

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

FORM 10-K

(Mark One)

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

For the fiscal year ended June 30, 2005  
OR

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

For the transition period      to  
Commission File Number 001-32505

TRANSMONTAIGNE PARTNERS L.P.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

34-2037221  
(I.R.S. Employer  
Identification No.)

Suite 3100, 1670 Broadway  
Denver, Colorado 80202  
(Address, including zip code, of principal executive offices)

(303) 626-8200  
(Telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class

Name of Each Exchange  
on Which Registered

Common Limited Partner Units

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

NONE

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2) Yes ☐ No ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act) Yes ☐ No ☒

The aggregate market value of common limited partner units held by non-affiliates of the Registrant was \$98,754,768. The aggregate market value was computed by reference to the last sale price (\$26.01 per common unit) of the Registrant's common limited partner units on the New York Stock Exchange on August 29, 2005.

The number of the registrant's common limited partner units outstanding on August 29, 2005 was 3,972,500.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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## TABLE OF CONTENTS

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<u>Item</u>	
	<b><u>Part I</u></b>
1.	<a href="#"><u>Business</u></a>
2.	<a href="#"><u>Properties</u></a>
3.	<a href="#"><u>Legal Proceedings</u></a>
4.	<a href="#"><u>Submission of Matters to a Vote of Security Holders</u></a>
	<b><u>Part II</u></b>
5.	<a href="#"><u>Market for the Registrant's Common Units, Related Unitholder Matters and Issuer Purchases of Equity Securities</u></a>
6.	<a href="#"><u>Selected Financial Data</u></a>
7.	<a href="#"><u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u></a>
7A.	<a href="#"><u>Quantitative and Qualitative Disclosures About Market Risk</u></a>
8.	<a href="#"><u>Financial Statements and Supplementary Data</u></a>
9.	<a href="#"><u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosures</u></a>
9A.	<a href="#"><u>Controls and Procedures</u></a>
9B.	<a href="#"><u>Other Information</u></a>
	<b><u>Part III</u></b>
10.	<a href="#"><u>Directors and Executive Officers of our General Partner</u></a>
11.	<a href="#"><u>Executive Compensation</u></a>
12.	<a href="#"><u>Security Ownership of Certain Beneficial Owners and Management and Related Unitholder Matters</u></a>
13.	<a href="#"><u>Certain Relationships and Related Transactions</u></a>
14.	<a href="#"><u>Principal Accountant Fees and Services</u></a>
	<b><u>Part IV</u></b>
15.	<a href="#"><u>Exhibits and Financial Statement Schedules</u></a>

Our annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K, and any amendments to such reports, will be available free of charge on our website at [www.transmontaignepartners.com](http://www.transmontaignepartners.com) under the heading "Unit holder Information" "SEC Filings" as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission.

## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, including the following:

- certain statements, including possible or assumed future results of operations, in "Management's Discussion and Analysis of Financial Condition and Results of Operations;"
- any statements contained herein or therein regarding the prospects for our business or any of our services;
- any statements preceded by, followed by or that include the words "may," "seeks," "believes," "expects," "anticipates," "intends," "continues," "estimates," "plans," "targets," "predicts," "attempts," "is scheduled," or similar expressions; and
- other statements contained herein or therein regarding matters that are not historical facts.

Our business and results of operations are subject to risks and uncertainties, many of which are beyond our ability to control or predict. Because of these risks and uncertainties, actual results may differ materially from those expressed or implied by forward-looking statements, and investors are cautioned not to place undue reliance on such statements, which speak only as of the date thereof.

In addition to the specific risk factors described in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Risk Factors," important factors that could cause actual results to differ materially from our expectations include, but are not limited to:

- a reduction in revenues from TransMontaigne Inc., upon which we rely for a substantial majority of our revenues;
- the continued creditworthiness of, and performance by, contract parties, including TransMontaigne Inc.;
- a reduction or suspension of TransMontaigne Inc.'s obligations under the terminaling services agreement;
- TransMontaigne Inc.'s failure to continue to engage us to provide services after the expiration of the terminaling services agreement, or our failure to secure comparable alternative arrangements;
- the availability of acquisition opportunities and successful integration and future performance of acquired assets;
- the failure to purchase additional refined product terminals from TransMontaigne Inc.;
- timing, cost and other economic uncertainties related to the construction of new assets;
- debt levels and restrictions in our debt agreements that may limit our operational flexibility;
- the threat of terrorist attacks or war;
- the impact of current and future laws and governmental regulations;
- liability for environmental claims;
- conflicts of interest and the limited fiduciary duties of our general partner, which is controlled by TransMontaigne Inc.;
- our failure to avoid federal income taxation as a corporation or the imposition of state level taxation; and
- general economic, market or business conditions;

We do not intend to update these forward-looking statements except as required by law.

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## Part I

### ITEMS 1 AND 2. BUSINESS AND PROPERTIES

#### OVERVIEW

TransMontaigne Partners L.P. is a publicly traded Delaware limited partnership formed in February 2005 by TransMontaigne Inc., but did not commence operations until the closing of our initial public offering on May 27, 2005. Our common units are traded on the New York Stock Exchange under the symbol "TLP." Our principal executive offices are located at 1670 Broadway, Denver, Colorado 80202; our telephone number is (303) 672-8200. Unless the context requires otherwise, references to "we," "us," "our," "TransMontaigne Partners," "Partners" or the "partnership" are intended to mean TransMontaigne Partners L.P., our subsidiary operating limited partnerships and their subsidiaries. References to TransMontaigne Inc. are intended to mean TransMontaigne Inc. and its subsidiaries other than TransMontaigne GP L.L.C., TransMontaigne Partners and subsidiaries of TransMontaigne Partners.

We are a refined petroleum products terminaling and pipeline company with operations currently in Florida, Southwest Missouri and Northwest Arkansas. We provide integrated terminaling, storage, pipeline and related services for companies engaged in the distribution and marketing of refined petroleum products and crude oil, including TransMontaigne Inc. We handle light refined products, such as gasolines, distillates (including heating oil) and jet fuels, heavy refined products such as residual fuel oils and asphalt, and crude oil.

Our existing assets, often referred to as the "contributed assets," include:

- > seven refined product terminals located in Florida, with an aggregate storage capacity of approximately 5.8 million barrels, that provide integrated terminaling services to TransMontaigne Inc., other distribution and marketing companies and the United States government;
- > a 67-mile, interstate refined products pipeline, which we refer to as the Razorback Pipeline, that currently transports gasolines and distillates for TransMontaigne Inc. from Mt. Vernon, Missouri to Rogers, Arkansas; and
- > two refined product terminals, one located in Mt. Vernon, Missouri and the other located in Rogers, Arkansas, with an aggregate storage capacity of approximately 400,000 barrels, that are connected to the Razorback Pipeline and provide integrated terminaling services to TransMontaigne Inc.

We do not purchase or market products that we handle or transport and, therefore, we do not have material direct exposure to changes in commodity prices, except for the value of product gains and losses arising from our terminaling services agreements with our customers.

#### RECENT EVENTS

We were formed by TransMontaigne Inc. to own and operate certain of its terminal and pipeline assets. In connection with our initial public offering the following transactions occurred:

- > TransMontaigne Inc. transferred the contributed assets to us in exchange for (1) the issuance to TransMontaigne Inc. and its affiliates of 120,000 common units, 2,872,266 subordinated units, a 2% general partner interest, represented by 148,873 general partner units and related incentive distribution rights and (2) the payment of \$111.5 million in cash;

- we issued 3,852,500 common units (including the exercise of the underwriters' over-allotment option) to the public at the initial offering price of \$21.40 per common unit and issued 450,000 subordinated units to an affiliate of Morgan Stanley Capital Group, Inc. in a separate private placement at a price of \$17.65 per unit;
- we borrowed \$31.5 million under a new credit facility and paid \$0.9 million of deferred debt issuance costs incurred in connection with our new credit facility; and
- we entered into a terminaling services agreement and an omnibus agreement with TransMontaigne Inc..

## INDUSTRY OVERVIEW

Refined product terminaling and pipeline companies, such as TransMontaigne Partners, facilitate the movement of refined products to consumers around the country. Consumption of refined products in the United States exceeds domestic production, which necessitates the importing of refined products from other countries. Moreover, a substantial majority of the petroleum product refining that occurs in the United States is concentrated in the Gulf Coast region, which necessitates the transportation of domestic production to other areas, such as the East Coast, Florida, Midwest and West Coast regions of the country. Terminaling and pipeline companies receive, store, blend, treat and distribute refined products, both domestic and imported, as they are transported from refineries to retailers and end-users.

**Refining.** Refineries in the Gulf Coast region refine crude oil into various "light oils" and "heavy oils." Light oils include gasolines and distillates, such as diesel fuels, heating oils and jet fuels. Heavy oils include residual fuel oils and asphalt. These products have various characteristics, such as sulfur content, octane level, Reid-vapor pressure, and other chemical characteristics. Refined petroleum products of a specific grade and characteristics are substantially identical in composition from one refinery to another and are referred to as being "fungible." The refined products initially are stored at the refineries' own terminal facilities. The refineries owned by major oil companies then schedule for delivery some of their product output to satisfy their own retail delivery obligations, at branded gasoline stations, for example, and sell the remainder of their product output to independent marketing and distribution companies, such as TransMontaigne Inc. and its independent supply partners, for resale. The major refineries typically prefer to sell their excess product to independent marketing and distribution companies rather than to other refineries and integrated oil companies, which are their primary competitors.

**Transportation.** For an independent distribution and marketing company, such as TransMontaigne Inc., to distribute product in the wholesale markets, it must first schedule that product for shipment by tankers or barges or on common carrier pipelines to a terminal.

Product reaches Florida primarily through marine terminals, as there are no interstate pipelines transporting refined products into the state. Product is transported to marine terminals by tankers or barges. Because there are economies of scale in transporting products by vessel, marine terminals with larger storage capacities for various commodities have the ability to offer their customers lower per-barrel freight costs to a greater extent than do terminals with smaller storage capacities.

Product reaches inland terminals, such as our Mt. Vernon and Rogers terminals, by common carrier pipelines. Common carrier pipelines are pipelines with published tariffs that are regulated by the FERC or state authorities. These pipelines ship product in batches, with each batch generally consisting of fungible product owned by several different companies. As a batch of product is shipped on a pipeline,

each terminal operator along the way draws the volume of fungible product that is scheduled for that facility as the batch passes in the pipeline. Consequently, each terminal operator must monitor the type of product in the common carrier pipeline to determine when to draw product scheduled for delivery to that terminal. In addition, both the common carrier pipeline and the terminal operator monitor the volume of product drawn to ensure that the amount scheduled for delivery at that location is actually received.

At both inland and marine terminals, the various refined petroleum products are segregated and stored in tanks. Because the characteristics of gasoline are required to be changed at least twice per year in many locations to meet government regulations, regular unleaded gasoline produced for winter cannot be stored in a tank together with regular unleaded gasoline produced for summer.

**Delivery.** Most terminals have a tanker truck loading facility commonly referred to as a "rack." Often, commercial and industrial end-users and independent retailers will rely on independent trucking companies to pick up product at the rack and transport it to the end-user or retailer at its location. Each truck holds an aggregate of approximately 8,000 gallons (approximately 190 barrels) of various products in different compartments. The driver will swipe a magnetic card that identifies the customer purchasing the product, the carrier and the driver as well as the products to be pumped into the truck. A computerized system electronically reviews the credentials of the carrier, including insurance and certain mandated certifications, the credit of the customer and confirms the customer is within product allocation limits. When all conditions are verified as being current and correct, the system authorizes the delivery of the product to the truck. As product is being loaded into the truck, additives are injected into products, including all gasolines, to conform to government specifications and individual customer requirements. If a truck is loading gasoline for retail sale by an independent gasoline station, generic additives will be added to the gasoline as it is loaded into the truck. If the gasoline is for delivery to a branded retail gasoline station, the proprietary additive compound of that particular retailer will be added to the gasoline as it is loaded. The type and amount of additive are electronically and mechanically controlled by equipment located at the truck loading rack. Approximately one to two gallons of additive are added to an 8,000 gallon truckload of gasoline.

At marine terminals, the product will be stored in tanks and may be delivered to tanker trucks over a rack in the same manner as at an inland terminal. Product also may be delivered to cruise ships and other vessels, known as bunkering, either at the dock, through a pipeline or truck, or by barge. Cruise ships typically purchase approximately 6,000 to 8,000 barrels, the equivalent of approximately 42 tanker truckloads, of product per refueling. Bunker fuel is a mixture of residual fuel oil and distillate. Each large vessel generally requires its own mixture of bunker fuel to match the distinct characteristics of that ship's engines and turbines. Because the mixture for each ship requires precision to mix and deliver, cruise ships often prefer to refuel in United States ports with experienced companies.

## OUR OPERATIONS

Our existing assets are located in Florida, Southwest Missouri and Northwest Arkansas. We use our terminaling assets to, among other things:

- > receive refined products from the pipeline, ship, barge or railcar making delivery on behalf of our customers, and transfer those products to the tanks located at our terminals;
- > store the refined products for our customers;
- > monitor the volume of the refined products stored in our tanks;

- > distribute the refined products out of our terminals in small lots or truckloads via the truck racks and other distribution equipment located at our terminals; and
- > heat residual fuel oils and asphalt stored in our tanks, and provide other ancillary services related to the throughput process.

We derive revenues from our refined product terminals by charging fees for providing the following integrated terminaling and related services: throughput and additive injection fees based on the volume of product distributed at a standard rate per barrel, terminaling storage fees based on a per barrel of storage capacity per month, and ancillary services including heating and mixing of stored products, product transfer services, and product gains and losses arising from the terminaling services agreements with our customers. We generate revenues at the Razorback Pipeline by charging a tariff regulated by the FERC, based on the volume of product transported and the distance from the origin point to the delivery point.

## Florida Operations

Our Florida assets include seven refined product terminals. At our Florida terminals, we handle refined products and crude oil on behalf of, and provide integrated terminaling services to, TransMontaigne Inc., other companies engaged in the distribution and marketing of refined products and crude oil, and the United States government. All of our Florida terminals receive refined products from waterborne vessels on behalf of our customers. The customers TransMontaigne Inc. serves from our Florida terminals consist principally of wholesale and retail marketers of refined products, cruise ships, an electric utility and industrial and commercial end-users. The principal products that we handle at our Florida terminals are light refined products (such as gasolines), distillates (including heating oils), and jet fuels, heavy refined products such as residual fuel oils and asphalt, and crude oil.

The following chart sets forth information about our existing assets in Florida:

	Active Storage Capacity (shell bbls)	Number of Active Tanks	Supply Modes	Delivery Modes	Products Handled
Port Everglades					
Port Everglades—North	1,600,000	24	Vessel, rail, truck	Pipeline, truck, rail, vessel	Gasolines, distillates, residual fuel oils, asphalt, jet fuels, crude oil
Port Everglades—South	370,000(1)	10	Vessel	Pipeline, truck, vessel	Gasolines, distillates
Jacksonville(2)	280,000	10	Vessel, rail	Truck, rail	Asphalt
Cape Canaveral	730,000	16	Vessel	Truck, vessel	Gasolines, distillates, residual fuel oils, asphalt
Port Manatee(3)	1,150,000	9	Vessel	Truck, vessel	Distillates, residual fuel oils, asphalt
Fisher Island	670,000	12	Vessel	Vessel	Residual fuel oils, marine fuels
Tampa(4)	420,000	6	Vessel	Pipeline, truck, vessel	Gasolines, distillates

(1) Reflects our ownership interest net of CITGO Petroleum Corporation's ownership interest.

- (2) The Jacksonville terminal also has six idle tanks with an aggregate storage capacity of approximately 110,000 barrels, which were idle when purchased in February 2003.
- (3) The Port Manatee terminal also has seven idle tanks with an aggregate storage capacity of approximately 380,000 barrels, which were idle when purchased in February 2003.
- (4) The Tampa terminal also has one idle tank with an aggregate storage capacity of 80,000 barrels.

The following map shows our Florida operations:



**Port Everglades Terminals.** Our Port Everglades terminals are located near Fort Lauderdale, and include our Port Everglades (North) terminal and our Port Everglades (South) terminal.

**Port Everglades (North) Terminal.** Our Port Everglades (North), Florida marine terminal is connected by pipeline to four ship berths for receiving refined products, and is equipped with three truck racks, one for residual fuel oil, one for light refined products and one for asphalt. The terminal receives gasolines, distillates, jet fuels, residual fuel oils and asphalt from ships and barges on behalf of our customers for delivery via (a) our truck racks to our customers for redistribution to locations throughout south Florida, including Miami, Fort Lauderdale and West Palm Beach; (b) barges to our customers for redistribution to bunker fuel and residual oil customers and gasoline, distillate and jet fuel customers, primarily in the Bahamas; (c) TransMontaigne Inc.'s proprietary pipeline delivery



system for delivery of bunker fuels to cruise ships and other vessels in Port Everglades; and (d) the Buckeye Pipeline for jet fuel delivery to the Fort Lauderdale and Miami Airports. The terminal also receives crude oil through a separate truck rack for delivery to ships or barges, and has facilities for the receipt and delivery of refined products to and from railcars. The Port Everglades (North) terminal has room for an additional 1.0 million barrels of storage capacity. Our customers include a marketer of asphalt, the United States Government, major oil companies and TransMontaigne Inc. TransMontaigne Inc. markets gasolines, distillates and residual fuel oils from the terminal to wholesale and retail marketers of refined products, cruise ships, shipping companies and the utility industry.

**Port Everglades (South) Terminal.** Our Port Everglades (South), Florida marine terminal is connected by pipeline to our Port Everglades (North) terminal. CITGO Petroleum Corporation owns varying percentage interests, ranging from 25% to 50%, in specific assets at the terminal. We operate the terminal, and we are reimbursed by CITGO for a share of our expenses. The terminal is connected by pipeline to four ship berths for receiving refined products and is equipped with a truck rack that can load up to eight trucks simultaneously. The terminal receives gasolines and distillates from ships and barges for delivery via our truck rack for redistribution to locations throughout southern Florida, including Miami, Fort Lauderdale and West Palm Beach. TransMontaigne Inc., currently our only customer at the terminal, markets gasolines and distillates from the terminal to wholesale and retail marketers of refined products.

Competition to our Port Everglades terminals includes other terminals located in Port Everglades owned by BP p.l.c., Chevron U.S.A. Inc., CITGO Petroleum Corporation, Exxon Mobil Corporation, Amerada Hess Corporation, Marathon Ashland Petroleum, LLC and Motiva Enterprises LLC.

**Jacksonville Terminal.** Our Jacksonville, Florida terminal stores asphalt and provides integrated terminaling services for a marketer of asphalt pursuant to a contract that extends through 2013. This terminal receives asphalt via rail and our ship berth for delivery via our truck rack to our customer for redistribution to locations throughout northern Florida and southern Georgia. Competition to our terminal includes the local Valero L.P. and Trumbull Asphalt, Inc. terminals.

**Cape Canaveral Terminal.** Our Cape Canaveral, Florida terminal receives gasolines, distillates, residual fuel oils and asphalt from ships and barges for delivery via our truck rack to our customers for redistribution to locations throughout central Florida, including Orlando, and via barges to TransMontaigne Inc. for delivery to cruise ships and a power plant. Our customers include TransMontaigne Inc. and a marketer of asphalt. TransMontaigne Inc. supplies gasolines, distillates and residual fuel oils from the terminal to wholesale and retail marketers of refined products, cruise ships, shipping companies and the utility industry. Competition to our terminal includes the Central Florida Pipeline terminal in Taft, an asphalt terminal in West Palm Beach and various terminals in Jacksonville and Port Everglades.

**Port Manatee Terminal.** Our Port Manatee, Florida terminal receives distillates, residual fuel oils and asphalt from ships and barges for delivery via our truck rack to our customers for redistribution to locations throughout southwestern Florida, including Sarasota and Fort Myers, and via barges to residual fuel oil customers. Our customers include TransMontaigne Inc., a marketer of residual fuel oil and a marketer of asphalt. Competition to our terminal includes the various terminals in the Tampa area owned by BP p.l.c., Chevron U.S.A. Inc., CITGO Petroleum Corporation, Amerada Hess Corporation, Kinder Morgan, Inc. and its affiliate Kinder Morgan Energy Partners, L.P., Marathon Ashland Petroleum, LLC, Motiva Enterprises LLC and Murphy Oil Corporation.

**Fisher Island Terminal.** Our Fisher Island, Florida marine terminal receives residual fuel oils and marine distillates from ships and barges on behalf of our customers for redistribution via barges to residual fuel oil customers and bunker fuel customers. TransMontaigne Inc. currently is our only customer at the terminal. TransMontaigne Inc. supplies marine fuels to cruise ships and shipping companies located within the Port of Miami, and residual fuel oils to the utility industry. Competition to our terminal includes other terminals located in Port Everglades and terminals located in the Caribbean.

**Tampa Terminal.** Our Tampa, Florida marine terminal receives gasolines and distillates from ships and barges for delivery via our truck rack to TransMontaigne Inc. for redistribution to locations throughout west central Florida, including Tampa, St Petersburg, Sarasota and Fort Myers, and via the Central Florida Pipeline to Taft, Florida. TransMontaigne Inc. currently is our only customer at the terminal. TransMontaigne Inc. markets gasolines and distillates from the terminal to wholesale and retail marketers of refined products. Competition to our terminal includes other terminals located in the Tampa area owned by BP p.l.c., Chevron U.S.A. Inc., CITGO Petroleum Corporation, Amerada Hess Corporation, Kinder Morgan, Inc. and its affiliate Kinder Morgan Energy Partners, L.P., Marathon Ashland Petroleum, LLC, Motiva Enterprises LLC and Murphy Oil Corporation.

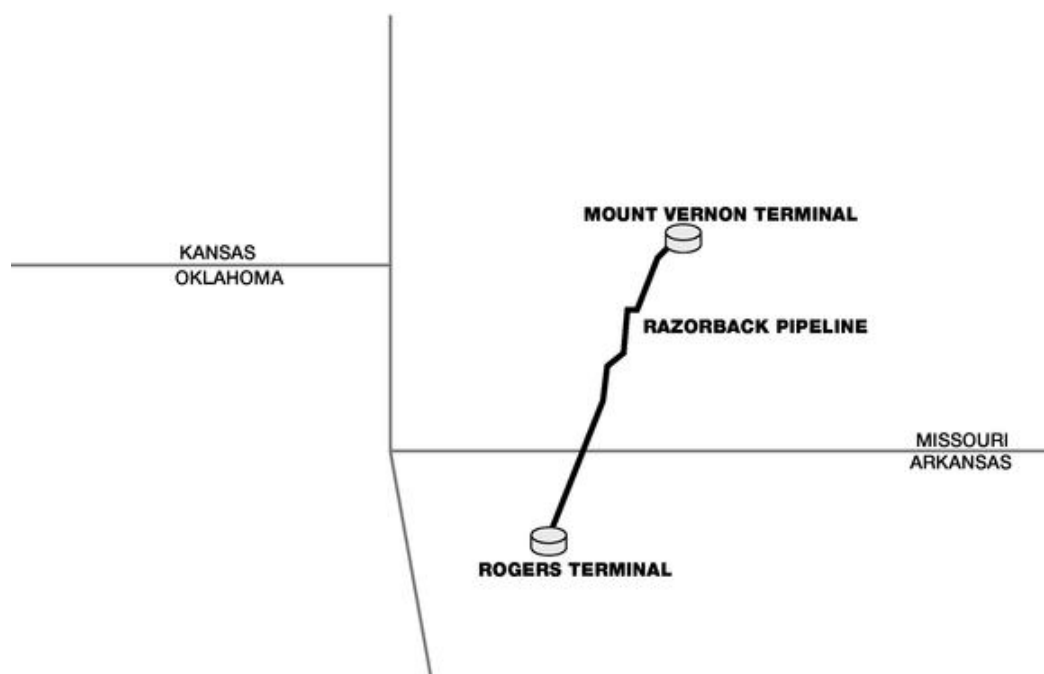
**Southwest Missouri and Northwest Arkansas Operations**

In Southwest Missouri and Northwest Arkansas we own and operate the Razorback Pipeline and terminals in Rogers, Arkansas, at the terminus of the pipeline, and Mt. Vernon, Missouri, at the origin of the pipeline.

The following sets forth information about our existing terminaling assets in Southwest Missouri and Northwest Arkansas:

	Active Storage Capacity (shell bbls)	Number of Tanks	Supply Modes	Delivery Modes	Products Handled
Rogers and Mt. Vernon (aggregate amounts)	400,000	9	Pipeline	Truck	Gasolines, distillates

The following map shows our existing Southwest Missouri and Northwest Arkansas operations:



**Razorback Pipeline.** Our Razorback Pipeline is a 67 mile, 8-inch diameter interstate common carrier pipeline that transports light oil refined product on behalf of TransMontaigne Inc. from Mt. Vernon, Missouri, where it is interconnected with a pipeline system owned by Magellan Midstream Partners, to Rogers, Arkansas. The pipeline has a capacity of approximately 30,000 barrels per day. The FERC regulates the transportation tariffs for interstate shipments on the Razorback Pipeline. TransMontaigne Inc. currently is the only shipper on the Razorback Pipeline.

**Mt. Vernon and Rogers Terminals.** Our Mt. Vernon, Missouri terminal is the origin of the Razorback Pipeline; our Rogers, Arkansas terminal is located at the terminus of the Razorback Pipeline. The Mt. Vernon terminal receives gasolines and distillates from Magellan and ConocoPhillips pipelines for delivery via our truck rack to TransMontaigne Inc. for redistribution to locations throughout southwest Missouri and to the Razorback Pipeline for shipment to our Rogers terminal. The Rogers terminal receives gasolines and distillates from the Razorback Pipeline for delivery via our truck rack to TransMontaigne Inc. for redistribution to locations throughout northwest Arkansas. TransMontaigne Inc. currently is the only customer of the two terminals. TransMontaigne Inc. markets gasolines and distillates from the facilities to wholesale and retail marketers of refined products. Competition to our facilities includes the Magellan Pipeline terminals in Carthage and Springfield, Missouri and Fort Smith, Arkansas; the ConocoPhillips terminal in Mt Vernon, Missouri; various terminals in North Little Rock, Arkansas; and the Sunoco and Sinclair refineries and terminal facilities in Tulsa, Oklahoma.

## OUR RELATIONSHIP WITH TRANSMONTAIGNE INC.

### General

The substantial majority of our business is devoted to providing integrated terminaling and pipeline services to TransMontaigne Inc. TransMontaigne Inc. accounted for approximately 64%, 59% and 70% of our revenues for the years ended June 30, 2005, 2004 and 2003, respectively. TransMontaigne Inc., formed in 1995, is a terminaling, distribution and marketing company that supplies, distributes and markets refined petroleum products to refiners, wholesalers, distributors, marketers and industrial and commercial end users throughout the United States, primarily in the Gulf Coast, Florida, East Coast and Midwest regions. TransMontaigne Inc. also provides supply chain management services to various customers throughout the United States. TransMontaigne Inc. relies on us to provide substantially all of the integrated terminaling services it requires to support its operations in Florida, Southwest Missouri and Northwest Arkansas. Pursuant to the terms of our terminaling services agreement with TransMontaigne Inc., we expect to continue to derive a substantial majority of our revenues from TransMontaigne Inc. for the foreseeable future.

At June 30, 2005, TransMontaigne Inc. owns 43 refined product terminals, including those subject to our exclusive options to purchase, a dock facility in Baton Rouge, Louisiana, 11 tug boats and 13 barges, a hydrant system in Port Everglades, and its distribution and marketing business. TransMontaigne Inc.'s distribution and marketing operations generally consist of the distribution and marketing of refined petroleum products through contract sales, rack spot sales and bulk sales in the physical markets, and providing related value-added fuel procurement and supply chain management services. TransMontaigne Inc. has a significant interest in our partnership through its indirect ownership of a 39.4% limited partner interest and a 2% general partner interest in us. TransMontaigne Inc.'s common stock trades on the New York Stock Exchange under the symbol "TMG" and is subject to the information requirements of the Securities Exchange Act of 1934.

### Exclusive Options to Purchase Additional Refined Product Terminals

Pursuant to the omnibus agreement, TransMontaigne Inc. granted us exclusive options to purchase additional refined product terminals. In the event we exercise our option, we would seek to enter into a terminaling services agreement with TransMontaigne Inc. for these terminals.

The assets and operations subject to the option include:

- > TransMontaigne Inc.'s terminal complex located in Brownsville, Texas with a current aggregate storage capacity of approximately 2.2 million barrels;
- > TransMontaigne Inc.'s refined product terminals located at various points along the Plantation and Colonial pipeline corridors, which extend from the Gulf Coast through the Southeast and Mid-Atlantic regions, with a current aggregate storage capacity of approximately 8.9 million barrels; and
- > TransMontaigne Inc.'s refined product terminals located along the Mississippi and Ohio River areas, with a current aggregate storage capacity of approximately 3.2 million barrels.

The option with respect to the Brownsville complex will be exercisable for one year beginning in January 2006, the option with respect to the terminals along the Plantation and Colonial pipeline corridors will be exercisable for one year beginning in December 2007, and the option with respect to the terminals along the Mississippi and Ohio River areas will be exercisable for one year beginning in December 2008.

The exercise of any of the options will be subject to the negotiation of a purchase price and a terminaling services agreement relating to the terminals proposed to be purchased, and may be conditioned on obtaining various consents. Such consents may include consents of the holders of TransMontaigne Inc.'s equity or debt securities or governmental consents.

The exercise price would be determined according to a process in which, within 45 days of our notification that we wish to exercise the option, TransMontaigne Inc. would propose to our general partner the terms on which it would be willing to sell the asset, including the terms of a terminaling services agreement. Within 45 days after TransMontaigne Inc.'s delivery of its proposed terms, we would propose a cash purchase price for the assets. If we cannot agree on a purchase price after negotiating in good faith for 60 days, TransMontaigne Inc. would have the right to seek an alternative purchaser willing to pay at least 105% of the purchase price we proposed; if an alternative transaction on such terms has not been consummated within six months, we would have the right to purchase the assets at the price we originally proposed. If we do not exercise this right, TransMontaigne Inc. would be free to retain or sell the assets without restriction.

The omnibus agreement also provides that, in certain circumstances, TransMontaigne Inc. offer to sell us tangible assets it acquires or constructs in the future. These circumstances are discussed in greater detail under "Item 13. Certain Relationships and Related Transactions-Omnibus Agreement; Obligation to Offer to Sell Acquired or Constructed Assets."

### **Terminals Services Agreement**

We have a terminaling and transportation services agreement with TransMontaigne Inc. that will expire on December 31, 2011. Under this agreement, TransMontaigne Inc. agreed to transport on the Razorback Pipeline and throughput at our terminals a volume of refined products that will, at the fee and tariff schedule contained in the agreement, result in minimum revenues to us of \$5 million per calendar quarter. In exchange for TransMontaigne Inc.'s minimum revenue commitment, we agreed to provide TransMontaigne Inc. approximately 2.0 million barrels of light oil storage capacity and approximately 1.4 million barrels of heavy oil storage capacity at certain of our Florida terminals.

TransMontaigne Inc.'s minimum revenue commitment applies only to our initial assets and may not be spread among assets we subsequently acquire. If TransMontaigne Inc. fails to meet its minimum revenue commitment in any quarter, it must pay us the amount of any shortfall within 15 days following receipt of an invoice from us. A shortfall payment may be applied as a credit in the following four quarters after TransMontaigne Inc.'s minimum obligations are met.

Furthermore, if new laws or regulations that affect terminals generally are enacted that require us to make substantial and unanticipated capital expenditures at any of our terminals, we have the right to negotiate a monthly surcharge to be paid by TransMontaigne Inc. for the use of our terminals. The surcharge is intended to cover TransMontaigne Inc.'s pro rata portion of the cost of complying with these laws or regulations, after we have made efforts to mitigate their effect. If we cannot agree on a surcharge, and if we are not able to direct the affected refined products to mutually acceptable alternative terminaling assets that we own, either party has the right to remove the assets from the terminaling services agreement, and TransMontaigne Inc.'s minimum revenue commitment will be correspondingly reduced. The surcharge does not apply in respect of routine capital expenditures.

Under the agreement, we are responsible for all refined product losses in excess of 0.10% of the refined product we receive from TransMontaigne Inc. at our terminals. We are also entitled to all product gains, including 0.10% of the refined product we receive from TransMontaigne Inc. at our terminals.

In the event of a force majeure event, that renders performance impossible with respect to an asset for at least 30 days, TransMontaigne Inc.'s obligations would be temporarily suspended with respect to that asset. If a force majeure event continues for 30 days or more and results in a diminution in the storage capacity we make available to TransMontaigne Inc., TransMontaigne Inc.'s minimum revenue commitment would be reduced proportionately for the duration of the force majeure event. If such a force majeure event continues for twelve consecutive months or more, either party has the right to terminate the entire terminaling services agreement.

After the initial term, the terminaling services agreement will automatically renew for subsequent one-year periods, subject to either party's right to terminate with six months' notice. TransMontaigne Inc.'s obligations under the terminaling services agreement will not terminate if TransMontaigne Inc. no longer owns our general partner. TransMontaigne Inc. may assign the terminaling services agreement only with the consent of the conflicts committee of our general partner. Upon termination of the agreement, TransMontaigne Inc. has a right of first refusal to enter into a new terminaling services agreement with us, provided it pays no less than 105% of the fees offered by the third party.

TransMontaigne Inc. also has a right of first refusal to control any petroleum product storage capacity that is put into commercial service after May 27, 2005 or is subject to a contract which terminates or becomes terminable by us (excluding a contract renewable solely at the option of our customer), provided that TransMontaigne Inc. pays 105% of the fees offered by the third party customer.

## COMPETITION

We face competition from other terminals and pipelines that may be able to supply TransMontaigne Inc. and our other customers with refined product integrated terminaling and pipeline services on a more competitive basis. We compete with national, regional and local terminal and pipeline companies, including the major integrated oil companies, of widely varying sizes, financial resources and experience. These competitors include BP p.l.c., Chevron U.S.A. Inc., CITGO Petroleum Corporation, Exxon Mobil Corporation, Amerada Hess Corporation, Magellan Midstream Partners, L.P., Marathon Ashland Petroleum, LLC, Motiva Enterprises LLC, Murphy Oil Corporation and terminals in the Caribbean. Several of our competitors conduct portions of their operations through publicly traded partnerships with structures similar to ours, including Sunoco, Inc. and its affiliate Sunoco Logistics Partners L.P., Holly Corporation and its affiliate Holly Energy Partners, L.P., Valero Energy Corporation and its affiliate Valero L.P., and Kinder Morgan, Inc. and its affiliate Kinder Morgan Energy Partners, L.P. In particular, our ability to compete could be harmed by factors we cannot control, including:

- > price competition from terminal and pipeline companies, some of which are substantially larger than us and have greater financial resources, and control substantially greater refined product storage capacity, than we do;
- > the perception that another company can provide better service; and
- > the availability of alternative supply points, or supply points located closer to TransMontaigne Inc.'s customers' operations.

We also compete with national, regional and local terminal and pipeline companies for asset acquisition and expansion opportunities. Some of these competitors are substantially larger than us and have greater financial resources and lower costs of capital than we do.

## BUSINESS STRATEGIES

Our primary business objective is to increase distributable cash flow per unit. The most effective means of growing our business and increasing distributions to our unitholders is to expand our asset base and infrastructure, and to increase utilization of our existing infrastructure. We intend to accomplish this by executing the following strategies:

***Generate stable cash flows through the use of long-term contracts with our customers.*** We generate revenues from customers who pay us fees based on the volume of refined products throughput at our terminals or transported in our pipeline. We have no direct commodity price risk because we do not own any of the products throughput at our terminals or transported on our pipeline. We have a long-term terminaling services agreement with TransMontaigne Inc. pursuant to which TransMontaigne Inc. has agreed to pay us a guaranteed minimum amount of revenues of \$5 million per calendar quarter. We believe that the fee-based nature of our business, our minimum revenue commitment from TransMontaigne Inc., and the long-term nature of our contracts with customers will provide us with stable cash flows.

***Pursue strategic and accretive acquisitions in new and existing markets.*** We plan to pursue acquisitions from third parties of petroleum product transportation and terminaling assets that are complementary to those we currently own. We also may purchase assets outside our existing area of operations. In many cases, we would expect to pursue these acquisitions jointly with TransMontaigne Inc. We also have the right under the omnibus agreement to purchase certain assets TransMontaigne Inc. purchases or constructs in the future, subject to the negotiation of satisfactory terms and obtaining required consents. We expect that TransMontaigne Inc. will operate the assets it offers to us pursuant to the omnibus agreement for a period of up to two years, during which time TransMontaigne Inc.'s distribution and marketing operations will seek to increase the utilization of the assets as well as its knowledge of the areas in which the assets operate. We believe we will benefit from TransMontaigne Inc.'s operation of such assets because we anticipate TransMontaigne Inc. will be more likely to enter into a long-term terminaling services agreement with us once it has gained greater operating and market knowledge with respect to the assets. In light of the recent industry trend of large energy companies divesting their distribution and logistic assets, we believe there will continue to be significant acquisition opportunities.

We believe that our affiliation with TransMontaigne Inc. will provide us with a competitive advantage in situations where we jointly pursue acquisition opportunities or where we purchase assets previously purchased or constructed by TransMontaigne Inc. As is frequently the case in the energy industry, potential acquisition opportunities may have an element of commodity price risk inherent in their pre-acquisition operations. We expect to be able to pursue such acquisitions jointly with TransMontaigne Inc. in a manner that minimizes commodity price exposure to us. In these circumstances, TransMontaigne Inc. or one of its affiliates may assume most or all of the direct commodity price exposure inherent in the acquired business and incorporate these risks into its overall distribution and marketing operations. As a result of this affiliation, we believe we will be able to aggressively pursue acquisitions that otherwise would not be attractive to us or other competing potential acquirers because of the commodity price risk inherent in the target's operations.

***Maximize the benefits of our relationship with TransMontaigne Inc.*** Our exclusive options with TransMontaigne Inc. to purchase additional refined product terminals will provide us an opportunity to acquire additional assets and expand our operations in a manner which allows us to achieve substantial utilization of our assets by linking our infrastructure with TransMontaigne Inc.'s distribution and marketing business. In addition, our relationship with TransMontaigne Inc. will

provide us with access to a significant pool of management talent and strong relationships throughout the energy industry that we intend to utilize to implement our strategies. TransMontaigne Inc. intends to utilize our partnership as a primary growth vehicle for its terminaling and transportation business. For this reason, we expect to have the opportunity to participate with TransMontaigne Inc. in considering transactions that we would not be able to aggressively pursue on our own.

***Execute cost-effective expansion and asset enhancement opportunities.*** We continually evaluate opportunities to expand our existing asset base and we will consider constructing new refined product terminals in high-growth areas in Florida and elsewhere. During the year ended June 30, 2005, we placed 355,000 barrels of storage capacity into commercial service at our Florida terminals, and will continue to evaluate adding new tanks or bringing out-of-service tankage into commercial service in order to meet increasing demand for integrated terminaling services.

## COMPETITIVE STRENGTHS

We believe we are well-positioned to execute our business strategies successfully using the following competitive strengths:

***The terminaling services agreement we have with TransMontaigne Inc. will provide us with predictable cash flows.*** We are well-positioned to focus our efforts to execute our strategy of expanding our asset base because our existing operations generate predictable revenues. Under the terminaling services agreement, TransMontaigne Inc. has agreed to pay us fees to transport refined products on the Razorback Pipeline and to receive integrated terminaling services through December 31, 2011, with a guaranteed minimum amount of revenues each calendar quarter.

***Our relationship with TransMontaigne Inc., including our exclusive options to purchase additional refined product terminals, enhances our ability to make strategic acquisitions.*** Our exclusive options offer us an attractive means of expanding our asset base by allowing us to purchase from TransMontaigne Inc. additional refined product terminals that complement our existing operations. The assets subject to the options are linked to TransMontaigne Inc.'s distribution and marketing operations, thereby allowing us to achieve substantial utilization of the assets. In addition, TransMontaigne Inc. generally is required to offer us the opportunity to buy terminal and pipeline assets it purchases or constructs in the future. In connection with any purchase of assets from TransMontaigne Inc., pursuant to the exclusive options or otherwise, we expect to have the opportunity to negotiate an appropriate terminaling services agreement with TransMontaigne Inc. relating to the new assets. We believe the value of any terminaling assets we acquire will be enhanced if we can concurrently obtain a long-term terminaling services agreement with TransMontaigne Inc., and therefore our efforts to make strategic acquisitions will be improved by our ability to jointly pursue these acquisitions with TransMontaigne Inc.

***We have the financial flexibility to pursue expansion and acquisition opportunities.*** We have a \$75.0 million credit facility that expires in May 2010, of which we have approximately \$33.0 million available at June 30, 2005 for general partnership purposes, including capital expenditures and acquisitions. In combination with our ability to issue new partnership units, we have significant resources to finance expansion projects and acquisitions.



***We have a substantial presence in Florida, which has above-average population growth and significant cruise ship activity, and is not currently served by any local refinery or interstate refined product pipeline.*** Seven of our terminals serve TransMontaigne Inc.'s and our other customers' operations in metropolitan areas in Florida, which we believe to be an attractive area for the following reasons:

- > Refined petroleum products are largely distributed in Florida through terminals with waterborne access, such as our terminals, because Florida has no refineries or interstate refined product pipelines.
- > Florida's population is one of the fastest-growing in the United States, resulting in additional potential demand for refined petroleum products.
- > The ports served by our terminals are among the top cruise ship ports in the United States, with year-round demand.

***Our general partner has a knowledgeable management team with significant experience in the energy industry and in executing acquisition and expansion strategies.*** The members of our general partner's management team have significant experience with regard to the implementation of acquisition, operating and growth strategies in many facets of the energy industry, including crude oil marketing and transportation; natural gas and natural gas liquid gathering, processing, transportation and marketing; propane storage, transportation and marketing; and refined petroleum product storage, transportation and marketing. In addition, over the course of their respective careers, members of the management team have established strong, long-standing relationships within the energy industry, which we believe will enable us to grow and expand our business through both acquisition and internal expansion.

## **TERMINALS AND PIPELINE CONTROL OPERATIONS**

Our pipeline is operated via geosynchronous satellite, microwave, radio and frame relay communication systems from a central control room located in Atlanta, Georgia. We also monitor activity at our terminals from this control room.

The control center operates with state-of-the-art System Control and Data Acquisition, or SCADA, systems. Our control center is equipped with computer systems designed to continuously monitor operational data, including refined product throughput, flow rates and pressures. In addition, the control center monitors alarms and throughput balances. The control center operates remote pumps, motors, engines, and valves associated with the receipt of refined products. The computer systems are designed to enhance leak-detection capabilities, sound automatic alarms if operational conditions outside of pre-established parameters occur, and provide for remote-controlled shutdown of pump stations on the pipeline. Pump stations and meter-measurement points on the pipeline are linked by satellite or telephone communication systems for remote monitoring and control, which reduces our requirement for full-time on-site personnel at most of these locations.

## **SAFETY AND MAINTENANCE**

We perform preventive and normal maintenance on our pipeline and terminal system and make repairs and replacements when necessary or appropriate. We also conduct routine and required inspections of our pipeline and terminal tanks as required by code or regulation. External coatings and impressed current cathodic protection systems are used to protect against external corrosion. We conduct all

cathodic protection work in accordance with National Association of Corrosion Engineers standards. We continually monitor, test, and record the effectiveness of these corrosion inhibiting systems.

We monitor the structural integrity of selected segments of our Razorback Pipeline system through a program of periodic internal inspections as well as hydrostatic testing that conforms to Federal standards. Beginning in 2002, the Department of Transportation, or DOT, required internal inspections or other integrity testing of all DOT-regulated crude oil and refined product pipelines. We internally tested the Razorback Pipeline in 2004 and have completed all necessary repairs and maintenance.

Maintenance facilities containing equipment for pipe repairs, spare parts, and trained response personnel are located along the Razorback Pipeline. Employees participate in simulated spill deployment exercises on a regular basis. They also participate in actual spill response boom deployment exercises in planned spill scenarios in accordance with Oil Pollution Act of 1990 requirements. We believe that the Razorback Pipeline has been constructed and is maintained in all material respects in accordance with applicable federal, state, and local laws and the regulations and standards prescribed by the American Petroleum Institute, the DOT, and accepted industry practice.

At our terminals, tanks designed for gasoline storage are equipped with internal or external floating roofs that minimize emissions and prevent potentially flammable vapor accumulation between fluid levels and the roof of the tank. Our terminal facilities have facility response plans, spill prevention and control plans, and other plans and programs to respond to emergencies.

Many of our terminal loading racks are protected with water deluge systems activated by either heat sensors or an emergency switch. Several of our terminals also are protected by foam systems that are activated in case of fire. All of our terminals are subject to participation in a comprehensive environmental management program to assure compliance with applicable air, solid waste, and wastewater regulations.

## **SAFETY REGULATION**

We are subject to regulation by the United States Department of Transportation under the Accountable Pipeline and Safety Partnership Act of 1996, sometimes referred to as the Hazardous Liquid Pipeline Safety Act or HLPSP, and comparable state statutes relating to the design, installation, testing, construction, operation, replacement and management of our pipeline facilities. HLPSP covers petroleum and petroleum products and requires any entity that owns or operates pipeline facilities to comply with such regulations and also to permit access to and copying of records and to make certain reports and provide information as required by the Secretary of Transportation. We believe that we are in material compliance with these HLPSP regulations.

The United States Department of Transportation Office of Pipeline Safety, or OPS, has promulgated regulations that require qualification of pipeline personnel. These regulations require pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks on pipeline facilities. The intent of this regulation is to ensure a qualified work force and to reduce the probability and consequence of incidents caused by human error. The regulation establishes qualification requirements for individuals performing covered tasks, and amends certain training requirements in existing regulations. We believe that we are in material compliance with these OPS regulations.

We also are subject to OPS regulation for High Consequence Areas, or HCAs, for Category 2 pipeline systems (companies operating less than 500 miles of jurisdictional pipeline). This regulation specifies how to assess, evaluate, repair and validate the integrity of pipeline segments that could impact

populated areas, areas unusually sensitive to environmental damage and commercially navigable waterways, in the event of a release. The Razorback Pipeline is subject to these requirements. The regulation requires an integrity management program that utilizes internal pipeline inspection, pressure testing, or other equally effective means to assess the integrity of pipeline segments in HCAs. The program requires periodic review of pipeline segments in HCAs to ensure adequate preventative and mitigative measures exist. Through this program, we evaluated a range of threats to each pipeline segment's integrity by analyzing available information about the pipeline segment and consequences of a failure in an HCA. The regulation requires prompt action to address integrity issues raised by the assessment and analysis. The complete baseline assessment of all segments must be performed by February 17, 2009, with intermediate compliance deadlines prior to that date. We believe that we are in material compliance with the OPS regulation of HCAs.

Our Florida terminals also are subject to state regulations regarding our storage of refined product in aboveground storage tanks. These regulations require, among other things, registration of tanks, financial assurances and inspection and testing, consistent with the standards established by the American Petroleum Institute. We believe that we are in material compliance with these aboveground storage tank regulations.

We also are subject to the requirements of the federal Occupational Safety and Health Act, or OSHA, and comparable state statutes that regulate the protection of the health and safety of workers. In addition, the OSHA hazard communication standard, the EPA community right-to-know regulations under Title III of the Federal Superfund Amendment and Reauthorization Act, and comparable state statutes require us to organize and disclose information about the hazardous materials used in our operations. Certain parts of this information must be reported to employees, state and local governmental authorities, and local citizens upon request. We believe that we are in material compliance with OSHA and state requirements, including general industry standards, record keeping requirements and monitoring of occupational exposures.

In general, we expect to increase our expenditures during the next decade to comply with higher industry and regulatory safety standards such as those described above. Although we cannot estimate the magnitude of such expenditures at this time, we do not believe that they will have a material adverse impact on our results of operations.

## **ENVIRONMENTAL MATTERS**

Our operations are subject to stringent and complex laws and regulations pertaining to health, safety and the environment. As an owner or operator of refined petroleum product terminals and pipelines, we must comply with these laws and regulations at federal, state and local levels. These laws and regulations can restrict or impact our business activities in many ways, such as:

- > requiring remedial action to mitigate releases of hydrocarbons, hazardous substances or wastes caused by our operations or attributable to former operators;
- > requiring capital expenditures to comply with environmental control requirements; and
- > enjoining the operations of facilities deemed in non-compliance with permits issued pursuant to such environmental laws and regulations.

Failure to comply with these laws and regulations may trigger a variety of administrative, civil and criminal enforcement measures, including the assessment of monetary penalties, the imposition of remedial requirements, and the issuance of orders enjoining future operations. Certain environmental statutes impose strict, joint and several liability for costs required to clean up and restore sites where

hydrocarbons, hazardous substances or wastes have been released or disposed of. Moreover, it is not uncommon for neighboring landowners and other third parties to file claims for personal injury and property damage allegedly caused by the release of hydrocarbons, hazardous substances or other wastes into the environment.

The trend in environmental regulation is to place more restrictions and limitations on activities that may affect the environment. As a result, there can be no assurance as to the amount or timing of future expenditures for environmental compliance or remediation, and actual future expenditures may be different from the amounts we currently anticipate. We try to anticipate future regulatory requirements that might be imposed and to plan accordingly to remain in compliance with changing environmental laws and regulations and to minimize the costs of such compliance.

We do not believe that compliance with federal, state or local environmental laws and regulations will have a material adverse effect on our business, financial position or results of operations. In addition, we believe that the various environmental activities in which we are presently engaged are not expected to materially interrupt or diminish our operational ability. We cannot assure you, however, that future events, such as changes in existing laws, the promulgation of new laws, or the development or discovery of new facts or conditions will not cause us to incur significant costs. The following is a discussion of certain material environmental and safety concerns that relate to our business.

## **Water**

The Federal Water Pollution Control Act of 1972, renamed and amended as the Clean Water Act or CWA, imposes strict controls against the discharge of oil and its derivatives into navigable waters. The CWA provides penalties for any discharges of petroleum products in reportable quantities and imposes substantial potential liability for the costs of removing an oil or hazardous substance spill. State laws for the control of water pollution also provide for various civil and criminal penalties and liabilities in the event of a release of petroleum or its derivatives in surface waters or into the groundwater. Spill prevention control and countermeasure requirements of federal laws require appropriate containment berms and similar structures to help prevent the contamination of navigable waters in the event of a petroleum tank spill, rupture or leak. A containment berm is an earthen or cement barrier, impervious to liquids, which surrounds a storage tank holding between 1,000 and 500,000 gallons of petroleum products or other hazardous materials and used to prevent spilling and extensive damage to the environment. The berm is a form of secondary containment with the storage tank itself being the primary instrument of containment.

Contamination resulting from spills or releases of refined petroleum products is an inherent risk in the petroleum terminal and pipeline industry. To the extent that groundwater contamination requiring remediation exists around the assets we own as a result of past operations, we believe any such contamination can be controlled or remedied without having a material adverse effect on our financial condition. However, such costs are often unpredictable and are site specific and, therefore, the effect may be material in the aggregate.

The primary federal law for oil spill liability is the Oil Pollution Act of 1990, as amended, or OPA, which addresses three principal areas of oil pollution—prevention, containment and cleanup. It applies to vessels, offshore platforms, and onshore facilities, including terminals, pipelines and transfer facilities. In order to handle, store or transport oil, shore facilities are required to file oil spill response plans with the United States Coast Guard, the OPS, or the EPA. Numerous states have enacted laws similar to OPA. Under OPA and similar state laws, responsible parties for a regulated facility from which oil is discharged may be liable for removal costs and natural resources damages. We believe that we are in substantial compliance with regulations pursuant to OPA and similar state laws.

We do not have any terminal location that discharges any type of process wastewater. We are, however, subject to various types of storm water discharge requirements at our terminals. The EPA has adopted regulations that require us to obtain permits to discharge certain storm water run-off. Storm water discharge permits also may be required by certain states in which we operate. Such permits may require us to monitor and sample the effluent from our operations. We believe that we are in substantial compliance with effluent limitations at our facilities and with the CWA generally.

