

Case No.: U-14981  
Exhibit No.: A-1  
Hearing Date: 10/18/2006

**EXECUTION COPY**

Case No.: U-14981  
Exhibit No.: A-1 (DMB-1)  
Witness: DMBaughman  
Date: August 2006  
Page: 1 of 198

**STOCK PURCHASE AGREEMENT**

**dated as of July 24, 2006**

**by and among**

**CONSUMERS ENERGY COMPANY,**

**CMS MIDLAND, INC.,**

**CMS MIDLAND HOLDINGS COMPANY**

**and**

**MCV POWER PARTNERS, INC.**

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## **SCHEDULES**

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## STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this “Agreement”), dated as of July 24, 2006, is entered into by and among Consumers Energy Company (formerly known as Consumers Power Company), a Michigan corporation (“Seller”), CMS Midland, Inc., a Michigan corporation (“CMS Midland”), CMS Midland Holdings Company, a Michigan corporation (“CMS Holdings”; each of CMS Midland and CMS Holdings is also referred to herein as a “Company” and, collectively, the “Companies”), and MCV Power Partners, Inc., a Delaware corporation (“Purchaser”). Each of Purchaser, the Companies and Seller are sometimes referred to individually herein as a “Party” and collectively as the “Parties”. Certain other terms are defined throughout this Agreement and in Section 9.2 hereof.

### WITNESSETH:

WHEREAS Seller owns all the issued and outstanding Equity Interests in (i) CMS Midland and (ii) CMS Holdings;

WHEREAS CMS Holdings is a limited partner holding a 46.3818658% equity interest in First Midland Limited Partnership, a Delaware limited partnership (the “Owner Participant”), which entered into the Trust Agreement and certain documents related thereto in respect of the sale and leaseback of a 75.46053% undivided ownership interest in the MCV Facility;

WHEREAS pursuant to the Amended and Restated Lease Agreement dated as of June 1, 1990, as amended, between the Lessor and Midland Cogeneration Venture Limited Partnership, a Michigan limited partnership (the “Partnership”), as lessee, the Lessor leases such undivided ownership interest in the MCV Facility to the Partnership;

WHEREAS CMS Midland is a general partner holding a 49% ( $\pm 0.001\%$ ) equity interest in the Partnership as set forth in the MCV Partnership Agreement;

WHEREAS prior the Closing, Seller shall effect the transactions contemplated in Schedule 1.6 of the Disclosure Letter; and

WHEREAS Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, all the CMS Holdings Shares (and indirectly the Equity Interest in CMS Midland), upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and warranties made in this Agreement and of the mutual benefits to be derived therefrom, the Parties agree as follows:

## ARTICLE I

### SALE AND PURCHASE OF SHARES

1.1 Sale and Purchase of CMS Holdings Shares. Upon the terms and subject to the conditions of this Agreement, at the Closing, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, good and valid title free and clear of any Liens except those created

by Purchaser arising out of ownership of the Shares by Purchaser, all the CMS Holdings Shares (the “Transaction”).

1.2 Purchase Price. The consideration to be paid by Purchaser in respect of the purchase of CMS Holdings Shares (and indirectly the Equity Interest in CMS Midland) shall be an amount in cash equal to Sixty Million Five Hundred Thousand DOLLARS (\$60,500,000) (the “Purchase Price”).

1.3 Closing. The closing of the Transaction (the “Closing”) shall take place at the offices of Sidley Austin LLP, 787 Seventh Avenue, New York, New York, at 10:00 a.m., local time, as soon as practicable, but in any event not later than the second (2nd) Business Day immediately following the date on which the last of the conditions contained in Article VI is fulfilled or waived (except for those conditions which by their nature can only be fulfilled at the Closing, but subject to the fulfillment or waiver of such conditions), or at such other place, time and date (the “Closing Date”) as the Parties may agree.

1.4 Closing Deliveries. At the Closing:

(a) Seller shall deliver to Purchaser one or more stock certificates evidencing the CMS Holdings Shares, duly endorsed in blank or accompanied by powers duly executed in blank in proper form for transfer.

(b) Purchaser shall pay, or cause to be paid, to Seller an amount in cash equal to the Purchase Price, for the CMS Holdings Shares so delivered by Seller, by wire transfer of immediately available funds to the bank account or accounts designated by Seller prior to the Closing and application of amounts previously delivered to Seller pursuant to Section 1.5.

(c) Seller shall deliver to Purchaser the SEPA Payment Agreement executed by Purchaser substantially in the form of Exhibit A hereto (the “SEPA Payment Agreement”).

(d) Each Party shall deliver the certificates, agreements, instruments and other documents required to be delivered by it pursuant to Article VI hereof.

1.5 Purchase Agreement Fee. Simultaneously with the execution of this Agreement and in consideration of the time expended and expense incurred by Seller and the Companies in negotiating and executing this Agreement, Purchaser shall pay to Seller an amount in cash equal to five percent (5%) of the Purchase Price (such amount, plus any interest deemed earned thereon from (and including) the date hereof to (but excluding) the Closing Date or date of earlier termination of this Agreement being referred to as the “Purchase Agreement Fee”), in each case by wire transfer of immediately available funds to the bank account or accounts that have been designated by Seller. The Purchase Agreement Fee will be deemed to earn interest at the Specified Rate. Notwithstanding any provision to the contrary contained herein, the Purchase Agreement Fee shall be nonrefundable by Seller except in the event that this Agreement is duly and validly terminated in accordance with Section 7.1(b) or Section 7.1(c) hereof or Purchaser duly and validly terminates this Agreement in accordance with Section 7.1(d) hereof, in which event Seller shall pay to Purchaser, no later than ten (10) Business Days following the effective date of such termination, an amount equal to the Purchase Agreement Fee

received by it pursuant to this Section 1.5 hereof by wire transfer of immediately available funds to the bank account or accounts designated by Purchaser. The Purchase Agreement Fee received by Seller shall be credited against (x) the Purchase Price payable to Seller at the Closing in accordance with Section 1.4 hereof or (y) if this Agreement is terminated (other than pursuant to Section 7.1(b) or 7.1(d) hereof), the Damages, if any owed by Purchaser to Seller arising out of breach of this Agreement by Purchaser. The Purchase Agreement Fee shall not be deemed to be a liquidated damages payment for any breach by Purchaser of this Agreement.

1.6 Pre-Closing Restructuring. Prior to Closing, Seller shall effect or cause to be effected the transactions contemplated in Schedule 1.6 of the Disclosure Letter. Such transactions are intended to be a “reorganization” under Section 368(a) of the Code, and the Parties agree to prepare, or cause to be prepared, their respective Tax Returns in a manner consistent with such intent.

## ARTICLE II

### WARRANTIES OF SELLER

Except as disclosed in the Disclosure Letter attached hereto as Exhibit B (the “Disclosure Letter”), Seller warrants, as to itself only, to Purchaser as follows in this Article II:

2.1 Organization and Qualification. Seller is a corporation duly formed and validly existing under the laws of Michigan, and has full corporate power and authority to own, lease and operate its assets and properties and to conduct its business as presently conducted, except where the failure to have such power and authority would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

2.2 Capitalization; Right and Title to Interests. As of the date hereof, the authorized capital stock of (i) CMS Midland consists of 100,000 shares of common stock, of which 110 shares are issued and outstanding (“CMS Midland Shares”), and (ii) CMS Holdings consists of 60,000 shares of common stock, of which 10 shares are issued and outstanding (the “CMS Holdings Shares” and, together with the CMS Midland Shares, the “Shares”). As of the date hereof, CMS Midland Shares constitutes all of the issued and outstanding Equity Interests in CMS Midland. As of the date hereof, CMS Holdings Shares constitutes all of the issued and outstanding Equity Interests in CMS Holdings. Seller is the record and beneficial holder of and has good and valid title to CMS Holdings Shares and, as of the date hereof, the CMS Midland Shares. Seller holds, and upon completion of the transactions referred to and as contemplated herein, Purchaser shall have acquired from Seller, good and valid title to the CMS Holdings Shares free and clear of any and all Liens.

2.3 Authority; Non-Contravention; Statutory Approvals.

(a) Authority. Seller has full corporate power and authority to enter into this Agreement and, subject to receipt of the Seller Required Statutory Approvals, to consummate the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action on the part of Seller, and no other

corporate proceedings or approvals on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery hereof by each other Party, constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by Laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(b) Non-Contravention. The execution and delivery of this Agreement by Seller does not, and the consummation of the transactions contemplated hereby will not, result in any violation or breach of or default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation under (any such violation, breach, default, right of termination, cancellation or acceleration is referred to herein as a "Violation"), or result in the creation of any Lien upon any of the properties or assets of Seller pursuant to any provision of (i) subject to obtaining the third-party Consents set forth in Schedule 2.3(b) of the Disclosure Letter (the "Seller Required Consents"), the Organizational Documents of Seller; (ii) subject to obtaining the Seller Required Consents, any lease, mortgage, indenture, note, bond, deed of trust, or other instrument or agreement of any kind to which it is a party or by which it may be bound; or (iii) subject to obtaining the Seller Required Statutory Approvals, any Law, Permit or Governmental Order applicable to it other than in the case of clauses (i), (ii) and (iii) any such Violation or Lien which would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect or a Company Material Adverse Effect.

(c) Statutory Approvals. Except for the filings or approvals (i) set forth in Schedule 2.3(c) of the Disclosure Letter (the "Seller Required Statutory Approvals") and (ii) as may be required due to the regulatory or other status of Purchaser, no Consent of any Governmental Entity is required to be made or obtained by Seller in connection with the execution and delivery of this Agreement or the consummation by Seller of the transactions contemplated hereby, except those which the failure to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect or a Company Material Adverse Effect.

2.4 Litigation. There is no action, claim, suit or proceeding at law or in equity pending or, to the Knowledge of Seller, threatened against Seller that, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Subject to obtaining the Seller Required Statutory Approvals, there are no Governmental Orders of or by any Governmental Entity applicable to Seller except for such that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect or a Company Material Adverse Effect.

2.5 Absence of Defaults. To the Knowledge of Seller, Seller is not in breach or default under any Affiliate Contract to which Seller is a party, which breach or default has not been waived, and, to the Knowledge of Seller, no other party to any such Affiliate Contract to which Seller is a party is in breach or default, except in each case, for any breach or default that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect or a Company Material Adverse Effect.

2.6 Composite PPA, etc. Attached as Exhibit B to the Consumers Consent is a true, correct and complete conformed composite copy of the Power Purchase Agreement dated as of July 17, 1986, as amended, between Seller and MCV as in effect on June 1, 1990 (the “Composite PPA”). Other than as reflected in the Composite PPA or as may have been effected by the Consumers Consent, the RCA, the RDA, the parties’ course of dealing under Section 7(c) of the PPA and the matters listed on Schedule 2.6 of the Disclosure Letter, there are no written amendments, modifications, additions, deletions or other changes to the Composite PPA. Prior to and after the Commercial Operation Date (as defined in the Composite PPA), Seller and the Partnership have entered into various agreements or undertakings including the Composite PPA and its amendments related to charges for capacity and energy purchased from the Partnership and delivered or made available to Seller (the “C&E Agreements”). The C&E Agreements taken collectively constitute a settlement or resolution of claims relating to the purchase of energy and capacity purported to be covered thereby for all periods from the Commercial Operation Date through and including September 15, 2007 and do not act to suspend or otherwise delay or toll Seller’s rights to seek recovery from the Partnership with respect to such energy and capacity purchases.

### ARTICLE III

#### WARRANTIES OF THE COMPANIES

Except as disclosed in the Disclosure Letter and except for any actions permitted by Section 5.1 of this Agreement, each of the Companies warrants to Purchaser as follows in this Article III:

3.1 Organization and Qualification; Authority; Non-Contravention; Statutory Approvals.

(a) Organization and Qualification. Each of the Companies, the Partnership and the Owner Participant is duly formed, validly existing and in good standing (to the extent such concepts are recognized under applicable Law) under the laws of the jurisdiction of its formation, has, as applicable, full corporate, partnership, limited liability company or similar power and authority to own, lease and operate its assets and properties and to conduct its business as presently conducted and is duly qualified to do business and is in good standing (to the extent such concepts are recognized under applicable Law) as a foreign corporation, partnership or limited liability company, as applicable, in all jurisdictions in which such qualification is necessary under applicable Law as a result of the conduct of its business or the ownership of its properties, except for those jurisdictions where failure to have such power and authority or to be so qualified or in good standing would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth on Schedule 3.1(a) of the Disclosure Letter, neither the Companies nor, to the Knowledge of CMS Midland, the Partnership has been qualified to do business in any jurisdiction as a foreign corporation, partnership or limited liability company, as the case may be. True and complete copies of the Organizational Documents of each Company, the Partnership and the Owner Participant have been made available to the Purchaser.

(b) Authority. Each of the Companies has full entity power and authority to enter into this Agreement and, subject to receipt of the Seller Required Statutory Approvals, to consummate the transactions contemplated hereby. The execution, delivery and performance by each of the Companies of this Agreement and the consummation by each of the Companies of the transactions contemplated hereby have been duly and validly authorized by all requisite entity action on the part of each of Companies, and no other corporate proceedings or approvals on the part of the Companies are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by each of the Companies and, assuming the due authorization, execution and delivery hereof by each other Party, constitutes the legal, valid and binding obligation of each of the Companies, enforceable against each of the Companies in accordance with its terms, except as limited by Laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(c) Non-Contravention. The execution and delivery of this Agreement by each of the Companies does not, and the consummation of the transactions contemplated hereby will not, result in any Violation or result in the creation of any Lien upon any of the properties or assets of each of the Companies or, to the Knowledge of CMS Midland, the Partnership, and to the Knowledge of CMS Holdings, the Owner Participant and the Lessor, pursuant to any provision of (i) subject to obtaining the third-party Consents set forth in Schedule 3.1(c) of the Disclosure Letter (the "Company Required Consents"), the Organizational Documents of the Company, the Partnership, the Owner Participant or the Lessor, as applicable; (ii) subject to obtaining the Company Required Consents, any lease, mortgage, indenture, note, bond, deed of trust, or other instrument or agreement of any kind to which the Company, the Partnership, the Owner Participant or the Lessor, as applicable, is a party or by which any of the Company, the Partnership, the Owner Participant or the Lessor, as applicable, may be bound; or (iii) subject to obtaining the Seller Required Statutory Approvals and the Company Required Statutory Approvals, any Law, Permit or Governmental Order applicable to each of the Companies, the Partnership, the Owner Participant or the Lessor, as applicable, other than in the case of clauses (i), (ii) and (iii) any such Violation or Lien which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) Statutory Approvals. Except for the filings or approvals (i) set forth in Schedule 3.1(d) of the Disclosure Letter (the "Company Required Statutory Approvals") and (ii) as may be required due to the regulatory or corporate status of Purchaser, no Consent of any Governmental Entity is required to be made or obtained by each of the Companies or, to the Knowledge of CMS Midland, the Partnership, and to the Knowledge of CMS Holdings, the Owner Participant and the Lessor, in connection with the execution and delivery of this Agreement or the consummation by each of the Companies of the transactions contemplated hereby, except those which the failure to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

### 3.2 Capitalization.

(a) Partnership and Owner Participant. Schedule 3.2(a) of the Disclosure Letter sets forth for each of the Partnership and the Owner Participant as of the date hereof and as of the Closing Date: (i) its jurisdiction of formation; (ii) its authorized Equity Interests; (iii) the number of its issued and outstanding Equity Interests; and (iv) the Equity Interests that are

owned by the applicable Company. The Equity Interests of the Partnership that are owned by CMS Midland and the Equity Interests of the Owner Participant that are owned by CMS Holdings, as applicable, as set forth on Schedule 3.2(a) of the Disclosure Letter, are owned free and clear of all Liens, other than Permitted Liens and other than as set forth in Schedule 3.2(a) of the Disclosure Letter. All the issued and outstanding Equity Interests in each of the Partnership and the Owner Participant that are owned, directly or indirectly, by a Company, as applicable, have been duly authorized and are validly issued and fully paid.

(b) No Other Equity Interests. As of the date hereof, CMS Midland does not own, directly or indirectly, any Equity Interests in any Person other than the Partnership and, as of the Closing Date, CMS Midland will not own, directly or indirectly, any Equity Interests in any Person other than the Partnership, Alanna Holdings Corporation and Alanna Corporation. As of the date hereof, CMS Holdings does not own, directly or indirectly, any Equity Interests in any Person other than the Owner Participant and, as of the Closing Date, CMS Holdings will not own, directly or indirectly, any Equity Interests in any Person other than the Owner Participant, CMS Midland, Alanna Holdings Corporation and Alanna Corporation.

(c) Agreements with Respect to Shares and Equity Interests of the Companies, the Partnership and the Owner Participant. Except (i) as set forth in Schedule 3.2(c) of the Disclosure Letter, (ii) as provided for in the Organizational Documents of the applicable Company, the Partnership or the Owner Participant, as applicable, and (iii) as contemplated by Schedule 1.6 of the Disclosure Letter, there are no:

(A) subscriptions, options, warrants, calls, conversion, exchange, purchase right or other written contracts, rights, agreements or commitments of any kind obligating, directly or indirectly, a Company, or, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant, as applicable, to issue, transfer, sell or otherwise dispose of, or cause to be issued, transferred, sold or otherwise disposed of, any Equity Interests of a Company, the Partnership or the Owner Participant, as applicable, or any securities convertible into or exchangeable for any such Equity Interests; or

(B) agreements, partnership agreements, voting trusts, proxies or other agreements, instruments or understandings to which a Company or, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant, as applicable, is a party, or by which a Company or, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant, as applicable, is bound, relating to the voting of any shares of the Equity Interests of a Company, the Partnership or the Owner Participant, as applicable.

3.3 Financial Statements. (a) Each of the Companies has provided to Purchaser copies of its respective unaudited balance sheet as of December 31, 2005 and unaudited statement of operations for the year ended December 31, 2005 (each a "Company Financial Statement" and collectively, the "Companies Financial Statements"). Each Company Financial Statement, as applicable, fairly presents in all material respects the consolidated assets and liabilities of such Company, as the case may be, as of December 31, 2005 and the results of

such Company's operations, as the case may be, for the period indicated (except for normal and recurring year-end adjustments and for the absence of notes).

(b) To the Knowledge of CMS Midland, the audited consolidated balance sheet of the Partnership as of December 31, 2005 and the audited consolidated statements of operations, statements of partners' equity and comprehensive income (loss) and statements of cash flows of the Partnership for the year ended December 31, 2005 (including the notes thereto) included in the Partnership's Form 10-K for the fiscal year ended December 31, 2005 filed with the U.S. Securities and Exchange Commission fairly present in all material respects the consolidated assets and liabilities of the Partnership as of December 31, 2005 and the results of its operations and cash flows for the year ended December 31, 2005.

(c) To the Knowledge of CMS Holdings, the audited statement of assets, liabilities and capital of the Owner Participant as of December 31, 2004 and the audited statement of revenues and expenses, statement of cash flows and statement of changes in partners' deficit for the year ended December 31, 2004 (including the notes thereto) fairly present in all material respects the assets, liabilities and capital of the Owner Participant as of December 31, 2004 and its revenues and expenses, changes in partners' deficit and cash flows for the year ended December 31, 2004.

#### 3.4 Absence of Certain Changes or Events.

(a) Since December 31, 2005 through the date hereof, except as set forth in Schedule 3.4(a) of the Disclosure Letter, other than in connection with the transactions contemplated by this Agreement, none of the Companies, or, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant, has taken any of the actions set forth in Sections 5.1(b) through 5.1(o), that, if taken after the execution and delivery of this Agreement, would require the consent of Purchaser pursuant to Section 5.1.

(b) Since December 31, 2005, there has not been any change, event, condition, circumstance, occurrence or development which has had, or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) Since December 31, 2005, none of the Companies or, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant has incurred any Liability that has had, or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.5 Tax Matters. Except as set forth in Schedule 3.5 of the Disclosure Letter, to the Knowledge of the applicable Company:

(a) each of the Companies and, to the Knowledge of CMS Midland, the Partnership and, to the Knowledge of CMS Holdings, the Owner Participant has (A) filed (or there has been filed on its behalf) with the appropriate Governmental Entity all Material Tax Returns required to have been filed by it, (B) duly paid in full or made provision in accordance with GAAP (or there has been paid or provision has been made on its behalf) for the payment of

all Taxes shown as due or payable on such Tax Returns and (C) included in such Tax Returns all required disclosure of positions taken therein that could give rise to a substantial underpayment penalty under Section 6662 of the Internal Revenue Code of 1986, as amended (the “Code”), or any similar provision of state, local or other Tax law;

(b) no Material audits or other administrative proceedings or court proceedings are, as of the date hereof, pending with regard to any Taxes or Tax Returns of each of the Companies and, to the Knowledge of CMS Midland, the Partnership and, to the Knowledge of CMS Holdings, the Owner Participant and none of the Companies and, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant has been informed in writing or orally of the planned commencement of any such audit or administrative proceedings;

(c) neither the Companies nor to the Knowledge of CMS Midland with respect to the Partnership or to the Knowledge of CMS Holdings with respect to the Owner Participant has waived the applicable statute of limitations for the assessment or collection of any Material Taxes;

(d) there are no Liens on any assets of any of the Companies or, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant in connection with the failure to pay any Material Tax, except to the extent of statutory Liens existing for any Taxes accruing but not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established;

(e) each of the Companies has made available to Purchaser complete and accurate copies of all material income Tax Returns of such Company (or pro forma Tax Returns if such Company was included in a consolidated or combined Tax Return), for the years 2002, 2003, 2004, as filed or subsequently amended;

(f) all material Taxes which (i) to the Knowledge of CMS Midland, the Partnership, (ii) to the Knowledge of CMS Holdings, the Owner Participant or (iii) the Companies have been required to collect or withhold have been duly collected or withheld, and to the extent required, have been or will be duly paid when due to the proper Governmental Entity;

(g) none of the property of any of the Companies, to the Knowledge of CMS Midland, the Partnership, or, to the Knowledge of CMS Holding, the Owner Participant is (A) subject to a safe harbor lease (pursuant to Section 168(f)(8) of the Code as in effect after the Economic Recovery Tax Act of 1981 and before the Tax Reform Act of 1986) or (B) (other than the existing \$200,000,000 of tax exempt pollution control revenue refunding bonds outstanding with respect to the Facility) “tax exempt use property” (within the meaning of Section 168(h) of the Code) or “tax exempt bond financed property” (within the meaning of Section 168(g)(5) of the Code);

(h) (i) neither of the Companies, or (ii) to the Knowledge of CMS Midland, the Partnership, or (iii) to the Knowledge of CMS Holding, the Owner Participant has been a

party to a transaction that, after the Closing, will cause the Companies, the Partnership or the Owner Participant, as applicable, to recognize gain under either Section 355(d) or 355(e) of the Code;

(i) CMS Midland is the “tax matters partner” for the Partnership;

(j) no shareholder of the Companies is a foreign person as defined in Section 1445 of the Code;

(k) neither of the Companies has any liability for the Taxes of any other Person under applicable law, as a transferee or successor, or otherwise;

(l) no written claim is pending by any authority in a jurisdiction where any of the Companies, the Partnership (subject to the Knowledge of CMS Midland) or the Owner Participant (subject to the Knowledge of CMS Holdings) does not file Tax Returns that such entity is or may be subject to taxation in that jurisdiction;

(m) neither of the Companies has engaged in any transaction that would be reportable pursuant to Treasury Regulation Section 1.6011-4 that has not been properly reported in its Tax Returns;

(n) neither of the Companies nor to the Knowledge of CMS Midland with respect to the Partnership or to the Knowledge of CMS Holdings with respect to the Owner Participant will be required (i) to include any amount in income for any taxable period (or portion thereof) beginning after the Closing Date as a result of a change in accounting method for any prior taxable period or pursuant to any agreement with any Governmental Entity or (ii) to include in any taxable period (or portion thereof) beginning after the Closing Date any income that accrued in a prior period but was not recognized in the prior period as a result of the installment method of accounting, the completed contract method of accounting, the long-term contract method of accounting or the cash method of accounting;

(o) as of December 31, 2005, the tax basis that CMS Midland had in its equity interest in the Partnership for purposes of Section 731 of the Code was not less than \$175,000,000 and the capital account with respect to such equity interest for purposes of Section 704(b) of the Code and the Treasury Regulations thereto was not less than \$175,000,000. As of December 31, 2005, the tax basis that CMS Holdings had in its equity interest in the Owner Participant for purposes of Section 731 of the Code was not less than negative \$100,000,000 (disregarding the partner’s share of partnership liabilities); and

(p) as of December 31, 2005, the net operating losses of CMS Midland that were available for a carryforward pursuant to Section 172 of the Code, were not less than \$20,000,000.

3.6 Litigation. Except as set forth in Schedule 3.6 of the Disclosure Letter, there is no action, claim, suit or other proceeding at law or in equity pending or, to the Knowledge of the applicable Company, threatened against a Company or affecting the assets or properties of a Company that, if adversely determined, would reasonably be expected to have,

individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in Schedule 3.6 of the Disclosure Letter, to the Knowledge of CMS Midland with respect to the Partnership and to the Knowledge of CMS Holdings with respect to the Owner Participant, there is no action, claim, suit or other proceeding at law or in equity pending or threatened against the Partnership or the Owner Participant, as applicable, or affecting its respective assets or properties that, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

### 3.7 Compliance with Laws.

(a) Except as set forth in Schedule 3.7(a) of the Disclosure Letter, neither of the Companies has been given notice of or been charged with any violation of, or, to the Knowledge of the applicable Company, is in violation of or is under investigation with respect to any violation of, any Law or Governmental Order, except in each case for violations which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in Schedule 3.7(a) of the Disclosure Letter, to the Knowledge of CMS Midland with respect to the Partnership and to the Knowledge of CMS Holdings with respect to the Owner Participant, neither the Partnership nor the Owner Participant, as applicable, has been given notice of or been charged with any violation of, or is in violation of or is under investigation with respect to any violation of, any Law or Governmental Order, except for violations which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) This Section 3.7 does not relate to Tax matters, which are instead the subject of Section 3.5, employee benefits matters, which are instead the subject of Section 3.8, Company Permits, which are instead the subject of Section 3.9, or environmental matters, which are instead the subject of Section 3.12.

### 3.8 Employee Benefits.

(a) Schedule 3.8(a) of the Disclosure Letter contains a list of each material bonus, incentive or deferred compensation, pension, retirement, profit-sharing, savings, employment, consulting, compensation, stock purchase, stock option, phantom stock or other equity-based compensation, severance pay, termination, change-in-control, retention, salary continuation, vacation, sick leave, disability, death benefit, group insurance, hospitalization, medical, dental, life, loan, educational assistance, and other fringe benefit plans, programs, agreements and arrangements maintained, to the Knowledge of CMS Midland, by the Partnership or any trade or business, whether or not incorporated, that together with the Partnership would be deemed a “single employer” within the meaning of Section 4001 of ERISA (an “ERISA Affiliate”) for the benefit of any employee or former employee of the Partnership (collectively, the “Partnership Plans”).

(b) With respect to each Partnership Plan, the Partnership has provided or made available to Purchaser true and complete copies of the following documents, to the extent applicable: (1) a copy of such Partnership Plan (including all amendments thereto), (2) a copy of the annual report and actuarial report, if required under ERISA or the Code, for the two (2) most recently ended plan years, (3) a copy of the most recent summary plan description, if required

under ERISA, (4) if such Partnership Plan is funded through a trust or any third party funding vehicle, a copy of the trust or other funding agreement (including all amendments thereto) and the most recent financial statements, and (5) the most recent determination or opinion letter, as applicable, received from the Internal Revenue Service with respect to such Partnership Plan if it is intended to qualify under Section 401(a) of the Code.

(c) To the Knowledge of CMS Midland, each Partnership Plan has been administered in all material respects in compliance with its terms and applicable Law, including ERISA and the Code. To the Knowledge of CMS Midland, there is no pending or threatened legal action, suit or claim relating to the Partnership Plans (other than routine claims for benefits). To the Knowledge of CMS Midland, each Partnership Plan which is intended to qualify under Section 401(a) of the Code is qualified in form and operation and has received a favorable determination letter from the Internal Revenue Service and, to the Knowledge of CMS Midland, no circumstances exist that could be expected to result in the revocation of any such favorable determination or opinion letter, as applicable. To the Knowledge of CMS Midland, each funding vehicle of a Partnership Plan that is intended to be part of a voluntary employees' beneficiary association within the meaning of Section 501(c)(9) of the Code has (A) received an opinion letter from the Internal Revenue Service recognizing its exempt status under Section 501(c)(9) of the Code and (B) filed a timely notice with the Internal Revenue Service pursuant to Section 505(c) of the Code, and, to the Knowledge of CMS Midland, no circumstances exist that could be expected to result in the loss of the exempt status of such funding vehicle under Section 501(c)(9) of the Code.

