the Partners agree that Nonrecourse Liabilities of the Partnership in excess of the sum of (A) the amount of Partnership Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Partners 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) of the Code (including pursuant to Treasury Regulation section 1.734-2(b)(1)) 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 (A) the number of Final Subordinated Units held by such Partner and (B) the Per Unit Capital Amount for a Common Unit. The purpose of this allocation is to establish uniformity between the Capital Accounts underlying Final Subordinated Units and the Capital Accounts underlying Common Units held by Persons other than the General Partner and its Affiliates immediately prior to the conversion of such Final Subordinated Units into Common Units. This allocation method for establishing such economic uniformity will 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 (A) the Aggregate Quantity of IDR Reset Common Units and (B) the Per Unit Capital Amount for an IPO Common Unit.

(C) With respect to any taxable period during which an IDR Reset 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 Unit to an amount equal to the Per Unit Capital Amount for an IPO 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 (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations of income, gain, loss, deduction, Unrealized Gain or Unrealized Loss; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.1(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) Equalization of Capital Accounts With Respect to Privately Placed Units. Net Termination Gain or Net Termination Loss deemed recognized as a result of a Revaluation Event shall first be allocated to the (A) Unitholders holding Privately Placed Units or (B) Unitholders holding Common Units, Pro Rata, as applicable, to the extent necessary to cause the Capital Account in respect of each Privately Placed Unit then Outstanding to equal the Capital Account in respect of each Common Unit (other than Privately Placed Units) then Outstanding.

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

(A) The General Partner shall allocate Additional Book Basis Derivative Items consisting of depreciation, amortization, depletion or any other form of cost recovery (other than Additional Book Basis Derivative Items included in Net Termination Gain or Net Termination Loss) with respect to any Adjusted Property to the Unitholders, Pro Rata, and the holders of Incentive Distribution Rights, all in the same proportion as the Net Termination Gain or Net Termination Loss resulting from the Revaluation Event that gave rise to such

Additional Book Basis Derivative Items was allocated to them pursuant to Section 6.1(c).

(B) If a sale or other taxable disposition of an Adjusted Property, including, for this purpose, inventory ("*Disposed of Adjusted Property*") occurs other than in connection with an event giving rise to Net Termination Gain or Net Termination Loss, the General Partner shall allocate (1) items of gross income and gain (aa) away from the holders of Incentive Distribution Rights and (bb) to the Unitholders, or (2) 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 with respect to the Disposed of Adjusted Property (determined in accordance with the last sentence of the definition of Additional Book Basis Derivative Items) treated as having been allocated to the Unitholders pursuant to this Section 6.1(d)(xiii)(B) exceed their Share of Additional Book Basis Derivative Items with respect to such Disposed of Adjusted Property. For purposes of this Section 6.1(d)(xiii)(B), the Unitholders shall be treated as having been 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 the Partnership Agreement (e.g., Additional Book Basis Derivative Items taken into account in computing cost of goods sold would reduce the amount of book income otherwise available for allocation among the Partners). Any allocation made pursuant to this Section 6.1(d)(xiii)(B) shall be made after all of the other Agreed Allocations have been made as if this Section 6.1(d)(xiii) 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) Net Termination Loss in an amount equal to the lesser of (1) such Net Termination Loss and (2) the Aggregate Remaining Net Positive Adjustments shall be allocated in such a manner, as determined by the General Partner, that to the extent possible, the Capital Account balances of the Partners will equal the amount they would have been had no prior Book-Up Events occurred, and any remaining Net Termination Loss shall be allocated pursuant to Section 6.1(c) hereof. In allocating Net Termination Loss pursuant to this Section 6.1(d)(xiii)(C), the General Partner shall attempt, to the extent possible, to cause the Capital Accounts of the Unitholders, on the one hand, and holders of the Incentive Distribution Rights, on the other hand, to equal the amount they would equal if (i) the Carrying Values of the Partnership's property had not been previously adjusted in connection with any prior Book-Up Events, (ii) Unrealized Gain and Unrealized Loss (or, in the case of a liquidation, actual gain or loss) with respect to such Partnership Property were determined with respect to such unadjusted Carrying Values, and (iii) any resulting Net Termination Gain had been allocated pursuant to Section 6.1(c)(i) (including, for the avoidance of doubt, taking into account the provisions set forth in the last sentence of Section 6.1(c)(i)).

(D) For purposes of this Section 6.1(d)(xiii), 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. In making the allocations required under this Section 6.1(d)(xiii), the General Partner may apply whatever conventions or other methodology it determines will satisfy the purpose of this Section 6.1(d)(xiii). 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 6.1(d)(xiii)(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)(xiii).

(E) Notwithstanding any other provision of this Section 6.1(d)(xiii), the determinations of Additional Book Basis (and items derived therefrom) and Net Positive Adjustments (and items derived therefrom) shall be made without regard to any Book-Up Event or Book-Down Event that occurred on or prior to the IPO Closing Date.

(xiv) Special Curative Allocation in Event of Liquidation Prior to Conversion of the Last Outstanding Subordinated Unit. Notwithstanding any other provision of this Section 6.1 (other than the Required Allocations), if (A) the Liquidation Date occurs prior to the conversion of the last Outstanding Subordinated Unit and (B) after having made all other allocations provided for in this Section 6.1 for the taxable period in which the Liquidation Date occurs, the Capital Account in respect of each Common Unit does not equal the amount such Capital Account would have been if Section 6.1(c)(iii) and Section 6.1(c)(iv) had not been part of this Agreement and 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, then items of income, gain, loss and deduction for such taxable period shall be reallocated among the General Partner and all Unitholders in a 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. For the avoidance of doubt, the reallocation of items set forth in the immediately preceding sentence provides that, to the extent necessary to achieve the Capital Account balances described above, (x) items of income and gain that would otherwise be included in Net Income or Net Loss, as the case may be, for the taxable period in which the Liquidation Date occurs, shall be reallocated from the Unitholders holding Subordinated Units to Unitholders holding Common Units and (y) items of deduction and loss that would otherwise be included in Net Income or Net Loss, as the case may be, for the taxable period in which the Liquidation Date occurs shall be reallocated from Unitholders holding Common Units to the Unitholders holding Subordinated Units. In the event that (i) the Liquidation Date occurs on or before the



date (not including any extension of time prescribed by law for the filing of the Partnership's federal income tax return for the taxable period immediately prior to the taxable period in which the Liquidation Date occurs and (ii) the reallocation of items for the taxable period in which the Liquidation Date occurs as set forth above in this Section 6.1(d)(xiv) fails to achieve the Capital Account balances described above, items of income, gain, loss and deduction that would otherwise be included in the Net Income or Net Loss, as the case may be, for such prior taxable period shall be reallocated among all Unitholders in a manner that will, to the maximum extent possible and after taking into account all other allocations made pursuant to this Section 6.1(d)(xiv), cause 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 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 shall, for federal income tax purposes, 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 first Business Day of each month; *provided, however*, that gain or loss on a sale or other disposition of any assets of the Partnership or any other extraordinary item of income, gain, loss or deduction as determined by the General Partner, shall be allocated to the Partners as of the opening of the first Business Day of the month in which such item 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, agent or representative in any case in which the nominee, agent or representative 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.

(h) If, as a result of an exercise of a Noncompensatory Option, a Capital Account reallocation is required under Treasury Regulation Section 1.704-1(b)(2)(iv)(s)(3), the General Partner shall make corrective allocations pursuant to Treasury Regulation Section 1.704-1(b)(4)(x).

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

(a) Within 45 days following the end of each Quarter commencing with the Quarter ending on June 30, 2014, 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. The Record Date for the first distribution of Available Cash shall not be prior to the final closing of the Over-Allotment Option. All amounts of Available Cash distributed by the Partnership on any date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash theretofore distributed by the Partnership to the Partners pursuant to Section 6.4 equals the Operating Surplus from the IPO Closing Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Partnership on such date shall, except as otherwise provided in Section 6.5, be deemed to be "*Capital Surplus*." All distributions required

to be made under this Agreement shall be made subject to Sections 17-607 and 17-804 of the Delaware Act.

(b) Notwithstanding Section 6.3(a) (but subject to the last sentence of Section 6.3(a)), in the event of the dissolution and liquidation of the Partnership, all cash 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, as determined appropriate under the circumstances by the General Partner.

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

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

(a) *During the Subordination Period.* Available Cash with respect to any Quarter within the Subordination Period that is deemed to be Operating Surplus pursuant to the provisions of Section 6.3 or 6.5 shall be distributed as follows, except as otherwise required in respect of additional Partnership Interests issued pursuant to Section 5.6(b):

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

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

(iii) Third, to the Unitholders holding Subordinated Units, Pro Rata, 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 all Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(v) Fifth, (A) 15% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 85% to all Unitholders, Pro Rata, 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) 25% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 75% to all Unitholders, Pro Rata, 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) 50% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 50% to all Unitholders, Pro Rata;

*provided, however*, if the Minimum Quarterly Distribution, the First Target Distribution, the Second Target Distribution and the Third Target Distribution have been reduced to zero pursuant to the second sentence of Section 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 the Subordination Period.* Available Cash with respect to any Quarter after the Subordination Period (which Quarter may include the date on which the Subordination Period ends) that is deemed to be Operating Surplus pursuant to the provisions of Section 6.3 or Section 6.5 shall be distributed as follows, except as otherwise required in respect of additional Partnership Interests issued pursuant to Section 5.6(b):

(i) First, to all Unitholders, Pro Rata, 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, to all Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(iii) Third, (A) 15% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 85% to all Unitholders, Pro Rata, 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) 25% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 75% to all Unitholders, Pro Rata, 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) 50% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 50% to all Unitholders, Pro Rata;

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

**Section 6.5 *Distributions of Available Cash from Capital Surplus.*** Available Cash that is deemed to be Capital Surplus pursuant to the provisions of Section 6.3(a) shall be distributed, unless the provisions of Section 6.3 require otherwise, to the Unitholders, Pro Rata, until the Minimum Quarterly Distribution has been reduced to zero pursuant to the second sentence of Section 6.6(a). Available Cash that is deemed to be Capital Surplus shall then be distributed to all Unitholders holding Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage. Thereafter, all Available Cash shall be distributed as if it were Operating Surplus and shall be distributed in accordance with Section 6.4.

**Section 6.6 *Adjustment of Minimum Quarterly Distribution and Target Distribution Levels.***

(a) The Minimum Quarterly Distribution, 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 accordance with Section 5.9. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the then applicable Minimum Quarterly Distribution and Target Distributions shall be adjusted proportionately downward to equal the product obtained by multiplying the otherwise applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, as the case may be, by a fraction of which the numerator is the Unrecovered Initial Unit Price of the Common Units immediately after giving effect to such distribution and of which the denominator is the Unrecovered Initial Unit Price of the Common Units immediately prior to giving effect to such distribution.

(b) The Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, shall also be subject to adjustment pursuant to Section 5.11 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 Unitholders holding a Subordinated Unit shall possess all of the rights and obligations of a Unitholder holding Common Units hereunder with respect to such converted 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 converted 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 Subordinated Unit that has converted into a Common 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).

(c) The holder of a Common Unit that has resulted from 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 represented by Certificates) 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 IPO 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) and Section 6.1(d)(x); *provided, however*, that no such steps may be taken that would have a material adverse effect on the Unitholders holding Common Units.

**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 (1) shall (x) possess the rights and obligations provided in this Agreement with respect to a Limited Partner pursuant to Article III and Article VII and (y) have a Capital Account as a Partner pursuant to Section 5.5 and all other provisions related thereto and (2) shall not (x) be entitled to vote on any matters requiring the approval or vote of the holders of Outstanding Units, except as provided by law, (y) be entitled to any distributions other than as provided in Sections 6.4(a)(v), (vi) and (vii), Sections 6.4(b)(iii), (iv) and (v), and Section 12.4 or (z) be allocated items of income, gain, loss or deduction other than as specified in this Article VI; *provided, however*, that, for the avoidance of doubt, the foregoing shall not preclude the Partnership from making any other payments or distributions in connection with other actions permitted by this Agreement.

(b) A Unitholder shall not be permitted to transfer an IDR Reset Common Unit (other than a transfer to an Affiliate) if the remaining balance in the transferring Unitholder's Capital Account with respect to the retained IDR Reset Common Units would be negative after giving effect to the allocation under Section 5.5(c)(iii).

(c) A holder of 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 such 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 IPO Common Unit. In connection with the condition imposed by this Section 6.8(c), 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.

**Section 6.9 Entity-Level Taxation.** If legislation is enacted or the official interpretation of existing legislation is modified by a governmental authority, which after giving effect to such enactment or modification, results in a Group Member becoming 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 shall reduce the Minimum Quarterly Distribution and the Target Distributions by the amount of income or withholding taxes that are payable by reason of any such new legislation or interpretation (the "*Incremental Income Taxes*") in the manner provided in this Section 6.9. If in accordance with the foregoing the General Partner reduces the Minimum Quarterly Distribution and the Target Distributions for any Quarter with respect to 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 such Incremental Income Taxes; *provided* that any difference between such estimate and the actual liability for Incremental Income Taxes 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 Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, 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 power 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 in its capacity as such shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or 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 and 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 into or exchangeable for Partnership Interests, and the incurring of any other obligations;

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

(iii) the acquisition, disposition, 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 and 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 the financing of the conduct of the operations of the Partnership Group; subject to Section 7.6(a), the lending of funds to other Persons (including other Group Members); the repayment or guarantee of obligations of any Group Member; and 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 cash held by the Partnership;

(vii) the selection and dismissal of employees (including employees having titles such as "president," "vice president," "secretary" and "treasurer") and agents, internal and outside attorneys, accountants, consultants and contractors 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 Indemnitees;

(ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any further limited or general partnerships, joint ventures, corporations, limited liability companies or other 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 and otherwise engaging in the conduct of litigation, arbitration or mediation and the incurring of legal expense and the settlement of claims and litigation;

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Limited Partner Interests from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 4.8);

(xiii) the purchase, sale or other acquisition or disposition of Partnership Interests, or the issuance of Derivative Partnership Interests;

(xiv) the undertaking of any action in connection with the Partnership's participation in the management of 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 hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement and the Group Member Agreement of each other Group Member, the Underwriting 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 thereof entered into after the date such Person becomes bound by the provisions of this Agreement); (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 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 or any other obligation of any type whatsoever 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 3.3(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 to Sell Assets of the Partnership Group.*** 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 without the approval of holders of a Unit Majority; *provided, however*, that this provision shall not preclude or limit the General Partner's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Partnership 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 payments it makes on behalf of the Partnership Group for salary, bonus, incentive compensation and other amounts paid to any Person who is an employee of the General Partner that manages the business and affairs of the Partnership Group, and (ii) all other overhead and general and administrative expenses allocable to the Partnership Group that are incurred by the General Partner in connection with the General Partner's management of the Partnership Group's business and affairs (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to 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. This provision does not affect the ability of the General Partner and its Affiliates to enter into an agreement to provide services to any Group Member for a fee or otherwise than for cost.

(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 employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Partnership Interests or options to purchase or rights, warrants or appreciation rights or phantom or tracking interests relating to Partnership Interests), or cause the Partnership to issue Partnership Interests or Derivative Partnership Interests in connection with, or pursuant to, any employee benefit plan, employee program or employee practice maintained or sponsored by the General Partner or any of its Affiliates in each case for the benefit of employees 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 Derivative Partnership Interests that the General Partner or such Affiliates are obligated to provide to any employees, consultants and directors pursuant to any such employee benefit plans, employee programs or employee practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliates of Partnership Interests or Derivative Partnership Interests purchased by the General Partner or such Affiliates from the Partnership to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.4(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices adopted by the General Partner as permitted by this Section 7.4(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner's General Partner Interest pursuant to Section 4.6.

(d) The General Partner and its Affiliates may charge any member of the Partnership Group a management fee to the extent necessary to allow the Partnership Group to reduce the amount of any state franchise or income tax or any tax based upon the revenues or gross margin of any member of the Partnership Group if the tax benefit produced by the payment of such management fee or fees exceeds the amount of such fee or fees.

#### 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) subject to the limitations contained in the Omnibus Agreement, the performance of its obligations under the Omnibus Agreement.

(b) Except as provided in the Omnibus Agreement or any Group Member Agreement, 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; *provided* such Unrestricted Person does not engage in such business or activity using confidential or proprietary information provided by or on behalf of the Partnership to such Unrestricted Person. None of any Group Member, 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 Sections 7.5(a) and (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 duty otherwise existing at law, in equity or otherwise, of the General Partner or any other Unrestricted Person for the Unrestricted Persons (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) the Unrestricted Persons shall have no 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). Except as provided in the Omnibus Agreement or any Group Member Agreement, 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 the Partnership, shall have any duty to communicate or offer such opportunity to the Partnership, and such Unrestricted Person (including the General Partner) shall not be liable to the Partnership, to any Limited Partner or any other Person bound by this Agreement for breach of any duty otherwise existing at law, in equity or otherwise, by reason of the fact that such Unrestricted Person (including the General Partner) pursues or acquires for itself, directs such opportunity to another Person or does not communicate such opportunity or information to the Partnership, provided such Unrestricted Person does not engage in such business or activity 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 or prior to the date hereof and, except as otherwise provided in this Agreement, shall be entitled to exercise, at their option, all rights relating to all Units and/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.

(e) Notwithstanding anything to the contrary in this Agreement, to the extent that the provisions of this Agreement purport or are interpreted to have the effect of restricting or eliminating any duties (including fiduciary duties) otherwise existing at law, in equity or otherwise, owed by the General Partner or other Person to the Partnership, its Limited Partners or

any other Person bound by this Agreement or to constitute a waiver or consent by the Limited Partners or any other Person bound by this Agreement to any such restriction, such provisions shall be deemed to have been approved by the Partners and every other Person bound by this Agreement.

**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 lend to any Group Member, and any Group Member may borrow from the General Partner or any of its Affiliates, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; *provided, however*, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arm's-length basis (without reference to the lending party's financial abilities or guarantees), 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.

(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. 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 or any other obligation of any type whatsoever, expressed or implied, 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 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 acting (or omitting or refraining to act) in such capacity on behalf of or for the benefit of the Partnership; *provided*, 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; *provided, further*, no indemnification pursuant to this Section 7.7 shall be available to any Indemnitee (other than a Group Member) with respect to any such Affiliate's obligation pursuant to the Transaction Documents. 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 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 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 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 7.7.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee may be entitled under this Agreement, any other agreement, pursuant to any vote of the holders of Outstanding Limited Partner Interests, 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 (including any capacity under the Underwriting Agreement or Master Formation Agreement), and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

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

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

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

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

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

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

(j) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND SUBJECT TO SECTION 7.7(a), THE PROVISIONS OF THE INDEMNIFICATION PROVIDED IN THIS SECTION 7.7 ARE INTENDED BY THE PARTNERS TO APPLY EVEN IF SUCH PROVISIONS HAVE THE EFFECT OF EXCULPATING THE INDEMNITEE FROM LEGAL RESPONSIBILITY FOR THE CONSEQUENCES OF SUCH PERSON'S NEGLIGENCE, FAULT OR OTHER CONDUCT.

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

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Limited Partners, or any other Persons who have acquired interests in the Partnership Interests, 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) 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.