Our storm water discharges generally fall into two categories: petroleum contact and non-contact. The sources of contact water are the truck loading operations at some of the terminals. Some of our terminal locations do not have contact water discharges because of the use of closed-loop water handling systems, thus obviating the need for discharge permits. The water generated in these closed-loop systems is transported offsite and disposed of properly. At locations where contact water is discharged on site, permit conditions dictate control technology requirements, effluent limitations and confirmation sampling. Non-contact storm water is generated at most terminal locations, primarily from rainfall collection in aboveground storage tank secondary containment enclosures or dikes. Various types of storm water permits regulate these discharges, with most being "General" state-wide industry specific mechanisms. The cost involved in obtaining and renewing these storm water permits is not material.

#### **Air emissions**

Our operations are subject to the federal Clean Air Act and comparable state and local statutes. The Clean Air Act Amendments of 1990 require most industrial operations in the United States to incur capital expenditures to meet the air emission control standards that are developed and implemented by the EPA and state environmental agencies. Pursuant to the Clean Air Act, any of our facilities that emit volatile organic compounds or nitrogen oxides and are located in ozone non-attainment areas face increasingly stringent regulations, including requirements to install various levels of control technology on sources of pollutants. Some of our facilities have been included within the categories of hazardous air pollutant sources. The Clean Air Act regulations are still being implemented by the EPA and state agencies. We believe that we are in substantial compliance with existing standards and regulations pursuant to the Clean Air Act and similar state and local laws, and we do not anticipate that implementation of additional regulations will have a material adverse effect on us.

Air permits are required for our terminaling operations that result in the emission of regulated air contaminants. These operations in general include fugitive volatile organic compounds (primarily hydrocarbons) from truck loading activities and tank working losses. The sources of these emissions are strictly regulated through the permitting process. Such regulation includes stringent control technology and extensive permit review and periodic renewal. The cost involved in obtaining and renewing these permits is not material.

#### **Hazardous and solid waste**

Our operations are subject to the federal Resource Conservation and Recovery Act, as amended, or RCRA, and comparable state laws, which impose detailed requirements for the handling, storage, treatment, and disposal of hazardous and solid waste. All of our terminal facilities are classified by the U.S. EPA as Conditionally Exempt Small Quantity Generators. Our terminals do not generate hazardous waste except on isolated and infrequent cases. At such times, only third party disposal sites which have been audited and approved by us are used. Our operations also generate solid wastes which are regulated under state law or the less stringent solid waste requirements of RCRA. We believe that we are in substantial compliance with the existing requirements of RCRA and similar state and local laws, and the cost involved in complying with these requirements is not material.

## Site remediation

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or CERCLA, also known as the "Superfund" law, and comparable state laws impose liability without regard to fault or the legality of the original conduct, on certain classes of persons responsible for the release of hazardous substances into the environment. Such classes of persons include the current and past owners or operators of sites where a hazardous substance was released, and companies that disposed or arranged for disposal of hazardous substances at offsite locations such as landfills. In the course of our operations we will generate wastes or handle substances that may fall within the definition of a "hazardous substance." CERCLA authorizes the U.S. EPA and, in some cases, third parties to take actions in response to threats to the public health or the environment and to seek to recover from the responsible classes of persons the costs they incur. Under CERCLA, we could be subject to joint and several liability for the costs of cleaning up and restoring sites where hazardous substances have been released, for damages to natural resources, and for the costs of certain health studies. We believe that we are in substantial compliance with the existing requirements of CERCLA.

We currently own, lease, or operate numerous properties and facilities that for many years have been used for industrial activities, including refined product terminaling operations. Hazardous substances, wastes, or hydrocarbons may have been released on or under the properties owned or leased by us, or on or under other locations where such substances have been taken for disposal. In addition, some of these properties have been operated by third parties or by previous owners whose treatment and disposal or release of hazardous substances, wastes, or hydrocarbons, was not under our control. These properties and the substances disposed or released on them may be subject to CERCLA, RCRA and analogous state laws. Under such laws, we could be required to remove previously disposed substances and wastes (including substances disposed of or released by prior owners or operators), remediate contaminated property (including groundwater contamination, whether from prior owners or operators or other historic activities or spills), or perform remedial plugging or pit closure operations to prevent future contamination.

In connection with its acquisition of five Florida terminals from an affiliate of El Paso Corporation, TransMontaigne Inc. agreed to assume responsibility for known environmental conditions at the acquired terminals. TransMontaigne Inc. currently is undertaking, or evaluating the need for, remediation of subsurface hydrocarbon contamination at the acquired Florida terminals. The total cost for remediating the contamination at these acquired terminal locations currently is estimated by TransMontaigne Inc. to be between \$3.0 million and \$5.1 million. TransMontaigne Inc.'s activities are being administered by the Florida Department of Environmental Protection under state-administered programs that encourage and help to fund all or a portion of the cleanup of contaminated sites. Under these programs, TransMontaigne Inc. believes that it is eligible to receive state reimbursement of the majority of the costs associated with the remediation of the acquired sites. As such, TransMontaigne Inc. believes that its share of the total liability after state reimbursement, as estimated by it, is between \$1.0 million and \$3.1 million. Costs incurred to remediate existing contamination at the Florida terminals historically owned by TransMontaigne Inc. have been, and are expected in the future to be, insignificant. As part of the omnibus agreement, TransMontaigne Inc. retained 100% of these liabilities. Additionally, TransMontaigne Inc. will agree to indemnify us for other remediation liabilities in some circumstances, subject to a deductible, maximum liability, and time limit as discussed under "Item 13. Certain Relationships and Related Transactions—Omnibus Agreement; Indemnification" of this annual report.

## **Endangered Species Act**

The Endangered Species Act restricts activities that may affect endangered species or their habitats. While some of our facilities are in areas that may be designated as habitat for endangered species, we believe that we are in substantial compliance with the Endangered Species Act. However, the discovery of previously unidentified endangered species could cause us to incur additional costs or become subject to operating restrictions or bans in the affected area.

## **OPERATIONAL HAZARDS AND INSURANCE**

Our terminal and pipeline facilities may experience damage as a result of an accident or natural disaster. These hazards can cause personal injury and loss of life, severe damage to and destruction of property and equipment, pollution or environmental damage and suspension of operations. We maintain insurance of various types that we consider adequate to cover our operations and properties.

The insurance covers all of our assets in amounts that we consider to be reasonable. The insurance policies are subject to deductibles that we consider reasonable and not excessive. Our insurance does not cover every potential risk associated with operating terminals, pipelines and other facilities, including the potential loss of significant revenues. Consistent with insurance coverage generally available to the industry, our insurance policies provide limited coverage for losses or liabilities relating to pollution, with broader coverage for sudden and accidental occurrences. The events of September 11, 2001, and their overall effect on the insurance industry have adversely impacted the availability and cost of coverage. Due to these events, insurers have excluded acts of terrorism and sabotage from our insurance policies.

We share some insurance policies, including our general liability policy, with TransMontaigne Inc. These policies contain caps on the insurer's maximum liability under the policy, and claims made by either of TransMontaigne Inc. or us are applied against the caps. The possibility exists that, in any event in which we wish to make a claim under a shared insurance policy, our claim could be denied or only partially satisfied due to claims made by TransMontaigne Inc. against the policy cap.

## **TARIFF REGULATION**

The Razorback Pipeline, which runs between Mt. Vernon, Missouri and Rogers, Arkansas, is an interstate petroleum products pipeline and is subject to regulation by the Federal Energy Regulatory Commission, or FERC, under the Interstate Commerce Act and the Energy Policy Act of 1992 and rules and orders promulgated under those statutes. FERC regulation requires that interstate oil pipeline rates be posted publicly and that these rates be "just and reasonable" and nondiscriminatory. Rates of interstate oil pipeline companies are currently regulated by the FERC primarily through an index methodology, whereby a pipeline is allowed to change its rates based on the change from year to year in the Producer Price Index for finished goods. In the alternative, interstate oil pipeline companies may elect to support rate filings by using a cost-of-service methodology, competitive market showings or actual agreements between shippers and the oil pipeline company.

Under current FERC regulations, we are permitted to charge "just and reasonable," non-discriminatory tariffs for the transportation of refined products through the Razorback Pipeline. The FERC generally has not investigated interstate rates on its own initiative when those rates have not been the subject of a protest or a complaint by a shipper. A shipper or other party having a substantial economic interest in our rates could, however, challenge our rates. In response to such challenges, the FERC could investigate our rates. If our rates were successfully challenged, the amount of cash available for distribution to unitholders could be materially reduced. In the absence of a challenge to our rates,

given our ability to utilize either posted rates subject to increases tied to the Producer Price Index, to utilize rates tied to cost of service methodology, competitive market showing or actual agreements between shippers and us, we do not believe that these regulations would have any negative material monetary impact on us unless the regulations were substantially modified in such a manner so as to prevent a pipeline transportation company's ability to earn a fair return for the shipment of petroleum products utilizing its transportation system, which we believe to be an unlikely scenario.

On July 20, 2004, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") issued its opinion in *BP West Coast Products, LLC v. FERC*, which vacated the portion of the FERC's decision applying the *Lakehead* policy, under which the FERC allowed a regulated entity organized as a master limited partnership to include in its cost-of-service an income tax allowance to the extent that entity's unitholders were corporations subject to income tax. On December 2, 2004, the FERC issued a Notice of Inquiry that called for comments regarding whether *BP West Coast* applies broadly or only to the specific facts of that case. In response to the comments received, on May 4, 2005, the FERC adopted a policy statement providing that all entities owning public utility assets—oil and gas pipelines and electric utilities—would be permitted to include an income tax allowance in their cost-of-service rates to reflect the actual or potential income tax liability attributable to their public utility income, regardless of the form of ownership. Any tax pass-through entity seeking an income tax allowance would have to establish that its partners or members have an actual or potential income tax obligation on the entity's public utility income. The FERC expressed the intent to implement its policy in individual rate proceedings as they arise. Evaluation of the impact of this policy statement will have to await further developments in various pending cases.

## TITLE TO PROPERTIES

Our pipeline is constructed on rights-of-way granted by the apparent record owners of the property and in some instances these rights-of-way are revocable at the election of the grantor. Several rights-of-way for our pipeline and other real property assets are shared with other pipelines and other assets owned by affiliates of TransMontaigne Inc. and by third parties. In many instances, lands over which rights-of-way have been obtained are subject to prior liens that have not been subordinated to the right-of-way grants. We have obtained permits from public authorities to cross over or under, or to lay facilities in or along, watercourses, county roads, municipal streets, and state highways and, in some instances, these permits are revocable at the election of the grantor. We have also obtained permits from railroad companies to cross over or under lands or rights-of-way, many of which are also revocable at the grantor's election. In some cases, property for pipeline purposes was purchased in fee.

Some of the leases, easements, rights-of-way, permits, licenses and franchise ordinances transferred to us will require the consent of the grantor to transfer these rights, which in some instances is a governmental entity. Our general partner has obtained or is in the process of obtaining sufficient third-party consents, permits, and authorizations for the transfer of the assets necessary for us to operate our business in all material respects as described in this annual report. With respect to any consents, permits, or authorizations that have not been obtained, our general partner believes that these consents, permits, or authorizations will be obtained, or that the failure to obtain these consents, permits, or authorizations would not have a material adverse effect on the operation of our business.

Our general partner believes that we have satisfactory title to all of our assets. Record title to some of our assets may continue to be held by affiliates of TransMontaigne Inc. until we have made the appropriate filings in the jurisdictions in which such assets are located and obtained any consents and approvals that were not obtained prior to transfer. We will make these filings and request these consents, the granting of which is subject to the discretion of the applicable governmental entity.



Although title to these properties is subject to encumbrances in some cases, such as customary interests generally retained in connection with acquisition of real property, liens that can be imposed in some jurisdictions for government-initiated action to clean up environmental contamination, liens for current taxes and other burdens, and easements, restrictions, and other encumbrances to which the underlying properties were subject at the time of acquisition by TransMontaigne Partners (Predecessor) or us, our general partner believes that none of these burdens should materially detract from the value of these properties or from our interest in these properties or should materially interfere with their use in the operation of our business.

## **EMPLOYEES**

TransMontaigne GP L.L.C. ("TransMontaigne GP"), is our general partner and manages our operations and activities. TransMontaigne Services Inc., is an indirect wholly-owned subsidiary of TransMontaigne Inc., and is the sole member of TransMontaigne GP. TransMontaigne Services Inc. employs the people who provide support to TransMontaigne Inc.'s operations as well as our operations. At August 29, 2005, TransMontaigne Services Inc. had approximately 727 full-time employees of which 85 of these employees provide services directly to us. At August 29, 2005, none of TransMontaigne Services Inc.'s employees that provide services directly to us was covered by a collective bargaining agreement. TransMontaigne Services Inc. considers its employee relations to be good.

## **ITEM 3. LEGAL PROCEEDINGS**

TransMontaigne Inc. has agreed to indemnify us for any losses we may suffer as a result of legal claims for actions that occurred prior to the closing of our initial public offering on May 27, 2005.

We currently are not a party to any material litigation. Our operations are subject to a variety of risks and disputes normally incident to our business. As a result, at any given time we may be a defendant in various legal proceedings and litigation arising in the ordinary course of business. We maintain insurance policies with insurers in amounts and with coverage and deductibles as the general partner believes are reasonable and prudent. However, we cannot assure that this insurance will be adequate to protect us from all material expenses related to potential future claims for personal and property damage or that the levels of insurance will be available in the future at economical prices.

## **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

No matters were submitted to a vote of the security holders, through solicitation of proxies or otherwise, during the fiscal year covered by this annual report.

## Part II

### ITEM 5. MARKET FOR THE REGISTRANT'S COMMON UNITS, RELATED UNITHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### CHANGES IN SECURITIES AND USE OF PROCEEDS

On May 24, 2005, our registration statement on Form S-1 (SEC File No.: 333-123219), as amended, that we filed with the Securities and Exchange Commission relating to our initial public offering became effective. The managing underwriter was UBS Investment Bank. The closing date of our initial public offering was May 27, 2005. On that date we sold 3,350,000 common units to the public at a price of \$21.40 per common unit, or \$71.7 million. The underwriting discount on this sale was \$4.7 million, excluding structuring fees of \$0.4 million paid to UBS Securities LLC. On June 3, 2005, the underwriters closed on the exercise of their over-allotment option to acquire an additional 502,500 common units at the initial public offering price of \$21.40 per unit, resulting in net proceeds of approximately \$10.0 million, after underwriting discounts and offering expenses of approximately \$0.8 million. We repurchased 502,500 common units from a subsidiary of TransMontaigne Inc. at \$20.01 per unit to satisfy the over-allotment option.

Concurrent with the closing of our initial public offering, we (1) entered into and borrowed \$31.5 million under our \$75 million revolving credit agreement and incurred \$0.9 million of debt issuance costs and related expenses and (2) issued 450,000 subordinated units to MSDW Bondbook Ventures, Inc., an affiliate of Morgan Stanley Capital Group, Inc., for \$7.9 million in a private offering exempt from registration under Section 4(2) of the Securities Act. A summary of the proceeds received and the use of proceeds is as follow (in millions).

#### Proceeds Received:

Sale of common units (including exercise of over-allotment option)	\$	82.5
Borrowing under credit facility		31.5
Private placement of subordinated units		7.9
	\$	121.9

#### Use of Proceeds:

Underwriting discount (including exercise of over-allotment option)	\$	5.8
Professional fees and other offering costs		3.7
Deferred debt issuance costs		0.9
Repurchase of units from subsidiary of TransMontaigne Inc.		10.0
Distributed to TransMontaigne Inc.		101.5
	\$	121.9

#### MARKET FOR COMMON UNITS

The common units are listed and traded on the New York Stock Exchange under the symbol "TLP." On August 29, 2005, there were approximately 40 unit holders of record of our common units. This number does not include unit holders whose units are held in trust by other entities. The actual number of unit holders is greater than the number of unit holders of record.

The following table sets forth, for the periods indicated, the range of high and low per unit sales prices for our common units as reported on the New York Stock Exchange.

	Low	High
May 24, 2005 (initial trading day) through June 30, 2005	\$ 21.40	\$ 26.85

## DISTRIBUTIONS OF AVAILABLE CASH

A distribution of \$0.15 per unit for the quarter ended June 30, 2005, was paid on August 9, 2005, and reflects the pro rata portion of the minimum quarterly distribution of \$0.40 per common unit for the period from the closing of the initial public offering on May 27, 2005 through June 30, 2005.

Within approximately 45 days after the end of each quarter, we will distribute all of our available cash, as defined in our partnership agreement, to unitholders of record on the applicable record date. Available cash generally means all cash on hand at the end of the quarter:

- > *less* the amount of cash reserves established by our general partner to:
  - > provide for the proper conduct of our business;
  - > comply with applicable law, any of our debt instruments, or other agreements; or
  - > provide funds for distributions to our unitholders and to our general partner for any one or more of the next four quarters;
- > *plus*, if our general partner so determines, all or a portion of cash on hand on the date of determination of available cash for the quarter.

## Distributions of Available Cash During the Subordination Period

Common units are entitled to receive distributions from operating surplus of \$0.40 per unit per quarter, or \$1.60 per unit per year, before any such distributions are paid on our subordinated units. At June 30, 2005, the amounts of available cash from operating surplus needed to pay the minimum quarterly distribution for one quarter and for four quarters on the common units, the subordinated units, and the general partner units were approximately:

	One Quarter (in thousands)	Four Quarters
Common units and related distribution on general partner units	\$ 1,621	\$ 6,486
Subordinated units and related distribution on general partner units	\$ 1,356	\$ 5,424
Total	\$ 2,977	\$ 11,910

We will make distributions of available cash from operating surplus for any quarter during the subordination period in the following manner:

- > **First**, 98% to the common unitholders, pro rata, and 2% to our general partner, until we distribute for each outstanding common unit an amount equal to the minimum quarterly distribution for that quarter;
- > **Second**, 98% to the common unitholders, pro rata, and 2% to our general partner, until we distribute for each outstanding common unit an amount equal to any arrearages in payment of the minimum quarterly distribution on the common units for any prior quarters during the subordination period;

- > **Third**, 98% to the subordinated unitholders, pro rata, and 2% to our general partner, until we distribute for each subordinated unit an amount equal to the minimum quarterly distribution for that quarter; and
- > **Thereafter**, cash in excess of the minimum quarterly distributions is distributed to unitholders and the general partner based on the incentive distribution rights held by our general partner.

### Distributions of Available Cash After the Subordination Period

At June 30, 2005, there were 3,322,266 subordinated units issued and outstanding. The subordination period will generally not end until June 30, 2010. However, a portion of the subordinated units may be converted into common units at an earlier date on a one-for-one basis based on the achievement of certain financial goals as defined in our partnership agreement.

Upon expiration of the subordination period, each outstanding subordinated unit will convert into one common unit and will then participate pro rata with the other common units in distributions of available cash.

We will make distributions of available cash for any quarter after the subordination period in the following manner:

- > **First**, 98% to all unitholders, pro rata, and 2% to our general partner until we distribute for each outstanding unit an amount equal to the minimum quarterly distribution for that quarter; and
- > **Thereafter**, in the manner described under "—Incentive Distribution Rights" below.

### Incentive Distribution Rights

Incentive distribution rights are a non-voting limited partner interest that represent the right to receive an increasing percentage of quarterly distributions of available cash from operating surplus after the minimum quarterly distribution and the target distribution levels have been achieved. Our general partner currently holds the incentive distribution rights, but may transfer these rights separately from its general partner interest, subject to restrictions in the partnership agreement.

The following table illustrates the percentage allocations of the additional available cash from operating surplus between the unitholders and our general partner up to the various target distribution levels. The amounts set forth under "Marginal percentage interest in distributions" are the percentage interests of our general partner and the unitholders in any available cash from operating surplus we distribute up to and including the corresponding amount in the column "Total quarterly distribution," until available cash from operating surplus we distribute reaches the next target distribution level, if any. The percentage interests shown for the unitholders and our general partner for the minimum quarterly distribution are also applicable to quarterly distribution amounts that are less than the minimum quarterly distribution. The percentage interests set forth below for our general partner include its 2% general partner interest and assume our general partner has contributed any additional

capital to maintain its 2% general partner interest and has not transferred its incentive distribution rights.

	Total quarterly distribution	Marginal percentage interest in distributions	
		Unitholders	General partner
Minimum Quarterly Distribution	\$0.40	98%	2%
First Target Distribution	up to \$0.44	98%	2%
Second Target Distribution	above \$0.44 up to \$0.50	85%	15%
Third Target Distribution	above \$0.50 up to \$0.60	75%	25%
Thereafter	above \$0.60	50%	50%

There is no guarantee that we will be able to pay the minimum quarterly distribution on the common units in any quarter, and we will be prohibited from making any distributions to unitholders if it would cause an event of default, or an event of default is existing, under our senior secured credit facility.

#### Common Unit Repurchases for the quarter ended June 30, 2005

Following is a summary of common unit repurchases for the quarter ended June 30, 2005 (in thousands, except average price per share):

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
May 1 - May 30(a)	—	\$ —		
June 1 - June 30	502,500	20.01		
<b>Total</b>	<b>502,500</b>	<b>\$ 20.01</b>	<b>—</b>	<b>—</b>

(a) On June 3, 2005, the underwriters closed the exercise of their over-allotment option to acquire an additional 502,500 common units at the initial public offering price of \$21.40 per unit, less the underwriting discount of \$1.39 per common unit. We repurchased 502,500 common units from a subsidiary of TransMontaigne Inc. to satisfy the requirements of the over-allotment option.

For information on our equity compensation plans, see "Item 12. Security Ownership of Certain Beneficial Owners and Management—Equity Compensation Plan Information."

## ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth selected historical financial data of TransMontaigne Partners for the periods and as of the dates indicated. The following selected financial data for each of the years in the five-year period ended June 30, 2005, has been derived from our consolidated financial statements. You should not expect the results for any prior periods to be indicative of the results that may be achieved in future periods. You should read the following information together with our historical consolidated financial statements and related notes and with "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this annual report.

	Years ended June 30,				
	2005	2004	2003(2) (dollars in thousands)	2002(1)	2001
<b>Statement of Operations Data:</b>					
Revenues	\$ 36,093	\$ 34,437	\$ 17,175	\$ 8,901	\$ 7,105
Direct operating costs and expenses	(15,842)	(14,813)	(6,267)	(2,894)	(2,401)
Net operating margin	20,251	19,624	10,908	6,007	4,704
Costs and expenses:					
Direct general and administrative	(79)	—	—	—	—
Allocated general and administrative	(2,800)	(3,300)	(2,500)	(1,400)	(1,400)
Allocated insurance	(333)	(318)	(239)	(200)	(200)
Depreciation and amortization	(6,154)	(5,903)	(3,588)	(1,728)	(1,749)
Gain on disposition of assets, net	—	6	—	—	—
Operating income	10,885	10,109	4,581	2,679	1,355
Other income (expense):					
Interest income	—	6	—	—	—
Interest expense	(167)	—	—	—	—
Amortization of deferred debt issuance costs	(15)	—	—	—	—
Minority interest share in earnings of Razorback Pipeline	—	—	—	(525)	(538)
Net earnings	\$ 10,703	\$ 10,115	\$ 4,581	\$ 2,154	\$ 817

### Other Financial Data:

Net cash provided by operating activities	\$ 18,517	\$ 16,532	\$ 8,469	\$ 4,545	\$ 3,249
Net cash (used) by investing activities	\$ (3,686)	\$ (3,256)	\$ (95,949)	\$ (7,115)	\$ (318)
Net cash provided (used) by financing activities	\$ (14,592)	\$ (13,292)	\$ 87,448	\$ 2,592	\$ (2,951)

	June 30,				
	2005	2004	2003(2) (dollars in thousands)	2002(1)	2001
<b>Balance Sheet Data:</b>					
Property, plant and equipment, net	\$ 116,044	\$ 118,012	\$ 120,153	\$ 29,985	\$ 24,603
Total assets	\$ 122,860	\$ 120,886	\$ 123,806	\$ 30,286	\$ 24,874
Equity	\$ 87,425	\$ 118,657	\$ 121,834	\$ 29,805	\$ 24,534

(1) Effective June 30, 2002, TransMontaigne Inc. acquired the remaining 40% interest that it did not own in the Razorback Pipeline system.

(2) The consolidated financial statements include the results of operations of the Coastal Fuels assets from the closing date of their acquisition by TransMontaigne Inc. (February 28, 2003).

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of the results of operations and financial condition should be read in conjunction with the accompanying consolidated financial statements included elsewhere in this annual report.

### OVERVIEW

We are a refined petroleum products terminaling and pipeline company formed by TransMontaigne Inc. Our initial operations consist of certain terminal and pipeline assets that were contributed to us by TransMontaigne Inc. Specifically, the contributed assets are composed of:

- > seven refined product terminals located in Florida, with an aggregate storage capacity of approximately 5.8 million barrels, that provide integrated terminaling services to TransMontaigne Inc., other distribution and marketing companies and the United States government;
- > a 67-mile, interstate refined products pipeline, which we refer to as the Razorback Pipeline, that currently transports gasolines and distillates for TransMontaigne Inc. from Mt. Vernon, Missouri to Rogers, Arkansas; and
- > two refined product terminals, one located in Mt. Vernon, Missouri and the other located in Rogers, Arkansas, with an aggregate storage capacity of approximately 400,000 barrels, that are connected to the Razorback Pipeline and provide integrated terminaling services to TransMontaigne Inc.

We conduct our operations in the United States in Florida, Southwest Missouri and Northwest Arkansas and provide integrated terminaling, storage, pipeline and related services for companies engaged in the distribution and marketing of refined products and crude oil, including TransMontaigne Inc. We handle light refined products such as gasolines, distillates (including heating oil) and jet fuels; heavy refined products such as residual fuel oils and asphalt; and crude oil.

The substantial majority of our business is devoted to providing terminaling and pipeline services to TransMontaigne Inc. TransMontaigne Inc. accounted for approximately 64%, 59% and 70% of our revenues for the years ended June 30, 2005, 2004 and 2003, respectively. TransMontaigne Inc., formed in 1995, is a terminaling, distribution and marketing company that supplies, distributes and markets refined petroleum products to refiners, wholesalers, distributors, marketers and industrial and commercial end users throughout the United States, primarily in the Gulf Coast, Florida, East Coast and Midwest regions. TransMontaigne Inc. also provides supply chain management services to various customers throughout the United States. TransMontaigne Inc. currently relies on us to provide substantially all the integrated terminaling services it requires to support its operations in Florida, Southwest Missouri and Northwest Arkansas. Pursuant to the terms of a terminaling services agreement we executed on May 27, 2005 with TransMontaigne Inc., we expect to continue to derive a substantial majority of our revenues from TransMontaigne Inc. for the foreseeable future. TransMontaigne Inc. has a significant interest in our partnership through its indirect ownership of a 39.4% limited partner interest and a 2% general partner interest in us.

We do not take ownership of or market products that we handle or transport and, therefore, we are not directly exposed to changes in commodity prices, except for the value of product gains and losses arising from our terminaling services agreements with our customers. The volume of product that is handled, transported through or stored in our terminals and pipeline is directly affected by the level of

supply and demand in the wholesale markets served by our terminals and pipeline. Overall supply of refined products in the wholesale markets is influenced by the products' absolute prices, the availability of capacity on delivering pipelines and vessels, fluctuating refinery margins and the markets' perception of future product prices. The demand for gasoline in Northwest Arkansas and Southwest Missouri peaks during the summer driving season, which extends from April to September, and declines during the fall and winter months. The demand for gasoline in Florida typically peaks in the winter season due to the influx of visitors to the state. The demand for marine fuels typically peaks in the winter months due to the increase in the number of cruise ships originating from the Florida ports. Despite these seasonalities, the overall impact on the volume of product throughput in our terminals and pipeline is not material.

Our assets, liabilities and results of operations reflect the assets, liabilities and results of operations of the contributed assets during the periods presented as described below.

## **SIGNIFICANT DEVELOPMENTS DURING THE YEAR ENDED JUNE 30, 2005**

In April 2005, we entered into a new three-year terminaling services agreement with a marketer of residual fuel oil that is expected to generate approximately \$1.3 million in annual revenues.

On May 9, 2005, we entered into a \$75 million senior secured credit facility that matures on May 9, 2010.

On May 27, 2005, we closed on the sale of 3,350,000 common units representing limited partnership interests in an initial public offering at a price of \$21.40 per common unit, resulting in net proceeds of approximately \$63.0 million, after underwriting discounts and offering expenses of approximately \$8.7 million.

On May 27, 2005, we closed on the sale of 450,000 subordinated units representing limited partnership interests in a private placement transaction with an affiliate of Morgan Stanley Capital Group, Inc., resulting in proceeds of approximately \$7.9 million.

On June 3, 2005, we closed on the exercise of the underwriters' over-allotment option to acquire an additional 502,500 common limited partner units at the initial public offering price of \$21.40 per unit, resulting in net proceeds of approximately \$10.0 million, after underwriting discounts and offering expenses of approximately \$0.8 million. We repurchased 502,500 common units from Coastal Fuels Marketing, Inc., a subsidiary of TransMontaigne Inc., at \$20.01 per unit to satisfy the over-allotment option.

## **SUBSEQUENT EVENTS**

On July 20, 2005, we announced the declaration of a cash distribution of \$0.15 per unit payable on August 9, 2005 to unitholders of record on July 29, 2005. That distribution represents the pro rata portion of our minimum quarterly cash distribution of \$0.40 per unit for the period from May 27, 2005 through June 30, 2005.

On August 29, 2005, Hurricane Katrina caused severe damage along the United States Gulf Coast and into the southeastern United States. We currently are not aware of any significant long-term damage to our facilities as a result of Hurricane Katrina.



## NATURE OF REVENUES AND EXPENSES

We derive revenues from our refined product terminals by charging fees for providing integrated terminaling and related services. We generate revenues from the Razorback Pipeline by charging a tariff for transporting refined products. The fees we charge, our other sources of revenue and our direct operating costs and expenses are described below.

**Throughput and additive injection fees.** We earn throughput fees for each barrel of product that is distributed at our terminals by our customers. Terminal throughput fees are based on the volume of product distributed at the facility's truck loading racks, generally at a standard rate per barrel of product. We provide injection services in connection with the delivery of product at our terminals. These fees generally are based on the volume of product injected and delivered over the rack at our terminals.

**Terminaling Storage Fees.** We provide storage capacity at our terminals to third parties, and prior to May 27, 2005, TransMontaigne Inc. Terminaling storage fees generally are based on a per barrel of storage capacity per month rate and vary with the duration of the agreement and the type of product.

**Pipeline Transportation Fees.** We earn pipeline transportation fees at our Razorback Pipeline based on the volume of product transported and the distance from the origin point to the delivery point. The tariff on the Razorback Pipeline is regulated by the FERC.

**Reimbursed Costs.** We manage and operate for a major oil company certain tank capacity at our Port Everglades (South) terminal and receive a reimbursement of costs.

**Other Revenue.** In addition to providing storage and distribution services at our terminal facilities, we also provide ancillary services including heating and mixing of stored products and product transfer services. We also recognize gains from the sale of product to TransMontaigne Inc. resulting from the excess of product deposited by our customers into our terminals over the amount of product that the customer is contractually permitted to withdraw from those terminals.

**Direct Operating Costs and Expenses.** The direct operating costs and expenses of our operations include the directly related wages and employee benefits, utilities, communications, maintenance and repairs, property and casualty insurance, property taxes, rent, vehicle expenses, environmental compliance costs, materials and supplies.

## CRITICAL ACCOUNTING POLICIES AND ESTIMATES

A summary of the significant accounting policies that we have adopted and followed in the preparation of our historical consolidated financial statements is detailed in Note 1 of Notes to consolidated financial statements. Certain of these accounting policies require the use of estimates. We have identified the following estimates that, in our opinion, are subjective in nature, require the exercise of judgment, and involve complex analysis. These estimates are based on our knowledge and understanding of current conditions and actions that we may take in the future. Changes in these estimates will occur as a result of the passage of time and the occurrence of future events. Subsequent changes in these estimates may have a significant impact on our financial condition and results of operations.

**Allowance for Doubtful Accounts.** At June 30, 2005, our allowance for doubtful accounts was \$nil. Our allowance for doubtful accounts represents the amount of trade receivables that we do not expect to collect. The valuation of our allowance for doubtful accounts is based on our analysis of specific

individual customer balances that are past due and, from that analysis, we estimate the amount of the receivable balance that we do not expect to collect. That estimate is based on various factors, including our experience in collecting past due amounts from the customer being evaluated, the customer's current financial condition, the current economic environment and the economic outlook for the future.

**Accrued Environmental Obligations.** At June 30, 2005, we were not aware of any existing conditions that may cause us to incur significant expenditures in the future for the remediation of potentially contaminated sites caused by past operations. As such, we have not reflected in the accompanying consolidated financial statements any liabilities for environmental obligations to be incurred in the future based on existing conditions. Estimates of our environmental obligations are subject to change due to a number of factors and judgments involved in the estimation process, including the early stage of investigation at certain sites, the lengthy time frames required to complete remediation, technology changes affecting remediation methods, alternative remediation methods and strategies, and changes in environmental laws and regulations. Changes in our estimates and assumptions may occur as a result of the passage of time and the occurrence of future events.

Costs incurred to remediate existing contamination at the Florida terminals historically owned by TransMontaigne Inc. have been, and are expected in the future to be, insignificant. As part of the omnibus agreement, TransMontaigne Inc. retained 100% of these liabilities. TransMontaigne Inc. has indemnified us through May 2010 against certain potential environmental claims, losses and expenses associated with the operation of the initially-contributed assets and occurring before May 27, 2005, up to a maximum liability not to exceed \$15 million for this indemnification obligation (see Note 2 of Notes to consolidated financial statements).

## RESULTS OF OPERATIONS—YEARS ENDED JUNE 30, 2005, 2004 AND 2003

In reviewing our historical results of operations, you should be aware that the historical results of operations prior to the closing of our initial public offering on May 27, 2005, reflect the financial results of our predecessor entity "TransMontaigne Partners (Predecessor)." The contribution of certain TransMontaigne Inc. terminal and pipeline operations to us was recorded for financial reporting purposes at carryover basis in a manner similar to a reorganization of entities under common control. In reviewing these results you should be aware of the following:

The historical revenues include only actual amounts received from:

- third parties who utilized our Florida terminals; and
- TransMontaigne Inc. for use of our Razorback Pipeline system and Florida terminals.

In addition, the historical results of operations reflect the impact of the following acquisitions:

- the purchase of five of the Florida terminals contributed to us with aggregate storage capacity of approximately 4.8 million barrels, completed in February 2003; and
- the purchase of the remaining 40% interest in the Razorback Pipeline, completed in June 2002.

We reported net earnings of approximately \$10.7 million for the year ended June 30, 2005, compared to net earnings of approximately \$10.1 million for the year ended June 30, 2004, and net earnings of approximately \$4.6 million for the year ended June 30, 2003. Selected results of operations data for

each of the quarters in the three-year period ended June 30, 2005, are summarized below (in thousands):

	Three months ended				Year ended June 30, 2005
	September 30, 2004	December 31, 2004	March 31, 2005	June 30, 2005	
Revenues	\$ 8,392	\$ 8,300	\$ 9,714	\$ 9,687	\$ 36,093
Direct operating costs and expenses	(4,086)	(3,987)	(4,059)	(3,710)	(15,842)
Net operating margins	4,306	4,313	5,655	5,977	20,251
Direct general and administrative	—	—	—	(79)	(79)
Allocated general and administrative	(700)	(700)	(700)	(700)	(2,800)
Allocated insurance expense	(84)	(83)	(83)	(83)	(333)
Depreciation and amortization	(1,537)	(1,507)	(1,509)	(1,601)	(6,154)
Operating income	1,985	2,023	3,363	3,514	10,885
Other income (expense), net	—	—	—	(182)	(182)
Net earnings	\$ 1,985	\$ 2,023	\$ 3,363	\$ 3,332	\$ 10,703
	Three months ended				Year ended June 30, 2004
	September 30, 2003	December 31, 2003	March 31, 2004	June 30, 2004	
Revenues	\$ 8,812	\$ 8,020	\$ 8,797	\$ 8,808	\$ 34,437
Direct operating costs and expenses	(3,937)	(3,079)	(3,874)	(3,923)	(14,813)
Net operating margins	4,875	4,941	4,923	4,885	19,624
Allocated general and administrative	(825)	(825)	(825)	(825)	(3,300)
Allocated insurance expense	(80)	(80)	(79)	(79)	(318)
Depreciation and amortization	(1,287)	(1,537)	(1,522)	(1,557)	(5,903)
Gain on disposition of assets, net	—	6	—	—	6
Operating income	2,683	2,505	2,497	2,424	10,109
Other income (expense), net	—	—	6	—	6
Net earnings	\$ 2,683	\$ 2,505	\$ 2,503	\$ 2,424	\$ 10,115
	Three months ended				Year ended June 30, 2003
	September 30, 2002	December 31, 2002	March 31, 2003	June 30, 2003	
Revenues	\$ 2,069	\$ 2,370	\$ 4,490	\$ 8,246	\$ 17,175
Direct operating costs and expenses	(581)	(540)	(1,522)	(3,624)	(6,267)
Net operating margins	1,488	1,830	2,968	4,622	10,908
Allocated general and administrative	(625)	(625)	(625)	(625)	(2,500)
Allocated insurance expense	(60)	(60)	(60)	(59)	(239)
Depreciation and amortization	(577)	(519)	(490)	(2,002)	(3,588)
Operating income	226	626	1,793	1,936	4,581
Other income (expense), net	—	—	—	—	—
Net earnings	\$ 226	\$ 626	\$ 1,793	\$ 1,936	\$ 4,581

The net operating margins for the year ended June 30, 2005 were approximately \$20.3 million, compared to approximately \$19.6 million for the year ended June 30, 2004, and \$10.9 million for the year ended June 30, 2003. The increase of approximately \$0.7 million in net operating margins for 2005 as compared to 2004 was due principally to an increase in net operating margins of approximately \$0.3 million at the Florida facilities and approximately \$0.4 at the Razorback Pipeline system. The increase of approximately \$8.7 million in net operating margins for 2004 as compared to 2003 was due principally to the increase in net operating margins generated by the assets acquired from an affiliate of El Paso Corporation, which we refer to as the Coastal Fuels assets, of approximately \$8.5 million. The results of operations of the Coastal Fuels assets, principally five of the Florida terminals, are included from the closing date of the acquisition by TransMontaigne Inc. (February 28, 2003). For the years ended June 30, 2005, 2004 and 2003, the Coastal Fuels assets generated revenues of approximately \$25.9 million, \$23.8 million and \$7.8 million, respectively, and net operating margins of approximately \$13.7 million, \$12.6 million and \$4.1 million, respectively.

Our net operating margins are as follows (in thousands):

	Years ended June 30,		
	2005	2004	2003
Throughput and additive injection fees, net	\$ 11,893	\$ 10,617	\$ 7,360
Terminaling storage fees	18,106	17,711	6,135
Pipeline transportation fees	2,242	2,141	2,032
Reimbursed costs	129	108	132
Other	3,723	3,860	1,516
Revenue	36,093	34,437	17,175
Less direct operating costs and expenses	(15,842)	(14,813)	(6,267)
Net operating margins	\$ 20,251	\$ 19,624	\$ 10,908

**Throughput and additive injection fees, net.** Terminal throughput and additive injection fees, net were approximately \$11.9 million, \$10.6 million and \$7.4 million for the years ended June 30, 2005, 2004 and 2003, respectively. The increase of approximately \$1.3 million in throughput fees for 2005 as compared to 2004 was due principally to increases of approximately \$0.9 million at the Florida facilities and approximately \$0.4 million at the Razorback Pipeline system. The increase of approximately \$3.2 million in throughput fees for 2004 as compared to 2003 was due principally to increases of approximately \$2.4 million as a result of the acquisition of the Coastal Fuels assets, and approximately \$0.8 million at our historical Florida facilities. For the years ended June 30, 2005, 2004 and 2003, we delivered approximately 92,100 barrels, 98,400 barrels and 69,000 barrels per day of light oil throughput volumes, respectively, at our terminals.

The terminaling services agreement with TransMontaigne Inc. converted the fees charged on heavy oil marketing volumes from a storage agreement to a throughput agreement effective June 1, 2005. The throughput fees charged on heavy oil marketing volumes were approximately \$0.8 million for the one month ended June 30, 2005. For the years ended June 30, 2005 and 2004, we delivered approximately 26,300 barrels and 24,200 barrels per day, respectively, of heavy oil marketing volumes for TransMontaigne Inc. at our terminals.

Included in the terminal throughput fees for the years ended June 30, 2005, 2004 and 2003, are fees charged to TransMontaigne Inc. of approximately \$11.8 million, \$10.5 million and \$7.2 million, respectively.

**Terminaling Storage Fees.** Terminaling storage fees were approximately \$18.1 million, \$17.7 million and \$6.1 million for the years ended June 30, 2005, 2004 and 2003, respectively. The increase of approximately \$0.4 million in terminaling storage fees for 2005 as compared to 2004 was due principally to an annual increase in storage fees charged to our customers at the Florida facilities and the execution in April 2005 of a new two-year terminaling services agreement with a marketer of residual fuel oil. The increase of approximately \$11.6 million in terminaling storage fees for 2004 as compared to 2003 was due principally to the acquisition of the Coastal Fuels assets.

Included in the terminaling storage fees for the years ended June 30, 2005, 2004 and 2003 are fees charged to TransMontaigne Inc. of approximately \$8.4 million, \$7.2 million and \$2.4 million, respectively, for the storage of residual fuel oil.

**Pipeline Transportation Fees.** For the years ended June 30, 2005, 2004 and 2003, we earned pipeline transportation fees of approximately \$2.2 million, \$2.1 million and \$2.0 million, respectively. For the years ended June 30, 2005, 2004 and 2003, we averaged approximately 12,400 barrels, 12,400 barrels and 11,800 barrels per day of transported product on the Razorback Pipeline. During the year ended June 30, 2005, the tariff charged for transporting barrels on the Razorback Pipeline increased to \$0.50 per barrel from \$0.47 per barrel.

Included in pipeline transportation fees for the years ended June 30, 2005, 2004 and 2003, are fees charged to TransMontaigne Inc. of approximately \$2.2 million, \$2.1 million, and \$2.0 million, respectively.

**Reimbursed Costs.** We manage and operate for a major oil company certain tank capacity at our Port Everglades (South) terminal and receive a reimbursement of costs. For the years ended June 30, 2005, 2004 and 2003, cost reimbursements were approximately \$0.1 million, \$0.1 million, and \$0.1 million, respectively.

**Other Revenue.** For the years ended June 30, 2005, 2004 and 2003, other revenue was approximately \$3.7 million, \$3.9 million and \$1.5 million, respectively. The decrease of approximately \$0.2 million in other revenue for 2005 as compared to 2004 was due principally to an decrease of approximately \$0.1 million at the Florida facilities and approximately \$0.1 million at the Razorback Pipeline system. The increase of approximately \$2.4 million in other revenue for 2004 as compared to 2003 was due principally to an increase of approximately \$2.0 million from our acquisition of the Coastal Fuels assets and an increase of approximately \$0.6 million at our Razorback Pipeline terminals.

Included in other revenue for the years ended June 30, 2005, 2004 and 2003 are fees charged to TransMontaigne Inc. of approximately \$0.7 million, \$0.3 million and \$0.3 million, respectively.

**Direct Operating Costs and Expenses.** For the years ended June 30, 2005, 2004 and 2003, the direct operating costs and expenses of our operations were approximately \$15.8 million, \$14.8 million and

\$6.3 million, respectively. The direct operating costs and expenses of our operations are as follows (in thousands):

	Years ended June 30,		
	2005	2004	2003
Wages and employee benefits	\$ 4,975	\$ 4,442	\$ 2,037
Utilities and communication charges	1,207	1,735	856
Repairs and maintenance	4,713	3,725	1,011
Allocated property and casualty insurance costs	667	582	261
Office, rentals and property taxes	2,138	1,972	913
Vehicles and fuel costs	1,102	821	147
Environmental compliance costs	489	624	331
Other	551	912	711
Direct operating costs and expenses	\$ 15,842	\$ 14,813	\$ 6,267

The increase of approximately \$1.0 million in direct operating costs and expenses for 2005 as compared to 2004 was due principally to increases at the Florida facilities. The increase of approximately \$8.5 million in direct operating costs and expenses for 2004 as compared to 2003 was due principally to the addition of the Coastal Fuels assets, which resulted in approximately \$7.7 million of additional direct operating costs and expenses, an increase of approximately \$0.4 million at our historical Florida terminals, and an increase of approximately \$0.4 million at our Razorback Pipeline system.

**Costs and expenses.** The accompanying consolidated financial statements include allocated general and administrative charges from TransMontaigne Inc. for allocations of indirect corporate overhead to cover costs of centralized corporate functions such as legal, accounting, treasury, insurance administration and claims processing, health, safety and environmental, information technology, human resources, credit, payroll, taxes, engineering and other corporate services. The allocated general and administrative expenses were approximately \$2.8 million, \$3.3 million and \$2.5 million for the years ended June 30, 2005, 2004 and 2003, respectively. The accompanying consolidated financial statements also include allocated insurance charges from TransMontaigne Inc. for allocations of insurance premiums to cover costs of insuring activities such as property casualty, pollution, automobile, directors and officers, and other insurable risks. The allocated insurance expenses are presented in the accompanying consolidated statements of operations as follows (in thousands):

	Years ended June 30,		
	2005	2004	2003
Direct operating costs and expenses	\$ 667	\$ 582	\$ 261
General and administrative costs	333	318	239
Total allocated insurance costs	\$ 1,000	\$ 900	\$ 500

Depreciation and amortization expense for the years ended June 30, 2005, 2004 and 2003, was \$6.2 million, \$5.9 million and \$3.6 million, respectively. The increase of approximately \$0.3 million in depreciation and amortization expense for 2005 as compared to 2004 was due principally to depreciation and amortization expense on current year additions to property, plant, and equipment. The increase of approximately \$2.3 million in depreciation and amortization expense for 2004 as compared to 2003 was due principally to depreciation and amortization expense on the Coastal Fuels assets and current year additions to property, plant, and equipment.

## LIQUIDITY AND CAPITAL RESOURCES

Our primary liquidity needs are to fund our capital expenditures and our working capital requirements. Prior to our initial public offering in May 2005, investments and advances from TransMontaigne Inc. were our primary means of funding our liquidity needs. Currently, our principal sources of funds to meet our liquidity needs are cash generated by operations, borrowings under our new credit facility and debt and equity offerings.

Capital expenditures for the year ended June 30, 2005, were approximately \$3.7 million for terminal and pipeline facilities and assets to support these facilities. Excluding acquisitions, budgeted capital expenditures for the year ending June 30, 2006, are estimated to be less than \$5.0 million, which includes less than \$2.0 million of capital expenditures to maintain our existing facilities. Future capital expenditures will depend on numerous factors, including the availability, economics and cost of appropriate acquisitions which we identify and evaluate; the economics, cost and required regulatory approvals with respect to the expansion and enhancement of existing systems and facilities; customer demand for the services we provide; local, state and federal governmental regulations; environmental compliance requirements; and the availability of debt financing and equity capital on acceptable terms.

**Senior Secured Credit Facility.** On May 9, 2005, we entered into a \$75 million senior secured credit facility. The credit facility provides for a maximum borrowing line of credit equal to the lesser of (i) \$75 million and (ii) four times Consolidated EBITDA (as defined; \$61.3 million at June 30, 2005). Borrowings under the credit facility bear interest (at our option) based on a base rate plus an applicable margin, or LIBOR plus an applicable margin; the applicable margins are a function of the total leverage ratio (as defined). Interest on loans under the credit facility will be due and payable periodically, based on the applicable interest rate and related interest period, generally either one, two or three months. In addition, we will pay a commitment fee ranging from 0.375% to 0.50% per annum on the total amount of the unused commitments. Borrowings under the credit facility are secured by a lien on our assets, including cash, accounts receivable, inventory, general intangibles, investment property, contract rights and real property, except for our real property located in Florida. The terms of the credit facility include covenants that restrict our ability to make cash distributions and acquisitions. We may make distributions of cash to the extent of our "available cash" as defined in our partnership agreement. We may make acquisitions meeting the definition of "permitted acquisitions" which include: acquisitions in which the consideration paid for such acquisition, together with the consideration paid for other acquisitions in the same fiscal year, does not exceed \$15,000,000; acquisitions that arise from the exercise of options under the omnibus agreement with TransMontaigne Inc. provided that any cash consideration is not obtained from borrowings under the credit facility; and acquisitions in which we have (1) provided the agent prior written documentation in form and substance reasonably satisfactory to the agent demonstrating our pro forma compliance with all financial and other covenants contained herein after giving effect to such acquisition and (2) satisfied all other conditions precedent to such acquisition which the agent may reasonably require in connection therewith. The principal balance of loans and any accrued and unpaid interest will be due and payable in full on the maturity date, May 9, 2010.

The credit facility also contains customary representations and warranties (including those relating to corporate organization and authorization, compliance with laws, absence of defaults, material agreements and litigation) and customary events of default (including those relating to monetary defaults, covenant defaults, cross defaults and bankruptcy events). The primary financial covenants contained in the credit facility are a total leverage ratio test (not to exceed four times) and an interest coverage ratio test (not to be less than three times). These financial covenants are based on a defined financial performance measure within the credit facility known as "Consolidated EBITDA."

For the periods prior to our initial public offering on May 27, 2005, the credit facility stipulates our Consolidated EBITDA at approximately \$3.7 million per quarter and consolidated interest expense at approximately \$0.4 million per quarter. Those assumptions are reflected in the following calculation of the "total leverage ratio" and "interest coverage ratio" contained in the credit facility.

	Three Months Ended				Year Ended June 30, 2005
	September 30, 2004	December 31, 2004	March 31, 2005	June 30, 2005	
<b>Financial performance debt covenant test:</b>					
Consolidated EBITDA, as stipulated in the credit facility	\$ 3,663	\$ 3,663	\$ 3,663	\$ 4,341	\$ 15,330
Consolidated funded indebtedness					\$ 28,307
Total leverage ratio					1.85x
Consolidated interest expense, as stipulated in the credit facility	392	392	392	409	\$ 1,585
Interest coverage ratio					9.7x

If we were to fail either financial performance covenant, or any other covenant contained in the credit facility, we would seek a waiver from our lenders under such facility. If we were unable to obtain a waiver from our lenders and the default remained uncured after any applicable grace period, we would be in breach of the credit facility, and the lenders would be entitled to declare all outstanding borrowings immediately due and payable.

**Contractual obligations and contingencies.** We have contractual obligations that are required to be settled in cash. The amounts of our contractual obligations at June 30, 2005, are as follows (in thousands):

	Years ending June 30,					
	2006	2007	2008	2009	2010	Thereafter
Additions to property, plant and equipment under contract	\$ 160	\$ —	\$ —	\$ —	\$ —	\$ —
Operating leases—property and equipment	140	127	122	117	97	—
Long-term debt	—	—	—	—	28,307	—
Interest expense on debt(1)	1,415	1,415	1,415	1,415	1,297	—
Total contractual obligations to be settled in cash	\$ 1,715	\$ 1,542	\$ 1,537	\$ 1,532	\$ 29,701	\$ —

(1) Assumes that our outstanding long-term debt at June 30, 2005 remains outstanding until its maturity date and we incur interest expense at 5.0%.

**Off-Balance Sheet Arrangements.** We have no outstanding letters of credit.

See Notes 2, 9 and 11 of Notes to consolidated financial statements for additional information regarding our contractual obligations and off-balance sheet arrangements that may affect our results of operations and financial condition.

We believe that our future cash expected to be provided by operating activities, available borrowing capacity under our credit facility, and our relationship with institutional lenders and equity investors should enable us to meet our planned capital and liquidity requirements through at least the maturity date of our credit facility (May 2010).



## NEW ACCOUNTING PRONOUNCEMENTS

In December 2004, the Financial Accounting Standards Board ("FASB") enacted Statement of Financial Accounting Standards 123—revised 2004 ("SFAS 123R"), "Share-Based Payment" which replaces Statement of Financial Accounting Standards No. 123 ("SFAS 123"), "Accounting for Stock-Based Compensation" and supersedes APB Opinion No. 25 ("APB 25"), "Accounting for Stock Issued to Employees." SFAS 123R requires the measurement of all employee share-based payments to employees, including grants of employee stock options, using a fair-value-based method and the recording of such expense in our consolidated statements of operations. For TransMontaigne Partners, the accounting provisions of SFAS 123R are effective for reporting periods beginning after June 15, 2005. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition. We are evaluating the requirements under SFAS 123R and, currently we are not anticipating a significant impact on our consolidated financial statements from the adoption of SFAS 123R.