(d) To the Knowledge of CMS Midland, neither the Partnership nor any ERISA Affiliate has ever maintained, contributed to, or had an obligation to contribute to, a plan that is (i) subject to Title IV of ERISA or Section 412 of the Code, (ii) a "multiemployer plan" within the meaning of Section 3(37) of ERISA, (iii) maintained by more than one employer within the meaning of Section 413(c) of the Code, or (iv) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

(e) To the Knowledge of CMS Midland, all contributions or premiums to each Partnership Plan required under the terms of such Partnership Plan or applicable Law have been timely made. To the Knowledge of CMS Midland, all Material liabilities or expenses of the Partnership in respect of any Partnership Plan have been properly accrued on the most recent financial statements of the Partnership in compliance with GAAP.

(f) Except as set forth in Schedule 3.8(f) of the Disclosure Letter, to the Knowledge of CMS Midland, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with another event) (i) entitle any current or former employee or director of the Partnership to any payment or result in any payment becoming due, increase the amount of any compensation due, or result in the acceleration of the time of any payment due to any such person or (ii) increase any benefits otherwise payable under any Partnership Plan or result in the acceleration of the time of payment or vesting of any benefit under a Partnership Plan.

(g) To the Knowledge of CMS Midland, no Partnership Plan provides benefits, including without limitation death or medical benefits (whether or not insured), with

respect to current or former employees of the Partnership beyond their retirement or other termination of service, other than (i) coverage mandated solely by applicable Law, (ii) death benefits or retirement benefits under any “employee pension benefit plan” within the meaning of Section 3(2) of ERISA, (iii) deferred compensation benefits accrued as liabilities on the books of the Partnership or (iv) benefits the costs of which are borne entirely by the current or former employee or his or her beneficiary. Except as otherwise provided by applicable Law or written Partnership Plan terms, to the Knowledge of CMS Midland, there are no restrictions on the rights of the Partnership to unilaterally amend or terminate any such Partnership Plan at any time without incurring any material liability pursuant to the terms thereof.

(h) Neither of the Companies has any liabilities to any employees or with respect to any employee benefit plans.

(i) To the Knowledge of CMS Midland, neither the Partnership nor any plan fiduciary of any Partnership Plan has engaged in any transaction in violation of Section 406 of ERISA (for which transaction no exemption exists under Section 408 of ERISA) or in any “prohibited transaction” as defined in Section 4975(c)(1) of the Code (for which no exemption exists under Section 4975(c)(2) or 4975(d) of the Code.

### 3.9 Permits.

(a) Except as set forth in Schedule 3.9(a) of the Disclosure Letter, each of the Companies and, to the Knowledge of CMS Midland, the Partnership and, to the Knowledge of CMS Holdings, the Owner Participant has all Permits that are necessary for it to conduct its operations in the manner in which they are presently conducted, other than any such Permits the failure of which to have would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect (collectively, “Company Permits”). Except as set forth in Schedule 3.9(a) of the Disclosure Letter, each Company Permit held by the applicable Company is in full force and effect other than any failure to be in full force and effect which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in Schedule 3.9(a) of the Disclosure Letter, to the Knowledge of CMS Midland with respect to the Partnership and to the Knowledge of CMS Holdings with respect to the Owner Participant, each Company Permit held by the Partnership and the Owner Participant, as applicable, is in full force and effect other than any failure to be in full force and effect which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) This Section 3.9 does not relate to environmental matters, which are instead the subject of Section 3.12.

3.10 Tangible Property. Except as to CMS Midland as specified in Schedule 3.10 of the Disclosure Letter, neither Company (i) now owns, controls or possesses any tangible property (real or personal), or interest therein, and (ii) has ever owned, controlled or possessed any tangible property (real or personal), except, in each case, such property as is owned, controlled and possessed by the Partnership, the Owner Participant or the Lessor, as the case may be.

### 3.11 Contracts.

(a) Set forth in Schedule 3.11(a) of the Disclosure Letter is, as of the date hereof, a list of the following agreements and contracts to which the Companies or, to the Knowledge of CMS Midland, the Partnership or, to the Knowledge of CMS Holdings, the Owner Participant is a party or by which any of their respective properties or assets are bound, other than any insurance policies covering the Companies, the Partnership or the Owner Participant or any of their respective assets (the agreements and contracts set forth in Schedule 3.11(a) of the Disclosure Letter are referred to herein as the “Company Material Contracts” and, as used in this Section 3.11, “Contracting Party” shall refer to any Company, the Partnership or the Owner Participant party to such Company Material Contract):

(i) (A) all currently effective MCV Gas Contracts and MCV Gas Transportation Agreements (as each such term is defined in the MCV Partnership Agreement), (B) all currently effective Dow Contracts, other Backup Agreements, Consumers Contracts, Facilities Agreements, Transaction Documents and Financing Documents (as each such term is defined in Appendix A; in each case by trust where there are separate documents for each undivided interest transaction), (C) each assignment to The Dow Chemical Company (“Dow”) of an interest in any MCV Gas Contract or MCV Transportation Contract and (D) each contract or agreement to which a Company is party in its individual capacity;

(ii) all Operating Contracts providing for the payment by or to the Contracting Party in excess of \$2,500,000 (the “Agreed Amount”) per year, other than (x) any agreements with any Company or the Partnership or the Owner Participant to document certain intercompany loans or (y) any agreements among any Company, the Partnership or the Owner Participant for the provision of services and/or payment of costs, which are terminable by either party thereto upon not more than sixty (60) days’ notice;

(iii) all Trading Contracts which (A) provide for payment to or from the Contracting Party in excess of the Agreed Amount per year (or its equivalent as of the date of this Agreement in foreign currency if such agreement is denominated in foreign currency) or (B) have a notional amount in excess of the Agreed Amount;

(iv) all contracts (other than Operating Contracts) requiring a future capital expenditure by the Contracting Party in excess of the Agreed Amount in any twelve-month period;

(v) all contracts or agreements under which the Contracting Party is obligated to sell real or personal property having a value in excess of the Agreed Amount other than in the ordinary course of business;

(vi) all shareholders, partnership, voting or similar agreements to which the Partnership or the Owner Participant is a party, by which the Partnership or the Owner Participant is bound or to which the Partnership or the Owner

Participant is subject (other than any such agreements of the Partnership or the Owner Participant that is wholly owned, directly or indirectly, by any Company, or by which any such Person is bound);

(vii) all contracts or agreements under which the Contracting Party (1) created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness, (2) granted a Lien on its assets, whether tangible or intangible, to secure such indebtedness or (3) extended credit or advanced funds to any Person, in each case, in excess of the Agreed Amount;

(viii) all executory contracts for the purchase or sale of any business, corporation, partnership, joint venture, association or other business organization or any division, assets, operating unit or product line thereof which have a purchase or sale price in excess of the Agreed Amount;

(ix) to the Knowledge of the applicable Company, all contracts or agreements establishing any joint venture;

(x) all agreements that grant a right of first refusal or similar right with respect to (A) any assets of the Contracting Party having a value in excess of the Agreed Amount or (B) any direct or indirect economic interest in the Contracting Party having a value in excess of the Agreed Amount;

(xi) any contract or agreement providing for the use of material Intellectual Property which has an annual license payment or fee in excess of \$500,000; and

(xii) any other agreement not covered in clauses (i) through (xi) above that involves payment by or to the Contracting Party of more than the Agreed Amount annually or twice the Agreed Amount in the aggregate under such agreement, other than those that can be terminated without penalty in excess of 20% of the Agreed Amount to the Contracting Party upon not more than sixty (60) days' notice.

(b) Except as set forth in Schedule 3.11(b)(i) of the Disclosure Letter, the Companies have made available to Purchaser complete and correct copies of all Company Material Contracts. Except as set forth in Schedule 3.11(b)(ii) of the Disclosure Letter, each Company Material Contract is (i) to the Knowledge of the applicable Company with respect to Company Material Contracts to which any of the Partnership, the Owner Participant or the Lessor is a party, in full force and effect and (ii) the valid and binding obligation of the Companies or, to the Knowledge of the applicable Company, the Partnership, the Owner Participant and the Lessor, as the case may be, and, to the Knowledge of the applicable Company, of each other party thereto, in each case (x) except as limited by Laws affecting the enforcement of creditors' rights generally or by general equitable principles and (y) with such exceptions as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in Schedule 3.11(b)(ii) of the Disclosure Letter, none of the Companies or, to the Knowledge of the applicable Company, the Partnership,

the Owner Participant or the Lessor is in breach or default under any Company Material Contract, which breach or default has not been waived, and, to the Knowledge of the applicable Company, no other party to any Company Material Contract is in breach or default, except in each case, for any breach or default that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the Knowledge of CMS Midland, no “Lease Default” or “Lease Event of Default” (as such defined terms are applicable) exists under a Company Material Contract to which the Partnership is a party.

3.12 Environmental Matters. Except as set forth in Schedule 3.12 of the Disclosure Letter, or as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) each of the Companies and, to the Knowledge of the applicable Company, the Partnership and the Lessor, are in compliance with all applicable Environmental Laws, including having and complying with all terms and conditions of all Permits required under applicable Environmental Laws or that are necessary for them to conduct their operations in the manner in which they are presently conducted and all such Permits are in full force and effect and not subject to appeal or challenge;

(b) none of the Companies or, to the Knowledge of the applicable Company, the Partnership or the Lessor (i) has received from any Governmental Entity any written notice of violation of, alleged violation of, non-compliance with, or Liability or potential Liability pursuant to, any Environmental Law, other than notices with respect to matters that have been resolved and for which any Company or, to the Knowledge of the applicable Company, the Partnership or the Lessor has no further obligations outstanding or (ii) is subject to any outstanding Governmental Order, “consent order” or other agreement with regard to any violation, noncompliance or Liability under any Environmental Law;

(c) no judicial proceeding or governmental or administrative action is pending under any applicable Environmental Law or relating to Hazardous Substances to which any Company or, to the Knowledge of the applicable Company, the Partnership or the Lessor is or has been a party;

(d) none of the Companies or, to the Knowledge of the applicable Company, the Partnership or the Lessor has received any written notice, claim or demand from any Person, including any Governmental Entity, seeking costs of response, damages or requiring remedial action relating to (i) any Release of Hazardous Substances at, on or beneath any Company's, the Partnership's or the Lessor's current facilities or (ii) a Release of Hazardous Substances at any third party property to which Hazardous Substances generated by any Company, the Partnership or the Lessor were sent for treatment or disposal; and

(e) to the Knowledge of the applicable Company, each of the Companies, the Partnership and the Lessor have made available to Purchaser true and correct copies of all material audits, assessments, evaluations and similar reports or documents in their possession relating to the environmental compliance or condition of assets and facilities owned or operated by the Companies, the Partnership or the Lessor.

Notwithstanding any of the warranties contained elsewhere in this Agreement, all environmental matters shall be governed exclusively by this Section 3.12.

3.13 Labor Matters.

(a) Schedule 3.13(a) of the Disclosure Letter contains a list of all collective bargaining agreements to which any Company or, to the Knowledge of the applicable Company, the Partnership, the Owner Participant or the Lessor is bound.

(b) Except as set forth on Schedule 3.13(b) of the Disclosure Letter, no employees of any Company or, to the Knowledge of the applicable Company, the Partnership, the Owner Participant or the Lessor are represented by any labor organization with respect to their employment with the Companies, the Partnership, the Owner Participant or the Lessor, as applicable.

(c) To the Knowledge of the applicable Company, there are no Material labor union organizing activities with respect to any employees of any Company, the Partnership, the Owner Participant or the Lessor.

(d) Since January 1, 2004, there have been no pending or, to the Knowledge of the applicable Company, threatened unfair labor practices, work stoppages, slowdowns, strikes, lockouts, arbitrations, grievances, or other labor disputes involving employees of any Company, or, to the Knowledge of the applicable Company, the Partnership, the Owner Participant or the Lessor, in each case, that is Material.

3.14 Intellectual Property. Except as would not reasonably be expected to have a Company Material Adverse Effect, (a) each of the Companies and, to the Knowledge of the applicable Company, the Partnership and the Lessor owns, or has the right to use, all patents, patent rights (including patent applications and licenses), know-how, trade secrets, trademarks (including trademark applications), trademark rights, trade names, trade name rights, service marks, service mark rights, copyrights and other proprietary intellectual property rights (collectively, "Intellectual Property") used in and necessary for the conduct of the businesses of the Companies, the Partnership and the Lessor as currently conducted, (b) to the Knowledge of the applicable Company, the use of the Intellectual Property used in the businesses of the Companies, the Partnership and the Lessor as currently conducted does not infringe or otherwise violate the Intellectual Property rights of any third party, (c) to the Knowledge of the applicable Company, no third party is challenging, infringing or otherwise violating any right of any Company, the Partnership and the Lessor in any Intellectual Property necessary for the conduct of the businesses of the Companies, the Partnership and the Lessor as currently conducted, and (d) none of the Companies or, to the Knowledge of the applicable Company, the Partnership and the Lessor has received any written notice of any pending claim that Intellectual Property used in and necessary for the conduct of the businesses of the Companies, the Partnership and the Lessor as currently conducted infringes or otherwise violates the Intellectual Property rights of any third party.

3.15 Affiliate Contracts. Schedule 3.15 of the Disclosure Letter contains a true and complete list of each material agreement or contract as of the date hereof between (i) any

Company, the Partnership, the Owner Participant or the Lessor, on one hand and (ii) a Seller or any Affiliate thereof (other than the Companies, the Partnership, the Owner Participant or the Lessor) on the other (collectively, the “Affiliate Contracts”).

3.16 Insurance. Set forth on Schedule 3.16 of the Disclosure Letter is a list of all material policies of insurance under which any Company's or, to the Knowledge of CMS Midland, the Partnership's assets or business activities are covered, including for each such policy the type of policy, the name of the insured, the term of the policy, a description of the limits of such policy, the basis of coverage and the deductibles. Except as set forth on Schedule 3.16 of the Disclosure Letter, to the Knowledge of CMS Midland, the Partnership maintains all policies of insurance to the extent required by any applicable Financing Facility, except where the failure to maintain such policies of insurance would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.17 Brokers and Finders. None of Seller, any Company or, to the Knowledge of the applicable Company, the Partnership or the Owner Participant has entered into any agreement or arrangement entitling any agent, broker, investment banker, financial advisor or other firm or Person to any broker's or finder's fee or any other commission or similar fee payable by any Company in connection with any of the transactions contemplated by this Agreement, except J.P. Morgan Securities Inc., whose fees and expenses are governed by Section 5.6.

3.18 Absence of Certain Matters and Notices. There is no pending matter concerning CMS Holdings that has been referred to an arbitrator pursuant to Article X of the FMLP Partnership Agreement and no Notice of Dispute (as defined in the FMLP Partnership Agreement) concerning CMS Holdings that is pending.

## ARTICLE IV

### WARRANTIES OF PURCHASER

Except as set forth in the Purchaser Disclosure Schedules, Purchaser warrants to the Company and to each Seller as follows in this Article IV:

4.1 Organization and Qualification. Purchaser is a corporation, duly formed, validly existing and in good standing under the laws of Delaware and has full power and authority to own, lease and operate its assets and properties and to conduct its business as presently conducted. Purchaser is duly qualified to do business and in good standing as a foreign corporation in all jurisdictions in which such qualification is necessary under applicable Law as a result of the conduct of its business or the ownership of its properties, except for those jurisdictions where failure to be so qualified or in good standing would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.2 Authority; Non-Contravention; Statutory Approvals.

(a) Authority. Purchaser has full corporate power and authority to enter into this Agreement and, subject to receipt of the Purchaser Required Statutory Approvals, to

consummate the transactions contemplated hereby. The execution, delivery and performance by Purchaser of this Agreement and the consummation by Purchaser of the transactions contemplated hereby have been duly and validly authorized by all requisite action on the part of Purchaser, and no other proceedings or approvals on the part of Purchaser are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery hereof by each other Party, constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as limited by Laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(b) Non-Contravention. Except as set forth on Schedule 4.2(b) of the Disclosure Letter, the execution and delivery of this Agreement by Purchaser do not, and the consummation of the transactions contemplated hereby will not, result in any Violation or result in the creation of any Lien upon any of the properties or assets of Purchaser pursuant to any provision of (i) the Organizational Documents of Purchaser; (ii) subject to obtaining the third-party Consents set forth in Schedule 4.2(b) of the Disclosure Letter (the “Purchaser Required Consents”), any lease, mortgage, indenture, note, bond, deed of trust, or other instrument or agreement of any kind to which Purchaser is a party or by which Purchaser may be bound; or (iii) subject to obtaining the Purchaser Required Statutory Approvals, any Law, Permit or Governmental Order applicable to Purchaser, other than in the case of clauses (i), (ii) and (iii) for any such Violation or Lien which would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

(c) Statutory Approvals. Except for the filings or approvals (i) set forth in Schedule 4.2(c) of the Disclosure Letter (the “Purchaser Required Statutory Approvals”) and (ii) as may be required due to the regulatory or corporate status of Seller or the Companies, no Consent of any Governmental Entity is required to be made or obtained by Purchaser in connection with the execution and delivery of this Agreement or the consummation by Purchaser of the transactions contemplated hereby, except those which the failure to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.3 Financing. Purchaser has, and will have at the Closing, available cash and credit capacity, either in its accounts, through binding and enforceable credit arrangements or borrowing facilities or otherwise, (i) to pay the Purchase Price at the Closing, (ii) to pay all fees and expenses required to be paid by Purchaser in connection with the transactions contemplated by this Agreement, pursuant to Section 5.6 or otherwise, and (iii) to perform all of its other obligations hereunder including, without limitation, its obligations under Section 5.12 and the SEPA Payment Agreement (the “Financing Arrangements”), all without any distributions from the Companies and neither of the Companies will be required to assume or become liable for such Financing Arrangements prior to the time immediately following the Closing. A description of the Financing Arrangements is set forth on Schedule 4.3 of the Disclosure Letter. Prior to the date of this Agreement, Purchaser has provided Seller with copies of all documentation relating to the Financing Arrangements, including any commitment letters for any of the foregoing, which Purchaser intends to utilize to make the payments described in this Section 4.3. To the extent that this Agreement must be in a form acceptable to a lender, such

lender has approved this Agreement and there are no other material contingencies to the lender's obligations under the Financing Arrangements or otherwise.

4.4 Litigation. Except as set forth in Schedule 4.4 of the Disclosure Letter, there is no action, claim, suit or proceeding at law or in equity pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its Subsidiaries or affecting any of their respective assets or properties that, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. There are no Governmental Orders of or by any Governmental Entity applicable to Purchaser or any of its Subsidiaries except for such that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.5 Investment Intention; Sufficient Investment Experience; Independent Investigation. Purchaser is acquiring the Shares for its own account, for investment purposes only and not with a view to the distribution (as such term is used in Section 2(a)(11) of the United States Securities Act of 1933 (the "Securities Act") thereof in a manner not permitted by the Securities Act. Purchaser understands that the Shares have not been registered under the Securities Act and, if and to the extent the Securities Act applies, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is available and pursuant to registration or qualification (or exemption therefrom) under applicable state securities laws. Purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the Companies and the merits and risks of an investment in the Shares. Purchaser has been given adequate opportunity to examine all documents provided by, conduct due diligence and ask questions of, and to receive answers from, Seller, the Companies and their respective representatives concerning the Companies and Purchaser's investment in the Shares. Purchaser acknowledges and affirms that it has completed its own independent investigation, analysis and evaluation of the Companies, the Partnership, the Owner Participant and the Lessor, that it has made all such reviews and inspections of the business, assets, results of operations and condition (financial or otherwise) of the Companies, the Partnership, the Owner Participant and the Lessor as it has deemed necessary or appropriate, and that in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby it has relied on its own independent investigation, analysis, and evaluation of the Companies, the Partnership, the Owner Participant and the Lessor and Seller's warranties set forth in Article II and the Companies' warranties set forth in Article III.

4.6 Brokers and Finders. Purchaser has not entered into any agreement or arrangement entitling any agent, broker, investment banker, financial advisor or other firm or Person to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement.

4.7 Qualified for Permits. Purchaser is qualified to obtain any Permits necessary for the operation by Purchaser of the Companies (including the ownership of the Equity Interests in the Owner Participant and the Partnership) as of the Closing in the same manner as the Companies are currently operated.

4.8 No Knowledge of Seller or Company Breach. Neither Purchaser nor any of its Affiliates has Knowledge of any material breach or inaccuracy of (i) any warranty of Seller set forth in Article II hereof or (ii) any warranty of the Companies set forth in Article III hereof.

4.9 Environmental Review. Purchaser has completed its on-site review of environmental matters.

## ARTICLE V

### COVENANTS

5.1 Conduct of Business. After the date hereof and prior to the Closing or earlier termination of this Agreement, except as set forth in Schedule 5.1 of the Disclosure Letter and except (i) as contemplated in or permitted by this Agreement, (ii) as may be required to comply with any Company Material Contract (including any Financing Facility), (iii) in connection with necessary or prudent repairs due to breakdown or casualty, or other actions taken in response to a business emergency or other unforeseen operational matters, (iv) in connection with necessary or prudent maintenance consistent with manufacturer's recommendations and warranties, (v) as required by applicable Law, or (vi) to the extent Purchaser shall otherwise consent, which decision regarding consent shall be made promptly and which consent shall not be unreasonably withheld, conditioned or delayed, Seller shall exercise the voting, governance and contractual powers available to it to cause the Companies to and each of the Companies shall, to the extent reasonably possible, exercise the voting, governance and contractual powers available to the Companies to cause the Partnership, the Owner Participant and the Lessor to (but subject in each case to any contractual, fiduciary or similar obligation of Seller, any Company, the Partnership, the Owner Participant or the Lessor):

- (a) conduct its businesses in the ordinary and usual course in substantially the same manner as heretofore conducted and, to the extent consistent therewith, use reasonable efforts to preserve its business organization intact and maintain its existing relations and goodwill with customers, suppliers, creditors, lessors, employees and business associates;
- (b) not (i) amend its Organizational Documents other than amendments which are ministerial in nature or not otherwise material; (ii) split, combine or reclassify its outstanding Equity Interests; or (iii) repurchase, redeem or otherwise acquire any shares of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of its capital stock;
- (c) not issue, sell, or dispose of any shares of, or securities convertible into or exchangeable or exercisable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of its capital stock, other than any issuance, sale or disposal, solely among each of the Companies, the Partnership or the Lessor;
- (d) not incur any indebtedness other than (i) borrowings in the ordinary course of business or (ii) borrowings under existing credit facilities as such facilities may be amended or replaced;

(e) not, other than (i) in the ordinary and usual course of business or (ii) in the case of the Partnership or the Lessor, to the extent not prohibited by a Financing Facility, make any commitments for or make capital expenditures in excess of \$2,500,000 individually or \$5,000,000 in the aggregate;

(f) not, other than in the ordinary and usual course of business consistent with past practice, make any acquisition of, or investment in, assets or stock of any other Person or entity;

(g) not, other than in the ordinary and usual course of business or in the case of the Partnership or the Lessor, to the extent not prohibited by a Financing Facility, sell, lease, license, encumber or otherwise dispose of any of its assets in excess of \$2,500,000 individually or \$5,000,000 in the aggregate;

(h) not terminate, establish, adopt, enter into, make any new grants or awards of stock-based compensation or other benefits under, amend or otherwise materially modify any Partnership Plan or increase the salary, wage, bonus or other compensation of any directors, officers or employees except (i) for grants or awards to directors, officers and employees under existing Partnership Plans in such amounts and on such terms as are consistent with past practice, (ii) in the normal and usual course of business (which shall include normal periodic performance reviews and related plans and the provision of individual Partnership Plans consistent with past practice for newly hired, appointed or promoted officers and employees) or (iii) for actions necessary to satisfy existing contractual obligations under Partnership Plans;

(i) not change any Material financial or Material Tax accounting methods, policies, practices or elections, except as required by GAAP or the Code, respectively;

(j) not adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization (other than the Transaction);

(k) not settle or compromise any material litigation requiring payment of an amount in excess of the reserves established therefor, or waive, release or assign any material claims, in each case other than in an amount not to exceed \$2,500,000 individually or \$5,000,000 in the aggregate;

(l) other than, in the case of the Partnership or the Lessor, to the extent not prohibited by a Financing Facility, not (i) amend or modify any Company Material Contract in any material respect, (ii) terminate any Company Material Contract or (iii) enter into any contract, agreement or instrument that would have been required to be set forth on Schedule 3.11(a) of the Disclosure Letter had it been entered into prior to the date of this Agreement;

(m) not amend, modify, terminate or enter into any Trading Contract other than, in the case of the Partnership, (i) for fiscal year 2006 requirements, in the ordinary course of business consistent with past practice and within written parameters established by the management committee of the Partnership and (ii) for fiscal year 2007 requirements, in the ordinary course of business consistent with past practice and within written parameters to be established by such management committee after notice to, and consultation with, the Purchaser;

(n) unless not available on commercially reasonable terms, fail to maintain insurance with financially responsible or nationally recognized insurers in such amounts and against such risks and losses as are consistent with the insurance maintained by it in the ordinary and usual course of business; and

(o) not commit to take any of the actions set forth in subsections (b)-(n) of this Section 5.1.

## 5.2 Regulatory Approvals.

(a) Regulatory Approvals. Each Party shall cooperate and use reasonable efforts to prepare and file as soon as practicable all applications, notices, petitions, filings and other documents necessary to obtain, and shall use reasonable efforts to obtain, the Seller Required Statutory Approvals and the Purchaser Required Statutory Approvals. The Parties further agree to use reasonable efforts (i) to take any act, make any undertaking or receive any clearance or approval required by any Governmental Entity or applicable Law and (ii) to satisfy any conditions imposed by any Governmental Entity, in each case, in order to consummate the transaction contemplated hereby as soon as reasonably possible. Each of the Parties shall (i) respond as promptly as practicable to any inquiries or requests received from any Governmental Entity for additional information or documentation and (ii) not enter into any agreement with any Governmental Entity that would reasonably be expected to adversely affect the Parties' ability to consummate the transactions contemplated by this Agreement, except with the prior consent of the other Parties (which shall not be unreasonably withheld or delayed).

(b) Communications. The Parties shall promptly provide the other Parties with copies of all filings made with, and inform one another of any communications received from, any Governmental Entity in connection with this Agreement and the transactions contemplated hereby.

5.3 Required Consents. Seller and the Companies, on the one hand, and Purchaser, on the other hand, agree to use reasonable efforts to obtain the Company Required Consents and the Purchaser Required Consents, respectively, and to cooperate with each other in connection with the foregoing.

5.4 Access. After the date hereof and prior to the Closing, Seller and the Companies agree that the Companies shall permit, and the Companies shall exercise the voting, governance and contractual powers available to either of them to cause (subject to any contractual, fiduciary or similar obligation of the Companies), if possible, each of the Partnership and the Owner Participant to permit, Purchaser and its respective employees, counsel, accountants and other representatives to have reasonable access, upon reasonable advance notice, during regular business hours, to the assets, employees, properties, books and records, businesses and operations relating to the Companies, the Partnership or the Owner Participant as Purchaser may reasonably request, provided, however, that in no event shall Seller, the Companies, the Partnership or the Owner Participant be obligated to provide any access or information (i) if Seller or the Companies determine, in good faith after consultation with counsel, that providing such access or information may violate applicable Law, cause Seller, the Companies, the Partnership, the Owner Participant or the Lessor to breach a confidentiality obligation to which it

is bound or jeopardize any recognized privilege available to Seller, the Companies, the Partnership, the Owner Participant or the Lessor or (ii) to the extent set forth on Schedule 5.4 of the Disclosure Letter. Purchaser agrees to indemnify and hold Seller, the Companies, the Partnership, the Owner Participant and the Lessor harmless from any and all claims and liabilities, including costs and expenses for loss, injury to or death of any representative of Purchaser, and any loss, damage to or destruction of any property owned by Seller, the Companies, the Partnership, the Owner Participant or the Lessor or others (including claims or liabilities for loss of use of any property) resulting directly or indirectly from the action or inaction of any of the employees, counsel, accountants, advisors and other representatives of Purchaser during any visit to the business or property sites of the Companies, the Partnership, the Owner Participant or the Lessor prior to the Closing Date, whether pursuant to this Section 5.4 or otherwise. During any visit to the business or property sites of the Companies, the Partnership, the Owner Participant or the Lessor, Purchaser shall, and shall cause its employees, counsel, accountants, advisors and other representatives accessing such properties to, comply with all applicable Laws and all of the Companies', the Partnership's, the Owner Participant's or the Lessor's safety and security procedures and conduct itself in a manner that could not be reasonably expected to interfere with the operation, maintenance or repair of the assets of the Companies, the Partnership, the Owner Participant or the Lessor. Each Party shall, and shall cause its Affiliates and representatives to, hold in strict confidence all documents and information concerning the other furnished to it in connection with the transactions contemplated by this Agreement in accordance with the Confidentiality Agreement.