**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 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, of any Group Member Agreement, of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action in respect of 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) determined by the Board of Directors of the General Partner to be on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iv) determined by the Board of Directors of the General Partner to be 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 such conflict of interest to seek Special Approval or Unitholder approval of such resolution, and the General Partner may also adopt a resolution or course of action that has not received Special Approval or Unitholder approval. Unless otherwise expressly provided in this Agreement or any Group Member Agreement, whenever the General Partner makes a determination to refer any potential conflict of interest for Special Approval, seek Unitholder Approval or adopt a resolution or course of action that has not received Special Approval or Unitholder Approval, then the General Partner shall be entitled, to the fullest extent permitted by law, to make such determination or to take or decline to take such other action free of any duty or obligation whatsoever to the Partnership or any Limited Partner, and the General Partner shall not, to the fullest extent permitted by law, 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, and the General Partner in making such determination or taking or declining to take such other action shall be permitted to do so in its sole and absolute discretion. If Special Approval is sought, then it shall be presumed that, in making its decision, the Conflicts Committee acted in good faith, and if the Board of Directors of the General Partner determines that the resolution 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 or that a director satisfies the eligibility requirements to be a member of the Conflicts Committee, then it shall be presumed that, in making its decision, the Board of Directors of the General Partner acted in good faith. 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 any action by the



Conflicts Committee with respect to any matter referred to the Conflicts Committee for Special Approval by the General Partner, any action by the Board of Directors of the General Partner in determining whether the resolution 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 or whether a director satisfies the eligibility requirements to be a member of the Conflicts Committee, the Person bringing or prosecuting such proceeding shall have the burden of overcoming the presumption that the Conflicts Committee or the Board of Directors of the General Partner, as applicable, acted in good faith; in all cases subject to the provisions for conclusive determination in Section 7.9(b). Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or equity, the existence of the conflicts of interest described in the Registration Statement are hereby approved by all Partners and shall not constitute a breach of this Agreement or any such duty.

(b) Whenever the General Partner or 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 causes the General Partner to do so, in its 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, then, unless another express standard is provided for in this Agreement, the General Partner, the Board of Directors or such committee or such Affiliates causing the General Partner to do so, shall make such determination or take or decline to take such other action 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, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. A determination or other action or inaction will conclusively be deemed to be in "good faith" for all purposes of this Agreement, if the Person or Persons making such determination or taking or declining to take such other action subjectively believe that the determination or other action or inaction is in the best interests of the Partnership Group; *provided*, that if the Board of Directors of the General Partner is making a determination or taking or declining to take an action pursuant to clause (iii) or clause (iv) of the first sentence of Section 7.9(a), then in lieu thereof, such determination or other action or inaction will conclusively be deemed to be in "good faith" for all purposes of this Agreement if the members of the Board of Directors of the General Partner making such determination or taking or declining to take such other action subjectively believe that the determination or other action or inaction meets the standard set forth in clause (iii) or clause (iv) of the first sentence of Section 7.9(a), as applicable; *provided, further*, that if the Board of Directors of the General Partner is making a determination that a director satisfies the eligibility requirements to be a member of a Conflicts Committee, then in lieu thereof, such determination will conclusively be deemed to be in "good faith" for all purposes of this Agreement if the members of the Board of Directors of the General Partner making such determination subjectively believe that the director satisfies the eligibility requirements to be a member of the Conflicts Committee, as the case may be.

(c) Whenever the General Partner makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its individual capacity as opposed to in its capacity as the general partner of the Partnership, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then the General Partner, or such Affiliates causing it to do so, are entitled, to the fullest extent permitted

by law, to make such determination or to take or decline to take such other action free of any duty or obligation whatsoever to the Partnership or any Limited Partner, and the General Partner, or such Affiliates causing it to do so, shall not, to the fullest extent permitted by law, 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, and the Person or Persons making such determination or taking or declining to take such other action shall be permitted to do so in their sole and absolute discretion. By way of illustration and not of limitation, whenever the phrase, "the General Partner at its option," or some variation of that phrase, 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, or refrains from voting or transferring its 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 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 its Affiliates 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 and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use. Any determination by the General Partner or any of its Affiliates to enter into such contracts shall be at its option.

(f) Except as expressly set forth in this Agreement or required by the Delaware Act, neither the General Partner nor any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Partnership or any Limited Partner and the provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities, including fiduciary duties, of the General Partner or any other Indemnitee otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of the General Partner or such other Indemnitee.

(g) The Unitholders hereby authorize the General Partner, on behalf of the Partnership as a general partner or managing member of a Group Member, to approve actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the General Partner pursuant to this Section 7.9.

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

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

(b) The General Partner and any other Indemnitee 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 such Persons as to matters that the General Partner or such Indemnitee, respectively, 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.

**Section 7.11 *Purchase or Sale of Partnership Interests.*** The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Interests or Derivative 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 Articles IV and X.

**Section 7.12 *Reliance by Third Parties.*** Notwithstanding anything to the contrary in this Agreement, any Person (other than the General Partner and its Affiliates) 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 (other than the General Partner and its Affiliates) 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 7.13 Pension Plan Liabilities.** Any acceptance or assumption of assets or liabilities from any pension plan as defined in Section 3(2) of ERISA, whether or not subject to ERISA, that is sponsored or maintained by either Sponsor Party or its Affiliates shall be approved by Special Approval. To the fullest extent permitted by law, each Sponsor Party shall indemnify and hold harmless the Partnership and any other Group Member from and against any and all losses, damages, liabilities, claims, demands, causes of action, judgments, settlements, fines, penalties, costs and expenses (including court costs and reasonable attorneys' and experts' fees) of any and every kind or character, known or unknown, fixed or contingent, arising from or related to any acceptance or assumption by any Group Member of assets or liabilities from any pension plan, as defined in Section 3(2) of ERISA, whether or not subject to ERISA, maintained by such Sponsor Party or its Affiliates; *provided, however*, that notwithstanding anything herein to the contrary, in no event shall a Sponsor Party's indemnification obligations cover or include consequential, indirect, incidental, punitive, exemplary, special or similar damages or lost profits suffered by the Partnership or any other Group Member.

## **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 the Register and all other books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 3.3(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the Register, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device; *provided*, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP. 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.

**Section 8.2 Fiscal Year.** The fiscal year of the Partnership shall be a fiscal year ending December 31.

**Section 8.3 Reports.**

(a) Whether or not the Partnership is subject to the requirement to file reports with the Commission, as soon as practicable, but in no event later than 105 days after the close of each fiscal year of the Partnership (or such shorter period as required by the Commission), the General Partner shall cause to be mailed or made available, by any reasonable means (including posting on or accessible through the Partnership's or the Commission's website) to each Record Holder of a Unit 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, and such other information as may be required by applicable law, regulation or rule of the Commission or 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.

(b) Whether or not the Partnership is subject to the requirement to file reports with the Commission, as soon as practicable, but in no event later than 50 days after the close of each Quarter (or such shorter period as required by the Commission) except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available, by any reasonable means (including posting on or accessible through the Partnership's or the Commission's website) to each Record Holder of a Unit, as of a date selected by the General Partner, a report containing unaudited financial statements of the Partnership for such Quarter and year-to-date period, presented in accordance with U.S. GAAP, including a balance sheet and statements of operations, Partnership equity and cash flows, and such other information as may be required by applicable law, regulation or rule of the Commission or 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.

## 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 year 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 and state 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 federal income tax purposes.

#### Section 9.2 *Tax Elections.*

(a) The Partnership shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the best interests of the Limited Partners. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Limited Partner Interest will be deemed to be the lowest quoted closing price of the Limited Partner Interests on any National Securities Exchange on which such Limited Partner Interests are 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 Section 6231(a)(7) of the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

**Section 9.4 Withholding.** Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that 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, or established under any foreign law. 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 or Section 12.4(c) in the amount of such withholding from such Partner.

## 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 Initial Limited Partners as described in Article V, such Persons have been or shall be, by acceptance of such Partnership Interests, and upon becoming the Record Holders of such Partnership Interests, admitted to the Partnership as Limited Partners in respect of the Common Units, Subordinated Units and Incentive Distribution Rights issued to them and be bound by this Agreement, all with or without execution of this Agreement by such Persons. Upon the issuance by the Partnership of Common Units to the IPO Underwriters in connection with the Initial Public Offering as described in Article V, such Persons shall, by acceptance of such Partnership Interests, and upon becoming the Record Holders of such Partnership Interests, be admitted to the Partnership as Limited Partners in respect of the Common Units issued to them and be bound by this Agreement, all with or without execution of this Agreement by such Persons.

(b) By acceptance of any Limited Partner Interests transferred in accordance with Article IV or acceptance of any Limited Partner Interests issued pursuant to Article V or pursuant to a merger, consolidation or conversion pursuant to Article XIV, and except as

provided in Section 4.9, each transferee of, or other such Person acquiring, a Limited Partner Interest (including any nominee, agent or representative acquiring such Limited Partner Interests for the account of another Person or Group, which nominee, agent or representative shall be subject to Section 10.1(c) below) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred or issued to such Person when such Person becomes the Record Holder of the Limited Partner Interests so transferred or acquired, (ii) shall become bound, and shall be deemed to have agreed to be bound, by the terms of this Agreement, (iii) shall be deemed to represent that the transferee or acquirer has the capacity, power and authority to enter into this Agreement and (iv) shall be deemed to make any consents, acknowledgements or 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 Limited Partner 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 becoming 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) With respect to Units that are held for a Person's account by another Person that is the Record Holder (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), such Record Holder shall, in exercising the rights of a Limited Partner in respect of such Units, including the right to vote, on any matter, and unless the arrangement between such Persons provides otherwise, take all action as a Limited Partner by virtue of being the Record Holder of such Units in accordance with the direction of the Person who is the beneficial owner of such Units, and the Partnership shall be entitled to assume such Record Holder is so acting without further inquiry. The provisions of this Section 10.1(c) are subject to the provisions of Section 4.3.

(d) The name and mailing address of each Record Holder shall be listed in the Register. The General Partner shall update the Register from time to time as necessary to reflect accurately the information therein (or shall cause the Transfer Agent to do so, as applicable).

(e) Any transfer of a Limited Partner Interest shall not entitle the transferee to share in the 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).

**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 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 Register and any other 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) if 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) if the General Partner is a partnership or a limited liability company, the dissolution and commencement of winding up of the General Partner; (C) if the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) if the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise upon the termination of the General Partner.



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

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on the IPO Closing Date and ending at 12:00 midnight, Central Time, on June 30, 2024, 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 cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed); (ii) at any time after 12:00 midnight, Central Time, on June 30, 2024, 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 pursuant to Section 11.1(a)(i), the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. 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 75% 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 class and Unitholders holding a majority of the outstanding Subordinated Units (if any Subordinated Units are then Outstanding) voting as a 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 (including, in the case of EH II, the EH Management Units) 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 business of the Partnership is continued 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 business of the Partnership is continued, prior to the date the business of 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 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 (or its transferee) shall become a Limited Partner and its Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 11.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing General Partner (or its transferee) as to all debts and liabilities of the Partnership arising on or after the date on which the Departing General Partner (or its transferee) becomes a Limited Partner. For purposes of this Agreement, conversion of the Combined Interest of the Departing General Partner to Common Units will be characterized as if the Departing General Partner (or its transferee) contributed its Combined Interest to the Partnership in exchange for the newly issued Common Units.

(c) If a successor General Partner is elected in accordance with the terms of Section 11.1 or 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 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, (i) the Subordination Period will end and all Outstanding Subordinated Units will immediately and automatically convert into Common Units

on a one-for-one basis, (ii) all Cumulative Common Unit Arrearages on the Common Units will be extinguished and (iii) 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 shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

(a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and a Withdrawal Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.2;

(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) at any time there are 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 (a) dissolution of the Partnership following an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or (iii) and the failure of the Partners to select a successor to such Departing General Partner pursuant to Section 11.1 or Section 11.2, then, to the maximum extent permitted by law, within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a Unit Majority may elect to continue the business of the Partnership on the same terms and conditions set forth in this Agreement by appointing 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 of any Limited Partner under the Delaware Act 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 federal income tax purposes upon the exercise of such right to continue (to the extent not already so treated or taxed).

**Section 12.3 Liquidator.** Upon dissolution of the Partnership in accordance with the provisions of Article XII, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.3) 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 to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to discharge liabilities as provided in Section 12.4(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 liquidation 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 assets of the Partnership.

**Section 12.7 *Waiver of Partition.*** To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

Section 12.8 *Capital Account Restoration.* No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

## ARTICLE XIII

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

Section 13.1 *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 office of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that 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, (ii) to be necessary or appropriate (A) to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) to facilitate the trading of the Units (including the division of any class or classes of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are or will be listed 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 the Master Formation Agreement or is otherwise contemplated by this Agreement or the Master Formation Agreement;

(e) a change in the fiscal year or taxable year 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 year of the Partnership including a change in the definition of "Quarter" and the dates on which distributions are to be made by the Partnership;

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

(g) an amendment that the General Partner determines to be necessary or appropriate in connection with the authorization or issuance of any class or series of Partnership Interests pursuant to Section 5.6;

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

(i) an amendment effected, necessitated or contemplated by a Merger Agreement or Plan of Conversion 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;

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

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

**Section 13.2 *Amendment Procedures.*** Amendments to this Agreement may be proposed only by the General Partner. 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 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 this Agreement, 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, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity, and the General Partner in determining whether to propose or approve any amendment to this Agreement shall be permitted to do so in its sole and absolute discretion. An amendment to this Agreement shall be effective upon its approval by the General Partner and, except as otherwise provided by Section 13.1 or Section 13.3, the holders of a Unit Majority, unless a greater or different percentage of Outstanding Units 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 amendments. The General Partner shall be



deemed to have notified all Record Holders as required by this Section 13.2 if it has posted or made accessible such amendment through the Partnership's or the Commission's website.

**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) required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of (i) in the case of any provision of this Agreement other than Section 11.2 or Section 13.4, reducing such percentage or (ii) in the case of Section 11.2 or Section 13.4, increasing such percentages, unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute (x) in the case of a reduction as described in subclause (a)(i) hereof, not less than the voting requirement sought to be reduced, (y) in the case of an increase in the percentage in Section 11.2, not less than 90% of the Outstanding Units, or (z) in the case of an increase in the percentage in Section 13.4, not less than a majority of the Outstanding Units.

(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 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 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.

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

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Units.

**Section 13.4 *Special Meetings.*** All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited

Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the specific purposes for which the special meeting is to be called and the class or classes of Units for which the meeting is proposed. No business may be brought by any Limited Partner before such special meeting except the business listed in the related request. 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. 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 be permitted to 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. If any such vote were to take place, it shall be deemed null and void to the extent necessary so as not to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

**Section 13.5 *Notice of a Meeting.*** Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1.

**Section 13.6 *Record Date.*** For purposes of determining the Limited Partners who are Record Holders of the class or classes of Limited Partner Interests 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 shall 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 such Limited Partners are requested in writing by the General Partner to give such approvals.

**Section 13.7 *Postponement and Adjournment.*** Prior to the date upon which any meeting of Limited Partners is to be held, the General Partner may postpone such meeting one or more times for any reason by giving notice to each Limited Partner entitled to vote at the meeting so postponed of the place, date and hour at which such meeting would be held. Such notice shall be given not fewer than two days before the date of such meeting and otherwise in accordance with this Article XIII. When a meeting is postponed, a new Record Date need not be fixed unless the aggregate amount of such postponement shall be for more than 45 days after the original meeting date. Any meeting of Limited Partners may be adjourned by the General Partner one or more times for any reason, including the failure of a quorum to be present at the meeting with respect to any proposal or the failure of any proposal to receive sufficient votes for approval. No vote of the Limited Partners shall be required for any adjournment. A meeting of

Limited Partners may be adjourned by the General Partner as to one or more proposals regardless of whether action has been taken on other matters. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

**Section 13.8 *Waiver of Notice; Approval of Meeting.*** The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after call and notice in accordance with Sections 13.4 and 13.5, 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 of any matters submitted for consideration or to object to the failure to submit for consideration any matters required to be included in the notice of the meeting, but not so included, if such objection is expressly made at the beginning of the meeting.

**Section 13.9 *Quorum and Voting.*** The presence, in person or by proxy, of holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called (including Outstanding Units deemed owned by the General Partner and its Affiliates) shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage. At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote at such meeting shall be deemed to constitute the act of all Limited Partners, unless a different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the Limited Partners holding Outstanding Units that in the aggregate represent at least such different percentage shall be required. The Limited Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the exit of enough Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement.

**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 submission and revocation of approvals in writing.

**Section 13.11 *Action Without a Meeting.*** If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage of the Outstanding Units (including Units deemed owned by the General Partner and its Affiliates) that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed 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 approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Outstanding Units held by such Limited Partners, the Partnership shall be deemed to have failed to receive a ballot for the Outstanding Units that were not voted. If approval of the taking of any permitted action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) approvals sufficient to take the action proposed are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are first deposited with the Partnership and (c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

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

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

(b) With respect to Units that are held for a Person's account by another Person that is the Record Holder (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), such Record Holder shall, in exercising the voting rights in

respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and in accordance with the direction of, the Person who is the beneficial owner of such Units, and the Partnership shall be entitled to assume such Record Holder 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.

#### **Section 13.13 *Voting of Incentive Distribution Rights.***

(a) For so long as a majority of the Incentive Distribution Rights are held by the General Partner and its Affiliates, the holders of the Incentive Distribution Rights shall not be entitled to vote such Incentive Distribution Rights on any Partnership matter except as may otherwise be required by law, and the holders of the Incentive Distribution Rights, in their capacity as such, shall be deemed to have approved any matter approved by the General Partner.

(b) For so long as less than a majority of the Incentive Distribution Rights are held by the General Partner and its Affiliates, the Incentive Distribution Rights will be entitled to vote on all matters submitted to a vote of Unitholders, other than amendments to this Agreement and other matters that the General Partner determines do not adversely affect the holders of the Incentive Distribution Rights as a whole in any material respect. On any matter in which the holders of Incentive Distribution Rights are entitled to vote, such holders will vote together with the Subordinated Units, prior to the end of the Subordination Period, or together with the Common Units, thereafter, in either case as a single class except as otherwise required by Section 13.3(c), and such Incentive Distribution Rights shall be treated in all respects as Subordinated Units or Common Units, as applicable, 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. The relative voting power of the Incentive Distribution Rights and the Subordinated Units or Common Units, as applicable, will be set in the same proportion as cumulative cash distributions, if any, in respect of the Incentive Distribution Rights for the four consecutive Quarters prior to the record date for the vote bears to the cumulative cash distributions in respect of such class of Units for such four Quarters.

(c) Notwithstanding Section 13.13(b), in connection with any equity financing, or anticipated equity financing, by the Partnership of an Expansion Capital Expenditure, the General Partner may, without the approval of the holders of the Incentive Distribution Rights, temporarily or permanently reduce the amount of Incentive Distributions that would otherwise be distributed to such holders, *provided* that in the judgment of the General Partner, such reduction will be in the long-term best interest of the holders of the Incentive Distribution Rights.

### **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.

Section 14.2 *Procedure for Merger, Consolidation or Conversion* 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 or obligation whatsoever to the Partnership or any Limited Partner and, in declining to consent to a merger, consolidation or conversion, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any other agreement contemplated hereby or under the Act or any other law, rule or regulation or at equity, and the General Partner in determining whether to consent to any merger, consolidation or conversion of the Partnership shall be permitted to do so in its sole and absolute discretion.

(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) name and state of domicile of each of the business entities proposing to merge or consolidate;

(ii) the name and state of domicile 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 securities 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 general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or 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) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their interests, securities or rights, and (B) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust, 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, operating 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 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (*provided*, that if the effective time of the merger is to be later than the date of the filing of such certificate of merger, 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 merger and stated therein); 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 securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the converted entity;

(v) in an attachment or exhibit, the certificate of limited partnership of the Partnership;

(vi) in an attachment or exhibit, the certificate of limited partnership, 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 articles 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 articles 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 articles 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.** Except as provided in Sections 14.3 (c) or (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 and, subject to any applicable requirements of Regulation 14A pursuant to the Exchange Act or successor provision, no other disclosure regarding the proposed merger, consolidation or conversion shall be required.