In March 2005, the FASB issued FASB Interpretation No. 47 ("FIN 47"), "Accounting for Conditional Asset Retirement Obligations—an interpretation of SFAS 143," which requires companies to recognize a liability for the fair value of a legal obligation to perform asset-retirement activities that are conditional on a future event, if the amount can be reasonably estimated. For TransMontaigne Partners, FIN 47 is effective for annual reporting periods beginning after December 15, 2005. We are evaluating the requirements under FIN 47 and do not anticipate the adoption will have a significant impact on our consolidated financial statements.

## RISKS INHERENT IN OUR BUSINESS THAT MAY AFFECT FUTURE RESULTS

*Our business, operations and financial condition are subject to various risks. You should consider carefully the following risk factors, in addition to the other information set forth in this annual report in connection with any investment in our securities. If any of the following risks actually occurs, our business, financial condition or results of operations could be materially adversely affected. In that case, the market value of our common units representing limited partnership interests could decline, and investors could lose all or a part of their investment.*

**We depend upon TransMontaigne Inc. for a substantial majority of our revenues. A substantial reduction of those revenues would have a material adverse effect on our financial condition and results of operations.**

We expect to derive a substantial majority of our revenues from TransMontaigne Inc. for the foreseeable future. Because of TransMontaigne Inc.'s position as a major customer of our business, events which adversely affect TransMontaigne Inc.'s creditworthiness or business operations may adversely affect our financial condition or results of operations. If TransMontaigne Inc. is unable to meet its minimum revenue commitment for any reason, then our revenues and cash flow would decline. Therefore, we are indirectly subject to the business risks of TransMontaigne Inc., many of which are similar to the business risks we face. In particular, these business risks include the following:

- > TransMontaigne Inc.'s inability to negotiate distribution and marketing contracts on favorable terms;
- > contract non-performance by TransMontaigne Inc.'s customers;

- > Morgan Stanley Capital Group, Inc.'s failure to perform under its product supply agreement with TransMontaigne Inc., which would adversely affect TransMontaigne Inc.'s ability to acquire supplies of gasoline and distillates and deliver them to its customers on a timely basis;
- > a material decline in refined petroleum product supplies, including heavy refined products not supplied by Morgan Stanley Capital Group, Inc., which could increase TransMontaigne Inc.'s terminaling, storage and throughput costs on a per-barrel basis; and
- > various operational risks to which TransMontaigne Inc.'s business is subject.

Because the substantial majority of our active terminal storage capacity will be utilized by TransMontaigne Inc. pursuant to the terminaling services agreement, we do not expect to materially increase our revenues from third party customers in the near term unless we undertake significant acquisition or construction projects. Therefore, we do not expect our dependence on TransMontaigne Inc. for a substantial majority of our revenues to decrease in the near future.

**We are subject to the credit risk of TransMontaigne Inc., and TransMontaigne Inc.'s leverage and creditworthiness could adversely affect our ability to grow our business.**

Currently our indebtedness is not rated by any credit rating agency, however, we may have rated debt in the future. Credit rating agencies such as Standard & Poor's and Moody's may consider TransMontaigne Inc.'s debt ratings when assigning ours, because of TransMontaigne Inc.'s ownership interest in and control of us, the strong operational links between TransMontaigne Inc. and us, and our reliance on TransMontaigne Inc. for a substantial majority of our revenues. If one or more credit rating agencies were to downgrade the outstanding indebtedness of TransMontaigne Inc., we could experience an increase in our borrowing costs or difficulty accessing capital markets. Such a development could adversely affect our ability to grow our business.

**We are exposed to the credit risks of our key third party customers, and any material nonpayment or nonperformance by such customers could adversely affect our financial condition and results of operations.**

In addition to our dependence on TransMontaigne Inc., we are subject to risks of loss resulting from nonpayment or nonperformance by our third party customers. Some of our customers may be highly leveraged and subject to their own operating and regulatory risks. Any material nonpayment or nonperformance by our other key customers could require us to pursue substitute customers for our affected assets or provide alternative services. There can be no assurance that any such efforts would be successful or would provide similar fees. Additionally, we may incur substantial costs if modifications to our terminals are required in order to attract substitute customers or provide alternative services. These events could adversely affect our financial condition and results of operations.

**TransMontaigne Inc.'s obligations under the terminaling services agreement may be reduced or suspended in some circumstances, which would adversely affect our financial condition and results of operations.**

Some of the circumstances under which TransMontaigne Inc.'s obligations under the terminaling services agreement may be permanently reduced are within the exclusive control of TransMontaigne Inc. as discussed under "Item 1. Business—Terminals Services Agreement." Any such permanent reduction could adversely affect our financial condition and results of operations.

**If TransMontaigne Inc. does not continue to engage us to provide services after the expiration of the terminaling services agreement and we are unable to secure comparable alternative arrangements, our financial condition and results of operations will be adversely affected.**

TransMontaigne Inc.'s obligations under the terminaling services agreement expire on December 31, 2011, subject thereafter to automatic one-year renewals if neither party provides notice of termination. After the expiration of the terminaling services agreement, TransMontaigne Inc. may elect not to continue to engage us to provide services. In addition, even if TransMontaigne Inc. does engage us, the terms of any renegotiated agreement may be less favorable than the agreement it replaces. In either case, we will not be able to generate additional revenues from third parties. To the extent TransMontaigne Inc. does not extend or renew the terminaling services agreement, or if we extend or renew the terminaling services agreement on less favorable terms, our financial condition and results of operations could be adversely affected.

**If we do not make acquisitions on economically acceptable terms, any future growth will be limited.**

Our ability to grow is dependent principally on our ability to make acquisitions that are attractive because they are expected to result in an increase in adjusted operating surplus per unit. Our acquisition strategy is based, in part, on our expectation of ongoing divestitures of refined product terminal and pipeline assets by large industry participants. A material decrease in such divestitures would limit our opportunities for future acquisitions and could adversely affect our operations and cash flows.

In addition, we may be unable to make attractive acquisitions for any of the following reasons, among others:

- > because we are unable to identify attractive acquisition candidates or negotiate acceptable purchase contracts with them, or acceptable terminaling services contracts with them or TransMontaigne Inc.;
- > because we are unable to raise financing for such acquisitions on economically acceptable terms; or
- > because we are outbid by competitors, some of which are substantially larger than us and have greater financial resources and lower costs of capital than we do.

If we consummate future acquisitions, our capitalization and results of operations may change significantly.

**Any acquisitions we make are subject to substantial risks, which could adversely affect our financial condition and results of operations.**

Any acquisition involves potential risks, including risks that we may:

- > fail to realize anticipated benefits, such as new customer relationships, cost-savings or cash flow enhancements;
- > decrease our liquidity by using a significant portion of our available cash or borrowing capacity to finance acquisitions;
- > significantly increase our interest expense or financial leverage if we incur additional debt to finance acquisitions;

- > encounter difficulties operating in new geographic areas or new lines of business;
- > incur or assume unanticipated liabilities, losses or costs associated with the business or assets acquired, including upon exercise of our options with TransMontaigne Inc., for which we are not indemnified or for which the indemnity is inadequate;
- > be unable to hire, train or retain qualified personnel to manage and operate our growing business and assets;
- > less effectively manage our historical assets, because of the diversion of management's attention from other business concerns; or
- > incur other significant charges, such as impairment of goodwill or other intangible assets, asset devaluation or restructuring charges.

If any acquisitions we ultimately consummate result in one or more of these outcomes, our financial condition and results of operations may be adversely affected.

**Our options to purchase additional refined product terminals from TransMontaigne Inc. are subject to significant risks and uncertainty, and thus these options may never be exercised, which could limit our ability to grow our business.**

TransMontaigne Inc. granted us exclusive options to purchase additional refined product terminals. The exercise of any of the options will be subject to the negotiation of a purchase price and a terminaling services agreement relating to the terminals proposed to be purchased, and may be conditioned on obtaining various consents. Such consents may include consents of the holders of TransMontaigne Inc.'s equity or debt securities or governmental consents. We can offer no assurance that we will be able to successfully negotiate a purchase price or that any necessary consents will be obtained. Additionally, the conflicts committee of our general partner may conclude that it does not wish to cause us to exercise these options when they become exercisable, and their decision will not be subject to unitholder approval.

If the conflicts committee elects not to cause us to exercise an option, or if for any other reason the exercise of an option is not consummated, our ability to grow our business may be limited. In addition, if we do not acquire the assets subject to the options, TransMontaigne Inc. or another purchaser of the relevant assets may use the assets to compete with us.

**We may not be able to obtain financing for the exercise of our options to purchase additional refined product terminals from TransMontaigne Inc., which could limit our ability to grow our business.**

Even if the conflicts committee concludes that exercising one of the options would be beneficial to us, we may be unable to obtain the financing necessary to exercise the option. To fund the exercise of an option, we would be required to use cash from operations or incur borrowings or raise capital through the sale of debt or additional equity securities. Our ability to obtain bank financing or to access the capital markets for future offerings may be limited by our financial condition at the time of any such financing or offering, as well as by adverse market conditions resulting from, among other things, general economic conditions and contingencies and uncertainties that are beyond our control.

**Expanding our business by constructing new assets subjects us to risks that the project may not be completed on schedule, and that the costs associated with the project may exceed our expectations, which could adversely affect our financial condition and results of operations.**

The construction of additions or modifications to our existing terminal and pipeline systems, and the construction of new terminals and pipelines, involves numerous regulatory, environmental, political, legal and operational uncertainties beyond our control and requires the expenditure of significant amounts of capital. If we undertake these projects, they may not be completed on schedule or at all or at the budgeted cost. Moreover, our revenues may not increase immediately upon the expenditure of funds on a particular project. For instance, if we construct a terminal, the construction may occur over an extended period of time, and we will not receive any material increases in revenues until the project is completed. Moreover, we may construct facilities to capture anticipated future growth in consumption of refined products in a market in which such growth does not materialize.

**Our revenues from third party customers are generated under contracts that must be renegotiated periodically and that allow the customer to reduce or suspend performance in some circumstances, which could cause our revenues from those contracts to decline.**

Some of our contract-based revenues from customers, other than TransMontaigne Inc., are generated under contracts with terms which allow the customer to reduce or suspend performance under the contract in specified circumstances, such as the occurrence of a catastrophic event to our or the customer's operations. The occurrence of an event which results in a material reduction or suspension of our customer's performance could adversely affect our results of operations.

Some of our contracts with third party customers have terms of one year or less. As these contracts expire, they must be extended and renegotiated or replaced. We may not be able to extend, renegotiate or replace these contracts when they expire, and the terms of any renegotiated contracts may not be as favorable as the contracts they replace. In particular, our ability to extend or replace contracts could be harmed by competitive factors we cannot control. If we cannot successfully renew significant contracts or must renew them on less favorable terms, our revenues from these arrangements would decline.

**A significant decrease in demand for refined products in the areas served by our terminals and pipeline would adversely affect our financial condition and results of operations.**

A sustained decrease in demand for refined products in the areas served by our terminals and pipeline could significantly reduce our revenues. Factors that could lead to a decrease in market demand include:

- > a recession or other adverse economic condition that results in lower spending by consumers on gasolines, distillates, and travel;
- > an increase in the market price of crude oil that leads to higher refined product prices;
- > higher fuel taxes or other governmental or regulatory actions that increase, directly or indirectly, the cost of gasolines or other refined products;

- > a decline in demand in the cruise ship industry, which is a significant source of revenue to TransMontaigne Inc.; and
- > a shift by consumers to more fuel-efficient or alternative fuel vehicles or an increase in fuel economy, whether as a result of technological advances by manufacturers, pending legislation proposing to mandate higher fuel economy, or otherwise.

**Competition from other terminals and pipelines that are able to supply TransMontaigne Inc. and its affiliates' customers with refined petroleum products storage capacity at a lower price could adversely affect our financial condition and results of operations.**

We face competition from other terminals and pipelines that may be able to supply TransMontaigne Inc. and other distribution and marketing customers with integrated terminaling services on a more competitive basis. We compete with national, regional and local terminal and pipeline companies, including the major integrated oil companies, of widely varying sizes, financial resources and experience. Our ability to compete could be harmed by factors we cannot control, including:

- > price competition from terminal and pipeline companies, some of which are substantially larger than us and have greater financial resources, and control substantially greater refined product storage capacity, than we do;
- > the perception that another company can provide better service; and
- > the availability of alternative supply points or supply points located closer to our or TransMontaigne Inc.'s customers' operations.

If we are unable to compete with services offered by other petroleum enterprises, our financial condition and results of operations would be adversely affected.

In addition, TransMontaigne Inc. may engage in competition with us under certain conditions. Pursuant to the omnibus agreement, TransMontaigne Inc. has agreed to offer us certain tangible assets it acquires or constructs related to the storage, transportation or terminaling of refined petroleum products in the United States (as discussed under "Item 1. Business—Obligation to Offer to Sell Acquired or Constructed Assets"). If we decline any such offer, TransMontaigne Inc. will be free to use the asset to compete with us or to sell the asset without restriction. If we indicate our desire to purchase the assets, but we cannot agree on the terms, TransMontaigne Inc. has the right to sell the asset, subject to certain restrictions, to a third party. Either event would increase competition in the area in which the asset is located.

**Because of our lack of asset and geographic diversification, adverse developments in our terminals or pipeline operations or operating areas could adversely affect our revenue and cash flows.**

We rely exclusively on the revenues generated from our terminals and pipeline operations. Furthermore, all of our assets are located in Florida or in Southwest Missouri and Northwest Arkansas. Because of our lack of diversification in asset type and location, an adverse development in these businesses or areas, including adverse developments caused by catastrophic events or weather and decreases in demand for petroleum products, would have a significantly greater impact on our financial condition and results of operations than if we maintained more diverse assets.

**Our operations are subject to governmental laws and regulations relating to the protection of the environment that may expose us to significant costs and liabilities.**

Our business is subject to the jurisdiction of numerous governmental agencies that enforce complex and stringent laws and regulations with respect to a wide range of environmental, safety and other regulatory matters. We could be adversely affected by increased costs resulting from more strict pollution control requirements or liabilities resulting from non-compliance with required operating or other regulatory permits. New environmental laws and regulations might adversely impact our activities, including the transportation, storage and distribution of refined petroleum products. Federal, state and local agencies also could impose additional safety requirements, any of which could affect our profitability. In addition, we face the risk of accidental releases or spills associated with our operations, which could result in material costs and liabilities, including those relating to claims for damages to property and persons. Failure by us to comply with environmental or safety related laws and regulations could result in the assessment of administrative, civil and criminal penalties, the imposition of investigatory and remedial obligations and even the issuance of injunctions that restrict or prohibit the performance of our operations. For more information regarding the environmental, safety and other regulatory matters that could affect our business, see "Item 1. Business—Safety and Maintenance," "—Safety Regulation" and "—Environmental Matters."

**Our business involves many hazards and operational risks, including adverse weather conditions, which could cause us to incur substantial liabilities.**

Our operations are subject to the many hazards inherent in the transportation and terminaling of petroleum products, including:

- > explosions, fires, accidents;
- > extreme weather conditions, such as hurricanes, tropical storms, and rough seas, which are common in Florida;
- > damage to pipelines, storage tanks and related equipment;
- > leaks or releases of petroleum products into the environment; and
- > acts of terrorism or vandalism.

If any of these events were to occur, we could suffer substantial losses because of personal injury or loss of life, severe damage to and destruction of property and equipment, and pollution or other environmental damage resulting in curtailment or suspension of our related operations. In addition, mechanical malfunctions, faulty measurement or other errors may result in significant costs or lost revenues.

**We are not fully insured against all risks incident to our business, and could incur substantial liabilities as a result.**

In accordance with typical industry practice, we do not have any property insurance on the Razorback Pipeline. Furthermore, we may not be able to maintain or obtain insurance of the type and amount we desire at reasonable rates. As a result of market conditions, premiums and deductibles for certain of our insurance policies have increased substantially, and could escalate further. In some instances, certain insurance could become unavailable or available only for reduced amounts of coverage. For example, our insurance carriers require broad exclusions for losses due to terrorist acts. If we were to

incur a significant liability for which we were not fully insured, it could have a material adverse effect on our financial condition.

We share some insurance policies, including our general liability policy, with TransMontaigne Inc. These policies contain caps on the insurer's maximum liability under the policy, and claims made by either of TransMontaigne Inc. or us are applied against the caps. The possibility exists that, in any event in which we wish to make a claim under a shared insurance policy, our claim could be denied or only partially satisfied due to claims made by TransMontaigne Inc. against the policy cap.

**Our debt levels may limit our flexibility in obtaining additional financing and in pursuing other business opportunities.**

We have the ability to incur additional debt, subject to limitations in our credit facility. Our level of debt could have important consequences to us. For example our level of debt could:

- > impair our ability to obtain additional financing, if necessary, for working capital, capital expenditures, acquisitions or other purposes;
- > require us to dedicate a substantial portion of our cash flow to make principal and interest payments on our debt, reducing the funds that would otherwise be available for operations and future business opportunities;
- > make us more vulnerable to competitive pressures, changes in interest rates or a downturn in our business or the economy generally; and
- > limit our flexibility in responding to changing business and economic conditions.

If our operating results are not sufficient to service our current or future indebtedness, we will be forced to take actions such as reducing distributions, reducing or delaying our business activities, acquisitions, investments or capital expenditures, selling assets, restructuring or refinancing our debt, or seeking additional equity capital. We may not be able to effect any of these actions on satisfactory terms, or at all.

Our credit facility also contains covenants limiting our ability to make distributions to unitholders in certain circumstances. In addition, our credit facility contains various covenants that limit, among other things, our ability to incur indebtedness, grant liens or enter into a merger, consolidation or sale of assets. Furthermore, our credit facility contains covenants requiring us to maintain certain financial ratios and tests. Any future breach of any of these covenants or our failure to meet any of these ratios or conditions could result in a default under the terms of our credit facility, which could result in acceleration of our debt and other financial obligations. If we were unable to repay those amounts, the lenders could initiate a bankruptcy proceeding or liquidation proceeding or proceed against the collateral.

**Terrorist attacks, and the threat of terrorist attacks, have resulted in increased costs to our business. Continued hostilities in the Middle East or other sustained military campaigns may adversely impact our ability to make distributions to our unitholders.**

The long-term impact of terrorist attacks, such as the attacks that occurred on September 11, 2001, and the threat of future terrorist attacks, on the energy transportation industry in general, and on us in particular, is not known at this time. Increased security measures taken by us as a precaution against possible terrorist attacks have resulted in increased costs to our business. Uncertainty surrounding continued hostilities in the Middle East or other sustained military campaigns may affect our



operations in unpredictable ways, including the possibility that infrastructure facilities could be direct targets of, or indirect casualties of, an act of terrorism.

**TransMontaigne Inc. controls our general partner, which has sole responsibility for conducting our business and managing our operations.**  
**TransMontaigne Inc. has conflicts of interest and limited fiduciary duties, which may permit it to favor its own interests to our detriment.**

TransMontaigne Services Inc., a wholly owned subsidiary of TransMontaigne Inc., owns and controls our general partner. Neither our general partner nor its board of directors are elected by our unitholders and our unitholders have no right to elect our general partner or its board of directors on an annual or other continuing basis. Furthermore, unitholders have little ability to remove our general partner.

Although our general partner has a fiduciary duty to manage us in a manner beneficial to us and our unitholders, the directors and officers of our general partner have a fiduciary duty to manage our general partner in a manner beneficial to its owner, TransMontaigne Services Inc. Furthermore, three of our general partner's directors, and all of its executive officers, are directors or officers of TransMontaigne Inc. Therefore, conflicts of interest may arise between TransMontaigne Inc. and its affiliates, including our general partner, on the one hand, and us and our unitholders, on the other hand. In resolving those conflicts of interest, our general partner may favor its own interests and the interests of its affiliates over the interests of our unitholders.

The following are potential conflicts of interest:

- TransMontaigne Inc., as a user of our pipeline and terminals, has an economic incentive not to cause us to seek a higher tariff or higher terminaling service fees, even if such higher rates or terminaling service fees would reflect rates that could be obtained in arm's-length, third-party transactions;
- TransMontaigne Inc. may engage in competition with us under certain circumstances;
- neither our partnership agreement nor any other agreement requires TransMontaigne Inc. to pursue a business strategy that favors us. TransMontaigne Inc.'s directors and officers have a fiduciary duty to make these decisions in the best interests of the stockholders of TransMontaigne Inc., which may be contrary to our interests;
- our general partner is allowed to take into account the interests of parties other than us, such as TransMontaigne Inc., in resolving conflicts of interest;
- some officers of TransMontaigne Inc. who will provide services to us also will devote significant time to the businesses of TransMontaigne Inc., and will be compensated by TransMontaigne Inc. for the services rendered to it;
- our general partner has limited its liability and reduced its fiduciary duties, and also has restricted the remedies available to our unitholders for actions that, without the limitations, might constitute breaches of fiduciary duty;
- our general partner determines the amount and timing of asset purchases and sales, capital expenditures, borrowings, issuance of additional partnership securities, and reserves, each of which can affect the amount of cash that is distributed to our unitholders;

- our general partner determines the amount and timing of any capital expenditures and whether a capital expenditure is a maintenance capital expenditure, which reduces operating surplus, or an expansion capital expenditure, which does not, which determination can affect the amount of cash that is distributed to our unitholders and the ability of the subordinated units to convert to common units;
- our general partner may use an amount, initially equal to \$11.9 million, which would not otherwise constitute operating surplus, in order to permit the payment of cash distributions on the subordinated units or incentive distribution rights;
- our general partner determines which out-of-pocket costs incurred by TransMontaigne Inc. are reimbursable by us;
- our partnership agreement does not restrict our general partner from causing us to pay it or its affiliates for any services rendered to us or entering into additional contractual arrangements with any of these entities on our behalf;
- our general partner intends to limit its liability regarding our contractual and other obligations;
- our general partner may exercise its limited right to call and purchase common units if it and its affiliates own more than 80% of the common units;
- our general partner controls the enforcement of obligations owed to us by our general partner and its affiliates, including the terminaling services agreement with TransMontaigne Inc.; and
- our general partner decides whether to retain separate counsel, accountants, or others to perform services for us.

**The control of our general partner may be transferred to a third party without unitholder consent.**

Our general partner may transfer its general partner interest to a third party in a merger or in a sale of all or substantially all of its assets without the consent of the unitholders. Furthermore, our partnership agreement does not restrict the ability of the members of our general partner from transferring their respective limited liability company interests in our general partner to a third party. The new members of our general partner then would be in a position to replace the board of directors and officers of our general partner with their own choices and to control the decisions taken by the board of directors and officers.

**Our tax treatment depends on our status as a partnership for federal income tax purposes, as well as our not being subject to entity-level taxation by states. If the IRS were to treat us as a corporation or if we were to become subject to entity-level taxation for state tax purposes, then our cash flows would be substantially reduced.**

The anticipated after-tax benefit of an investment in the common units depends largely on our being treated as a partnership for federal income tax purposes. We have not requested, and do not plan to request, a ruling from the IRS on this or any other matter affecting us.

If we were treated as a corporation for federal income tax purposes, we would pay federal income tax on our income at the corporate tax rate, which is currently a maximum of 35%. Distributions to our unitholders would generally be taxed again as corporate distributions, and no income, gains, losses, deductions or credits would flow through to our unitholders. Because a tax would be imposed upon us

as a corporation, our cash flows would be substantially reduced. Thus, treatment of us as a corporation would result in a material reduction in the anticipated cash flow and after-tax return to our unitholders, likely causing a substantial reduction in the value of the common units.

Current law may change, causing us to be treated as a corporation for federal income tax purposes or otherwise subjecting us to entity-level taxation. For example, because of widespread state budget deficits, several states are evaluating ways to subject partnerships to entity-level taxation through the imposition of state income, franchise or other forms of taxation. If any state were to impose a tax upon us as an entity, our cash flows would be reduced. The partnership agreement provides that if a law is enacted or existing law is modified or interpreted in a manner that subjects us to taxation as a corporation or otherwise subjects us to entity-level taxation for federal, state or local income tax purposes, then the minimum quarterly distribution amount and the target distribution amounts will be reduced to reflect the impact of that law on us.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISKS**

Market risk is the risk of loss arising from adverse changes in market rates and prices. The principal market risk to which we are exposed is interest rate risk associated with borrowings under our senior secured credit facility. Borrowings under our senior secured credit facility will bear interest at a variable rate based on LIBOR or the lender's base rate. We currently do not manage our exposure to interest rates, but we may in the future. At June 30, 2005, we had outstanding borrowings of \$28.3 million under our senior secured credit facility. Based on the outstanding balance of our variable-interest-rate debt at June 30, 2005, and assuming market interest rates increase or decrease by 100 basis points, the potential annual increase or decrease in interest expense is approximately \$283,000.

We do not purchase or market products that we handle or transport and, therefore, we do not have material direct exposure to changes in commodity prices, except for the value of product gains and losses arising from our terminaling services agreements with our customers. We do not use derivative commodity instruments to manage the commodity risk associated with the product we may own at any given time. Generally, to the extent we are entitled to retain product pursuant to terminaling services agreements with our customers, we sell the product to TransMontaigne Inc. As a result, we do not have a material direct exposure to commodity price fluctuations.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The following consolidated financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this annual report.

### **TransMontaigne Partners L.P. and Subsidiaries:**

[Report of Independent Registered Public Accounting Firm](#)

[Consolidated balance sheets as of June 30, 2005 and 2004](#)

[Consolidated statements of operations for the years ended June 30, 2005, 2004 and 2003](#)

[Consolidated statements of partners' equity for the years ended June 30, 2005, 2004 and 2003](#)

[Consolidated statements of cash flows for the years ended June 30, 2005, 2004 and 2003](#)

[Notes to consolidated financial statements](#)

## Report of Independent Registered Public Accounting Firm

The Board of Directors and Member  
TransMontaigne GP L.L.C.:

We have audited the accompanying consolidated balance sheets of TransMontaigne Partners L.P. as of June 30, 2005 and 2004, and the related consolidated statements of operations and partners' equity, and cash flows for each of the years in the three-year period ended June 30, 2005. In connection with our audits of the consolidated financial statements, we have also audited the accompanying financial statement schedule (Exhibit 99.1). These consolidated financial statements and financial statement schedule are the responsibility of TransMontaigne GP L.L.C.'s management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of TransMontaigne Partners L.P. as of June 30, 2005 and 2004, and the results of their operations and their cash flows for each of the years in the three-year period ended June 30, 2005, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

KPMG LLP

Denver, Colorado  
September 12, 2005

**TransMontaigne Partners L.P. and subsidiaries**  
**Consolidated balance sheets**  
(In thousands)

	June 30, 2005	June 30, 2004
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 241	\$ 2
Trade accounts receivable, net	492	782
Due from TransMontaigne Inc.	3,538	—
Other current assets	302	248
	<u>4,573</u>	<u>1,032</u>
Property, plant and equipment, net	116,044	118,012
Other assets, net	2,243	1,842
	<u>\$ 122,860</u>	<u>\$ 120,886</u>
<b>LIABILITIES AND EQUITY</b>		
Current liabilities:		
Trade accounts payable	\$ 2,180	\$ 946
Due to TransMontaigne Inc.	3,524	—
Accrued liabilities	1,424	1,283
	<u>7,128</u>	<u>2,229</u>
Long-term debt	28,307	—
	<u>35,435</u>	<u>2,229</u>
Partners' equity:		
Predecessor equity	—	118,657
Common unitholders (3,972,500 units issued and outstanding at June 30, 2005)	76,255	—
Subordinated unitholders (3,322,266 units issued and outstanding at June 30, 2005)	13,433	—
General partner interest (2% interest with 148,873 equivalent units outstanding at June 30, 2005)	281	—
Deferred equity-based compensation	(2,544)	—
	<u>87,425</u>	<u>118,657</u>
	<u>\$ 122,860</u>	<u>\$ 120,886</u>

See accompanying notes to consolidated financial statements.

**TransMontaigne Partners L.P. and subsidiaries**  
**Consolidated statements of operations**  
(In thousands)

	Years ended June 30,		
	2005	2004	2003
Revenues	\$ 36,093	\$ 34,437	\$ 17,175
Direct operating costs and expenses	(15,842)	(14,813)	(6,267)
Net operating margins	20,251	19,624	10,908
Costs and expenses:			
Direct general and administrative expenses	(79)	—	—
Allocated general and administrative expenses	(2,800)	(3,300)	(2,500)
Allocated insurance expense	(333)	(318)	(239)
Depreciation and amortization	(6,154)	(5,903)	(3,588)
Gain on disposition of assets, net	—	6	—
Total costs and expenses	(9,366)	(9,515)	(6,327)
Operating income	10,885	10,109	4,581
Other income (expense):			
Interest income	—	6	—
Interest expense	(167)	—	—
Amortization of deferred financing costs	(15)	—	—
Total other income (expense)	(182)	6	—
Net earnings	10,703	10,115	4,581
Less:			
Net earnings attributable to Predecessor	9,730	10,115	4,581
General partner interest in net earnings	19	—	—
Net earnings allocable to limited partners	\$ 954	\$ —	\$ —
Net earnings per limited partners' unit—basic and diluted	\$ 0.13	\$ —	\$ —
Weighted average limited partners' units Outstanding—basic and diluted	7,295	—	—

See accompanying notes to consolidated financial statements.

**TransMontaigne Partners L.P. and subsidiaries**  
**Consolidated statements of partners' equity**  
(In thousands)

	Predecessor	Common Units	Subordinated Units	General Partner Interest	Deferred Equity-Based Compensation	Total
<b>Balance July 1, 2002</b>	\$ 29,805	\$ —	\$ —	\$ —	\$ —	\$ 29,805
Net earnings	4,581	—	—	—	—	4,581
Contributions and advances, net	87,448	—	—	—	—	87,448
<b>Balance June 30, 2003</b>	121,834	—	—	—	—	121,834
Net earnings	10,115	—	—	—	—	10,115
Distributions and repayments, net	(13,292)	—	—	—	—	(13,292)
<b>Balance June 30, 2004</b>	118,657	—	—	—	—	118,657
Net earnings through May 26, 2005	9,730	—	—	—	—	9,730
Distributions and repayments, net	(11,399)	—	—	—	—	(11,399)
Proceeds from initial public offering of 3,852,500 common units, net of underwriters' discount and offering expenses of \$9,512	—	72,932	—	—	—	72,932
Proceeds from private placement of 450,000 subordinated units	—	—	7,945	—	—	7,945
Distribution to TransMontaigne Inc.	(111,461)	—	—	—	—	(111,461)
Allocation of predecessor equity in exchange for 120,000 common units, 2,872,266 subordinated units, and a 2% general partner interest (represented by 148,873 units)	(5,527)	211	5,054	262	—	—
Grant of 120,000 restricted common units under the long-term incentive plan	—	2,592	—	—	(2,592)	—
Amortization of deferred equity-based compensation related to restricted common units	—	—	—	—	48	48
Net earnings from May 27, 2005 through June 30, 2005	—	520	434	19	—	973
<b>Balance June 30, 2005</b>	\$ —	\$ 76,255	\$ 13,433	\$ 281	\$ (2,544)	\$ 87,425

See accompanying notes to consolidated financial statements.



**TransMontaigne Partners L.P. and subsidiaries**  
**Consolidated statements of cash flows**  
(In thousands)

	Year ended June 30, 2005	Year ended June 30, 2004	Year ended June 30, 2003
<b>Cash flows from operating activities:</b>			
Net earnings	\$ 10,703	\$ 10,115	\$ 4,581
Adjustments to reconcile net earnings to net cash provided (used) by operating activities:			
Depreciation and amortization	6,154	5,903	3,588
Amortization of deferred equity-based compensation	48	—	—
Amortization of deferred financing costs	15	—	—
Gain on disposition of assets, net	—	(6)	—
Changes in operating assets and liabilities, net of effects from acquisitions:			
Trade accounts receivable, net	290	177	(840)
Net due from TransMontaigne Inc.	(14)	—	—
Other current assets	(54)	86	(211)
Trade accounts payable	1,234	(400)	1,083
Accrued liabilities	141	657	268
	<u>18,517</u>	<u>16,532</u>	<u>8,469</u>
Net cash provided by operating activities	<u>18,517</u>	<u>16,532</u>	<u>8,469</u>
<b>Cash flows from investing activities:</b>			
Acquisition of Coastal Fuels assets	—	—	(95,366)
Additions to property, plant and equipment—expansion of facilities	(2,332)	(1,327)	(211)
Additions to property, plant and equipment—maintain existing facilities	(1,354)	(1,955)	(372)
Proceeds from sale of assets	—	26	—
	<u>(3,686)</u>	<u>(3,256)</u>	<u>(95,949)</u>
Net cash (used) by investing activities	<u>(3,686)</u>	<u>(3,256)</u>	<u>(95,949)</u>
<b>Cash flows from financing activities:</b>			
Net proceeds from issuance of common units	72,932	—	—
Net proceeds from issuance of subordinated units	7,945	—	—
Net borrowings under credit facility	28,307	—	—
Deferred financing costs	(916)	—	—
Net contributions and advances by (distributions and repayments to) TransMontaigne Inc.	(122,860)	(13,292)	87,448
	<u>(14,592)</u>	<u>(13,292)</u>	<u>87,448</u>
Net cash provided (used) by financing activities	<u>(14,592)</u>	<u>(13,292)</u>	<u>87,448</u>
	<u>239</u>	<u>(16)</u>	<u>(32)</u>
Increase (decrease) in cash and cash equivalents	<u>2</u>	<u>18</u>	<u>50</u>
Cash and cash equivalents at beginning of year	<u>2</u>	<u>18</u>	<u>50</u>
	<u>\$ 241</u>	<u>\$ 2</u>	<u>\$ 18</u>
Cash and cash equivalents at end of year	<u>\$ 241</u>	<u>\$ 2</u>	<u>\$ 18</u>
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid for interest expense	\$ 167	\$ —	\$ —

See accompanying notes to consolidated financial statements.

# Notes to consolidated financial statements

## Years ended June 30, 2005, 2004 and 2003

### **(1) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

#### **(a) Nature of business**

TransMontaigne Partners L.P. ("Partners") includes the assets, liabilities and results of operations of certain terminal and pipeline operations of TransMontaigne Inc. that were contributed to us on May 27, 2005. The consolidated financial statements also include the assets, liabilities and results of operations of these terminals and pipelines prior to their contribution by TransMontaigne Inc. to us. Partners was formed in 2005 as a Delaware master limited partnership initially to own and operate refined petroleum products terminaling and pipeline assets.

Partners conducts its operations in the United States primarily in Florida, Southwest Missouri and Northwest Arkansas. Partners provides integrated terminaling, storage, pipeline and related services for companies engaged in the distribution and marketing of refined petroleum products and crude oil, including TransMontaigne Inc.

#### **(b) Basis of presentation and use of estimates**

Our accounting and financial reporting policies conform to accounting principles and practices generally accepted in the United States of America. The accompanying consolidated financial statements include the assets, liabilities and results of operations of certain terminal and pipeline operations of TransMontaigne Inc. that were contributed to us at the closing of our initial public offering on May 27, 2005. Specifically, the TransMontaigne Inc. terminal and pipeline operations that were contributed to us are composed of seven Florida terminals, including terminals located in Tampa, Port Manatee, Fisher Island, Port Everglades (North), Port Everglades (South), Cape Canaveral, and Jacksonville; and the Razorback Pipeline system, including the terminals located at Mt. Vernon, Missouri and Rogers, Arkansas. On February 28, 2003, TransMontaigne Inc. acquired the Port Manatee, Fisher Island, Port Everglades (North), Cape Canaveral and Jacksonville terminal operations from an affiliate of El Paso Corporation (see Note 3 of Notes to consolidated financial statements). All significant inter-company accounts and transactions have been eliminated in the preparation of the accompanying consolidated financial statements.

The preparation of financial statements in conformity with generally accepted accounting principles requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. The following estimates, in management's opinion, are subjective in nature, require the exercise of judgment, and involve complex analysis: allowance for doubtful accounts and accrued environmental obligations. Changes in these estimates and assumptions will occur as a result of the passage of time and the occurrence of future events. Actual results could differ from these estimates.

The accompanying consolidated financial statements include allocated general and administrative charges from TransMontaigne Inc. for indirect corporate overhead to cover costs of functions such as legal, accounting, treasury, engineering, environmental safety, information technology, and other corporate services (see Note 2 of Notes to consolidated financial statements). The allocated general and administrative charges were \$2.8 million, \$3.3 million and \$2.5 million for the years ended June 30, 2005, 2004 and 2003, respectively. The accompanying consolidated financial statements also

include allocated insurance charges from TransMontaigne Inc. for insurance premiums to cover costs of insuring activities such as property casualty, pollution, automobile, directors and officers liability, and other insurable risks. The allocated insurance charges were \$1.0 million, \$0.9 million and \$0.5 million for the years ended June 30, 2005, 2004 and 2003, respectively. Management believes that the allocated general and administrative charges and insurance charges are representative of the costs and expenses incurred by TransMontaigne Inc. for the contributed terminal and pipeline operations.

**(c) Accounting for terminal and pipeline operations**

In connection with our terminal and pipeline operations, we utilize the accrual method of accounting for revenue and expenses. We generate revenues in our terminal and pipeline operations from throughput fees, storage fees, transportation fees, and fees from other ancillary services. Throughput revenue is recognized when the product is delivered to the customer; storage revenue is recognized ratably over the term of the storage contract; transportation revenue is recognized when the product has been delivered to the customer at the specified delivery location; and ancillary service revenue is recognized as the services are performed.

**(d) Cash and cash equivalents**

We consider all short-term investments with a remaining maturity of three months or less at the date of purchase to be cash equivalents.

**(e) Property, plant and equipment**

Depreciation is computed using the straight-line and double-declining balance methods. Estimated useful lives are 20 to 25 years for plant, which includes buildings, storage tanks, and pipelines, and 3 to 20 years for equipment. All items of property, plant and equipment are carried at cost. Expenditures that increase capacity or extend useful lives are capitalized. Routine repairs and maintenance are expensed as incurred.

We evaluate long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable based on expected undiscounted cash flows attributable to that asset. If an asset is impaired, the impairment loss to be recognized is the excess of the carrying amount of the asset over its estimated fair value.

**(f) Environmental obligations**

We accrue for environmental costs that relate to existing conditions caused by past operations when estimable. Environmental costs include initial site surveys and environmental studies of potentially contaminated sites, costs for remediation and restoration of sites determined to be contaminated and ongoing monitoring costs, as well as fines, damages and other costs, including direct internal and legal costs. Liabilities for environmental costs at a specific site are initially recorded, on an undiscounted basis, when it is probable that we will be liable for such costs, and a reasonable estimate of the associated costs can be made based on available information. Such an estimate includes our share of the liability for each specific site and the sharing of the amounts related to each site that will not be paid by other potentially responsible parties, based on enacted laws and adopted regulations and policies. Adjustments to initial estimates are recorded, from time to time, to reflect changing circumstances and estimates based upon additional information developed in subsequent periods.

Estimates of our ultimate liabilities associated with environmental costs are particularly difficult to make with certainty due to the number of variables involved, including the early stage of investigation at certain sites, the lengthy time frames required to complete remediation, technology changes, alternatives available and the evolving nature of environmental laws and regulations. We periodically file claims for insurance recoveries of certain environmental remediation costs with our insurance carriers under our comprehensive liability policies. Due to the uncertainty of obtaining recoveries from our insurance carriers, we recognize our insurance recoveries as a credit to income in the period the insurance recoveries are received.

At June 30, 2005 and 2004, we are not aware of any existing conditions that may cause us to incur significant expenditures in the future for the remediation of existing contamination. As such, we have not reflected in the accompanying consolidated financial statements any liabilities for environmental obligations to be incurred in the future based on existing contamination. Changes in our estimates and assumptions may occur as a result of the passage of time and the occurrence of future events.

TransMontaigne Inc. has indemnified us through May 2010 against certain potential environmental claims, losses and expenses associated with the operation of the initially-contributed assets and occurring before May 27, 2005, up to a maximum liability not to exceed \$15 million for this indemnification obligation (see Note 2 of Notes to consolidated financial statements).

#### **(g) Equity-Based Compensation Plan**

We account for our restricted unit awards using the intrinsic value method pursuant to APB Opinion No. 25, *Accounting for Stock Issued to Employees*. We recognize deferred equity-based compensation on the date of grant based on the quoted market price of the underlying common units.

Deferred equity-based compensation is amortized ratably to income over the related vesting period of 4 years.

#### **(h) Income taxes**

No provision for income taxes has been reflected in the accompanying consolidated financial statements because Partners is treated as a partnership for federal and state income taxes. As a partnership, all income, gains, losses, expenses, deductions and tax credits generated by Partners will flow through to the unitholders of the partnership.

#### **(i) Net Earnings Per Limited Partners' Unit**

Net earnings per limited partners' unit are computed by dividing net earnings allocable to limited partners by the weighted average number of limited partnership units outstanding during the period. Net earnings allocable to limited partners are net of two percent of the earnings allocable to the general partner. Basic and diluted net earnings per limited partners' unit are the same because we currently have no potentially dilutive securities outstanding.

#### **(j) Adoption of new accounting pronouncements**

In June 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 143, *Accounting for Asset Retirement Obligations*, which addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The standard applies to legal obligations

associated with the retirement of long-lived assets that result from the acquisition, construction, development and/or normal use of the asset. SFAS No. 143 requires that the fair value of a liability for an asset retirement obligation be recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. The fair value of the liability is added to the carrying amount of the associated asset and this additional carrying amount is depreciated over the life of the asset. The liability is accreted at the end of each period through charges to operating expense. If the obligation is settled for other than the carrying amount of the liability, a gain or loss is recognized on settlement. We adopted the provisions of SFAS No. 143 effective July 1, 2002. In connection with the adoption of SFAS No. 143, we reviewed current laws and regulations governing obligations for asset retirements. Based on that review we did not identify any significant legal obligations associated with the retirement of our tangible long-lived assets. Therefore, the adoption of SFAS No. 143 did not have an impact on our consolidated financial statements.

#### **(k) Reclassifications**

Certain amounts in the prior years have been reclassified to conform to the current year's presentation. Net earnings and partners' equity have not been affected by these reclassifications.

#### **(2) TRANSACTIONS WITH TRANSMONTAIGNE INC.**

*Omnibus Agreement.* On May 27, 2005, we entered into an omnibus agreement with TransMontaigne Inc. and our general partner. Under the omnibus agreement we pay TransMontaigne Inc. an annual administrative fee in the amount of \$2.8 million for the provision of various general and administrative services for our benefit with respect to the contributed assets. The omnibus agreement further provides that we pay TransMontaigne Inc. an annual insurance reimbursement in the amount of \$1.0 million for premiums on insurance policies covering the initially-contributed assets. The administrative fee may increase in the second and third years by the percentage increase in the consumer price index for the immediately preceding year, and the insurance reimbursement will increase in accordance with increases in the premiums payable under the relevant policies. In addition, if we acquire or construct additional assets during the term of the agreement, TransMontaigne Inc. will propose a revised administrative fee covering the provision of services for such additional assets. If the conflicts committee of our general partner agrees to the revised administrative fee, TransMontaigne Inc. will provide services for the additional assets pursuant to the agreement. After the three-year period, our general partner will determine the general and administrative expenses allocated to us.

The \$2.8 million administrative fee includes expenses incurred by TransMontaigne Inc. to perform centralized corporate functions, such as legal, accounting, treasury, insurance administration and claims processing, health, safety and environmental, information technology, human resources, credit, payroll, taxes and engineering and other corporate services, to the extent such services are not outsourced by TransMontaigne Inc. The administrative fee does not include reimbursements for direct expenses TransMontaigne Inc. incurs on our behalf, such as salaries of operational personnel performing services on-site at our terminals and pipeline and the cost of their employee benefits, including 401(k), pension, and health insurance benefits.

Under the omnibus agreement, TransMontaigne Inc. has agreed to indemnify us for five years after May 27, 2005 against certain potential environmental claims, losses and expenses associated with the operation of the assets and occurring before May 27, 2005. TransMontaigne Inc.'s maximum liability for this indemnification obligation is \$15 million and has no obligation to indemnify us for losses until

such aggregate losses exceed \$250,000. TransMontaigne Inc. has no indemnification obligations with respect to environmental claims made as a result of additions to or modifications of environmental laws promulgated after May 27, 2005. We have agreed to indemnify TransMontaigne Inc. against environmental liabilities related to our assets, to the extent these liabilities are not subject to TransMontaigne Inc.'s indemnification obligations.

Pursuant to the omnibus agreement, TransMontaigne Inc. granted us exclusive options to purchase additional refined product terminals. The option with respect to the Brownsville, Texas complex, with a current aggregate storage capacity of approximately 2.2 million barrels, will be exercisable for one year beginning in January 2006. The option with respect to the terminals along the Plantation and Colonial pipeline corridors, with a current aggregate storage capacity of approximately 8.9 million barrels, will be exercisable for one year beginning in December 2007. The option with respect to the terminals along the Mississippi and Ohio River areas, with a current aggregate storage capacity of approximately 3.2 million barrels, will be exercisable for one year beginning in December 2008. The exercise of any of the options will be subject to the negotiation of a purchase price and a terminaling services agreement relating to the terminals proposed to be purchased, and may be conditioned on obtaining various consents. Such consents may include consents of the holders of TransMontaigne Inc.'s equity or debt securities or governmental consents. The exercise price would be determined according to a process in which, within 45 days of our notification that we wish to exercise the option, TransMontaigne Inc. would propose to our general partner the terms on which it would be willing to sell the asset, including the terms of a terminaling services agreement. Within 45 days after TransMontaigne Inc.'s delivery of its proposed terms, we would propose a cash purchase price for the assets. If we cannot agree on a purchase price after negotiating in good faith for 60 days, TransMontaigne Inc. would have the right to seek an alternative purchaser willing to pay at least 105% of the purchase price we proposed; if an alternative transaction on such terms has not been consummated within six months, we would have the right to purchase the assets at the price we originally proposed. If we do not exercise this right, TransMontaigne Inc. would be free to retain or sell the assets without restriction.

*Terminals Services Agreement.* We have a terminaling and transportation services agreement with TransMontaigne Inc. that will expire on December 31, 2011. Under this agreement, TransMontaigne Inc. agreed to transport on the Razorback Pipeline and throughput at our terminals a volume of refined products that will, at the fee and tariff schedule contained in the agreement, result in minimum revenues to us of \$5 million per calendar quarter. If TransMontaigne Inc. fails to meet its minimum revenue commitment in any quarter, it must pay us the amount of any shortfall within 15 days following receipt of an invoice from us. A shortfall payment may be applied as a credit in the following four quarters after TransMontaigne Inc.'s minimum obligations are met. In exchange for TransMontaigne Inc.'s minimum revenue commitment, we agreed to provide TransMontaigne Inc. approximately 2.0 million barrels of light oil storage capacity and approximately 1.4 million barrels of heavy oil storage capacity at certain of our Florida terminals.

In the event of a force majeure event, that renders performance impossible with respect to an asset for at least 30 days, TransMontaigne Inc.'s obligations would be temporarily suspended with respect to that asset. If a force majeure event continues for 30 days or more and results in a diminution in the storage capacity we make available to TransMontaigne Inc., TransMontaigne Inc.'s minimum revenue commitment would be reduced proportionately for the duration of the force majeure event. If such a force majeure event continues for twelve consecutive months or more, either party has the right to terminate the entire terminaling services agreement.

After the initial term, the terminaling services agreement will automatically renew for subsequent one-year periods, subject to either party's right to terminate with six months' notice. TransMontaigne Inc.'s obligations under the terminaling services agreement will not terminate if TransMontaigne Inc. no longer owns our general partner. TransMontaigne Inc. may assign the terminaling services agreement only with the consent of the conflicts committee of our general partner. Upon termination of the agreement, TransMontaigne Inc. has a right of first refusal to enter into a new terminaling services agreement with us, provided it pays no less than 105% of the fees offered by the third party.

TransMontaigne Inc. also has a right of first refusal to control any petroleum product storage capacity that is put into commercial service after May 27, 2005 or is subject to a contract which terminates or becomes terminable by us (excluding a contract renewable solely at the option of our customer), provided that TransMontaigne Inc. pays 105% of the fees offered by the third party customer.

Under the agreement, we are responsible for all refined product losses in excess of 0.10% of the refined product we receive from TransMontaigne Inc. at our terminals. We are entitled to all product gains, including 0.10% of the refined product we receive from TransMontaigne Inc. at our terminals.

**(3) ACQUISITIONS**

On February 28, 2003, TransMontaigne Inc. acquired all of the outstanding shares of capital stock of Coastal Fuels Marketing, Inc. and its subsidiary, Coastal Tug and Barge, Inc., along with the rights to and operations of the Southeast marketing division of El Paso Merchant Energy Petroleum Company, from an affiliate of El Paso Corporation. The acquisition included five Florida terminals, with aggregate storage capacity of approximately 4.8 million barrels, and a related tug and barge operation (collectively, the "Coastal Fuels assets"). The Coastal Fuels assets primarily handle gasolines, distillates (including heating oils), jet fuels, residual fuel oils, asphalt and crude oil at Cape Canaveral, Port Manatee/Tampa, Port Everglades/Ft. Lauderdale, Fisher Island/Miami and Jacksonville, Florida. The adjusted purchase price for the acquisition, including approximately \$37.0 million of product inventory, was approximately \$156.0 million. The accompanying consolidated financial statements include the results of operations of the Coastal Fuels assets contributed to us from the closing date of the acquisition by TransMontaigne Inc. (February 28, 2003).

The adjusted purchase price was allocated to the assets and liabilities acquired based upon the estimated fair value of the assets and liabilities as of the acquisition date. The applicable portion of the adjusted purchase price that was allocated to the Coastal Fuels assets contributed to us is as follows (in thousands):

	Coastal Fuels
Property, plant and equipment	\$ 93,006
Other assets—acquired intangible	2,500
Acquisition related liabilities	(140)
Cash paid	\$ 95,366

Coastal Fuels acquisition-related liabilities include accrued property taxes of approximately \$140,000.

#### (4) CONCENTRATION OF CREDIT RISK AND TRADE ACCOUNTS RECEIVABLE

Our primary market areas are located in Florida, Southwest Missouri and Northwest Arkansas. We have a concentration of trade receivable balances due from companies engaged in the distribution and marketing of refined products and crude oil, and the United States government. These concentrations of customers may affect our overall credit risk in that the customers may be similarly affected by changes in economic, regulatory or other factors. Our customers' historical and future credit positions are analyzed prior to extending credit. We manage our exposure to credit risk through credit analysis, credit approvals, credit limits and monitoring procedures, and for certain transactions we may request letters of credit, prepayments or guarantees. We maintain allowances for potentially uncollectible accounts receivable. During the years ended June 30, 2005, 2004 and 2003, we increased the allowance for doubtful accounts through a charge to income of approximately \$50,000, \$0.1 million and \$nil, respectively.

Trade accounts receivable, net consists of the following (in thousands):

	June 30, 2005	June 30, 2004
Trade accounts receivable	\$ 492	\$ 882
Less allowance for doubtful accounts	—	(100)
	<u>\$ 492</u>	<u>\$ 782</u>

TransMontaigne Inc. accounted for approximately 64%, 59% and 70% of our total revenues for the years ended June 30, 2005, 2004 and 2003, respectively. Trigeant EP, Ltd. and its successors accounted for 24%, 24% and nil% of our total revenues for the years ended June 30, 2005, 2004 and 2003, respectively. In April 2005, Trigeant EP, Ltd. assigned its terminaling services contract with us to Gulf Atlantic Refining & Marketing, LP.

#### (5) OTHER CURRENT ASSETS

Other current assets are as follows (in thousands):

	June 30, 2005	June 30, 2004
Additive detergent	\$ 290	\$ 227
Deposits and other assets	12	21
	<u>\$ 302</u>	<u>\$ 248</u>



**(6) PROPERTY, PLANT AND EQUIPMENT**

Property, plant and equipment, net is as follows (in thousands):

	June 30, 2005	June 30, 2004
Land	\$ 25,024	\$ 25,024
Terminals, pipelines and equipment	117,593	113,715
Furniture, fixtures and equipment	468	317
Construction in progress	741	1,085
	<hr/>	<hr/>
	143,826	140,141
Less accumulated depreciation	(27,782)	(22,129)
	<hr/>	<hr/>
	\$ 116,044	\$ 118,012
	<hr/>	<hr/>

**(7) OTHER ASSETS**

Other assets are as follows (in thousands):

	June 30, 2005	June 30, 2004
Acquired intangible, net of accumulated amortization of \$1,167 and \$667	\$ 1,333	\$ 1,833
Deferred debt issuance costs, net of accumulated amortization of \$15	901	—
Deposits and other assets	9	9
	<hr/>	<hr/>
	\$ 2,243	\$ 1,842
	<hr/>	<hr/>

Acquired intangible represents the right to use the Coastal Fuels trade name for a period of five years. The cost of the acquired intangible is being amortized on a straight-line basis over five years.