5.5 Publicity. Except as may be required by applicable Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange, prior to the Closing, none of Seller, the Companies or Purchaser or any of their respective Affiliates shall, without the express written approval of Seller, the Companies and Purchaser, make any press release or other public announcements concerning the transactions contemplated by this Agreement, except as and to the extent that any such Party shall be so obligated by applicable Law or pursuant to any such listing agreement or rules of any national securities exchange, in which case the other Parties shall be advised and the parties shall use reasonable efforts to cause a mutually agreeable release or announcement to be issued. From and after the Closing, the Confidentiality Agreement dated May 22, 2006 between Seller and GSO Capital Partners LP (the "Seller CA") shall terminate and cease to be of any force and effect.

5.6 Fees and Expenses. (a) Except as provided in paragraph (b) below, whether or not the Closing occurs, all costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement (including, without limitation, any fees and expenses of investment bankers, brokers, finders, counsel, advisors, experts or other agents, in each case, incident to or in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby (whether payable prior to, at or after the Closing Date)) shall be paid by the party incurring such expenses; provided that all such costs and expenses incurred by the Companies, the Partnership, the Owner Participant or the Lessor on or prior to the Closing shall be paid by Seller.

(b) Other Transaction Expenses. Notwithstanding anything to the contrary set forth in this Agreement, (i) Seller and Purchaser shall each pay 50% of any real property transfer

or gains Tax, sales Tax, use Tax, stamp Tax, stock transfer Tax or other similar Tax imposed on the transactions contemplated by this Agreement, (ii) Purchaser shall pay any out-of-pocket fees, costs and expenses incurred in connection with obtaining all Purchaser Required Statutory Approvals and (iii) Seller shall pay any out-of-pocket fees, costs and expenses incurred in connection with obtaining all Company Required Statutory Approvals and Seller Required Statutory Approvals (other than the Parties' legal fees and expenses which are the subject of paragraph (a) above).

#### 5.7 Indemnification of Directors and Officers.

(a) Indemnification. From and after the Closing Date, Purchaser shall cause each Company (and, for the avoidance of doubt, in the case of CMS Midland, including its successor entities as contemplated by Schedule 1.6 of the Disclosure Letter), to the fullest extent permitted under applicable Law, to indemnify and hold harmless (and advance funds in respect of each of the foregoing) each present and former employee, agent, director, officer or manager of the respective Company and, to the extent appointed by such Company, the Partnership or the Owner Participant, as the case may be (each, together with such person's heirs, executors or administrators, an "Indemnified Person" and collectively, the "Indemnified Persons"), against any costs or expenses (including advancing attorneys' fees and expenses in advance of the final disposition of any claim, suit, proceeding or investigation to each Indemnified Person to the fullest extent permitted by law), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any actual or threatened claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (an "Action"), arising out of, relating to or in connection with any action or omission by such Indemnified Person in his or her capacity as an employee, agent, director, officer or manager occurring or alleged to have occurred whether before or after the Closing Date (including acts or omissions in connection with such person's service as an officer, director or other fiduciary in any entity if such service was at the request or for the benefit of such Company, the Partnership or the Owner Participant, as the case may be). In the event of any such Action, Purchaser shall cooperate with the Indemnified Person in the defense of any such Action.

(b) Survival of Indemnification. To the fullest extent not prohibited by Law, from and after the Closing Date, all rights to indemnification now existing in favor of the Indemnified Persons with respect to their activities as such prior to, on or after the Closing Date, as provided in each Company's (and, for the avoidance of doubt, in the case of CMS Midland, including its successor entities as contemplated by Schedule 1.6 of the Disclosure Letter), the Partnership's and the Owner Participant's respective Organizational Documents or indemnification agreements in effect on the date of such activities or otherwise in effect on the date hereof, shall survive the Closing and shall continue in full force and effect for a period of not less than six (6) years from the Closing Date, provided that, in the event any claim or claims are asserted or made within such survival period, all such rights to indemnification in respect of any claim or claims shall continue until final disposition of such claim or claims.

(c) Insurance. For a period of six (6) years after the Closing Date, Purchaser shall or shall use reasonable efforts to cause the Partnership to, maintain in effect policies of directors' and officers' liability insurance equivalent to those maintained by the Partnership prior to the Closing Date for the benefit of those persons who are currently covered by such policies

on terms no less favorable than the terms of such current insurance coverage; provided, however, that the Partnership will not be required to expend in any year an amount in excess of two hundred percent (200%) of the annual aggregate premiums currently paid by the Partnership for such insurance; and provided, further, that, if the annual premiums of such insurance coverage exceed such amount, Purchaser shall use reasonable efforts to cause the Partnership to, obtain a policy with the best coverage available, in the reasonable judgment of the board of directors of Purchaser, for a cost not exceeding such amount.

(d) Successors. If, after the Closing Date, any of the Companies or Purchaser or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or a substantial portion of its properties and assets to any Person, then, and in either such case, proper provisions shall be made so that the successors and assigns of any of the Companies or Purchaser, as the case may be, shall assume the obligations set forth in this Section 5.7.

(e) Benefit. The provisions of this Section 5.7 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs, executors or administrators and his or her other representatives.

5.8 Termination of Affiliate Contracts. Except as identified in Schedule 5.8 of the Disclosure Letter, all Affiliate Contracts, including any agreements or understandings (written or oral) with respect thereto, shall survive the Closing without any further action on the part of the parties thereto or the Parties.

5.9 Further Assurances. Each of Seller, the Companies and Purchaser agrees that, from time to time before and after the Closing Date, they will execute and deliver, and each of the Companies shall use reasonable efforts to cause the Partnership and the Owner Participant to execute and deliver, or use reasonable efforts to cause their other respective Affiliates (including by exercising the voting, governance and contractual powers available to cause, if possible, each of the Partnership and the Owner Participant) to execute and deliver such further instruments, and take, or cause their respective Affiliates (including by exercising the voting, governance and contractual powers available to cause, if possible, each of the Partnership and the Owner Participant) to take, such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement. Purchaser, the Companies and Seller agree to use reasonable efforts to refrain from taking any action which could reasonably be expected to materially delay the consummation of the Transaction.

5.10 Supplements to Company Disclosure Schedules. Seller and the Companies may, from time to time prior to the Closing by written notice to Purchaser, supplement the Seller Disclosure Schedules or the Company Disclosure Schedules or add a schedule or section to the Seller Disclosure Schedules or the Company Disclosure Schedules with a corresponding reference to be added in this Agreement (such added Schedule to be deemed a supplement hereunder) to disclose any matter which, if occurring prior to the date hereof, would have been required to be set forth or described on the Seller Disclosure Schedules or the Company Disclosure Schedules or to correct any inaccuracy or breach in the warranties made by Seller in this Agreement. Subject to this Section 5.10, none of such supplements to the

Seller Disclosure Schedules or the Company Disclosure Schedules shall be deemed to cure the warranties to which such matters relate with respect to satisfaction of the conditions set forth in Section 6.2(b) hereof or otherwise affect any other term or condition contained in this Agreement; provided, however, that unless Purchaser shall have delivered a Breach Notice contemplated by Section 7.1(d) (to the extent Purchaser is entitled to deliver such Breach Notice pursuant to the terms of this Agreement) within ten (10) Business Days of the receipt by Purchaser of any supplement to the Seller Disclosure Schedules or the Company Disclosure Schedules pursuant to this Section 5.10, then Purchaser shall have waived any and all rights to terminate this Agreement, pursuant to Section 7.1(d) or otherwise, arising out of or relating to the contents of such supplement and the resulting breach or breaches of the warranties and Purchaser shall be deemed to have accepted the contents of such supplement for all purposes of this Agreement; and provided, further, that, from and after the Closing, Seller shall have no liability pursuant to this Agreement or for any matters arising out of or relating to any of the matters disclosed on the Disclosure Letter, as supplemented or amended by the Companies and Seller prior to the Closing.

#### 5.11 Change of Name.

(a) Notwithstanding anything to the contrary contained herein, within fifteen (15) Business Days after the Closing Date, the Purchaser shall have caused CMS Midland and CMS Holdings to be renamed such that each such Company does not include within its name “CMS”. On or after the Closing Date, Purchaser and its Affiliates shall not use existing or develop new stationery, business cards and other similar items that bear the name or mark of “CMS Midland, Inc.” or “CMS Midland Holdings Company” or any similar derivation thereof in connection with the businesses of the Companies.

(b) The Parties acknowledge that any damage caused to Seller or any of its Affiliates by reason of the breach by Purchaser or any of its Affiliates of Section 5.11(a), in each case would cause irreparable harm that could not be adequately compensated for in monetary damages alone; therefore, each Party agrees that, in addition to any other remedies, at law or otherwise; Seller and any of its Affiliates shall be entitled to an injunction issued by a court of competent jurisdiction restraining and enjoining any violation by Purchaser or any of its Affiliates of Section 5.11(a), and Purchaser further agrees that it (x) will stipulate to the fact that Seller or any of its respective Affiliates, as applicable, have been irreparably harmed by such violation and not oppose the granting of such injunctive relief and (y) waive any requirement that Seller post any bond or similar requirement in order for Seller to obtain the injunctive relief contemplated by this Section 5.11(b).

5.12 Financing. Notwithstanding anything contained in this Agreement to the contrary, Purchaser expressly acknowledges and agrees that Purchaser's obligations hereunder are not conditioned in any manner whatsoever upon Purchaser obtaining any financing and any failure to fulfill any obligation hereunder arising from the failure of Purchaser to obtain financing or the unavailability of such financing shall be deemed to be intentional for purposes hereof. Purchaser shall keep Seller apprised of all developments or changes relating to the Financing Arrangements and the financing contemplated thereby. If the Financing Arrangements shall cease to be in full force and effect at any time or the lenders party thereto shall indicate any unwillingness to provide the financing contemplated thereby, or for any reason Purchaser

otherwise no longer believes in good faith that it will be able to obtain the financing contemplated thereby, then Purchaser shall promptly notify Seller and use best efforts to obtain replacement financing arrangements or commitment letters as soon as reasonably practicable. Purchaser shall not, or permit any of its Subsidiaries or Affiliates to, without the prior written consent of Seller, take any action or enter into any transaction, including any merger, acquisition, joint venture, disposition, lease, contract or debt or equity financing that would reasonably be expected to impair, delay or prevent the financing contemplated by the Financing Arrangements.

5.13 Termination of Tax Sharing Agreements. Any and all existing Tax sharing agreements or arrangements (written or unwritten, formal or informal, including the Amended and Restated Agreement for the Allocation of Income Tax Liabilities and Benefits dated as of January 1, 1994 to which CMS Energy, the Companies and Seller, among others, are parties), providing for the allocation or payment of Tax liabilities or payment for Tax benefits between a Company, the Partnership or the Owner Participant, on the one hand, and any other Person, on the other hand, shall be terminated as of the Closing Date and none of the Companies, the Partnership or the Owner Participant will have any liability or claims thereunder on or after the Closing Date. Purchaser shall be entitled to written confirmation of such termination and extinguishment of liability and claims from CMS Energy on behalf of itself and all affected non-Company parties to such Tax sharing agreements and arrangements.

5.14 Tax Matters.

(a) Liability for Taxes. (i) Seller shall be liable for and pay (A) all Taxes imposed on any of the Companies, or for which any of the Companies may otherwise be liable, for any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date, (B) any Taxes by reason of the several liability of the Companies pursuant to Treasury Regulations § 1.1502-6 or any analogous state, local or foreign law or regulation which is attributable to having been a member of any consolidated, affiliated, combined, unitary or similar group on or prior to the Closing Date and (C) any Taxes incurred by or imposed on Seller arising from the sale of the Companies by Seller; provided, however, that Seller shall not be liable for or pay (I) any Taxes shown as a liability or reserve on the Companies Financial Statements, (II) any Taxes imposed on any of the Companies or for which any of the Companies may otherwise be liable as a result of transactions occurring on the Closing Date that are properly allocable (based on, among other relevant factors, factors set forth in Treasury Regulations § 1.1502-76(b)(1)(ii)(B)) to the portion of the Closing Date after the Closing, and (III) notwithstanding anything to the contrary herein, any Taxes resulting from a sale of any of the Companies by Purchaser (Taxes described in this proviso, hereinafter “Excluded Taxes”). Purchaser and Seller agree that, with respect to any transaction described in clause (II) of the preceding sentence, each of the Companies and all persons related to any of the Companies under Section 267(b) of the Code immediately after the Closing shall treat the transaction for all federal income Tax purposes (in accordance with Treasury Regulations § 1.1502-76(b)(1)(ii)(B)), and (to the extent permitted) for other income Tax purposes, as occurring at the beginning of the day following the

Closing Date. Seller shall be entitled to any refund of (or credit for) Taxes allocable to any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date.

(ii) Purchaser shall be liable for and pay, and pursuant to Article VIII covenants to indemnify, defend and hold harmless the Seller Indemnified Parties from and against any and all Damages arising from, (A) all Taxes imposed any of the Companies, or for which any of the Companies may otherwise be liable, for any taxable year or period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date and (B) any Excluded Taxes. Except as otherwise provided herein, Purchaser shall be entitled to any refund of (or credit for) Taxes allocable to any taxable year or period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date.

(iii) For purposes of paragraphs (a)(i) and (a)(ii), whenever it is necessary to determine the liability for Taxes of any of the Companies for a Straddle Period, the determination of the Taxes of any of the Companies for the portion of the Straddle Period ending on and including, and the portion of the Straddle Period beginning after, the Closing Date shall be determined by assuming that the Straddle Period consisted of two taxable years or periods, one which ended at the close of the Closing Date and the other which began at the beginning of the day following the Closing Date, and items of income, gain, deduction, loss or credit of any of the Companies for the Straddle Period shall be allocated between such two taxable years or periods on a “closing of the books basis” by assuming that the books of the Companies were closed at the close of the Closing Date; provided, however, that (I) transactions occurring on the Closing Date that are properly allocable (based on, among other relevant factors, factors set forth in Treasury Regulations § 1.1502-76(b)(1)(ii)(B)) to the portion of the Closing Date after the Closing shall be allocated to the taxable year or period that is deemed to begin at the beginning of the day following the Closing Date, and (II) exemptions, allowances or deductions that are calculated on an annual basis, such as the deduction for depreciation, shall be apportioned between such two taxable years or periods on a daily basis.

(iv) If, as a result of any action, suit, investigation, audit, claim, assessment or amended Tax Return, there is any change after the Closing Date in an item of income, gain, loss, deduction, credit or amount of Tax that results in an increase in a Tax liability for which Seller would otherwise be liable pursuant to paragraph (a)(i) of this Section 5.14, and such change results in or will result in a decrease in the Tax liability of any of the Companies, Purchaser or successor of any thereof for any taxable year or period beginning after the Closing Date or for the portion of any Straddle Period beginning after the Closing Date, Seller shall not be liable pursuant to such paragraph (a)(i) with respect to such increase to the extent of the present value (using a discount rate equal to the then “Federal mid-

term rate,” as that term is defined in Section 1274(d) of the Code) of such decrease (and, to the extent such increase in Tax liability is paid to a taxing authority by Seller or any Affiliate thereof, Purchaser shall pay Seller an amount equal to the present value of such decrease). Conversely, if, as a result of any action, suit, investigation, audit, claim, assessment or amended Tax Return, there is any change after the Closing Date in an item of income, gain, loss, deduction, credit or amount of Tax that results in an increase in a Tax liability for which Purchaser would otherwise be liable pursuant to paragraph (a)(ii) of this Section 5.14, and such change results in or will result in a decrease in the Tax liability of any of the Companies, Seller or successor of any thereof for any taxable year or period ending on or before the Closing Date or for the portion of any Straddle Period beginning before the Closing Date, Purchaser shall not be liable pursuant to such paragraph (a)(ii) with respect to such increase to the extent of the present value (using a discount rate equal to the then “Federal mid-term rate”, as that term is defined in Section 1274(d) of the Code) of such decrease (and, to the extent such increase in Tax liability is paid to a taxing authority by Purchaser or any Affiliate thereof, Seller shall pay Purchaser an amount equal to the present value of such decrease).

(b) Tax Returns. (i) Seller shall file or cause to be filed when due (taking into account all extensions properly obtained all Tax Returns that are required to be filed by or with respect to any of the Companies for taxable years or periods ending on or before the Closing Date and Seller shall remit or cause to be remitted any Taxes due in respect of such Tax Returns, and Purchaser shall file or cause to be filed when due (taking into account all extensions properly obtained) all Tax Returns that are required to be filed by or with respect to any of the Companies for taxable years or periods ending after the Closing Date, and Purchaser shall remit or cause to be remitted any Taxes due in respect of such Tax Returns. Seller or Purchaser shall pay the other party for the Taxes for which Seller or Purchaser, respectively, is liable pursuant to paragraph (a) of this Section 5.14 but which are payable with any Tax Return to be filed by the other party pursuant to this paragraph (b) upon the written request of the party entitled to payment, setting forth in detail the computation of the amount owed by Seller or Purchaser, as the case may be, but in no event earlier than 10 days prior to the due date for paying such Taxes without regard to any indemnification limitations set forth in Article VIII. If either Company has the right (contractually or under applicable Law) to review, provide comments with respect to, consent to the filing of or take any other action with respect to, any Tax Return required to be filed by or with respect to the Owner Participant or the Partnership, then (i) to the extent such Tax Return relates to a taxable year or period ending on or before the Closing Date, Seller shall control such Company’s exercise of such right and (ii) to the extent such Tax Return relates to a Straddle Period, Purchaser shall control such Company’s exercise of such right, but Seller shall be entitled to participate in such Company’s exercise of such right.

(ii) None of Purchaser or any Affiliate of Purchaser shall (or shall cause or permit any of the Companies to) (i) in the case of any Tax Return relating in whole or in part to any of the Companies with respect to any taxable year or period ending on or before the Closing Date (or with respect to any Straddle Period), amend, refile or otherwise modify (or grant an extension of any statute of limitation with respect to) such Tax Return or (ii) in the case of any Tax Return relating in whole or in part to the Owner Participant or the Partnership with respect to any taxable year or period ending on or before the Closing Date (or with respect to any Straddle Period), consent to, or otherwise exercise the rights of either Company (contractually or under applicable Law) with respect to, the amendment, refiling or other modification of (or the grant of any extension of any statute of limitation with respect to) any such Tax Return, in each case without the prior written consent of Seller, which consent may not be unreasonably withheld.

(iii) Purchaser shall promptly cause each of the Companies to prepare and provide to Seller a package of Tax information materials (including, without limitation, (i) schedules and work papers and (ii) any Schedule K-1s delivered to the Companies by the Owner Participant or the Partnership, as the case may be) (the “Tax Package”) required by Seller to enable Seller to prepare and file all Tax Returns required to be prepared and filed by it pursuant to paragraph (b)(i). The Tax Package shall be completed in accordance with past practice, including past practice as to providing such information and as to the method of computation of separate taxable income or other relevant measure of income of the Company. Purchaser shall cause the Tax Package to be delivered to Seller within 60 days after the Closing Date. To the extent requested by Purchaser, Seller shall provide reasonable assistance and guidance with respect to Purchaser’s preparation of the Tax Package.

(c) Contest Provisions. Purchaser shall promptly notify Seller in writing upon receipt by Purchaser, any of its Affiliates, or any of the Companies of notice of any pending or threatened federal, state, local or foreign Tax audits, examinations or assessments which might affect the Tax liabilities for which Seller may be liable pursuant to paragraph (a) of this Section 5.14 (including, but not limited to, notice of any pending or threatened audits, examinations or assessments involving the Owner Participant or the Partnership which might affect the Tax liabilities for which Seller may be liable pursuant to paragraph (a) of this Section 5.14). Seller shall have the sole right to represent each of the Company’s interests in any Tax audit or administrative or court proceeding relating to taxable periods ending on or before the Closing Date or otherwise relating to Taxes for which Seller may be liable pursuant to paragraph (a) of this Section 5.14 (including, but not limited to, the right to exercise any participation rights the Company may have (either contractually or under applicable Law) in any Tax audit or administrative or court proceeding involving the Owner Participant or the Partnership which might affect the Tax liabilities for which Seller may be liable pursuant to paragraph (a) of this Section 5.14), and to employ counsel of its choice at its expense. In the case of a Straddle Period, Seller shall be entitled to participate at its sole expense in any Tax audit or administrative or court proceeding relating (in whole or in part) to Taxes attributable to the portion of such Straddle Period ending on and including the Closing Date (including any Tax audit or

administrative or court proceeding involving the Owner Participant or Partnership, to the extent either Company is entitled to participate in such Tax audit or administrative or court proceeding (either contractually or and under applicable Law)) and, with the written consent of Purchaser, and at Seller's sole expense, may assume the entire control of such audit or proceeding (or, in the case of any audit or proceeding involving the Owner Participant or Partnership, the entire participation by either Company in such audit or proceeding). None of Purchaser, any of its Affiliates, or any of the Companies may settle any Tax claim (or consent to or otherwise exercise the rights of either Company (contractually or under applicable Law) with respect to the settlement of any Tax claim by the Owner Participant or the Partnership) relating to Taxes for which Seller may be liable pursuant to paragraph (a) of this Section 5.14 without the prior written consent of Seller, which consent may be withheld in the sole discretion of Seller.

(d) Assistance and Cooperation. After the Closing Date, each of Seller and Purchaser shall (and cause their respective Affiliates to):

(i) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with paragraph (b) of this Section 5.14;

(ii) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns of any of the Companies, the Owner Participant or the Partnership;

(iii) make available to the other and to any taxing authority as reasonably requested all information, records, and documents relating to Taxes of each of the Companies, the Owner Participant or the Partnership;

(iv) provide timely notice to the other in writing of any pending or threatened Tax audits or assessments of any of the Companies, the Owner Participant or the Partnership for taxable periods for which the other may have a liability under this Section 5.14;

(v) furnish the other with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period;

(vi) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in paragraph (a)(ii)(B) of this Section 5.6(b) (relating to sales, transfer and similar Taxes); and

(vii) timely provide to the other powers of attorney or similar authorizations necessary to carry out the purposes of this Section 5.14.

5.15 Unwind Agreement. The Companies shall have been (i) completely released from all liabilities to CMS Energy and its Affiliates under the Class I Contracts and (ii)

released from all liabilities to CMS Energy and its Affiliates under the Class II Contracts to the extent exceeding \$5,000,000 (and a copy of such release shall have been provided to Purchaser).

5.16 Books and Records. At the Closing, Seller shall deliver to Purchaser copies or originals (where available) of the minute books for each Company which are complete and correct in all material respects. As soon as practicable following the Closing, Seller shall deliver or cause to be delivered to Purchaser originals (where reasonably available, including duplicate original counterparts held by former debt trustees and former counsel) or copies of other books and records of the Companies, Seller and CMS Energy in respect of the Partnership and the Owner Participant, in each case, listed on any Schedule of the Disclosure Letter or otherwise made available for review by Purchaser prior to the Closing in the electronic data room for “Project MCV” maintained by Intralinks, Inc.

5.17 FIRPTA Certificate. At the Closing, Purchaser shall have received a certification of Seller’s non-foreign status as set forth in Treasury Regulations Section 1.1445-2(b).

## ARTICLE VI

### CONDITIONS TO CLOSING

6.1 Conditions to the Obligations of the Parties. The obligations of the Parties to effect the Closing shall be subject to the satisfaction or waiver (to the extent permitted by Law) by Purchaser and Seller, on or prior to the Closing Date, of each of the following conditions precedent:

(a) Statutory Approvals. The Seller Required Statutory Approvals and the Purchaser Required Statutory Approvals set forth on Schedule 6.1(a) of the Disclosure Letter shall have been obtained at or prior to the Closing Date and the Seller Required Statutory Approvals shall not, individually or in the aggregate, contain terms or conditions that have, or could reasonably be expected to have, (i) a Company Material Adverse Effect or (ii) Purchaser Material Adverse Effect.

(b) No Injunction. No statute, rule or regulation shall have been enacted or promulgated by any Governmental Entity which prohibits the consummation of the transactions contemplated hereby and there shall be no order or injunction of a court of competent jurisdiction in effect precluding or prohibiting the consummation of the transactions contemplated hereby; provided, however, that should any such order or injunction be entered into or in effect, the parties shall use reasonable efforts (at the sole cost and expense of the Party against which such order or injunction has been entered) to have any order or injunction vacated or lifted.

6.2 Conditions to the Obligation of Purchaser. The obligation of Purchaser to effect the Closing shall be subject to the satisfaction or waiver by Purchaser on or prior to the Closing Date of each of the following conditions:

(a) Performance of Obligations of Seller and the Companies. Each of Seller and the Companies shall have performed in all Material respects its respective agreements and covenants contained in or contemplated by this Agreement which are required to be performed by it at or prior to the Closing.

(b) Warranties. The warranties of Seller and the Companies set forth in this Agreement shall be true and correct (i) on and as of the date hereof and (ii) on and as of the Closing Date with the same effect as though such warranties had been made on and as of the Closing Date (except for warranties that expressly speak only as of a specific date or time which need only be true and correct as of such date or time) except in each of cases (i) and (ii) for such failures of warranties to be true and correct (without giving effect to any materiality qualification or standard contained in any such warranties) which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or a Seller Material Adverse Effect.

(c) Company Required Consents. The Company Required Consents, the failure of which to obtain would be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect or a Seller Material Adverse Effect, shall have been obtained.

(d) Officer's Certificate. Purchaser shall have received a certificate from an authorized officer of Seller, dated the Closing Date, to the effect that, to the best of such officer's Knowledge, the conditions set forth in Sections 6.2(a) and 6.2(b) have been satisfied.

(e) Resignations of Certain Officers and Directors. Purchaser shall have received the resignations or removals of the officers and directors and other persons set forth on Schedule 6.2(e) of the Disclosure Letter from their position as officer or director, or other management or employment position, of the Companies, the Partnership or the Owner Participant set forth opposite the name of such officer, director or person on Schedule 6.2(e) of the Disclosure Letter.

(f) Alanna Holding Corporation. CMS Midland shall have become (for \$1.00 of consideration) the record and beneficial owner of all shares of common stock of Alanna Holdings Corporation presently held by CMS Energy and, in connection therewith, CMS Midland shall have become a party to a stockholders agreement in the form required by the Stockholder's Agreement dated as of June 14, 1990 to which CMS Energy is a party, and CMS Midland shall have assumed all of CMS Energy's rights and obligations under such Stockholder's Agreement.

(g) MCV2 and MCV Expansion. Purchaser shall have received an instrument of assignment (which form is attached hereto as Exhibit C), pursuant to which (i) CMS Generation Co. shall have assigned to Purchaser all its right, title and interest in and to MCV2 and (ii) CMS Generation Co. shall have assigned to Purchaser all its right, title and interest in and to MCV Expansion, which instrument shall be effective at the Effective Time.

(h) Closing Deliverables. Purchaser shall have received all documents and other items required to be delivered by Seller to Purchaser pursuant to Section 1.4.

6.3 Conditions to the Obligation of Seller. The obligation of Seller to effect the Closing shall be subject to the satisfaction or waiver by Seller on or prior to the Closing Date of each of the following conditions:

(a) Performance of Obligations of Purchaser. Purchaser shall have performed in all Material respects its agreements and covenants contained in or contemplated by this Agreement which are required to be performed by it at or prior to the Closing.

(b) Warranties. The warranties of Purchaser set forth in this Agreement shall be true and correct (i) on and as of the date hereof and (ii) on and as of the Closing Date with the same effect as though such warranties had been made on and as of the Closing Date (except for warranties that expressly speak only as of a specific date or time which need only be true and correct as of such date or time) except in each of cases (i) and (ii) for such failures of warranties to be true and correct (without giving effect to any materiality qualification or standard contained in any such warranties) which would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

(c) Purchaser Required Consents. The Purchaser Required Consents, the failure of which to obtain would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect, shall have been obtained.