(a) Except as provided in Section 14.3(d) and Section 14.3(e), the Merger Agreement or 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 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 a greater percentage of the Outstanding Units or of any class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement or the Plan of Conversion, as the case may be.

(b) 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 articles of conversion pursuant to Section 14.4, the merger, consolidation or conversion may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement or Plan of Conversion, as the case may be.

(c) 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 conversion, merger or conveyance 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 conversion, merger or conveyance, as the case may be, would not result in the loss of limited liability under the laws of the jurisdiction governing the other limited liability entity (if that jurisdiction is not Delaware) of any Limited Partner as compared to its limited liability 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 previously treated as such), (ii) the sole purpose of such conversion, merger, or conveyance 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.

(d) 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 limited liability 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 under the laws of the



jurisdiction governing the other limited liability entity (if that jurisdiction is not Delaware) as compared to its limited liability 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 previously 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 Unit outstanding immediately prior to the effective date of the merger or consolidation is to be an identical Unit 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 Incentive Distribution Rights) Outstanding immediately prior to the effective date of such merger or consolidation.

(e) Pursuant to Section 17-211(g) of the Delaware Act, an agreement of merger or consolidation approved in accordance with this Article XIV may (i) effect any amendment to this Agreement or (ii) 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 14.3 shall be effective at the effective time or date of the merger or consolidation.

Section 14.4 *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 or other filing, as applicable, shall be executed and filed with the Secretary of State of the State of Delaware or the appropriate filing office of any other jurisdiction, as applicable, in conformity with the requirements of the Delaware Act or other applicable law.

Section 14.5 *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 and is not in any way impaired because of the merger or consolidation;

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

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

(b) 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 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 prior 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 Interests that are to be converted into partnership interests, shares, evidences of ownership, or other securities in the converted 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 90% 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 at its option, 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 Business 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. Notwithstanding the foregoing, if, at any time, the General Partner and its Affiliates hold less

than 70% of the total Limited Partner Interests of any class then Outstanding then, from and after that time, the General Partner's right set forth in this Section 15.1(a) shall be exercisable if the General Partner and its Affiliates subsequently hold more than 80% of the total Limited Partner Interests of such class.

(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 applicable Transfer Agent notice of such election to purchase (the "*Notice of Election to Purchase*") and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited Partner Interests of such class (as of a Record Date selected by the General Partner), together with such information as may be required by law, rule or regulation, at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be filed and distributed as may be required by the Commission or any National Securities Exchange on which such Limited Partner Interests are listed. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of Certificates representing such Limited Partner Interests, in the case of Limited Partner Interests evidenced by Certificates, or instructions agreeing to such redemption in exchange for payment, at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the Register 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 or exchange agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate or redemption instructions shall not have been surrendered for purchase or provided, respectively, all rights of the holders of such Limited Partner Interests (including any rights pursuant to Article IV, Article V, Article VI, and Article XII) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) for Limited Partner Interests therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Limited Partner Interests, in the case of Limited Partner Interests evidenced by Certificates, or instructions agreeing to such redemption, 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, in the Register, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the Record Holder of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the Record Holder of such Limited Partner Interests (including all rights as owner of such Limited Partner Interests pursuant to Article IV, Article V, Article VI and Article XII).

(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, in accordance with procedures set forth by the General Partner.

## 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. Except as otherwise provided herein, 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 in the Register, 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 addressed to a Record Holder at the address of such Record Holder appearing in the Register is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner 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.

**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 immediately upon affixing its signature hereto or, in the case of a Person acquiring a Limited Partner Interest, pursuant to Section 10.1(a) or (b) 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 or Group 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 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 a duty (including a 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 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) 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; and

(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*, nothing in clause (v) hereof shall affect or limit any right to serve process in any other manner permitted by law.

**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/or parts 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 provisions and/or part shall be 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 shall be bound by the results of such action.


**Section 16.12 *Facsimile and Email Signatures.*** The use of facsimile signatures and signatures delivered by email in portable document (.pdf) or similar format affixed in the name and on behalf of the transfer agent and registrar of the Partnership on Certificates representing Units is expressly permitted by this Agreement.

**[Signature Pages Follow]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

ENABLE GP, LLC

By:   
Name:  
Title:

**LIMITED PARTNERS:**

CenterPoint Energy Resources Corp.

By: \_\_\_\_\_  
Name:  
Title:

OGE Enogex Holdings, LLC

By: OGE Energy Corp., its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

Enogex Holdings LLC

By: \_\_\_\_\_  
Name:  
Title:

Bronco Midstream Infrastructure LLC

By: \_\_\_\_\_  
Name:  
Title:

*Signature Page to Second Amended and Restated Partnership Agreement  
of Limited Partnership of Enable Midstream Partners, LP*



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

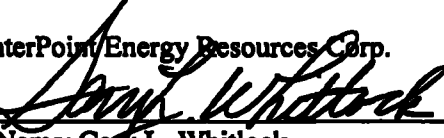
**GENERAL PARTNER:**

**ENABLE GP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**LIMITED PARTNERS:**

CenterPoint Energy Resources Corp.

By:  \_\_\_\_\_  
Name: Gary L. Whitlock  
Title: Executive Vice President and Chief  
Financial Officer

**OGE Enogex Holdings, LLC**

**By: OGE Energy Corp., its Sole Member**

By: \_\_\_\_\_  
Name:  
Title:

**Enogex Holdings LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Bronco Midstream Infrastructure LLC**

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

**ENABLE GP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**LIMITED PARTNERS:**

**CenterPoint Energy Resources Corp.**

By: \_\_\_\_\_  
Name:  
Title:

**OGE Enogex Holdings, LLC**

By: **OGE Energy Corp., its Sole Member**

By:  \_\_\_\_\_  
Name:  
Title:

**Enogex Holdings LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Bronco Midstream Infrastructure LLC**

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

**ENABLE GP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**LIMITED PARTNERS:**

**CenterPoint Energy Resources Corp.**

By: \_\_\_\_\_  
Name:  
Title:

**OGE Enogex Holdings, LLC**

By: **OGE Energy Corp., its Sole Member**

By: \_\_\_\_\_  
Name:  
Title:

**Enogex Holdings LLC**

By:  \_\_\_\_\_  
Name: **Daniel R. Revers**  
Title: **President**

**Bronco Midstream Infrastructure LLC**

By:  \_\_\_\_\_  
Name: **Daniel R. Revers**  
Title: **President**

**EXHIBIT A**

**Certificate Evidencing Common Units  
Representing Limited Partner Interests in  
ENABLE MIDSTREAM PARTNERS, LP**

No. \_\_\_\_\_ Common Units

In accordance with Section 4.1 of the Second Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP, as amended, supplemented or restated from time to time (the "*Partnership Agreement*"), Enable Midstream Partners, LP, 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 One Leadership Square, 211 North Robinson Avenue, Suite 950, Oklahoma City, Oklahoma 73102. 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 ENABLE MIDSTREAM PARTNERS, LP 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 ENABLE MIDSTREAM PARTNERS, LP UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE ENABLE MIDSTREAM PARTNERS, LP 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). ENABLE GP, LLC, THE GENERAL PARTNER OF ENABLE MIDSTREAM PARTNERS, LP, MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE NECESSARY TO (A) AVOID A SIGNIFICANT RISK OF ENABLE MIDSTREAM PARTNERS, LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES OR (B) IN THE CASE OF LIMITED PARTNER INTERESTS, TO PRESERVE THE UNIFORMITY THEREOF (OR ANY CLASS OR CLASSES OF LIMITED PARTNER INTERESTS). 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 and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement and (iii) 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. This Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

Dated: \_\_\_\_\_ Enable Midstream Partners, LP

Countersigned and Registered by: By: Enable GP, LLC

Wells Fargo Bank, National Association, By: \_\_\_\_\_  
As Transfer Agent and Registrar Name: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary

[Reverse of Certificate]

**ABBREVIATIONS**

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

TEN COM - as tenants in common	UNIF GIFT/TRANSFERS MIN ACT
TEN ENT - as tenants by the entireties	_____ Custodian _____
JT TEN - as joint tenants with right of survivorship and not as tenants in common	(Cust) _____ (Minor) _____
	Under Uniform Gifts/Transfers to CD Minors Act (State)

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

**ASSIGNMENT OF COMMON UNITS OF  
ENABLE MIDSTREAM PARTNERS, LP**

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 Enable Midstream Partners, LP.

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 or transfer.

**SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**ENABLE GP, LLC**

**A Delaware Limited Liability Company**

**Dated as of**

**July 30, 2013**

THE HOLDERS OF THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AGREEMENT ACKNOWLEDGE FOR THE BENEFIT OF ENABLE GP, LLC THAT THE MEMBERSHIP INTERESTS 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 ENABLE GP, LLC UNDER THE LAWS OF THE STATE OF DELAWARE, (C) CAUSE ENABLE GP, LLC 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) OR (D) VIOLATE THE OTHER RESTRICTIONS ON TRANSFER SET FORTH HEREIN.

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## TABLE OF CONTENTS

<b>ARTICLE I. DEFINITIONS .....</b>	<b>1</b>
Section 1.01 <b>Definitions.....</b>	<b>1</b>
Section 1.02 <b>Construction.....</b>	<b>13</b>
<b>ARTICLE II. ORGANIZATION.....</b>	<b>13</b>
Section 2.01 <b>Formation.....</b>	<b>13</b>
Section 2.02 <b>Name.....</b>	<b>13</b>
Section 2.03 <b>Registered Office; Registered Agent; Principal Office; Other Offices.....</b>	<b>14</b>
Section 2.04 <b>Purposes.....</b>	<b>14</b>
Section 2.05 <b>Powers.....</b>	<b>14</b>
Section 2.06 <b>Term.....</b>	<b>14</b>
Section 2.07 <b>Title to Company Assets.....</b>	<b>14</b>
<b>ARTICLE III. MEMBERSHIP INTERESTS; UNITS.....</b>	<b>14</b>
Section 3.01 <b>Membership Interests; Additional Members.....</b>	<b>14</b>
Section 3.02 <b>No Liability of Members.....</b>	<b>16</b>
Section 3.03 <b>Withdrawal of Members.....</b>	<b>16</b>
Section 3.04 <b>Record Holders.....</b>	<b>16</b>
Section 3.05 <b>No Appraisal Rights.....</b>	<b>16</b>
Section 3.06 <b>Representations and Warranties.....</b>	<b>17</b>
<b>ARTICLE IV. TRANSFERS OF UNITS.....</b>	<b>18</b>
Section 4.01 <b>Transfers Generally.....</b>	<b>18</b>
Section 4.02 <b>Specific Performance.....</b>	<b>19</b>
<b>ARTICLE V. RIGHTS UPON A PROPOSED TRANSFER.....</b>	<b>19</b>
Section 5.01 <b>Right of First Offer.....</b>	<b>19</b>
Section 5.02 <b>Right of First Refusal.....</b>	<b>20</b>
<b>ARTICLE VI. INITIAL PUBLIC OFFERING.....</b>	<b>21</b>
Section 6.01 <b>Initial Public Offering.....</b>	<b>21</b>
<b>ARTICLE VII. CAPITAL CONTRIBUTIONS.....</b>	<b>22</b>
Section 7.01 <b>Initial Capital Contributions.....</b>	<b>22</b>
Section 7.02 <b>Additional Contributions.....</b>	<b>22</b>
Section 7.03 <b>Loans.....</b>	<b>22</b>
Section 7.04 <b>Return of Contributions.....</b>	<b>22</b>
Section 7.05 <b>Capital Accounts.....</b>	<b>23</b>
<b>ARTICLE VIII. DISTRIBUTIONS AND ALLOCATIONS.....</b>	<b>23</b>
Section 8.01 <b>Distributions.....</b>	<b>23</b>
Section 8.02 <b>Allocations.....</b>	<b>23</b>
Section 8.03 <b>Special Allocations.....</b>	<b>24</b>
Section 8.04 <b>Section 704(c).....</b>	<b>26</b>



Section 8.05	Varying Interests .....	26
Section 8.06	Withheld Taxes .....	26
Section 8.07	Limitations on Distributions .....	26
<b>ARTICLE IX. BOARD OF DIRECTORS .....</b>		<b>27</b>
Section 9.01	Management by Board of Directors .....	27
Section 9.02	Board Composition .....	27
Section 9.03	Board Meetings; Quorum .....	30
Section 9.04	Board Voting .....	30
Section 9.05	Notice .....	32
Section 9.06	Action by Written Consent of Board .....	32
Section 9.07	Conference Telephone Meetings .....	33
Section 9.08	Minutes .....	33
Section 9.09	Committees .....	33
<b>ARTICLE X. OFFICERS .....</b>		<b>34</b>
Section 10.01	Elected Officers .....	34
Section 10.02	Term of Office .....	34
Section 10.03	Chief Executive Officer .....	34
Section 10.04	Vice Presidents .....	35
Section 10.05	Treasurer .....	35
Section 10.06	Secretary .....	35
Section 10.07	Removal .....	35
Section 10.08	Vacancies .....	36
<b>ARTICLE XI. BUDGET .....</b>		<b>36</b>
Section 11.01	Budget .....	36
<b>ARTICLE XII. MANAGEMENT MEMBER MEETINGS .....</b>		<b>36</b>
Section 12.01	Meetings .....	36
Section 12.02	Notice of a Meeting .....	36
Section 12.03	Quorum; Voting Requirement .....	37
Section 12.04	Action by Consent of Members .....	38
Section 12.05	Conference Telephone Meetings .....	38
<b>ARTICLE XIII. EXCULPATION AND INDEMNIFICATION; DUTIES .....</b>		<b>38</b>
Section 13.01	Indemnification .....	38
Section 13.02	Liability of Indemnitees .....	40
Section 13.03	Other Matters Concerning the Directors .....	40
Section 13.04	Corporate Opportunities .....	41
Section 13.05	Duties .....	41
<b>ARTICLE XIV. TAXES .....</b>		<b>42</b>
Section 14.01	Tax Returns .....	42
Section 14.02	Tax Elections .....	43
Section 14.03	Tax Matters Member .....	43

<b>ARTICLE XV. BOOKS, RECORDS, REPORTS, BANK ACCOUNTS, AND BUDGETS .....</b>		<b>44</b>
<b>Section 15.01</b>	<b>Maintenance of Books .....</b>	<b>44</b>
<b>Section 15.02</b>	<b>Reports .....</b>	<b>44</b>
<b>Section 15.03</b>	<b>Bank Accounts .....</b>	<b>45</b>
<b>ARTICLE XVI. DISSOLUTION, WINDING-UP, TERMINATION AND CONVERSION ....</b>		<b>45</b>
<b>Section 16.01</b>	<b>Dissolution .....</b>	<b>45</b>
<b>Section 16.02</b>	<b>Liquidator .....</b>	<b>45</b>
<b>Section 16.03</b>	<b>Liquidation .....</b>	<b>46</b>
<b>Section 16.04</b>	<b>Certificate of Cancellation of Formation .....</b>	<b>46</b>
<b>Section 16.05</b>	<b>Return of Contributions .....</b>	<b>46</b>
<b>Section 16.06</b>	<b>Waiver of Partition .....</b>	<b>47</b>
<b>Section 16.07</b>	<b>Capital Account Restoration .....</b>	<b>47</b>
<b>ARTICLE XVII. GENERAL PROVISIONS .....</b>		<b>47</b>
<b>Section 17.01</b>	<b>Offset .....</b>	<b>47</b>
<b>Section 17.02</b>	<b>Amendment .....</b>	<b>47</b>
<b>Section 17.03</b>	<b>Addresses and Notices; Written Communications .....</b>	<b>47</b>
<b>Section 17.04</b>	<b>Further Action .....</b>	<b>48</b>
<b>Section 17.05</b>	<b>Binding Effect .....</b>	<b>48</b>
<b>Section 17.06</b>	<b>Integration .....</b>	<b>48</b>
<b>Section 17.07</b>	<b>Creditors .....</b>	<b>48</b>
<b>Section 17.08</b>	<b>Waivers .....</b>	<b>48</b>
<b>Section 17.09</b>	<b>Third-Party Beneficiaries .....</b>	<b>48</b>
<b>Section 17.10</b>	<b>Counterparts .....</b>	<b>48</b>
<b>Section 17.11</b>	<b>Applicable Law, Forum, Venue, and Jurisdiction .....</b>	<b>49</b>
<b>Section 17.12</b>	<b>Invalidity of Provisions .....</b>	<b>49</b>

**SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ENABLE GP, LLC**

A Delaware Limited Liability Company

This **SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT** (this "Agreement") of Enable GP, LLC (the "Company"), dated as of [●], 2013, is adopted, executed and agreed to, for good and valuable consideration, by CenterPoint Energy Resources Corp., a Delaware corporation ("CERC"), and OGE Enogex Holdings LLC, a Delaware limited liability company ("OGEH"). CERC and OGEH are hereinafter collectively referred to as the "Parties" and each individually as a "Party."

**RECITALS**

WHEREAS, the name of the Company is "Enable GP, LLC";

WHEREAS, the Company was originally formed as a Delaware limited liability company by the filing of a Certificate of Formation (as it may be amended or restated from time to time, the "Certificate of Formation"), dated as of April 30, 2013, with the Secretary of State of the State of Delaware pursuant to the Delaware Act;

WHEREAS, on April 30, 2013, CERC entered into the Limited Liability Company Agreement of the Company;

WHEREAS, on May 1, 2013, the Parties entered into the Amended and Restated Limited Liability Company Agreement of the Company (the "Prior Agreement");

WHEREAS, the Parties desire to amend and restate the Prior Agreement in its entirety as set forth herein solely to reflect a change in the name of the Company and the Partnership (as defined below);

NOW, THEREFORE, in consideration of the covenants, conditions and agreements contained herein, the Parties agree as follows:

**ARTICLE I.  
DEFINITIONS**

Section 1.01 *Definitions.*

As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the Sections referred to below:

**“Adjusted Capital Account Deficit”** means, with respect to any Economic Member, the deficit balance, if any, in such Economic Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Economic Member is obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

**“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.

**“Agreement”** has the meaning given such term in the introductory paragraph, as the same may be amended from time to time.

**“Allocation Year”** means (a) the Company’s taxable year for U.S. federal income tax purposes, or (b) any portion of the period described in clause (a) for which the Company is required to allocate Profits, Losses, and other items of Company income, gain, loss or deduction for U.S. federal income tax purposes.

**“Alternate Director”** has the meaning given such term in Section 9.02(b)(i)(B).

**“Annual Budget”** means a budget covering the operations of the Partnership Group for a calendar year, setting forth reasonable line item detail regarding anticipated expenditures, including: (a) estimated operating expenditures; (b) estimated capital expenditures; (c) proposed financing plans for such expenditures; and (d) such other items as the Board may deem appropriate.

**“ArcLight”** means Enogex Holdings LLC, a Delaware limited liability company.

**“Audit Committee”** has the meaning given such term in Section 9.09(d)(i).

**“Audit Committee Independent Director”** has the meaning given such term in Section 9.09(d)(i).

**“Available Cash”** means, with respect to any Quarter ending prior to a Dissolution Event,

(a) the sum of all cash and cash equivalents of the Company on hand on the date of the determination of Available Cash for such Quarter, *less*

(b) the amount of any cash reserves that are established by the Board to (i) provide for the proper conduct of the business of the Company (including reserves for future capital expenditures and for anticipated future credit needs of the Company) subsequent to such Quarter and (ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Company is a party or by which it is bound or its assets are subject; *provided, however,* that disbursements made by the Company 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 Board so determines.