Deferred debt issuance costs are amortized using the interest method over the term of the credit facility (see Note 9 of Notes to consolidated financial statements).

**(8) ACCRUED LIABILITIES**

Accrued liabilities are as follows (in thousands):

	June 30, 2005	June 30, 2004
Accrued property taxes	\$ 785	\$ 699
Customer advances and deposits	633	31
Accrued expenses and other	6	553
	<hr/>	<hr/>
	\$ 1,424	\$ 1,283
	<hr/>	<hr/>

**(9) LONG-TERM DEBT**

On May 9, 2005, we entered into a \$75 million senior secured credit facility. At June 30, 2005, our outstanding borrowings under the credit facility were approximately \$28.3 million. The credit facility provides for a maximum borrowing line of credit equal to the lesser of (i) \$75 million and (ii) four times Consolidated EBITDA (as defined; \$61.3 million at June 30, 2005). Borrowings under the credit

facility bear interest (at our option) based on a base rate plus an applicable margin, or LIBOR plus an applicable margin; the applicable margins are a function of the total leverage ratio (as defined). Interest on loans under the credit facility are due and payable periodically, based on the applicable interest rate and related interest period, generally either one, two or three months. The weighted average interest rate on borrowings under our credit facility was 4.97% during the year ended June 30, 2005. In addition, we will pay a commitment fee ranging from 0.375% to 0.50% per annum on the total amount of the unused commitments. Borrowings under the credit facility are secured by a lien on our assets, including cash, accounts receivable, inventory, general intangibles, investment property, contract rights and real property, except for our real property located in Florida. The terms of the credit facility include covenants that restrict our ability to make cash distributions and acquisitions. The principal balance of loans and any accrued and unpaid interest will be due and payable in full on the maturity date, May 9, 2010.

The credit facility also contains customary representations and warranties (including those relating to organization and authorization, compliance with laws, absence of defaults, material agreements and litigation) and customary events of default (including those relating to monetary defaults, covenant defaults, cross defaults and bankruptcy events). The primary financial covenants contained in the credit facility are a total leverage ratio test (not to exceed four times) and an interest coverage ratio test (not to be less than three times).

#### **(10) LONG-TERM INCENTIVE PLAN**

TransMontaigne GP L.L.C. ("TransMontaigne GP"), is our general partner and manages our operations and activities. TransMontaigne Services Inc., is an indirect wholly-owned subsidiary of TransMontaigne Inc., and is the sole member of TransMontaigne GP. TransMontaigne Services Inc. adopted a long-term incentive plan for its employees and consultants and non-employee directors of our general partner. The long-term incentive plan currently permits the grant of awards covering an aggregate of 200,000 units, which amount will automatically increase on an annual basis by 2% of the total outstanding common and subordinated units at the end of the preceding fiscal year. The plan is administered by the compensation committee of the board of directors of our general partner.

On May 27, 2005, TransMontaigne Services Inc. granted 120,000 restricted common units to its key employees and executive officers, and non-employee directors of our general partner. Ownership in these units is subject to forfeiture until the vesting date, but recipients have distribution and voting rights from the date of grant. We recognized deferred equity-based compensation of approximately \$2.6 million, which is being amortized to income over the four-year vesting period.

Amortization of deferred equity-based compensation of approximately \$48,000 is included in direct general and administrative expense for the year ended June 30, 2005.

## (11) COMMITMENTS AND CONTINGENCIES

*Operating Leases.* We lease property and equipment under non-cancelable operating leases that extend through April 2010. At June 30, 2005, future minimum lease payments under these non-cancelable operating leases are as follows (in thousands):

Years ending June 30:

		Property and equipment
2006	\$	140
2007		127
2008		122
2009		117
2010		97
Thereafter		—
	\$	603

Rental expense under operating leases was approximately \$225, \$223, and \$91 for the years ended June 30, 2005, 2004 and 2003, respectively.

## (12) DISCLOSURES ABOUT FAIR VALUE OF FINANCIAL INSTRUMENTS

The following methods and assumptions were used to estimate the fair value of financial instruments at June 30, 2005 and 2004.

*Cash and Cash Equivalents, Trade Receivables and Trade Accounts Payable.* The carrying amount approximates fair value because of the short-term maturity of these instruments.

*Debt.* The carrying value of the senior secured credit facility approximates fair value since borrowings under the senior secured credit facility bear interest at current market interest rates.

## (13) BUSINESS SEGMENTS

We provide integrated terminaling, storage, pipeline and related services to companies engaged in the distribution and marketing of refined petroleum products and crude oil. Our chief operating decision maker is TransMontaigne Inc.'s chief executive officer ("CEO"). TransMontaigne Inc.'s CEO reviews the financial performance of our business segments using disaggregated financial information about "net operating margins" for purposes of making operating decisions and assessing financial performance. "Net operating margins" is composed of revenues less direct operating costs and expenses. Accordingly, we present "net operating margins" for each of our two business segments: (i) Florida terminals and (ii) Razorback Pipeline system.

The financial performance of our business segments is as follows (in thousands):

	Years ended		
	June 30, 2005	June 30, 2004	June 30, 2003
<b>Florida Terminals:</b>			
Throughput and additive injection fees, net	\$ 10,077	\$ 9,186	\$ 6,002
Storage	18,106	17,711	6,135
Pipeline transportation fees	—	—	—
Other	3,417	3,410	1,347
	<hr/>	<hr/>	<hr/>
Revenues	31,600	30,307	13,484
Direct operating costs and expenses	(14,633)	(13,580)	(5,416)
	<hr/>	<hr/>	<hr/>
Net operating margins	16,967	16,727	8,068
	<hr/>	<hr/>	<hr/>
<b>Razorback Pipeline System:</b>			
Throughput and additive injection fees, net	1,816	1,431	1,358
Storage	—	—	—
Pipeline transportation fees	2,242	2,141	2,032
Other	435	558	301
	<hr/>	<hr/>	<hr/>
Revenues	4,493	4,130	3,691
Direct operating costs and expenses	(1,209)	(1,233)	(851)
	<hr/>	<hr/>	<hr/>
Net operating margins	3,284	2,897	2,840
	<hr/>	<hr/>	<hr/>
Total net operating margins	20,251	19,624	10,908
Direct general and administrative expenses	(79)	—	—
Allocated general and administrative expenses	(2,800)	(3,300)	(2,500)
Allocated insurance expense	(333)	(318)	(239)
Depreciation and amortization	(6,154)	(5,903)	(3,588)
Gain on disposition of assets, net	—	6	—
	<hr/>	<hr/>	<hr/>
Operating income	10,885	10,109	4,581
Other income (expense), net	(182)	6	—
	<hr/>	<hr/>	<hr/>
Net earnings	\$ 10,703	\$ 10,115	\$ 4,581
	<hr/>	<hr/>	<hr/>

Supplemental information about our business segments is summarized below (in thousands):

	Year ended June 30, 2005		
	Florida Terminals	Razorback Pipeline System	Total
Revenues from external customers	\$ 13,037	\$ —	\$ 13,037
Revenues from TransMontaigne Inc.	18,563	4,493	23,056
Revenues	\$ 31,600	\$ 4,493	\$ 36,093
Identifiable assets	\$ 113,074	\$ 9,786	\$ 122,860
Capital expenditures	\$ 3,686	\$ —	\$ 3,686
	Year ended June 30, 2004		
	Florida Terminals	Razorback Pipeline System	Total
Revenues from external customers	\$ 14,259	\$ —	\$ 14,259
Revenues from TransMontaigne Inc.	16,048	4,130	20,178
Revenues	\$ 30,307	\$ 4,130	\$ 34,437
Identifiable assets	\$ 110,227	\$ 10,659	\$ 120,886
Capital expenditures	\$ 3,175	\$ 107	\$ 3,282
	Year ended June 30, 2003		
	Florida Terminals	Razorback Pipeline System	Total
Revenues from external customers	\$ 5,183	\$ —	\$ 5,183
Revenues from TransMontaigne Inc.	8,301	3,691	11,992
Revenues	\$ 13,484	\$ 3,691	\$ 17,175
Identifiable assets	\$ 112,185	\$ 11,621	\$ 123,806
Capital expenditures	\$ 95,989	\$ 100	\$ 96,089

**(11) FINANCIAL RESULTS BY QUARTER (UNAUDITED)****(in thousands)**

	Three months ended				
	September 30, 2004	December 31, 2004	March 31, 2005	June 30, 2005	Year ended June 30, 2005
Revenues	\$ 8,392	\$ 8,300	\$ 9,714	\$ 9,687	\$ 36,093
Net operating margins	\$ 4,306	\$ 4,313	\$ 5,655	\$ 5,977	\$ 20,251
Net earnings	\$ 1,985	\$ 2,023	\$ 3,363	\$ 3,332	\$ 10,703
	Three months ended				
	September 30, 2003	December 31, 2003	March 31, 2004	June 30, 2004	Year ended June 30, 2004
Revenues	\$ 8,812	\$ 8,020	\$ 8,797	\$ 8,808	\$ 34,437
Net operating margins	\$ 4,875	\$ 4,941	\$ 4,923	\$ 4,885	\$ 19,624
Net earnings	\$ 2,683	\$ 2,505	\$ 2,503	\$ 2,424	\$ 10,115

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES**

There were no changes in or disagreements with accountants on accounting and financial disclosures during the year ended June 30, 2005.

**ITEM 9A. CONTROLS AND PROCEDURES**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit to the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified by the Commission's rules and forms, and that information is accumulated and communicated to the management of our general partner, including our general partner's principal executive and principal financial officers (whom we refer to as the Certifying Officers), as appropriate to allow timely decisions regarding required disclosure. The management of our general partner evaluated, with the participation of the Certifying Officers, the effectiveness of our disclosure controls and procedures as of June 30, 2005, pursuant to Rule 13a-15(b) under the Exchange Act. Based upon that evaluation, the Certifying Officers concluded that, as of June 30, 2005, our disclosure controls and procedures were effective.

**ITEM 9B. OTHER INFORMATION**

No information was required to be disclosed in a report on Form 8-K, but not so reported, for the quarter ended June 30, 2005.

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## Part III

### ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF OUR GENERAL PARTNER

#### MANAGEMENT OF TRANSMONTAIGNE PARTNERS

TransMontaigne GP L.L.C. ("TransMontaigne GP"), is our general partner and manages our operations and activities on our behalf. TransMontaigne Services Inc., is an indirect wholly-owned subsidiary of TransMontaigne Inc., and is the sole member of TransMontaigne GP. All of our officers are employees of TransMontaigne Services Inc. Our general partner is not elected by our unitholders and is not subject to re-election on a regular basis in the future. Unitholders are not entitled to elect directors to the board of directors of our general partner or directly or indirectly participate in our management or operation. Our general partner owes a fiduciary duty to our unitholders. Our general partner is liable, as general partner, for all of our debts (to the extent not paid from our assets), except for indebtedness or other obligations that are made specifically nonrecourse to it. Whenever possible, our general partner intends to incur indebtedness or other obligations that are nonrecourse to it.

#### Board of Directors and Officers

The board of directors of our general partner oversees our operations. Our general partner has appointed seven members to the board of directors, three of whom are independent as defined under the independence standards established by the New York Stock Exchange, three of whom are directors or executive officers of TransMontaigne Inc., and one of whom was not, at the time of his appointment and will not for as long as he remains a director of our general partner, serve as a director or employee of TransMontaigne Inc. or its affiliates, or have a significant commercial relationship, as determined by the board, with TransMontaigne Inc. or its affiliates. The New York Stock Exchange does not require a listed limited partnership like us to have a majority of independent directors on the board of directors of our general partner or to establish a compensation committee or a nominating governance committee.

The officers of our general partner manage the day-to-day affairs of our business. All of the officers listed below allocate their time between managing our business and affairs and the business and affairs of TransMontaigne Inc. The officers of our general partner may face a conflict regarding the allocation of their time between our business and the other business interests of TransMontaigne Inc. The sole member of our general partner intends to seek to cause the officers to devote as much time to the management of our business and affairs as is necessary for the proper conduct of our business and affairs.

#### DIRECTORS AND EXECUTIVE OFFICERS

The following table shows information for the directors and officers of TransMontaigne GP L.L.C.:

Name	Age	Position
Donald H. Anderson	56	Chairman of the Board and Chief Executive Officer
William S. Dickey	47	Executive Vice President, Chief Operating Officer and Director
Randall J. Larson	48	Executive Vice President, Chief Financial Officer, Chief Accounting Officer and Director
Frederick W. Boutin	50	Senior Vice President and Treasurer
Erik B. Carlson	58	Senior Vice President, Corporate Secretary and General Counsel
Jerry R. Masters	47	Director
David A. Peters	46	Director
D. Dale Shaffer	62	Director
Rex L. Utsler	59	Director



**Donald H. Anderson** was elected Chairman of the board of directors and Chief Executive Officer of our general partner in February 2005. Mr. Anderson has been Director, Vice Chairman and Chief Executive Officer of TransMontaigne Inc. since September 1999, and has served as President since January 2000. From 1997 through September 1999, Mr. Anderson was the Executive Director and a Principal of Western Growth Capital LLC, a Colorado-based private equity investment and consulting firm. From December 1994 until March 1997, Mr. Anderson was Chairman, President and Chief Executive Officer of PanEnergy Services, PanEnergy's non-jurisdictional operating subsidiary. From December 1994 until March 1997, Mr. Anderson also served as a Director of TEPPCO Partners, L.P. Mr. Anderson was previously President, Chief Operating Officer and Director of Associated Natural Gas Corporation from 1989 until its merger with PanEnergy Corporation in 1994. Mr. Anderson is a director of Bear Paw Energy, LLC.

**William S. Dickey** was elected Executive Vice President, Chief Operating Officer and Director of our general partner in February 2005. Mr. Dickey has been an Executive Vice President and Chief Operating Officer of TransMontaigne Inc. since May 2000. From January 1999 until May 2000, Mr. Dickey was a Vice President of TEPPCO Partners, L.P. From 1994 to 1998, Mr. Dickey served as Vice President and Chief Financial Officer of Associated Natural Gas, Inc. and its successor, Duke Energy Field Services.

**Randall J. Larson** was elected Executive Vice President, Chief Financial Officer, Chief Accounting Officer and Director of our general partner in February 2005. Mr. Larson has been an Executive Vice President and Chief Accounting Officer of TransMontaigne Inc. since May 2002. Mr. Larson served as Executive Vice President, Chief Accounting Officer and Controller of TransMontaigne Inc. from May 2002 until January 2003 and was appointed Chief Financial Officer on January 1, 2003. From July 1994 through April 2002, Mr. Larson was a partner with KPMG LLP, most recently in KPMG's San Jose, California office. Prior to joining the San Jose office in 1996, Mr. Larson was a partner in KPMG's Department of Professional Practice in the national office in New York City. From July 1992 to June 1994, Mr. Larson served as a Professional Accounting Fellow in the Office of Chief Accountant of the Securities and Exchange Commission. Mr. Larson began his accounting career with KPMG in 1981 in the Denver, Colorado office.

**Frederick W. Boutin** was elected Senior Vice President and Treasurer of our general partner in February 2005. Mr. Boutin has been Senior Vice President and Treasurer of TransMontaigne Inc. since June 2003. Mr. Boutin also served as Senior Vice President of TransMontaigne Inc. from September 1996 to March 2002. In addition, Mr. Boutin served as Vice President of TransMontaigne Product Services Inc. from February 2002 to June 2003; Vice President of Coastal Tug and Barge, Inc. from February 2003 to June 2003; Vice President of Coastal Fuels Marketing, Inc. from February 2003 to June 2003; and Senior Vice President and Director of TransMontaigne Transport Inc. from February 2002 to the present. From 1985 to 1995, Mr. Boutin served as a Vice President of Associated Natural Gas, Inc. and its successor, Duke Energy Field Services.

**Erik B. Carlson** was elected Senior Vice President, Corporate Secretary and General Counsel of our general partner in February 2005. Mr. Carlson has been the Senior Vice President, Corporate Secretary and General Counsel of TransMontaigne Inc. since January 1998. From February 1983 until January 1998, Mr. Carlson served as Senior Vice President, General Counsel and Corporate Secretary of Associated Natural Gas Corporation and its successor, Duke Energy Field Services.

**Jerry R. Masters** was elected as a director of our general partner on May 24, 2005, and serves as a member of the compensation and conflicts committees, and as chair of the audit committee, of the board of directors of our general partner. Mr. Masters is a private investor and was a part-time consultant to Microsoft Corporation from April 2000 to August 2002. From February 1991 to

April 2000, Mr. Masters held various executive positions within the financial organization at Microsoft Corporation. In his last position as Senior Director, Mr. Masters was responsible for external financial reporting, budgeting and forecasting, and financial modeling of mergers and acquisitions.

**David A. Peters** was elected as a director of our general partner on May 24, 2005, and serves as a member of the audit, compensation and conflicts committees of the board of directors of our general partner. Since 1999 Mr. Peters has been a business consultant with a primary client focus in the energy sector; in addition, Mr. Peters also served as a member of the board of directors of QDOBA Restaurant Corporation from 1998 to 2003. From 1997 to 1999 Mr. Peters was a managing director of a private investment fund, and from 1995 to 1997 he served as an executive vice president at DukeEnergy/PanEnergy Field Services responsible for natural gas gathering, processing and storage operations. Prior to joining DukeEnergy/PanEnergy Field Services, Mr. Peters held various positions with Associated Natural Gas Corp., and from 1980 to 1984 he worked in the audit department of Peat Marwick Mitchell & Co. Mr. Peters holds a bachelor's degree in business administration from the University of Michigan.

**D. Dale Shaffer** was elected as a director of our general partner on May 24, 2005, and serves as a member of the conflicts committee and as chair of the compensation committee of the board of directors of our general partner. Since 1992, Mr. Shaffer has served as President of National Water Company, a privately held firm formed by Mr. Shaffer to provide a broad range of water consulting and operating services to clients using raw water. From 2001 through 2002, Mr. Shaffer also served as Director of Development for Kinder Morgan Power Company, a subsidiary of Kinder Morgan Inc., a publicly traded company. From 1988 to 1992, Mr. Shaffer served as President of First Colorado Corporation, a privately held firm engaged in developing natural resources and a cattle ranching operation. From 1988 to 1992, Mr. Shaffer was a principal in Kirkpatrick Energy Associates, a financial advisory firm to the oil and gas industry, and from 1983 to 1986, Mr. Shaffer served as Executive Vice President of Premier Resources, Ltd., a publicly traded oil and gas exploration and production company. Between 1975 and 1983, Mr. Shaffer served in several different capacities at Western Crude Oil, Inc., a subsidiary of Reserve Oil and Gas, a publicly traded company involved in the gathering, transportation and marketing of crude oil, serving as Senior Vice President and General Counsel of Western Crude Oil, Inc. and Assistant General Counsel of Reserve Oil and Gas. Mr. Shaffer holds a Bachelor of Science degree from the University of Colorado and a Juris Doctor degree from the University of Denver.

**Rex L. Utsler** was elected as a director of our general partner on May 24, 2005, and serves as a member of the audit committee and as chair of the conflicts committee of the board of directors of our general partner. Mr. Utsler became President and Chief Executive Officer of Grease Monkey International, Inc. (GMI) and Grease Monkey Holding Corporation (GMHC), a franchisor of automotive preventive maintenance centers, in December 1999. Mr. Utsler previously served as Senior Vice President of GMI and GMHC from September 1998 to January 2001; as President and Chief Operations Officer of GMI and GMHC from September 1998 to December 1999; as a consultant to GMI and GMHC from February 1997 to September 1998; and as Chairman of the Board of Directors and President of GMI and GMHC from March 1991 to February 1997. From 1980 to June 1997 Mr. Utsler was the President and Chief Executive Officer of First of September Corporation, a Denver-based company engaged in crude oil purchasing, transportation and marketing.

#### **Compliance With Section 16(a) of the Securities Exchange Act of 1934**

Section 16(a) of the Securities Exchange Act of 1934 requires our executive officers and directors, and persons who own more than ten percent of a registered class of our equity securities (collectively, "Reporting Persons") to file with the SEC and the New York Stock Exchange initial reports of

ownership and reports of changes in ownership of our common units and our other equity securities. Specific due dates for those reports have been established, and we are required to report herein any failure to file reports by those due dates. Reporting Persons are also required by SEC regulations to furnish TransMontaigne Inc. with copies of all Section 16(a) reports they file.

To our knowledge, based solely on a review of the copies of such reports furnished to us and written representations that no other reports were required during the fiscal year ended June 30, 2005, all Section 16(a) filing requirements applicable to such Reporting Persons were complied with.

### **Audit Committee**

The board of directors of our general partner has a standing audit committee. The audit committee is composed of three directors, Jerry R. Masters, David A. Peters and Rex L. Utsler, each of whom is able to understand fundamental financial statements and at least one of whom has past experience in accounting or related financial management experience. The board has determined that each member of the audit committee is independent under Section 303A.02 of the New York Stock Exchange listing standards and Section 10A(m)(3) of the Securities Exchange Act of 1934, as amended. In making the independence determination, the board considered the requirements of the New York Stock Exchange and our Governance Guidelines. Among other factors, the board considered current or previous employment with the partnership, its auditors or their affiliates by the director or his immediate family members, ownership of our voting securities, and other material relationships with the partnership. The audit committee has adopted a charter, which has been ratified and approved by the board of directors.

With respect to material relationships, the following relationships are not considered to be material for purposes of assessing independence: service as an officer, director, employee or trustee of, or greater than five percent beneficial ownership in (a) a supplier to the partnership if the annual sales to the partnership are less than one percent of the sales of the supplier; (b) a lender to the partnership if the total amount of the partnership's indebtedness is less than one percent of the total consolidated assets of the lender; or (c) a charitable organization if the total amount of the partnership's annual charitable contributions to the organization are less than three percent of that organization's annual charitable receipts.

Mr. Masters has been designated by the board as the audit committee's financial expert meeting the requirements promulgated by the SEC and set forth in Item 401(h) of Regulation S-K of the Securities Exchange Act of 1934 based upon his education and employment experience as more fully detailed in Mr. Masters' biography set forth above.

### **Conflicts Committee**

Four members of the board of directors of our general partner currently serve on a conflicts committee to review specific matters that the board believes may involve conflicts of interest. The conflicts committee determines if the resolution of the conflict of interest is fair and reasonable to us. The members of the conflicts committee may not be officers or employees of TransMontaigne GP or directors, officers, or employees of its affiliates, and must meet the independence and experience standards established by the New York Stock Exchange and the Securities Exchange Act of 1934, as amended, to serve on an audit committee of a board of directors, and certain other requirements. Any matters approved by the conflicts committee will be conclusively deemed to be fair and reasonable to us, approved by all of our partners, and not a breach by our general partner of any duties it may owe us or our unitholders. Messrs. Masters, Utsler, Peters and Shaffer currently serve on our conflicts committee.

### **Compensation Committee**

Although not required by the New York Stock Exchange, the board of directors of our general partner has a standing compensation committee, which administers the TransMontaigne Services Inc.

Long-term Incentive Plan, including the selection of the individuals to be granted equity-based awards from among those eligible to participate. The compensation committee has adopted a charter, which has been ratified and approved by the board of directors.

### **Corporate Governance Guidelines; Code of Business Conduct and Ethics**

Our board of directors has adopted Corporate Governance Guidelines that outline the important policies and practices regarding our governance.

The audit committee has adopted a Code of Business Conduct and Ethics (the "Code"), which has been ratified and approved by the Board. The Code applies to all employees, officers and directors and our subsidiaries. The audit committee has also adopted a Code of Ethics for Senior Financial Officers (the "Financial Officers Ethics Code"), which has been ratified and approved by the board. The Financial Officers Ethics Code applies to our senior financial officers, including the chief executive officer, the chief financial officer and the chief accounting officer or persons performing similar functions.

Copies of our Code, Financial Ethics Code, Corporate Governance Guidelines, Audit Committee Charter, and Compensation Committee Charter, are available on our website at [www.transmontaignepartners.com](http://www.transmontaignepartners.com). Copies of these items are also available free of charge in print to any unitholder who sends a request to the office of Secretary, TransMontaigne Partners, L.P. at 1670 Broadway, Suite 3100, Denver, Colorado 80202.

### **Communications by Unitholders**

Pursuant to our Corporate Governance Guidelines, the board meets in executive sessions (attended only by non-management, independent directors) at the conclusion of each regularly-scheduled board meeting. Mr. Shaffer has been chosen to preside as chairman of these executive session meetings.

Unitholders may communicate with any and all members of our board by transmitting correspondence by mail or facsimile addressed to one or more directors by name (or to the chairman of the board or any standing committee of the board) at the following address and fax number:

Name of the Director(s)  
c/o Secretary  
TransMontaigne Partners LP  
1670 Broadway, Suite 3100  
Denver, Colorado 80202  
(303) 626 - 8228

Communications from our unitholders to one or more directors will be collected and organized by our secretary under procedures approved by our board of directors. Our secretary will forward all communications to the chairman of the board or to the identified director(s) as soon as practicable, although communications that are abusive, offensive or that present safety or security concerns may be handled differently. If multiple communications are received on a similar topic, our secretary may, in his or her discretion, forward only representative correspondence.

The chairman of the board will determine whether any communication addressed to the entire board should be properly addressed by the entire board or a committee thereof. If a communication is sent to the board or a committee, the chairman of the board or the chairman of that committee, as the case may be, will determine whether a response to the communication is warranted. If a response to the communication is warranted, the content and method of the response will be coordinated with our internal or external counsel.

## New York Stock Exchange Certification

In 2005, Mr. Anderson, our chief executive officer, provided to the New York Stock Exchange the annual CEO certification regarding our compliance with the New York Stock Exchange's corporate governance listing standards.

## ITEM 11. EXECUTIVE COMPENSATION

### EXECUTIVE COMPENSATION

The following table sets forth certain information regarding compensation earned during our last fiscal year by Chief Executive Officer and each of our other executive officers (collectively, the "named executive officers").

As previously discussed, all of our employees, including our executive officers, are employed and paid by TransMontaigne Services Inc., and no direct charge for the compensation of the officers of TransMontaigne Services Inc. is made by our general partner to TransMontaigne Services Inc. Under the terms of the omnibus agreement, we pay TransMontaigne Inc. a \$2.8 million administrative fee, which includes expenses incurred by TransMontaigne Inc. to provide certain corporate staff and support services to us. The \$2.8 million administrative fee is a lump-sum payment and does not reflect specific amounts attributable to the compensation of our executive officers, while acting on our behalf. Compensation information for our executive officers, solely in their capacity as executive officers of TransMontaigne Inc., can be found under "Item 11. Executive Compensation" in TransMontaigne Inc.'s Annual Report on Form 10-K for the year ended June 30, 2005, which is available on TransMontaigne Inc.'s website at [www.transmontaigne.com](http://www.transmontaigne.com) under the heading "Investor Relations" "Investor Information" "SEC Filings." For additional information regarding the omnibus agreement, see "Item 13. Certain Relationships and Related Transactions—Omnibus Agreement" in this report.

Name and Principal Position	Year	Long-Term Compensation Awards	
		Restricted Stock Awards	
Donald H. Anderson Chairman of the Board, Chief Executive Officer	2005	\$	235,400(1)
William S. Dickey Executive Vice President and Chief Operating Officer, Director	2005	\$	235,400(2)
Randall J. Larson Executive Vice President, Chief Financial Officer, Chief Accounting Officer, Director	2005	\$	235,400(3)
Erik B. Carlson Senior Vice President, General Counsel and Secretary	2005	\$	181,900(4)
Frederick W. Boutin Senior Vice President and Treasurer	2005	\$	181,900(5)

Notes:

- (1) Represents 11,000 restricted common units granted on May 27, 2005 at the initial public offering price of \$21.40. The restricted stock award vests at the rate of 25% per year commencing June 1, 2006, and on each anniversary date thereafter

assuming continuous employment since the grant date. As of June 30, 2005, Mr. Anderson had a total of 11,000 non-vested restricted shares outstanding, representing a value of \$278,740, calculated using the fair market value of the common units at June 30, 2005, \$25.34 per unit.

- (2) Represents 11,000 restricted common units granted on May 27, 2005 at the initial public offering price of \$21.40. The restricted stock award vests at the rate of 25% per year commencing June 1, 2006, and on each anniversary date thereafter assuming continuous employment since the grant date. As of June 30, 2005, Mr. Dickey had a total of 11,000 non-vested restricted shares outstanding, representing a value of \$278,740, calculated using the fair market value of the common units at June 30, 2005, \$25.34 per unit.
- (3) Represents 11,000 restricted common units granted on May 27, 2005 at the initial public offering price of \$21.40. The restricted stock award vests at the rate of 25% per year commencing June 1, 2006, and on each anniversary date thereafter assuming continuous employment since the grant date. As of June 30, 2005, Mr. Larson had a total of 11,000 non-vested restricted shares outstanding, representing a value of \$278,740, calculated using the fair market value of the common units at June 30, 2005, \$25.34 per unit.
- (4) Represents 8,500 restricted common units granted on May 27, 2005 at the initial public offering price of \$21.40. The restricted stock award vests at the rate of 25% per year commencing June 1, 2006, and on each anniversary date thereafter assuming continuous employment since the grant date. As of June 30, 2005, Mr. Carlson had a total of 8,500 non-vested restricted shares outstanding, representing a value of \$215,390, calculated using the fair market value of the common units at June 30, 2005, \$25.34 per unit.
- (5) Represents 8,500 restricted common units granted on May 27, 2005 at the initial public offering price of \$21.40. The restricted stock award vests at the rate of 25% per year commencing June 1, 2006, and on each anniversary date thereafter assuming continuous employment since the grant date. As of June 30, 2005, Mr. Boutin had a total of 8,500 non-vested restricted shares outstanding, representing a value of \$215,390, calculated using the fair market value of the common units at June 30, 2005, \$25.34 per unit.

Neither we, our general partner nor TransMontaigne Services Inc. has entered into any employment agreements with any officers of our general partner. We issued 120,000 common units to TransMontaigne Services Inc. for its subsequent grant of restricted units to key employees and executive officers of TransMontaigne Services Inc. and to non-employee directors of our general partner.

## **COMPENSATION OF DIRECTORS**

Officers and employees who also serve as directors of our general partner will not receive additional compensation. Directors who are not officers or employees of our general partner or its affiliates will receive a \$30,000 annual cash retainer and an annual grant of 2,000 restricted common units, which will vest in 25% increments on each of the four successive anniversaries of the date of grant (with vesting to be accelerated upon a change of control). In addition, each director will be reimbursed for out-of-pocket expenses in connection with attending meetings of the board of directors or committees. Each director will be fully indemnified by us for actions associated with being a director to the extent permitted under Delaware law.

## **COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION**

The compensation committee of our general partner primarily administers our long-term incentive plan, including the selection of the individuals to be granted awards from among those eligible to participate. During the year ended June 30, 2005, the compensation committee of our general partner awarded 120,000 restricted common units. There are no compensation committee interlocks.

## LONG-TERM INCENTIVE PLAN

Upon the consummation of our initial public offering, TransMontaigne Services Inc. adopted a long-term incentive plan for employees and consultants of TransMontaigne Services Inc. who provide services on our behalf, and our non-employee directors. The summary of the proposed long-term incentive plan contained below does not purport to be complete, but outlines its material provisions. The long-term incentive plan consists of four components: restricted units, phantom units, unit options and unit appreciation rights. The long-term incentive plan currently permits the grant of awards covering an aggregate of 200,000 units, which amount will automatically increase on an annual basis by 2% of the total outstanding common and subordinated units at the end of the preceding fiscal year. The plan is administered by the compensation committee of the board of directors of our general partner.

The board of directors of our general partner, in its discretion may terminate, suspend or discontinue the long-term incentive plan at any time with respect to any award that has not yet been granted. The board of directors also has the right to alter or amend the long-term incentive plan or any part of the plan from time to time, including increasing the number of units that may be granted subject to unitholder approval as required by the exchange upon which the common units are listed at that time. However, no change in any outstanding grant may be made that would materially impair the rights of the participant without the consent of the participant, unless the change is necessary to comply with certain tax requirements.

***Restricted Units and Phantom Units.*** A restricted unit is a common unit subject to forfeiture prior to the vesting of the award. A phantom unit is a notional unit that entitles the grantee to receive a common unit upon the vesting of the phantom unit or, in the discretion of the compensation committee, cash equivalent to the value of a common unit. The compensation committee may determine to make grants under the plan of restricted units and phantom units to employees, consultants and non-employee directors containing such terms as the compensation committee shall determine. The compensation committee will determine the period over which restricted units and phantom units granted to employees, consultants and non-employee directors will vest. The compensation committee may base its determination upon the achievement of specified financial objectives. In addition, the restricted units and phantom units will vest upon a change of control of us, our general partner or TransMontaigne Inc., unless provided otherwise by the compensation committee.

If a grantee's employment, service relationship or membership on the board of directors terminates for any reason, the grantee's restricted units and phantom units will be automatically forfeited unless, and to the extent, the compensation committee provides otherwise. Common units to be delivered in connection with the grant of restricted units or upon the vesting of phantom units may be common units acquired by our general partner on the open market, common units already owned by our general partner, common units acquired by our general partner directly from us or any other person or any combination of the foregoing. TransMontaigne Services Inc. will be entitled to reimbursement by us for the cost incurred in acquiring common units. Thus, the cost of the restricted units and delivery of common units upon the vesting of phantom units will be borne by us. If we issue new common units in connection with the grant of restricted units or upon vesting of the phantom units, the total number of common units outstanding will increase. The compensation committee, in its discretion, may grant tandem distribution rights with respect to restricted units and tandem distribution equivalent rights with respect to phantom units.

We intend the issuance of restricted units and common units upon the vesting of the phantom units under the plan to serve as a means of incentive compensation for performance and not primarily as an

opportunity to participate in the equity appreciation of the common units. Therefore, at this time it is not contemplated that plan participants will pay any consideration for restricted units or common units they receive, and at this time we do not contemplate that we will receive any remuneration for the restricted units and common units.

**Unit Options and Unit Appreciation Rights.** The long-term incentive plan permits the grant of options covering common units and the grant of unit appreciation rights. A unit appreciation right is an award that, upon exercise, entitles the participant to receive the excess of the fair market value of a unit on the exercise date over the exercise price established for the unit appreciation right. Such excess may be paid in common units, cash, or a combination thereof, as determined by the compensation committee in its discretion. The compensation committee may make grants of unit options and unit appreciation rights under the plan to employees, consultants and non-employee directors containing such terms as the compensation committee shall determine. Unit options and unit appreciation rights may have an exercise price that is equal to or greater than the fair market value of the common units on the date of grant. In general, unit options and unit appreciation rights granted will become exercisable over a period determined by the compensation committee. In addition, the unit options and unit appreciation rights will become exercisable upon a change in control of us, our general partner or TransMontaigne Inc., unless provided otherwise by the compensation committee.

Upon exercise of a unit option (or a unit appreciation right settled in common units), our general partner will acquire common units on the open market or directly from us or any other person or use common units already owned by our general partner, or any combination of the foregoing. Our general partner will be entitled to reimbursement by us for the difference between the cost incurred by our general partner in acquiring these common units and the proceeds received from a participant at the time of exercise. Thus, the cost of the unit options (or a unit appreciation right settled in common units) will be borne by us. If we issue new common units upon exercise of the unit options (or a unit appreciation right settled in common units), the total number of common units outstanding will increase, and our general partner will pay us the proceeds it receives from an optionee upon exercise of a unit option. The availability of unit options and unit appreciation rights is intended to furnish additional compensation to employees, consultants and non-employee directors and to align their economic interests with those of common unitholders.



## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED UNITHOLDER MATTERS

The following table sets forth certain information regarding the beneficial ownership of units as of August 29, 2005 by each director of our general partner, and by each individual serving as an executive officer of our general partner as of August 29, 2005, by each person known by us to own more than 5% of the outstanding units, and by all directors and those serving as executive officers as of August 29, 2005 as a group. The information set forth below is based solely upon information furnished by such individuals or contained in filings made by such beneficial owners with the SEC.

The calculation of the percentage of beneficial ownership is based on 7,294,766 limited partnership units outstanding as of August 29, 2005. Beneficial ownership is determined in accordance with the rules of the SEC and includes voting and investment power with respect to the units. To our knowledge, except under applicable community property laws or as otherwise indicated, the persons named in the table have sole voting and sole investment power with respect to all shares beneficially owned. Units underlying outstanding warrants or options that are currently exercisable or exercisable within 60 days of August 29, 2005 are deemed outstanding for the purpose of computing the percentage of beneficial ownership of the person holding those options or warrants, but are not deemed outstanding for computing the percentage of beneficial ownership of any other person.

Name of beneficial owner	Common units beneficially owned	Percentage of common units beneficially owned	Subordinated units beneficially owned	Percentage of subordinated units beneficially owned	Percentage of total units beneficially owned(1)
TransMontaigne Inc.(2)	—	—	2,872,266	86.5%	39.4%
MSDW Bondbook Ventures Inc.(3)	—	—	450,000	13.5%	6.2%
Donald H. Anderson(4)	25,200	*	—	—	*
William S. Dickey(5)	25,200	*	—	—	*
Randall J. Larson(6)	30,200	*	—	—	*
Frederick W. Boutin(7)	27,700	*	—	—	*
Erik B. Carlson(8)	28,500	*	—	—	*
Jerry R. Masters(9)	16,000	*	—	—	*
David A. Peters(10)	13,600	*	—	—	*
D. Dale Shaffer(11)	2,700	*	—	—	*
Rex L. Utsler(12)	6,600	*	—	—	*
All directors and executive officers as a group (9 persons)	175,700	4.4%	—	—	0.8%

\* Less than 1%.

- (1) The subordinated units included in this column are not convertible into common units within 60 days of August 29, 2005, but are included to reflect the total percentage beneficial interest held by each unitholder in all of our outstanding limited partnership units.
- (2) The subordinated units beneficially owned by TransMontaigne Inc. are held by TransMontaigne Product Services Inc. and Coastal Fuels Marketing, Inc. TransMontaigne Inc. is the direct parent company of TransMontaigne Product Services Inc. and the ultimate parent company of Coastal Fuels Marketing, Inc. and may, therefore, be deemed to beneficially own the units held by each of them. Does not include the 2% general partnership interest and related incentive distribution rights held by our general partner, which are not considered "units" for purposes of our limited partnership agreement. The general partner, accordingly, is not considered a "unitholder." The address of TransMontaigne Inc. is 1670 Broadway, Suite 3100, Denver, Colorado 80202.

- (3) The address of MSDW Bondbook Ventures Inc., and affiliate of Morgan Stanley Capital Group, Inc., is 2000 Westchester Avenue, Floor 01, Purchase, New York 10577.
- (4) Includes 11,000 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 14,200 common units purchased in the initial public offering through the directed unit program.
- (5) Includes 11,000 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 14,200 common units purchased in the initial public offering through the directed unit program.
- (6) Includes 11,000 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 19,200 common units purchased in the initial public offering through the directed unit program.
- (7) Includes 8,500 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 19,200 common units purchased in the initial public offering through the directed unit program.
- (8) Includes 8,500 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 20,000 common units purchased in the initial public offering through the directed unit program.
- (9) Includes 2,000 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 14,000 common units purchased in the initial public offering through the directed unit program.
- (10) Includes 2,000 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 11,600 common units purchased in the initial public offering through the directed unit program.
- (11) Includes 2,000 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 700 common units purchased in the initial public offering through the directed unit program.
- (12) Includes 2,000 restricted common units granted pursuant to the TransMontaigne Services Inc. Long-term Incentive Plan, and 4,600 common units purchased in the initial public offering through the directed unit program.

EQUITY COMPENSATION PLAN INFORMATION

The following table summarizes information about our equity compensation plans as of June 30, 2005.

	Number of Securities to be issued upon exercise of outstanding options, warrants and rights(1)	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected)
Equity compensation plans approved by security holders	—	—	—
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>—</b>	<b>—</b>	<b>—</b>

(1) The long-term incentive plan currently permits the grant of awards covering an aggregate of 200,000 units, which amount will automatically increase on an annual basis by 2% of the total outstanding common and subordinated units at the end of the preceding fiscal year. For more information about our Long-Term Incentive Plan, which did not require approval by our limited partners, refer to "Item 11. Executive Compensation—Long-Term Incentive Plan."

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

TransMontaigne Inc. controls our operations through its ownership of our general partner, as well as a significant limited partner ownership interest in us through its ownership of a majority of our subordinated units. As of August 29, 2005, affiliates of TransMontaigne Inc., in the aggregate, owned

a 41.4% interest in the partnership, consisting of 2,872,266 subordinated units and a 2% general partner interest.

During the year ended June 30, 2005, we paid \$113,430 to Arapahoe Development, Inc. ("Arapahoe"), owned by Cortlandt S. Dietler, Chairman of the Board of TransMontaigne Inc., for flights aboard an aircraft owned by Arapahoe related to travel in connection with the underwriting and initial public offering of our common units. We believe that the prices paid for those flights were competitive with rates charged by other aircraft leasing companies for similar services.

**DISTRIBUTIONS AND PAYMENTS TO OUR GENERAL PARTNER AND ITS AFFILIATES**

The following table summarizes the distributions and payments to be made by us to our general partner and its affiliates (i.e., TransMontaigne Inc.) in connection with our formation, ongoing operation, and liquidation. These distributions and payments were determined by and among affiliated entities and, consequently, are not the result of arm's-length negotiations.

**Formation stage**

The consideration received by our general partner and its affiliates for the contribution of the assets and liabilities	->	120,000 common units;
	->	2,872,266 subordinated units;
	->	2% general partner interest in TransMontaigne Partners;
	->	the incentive distribution rights; and
	->	\$111.5 million cash payment from the proceeds of the offering and borrowings under our new credit facility, in part to reimburse them for certain capital expenditures.

**Operational stage**

Distributions of available cash to our general partner and its affiliates	We will generally make cash distributions 98% to the unitholders and 2% to our general partner. In addition, if distributions exceed the minimum quarterly distribution and other higher target levels, our general partner will be entitled to increasing percentages of the distributions, up to 50% of the distributions above the highest target level.
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For the three months ended June 30, 2005, we distributed approximately \$471,000 to TransMontaigne Inc. and its affiliates. Assuming we have sufficient available cash to pay the full minimum quarterly distribution on all of our outstanding units for four quarters, our general partner and its affiliates would receive an annual distribution of approximately \$238,000 on the 2% general partner interest and approximately \$4.8 million on their common units and subordinated units.

Payments to our general partner and its affiliates

We pay TransMontaigne Inc. and its affiliates an administrative fee of \$2.8 million per year with an additional insurance reimbursement of \$1.0 million per year for the provision of various general and administrative services for our benefit. For further information regarding the administrative fee, please see "—Omnibus Agreement; Payment of general and administrative services fee" below.

Withdrawal or removal of our general partner

If our general partner withdraws or is removed, its general partner interest and its incentive distribution rights will either be sold to the new general partner for cash or converted into common units, in each case for an amount equal to the fair market value of those interests.

## Liquidation stage

Liquidation

Upon our liquidation, the partners, including our general partner, will be entitled to receive liquidating distributions according to their respective capital account balances.

## SALE TO AFFILIATE OF MORGAN STANLEY CAPITAL GROUP, INC.

On May 27, 2005, MSDW Bondbook Ventures Inc., an affiliate of Morgan Stanley Capital Group, Inc., purchased 450,000 of our subordinated units at a price of \$17.65 per unit, a 17.5% discount from the public offering price of our common units. Assuming we have sufficient available cash to pay the full minimum quarterly distribution on all of our outstanding units for four quarters during our year ending June 30, 2006, MSDW Bondbook Ventures Inc. would receive an annual distribution of approximately \$720,000 on its subordinated units. For the three months ended June 30, 2005, MSDW Bondbook Ventures received \$67,500 of distributions. In connection with the sale, we entered into a registration rights agreement with MSDW Bondbook Ventures giving it the right to require us to register the common units issuable upon conversion of its subordinated units for sale under the Securities Act. The agreement provides customary registration procedures.

## AGREEMENTS GOVERNING THE TRANSACTIONS

We and other parties entered various documents and agreements in connection with our initial public offering. These agreements are not the result of arm's-length negotiations, and they, or any of the

transactions that they provide for, may not be effected on terms at least as favorable to the parties to these agreements as they could have been obtained from unaffiliated third parties. All of the transaction expenses incurred in connection with these transactions, including the expenses associated with transferring assets into our subsidiaries, were paid from the proceeds of our offering.

## **OMNIBUS AGREEMENT**

On May 27, 2005, we entered into an omnibus agreement with TransMontaigne Inc. and our general partner that addressed the following matters:

- > our obligation to pay TransMontaigne Inc. an annual administrative fee in the amount of \$2.8 million, with an annual insurance reimbursement in the amount of \$1.0 million, for the provision by TransMontaigne Inc. of certain general and administrative services and insurance coverage with respect to the assets contributed to us;
- > our options to purchase from TransMontaigne Inc. additional refined product terminals;
- > TransMontaigne Inc.'s and its affiliates' agreement to offer to sell to us certain assets acquired or constructed by TransMontaigne Inc. in the future;
- > TransMontaigne Inc.'s obligation to indemnify us for certain liabilities and our obligation to indemnify TransMontaigne Inc. for certain liabilities; and
- > TransMontaigne Inc.'s right of first refusal to purchase our assets that are in the same line of business in which TransMontaigne Inc. is engaged, or any storage capacity that becomes available after May 27, 2005.

Any or all of the provisions of the omnibus agreement, other than the indemnification provisions described below, are terminable by TransMontaigne Inc. at its option if our general partner is removed without cause and units held by our general partner and its affiliates are not voted in favor of that removal.

### **Payment of general and administrative services fee**

Under the omnibus agreement we pay TransMontaigne Inc. an annual administrative fee in the amount of \$2.8 million for the provision of various general and administrative services for our benefit with respect to the contributed assets. The omnibus agreement further provides that we pay TransMontaigne Inc. an annual insurance reimbursement in the amount of \$1.0 million for premiums on insurance policies covering the initially-contributed assets. The administrative fee may increase in the second and third years by the percentage increase in the consumer price index for the immediately preceding year, and the insurance reimbursement will increase in accordance with increases in the premiums payable under the relevant policies. In addition, if we acquire or construct additional assets during the term of the agreement, TransMontaigne Inc. will propose a revised administrative fee covering the provision of services for such additional assets. If the conflicts committee of our general partner agrees to the revised administrative fee, TransMontaigne Inc. will provide services for the additional assets pursuant to the agreement. After the three-year period, our general partner will determine the general and administrative expenses allocated to us.

The \$2.8 million administrative fee includes expenses incurred by TransMontaigne Inc. to perform centralized corporate functions, such as legal, accounting, treasury, insurance administration and claims processing, health, safety and environmental, information technology, human resources, credit, payroll, taxes and engineering and other corporate services, to the extent such services are not outsourced by TransMontaigne Inc. The fee does not include reimbursements for direct expenses TransMontaigne Inc.

incurs on our behalf, such as salaries of operational personnel performing services on-site at our terminals and pipeline and the cost of their employee benefits, including 401(k), pension, and health insurance benefits. In addition, we anticipate incurring approximately \$2.7 million of additional general and administrative costs, including costs relating to operating as a separate publicly held entity, such as costs associated with annual and quarterly reports to unitholders, tax return and Schedule K-1 preparation and distribution, investor relations, registrar and transfer agent fees and equity-based compensation awarded to key employees and consultants of TransMontaigne Services Inc., and non-employee directors of our general partner.

#### **Exclusive options to purchase additional refined product terminals**

The omnibus agreement contains the terms of our exclusive options, the first of which is exercisable beginning in January 2006, to purchase additional refined product terminals. Please read "Business—Our Relationship with TransMontaigne Inc.; Exclusive Options to Purchase Additional Refined Product Terminals."

#### **Obligation to offer to sell acquired or constructed assets**

Pursuant to the omnibus agreement, subject to certain exclusions and conditions, TransMontaigne Inc. has agreed to offer us any tangible assets that it acquires or constructs related to the storage, transportation or terminaling of refined petroleum products in the United States. At our request, TransMontaigne Inc. is required to make such an offer within two years of the date of purchase or construction completion. We expect that TransMontaigne Inc. will operate the assets it offers to us pursuant to the omnibus agreement for this interim period, during which time TransMontaigne Inc.'s distribution and marketing operations will seek to achieve substantial utilization of the assets. We have one year following receipt of TransMontaigne Inc.'s offer to notify TransMontaigne Inc. whether we are interested in pursuing the offer. If we are interested in pursuing the offer, TransMontaigne Inc. is obligated to submit a term sheet to us within 45 days after receipt of our notice specifying the fundamental terms of the proposed transaction, other than the purchase price. We would then have 45 days to propose a cash purchase price for the transaction, and we and TransMontaigne Inc. would then be obligated to negotiate in good faith for 60 days to reach an agreement. If we decline any such offer, TransMontaigne Inc. is free to use the asset to compete with us. If we and TransMontaigne Inc. do not agree to all of the terms of the transaction, including the purchase price, after negotiating in good faith, TransMontaigne Inc. would have the right to seek an alternative purchaser willing to pay at least 105% of the purchase price we proposed; if an alternative transaction on such terms has not been consummated within six months, we would have the right to purchase the assets at the purchase price we originally proposed and on the other fundamental terms specified in the term sheet previously provided by TransMontaigne Inc.

The obligation to offer includes assets subject to lease or joint venture arrangements controlled by TransMontaigne Inc. and extending for more than five years, to the extent of TransMontaigne Inc.'s interest in the assets, but does not apply to assets acquired by TransMontaigne Inc. in an asset exchange transaction, or to:

- any business operated by TransMontaigne Inc. or any of its subsidiaries as of May 27, 2005;
- any business conducted by TransMontaigne Inc. with the approval of the conflicts committee of our general partner;
- tangible assets acquired by TransMontaigne Inc., including as part of a larger acquisition of other assets, if the fair value of the tangible assets does not exceed \$10.0 million; and

—> tangible assets, or capital improvements of tangible assets, constructed by TransMontaigne Inc., including as part of a larger construction project, if the construction cost of the tangible assets or capital improvements does not exceed \$10.0 million.

In addition, any offer to sell tangible assets will be conditioned on obtaining various consents. Such consents may include consents of the holders of TransMontaigne Inc.'s equity or debt securities. In the event that TransMontaigne Inc. or its affiliates no longer control our partnership or there is a change of control of TransMontaigne Inc., TransMontaigne Inc.'s obligation to offer to sell assets to us will terminate.

## **Indemnification**

Under the omnibus agreement, TransMontaigne Inc. has agreed to indemnify us for five years after May 27, 2005 against certain potential environmental claims, losses and expenses associated with the operation of the assets and occurring before the May 27, 2005. TransMontaigne Inc.'s maximum liability for this indemnification obligation is \$15 million and has no obligation to indemnify us for aggregate losses until such aggregate losses exceed \$250,000. TransMontaigne Inc. has no indemnification obligations with respect to environmental claims made as a result of additions to or modifications of environmental laws promulgated after May 27, 2005. We have agreed to indemnify TransMontaigne Inc. against environmental liabilities related to our assets, to the extent these liabilities are not subject to TransMontaigne Inc.'s indemnification obligations.

Additionally, TransMontaigne Inc. has agreed to indemnify us for losses attributable to title defects, retained assets and liabilities (including preclosing litigation relating to contributed assets) and income taxes attributable to operations prior to May 27, 2005. We will indemnify TransMontaigne Inc. for all losses attributable to operations of the contributed assets after May 27, 2005, to the extent the assets are not subject to TransMontaigne Inc.'s indemnification obligations.