(d) Officer's Certificate. Seller shall have received a certificate from an authorized officer of Purchaser, dated the Closing Date, to the effect that, to the best of such officer's Knowledge, the conditions set forth in Sections 6.3(a) and 6.3(b) have been satisfied.

(e) Demand Note. Seller shall have received a dividend of the \$10,000,000 demand note issued by Seller in favor of CMS Midland or such note and the obligations thereunder shall have been cancelled without any payment by Seller in respect thereof.

(f) Closing Deliverables. Seller shall have received all documents and other items required to be delivered by Purchaser to Seller pursuant to Section 1.4.

## ARTICLE VII

### TERMINATION

7.1 Termination. This Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual written agreement of Purchaser, the Companies and Seller;

(b) by Purchaser or Seller, if (i) a statute, rule, regulation or executive order shall have been enacted, entered or promulgated prohibiting the consummation of the transactions contemplated hereby or (ii) an order, decree, ruling or injunction shall have been entered permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, and such order, decree, ruling or injunction shall have become final and nonappealable;

(c) by Purchaser or Seller, by written notice, if the Closing Date shall not have occurred on or before December 31, 2006 (the “Termination Date”); provided, however, that the right to terminate the Agreement under this Section 7.1(c) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall have caused or resulted in the failure of the Closing Date to occur on or before such date;

(d) by Purchaser, so long as Purchaser is not then in breach of any of its warranties, covenants or agreements hereunder, by written notice to Seller, if there shall have been a breach of any warranty of Seller or the Companies, or a breach of any covenant or agreement of Seller hereunder, which breaches would be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, and such breach shall not have been remedied within thirty (30) days after receipt by Seller and the Companies of notice in writing from Purchaser (a “Breach Notice”), specifying the nature of such breach and requesting that it be remedied or Purchaser shall not have received adequate assurance of a cure of such breach within such thirty-day period; or

(e) by Seller, so long as Seller or the Companies are not then in breach of any of their warranties, covenants or agreements hereunder, by written notice to Purchaser, if there shall have been a breach of any warranty, or a breach of any covenant or agreement of Purchaser hereunder, which breaches would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect, and such breach shall not have been remedied within thirty (30) days after receipt by Purchaser of notice in writing from Seller, specifying the nature of such breach and requesting that it be remedied or Seller shall not have received adequate assurance of a cure of such breach within such thirty-day period.

7.2 Effect of Termination. No termination of this Agreement pursuant to Section 7.1 shall be effective until notice thereof is given to the non-terminating Parties specifying the provision hereof pursuant to which such termination is made. Subject to Section 1.5 hereof, if validly terminated pursuant to Section 7.1, this Agreement shall, subject to Section 8.1, become wholly void and of no further force and effect without liability to any Party or to any Affiliate, or their respective members or shareholders, directors, officers, employees, agents, advisors or representatives, and following such termination no Party shall have any liability under this Agreement or relating to the transactions contemplated by this Agreement to any other Party; provided that no such termination shall (i) relieve Purchaser, Seller or the Companies from liability for fraud or any willful or intentional breach of any provision of this Agreement prior to such termination or (ii) relieve Purchaser from any liability for any breach of Purchaser's warranties contained in Section 4.3 (whether or not such breach is fraudulent, willful or intentional). If this Agreement is terminated as provided in Section 7.1, Purchaser shall redeliver to Seller or the Companies, as the case may be, and will cause its agents to redeliver to Seller or the Companies, as the case may be, all documents, workpapers and other materials of Seller, the Companies, the Partnership, the Owner Participant and the Lessor relating to any of them and the transactions contemplated hereby, whether obtained before or after the execution hereof, and Purchaser shall comply with all of its obligations under the Confidentiality Agreement.

## ARTICLE VIII

### LIMITS OF LIABILITY

8.1 Non-Survival of Warranties, Covenants and Agreements.

(a) Except as expressly provided in Section 8.1(b), none of the warranties, covenants or agreements of Purchaser, the Companies or Seller in this Agreement shall survive the Closing, and no claim of any sort or on any basis may be made by any Party in respect of any breach of any such warranty, covenant or agreement after the Closing, and no breach thereof shall confer any right of rescission of this Agreement. Except in respect of the warranties, covenants and agreements referred to in Section 8.1(b) that survive the Closing and except as otherwise provided for in this Agreement, the sole remedy that a Party may have for a breach of any warranty, covenant or agreement of Purchaser, the Companies or Seller in this Agreement shall be to terminate this Agreement to the extent provided for under, and in accordance with the terms of, this Agreement.

(b) The warranties, covenants and agreements of Purchaser, Companies and Seller in this Agreement shall survive as follows:

(i) the warranties of Seller contained in Sections 2.2 (Company Capitalization; Right and Title to Interests), 2.3(a) (Authority) and 2.6 (Composite PPA, etc.) hereof shall survive indefinitely;

(ii) the warranties of the Companies contained in Sections 3.1(a) (Organization and Qualification), 3.1(b) (Authority) and 3.2 (Capitalization) hereof shall survive indefinitely;

(iii) the warranties of the Companies contained in Section 3.11 (Contracts) shall survive through December 31, 2007;

(iv) the warranties of Purchaser contained in Sections 4.2(a) (Authority) and 4.8 (No Knowledge of Seller or Company Breach) hereof shall survive indefinitely;

(v) the covenants and agreements of Purchaser and Companies contained in Section 5.7 (Indemnification of Directors and Officers) hereof shall survive in accordance with their terms;

(vi) the covenants and agreements of the Parties set forth in the last sentence of Section 5.4 (Access), Sections 5.6 (Fees and Expenses), 5.9 (Further Assurances) and 5.11 (Change of Name) hereof, Section 7.2 (Effect of Termination) hereof, Article VIII (Limits of Liability) hereof and Article X (General Provisions) hereof shall survive indefinitely;

(vii) the covenants and agreements of the Parties contained in Sections 5.13 (Termination of Tax Sharing Agreements) and 5.14 (Tax Matters) hereof shall survive the Closing and shall not terminate until the Tax Statute of Limitations Date.

No claim or cause of action arising out of the inaccuracy or breach of any warranty, covenant or agreement of Seller, the Companies or Purchaser may be made following the

termination of the applicable survival period referred to in this Section 8.1(b). The Parties intend to change the statutory limitations and agree that, after the Closing Date, with respect to Seller, the Companies and Purchaser, any claim or cause of action against any of the Parties, or any of their respective directors, officers, employees, Affiliates, successors, permitted assigns, advisors, agents, or representatives based upon, directly or indirectly, any of the warranties, covenants or agreements contained in this Agreement, or any other agreement, document or instrument to be executed and delivered in connection with this Agreement, may be brought only as expressly provided in this Article VIII.

(c) The liability of any Party in respect of which a notice of claim is given under this Agreement shall (if such claim has not been previously satisfied, settled or withdrawn) absolutely determine and any claim made therein be deemed to have been withdrawn (and no new claim may be made in respect of the facts, event, matter or circumstance giving rise to such withdrawn claim) unless legal proceedings in respect of such claim shall have been commenced within six (6) months of the date of service of such notice (or such other period as may be agreed by the relevant Parties) and for this purpose proceedings shall not be deemed to have commenced unless they shall have been properly issued and validly served upon the relevant Party.

8.2 Seller Indemnity. From and after the Closing Date and subject to the provisions of this Article VIII, Seller agrees to indemnify, defend and hold harmless the Purchaser Indemnified Parties, from and against any and all Damages arising from breach of warranties of the Companies contained in Sections 3.1(a) (Organization and Qualification), 3.1(b) (Authority), 3.2 (Capitalization) and 3.11 (Contracts) hereof, subject in each case to any limits on liability contained in this Agreement. Sections 3.1(a), 3.1(b) and 3.2 of this Agreement shall survive indefinitely and Section 3.11 hereof shall survive through December 31, 2007 but Seller shall have no claim for indemnity, contribution or subrogation against the Companies for any breach of such Sections or against any officer of any Company that may have certified as to the matters specified in such Sections.

8.3 Purchaser Indemnity. From and after the Closing Date and subject to the provisions of this Article VIII, Purchaser agrees to indemnify, defend and hold harmless the Seller Indemnified Parties, from and against any and all Damages arising from and after the Effective Time in connection with or relating to the business and operation of the Companies, the Partnership, the Owner Participant and the Lessor, arising out of or relating to conduct occurring from and after the Effective Time only excluding Damages arising from and after the Effective Time in connection with or relating to (i) the business and operations of the Companies, the Partnership, the Owner Participant and the Lessor under the Consumers Contracts or the Dow Contracts, (ii) MPSC Matters or (iii) Specified Environmental Matters.

#### 8.4 Claim Process.

(a) The party or parties making a claim for breach of warranty or indemnification under this Agreement shall be, for the purposes of this Agreement, referred to as the "Indemnified Party" and the party or parties against whom such claims are asserted under

this Agreement shall be, for the purposes of this Agreement, referred to as the “Indemnifying Party”.

(b) In the event that: (i) any action, application, suit, demand, claim or legal, administrative, arbitration or other alternative dispute resolution proceeding, hearing or investigation (each, a “Proceeding”) is asserted or instituted by any Person other than the Parties or their Affiliates which could give rise to Damages for which an Indemnifying Party could be liable to an Indemnified Party under this Agreement (such Proceeding, a “Third Party Claim”) or (ii) any Indemnified Party under this Agreement shall have a claim for Damages under this Agreement which does not involve a Third Party Claim (such claim, a “Direct Claim” and, together with Third Party Claims, “Claims”), the Indemnified Party shall, promptly after it becomes aware of a Third Party Claim, or facts supporting a Direct Claim, send to the Indemnifying Party a written notice specifying the nature of such Proceeding and the amount or estimated amount thereof (which amount or estimated amount shall not be conclusive of the final amount, if any, of such Proceeding) (a “Claim Notice”), together with copies of all notices and documents (including court papers) served on or received by the Indemnified Party in the case of a Third Party Claim, provided that a delay in notifying the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Article VIII except to the extent that (and only to the extent that) the Indemnifying Party shall have been materially prejudiced by such failure to give such notice, in which case the Indemnifying Party shall be relieved of its obligations under this Article VIII to the extent of such material prejudice.

(c) In the event of a Third Party Claim, the Indemnifying Party shall have the right to defend the Indemnified Party against such Third Party Claim and be entitled to appoint counsel of the Indemnifying Party’s choice at the expense of the Indemnifying Party to represent the Indemnified Party in connection with such Proceeding (in which case the Indemnifying Party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by any Indemnified Party or any other costs or expenses with respect to the defense of a Third Party Claim except as set forth below); provided that such counsel is acceptable to the Indemnified Party, the Indemnified Party acting reasonably. Notwithstanding an Indemnifying Party’s election to defend such Third Party Claim and appoint counsel to represent an Indemnified Party in connection with a Third Party Claim, an Indemnified Party shall have the right to employ separate counsel, but the Indemnifying Party shall bear the reasonable fees, costs and expenses of such separate counsel only if (i) the use of counsel selected by the Indemnifying Party to represent the Indemnified Party would present such counsel with a conflict of interest or (ii) the Indemnifying Party shall not have employed counsel to represent the Indemnified Party within a reasonable time after notice of the institution of such Third Party Claim, provided that, notwithstanding such failure to employ counsel within a reasonable time, the Indemnifying Party shall have the right to assume the defense of such Third Party Claim by appointment of counsel reasonably acceptable to the Indemnified Party and shall thereafter cease to be responsible for the fees and expenses of counsel appointed by the Indemnified Party. Nothing in this Section 8.4(c) shall require the Indemnifying Party to be responsible for the fees and expenses of more than one counsel at any time in connection with the defense against a Third Party Claim. If requested by the Indemnifying Party, the Indemnified Party agrees to cooperate with the Indemnifying Party and its counsel in defending and contesting any Proceeding which the Indemnifying Party defends, or, if appropriate and related to the Proceeding in question, in

making any counterclaim against the person asserting the Third Party Claim, or any cross-complaint against any person. No Third Party Claim may be settled or compromised (i) by the Indemnified Party without the prior written consent of the Indemnifying Party or (ii) by the Indemnifying Party without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), unless, in the case of this clause (ii), the sole relief provided is monetary damages that are paid in full by the Indemnifying Party (if such claim by the Indemnified Party for indemnification is successful). In the event any Indemnified Party settles or compromises or consents to the entry of any judgment with respect to any Third Party Claim without the prior written consent of the Indemnifying Party (except in the event the Indemnifying Party unreasonably withheld or delayed its consent), each Indemnified Party shall be deemed to have waived all rights against the Indemnifying Party for indemnification under this Article VIII with respect to such Third Party Claim.

(d) In the event of a Direct Claim, the Indemnifying Party shall notify the Indemnified Party within thirty (30) days of receipt of a Claim Notice whether the Indemnifying Party disputes such claim. From and after the delivery of a Claim Notice under this Agreement, at the reasonable request of the Indemnifying Party, each Indemnified Party shall grant the Indemnifying Party and its representatives reasonable access to the books, records, employees, representatives and properties of such Indemnified Party to the extent reasonably related to the matters to which the Claim Notice relates. If the Indemnified Party is Purchaser, Purchaser shall cause each of the Companies, and shall use reasonable efforts to cause each of the Partnership, the Owner Participant and the Lessor, to grant to the Indemnifying Party the access described in the immediately preceding sentence. All such access shall be granted during normal business hours and shall be granted under conditions which will not unreasonably interfere with the business and operations of the Indemnified Party. The Indemnifying Party will not, and shall use reasonable efforts to cause its representatives not to, use (except in connection with such Claim Notice) or disclose to any third person other than the Indemnifying Party's representatives (except as may be required by applicable Law) any information obtained pursuant to this Section 8.4(d) which is designated as confidential by an Indemnified Party.

(e) If there shall be any conflicts between the provisions of this Section 8.4 and Section 5.14(c) hereof, the provisions of such Section 5.14(c) shall control with respect to Tax contests.

#### 8.5 Limitations on Claims.

(a) Maximum Liability. Notwithstanding anything in this Agreement to the contrary, but subject to the limitations set forth in this Section 8.5, Section 10.10 hereof or otherwise in this Agreement, the aggregate amount of Purchaser's or Seller's liability (in each case) pursuant to this Agreement and the transactions contemplated hereby (in addition to Purchaser's obligation to pay the Purchase Price in accordance with Article I hereof) shall not exceed the amount of the Purchase Price plus any amounts paid by Purchaser under the SEPA Payment Agreement and not otherwise reimbursed.

#### (b) Additional Limitations.

(i) The amount of any Damages incurred by the Indemnified Party shall be reduced by the net amount the Indemnified Party or any of its Affiliates recovers (after deducting all attorneys' fees, expenses and other costs of recovery) from any insurer or other party liable for such Damages (other than Seller). The Indemnified Party shall use reasonable efforts to effect any such recovery.

(ii) The amount of any Damages incurred by the Indemnified Party shall be reduced by the amount of any Tax benefit to the Indemnified Party arising from the recognition of Damages.

(iii) Any liability under this Agreement shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one warranty, covenant or agreement.

(iv) No recovery under this Agreement shall be available for Damages arising out of or relating to any inaccuracy or breach of any warranty of Seller or the Company to the extent Purchaser or any Affiliate of Purchaser had Knowledge of such breach or inaccuracy prior to the Closing.

(v) No Party shall be entitled to recover Damages or obtain payment, reimbursement or restitution more than once in respect of any inaccuracy or breach of any provision of this Agreement. No liability shall attach to any Party under this Agreement to the extent the subject thereof has otherwise been made good or is compensated for.

(vi) Seller's liability for all claims made under Section 8.2 hereof with respect to breach of the warranties of the Companies contained in Section 3.11 (*Contracts*) shall be subject to the following limitations: (A) Seller shall have no liability for such claims until the aggregate amount of the Damages incurred (determined without regard to any materiality qualification or qualification with reference to Seller Material Adverse Effect or Company Material Adverse Effect) shall exceed \$1,000,000, in which case Seller shall be liable only for the portion of the Damages exceeding such amount and (B) Seller's aggregate liability for all such Section 3.11-based claims shall not exceed 50% of the Purchase Price.

(c) Limitation of Remedies.

(i) Except for the warranties set forth in Articles II and III hereof, none of Seller, the Companies or their respective Affiliates nor any of their respective directors, officers, employees, subsidiaries, controlling persons, agents or representatives, makes or has made, and each of Seller, the Companies and their respective Affiliates and all of their respective directors, officers, employees, subsidiaries, controlling persons, agents or representatives hereby negate and disclaim, any other warranty, written or oral, statutory, express or implied, concerning the Shares, the business, assets or liabilities of any of the Companies, the Partnership, the Owner Participant, the Lessor, the transactions contemplated hereby, or any other matter in connection with Purchaser's investigation of the

Companies, the Partnership, the Owner Participant and the Lessor. Purchaser has received and may continue to receive from Seller, the Companies and their respective representatives certain estimates, projections and other forecasts for the Companies, the Partnership and the Owner Participant and certain plan and budget information. Purchaser acknowledges that these estimates, projections, forecasts, plans and budgets and the assumptions on which they are based were prepared for specific purposes and may vary significantly from each other. Further, Purchaser acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts, plans and budgets, that Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, plans and budgets so furnished to it, and that Purchaser is not relying on any estimates, projections, forecasts, plans or budgets furnished by Seller, the Companies or their respective representatives, and Purchaser shall not hold any such person liable with respect thereto. Neither Seller nor the Companies make any representation or warranty with respect to any estimates, projections, forecasts, plans or budgets. Except as expressly provided in this Agreement, Purchaser acknowledges that none of Seller, the Companies, the Partnership, the Owner Participant, the Lessor and their respective Affiliates and none of their respective directors, officers, employees, subsidiaries, controlling persons, agents or representatives has made, and Seller and the Companies hereby expressly disclaim and negate, and Purchaser hereby expressly waives, any representation or warranty, express or implied, at common law, by statute or otherwise relating to, and Purchaser hereby expressly waives and relinquishes any and all rights, claims and causes of action against Seller, the Companies, the Partnership, the Owner Participant and the Lessor and their respective Affiliates and all of their respective directors, officers, employees, subsidiaries, controlling persons, agents or representatives in connection with, the accuracy, completeness or materiality of any information, data or other materials (written or oral) furnished to Purchaser or its Affiliates or representatives prior to, on or after the date hereof by or on behalf of Seller, the Companies, the Partnership, the Owner Participant and the Lessor. The provisions of this Section 8.5(c)(i) are intended to be for the benefit of, and be enforceable by, the respective Affiliates of Seller and the Companies, and directors, officers, employees, subsidiaries, controlling persons, agents and representatives of Seller, the Companies and their respective Affiliates.

(ii) Except to the extent provided in Sections 5.12 and 10.12 hereof, from and after the Closing, the rights expressly provided for in this Article VIII shall be the exclusive remedies of the Parties and their respective officers, directors, employees, Affiliates, agents, representatives, successors and assigns for any breach or inaccuracy of any warranty or breach of or noncompliance with any covenant or agreement contained in this Agreement and the parties shall not be entitled to a rescission of this Agreement or to any further indemnification or other rights or claims of any nature whatsoever (including under statute, regulation, common law, in equity or for negligence) in respect thereof, all of which the parties hereto hereby waive to the fullest extent permitted by law.

8.6 Characterization of Payments for Damages. Purchaser and Seller agree to treat any payment made under this Article VIII, to the maximum extent permitted by applicable Law, as an adjustment to the Purchase Price for all Tax purposes.

## **ARTICLE IX**

### **DEFINITIONS AND INTERPRETATION**

9.1 Defined Terms. The following terms are defined in the corresponding Sections of this Agreement:

<u>Defined Term</u>	<u>Section Reference</u>
Action	<u>Section 5.7(a)</u>
Affiliate Contracts	<u>Section 3.15</u>
Agreed Amount	<u>Section 3.11(a)(ii)</u>
Agreement	<u>Preamble</u>
Breach Notice	<u>Section 7.1(d)</u>
Claims	<u>Section 8.4(b)</u>
C&E Agreements	<u>Section 2.6</u>
Claim Notice	<u>Section 8.4(b)</u>
Closing	<u>Section 1.3</u>
Closing Date	<u>Section 1.3</u>
CMS Holdings	<u>Preamble</u>
CMS Holdings Shares	<u>Section 2.2</u>
CMS Midland	<u>Preamble</u>
CMS Midland Shares	<u>Section 2.2</u>
Code	<u>Section 3.5(a)</u>
Companies	<u>Preamble</u>
Company	<u>Preamble</u>
Company Financial Statements	<u>Section 3.3</u>
Company Material Contracts	<u>Section 3.11(a)</u>
Company Permits	<u>Section 3.9(a)</u>
Company Required Consents	<u>Section 3.1(c)</u>
Company Required Statutory Approvals	<u>Section 3.1(d)</u>
Composite PPA	<u>Section 2.6</u>
Contracting Party	<u>Section 3.11(a)</u>
Direct Claim	<u>Section 8.4(b)</u>
Disclosure Letter	<u>Article II</u>
Dow	<u>Section 3.11(a)(i)</u>
ERISA Affiliate	<u>Section 3.8(a)</u>
Excluded Taxes	<u>Section 5.14(a)(i)</u>
Financing Arrangements	<u>Section 4.3</u>
Indemnified Party	<u>Section 8.4(a)</u>
Indemnified Person	<u>Section 5.7(a)</u>
Indemnifying Party	<u>Section 8.4(a)</u>
Intellectual Property	<u>Section 3.14</u>

<u>Defined Term</u>	<u>Section Reference</u>
Owner Participant	<u>Recitals</u>
Parties	<u>Preamble</u>
Partnership	<u>Recitals</u>
Partnership Plans	<u>Section 3.8(a)</u>
Proceeding	<u>Section 8.4(b)</u>
Purchase Agreement Fee	<u>Section 1.5</u>
Purchase Price	<u>Section 1.2</u>
Purchaser	<u>Preamble</u>
Purchaser Required Consents	<u>Section 4.2(b)</u>
Purchaser Required Statutory Approvals	<u>Section 4.2(c)</u>
Reg-Out Waiver Period	<u>Section 2.6</u>
Securities Act	<u>Section 4.5</u>
Seller	<u>Preamble</u>
Seller CA	<u>Section 5.5</u>
Seller Required Consents	<u>Section 2.3(b)</u>
Seller Required Statutory Approvals	<u>Section 2.3(c)</u>
SEPA Payment Agreement	<u>Section 1.4(c)</u>
Shares	<u>Section 2.2</u>
Tax Package	<u>Section 5.14(b)(iii)</u>
Termination Date	<u>Section 7.1(c)</u>
Third Party Claim	<u>Section 8.4(b)</u>
Transaction	<u>Section 1.1</u>
Violation	<u>Section 2.3(b)</u>

9.2 Definitions. Except as otherwise expressly provided in this Agreement, or unless the context otherwise requires, whenever used in this Agreement (including the Schedules), the following terms will have the meanings indicated below:

“Affiliate” means, with respect to any Person or group of Persons, a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person or group of Persons. “Control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities or other Equity Interests, by contract or credit arrangement, as trustee or executor, or otherwise. Solely for the purpose of the preceding sentence, a company is “directly controlled” by another company or companies holding shares carrying the majority of votes exercisable at a general meeting (or its equivalent) of the first mentioned company; and a particular company is “indirectly controlled” by a company or companies (hereinafter called the “parent company or companies”) if a series of companies can be specified, beginning with the parent company or companies and ending with the particular company, so related that each company of the series except the parent company or companies is directly controlled by one or more of the preceding companies in the series.

“Appendix A” means Appendix A to the Participation Agreement.

“Business Day” means a day other than a Saturday, or Sunday or any other day on which banks are not required to be open or are authorized to close in New York, New York.

“Class I Contracts” are items 1, 2, 4, 7 and 8 listed on Schedule A to the Unwind Agreement.

“Class II Contracts” are (i) the Amended and Restated Investor Partner Tax Indemnification Agreement dated as of June 1, 1990 and (ii) items 3, 5 (but only to the extent constituting a guaranty of such Amended and Restated Investor Partner Tax Indemnification Agreement) and 6 listed on Schedule A to the Unwind Agreement.

“CMS Consent” means the Consent and Agreement dated as of June 1, 1990 among Seller, the Partnership, the Lessor and certain other signatories thereto.

“CMS Energy” means CMS Energy Corporation, a Michigan corporation and the parent entity of Seller.

“Company Disclosure Schedules” means the Schedules setting forth certain disclosures of the Companies, or qualifications or exceptions to any of the Companies’ warranties set forth in Article III, contained in the Disclosure Letter delivered simultaneously with the execution and delivery of this Agreement.

“Company Material Adverse Effect” means any material adverse effect on (a) the business, assets, financial condition or results of operations of the Companies, the Partnership and the Owner Participant taken as a whole or (b) the ability of Seller to consummate the transactions contemplated by this Agreement or perform its obligations hereunder; provided, however, that (with respect to clause (a) of this definition) the term “Company Material Adverse Effect” shall not include effects that result from or are consequences of (i) changes in financial, securities or currency markets, changes in prevailing interest rates or foreign exchange rates, changes in general economic conditions, changes in electricity, gas or other fuel supply and transmission and transportation markets, including changes to market prices for electricity, steam, natural gas or other commodities, or effects of weather or meteorological events, (ii) changes in law, rule or regulation of any Governmental Entity or changes in regulatory conditions in the United States or any state in which the Companies, the Partnership or the Owner Participant operates, (iii) events or changes that are consequences of hostility, terrorist activity, acts of war or acts of public enemies, (iv) changes in accounting standards, principles or interpretations, (v) the negotiation, announcement, execution, delivery, consummation or pendency of this Agreement or the transactions contemplated by this Agreement or any action by Seller or its Affiliates contemplated by or required by this Agreement, or (vi) actions taken or not taken solely at the request of Purchaser.

“Confidentiality Agreement” means, collectively, (i) the Confidentiality Agreement, dated as of June 12, 2006 among the Partnership, GSO Capital Partners LP and Rockland Capital Energy Investments LLC and (ii) the Seller CA.

“Consent” means any consent, approval, authorization, order, filing, registration or qualification of, by or with any Person.

“Consumers Contracts” means (i) the Consumers Contracts (as defined in Appendix A) and (ii) the Consumers Consent (as defined in Appendix A) as in effect on the date hereof.

“Damages” means Liabilities, demands, claims, suits, actions, or causes of action, losses, costs, expenses, damages and judgments, whether or not resulting from third party claims (including reasonable fees and expenses of attorneys and accountants).

“Dow Contracts” has the meaning specified in Appendix A as in effect on the date hereof.

“Effective Time” means such time on the Closing Date at which the Transaction and the other transactions contemplated by this Agreement are consummated.

“Environmental Law” means any foreign, federal, state, or local Law relating to (a) the treatment, disposal, emission, discharge, Release or threatened Release of Hazardous Substances or (b) the preservation and protection of the environment (including natural resources, air and surface or subsurface land or waters).

“Equity Interests” means shares of capital stock or other equity interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Financing Facility” means debt instruments incurred by the Partnership, if any, and leveraged lease debt.

“FMLP Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership dated as of June 14, 1990 among the parties signatory thereto.

“GAAP” means United States generally accepted accounting principles.

“Governmental Entity” means any supranational, national, federal, state, municipal or local governmental or quasi-governmental or regulatory authority (including a national securities exchange or other self-regulatory body), agency, court, commission or other similar entity, domestic or foreign.

“Governmental Order” means any order, decree, ruling, injunction, judgment or similar act of or by any Governmental Entity.

“Hazardous Substance” means (a) any material, substance or waste (whether liquid, gaseous or solid) that (i) requires removal, remediation or reporting under any Environmental Law, or is listed, classified or regulated as a “hazardous waste” or “hazardous substance” (or other similar term) pursuant to any applicable Environmental Law or (ii) is regulated under applicable Environmental Laws as being, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and (b) any petroleum product or by-product, petroleum-derived substances wastes or breakdown products, asbestos or polychlorinated biphenyls.