Notwithstanding the foregoing, “Available Cash” with respect to the Quarter in which a Dissolution Event occurs and any subsequent Quarter shall equal zero.

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

**“Bronco Entities”** means, collectively, Bronco Midstream Holdings, LLC, a Delaware limited liability company, and Bronco Midstream Holdings II, LLC, a Delaware limited liability company.

**“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 New York shall not be regarded as a Business Day.

**“Capital Account”** shall mean the capital account determined and maintained for each Economic Member in accordance with Sections 7.05, 8.02 and 8.03.

**“Capital Contribution”** means any cash, cash equivalents or the net fair market value of contributed property that an Economic Member contributes to the Company or that is contributed or deemed contributed to the Company on behalf of an Economic Member.

**“CERC”** has the meaning given such term in the introductory paragraph.

**“CERC Alternate Director”** has the meaning given such term in Section 9.02(b)(i)(A).

**“CERC Representative”** has the meaning given such term in Section 9.02(b)(i)(A).

**“Certificate of Formation”** has the meaning given such term in the Recitals.

**“Certified Public Accountants”** means an independent public accounting firm registered with the Public Company Accounting Oversight Board selected from time to time by the Board.

**“Change in Control”** of any Person means (a) a person or group (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of all of the then outstanding Voting Securities of such Person, except in a merger or consolidation that would not constitute a Change in Control under clause (b) below, or (b) the Person consolidates or merges with another Person, other than any such consolidation or merger where (i) the outstanding Voting Securities of the subject Person are changed into or exchanged for Voting Securities of the surviving Person or its parent and (ii) the holders of the Voting Securities of the subject Person immediately prior to such transaction own, directly or indirectly, not less than a majority of the outstanding Voting Securities of the surviving Person or its parent immediately after such transaction in substantially the same proportions as their ownership of outstanding Voting Securities in the subject Person immediately prior to such consolidation or merger.

**“Closing Date”** means the date on which the transactions contemplated by the Master Formation Agreement are consummated.

**“CNP”** means CenterPoint Energy, Inc., a Texas corporation.

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

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

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

**“Company”** has the meaning given such term in the introductory paragraph.

**“Company Minimum Gain”** means the amount of “partnership minimum gain” determined in accordance with the principles of Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

**“Conflicts Committee”** has the meaning given such term in Section 9.09(d)(ii).

**“Conflicts Committee Independent Director”** means a Director who meets the standards set forth in the definition of “Conflicts Committee” in the Partnership Agreement.

**“Control Period”** has the meaning given such term in Section 4.01(b).

**“Deadlock”** has the meaning given such term in Section 9.04(c).

**“Deadlock Notice”** has the meaning given such term in Section 9.04(c).

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

**“Depreciation”** means, for each Allocation Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Allocation Year, except that if the Gross Asset Value of an asset differs from its adjusted basis

for federal income tax purposes at the beginning of such Allocation Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Allocation Year bears to such beginning adjusted tax basis; *provided, however*, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such Allocation Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board.

“Director” or “Directors” has the meaning given such term in Section 9.02(a)(i).

“Dispute Response” has the meaning given such term in Section 9.04(c).

“Dissolution Event” means an event of dissolution of the Company pursuant to Section 16.01.

“Economic Member” has the meaning given such term in Section 3.01(a).

“Economic Units” has the meaning given such term in Section 3.01(a).

“Encumbers,” “Encumbering” or “Encumbrances” means pledges, restrictions on transfer, proxies and voting or other agreements, liens, claims, charges, mortgages, security interests or other legal or equitable encumbrances, limitations or restrictions of any nature whatsoever.

“Equity Interests” means all shares, participations, capital stock, partnership or limited liability company interests, units, participations or similar equity interests issued by any Person, however designated.

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

“GAAP” means United States generally accepted accounting principles, as amended from time to time.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by an Economic Member to the Company shall be the gross fair market value of the asset, as determined by the contributing Economic Member and the Board, in a manner that is consistent with Section 7701(g) of the Code;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board, in a manner that is consistent with Section 7701(g) of the Code, as of the following times: (i) the acquisition of additional Economic Units by any new or existing Economic Member in exchange for more than a de minimis Capital Contribution or for the provision of services; (ii) the distribution by the Company to an Economic Member of more than a de minimis amount of property other than money as consideration for Economic Units; and (iii) the

liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); *provided, however*, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Economic Members in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Economic Member shall be the gross fair market value (taking Section 7701(g) of the Code into account) of such asset on the date of distribution; and

(d) The Gross Asset Values of any Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) of the Code or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and the definition of Capital Account hereof; *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (d) to the extent the Board determines that an adjustment pursuant to the foregoing subparagraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to the foregoing subparagraphs (a), (b) or (d), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**"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.

**"Indebtedness"** means, with respect to any Person, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other debt securities or warrants or other rights to acquire any debt securities of such Person, (c) all capitalized lease or leveraged lease obligations of such Person or obligations of such Person to pay the deferred and unpaid purchase price of property and equipment or (d) all "keep well" and other obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the obligations or property of others.



**"Indemnitee"** means (a) any Member, (b) any Person who is or was a director, officer, fiduciary, trustee, manager or managing member of the Company, any Group Member or a Member, (c) any Person who is or was serving at the request of a Member as a director, officer, fiduciary, trustee, manager or managing member of another Person owing a fiduciary duty to the Company or 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, (d) any Person who controls a Member and (e) any Person the Board designates as an "Indemnitee" for purposes of this Agreement.

**"Independent Director"** means a natural person who meets the independence, qualification and experience requirements of the New York Stock Exchange or any other national securities exchange selected for the listing of the limited partner or other Equity Interests of the Partnership and the independence, qualification and experience requirements of Section 10A(m)(3) of the Exchange Act (or any successor law), the rules and regulations of the SEC and any other applicable law.

**"Initial Budget"** has the meaning given such term in Section 11.01.

**"Initial Public Offering"** means the first firm commitment underwritten, public offering of Common Units pursuant to a registration statement that is filed and declared effective under the Securities Act, with gross proceeds of at least \$150 million.

**"IPO Date"** means the date on which an Initial Public Offering is consummated.

**"Interim Chairman"** has the meaning given such term in Section 9.02(a)(iv).

**"Liquidator"** has the meaning given such term in Section 16.02.

**"Majority Interest"** means greater than 50% of the outstanding Management Units.

**"Management Member"** has the meaning given such term in Section 3.01(a).

**"Management Units"** has the meaning given such term in Section 3.01(a).

**"Master Formation Agreement"** means that certain Master Formation Agreement dated as of March 14, 2013 among CNP, OGE and the Bronco Entities, and to which the Company and the Partnership are bound, as it may be further amended, supplemented or restated from time to time.

**"Material Contract"** shall mean (a) transportation agreements and storage agreements involving payments to or from any Group Member of at least \$20,000,000 per year; (b) gathering agreements, processing agreements and natural gas purchase agreements involving net payments (i.e., after taking into account directly associated cost of goods or directly associated revenues from the sale of goods) to or from any Group Member of at least \$20,000,000 per year; (c) construction and other services agreements in each case involving payments to or from any Group Member in excess of \$20,000,000 per year; (d) contracts, loan agreements, letters of credit, repurchase agreements, mortgages, security agreements, guarantees, pledge agreements, trust indentures, promissory notes, lines of credit and similar documents in each case relating to

the borrowing of money or for lines of credit, in any case for amounts in excess of \$20,000,000 (other than contracts solely between or among the Group Members and interest rate swap agreements); (e) swap, derivative, hedging, futures or other similar agreements or contracts that result in an aggregate exposure to any Group Member in excess of \$20,000,000; (f) real property leases calling for payments by any of the Group Members of amounts greater than \$20,000,000 per year (other than rights-of-way and leases solely between or among the Group Members); (g) partnership or joint venture agreements (which do not include joint tariff or joint operating agreements); (h) contracts limiting the ability of any of the Group Members to compete in any line of business or with any Person or in any geographic area; (i) contracts relating to any outstanding commitment for capital expenditures in excess of \$50,000,000; (j) contracts with any labor union or organization; (k) contracts not entered into in the ordinary course of the business of the Partnership Group other than those that are not material to the business of the Partnership Group; and (l) contracts that prohibit any Group Member from making cash distributions in respect of its equity interests, other than restrictions in the governing documents of such entity.

**"Member"** means any Person executing this Agreement as of the Closing Date as a member of the Company or hereafter admitted to the Company as a member as provided in this Agreement, but such term does not include any Person who has ceased to be a member of the Company. A Member may be an Economic Member, a Management Member or both an Economic Member and a Management Member.

**"Member Nonrecourse Debt"** has the meaning of "partner nonrecourse debt" set forth in Treasury Regulation Section 1.704-2(b)(4).

**"Member Nonrecourse Debt Minimum Gain"** has the meaning of "partner nonrecourse debt minimum gain" set forth in Treasury Regulation Section 1.704-2(i)(2).

**"Member 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 Member Nonrecourse Debt.

**"Member's Owners"** has the meaning given such term in Section 3.06(b)(v).

**"Membership Interest"** means the ownership interest of a Member in the Company, which may be evidenced by an Economic Unit, Management Unit or other Equity Interest or a combination thereof or interest therein, and includes any and all benefits to which such Member is entitled as provided in this Agreement, together with all obligations of such Member to comply with the terms and provisions of this Agreement.

**"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).

**"OGE"** means OGE Energy Corp., an Oklahoma corporation.

**"OGEH"** has the meaning given such term in the introductory paragraph.

**"OGEH Alternate Director"** has the meaning given such term in Section 9.02(b)(i)(B).

**"OGEH Representative"** has the meaning given such term in Section 9.02(b)(i)(B).

**"Omnibus Agreement"** means that certain Omnibus Agreement dated the date hereof among CNP, OGE, ArcLight and the Partnership, as it may be amended, supplemented or restated from time to time.

**"Opinion of Counsel"** means a written opinion of counsel (who may be regular counsel to, or the General Counsel or other inside counsel of, the Company or any of its Affiliates) acceptable to the Board.

**"Ownership Percentage"** shall mean, with respect to an Economic Member, the percentage obtained by dividing (a) the number of Economic Units owned by such Economic Member by (b) the total number of outstanding Economic Units owned by all Economic Members and, with respect to a Management Member, the percentage obtained by dividing (x) the number of Management Units owned by such Management Member by (y) the total number of outstanding Management Units owned by all Management Members.

**"Partnership"** means Enable Midstream Partners, LP, a Delaware limited partnership.

**"Partnership Agreement"** means that certain First Amended and Restated Agreement of Limited Partnership of Enable Midstream Partners, LP dated as of May 1, 2013 among Enable GP, LLC, CERC, OGEH and ArcLight as it may be further amended, supplemented or restated from time to time.

**"Partnership Group"** means, collectively, the Partnership and its Subsidiaries.

**"Permitted Encumbrances"** means (a) Encumbrances for taxes not yet delinquent or being contested in good faith by appropriate proceedings, (b) statutory Encumbrances (including materialmen's, warehousemen's, mechanic's, repairmen's, landlord's, and other similar liens) arising in the ordinary course of business and securing payments not yet delinquent or being contested in good faith by appropriate proceedings, (c) Encumbrances of public record (other than for indebtedness for borrowed money), (d) the rights of lessors and lessees under leases, and the rights of third parties under any agreement, executed in the ordinary course of business, (e) the rights of licensors and licensees under licenses executed in the ordinary course of business, (f) purchase money Encumbrances and Encumbrances securing rental payments under capital lease arrangements, and (g) any Encumbrances created pursuant to construction, operating, maintenance or similar agreements.

**"Permitted Transfer"** means:

(a) with respect to CERC, a Transfer by such Member of a Membership Interest to a wholly owned Subsidiary of CNP; and

(b) with respect to OGEH, a Transfer by such Member of a Membership Interest to a wholly owned Subsidiary of OGE;

*provided* that (i) with respect to Permitted Transfers by CERC, the Subsidiary Transferee remains a wholly owned Subsidiary of CNP (or any successor Person), at all times following such Transfer and (ii) with respect to Permitted Transfers by OGEH, the Subsidiary Transferee remains a wholly owned Subsidiary of OGE (or any successor Person), at all times following such Transfer, it being acknowledged that any Transfer resulting in the Subsidiary Transferee no longer being wholly owned shall be deemed a Transfer that is subject to the restrictions set forth in Article IV and Article V.

**“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.

**“Prior Agreement”** has the meaning given and term in the Recitals.

**“Profits”** and **“Losses”** means, for each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code, and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) or (d) of the definition of Gross Asset Value hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of property (other than money) with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation hereof; and

(f) Notwithstanding any other provision of this definition of “**Profits**” and “**Losses**,” any items which are specially allocated pursuant to Section 8.03 shall not be taken into account in computing Profits or Losses.

“**Proposed Transferee**” has the meaning given such term in Section 5.02(d).

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

“**Registration Rights Agreement**” means that certain Registration Rights Agreement dated as of May 1, 2013 among CERC, OGEH, ArcLight and the Partnership, as it may be further amended, supplemented or restated from time to time.

“**Representative**” has the meaning given such term in Section 9.02(b).

“**Required Allocations**” has the meaning given such term in Section 8.03(i).

“**Restricted Period**” means the period from the Closing Date until the IPO Date.

“**ROFO Acceptance Notice**” has the meaning given such term in Section 5.01(b).

“**ROFO Accepting Members**” has the meaning given such term in Section 5.01(b).

“**ROFO Non-Selling Member**” has the meaning given such term in Section 5.01(a).

“**ROFO Notice**” has the meaning given such term in Section 5.01(a).

“**ROFO Offer Notice**” has the meaning given such term in Section 5.01(b).

“**ROFO Price**” has the meaning given such term in Section 5.01(a).

“**ROFO Seller**” has the meaning given such term in Section 5.01(a).

“**ROFO Units**” has the meaning given such term in Section 5.01(a).

“**ROFR Acceptance Notice**” has the meaning given such term in Section 5.02(b).

“**ROFR Non-Transferring Members**” has the meaning given such term in Section 5.02(a).

“**ROFR Offer**” has the meaning given such term in Section 5.02(a).

“**ROFR Period**” has the meaning given such term in Section 5.02(a).

“**ROFR Sale Price**” has the meaning given such term in Section 5.02(a).

“**ROFR Seller**” has the meaning given such term in Section 5.02(a).

“**ROFR Seller Notice**” has the meaning given such term in Section 5.02(a).

**“ROFR Units”** has the meaning given such term in Section 5.02(a).

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

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

**“Tax Matters Member”** has the meaning given such term in Section 14.03(a).

**“Transfer”** means, with respect to any Membership Interest, any direct or indirect transfer, sale, assignment, gift, Encumbrance, hypothecation, exchange or any other disposition by law or otherwise; *provided, however*, that any Transfer of all or substantially all the assets, or a Change in Control, of CNP or OGE shall not be a Transfer of Membership Interests. Without limiting the generality of the foregoing, any distribution, transfer, assignment or other disposition of any Membership Interest, whether voluntary, involuntary or pursuant to any dissolution, liquidation or termination of such Person, to such Person’s members, shareholders, partners or other interestholders shall constitute a **“Transfer.”** For the avoidance of doubt, any transfer, sale, assignment, gift, Encumbrance, hypothecation, exchange or other disposition of any interest in such Member, by such Member or any interestholder of such Member, shall be deemed to be an indirect Transfer of Membership Interests hereunder.

**“Transferee”** means a Person who has received Units by means of a Transfer.

**“Treasury Regulations”** means the regulations (including temporary regulations) promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute, temporary or final Treasury Regulations.

**“Units”** has the meaning set forth in Section 3.01(a).

**“Voting Securities”** of a Person shall mean 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, Voting Securities of such Person shall be the general partner interest in such Person.

**Section 1.02 Construction.**

(a) Unless the context requires otherwise: (i) 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; (ii) references to Articles and Sections refer to Articles and Sections of this Agreement; (iii) the terms “include,” “includes,” “including” or words of like import shall be deemed to be followed by the words “without limitation”; and (iv) 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. The Board has the power to construe and interpret this Agreement and to act upon any such construction or interpretation. Any construction or interpretation of this Agreement by the Board and any action taken pursuant thereto and any determination made by the Board in good faith shall, in each case, be conclusive and binding on all Parties and all other Persons for all purposes.

(b) The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. No provision of this Agreement will be interpreted in favor of, or against, any of the Parties to this Agreement by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement, and no rule of strict construction will be applied against any Party hereto. This Agreement will not be interpreted or construed to require any Person to take any action, or fail to take any action, if to do so would violate any applicable law.

**ARTICLE II.  
ORGANIZATION**

**Section 2.01 Formation.**

CERC previously formed the Company as a limited liability company pursuant to the provisions of the Delaware Act, and the Members hereby amend and restate the Prior Agreement in its entirety. This amendment and restatement shall become effective on the date hereof. Except as expressly provided to the contrary in this Agreement, the rights, duties (including fiduciary duties), liabilities and obligations of the Members and the administration, dissolution and termination of the Company shall be governed by the Delaware Act. All Membership Interests shall constitute personal property of the owner thereof for all purposes.

**Section 2.02 Name.**

The name of the Company shall be “Enable GP, LLC.” The Company’s business may be conducted under any other name or names as determined by the Board. The words “limited liability company,” “LLC,” “L.L.C.” 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 may change the name of the Company at any time and from time to time.

**Section 2.03 *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 such place as the Board may from time to time designate by notice to the Members. The Company may maintain offices at such other place or places within or outside the State of Delaware as the Board determines to be necessary or appropriate.

**Section 2.04 *Purposes.***

The purposes of the Company are (a) to act as the general partner of the Partnership (and acquire, hold and dispose of partnership interests and related rights in the Partnership) and only undertake activities that are ancillary or related thereto, (b) to act as a managing member or general partner of any Subsidiary of the Partnership that is a limited liability company or partnership and (c) in connection with acting in such capacities, to carry on any lawful business or activity.

**Section 2.05 *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 2.04 and for the protection and benefit of the Company or the Partnership Group.

**Section 2.06 *Term.***

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

**Section 2.07 *Title to Company Assets.***

Title to the Company's assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity and/or the Partnership Group, and no Member, individually or collectively, shall have any ownership interest in such Company assets or any portion thereof.

**ARTICLE III.  
MEMBERSHIP INTERESTS; UNITS**

**Section 3.01 *Membership Interests; Additional Members.***

(a) The Members own Membership Interests in the Company that shall be represented by Economic Units ("Economic Units") and Management Units ("Management



Units”). Economic Units and Management Units are sometimes referred to collectively herein as “Units.” Holders of Economic Units and Management Units shall be referred to as “Economic Members” and “Management Members,” respectively. The Units shall be uncertificated, unless the Board determines to have the Company issue certificates for the Units. In exchange for each Economic Member’s Capital Contribution to the Company referred to in Section 7.01, the Company shall issue to each Economic Member the number of Economic Units set forth opposite such Economic Member’s name on Exhibit A. In addition, the Company shall issue to each Management Member the number of Management Units set forth opposite such Member’s name on Exhibit B.

(b) Economic Units shall represent an Economic Member’s interest in items of income, gain, loss and deduction of the Company and a right to receive distributions of the Company’s assets in accordance with the provisions of this Agreement. Economic Members shall have no voting or designation rights with respect to their Economic Units.