## **Rights of first refusal**

The omnibus agreement also provides TransMontaigne Inc. a right of first refusal to purchase our assets that are in the same line of business in which TransMontaigne Inc. is engaged, provided that TransMontaigne Inc. agrees to pay no less than 105% of the purchase price offered by the third party bidder. Before we enter into any contract to sell such terminal or pipeline assets, we must give written notice of all material terms of such proposed sale to TransMontaigne Inc. TransMontaigne Inc. will then have the sole and exclusive option for a period of 45 days following receipt of the notice, to purchase the subject assets for no less than 105% of the purchase price on the terms specified in the notice. TransMontaigne Inc. also has a right of first refusal, subject to comparable procedures, to purchase any petroleum product storage capacity that is put into commercial service after the closing of this offering, was subject to the terminaling services agreement prior to the termination or expiration thereof, or is subject to a contract which terminates or becomes terminable by us (excluding a contract renewable solely at the option of our customer), provided that TransMontaigne Inc. agrees to pay 105% of the fees offered by the third party customer.

The omnibus agreement also provides us with a right of first refusal with respect to any proposed sale or transfer, other than in an asset exchange transaction, of:

—> any tangible assets that TransMontaigne Inc. acquires or constructs related to the storage, transportation or terminaling of refined petroleum products, provided such assets generate qualifying income as defined in Section 7704 of the Internal Revenue Code, prior to TransMontaigne Inc.'s delivery to the conflicts committee of proposed terms as described in "—Obligation to Offer to Sell Acquired or Constructed Assets" above; and

—> any of the assets subject to our exclusive options prior to the applicable exercise period and any assets acquired in asset exchange transaction that replace assets subject to our executive options;

provided, that in either case, we agree to pay at least 105% of the purchase price offered by the third party bidder.

TERMINALING SERVICES AGREEMENT

On May 27, 2005, we entered into a terminaling services agreement with TransMontaigne Inc. as described under "Item 1. Business—Our Relationship with TransMontaigne Inc." TransMontaigne Inc.'s obligations under this agreement will not terminate if TransMontaigne Inc. no longer owns our general partner. This agreement may be assigned by TransMontaigne Inc. only if our conflicts committee consents to such assignment.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

For the year ended June 30, 2005, KPMG LLP's accounting fees and services were as follows:

	2005
Audit fees	\$ 340,000
Audit-related fees(1)	168,000
Tax fees(2)	—
All other fees(3)	—
Total accounting fees and services	\$ 508,000

- (1) Audit related fees include fees for reviews of registration statements and issuances of consents, reviews of private placement offering documents and issuance of letter to underwriters.
- (2) Tax fees include fees for tax return preparation and technical tax advice.
- (3) All other fees consist of a subscription to an on-line accounting research tool.



## Part IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as a part of this report.

(1) Consolidated Financial Statements

TransMontaigne Partners L.P.

Report of Independent Registered Public Accounting Firm

Consolidated balance sheets as of June 30, 2005 and 2004

Consolidated statements of operations for the years ended June 30, 2005, 2004 and 2003

Consolidated statements of partners' equity for the years ended June 30, 2005, 2004 and 2003

Consolidated statements of cash flows for the years ended June 30, 2005, 2004 and 2003

Notes to consolidated financial statements

(2) Financial Statement Schedules

Valuation and qualifying accounts.

(3) Exhibits:

A list of exhibits required by Item 601 of Regulation S-K to be filed as part of this report:

Exhibit Number	Description
3.1	Certificate of Limited Partnership of TransMontaigne Partners L.P., dated February 23, 2005 (incorporated by reference to Exhibit 3.1 of TransMontaigne Partners L.P.'s Registration Statement on Form S-1 (Registration No. 333-123219) filed on March 9, 2005).
3.2*	First Amended and Restated Agreement of Limited Partnership of TransMontaigne Partners L.P. dated May 27, 2005.
10.1	Senior Secured Credit Facility dated as of May 9, 2005 among TransMontaigne Operating Company L.P., each of the financial institutions party thereto, Bank of America, N.A. and JPMorgan Chase Bank, N.A., as Syndication Agents, BNP Paribas and Société Générale, as Documentation Agents, and Wachovia Bank, National Association, as Administrative Agent (incorporated by reference to Exhibit 10.1 of Amendment No. 2 to TransMontaigne Partners L.P.'s Registration Statement on Form S-1 (Registration No. 333-123219) filed on May 13, 2005).
10.2*	Contribution, Conveyance and Assumption Agreement, dated May 27, 2005, among TransMontaigne Inc., TransMontaigne Partners L.P., TransMontaigne GP L.L.C., TransMontaigne Operating GP L.L.C., TransMontaigne Operating Company L.P., TransMontaigne Product Services Inc. and Coastal Fuels Marketing, Inc., Coastal Terminals L.L.C., Razorback L.L.C., TPSI Terminals L.L.C. and TransMontaigne Services, Inc.
10.3	Omnibus Agreement, dated May 27, 2005, among TransMontaigne Inc., TransMontaigne Partners L.P., TransMontaigne GP L.L.C., TransMontaigne Operating GP L.L.C. and TransMontaigne Operating Company L.P. (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K filed by TransMontaigne Inc. (Commission File No. 001-11763) on June 3, 2005).

- 10.4      Terminaling and Transportation Services Agreement, dated May 27, 2005, among TransMontaigne Inc., TransMontaigne Partners L.P., TransMontaigne Product Services Inc. and Coastal Fuels Marketing, Inc. (incorporated by reference to Exhibit 10.3 of the Current Report on Form 8-K filed by TransMontaigne Inc. (Commission File No. 001-11763) on June 3, 2005).
- 10.5\*      TransMontaigne Services Inc. Long-Term Incentive Plan.\*\*
- 10.6\*      Subordinated Unit Purchase Agreement, dated May 24, 2005, by and between TransMontaigne Partners L.P. and MSDW Bondbook Ventures Inc.
- 10.7\*      Registration Rights Agreement, dated May 27, 2005, by and between TransMontaigne Partners L.P. and MSDW Bondbook Ventures Inc.
- 10.8      Form of TransMontaigne Services Inc. Long-Term Incentive Plan Employee Restricted Unit Agreement (incorporated by reference to Exhibit 10.8 of Amendment No. 3 to TransMontaigne Partners L.P.'s Registration Statement on Form S-1 (Registration No. 333-123219) filed on May 24, 2005).\*\*
- 10.9      Form of TransMontaigne Services Inc. Long-Term Incentive Plan Non-Employee Director Restricted Unit Agreement (incorporated by reference to Exhibit 10.9 of Amendment No. 3 to TransMontaigne Partners L.P.'s Registration Statement on Form S-1 (Registration No. 333-123219) filed on May 24, 2005).\*\*
- 21.1\*      List of Subsidiaries of TransMontaigne Partners L.P.
- 23.1\*      Consent of Independent Registered Public Accounting Firm
- 31.1\*      Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2\*      Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1\*      Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2\*      Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.1\*      Financial Statement Schedule.

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\*      Filed with this report.

\*\*      Identifies each management compensation plan or arrangement

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TRANSMONTAIGNE PARTNERS L.P.

By: TRANSMONTAIGNE GP L.L.C., its General Partner

By: /s/ DONALD H. ANDERSON

**Donald H. Anderson**  
**Chairman**

Date: September 13, 2005

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities with TransMontaigne GP L.L.C., the general partner of the registrant, on the date indicated.

Name and Signature	Title	Date
/s/ DONALD H. ANDERSON	President, Chief Executive Officer, Chairman and Director	September 13, 2005
<b>Donald H. Anderson</b>		
/s/ WILLIAM S. DICKEY	Executive Vice President, Chief Operating Officer and Director	September 13, 2005
<b>William S. Dickey</b>		
/s/ RANDALL J. LARSON	Executive Vice President, Chief Financial Officer, Chief Accounting Officer and Director	September 13, 2005
<b>Randall J. Larson</b>		
/s/ JERRY R. MASTERS	Director	September 13, 2005
<b>Jerry R. Masters</b>		
/s/ DAVID A. PETERS	Director	September 13, 2005
<b>David A. Peters</b>		
/s/ D. DALE SHAFFER	Director	September 13, 2005
<b>D. Dale Shaffer</b>		
/s/ REX L. UTSLER	Director	September 13, 2005
<b>Rex L. Utsler</b>		

## EXHIBIT INDEX

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- 99.1\* Financial Statement Schedule.
- 

\* Filed with this report.

\*\* Identifies each management compensation plan or arrangement

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**FIRST AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
TRANSMONTAIGNE PARTNERS L.P.**

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# TABLE OF CONTENTS

		Page
<b>ARTICLE I</b>		
<b>DEFINITIONS</b>		
SECTION 1.1	Definitions	1
SECTION 1.2	Construction	16
<b>ARTICLE II</b>		
<b>ORGANIZATION</b>		
SECTION 2.1	Formation	16
SECTION 2.2	Name	17
SECTION 2.3	Registered Office; Registered Agent; Principal Office; Other Offices	17
SECTION 2.4	Purpose and Business	17
SECTION 2.5	Powers	17
SECTION 2.6	Power of Attorney	17
SECTION 2.7	Term	18
SECTION 2.8	Title to Partnership Assets	18
<b>ARTICLE III</b>		
<b>RIGHTS OF LIMITED PARTNERS</b>		
SECTION 3.1	Limitation of Liability	19
SECTION 3.2	Management of Business	19
SECTION 3.3	Outside Activities of the Limited Partners	19
SECTION 3.4	Rights of Limited Partners	19
<b>ARTICLE IV</b>		
<b>CERTIFICATES; RECORD HOLDERS; TRANSFER OF PARTNERSHIP INTERESTS; REDEMPTION OF PARTNERSHIP INTERESTS</b>		
SECTION 4.1	Certificates	20
SECTION 4.2	Mutilated, Destroyed, Lost or Stolen Certificates	20
SECTION 4.3	Record Holders	21
SECTION 4.4	Transfer Generally	21
SECTION 4.5	Registration and Transfer of Limited Partner Interests	22
SECTION 4.6	Transfer of the General Partner's General Partner Interest	22
SECTION 4.7	Transfer of Incentive Distribution Rights	23
SECTION 4.8	Restrictions on Transfers	23
SECTION 4.9	Citizenship Certificates; Non-citizen Assignees	24
SECTION 4.10	Redemption of Partnership Interests of Non-citizen Assignees	25



**ARTICLE V**  
**CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS**

SECTION 5.1	Organizational Contributions	26
SECTION 5.2	Contributions by the General Partner, its Affiliates and MSDW	26
SECTION 5.3	Contributions by Initial Limited Partners	27
SECTION 5.4	Interest and Withdrawal	27
SECTION 5.5	Capital Accounts	27
SECTION 5.6	Issuances of Additional Partnership Securities	30
SECTION 5.7	Conversion of Subordinated Units	30
SECTION 5.8	Limited Preemptive Right	33
SECTION 5.9	Splits and Combinations	33
SECTION 5.10	Fully Paid and Non-Assessable Nature of Limited Partner Interests	33

**ARTICLE VI**  
**ALLOCATIONS AND DISTRIBUTIONS**

SECTION 6.1	Allocations for Capital Account Purposes	33
SECTION 6.2	Allocations for Tax Purposes	40
SECTION 6.3	Requirement and Characterization of Distributions; Distributions to Record Holders	41
SECTION 6.4	Distributions of Available Cash from Operating Surplus	42
SECTION 6.5	Distributions of Available Cash from Capital Surplus	43
SECTION 6.6	Adjustment of Minimum Quarterly Distribution and Target Distribution Levels	44
SECTION 6.7	Special Provisions Relating to the Holders of Subordinated Units	44
SECTION 6.8	Special Provisions Relating to the Holders of Incentive Distribution Rights	45
SECTION 6.9	Entity Level Taxation	45

**ARTICLE VII**  
**MANAGEMENT AND OPERATION OF BUSINESS**

SECTION 7.1	Management	45
SECTION 7.2	Certificate of Limited Partnership	47
SECTION 7.3	Restrictions on the General Partner's Authority	47
SECTION 7.4	Reimbursement of the General Partner	48
SECTION 7.5	Outside Activities	48
SECTION 7.6	Loans from the General Partner; Loans or Contributions from the Partnership or Group Members.	49
SECTION 7.7	Indemnification	50
SECTION 7.8	Liability of Indemnitees	51
SECTION 7.9	Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties	52
SECTION 7.10	Other Matters Concerning the General Partner	53
SECTION 7.11	Purchase or Sale of Partnership Securities	53
SECTION 7.12	Registration Rights of the General Partner and its Affiliates	53
SECTION 7.13	Reliance by Third Parties	56

**ARTICLE VIII**  
**BOOKS, RECORDS, ACCOUNTING AND REPORTS**

SECTION 8.1	Records and Accounting	57
SECTION 8.2	Fiscal Year	57
SECTION 8.3	Reports	57

**ARTICLE IX**  
**TAX MATTERS**

SECTION 9.1	Tax Returns and Information	57
SECTION 9.2	Tax Elections	58
SECTION 9.3	Tax Controversies	58
SECTION 9.4	Withholding	58

**ARTICLE X**  
**ADMISSION OF PARTNERS**

SECTION 10.1	Admission of Limited Partners	58
SECTION 10.2	Admission of Successor General Partner	59
SECTION 10.3	Amendment of Agreement and Certificate of Limited Partnership	59

**ARTICLE XI**  
**WITHDRAWAL OR REMOVAL OF PARTNERS**

SECTION 11.1	Withdrawal of the General Partner	59
SECTION 11.2	Removal of the General Partner	61
SECTION 11.3	Interest of Departing General Partner and Successor General Partner	61
SECTION 11.4	Termination of Subordination Period, Conversion of Subordinated Units and Extinguishment of Cumulative Common Unit Arrearages	62
SECTION 11.5	Withdrawal of Limited Partners	63

**ARTICLE XII**  
**DISSOLUTION AND LIQUIDATION**

SECTION 12.1	Dissolution	63
SECTION 12.2	Continuation of the Business of the Partnership After Dissolution	63
SECTION 12.3	Liquidator	64
SECTION 12.4	Liquidation	64
SECTION 12.5	Cancellation of Certificate of Limited Partnership	65
SECTION 12.6	Return of Contributions	65
SECTION 12.7	Waiver of Partition	65
SECTION 12.8	Capital Account Restoration	65

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

SECTION 13.1	Amendments to be Adopted Solely by the General Partner	65
SECTION 13.2	Amendment Procedures	66
SECTION 13.3	Amendment Requirements	67
SECTION 13.4	Special Meetings	67
SECTION 13.5	Notice of a Meeting	67
SECTION 13.6	Record Date	68
SECTION 13.7	Adjournment	68
SECTION 13.8	Waiver of Notice; Approval of Meeting; Approval of Minutes	68
SECTION 13.9	Quorum and Voting	68
SECTION 13.10	Conduct of a Meeting	69
SECTION 13.11	Action Without a Meeting	69
SECTION 13.12	Right to Vote and Related Matters	69

**ARTICLE XIV**  
**MERGER**

SECTION 14.1	Authority	70
SECTION 14.2	Procedure for Merger or Consolidation	70
SECTION 14.3	Approval by Limited Partners of Merger or Consolidation	71
SECTION 14.4	Certificate of Merger	72
SECTION 14.5	Amendment of Partnership Agreement	72
SECTION 14.6	Effect of Merger	72

**ARTICLE XV**  
**RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS**

SECTION 15.1	Right to Acquire Limited Partner Interests	72
--------------	--	----

**ARTICLE XVI**  
**GENERAL PROVISIONS**

SECTION 16.1	Addresses and Notices	74
SECTION 16.2	Further Action	74
SECTION 16.3	Binding Effect	74
SECTION 16.4	Integration	74
SECTION 16.5	Creditors	74
SECTION 16.6	Waiver	74
SECTION 16.7	Counterparts	75
SECTION 16.8	Applicable Law	75
SECTION 16.9	Invalidity of Provisions	75
SECTION 16.10	Consent of Partners	75
SECTION 16.11	Facsimile Signatures	75

**FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED  
PARTNERSHIP OF TRANSMONTAIGNE PARTNERS L.P.**

THIS FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF TRANSMONTAIGNE PARTNERS L.P. dated as of May 27, 2005, is entered into by and among TransMontaigne GP L.L.C., a Delaware limited liability company, as the General Partner, TransMontaigne Product Services Inc., a Delaware corporation, as the Organizational Limited Partner, Coastal Fuels Marketing, Inc., a Florida corporation, and MSDW Bondbook Ventures Inc., a Delaware corporation, together with any other Persons who become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

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

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

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

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

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

"Additional Book Basis Derivative Items" means any Book Basis Derivative Items that are computed with reference to Additional Book Basis. To the extent that the Additional Book Basis attributable to all of the Partnership's Adjusted Property as of the beginning of any taxable period exceeds the Aggregate Remaining Net Positive Adjustments as of the beginning of such period (the "Excess Additional Book Basis"), the Additional Book Basis Derivative Items for such period shall be reduced by the amount that bears the same ratio to the amount of Additional 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.

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

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

"Adjusted Operating Surplus" means, with respect to any period, Generated Operating Surplus with respect to such period (a) less any decrease in cash reserves for Operating Expenditures with respect to such period not relating to an Operating Expenditure made with respect to such period, and (b) plus (i) any decreases made in subsequent periods in cash reserves for Operating Expenditures initially established with respect to such period, and (ii) any net increase in cash reserves for Operating Expenditures with respect to such period required by any debt instrument for the repayment of principal, interest or premium.

"Adjusted Property" means any property the Carrying Value of which has been adjusted pursuant to Section 5.5(d)(i) or 5.5(d)(ii).

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

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

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

"Agreed Value" of any Contributed Property means the fair market value of such property or other consideration at the time of contribution as determined by the General Partner. 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 First Amended and Restated Agreement of Limited Partnership of TransMontaigne Partners L.P., as it may be amended, supplemented or restated from time to time.

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

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

(a) the sum of (i) all cash and cash equivalents of the Partnership Group on hand at the end of such Quarter, and (ii) if the General Partner so determines, all or any portion of any additional cash or cash equivalents of the Partnership Group on hand on the date of determination of Available Cash with respect to such Quarter, less

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

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

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

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

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

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

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

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

"Capital Account" means the capital account maintained for a Partner pursuant to Section 5.5. The "Capital Account" of a Partner in respect of a General Partner Unit, a Common Unit, a Subordinated Unit, an Incentive Distribution Right or any Partnership Interest shall be the amount that

such Capital Account would be if such General Partner Unit, Common Unit, Subordinated Unit, Incentive Distribution Right or other Partnership Interest were the only interest in the Partnership held by such Partner from and after the date on which such General Partner Unit, Common Unit, Subordinated Unit, Incentive Distribution Right or other Partnership Interest was first issued.

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

"Capital Improvement" means any (a) addition or improvement to the capital assets owned by any Group Member or (b) acquisition of existing, or the construction of new, capital assets (including pipelines, terminals, docks, truck racks, tankage or other storage, distribution or transportation facilities or related assets), in each case if such addition, improvement, acquisition or construction is made to increase the operating capacity or revenues of the Partnership Group from the operating capacity or revenues of the Partnership Group existing immediately prior to such addition, improvement, acquisition or construction.

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

"Carrying Value" means (a) with respect to a Contributed Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and cost recovery deductions charged to the Partners' Capital Accounts in respect of such Contributed Property, and (b) with respect to any other Partnership property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with Sections 5.5(d)(i) and 5.5(d)(ii) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

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

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

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

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

"claim" (as used in Section 7.12(d)) has the meaning assigned to such term in Section 7.12(d).

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

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

"Coastal Fuels" means Coastal Fuels Marketing, Inc., a Florida corporation.

"Coastal Terminals LLC" means Coastal Terminals L.L.C., a Delaware limited liability company.

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

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

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

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

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

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

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

"Contribution Agreement" means that certain Contribution, Conveyance and Assumption Agreement, dated as of the Closing Date, among the General Partner, the Partnership, the Operating Company and certain other parties, together with the additional conveyance documents and instruments contemplated or referenced thereunder, as such may be amended, supplemented or restated from time to time.

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

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

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

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

"Departing 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 11.2.



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

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

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

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

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

"Expansion Capital Expenditures" means cash expenditures for Acquisitions or Capital Improvements, and shall not include Maintenance Capital Expenditures.

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

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

"First Target Distribution" means \$0.44 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on June 30, 2005, it means the product of \$0.44 multiplied by a fraction of which the numerator is the number of days in such period, and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.

"Fully Diluted Basis" means, when calculating the number of Outstanding Units for any period, a basis that includes, in addition to the Outstanding Units, all Partnership Securities and options, rights, warrants and appreciation rights relating to an equity interest in the Partnership (a) that are convertible into or exercisable or exchangeable for Units that are senior to or pari passu with the Subordinated Units, (b) whose conversion, exercise or exchange price is less than the Current Market Price on the date of such calculation, (c) 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 (d) 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 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 Securities, options, rights, warrants and appreciation rights shall be deemed to have been Outstanding Units only for the four Quarters that comprise the last four Quarters of the measurement period; provided, further, that if consideration will be paid to any Group Member in connection with such conversion, exercise or exchange, the number of Units to be included in such calculation shall be that number equal to the difference between (i) the number of Units issuable upon such conversion, exercise or exchange and (ii) the number of Units that such consideration would purchase at the Current Market Price.

"General Partner" means TransMontaigne GP L.L.C., a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Partnership as general partner of the Partnership, in its capacity as general partner of the Partnership (except as the context otherwise requires).

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

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

"General Partner Unit" means a fractional part of the General Partner Interest having the rights and obligations specified with respect to the General Partner Interest. A General Partner Unit is not a Unit.

"Generated Operating Surplus" means, with respect to any period ending prior to the Liquidation Date and without duplication,

(a) the sum of (i) all cash receipts of the Partnership Group during such period, other than cash receipts from Interim Capital Transactions (except to the extent specified in Section 6.5); and (ii) the amount of all decreases made during such period in cash reserves established by the General Partner to provide funds for future Operating Expenditures; less

(b) the sum of (i) Operating Expenditures for such period; and (ii) the amount of all increases made during such period in cash reserves established by the General Partner to provide funds for future Operating Expenditures.

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

"Group Member" means a member of the Partnership Group.

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

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

"Incentive Distribution Right" means a non-voting Limited Partner Interest issued to the General Partner in connection with the transfer by the General Partner of its interests in Coastal Terminals LLC, Razorback LLC and TPSI Terminals LLC to the Partnership pursuant to the Contribution Agreement, which Limited Partner Interest will confer upon the holder thereof only the rights and obligations specifically provided in this Agreement with respect to Incentive Distribution Rights (and no other rights otherwise available to or other obligations of a holder of a Partnership Interest). Notwithstanding anything in this Agreement to the contrary, the holder of an Incentive Distribution Right shall not be entitled to vote such Incentive Distribution Right on any Partnership matter except as may otherwise be required by law.

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

"Indemnified Persons" has the meaning assigned to such term in Section 7.12(d).

"Indemnatee" 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 member, partner, director, officer, fiduciary or trustee of any Group Member, the

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

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

"Initial Limited Partners" means TPSI, the General Partner and Coastal Fuels (with respect to the Common Units, Subordinated Units and Incentive Distribution Rights received by them pursuant to Section 5.2), MSDW (with respect to the Subordinated Units received by it pursuant to Section 5.2(a)) and the Underwriters upon the issuance by the Partnership of Common Units as described in Section 5.2 in connection with the Initial Offering.

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

"Initial Unit Price" means (a) with respect to the Common Units, the initial public offering price per Common Unit at which the Underwriters offered the Common Units to the public for sale as set forth on the cover page of the prospectus included as part of the Registration Statement and first issued at or after the time the Registration Statement first became effective, (b) with respect to the Subordinated Units, the price per Subordinated Unit at which MSDW purchased Subordinated Units pursuant to the Subordinated Unit Purchase Agreement or (c) 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 for items purchased on open account in the ordinary course of business) by any Group Member and sales of debt securities of any Group Member; (b) sales of equity interests of any Group Member (including the Common Units sold to the Underwriters pursuant to the exercise of the Over-Allotment Option); and (c) sales or other voluntary or involuntary dispositions of any assets of any Group Member other than (i) sales or other dispositions of inventory, accounts receivable and other assets in the ordinary course of business, and (ii) sales or other dispositions of assets as part of normal retirements or replacements.

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

"Limited Partner" means, unless the context otherwise requires, the Organizational Limited Partner prior to its withdrawal from the Partnership, 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; provided, however, that when the term "Limited Partner" is used herein in the context of any vote or other approval, including Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of an Incentive Distribution Right (solely with respect to its Incentive Distribution Rights and not with respect to any other Limited Partner Interest held by such Person) except as may otherwise be required by law.

"Limited Partner Interest" means the ownership interest of a Limited Partner in the Partnership, which may be evidenced by Common Units, Subordinated Units, Incentive Distribution Rights or other

Partnership Securities or a combination thereof or interest therein, 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 to comply with the terms and provisions of this Agreement; provided, however, that when the term "Limited Partner Interest" is used herein in the context of any vote or other approval, including Articles XIII and XIV, such term shall not, solely for such purpose, include any Incentive Distribution Right except as may otherwise be required by law.

"Liquidation Date" means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 12.2, the date on which the applicable time period during which the holders of Outstanding Units have the right to elect to 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 Expenditures" means cash expenditures (including expenditures for the addition or improvement to the capital assets owned by any Group Member or for the acquisition of existing, or the construction of new, capital assets) if such expenditures are made to maintain, including over the long term, the operating capacity or revenues of the Partnership Group.

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

"Minimum Quarterly Distribution" means \$0.40 per Unit per Quarter (or with respect to the period commencing on the Closing Date and ending on June 30, 2005, it means the product of \$0.40 multiplied by a fraction of which the numerator is the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.

"MSDW" means MSDW Bondbook Ventures Inc., a Delaware corporation.

"National Securities Exchange" means an exchange registered with the Commission under Section 6(a) of the Securities Exchange Act, and any successor to such statute, or The Nasdaq Stock Market or any successor thereto.

"Net Agreed Value" means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any liabilities either assumed by the Partnership upon such contribution or to which such property is subject when contributed, and (b) in the case of any property distributed to a Partner by the Partnership, the Partnership's Carrying Value of such property (as adjusted pursuant to Section 5.5(d)(ii)) at the time such property is distributed, reduced by any indebtedness either assumed by such Partner upon such distribution or to which such property is subject at the time of distribution, in either case, as determined under Section 752 of the Code.

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

"Net Loss" means, for any taxable year, the excess, if any, of the Partnership's items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership's items of income and gain (other

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

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

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

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

"Non-citizen Assignee" means a Person whom the General Partner has determined does not constitute an Eligible Citizen and as to whose Partnership Interest the General Partner has become the Limited Partner, pursuant to Section 4.9.

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

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

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

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

"Omnibus Agreement" means that certain Omnibus Agreement, dated as of the Closing Date, among TransMontaigne Inc., the General Partner, the Partnership, TransMontaigne Operating GP L.L.C., the Operating Company and certain other parties thereto, as such may be amended, supplemented or restated from time to time.

"Operating Company" means TransMontaigne Operating Company L.P., a Delaware limited partnership, and any successors thereto.

"Operating Expenditures" means all Partnership Group expenditures, including taxes, reimbursements of the General Partner in accordance with this Agreement, interest payments, Maintenance Capital Expenditures and non-Pro Rata repurchases of Units, but excluding the following:

- (a) payments (including prepayments and prepayment penalties) of principal of and premium on indebtedness;
- (b) Expansion Capital Expenditures;
- (c) payment of transaction expenses relating to Interim Capital Transactions; and

(d) distributions to Partners, including taxes paid on behalf of Partners that are deemed to be distributions to Partners pursuant to Section 6.3(c).

Where capital expenditures consist of both Maintenance Capital Expenditures and Expansion Capital Expenditures, the General Partner, with the concurrence of the Conflicts Committee, shall determine the allocation between the portion consisting of Maintenance Capital Expenditures and the portion consisting of Expansion Capital Expenditures.

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

- (a) Generated Operating Surplus with respect to such period; plus
- (b) an amount equal to four times the amount needed for any one Quarter for the Partnership to pay a distribution on all Units, General Partner Units and Incentive Distribution Rights at the same per-Unit amount as was distributed in the immediately preceding Quarter (or with respect to the period commencing on the Closing Date and ending on June 30, 2005, it means the product of (i) \$1.60 multiplied by (ii) a fraction of which the numerator is the number of days in such period and the denominator is 91 multiplied by (iii) the number of Units and General Partner Units Outstanding on the Record Date with respect to such period and with respect to the Quarter ending September 30, 2005, it means the product of (i) \$1.60 and (ii) the number of Units and General Partner Units Outstanding on the Record Date with respect to such Quarter).

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

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

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

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

"Outstanding" means, with respect to Partnership Securities, all Partnership Securities that are issued by the Partnership and reflected as outstanding on the Partnership's books and records as of the date of determination; provided, however, that if at any time any Person or Group (other than the General Partner or its Affiliates) beneficially owns 20% or more of the Outstanding Partnership Securities of any class then Outstanding, all Partnership Securities owned by such Person or Group shall not be voted on any matter and shall not be considered to be Outstanding when sending notices of a meeting of Limited Partners to vote on any matter (unless otherwise required by law), calculating required votes, determining the presence of a quorum or for other similar purposes under this Agreement, except that Units so owned shall be considered to be Outstanding for purposes of Section 11.1(b)(iv) (such Units shall not, however, be treated as a separate class of Partnership Securities for purposes of this Agreement); provided, further, that the foregoing limitation shall not apply to (i) any Person or Group who acquired 20% or more of the Outstanding Partnership Securities of any class then Outstanding directly from the General Partner or its Affiliates, (ii) any Person or Group who acquired 20% or more of the Outstanding Partnership Securities of any class then Outstanding directly or indirectly from a Person or Group described in clause (i) provided that the General Partner shall have notified such Person or Group in writing that such limitation shall not apply, or (iii) any Person or Group who acquired 20% or more of any Partnership Securities issued by the Partnership with the prior approval of the Board of Directors.

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

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

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

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

"Partners" means the General Partner and the Limited Partners.

"Partnership" means TransMontaigne Partners L.P., a Delaware limited partnership.

"Partnership Group" means the Partnership and its Subsidiaries treated as a single consolidated entity.

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

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

"Partnership Security" means any class or series of equity interest in the Partnership (but excluding any options, rights, warrants and appreciation rights relating to an equity interest in the Partnership), including Common Units, Subordinated Units, General Partner Units and Incentive Distribution Rights.

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

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

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

"Pro Rata" means (a) when used with respect to Units or any class thereof, apportioned equally 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, as the case may be, in accordance with their relative Percentage Interests and (c) when used with respect to holders of Incentive Distribution Rights, apportioned equally among all holders of Incentive Distribution Rights in accordance with the relative number or percentage of Incentive Distribution Rights held by each such holder.

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

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

"Razorback LLC" means Razorback L.L.C., a Delaware limited liability company.

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

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

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

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

"Registration Statement" means the Registration Statement on Form S-1 as it has been or as it may be amended or supplemented from time to time, filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Common Units in the Initial Offering.

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

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

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

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



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

"Second Target Distribution" means \$0.50 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on June 30, 2005, it means the product of \$0.50 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.

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

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

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

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

"Subordinated Unit" means a Unit representing a fractional part of the Partnership Interests of all Limited Partners, and 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.

"Subordinated Unit Purchase Agreement" means that certain purchase agreement dated as of May 24, 2005 between MSDW and the Partnership, providing for the purchase of Subordinated Units by MSDW.

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

(a) the first day of any Quarter beginning after June 30, 2010 in respect of which (i) (A) distributions of Available Cash from Operating Surplus on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units with respect to each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during 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 that were Outstanding during such periods on a Fully Diluted Basis, and the

General Partner Units, with respect to each such period and (ii) there are no Cumulative Common Unit Arrearages; and

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

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

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

"Terminating Services Agreement" means that certain Terminating Services Agreement, dated as of the Closing Date, among TransMontaigne Inc., the General Partner, the Partnership, TransMontaigne Operating GP L.L.C., the Operating Company and certain other parties thereto, as such may be amended, supplemented or restated from time to time.

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

"Third Target Distribution" means \$0.60 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on June 30, 2005, it means the product of \$0.60 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.

"TPSI" means TransMontaigne Product Services Inc., a Delaware corporation.

"TPSI Terminals LLC" means TPSI Terminals L.L.C., a Delaware limited liability company.

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

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

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

"TSI" means TransMontaigne Services Inc., a Delaware corporation.

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

"Underwriting Agreement" means that certain Underwriting Agreement dated as of May 24, 2005 among the Underwriters, the Partnership, the General Partner, the Operating Company and other parties thereto, providing for the purchase of Common Units by the Underwriters.

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

"Unitholders" means the holders of Units.

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

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

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

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

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

"U.S. GAAP" means United States generally accepted accounting principles consistently applied.

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

**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.

## **ARTICLE II ORGANIZATION**

**SECTION 2.1 Formation.** The General Partner and the Organizational Limited Partner have previously formed the Partnership as a limited partnership pursuant to the provisions of the Delaware Act and hereby amend and restate the original Agreement of Limited Partnership of TransMontaigne Partners L.P. 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 (including fiduciary duties), liabilities and obligations of the Partners and the administration, dissolution and termination of the Partnership shall be governed by the Delaware Act. All Partnership Interests shall constitute personal property of the owner thereof for all purposes.

SECTION 2.2 *Name.* The name of the Partnership shall be "TransMontaigne Partners L.P.". The Partnership's business may be conducted under any other name or names as determined by the General Partner, including the name of the General Partner. The words "Limited Partnership," "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, 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 1670 Broadway, Suite 3100, Denver, Colorado 80202 or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner shall determine necessary or appropriate. The address of the General Partner shall be 1670 Broadway, Suite 3100, Denver, Colorado 80202 or such other place as the General Partner may from time to time designate by notice to the Limited Partners.

SECTION 2.4 *Purpose and Business.* The purpose and nature of the business to be conducted by the Partnership shall be to engage directly in, or enter into or form, hold or 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 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 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, and may decline to propose or approve, the conduct by the Partnership of any business free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to so propose or approve, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.

SECTION 2.5 *Powers.* The Partnership shall be empowered to do any and all acts and things necessary or appropriate for the furtherance and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Partnership.

SECTION 2.6 *Power of Attorney.*

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

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

the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (B) all certificates, documents and other instruments that the General Partner or the Liquidator determines to be necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the General Partner or the Liquidator determines to be necessary or appropriate to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article IV, X, XI or XII; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Securities issued pursuant to Section 5.6; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger) relating to a merger, consolidation or conversion of the Partnership pursuant to Article XIV; and

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

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

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and, to the maximum extent permitted by law, not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of any Limited Partner and the transfer of all or any portion of such Limited Partner's 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.

**SECTION 2.7 Term.** The term of the Partnership commenced upon the filing of the Certificate of Limited Partnership in accordance with the Delaware Act and shall continue in existence until the dissolution of the Partnership in accordance with the provisions of Article XII. The existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate of Limited Partnership as provided in the Delaware Act.

**SECTION 2.8 Title to Partnership Assets.** Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity,

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

### **ARTICLE III RIGHTS OF LIMITED PARTNERS**

**SECTION 3.1 *Limitation of Liability.*** The Limited Partners 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. Any action taken by any Affiliate of the General Partner or any officer, director, employee, manager, member, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, manager, member, general partner, agent or trustee of a Group Member, in its capacity as such, shall not be deemed to be participation in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) and shall not affect, impair or eliminate the limitations on the liability of the Limited Partners under this Agreement.

**SECTION 3.3 *Outside Activities of the Limited Partners.*** Subject to the provisions of Section 7.5 and the Omnibus Agreement, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Persons shall also be Limited Partners, any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership Group. Neither the Partnership nor any of the other Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner.

**SECTION 3.4 *Rights of Limited Partners.***

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 3.4(b), each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a Limited Partner in the Partnership, upon reasonable written demand stating the purpose of such demand, and at such Limited Partner's own expense:

- (i) to obtain true and full information regarding the status of the business and financial condition of the Partnership;
- (ii) promptly after its becoming available, to obtain a copy of the Partnership's federal, state and local income tax returns for each year;

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

(iv) to obtain a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with copies of the executed copies of all powers of attorney pursuant to which this Agreement, the Certificate of Limited Partnership and all amendments thereto have been executed;

(v) to obtain true and full information regarding the amount of cash and a description and statement of the Net Agreed Value of any other Capital Contribution by each Partner and that each Partner has agreed to contribute in the future, and the date on which each became a Partner; and

(vi) to obtain such other information regarding the affairs of the Partnership as is just and reasonable.

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

#### ARTICLE IV

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

SECTION 4.1 *Certificates.* Upon the Partnership's issuance of Common Units or Subordinated Units to any Person, the Partnership shall issue, upon the request of such Person, one or more Certificates in the name of such Person evidencing the number of such Units being so issued. In addition, (a) upon the General Partner's request, the Partnership shall issue to it one or more Certificates in the name of the General Partner evidencing its General Partner Units and (b) upon the request of any Person owning Incentive Distribution Rights or any other Partnership Securities other than Common Units or Subordinated Units, the Partnership shall issue to such Person one or more certificates evidencing such Incentive Distribution Rights or other Partnership Securities other than Common Units or Subordinated Units. Certificates shall be executed on behalf of the Partnership by the Chairman of the Board, President or any Executive Vice President, Senior Vice President or Vice President and the Secretary or any Assistant Secretary of the General Partner. No Common Unit Certificate shall be valid for any purpose until it has been countersigned by the Transfer Agent; provided, however, that if the General Partner elects to issue Common Units in global form, the Common Unit Certificates shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Common Units have been duly registered in accordance with the directions of the Partnership. Subject to the requirements of Section 6.7(c), the Partners holding Certificates evidencing Subordinated Units may exchange such Certificates for Certificates evidencing Common Units on or after the date on which such Subordinated Units are converted into Common Units pursuant to the terms of Section 5.7.

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

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

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

- (i) makes proof by affidavit, in form and substance satisfactory to the General Partner, that a previously issued Certificate has been lost, destroyed or stolen;
- (ii) requests the issuance of a new Certificate before the General Partner has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (iii) if requested by the General Partner, delivers to the General Partner a bond, in form and substance satisfactory to the General Partner, with surety or sureties and with fixed or open penalty as the General Partner may direct, to indemnify the Partnership, the Partners, the General Partner and the Transfer Agent against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate; and
- (iv) satisfies any other reasonable requirements imposed by the General Partner.

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

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

**SECTION 4.3 *Record Holders.*** The Partnership shall be entitled to recognize the Record Holder as the Partner with respect to any Partnership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Partnership Interest on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Partnership Interests are listed or admitted to trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Partnership Interests, as between the Partnership on the one hand, and such other Persons on the other, such representative Person shall be the Record Holder of such Partnership Interest.

#### **SECTION 4.4 *Transfer Generally.***

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



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

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any 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.

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

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

(b) Except as otherwise provided in Section 4.9, the General Partner shall not recognize any transfer of Limited Partner Interests until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer. No charge shall be imposed by the General Partner for such transfer; provided, that as a condition to the issuance of any new Certificate under this Section 4.5, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto.

(c) 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 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 (other than the Incentive Distribution Rights) shall be freely transferable.

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

#### SECTION 4.6 *Transfer of the General Partner's General Partner Interest.*

(a) Subject to Section 4.6(c) below, prior to June 30, 2015, the General Partner shall not transfer all or any part of its General Partner Interest (represented by General Partner Units) to a Person unless such transfer (i) has been approved by the prior written consent or vote of the holders of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) or (ii) is of all, but not less than all, of its General Partner Interest to (A) an Affiliate of the General Partner (other than an individual) or (B) another Person (other than an individual) in connection with the merger or consolidation of the General Partner with or into such other Person or the transfer by the General Partner of all or substantially all of its assets to such other Person.

(b) Subject to Section 4.6(c) below, on or after June 30, 2015, the General Partner may transfer all or any of its General Partner Interest without Unitholder approval.

(c) Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and to be bound by the provisions of this Agreement, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability of any Limited Partner or 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 immediately prior to the transfer of the General Partner Interest, and the business of the Partnership shall continue without dissolution.

**SECTION 4.7 *Transfer of Incentive Distribution Rights.*** Prior to June 30, 2015, a holder of Incentive Distribution Rights may transfer any or all of the Incentive Distribution Rights held by such holder without any consent of the Unitholders to (a) an Affiliate of such holder (other than an individual) or (b) another Person (other than an individual) in connection with (i) the merger or consolidation of such holder of Incentive Distribution Rights with or into such other Person, (ii) the transfer by such holder of all or substantially all of its assets to such other Person or (iii) the sale of all the ownership interests in such holder. Any other transfer of the Incentive Distribution Rights prior to June 30, 2015, shall require the prior approval of holders of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates). On or after June 30, 2015, the General Partner or any other holder of Incentive Distribution Rights may transfer any or all of its Incentive Distribution Rights without Unitholder approval. Notwithstanding anything herein to the contrary, no transfer of Incentive Distribution Rights to another Person shall be permitted unless the transferee agrees to be bound by the provisions of this Agreement.

**SECTION 4.8 *Restrictions on Transfers.***

(a) Except as provided in Section 4.8(d) below, but notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interests shall be made if such transfer would (i) violate the then applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (ii) terminate the existence or qualification of the Partnership 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) 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 avoid a significant risk of the Partnership becoming taxable as a corporation or otherwise becoming taxable as an entity for federal income tax purposes. The General Partner may impose such restrictions by amending this Agreement; provided, however, that any amendment that would result in the delisting or suspension of trading of any class of Limited Partner Interests on the principal National Securities Exchange on which such class of Limited Partner Interests is then listed or admitted to trading must be approved, prior to such amendment being effected, by the holders of at least a majority of the Outstanding Limited Partner Interests of such class.

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

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

(e) In the event that any Partnership Interest is evidenced in certificated form, each such certificate shall bear a conspicuous legend in substantially the following form:

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

#### SECTION 4.9 *Citizenship Certificates; Non-citizen Assignees.*

(a) If any Group Member is or becomes subject to any federal, state or local law or regulation that the General Partner determines 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 a Limited Partner, the General Partner may request any Limited Partner to furnish to the General Partner, within 30 days after receipt of such request, an executed Citizenship Certification or such other information concerning his nationality, citizenship or other related status (or, if the Limited Partner is a nominee holding for the account of another Person, the nationality, citizenship or other related status of such Person) as the General Partner may request. If a Limited Partner fails to furnish to the General Partner within the aforementioned 30-day period such Citizenship Certification or other requested information or if upon receipt of such Citizenship Certification or other requested information the General Partner determines that a Limited Partner is not an Eligible Citizen, the Limited Partner Interests owned by such Limited Partner shall be subject to redemption in accordance with the provisions of Section 4.10. In addition, the General Partner may require that the status of any such Limited Partner be changed to that of a Non-citizen Assignee and, thereupon, the General Partner shall be substituted for such Non-citizen Assignee as the Limited Partner in respect of the Non-Citizen Assignee's Limited Partner Interests.

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

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

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

#### SECTION 4.10 *Redemption of Partnership Interests of Non-citizen Assignees.*

(a) If at any time a Limited Partner fails to furnish a Citizenship Certification or other information requested within the 30-day period specified in Section 4.9(a), or if upon receipt of such Citizenship Certification or other information the General Partner determines, with the advice of counsel, that a Limited Partner is not an Eligible Citizen, the Partnership may, unless the Limited Partner establishes to the satisfaction of the General Partner that such Limited Partner is an Eligible Citizen or has transferred his Partnership Interests to a Person who is an Eligible Citizen and who furnishes a Citizenship Certification to the General Partner prior to the date fixed for redemption as provided below, redeem the Limited Partner Interest of such Limited Partner as follows:

(i) The General Partner shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Limited Partner, at his last address designated on the records of the Partnership or the Transfer Agent, by registered or certified mail, postage prepaid. The notice shall be deemed to have been given when so mailed. The notice shall specify the Redeemable Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the Certificate evidencing the Redeemable Interests and that on and after the date fixed for redemption no further allocations or distributions to which the Limited Partner 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 10% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

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

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

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

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

## **ARTICLE V**

### **CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS**

**SECTION 5.1 *Organizational Contributions.*** In connection with the formation of the Partnership under the Delaware Act, the General Partner made an initial Capital Contribution to the Partnership in the amount of \$20.00 for a 2% General Partner Interest in the Partnership and has been admitted as the General Partner of the Partnership, and the Organizational Limited Partner made an initial Capital Contribution to the Partnership in the amount of \$980.00 for a 98% Limited Partner Interest in the Partnership and has been admitted as a Limited Partner of the Partnership. As of the Closing Date, after consummation of the contributions referenced in Section 5.3(a) and the admission of such contributing Persons as Limited Partners pursuant to Section 10.1, the Limited Partner Interest of the Organizational Limited Partner shall be redeemed as provided in the Contribution Agreement; and the initial Capital Contribution of the Organizational Limited Partner shall thereupon be refunded. Ninety eight percent of any interest or other profit that may have resulted from the investment or other use of such initial Capital Contributions shall be allocated and distributed to the Organizational Limited Partner, and the balance thereof shall be allocated and distributed to the General Partner.

#### **SECTION 5.2 *Contributions by the General Partner, its Affiliates and MSDW.***

(a) On the Closing Date and pursuant to the Contribution Agreement: (i) Coastal Fuels shall contribute to the Partnership, as a Capital Contribution, an ownership interest in Coastal Terminals LLC in exchange for (A) 502,500 Common Units, (B) 626,333 Subordinated Units and (C) \$91,266,000 in cash; (ii) TPSI shall contribute to the Partnership, as a Capital Contribution, ownership interests in Razorback LLC and TPSI Terminals LLC in exchange for (A) 2,245,933 Subordinated Units and (B) \$ 10,650,000 in cash; (iii) TSI shall contribute to the Partnership, as a Capital Contribution, its ownership interests in Coastal Terminals LLC, Razorback LLC and TPSI Terminals LLC in exchange for 120,000 Common Units, which will be used to make grants of restricted Common Units to its employees and to directors of the General Partner; and (iv) the General Partner shall contribute to the Partnership, as a Capital Contribution, all of its ownership interests in Coastal Terminals LLC, Razorback LLC and TPSI Terminals LLC in exchange for (A) 148,873 General Partner Units representing the 2% General Partner Interest, subject to all of the rights, privileges and duties of the General Partner under this Agreement, and (B) the Incentive Distribution Rights. The General Partner and TSI shall have obtained the interests in Coastal Terminals LLC, Razorback LLC and TPSI Terminals LLC that they contribute to the Partnership indirectly from Coastal Fuels and TPSI on the Closing Date. On the Closing Date and pursuant to the Subordinated Unit Purchase Agreement, MSDW shall contribute to the Partnership, as a Capital Contribution, \$7,944,750 in exchange for 450,000 Subordinated Units.

(b) Upon the issuance of any additional Limited Partner Interests by the Partnership (other than the Common Units issued in the Initial Offering, the Common Units issued pursuant to the Over-Allotment Option and Subordinated Units issued pursuant to Section 5.2(a)), the General Partner may, in exchange for a proportionate number of General Partner Units, make additional Capital Contributions in an amount equal to the product obtained by multiplying (i) the quotient determined by dividing (A) the General Partner's Percentage Interest by (B) 100 less the General Partner's Percentage Interest times (ii) the amount contributed to the Partnership by the Limited Partners in

exchange for such additional Limited Partner Interests. Except as set forth in Article XII, the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

### SECTION 5.3 *Contributions by Initial Limited Partners.*

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

(b) Upon the exercise of the Over-Allotment Option, each Underwriter shall contribute to the Partnership cash in an amount equal to the Issue Price per Initial Common Unit, multiplied by the number of Common Units to be purchased by such Underwriter at the Option Closing Date. In exchange for such Capital Contributions by the Underwriters, the Partnership shall issue Common Units to each Underwriter on whose behalf such Capital Contribution is made in an amount equal to the quotient obtained by dividing (i) the cash contributions to the Partnership by or on behalf of such Underwriter by (ii) the Issue Price per Initial Common Unit. Upon receipt by the Partnership of the Capital Contributions from the Underwriters as provided in this Section 5.3(b), the Partnership shall use such cash to redeem from Coastal Fuels that number of Common Units equal to the number of Common Units issued to the Underwriters as provided in this Section 5.3(b).

(c) No Limited Partner Interests will be issued or issuable as of or at the Closing Date other than (i) the Common Units issuable pursuant to subparagraph (a) hereof in aggregate number equal to 3,350,000, (ii) the "Additional Units" as such term is used in the Underwriting Agreement in an aggregate number up to 502,500 issuable upon exercise of the Over-Allotment Option pursuant to subparagraph (b) hereof, (iii) the 2,872,266 Subordinated Units issuable pursuant to Section 5.2 hereof, (iv) the 622,500 Common Units issuable pursuant to Section 5.2 hereof, (v) the Incentive Distribution Rights, (vi) Common Units issuable under, or to satisfy the obligations of the Partnership or any of its Affiliates under, the employee benefit plans of the General Partner or its Affiliates, the Partnership or any other Group Member and (vii) the Subordinated Units issued pursuant to the Subordinated Unit Purchase 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 in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner) owning a Partnership Interest a separate Capital Account with respect to such Partnership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions made to the Partnership with respect to such Partnership Interest and (ii) all items of Partnership income and gain

(including income and gain exempt from tax) computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest and (y) all items of Partnership deduction and loss computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1.

(b) For purposes of computing the amount of any item of income, gain, loss or deduction which is to be allocated pursuant to Article VI and is to be reflected in the Partners' Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including 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 any other Group Member that is classified as a partnership for federal income tax purposes.

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

(iii) Except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code which may be made by the Partnership and, as to those items described in Section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalized for federal income tax purposes. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

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

(v) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Partnership were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 5.5(d) to the Carrying Value of any Partnership property subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such property shall be determined (A) as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment and (B) using a rate of depreciation, cost recovery or amortization derived from the same method and useful life (or, if applicable, the remaining useful life) as is applied for federal income tax purposes; provided, however, that, if the asset has a zero adjusted basis for federal income tax purposes, depreciation, cost recovery or amortization deductions shall be determined using any method that the General Partner may adopt.

(vi) If the Partnership's adjusted basis in a depreciable or cost recovery property is reduced for federal income tax purposes pursuant to Section 48(q)(1) or 48(q)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the year such property is placed in service and shall be allocated among the Partners pursuant to Section 6.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

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

(ii) 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 Subordinated Units or converted Subordinated Units ("Retained Converted Subordinated Units"). Following any such allocation, the transferor's Capital Account, if any, maintained with respect to the retained Subordinated Units or Retained Converted Subordinated Units, if any, will have a balance equal to the amount allocated under clause (B) hereinabove, and the transferee's Capital Account established with respect to the transferred Subordinated Units or converted Subordinated Units will have a balance equal to the amount allocated under clause (A) hereinabove.

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Partnership Interests for cash or Contributed Property, the issuance of Partnership Interests as consideration for the provision of services or the conversion of the General Partner's Combined Interest to Common Units pursuant to Section 11.3(b), the Capital Account of all Partners and the Carrying Value of each Partnership property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance and had been allocated to the Partners at such time pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests shall be determined by the General Partner using such method of valuation as it may adopt; provided, however, that the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines) to arrive at a fair market value for individual properties.

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



value, and had been allocated to the Partners, at such time, pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of an actual distribution that is not made pursuant to Section 12.4 or in the case of a deemed distribution, be determined and allocated in the same manner as that provided in Section 5.5(d) (i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined and allocated by the Liquidator using such method of valuation as it may adopt.

#### SECTION 5.6 *Issuances of Additional Partnership Securities.*

(a) The Partnership may issue additional Partnership Securities and options, rights, warrants and appreciation rights relating to the Partnership Securities for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the General Partner shall determine, all without the approval of any Limited Partners.

(b) Each additional Partnership Security authorized to be issued by the Partnership pursuant to Section 5.6(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership Securities) as shall be fixed by the General Partner, 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 Security (including sinking fund provisions); (v) whether such Partnership Security is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Security will be issued, evidenced by certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Partnership Security; and (viii) the right, if any, of each such Partnership Security to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Security.

(c) The General Partner shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Partnership Securities and options, rights, warrants and appreciation rights relating to Partnership Securities pursuant to this Section 5.6, (ii) the conversion of the General Partner Interest (represented by General Partner Units) or any Incentive Distribution Rights into Units pursuant to the terms of this Agreement, (iii) reflecting the admission of such additional Limited Partners in the books and records of the Partnership as the Record Holder of such Limited Partner Interest, and (iv) all additional issuances of Partnership Securities. The General Partner shall determine the relative rights, powers and duties of the holders of the Units or other Partnership Securities being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Partnership Securities or in connection with the conversion of the General Partner Interest or any Incentive Distribution Rights into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Securities are listed or admitted to trading.