“Knowledge” when used with respect to the applicable Company, means the actual knowledge of any fact, circumstance or condition of those officers of such Company or its Affiliates set forth on Schedule 9.2(a) of the Disclosure Letter and to the extent set forth on Schedule 9.2(a) of the Disclosure Letter; when used with respect to CMS Midland, means the actual knowledge of any fact, circumstance or condition of those individuals set forth on Schedule 9.2(a) of the Disclosure Letter and to the extent set forth on Schedule 9.2(a) of the Disclosure Letter; when used with respect to CMS Holdings, means the actual knowledge of any fact, circumstance or condition of those individuals set forth on Schedule 9.2(a) of the Disclosure Letter and to the extent set forth on Schedule 9.2(a) of the Disclosure Letter; when used with respect to Seller, means the actual knowledge of any fact, circumstance or condition of those officers of Seller or its Affiliates set forth on Schedule 9.2(a) of the Disclosure Letter and to the extent set forth on Schedule 9.2(a) of the Disclosure Letter; and when used with respect to Purchaser, means the actual knowledge of any fact, circumstance or condition of those officers of Purchaser or its Affiliates set forth on Schedule 9.2(b) of the Disclosure Letter and to the extent set forth on Schedule 9.2(b) of the Disclosure Letter.

“Law” means any law, statute, ordinance, regulation or rule of or by any Governmental Entity or any arbitrator.

“Lessor” means Bank of America, N.A., as successor in interest to The Connecticut National Bank, not in its individual capacity but solely as Owner Trustee under the Trust Agreement.

“Liabilities” means any and all known liabilities or indebtedness of any nature (whether direct or indirect, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured, asserted or unasserted, determined or determinable and whenever or however arising).

“Lien” means any lien, claim, security interest, encumbrance or other adverse claim.

“Material” when used with respect to the applicable Company, means material to CMS Midland and the Partnership, taken as a whole, or to CMS Holdings, the Owner Participant and the Lessor, taken as a whole, and when used with respect to Purchaser, means material to Purchaser and its Subsidiaries, taken as a whole.

“MCV2” means MCV2 Development Company, a Michigan general partnership.

“MCV Expansion” means Midland Cogeneration Venture Expansion, LLC, a Delaware limited liability company.

“MCV Facility” means the 1,500 MW natural gas-fired, combined-cycle, cogeneration facility located in Midland County, Michigan operated by the Partnership.

“MCV Partnership Agreement” means that certain Amended and Restated Limited Partnership Agreement of the Partnership, dated as of June 13, 1988, by and among CMS Midland, Tempco I, Inc., Tempco II, Inc., Rofan Energy Inc., Micogen Limited Partnership, MEI Limited Partnership, Source Midland Limited Partnership, Coastal Midland, Inc. and C-E Midland Energy, Inc. in effect on the date hereof (including Amendment No. 4 thereto to be entered into on or about the date hereof).

“MPSC Matters” means any past or future proceeding, order or settlement with respect to the MCV Facility or a Consumers Contract before any Governmental Entity involving the nature or extent of MPSC authority, the recovery in retail rates of costs under the Composite PPA or any past settlement, order or proceeding relating to the Composite PPA or recovery in rates of Composite PPA costs.

“Operating Contract” means any contract or agreement (i) providing for the purchase, sale, supply, transportation, disposal or distribution of electricity, steam, fuel or any byproduct from electricity generation, (ii) for the operation and maintenance of any assets of the Companies and (iii) governing any Facility output or input.

“Organizational Documents” means, with respect to any corporation, its articles or certificate of incorporation, memorandum or articles of association and by-laws or documents of similar substance; with respect to any limited liability company, its articles or certificate of organization, formation or association and its operating agreement or limited liability company agreement or documents of similar substance; with respect to any limited partnership, its certificate of limited partnership and partnership agreement or documents of similar substance; and with respect to any other entity, documents of similar substance to any of the foregoing.

“Participation Agreement” means the Amended and Restated Participation Agreement (Trust 1) dated as of June 1, 1990 between the Partnership, the Owner Participant and certain other parties signatory thereto in effect on the date hereof.

“Permits” means all permits, licenses, franchises, registrations, variances, authorizations, Consents, orders, certificates and approvals obtained from or otherwise made available by any Governmental Entity or pursuant to any Law.

“Permitted Liens” means any Lien arising under the Organizational Documents of any of the Companies, the Partnership or the Owner Participant, as applicable.

“Person” means any natural person, firm, partnership, association, corporation, company, joint venture, trust, business trust, Governmental Entity or other entity.

“Purchaser Disclosure Schedules” means Schedules 4.2(b), 4.2(c), 4.3 and 4.4 setting forth disclosures of Purchaser, or qualifications or exceptions to any of Purchaser’s warranties set forth in Article IV delivered simultaneously with the execution and delivery of this Agreement by Purchaser.

“Purchaser Indemnified Parties” means Purchaser, Purchaser’s Affiliates, and their respective directors, officers, shareholders, attorneys, accountants, representatives, agents and employees, and their respective heirs, successors and assigns.

“Purchaser Material Adverse Effect” means any material adverse effect on (a) the business, assets, financial condition or results of operations of Purchaser and its Subsidiaries taken as a whole or (b) the ability of Purchaser to consummate the transactions contemplated by this Agreement or perform its obligations hereunder.

“RCA” means the Resource Conservation Agreement dated as of February 12, 2004, by and between the Partnership and Seller.

“RDA” means the Reduced Dispatched Agreement dated as of July 7, 2004, by and between the Partnership and Seller.

“Release” means the release, spill, emission, leaking, pumping, pouring, emptying, escaping, dumping, injection, deposit, disposal, discharge, dispersal, leaching or migrating of any Hazardous Substance into the environment.

“Seller Indemnified Parties” means Seller, Seller’s Affiliates, and their respective directors, officers, shareholders, attorneys, accountants, representatives, agents and employees, and their respective heirs, successors and assigns.

“Seller Material Adverse Effect” means, with respect to Seller, any material adverse effect on the ability of Seller to consummate the transactions contemplated by this Agreement or perform its obligations hereunder.

“Seller Disclosure Schedules” means the Schedules setting forth certain disclosures of Seller, or qualifications or exceptions to any of Seller’s warranties set forth in Article II, contained in the Disclosure Letter delivered simultaneously with the execution and delivery of this Agreement.

“Specified Environmental Matters” means matters addressed in any environmental agreement or environmental indemnification agreement as in effect on the date hereof where Seller, CMS Energy and/or Dow has a hold harmless and indemnity obligation in respect of an environmental matter relating to the site of the MCV Facility, excluding, however, matters to the extent that such matters attributable to the business and operations of the Companies, the Partnership, the Owner Participant and/or the Lessor from and after the Effective Time.

“Specified Rate” means the per annum rate of interest published as the “Prime Rate” in *The Wall Street Journal* determined as of the date the obligation to pay interest arises.

“Straddle Period” shall mean any taxable year or period beginning on, or before and ending after the Closing Date.

“Subsidiary” means, with respect to any Person (for the purposes of this definition, the “parent”), any other Person (other than a natural person), whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by the parent or by one or more of its respective Subsidiaries or by the parent and any one or more of its respective Subsidiaries.

“Tax” or “Taxes” means federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, environmental (including taxes under Code Section 59A), stamp, franchise, employment, payroll, withholding, social security (or similar), unemployment, property, personal property, alternative or add-on minimum, ad valorem, value added, transfer or excise tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, whether disputed or not, imposed by any Governmental Entity.

“Tax Returns” means all tax returns, declarations, statements, reports, claims for refund, schedules, forms and information returns and any amendments, schedules or attachments to any of the foregoing relating to Taxes.

“Tax Statute of Limitations Date” means the close of business on the 45<sup>th</sup> day after the expiration of the applicable statute of limitations with respect to Taxes, including any extensions thereof (or if such date is not a Business Day, the next Business Day).

“Trading Contract” means any swap, forward, option or hedging agreement relating to the purchase or sale of energy-related products and services.

“Trust Agreement” means the Amended and Restated Trust Agreement dated as of March 1, 1990 between the Owner Participant and the Lessor.

“Unwind Agreement” means the Unwind Agreement dated as of December 10, 1991 among CMS Energy, Seller, the Companies and MEC Development Corp. and included as Schedule 9.2(c) of the Disclosure Letter.

9.3 Interpretation. In this Agreement, unless otherwise specified, the following rules of interpretation apply:

(a) references to Sections, Schedules, Annexes, Exhibits and Parties are references to sections or sub-sections, schedules, annexes and exhibits of, and parties to, this Agreement;

(b) the section and other headings contained in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement;

- (c) words importing the singular include the plural and vice versa;
- (d) references to the word “including” do not imply any limitation;
- (e) the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- (f) references to “\$” or “dollars” refer to U.S. dollars.

## **ARTICLE X**

### **GENERAL PROVISIONS**

10.1 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on if (a) delivered personally, (b) mailed by certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery, or (d) sent by fax or telegram, as follows:

- (a) if to Purchaser,

MCV Power Partners, Inc.  
c/o GSO Capital Partners, LP  
280 Park Avenue  
11<sup>th</sup> Floor East Tower  
New York, New York 10023  
Fax: 212-503-6930  
Telephone: 212-503-2100  
Attention: D. Dwight Scott

with a copy to:

Rockland Capital Energy Investments, LLC  
2204 Timberlock Place, Suite 190  
The Woodlands, TX 77380  
Fax: 832-585-0104  
Telephone: 832-585-0035  
Attention: W. Scott Harlan

- (b) if to Seller,

Consumers Energy Company  
One Energy Plaza  
Jackson, MI 49201  
Fax: (517) 788-0768  
Telephone: (517) 788-1257  
Attention: James E. Brunner

with a copy to:

Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Fax: (312) 853-7036  
Telephone: (312) 853-7324  
Attention: Andrew H. Shaw

(c) if to CMS Midland,

CMS Midland Holdings Company  
One Energy Plaza  
Jackson, MI 49201  
Fax: (517) 788-0768  
Telephone: (517) 788-1257  
Attention: James E. Brunner

with a copy to:

Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Fax: (312) 853-7036  
Telephone: (312) 853-7324  
Attention: Andrew H. Shaw

(d) If to CMS Holdings,

CMS Midland Holdings Company  
One Energy Plaza  
Jackson, MI 49201  
Fax: (517) 788-0768  
Telephone: (517) 788-1257  
Attention: James E. Brunner

with a copy to:

Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Fax: (312) 853-7036  
Telephone: (312) 853-7324  
Attention: Andrew H. Shaw

or, in each case, at such other address as may be specified in writing to the other Parties.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received, if by personal delivery, certified or registered mail or next-day or overnight mail or delivery, on the day delivered or, if by fax or telegram, on the next Business Day following the day on which such fax or telegram was sent, provided that a copy is also sent by certified or registered mail. For the purposes of this Section 10.1, notice to any of the Companies shall not constitute notice to Seller, and vice versa.

10.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns.

10.3 Assignment; Successors; Third-Party Beneficiaries. (a) This Agreement is not assignable by any Party without the prior written consent of all of the other Parties and any attempt to assign this Agreement without such consent shall be void and of no effect; provided, however, no consent shall be required with respect to any merger or conversion contemplated in Schedule 1.6 of the Disclosure Letter.

(b) This Agreement shall inure to the benefit of, and be binding on and enforceable by and against, the successors and permitted assigns of the respective Parties, whether or not so expressed.

(c) This Agreement is intended for the benefit of the Parties hereto and does not grant any rights to any third parties unless specifically stated herein.

10.4 Amendment; Waivers; etc. No amendment, modification or discharge of this Agreement, and no waiver under this Agreement, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. The waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, or any failure or delay to exercise any right or privilege under this Agreement, shall not be construed as a waiver thereof or otherwise affect any of such provisions, rights or privileges under this Agreement.

10.5 Entire Agreement.

(a) This Agreement (including the Schedules and Exhibits referred to in or delivered under this Agreement, including the Disclosure Letter) and the Confidentiality Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement to the exclusion of any terms implied by law which may be excluded by contract and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to their subject matters. Each Party acknowledges that it has not been induced to enter this Agreement by and, in agreeing to enter into this Agreement, it has not relied on, any warranties except as expressly stated or referred to in this Agreement.

(b) The liability of a Party shall be limited or excluded as set out in this Agreement if and to the extent such limitations or exclusions apply, save in the event of fraud, fraudulent misrepresentation, death or personal injury.

10.6 Severability. Any term or provision of this Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the Parties agree that the court making such determination, to the greatest extent legally permissible, shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

10.7 Counterparts. This Agreement may be executed and delivered (including via facsimile) in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

10.8 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAW PRINCIPLES OF SUCH STATE.

10.9 Jurisdiction.

(a) The courts of the State of New York are to have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement. Any Proceedings shall be brought in the courts of the State of New York sitting in the County of New York, the court of the United States of America for the Southern District, and appellate courts having jurisdiction of appeals from any of the foregoing. Each Party waives (and agrees not to raise) any objection, on the ground of forum non conveniens or on any other ground, to the taking of proceedings in such courts. Each Party also agrees that a judgment against it in Proceedings brought in the State of New York shall be conclusive and binding upon it and may be enforced in any other jurisdiction.

(b) Each Party irrevocably submits and agrees to submit to the jurisdiction of the courts of the State of New York sitting in the County of New York, the court of the United States of America for the Southern District, and appellate courts having jurisdiction of appeals from any of the foregoing.

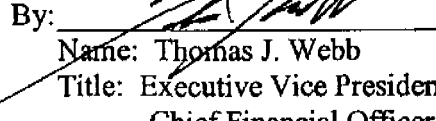
10.10 Limitation on Damages. No Party shall, under any circumstance, have any liability to any other Party for any special, indirect, consequential or punitive damages claimed by such other Party under the terms of or due to any breach or non-performance of this Agreement, including lost profits, loss of revenue or income, cost of capital, or loss of business reputation or opportunity.

10.11 Enforcement. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not to be performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof in addition to any other remedies at law or in equity.

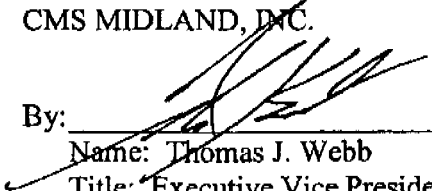
10.12 No Right of Set-Off. Purchaser, for itself and its successors and permitted assigns, hereby unconditionally and irrevocably waives any rights of set-off, netting, offset, recoupment, or similar rights that such Purchaser or any of its successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

CONSUMERS ENERGY COMPANY

By:   
Name: Thomas J. Webb  
Title: Executive Vice President and  
Chief Financial Officer

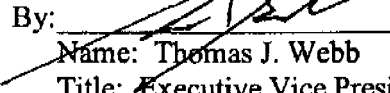
CMS MIDLAND, INC.

By:   
Name: Thomas J. Webb  
Title: Executive Vice President and  
Chief Financial Officer

APVD AS TO FORM



CMS MIDLAND HOLDINGS COMPANY

By:   
Name: Thomas J. Webb  
Title: Executive Vice President and  
Chief Financial Officer

MCV POWER PARTNERS, INC.

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

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

CONSUMERS ENERGY COMPANY

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

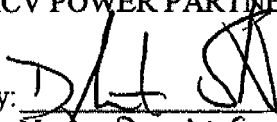
CMS MIDLAND, INC.

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

CMS MIDLAND HOLDINGS COMPANY

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

MCV POWER PARTNERS, INC.

By:  \_\_\_\_\_  
Name: Dwight Scott  
Title: Vice President

## EXHIBIT A to STOCK PURCHASE AGREEMENT

### SEPA Payment Agreement

SEPA Payment Agreement dated as of [\_\_\_\_\_], 2006 (this “Agreement”) between Consumers Energy Company, a Michigan corporation (“Seller”), and MCV Power Partners, Inc., a Delaware corporation (“Purchaser”). Certain other terms are defined throughout this Agreement and in Section 9.2 of the Stock Purchase Agreement (as defined below).

WHEREAS, Seller owns all the issued and outstanding shares of capital stock of CMS Midland Holdings Company, a Michigan corporation (“CMS Holdings”);

WHEREAS, effective as of the date hereof, CMS Holdings owns all of the issued and outstanding equity interests of [\_\_\_\_\_], as successor in interest to CMS Midland, Inc., a Michigan corporation (“CMS Midland”) (such interests, the “CMS Midland Interest” and, together with the CMS Holdings Shares, the “Shares”);

WHEREAS, CMS Midland is a direct holder of 49% of the outstanding equity interests in Midland Cogeneration Venture Limited Partnership, a Michigan limited partnership (“MCV”);

WHEREAS, MCV is party to that certain Steam and Electric Power Agreement dated January 27, 1987, as amended (as heretofore amended, the “SEPA”), with The Dow Chemical Company (“Dow”);

WHEREAS, Seller is party to that certain Backup Steam and Electric Power Agreement dated January 27, 1987 (the “Backup SEPA”) with Dow;

WHEREAS, MCV and Seller are parties to that certain MCV Backup Agreement dated June 9, 1988 (“Backup Agreement”);

WHEREAS, Purchaser, Seller, CMS Midland and CMS Holdings have entered into a Stock Purchase Agreement dated as of July 24, 2006 (the “Stock Purchase Agreement”); and

WHEREAS, Purchaser is willing to agree, in the event of certain terminations of the SEPA pursuant to Article III thereof, to make certain payments as set forth herein to Seller in order to compensate Seller for certain of Seller’s continuing obligations to Dow, including those under the Backup SEPA.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agree as follows:

**1. Payment to Seller upon Termination of SEPA.** In the event of (i) a termination of the SEPA under Article III thereof, Purchaser shall pay Seller, within five (5) Business Days after such termination, the sum of Eighty-five million dollars (\$85,000,000), less any amounts that MCV shall have previously paid to Dow pursuant to the termination provisions of the SEPA; provided, however, that if termination of the SEPA is pursuant to Section 3.3

thereof, Purchaser shall not be obligated to pay Seller said amount if (i) MCV shall have no obligation to Dow under Section 3.5 thereof in consequence of the concluding sentence of such Section 3.5 and (ii) Purchaser agrees to indemnify, defend and hold harmless Seller from and against any and all Damages (as defined in the Stock Purchase Agreement) arising from any claim that MCV may have such obligation to Dow under such Section 3.5 or that Seller is in breach of the Backup SEPA by reason of having failed to make a payment to Dow thereunder.

**2. Assignment of Certain Rights.** Subject to Purchaser's payment in full of all obligations to Seller as set forth in Section 1: (a) Seller shall assign to Purchaser its rights to payment from MCV under the Backup SEPA and the Backup Agreement in each case to the fullest extent such assignment is permitted under those agreements; (b) in the event that Seller receives any payment under the Backup SEPA or the Backup Agreement from and after the date that Purchaser has paid in full all obligations to Seller as set forth in Section 1, Seller will promptly remit such payments to Purchaser; (c) Seller will assign to Purchaser any rights it may have to a refund from Dow (and will promptly turn over to Purchaser any refund which Seller may receive) in the event that Dow receives more than the sum of (i) \$85,000,000 and (ii) any amounts actually paid by Seller or its Affiliates under the Stipulated Loss AGE Agreement in the aggregate by reason of duplicate payment from both MCV and Seller; (d) if prior to the end of the Designated Period (as hereinafter defined), (X) Seller fails to claim relief under Section 10(c) of the PPA (thereby limiting its capacity and energy payments to MCV to the amounts that Seller collects from its customers) or (Y) Seller states publicly that it no longer expects to claim such relief, then Seller shall, as of the first to occur of the events contemplated by clause (X) or (Y) of this Section 2(d), assign to Purchaser a senior participation in an amount equal to the Agreed Amount (as hereinafter defined) in proceeds in respect of Seller's claims under, or in respect of the PPA (whether from MCV or other party responsible therefor) for (1) termination of the PPA pursuant to Section 7(c), 10(f) or 13 thereof, or (2) repudiation, total breach or rejection of the PPA (whether pursuant to power granted under the Bankruptcy Code or other applicable law). The "Agreed Amount" is the excess of (I) the amount actually paid by Purchaser pursuant to Section 1 hereof over (II) amounts received by Purchaser as described in clauses (a), (b) and (c) of this Section 2. "Designated Period" means the period from September 15, 2007 through September 30, 2007; provided, however, such period shall be extended for an additional period (if any) that is fifteen (15) days after the end of any period during which Seller is stayed, enjoined or otherwise legally unable to claim relief under Section 10(c) of the PPA resulting from challenge by MCV or MCV or its trustee exercising powers under the Bankruptcy Code. Attached as Annex 1, 2, 3 and 4 hereto are the forms of assignment pursuant to which the foregoing assignments are to be effected. Seller shall not take any action under or in respect of the Backup SEPA or other similar backup agreement (other than actions permitted under the Backup SEPA or such other similar backup agreement) that would adversely affect the timing or amount of any payment and/or refunds to which Purchaser is entitled under this Section 2.

**3. No Setoff; Defenses; Seller's Election Rights.** Purchaser shall be obligated to pay Seller the amount due hereunder on demand, irrespective of any claim or defense which Purchaser otherwise may have against Seller and without setoff, and notwithstanding any defense which a guarantor may have to payment of any guaranteed obligations. Without limiting the generality of the foregoing, Purchaser acknowledges that under the Backup SEPA and Backup Agreement, Seller has the right to make various elections as to its obligations to Dow, and Purchaser agrees that (i) Seller shall retain the right to make such

elections notwithstanding anything herein contained; and (ii) no election by Seller, or failure by Seller to make a particular election, in accordance with the provisions of the SEPA, Backup SEPA or Backup Agreement, shall constitute a defense to the obligations of Purchaser hereunder.

**4. MCV Subordination.** Purchaser acknowledges Section 13 of the Consumers Consent. Purchaser agrees that its obligations hereunder shall not be reduced except to the extent of Seller's receipt of actual payment from MCV under the Backup Agreement (or payment by MCV to Dow which reduces Seller's obligations to Dow), and that any payment by MCV to any person other than Seller or Dow, whether by reason of subordination provisions or otherwise, shall not reduce the amount payable to Seller hereunder.

**5. Reinstatement Upon Set-Aside.** To the extent that any payment by MCV to Seller under the Backup Agreement (or payment by MCV to Dow which reduces Seller's obligations to Dow or the amount payable hereunder) is subsequently invalidated, declared to be fraudulent or preferential, set aside, avoided and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then, to the extent of such payment or proceeds received, the liability of Purchaser, or part thereof, otherwise satisfied or intended to be satisfied shall be revived and continue in full force and effect as if such payment or proceeds had not been received by Seller or Dow, as the case may be.

**6. Obligations Absolute.** The obligations of Purchaser hereunder constitute a present and continuing payment commitment and payment guaranty, respectively, and not of a guaranty of collectibility, shall be absolute and unconditional, shall not be subject to any counterclaim, set-off, deduction or defense based upon any claim Purchaser, Seller, any assignee or any of their respective Affiliates may have against each other or any other Person. Purchaser hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of their respective obligations hereunder. The obligations of Purchaser hereunder shall be binding upon Purchaser and its respective successors and assigns and shall remain in full force and effect irrespective of:

(a) the power or authority or the lack of power or authority of Purchaser to execute and deliver this Agreement or the Stock Purchase Agreement or any of the terms hereof or thereof, or of any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor; or

(b) any failure or lack of diligence or promptness in collection or protection, failure in presentment or demand for payment, protest, notice of protest, notice of default and of nonpayment, any failure to give notice of failure of MCV or Purchaser to keep and perform any covenant or agreement under the terms of the SEPA, the Backup Agreement, this Agreement or the Stock Purchase Agreement, or failure to resort for payment to Purchaser or to any other guaranty or to any property, security, Lien or other rights or remedies (Purchaser hereby expressly waiving all of the foregoing); or

(c) the acceptance of any additional security or other guaranty of amendments, modifications, consents or waivers with respect to the SEPA, the Backup Agreement, this Agreement or the Stock Purchase Agreement or the sale, release, substitution or exchange of any security relating thereto (Purchaser hereby expressly consenting to all of the foregoing); or

(d) any delay, failure or omission upon the part of Seller or any other Person to enforce any of the rights or powers given or conferred by the SEPA, the Backup Agreement, this Agreement or the Stock Purchase Agreement or by any delay, failure or omission upon the part of Seller or any other person to enforce any right against MCV or Purchaser, or by any action by Seller or any other Person in granting indulgence to MCV or Purchaser, or in waiving or acquiescing in any default or event of default upon the part of MCV or Purchaser under the SEPA, the Backup Agreement, this Agreement or the Stock Purchase Agreement; or

(e) the consolidation or merger of MCV or Purchaser with or into any other corporation or corporations or any sale, lease or other disposition of the properties of MCV or Purchaser as an entirety or substantially as an entirety to any other corporation; or

(f) any act or delay or failure to act with regarding to the SEPA, the Backup Agreement, this Agreement or the Stock Purchase Agreement or anything which might vary the risk of Purchaser.

## **7. Letter of Credit.**

(a) The obligation of Purchaser arising under or in connection with Section 1 of this Agreement shall be secured by a Letter of Credit (the "L/C") in the stated amount of \$85 million (which form is attached hereto as Annex V) issued by any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof (the "L/C Provider") which has a rating for unsecured obligations of at least A1 by Moody's Investor Service, Inc. ("Moody's") and A+ by Standard & Poor's Rating Services ("S&P") (the "Required Rating"). Such letter of credit shall be in form and substance satisfactory to Seller and shall be subject to draw solely upon presentment of a sight draft from Seller stating either that (i) the expiry date of the L/C is 30 days or less from the date of presentment, and Seller has not been provided with a replacement L/C which complies with this Section; or (ii) Seller is entitled to draw on the L/C under the terms of this Agreement.

(b) In the event of a failure by Purchaser to make the payment required under Section 1 hereof within five (5) days after such payment becomes due or failure of Purchaser to indemnify, defend and hold harmless Seller as contemplated under Section 1 hereof, Seller shall be entitled to effect a draw on the L/C in the amount of the payment then due. Seller shall also have the right to effect additional draws on the L/C from time to time in the event of, and in the amount of, any set-aside under Section 5 hereof. In addition, Seller shall have the right to effect a draw on the L/C in the full amount thereof, without regard to any of the other prerequisites set forth in this paragraph, if a voluntary petition in bankruptcy has been filed, or order for relief shall have been entered, with respect to Purchaser or an involuntary petition in bankruptcy has been filed with respect to Purchaser and remain undismissed for 45 days.

(c) In the event that the rating of the L/C Provider falls below the Required Rating, within sixty (60) days of notice of such event to Purchaser from the L/C Provider or Seller, Purchaser shall substitute a replacement letter of credit on terms substantially the same as the L/C, issued by a commercial bank reasonably acceptable to Seller which has the Required Rating; provided, however, that any such substitution of a letter of credit shall be conditioned upon either (i) the non-existence of any event which, with notice or the lapse of time or both, could give rise to a right to draw under the L/C, at the time such substitute letter of credit is delivered to Seller, or (ii) the express written agreement by the issuer or issuers of such substitute letter of credit to honor any draw by Seller as a result of any such event, whether or not it may have been in existence prior to the effective date of such letter of credit. Any substitute letter of credit must be delivered to Seller to effect such substitution. Purchaser shall provide such substitute letter of credit provider within such sixty (60)-day period. If Purchaser fails to provide a substitute letter of credit provider in accordance with this Section within such sixty (60) day period, Seller shall be entitled to draw and retain the entire amount that is outstanding under the L/C upon the expiration of such period. If a substitute letter of credit provider has been accepted by Seller, the original letter of credit shall be terminated and released by Seller as of the effective date of such substitute letter of credit of the substitute letter of credit provider.

**8. Term.** This Agreement shall continue in effect until terminated by mutual agreement of Seller and Purchaser; provided, however, this Agreement shall terminate (and the L/C shall be returned): (i) as provided in Section 9.8 below; (ii) if (x) the SEPA is terminated pursuant to Article III thereof, (y) Seller has elected to assume the obligations to deliver steam and electric power under the Backup SEPA and (z) Seller shall not have elected its option to terminate the Backup SEPA on or prior to the third (3<sup>rd</sup>) anniversary of Seller's first delivering steam and electric power under the Backup SEPA; or (iii) one (1) year after the date which is 25 contract years after the Stage I Commercial Operation Date (as defined in the Backup SEPA).

**9. General.**

9.1. Captions. The captions of the provisions hereof have been inserted solely for convenience of reference and in no way define, limit, or describe the scope of substance of any provision of this Agreement.

9.2. Assignment. All the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that no party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each other party hereto, and no such assignment or transfer of any such obligation shall relieve the assigning party thereof unless each other party hereto shall have consented to such release in writing specifically referring to the obligation from which the assigning party is to be released.