(c) Management Units shall represent a Management Member’s right to vote on Company matters in accordance with the provisions of the Agreement and, subject to Section 4.01(d) and 9.02, designate Representatives. Management Members shall have no interest in items of income, gain, loss or deduction of the Company or any right to receive distributions of the Company’s assets in accordance with the provisions of this Agreement with respect to their Management Units.

(d) For the avoidance of doubt, the undersigned intend for the holders of Management Units to be considered managers and not members or partners for federal income tax purposes with respect to such Management Units. Therefore, if one hundred percent (100%) of the Economic Units are held by one tax owner, the Company will be treated, as of such time, as a disregarded entity for federal income tax purposes pursuant to Treasury Regulation Section 301.7701-3.

(e) The Company may issue additional Membership Interests and options, rights, warrants and appreciation rights relating to the Membership Interests for any Company purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the Board shall determine in accordance with Section 9.04.

(f) Each additional Membership Interest authorized to be issued by the Company pursuant to Section 3.01(d) 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 Membership Interests), as shall be fixed by the Board in accordance with Section 9.04, including (i) the right to share in Company profits and losses or items thereof; (ii) the right to share in Company distributions; (iii) the rights upon dissolution and liquidation of the Company; (iv) whether, and the terms and conditions upon which, the Company may, or shall be required to, redeem the Membership Interest (including sinking fund provisions); (v) whether such Membership Interest 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 Membership Interest will be issued, evidenced by certificates and assigned or transferred; and (vii) the right, if any, of each such Membership Interest to vote on

Company matters, including matters relating to the relative rights, preferences and privileges of such Membership Interest.

(g) The Board shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Membership Interests and options, rights, warrants and appreciation rights relating to Membership Interests pursuant to this Section 3.01, (ii) reflecting the admission of such additional Members in the books and records of the Company as the record holder of such Membership Interest and (iii) all additional issuances of Membership Interests, in each case including amending this Agreement and Exhibit A and Exhibit B hereof as necessary to reflect any such issuance. The Board, acting pursuant to Section 9.04, shall determine the relative rights, powers and duties of the holders of the Units or other Membership Interests being so issued. The Board 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 Membership Interests pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any governmental agency.

**Section 3.02 *No Liability of Members.***

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

**Section 3.03 *Withdrawal of Members.***

No Member shall have any right to withdraw from the Company; *provided, however*, that when a Transferee becomes registered on the books and records of the Company as the Member with respect to the Membership Interest so transferred, the transferring Member shall cease to be a Member with respect to the Membership Interest so Transferred.

**Section 3.04 *Record Holders.***

The Company shall be entitled to recognize the Person in whose name any Membership Interest is registered on the books and records of the Company as the Member with respect to any Membership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Membership Interest on the part of any other Person, regardless of whether the Company shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation or guideline of any governmental agency.

**Section 3.05 *No Appraisal Rights.***

No Member shall be entitled to any valuation, appraisal or similar rights with respect to such Member's Units, whether individually or as part of any class or group of Members, in the event of a merger, consolidation, sale of the Company or other transaction involving the Company or its securities unless such rights are expressly provided by the agreement of merger, agreement of consolidation or other document effectuating such transaction.

**Section 3.06 *Representations and Warranties.***

Each Member hereby represents and warrants to the Company and each other Member that:

(a) **Power and Authority.** Such Member has all requisite power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance by such Member of this Agreement have been duly authorized by all requisite action on the part of such Member, and no other action or proceeding on the part of such Member or any Affiliate thereof is necessary to consummate the transactions contemplated by this Agreement.

(b) **No Conflicts.** Neither the execution and delivery by such Member of this Agreement, nor the performance by such Member under this Agreement will (i) violate, conflict with or result in a breach of any provision of the governing documents of such Member; (ii) require any consent or approval of any counterparty to, or violate or result in any breach of or constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, or give to others any right of termination, cancellation, amendment or acceleration of any obligation or the loss of any benefit under, any material agreement or arrangement to which it is a party or by which it is, or its assets are, bound; (iii) result in the creation of an Encumbrance upon or require the sale or give any Person the right to acquire any of the assets of such Member; or (iv) violate or conflict with any law applicable to such Member.

(c) **Contributed Property.** All property, assets or interests contributed to the Company by such Member, and any property thereafter to be contributed to the Company by such Member, has been or will be duly and lawfully acquired.

(d) **Investment Intent.** Such Member is acquiring the Membership Interests for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof. Such Member (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Membership Interests and is capable of bearing the economic risks of such investment. Such Member is aware that the Membership Interests have not been registered, and will not be registered, under the Securities Act or under any state or foreign securities laws.

(e) **No Registration Rights.** Such Member is aware that only the Company can take action to register Units in the Company under the Securities Act, and that the Company is under no such obligation and does not propose or intend to attempt to do so.

(f) **Transfer Restrictions.** Such Member is aware that this Agreement provides restrictions on the ability of a Member to Transfer Units, and such Member will not seek to effect any Transfer other than in accordance with such restrictions.

(g) **Accredited Investor.** Such Member and each member, shareholder or other equity holder of such Member (collectively, "**Member's Owners**"), is, and at such time that it makes any additional Capital Contributions to the Company will be, an "accredited investor" (as such

term is used in Rule 501 under the Securities Act), is able to bear the economic risk of its investment in the Membership Interests and has sufficient net worth to sustain a loss of its entire investment in the Company without economic hardship if such loss should occur.

(h) Access to Information. Such Member and, if applicable, each of such Member's Owners has had an opportunity to ask questions and discuss the Company's business, management and financial affairs with the Company, and such questions were answered to its satisfaction. Such Member and, if applicable, each of such Member's Owners acknowledges that it is familiar with all aspects of the Company's business.

#### **ARTICLE IV. TRANSFERS OF UNITS**

##### **Section 4.01 *Transfers Generally.***

(a) No Membership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IV and Article V. No Transfer of any Membership 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 Company under the laws of the jurisdiction of its formation, (iii) cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed) or (iv) constitute a breach or violation of, or a change of control or event of default under, any credit agreement, loan agreement, indenture, mortgage, deed of trust or other similar instrument or document governing Indebtedness of the Company or any Group Member. Any Transfer or purported Transfer of a Membership Interest not made in accordance with this Article IV and Article V shall be, to the fullest extent permitted by law, null and void, and the Company shall have no obligation to recognize any such Transfer or purported Transfer.

(b) From the execution hereof until the date that is the third anniversary of the Closing Date (the "Control Period"), no Membership Interest shall be Transferred, in whole or in part, except for a Permitted Transfer in accordance with the applicable provisions of this Article IV.

(c) Following the Control Period, no Membership Interest shall be Transferred, in whole or in part, except for (i) a Permitted Transfer in accordance with the applicable provisions of this Article IV or (ii) subject to Section 3.4(c) of the Partnership Agreement, Transfers in accordance with the applicable provisions of Article V and this Article IV.

(d) Notwithstanding any other provision of this Agreement, during and following the Restricted Period, no Member may Transfer less than all of the Membership Interests held by such Member. A Management Member's right to designate Representatives, as provided in Section 9.02(b), shall not be assigned or Transferred (including in a Permitted Transfer) except as part of a Transfer permitted under the terms of this Agreement to one Transferee of all of the Member's Units with respect to which such Management Member expressly elects in writing

delivered to the Company prior to such Transfer that such Management Member will transfer such right to designate Representatives to such Transferee in connection with such Transfer.

(e) No Transfer (including a Permitted Transfer) may be undertaken unless and until the following have occurred: (i) the proposed Transferee shall have agreed in writing to be bound by the terms of this Agreement and provided to the Board its name, address, taxpayer identification number and any other information reasonably necessary to permit the Company to file all required federal and state tax returns or reasonably requested by the Board and (ii) the Member proposing to make such Transfer shall have delivered to the Company an Opinion of Counsel (reasonably acceptable as to form, substance and identity of counsel to the Company) that no registration under the Securities Act is required in connection with such Transfer (unless the requirement of an opinion is waived by the Board).

(f) By acceptance of the Transfer of any Membership Interest in accordance with this Article IV and Article V, the Transferee of a Membership Interest shall be admitted as a Member with respect to the Membership Interests so Transferred to such Transferee when any such Transfer or admission is reflected in the books and records of the Company.

(g) Each Member making a Transfer shall be obligated to pay his or its own expenses incurred in connection with such Transfer, and the Company shall not have any obligation with respect thereto. Each Member making a Transfer shall pay, or reimburse the Company for, all reasonable costs and expenses incurred by the Company in connection with such Transfer and the admission of the Transferee as a Member, including the legal fees incurred in connection with the legal opinions referred to in Section 4.01(e).

#### Section 4.02 *Specific Performance.*

The Members acknowledge and agree that an award of money damages would be inadequate for any breach of the provisions of this Article IV and Article V and any such breach would cause the non-breaching parties irreparable harm. Accordingly, the Members agree that, in the event of any breach or threatened breach of this Article IV and Article V by a Member, the Members, to the fullest extent permitted by law, will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance; *provided* such Member is not in material default hereunder. Such remedies will not be the exclusive remedies for any breach of this Article IV and Article V but will be in addition to all other remedies available at law or equity to each of the Members.

### ARTICLE V. RIGHTS UPON A PROPOSED TRANSFER

#### Section 5.01 *Right of First Offer.*

(a) Following the Control Period, except for a Permitted Transfer, no Membership Interest shall be Transferred unless the provisions of this Section 5.01 or Section 5.02 are first complied with. If a Member (the "ROFO Seller") wishes to solicit proposals from third parties to acquire all, but not less than all, of the ROFO Seller's Units, the ROFO Seller shall first provide a notice (the "ROFO Notice") to the other Member, with a copy to the Company,

containing: (i) the number and class of Units proposed to be transferred (the "ROFO Units") and (ii) a request for the other Member (the "ROFO Non-Selling Member") to specify the purchase price (the "ROFO Price") and other terms and conditions on which the ROFO Non-Selling Member is willing to purchase the ROFO Units.

(b) Within 30 days after receiving the ROFO Notice, the ROFO Non-Selling Member (the "ROFO Accepting Member") may elect (the "ROFO Offer Notice") to purchase all, but not less than all, of the ROFO Units. The ROFO Offer Notice shall specify the ROFO Price and other terms and conditions on which the ROFO Accepting Member is willing to purchase the ROFO Units. If the ROFO Accepting Member submits a ROFO Offer Notice within the time period specified herein, the ROFO Seller shall have 30 days from the date it received the ROFO Offer Notice to elect (the "ROFO Acceptance Notice") to accept the ROFO Accepting Member's offer to purchase the ROFO Units.

(c) If the ROFO Seller accepts the ROFO Accepting Member's offer, the ROFO Accepting Member must purchase the ROFO Units in the manner, and subject to the terms and conditions, described in Section 5.01(d). If the ROFO Seller does not accept the offer from the ROFO Accepting Member or fails to make such election within 30 days after receiving the ROFO Offer Notice, the ROFO Seller may, during the next 120 days, Transfer the ROFO Units to a third party Transferee (i) at a purchase price not less than 105% of the ROFO Price and upon terms no more favorable to the proposed transferee than those specified in the ROFO Notice and (ii) subject to the applicable terms and restrictions of this Agreement, including Article IV.

(d) Sales of the ROFO Units to the ROFO Accepting Member pursuant to this Section 5.01 shall be made at the offices of the Company within 60 days of the delivery of ROFO Acceptance Notice, or on such other date as the parties may agree. Such sales shall be effected by the ROFO Seller's delivery of the ROFO Units, free and clear of all Encumbrances (other than restrictions imposed by the governing documents of the Company and securities laws), to the ROFO Accepting Member, against payment to the ROFO Seller of the ROFO Price by the ROFO Accepting Member and on the terms and conditions specified in the applicable ROFO Offer Notice.

#### **Section 5.02 *Right of First Refusal.***

(a) Following the Control Period, except for a Permitted Transfer, no Membership Interest shall be Transferred unless the provisions of this Section 5.02 or Section 5.01 are first complied with. A Member (a "ROFR Seller") who receives an unsolicited *bona fide* offer from a third party for a Transfer of all, but not less than all, of the ROFR Seller's Units, and the ROFR Seller wishes to accept such offer, the ROFR Seller shall first provide a notice (the "ROFR Seller's Notice") to the other Member (with a copy to the Company) containing: (i) the number of Units proposed to be Transferred (the "ROFR Units") and the per Unit purchase price offered therefor, which may only be in cash (the "ROFR Sale Price"), and (ii) the material terms and conditions of such proposed Transfer. Delivery of the ROFR Seller's Notice to the other Member (the "ROFR Non-Transferring Member") shall constitute an offer (a "ROFR Offer") by the ROFR Seller to sell the ROFR Units at the ROFR Sale Price to the ROFR Non-Transferring Member, which shall remain outstanding for a period of thirty (30) days after the delivery of the ROFR Seller's Notice (subject to extension as provided below, the "ROFR Period").

(b) During the ROFR Period, the ROFR Non-Transferring Member shall have the right to accept the ROFR Offer by delivering a notice to the ROFR Seller (a "ROFR Acceptance Notice"), with a copy to the Company, of its acceptance of the ROFR Offer at the ROFR Sale Price and on the same terms specified in the ROFR Seller's Notice.

(c) A failure by the ROFR Non-Transferring Member to validly deliver a ROFR Acceptance Notice during the ROFR Period shall be deemed a rejection of the ROFR Offer and a waiver of the ROFR Non-Transferring Member's right to purchase any portion of the ROFR Units.

(d) If the ROFR Non-Transferring Member does not elect to purchase all of the ROFR Units pursuant to this Section 5.02, then the ROFR Seller shall be free, for a period of sixty (60) days from the date of the expiration of the ROFR Period, to sell such ROFR Units to a third party (the "Proposed Transferee") (x) at a price per Unit equal to or greater than the ROFR Price and upon terms no more favorable to the Proposed Transferee than those specified in the ROFR Seller's Notice and (y) subject to the applicable terms and restrictions of this Agreement, including Article IV.

(e) Sales of the ROFR Units to be sold to the ROFR Non-Transferring Member pursuant to this Section 5.02 shall be made at the offices of the Company within sixty (60) days of the delivery of the final ROFR Acceptance Notice (or amended ROFR Acceptance Notice) for such sale, or on such other date as the parties may agree. Such sales shall be effected by the ROFR Seller's delivery of the ROFR Units, free and clear of all Encumbrances (other than restrictions imposed by the governing documents of the Company and securities laws), to the ROFR Non-Transferring Member, against payment to the ROFR Seller of the purchase consideration therefor by the ROFR Non-Transferring Member and on the terms and conditions specified in the ROFR Seller's Notice.

## **ARTICLE VI. INITIAL PUBLIC OFFERING**

### **Section 6.01 *Initial Public Offering.***

(a) It is hereby acknowledged and agreed that it is the express intent of the Company and the Members to effect an Initial Public Offering as soon as reasonably practicable following the Closing Date, and each of the Members and the Company shall use commercially reasonable efforts to consummate an Initial Public Offering as soon as reasonably practicable following the Closing Date.

(b) Subject to compliance with the Partnership's obligations under the Registration Rights Agreement, the Board will determine all matters related to the Initial Public Offering and the related registration process.

**ARTICLE VII.  
CAPITAL CONTRIBUTIONS**

**Section 7.01 *Initial Capital Contributions.***

Prior to the date hereof, capital contributions totaling \$1,000 were made to the Company and 1,000 Economic Units were issued in consideration therefor as set forth in Exhibit A. As of the date hereof, the Economic Members agree that the respective Capital Contributions of the Economic Members and Economic Units of the Economic Members are as set forth on Exhibit A.

**Section 7.02 *Additional Contributions.***

No Member shall be obligated to make any additional Capital Contributions to the Company apart from those Capital Contributions specified in Section 7.01.

**Section 7.03 *Loans.***

(a) The Company or any of its Affiliates may, but shall be under no obligation to, lend to any Group Member, and any Group Member may borrow from the Company or any of its Affiliates, funds needed or desired by the Group Member for such periods of time and in such amounts as the Board 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, all as determined by the Board. 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 7.03(a) and Section 7.03(b), the term "Group Member" shall include any Affiliate of a Group Member that is controlled by the Group Member.

(b) No Group Member may lend funds to the Company or any of its Affiliates (other than another Group Member).

(c) Any Member may, subject to Section 9.04, loan funds to the Company. Loans by a Member to the Company will not be treated as Capital Contributions but will be treated as debt obligations having such terms as are approved in accordance with Section 9.04.

**Section 7.04 *Return of Contributions.***

Except as expressly provided herein, no Economic Member is entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Economic Member. An Economic Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Economic Member's Capital Contributions.



**Section 7.05 *Capital Accounts.***

A separate capital account ("Capital Account") shall be established, determined and maintained for each Economic Member in accordance with the substantial economic effect test set forth in Treasury Regulation § 1.704-1(b)(2), which provides, in part, that a Capital Account shall be:

(a) increased by (i) the amount of money contributed by the Economic Member to the Company; (ii) the fair market value of any property contributed by the Economic Member to the Company (net of liabilities secured by such contributed property); and (iii) allocations to the Economic Member of the Company income and gain (or items thereof), including income and gain exempt from tax; and

(b) decreased by (i) the amount of money distributed to the Economic Member by the Company; (ii) the fair market value of any property distributed to the Economic Member by the Company (net of liabilities secured by such distributed property); (iii) allocations to the Economic Member of expenditures of the Company not deductible in computing its taxable income and not properly capitalized for federal income tax purposes; and (iv) allocations to the Economic Member of Company loss and deduction (or items thereof).

In the case of a termination of a an Economic Unit or an additional Capital Contribution by an existing or newly admitted Economic Member, the Capital Accounts of the Economic Members shall be adjusted as of the date of such termination or the date of the Capital Contribution, as the case may be.

**ARTICLE VIII.  
DISTRIBUTIONS AND ALLOCATIONS**

**Section 8.01 *Distributions.***

(a) Except as otherwise provided in Section 16.03, within fifty (50) days following the end of each Quarter commencing with the Quarter ending on June 30, 2013, an amount equal to 100% of Available Cash with respect to such Quarter shall be distributed in accordance with this Article VIII to all Economic Members simultaneously pro rata in accordance with each Economic Member's Ownership Percentage (at the time the amounts of such distributions are determined).

(b) Each distribution in respect of an Economic Unit shall be paid by the Company only to the holder of record of such Economic Unit as of the record date set for such distribution. Such payment shall constitute full payment and satisfaction of the Company's liability in respect of such payment, regardless of any claim of any Person who may have an interest in such payment by reason of an assignment or otherwise.

**Section 8.02 *Allocations.***

After giving effect to the allocations set forth in Section 8.03, the Company shall allocate Profits and Losses for any Allocation Year among the Economic Members in accordance with the Economic Members' Ownership Percentages.

**Section 8.03 *Special Allocations.***

(a) If there is a net decrease in Company Minimum Gain during any Allocation Year, each Economic Member shall be allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. This Section 8.03(a) is intended to comply with the Company Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Allocation Year, any Economic Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such Allocation Year shall be allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) 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. This Section 8.03(b) 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.

(c) In the event any Economic Member has a deficit balance in its Capital Account at the end of any Allocation Year in excess of the sum of (A) the amount such Economic Member is required to restore pursuant to the provisions of this Agreement and (B) the amount such Economic Member is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Economic Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 8.03(c) shall be made only if and to the extent that such Economic Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VIII have been tentatively made as if this Section 8.03(c) were not in this Agreement.