#### SECTION 5.7 *Conversion of Subordinated Units.*

(a) A total of 25% of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners

pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2008, in respect of which:

(i) distributions of Available Cash from Operating Surplus under Section 6.4 (a) on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units with respect to each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during such periods;

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

(iii) there are no Cumulative Common Unit Arrearages.

(b) An additional 25% of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2009, in respect of which:

(i) distributions of Available Cash from Operating Surplus under Section 6.4 (a) on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units with respect to each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during such periods;

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

(iii) there are no Cumulative Common Unit Arrearages;

provided, however, that the conversion of Subordinated Units pursuant to this Section 5.7(b) may not occur until at least one year following the end of the last four-Quarter period in respect of which conversion of Subordinated Units pursuant to Section 5.7(a) occurred.

(c) An additional 25% of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2008, in respect of which:

(i) distributions of Available Cash from Operating Surplus under Section 6.4 (a) on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units

with respect to each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of \$2.00 (125% of the annualized Minimum Quarterly Distribution) on all of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during such periods;

(ii) the Adjusted Operating Surplus generated during each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of \$2.00 (125% of the annualized Minimum Quarterly Distribution) on all of the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units that were Outstanding during such periods on a Fully Diluted Basis and the General Partner Units, with respect to such periods; and

(iii) there are no Cumulative Common Unit Arrearages.

(d) An additional 25% of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2009, in respect of which:

(i) distributions of Available Cash from Operating Surplus under Section 6.4 (a) on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units with respect to each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of \$2.24 (140% of the annualized Minimum Quarterly Distribution) on all of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during such periods;

(ii) the Adjusted Operating Surplus generated during each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of \$2.24 (140% of the annualized Minimum Quarterly Distribution) on all of the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units that were Outstanding during such periods on a Fully Diluted Basis and the General Partner Units, with respect to such periods; and

(iii) there are no Cumulative Common Unit Arrearages.

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

(f) Any Subordinated Units that are not converted into Common Units pursuant to Section 5.7(a), (b), (c) or (d) shall convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of the final Quarter of the Subordination Period.

(g) Notwithstanding any other provision of this Agreement, all the then Outstanding Subordinated Units will automatically convert into Common Units on a one-for-one basis as set forth in, and pursuant to the terms of, Section 11.4.

(h) A Subordinated Unit that has converted into a Common Unit shall be subject to the provisions of Section 6.7(c).

**SECTION 5.8 *Limited Preemptive Right.*** Except as provided in this Section 5.8 and in Section 5.2, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Security, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Securities from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Securities to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Securities.

**SECTION 5.9 *Splits and Combinations.***

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

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

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

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions of this Section 5.9(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

**SECTION 5.10 *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 and 17-607 of the Delaware Act.

**ARTICLE VI  
ALLOCATIONS AND DISTRIBUTIONS**

**SECTION 6.1 *Allocations for Capital Account Purposes.*** For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of

income, gain, loss and deduction (computed in accordance with Section 5.5(b)) shall be allocated among the Partners in each taxable year (or portion thereof) as provided herein below.

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

(i) First, 100% to the General Partner, in an amount equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(iii) for all previous taxable years until the aggregate Net Income allocated to the General Partner pursuant to this Section 6.1(a)(i) for the current taxable year and all previous taxable years is equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(iii) for all previous taxable years;

(ii) Second, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests, until the aggregate Net Income allocated to such Partners pursuant to this Section 6.1(a)(ii) for the current taxable year and all previous taxable years is equal to the aggregate Net Losses allocated to such Partners pursuant to Section 6.1(b)(ii) for all previous taxable years; and

(iii) Third, the balance, if any, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests.

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

(i) First, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests, until the aggregate Net Losses allocated pursuant to this Section 6.1(b)(i) for the current taxable year and all previous taxable years is equal to the aggregate Net Income allocated to such Partners pursuant to Section 6.1(a)(iii) for all previous taxable years, provided that the Net Losses shall not be allocated pursuant to this Section 6.1(b)(i) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account);

(ii) Second, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests; provided, that Net Losses shall not be allocated pursuant to this Section 6.1(b)(ii) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account); and

(iii) Third, the balance, if any, 100% to the General Partner.

(c) Net Termination Gains and Losses. After giving effect to the special allocations set forth in Section 6.1(d), all items of income, gain, loss and deduction taken into account in computing Net Termination Gain or Net Termination Loss for such taxable period shall be allocated in the same manner as such Net Termination Gain or Net Termination Loss is allocated hereunder. All allocations under this Section 6.1(c) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 6.1 and after all distributions of Available Cash provided under Sections 6.4 and 6.5 have been made; provided, however, that solely for purposes of this Section 6.1(c), Capital Accounts shall not be adjusted for distributions made pursuant to Section 12.4.

(i) If a Net Termination Gain is recognized (or deemed recognized pursuant to Section 5.5(d)), such Net Termination Gain shall be allocated among the Partners in the following manner (and the Capital Accounts of the Partners shall be increased by the amount so allocated in

each of the following subclauses, in the order listed, before an allocation is made pursuant to the next succeeding subclause):

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

(B) Second, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Common Units, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (B), 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 6.4(b)(i) with respect to such Common Unit for such Quarter (the amount determined pursuant to this clause (2) is hereinafter defined as the "Unpaid MQD") and (3) any then existing Cumulative Common Unit Arrearage;

(C) Third, if such Net Termination Gain is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Subordinated Unit, (x) to the General Partner in accordance with its Percentage Interest and (y) all Unitholders holding Subordinated Units, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (c), 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 year (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, 100% to the General Partner and all Unitholders, in accordance with their respective Percentage Interests, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price, (2) the Unpaid MQD, (3) any then existing Cumulative Common Unit Arrearage, and (4) the excess of (aa) the First Target Distribution less the Minimum Quarterly Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Sections 6.4(a)(iv) and 6.4(b)(ii) (the sum of (1), (2), (3) and (4) is hereinafter defined as the "First Liquidation Target Amount");

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

(F) Sixth, (x) to the General Partner in accordance with its Percentage Interest, (y) 23% to the holders of the Incentive Distribution Rights, Pro Rata, and (z) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclause (x) and (y) of this clause (F), until the Capital Account in respect of each Common Unit then

Outstanding is equal to the sum of (1) the Second Liquidation Target Amount, and (2) the excess of (aa) the Third Target Distribution less the Second Target Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Sections 6.4(a)(vi) and 6.4(b)(iv) (the sum of (1) and (2) is hereinafter defined as the "Third Liquidation Target Amount"); and

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

(ii) If a Net Termination Loss is recognized (or deemed recognized pursuant to Section 5.5(d)), such Net Termination Loss shall be allocated among the Partners in the following manner:

(A) First, if such Net Termination Loss is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Subordinated Unit, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Subordinated Units, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (A), until the Capital Account in respect of each Subordinated Unit then Outstanding has been reduced to zero;

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

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

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

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

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

than Section 6.1(d)(i) and other than an allocation pursuant to Sections 6.1(d)(vi) and 6.1(d)(vii), with respect to such taxable period. This Section 6.1(d)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Priority Allocations.

(A) If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 12.4) to any Unitholder with respect to its Units for a taxable year is greater (on a per Unit basis) than the amount of cash or the Net Agreed Value of property distributed to the other Unitholders with respect to their Units (on a per Unit basis), then (1) each Unitholder receiving such greater cash or property distribution shall be allocated gross income in an amount equal to the product of (aa) the amount by which the distribution (on a per Unit basis) to such Unitholder exceeds the distribution (on a per Unit basis) to the Unitholders receiving the smallest distribution and (bb) the number of Units owned by the Unitholder receiving the greater distribution; and (2) the General Partner shall be allocated gross income in an aggregate amount equal to the product obtained by multiplying (aa) the quotient determined by dividing (x) the General Partner's Percentage Interest at the time in which the greater cash or property distribution occurs by (y) the sum of 100 less the General Partner's Percentage Interest at the time in which the greater cash or property distribution occurs times (bb) the sum of the amounts allocated in clause (1) above.

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

(iv) Qualified Income Offset. In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible unless such deficit balance is otherwise eliminated pursuant to Section 6.1(d)(i) or (ii).

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



(vi) Nonrecourse Deductions. Nonrecourse Deductions for any taxable period shall be allocated to the Partners in accordance with their respective Percentage Interests. If the General Partner determines 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 in accordance with their respective Percentage Interests.

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

(x) Economic Uniformity. 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 equal to the product of (A) the number of Final Subordinated Units held by such Partner and (B) the Per Unit Capital Amount for a Common Unit. The purpose of this allocation is to establish uniformity between the Capital Accounts underlying Final Subordinated Units and the Capital Accounts underlying Common Units held by Persons other than the General Partner and its Affiliates immediately prior to the conversion of such Final Subordinated Units into Common Units. This allocation method for establishing such economic uniformity will 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.

(xi) Curative Allocation.

(A) Notwithstanding any other provision of this Section 6.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss and

deduction allocated to each Partner pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Partner under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in this Section 6.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain and (2) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Nonrecourse Debt Minimum Gain. Allocations pursuant to this Section 6.1(d)(xi)(A) shall only be made with respect to Required Allocations to the extent the General Partner determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners. Further, allocations pursuant to this Section 6.1(d)(xi)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) hereof to the extent the General Partner determines that such allocations are likely to be offset by subsequent Required Allocations.

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

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

(A) In the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 5.5(d) hereof), the General Partner shall allocate additional items of gross income and gain away from the holders of Incentive Distribution Rights to the Unitholders and the General Partner, or additional items of deduction and loss away from the Unitholders and the General Partner to the holders of Incentive Distribution Rights, to the extent that the Additional Book Basis Derivative Items allocated to the Unitholders or the General Partner exceed their Share of Additional Book Basis Derivative Items. For this purpose, the Unitholders and the General Partner shall be treated as being allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Unitholders or the General Partner under the Partnership Agreement (e.g., Additional Book Basis Derivative Items taken into account in computing cost of goods sold would reduce the amount of book income otherwise available for allocation among the Partners). Any allocation made pursuant to this Section 6.1(d)(xii)(A) shall be made after all of the other Agreed Allocations have been made as if this Section 6.1(d)(xii) were not in this Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

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

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

## SECTION 6.2 *Allocations for Tax Purposes.*

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

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

(i) (A) In the case of a Contributed Property, such items attributable thereto shall be allocated among the Partners in the manner provided under Section 704(c) of the Code that takes into account the variation between the Agreed Value of such property and its adjusted basis at the time of contribution; and (B) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Partners in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 6.1.

(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 5.5(d)(i) or 5.5(d)(ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 6.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 6.1.

(iii) The General Partner shall apply the principles of Treasury Regulation Section 1.704-3 to eliminate Book-Tax Disparities, using the method or methods it elects thereunder.

(c) Notwithstanding any other provision of this Agreement, 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 for federal income tax purposes of income (including gross income) or deductions; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.2(c) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Limited Partner Interests issued and Outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(d) The General Partner may determine to depreciate or amortize the portion of an adjustment under Section 743(b) of the Code attributable to unrealized appreciation in any Adjusted Property (to the extent of the unamortized Book-Tax Disparity) using a predetermined rate derived from the depreciation or amortization method and useful life applied to the Partnership's common basis of such property, despite any inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6) or any successor regulations thereto. If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Limited Partner Interests in the same month would receive

depreciation and amortization deductions, based upon the same applicable rate as if they had purchased a direct interest in the Partnership's property. If the General Partner chooses not to utilize such aggregate method, the General Partner may use any other 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.

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

(f) All items of income, gain, loss, deduction and credit recognized by the Partnership for federal income tax purposes and allocated to the Partners in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code 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.

(g) Each item of Partnership income, gain, loss and deduction, for federal income tax purposes, shall be determined on an annual basis and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of each month; provided, however, such items for the period beginning on the Closing Date and ending on the last day of the month in which the Option Closing Date or the expiration of the Over-Allotment Option occurs shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the next succeeding month; and provided, further, that gain or loss on a sale or other disposition of any assets of the Partnership or any other extraordinary item of income or loss realized and recognized other than in the ordinary course of business, as determined by the General Partner, shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the month in which such gain or loss is recognized for federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

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

#### 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, 2005, an amount equal to 100% of Available Cash with respect to such Quarter shall, subject to Section 17-607 of the Delaware Act, be distributed in accordance with this Article VI by the Partnership to the Partners as of the Record Date selected by the General Partner. All amounts of Available Cash distributed by the Partnership on any date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash theretofore distributed by the Partnership to the Partners pursuant to Section 6.4 equals the Operating Surplus from the Closing Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Partnership on such date shall, except as otherwise provided in Section 6.5, be

deemed to be "Capital Surplus." All distributions required to be made under this Agreement shall be made subject to Section 17-607 of the Delaware Act.

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

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

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

#### SECTION 6.4 *Distributions of Available Cash from Operating Surplus.*

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

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

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

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

(vi) Sixth, (A) to the General Partner in accordance with its Percentage Interest, (B) 23% to the holders of the Incentive Distribution Rights, Pro Rata; and (C) to all Unitholders, Pro Rata, a

percentage equal to 100% less the sum of the percentages applicable to subclause (A) and (B) of this subclause (vi), until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution for such Quarter; and

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

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

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

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

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

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

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

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

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

SECTION 6.5 *Distributions of Available Cash from Capital Surplus.* Available Cash that is deemed to be Capital Surplus pursuant to the provisions of Section 6.3(a) shall, subject to

Section 17-607 of the Delaware Act, be distributed, unless the provisions of Section 6.3 require otherwise, 100% to the General Partner and the Unitholders in accordance with their respective Percentage Interests, until a hypothetical holder of a Common Unit acquired on the Closing Date has received with respect to such Common Unit, during the period since the Closing Date through such date, distributions of Available Cash that are deemed to be Capital Surplus in an aggregate amount equal to the Initial Unit Price. Available Cash that is deemed to be Capital Surplus shall then be distributed to the General Partner and all Unitholders holding Common Units in accordance with their respective Percentage Interests, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage. Thereafter, all Available Cash shall be distributed as if it were Operating Surplus and shall be distributed in accordance with Section 6.4.

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

(a) The Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution, Third Target Distribution, Common Unit Arrearages and Cumulative Common Unit Arrearages shall be proportionately adjusted in the event of any distribution, combination or subdivision (whether effected by a distribution payable in Units or otherwise) of Units or other Partnership Securities in accordance with Section 5.9. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the then applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution shall be adjusted proportionately downward to equal the product obtained by multiplying the otherwise applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, as the case may be, by a fraction of which the numerator is the Unrecovered 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 6.9.

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

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

(c) The Unitholder holding a Subordinated Unit that has converted into a Common Unit pursuant to Section 5.7 shall not be issued a Common Unit Certificate pursuant to Section 4.1, and shall not be permitted to transfer its converted Subordinated Units to a Person that is not an Affiliate of the holder, until such time as the General Partner determines, based on advice of counsel, that a

converted Subordinated Unit should have, as a substantive matter, like intrinsic economic and federal income tax characteristics, in all material respects, to the intrinsic economic and federal income tax characteristics of an Initial Common Unit. In providing such advice, counsel may rely upon the fact that the General Partner will take positions in filing the tax returns of the Partnership (including information returns to unitholders) which are intended to preserve the uniformity of units, as described at "Material tax consequences—Uniformity of Units" in the Registration Statement, and may assume the validity of such positions. 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 the converted Subordinated Units in preparation for a transfer of such converted Subordinated Units, including the application of Sections 5.5(c)(ii), 6.1(d)(x) and 6.7(b); provided, however, that no such steps may be taken that would have a material adverse effect on the Unitholders holding Common Units represented by Common Unit Certificates.

**SECTION 6.8 *Special Provisions Relating to the Holders of Incentive Distribution Rights.*** Notwithstanding anything to the contrary set forth in this Agreement, the holders of the Incentive Distribution Rights (a) shall (i) possess the rights and obligations provided in this Agreement with respect to a Limited Partner pursuant to Articles III and VII and (ii) have a Capital Account as a Partner pursuant to Section 5.5 and all other provisions related thereto and (b) shall not (i) be entitled to vote on any matters requiring the approval or vote of the holders of Outstanding Units, except as provided by law, (ii) be entitled to any distributions other than as provided in Sections 6.4(a)(v), (vi) and (vii), 6.4(b)(iii), (iv) and (v), and 12.4 or (iii) be allocated items of income, gain, loss or deduction other than as specified in this Article VI.

**SECTION 6.9 *Entity Level Taxation.*** If legislation is enacted or the interpretation of existing language is modified by a governmental taxing authority so that a Group Member is treated as an association taxable as a corporation or is otherwise subject to an entity level tax for federal, state or local income tax purposes, then the General Partner shall estimate for each Quarter the Partnership Group's aggregate liability (the "Estimated Incremental Quarterly Tax Amount") for all such income taxes that are payable by reason of any such new legislation or interpretation; provided that any difference between such estimate and the actual tax liability for such Quarter that is owed by reason of any such new legislation or interpretation shall 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, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted 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 Partnership Securities, and the incurring of any other obligations;
- (ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;
- (iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.3 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 same results in the terms of the transaction being less favorable to the Partnership than would otherwise be the case);
- (vi) the distribution of Partnership cash;
- (vii) the selection and dismissal of employees (including employees having titles such as "president," "vice president," "secretary" and "treasurer") and agents, outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring;
- (viii) the maintenance of 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 relationships (including the acquisition of interests in, and the contributions of property to, any Group Member from time to time) subject to the restrictions set forth in Section 2.4;
- (x) the control of any matters affecting the rights and obligations of the Partnership, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation, 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 Securities, or the issuance of options, rights, warrants and appreciation rights relating to Partnership Securities;

(xiv) the undertaking of any action in connection with the Partnership's participation in any Group Member; and

(xv) the entering into of agreements with any of its Affiliates to render services to a Group Member or to itself in the discharge of its duties as General Partner of the Partnership.

(b) Notwithstanding any other provision of this Agreement, any Group Member Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners and each other Person who may acquire an interest in Partnership Securities 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, the Omnibus Agreement, the Terminals Services Agreement, the Contribution Agreement, the Subordinated Unit Purchase 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; (ii) agrees that the General Partner (on its own or through any officer of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners or the other Persons who may acquire an interest in Partnership Securities; and (iii) agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them, of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XV), shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

**SECTION 7.2 *Certificate of Limited Partnership.*** The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents that the General Partner determines to be necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware or any other state in which the Partnership may elect to do business or own property. To the extent the General Partner determines such action to be necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all things to maintain the Partnership as a limited partnership (or a partnership or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner.

**SECTION 7.3 *Restrictions on the General Partner's Authority.*** Except as provided in Articles XII and XIV, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or a series of related transactions (including by way of merger, consolidation, other combination or sale of ownership interests of the Partnership's Subsidiaries) 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. Without the approval of holders of a Unit Majority, the General Partner shall not, on behalf of the Partnership, except as permitted under Sections 4.6, 11.1 and 11.2, elect or cause the Partnership to elect a successor general partner of the Partnership.

#### SECTION 7.4 *Reimbursement of the General Partner.*

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

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

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

#### SECTION 7.5 *Outside Activities.*

(a) After the Closing Date, the General Partner, for so long as it is the General Partner of the Partnership, (i) agrees that its sole business will be to act as a general partner or managing member, as the case may be, of the Partnership and any other partnership or limited liability company of which the Partnership 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 or (B) the acquiring, owning or disposing of debt or equity securities in any Group Member.

(b) Except as specifically restricted by the Omnibus Agreement, each Indemnitee (other than the General Partner) shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by any Group Member, independently or with others, including business interests and activities in direct competition with the business and activities of any Group Member, and none of the same shall constitute a breach of this Agreement or any duty expressed or implied by law to any Group Member or any Partner. 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 Indemnitee.

(c) Subject to the terms of Section 7.5(a), Section 7.5(b) and the Omnibus Agreement, but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Indemnitees (other than the General Partner) in accordance with the provisions of this Section 7.5 is hereby approved by the Partnership and all Partners, (ii) it shall be deemed not to be a breach of any fiduciary duty or any other obligation of any type whatsoever of the General Partner or of any Indemnitee for the Indemnitees (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership and (iii) except as set forth in the Omnibus Agreement, the Indemnitees shall have no obligation hereunder or as a result of any duty expressed or implied by law to present business opportunities to the Partnership.

(d) The General Partner and each of its Affiliates may acquire Units or other Partnership Securities in addition to those acquired on the Closing Date and, except as otherwise provided in this Agreement, shall be entitled to exercise, at their option, all rights relating to all Units or other Partnership Securities 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 any provision of this Agreement purports or is interpreted to have the effect of restricting the fiduciary duties that might otherwise, as a result of Delaware or other applicable law, be owed by the General Partner to the Partnership and its Limited Partners, or to constitute a waiver or consent by the Limited Partners to any such restriction, such provisions shall be inapplicable and have no effect in determining whether the General Partner has complied with its fiduciary duties in connection with determinations made by it under this Section 7.5.

#### SECTION 7.6 *Loans from the General Partner; Loans or Contributions from the Partnership 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, expressed or implied, of the General Partner or its Affiliates to the Partnership or the Limited Partners by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to (i) enable distributions to the General Partner or its Affiliates (including in their capacities as Limited Partners) to exceed the General Partner's Percentage Interest of the total amount distributed to all partners or (ii) hasten the expiration of the Subordination Period or the conversion of any Subordinated Units into Common Units.

#### SECTION 7.7 *Indemnification.*

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

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnatee who is indemnified pursuant to Section 7.7(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to a determination that the Indemnatee is not entitled to be indemnified upon receipt by the Partnership of any undertaking by or on behalf of the Indemnatee to repay such amount if it shall be determined that the Indemnatee is not entitled to be indemnified as authorized in this Section 7.7.

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

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

(e) For purposes of this Section 7.7, the Partnership shall be deemed to have requested an 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, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

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

#### SECTION 7.8 *Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Limited Partners or any other Persons who have acquired interests in the Partnership Securities, for losses sustained or liabilities incurred as a result of any act or omission 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) Subject to its obligations and duties as General Partner set forth in Section 7.1(a), the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

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

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

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 Common Units (excluding Common Units owned by the General Partner and its Affiliates), (iii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iv) fair and reasonable to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of such resolution, and the General Partner may also adopt a resolution or course of action that has not received Special Approval. If Special Approval is not sought and 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, then it shall be presumed that, in making its decision, the Board of Directors acted in good faith, and in any proceeding brought by any Limited Partner or by or on behalf of such Limited Partner or any other Limited Partner or the Partnership challenging such approval, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or 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.

(b) 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 capacity as the general partner of the Partnership as opposed to in its individual capacity, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then, unless another express standard is provided for in this Agreement, the General Partner, or such Affiliates causing it 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 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. In order for a determination or other action to be in "good faith" for purposes of this Agreement, the Person or Persons making such determination or taking or declining to take such other action must believe that the determination or other action is in the best interests of the Partnership.

(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 make such determination or to take or decline to take such other action free of any fiduciary duty or obligation whatsoever to the Partnership, any Limited Partner, and the General Partner, or such Affiliates causing it to do so, 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. By way of illustration and not of limitation, whenever the phrase, "at the option of the General Partner," 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 Units, or refrains from voting or transferring its Units, it shall be acting in its individual capacity.

(d) 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.

(e) Except as expressly set forth in this Agreement, 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.

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

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

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

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

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

SECTION 7.11 *Purchase or Sale of Partnership Securities.* The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Securities; provided that, except as permitted pursuant to Section 4.10, the General Partner may not cause any Group Member to purchase Subordinated Units during the Subordination Period. As long as Partnership Securities are held by any Group Member, such Partnership Securities shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner may also purchase or otherwise acquire and sell or otherwise dispose of Partnership Securities for its own account, subject to the provisions of Articles IV and X.

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

(a) If (i) the General Partner or any Affiliate of the General Partner (including for purposes of this Section 7.12, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner) holds Partnership Securities that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or



regulation to Rule 144) or another exemption from registration is not available to enable such holder of Partnership Securities (the "Holder") to dispose of the number of Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then at the option and upon the request of the Holder, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Securities covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Partnership Securities specified by the Holder; provided, however, that the Partnership shall not be required to effect more than three registrations pursuant to Sections 7.12(a) and 7.12(b); and provided further, however, that if the Conflicts Committee determines in good faith that the requested registration would be materially detrimental to the Partnership and its Partners because such registration would (x) materially interfere with a significant acquisition, reorganization or other similar transaction involving the Partnership, (y) require premature disclosure of material information that the Partnership has a bona fide business purpose for preserving as confidential or (z) render the Partnership unable to comply with requirements under applicable securities laws, then the Partnership shall have the right to postpone such requested registration for a period of not more than six months after receipt of the Holder's request, such right pursuant to this Section 7.12(a) or Section 7.12(b) not to be utilized more than once in any twelve-month period. Except as provided in the preceding sentence, the Partnership shall be deemed not to have used all reasonable efforts to keep the registration statement effective during the applicable period if it voluntarily takes any action that would result in Holders of Partnership Securities covered thereby not being able to offer and sell such Partnership Securities at any time during such period, unless such action is required by applicable law. In connection with any registration pursuant to the immediately preceding sentence, the Partnership shall (i) promptly prepare and file (A) such documents as may be necessary to register or qualify the securities subject to such registration under the securities laws of such states as the Holder shall reasonably request; provided, however, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such registration, and (B) such documents as may be necessary to apply for listing or to list the Partnership Securities subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and (ii) do any and all other acts and things that may be necessary or appropriate to enable the Holder to consummate a public sale of such Partnership Securities in such states. Except as set forth in Section 7.12(d), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(b) If any Holder holds Partnership Securities that it desires to sell and Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such Holder to dispose of the number of Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then at the option and upon the request of the Holder, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Securities covered by such shelf registration statement have been sold, a "shelf" registration statement covering the Partnership Securities specified by the Holder on an appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the Commission; provided, however, that the Partnership shall not be required to effect more than three registrations pursuant to Section 7.12(a) and this Section 7.12(b); and provided further, however, that if the Conflicts Committee determines in good faith that any offering under, or the use of any prospectus forming a part of, the shelf registration statement would be materially detrimental to the

Partnership and its Partners because such offering or use would (x) materially interfere with a significant acquisition, reorganization or other similar transaction involving the Partnership, (y) require premature disclosure of material information that the Partnership has a bona fide business purpose for preserving as confidential or (z) render the Partnership unable to comply with requirements under applicable securities laws, then the Partnership shall have the right to suspend such offering or use for a period of not more than six months after receipt of the Holder's request, such right pursuant to Section 7.12(a) or this Section 7.12(b) not to be utilized more than once in any twelve-month period. Except as provided in the preceding sentence, the Partnership shall be deemed not to have used all reasonable efforts to keep the shelf registration statement effective during the applicable period if it voluntarily takes any action that would result in Holders of Partnership Securities covered thereby not being able to offer and sell such Partnership Securities at any time during such period, unless such action is required by applicable law. In connection with any shelf registration pursuant to this Section 7.12(b), the Partnership shall (i) promptly prepare and file (A) such documents as may be necessary to register or qualify the securities subject to such shelf registration under the securities laws of such states as the Holder shall reasonably request; provided, however, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such shelf registration, and (B) such documents as may be necessary to apply for listing or to list the Partnership Securities subject to such shelf registration on such National Securities Exchange as the Holder shall reasonably request, and (ii) do any and all other acts and things that may be necessary or appropriate to enable the Holder to consummate a public sale of such Partnership Securities in such states. Except as set forth in Section 7.12(d), all costs and expenses of any such shelf registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

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

(d) If underwriters are engaged in connection with any registration referred to in this Section 7.12, the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under Section 7.7, the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder, its officers, directors and each Person who controls the Holder (within the meaning of the Securities Act) and any agent thereof (collectively, "Indemnified Persons") from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines,

penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnified Person may be involved, or is threatened to be involved, as a party or otherwise, under the Securities Act or otherwise (hereinafter referred to in this Section 7.12(d) as a "claim" and in the plural as "claims") based upon, arising out of or resulting from any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any Partnership Securities were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; provided, however, that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

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

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

(g) Any request to register Partnership Securities pursuant to this Section 7.12 shall (i) specify the Partnership Securities intended to be offered and sold by the Person making the request, (ii) express such Person's present intent to offer such Partnership Securities for distribution, (iii) describe the nature or method of the proposed offer and sale of Partnership Securities, and (iv) contain the undertaking of such Person to provide all such information and materials and take all action as may be required in order to permit the Partnership to comply with all applicable requirements in connection with the registration of such Partnership Securities.

**SECTION 7.13 *Reliance by Third Parties.*** Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner or any such officer in connection with

any such dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the terms of 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.

## **ARTICLE VIII**

### **BOOKS, RECORDS, ACCOUNTING AND REPORTS**

**SECTION 8.1 *Records and Accounting.*** The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders of Units or other Partnership Securities, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device; provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.

**SECTION 8.2 *Fiscal Year.*** The fiscal year of the Partnership shall be a fiscal year ending June 30.

**SECTION 8.3 *Reports.***

(a) As soon as practicable, but in no event later than 120 days after the close of each fiscal year of the Partnership, the General Partner shall cause to be mailed or made available 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.

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

## **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 year or years that it is required by law to adopt, from time to time, as determined by the General Partner. In the event the Partnership is required to use a taxable year other than a year ending on December 31, the General Partner shall use reasonable efforts to change the

taxable year 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 year shall be furnished to them within 90 days of the close of the calendar year in which the Partnership's taxable year ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for federal income tax purposes.

#### SECTION 9.2 *Tax Elections.*

(a) The Partnership shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the best interests of the Limited Partners. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Limited Partner Interest will be deemed to be the lowest quoted closing price of the Limited Partner Interests on any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading during the calendar month in which such transfer is deemed to occur pursuant to Section 6.2(g) without regard to the actual price paid by such transferee.

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

SECTION 9.3 *Tax Controversies.* Subject to the provisions hereof, the General Partner is designated as the Tax Matters Partner (as defined in the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

SECTION 9.4 *Withholding.* Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that may be required to cause the Partnership and other Group Members to comply with any withholding requirements established under the Code or any other federal, state or local law including pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner (including by reason of Section 1446 of the Code), the General Partner may, but is not required to, treat the amount withheld as a distribution of cash pursuant to Section 6.3 in the amount of such withholding from such Partner.

### ARTICLE X ADMISSION OF PARTNERS

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

(a) By acceptance of the transfer of any Limited Partner Interests in accordance with Article IV or the acceptance of any Limited Partner Interests issued pursuant to Article V or pursuant to a merger or consolidation pursuant to Article XIV, and except as provided in Section 4.9, each transferee of, or other such Person acquiring, a Limited Partner Interest (including any nominee holder or an agent or representative acquiring such Limited Partner Interests for the account of another Person) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred or issued to such Person when any such transfer, issuance or admission is reflected in the books and records of the Partnership and such Limited Partner becomes the Record Holder of the Limited Partner Interests so transferred, (ii) shall become bound by the terms of this

Agreement, (iii) represents that the transferee has the capacity, power and authority to enter into this Agreement, (iv) grants the powers of attorney set forth in this Agreement and (v) makes the consents and waivers contained in this Agreement, all with or without execution of this Agreement by such Person. The transfer of any Limited Partner Interests and the admission of any new Limited Partner shall not constitute an amendment to this Agreement. A Person may become a Limited Partner or Record Holder of a Limited Partner Interest without the consent or approval of any of the Partners. A Person may not become a Limited Partner without acquiring a Limited Partner Interest and until such Person is reflected in the books and records of the Partnership as the Record Holder of such Limited Partner Interest. The rights and obligations of a Person who is a Non-citizen Assignee shall be determined in accordance with Section 4.9 hereof.

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

(c) 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(a).

**SECTION 10.2 Admission of Successor General Partner.** A successor General Partner approved pursuant to Section 11.1 or 11.2 or the transferee of or successor to all of the General Partner Interest (represented by General Partner Units) 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 (represented by General Partner Units) pursuant to Section 4.6, provided, however, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

**SECTION 10.3 Amendment of Agreement and Certificate of Limited Partnership.** To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary or appropriate under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership, and the General Partner may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.

## **ARTICLE XI WITHDRAWAL OR REMOVAL OF PARTNERS**

### **SECTION 11.1 Withdrawal of the General Partner.**

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

- (i) The General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners;

(ii) The General Partner transfers all of its rights as General Partner pursuant to Section 4.6;

(iii) The General Partner is removed pursuant to Section 11.2;

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

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

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

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

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on the Closing Date and ending at 12:00 midnight, Mountain Standard Time, on June 30, 2015, the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners; provided, that prior to the effective date of such withdrawal, the withdrawal is approved by Unitholders holding at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) and the General Partner delivers to the Partnership an Opinion of Counsel ("Withdrawal Opinion of Counsel") that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner or any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed); (ii) at any time after 12:00 midnight, Mountain Standard Time, on June 30, 2015, 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. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Unitholders as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 12.1. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.2.

**SECTION 11.2 *Removal of the General Partner.*** The General Partner may be removed if such removal is approved by the Unitholders holding at least 66<sup>2</sup>/3% of the Outstanding Units (including Units held by the General Partner and its Affiliates) voting as a single class. Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the Unitholders holding a majority of the outstanding Common Units voting as a class and a majority of the outstanding Subordinated Units voting as a class (including Units held by the General Partner and its Affiliates). Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.2. 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 11.2, the Departing General Partner shall have the option, exercisable prior to the effective date of the departure of such Departing General Partner, to require its successor to purchase its General Partner Interest (represented by General Partner Units) and its general partner interest (or equivalent interest), if any, in the other Group Members and all of its Incentive Distribution Rights (collectively, the "Combined Interest") in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its departure. If the General Partner is removed by the Unitholders under circumstances where Cause exists or if the General Partner withdraws under circumstances where such withdrawal violates this Agreement, and if a successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2 (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 departure 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 of the Departing General Partner. 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 Departing General Partner's 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 departure, 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 departure, 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 of the Departing General Partner. In making its determination, such third independent investment banking firm or other independent expert may consider the then current trading price of Units on any National Securities Exchange on which Units are then listed or admitted to trading, the value of the Partnership's assets, the rights and obligations of the Departing General Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing 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 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 the Percentage Interest of the Departing General Partner and 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 (represented by General Partner Units) and its Incentive Distribution Rights into Common Units or to receive cash in exchange therefor.

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 or 11.2, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

- (a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.2;
- (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 11.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a Unit Majority may elect to 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 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, unless the business of the Partnership is continued pursuant to Section 12.2, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.3) 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 year of the Partnership during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

**SECTION 12.5 *Cancellation of Certificate of Limited Partnership.*** Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the liquidation of the Partnership, the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

**SECTION 12.6 *Return of Contributions.*** The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

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

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

### **ARTICLE XIII AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE**

**SECTION 13.1 *Amendments to be Adopted Solely by the General Partner.*** Each Partner agrees that the General Partner, without the approval of any Partner, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) 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 (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect, (ii) to be necessary or appropriate to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of any class or

classes of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which 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 is otherwise contemplated by this 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, if the General Partner shall so determine, a change in the definition of "Quarter" and the dates on which distributions are to be made by the Partnership;

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

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

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

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

(j) an amendment that 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 or conveyance pursuant to Section 14.3(d); or

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

**SECTION 13.2 *Amendment Procedures.*** Except as provided in Sections 13.1 and 13.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by the General Partner; provided, however that the General Partner shall have no duty or obligation to propose any amendment to this Agreement and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to propose an amendment to the fullest extent permitted by law, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. A proposed amendment shall be effective upon its approval by the General Partner and the holders of a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments.

### SECTION 13.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Sections 13.1 and 13.2, no provision of this Agreement that establishes a percentage of Outstanding Units (including Units deemed owned by the General Partner) required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing such voting percentage unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Sections 13.1 and 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c) 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 law.

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

**SECTION 13.4 *Special Meetings.*** All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the general or specific purposes for which the special meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

**SECTION 13.5 *Notice of a Meeting.*** Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

**SECTION 13.6 *Record Date.*** For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11 the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading, in which case the rule, regulation, guideline or requirement of such National Securities Exchange shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals. If the General Partner does not set a Record Date, then (a) the Record Date for determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners shall be the close of business on the day next preceding the day on which notice is given, and (b) the Record Date for determining the Limited Partners entitled to give approvals without a meeting shall be the date the first written approval is deposited with the Partnership in care of the General Partner in accordance with Section 13.11.

**SECTION 13.7 *Adjournment.*** When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

**SECTION 13.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.*** The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

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

Partner) represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

**SECTION 13.10 *Conduct of a Meeting.*** The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

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

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

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

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



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

## **ARTICLE XIV MERGER**

**SECTION 14.1 Authority.** The Partnership may merge or consolidate with 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)), partnership, formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation ("Merger Agreement") in accordance with this Article XIV.

**SECTION 14.2 Procedure for Merger or Consolidation.** Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior 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 or consolidation of the Partnership and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership, any Limited Partner and, in declining to consent to a merger or consolidation, 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. 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:

- (a) the names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;
- (b) the name and jurisdiction of formation or organization of the business entity that is to survive the proposed merger or consolidation (the "Surviving Business Entity");
- (c) the terms and conditions of the proposed merger or consolidation;
- (d) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or general or limited partner interests, rights, securities or obligations of any 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 interests, securities or rights are to receive in exchange for, or upon conversion of their interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;
- (e) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;

(f) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of 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

(g) such other provisions with respect to the proposed merger or consolidation that the General Partner determines to be necessary or appropriate.

#### SECTION 14.3 *Approval by Limited Partners of Merger or Consolidation.*

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

(b) Except as provided in Sections 14.3(d) and 14.3(e), the Merger Agreement shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority.

(c) Except as provided in Sections 14.3(d) and 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 pursuant to Section 14.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

(d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, 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 which 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 the limited liability of any Limited Partner 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 governing instruments of the new entity provide the Limited Partners and the General Partner with the same rights and obligations as are herein contained.

(e) Additionally, notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to merge or consolidate the Partnership with or into another entity if (A) 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 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), (B) the merger or consolidation would not result in an amendment to the Partnership Agreement, other than any amendments that could be adopted pursuant to Section 13.1, (C) the Partnership is the Surviving Business Entity in such merger or consolidation, (D) 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 (E) the number of Partnership Securities to be issued by the Partnership in such merger or consolidation do not exceed 20% of the Partnership Securities Outstanding immediately prior to the effective date of such merger or consolidation.

SECTION 14.4 *Certificate of Merger.* Upon the required approval by the General Partner and the Unitholders of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

SECTION 14.5 *Amendment of Partnership Agreement.* Pursuant to Section 17-211(g) of the Delaware Act, an agreement of merger or consolidation approved in accordance with this Article XIV may (a) effect any amendment to this Agreement or (b) effect the adoption of a new partnership agreement for the Partnership if it is the Surviving Business Entity. Any such amendment or adoption made pursuant to this Section 14.5 shall be effective at the effective time or date of the merger or consolidation.

SECTION 14.6 *Effect of Merger.*

(a) At the effective time of the certificate of merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities, shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

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

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

(b) A merger or consolidation effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another.

## **ARTICLE XV RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS**

SECTION 15.1 *Right to Acquire Limited Partner Interests.*

(a) Notwithstanding any other provision of this Agreement, if at any time the General Partner and its Affiliates hold more than 80% of the total Limited Partner Interests of any class then Outstanding, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General Partner, exercisable 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 days prior to the date that the notice described in Section 15.1(b) is mailed and (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed. As used in this Agreement, (i) "Current Market Price" as of any date of any class of Limited Partner Interests means the average of the daily Closing Prices (as hereinafter defined) per Limited Partner Interest of such class for the 20 consecutive Trading Days (as hereinafter defined) immediately prior to such date; (ii) "Closing Price" for any day means the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, as reported in the principal consolidated

transaction reporting system with respect to securities listed on the principal National Securities Exchange (other than The Nasdaq Stock Market) 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 (other than The Nasdaq Stock Market), the last quoted price on such day or, if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by The Nasdaq Stock Market or such other system then in use, or, if on any such day such Limited Partner Interests of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined by the General Partner; and (iii) "Trading Day" means a day on which the principal National Securities Exchange on which such Limited Partner Interests of any class are listed is open for the transaction of business or, if Limited Partner Interests of a class are not listed on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Limited Partner Interests granted pursuant to Section 15.1(a), the General Partner shall deliver to the Transfer Agent notice of such election to purchase (the "Notice of Election to Purchase") and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited Partner Interests of such class (as of a Record Date selected by the General Partner) at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be published for a period of at least three consecutive days in at least two daily newspapers of general circulation printed in the English language and published in the Borough of Manhattan, New York. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of Certificates representing such Limited Partner Interests in exchange for payment, at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Limited Partner Interests (including any rights pursuant to Articles IV, V, VI, and XII) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) for Limited Partner Interests therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Limited Partner Interests, and such Limited Partner Interests shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the owner of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the owner of such Limited Partner Interests (including all rights as owner of such Limited Partner Interests pursuant to Articles IV, V, VI and XII).

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

## **ARTICLE XVI GENERAL PROVISIONS**

**SECTION 16.1 *Addresses and Notices.*** Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner at the address described below. Any notice, payment or report to be given or made to a Partner hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Partnership Securities at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Securities by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner 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.

**SECTION 16.2 *Further Action.*** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

**SECTION 16.3 *Binding Effect.*** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

**SECTION 16.4 *Integration.*** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**SECTION 16.5 *Creditors.*** None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

**SECTION 16.6 *Waiver.*** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

SECTION 16.7 *Counterparts.* This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Limited Partner Interest, pursuant to Section 10.1(a) without execution hereof.

SECTION 16.8 *Applicable Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

SECTION 16.9 *Invalidity of Provisions.* If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

SECTION 16.10 *Consent of Partners.* Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

SECTION 16.11 *Facsimile Signatures.* The use of facsimile signatures affixed in the name and on behalf of the transfer agent and registrar of the Partnership on certificates representing Common Units is expressly permitted by this Agreement.

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GENERAL PARTNER:  
TRANSMONTAIGNE GP L.L.C.

By: /s/ ERIK B. CARLSON  
\_\_\_\_\_  
Name: Erik B. Carlson  
Title: Senior Vice President

ORGANIZATIONAL LIMITED PARTNER:  
TRANSMONTAIGNE PRODUCT SERVICES INC.

By: /s/ ERIK B. CARLSON  
\_\_\_\_\_  
Name: Erik B. Carlson  
Title: Senior Vice President

COASTAL FUELS MARKETING, INC.

By: /s/ ERIK B. CARLSON  
\_\_\_\_\_  
Name: Erik B. Carlson  
Title: Senior Vice President

MSDW BONDBOOK VENTURES INC.

By: /s/ DEBRA M. AARON  
\_\_\_\_\_  
Name: Debra M. Aaron  
Title: Vice President

LIMITED PARTNERS:  
All Limited Partners now and hereafter admitted as Limited Partners of the Partnership, pursuant to powers of attorney now and hereafter executed in favor of, and granted and delivered to the General Partner or without execution hereof pursuant to Section 10.1(a) hereof.

**EXHIBIT A**  
to the First Amended and Restated  
Agreement of Limited Partnership of  
TransMontaigne Partners L.P.  
Certificate Evidencing Common Units  
Representing Limited Partner Interests in  
TransMontaigne Partners L.P.

No.

Common Units

In accordance with Section 4.1 of the First Amended and Restated Agreement of Limited Partnership of TransMontaigne Partners L.P., as amended, supplemented or restated from time to time (the "Partnership Agreement"), TransMontaigne Partners L.P., a Delaware limited partnership (the "Partnership"), hereby certifies that (the "Holder") is the registered owner of Common Units representing limited partner interests in the Partnership (the "Common Units") transferable on the books of the Partnership, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. 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 1670 Broadway, Suite 3100, Denver, Colorado 80202. 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 TRANSMONTAIGNE PARTNERS L.P. THAT THIS SECURITY MAY NOT BE SOLD, OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED IF SUCH TRANSFER WOULD (A) VIOLATE THE THEN APPLICABLE FEDERAL OR STATE SECURITIES LAWS OR RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY WITH JURISDICTION OVER SUCH TRANSFER, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF TRANSMONTAIGNE PARTNERS L.P. UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE TRANSMONTAIGNE PARTNERS L.P. TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). TRANSMONTAIGNE GP L.L.C., THE GENERAL PARTNER OF TRANSMONTAIGNE PARTNERS L.P., MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE NECESSARY TO AVOID A SIGNIFICANT RISK OF TRANSMONTAIGNE PARTNERS L.P. BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES. THE RESTRICTIONS SET FORTH ABOVE SHALL NOT PRECLUDE THE SETTLEMENT OF ANY TRANSACTIONS INVOLVING THIS SECURITY ENTERED INTO THROUGH THE FACILITIES OF ANY NATIONAL SECURITIES EXCHANGE ON WHICH THIS SECURITY IS LISTED OR ADMITTED TO TRADING.

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



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

Dated:	TransMontaigne Partners L.P.
Countersigned and Registered by: as Transfer Agent and Registrar	By: TransMontaigne GP L.L.C., its General Partner
By:	By:
	Name:
Authorized Signature	By:
	Secretary

[Reverse of Certificate]

## ABBREVIATIONS

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

TEN COM	—	as tenants in common	UNIF GIFT MIN ACT—	_____	Custodian	_____
TEN ENT	—	as tenants by the entireties		(Cust)		(Minor)
JT TEN	—	as joint tenants with right of survivorship and not as tenants in common			under Uniform Gifts to Minors Act	
					_____	
					(State)	
			UNIF TRF MIN ACT—	_____	Custodian (until age ____)	_____
				(Cust)		(Minor)
					under Uniform Transfers to Minors Act	
					_____	
					(State)	

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

### ASSIGNMENT OF COMMON UNITS

IN TRANSMONTAIGNE PARTNERS L.P.

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 TransMontaigne Partners L.P.

Date:

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

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE17d 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.

## QuickLinks

[FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF TRANSMONTAIGNE PARTNERS L.P.](#)

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**CONTRIBUTION, CONVEYANCE  
AND ASSUMPTION AGREEMENT**

Among

TRANSMONTAIGNE PARTNERS L.P.,

TRANSMONTAIGNE GP L.L.C.,

TRANSMONTAIGNE OPERATING COMPANY L.P.,

TRANSMONTAIGNE OPERATING GP L.L.C.,

COASTAL TERMINALS L.L.C.,

RAZORBACK L.L.C.,

TPSI TERMINALS L.L.C.,

TRANSMONTAIGNE INC.,

TRANSMONTAIGNE PRODUCT SERVICES INC.,

TRANSMONTAIGNE SERVICES INC.,

and

COASTAL FUELS MARKETING, INC.

EFFECTIVE AS OF

MAY 27, 2005

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**CONTRIBUTION, CONVEYANCE  
AND ASSUMPTION AGREEMENT**

THIS CONTRIBUTION, CONVEYANCE AND ASSUMPTION AGREEMENT, dated as of May 27, 2005, is entered into by and among **TRANSMONTAIGNE PARTNERS L.P.**, a Delaware limited partnership ("**MLP**"), **TRANSMONTAIGNE GP L.L.C.**, a Delaware limited liability company ("**GP**"), **TRANSMONTAIGNE OPERATING COMPANY L.P.**, a Delaware limited partnership ("**OLP**"), **TRANSMONTAIGNE OPERATING GP L.L.C.**, a Delaware limited liability company ("**OLP GP**"), **COASTAL TERMINALS L.L.C.**, a Delaware limited liability company ("**COASTAL TERMINALS**"), **RAZORBACK L.L.C.**, a Delaware limited liability company ("**RAZORBACK**"), **TPSI TERMINALS L.L.C.**, a Delaware limited liability company ("**TPSI TERMINALS**"), **TRANSMONTAIGNE INC.**, a Delaware corporation ("**TMG**"), **TRANSMONTAIGNE PRODUCT SERVICES INC.**, a Delaware corporation ("**TPSI**"), **TRANSMONTAIGNE SERVICES INC.**, a Delaware corporation ("**TSI**"), and **COASTAL FUELS MARKETING, INC.**, a Delaware corporation ("**COASTAL FUELS**"). The parties to this agreement are collectively referred to herein as the "**Parties**." Capitalized terms used herein shall have the meanings assigned to such terms in Section 1.1.

**RECITALS**

- A. TPSI and GP have formed MLP pursuant to the Delaware Revised Uniform Limited Partnership Act (the "**Delaware Act**"), for the purpose of engaging in any business activity that is approved by GP and that lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act.
- B. In order to accomplish the objectives and purposes in the preceding recital, the following actions have been taken prior to the date hereof:
1. TPSI has formed GP, to which TPSI contributed \$1,000 in exchange for all of the member interests in GP.
  2. TPSI and GP have formed MLP, to which TPSI contributed \$980 in exchange for a 98% limited partner interest in MLP, and GP contributed \$20 in exchange for a 2% general partner interest in MLP.
  3. MLP has formed OLP GP, to which MLP contributed \$500 in exchange for all of the member interests in OLP GP.
  4. MLP and OLP GP have formed OLP, to which MLP contributed \$499.95 in exchange for a 99.999% limited partner interest in MLP, and OLP GP contributed \$.05 in exchange for a 0.001% general partner interest in OLP.
  5. Coastal Fuels has formed Coastal Terminals, to which it contributed \$1,000 in exchange for all of the member interests in Coastal Terminals.
  6. TPSI has formed Razorback, to which it contributed \$1,000 in exchange for all of the member interests in Razorback.
  7. TPSI has formed TPSI Terminals, to which it contributed \$1,000 in exchange for all of the member interests in TPSI Terminals.
  8. TPSI has conveyed its member interests in GP to TSI in exchange for \$20.
- C. Concurrently with the consummation of the transactions contemplated hereby, each of the following matters shall occur:
1. Coastal Fuels will convey all of its right, title and interest in the Coastal Assets to Coastal Terminals as a capital contribution, in exchange for a continuation of Coastal Fuels' 100% member interest in Coastal Terminals and the assumption by Coastal Terminals of the Coastal Liabilities.
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2. TPSI will convey all of its right, title and interest in the Razorback Assets to Razorback as a capital contribution, in exchange for a continuation of TPSI's 100% member interest in Razorback and the assumption by Razorback of the Razorback Liabilities.
3. TPSI will convey all of its right, title and interest in the TPSI Assets to TPSI Terminals as a capital contribution, in exchange for a continuation of TPSI's 100% member interest in TPSI Terminals and the assumption by TPSI Terminals of the TPSI Liabilities.
4. Coastal Fuels will contribute 96.583% of its member interests in Coastal Terminals to MLP in exchange for (a) 502,500 Common Units, representing a 6.8% interest in MLP units, (b) 626,333 Sub Units, representing an 8.4% interest in MLP units and (c) \$91,266,000 in cash.
5. TPSI will contribute 96.583% of its member interests in each of Razorback and TPSI Terminals to MLP in exchange for (a) 2,245,933 Sub Units, representing a 30.2% interest in MLP units and (b) \$10,650,000 in cash.
6. Coastal Fuels will convey its remaining 3.417% member interest in Coastal Terminals to TPSI as a distribution.
7. TPSI will convey its 3.417% member interests in each of Coastal Terminals, Razorback and TPSI Terminals to TMG as a distribution.
8. TMG will convey its 3.417% member interests in each of Coastal Terminals, Razorback and TPSI Terminals to TSI as a capital contribution, in exchange for a continuation of TMG's 100% ownership interest in TSI.
9. TSI will contribute a 1.525% member interest in each of Coastal Terminals, Razorback and TPSI Terminals to MLP in exchange for 120,000 Common Units, representing a 1.6% interest in MLP units.
10. TSI will contribute its remaining 1.892% member interest in each of Coastal Terminals, Razorback and TPSI Terminals to GP as a capital contribution, in exchange for a continuation of TSI's 100% member interest in GP.
11. GP will contribute its 1.892% member interest in each of Coastal Terminals, Razorback and TPSI Terminals to MLP in exchange for (a) a continuation of its 2% general partner interest in MLP, represented by 148,873 General Partner Units and (b) the issuance of the IDRs.
12. MSDW will contribute \$7,944,750 in cash to MLP in exchange for 450,000 Sub Units, representing a 6.0% interest in MLP units.
13. The public, through the Underwriters, will contribute \$71,690,000 in cash to MLP, less the Underwriters' structuring fee and spread of \$5,018,300, in exchange for 3,350,000 Common Units representing a 45.0% interest in MLP units.
14. MLP will borrow \$31,500,000 under a new credit facility through OLP.
15. MLP will pay transaction expenses and deferred debt issuance expenses associated with the transactions contemplated by this Agreement in the amount of approximately \$3,200,000 (exclusive of the Underwriters' structuring fee and spread) and \$1,000,000, respectively.
16. MLP will convey all of its member interests in Coastal Terminals, Razorback and TPSI Terminals to OLP as a capital contribution (99.999% for itself and 0.001% on behalf of OLP GP).
17. The organizational documents of the Parties will be amended and restated as necessary to reflect the applicable matters set forth above and as contained in this Agreement.