9.3. Modifications. This Agreement constitutes the complete and exclusive statement of the terms of the Agreement between the parties with reference to the subject matter hereof, and no statements or agreements, oral or written, prior to the signing of this Agreement, shall vary or modify the written terms; and no party shall claim any modification or rescission of any provision unless such modification or rescission is in writing signed by all parties and specifically states it its an amendment to this Agreement.

9.4. Severability. If any provision of this Agreement is held invalid, such invalidity shall not affect other provisions or application of the Agreement which can be given effect without the invalid provision or application, and to this end the provision of this Agreement is declared to be severable. If such invalidity becomes known or apparent to any party, the parties hereto shall negotiate promptly in good faith to attempt to make appropriate changes and adjustments to achieve as closely as possible, consistent with applicable law, the intent and spirit of such invalid provision.

9.5. Waivers. Neither this Agreement nor any term or condition hereof or right hereunder may be waived or shall be deemed to have been waived or modified in whole or in part by any party or by the forbearance of any party to exercise any of its rights hereunder, except by written instrument executed by or on behalf of that party; and in the case of breach by any party of any agreement or undertaking hereunder, a non-defaulting party may nevertheless accept from the defaulting party any payment or performance hereunder and may continue to operate under this Agreement without in any way waiving its rights or remedies.

9.6. Governing Law. THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF MICHIGAN AND SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN.

9.7. Notices. Unless otherwise expressly provided, every notice under this Agreement, or related thereto, shall be effective only if actually delivered by hand, facsimile or by prepaid United States mail to the party for whom it is intended at the following address. Any notice not provided in writing shall be effective only if acknowledged in writing by the below designated representative of the party to whom it was provided. Each party may change the following address and designated representative by providing advance written notice to the other party.

Addresses:

Consumers Energy Company  
One Energy Plaza  
Jackson, MI 49201  
Attention: James E. Brunner

MCV Power Partners, Inc.  
c/o GSO Capital Partners, LP  
280 Park Avenue  
11<sup>th</sup> Floor East Tower  
New York, New York 10023  
Attention: D. Dwight Scott

9.8. SEPA Restructuring. In the event that (i) MCV and Dow shall have modified the termination provisions of the SEPA and (ii) as a result, Dow shall have irrevocably released Seller from any and all obligations under the Backup SEPA, the Purchaser's obligations under this Agreement shall terminate and the L/C shall be returned.

Exhibit A-6

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the date first above written.

CONSUMERS ENERGY COMPANY

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

MCV POWER PARTNERS, INC.

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

**ANNEX I to SEPA PAYMENT AGREEMENT**

**SECTION 2(a) ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby ASSIGNS to \_\_\_\_\_, a \_\_\_\_\_ [corporation] [limited liability company] (the "Assignee") all rights that the undersigned has to payment from Midland Cogeneration Venture Limited Partnership, a Michigan limited partnership ("MCV"), under (i) the Backup SEPA and (ii) the Backup Agreement (in each case, including rights (if any) accruing to the undersigned as subrogee by virtue of the undersigned having discharged obligations of MCV under SEPA). Capitalized terms used herein without definition have the respective meanings specified in the SEPA Payment Agreement dated as of \_\_\_\_\_, 2006 (the "SEPA Payment Agreement") between the undersigned and MCV Power Partners, Inc.

By its acceptance of this instrument, the Assignee acknowledges Section 13 of the Consumer Consent.

This instrument is being delivered pursuant to Section 2(a) of the SEPA Payment Agreement.

[MCV has given its consent to this instrument.] This instrument is intended to effect an assignment to the fullest extent that such assignment is permitted by the Backup SEPA or the Backup Agreement, as applicable.

Dated: \_\_\_\_\_, 200\_

CONSUMERS ENERGY COMPANY

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

Name:

Title:

The undersigned hereby consents to the foregoing instrument.

MIDLAND COGENERATION VENTURE  
LIMITED PARTNERSHIP

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

Name:

Title:

The undersigned hereby accepts the foregoing instrument.

[NAME OF ASSIGNEE]

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

Name:

Title:

Exhibit A-8

**ANNEX II to SEPA PAYMENT AGREEMENT**

**SECTION 2(b) ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby ASSIGNS to \_\_\_\_\_, a \_\_\_\_\_ [corporation] [limited liability company], any and all payments that the undersigned receives under the Backup SEPA or the Backup Agreement from and after [insert date that Section 1 amount was paid]. Capitalized terms used herein without definition have respective meanings specified in the SEPA Payment Agreement dated as of \_\_\_\_\_, 2006 (the "SEPA Payment Agreement") between the undersigned and MCV Power Partners, Inc.

By its acceptance of this instrument, the Assignee acknowledges Section 13 of the Consumers Consent.

This instrument is being delivered pursuant to Section 2(b) of the SEPA Payment Agreement.

Dated: \_\_\_\_\_, 200\_

CONSUMERS ENERGY COMPANY

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

The undersigned hereby accepts the foregoing instrument.

[NAME OF ASSIGNEE]

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

**ANNEX III to SEPA PAYMENT AGREEMENT**

**SECTION 2(c) ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby ASSIGNS to \_\_\_\_\_, a \_\_\_\_\_ [corporation] [limited liability company] (the "Assignee") all rights that the undersigned may have to a refund from Dow (and the undersigned shall promptly turn over to Assignee any refund that the undersigned may receive) in the event that Dow receives more than the sum of (i) \$85,000,000 and (ii) any amounts actually paid by the undersigned or its Affiliates under the Stipulated Loss AGE Agreement in the aggregate by reason of duplicate payment from both MCV and the undersigned. Capitalized terms used herein without definition have the respective meanings specified in the SEPA Payment Agreement dated as of \_\_\_\_\_, 2006 (the "SEPA Payment Agreement") between the undersigned and MCV Power Partners, Inc.

This instrument is being delivered pursuant to Section 2(c) of the SEPA Payment Agreement.

Dated: \_\_\_\_\_, 200\_

CONSUMERS ENERGY COMPANY

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

The undersigned hereby accepts the foregoing instrument.

[NAME OF ASSIGNEE]

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

## ANNEX IV to SEPA PAYMENT AGREEMENT

### FORM OF SENIOR PARTICIPATION AGREEMENT

This SENIOR PARTICIPATION AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 200\_\_ is between Consumers Energy Company, a Michigan corporation ("Assignor"), and \_\_\_\_\_, a Delaware limited liability company ("Assignee"). This Agreement is being made in furtherance of the requirements of the SEPA Payment Agreement dated as of July \_\_, 2006 (the "Payment Agreement") between Assignor and \_\_\_\_\_.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Background; Definitions.

(a) Seller and Midland Cogeneration Venture Limited Partnership, a Michigan limited partnership ("MCV"), are parties to the Power Purchase Agreement dated as of July 17, 1986, as amended by Amendment No. 3 dated as of August 28, 1989 and Amendment No.4A dated as of May 25, 1989 (Amendment No. 1 being superceded by Amendment No.3 and Amendment No.2 having been rendered void ab initio) (such agreement, as so amended, the "PPA"). MCV has entered into five (5) separate Cogeneration Agreements Assignment Agreements, each dated as of June 1, 1990 (collectively, the "CAA Agreements"), pursuant to which MCV has assigned undivided interest percentages aggregating 100% in all of its rights, titles and interests in, to and under, the PPA, among other things, in each case as provided in the CAA Agreements. Pursuant to the Consent and Agreement dated as of June 1, 1990 (the "Consumers Consent") by Assignor with the assignee under each CAA Agreement and MCV, among others, Assignor has, among other things, consented to the CAA Agreements on the terms and subject to the provisions of the Consumers Consent.

(b) Capitalized terms used in this Agreement without definition shall have the respective meanings specified in Recital I to the Consumers Consent and the definition conventions and rules of usage stated or adopted in such Recital I shall also be applicable to this Agreement except that all references to any agreement shall mean such agreement as in effect on the date of the Payment Agreement.

(c) For purposes of this Agreement: "PPA Claims" means any and all claims, interests, rights to payment, accounts, proceeds, general intangibles, payment intangibles and the like of Assignor existing under, or in respect of, the PPA (whether from MCV or any other primary or secondary obligor, including, but not limited to, those obligated in consequence of CAA Agreements) for (i) termination of the PPA pursuant to Section 7(c), 10(f) or 13 thereof, and (ii) repudiation, total breach or rejection of the PPA (whether pursuant to power granted under the Bankruptcy Code or other applicable law; and "Agreed Amount" is the excess of the amount actually paid by Assignor pursuant to

Section 1 of the Payment Agreement over (B) amounts received by Assignor as described in clauses (a), (b) and (c) of Section 2 of the Payment Agreement.

2. Creation of Senior Participation; Assignment; etc.

(a) The totality of the PPA Claims are hereby divided into two parts: (i) a portion of the PPA Claims that equals the Agreed Amount (the "Senior Participation"), and (ii) the totality of the PPA Claims other than the Senior Participation (the "Residual Participation"). The Residual Participation is SUBJECT and SUBORDINATE to the Senior Participation Agreement as specified in this Agreement (the terms applicable to such subordination being set forth in Exhibit A to this Agreement, which terms are incorporated herein).

(b) Assignor hereby ASSIGNS, TRANSFERS and SELLS to Assignee all of Assignor's rights, titles and interests in and to the Senior Participation.

(c) Assignee hereby ACCEPTS the Senior Participation.

3. Extinguishment of Senior Participation. The Senior Participation shall terminate and be extinguished upon the earlier of (i) payment by Assignor to Assignee of the Agreed Amount and (ii) the indefeasible payment in full of the Senior Claims as defined in Exhibit A.

4. Enforcement of PPA Claims. (a) Assignee shall not (except as and to the extent so directed in writing by Assignor) exercise any right to enforce, collect or otherwise seek payment of or recovery on any PPA Claim (but the foregoing shall not prevent Assignee from taking appropriate action as may be required to preserve its Senior Participation), and Assignor shall be entitled to enforce, collect or otherwise seek payment of and recovery on the PPA Claims.

(b) Assignor shall not be liable to the Assignee (for any error in judgment or for any action taken or omitted to be taken by Assignor or its agents or advisors), except in the event of gross negligence or willful misconduct. Without limiting the generality of the foregoing, Assignee may rely upon the advice of counsel, accountants and other experts.

(c) All recoveries on the PPA Claims shall be applied first to reimburse Assignor for all costs incurred by it (including, but without limitation, any costs, expenses, attorneys' fees and charges in connection with enforcement proceedings) in enforcing, collecting or seeking recovery on, or with respect to, the PPA Claims.

5. Term. This Agreement shall continue in effect until the earliest of (i) the expiration of the Payment Agreement, (ii) the date the Senior Participation is extinguished pursuant to Section 3 hereof and (iii) termination by mutual agreement of Assignor and Assignee.

6. General.

(a) Captions. The captions of the provisions hereof have been inserted solely for convenience of reference and in no way define, limit, or describe the scope of substance of any provision of this Agreement.

(b) Assignment. All the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that no party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each other party hereto, and no such assignment or transfer of any such obligation shall relieve the assigning party thereof unless each other party hereto shall have consented to such release in writing specifically referring to the obligation from which the assigning party is to be released.

(c) Modifications. This Agreement constitutes the complete and exclusive statement of the terms of the Agreement between the parties with reference to the subject matter hereof, and no statements or agreements, oral or written, prior to the signing of this Agreement, shall vary or modify the written terms; and no party shall claim any modification or rescission of any provision unless such modification or rescission is in writing signed by all parties and specifically states it its an amendment to this Agreement.

(d) Severability. If any provision of this Agreement is held invalid, such invalidity shall not affect other provisions or application of the Agreement which can be given effect without the invalid provision or application, and to this end the provision of this Agreement is declared to be severable. If such invalidity becomes known or apparent to any party, the parties hereto shall negotiate promptly in good faith to attempt to make appropriate changes and adjustments to achieve as closely as possible, consistent with applicable law, the intent and spirit of such invalid provision.

(e) Waivers. Neither this Agreement nor any term or condition hereof or right hereunder may be waived or shall be deemed to have been waived or modified in whole or in part by any party or by the forbearance of any party to exercise any of its rights hereunder, except by written instrument executed by or on behalf of that party; and in the case of breach by any party of any agreement or undertaking hereunder, a non defaulting party may nevertheless accept from the defaulting party any payment or performance hereunder and may continue to operate under this Agreement without in any way waiving its rights or remedies.

(f) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAW PRINCIPLES OF SUCH STATE.

(g) Notices. Unless otherwise expressly provided, every notice under this Agreement, or related thereto, shall be effective only if actually delivered by hand, facsimile or by prepaid United States mail to the party for whom it is intended at the following address. Any notice not provided in writing shall be effective only if acknowledged in writing by the below designated representative of the party to whom it

was provided. Each party may change the following address and designated representative by providing advance written notice to the other party.

Assignor:  
Consumers Energy Company  
One Energy Plaza  
Jackson, MI 49201  
Attention: \_\_\_\_\_

Assignee:  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the date first above written.

CONSUMERS ENERGY COMPANY

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

[Name of Assignee]

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

## CONSENT AND CERTIFICATION

The undersigned has received a copy of the instrument (the "Senior Participation Agreement") on which this Consent and Certification is subscribed. To the extent that the creation in favor of Assignee of the senior participation pursuant to the Senior Participation Agreement is determined to have been a sale, assignment or other disposition by Assignor of part of its interests in the PPA (as defined in the Senior Participation Agreement) for purposes of paragraph 1(d) of the Consumer Consent, the undersigned hereby CERTIFIES to Assignor that the consent of each Owner Trustee and each related Indenture Trustee is not required under the terms of the related Transaction Documents. The undersigned hereby CONSENTS to (i) the creation in favor of Assignee of the senior participation pursuant to the Senior Participation Agreement and (ii) the Senior Participation Agreement.

MIDLAND CONGENERATION VENTURE  
LIMITED PARTNERSHIP

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

Name:

Title:

## EXHIBIT A to Senior Participation Agreement

### SUBORDINATION PROVISIONS

Unless otherwise defined in these Subordination Provisions (these "Subordination Provisions"), all defined terms used herein shall have the meaning ascribed thereto in the Senior Participation Agreement to which this Exhibit A is attached (the "Senior Participation Agreement") (definition conventions and rules of usage adopted in the Senior Participation Agreement are also applicable to these Subordination Provisions).

1. Subordination.

(a) For purposes of these Subordination Provisions: (i) "Obligor" is MCV, each trust that is party to a CAA Agreement, each partner in MCV, each beneficiary in each such trust, each partner in each such beneficiary and its successors, assigns and Affiliates; (ii) the "Subordinated Parties" are, collectively, Assignor, its successors and assigns and holders of an interest in the Residual Participation; (iv) the "Senior Claims" are the Senior Participation; (v) the "Senior Agreements" are the Senior Participation Agreement and each other agreement to the extent comprising a source or part of the PPA Claims as to which the Senior Participation has been created; and (vi) the "Junior Claims" are the Residual Participation and all interests therein.

(b) These Subordination Provisions shall constitute a continuing offer to all persons who, in reliance upon such provisions, become holders of, or continue to hold, any Senior Claims, and these Subordination Provisions are made for the benefit of the holders of the Senior Claims. By and upon its acceptance hereof, each Subordinated Party waives any and all notice of the creation or accrual of any Senior Claim and notice of proof of reliance upon the provisions of these Subordination Provisions by any holder of any Senior Claim, and any Senior Claim arising under any Senior Agreement shall conclusively be deemed to have been created, contracted or incurred in reliance upon the provisions of these Subordination Provisions.

2. Subordination in the Event of Insolvency, etc. In the event of (a) any insolvency, bankruptcy, reorganization, readjustment, composition or other similar proceeding relating to an Obligor, its property or its creditors as such, (b) the appointment of any receiver, intervenor or conservator of, or trustee for, an Obligor or any part of its properties, (c) any assignment for the benefits of creditors of the Lessee or (d) any liquidation, dissolution or winding up of an Obligor (collectively, a "Bankruptcy Event"):

(a) All amounts owing in respect of all Senior Claims, including any interest accruing from and after any Bankruptcy Event in respect of the Lessee and whether or not allowable as a claim in any proceeding in respect of such Bankruptcy Event, shall first be indefeasibly paid in full, or otherwise indefeasibly provided for in full, before any holder of a Junior Claim shall be entitled to receive any payment in respect of any Junior Claim or before any direct or indirect payment or distribution (in cash, property or

securities or by set off or otherwise) shall be made by an Obligor or agreed to be made by an Obligor or received from an Obligor on account of any Junior Claim.

(b) No Subordinated Party shall take any action or otherwise act so as to contest directly or indirectly on account of any Junior Claim (i) the relative rights and duties of the holders of the Senior Claims with respect to the holders of Junior Claims on account of any Junior Claim as established in these Subordination Provisions, or (ii) the enforceability of any of these Subordination Provisions.

If any payment or distribution of any character or any security, directly or indirectly, whether in cash, securities, other property or otherwise, shall be received by any holder of any Junior Claim on account of any Junior Claim before all amounts then due in respect of Senior Claims shall have been indefeasibly paid in full and the Senior Agreements terminated, such payment or distribution or security shall be received and held in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Claims at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all senior claims remaining unpaid, to the extent necessary to pay all such Senior Claims in full.

3. Waiver. (a) Each Subordinated Party unconditionally waives (i) all notices which may be required, whether by statute, rule of law or otherwise, to preserve intact any rights of any holder of any Senior Claim, including, without limitation, any demand, presentment and protest, proof of notice of non payment under any Senior Claim or the Senior Agreements, and notice of any failure on the part of the Lessee to perform and comply with any covenant, agreement, term or condition of the Senior Claims or the Senior Agreements, (ii) any right to the enforcement, assertion or exercise by any holder of any Senior Claims of any right, power, privilege or remedy conferred in such Senior Claims or the senior Agreements, or otherwise, (iii) any requirement of diligence on the part of any holder of any of the Senior Claims, (iv) any requirement on the part of any holder of any Senior Claim to mitigate damages resulting from any default under such Senior Claim or the Senior Agreements, and (v) any notice of any sale, transfer or other disposition of any Senior Claims by any holder thereof.

(b) The obligations of each Subordinated Party under these Subordination Provisions shall continue to be effective, or be reinstated, as the case may be, if at any time any payment in respect of any Senior Claim, or any other payment to any holder of any Senior Claim in its capacity as such, is rescinded or must otherwise be restored or returned by the holder of such Senior Claim upon the occurrence of any Bankruptcy Event.

**ANNEX V to SEPA PAYMENT AGREEMENT**

**FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT**

Irrevocable Standby  
Letter of Credit  
No. \_\_\_\_\_  
Date: \_\_\_\_\_  
Amount: \$85,000,000

CONSUMERS ENERGY COMPANY  
One Energy Plaza  
Jackson, MI 49201  
Attention: \_\_\_\_\_

Ladies and Gentlemen:

We hereby establish, at the request and for the account of MCV POWER PARTNERS, INC., in your favor, this Irrevocable Standby Letter of Credit No. \_\_\_\_\_, in the aggregate amount of up to Eighty-Five Million Dollars (\$85,000,000), effective \_\_\_\_\_, 200\_\_, and expiring at the close of banking business at our offices at \_\_\_\_\_ on \_\_\_\_\_, 200\_\_ (as such date may be extended in accordance with the terms hereof, the “Expiration Date”). The term hereof shall be automatically extended for additional consecutive periods of one year as of the Expiration Date and each of the subsequent Expiration Dates, unless we notify you in writing by certified or registered mail or next-day or overnight mail or delivery to your address specified above, at least thirty (30) days prior to the relevant Expiration Date, of our decision not to extend the term of this Irrevocable Standby Letter of Credit.

We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereinafter set forth, in one or more drawings by your draft bearing thereon Letter of Credit No. \_\_\_\_\_, payable at sight on a Banking Day (as defined below), and each accompanied by the original of this Letter of Credit, together with any amendment thereto, and a written and appropriately completed certificate signed by you in the form of Exhibit A attached hereto (any such draft accompanied by such certificate being a “Demand”); provided, however, that we hereby agree that Demands made under and in compliance with the terms and conditions hereof will be duly honored if presented to us in person or by certified or registered mail or next-day or overnight mail or delivery at our offices at \_\_\_\_\_ or by facsimile with an original of this Letter of Credit delivered to us by certified or registered mail or next-day or overnight mail or delivery. As used herein, “Banking Day” means a day of the year on which banks are not required or authorized to close in New York City.

If we receive any such Demand, all in strict conformity with the terms and conditions of this Letter of Credit, not later than 10:00 a.m. (New York City time) on a Banking Day prior to the termination hereof, we will honor such Demand by making available to you before 2:00 p.m.

Exhibit A-18

(New York City time) on the next Banking Day following the date we shall have received such Demand, an amount in same-day funds equal to the amount of the draft submitted with such Demand. If we receive any such Demand, all in strict conformity with the terms and conditions of this Letter of Credit, after 10:00 a.m. (New York City time) on a Banking Day prior to the termination hereof, we will honor such Demand by making available to you, before 2:00 p.m. (New York City time) on the second Banking Day following the date we shall have received such Demand, an amount in same-day funds equal to the amount of the draft submitted with such Demand.

In accordance with your instructions, payment under this Letter of Credit will be made from our funds by wire transfer of funds from the Federal Reserve Bank of New York to your account in a bank on the Federal Reserve wire system or by deposit of same-day funds into a designated account that you maintain with us.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such Demand.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, and, to the extent not inconsistent therewith, by the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the above address, specifically referring to this Letter of Credit No. \_\_\_\_\_.

Very truly yours,

[LETTER OF CREDIT ISSUER]

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

Name:

Title:

**EXHIBIT A TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT**

**CERTIFICATE FOR DRAWING UNDER  
IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_**

The undersigned, a duly authorized representative of CONSUMERS ENERGY COMPANY, a Michigan corporation (the "Beneficiary"), hereby certifies to [the Letter of Credit Issuer] (the "Issuer"), with reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued by the Issuer in favor of the Beneficiary, that this Certificate has been executed and delivered by the Beneficiary pursuant to the SEPA Payment Agreement dated as of \_\_\_\_\_, 2006 (the "SEPA Agreement") between Beneficiary and MCV Power Partners, Inc., a Delaware corporation.

The Beneficiary hereby certifies to you that (i) [the expiry date of the Letter of Credit is thirty (30) days or less from the date hereof and Beneficiary has not been provided with a replacement letter of credit that complies with the terms of the SEPA Agreement] or (ii) [we are entitled to draw on the Letter of Credit under the terms of the SEPA Agreement in the amount stated in the accompanying sight draft].

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONSUMERS ENERGY COMPANY

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

**EXHIBIT B to STOCK PURCHASE AGREEMENT**

DISCLOSURE LETTER  
TO  
STOCK PURCHASE AGREEMENT  
BY AND AMONG  
CONSUMERS ENERGY COMPANY,  
CMS MIDLAND, INC.,  
CMS MIDLAND HOLDINGS COMPANY  
AND  
MCV POWER PARTNERS, INC.  
DATED AS OF July 24, 2006

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SELLER DISCLOSURE SCHEDULES

TO

STOCK PURCHASE AGREEMENT

BY AND AMONG

CONSUMERS ENERGY COMPANY,

CMS MIDLAND, INC.,

CMS MIDLAND HOLDINGS COMPANY

AND

MCV POWER PARTNERS, INC.

DATED AS OF July 24, 2006

These Seller Disclosure Schedules are being furnished by Consumers Energy Company (“Seller” or “CECo”) to MCV Power Partners, Inc. (“Purchaser”) in connection with the Stock Purchase Agreement dated as of July 24, 2006 (the “Agreement”) by and among Seller, CMS Midland, Inc., CMS Midland Holdings Company and Purchaser Agreement Agreement. Unless the context otherwise requires, all capitalized terms used in these Seller Disclosure Schedules shall have the respective meanings assigned to them in the Agreement.

These Seller Disclosure Schedules are qualified in their entirety by reference to the specific provisions of the Agreement, and are not intended to constitute, and shall not be construed as constituting, representations or warranties of Seller, except as and to the extent provided in the Agreement.

Nothing in these Seller Disclosure Schedules shall constitute an admission that any information disclosed, set forth or incorporated by reference in these Seller Disclosure Schedules, either individually or in the aggregate, is material, would result in a Seller Material Adverse Effect or is otherwise required by the terms of the Agreement to be so disclosed, set forth or incorporated by reference. No disclosure made in these Seller Disclosure Schedules (i) shall be deemed to modify in any respect the standard of materiality or any other standard for disclosure set forth in the Agreement or (ii) relating to any possible breach or violation of any agreement, contract, Law or Governmental Order shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

Notwithstanding anything to the contrary contained in these Seller Disclosure Schedules or in the Agreement, (a) the information and disclosures contained in each Schedule hereto shall

be deemed to be disclosed and incorporated by reference in each of the other Schedules hereto as though fully set forth in such other Schedules and (b) any matter that is expressly disclosed in one Schedule hereto in such a way as to make its relevance to another Schedule reasonably apparent shall be deemed to have been included in such other Schedule, notwithstanding the omission of an appropriate cross reference thereto.

Headings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description of these Seller Disclosure Schedules as contemplated by the Agreement or the express description of the Sections of the Agreement.

**Schedule 1.6**  
**Pre-Closing Restructuring**

Prior to the Closing, Seller shall effect the transactions as set forth below pursuant to a plan of reorganization in a manner reasonably satisfactory to Purchaser.

1. CMS Midland will merge into a newly-created Delaware corporation ("New Midland"), which has been organized as a direct, wholly-owned subsidiary of Seller, with New Midland as the surviving corporation.
2. New Midland will effect the dividend contemplated in Section 6.3(e) of the Agreement, subject to applicable law.
3. Seller will contribute all of the shares of New Midland to CMS Holdings such that New Midland will have become a direct, wholly-owned subsidiary of CMS Holdings.
4. New Midland will convert to a Delaware limited liability company pursuant to Section 18 214 of the Delaware Limited Liability Company Act.

**Schedule 2.3(b)**  
**Seller Required Consents**

None.

**Schedule 2.3(c)**  
**Seller Required Statutory Approvals**

1. FERC Approval

As of July 24, 2006, Seller needs no approval from the Federal Energy Regulatory Commission (“FERC”) to sell or otherwise transfer the CMS Holdings Shares (and indirectly the Equity Interest in CMS Midland) to Purchaser. The Partnership is a Qualifying Facility (“QF”) (QF87-237) whose sales of electricity have been exempt from FERC jurisdiction under FERC’s rules. In March 2006, the Partnership filed with the FERC a market-based sales tariff pursuant to revised FERC QF rules that went into effect that same month. The Partnership has received a favorable FERC ruling on July 6, 2006.

2. MPSC Approval

Seller believes no approval from the Michigan Public Service Commission (“MPSC”) is necessary to sell or otherwise transfer the CMS Midland Shares and the CMS Holdings Shares to Purchaser. Seller intends to seek MPSC concurrence on this matter.

3. FTC Approval

To the extent that the applicable jurisdictional tests are met for the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and no exemption exists, the ultimate parent entity of Purchaser or its designee and the ultimate parent entity of Seller or its designee shall be required to file Premerger Notification and Reports with the Federal Trade Commission and Department of Justice and observe applicable waiting periods before consummation of the transaction contemplated by the Agreement can take place.

**Schedule 2.6**  
**Composite PPA**

None.

COMPANY DISCLOSURE SCHEDULES

TO

STOCK PURCHASE AGREEMENT

BY AND AMONG

CONSUMERS ENERGY COMPANY,

CMS MIDLAND, INC.,

CMS MIDLAND HOLDINGS COMPANY

AND

MCV POWER PARTNERS, INC.

DATED AS OF July 24, 2006

These Company Disclosure Schedules are being furnished by CMS Midland, Inc. (“CMS Midland”), CMS Midland Holdings Company (“CMS Holdings” and, together with CMS Midland, the “Companies”), First Midland Limited Partnership (the “Owner Participant” or “FMLP”) and Midland Cogeneration Venture Limited Partnership (the “Partnership” or “MCV”) to MCV Power Partners, Inc. (“Purchaser”) in connection with the Stock Purchase Agreement dated as of July 24, 2006 (the “Agreement”) by and among Consumers Energy Company (“Seller” or “CECo”), the Companies and Purchaser. Unless the context otherwise requires, all capitalized terms used in these Company Disclosure Schedules shall have the respective meanings assigned to them in the Agreement.

These Company Disclosure Schedules are qualified in their entirety by reference to the specific provisions of the Agreement, and are not intended to constitute, and shall not be construed as constituting, representations or warranties of any of the Companies, the Owner Participant and the Partnership, except as and to the extent provided in the Agreement.