(d) In the event any Economic Member has a deficit balance in its Capital Account at the end of any Allocation Year in excess of the sum of (A) the amount such Economic Member is required to restore pursuant to the provisions of this Agreement and (B) the amount such Economic Member is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Economic Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 8.03(d) shall be made only if and to the extent that such Economic Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VIII have been tentatively made as if Section 8.03(c) and this Section 8.03(d) were not in this Agreement.

(e) Nonrecourse Deductions for any Allocation Year shall be allocated to the Economic Members pro rata in accordance with each Economic Member's Ownership Percentage.

(f) Member Nonrecourse Deductions for any Allocation Year shall be allocated 100% to the Economic Member that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Economic Member bears the economic risk of loss with respect to a Member Nonrecourse Debt, such Economic Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Economic Members in accordance with the ratios in which they share such economic risk of loss.

(g) For purposes of Treasury Regulation Section 1.752-3(a)(3), the Economic Members agree that Nonrecourse Liabilities of the Company shall be allocated to the Economic Members pro rata in accordance with each Economic Member's Ownership Percentage.

(h) To the extent an adjustment to the adjusted tax basis of any Company 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 Economic Members 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.

(i) Notwithstanding any other provision of this Section 8.03, the allocations set forth in Sections 8.03(a), (b), (c), (d), (e), (f) and (h) (the "Required Allocations") shall be taken into account so that, to the extent possible, the net amount of items of gross income, gain, loss and deduction allocated to each Economic Member pursuant to Sections 8.02 and 8.03, together, shall be equal to the net amount of such items that would have been allocated to each such Economic Member under Section 8.02 and Section 8.03 had the Required Allocations and this Section 8.03(i) not otherwise been provided in this Agreement. The Company may take into account future Required Allocations that, although not yet made, are likely to offset other Required Allocations previously made.

(j) Items of income, gain, loss and deduction realized in any taxable year that includes a Dissolution Event shall be allocated in a manner that will cause, to the extent possible, the ratio of each Economic Member's Capital Account to the sum of all Economic Members' Capital Accounts to be equal to such Economic Member's Ownership Percentage. Upon a Dissolution Event, if any property is distributed in kind, any unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously shall be allocated among the Economic Members as if there were a taxable disposition of that property for the fair market value of that property on the date of distribution.

(k) The allocations in Section 8.02, this Section 8.03 and Section 8.05, and the provisions of this Agreement relating to the maintenance of Capital Accounts, are included to ensure compliance with requirements of the federal income tax law (and any applicable state income tax laws). Such provisions are intended to comply with Treasury Regulations Sections 1.704-1 and 1.704-2 and shall be interpreted and applied in a manner consistent with such Treasury Regulations and any amendment or successor provision thereto. The Management Members shall cause appropriate modifications to be made if unanticipated events might

otherwise cause this Agreement not to comply with such Treasury Regulations, so long as such modifications do not cause a material change in the relative economic benefit of the Economic Members under this Agreement.

**Section 8.04** *Section 704(c).*

In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Economic Members to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of same under this Agreement). In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) of the definition of Gross Asset Value hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement; *provided* that the Company shall use the traditional method without curatives set forth in Treasury Regulation Section 1.704-3(b). Allocations pursuant to this Section 8.04 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Economic Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

**Section 8.05** *Varying Interests.*

All items of income, gain, loss, deduction or credit shall be allocated, and all distributions shall be made, to the Persons shown on the records of the Company to have been Economic Members as of the last calendar day of the period for which the allocation or distribution is to be made. Notwithstanding the foregoing, if during any taxable year there is a change in any Economic Member's Ownership Percentage, the Economic Members agree that their allocable shares of such items for the taxable year shall be determined on any method determined by the Board to be permissible under Code Section 706 and the related Treasury Regulations to take account of the Economic Members' varying Ownership Percentages.

**Section 8.06** *Withheld Taxes.*

All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Company or the Economic Members shall be treated as amounts distributed to the Economic Members pursuant to this Article VIII for all purposes of this Agreement. The Company is authorized to withhold from distributions, or with respect to allocations, to the Economic Members and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provision of any other federal, state or local law and shall allocate such amounts to those Economic Members with respect to which such amounts were withheld.

**Section 8.07** *Limitations on Distributions.*

Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Delaware Act or other applicable law. All distributions required to be made under this Agreement shall be made subject to Sections 18-607 and 18-804 of the Delaware Act.

## **ARTICLE IX. BOARD OF DIRECTORS**

### **Section 9.01 *Management by Board of Directors.***

(a) The Board shall conduct, direct and manage all activities of the Company. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Company shall be exclusively vested in the Board, and no Member shall have any management power over the business and affairs of the Company.

(b) No Member, in its capacity as such, shall participate in the operation, management or control of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company.

### **Section 9.02 *Board Composition.***

#### **(a) General.**

(i) The Board shall be composed of four (4) "Directors" (or such other number of directors as permitted in accordance with Section 9.02(d)) who shall be natural persons (together with each Alternate Director that acts as a Director from time to time as set forth in this Section 9.02, the "Directors" and each such person a "Director"). The Directors shall constitute "managers" of the Company within the meaning of the Delaware Act. A Director need not be a resident of the State of Delaware, a Member or an officer of the Company.

(ii) Notwithstanding the foregoing, no Director in his or her individual capacity shall have the authority to manage the Company or approve matters relating to, or otherwise to bind the Company, such powers being reserved to a Director acting through the Board, and to such other committees of the Board, and officers and agents of the Company, as designated by the Board.

(iii) The Chairman of the Board shall be a Director and shall set the agenda for and preside at all meetings of the Board. The Parties will mutually agree on the initial Chairman of the Board. The Party whose Representative was not the initial Chairman will appoint the successor to the initial Chairman of the Board, subject to the other Party's approval, which approval shall not be unreasonably withheld, conditioned or delayed. The rights to appoint the Chairman and approve such appointment as described above shall rotate between CERC and OGEH (or any other party to whom any such Management Member Transfers its rights to designate Representatives). The term of the initial Chairman of the Board shall end on the second anniversary of the Closing Date. Each successor Chairman of the Board shall serve for a two-year term.

(iv) Prior to the designation of the initial Chairman of the Board, CERC shall be entitled to designate a natural person to serve as interim Chairman of the Board (the "Interim Chairman"). The Interim Chairman shall have power and authority, among other things, to execute, for and on behalf of the Company and the Partnership Group, the Transaction Documents (as such term is defined in the Master Formation Agreement) and such other documents necessary or appropriate in connection therewith.

(b) Designation of Directors; Alternate Directors.

(i) Representatives. Subject to Section 9.02(b)(i)(C), each Management Member shall be permitted to designate Directors, including Alternate Directors (each person so designated, a "Representative" and, collectively, the "Representatives"), as follows:

(A) CERC shall be entitled to designate two (2) natural persons to serve on the Board (any such Director designated by CERC, a "CERC Representative") and two (2) natural persons to serve as Alternate Directors (any such person designated by CERC, a "CERC Alternate Director"). The initial CERC Representatives as of the Closing Date are set forth on Exhibit C.

(B) OGEH shall be entitled to designate two (2) natural person to serve on the Board (any such Director designated by OGEH, an "OGEH Representative") and two (2) natural persons to serve as Alternate Directors (any such person designated by OGEH, an "OGEH Alternate Director," and together with the CERC Alternate Directors, the "Alternate Directors"). The initial OGEH Representatives as of the Closing Date are set forth on Exhibit C.

(C) If any Management Member elects to Transfer its right to designate its Representatives in accordance with the terms of this Agreement (including the requirements set forth in Section 4.01(d), then (1) each Representative designated by such Management Member shall be automatically removed from all positions such individual holds with the Company without any further action as of the close of business on the date of such Transfer, (2) each vacancy in the Board shall be filled by the Transferee of such Transfer, (3) such Management Member shall no longer be permitted to designate Representatives pursuant to this Agreement and (4) the Transferee of such Transfer shall become entitled to designate Representatives under this Agreement as of the close of business on the date of Transfer.

(ii) Other Directors. Each Independent Director and each Conflicts Committee Independent Director shall be designated by unanimous vote of the Management Members. For the avoidance of doubt, assuming they meet the requisite standards, Independent Directors can also serve as Conflicts Committee Independent Directors.

(iii) Alternate Directors. Alternate Directors shall be entitled to receive notice of and attend meetings of the Board; *provided* that such attendance shall be only in an observer capacity unless a particular Alternate Director is serving in place of a Management Member's designated Director. An Alternate Director may, without prior

notice to the Company or any other Member, in the sole discretion of the Management Member that designated such Alternate Director, serve in place of any Management Member's designated Director at any meeting of the Board or in connection with any action or approval of the Board, and the presence of such Alternate Director shall be the equivalent of the presence of a designated Director for all purposes under this Agreement. When serving in such capacity as a Director, each Alternate Director shall be entitled to all of the rights and obligations of a Director as set forth in this Agreement.

(c) Removal; Resignation; Vacancies.

(i) Each Representative may be removed and replaced, with or without cause, at any time by the Management Member that designated him or her, in such Management Member's sole discretion, but may not be removed or replaced by any other means, except as set forth in Section 9.02(b)(i)(C). A Management Member who removes its Representative shall promptly notify the other Management Members of the removal and the name of its replacement Representative. Each Independent Director may be removed and replaced, with or without cause, at any time by unanimous vote of the Management Members.

(ii) A Director may resign at any time, such resignation to be made in writing and to take effect immediately or on such later date as may be specified therein.

(iii) If any Representative designated by a Management Member shall cease to serve as a Director for any reason, the vacancy resulting thereby shall be filled by another individual to be designated by that Management Member; *provided* that such Management Member would, at such time, otherwise be permitted to designate a Representative pursuant to Section 9.02(b). If any other Director shall cease to serve as a Director for any reason, the vacancy resulting thereby will be filled by another Director designated in accordance with Section 9.02(b)(ii).

(d) Changes in Size. The number of Directors constituting the full Board may be increased or decreased from time to time by unanimous vote of the Management Members; *provided, however*, that, for so long as two Management Members are permitted to designate Representatives in accordance with Section 9.02(b), the Management Members shall have an equal number of Representatives. In connection with the Initial Public Offering, the Management Members shall increase the number of Directors constituting the full Board and take all actions necessary to designate and maintain (i) the Independent Directors required by the listing standards of the New York Stock Exchange or any national securities exchange selected for the listing of the limited partner interests or other Equity Interests of the Partnership and (ii) the Conflicts Committee Independent Directors required under the Partnership Agreement; *provided, however*, that if at any time the Board does not include the requisite number of Independent Directors and/or Conflicts Committee Independent Directors, the Board shall still have all powers and authority granted to it hereunder, but the Management Members shall endeavor to appoint one or more additional Independent Directors and/or Conflicts Committee Independent Directors pursuant to Section 9.02(b)(ii) as necessary to come into compliance with this Section 9.02(d).

**Section 9.03 *Board Meetings; Quorum.***

(a) The Board shall meet at least quarterly at the offices of the Company (or such other place as determined by the Board), with the participation of such officers of the Company as such Representative may request. Special meetings of the Board, to be held at the offices of the Company (or such other place as shall be determined by the Board), shall be called at the direction of any one Director. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that such meeting is not properly called or convened. The reasonable costs and expenses incurred by the Directors and Alternate Directors in connection with any meeting of the Board shall be borne and paid by the Company (and any Director and Alternate Director may obtain reimbursement from the Company for any such reasonably documented costs and expenses).

(b) During the Restricted Period, the presence of all Directors, present in person or participating in accordance with Section 9.07, shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board. After the Restricted Period, as long as one CERC Representative and one OGEH Representative are present, the presence of a majority of all the Directors, whether in person or participating in accordance with Section 9.07, shall be necessary and sufficient to constitute a quorum.

**Section 9.04 *Board Voting.***

(a) General: Majority Voting. Each Director shall be entitled to one vote. On all matters requiring the vote or action of the Board, any action undertaken by the Board must be authorized by the affirmative vote of at least a majority of Directors. For the avoidance of doubt, Alternate Directors that are present at a meeting of the Board solely in an observer capacity shall not be entitled to vote.

(b) Actions Requiring Approval of the Board. In addition to such other matters as the Board may from time to time by resolution in accordance with Section 9.04(a) determine, and except for such actions as the Board may from time to time in accordance with Section 9.04(a) delegate to the officers of the Company that may be taken without approval of the Board, the Company shall not, and shall cause the Group Members not to, and shall not authorize or permit any officer or agent of the Company on behalf of the Company or of any Group Member to, effect any non-ministerial action, including the following actions:

- (i) approve the Annual Budget;
- (ii) incur capital expenditures in excess of the amounts contemplated by the Annual Budget;
- (iii) enter into, modify or terminate a Material Contract;
- (iv) prior to the IPO Date, approve any transaction between any Group Member, on the one hand, and the Company or any Member or any of its Affiliates (other than any member of the Partnership Group) or any officer, director or employee of any Member or



any of its Affiliates (other than any Group Member), on the other hand (each, a **“Related Party Transaction”**);

(v) transfer an asset (other than working capital) to a Person other than a Group Member outside the ordinary course of business;

(vi) merge, consolidate or convert with or into any other Person (other than a wholly owned Subsidiary of the Partnership into another wholly owned Subsidiary of the Partnership), or engage in any recapitalization, restructuring or reorganization, or enter into a letter of intent or agreement in principle with respect thereto;

(vii) alter, repeal, amend or adopt any provision of its certificate of limited partnership, certificate of formation or certificate of incorporation or any agreement of limited partnership, limited liability company agreement or bylaws or any similar organizational or governing document or change the form of organization of any Group Member; or

(viii) engage, participate or invest, directly or indirectly, in any new line of business.

(c) **Board Deadlock.**

(i) In the event that the Board is unable to obtain the requisite vote under Section 9.04(a) for the approval of any matter (such event, a **“Deadlock”**), either Management Member may give the other Management Member notice (a **“Deadlock Notice”**) of such matter that has not been approved. Within five days after receipt of the Deadlock Notice, the receiving Management Member shall submit to the other Management Member a written response (a **“Dispute Response”**). The Dispute Notice and the Dispute Response shall each include (A) a statement setting forth the position of the Management Member giving the notice and a summary of arguments supporting such position and (B) the name and title of a senior representative of such Management Member who has authority to settle the Deadlock. Within five days of the delivery of the Dispute Response, the senior representatives of both Management Members shall meet or communicate by telephone at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, and shall negotiate in good faith to resolve the Deadlock.

(ii) If such Deadlock has not been resolved within 30 days following delivery of the Dispute Response, then each Management Member agrees to have its Chief Executive Officer meet or communicate by telephone with the Chief Executive Officer of the other Management Member at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, and shall negotiate in good faith to resolve the Deadlock.

(iii) If such Deadlock is not resolved within 60 days of delivery of the Deadlock Response, (A) prior to the IPO Date, either Management Member may require such Deadlock to be submitted to nonbinding mediation in Houston, Texas, before an impartial mediator acceptable to both Management Members and with senior representatives of

both Members who have authority to settle the Deadlock in attendance, or (B) on or after the IPO Date, such Deadlock shall be resolved by the affirmative vote of a majority of the Independent Directors on the Board.

(iv) Notwithstanding anything herein to the contrary, until a Deadlock is resolved, each Management Member agrees to continue to perform its obligations under this Agreement and to cause its Representatives to continue to perform their obligations under this Agreement. In the event a Deadlock exists with respect to any Annual Budget, then, until such time as such Deadlock is resolved, the Annual Budget for such calendar year shall be based on the corresponding portions of the Annual Budget for the preceding calendar year (excluding any unusual or extraordinary revenues, expenses or capital expenditures that occurred during such prior calendar year), together with any additional amounts to the extent necessary, when combined with amounts authorized to be spent in such last Annual Budget, to meet the Partnership's existing commitments and obligations and to conduct and maintain the Partnership's operations and properties in the ordinary course of business. With respect to non-recurring amounts and capital expenditures, if any, for which there is no corresponding portion of the Annual Budget for the preceding calendar year, only budgeted amounts directed or approved by the Board of Directors on a case by case basis shall be utilized.

(d) Related Party Transactions. After the IPO Date, any Related Party Transactions shall be approved in accordance with the applicable provisions of the Partnership Agreement.

#### Section 9.05 *Notice.*

Written notice of all regular meetings of the Board shall be given to all Directors and Alternate Directors at least 10 days prior to the regular meeting of the Board and one Business Day prior to any special meeting of the Board. All notices and other communications to be given to Directors and Alternate Directors shall be sufficiently given for all 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, delivered by electronic mail or when received in the form of a facsimile, and shall be directed to the address or facsimile number as such Director and Alternate 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 need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the Directors are present or if those not present waive notice of the meeting either before or after such meeting. Notwithstanding anything in the foregoing to the contrary, the failure to give notice or documents or other information to an Alternate Director that is acting solely in an observer capacity shall not affect the validity of any action taken by the Board.

#### Section 9.06 *Action by Written Consent of Board.*

To the extent permitted by applicable law, the Board may act without a meeting, without notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by all Directors (which, for the avoidance of doubt, need not include the consent of any Alternate Directors unless a particular Alternate Director is serving in place of a

Management Member's designated Director). All actions taken by the Board in the form of a written consent shall be distributed to each Director and Alternate Director promptly upon the taking of such action.

**Section 9.07 *Conference Telephone Meetings.***

Directors and Alternate Directors may participate in a meeting of the Board or any committee thereof by means of conference telephone 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.

**Section 9.08 *Minutes.***

All decisions and resolutions of the Board shall be reported in the minutes of its meetings, which shall state the date, time and place of the meeting (or the date of the written consent in lieu of a meeting), the persons present at the meeting, the resolutions put to a vote (or the subject of a written consent) and the results of such voting (or written consent). The minutes of all meetings of the Board shall be kept at the principal office of the Company.

**Section 9.09 *Committees.***

(a) The Board may establish committees of the Board and may delegate any of its responsibilities to such committees, except as prohibited by applicable law. CERC and OGEH shall appoint an equal number of Directors to any such committee (except for the Audit Committee and the Conflicts Committee).

(b) A majority of the members of any committee, present in person or participating in accordance with Section 9.07, shall constitute a quorum for the transaction of business of such committee. Except as otherwise required by law or the Partnership Agreement, all decisions of a committee shall require the affirmative vote of at least a majority of the committee members at any meeting at which a quorum is present.

(c) A majority of the members of any committee may determine its action and fix the time and place of its meetings unless the Board shall otherwise provide. Notice of such meetings shall be given to each member of the committee in the manner provided for in Section 9.05. Subject to Section 9.09(a), the Board shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

(d) After the IPO Date:

(i) The Board shall have an audit committee (the "Audit Committee") made up of Directors who meet the independence standards required of directors who serve on an audit committee of a board of directors established by the Exchange Act and the rules and regulations of the Commission thereunder and by the New York Stock Exchange or any national securities exchange on which the limited partner interests or other Equity Interest are listed (each, an "Audit Committee Independent Director"). The Audit Committee shall establish a written audit committee charter in accordance with the rules and regulations of the Commission and the New York Stock Exchange or any national

securities exchange on which the Common Units are listed from time to time, in each case as amended from time to time. Each member of the Audit Committee shall satisfy the rules and regulations of the Commission and the New York Stock Exchange or any national securities exchange on which the Common Units are listed from time to time, in each case as amended from time to time, pertaining to qualification for service on an audit committee.

(ii) The Board shall have a conflicts committee (the "Conflicts Committee") made up of at least two Conflicts Committee Independent Directors. 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 duties owed by the Board or any Director to the Company or the Members.