NOW, THEREFORE, in consideration of their mutual undertakings and agreements hereunder, the Parties undertake and agree as follows:

## ARTICLE 1 DEFINITIONS

Section 1.1 The following capitalized terms shall have the meanings given below.

- (a) "**Agreement**" shall mean this Contribution, Conveyance and Assumption Agreement.
- (b) "**Assets**" shall mean all right, title and interest of Coastal Fuels and TPSI in and to the properties and assets described as such in Exhibit A attached hereto, whether tangible or intangible, whether real, personal or mixed, whether accrued or contingent, and wherever located.
- (c) "**Coastal Assets**" shall mean that portion of the Assets comprised of or relating to the five refined petroleum product terminals owned by Coastal Fuels in Port Everglades (North), Florida; Jacksonville, Florida; Cape Canaveral, Florida; Port Manatee, Florida; and Fisher Island, Florida.
- (d) "**Coastal Fuels**" has the meaning assigned to such term in the opening paragraph of this Agreement.
- (e) "**Coastal Liabilities**" shall mean all liabilities arising out of or related to the ownership of the Coastal Assets to the extent arising or accruing on and after the Effective Time, whether known or unknown, accrued or contingent, and whether or not reflected on the books and records of Coastal Fuels or its affiliates, except the Excluded Liabilities.
- (f) "**Coastal Terminals**" has the meaning assigned to such term in the opening paragraph of this Agreement.
- (g) "**Common Unit**" has the meaning assigned to such term in the Partnership Agreement.
- (h) "**Conveyance Documents**" shall mean the documents attached hereto as Exhibit B from Coastal Fuels to Coastal Terminals, from TPSI to Razorback, and from TPSI to TPSI Terminals, each dated the date of this Agreement. Coastal Fuels and TPSI may execute and deliver multiple Conveyance Documents as desirable to expedite recording thereof in the various jurisdictions in which the Assets are located.
- (i) "**Delaware Act**" has the meaning assigned to such term in the recitals to this Agreement.
- (j) "**Effective Time**" shall mean 10:00 a.m. New York, New York time on May 27, 2005.
- (k) "**Excluded Liabilities**" shall mean the liabilities described as such in Exhibit A hereto.
- (l) "**General Partner Unit**" has the meaning assigned to such term in the Partnership Agreement.
- (m) "**GP**" has the meaning assigned to such term in the opening paragraph of this Agreement.
- (n) "**IDRs**" shall mean "Incentive Distribution Rights" as such term is defined in the Partnership Agreement.
- (o) "**MLP**" has the meaning assigned to such term in the opening paragraph of this Agreement.
- (p) "**MSDW**" means MSDW Bondbook Ventures Inc., a Delaware corporation.
- (q) "**Offering**" shall mean the initial public offering by MLP of Common Units.
- (r) "**OLP**" has the meaning assigned to such term in the opening paragraph of this Agreement.
- (s) "**OLP GP**" has the meaning assigned to such term in the opening paragraph of this Agreement.

(t) "**Parties**" has the meaning assigned to such term in the opening paragraph of this Agreement.

(u) "**Partnership Agreement**" shall mean the First Amended and Restated Agreement of Limited Partnership of TransMontaigne Partners L.P. dated as of May 27, 2005.

(v) "**Razorback**" has the meaning assigned to such term in the opening paragraph of this Agreement.

(w) "**Razorback Assets**" shall mean that portion of the Assets comprised of or relating to the refined petroleum product pipeline owned by TPSI and the connected refined petroleum product terminals located in Mt. Vernon, Missouri and Rogers, Arkansas.

(x) "**Razorback Liabilities**" shall mean all liabilities arising out of or related to the ownership of the Razorback Assets to the extent arising or accruing on and after the Effective Time, whether known or unknown, accrued or contingent, and whether or not reflected on the books and records of TPSI or its affiliates, except the Excluded Liabilities.

(y) "**Sub Unit**" shall mean "Subordinated Unit" as such term is defined in the Partnership Agreement.

(z) "**TMG**" has the meaning assigned to such term in the opening paragraph of this Agreement.

(aa) "**TPSI**" has the meaning assigned to such term in the opening paragraph of this Agreement.

(bb) "**TPSI Assets**" shall mean that portion of the Assets comprised of or relating to the two refined petroleum product terminals owned by TPSI located in Port Everglades (South), Florida and Tampa, Florida.

(cc) "**TPSI Liabilities**" shall mean all liabilities arising out of or related to the ownership of the TPSI Assets to the extent arising or accruing on and after the Effective Time, whether known or unknown, accrued or contingent, and whether or not reflected on the books and records of TPSI or its affiliates, except the Excluded Liabilities.

(dd) "**TPSI Terminals**" has the meaning assigned to such term in the opening paragraph of this Agreement.

(ee) "**TSI**" has the meaning assigned to such term in the opening paragraph of this Agreement.

(ff) "**Underwriters**" shall mean UBS Securities LLC, Citigroup Global Markets Inc., A.G. Edwards & Sons, Inc., and Wachovia Capital Markets, LLC.

## ARTICLE 2 CONTRIBUTIONS, ACKNOWLEDGMENTS AND DISTRIBUTIONS

Section 2.1 ***Contribution of Coastal Assets by Coastal Fuels to Coastal Terminals.*** Coastal Fuels hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to Coastal Terminals, its successors and assigns, for its and their own use forever, all of its right, title and interest in and to the Coastal Assets, as a capital contribution, in exchange for (a) a continuation of its 100% member interest in Coastal Terminals, (b) the assumption by Coastal Terminals of the Coastal Liabilities as provided in Section 3.1 hereof, and (c) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and Coastal Terminals hereby accepts such Coastal Assets as a contribution to the capital of Coastal Terminals. To further evidence this conveyance with respect to the real property included in the Coastal Assets, Coastal Fuels will execute and deliver the Conveyance Documents to Coastal Terminals.

TO HAVE AND TO HOLD the Coastal Assets unto Coastal Terminals, its successors and assigns, together with all and singular the rights and appurtenances thereto in any way belonging, subject, however, to the terms and conditions stated in this Agreement, forever.



Section 2.2 ***Contribution of Razorback Assets by TPSI to Razorback.*** TPSI hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to Razorback, its successors and assigns, for its and their own use forever, all of its right, title and interest in and to the Razorback Assets, as a capital contribution, in exchange for (a) a continuation of its 100% member interest in Razorback, (d) the assumption by Razorback of the Razorback Liabilities as provided in Section 3.2 hereof, and (c) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and Razorback hereby accepts such Razorback Assets as a contribution to the capital of Razorback. To further evidence this conveyance with respect to the real property included in the Razorback Assets, TPSI will execute and deliver the Conveyance Documents to Razorback.

TO HAVE AND TO HOLD the Razorback Assets unto Razorback, its successors and assigns, together with all and singular the rights and appurtenances thereto in any way belonging, subject, however, to the terms and conditions stated in this Agreement, forever.

Section 2.3 ***Contribution of TPSI Assets by TPSI to TPSI Terminals.*** TPSI hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to TPSI Terminals, its successors and assigns, for its and their own use forever, all of its right, title and interest in and to the TPSI Assets, as a capital contribution, in exchange for (a) a continuation of its 100% member interest in TPSI Terminals, (f) the assumption by TPSI Terminals of the TPSI Liabilities as provided in Section 3.3 hereof, and (c) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and TPSI Terminals hereby accepts such TPSI Assets as a contribution to the capital of TPSI Terminals. To further evidence this conveyance with respect to the real property included in the TPSI Assets, TPSI will execute and deliver the Conveyance Documents to TPSI Terminals.

TO HAVE AND TO HOLD the TPSI Assets unto TPSI Terminals, its successors and assigns, together with all and singular the rights and appurtenances thereto in any way belonging, subject, however, to the terms and conditions stated in this Agreement, forever.

Section 2.4 ***Contribution of Member Interest in Coastal Terminals by Coastal Fuels to MLP.*** Coastal Fuels hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to MLP, its successors and assigns, for its and their own use forever, a 96.583% member interest in Coastal Terminals, as a capital contribution, in exchange for (a) 502,500 Common Units, representing a 6.8% interest in MLP units, (b) 626,333 Sub Units, representing an 8.4% interest in MLP units, (c) \$91,266,000 in cash and (d) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and MLP hereby accepts such member interests in Coastal Terminals as a contribution to the capital of MLP.

Section 2.5 ***Contribution of Member Interest in Razorback and TPSI Terminals by TPSI to MLP.*** TPSI hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to MLP, its successors and assigns, for its and their own use forever, a 96.583% member interest in each of Razorback and TPSI Terminals, as a capital contribution, in exchange for (a) 2,245,933 Sub Units, representing a 30.2% interest in MLP units, (b) \$10,650,000 in cash and (c) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and MLP hereby accepts such member interests in Razorback and TPSI Terminals as a contribution to the capital of MLP.

Section 2.6 ***Distribution of Member Interests in Coastal Terminals by Coastal Fuels to TPSI.*** Coastal Fuels hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to TPSI, its successors and assigns, for its and their own use forever, a 3.417% member interest in Coastal Terminals, as a distribution.

Section 2.7 ***Distribution of Member Interests in Coastal Terminals, Razorback and TPSI Terminals by TPSI to TMG.*** TPSI hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to TMG, its successors and assigns, for its and their own use forever, a 3.417% member interest in each of Coastal Terminals, Razorback and TPSI Terminals, as a distribution.

Section 2.8 ***Contribution of Member Interests in Coastal Terminals, Razorback and TPSI Terminals by TMG to TSI.*** TMG hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to TSI, its successors and assigns, for its and their own use forever, a 3.417% member interest in each of Coastal Terminals, Razorback and TPSI Terminals, as a capital contribution, in exchange for (a) a continuation of its 100% ownership interest in TSI, and (b) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and TSI hereby accepts such member interests as a contribution to the capital of TSI.

Section 2.9 ***Contribution of Member Interests in Coastal Terminals, Razorback and TPSI Terminals by TSI to MLP.*** TSI hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to MLP, its successors and assigns, for its and their own use forever, a 1.525% member interest in each of Coastal Terminals, Razorback and TPSI Terminals, as a capital contribution, in exchange for (a) 120,000 Common Units, representing a 1.6% interest in MLP units and (b) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and MLP hereby accepts such member interests.

Section 2.10 ***Contribution of Member Interests in Coastal Terminals, Razorback and TPSI Terminals by TSI to GP.*** TSI hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to GP, its successors and assigns, for its and their own use forever, a 1.892% member interest in each of Coastal Terminals, Razorback and TPSI Terminals, as a capital contribution, in exchange for (a) a continuation of its 100% member interest in GP and (b) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and GP hereby accepts such member interests as a contribution to the capital of GP. The Parties acknowledge that the member interests so contributed have an aggregate value approximately equal to 2% of the value of MLP after the closing of the transactions contemplated by this Agreement.

Section 2.11 ***Contribution of Member Interests in Coastal Terminals, Razorback and TPSI Terminals by GP to MLP.*** GP hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to MLP, its successors and assigns, for its and their own use forever, a 1.892% member interest in each of Coastal Terminals, Razorback and TPSI Terminals, as a capital contribution, in exchange for (a) a continuation of its 2% general partner interest in MLP, represented by 148,873 General Partner Units, (h) the issuance of the IDRs, and (c) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and MLP hereby accepts the member interests as a contribution to the capital of MLP.

Section 2.12 ***MSDW Contribution.*** The Parties acknowledge a capital contribution by MSDW to MLP of \$7,944,750 in cash in exchange for 450,000 Sub Units, representing a 6.0% interest in MLP units.

Section 2.13 ***Public Cash Contribution.*** The Parties acknowledge a capital contribution by the public through the Underwriters to MLP of \$71,690,000 in cash (\$66,671,700 net to MLP after the Underwriters' spread of \$5,018,300) in exchange for 3,350,000 Common Units, representing a 45.0% interest in MLP units.

Section 2.14 ***Incurrence of Indebtedness.*** The Parties acknowledge the borrowing by MLP, through OLP, in connection the with the transactions contemplated hereby, of \$31,500,000 under a new credit facility.

Section 2.15 ***Payment of Transaction Costs by MLP.*** The Parties acknowledge the payment by MLP, in connection with the transactions contemplated hereby, of transaction expenses and deferred debt issuance costs in the amount of approximately \$3,200,000 (exclusive of the Underwriters' structuring fees and spread) and \$1,000,000, respectively.

Section 2.16 ***Contribution of Coastal Terminals, Razorback and TPSI Terminals by MLP to OLP.*** MLP hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to OLP, its

successors and assigns, for its and their own use forever, its 100% member interests in Coastal Terminals, Razorback and TPSI Terminals, as a capital contribution (99.999% for itself and 0.001% on behalf of OLP GP), in exchange for (a) a continuation of its 99.999% limited partner interest in OLP and OLP GP's 0.001% general partner interest in OLP GP, and (j) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and OLP hereby accepts such member interests in Coastal Terminals, Razorback and TPSI Terminals as a contribution to the capital of OLP.

Section 2.17 ***Exercise of the Over-Allotment Option.*** The Parties acknowledge that in the event the Underwriters exercise their over-allotment option, MLP shall use any net proceeds therefrom to redeem from Coastal Fuels a number of Common Units held by Coastal Fuels equal to the number of Common Units issued upon exercise of the over-allotment option, at a price per Common Unit equal to the net proceeds per Common Unit received by MLP after underwriting discounts and commissions but before other expenses.

### ARTICLE 3 ASSUMPTION OF CERTAIN LIABILITIES

Section 3.1 ***Assumption of Coastal Liabilities by Coastal Terminals.*** In connection with Coastal Fuels' contribution and transfer of the Coastal Assets to Coastal Terminals, Coastal Terminals hereby assumes and agrees to duly and timely pay, perform and discharge the Coastal Liabilities, to the full extent that Coastal Fuels has been heretofore or would have been in the future, were it not for the execution and delivery of this Agreement, obligated to pay, perform and discharge the Coastal Liabilities; provided, however, that said assumption and agreement to duly and timely pay, perform and discharge the Coastal Liabilities shall not increase the obligation of Coastal Terminals with respect to the Coastal Liabilities beyond that of Coastal Fuels, waive any valid defense that was available to Coastal Fuels with respect to any Coastal Liabilities or enlarge the rights or remedies of any third party, if any, under any of the Coastal Liabilities. This assumption shall inure to the benefit of Coastal Fuels, its shareholders, officers, directors, employees and agents.

Section 3.2 ***Assumption of Razorback Liabilities by Razorback.*** In connection with TPSI's contribution and transfer of the Razorback Assets to Razorback, Razorback hereby assumes and agrees to duly and timely pay, perform and discharge the Razorback Liabilities, to the full extent that TPSI has been heretofore or would have been in the future, were it not for the execution and delivery of this Agreement, obligated to pay, perform and discharge the Razorback Liabilities; provided, however, that said assumption and agreement to duly and timely pay, perform and discharge the Razorback Liabilities shall not increase the obligation of Razorback with respect to the Razorback Liabilities beyond that of TPSI, waive any valid defense that was available to TPSI with respect to any Razorback Liabilities or enlarge the rights or remedies of any third party, if any, under any of the Razorback Liabilities. This assumption shall inure to the benefit of TPSI, its shareholders, officers, directors, employees and agents.

Section 3.3 ***Assumption of TPSI Liabilities by TPSI Terminals.*** In connection with TPSI's contribution and transfer of the TPSI Assets to TPSI Terminals, TPSI Terminals hereby assumes and agrees to duly and timely pay, perform and discharge the TPSI Liabilities, to the full extent that TPSI has been heretofore or would have been in the future, were it not for the execution and delivery of this Agreement, obligated to pay, perform and discharge the TPSI Liabilities; provided, however, that said assumption and agreement to duly and timely pay, perform and discharge the TPSI Liabilities shall not increase the obligation of TPSI Terminals with respect to the TPSI Liabilities beyond that of TPSI, waive any valid defense that was available to TPSI with respect to any TPSI Liabilities or enlarge the rights or remedies of any third party, if any, under any of the TPSI Liabilities. This assumption shall inure to the benefit of TPSI, its shareholders, officers, directors, employees and agents.

**ARTICLE 4**  
**TITLE MATTERS**

**Section 4.1 *Encumbrances.***

(a) The contribution and conveyance (by operation of law or otherwise) of the Assets as reflected in this Agreement are made expressly subject to all recorded and unrecorded liens, encumbrances, agreements, defects, restrictions, adverse claims and all laws, rules, regulations, ordinances, judgments and orders of governmental authorities or tribunals having or asserting jurisdiction over the Assets and operations conducted thereon or in connection therewith, in each case to the extent the same are valid, enforceable and affect the Assets, including all matters that a current survey or visual inspection of the Assets would reflect.

(b) To the extent that certain jurisdictions in which the Assets are located may require that documents be recorded in order to evidence the transfers of title reflected in this Agreement, then the provisions set forth in Section 4.1(a) immediately above shall also be applicable to the conveyances under such documents.

**Section 4.2 *Disclaimer of Warranties; Subrogation; Waiver of Bulk Sales Laws.***

(a) THE PARTIES ACKNOWLEDGE AND AGREE THAT NONE OF THE PARTIES HAS MADE, DOES NOT MAKE, AND EACH SUCH PARTY SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR WRITTEN, PAST OR PRESENT, REGARDING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE ASSETS, INCLUDING THE WATER, SOIL, GEOLOGY OR ENVIRONMENTAL CONDITION OF THE ASSETS GENERALLY OR THE PRESENCE OR LACK OF HAZARDOUS SUBSTANCES OR OTHER MATTERS ON THE ASSETS, (B) THE INCOME TO BE DERIVED FROM THE ASSETS, (C) THE SUITABILITY OF THE ASSETS FOR ANY AND ALL ACTIVITIES AND USES THAT MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF OR BY THE ASSETS OR THEIR OPERATION WITH ANY LAWS (INCLUDING ANY ZONING, ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS), OR (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE ASSETS. THE PARTIES ACKNOWLEDGE AND AGREE THAT EACH HAS HAD THE OPPORTUNITY TO INSPECT THE RESPECTIVE ASSETS, AND EACH IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE RESPECTIVE ASSETS AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY ANY OF THE PARTIES. NONE OF THE PARTIES IS LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE ASSETS FURNISHED BY ANY AGENT, EMPLOYEE, REPRESENTATIVE, SERVANT OR THIRD PARTY. EACH OF THE PARTIES ACKNOWLEDGES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CONTRIBUTION OF THE ASSETS AS PROVIDED FOR HEREIN IS MADE IN AN "AS IS", "WHERE IS" CONDITION WITH ALL FAULTS, AND THE ASSETS ARE CONTRIBUTED AND CONVEYED SUBJECT TO ALL OF THE MATTERS CONTAINED IN THIS SECTION. THIS SECTION SHALL SURVIVE SUCH CONTRIBUTION AND CONVEYANCE OR THE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED BY THE PARTIES AFTER DUE CONSIDERATION AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE ASSETS THAT MAY ARISE PURSUANT TO ANY LAW NOW OR HEREAFTER IN EFFECT, OR OTHERWISE.

(b) The contributions of the Assets made under this Agreement are made with full rights of substitution and subrogation of the respective Parties receiving such contributions, and all persons claiming by, through and under such Parties, to the extent assignable, in and to all covenants and warranties by the predecessors-in-title of the Parties contributing the Assets, and with full subrogation of all rights accruing under applicable statutes of limitation and all rights of action of warranty against all former owners of the Assets.

(c) Each of the Parties agrees that the disclaimers contained in this Section 4.2 are "conspicuous" disclaimers. Any covenants implied by statute or law by the use of the words "grant," "contribute," "bargain," "convey," "assign," "transfer," or "deliver" or any of them or any other words used in this Agreement or any exhibits hereto are hereby expressly disclaimed, waived or negated.

(d) Each of the Parties hereby waives compliance with any applicable bulk sales law or any similar law in any applicable jurisdiction in respect of the transactions contemplated by this Agreement.

## **ARTICLE 5 FURTHER ASSURANCES**

From time to time after the Effective Time, and without any further consideration, the Parties agree to execute, acknowledge and deliver all such additional deeds, assignments, bills of sale, conveyances, instruments, notices, releases, acquittances and other documents, and will do all such other acts and things, all in accordance with applicable law, as may be necessary or appropriate (a) more fully to assure that the applicable Parties own all of the properties, rights, titles, interests, estates, remedies, powers and privileges granted by this Agreement, or which are intended to be so granted, or (b) more fully and effectively to vest in the applicable Parties and their respective successors and assigns beneficial and record title to the interests contributed and assigned by this Agreement or intended so to be and to more fully and effectively carry out the purposes and intent of this Agreement.

## **ARTICLE 6 EFFECTIVE TIME**

Notwithstanding anything contained in this Agreement to the contrary, none of the provisions of Article 2 or Article 3 of this Agreement shall be operative or have any effect until the Effective Time, at which time all the provisions of Article 2 and Article 3 of this Agreement shall be effective and operative in accordance with Article 7, without further action by any Party.

## **ARTICLE 7 MISCELLANEOUS**

Section 7.1 ***Order of Completion of Transactions.*** The transactions provided for in Article 2 of this Agreement shall be completed immediately following the Effective Time in the order set forth in Article 2. The transactions provided for in Article 3 of this Agreement shall be completed simultaneously with the transactions provided for in Article 2 of this Agreement.

Section 7.2 ***Costs.*** Except for the transaction costs set forth in Section 2.11, OLP shall pay all expenses, fees and costs, including all sales, use and similar taxes arising out of the contributions, conveyances and deliveries to be made hereunder, and shall pay all documentary, filing, recording, transfer, deed and conveyance taxes and fees required in connection therewith. In addition, OLP shall be responsible for all costs, liabilities and expenses (including court costs and reasonable attorneys' fees) incurred in connection with the implementation of any conveyance or delivery pursuant to Article 5 of this Agreement.

Section 7.3 **Headings; References; Interpretation.** All Article and Section headings in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any of the provisions hereof. The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole, including all Exhibits attached hereto, and not to any particular provision of this Agreement. All references herein to Articles, Sections and Exhibits shall, unless the context requires a different construction, be deemed to be references to the Articles and Sections of this Agreement and the Exhibits attached hereto, and all such Exhibits attached hereto are hereby incorporated herein and made a part hereof for all purposes. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa. The terms "include", "includes", "including" or words of like import shall be deemed to be followed by the words "without limitation".

Section 7.4 **Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Section 7.5 **No Third Party Rights.** The provisions of this Agreement are intended to bind the Parties as to each other and are not intended to and do not create rights in any other person or confer upon any other person any benefits, rights or remedies and no person is or is intended to be a third party beneficiary of any of the provisions of this Agreement.

Section 7.6 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement binding on the parties hereto.

Section 7.7 **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado applicable to contracts made and to be performed wholly within such state without giving effect to conflict of law principles thereof.

Section 7.8 **Severability.** If any of the provisions of this Agreement are held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid and an equitable adjustment shall be made and necessary provision added so as to give effect to the intention of the Parties as expressed in this Agreement at the time of execution of this Agreement.

Section 7.9 **Amendment or Modification.** This Agreement may be amended or modified from time to time only by the written agreement of all the Parties. Each such instrument shall be reduced to writing and shall be designated on its face as an amendment to this Agreement.

Section 7.10 **Integration.** This Agreement and the instruments referenced herein supersede all previous understandings or agreements among the Parties, whether oral or written, with respect to their subject matter. This document and such instruments contain the entire understanding of the Parties with respect to the subject matter hereof and thereof. No understanding, representation, promise or agreement, whether oral or written, is intended to be or shall be included in or form part of this Agreement unless it is contained in a written amendment hereto executed by the parties hereto after the date of this Agreement.

Section 7.11 **Deed; Bill of Sale; Assignment.** To the extent required and permitted by applicable law, this Agreement shall also constitute a "deed," "bill of sale" or "assignment" of the assets and interests referenced herein.

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**TRANSMONTAIGNE PARTNERS L.P.**

By: TransMontaigne GP L.L.C., its general partner

/s/ ERIK B. CARLSON

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Name: Erik B. Carlson  
Title: Senior Vice President

**TRANSMONTAIGNE GP L.L.C.**

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**TRANSMONTAIGNE OPERATING COMPANY L.P.**

By: TransMontaigne Operating GP L.L.C., its general partner

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**TRANSMONTAIGNE OPERATING GP L.L.C.**

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**COASTAL TERMINALS L.L.C.**

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**RAZORBACK L.L.C.**

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**TPSI TERMINALS L.L.C.**

/s/ ERIK B. CARLSON

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Name: Erik B. Carlson  
Title: Senior Vice President

**TRANSMONTAIGNE INC.**

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**TRANSMONTAIGNE PRODUCT SERVICES INC.**

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**TRANSMONTAIGNE SERVICES INC.**

/s/ ERIK B. CARLSON

---

Name: Erik B. Carlson  
Title: Senior Vice President

**COASTAL FUELS MARKETING, INC.**

/s/ ERIK B. CARLSON

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Name: Erik B. Carlson  
Title: Senior Vice President



QuickLinks

[CONTRIBUTION, CONVEYANCE AND ASSUMPTION AGREEMENT](#)

**TRANSMONTAIGNE SERVICES INC.  
LONG-TERM INCENTIVE PLAN**

1. *Plan.* The TransMontaigne Services Inc. Long-Term Incentive Plan (the "Plan") was adopted by TransMontaigne Services Inc. (the "Company") to reward certain employees, consultants and directors of the Company and the Company's Affiliates who perform services for TransMontaigne Partners L.P. (the "Partnership") or its Affiliates by enabling them to acquire Units of the Partnership and/or through the provision of cash payments.

2. *Objectives.* This Plan is designed to enhance the ability of the Company and its Affiliates to attract and retain employees, directors and consultants whose services are key to the growth and profitability of the Partnership and its Affiliates, to encourage the sense of proprietorship among such persons and to stimulate the active interest of such persons in the development and financial success of the Partnership and its Affiliates. These objectives are to be accomplished by making Awards under this Plan and thereby providing Participants with a proprietary interest in the growth and performance of the Partnership.

3. *Definitions.* As used herein, the terms set forth below shall have the following respective meanings:

"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.

"Award" means the grant of any Option, Unit Appreciation Right, Restricted Unit or Phantom Unit, whether granted singly, in combination or in tandem, to a Participant pursuant to such applicable terms, conditions and limitations as the Committee may establish in order to fulfill the objectives of the Plan.

"Award Agreement" means any written agreement between the Company and a Participant setting forth the terms, conditions and limitations applicable to an Award.

"Board" means the Board of Directors of the General Partner.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Committee" means the Board, the Compensation Committee of the Board or such other committee of the Board as is designated by the Board to administer the Plan.

"Company" means TransMontaigne Services Inc.

"Consultant" means an individual, other than an Employee or a Non-Employee Director, providing bona fide services to the Partnership, the Company or any of their Affiliates as a consultant or advisor, as applicable, provided that such individual is a natural person and that such services are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for any securities of the Partnership.

"Distribution Equivalents" means a contingent right, granted in tandem with a specific Phantom Unit, to receive an amount in cash equal to the cash distributions made by the Partnership with respect to a Unit during the Restriction Period applicable to the Phantom Unit.

"Employee" means an employee of the General Partner, the Company, the Partnership or any of their Affiliates who performs services for the Company or for the Partnership and its Affiliates.

"Fair Market Value" means, as of any date and in respect of any Units, the closing sales price of a Unit on the applicable date (or, if there is no trading in the Units on such date, the closing sales price

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on the last date the Units were traded) as reported in The Wall Street Journal (or other reporting service approved by the Committee). In the event Units are not publicly traded at the time a determination of Fair Market Value is required to be made hereunder, the determination of Fair Market Value shall be made in good faith by the Committee.

"General Partner" means TransMontaigne GP L.L.C.

"Non-Employee Director" means an individual, other than an Employee or Consultant, serving as a member of the Board of Directors of the General Partner or the Company.

"Option" means a right to purchase a specified number of Units at a specified price.

"Participant" means an Employee, Consultant or Non-Employee Director to whom an Award has been made under this Plan.

"Partnership" means TransMontaigne Partners L.P.

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

"Phantom Unit" means a phantom (notional) unit granted under the Plan which upon vesting entitles the Participant to receive a Unit or, subject to compliance with Section 17, an amount of cash equal to the Fair Market Value of a Unit, whichever is determined by the Committee.

"Restricted Unit" means any Unit that is subject to such restrictions or forfeiture provisions as are established by the Committee.

"Restriction Period" means a period of time established by the Committee during which an Award remains subject to forfeiture or is not exercisable by the Participant.

"Unit" means a common unit of the Partnership.

"Unit Appreciation Right" means a right to receive a payment, in Units, cash or a combination thereof as determined by the Committee, equal to the excess of the Fair Market Value or other specified valuation of a specified number of Units on the date the right is exercised over a specified strike price, in each case, as determined by the Committee.

4. *Participation.* Individuals eligible to participate and receive Awards under the Plan are those Employees, Consultants and Non-Employee Directors selected by the Committee in its discretion.

5. *Units Available for Awards.* Subject to the provisions of paragraph 14 hereof, initially there shall be available for Awards under this Plan, granted wholly or partly in Units (including rights or options that may be exercised for or settled in Units), 200,000 Units, which amount shall automatically increase on January 1 of each calendar year by two percent of the total number of common and subordinated units of the Partnership outstanding at the end of the Partnership's preceding fiscal year. Any Units delivered pursuant to an Award shall consist, in whole or in part, of Units acquired in the open market, from any Affiliate, the Company, the Partnership or any other Person, or any combination of the foregoing, as determined by the Committee in its discretion. The number of Units that are the subject of Awards under this Plan, that are cancelled, forfeited, terminated or expire unexercised, shall again immediately become available for Awards hereunder. The number of Units reserved for issuance under the Plan shall be reduced only to the extent that Units are actually issued in connection with the exercise or settlement of an Award. The Committee may from time to time adopt and observe such procedures concerning the counting of Units against the Plan maximum as it may deem appropriate. The Board and the appropriate officers of the General Partner shall from time to time take whatever actions are necessary to file any required documents with governmental

authorities, stock exchanges and transaction reporting systems to ensure that Units are available for issuance pursuant to Awards.

6. *Administration*

(a) *Authority of the Committee.* Subject to the provisions hereof, the Committee shall have full and exclusive power and authority to administer this Plan and to take all actions that are specifically contemplated hereby or are necessary or appropriate in connection with the administration hereof. The Committee shall also have full and exclusive power to interpret this Plan and to adopt such rules, regulations and guidelines for carrying out this Plan as it may deem necessary or proper, all of which powers shall be exercised in the best interests of the General Partner, the Company and the Partnership and in keeping with the objectives of this Plan. The Committee may, in its discretion, provide for the extension of the exercisability of an Award, accelerate the vesting or exercisability of an Award, eliminate or make less restrictive any restrictions contained in an Award, waive any restriction or other provision of this Plan or an Award or otherwise amend or modify an Award in any manner that is (i) not adverse to the Participant to whom such Award was granted, (ii) consented to by such Participant or (iii) authorized by paragraph 14(c) hereof; provided, however, that no such action shall permit the term of any Option to be greater than ten years from the applicable grant date. The Committee may correct any defect or supply any omission or reconcile any inconsistency in this Plan or in any Award in the manner and to the extent the Committee deems necessary or desirable to further the Plan purposes. Any decision of the Committee in the interpretation and administration of this Plan shall lie within its sole and absolute discretion and shall be final, conclusive and binding on all parties concerned.

(b) *Indemnity.* No member of the Committee or officer of the General Partner to whom the Committee has delegated authority in accordance with the provisions of paragraph 7 of this Plan shall be liable for anything done or omitted to be done by him or her, by any member of the Committee or by any officer of the General Partner in connection with the performance of any duties under this Plan, except for his or her own willful misconduct or as expressly provided by statute.

7. *Delegation of Authority.* The Committee may delegate to the Chief Executive Officer and to other senior officers of the General Partner its duties under this Plan pursuant to such conditions or limitations as the Committee may establish; provided, however, that the Chief Executive Officer may not grant Awards to, or take any action with respect to any Award previously granted to, himself, a person who is an officer subject to Rule 16b-3 of the Exchange Act, or a member of the Board.

8. *Awards.* The Committee shall determine the type or types of Awards to be made under this Plan and shall designate from time to time the Participants who are to be the recipients of such Awards. Each Award shall be embodied in an Award Agreement, which shall contain such terms, conditions and limitations as shall be determined by the Committee in its sole discretion. Awards may consist of those listed in this paragraph 8 and may be granted singly, in combination or in tandem. Awards may also be made in combination or in tandem with, in replacement of, or as alternatives to, grants or rights under this Plan or any other plan of the Partnership, the Company or any of their Affiliates, including the plan of any acquired entity; provided that, except as contemplated in paragraph 14 hereof, no Option may be issued in exchange for the cancellation of an Option with a higher exercise price nor may the exercise price of any Option be reduced. All or part of an Award may be subject to conditions established by the Committee, which may include, but are not limited to, continuous service with the Partnership, the Company and/or their Affiliates, achievement of specific business objectives, increases in specified indices, attainment of specified growth rates and other comparable measurements of performance. Upon the termination of employment by a Participant who is an Employee or upon the termination of service by a Participant who is a Consultant or a

Non-Employee Director, any unexercised, deferred, unvested or unpaid Awards shall be treated as set forth in the applicable Award Agreement.

(a) *Options.* An Award may be in the form of an Option. The price at which Units may be purchased upon the exercise of an Option shall be not less than the Fair Market Value of the Units on the date of grant. The term of an Option shall not exceed ten years from the date of grant. Subject to the foregoing provisions, the terms, conditions and limitations applicable to any Options awarded pursuant to this Plan, including the term of any Options and the date or dates upon which they become exercisable, shall be determined by the Committee.

(b) *Unit Appreciation Rights.* An Award may be in the form of a Unit Appreciation Right. The strike price for a Unit Appreciation Right shall not be less than the Fair Market Value of the Units on the date on which the Unit Appreciation Right is granted. The term of a Unit Appreciation Right shall not exceed ten years from the date of grant. Subject to the foregoing limitations, the terms, conditions and limitations applicable to any Unit Appreciation Rights awarded pursuant to this Plan, including the term of any Unit Appreciation Rights and the date or dates upon which they become exercisable, shall be determined by the Committee.

(c) *Restricted Units.* An Award may be in the form of a Restricted Unit. The Committee shall have the authority to determine the number of Restricted Units to be granted to a Participant, the Restriction Period, the conditions under which the Restricted Units may become vested or forfeited, which may include, without limitation, accelerated vesting upon the achievement of specified performance objectives, and such other terms and conditions as the Committee may establish with respect to such Awards, including whether cash distributions with respect to such Restricted Units are subject to forfeiture restrictions.

(d) *Phantom Units.* An Award may be in the form of Phantom Units. The Committee shall have the authority to determine the number of Phantom Units to be granted to a Participant, the Restriction Period, the conditions under which the Phantom Units may become vested or forfeited, which may include, without limitation, accelerated vesting upon the achievement of specified performance objectives, and such other terms and conditions as the Committee may establish with respect to such Awards, including whether Distribution Equivalents are granted with respect to such Phantom Units.

9. *Award Payment and Distributions.*

(a) *General.* Payment of Awards may be made in the form of cash or Units, or a combination thereof, and may include such restrictions as the Committee shall determine, including, in the case of Units, restrictions on transfer and forfeiture provisions. Notwithstanding anything in the Plan or any Award Agreement to the contrary, delivery of Units pursuant to the exercise or vesting of an Award may be deferred for any period during which, in the good faith determination of the Committee, the Company or the General Partner, as applicable, is not reasonably able to obtain Units to deliver pursuant to such Award without violating the rules or regulations of any applicable law or securities exchange. If payment of an Award is made in the form of Restricted Units, the applicable Award Agreement relating to such Units shall specify whether certificates evidencing such Units are to be issued at the beginning or end of the Restriction Period. In the event that certificates are to be issued at the beginning of the Restriction Period, the certificates evidencing such Units (to the extent that such Units are so evidenced) shall contain appropriate legends and restrictions that describe the terms and conditions of the restrictions applicable thereto. In the event that Units are to be issued at the end of the Restriction Period, the right to receive such Units shall be evidenced by book entry registration or in such other manner as the Committee may determine.

(b) *Deferral.* With the approval of the Committee, amounts payable in respect of Awards may be deferred and paid either in the form of installments or as a lump-sum payment; provided, however, that if deferral is permitted, each provision of the Award shall be interpreted to permit the deferral only as allowed in compliance with the requirements of Section 409A of the Code and any provision that would conflict with such requirements shall not be valid or enforceable. The Committee intends that any Awards under the Plan satisfy the requirements of Section 409A of the Code to avoid imposition of applicable taxes thereunder. The Committee may permit selected Participants to elect to defer payments of some or all types of Awards in accordance with procedures established by the Committee. Any deferred payment of an Award, whether elected by the Participant or specified by the Award Agreement or by the Committee, may be forfeited if and to the extent that the Award Agreement so provides.

(c) *Distributions and Interest.* Rights to Distribution Equivalents or other distributions may be extended to and made part of any Award consisting of or denominated in Units, subject to such terms, conditions and restrictions as the Committee may establish. The Committee may also establish rules and procedures for the crediting of interest on deferred cash payments and Distribution Equivalents for Awards consisting of or denominated in Units.

(d) *Consideration.* Awards may be granted for such consideration as the Committee determines, including, without limitation, service or such minimal cash consideration as may be required by applicable law.

10. *Option Exercise.* The price at which Units may be purchased under an Option shall be paid in full at the time of exercise in cash or, if elected by the Participant and approved by the Committee, the Participant may purchase such Units by means of tendering Units already owned or surrendering another Award, including Restricted Units, valued at Fair Market Value on the date of exercise, or any combination thereof. The Committee shall determine acceptable conditions and methods for Participants to tender Units or other Awards. The Committee may provide for procedures to permit the exercise or purchase of such Awards by use of the proceeds to be received from the sale of Units issuable pursuant to an Award. Unless otherwise provided in the applicable Award Agreement, in the event Restricted Units are tendered as consideration for the exercise of an Option, a number of the Units issued upon the exercise of the Option equal to the number of Restricted Units used as consideration therefor shall be subject to the same restrictions as the Restricted Units so submitted as well as any additional restrictions that may be imposed by the Committee.

11. *Taxes.* The Company shall have the right to deduct applicable taxes from any Award payment and withhold, at the time of delivery or vesting of cash or Units under this Plan, an appropriate amount of cash or number of Units or a combination thereof for payment of taxes required by law or to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for withholding of such taxes. The Committee may also permit withholding to be satisfied by the transfer to the Company, the General Partner or any Affiliate of Units theretofore owned by the holder of the Award with respect to which withholding is required. If Units are used to satisfy tax withholding, such Units shall be valued based on the Fair Market Value when the tax withholding is required to be made.

12. *Amendment, Modification, Suspension or Termination.* Except as required by applicable law or the rules of the principal securities exchange on which the Units are traded, the Board of Directors of the Company may, subject to ratification by the Board, amend, modify, suspend or terminate this Plan for the purpose of meeting or addressing any changes in legal requirements or for any other purpose permitted by law including increasing the number of Units available for Awards under the Plan without the consent of any partner, Participant, other holder or beneficiary of an Award or other Person; provided, however, that no amendment or alteration that would adversely affect the rights of any

Participant under any Award previously granted to such Participant shall be made without the consent of such Participant.

The Committee may waive any conditions or rights under, amend any terms of, or alter any Award theretofore granted, provided no change in any Award shall materially reduce the benefit to a Participant without the consent of such Participant.

13. *Assignability.* Unless otherwise determined by the Committee in the Award Agreement, no Award or any other benefit under this Plan shall be assignable or otherwise transferable. Any attempted assignment of an Award or any other benefit under this Plan in violation of this paragraph 13 shall be null and void.

14. *Adjustments.*

(a) The existence of outstanding Awards shall not affect in any manner the right or power of the General Partner to make or authorize any or all distributions, adjustments, recapitalizations, reorganizations or other changes in the Units or other interests in the Partnership or its business or any merger or consolidation of the Partnership, or any issue of bonds or debentures or the dissolution or liquidation of the Partnership, or any sale or transfer of all or any part of its assets or business, or any other act or proceeding of any kind, whether or not of a character similar to that of the acts or proceedings enumerated above.

(b) If the Committee determines that any distribution (whether in the form of cash, Units, other securities, or other property), re-capitalization, split, reverse split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Units or other securities of the Partnership, issuance of warrants or other rights to purchase Units or other securities of the Partnership, or other similar transaction or event affects the Units such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of:

(i) the number and type of Units (or other securities or property) with respect to which Awards may be granted;

(ii) the number and type of Units (or other securities or property) subject to outstanding Awards; and

(iii) if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award; provided, that the number of Units subject to any Award will always be a whole number.

(c) The Committee is hereby authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of unusual or nonrecurring events (including, without limitation, the events described in Section 14(b) of the Plan) affecting the Partnership or the financial statements of the Partnership, or of changes in applicable laws, regulations, or accounting principles, whenever the Committee determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

15. *Restrictions.* No Units or other form of payment shall be issued with respect to any Award unless the Company shall be satisfied based on the advice of its counsel that such issuance will be in compliance with applicable federal and state securities laws. Certificates evidencing Units delivered under this Plan (to the extent that Units are so evidenced) may be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any securities exchange or transaction reporting system upon which the Units are then listed or to which it is admitted for quotation and any

applicable federal or state securities law. The Committee may cause a legend or legends to be placed upon such certificates (if any) to make appropriate reference to such restrictions.

16. *Unfunded Plan.* Insofar as it provides for Awards of cash, Units or rights thereto, this Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Participants who are entitled to cash, Units or rights thereto under this Plan, any such accounts shall be used merely as a bookkeeping convenience. The Company shall not be required to segregate any assets that may at any time be represented by cash, Units or rights thereto, nor shall this Plan be construed as providing for such segregation, nor shall the Company, the Board or the Committee be deemed to be a trustee of any cash, Units or rights thereto to be granted under this Plan. Any liability or obligation of the Company to any Participant with respect to an Award of cash, Units or rights thereto under this Plan shall be based solely upon any contractual obligations that may be created by this Plan and any Award Agreement, and no such liability or obligation of the Company shall be deemed to be secured by any pledge or other encumbrance on any property of the Company. Neither the Company nor the Board nor the Committee shall be required to give any security or bond for the performance of any obligation that may be created by this Plan.

17. *Code Section 409A.* Notwithstanding anything in this Plan to the contrary, if any Plan provision or Award under the Plan would result in the imposition of an applicable tax under Code Section 409A and related regulations and Treasury pronouncements ("Section 409A"), that Plan provision or Award will be reformed to avoid imposition of the applicable tax and no action taken to comply with Section 409A shall be deemed to adversely affect the Participant's rights to an Award or to require the Participant's consent.

18. *Severability.* If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, Person or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

19. *No Fractional Units.* No fractional Units shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities, or other property shall be paid or transferred in lieu of any fractional Units or whether such fractional Units or any rights thereto shall be canceled, terminated, or otherwise eliminated.

20. *Facility Payment.* Any amounts payable hereunder to any person under legal disability or who, in the judgment of the Committee, is unable to properly manage his financial affairs, may be paid to the legal representative of such person, or may be applied for the benefit of such person in any manner which the Committee may select, and the Company shall be relieved of any further liability for payment of such amounts.

21. *Governing Law.* This Plan and all determinations made and actions taken pursuant hereto, to the extent not otherwise governed by mandatory provisions of the Code or the securities laws of the United States, shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of such state or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than such state.

22. *Effectiveness.* This Plan shall be effective on the date it is ratified by the Board following its adoption by the Board of Directors of the Company, and shall continue until the first to occur of the date the Plan is terminated, the date Units are no longer available for grants of Awards under the Plan, or the date that is ten years after the initial adoption of the Plan.



IN WITNESS WHEREOF, TransMontaigne Services Inc. has caused this Plan to be executed by its duly authorized officer, effective as provided herein.

TRANSMONTAIGNE SERVICES INC.

By: /s/ RANDALL J. LARSON

Title: Executive Vice President

Date: May 27, 2005

ATTEST: Erik B. Carlson

DATE: May 27, 2005

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[TRANSMONTAIGNE SERVICES INC. LONG-TERM INCENTIVE PLAN](#)

**SUBORDINATED UNIT  
PURCHASE AGREEMENT**

**by and between**

**TRANSMONTAIGNE PARTNERS L.P.,**

**and**

**MSDW BONDBOOK VENTURES INC.**

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## SUBORDINATED UNIT PURCHASE AGREEMENT

SUBORDINATED UNIT PURCHASE AGREEMENT, dated as of May 24, 2005 (this "*Agreement*"), by and between TRANSMONTAIGNE PARTNERS L.P. ("TLP") and MSDW Bondbook Ventures Inc., (the "*Purchaser*").

In consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I. DEFINITIONS

Section 1.01 *Definitions*. As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings indicated:

"*Closing*" shall have the meaning specified in Section 2.03.

"*Closing Date*" shall have the meaning specified in Section 2.03.

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

"*Common Units*" has the meaning specified in the Partnership Agreement.

"*Delaware LLC Act*" has the meaning specified in Section 3.02(b).

"*Delaware LP Act*" has the meaning specified in Section 3.02(a).

"*Governmental Authority*" means, with respect to a particular Person, the country, state, county, city and political subdivisions in which such Person or such Person's Property is located or which exercises valid jurisdiction over any such Person or such Person's Property, and any court, agency, department, commission, board, bureau or instrumentality of any of them and any monetary authority which exercises valid jurisdiction over any such Person or such Person's Property. Unless otherwise specified, all references to Governmental Authority herein with respect to TLP means a Governmental Authority having jurisdiction over TLP, its Subsidiaries or any of their respective Properties.

"*Indemnified Party*" shall have the meaning specified in Section 5.02(c).

"*Indemnifying Party*" shall have the meaning specified in Section 5.02(c).

"*Law*" means any federal, state, local or foreign order, writ, injunction, judgment, settlement, award, decree, statute, law, rule or regulation.

"*Lien*" means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to the lien or security interest arising from a mortgage, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. For the purpose of this Agreement, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

"*Offering*" means the initial public offering of Common Units contemplated by the Registration Statement.

"*Partnership Agreement*" means the First Amended and Restated Agreement of Limited Partnership of TLP, attached as Appendix A to the Registration Statement, as the same may be amended, restated or supplemented from time to time.

"*Permits*" means, with respect to TLP or any of its Subsidiaries, any licenses, permits, variances, consents, authorizations, waivers, grants, franchises, concessions, exemptions, orders, registrations and

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approvals of Governmental Authorities or other Persons necessary for the ownership, leasing, operation, occupancy and use of its Properties and the conduct of its businesses as currently conducted.

"*Person*" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or government or any agency, instrumentality or political subdivision thereof, or any other form of entity.

"*Property*" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"*Purchase Price*" has the meaning specified in Section 2.02.

"*Purchased Units*" means 450,000 Subordinated Units to be issued and sold to the Purchaser pursuant to this Agreement.

"*Purchaser*" has the meaning specified in the introductory paragraph.

"*Purchaser Related Parties*" has the meaning specified in Section 5.02(a).

"*Registration Rights Agreement*" means the Registration Rights Agreement, to be entered into at the Closing, by and between TLP and the Purchaser in the form attached hereto as *Exhibit A*.

"*Registration Statement*" means the registration statement on Form S-1 (Registration No. 333-123219) relating to the initial public offering of Common Units, as amended when it became or becomes effective or pursuant to a post-effective amendment, including any information contained in a prospectus subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act and deemed to be part of the Registration Statement at the time of effectiveness pursuant to Rule 430A under the Securities Act, and also including any registration statement filed pursuant to Rule 462(b) under the Securities Act.

"*Representatives*" of any Person means the officers, directors, employees, agents, counsel, investment bankers and other representatives of such Person.

"*Securities Act*" means the Securities Act of 1933, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

"*Subordinated Units*" has the meaning specified in the Partnership Agreement.

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

"*TLP*" means TransMontaigne Partners L.P., a Delaware limited partnership.

"*TLP Entities*" means TLP, TransMontaigne GP L.L.C., TransMontaigne Operating GP L.L.C., TransMontaigne Operating Company L.P., Coastal Terminals L.L.C., TPSI Terminals L.L.C., and Razorback L.L.C.

"TLP Material Adverse Effect" has the meaning specified in Section 3.01.

"TLP Related Parties" has the meaning specified in Section 5.02(b).

"Transaction Documents" means, collectively, this Agreement, the Registration Rights Agreement and any and all other agreements or instruments executed and delivered to the Purchaser by TLP or any Subsidiary of TLP hereunder or thereunder.

## ARTICLE II. AGREEMENT TO SELL AND PURCHASE

Section 2.01 *Authorization of Sale of Purchased Units*. TLP has authorized the issuance and sale to the Purchaser of the Purchased Units. The Purchased Units shall have those rights, preferences, privileges and restrictions governing Subordinated Units reflected in the Partnership Agreement.

Section 2.02 *Sale and Purchase*. Contemporaneously with the consummation of the Offering and subject to the terms and conditions hereof, at the Closing TLP hereby agrees to issue and sell to the Purchaser, and the Purchaser hereby agrees to purchase from TLP, the Purchased Units, and the Purchaser agrees to pay TLP in cash an amount per Purchased Unit equal to 82.5% of the initial public offering price of each Common Unit to be sold in the Offering (such aggregate amount, the "Purchase Price").

Section 2.03 *Closing*. Subject to the terms and conditions hereof, the consummation of the purchase and sale of the Purchased Units hereunder (the "Closing") shall take place contemporaneously with the consummation of the Offering (such date, the "Closing Date"), at the offices of Baker Botts L.L.P., 910 Louisiana Street, Houston, Texas 77002.

Section 2.04 *Conditions to the Closing*.

The respective obligation of each party to consummate the purchase and issuance and sale of the Purchased Units shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by a particular party on behalf of itself in writing, in whole or in part, to the extent permitted by applicable Law):

(i) no statute, rule, order, decree or regulation shall have been enacted or promulgated, and no action shall have been taken, by any Governmental Authority of competent jurisdiction which temporarily, preliminarily or permanently restrains, precludes, enjoins or otherwise prohibits the consummation of the transactions contemplated hereby or makes the transactions contemplated hereby illegal;

(ii) there shall not be pending any suit, action or proceeding by any Governmental Authority seeking to restrain, preclude, enjoin or prohibit the transactions contemplated by this Agreement;

(iii) the representations and warranties of the other party contained in this Agreement shall be true and correct in all material respects both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and

(iv) the Offering shall have been consummated.

Section 2.05 *Deliveries*. At the Closing, subject to the terms and conditions hereof:

(a) TLP will deliver, or cause to be delivered, to the Purchaser the Purchased Units by delivery of certificates evidencing such Purchased Units meeting the requirements of the Partnership Agreement, all free and clear of any Liens, encumbrances or interests of any other party, and the Purchaser will make payment to TLP of the Purchase Price by wire transfer of immediately available funds to an account designated by TLP in writing; and

(b) each party will deliver executed counterparts of the Registration Rights Agreement and the Partnership Agreement.