Nothing in these Company Disclosure Schedules shall constitute an admission that any information disclosed, set forth or incorporated by reference in these Company Disclosure Schedules, either individually or in the aggregate, is material, would result in a Company Material Adverse Effect or is otherwise required by the terms of the Agreement to be so disclosed, set forth or incorporated by reference. No disclosure made in these Company Disclosure Schedules (i) shall be deemed to modify in any respect the standard of materiality or any other standard for disclosure set forth in the Agreement or (ii) relating to any possible breach or violation of any agreement, contract, Law or Governmental Order shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

Notwithstanding anything to the contrary contained in these Company Disclosure Schedules or in the Agreement, (a) the information and disclosures contained in each Schedule hereto shall be deemed to be disclosed and incorporated by reference in each of the other Schedules hereto as though fully set forth in such other Schedules and (b) any matter that is expressly disclosed in one Schedule hereto in such a way as to make its relevance to another Schedule reasonably apparent shall be deemed to have been included in such other Schedule, notwithstanding the omission of an appropriate cross reference thereto.

With respect to information disclosed in these Company Disclosure Schedules on the Partnership, information disclosed in the Partnership's documents that have been filed with the U.S. Securities and Exchange Commission are deemed to be incorporated by reference and a part of these Company Disclosure Schedules.

Headings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description of these Company Disclosure Schedules as contemplated by the Agreement or the express description of the Sections of the Agreement.

**Schedule 3.1(a)**  
**Organization and Qualification**

In connection with the consummation of the transactions contemplated by Section 1.6 of the Agreement, New Midland (as the successor entity of CMS Midland), if required, will qualify to do business as a foreign limited liability company in the State of Michigan.

**Schedule 3.1(c)**  
**Company Required Consents**

The general partners in the Partnership have agreed to enter into Amendment No. 4 to MCV Partnership Agreement in the form attached hereto. Assuming that such amendment shall have become effective, the transactions contemplated by the Agreement can be consummated without the necessity for action by any partner under the MCV Partnership Agreement.

**Schedule 3.1(d)**  
**Company Required Statutory Approvals**

See Schedule 2.3(c) of the Seller Disclosure Schedules under the heading of “FERC Approval”.

**Schedule 3.2(a)**  
**Partnership and Owner Participant**

As of the date hereof:

<b><u>Name</u></b>	<b><u>Jurisdiction of Formation</u></b>	<b><u>Authorized Equity Interests</u></b>	<b><u>Issued and Outstanding Equity Interests</u></b>	<b><u>Equity Interests Ownership</u></b>
MCV	Michigan	Not applicable	Not applicable	CMS Midland owns 49% of the Equity Interests of MCV.
FMLP	Delaware	Not applicable	Not applicable	CMS Holdings owns 46.3818658% of the Equity Interests.

As of the Closing Date:

<b><u>Name</u></b>	<b><u>Jurisdiction of Formation</u></b>	<b><u>Authorized Equity Interests</u></b>	<b><u>Issued and Outstanding Equity Interests</u></b>	<b><u>Equity Interests Ownership</u></b>
MCV	Michigan	Not applicable	Not applicable	New Midland will own 49% of the Equity Interests of MCV.
FMLP	Delaware	Not applicable	Not applicable	CMS Holdings will own 46.3818658% of the Equity Interests.

**Schedule 3.2(c)**  
**Agreements regarding Shares and Equity Interests**

**MCV**

Not applicable.

**CMS Midland and CMS Holdings**

Not applicable.

**FMLP**

Not applicable.

**Schedule 3.4(a)**  
**Absence of Certain Changes or Events**

**MCV**

1. In February 2006, the Management Committee of the Partnership approved senior management bonuses, employee bonuses and merit increases for all employees, which payments were already made or will be payable through the course of 2006. The Management Committee of the Partnership also approved the 2006 bonus programs, one for senior management and another for all other employees, which bonuses are payable in 2007. Such approvals were made in the usual course of business.
2. Senior Management Retention Letters dated June 8, 2006 among CMS Midland, El Paso Midland, Inc. and, respectively, Bruce C. Grant, Robert E. McCue, Kevin R. Olling, Gary B. Pasek, James M. Rajewski, Joseph L. Roberts, Jr. and Laurie M. Valase were approved in June 2006.
3. On February 17, 2006, the Management Committee of the Partnership modified the Partnership's Termination and Severance Policy.
4. Enron Bankruptcy Settlement. MCV had entered into a gas supply contract and a parent guaranty with an affiliate of Enron Corporation ("Enron"), which contracts were rejected in Enron's bankruptcy proceeding. MCV's claim with respect to the gas supply contract was settled with the Enron affiliate. MCV sold its rights to this claim to a third-party investment fund. Winston & Strawn LLP ("W&S") represented MCV in respect of Enron's bankruptcy proceeding. W&S failed to timely file MCV's proof of claim with respect to the guarantee. W&S and MCV agreed to a settlement in 2006 with respect to W&S's failure to timely file MCV's proof of claim.
5. In September 2005, the Partnership exercised its contractual option to send Dow Corning Corporation ("DCC") a one-year notice of termination of the Steam Purchase Agreement, dated November 15, 1995, between the Partnership and DCC. Such notice will effectuate termination in September 2006, provided that the Partnership makes the approximate \$5.5 million termination payment due in August 2006.
6. The Partnership and ANR Pipeline Company ("ANR") are parties to a Letter Agreement dated September 1, 2000, whereby ANR was to provide certain gas transportation services to the Partnership beginning in 2006. ANR over-subscribed its pipeline capacity and is not able to provide the contracted service. The parties are currently negotiating a settlement.
7. MCV entered into the Employment Offer Letter dated March 15, 2006 with Joseph L. Roberts.
8. MCV entered into the Memorandum of Agreement Regarding Termination and Severance dated March 24, 2006 with The Utility Workers of America, AFL-CIO, its

Michigan State Utility Workers Council and The Utility Workers Union of America  
Local 564.

9. MCV entered into an agreement to provide certain consulting services with James M. Kevra on June 2, 2006.
10. See Safety Audit Report for MCV dated October 2005 by Young's Environmental Cleanup, Inc. and Safety Audit Action Responsibility and Status Form.

**CMS Midland and CMS Holdings**

Not applicable.

**FMLP**

Not applicable.

### **Schedule 3.5** **Tax Matters**

In 1997, the Partnership filed a property tax appeal against the City of Midland at the Michigan Tax Tribunal (“MTT”) contesting the Partnership’s 1997 property taxes. Subsequently, the Partnership filed appeals contesting its property taxes for tax years 1998 — 2005 at the Michigan Tax Tribunal. A trial was held for tax years 1997 — 2000. The appeals for tax years 2001-2005 are being held in abeyance. In 2004, the Michigan Tax Tribunal issued its decision in the Partnership’s tax appeal against the City of Midland for tax years 1997 — 2000 (the “MTT Decision”). The MTT Decision was appealed to the Michigan Appellate Court by the City of Midland. The Partnership filed a cross-appeal at the Michigan Appellate Court. On February 21, 2006, the Michigan Appellate Court upheld the MTT Decision but remanded the case to the MTT for the limited purpose of clarification of whether the MTT erroneously included tax-exempt pollution-control equipment or property located outside the City of Midland in its concluded true cash value. On April 4, 2006, the City of Midland filed an Application for Leave to Appeal with the Michigan Supreme Court. The Partnership responded in opposition to that application. The Michigan Supreme Court may decide to hear the case or not.

CMS Midland and CMS Holdings are members of the CMS Energy Corporation Consolidated Federal Income Tax return. The statutes of limitations for the consolidated return years 1992 through 2002 have been extended to December 31, 2007.

**Schedule 3.6**  
**Litigation**

1. PENDING MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (“MDEQ”) LETTERS OF VIOLATION
  - a. MDEQ Notice of Violation (March 15, 2006). MDEQ issued a Notice of Violation alleging that the permitted NO<sub>x</sub> emission rate on one gas turbine had exceeded 29 hours due to diagnostic testing to determine failures occurring on that unit. MCV is preparing a response that explains such incident and details any applicable remedial measures. No fines have been issued in connection with this Notice of Violation to date.
  - b. MDEQ Notice of Violation (July 13, 2004). MDEQ issued a Notice of Violation in connection with alleged discharges of heated process waste waters into the storm water system in violation of the applicable NPDES permit, as well as alleged record-keeping infractions. MCV submitted a response to MDEQ in August 2004. There have been no subsequent agency actions.
  - c. MDEQ Compliance Inspection Report (October 17, 2005). The Michigan Department of Environmental issued a compliance inspection report asserting several minor violations of the Stormwater Pollution Prevention Plans (“SWPPP”). MCV implemented corrective actions and submitted an updated SWPPP to MDEQ on December 1, 2005.
  - d. See also Item 1 of Part II of MCV’s Form 10-Q for the quarterly period ended March 31, 2006 and Item 3 of MCV’s Form 10-K for the fiscal year ended December 31, 2005.
  
2. MCV/CECo NO<sub>x</sub> ALLOWANCE OWNERSHIP DISPUTE – CECo has informed MCV that CECo is entitled to a pro-rata share of MCV’s NO<sub>x</sub> allowances. MCV contests this claim. MCV and CECo have entered into a Standstill Agreement, which permits MCV to sell excess NO<sub>x</sub> allowances as it deems appropriate, without recourse by CECo. Currently, MCV has excess NO<sub>x</sub> allowances available for sale. MCV may become a net buyer of allowances in 2010, contingent upon the State of Michigan’s implementation of the Clean Air Interstate Rule.
  
3. MCV/CECo/MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC (“METC”) FACILITIES AGREEMENT DISPUTE – MCV and CECo are parties to the Facilities Agreement dated as of July 8, 1988 (the “Facilities Agreement”). Pursuant to this Facilities Agreement, MCV has agreed to reimburse CECo for certain out-of-pocket expenses it incurs. CECo no longer incurs expenses under the Facilities Agreement, as it has conveyed the property to METC. MCV continued to make these expense payments for a period after CECo had sold the assets. MCV has asserted a right for reimbursement of such expense payments. CECo’s position is that MCV is obligated to continue to make reimbursement payments directly to METC, even though CECo no longer incurs the expenses under the Facilities Agreement.

4. MARKET-BASED RATE FILING AT FERC – MCV has filed for market-based rate authority at the FERC and has received a favorable FERC ruling on July 6, 2006. No parties have intervened in protest of MCV's application.
5. UNIT 9 FAILURE
  - a. General Electric International, Inc. (“GE II”) Warranty claim – MCV had a catastrophic failure on Unit 9, which resulted in approximately \$5.3 million of damages. GE II conducted an extensive root-cause analysis and determined that the damages were the result of a failure to a row-2 blade, domestic-object damage from a secondary air nozzle fracture, or a combination of these two events. MCV and GE II are currently negotiating resolution of GE II's warranty obligations under the Maintenance Services and Parts Agreement for MCV 11NM Gas Turbines between MCV and GE II. Any damages not covered by GE II will, if in excess of the \$1 million deductible, be submitted to MCV's insurance carriers.
  - b. Insurance claim – MCV's insurance carriers may contest the claim.
6. STEAM PURCHASE AGREEMENT WITH DOW CORNING CORPORATION
  - a. Termination payment – In September 2005, MCV exercised its contractual option to send Dow Corning Corporation (“DCC”) a one-year notice of termination of the Steam Purchase Agreement, dated as of November 15, 1995 (the “Steam Agreement”), between MCV and DCC to effectuate termination of such agreement in September 2006. The Steam Agreement will terminate in September 2006, provided that MCV makes a termination payment of approximately \$5.5 million in August 2006. There is, however, a discrepancy of approximately \$40,000 in the parties' assessment of the termination fee. Also MCV disputes DCC's provision of steam to a third party under the Steam Agreement.
  - b. Provision of Steam to Cabot Corporation – MCV believes that DCC has been providing MCV steam supplied to DCC to Cabot Corporation. MCV believes that such provision of steam is a violation of the Steam Agreement. MCV is currently attempting to resolve this matter with DCC. MCV management cannot predict the outcome of this matter.
7. ANR PIPELINE COMPANY CAPACITY AGREEMENT – MCV and ANR Pipeline Company (“ANR”) are parties to a Letter Agreement dated September 1, 2000, whereby ANR agreed to provide certain gas transportation services to MCV beginning in 2006. ANR over-subscribed its pipeline capacity and is not able to provide its contractual obligations. The parties are currently negotiating settlements to make MCV whole for MCV's inability to sue for such transportation services.
8. NATURAL GAS COMMODITY LITIGATION – MCV has been notified of a class action lawsuit against multiple parties involving the trading of basis and swap contracts on the New York Mercantile Exchange during the period of June 1, 1999 through December 31, 2002. As a result of a partial settlement of this lawsuit, a \$73 million fund has been created for parties who file a proof of claim. MCV was a net buyer and will

submit a claim for approximately \$125 million of net buys. The proof of claim is due by July 28, 2006. MCV management cannot predict the outcome of this matter.

9. See also Item 1 of Part II of MCV's Form 10-Q for the quarterly period ended March 31, 2006 and Item 3 of MCV's Form 10-K for the fiscal year ended December 31, 2005.

**Schedule 3.7(a)**  
**Compliance with Laws**

**MCV**

Not applicable (except for certain environmental matters as set forth in Schedules 3.6 and 3.12).

See Safety Audit Report for MCV dated October 2005 by Young's Environmental Cleanup, Inc., and Safety Audit Action Responsibility and Status Form.

**CMS Midland and CMS Holdings**

Not applicable.

**FMLP**

Not applicable.

**Schedule 3.8(a)**  
**Employee Benefits -- A**

**MCV**

Senior Management Incentive Plan

Employee Incentive Plan

Midland Cogeneration Venture Limited Partnership Defined Contribution Retirement Plan

Midland Cogeneration Venture Limited Partnership 401(k) Savings Plan

Midland Cogeneration Venture Limited Partnership Welfare Plan (includes medical, dental, vision, and prescription drug benefits)

Midland Cogeneration Venture Limited Partnership Reimbursement Plan (includes pre-tax medical premiums, health care flexible spending account and dependent care flexible spending account)

Midland Cogeneration Venture Limited Partnership Disability & Life Insurance Plans (includes basic and voluntary life insurance, dependent life insurance, basic and voluntary accidental death and dismemberment insurance and accident and sickness disability benefits)

Midland Cogeneration Venture Limited Partnership Retiree Health Benefit Plan for Salaried Employees and Voluntary Employee Benefit Association (VEBA) Trust

Midland Cogeneration Venture Limited Partnership Retiree Health Benefit Plan for Bargaining Unit Employees and Voluntary Employee Benefit Association (VEBA) Trust

Retiree Health Secular Trust Agreements (James M. Rajewski and Bruce C. Grant)

Midland Cogeneration Venture Limited Partnership Long Term Disability Plan

MCV Short Term Disability Policy

Midland Cogeneration Venture Limited Partnership Travel Accident Plan

MCV Supplemental Retirement Plan (SERP)

Collective Bargaining Agreement between MCV and the Utility Workers Union of America, AFL-CIO Local 564, Effective March 1, 2004 to February 28, 2009

Memorandum of Acknowledgement Regarding Access to MCV Health Care Plan by The Utility Workers of America, AFL-CIO, its Michigan State Utility Workers Council and The Utility Workers Union of America Local 564, dated July 19, 2004

Memorandum of Agreement Regarding Call In Overtime Rate Temporary Trial Provisions (Program) between MCV and The Utility Workers Union of America Local 564, dated July 19, 2004

Memorandum of Agreement between The Utility Workers of America, AFL-CIO, its Michigan State Utility Workers Council, The Utility Workers Union of America Local 564 and MCV Regarding Termination and Severance, dated March 24, 2006

Memorandum of Agreement Regarding Voluntary Severance Program between The Utility Workers of America, AFL-CIO, its Michigan State Utility Workers Council, The Utility Workers Union of America Local 564 and MCV, dated July 19, 2004

Relief Operator Agreement between The Utility Workers Union of America Local 564 and MCV, dated October 14, 2002

Senior Management Retention Letters dated June 8, 2006 among CMS Midland, Inc., El Paso Midland, Inc. and, respectively, Bruce C. Grant, Robert E. McCue, Kevin R. Olling, Gary B. Pasek, James M. Rajewski, Joseph L. Roberts, Jr. and Laurie M. Valasek

Employment Offer Letter from MCV to Joseph L. Roberts dated March 15, 2006

Employment Offer Letter from MCV to Gary B. Pasek dated May 9, 1995

Letter from MCV to Bruce C. Grant dated February 29, 1988 confirming acceptance of employment offer

MCV 2006 Employee Incentive Plan

MCV Termination and Severance Policy, revised as of February 17, 2006

MCV Employee Handbook, revised as of March 2006, which contains various provisions including without limitation Employee Incentive Plan provisions, a summary of employee benefit programs, and policies regarding holidays, vacation, sick leave, personal leaves with and without pay, FMLA leave, bereavement leave, jury duty, educational assistance, the Employee Assistance Program, various employee recognition programs and certain additional employee programs.

MCV Accident Prevention Manual

MCV Voluntary Severance Program for All Salaried Employees, dated July 12, 2004 (“VSP”)

MCV Voluntary Severance Program – Benefits Q&A

Form of Election to Participate in the MCV Voluntary Severance Program

Form of Voluntary Severance Agreement Waiver of Claims. Approximately 19 employees executed a Voluntary Severance Agreement Waiver of Claims substantially in this form in order to participate in the MCV 2004 Voluntary Separation Program

Agreement to provide certain consulting services between MCV and James M. Kevra dated June 2, 2006

Agreement between MCV and Simple Financial Solutions, Inc. (“SFSI”) dated September 28, 2004 pursuant to which Barbara E. Lawson, former officer of MCV and then-current Vice President of SFSI, would provide certain consulting services to MCV. SFSI’s consulting services and payments under this Agreement ceased in or about 2004.

Unanimous Consent Action of the Organization and Compensation Subcommittee of Midland Cogeneration Venture Limited Partnership dated June 18, 2004 pursuant to which Gary B. Pasek is eligible to receive additional compensation in the gross amount of \$400,000 for his performance associated with MCV’s property tax dispute with the City of Midland. The payment is contingent on certain conditions set forth in such Consent, including satisfactory resolution of the matter by court order or settlement.

Unanimous Consent Action of the Organization and Compensation Subcommittee of Midland Cogeneration Venture Limited Partnership dated June 18, 2004 pursuant to which Paul Hamer is eligible to receive additional compensation in the gross amount of \$50,000 for his performance associated with MCV’s property tax dispute with the City of Midland. The payment is contingent on certain conditions set forth in such Consent, including satisfactory resolution of the matter by court order or settlement.

See also HR Overview Document and Labor Agreement Overview Document.

**CMS Midland and CMS Holdings**

The Companies have no employees.

**Schedule 3.8(f)**  
**Employee Benefits -- B**

**MCV**

Senior Management Retention Letters dated June 8, 2006 among CMS Midland, Inc., El Paso Midland, Inc. and, respectively, Bruce C. Grant, Robert E. McCue, Kevin R. Olling, Gary B. Pasek, James M. Rajewski, Joseph L. Roberts, Jr. and Laurie M. Valasek

Article II, Section 2 of Collective Bargaining Agreement between MCV and the Utility Workers Union of America, AFL-CIO Local 564, Effective March 1, 2004 to February 28, 2009

Unanimous Consent Action of the Organization and Compensation Subcommittee of Midland Cogeneration Venture Limited Partnership dated June 18, 2004 pursuant to which Gary B. Pasek is eligible to receive additional compensation in the gross amount of \$400,000 for his performance associated with MCV's property tax dispute with the City of Midland. The payment is contingent on certain conditions set forth in such Consent, including satisfactory resolution of the matter by court order or settlement.

Unanimous Consent Action of the Organization and Compensation Subcommittee of Midland Cogeneration Venture Limited Partnership dated June 18, 2004 pursuant to which Paul Hamer is eligible to receive additional compensation in the gross amount of \$50,000 for his performance associated with MCV's property tax dispute with the City of Midland. The payment is contingent on certain conditions set forth in such Consent, including satisfactory resolution of the matter by court order or settlement.

MCV Supplemental Retirement Plan

MCV Vacation Policy, revised as of April 21, 2003

MCV Paid Sick Leave Policy, revised as of January 24, 2003

MCV Educational Assistance Policy, revised as of December 16, 2004

**CMS Midland and CMS Holdings**

The Companies have no employees.

**Schedule 3.9(a)**  
**Permits**

In March 2006, the Partnership filed with the FERC a market-based sales tariff pursuant to revised FERC QF rules that went into effect that same month. The Partnership has received a favorable FERC ruling on July 6, 2006. No parties have intervened in protest of the Partnership's application.

**Schedule 3.10(a)**  
**Tangible Property**

1. Second Amended and Restated Agreement of Lease [Part A] dated as of June 1, 1990 between Seller, as successor in interest to Consumers Power Company, and Partnership
2. Amended and Restated Lease Agreement for Trust 2, dated as of June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank and Partnership
3. Amended and Restated Lease Agreement for Trust 3, dated as of June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank and Partnership
4. Amended and Restated Lease Agreement for Trust 4, dated as of June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank and Partnership
5. Amended and Restated Lease Agreement for Trust 5, dated as of June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank and Partnership
6. Ground Lease Assignment and Assumption Agreement dated as of June 1, 1990 among the Partnership, Bank of America, N.A., as successor in interest to Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Seller, as successor in interest to Consumers Power Company
7. Pipeline Easements dated January 27, 1987 listed on Exhibit 2 to the Ground Lease Assignment and Assumption Agreement, dated as of June 1, 1990, among the Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Seller, as successor in interest to Consumers Power Company

**Schedule 3.11(a)**  
**Contracts -- A**

See separate attachment.

**Schedule 3.11(a)**<sup>1</sup>  
**Contracts -- A**

**I. MCV and FMLP Partnership Agreements and Amendments**

1. Amended and Restated Limited Partnership Agreement of Midland Cogeneration Venture Limited Partnership, dated as of June 13, 1988, by and among CMS Midland, Inc., Tempco I, Inc., Tempco II, Inc., Rofan Energy Inc., Micogen Limited Partnership, MEI Limited Partnership, Source Midland Limited Partnership, Coastal Midland, Inc., and C-E Midland Energy, Inc.
2. Amendment No. 1, dated as of May 26, 1989, to the Amended and Restated Limited Partnership Agreement of Midland Cogeneration Venture Limited Partnership, dated as of June 13, 1988
3. Amendment No. 2, dated as of November 28, 1989, to the Amended and Restated Limited Partnership Agreement of Midland Cogeneration Venture Limited Partnership, dated as of June 13, 1988
4. Amendment No. 3, dated as of June 1, 1990, to the Amended and Restated Limited Partnership Agreement of Midland Cogeneration Venture Limited Partnership, dated as of June 13, 1988
5. Amendment No. 4, dated as of July 24, 2006, to the Amended and Restated Limited Partnership Agreement of Midland Cogeneration Venture Limited Partnership, dated as of June 13, 1988
6. Memorandum of Agreement with respect to Amended and Restated Partnership Agreement dated as of March 2, 1990 among CMS Midland, Inc., Rofan Energy Inc., Micogen Limited Partnership, MEI Limited Partnership, Source Midland Limited Partnership, Coastal Midland, Inc. and C-E Midland Energy, Inc.
7. Amended and Restated Agreement of Limited Partnership of First Midland Limited Partnership, dated as of June 14, 1990, by and among Deerpath Capital Partners, Inc., general partners and limited partners listed on Exhibit A thereto

**II. Second Sale and Leaseback dated as of June 1, 1990 Closing Documents**

*Trust 1 – First Midland Limited Partnership*

1. Amended and Restated Participation Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, First Midland Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust

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<sup>1</sup> The descriptive headings contained in this Schedule 3.11(a) are inserted for convenience only and shall not be construed as a representation of any kind with respect to the contracts, agreements and instruments set forth hereto.

Company, Midland Funding Corporation I and Midland Funding Corporation II, MEC Development Corporation, and the Financial Institutions listed on Schedule I thereto

2. Amended and Restated Trust Agreement dated as of March 1, 1990 between First Midland Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
3. Amended and Restated Lease Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership, as amended
4. Amendment No. 1 to Amended and Restated Lease Agreement, dated as of January 1, 1992, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership (Trust 1)
5. Amendment No. 2, dated as of June 15, 2000, to Amended and Restated Lease Agreement between Bank of America, N.A., as successor in interest to State Street Bank and Trust Company and The Connecticut National Bank (Trust 1)
6. Amended and Restated Memorandum of Lease and Notice of Claim of Interest Pursuant to 1945 PA 200, dated as of March 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
7. Deed, Bill of Sale and Severance Agreement, made as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
8. Subordinated Trust Indenture Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, as Owner Trustee under the Amended and Restated Trust Agreement dated as of March 1, 1990 with First Midland Limited Partnership and Meridian Trust Company, Subordinated Indenture Trustee -- Sale and Leaseback of an Undivided Interest in the Midland 1370 MW Gas-Fired Cogeneration Facility
9. Subordinated Trust Indenture Supplement No. 4 dated as of June 1, 2000 to Subordinated Trust Indenture, Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and First Union National Bank as successor in interest to Meridian Trust Company
10. Second Amended and Restated Agreement of Lease [Part A], dated as of June 1, 1990, by and between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership

11. Ground Lease Assignment and Assumption Agreement dated as of June 1, 1990 among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company)
12. Cogeneration Agreements Assignment Agreement, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
13. Facility Agreements and Governmental Actions Assignment Agreement, dated as of June 1, 1990, by and between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank, as supplemented by those certain Supplements to Facility Agreements and Governmental Actions Assignment Agreement, dated as of March 31, 1995, June 30, 1995, June 28, 1996, July 21, 1997, April 5, 1999, October 6, 1999, January 7, 2000, July 5, 2000, January 3, 2001, April 2, 2001, July 2, 2001, January 3, 2002, April 2, 2002, January 3, 2003 and April 4, 2003, by Midland Cogeneration Venture Limited Partnership, and as amended by that certain Amendment to Facility Agreements and Governmental Actions Assignment Agreement dated as of February 1, 1992 (Trust 1)
14. Lessee Mortgage and Security Agreement, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
15. Amendment to Lessee Mortgage and Security Agreement, dated as of September 1, 1991, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank (Trust 1)
16. Support Facilities License and Easement Agreement, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
17. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by CMS Energy Corporation for CMS Midland Holdings, Inc. to each of the persons listed on Schedule A attached thereto
18. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Philip Morris Capital Corporation for PMCC Investors No. 1 Corporation to each of the persons listed on Schedule A attached thereto
19. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Philip Morris Capital Corporation for PMCC Investors No. 2 Corporation to each of the persons listed on Schedule A attached thereto

20. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Philip Morris Capital Corporation for PMCC Investors No. 3 Corporation to each of the persons listed on Schedule A attached thereto
21. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Philip Morris Capital Corporation for PMCC Investors No. 4 Corporation to each of the persons listed on Schedule A attached thereto
22. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Security Pacific Leasing Corporation for MCOG Leasing Group to each of the persons listed on Schedule A attached thereto
23. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Deerpath Capital Partners, Inc. for Deerpath Capital Partners, Inc. I to each of the persons listed on Schedule A attached thereto
24. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Comcast MO Financial Services, Inc. (formerly named U.S. West Financial Services, Inc.) for Commercial Funding, Inc. to each of the persons listed on Schedule A attached thereto
25. Owner Participant's Partner's Parent Guaranty, dated as of June 14, 1990, by Ford Motor Credit Company for Alpha Dearborn Limited Partnership to each of the persons listed on Schedule A attached thereto
26. Limited Waiver of Section 11.14(b) of Alpha Midland Limited Partnership by Deerpath Capital Partners, Inc., dated as of June 14, 1990, to each of the persons listed on Schedule A attached thereto
27. Amended and Restated Investor Partners Tax Indemnification Agreement, dated as of June 1, 1990, among Deerpath Capital Partners, Inc. I, PMCC Investors No. 1 Corporation, PMCC Investors No. 2 Corporation, PMCC Investors No. 3 Corporation, PMCC Investors No. 4 Corporation, Alpha Dearborn Limited Partnership, MCOG Leasing Corp., Commercial Funding, Inc., CMS Midland Holdings Corporation and CMS Energy Corporation
28. Amended and Restated Tax Indemnification Agreement, dated as of June 1, 1990, between First Midland Limited Partnership and Midland Cogeneration Venture Limited Partnership - Sale and Leaseback of Undivided Interest 1370 MW Gas-Fired Cogeneration Facility Midland, Michigan
29. Supplement to Tax Indemnification Agreement, dated as of June 15, 2000, between First Midland Limited Partnership and Midland Cogeneration Venture Limited Partnership (Trust 1)
30. Expense Reimbursement Agreement, dated as of June 1, 1990, between First Midland Limited Partnership and CMS Energy Corporation

31. Development Agreement dated as of June 1, 1990 among Midland Cogeneration Venture Limited Partnership, MCV2 Development Company, First Midland Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
32. Midland Cogeneration Limited Partnership Midland 1370 MW Gas-Fired Cogeneration Facility Notice of Second Closing by Midland Cogeneration Venture Limited Partnership to the Persons set forth on Exhibit A dated as of June 12, 1990

*Trust 2 – OGPA MCV LLC (assignee of interest originally held by DCC Project Finance One, Inc.)<sup>2</sup>*

33. Amended and Restated Participation Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, DCC Project Finance One, Inc., Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company, Midland Funding Corporation I, Midland Funding Corporation II, and MEC Development Corporation and the financial institutions listed on Schedule I thereto
34. Amended and Restated Trust Agreement, dated as of March 1, 1990, between DCC Project Finance One, Inc. and Bank of America, N.A., as successor in interest to The Connecticut National Bank
35. Amended and Restated Lease Agreement, dated as of June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership, as amended
36. Amendment No. 1 to Amended and Restated Lease Agreement, dated as of January 1, 1992, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership (Trust 2)
37. Amendment No. 2, dated as of June 15, 2000, to Amended and Restated Lease Agreement between Bank of America, N.A., as successor in interest to State Street Bank and Trust Company and The Connecticut National Bank (Trust 2)
38. Amended and Restated Memorandum of Lease and Notice of Claim Interest Pursuant to 1945 PA 200, dated as of March 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, DCC Project Finance One, Inc., and Midland Cogeneration Venture Limited Partnership

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<sup>2</sup> All references in this Schedule 3.11(a) to “DCC Project Finance One, Inc.” shall refer to OGPA MCV LLC, as assignee of the interest originally held by DCC Project Finance One, Inc.