## **ARTICLE X. OFFICERS**

### **Section 10.01 *Elected Officers.***

The executive officers of the Company shall serve at the pleasure of the Board. Such officers shall have the authority and duties delegated to each of them, respectively, by the Board from time to time. The elected officers of the Company shall be such officers (including, without limitation, a Chief Executive Officer, a Secretary, a Treasurer, Executive Vice Presidents, Senior Vice Presidents and Vice Presidents), as the Board from time to time may deem proper. All officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article X. Such officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in this Agreement or as may be prescribed by the Board or such committee, as the case may be.

### **Section 10.02 *Term of Office.***

Each officer shall hold office until such person's successor shall have been duly elected and shall have qualified or until such person's death or until he shall resign or be removed pursuant to Section 10.07.

### **Section 10.03 *Chief Executive Officer.***

The Chief Executive Officer shall be responsible for the general management of the affairs of the Company and shall perform all duties incidental to such person's office which may be required by law and all such other duties as are properly required of him by the Board. He shall make reports to the Board and the Management Members and shall see that all orders and resolutions of the Board and of any committee thereof are carried into effect.

**Section 10.04 *Vice Presidents.***

Each Executive Vice President and Senior Vice President and any Vice President shall have such powers and shall perform such duties as shall be assigned to him by the Board.

**Section 10.05 *Treasurer.***

(a) The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Treasurer shall cause the funds of the Company to be deposited in such banks as may be authorized by the Board, or in such banks as may be designated as depositories in the manner provided by resolution of the Board. The Treasurer shall, in general, perform all duties incident to the office of the Treasurer and shall have such further powers and duties and shall be subject to such directions as may be granted or imposed from time to time by the Board.

(b) Assistant Treasurers shall have such of the authority and perform such of the duties of the Treasurer as may be provided in this Agreement or assigned to them by the Board or the Treasurer. Assistant Treasurers shall assist the Treasurer in the performance of the duties assigned to the Treasurer, and in assisting the Treasurer, each Assistant Treasurer shall for such purpose have the powers of the Treasurer. During the Treasurer's absence or inability, the Treasurer's authority and duties shall be possessed by such Assistant Treasurer or Assistant Treasurers as the Board may designate.

**Section 10.06 *Secretary.***

(a) The Secretary shall keep or cause to be kept, in one or more books provided for that purpose, the minutes of all meetings of the Board, the committees of the Board and the Management Members. The Secretary shall see that all notices are duly given in accordance with the provisions of this Agreement and as required by applicable law; shall be custodian of the records and the seal of the Company and affix and attest the seal to all documents to be executed on behalf of the Company under its seal; and shall see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and in general, shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board.

(b) Assistant Secretaries shall have such of the authority and perform such of the duties of the Secretary as may be provided in this Agreement or assigned to them by the Board or the Secretary. Assistant Secretaries shall assist the Secretary in the performance of the duties assigned to the Secretary, and in assisting the Secretary, each Assistant Secretary shall for such purpose have the powers of the Secretary. During the Secretary's absence or inability, the Secretary's authority and duties shall be possessed by such Assistant Secretary or Assistant Secretaries as the Board may designate.

**Section 10.07 *Removal.***

Any officer elected, or agent appointed, by the Board may be removed, with or without cause, by the Board whenever, in its judgment, the best interests of the Company would be

served thereby. No elected officer shall have any contractual rights against the Company for compensation by virtue of such election beyond the date of the election of such person's successor, such person's death, such person's resignation or such person's removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

**Section 10.08 *Vacancies.***

A newly created elected office and a vacancy in any elected office because of death, resignation or removal may be filled by the Board for the unexpired portion of the term at any meeting of the Board.

**ARTICLE XI.  
BUDGET**

**Section 11.01 *Budget.***

The initial budget (the "Initial Budget") for the Partnership and its Subsidiaries was previously agreed pursuant to that certain Letter Agreement regarding Initial Budget, dated as of March 14, 2013, and covers the period from January 1, 2013 through December 31, 2013 and sets forth reasonable line item detail regarding anticipated expenditures, including: (i) estimated operating expenditures; (ii) estimated capital expenditures; (iii) the proposed financing plans for such expenditures; and (iv) such other items as are set forth therein, and such Initial Budget is deemed to be constructively attached to this Agreement and incorporated herein by reference. At such reasonable time prior to the expiration of the Initial Budget, and each year thereafter, the Board shall cause to be prepared the Annual Budget, which Annual Budget will be presented to the Board for approval in accordance with Section 9.04(b)(i). The Board of Directors shall cause the Annual Budget to be prepared and approved for distribution to the Management Members by October 31<sup>st</sup>, and finally approved by November 30<sup>th</sup>, for each calendar year during the term of this Agreement. If the Budget is not approved by the Board of Directors prior to the date when such Budget is to become effective, a Deadlock subject to the procedures set forth in Section 9.04(c) will be deemed to exist.

**ARTICLE XII.  
MANAGEMENT MEMBER MEETINGS**

**Section 12.01 *Meetings.***

Subject to the provisions of this Agreement, including Section 9.01, any actions of the Management Members required to be taken hereunder shall be taken in the manner provided in this Article XII. Meetings of Management Members shall be called by the Board. The Board may designate any place as the place of meeting for any meeting of the Management Members.

**Section 12.02 *Notice of a Meeting.***

Written notice of meetings of the Management Members shall be given to all Management Members at least ten (10) days prior to the meeting. All notices and other communications to be given to Management Members shall be sufficiently given for all 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, delivered by electronic mail or when received in the form of a facsimile, and shall be directed to the address or facsimile number as such Management Member shall designate by notice to the Company. Neither the business to be transacted at, nor the purpose of, any meeting of the Management Members need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the Management Members are present or if those not present waive notice of the meeting either before or after such meeting. Attendance of a Management Member at a meeting shall constitute a waiver of notice of such meeting, except where a Management Member attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 12.03 *Quorum; Voting Requirement.***

(a) The presence, in person or by proxy or participating in accordance with Section 12.05, of a Majority Interest shall constitute a quorum for the transaction of business by the Management Members. Unless otherwise provided by the Delaware Act, the affirmative vote of a Majority Interest present at a meeting at which a quorum is present shall constitute a valid decision of the Management Members.

(b) Except as provided in Section 17.02, on and after the IPO Date, without first receiving the unanimous vote of the Management Members, the Company shall not, and shall cause the Group Members not to, and shall not authorize or permit any officer or agent of the Company on behalf of the Company or of any Group Member to, effect any of the following actions:

(i) alter, repeal, amend or adopt any provision of its certificate of limited partnership, certificate of formation or certificate of incorporation or any agreement of limited partnership, limited liability company agreement or bylaws or any similar organizational or governing document if any such alteration, repeal, amendment or adoption would have a material adverse effect on the rights or preferences of any Member, partner, stockholder or any other holder of Equity Interests of the Company or any of the Group Members, as applicable;

(ii) merge, consolidate or convert with or into any other Person (other than a wholly owned Subsidiary of the Partnership into another wholly owned Subsidiary of the Partnership);

(iii) sell, lease, transfer, pledge or otherwise dispose of all or substantially all of the properties and assets of the Company and the Group Members, taken as a whole, in a single transaction or a series of related transactions (other than to a wholly owned Subsidiary of the Company);

(iv) change the classification of the Company or any Group Member for United States federal income tax purposes;

(v) voluntarily liquidate, wind-up or dissolve the Company or the Partnership; or

(vi) file or consent to the filing of any bankruptcy, insolvency or reorganization petition for relief under the United States Bankruptcy Code naming the Company or any Group Member, or otherwise seek, with respect to the Company or any Group Member, relief from debts or protection from creditors generally.

**Section 12.04 *Action by Consent of Members.***

Any action that may be taken at a meeting of the Management Members may be taken without a meeting if an approval in writing setting forth such action is signed by Management Members holding all of the outstanding Management Units.

**Section 12.05 *Conference Telephone Meetings.***

Management Members may participate in a meeting by means of conference telephone 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.

**ARTICLE XIII.  
EXCULPATION AND INDEMNIFICATION; DUTIES**

**Section 13.01 *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 acting (or refraining to act) in such capacity; *provided*, 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; *provided further*, no indemnification pursuant to this Section 13.01 shall be available to the Members or their Affiliates (other than a Group Member) with respect to its or their obligations incurred pursuant to the Master Formation Agreement (other than obligations incurred by such Member on behalf of the Company). Any indemnification pursuant to this Section 13.01 shall be made only out of the assets of the Company, it being agreed that the Members 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 13.01(a) in



defending 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 13.01, 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 13.01.

(c) The indemnification provided by this Section 13.01 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of a Majority Interest or of the Board, 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.

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

(e) For purposes of this Section 13.01, the Company shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the 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 13.01(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Company.

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

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 13.01 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 13.01 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.

(i) Any amendment, modification or repeal of this Section 13.01 or any provision hereof shall be prospective only and shall not 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 13.01 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.

(j) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND SUBJECT TO SECTION 13.01(a), THE PROVISIONS OF THE INDEMNIFICATION PROVIDED IN THIS SECTION 13.01 ARE INTENDED BY THE MEMBERS TO APPLY EVEN IF SUCH PROVISIONS HAVE THE EFFECT OF EXCULPATING THE INDEMNITEE FROM LEGAL RESPONSIBILITY FOR THE CONSEQUENCES OF SUCH PERSON'S NEGLIGENCE, FAULT OR OTHER CONDUCT.

#### **Section 13.02 *Liability of Indemnitees.***

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Company, the Members or any other Persons who have acquired interests in the Membership Interests, 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 the Members, the Indemnitee acting in connection with the Company's business or affairs shall not be liable to the Company or to any Member for its good faith reliance on the provisions of this Agreement, and the provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities, including fiduciary duties, of any Indemnitee otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of the Indemnitee.

(c) Any amendment, modification or repeal of this Section 13.02 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 13.02 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 13.03 *Other Matters Concerning the Directors***

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

(b) The Directors may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by the Directors, and any act taken or omitted to be taken in reliance upon the advice or opinion (including an Opinion of Counsel) of such Persons as to matters that the Directors reasonably believe 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.

#### **Section 13.04 *Corporate Opportunities.***

(a) Except as otherwise provided in the Omnibus Agreement or any other agreement or contract to which the Company or any Group Member is a party, (i) each Member, Director and officer of the Company and their respective Affiliates 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 the Company or any Group Member, independently or with others, including business interests and activities in direct competition with the business and activities of the Company or 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 the Company or any Group Member or any Member, and (ii) neither of the Company, any Member or any other Person shall have any rights by virtue of this Agreement, any Group Member Agreement, or the business relationship established hereby in any business ventures of any Member, Director or officer of the Company and their respective Affiliates.

(b) Notwithstanding anything in this Agreement to the contrary, the Members hereby agree that the doctrine of corporate opportunity shall not apply to Directors and officers of the Company.

#### **Section 13.05 *Duties.***

(a) Whenever a Member makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its capacity as a Member, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then such Member or its Affiliates causing it to do so shall be entitled, to the fullest extent permitted by law, to make such determination or to take or decline to take such other action free of any duty (including any fiduciary duty) or obligation whatsoever to the Company, any Member or Director, and the Member, or such Affiliates causing it to do so, shall not, to the fullest extent permitted by law, be required to act 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, it being the intent of all Members that such Member or any such Affiliate, in its capacity as a Member, shall have the right to make such determination solely on the basis of its own interests.

(b) Subject to, and as limited by the provisions of this Agreement, the officers of the Company, the Members and the Directors, in the performance of their duties as such, shall not, to the fullest extent permitted by the Delaware Act and other applicable law, owe any duties (including fiduciary duties) as an officer, Member or Director of the Company, notwithstanding

anything to the contrary existing at law, in equity or otherwise; *provided, however*, that each officer of the Company, Member and Director shall act in accordance with the implied contractual covenant of good faith and fair dealing. In furtherance of the foregoing to the fullest extent permitted by the Delaware Act, a Representative, in performing his duties and obligations as a Director under this Agreement, shall (i) owe no fiduciary or similar duty or obligation whatsoever to the Company, any Member (other than the Management Member designating such Representative) or the other Directors, and (ii) be entitled to act or omit to act at the direction of the Management Member that designated such Representative, considering only such factors, including the separate interests of the Management Member, as such Representative or Member chooses to consider, and any action of a Representative or failure to act, taken or omitted in good faith reliance on the foregoing provisions shall not, as between the Company and the other Members, on the one hand, and the Representative or Management Member designating such Representative, on the other hand, constitute a breach of any duty (including any fiduciary or other similar duty, to the extent such exists under the Delaware Act or any other applicable law) on the part of such Representative or Member to the Company or any other Representative or Member of the Company. Notwithstanding any duty otherwise existing at law or in equity, any matter approved by the Board in accordance with the provisions, and subject to the limitations, of the Partnership Agreement, shall not be deemed to be a breach of any duties owed by the Board or any Director to the Company or the Members.

(c) The provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties (including fiduciary duties) and liabilities of an officer of the Company or a Member or Director otherwise existing at law, in equity or by operation of the preceding sentences, are agreed by the Company and the Members to replace such duties and liabilities of such officer, Member or Director. The Members (in their own names and in the name and on behalf of the Company), acknowledge, affirm and agree that (i) none of the Members would be willing to make an investment in the Company or enter into this Agreement, and no Representative would be willing to so serve on the Board, in the absence of this Section 13.05, and (ii) they have reviewed and understand the provisions of Section 18-1101(b) and (c) of the Delaware Act.

(d) Nothing in this Agreement is intended to or shall eliminate any implied contractual covenant of good faith and fair dealing, the requirement not to waste Company assets or otherwise relieve or discharge any Representative or Member from liability to the Company or the Members on account of any fraudulent or intentional misconduct of such Representative or Member.

#### **ARTICLE XIV. TAXES**

##### **Section 14.01 *Tax Returns.***

The Board shall prepare and timely file or cause to be prepared and filed (on behalf of the Company) all federal, state, local and foreign tax returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall bear the costs of the preparation and filing of its returns.

**Section 14.02 *Tax Elections.***

(a) The Company shall make the following elections on the appropriate tax returns:

(i) to adopt as the Company's taxable year the calendar year;

(ii) to adopt the accrual method of accounting;

(iii) if a distribution of the Company's property as described in Section 734 of the Code occurs or upon a transfer of an Economic Unit as described in Section 743 of the Code occurs, on request by notice from any Member, to elect, pursuant to Section 754 of the Code, to adjust the basis of the Company's properties; and

(iv) any other election the Board may deem appropriate.

(b) Neither the Company nor any Member shall make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law and no provision of this Agreement shall be construed to sanction or approve such an election.

**Section 14.03 *Tax Matters Member.***

(a) OGEH shall act as the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code (the "Tax Matters Member"). The Tax Matters Member shall take such action as may be necessary to cause to the extent possible each Member to become a "notice partner" within the meaning of Section 6223 of the Code. The Tax Matters Member shall inform each Member of all significant matters that may come to its attention in its capacity as Tax Matters Member by giving notice thereof on or before the 15th Business Day after becoming aware thereof and, within that time, shall forward to each Member copies of all significant written communications it may receive in that capacity.

(b) Any reasonable cost or expense incurred by the Tax Matters Member in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

(c) The Tax Matters Member shall not enter into any extension of the period of limitations for making assessments on behalf of any Member without first obtaining the consent of such Member. The Tax Matters Member shall not bind any Member to a settlement agreement without obtaining the consent of such Member. Any Member that enters into a settlement agreement with respect to any Company item (as described in Section 6231(a)(3) of the Code in respect of the term "partnership item") shall notify the other Members of such settlement agreement and its terms within ninety (90) days from the date of the settlement.

(d) No Member shall file a request pursuant to Section 6227 of the Code for an administrative adjustment of Company items for any taxable year without first notifying the other Members. If the Board consents to the requested adjustment, the Tax Matters Member shall file the request for the administrative adjustment on behalf of the Members. If such consent is not obtained within thirty (30) days from such notice, or within the period required to timely

file the request for administrative adjustment, if shorter, any Member may file a request for administrative adjustment on its own behalf. Any Member intending to file a petition under Sections 6226, 6228 or other Section of the Code with respect to any item involving the Company shall notify the other Members of such intention and the nature of the contemplated proceeding. In the case where the Tax Matters Member is intending to file such petition on behalf of the Company, such notice shall be given to each other Member ninety (90) days prior to filing and the Tax Matters Member shall obtain the consent of the other Members to the forum in which such petition will be filed prior to filing, which consent shall not be unreasonably withheld or delayed.

(e) If any Member intends to file a notice of inconsistent treatment under Section 6222(b) of the Code, such Member shall give reasonable notice under the circumstances to the other Members of such intent and the manner in which the Member's intended treatment of an item is (or may be) inconsistent with the treatment of that item by the other Members.

## **ARTICLE XV. BOOKS, RECORDS, REPORTS, BANK ACCOUNTS, AND BUDGETS**

### **Section 15.01 *Maintenance of Books.***

(a) The Board shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the Management Members, appropriate registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Company.

(b) The books of account of the Company shall be (i) maintained on the basis of a fiscal year that is the calendar year, (ii) maintained on an accrual basis in accordance with GAAP, consistently applied and (iii) audited by the Certified Public Accountants at the end of each calendar year.

### **Section 15.02 *Reports.***

(a) As soon as practicable, but in no event later than ninety (90) days after the close of each fiscal year of the Company, the Board shall cause to be mailed or made available, by any reasonable means, to each holder of record of a Unit as of a date selected by the Board, an annual report containing financial statements of the Company for such fiscal year of the Company, presented in accordance with GAAP, including a balance sheet and statements of operations, company equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the Board.

(b) As soon as practicable, but in no event later than forty-five (45) days after the close of each Quarter except the last Quarter of each fiscal year, the Board shall cause to be mailed or made available, by any reasonable means to each holder of record of a Unit, as of a date selected by the Board, a report containing unaudited financial statements of the Company and such other information as may be required by applicable law or as the Board determines to be necessary or appropriate.

(c) With respect to each calendar year, the Board shall prepare, or cause to be prepared, and deliver, or cause to be delivered, to each Member such federal, state and local income tax returns and such other accounting, tax information and schedules (including any information necessary for unrelated business taxable income calculations by any Member) as shall be necessary for the preparation by each Member on or before July 15 following the end of each calendar year of its income tax return with respect to such year, *provided, however*, that the Board shall also cause the Company to prepare and deliver, or cause to be prepared and delivered, at any time, such other information with respect to Taxes as is reasonably requested by a Member at the cost of such Member.

**Section 15.03 *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 XVI.**

**DISSOLUTION, WINDING-UP, TERMINATION AND CONVERSION**

**Section 16.01 *Dissolution.***

The Company shall dissolve, and its affairs shall be wound up, upon:

(a) an election to dissolve the Company by (i) the unanimous consent of the Board, if on or before the IPO Date, or (ii) the affirmative vote of a Majority Interest, if after the IPO Date;

(b) the entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Delaware Act; or

(c) at any time there are no Members, unless the Company is continued without dissolution in accordance with the Delaware Act.

**Section 16.02 *Liquidator.***

Upon dissolution of the Company, the Board shall select one or more Persons to act as liquidator of the Company (the "Liquidator"). The Liquidator (if other than the Board) shall be entitled to receive such compensation for its services as may be approved by the Board. Except as expressly provided in this Article XVI, the Liquidator selected in the manner provided herein shall have and may exercise, without further authorization or consent of any of the Members, all of the powers conferred upon the Board 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 transferring assets set forth in Section 9.04(c)) 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 Company as provided for herein.