Section 2.06 *Lock-Up*. Notwithstanding anything to the contrary in this Agreement or any other Transaction Document, the Purchaser agrees not to (i) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to purchase or otherwise dispose of or agree to dispose of, directly or indirectly, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any of the Purchased Units, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of the Purchased Units, whether any such transaction is to be settled by delivery of Common Units or Purchased Units, in cash or otherwise, or (iii) publicly announce an intention to effect any transaction specified in clause (i) or (ii), in any case prior to the date which is 180 days after the Closing Date. TLP shall not waive the provisions of this Section 2.06 without the prior consent of UBS Securities LLC.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES RELATED TO TLP**

TLP represents and warrants to the Purchaser as follows:

Section 3.01 *Existence*. Each of the TLP Entities has been duly formed and is validly existing as a limited partnership or limited liability company, as the case may be, in good standing under the laws of the State of Delaware, and is, or at the Closing Date will be, duly registered or qualified to do business and is in good standing as a foreign limited partnership or limited liability company, as the case may be, in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such registration or qualification, except where the failure to be so registered or qualified and in good standing would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, properties, financial condition, results of operation or prospects of the TLP Entities taken as a whole (a "*TLP Material Adverse Effect*"). Each of the TLP Entities has all limited partnership or limited liability company, as the case may be, power and authority necessary to own or lease its properties currently owned or leased or to be owned or leased at the Closing, in each case in all material respects as described in the Registration Statement. None of the TLP Entities is in default in the performance, observance or fulfillment of any provision of, in the case of TLP, the Partnership Agreement or its Certificate of Limited Partnership or, in the case of any other TLP Entity, its respective organizational documents.

Section 3.02 *Capitalization and Valid Issuance of Purchased Units*.

(a) After the consummation of the Offering and the transactions contemplated by this Agreement, the issued and outstanding Common Units and Subordinated Units representing limited partner interests of TLP will be as described under the caption "Capitalization" in the Registration Statement. All such units and the limited partner interests represented thereby will be duly authorized and validly issued in accordance with the Partnership Agreement, and will be fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Sections 17-303 and 17-607 of the Delaware Revised Uniform Limited Partnership Act (the "*Delaware LP Act*") and as otherwise described in the Registration Statement under the caption "The partnership agreement—Limited liability").

(b) After giving effect to the Offering and the transactions contemplated by this Agreement, TLP will, directly or indirectly, own 100% of the outstanding limited liability company interests or partnership interests, as the case may be, in its Subsidiaries free and clear of all Liens (except for such restrictions as may exist under applicable Law and except for such Liens as may be imposed under TLP's or TLP's Subsidiaries' credit facilities). Such limited liability company interests or, in the case of a TLP Entity that is a limited partnership, the limited partner interests therein, as the

case may be, will be duly authorized and validly issued in accordance with the limited liability company or limited partnership agreements, as the case may be, of the respective TLP Entities, and will be fully paid (to the extent required under the applicable limited liability company agreement or limited partnership agreement) and nonassessable (except as such nonassessability may be affected by Section 18-607 of the Delaware Limited Liability Company Act (the "*Delaware LLC Act*"), in the case of a Delaware limited liability company, or Sections 17-303 and 17-607 of the Delaware LP Act in the case of a Delaware limited partnership). In the case of a TLP Entity that is a limited partnership, the general partner interests therein will be duly authorized and validly issued in accordance with the limited partnership agreements of such TLP Entity.

(c) The Subordinated Units being purchased by the Purchaser hereunder and the limited partner interests represented thereby, will be duly authorized and validly issued in accordance with the Partnership Agreement and, when issued and delivered to the Purchaser against payment therefor in accordance with the terms of this Agreement, will be fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Sections 17-303 and 17-607 of the Delaware LP Act and as otherwise described in the Registration Statement under the caption "The partnership agreement—Limited liability"), and will be free of any and all Liens and restrictions on transfer, other than restrictions on transfer under the Partnership Agreement and under applicable state and federal securities laws and other than such Liens as are created by the Purchaser. At the Closing, the Common Units issuable upon conversion of the Purchased Units, and the limited partner interests represented thereby, upon issuance in accordance with the terms of the Subordinated Units and the Partnership Agreement will be validly issued in accordance with the Partnership Agreement, fully paid (to the extent required by the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Sections 17-303 and 17-607 of the Delaware LP Act and as otherwise described in the Registration Statement under the caption "The partnership agreement—Limited liability"), and will be free of any and all Liens and restrictions on transfer, other than restrictions on transfer under the Partnership Agreement and under applicable state and federal securities laws and other than such Liens as are created by the Purchaser.

(d) The Common Units are listed on the New York Stock Exchange. The Common Units issuable upon conversion of the Purchased Units have, subject to issuance, been approved for listing on the New York Stock Exchange.

Section 3.03 *No Breach*. The execution, delivery and performance by TLP of this Agreement, the Registration Rights Agreement and all other agreements and instruments to be executed and delivered by TLP pursuant hereto or thereto or in connection with the transactions contemplated by this Agreement, the Registration Rights Agreement or any such other agreements and instruments, and compliance by TLP with the terms and provisions hereof and thereof and the issuance and sale by TLP of the Purchased Units, do not and will not (a) violate any provision of any Law or Permit having applicability to TLP or any of its Subsidiaries or any of their respective Properties, (b) conflict with or result in a violation of any provision of the Certificate of Limited Partnership or other organizational documents of TLP, or the Partnership Agreement, or any organizational documents of any of TLP's Subsidiaries, (c) require any consent, approval or notice under or result in a violation or breach of or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any contract, agreement, instrument, obligation, note, bond, mortgage, license, loan or credit agreement to which TLP or any of its Subsidiaries is a party or by which TLP or any of its Subsidiaries or any of their respective Properties may be bound, or (d) result in or require the creation or imposition of any Lien upon or with respect to any of the Properties now owned or hereafter acquired by TLP or any of its Subsidiaries; with the exception of the conflicts stated in clause (b) of this Section 3.03, except where such conflict, violation, default, breach, termination, cancellation, failure to receive consent or approval, or acceleration with respect to



the foregoing provisions of this Section 3.03 would not, individually or in the aggregate, reasonably be expected to have a TLP Material Adverse Effect.

Section 3.04 *Authority*. TLP has all necessary power and authority to execute, deliver and perform its obligations under the Transaction Documents; and the execution, delivery and performance by TLP of the Transaction Documents have been duly authorized by all necessary action on its part; and the Transaction Documents constitute the legal, valid and binding obligations of TLP, enforceable in accordance with their terms, provided, that the enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and (ii) public policy, applicable laws relating to fiduciary duties and indemnification and an implied covenant of good faith and fair dealing.

Section 3.05 *Approvals*. No authorization, consent, approval, waiver, license, qualification or written exemption from, nor any filing, declaration, qualification or registration with, any Governmental Authority or any other Person is required in connection with the execution, delivery or performance by TLP of any of the Transaction Documents, except (i) for the approvals required by the Commission and under state securities or "blue sky" laws in connection with TLP's obligations under the Registration Rights Agreement, (ii) for such consents that have been, or prior to the Closing Date will be, obtained, and (iii) for such consents that, if not obtained, would not, individually or in the aggregate, reasonably be expected to have a TLP Material Adverse Effect.

Section 3.06 *Private Placement*. Assuming the accuracy of the representations and warranties of the Purchaser contained in this Agreement, the sale and issuance of the Purchased Units to the Purchaser pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither TLP nor any authorized agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemptions.

Section 3.07 *Certain Fees*. No fees or commissions will be payable by TLP to brokers, finders, or investment bankers with respect to the sale of any of the Purchased Units or the consummation of the transactions contemplated by this Agreement.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to TLP:

Section 4.01 *Investment*. The Purchased Units are being acquired for its own account, not as a nominee or agent, and with no intention of distributing the Purchased Units or any part thereof, and the Purchaser has no present intention of selling or granting any participation in or otherwise distributing the same in any transaction in violation of the securities laws of the United States of America or any State, without prejudice, however, to the Purchaser's right at all times to sell or otherwise dispose of all or any part of the Purchased Units under a registration statement under the Securities Act and applicable state securities laws or under an exemption from such registration available thereunder. If the Purchaser should in the future decide to dispose of any of the Purchased Units, the Purchaser understands and agrees (a) that it may do so only (i) in compliance with the Securities Act and applicable state securities law, as then in effect, or (ii) in the manner contemplated by any registration statement pursuant to which such securities are being offered, and (b) that stop-transfer instructions to that effect will be in effect with respect to such securities.

Section 4.02 *Nature of Purchaser*. The Purchaser represents and warrants to, and covenants and agrees with, TLP that, (a) it is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission pursuant to the Securities Act and (b) by reason of its business and financial experience it has such knowledge, sophistication and

experience in making similar investments and in business and financial matters generally so as to be capable of evaluating the merits and risks of the prospective investment in the Purchased Units, is able to bear the economic risk of such investment and, at the present time, would be able to afford a complete loss of such investment.

Section 4.03 *Receipt of Information; Authorization*. The Purchaser acknowledges that it (a) has had access to and has reviewed the Registration Statement, and (b) has been provided a reasonable opportunity to ask questions of and receive answers from Representatives of TLP regarding matters concerning the business of TLP and its operations and financial condition.

Section 4.04 *Authority*. The Purchaser has all necessary power and authority to execute, deliver and perform its obligations under the Transaction Documents; and the execution, delivery and performance by the Purchaser of the Transaction Documents have been duly authorized by all necessary action on its part; and the Transaction Documents constitute the legal, valid and binding obligations of the Purchaser, enforceable in accordance with their terms, provided, that the enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and (ii) public policy, applicable laws relating to fiduciary duties and indemnification and an implied covenant of good faith and fair dealing.

Section 4.05 *No Breach*. The execution, delivery and performance by the Purchaser of this Agreement, the Registration Rights Agreement and all other agreements and instruments to be executed and delivered by the Purchaser pursuant hereto or thereto or in connection with the transactions contemplated by this Agreement, the Registration Rights Agreement or any such other agreements and instruments, and compliance by the Purchaser with the terms and provisions hereof and thereof and the purchase by the Purchaser of the Purchased Units, do not and will not (a) violate any provision of any Law or Permit having applicability to the Purchaser or any of its Subsidiaries or any of their respective Properties, (b) conflict with or result in a violation of any provision of the organizational documents of the Purchaser, (c) require any consent, approval or notice under or result in a violation or breach of or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any contract, agreement, instrument, obligation, note, bond, mortgage, license, loan or credit agreement to which the Purchaser or any of its Subsidiaries is a party or by which the Purchaser or any of its Subsidiaries or any of their respective Properties may be bound, or (d) result in or require the creation or imposition of any Lien upon or with respect to any of the Properties now owned or hereafter acquired by the Purchaser or any of its Subsidiaries; with the exception of the conflicts stated in clause (b) of this Section 4.05, except where such conflict, violation, default, breach, termination, cancellation, failure to receive consent or approval, or acceleration with respect to the foregoing provisions of this Section 4.05 would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Purchaser's ability to consummate the transactions contemplated by the Transaction Documents.

Section 4.06 *Restricted Securities*. The Purchaser understands that the Purchased Units it is purchasing are characterized as "restricted securities" under the federal securities laws insofar as they are being acquired from TLP in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. The Purchaser understands the nature of the Purchased Units and their limitations and subordinations as set forth in the Partnership Agreement. Specifically, the Purchaser acknowledges that the Purchased Units are subordinated to the Common Units with respect to distributions until June 30, 2008, at the earliest date, and that there is no assurance that the Purchased Units will ever cease to be so subordinated. Additionally, the Purchaser acknowledges that there is no active trading market for the Subordinated Units, including the Purchased Units.

Section 4.07 *Certain Fees*. No fees or commissions will be payable by the Purchaser to brokers, finders, or investment bankers with respect to the purchase of any of the Purchased Units or the consummation of the transactions contemplated by this Agreement.

Section 4.08 *Legend*. It is understood that the certificates evidencing the Purchased Securities may bear the following legend: "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Company that such registration is not required."

## **ARTICLE V. MISCELLANEOUS**

Section 5.01 *Interpretation and Survival of Provisions*. Article, Section, Schedule, and Exhibit references are to this Agreement, unless otherwise specified. All references to instruments, documents, contracts and agreements are references to such instruments, documents, contracts, and agreements as the same may be amended, supplemented, and otherwise modified from time to time, unless otherwise specified. The word "including" shall mean "including but not limited to." If any provision in the Transaction Documents is held to be illegal, invalid, not binding, or unenforceable, such provision shall be fully severable and the Transaction Documents shall be construed and enforced as if such illegal, invalid, not binding, or unenforceable provision had never comprised a part of the Transaction Documents, and the remaining provisions shall remain in full force and effect. The Transaction Documents have been reviewed and negotiated by sophisticated parties with access to legal counsel and shall not be construed against the drafter. The representations and warranties set forth herein shall survive for a period of six (6) months following the Closing Date regardless of any investigation made by or on behalf of TLP or the Purchaser. The covenants made in this Agreement or any other Transaction Document shall survive the closing of the transactions described herein and remain operative and in full force and effect regardless of acceptance of any of the Purchased Units and payment therefor and repayment, conversion, exercise or repurchase thereof.

### *Section 5.02 Indemnification, Costs and Expenses.*

(a) *Indemnification by TLP*. TLP agrees to indemnify the Purchaser and its officers, directors, employees and agents (collectively, "*Purchaser Related Parties*") from, and hold each of them harmless against any and all actions, suits, proceedings (including any investigations, litigation or inquiries), demands, and causes of action, and, in connection therewith, and promptly upon demand, pay or reimburse each of them for all reasonable costs, losses, liabilities, damages, or expenses of any kind or nature whatsoever, including, without limitation, the reasonable fees and disbursements of counsel and all other reasonable expenses incurred in connection with investigating, defending or preparing to defend any such matter that may be incurred by them or asserted against or involve any of them as a result of, arising out of, or in any way related to the breach of any of the representations, warranties or covenants of TLP contained herein, provided such claim for indemnification relating to a breach of a representation or warranty is made prior to the expiration of such representation or warranty.

(b) *Indemnification by the Purchaser*. The Purchaser agrees to indemnify the TLP Entities and their respective officers, directors, employees and agents (collectively, "*TLP Related Parties*") from, and hold each of them harmless against any and all actions, suits, proceedings (including any investigations, litigation, or inquiries), demands, and causes of action, and, in connection therewith, and promptly upon demand, pay or reimburse each of them for all reasonable costs, losses, liabilities, damages, or expenses of any kind or nature whatsoever, including, without limitation, the reasonable fees and disbursements of counsel and all other reasonable expenses incurred in connection with investigating, defending or preparing to defend any such matter that may be

incurred by them or asserted against or involve any of them as a result of, arising out of, or in any way related to the breach of any of the representations, warranties or covenants of the Purchaser contained herein, provided such claim for indemnification relating to a breach of the representations and warranties is made prior to the expiration of such representations and warranties.

(c) *Indemnification Procedure.* Promptly after any TLP Related Party or Purchaser Related Party (hereinafter, the "*Indemnified Party*") has received notice of any indemnifiable claim hereunder, or the commencement of any action or proceeding by a third person, which the Indemnified Party believes in good faith is an indemnifiable claim under this Agreement, the Indemnified Party shall give the indemnitor hereunder (the "*Indemnifying Party*") written notice of such claim or the commencement of such action or proceeding, but failure to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability it may have to such Indemnified Party hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure. Such notice shall state the nature and the basis of such claim to the extent then known. The Indemnifying Party shall have the right to defend and settle, at its own expense and by its own counsel, any such matter as long as the Indemnifying Party pursues the same diligently and in good faith. If the Indemnifying Party undertakes to defend or settle, it shall promptly notify the Indemnified Party of its intention to do so, and the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in all commercially reasonable respects in the defense thereof and the settlement thereof. Such cooperation shall include, but shall not be limited to, furnishing the Indemnifying Party with any books, records and other information reasonably requested by the Indemnifying Party and in the Indemnified Party's possession or control. Such cooperation of the Indemnified Party shall be at the cost of the Indemnifying Party. After the Indemnifying Party has notified the Indemnified Party of its intention to undertake to defend or settle any such asserted liability, and for so long as the Indemnifying Party diligently pursues such defense, the Indemnifying Party shall not be liable for any additional legal expenses incurred by the Indemnified Party in connection with any defense or settlement of such asserted liability; *provided, however*, that the Indemnified Party shall be entitled (i) at its expense, to participate in the defense of such asserted liability and the negotiations of the settlement thereof and (ii) if (A) the Indemnifying Party has failed to assume the defense and employ counsel or (B) if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and counsel to the Indemnified Party shall have concluded that there may be reasonable defenses available to the Indemnified Party that are different from or in addition to those available to the Indemnifying Party or if the interests of the Indemnified Party reasonably may be deemed to conflict with the interests of the Indemnifying Party, then the Indemnified Party shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the expenses and fees of such separate counsel and other expenses related to such participation to be reimbursed by the Indemnifying Party as incurred. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not settle any indemnified claim without the consent of the Indemnified Party, unless the settlement thereof imposes no liability or obligation on, and includes a complete release from liability of, the Indemnified Party.

(d) *Survival.* The parties' obligations under this Section 5.02 shall survive any termination of this Agreement.

#### Section 5.03 *No Waiver; Modifications in Writing.*

(a) *Delay.* No failure or delay on the part of any party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any

right, power, or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to a party at law or in equity or otherwise.

(b) *Specific Waiver.* Except as otherwise provided herein, no amendment, waiver, consent, modification, or termination of any provision of this Agreement or any other Transaction Document shall be effective unless signed by each of the parties hereto or thereto affected by such amendment, waiver, consent, modification, or termination. Any amendment, supplement or modification of or to any provision of this Agreement or any other Transaction Document, or any waiver of any provision of this Agreement or any other Transaction Document, shall be effective only in the specific instance and for the specific purpose for which made or given.

Section 5.04 *Binding Effect; Assignment.*

(a) *Binding Effect.* This Agreement shall be binding upon TLP, the Purchaser, and their respective successors and permitted assigns. Except as expressly provided in this Agreement, this Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement, and their respective successors and permitted assigns.

(b) *Assignment of Rights.* All or any portion of the rights and obligations of the Purchaser under this Agreement may not be transferred by the Purchaser without the written consent of TLP.

Section 5.05 *Confidentiality.* Notwithstanding anything herein to the contrary, the Purchaser shall continue to be bound by the confidentiality provisions set forth in Section 2 of that certain letter agreement dated as of May 13, 2005 by and between the parties hereto.

Section 5.06 *Communications.* All notices and demands provided for hereunder shall be in writing and shall be given by registered or certified mail, return receipt requested, telecopy, air courier guaranteeing overnight delivery or personal delivery to the following addresses:

(a) If to the Purchaser:

MSDW Bondbook Ventures Inc.  
2000 Westchester Avenue, Floor 01  
Purchase, New York 10577  
Attention: Javed Ahmed  
Facsimile: (914) 225-9301

with a copy to:

Morgan Stanley Capital Group Inc.  
2000 Westchester Avenue, Floor 01  
Purchase, New York 10577  
Attention: Herb Thornhill  
Facsimile: (914) 225-5715

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 1006  
Attention: S.K. Kang  
Facsimile: (212) 225-3999

(b) If to TLP:

1670 Broadway, 32nd Floor  
Denver, Colorado 80202-1373  
Attention: President  
Facsimile: (303) 626-8228

with a copy to:

Baker Botts L.L.P.  
910 Louisiana Street  
Houston, Texas 77002  
Attention: Joshua Davidson, Esq.  
Facsimile: (713) 229-2727

or to such other address as TLP or the Purchaser may designate in writing. All notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; upon actual receipt if sent by certified mail, return receipt requested, or regular mail, if mailed; when receipt is acknowledged, if sent via facsimile; and upon actual receipt when delivered to an air courier guaranteeing overnight delivery.

Section 5.07 *Entire Agreement*. This Agreement, the other Transaction Documents and the other agreements and documents referred to herein are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein with respect to the rights granted by TLP or any of its Affiliates or the Purchaser or any of its Affiliates set forth herein or therein. This Agreement, the other Transaction Documents and the other agreements and documents referred to herein supersede all prior agreements and understandings between the parties with respect to such subject matter.

Section 5.08 *Public Announcements*. Neither party hereto will make any public announcement or issue any press release, or disclose to any other person, any information regarding this Agreement or the subject matter hereof without the prior consent of the other party hereto, unless otherwise required by law or applicable stock exchange requirements or as may be required in TLP's filings with the Commission and in such event shall provide prompt notice thereof to the other party, together with a copy of the form of proposed disclosure.

Section 5.09 *Expenses*. Each party will bear its own expenses incident to the preparation of the Transaction Documents; provided, however, that in the event that any party institutes legal proceedings to enforce any provision hereof (including those that survive termination of this Agreement) or in remedy of any breach hereof, the prevailing party after entry of a final nonappealable order, will be entitled to recover reasonable attorneys' fees incurred in connection therewith.

Section 5.10 *Governing Law*. This Agreement will be construed in accordance with and governed by the laws of the State of New York without regard to principles of conflicts of laws.

Section 5.11 *Execution in Counterparts*. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 5.12 *Termination*.

(a) Notwithstanding anything herein to the contrary, this Agreement shall automatically terminate if the Closing shall not have occurred on or before June 30, 2005, unless the term hereof is extended by agreement of the parties hereto.

(b) In the event of the termination of this Agreement as provided in Section 5.10(a), this Agreement shall forthwith become null and void. In the event of such termination, there shall be no liability on the part of any party hereto, except as set forth in Section 5.02 of this Agreement and except with respect to the requirement to comply with the confidentiality agreement referenced in Section 5.05 in favor of TLP; provided that nothing herein shall relieve any party from any liability or obligation with respect to any willful breach of this Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto execute this Agreement, effective as of the date first above written.

**TRANSMONTAIGNE PARTNERS L.P.**

By: TRANSMONTAIGNE GP L.L.C., its general partner

By: /s/ DONALD H. ANDERSON

Name: Donald H. Anderson  
Title: Chief Executive Officer

**MSDW BONDBOOK VENTURES INC.**

By: /s/ DEBRA M. AARON

Name: Debra M. Aaron  
Title: Vice President

See Attached



QuickLinks

[SUBORDINATED UNIT PURCHASE AGREEMENT](#)

**REGISTRATION RIGHTS AGREEMENT**

by and between

**TRANSMONTAIGNE PARTNERS L.P.,**

and

**MSDW BONDBOOK VENTURES INC.**

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## REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "*Agreement*") is made and entered into as of May 27, 2005, by and between TRANSMONTAIGNE PARTNERS L.P., a Delaware limited partnership ("*TLP*"), and MSDW BONDBOOK VENTURES INC. (the "*Purchaser*").

This Agreement is made in connection with the Closing of the issuance and sale of the Purchased Units pursuant to the Subordinated Unit Purchase Agreement, dated as of the date hereof, by and between TLP and the Purchaser (the "*Purchase Agreement*"). TLP has agreed to provide the registration and other rights set forth in this Agreement for the benefit of the Purchaser pursuant to the terms of the Purchase Agreement. In consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties hereby agree as follows:

### ARTICLE I. DEFINITIONS

Section 1.01 *Definitions*. Capitalized terms used herein without definition shall have the meanings given to them in the Purchase Agreement. The terms set forth below are used herein as so defined:

"*Affiliate*" means, with respect to a specified Person, any other Person, directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, "controlling", "controlled by", and "under common control with") means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"*Conversion Units*" means the Common Units issuable upon conversion of the Purchased Units.

"*Effectiveness Period*" has the meaning specified therefor in Section 2.01(a) of this Agreement.

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

"*Holder*" means the Purchaser and any transferee or assignee of the Purchaser's rights under this Agreement pursuant to Section 2.09.

"*Included Registrable Securities*" has the meaning specified therefor in Section 2.02(a) of this Agreement.

"*Losses*" has the meaning specified therefor in Section 2.07(a) of this Agreement.

"*Managing Underwriter*" means, with respect to any Underwritten Offering, the book running lead manager of such Underwritten Offering.

"*Person*" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization, government or any agency, instrumentality or political subdivision thereof, or any other form of entity.

"*Piggyback Registration*" has the meaning specified therefor in Section 2.02(a) of this Agreement.

"*Purchase Agreement*" has the meaning specified therefor in the Recital of this Agreement.

"*Purchaser*" has the meaning specified therefor in the introductory paragraph of this Agreement.

"*Registrable Securities*" means the Conversion Units until such time as such securities cease to be Registrable Securities pursuant to Section 1.02 hereof.

"*Registration Expenses*" has the meaning specified therefor in Section 2.06(a) of this Agreement.

"*Registration Statement*" has the meaning specified therefor in Section 2.01(a) of this Agreement.

"*Selling Expenses*" has the meaning specified therefor in Section 2.06(a) of this Agreement.

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"Selling Holder" means a Holder who is selling Registrable Securities pursuant to a Registration Statement.

"Underwritten Offering" means an offering (including an offering pursuant to a Registration Statement) in which Common Units are sold to an underwriter on a firm commitment basis for reoffering to the public or an offering that is a "bought deal" with one or more investment banks.

Section 1.02 *Registrable Securities*. Any Registrable Security will cease to be a Registrable Security when (a) a Registration Statement covering such Registrable Security has been declared effective by the Commission and such Registrable Security has been sold or disposed of pursuant to such effective Registration Statement; (b) such Registrable Security has been disposed of pursuant to any section of Rule 144 (or any similar provision then in force under the Securities Act); or (c) such Registrable Security is held by TLP or one of its Subsidiaries.

## ARTICLE II. REGISTRATION RIGHTS

### Section 2.01 *Demand Registration*.

(a) *Demand Registration*. If a Holder holds Registrable Securities that it desires to sell, and if (but only if), after consultation with legal counsel, the Holder determines in good faith that there is reasonable uncertainty as to whether Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is available to enable such Holder to dispose of the number of Registrable Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then, at the option and upon the written request of the Holder (such written request to affirm that the Holder has consulted with legal counsel regarding whether Rule 144 or another exemption from registration is available), TLP shall file with the Commission as expeditiously as possible after receiving such written request, and use reasonable best efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Registrable Securities covered by such registration statement have been sold (the "*Effectiveness Period*"), a registration statement under the Securities Act (including, as provided below or as otherwise elected by TLP, a shelf registration statement permitted by Rule 415 under the Securities Act) registering the offering and sale of the number of Registrable Securities specified by the Holder ("*Registration Statement*"); provided, however, that TLP shall not be required to effect more than four registrations pursuant to this Section 2.01; and provided further, that TLP shall not be required to effect the registration of fewer than the lesser of 200,000 Registrable Securities (as adjusted to account for any split or reverse split of the Common Units) or the number of Registrable Securities currently outstanding and held by all Holders. Notwithstanding anything herein to the contrary, no Holder will be entitled to demand that any Registrable Securities be registered pursuant to this Section 2.01(a) if such Registrable Securities were outstanding at the time of any prior registration effected by TLP pursuant to this Section 2.01. If the Holders' demand registration rights will be permanently exhausted pursuant to this Section 2.01(a) following the then-current demand, then the Registration Statement for the then-current demand shall be a shelf registration statement permitted by Rule 415 under the Securities Act if so elected by the Holder.

(b) *Delay Rights*. Notwithstanding anything to the contrary contained herein, if TLP determines in good faith that any requested registration of Registrable Securities would be materially detrimental to TLP because such registration would (i) materially interfere with a significant acquisition, reorganization or other similar transaction involving TLP, (ii) require premature disclosure of material information that TLP has a bona fide business purpose for preserving as confidential or (iii) render TLP unable to comply with requirements under applicable

securities laws, then TLP shall have the right to postpone such requested registration for a period of not more than six months after receipt of the Holder's request, such right pursuant to this Section 2.01(b) not to be utilized more than once in any twelve-month period. Upon disclosure of such information or the termination of the condition described above, TLP shall provide prompt notice to the Selling Holders whose Registrable Securities were to be included in the requested registration, and shall promptly terminate any suspension of sales it has put into effect and shall take such other actions to permit registered sales of Registrable Securities as contemplated in this Agreement.

#### Section 2.02 *Piggyback Registration.*

(a) *Participation.* If TLP at any time proposes to file a registration statement with respect to an Underwritten Offering of Common Units for its own account or to register any Common Units for its own account for sale to the public in an Underwritten Offering other than (x) a registration relating solely to employee benefit plans, (y) a registration relating solely to a Rule 145 transaction, or (z) a registration on any registration form which does not permit secondary sales, does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities or would require that TLP effectuate a post-effective amendment to such registration statement to permit such Registrable Securities to be covered by the registration statement, then, as soon as practicable following the engagement of counsel to TLP to prepare the documents to be used in connection with an Underwritten Offering, TLP shall give notice of such proposed Underwritten Offering to the Holders and such notice shall offer the Holders the opportunity to include in such Underwritten Offering such number of Registrable Securities (the "*Included Registrable Securities*") as each such Holder may request in writing (a "*Piggyback Registration*"); provided, however, that TLP shall not be required to offer such opportunity to Holders if TLP has been advised by the Managing Underwriter that the inclusion of Registrable Securities for sale for the benefit of the Holders will have an adverse effect on the price or distribution of the Common Units. The notice required to be provided in this Section 2.02(a) to Holders shall be provided on a business day pursuant to Section 3.01 hereof and receipt of such notice shall be confirmed by each Holder. Each Holder shall then have seven calendar days to request inclusion of Registrable Securities in the Underwritten Offering. If no request for inclusion from a Holder is received within the specified time, such Holder shall have no further right to participate in such Piggyback Registration. If, at any time after giving written notice of its intention to undertake an Underwritten Offering and prior to the closing of such Underwritten Offering, TLP shall determine for any reason not to undertake or to delay such Underwritten Offering, TLP may, at its election, give written notice of such determination to the Selling Holders and, (x) in the case of a determination not to undertake such Underwritten Offering, shall be relieved of its obligation to sell any Included Registrable Securities in connection with such terminated Underwritten Offering, and (y) in the case of a determination to delay such Underwritten Offering, shall be permitted to delay offering any Included Registrable Securities for the same period as the delay in the Underwritten Offering. Any Selling Holder shall have the right to withdraw such Selling Holder's request for inclusion of such Selling Holder's Registrable Securities in such offering by giving written notice to TLP of such withdrawal up to and including the time of pricing of such offering.

(b) *Priority of Piggyback Registration.* If the Managing Underwriter or Underwriters of any proposed Underwritten Offering of Common Units included in a Piggyback Registration advises TLP that the total amount of Common Units which the Selling Holders and any other Persons intend to include in such offering exceeds the number which can be sold in such offering without being reasonably likely to have an adverse effect on the price or distribution of the Common Units offered or the market for the Common Units, then the Common Units to be included in such Underwritten Offering shall be reduced to equal the number of Registrable Securities that such

Managing Underwriter or Underwriters advises TLP can be sold without having such adverse effect, with such reduction to be allocated *pro rata* among the Selling Holders who have requested participation in the Piggyback Registration (based, for each such Selling Holder, on the percentage derived by dividing (A) the number of Registrable Securities proposed to be sold by such Selling Holder in such offering by (B) the aggregate number of Common Units proposed to be sold by all Selling Holders).

Section 2.03 *Underwritten Offering*.

(a) *Demand Registration*. In the event that a Selling Holder elects to dispose of Registrable Securities under a Registration Statement pursuant to an Underwritten Offering, TLP shall enter into an underwriting agreement in customary form with the Managing Underwriter or Underwriters, which shall include, among other provisions, indemnities to the effect and to the extent provided in Section 2.07, and shall take all such other reasonable actions as are requested by the Managing Underwriter in order to expedite or facilitate the registration and disposition of the Registrable Securities.

(b) *General Procedures*. In connection with any Underwritten Offering under this Agreement, TLP shall be entitled to select the Managing Underwriter or Underwriters, unless the registration is in respect of at least 450,000 Registrable Securities (as adjusted to account for any split or reverse split of the Common Units), in which case the Selling Holders shall be entitled to select the Managing Underwriter or Underwriters, subject to approval by TLP (such approval not to be unreasonably withheld). In connection with an Underwritten Offering, each Selling Holder and TLP shall be obligated to enter into an underwriting agreement which contains such representations, covenants, indemnities and other rights and obligations as are customary in underwriting agreements for firm commitment offerings of securities. No Selling Holder may participate in such Underwritten Offering unless such Selling Holder agrees to sell its Registrable Securities on the basis provided in such underwriting agreement and completes and executes all questionnaires, powers of attorney, indemnities and other documents reasonably required under the terms of such underwriting agreement. Each Selling Holder may, at its option, require that any or all of the representations and warranties by, and the other agreements on the part of, TLP to and for the benefit of such underwriters also be made to and for such Selling Holder's benefit and that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement also be conditions precedent to its obligations. No Selling Holder shall be required to make any representations or warranties to or agreements with TLP or the underwriters other than representations, warranties or agreements regarding such Selling Holder and its ownership of the securities being registered on its behalf and its intended method of distribution and any other representation required by law. If any Selling Holder disapproves of the terms of an underwriting, such Selling Holder may elect to withdraw therefrom by notice to TLP and the Managing Underwriter prior to the time of pricing of such offering.

Section 2.04 *Registration Procedures*. In connection with its obligations contained in Section 2.01, TLP will, as expeditiously as possible:

(a) prepare and file with the Commission such amendments and supplements to the Registration Statement and the prospectus used in connection therewith as may be necessary to keep the Registration Statement effective for the Effectiveness Period and as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by the Registration Statement;

(b) furnish to each Selling Holder (i) as far in advance as reasonably practicable before filing the Registration Statement or any supplement or amendment thereto, upon request, copies of reasonably complete drafts of all such documents proposed to be filed (including exhibits and each document incorporated by reference therein to the extent then required by the rules and

regulations of the Commission), and provide each such Selling Holder the opportunity to object to any information pertaining to such Selling Holder and its plan of distribution that is contained therein and make the corrections reasonably requested by such Selling Holder with respect to such information prior to filing the Registration Statement or supplement or amendment thereto, and (ii) such number of copies of the Registration Statement and the prospectus included therein and any supplements and amendments thereto as such Selling Holder may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities covered by such Registration Statement;

(c) if applicable, use its reasonable best efforts to register or qualify the Registrable Securities covered by the Registration Statement under the securities or blue sky laws of such jurisdictions as the Selling Holders or, in the case of an Underwritten Offering, the Managing Underwriter, shall reasonably request, provided that TLP will not be required to qualify generally to transact business in any jurisdiction where it is not then required to so qualify or to take any action which would subject it to general service of process in any such jurisdiction where it is not then so subject;

(d) promptly notify each Selling Holder and each underwriter, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of (i) the filing of the Registration Statement or any prospectus or prospectus supplement to be used in connection therewith, or any amendment or supplement thereto, and, with respect to such Registration Statement or any post-effective amendment thereto, when the same has become effective; and (ii) any written comments from the Commission with respect to any filing referred to in clause (i) and any written request by the Commission for amendments or supplements to the Registration Statement or any prospectus or prospectus supplement thereto;

(e) immediately notify each Selling Holder and each underwriter, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of (i) the happening of any event as a result of which the prospectus or prospectus supplement contained in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing; (ii) the issuance or threat of issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, or the initiation of any proceedings for that purpose; or (iii) the receipt by TLP of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the applicable securities or blue sky laws of any jurisdiction. Following the provision of such notice, TLP agrees to as promptly as practicable amend or supplement the prospectus or prospectus supplement or take other appropriate action so that the prospectus or prospectus supplement does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing and to take such other action as is necessary to remove a stop order, suspension, threat thereof or proceedings related thereto; in the event that TLP gives any such notice, the Effectiveness Period shall be extended by the number of days from and including the date of the giving of such notice to and including the date when (i) each Selling Holder shall have received copies of the supplemented or amended prospectus or (ii) the stop order, suspension, threat thereof or proceedings related thereto have been removed;

(f) upon request and subject to applicable confidentiality obligations, furnish to each Selling Holder copies of any and all transmittal letters or other correspondence with the Commission or any other governmental agency or self-regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to such offering of Registrable Securities;

(g) in the case of an Underwritten Offering, furnish upon request, (i) an opinion of counsel for TLP, dated the date of the closing under the underwriting agreement, and (ii) a "cold comfort" letter, dated the date of the closing under the underwriting agreement signed by the independent public accountants who have certified TLP's financial statements included or incorporated by reference into the Registration Statement, and each of the opinion and the "cold comfort" letter shall be in customary form and covering substantially the same matters with respect to the Registration Statement (and the prospectus and any prospectus supplement included therein) and as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to the underwriters in Underwritten Offerings of securities, and such other matters as such underwriters may reasonably request;

(h) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least 12 months, but not more than 18 months, beginning with the first full calendar month after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder;

(i) make available to the appropriate representatives of the Managing Underwriter and Selling Holders access to such information and TLP personnel as is reasonable and customary to enable such parties to establish a due diligence defense under the Securities Act; provided that, with respect to any representatives of the Selling Holders, TLP need not disclose any information to any such representative unless and until such representative has entered into a confidentiality agreement with TLP;

(j) cause all such Registrable Securities registered pursuant to this Agreement to be listed on each securities exchange or nationally recognized quotation system on which similar securities issued by TLP are then listed;

(k) use its reasonable best efforts to cause the Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of TLP to enable the Selling Holders to consummate the disposition of such Registrable Securities;

(l) provide a transfer agent and registrar for all Registrable Securities covered by the Registration Statement not later than the effective date thereof; and

(m) enter into customary agreements and take such other actions as are reasonably requested by the Selling Holders or the underwriters, if any, in order to expedite or facilitate the disposition of such Registrable Securities.

Each Selling Holder, upon receipt of notice from TLP of the happening of any event of the kind described in subsection (e) of this Section 2.04, shall forthwith discontinue disposition of the Registrable Securities until such Selling Holder's receipt of the copies of the supplemented or amended prospectus contemplated by subsection (e) of this Section 2.04 or until it is advised in writing by TLP that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings incorporated by reference in the prospectus, and, if so directed by TLP, such Selling Holder will, or will request the Managing Underwriter or underwriters, if any, to deliver to TLP (at TLP's expense) all copies in their possession or control, other than permanent file copies then in such Selling Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

**Section 2.05 Cooperation by Holders.** TLP shall have no obligation to include in a Registration Statement or Piggyback Registration units of a Holder who has failed to timely furnish such information which, in the opinion of counsel to TLP, is reasonably required in order for the



Section 2.06 *Expenses.*

(a) *Certain Definitions.* "Registration Expenses" means all expenses incident to TLP's performance under or compliance with this Agreement to effect the registration of Registrable Securities, and the disposition of such securities, including, without limitation, all registration, filing, securities exchange listing and NYSE fees, all registration, filing, qualification and other fees and expenses of complying with securities or blue sky laws, fees of the National Association of Securities Dealers, Inc., transfer taxes and fees of transfer agents and registrars, all word processing, duplicating and printing expenses, the fees and disbursements of counsel and independent public accountants for TLP, including the expenses of any special audits or "cold comfort" letters required by or incident to such performance and compliance, and reasonable fees and disbursements of Holders' counsel incurred in connection with the exercise of such Holders' rights hereunder, not to exceed \$100,000 per registration. In addition, TLP shall not be responsible for any "Selling Expenses," which means all underwriting fees, discounts and selling commissions allocable to the sale of the Registrable Securities.

(b) *Expenses.* TLP will pay all reasonable Registration Expenses in connection with each Registration Statement, whether or not such Registration Statement becomes effective or any sale is made pursuant to such Registration Statement. Each Selling Holder shall pay all Selling Expenses in connection with any sale of its Registrable Securities hereunder.

Section 2.07 *Indemnification.*

(a) *By TLP.* In the event of a registration of any Registrable Securities under the Securities Act pursuant to this Agreement, TLP will indemnify and hold harmless each Selling Holder thereunder, its directors and officers, and each underwriter, pursuant to the applicable underwriting agreement with such underwriter, of Registrable Securities thereunder and each Person, if any, who controls such Selling Holder or underwriter within the meaning of the Securities Act and the Exchange Act, against any losses, claims, damages, expenses or liabilities (including reasonable attorneys' fees and expenses) (collectively, "Losses"), joint or several, to which such Selling Holder or underwriter or controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Losses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse each such Selling Holder, its directors and officers, each such underwriter and each such controlling Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Loss or actions or proceedings; *provided, however*, that TLP will not be liable in any such case if and to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Selling Holder, such underwriter or such controlling Person in writing specifically for use in the Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Selling Holder or any such director, officer or controlling Person, and shall survive the transfer of such securities by such Selling Holder.

(b) *By Each Selling Holder.* Each Selling Holder agrees severally and not jointly to indemnify and hold harmless TLP, its directors and officers, and each Person, if any, who controls TLP within

the meaning of the Securities Act or of the Exchange Act to the same extent as the foregoing indemnity from TLP to the Selling Holders, but only with respect to information regarding such Selling Holder furnished in writing by or on behalf of such Selling Holder expressly for inclusion in the Registration Statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto; *provided, however*, that the liability of each Selling Holder shall not be greater in amount than the dollar amount of the proceeds (net of any Selling Expenses) received by such Selling Holder from the sale of the Registrable Securities giving rise to such indemnification.

(c) *Notice.* Promptly after receipt by an indemnified party hereunder of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party hereunder, notify the indemnifying party in writing thereof, but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party except to the extent that the failure to so notify the indemnifying party actually and materially prejudices the indemnifying party. In any action brought against any indemnified party, the indemnified party shall notify the indemnifying party of the commencement thereof. The indemnifying party shall be entitled to participate in and, to the extent it shall wish, to assume and undertake the defense thereof with counsel reasonably satisfactory to such indemnified party and, after notice from the indemnifying party to such indemnified party of its election so to assume and undertake the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 2.07 for any legal expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation and of liaison with counsel so selected; *provided, however*, that, (i) if the indemnifying party has failed to assume the defense and employ counsel or (ii) if the defendants in any such action include both the indemnified party and the indemnifying party and counsel to the indemnified party shall have concluded that there may be reasonable defenses available to the indemnified party that are different from or additional to those available to the indemnifying party, or if the interests of the indemnified party reasonably may be deemed to conflict with the interests of the indemnifying party, then the indemnified party shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the reasonable expenses and fees of such separate counsel and other reasonable expenses related to such participation to be reimbursed by the indemnifying party as incurred. Notwithstanding any other provision of this Agreement, no indemnified party shall settle any action brought against it with respect to which it is entitled to indemnification hereunder without the consent of the indemnifying party, unless the settlement thereof imposes no liability or obligation on, and includes a complete and unconditional release from all liability of, the indemnifying party.

(d) *Contribution.* If for any reason the indemnification provided for in this Section 2.07 is unavailable to an indemnified party or is insufficient to hold it harmless in respect of any Losses, then each such indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Losses as between the indemnifying party on the one hand and the indemnified party on the other, in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions which resulted in such Losses, as well as any other relevant equitable considerations; *provided, however*, that in no event shall such Selling Holder be required to contribute an aggregate amount in excess of the dollar amount of proceeds (net of Selling Expenses) received by such Selling Holder from the sale of Registrable Securities giving rise to such indemnification. The relative fault of the indemnifying party on the one hand and the indemnified party on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact has been made by, or relates to, information

supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contributions pursuant to this paragraph were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this paragraph. The amount paid by an indemnified party as a result of the Losses referred to in the first sentence of this paragraph shall be deemed to include any legal and other expenses reasonably incurred by such indemnified party in connection with investigating or defending any Loss which is the subject of this paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

(e) *Other Indemnification.* The provisions of this Section 2.07 shall be in addition to any other rights to indemnification or contribution which an indemnified party may have pursuant to law, equity, contract or otherwise.

*Section 2.08 Rule 144 Reporting.* With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Registrable Securities to the public without registration, TLP agrees to use its reasonable best efforts to:

- (a) make and keep public information regarding TLP available, as those terms are understood and defined in Rule 144 of the Securities Act, at all times from and after the date hereof;
- (b) file with the Commission in a timely manner all reports and other documents required of TLP under the Securities Act and the Exchange Act at all times from and after the date hereof; and
- (c) for so long as a Holder owns any Registrable Securities, furnish to such Holder forthwith upon request a copy of the most recent annual or quarterly report of TLP, and such other reports and documents so filed as such Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing such Holder to sell any such securities without registration.

*Section 2.09 Transfer or Assignment of Registration Rights.* The rights to cause TLP to register Registrable Securities granted to the Purchaser by TLP under this Article II may be transferred or assigned by the Purchaser to one or more transferee(s) or assignee(s) of such Registrable Securities, provided that (a) TLP is given written notice prior to any said transfer or assignment, stating the name and address of each such transferee and identifying the securities with respect to which such registration rights are being transferred or assigned, and (b) each such transferee assumes in writing responsibility for its portion of the obligations of the Purchaser under this Agreement. TLP will notify as promptly as practicable any such transferee or assignee with respect to whom a notice address is provided of TLP's receipt of any request for registration pursuant to this Agreement.

*Section 2.10 Restrictions on Public Sale by Holders of Registrable Securities.* Each Holder of Registrable Securities subject to the Registration Statement agrees not to effect any public sale or distribution of the Registrable Securities during the 90 calendar day period beginning on the date of a prospectus or prospectus supplement filed with the Commission with respect to the pricing of an Underwritten Offering, provided that the duration of the foregoing restrictions shall be no longer than the duration of the shortest restriction generally imposed by the underwriters on the officers or directors or any other unitholder of TLP on whom a restriction is imposed.

**ARTICLE III.  
MISCELLANEOUS**

Section 3.01 *Communications*. All notices and other communications provided for or permitted hereunder shall be made in writing by facsimile, courier service or personal delivery:

- (a) if to the Purchaser, at the most current addresses given by the Purchaser to TLP in accordance with the provisions of this Section 3.01, which addresses initially are, with respect to the Purchaser, the addresses set forth in the Purchase Agreement,
- (b) if to a transferee of the Purchaser, to such Holder at the address provided pursuant to Section 2.09 above, and
- (c) if to TLP, at 1670 Broadway, 32nd Floor, Denver, Colorado 80202-1373, notice of which is given in accordance with the provisions of this Section 3.01.

All such notices and communications shall be deemed to have been received at the time delivered by hand, if personally delivered; when receipt is acknowledged, if sent via facsimile or sent via Internet electronic mail; and when actually received, if sent by any other means.

Section 3.02 *Successor and Assigns*. Subject to Section 2.09, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including subsequent Holders of Registrable Securities to the extent permitted herein.

Section 3.03 *Recapitalization, Exchanges, etc. Affecting the Common Units*. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all units of TLP or any successor or assign of TLP (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for or in substitution of, the Registrable Securities, and shall be appropriately adjusted for combinations, recapitalizations and the like occurring after the date of this Agreement.

Section 3.04 *Specific Performance*. Damages in the event of breach of this Agreement by a party hereto may be difficult, if not impossible, to ascertain, and it is therefore agreed that each such Person, in addition to and without limiting any other remedy or right it may have, will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and each of the parties hereto hereby waives any and all defenses it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right will not preclude any such Person from pursuing any other rights and remedies at law or in equity which such Person may have.

Section 3.05 *Counterparts*. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 3.06 *Headings*. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 3.07 *Governing Law*. The laws of the State of New York shall govern this Agreement without regard to principles of conflict of laws.

Section 3.08 *Severability of Provisions*. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting or impairing the validity or enforceability of such provision in any other jurisdiction.

Section 3.09 *Entire Agreement*. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the rights granted by TLP set forth herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

Section 3.10 *Amendment*. This Agreement may be amended only by means of a written amendment signed by TLP and the Holders of a majority of the then outstanding Registrable Securities; *provided, however*, that no such amendment shall materially and adversely affect the rights of any Holder hereunder without the consent of such Holder.

Section 3.11 *No Presumption*. In the event any claim is made by a party relating to any conflict, omission, or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or its counsel.

Section 3.12 *Tax Year*. The Purchaser represents and warrants to TLP that its taxable year ends on November 30. The Purchaser will promptly notify TLP of any change or proposed change to its taxable year.

[The remainder of this page is intentionally left blank.]

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

**TRANSMONTAIGNE PARTNERS L.P.**

By: TRANSMONTAIGNE GP L.L.C., its general partner

By: /s/ DONALD H. ANDERSON

Name: Donald H. Anderson  
Title: Chief Executive Officer

**MSDW BONDBOOK VENTURES INC.**

By: /s/ DEBRA M. AARON

Name: Debra M. Aaron  
Title: Vice President

QuickLinks

[REGISTRATION RIGHTS AGREEMENT](#)

**SCHEDULE OF TRANSMONTAIGNE PARTNERS L.P. SIGNIFICANT SUBSIDIARIES AT JUNE 30, 2005**

Ownership of Subsidiary	Name of Subsidiary	Trade Name	State/Country of Organization
100%	TransMontaigne Operating GP L.L.C.	None	Delaware
100%	TransMontaigne Operating Company L.P.	None	Delaware
100%	Coastal Terminals L.L.C.	None	Delaware
100%	Razorback L.L.C.	None	Delaware
100%	TPSI Terminals L.L.C.	None	Delaware



QuickLinks

[SCHEDULE OF TRANSMONTAIGNE PARTNERS L.P. SIGNIFICANT SUBSIDIARIES AT JUNE 30, 2005](#)

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors and Member  
TransMontaigne GP L.L.C.:

We consent to the incorporation by reference in the registration statement (No. 333-125209) on Form S-8 of TransMontaigne Partners L.P. of our report dated September 12, 2005, relating to the consolidated balance sheets of TransMontaigne Partners L.P. and subsidiaries as of June 30, 2005 and 2004, and the related consolidated statements of operations and partners' equity, and cash flows for each of the years in the three-year period ended June 30, 2005, which appears in the June 30, 2005 annual report on Form 10-K of TransMontaigne Partners L.P.

KPMG LLP

Denver, Colorado  
September 12, 2005

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## QuickLinks

[Consent of Independent Registered Public Accounting Firm](#)

**Certification Pursuant to  
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Donald H. Anderson, Chief Executive Officer of TransMontaigne GP L.L.C., general partner of TransMontaigne Partners L.P., certify that:

1. I have reviewed this Annual Report on Form 10-K of TransMontaigne Partners L.P. for the fiscal year ended June 30, 2005;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 13, 2005

/s/ DONALD H. ANDERSON

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Donald H. Anderson  
Chief Executive Officer

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QuickLinks

[Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)

**Certification Pursuant to  
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Randall J. Larson, Chief Financial Officer of TransMontaigne GP L.L.C., general partner of TransMontaigne Partners L.P., certify that:

1. I have reviewed this Annual Report on Form 10-K of TransMontaigne Partners L.P. for the fiscal year ended June 30, 2005;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 13, 2005

/s/ RANDALL J. LARSON

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Randall J. Larson  
*Chief Financial Officer and Chief Accounting Officer*

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QuickLinks

[Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)

**Certification of Chief Executive Officer  
Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906  
of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350)**

The undersigned, the Chief Executive Officer of TransMontaigne GP L.L.C., a Delaware limited liability company and general partner of TransMontaigne Partners L.P. (the "Company"), hereby certifies that, to his knowledge on the date hereof:

- (a) the Annual Report on Form 10-K of the Company for the fiscal year ended June 30, 2005, filed on the date hereof with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ DONALD H. ANDERSON

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Donald H. Anderson  
*Chief Executive Officer*  
September 13, 2005

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## QuickLinks

[Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 \(18 U.S.C. Section 1350\)](#)

**Certification of Chief Financial Officer  
Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906  
of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350)**

The undersigned, the Chief Financial Officer of TransMontaigne GP L.L.C., a Delaware limited liability company and general partner of TransMontaigne Partners L.P. (the "Company"), hereby certifies that, to his knowledge on the date hereof:

- (a) the Annual Report on Form 10-K of the Company for the fiscal year ended June 30, 2005, filed on the date hereof with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ RANDALL J. LARSON

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Randall J. Larson  
*Chief Financial Officer and Chief Accounting Officer*  
September 13, 2005

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## QuickLinks

[Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 \(18 U.S.C. Section 1350\)](#)

Financial statement schedule—Rule 12-09.

Valuation and qualifying accounts.

YEAR ENDED JUNE 30, 2003

Column A—Description	Column B—Balance at beginning of period	Column C—Additions		Column D—Deductions	Column E—Balance at end of period
		(1)—Charged to costs and expenses	(2)—Charged to other accounts		
Allowance for doubtful accounts	\$ —	\$ —	\$ —	\$ —	\$ —

YEAR ENDED JUNE 30, 2004

Column A—Description	Column B— Balance at beginning of period	Column C—Additions		Column D—Deductions—uncollectible amounts	Column E— Balance at end of period
		(1)—Charged to costs and expenses	(2)—Charged to other accounts		
Allowance for doubtful accounts	\$ —	\$ 100,000	\$ —	\$ —	\$ 100,000

YEAR ENDED JUNE 30, 2005

Column A—Description	Column B—Balance at beginning of period	Column C—Additions		Column D—Deductions	Column E—Balance at end of period
		(1)—Charged to costs and expenses	(2)—Charged to other accounts		
Allowance for doubtful accounts	\$ 100,000	\$ 50,000	\$ —	\$ 150,000	\$ —

## QuickLinks

[Financial statement schedule—Rule 12-09.](#)