**Section 16.03 *Liquidation.***

The Liquidator shall proceed to dispose of the assets of the Company, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 18-804 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 Economic Members on such terms as the Liquidator and such Economic Member or Economic Members may agree; *provided, however*, that any General Partner Interest (as defined in the Partnership Agreement) and any Management Units (as defined in the Limited Liability Company Agreement of Enogex Holdings II LLC) shall be distributed *pro rata* to the Management Members based on their Ownership Percentages. If any other property is distributed in kind, the Member receiving the property shall be deemed for purposes of Section 16.03(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Members. The Liquidator may defer liquidation or distribution of the Company's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Company's assets would be impractical or would cause undue loss to the Members. The Liquidator may distribute the Company'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 Members.

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

(c) Except as otherwise provided in Section 16.03(a), all property and all cash in excess of that required to discharge liabilities as provided in Section 16.03(b) shall be distributed to the Economic Members in accordance with the Economic Member's positive Capital Account balances.

**Section 16.04 *Certificate of Cancellation of Formation.***

Upon the completion of the distribution of Company cash and property as provided in Section 16.03 in connection with the liquidation of the Company, the Company shall be terminated and the Certificate of Formation and all qualifications of the Company as a foreign limited liability company in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Company shall be taken.

**Section 16.05 *Return of Contributions.***

It is expressly understood that the return of any Capital Contributions of the Economic Members shall be made solely from Company assets.



**Section 16.06 *Waiver of Partition.***

To the maximum extent permitted by law, each Economic Member hereby waives any right to partition of the Company property.

**Section 16.07 *Capital Account Restoration.***

No Member shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Company.

**ARTICLE XVII.  
GENERAL PROVISIONS**

**Section 17.01 *Offset.***

Whenever the Company is to pay any sum to any Economic Member, including distributions pursuant to Article VIII, any amounts that Economic Member owes the Company, as determined by the Board, may be deducted from that sum before payment.

**Section 17.02 *Amendment.***

(a) Except as provided in Section 17.02(b), this Agreement shall not be altered modified or changed except by an amendment approved by each Management Member.

(b) The Board may make any amendment to this Agreement and Exhibit A as necessary to reflect any issuance of additional Membership Interests or other Equity Interests, as provided in Section 3.01 or any redemption or purchase of Membership Interests or other Equity Interests.

**Section 17.03 *Addresses and Notices; Written Communications.***

(a) Any notice, demand, request, report or other materials required or permitted to be given or made to a 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 other means of written communication to such Member at the address set forth on Exhibit A.

(b) If a Member shall consent to receiving notices, demands, requests, reports or other materials via electronic mail, any such notice, demand, request, report or other 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 17.03 executed by the Company or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report.

(c) Any notice to the Company shall be deemed given if received by the Company at the principal office of the Company designated pursuant to Section 2.03. The Company may rely and shall be protected in relying on any notice or other document from a Member or other Person if believed by it to be genuine.

(d) 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 17.04 *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 17.05 *Binding Effect.***

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

**Section 17.06 *Integration.***

Except for agreements with Affiliates of the Company, this Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**Section 17.07 *Creditors.***

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

**Section 17.08 *Waivers.***

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 17.09 *Third-Party Beneficiaries.***

Each Member agrees that 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.

**Section 17.10 *Counterparts.***

This Agreement may be executed in counterparts (including by facsimile or other electronic transmission), all of which together shall constitute an agreement binding on all the Parties, notwithstanding that all such Parties are not signatories to the original or the same counterpart. Each Party shall become bound by this Agreement immediately upon affixing its signature hereto.

**Section 17.11 *Applicable Law, Forum, Venue, and Jurisdiction.***

(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 Parties:

(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 among the Parties, or the rights or powers of, or restrictions on, the Parties or the Company), (B) asserting a claim of breach of a fiduciary duty owed by any director, officer, or other employee of the Company, or owed by the Company, to the Parties, (C) asserting a claim arising pursuant to any provision of the Delaware Act or (D) asserting a claim governed by the internal affairs doctrine shall be exclusively brought in the Court of Chancery of the State of Delaware, 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 the Court of Chancery of the State of Delaware in connection with any such claim, suit, action or proceeding;

(iii) 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 the Court of Chancery of the State of Delaware or of any other court to which proceedings in the Court of Chancery of the State of Delaware 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; and

(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*, nothing in clause (v) hereof shall affect or limit any right to serve process in any other manner permitted by law.

**Section 17.12 *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.

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first written above.

**MEMBERS:**

**CENTERPOINT ENERGY RESOURCES  
CORP.**

By: 

Name: Gary J. Whitlock

Title: Executive Vice President and Chief  
Financial Officer

**OGE ENOGEX HOLDINGS LLC**

By: OGE Energy Corp., its Sole Member

By: \_\_\_\_\_

Name: Sean Trauschke

Title: Vice President and Chief Financial  
Officer

*[Signature Page to Second Amended and  
Restated Enable GP, LLC Agreement]*

**IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first written above.**

**MEMBERS:**

**CENTERPOINT ENERGY RESOURCES  
CORP.**

**By:** \_\_\_\_\_

**Name: Gary L. Whitlock**

**Title: Executive Vice President and Chief  
Financial Officer**

**OGE ENOGEX HOLDINGS LLC**

**By: OGE Energy Corp., its Sole Member**

*jet*

**By:** \_\_\_\_\_

**Name: Sean Trauschke**

**Title: Vice President and Chief Financial  
Officer**

***[Signature Page to Second Amended and  
Restated Enable GP, LLC Agreement]***

**EXHIBIT A**

**Economic Units**

<u>Member</u>	<u>Capital Contribution</u>	<u>Capital Account Balance</u>	<u>Economic Units</u>	<u>Ownership Percentage</u>
CenterPoint Energy Resources Corp.....	\$400.00	\$400.00	400	40%
OGE Enogex Holdings LLC.....	600.00	600.00	600	60%
<b>Total:</b>	<u>\$1,000.00</u>	<u>\$1,000.00</u>	<u>1,000</u>	<u>100.00%</u>

**Members' Address for Notice:**

CenterPoint Energy Resources Corp.:

CenterPoint Energy Resources Corp.  
1111 Louisiana Street  
Houston, TX 77002  
Attention: Chief Executive Officer  
Fax: 713.207.9680

with a copy, which shall not constitute notice, to:

Baker Botts L.L.P.  
910 Louisiana Street  
Houston, Texas 77002  
Attention: J. David Kirkland  
Gerald M. Spedale  
Fax: 713.229.1522

OGE Enogex Holdings LLC:

OGE Enogex Holdings LLC  
321 North Harvey  
P.O. Box 321  
Oklahoma City, Oklahoma 73101-0321  
Attention: Sean Trauschke  
Fax: 405.553.3760

with a copy, which shall not constitute notice, to:

Jones Day  
77 West Wacker  
Chicago, Illinois 60601-1692  
Attention: Peter D. Clarke  
Fax: 312.782.8585

*Exhibit A*

**EXHIBIT B**

**Management Units**

<b><u>Management Member</u></b>	<b><u>Management Units</u></b>	<b><u>Ownership Percentage</u></b>
CenterPoint Energy Resources Corp.....	500	50%
OGE Enogex Holdings LLC.....	500	50%
<b>Total:</b>	<b>1,000</b>	<b>100.00%</b>

**Members' Address for Notice:**

CenterPoint Energy Resources Corp.:

CenterPoint Energy Resources Corp.  
1111 Louisiana Street  
Houston, TX 77002  
Attention: Chief Executive Officer  
Fax: 713.207.9680

with a copy, which shall not constitute notice, to:

Baker Botts L.L.P.  
910 Louisiana Street  
Houston, Texas 77002  
Attention: J. David Kirkland  
Gerald M. Spedale  
Fax: 713.229.1522

OGE Enogex Holdings LLC:

OGE Enogex Holdings LLC  
321 North Harvey  
P.O. Box 321  
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Attention: Sean Trauschke  
Fax: 405.553.3760

with a copy, which shall not constitute notice, to:

Jones Day  
77 West Wacker  
Chicago, Illinois 60601-1692  
Attention: Peter D. Clarke  
Fax: 312.782.8585

*Exhibit B*

**EXHIBIT C**  
**Representatives**

**CERC:**

David McClanahan  
Gary Whitlock

**OGEH:**

Pete Delaney  
Sean Trauschke





RE: Request for an Advisory Opinion - Enable Midstream Services, LLC

Meredith K. Leshner

to:

tbuckley@fec.gov

02/10/2016 03:15 PM

Cc:

"ARothstein@fec.gov", "ABell@fec.gov"

Hide Details

From: "Meredith K. Leshner" <mklesher@wms-jen.com>

To: "tbuckley@fec.gov" <tbuckley@fec.gov>,

Cc: "ARothstein@fec.gov" <ARothstein@fec.gov>, "ABell@fec.gov" <ABell@fec.gov>

1 Attachment



FEC follow up.docx

Tony, thank you for providing me with a written request detailing the issues requiring further clarification. I have attached a document attempting to answer the questions presented in your email. Please feel free to contact me with additional questions.

Best,  
Meredith

**From:** tbuckley@fec.gov [<mailto:tbuckley@fec.gov>]

**Sent:** Friday, January 15, 2016 4:34 PM

**To:** Meredith K. Leshner

**Cc:** ARothstein@fec.gov; ABell@fec.gov

**Subject:** Request for an Advisory Opinion - Enable Midstream Services, LLC

Meredith -

Thank you for speaking with Amy and me yesterday. As we discussed, the request is not yet complete. Here are our questions after a preliminary review of your request:

1. Please clarify ArcLight's current position in the organizational structure and the ownership status of ENBL. The request mentions that ArcLight Capital Partners was involved in the creation of Enable Midstream Partners, LP (ENBL). However:

- ArcLight does not appear in the organizational chart submitted as part of the request package;
- 
- The Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC defines ArcLight as "Enogex Holdings LLC;" and
- 
- The Second Amended and Restated Agreement of Limited Partnership of ENBL identifies two limited partners in addition to CNP (through its subsidiary CenterPoint Energy Resources Corp.) and OGE (through its subsidiary OGE Enogex Holdings, Inc.): BMI (Bronco Midstream Infrastructure, LLC) and Bronco (Enogex Holdings, LLC a/k/a ArcLight).

2. The first full paragraph on page two of the request states that OGE holds its common units in ENBL through Enogex. However, earlier on that page, the request states that OGE contributed 100% of its interest in Enogex to ENBL. Please clarify.

3. The second full paragraph on page two of the request states that "a new CEO [of ENBL] will be appointed

January 1, 2016 and added to the board as its eighth director." Please confirm whether these events have occurred.

4. The second full paragraph on page two of the request states that "ENBL is managed entirely by Enable GP through its board of directors and executive officers who are employed by EMS." Please clarify whether both the board members and executive officers are employed by EMS, or whether just the executive officers are employed by EMS.

5. The third full paragraph on page two of the request states that "approximately 175 employees of OGE have been seconded to ENBL."

- Are these employees officers or other decision-making employees of ENBL?
- 
- Which entity has authority to make personnel decisions (promotion, etc.) with respect to these employees during their secondment?
- 
- What is the financial arrangement between OGE and ENBL relating to this secondment?
- 
- For example, is ENBL reimbursing OGE for the employees' salaries while they are on detail?

6. The third full (single sentence) paragraph on page six of the request states that "[f]undraising and administrative costs, both organizational and committee-related, are covered by EMS through ENBL." Please clarify this statement.

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**Please clarify ArcLight's current position in the organizational structure and the ownership status of ENBL. The request mentions that ArcLight Capital Partners was involved in the creation of Enable Midstream Partners, LP (ENBL). However:**

- **ArcLight does not appear in the organizational chart submitted as part of the request package;**
- **The Second Amended and Restated Limited Liability Company Agreement of Enable GP, LLC defines ArcLight as "Enogex Holdings LLC;" and**
- **The Second Amended and Restated Agreement of Limited Partnership of ENBL identifies two limited partners in addition to CNP (through its subsidiary CenterPoint Energy Resources Corp.) and OGE (through its subsidiary OGE Enogex Holdings, Inc.): BMI (Bronco Midstream Infrastructure, LLC) and Bronco (Enogex Holdings, LLC a/k/a ArcLight).**

**Response: ArcLight is simply a common unit holder. On April 16, 2014, in connection with the closing of its initial public offering, the Partnership amended and restated its First Amended and Restated Agreement of Limited Partnership to remove certain provisions that expired upon completion of the offering. Following the offering, ArcLight no longer has protective approval rights over certain material activities of the Partnership, including material increases in capital expenditures and certain equity issuances, entering into transactions with related parties and acquiring, pledging or disposing of certain material assets.**

**The first full paragraph on page two of the request states that OGE holds its common units in ENBL through Enogex. However, earlier on that page, the request states that OGE contributed 100% of its interest in Enogex to ENBL. Please clarify.**

**Response: OGE Enogex Holdings, LLC is the name of the entity that owns OGE's interest in Enable. OGE Enogex Holdings, LLC is a wholly-owned subsidiary of OGE Energy Corp. Similarly, two wholly-owned subsidiaries of ArcLight, Bronco Midstream Infrastructure, LLC and Enogex Holdings, LLC, own ArcLight's interest in Enable. Similarly again, CenterPoint's wholly-owned subsidiary CenterPoint Energy Resources Corp. owns Centerpoint's interest in the partnership.**

**The second full paragraph on page two of the request states that "a new CEO [of ENBL] will be appointed January 1, 2016 and added to the board as its eighth director." Please confirm whether these events have occurred.**

**Response: Rodney J. Sailor assumed the role of President and Chief Executive Officer effective January 1, 2016. In addition, Mr. Sailor serves on the Partnership's board of directors.**

**The second full paragraph on page two of the request states that "ENBL is managed entirely by Enable GP through its board of directors and executive officers who are employed by EMS." Please clarify whether both the board members and executive officers are employed by EMS, or whether just the executive officers are employed by EMS.**

**Response:** Mr. Sailor is the lone board member employed by EMS. The balance of the executive officer team is also employed by EMS.

**The third full paragraph on page two of the request states that "approximately 175 employees of OGE have been seconded to ENBL."**

**Are these employees officers or other decision-making employees of ENBL?**

**Response:** Seconded employees are defined as those who were employed by OGE Energy or Enogex prior to 2000 and are participants under OGE Energy's defined benefit and retiree medical plans. These employees will remain seconded to the Partnership, subject to certain termination rights of the Partnership and OGE Energy. The Vice President of Corporate Communications and Government Relations is the only seconded executive employee.

**Which entity has authority to make personnel decisions (promotion, etc.) with respect to these employees during their secondment?**

**Response:** While EMS directs the day-to-day activities of seconded employees, it must coordinate with OGE Energy on employment issues.

**What is the financial arrangement between OGE and ENBL relating to this secondment?**

**Response:** The Partnership's reimbursement of OGE Energy for employee costs arising out of OGE Energy's defined benefit and retiree medical plans is fixed at \$6 million in each of 2015 and 2016, \$5 million in 2017, and at actual cost subject to a cap of \$5 million in 2018 and thereafter, in the event of continued secondment.

The Partnership also maintains services agreements with each of CenterPoint Energy and OGE Energy pursuant to which they perform certain administrative services for us that are generally consistent with the level and type of services they provided to each of their respective businesses prior to our formation. These services include accounting, finance, legal, risk management, information technology and human resources. We are required to reimburse CenterPoint Energy and OGE Energy for their direct expenses or, where the direct expenses cannot reasonably be determined, an allocated cost as set forth in the agreements. Unless otherwise approved by the Board of Directors, our reimbursement obligations are capped at amounts set forth in our annual budget. For the year ended December 31, 2015, we reimbursed \$11 million and \$15 million to CenterPoint Energy and OGE Energy, respectively, pursuant to the services agreements. The initial term of the services agreements ends in May 2016, after which date they continue on a year-to-year basis unless terminated by us upon 90 days' notice. We may terminate each services agreement, or the provision of any services thereunder, upon approval by the Board of Directors and 180 days' notice to CenterPoint Energy and OGE Energy, as applicable; provided, however, that the services agreement with OGE Energy and the provision of payroll and benefit administration services by OGE Energy thereunder may not be terminated prior to the termination of the transitional seconding agreement between the Partnership and OGE Energy.

**The third full (single sentence) paragraph on page six of the request states that "[f]undraising and administrative costs, both organizational and committee-related, are covered by EMS through ENBL." Please clarify this statement.**

**Response: The purpose of this statement is to assure Commissioners and staff that EMS would be solely responsible for any costs associated with fundraising and administrative costs associated with the Enable Political Action Committee.**



RE: Request for an Advisory Opinion - Enable Midstream Services, LLC

Meredith K. Leshner

to:

tbuckley@fec.gov

02/24/2016 11:43 AM

Cc:

"ABell@fec.gov", "ANoti@fec.gov"

Hide Details

From: "Meredith K. Leshner" <mklesher@wms-jen.com>

To: "tbuckley@fec.gov" <tbuckley@fec.gov>,

Cc: "ABell@fec.gov" <ABell@fec.gov>, "ANoti@fec.gov" <ANoti@fec.gov>

1 Attachment



FEC Supplemental Request.docx

Tony, please see the attached document that provides answers to your supplemental questions. Please feel free to contact me with additional questions.

Best,  
Meredith

Meredith K. Leshner  
Williams & Jensen PLLC  
701 8th Street NW  
Ste. 500  
Washington, DC 20001  
(202) 659-8201 main  
(202) 973-5938 direct  
(202) 659-5249 fax

**From:** tbuckley@fec.gov [<mailto:tbuckley@fec.gov>]  
**Sent:** Friday, February 19, 2016 7:59 AM  
**To:** Meredith K. Leshner  
**Cc:** ABell@fec.gov; ANoti@fec.gov  
**Subject:** RE: Request for an Advisory Opinion - Enable Midstream Services, LLC

Meredith -

Thank you for this document. It responds to all of our questions. We have just two minor clarification questions about the additional information you provided:

- 1) In the response to the question regarding which entity has the authority to make personnel decisions with respect to the seconded employees, the response states that "EMS must coordinate with OGE Energy on employment issues." Please explain the nature of the coordination that EMS must engage in with OGE Energy.
- 2) Please confirm that EMS directly pays the salaries of the OGE Energy employees seconded to it.

From: "Meredith K. Leshar" <mklesher@wms-fen.com>  
To: "tbuckley@fec.gov" <tbuckley@fec.gov>  
Cc: "ARothstein@fec.gov" <ARothstein@fec.gov>, "ABell@fec.gov" <ABell@fec.gov>  
Date: 02/10/2016 03:15 PM  
Subject: RE: Request for an Advisory Opinion - Enable Midstream Services, LLC

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**Sent:** Friday, January 15, 2016 4:34 PM  
**To:** Meredith K. Leshar  
**Cc:** [ARothstein@fec.gov](mailto:ARothstein@fec.gov); [ABell@fec.gov](mailto:ABell@fec.gov)  
**Subject:** Request for an Advisory Opinion - Enable Midstream Services, LLC

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**In the response to the question regarding which entity has the authority to make personnel decisions with respect to the seconded employees, the response states that "EMS must coordinate with OGE Energy on employment issues." Please explain the nature of the coordination that EMS must engage in with OGE Energy.**

**Response: The day-to-day work activities performed by seconded employees are managed by their respective Enable supervisor(s). Should an employee's services no longer be needed by Enable, the partnership must coordinate with OGE to determine the appropriate course of action (i.e. termination, reassignment back to OGE).**

**Please confirm that EMS directly pays the salaries of the OGE Energy employees seconded to it.**

**Response: Seconded employees receive salary and benefits from OGE; however, Enable reimburses OGE for these costs.**