39. Deed, Bill of Sale and Severance Agreement, made as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
40. Subordinated Trust Indenture Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, as Owner Trustee under the Amended and Restated Trust Agreement dated as of March 1, 1990 with First Midland Limited Partnership and Meridian Trust Company, Subordinated Indenture Trustee -- Sale and Leaseback of an Undivided Interest in the Midland 1370 MW Gas-Fired Cogeneration Facility
41. Subordinated Trust Indenture Supplement No. 4 dated as of June 1, 2000 to Subordinated Trust Indenture, Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and First Union National Bank as successor in interest to Meridian Trust Company
42. Second Amended and Restated Agreement of Lease [Part B], dated as of June 1, 1990, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
43. Ground Lease Assignment and Assumption Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company)
44. Cogeneration Agreements Assignment Agreements, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
45. Facility Agreements and Governmental Actions Assignment Agreement, dated as of June 1, 1990, by and between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank, as supplemented by those certain Supplements to Facility Agreements and Governmental Actions Assignment Agreement, dated as of March 31, 1995, June 30, 1995, June 28, 1996, July 21, 1997, April 5, 1999, October 6, 1999, January 7, 2000, July 5, 2000, January 3, 2001, April 2, 2001, July 2, 2001, January 3, 2002, April 2, 2002, January 3, 2003 and April 4, 2003 by Midland Cogeneration Venture Limited Partnership, and as amended by that certain Amendment to Facility Agreements and Governmental Actions Assignment Agreement dated as of February 1, 1992 (Trust 2)
46. Lessee Mortgage and Security Agreement, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank

47. Amendment to Lessee Mortgage and Security Agreement, dated as of September 1, 1991, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank (Trust 2)
48. Support Facilities License and Easement Agreement, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
49. Transferee's Parent Guarantee dated as of December 15, 2005 by Osaka Gas Energy America Corporation to U.S. Bank National Association, et al.
50. Amended and Restated Tax Indemnification Agreement, dated as of June 1, 1990 between DCC Project Finance One, Inc. and Midland Cogeneration Venture Limited Partnership
51. Confirmation of Indemnity, dated as of June 15, 2000, between DCC Project Finance One, Inc. and Midland Cogeneration Venture Limited Partnership
52. Acknowledgment of Adjustment between DCC Project Finance One, Inc. and Midland Cogeneration Venture Limited Partnership
53. Development Agreement, dated as of June 1, 1990 among Midland Cogeneration Venture Limited Partnership, MCV2 Development Company, DCC Project Finance One Inc. and Bank of America, N.A., as successor in interest to The Connecticut National Bank
54. Midland Cogeneration Limited Partnership Midland 1370 MW Gas-Fired Cogeneration Facility Notice of Second Closing by Midland Cogeneration Venture Limited Partnership to the Persons set forth on Exhibit A dated as of June 12, 1990

*Trust 3 – Bell Atlantic Credit Corporation (formerly named NYNEX Credit Company)*<sup>3</sup>

55. Amended and Restated Participation Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, NYNEX Credit Company, Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company, Midland Funding Corporation I and Midland Funding Corporation II, MEC Development Corporation, and the Financial Institutions listed on Schedule 1 thereto
56. Amended and Restated Trust Agreement, dated as of March 1, 1990, between NYNEX Credit Company and Bank of America, N.A., as successor in interest to The Connecticut National Bank

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<sup>3</sup> All references in this Schedule 3.11(a) to “NYNEX Credit Company” shall refer to Bell Atlantic Credit Corporation, as successor to NYNEX Credit Company.

57. Amended and Restated Lease Agreement, dated June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership, as amended
58. Amendment No. 1 to Amended and Restated Lease Agreement, dated as of January 1, 1992, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership (Trust 3)
59. Amendment No. 2, dated as of June 15, 2000, to Amended and Restated Lease Agreement between Bank of America, N.A., as successor in interest to State Street Bank and Trust Company and The Connecticut National Bank (Trust 3)
60. Amended and Restated Memorandum of Lease and Notice of Claim of Interest Pursuant to 1945 PA 200, dated as of March 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
61. Deed, Bill of Sale and Severance Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
62. Subordinated Trust Indenture Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, as Owner Trustee under the Amended and Restated Trust Agreement dated as of March 1, 1990 with First Midland Limited Partnership and Meridian Trust Company, Subordinated Indenture Trustee -- Sale and Leaseback of an Undivided Interest in the Midland 1370 MW Gas-Fired Cogeneration Facility
63. Subordinated Trust Indenture Supplement No. 4 dated as of June 1, 2000 to Subordinated Trust Indenture, Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and First Union National Bank as successor in interest to Meridian Trust Company
64. Second Amended and Restated Agreement of Lease [Part C] between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
65. Ground Lease Assignment and Assumption Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company)
66. Cogeneration Agreements Assignment Agreement, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank

67. Facility Agreements and Governmental Actions Assignment Agreement, dated as of June 1, 1990, by and between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank, as supplemented by those certain Supplements to Facility Agreements and Governmental Actions Assignment Agreement, dated as of March 31, 1995, June 30, 1995, June 28, 1996, July 21, 1997, April 5, 1999, October 6, 1999, January 7, 2000, July 5, 2000, January 3, 2001, April 2, 2001, July 2, 2001, January 3, 2002, April 2, 2002, January 3, 2003 and April 4, 2003 by Midland Cogeneration Venture Limited Partnership, and as amended by that certain Amendment to Facility Agreements and Governmental Actions Assignment Agreement dated as of February 1, 1992 (Trust 3)
68. Lessee Mortgage and Security Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
69. Amendment to Lessee Mortgage and Security Agreement, dated as of September 1, 1991, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank (Trust 3)
70. Support Facilities License and Easement Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership, and Bank of America, N.A., as successor in interest to The Connecticut National Bank
71. Amended and Restated Tax Indemnification Agreement, dated June 1, 1990, between NYNEX Credit Company and Midland Cogeneration Venture Limited Partnership
72. Supplement to Tax Indemnification Agreement, dated as of June 15, 2000, between First Midland Limited Partnership and Midland Cogeneration Venture Limited Partnership (Trust 3)
73. Development Agreement, dated June 1, 1990, among Midland Cogeneration Venture Limited Partnership, MCV2, NYNEX Credit Company, and Bank of America, N.A., as successor in interest to The Connecticut National Bank
74. Midland Cogeneration Limited Partnership Midland 1370 MW Gas-Fired Cogeneration Facility Notice of Second Closing by Midland Cogeneration Venture Limited Partnership to the Persons set forth on Exhibit A dated as of June 12, 1990

*Trust 4 – Resources Capital Management Corporation*

75. Amended and Restated Participation Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Resources Capital Management Corporation, Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian

Trust Company, Midland Funding Corporation I and Midland Funding Corporation II, MEC Development Corporation, and the Financial Institutions listed on Schedule 1 thereto

76. Amended and Restated Trust Agreement, dated as of March 1, 1990, between Resources Capital Management Corporation and Bank of America, N.A., as successor in interest to The Connecticut National Bank
77. Amended and Restated Lease Agreement, dated as of June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership, as amended
78. Amendment No. 1 to Amended and Restated Lease Agreement, dated as of January 1, 1992, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership (Trust 4)
79. Amendment No. 2, dated as of June 15, 2000, to Amended and Restated Lease Agreement between Bank of America, N.A., as successor in interest to State Street Bank and Trust Company and The Connecticut National Bank (Trust 4)
80. Amended and Restated Memorandum of Lease and Notice of Claim of Interest Pursuant to 1945 PA 200, dated March 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
81. Deed, Bill of Sale and Severance Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
82. Subordinated Trust Indenture Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, as Owner Trustee under the Amended and Restated Trust Agreement dated as of March 1, 1990 with First Midland Limited Partnership and Meridian Trust Company, Subordinated Indenture Trustee -- Sale and Leaseback of an Undivided Interest in the Midland 1370 MW Gas-Fired Cogeneration Facility
83. Subordinated Trust Indenture Supplement No. 4 dated as of June 1, 2000 to Subordinated Trust Indenture, Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and First Union National Bank as successor in interest to Meridian Trust Company
84. Second Amended and Restated Agreement of Lease [Part D] between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership

85. Ground Lease Assignment and Assumption Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company)
86. Cogeneration Agreements Assignment Agreement, dated June 1, 1990 between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
87. Facility Agreements and Governmental Actions Assignment Agreement, dated as of June 1, 1990, by and between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank, as supplemented by those certain Supplements to Facility Agreements and Governmental Actions Assignment Agreement, dated as of March 31, 1995, June 30, 1995, June 28, 1996, July 21, 1997, April 5, 1999, October 6, 1999, January 7, 2000, July 5, 2000, January 3, 2001, April 2, 2001, July 2, 2001, January 3, 2002, April 2, 2002, January 3, 2003 and April 4, 2003 by Midland Cogeneration Venture Limited Partnership, and as amended by that certain Amendment to Facility Agreements and Governmental Actions Assignment Agreement dated as of February 1, 1992 (Trust 4)
88. Lessee Mortgage and Security Agreement, dated June 1, 1990, between Midland Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
89. Amendment to Lessee Mortgage and Security Agreement, dated as of September 1, 1991, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank (Trust 4)
90. Support Facilities License and Easement Agreement, dated as of June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
91. Amended and Restated Tax Indemnification Agreement, dated as of June 1, 1990, between Resources Capital Management Corporation and Midland Cogeneration Venture Limited Partnership
92. Confirmation of Indemnity dated as of June 15, 1990 between Resources Capital Management Corporation and Midland Cogeneration Venture Limited Partnership
93. Acknowledgment of Adjustment dated as of July 24, 1990 Resources Capital Management Corporation and Midland Cogeneration Venture Limited Partnership
94. Development Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership, MCV2 Development Company, Resources Capital Management Corporation, and Bank of America, N.A., as successor in interest to The Connecticut National Bank

95. Midland Cogeneration Limited Partnership Midland 1370 MW Gas-Fired Cogeneration Facility Notice of Second Closing by Midland Cogeneration Venture Limited Partnership to the Persons set forth on Exhibit A dated as of June 12, 1990

*Trust 5 – Mission Funding Epsilon*

96. Amended and Restated Participation Agreement, dated June 1, 1990, among Midland Cogeneration Corporation Venture Limited Partnership, Mission Funding Epsilon, Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company
97. Amended and Restated Trust Agreement, dated March 1, 1990, between Mission Funding Epsilon and Bank of America, N.A., as successor in interest to The Connecticut National Bank
98. Amended and Restated Lease Agreement, dated June 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership, as amended
99. Amendment No. 1 to Amended and Restated Lease Agreement, dated as of January 1, 1992, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership (Trust 5)
100. Amendment No. 2, dated as of June 15, 2000, to Amended and Restated Lease Agreement between Bank of America, N.A., as successor in interest to State Street Bank and Trust Company and The Connecticut National Bank (Trust 5)
101. Amended and Restated Memorandum of Lease and Notice of Claim of Interest Pursuant to 1945 PA 200, dated March 1, 1990, between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
102. Deed, Bill of Sale and Severance Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
103. Subordinated Trust Indenture Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, as Owner Trustee under the Amended and Restated Trust Agreement dated as of March 1, 1990 with First Midland Limited Partnership and Meridian Trust Company, Subordinated Indenture Trustee -- Sale and Leaseback of an Undivided Interest in the Midland 1370 MW Gas-Fired Cogeneration Facility

104. Subordinated Trust Indenture Supplement No. 4 dated as of June 1, 2000 to Subordinated Trust Indenture, Leasehold Mortgage and Security Agreement dated as of June 1, 1990 between Bank of America, N.A., as successor in interest to The Connecticut National Bank, and First Union National Bank as successor in interest to Meridian Trust Company
105. Second Amended and Restated Agreement of Lease [Part E] between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
106. Ground Lease Assignment and Assumption Agreement, dated June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company)
107. Cogeneration Agreements Assignment Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
108. Facility Agreements and Governmental Actions Assignment Agreement, dated as of June 1, 1990, by and between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank, as supplemented by those certain Supplements to Facility Agreements and Governmental Actions Assignment Agreement, dated as of March 31, 1995, June 30, 1995, June 28, 1996, July 21, 1997, April 5, 1999, October 6, 1999, January 7, 2000, July 5, 2000, January 3, 2001, April 2, 2001, July 2, 2001, January 3, 2002, April 2, 2002, January 3, 2003 and April 4, 2003 by Midland Cogeneration Venture Limited Partnership, and as amended by that certain Amendment to Facility Agreements and Governmental Actions Assignment Agreement dated as of February 1, 1992 (Trust 5)
109. Lessee Mortgage and Security Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank
110. Amendment to Lessee Mortgage and Security Agreement, dated as of September 1, 1991, between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank (Trust 5)
111. Support Facilities License and Easement Agreement dated as of June 1, 1990 between Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank - Sale and Leaseback of an Undivided Interest in the Midland 1370 MW Gas-Fired Cogeneration Facility

112. Amended and Restated Tax Indemnification Agreement, dated as of June 1, 1990, between Mission Funding Epsilon and Midland Cogeneration Venture Limited Partnership
113. Supplement to Tax Indemnification Agreement, dated as of June 15, 2000, between First Midland Limited Partnership and Midland Cogeneration Venture Limited Partnership (Trust 5)
114. Development Agreement, dated June 1, 1990, among Midland Cogeneration Venture Limited Partnership, MCV2 Development Company, Mission Funding Epsilon and Bank of America, N.A., as successor in interest to The Connecticut National Bank
115. Midland Cogeneration Limited Partnership Midland 1370 MW Gas-Fired Cogeneration Facility Notice of Second Closing by Midland Cogeneration Venture Limited Partnership to the Persons set forth on Exhibit A dated as of June 12, 1990

*Common Documents*

116. Collateral Agency and Intercreditor Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company, Bank of Montreal and Manufacturers National Bank of Detroit
117. Consent and Agreement, dated as of June 1, 1990, by Consumers Energy Company (formerly known as Consumers Power Company) with Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company and Midland Cogeneration Venture Limited Partnership
118. Operating Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership and Bank of America, N.A., as successor in interest to The Connecticut National Bank – Sale and Leaseback of Undivided Interests in the Midland 1370 MW Gas-Fired Cogeneration Facility
119. Amended and Restated Partnership Agreement of MCV2 Development Company, dated as of December 13, 1991, by and among CMS Midland II, Inc., Micogen Limited Partnership, Midwest Energy Investors II, Inc., Source Midland Limited Partnership and Coastal Midland, Inc.
120. CMS Midland II, Inc. Assignment of Interest, dated as of September 12, 1994, Pursuant to Article VII of the MCV2 Development Company Amended and Restated Partnership Agreement dated December 13, 1991
121. Letter Agreement to The Connecticut National Bank, as Owner Trustee under the Trust Agreement, dated as of March 1, 1990, by and among Midland

Cogeneration Venture Limited Partnership, MCV2 Development Company, and the party identified on Schedule A thereto, dated October 9, 1991, amending the Development Agreement, dated as of June 1, 1990

122. Letter by Midland Cogeneration Venture Limited Partnership, dated June 16, 1990, to each of the five Owner Participants as defined in the Amended and Restated Participation Agreement dated as of June 1, 1990 (“Participation Agreement”), the financial institutions listed on Schedule 1 of the Participation Agreement (“Senior Bond Purchasers”) and United States Trust Company of New York relating to the Assignment of Ground Lease and Sale of Facility by MCV to Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Loan made by the Senior Bond Purchasers to Bank of America, N.A., as successor in interest to The Connecticut National Bank
123. 1988 Dow Consent Release, dated as of June 14, 1990, by and among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company), The First National Bank of Chicago, MEC Development Corporation, Midland Cogeneration Venture Limited Partnership and Citibank, N.A.
124. Consent and Agreement, dated as of June \_\_, 1990, made by ANR Production Company to the parties listed on Schedule A thereto
125. Consent and Agreement, dated as of June 15, 1990, made by CMS Energy Corporation to the parties listed on Schedule A thereto
126. Consent and Agreement, dated as of June 15, 1990, made by Canterra Energy Ltd. to the parties listed on Schedule A thereto
127. Consent and Agreement, dated as of June 15, 1990, made by CNG Producing Company to the parties listed on Schedule A thereto
128. Consent and Agreement, dated as of June 15, 1990, made by Norcen Energy Resources Limited to the parties listed on Schedule A thereto
129. Consent and Agreement, dated as of June 15, 1990, made by North Canadian Oils Limited to the parties listed on Schedule A thereto
130. Consent and Agreement, dated as of June 15, 1990, made by Northern Michigan Exploration Company to the parties listed on Schedule A thereto (L004 90-06-15)
131. Consent and Agreement, dated as of June 15, 1990, made by OXY USA, Inc. to the parties listed on Schedule A thereto
132. Consent and Agreement, dated as of June 15, 1990, made by POCO Petroleum Ltd. to the parties listed on Schedule A thereto

133. Consent and Agreement, dated as of June 15, 1990, made by PSI, Inc. to the parties listed on Schedule A thereto
134. Consent and Agreement, dated as of June 15, 1990, made by Transcanada Pipelines Limited to the parties listed on Schedule A thereto
135. Consent and Agreement, dated as of June 15, 1990, made by ANR Pipeline Company to the parties listed on Schedule A thereto [Duplicate in Facility Agreements: delete one]
136. Consent and Agreement, dated as of June 15, 1990, made by Great Lakes Transmission Company to the parties listed on Schedule A thereto
137. Consent and Agreement, dated as of June 15, 1990, made by Michigan Gas Storage Company to the parties listed on Schedule A thereto
138. Consent and Agreement, dated as of June 15, 1990, made by Panhandle Eastern Pipe Line Company to the parties listed on Schedule A thereto
139. Consent and Agreement, dated as of June 15, 1990, made by Trunkline Gas Company to the parties listed on Schedule A thereto
140. Consent and Agreement, dated as of June 15, 1990, made by Fluor Daniel, Inc. d/b/a Fluor Engineers, Inc. to the parties listed on Schedule A thereto
141. Consent and Agreement, dated as of June 15, 1990, made by Combustion Engineering, Inc. to the parties listed on Schedule A thereto
142. Consent and Agreement, dated as of June 15, 1990, made by ABB Energy Services, Inc. to the parties listed on Schedule A thereto
143. Consent and Agreement, dated as of June 9, 1988, made by Panhandle East Pipe Line Company to the parties listed on Schedule A thereto
144. Letter of Representation and Undertaking by CMS Energy Corporation, dated as of June 14, 1990, re: Midland Cogeneration Venture Sales and Leaseback Transactions
145. Pipeline Easement Assignment and Assumption Agreement, dated as of June 14, 1990, between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company (formerly known as Consumers Power Company)
146. Partial Release of Consumers Energy Company's (formerly known as Consumers Power Company) First Mortgage by Manufacturers Hanover Trust Company dated June 15, 1990
147. Discharge of Mortgages, Security Agreements, Fixture Filings and Assignments of Rents dated as of March 1, 1990 and March 12, 1990, made by Midland

- Cogeneration Venture Limited Partnership to MEC Development Corporation, by MEC Development Corporation dated as of June 14, 1990
148. Stipulated Age Release Amount Payment Agreement, dated as of June 1, 1990, among CMS Energy Corporation, Consumers Energy Company (formerly known as Consumers Power Company) and The Dow Chemical Company
  149. Letter of Representation and Undertaking by CMS Midland, Inc., dated as of June 15, 1990, to each of the person listed on Schedule I thereto re: Midland Cogeneration Venture Sale and Leaseback Transaction
  150. Letter of Representation and Undertaking by The Dow Chemical Company, dated as of December 17, 1990, to each of the person listed on Schedule I thereto re: Midland Cogeneration Venture Sale and Leaseback Transaction [50.298 / Dow L Representation & Undertaking Rofan Assign.pdf]
  151. Letter of Representation and Undertaking dated March 1, 2006 among Micogen Limited Partnership, MEI Limited Partnership, Source Midland Limited Partnership and El Paso Midland, Inc.
  152. Letter of Representation and Undertaking by MEC Development Corporation, dated as of June 14, 1990, to each of the person listed on Schedule I thereto re: Midland Cogeneration Venture Sale and Leaseback Transaction
  153. Conformed Credit Agreement, dated as of June 1, 1990, by and between Midland Cogeneration Venture Limited Partnership, Bank of Montreal and the other lenders signatory thereto, as amended and supplemented
  154. Amendment, dated as of August 27, 2004, to Credit Agreement dated as of June 1, 1990 between Midland Cogeneration Venture Limited Partnership, Bank of Montreal and the other lenders signatory thereto, as amended and supplemented
  155. Extension Agreement, effective as of August 27, 2005, of the Credit Agreement dated as of June 1, 1990 among Midland Cogeneration Venture Limited Partnership, Bank of Montreal and the other lenders signatory thereto
  156. Revolving Credit Note by Midland Cogeneration Venture Limited Partnership to Bank of Montreal
  157. Firm Gas Purchase Agreement (Contract No. 162), dated as of June 1, 1990, by and among Midland Cogeneration Venture Limited Partnership, Bank of Montreal and CMS Gas Marketing Company
  158. Consent of CMS Gas Marketing Company, dated June 1, 1990, in connection with the Firm Gas Purchase Agreement (Contract No. 162)
  159. CMS Energy Undertaking, dated June 1, 1990, by CMS Energy Corporation to Bank of Montreal

160. Waiver of Set-Off Letter by The Dow Chemical Company, dated June 1, 1990, to Bank of Montreal
161. Letter Agreement, dated June 16, 1990, between Midland Cogeneration Venture Limited Partnership and Bank of Montreal
162. Waiver of Set-Off Letter by Consumers Energy Company (formerly known as Consumers Power Company), dated June 1, 1990 [June 24, 1993], to Bank of Montreal
163. Collateral Assignment and Security Agreement dated as of June 1, 1990 by Midland Cogeneration Venture Limited Partnership and Bank of Montreal re Earned Receivable and Natural Gas Inventory
164. Side Letter Regarding Additions and Modifications dated June 15, 2000 by Midland Cogeneration Limited Partnership

### **III. Facility Agreements (as defined in Appendix A of the Participation Agreement)**

1. Demineralized Water Supply Agreement, dated as of January 27, 1987, by and between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.007 / Demineralized Water Supply Agreement.pdf]
2. Gas Backup Agreement, dated as of January 27, 1987, as amended by First Amendment dated March 27, 1987, Second Amendment dated April 29, 1987, Third Amendment dated May 18, 1987, Fourth Amendment dated March 1, 1988, and Fifth Amendment dated August 1, 1989, by and among Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.008 / Gas Back-Up Agreement.pdf]
3. Gas Supply Option, dated as of January 27, 1987, by and between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.009 / Gas Supply Option.pdf]
4. Steam Purchase Agreement, dated as of November 15, 1995, by and between Dow Corning Corporation and Midland Cogeneration Venture Limited Partnership [50.010 / SPA-Dow Corning.pdf]
5. Notice Letter dated September 19, 2005 by Midland Cogeneration Venture Limited Partnership relating to Steam Purchase Agreement, dated as of November 15, 1995, by and between Dow Corning Corporation and Midland Cogeneration Venture Limited Partnership
6. Equipment Lease dated as of January 27, 1987 between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.289]

7. First Amendment to Equipment Lease dated as of May 4, 1988 (effective March 1, 1988) between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.289]
8. Second Amendment to Equipment Lease dated as of November 20, 1989 (effective December 1, 1989) between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.289]
9. Equipment Lease Easement dated as of January 27, 1987 between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.289]
10. First Amendment to Equipment Lease Easement dated as of May 4, 1988 (effective March 1, 1988) between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.289]
11. Second Amendment to Equipment Lease Easement dated as of November 20, 1989 (effective December 1, 1989) between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership [50.289]
12. MCV Backup Agreement, dated as of June 9, 1988, by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company (formerly known as Consumers Power Company) [50.019 / MCV Back-Up w-Consumers Re SEPA.pdf]
13. Maintenance Services and Parts Agreement for MCV 11NM Gas Turbines, dated as of December 31, 2002, by and between Midland Cogeneration Venture Limited Partnership and General Electric International, Inc. [50.030 / GE LTSA for MCV 11NM GTS.doc]
14. Amendment 1, dated March 21, 2003, to Maintenance Services and Parts Agreement, dated December 31, 2002, between Midland Cogeneration Venture Limited Partnership and General Electric International, Inc. [50.030 / GE LTSA for MCV 11NM GTS.doc]
15. GE Steam Turbine Maintenance Agreement, dated as of December 30, 1994, by and between Midland Cogeneration Venture Limited Partnership and General Electric Company
16. Guaranty Agreement, dated as of January 22, 2003, by General Electric Company for the benefit of Midland Cogeneration Venture Limited Partnership [50.030 / GE LTSA for MCV 11NM GTS.doc]
17. Service Agreement dated May 1, 1997 between General Electric Company and Midland Cogeneration Venture Limited Partnership

18. GE Turbine-Generator Service Agreement Addendum No. 1 to Contract 390T1829 dated January 30, 2004 between Midland Cogeneration Venture Limited Partnership and General Electric Company
19. Consent and Agreement, dated as of December 31, 2002, by and between GE International, Inc. and Midland Cogeneration Venture Limited Partnership
20. Reduced Dispatch Agreement, dated as of July 7, 2004, by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company [50.071-50.072 / 50.71\_Reduced\_Dispatch\_Agreement.pdf]
21. Resource Conservation Agreement, dated as of February 12, 2004, by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company [50.071-50.072 / 50.72\_Resource\_Conservation\_Agreement.pdf]
22. Residual Open Access Interconnection Service Purchase Agreement dated December 5, 1991 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.290 / Residual Open Access Interconnection Svc Purchase Agrmt.pdf]
23. Service Agreement, dated as of October 1, 1990, between CMS Midland, Inc. and Consumers Energy Company (formerly known as Consumers Power Company) [50.075-50.076 / 50.75\_CMS\_Midland,\_Inc.\_Services\_Agreement.pdf]
24. Service Agreement, dated as of October 1, 1990, between CMS Midland Holdings Company and Consumers Energy Company (formerly known as Consumers Power Company) [50.075-50.076 / 50.76\_CMS\_Midland\_Holdings\_Services\_Agreement.pdf]
25. Temporary Transportation and Storage Rights Agreement, dated as of June 1, 1990, by and between Michigan Gas Storage Company and Bank of Montreal [50.130-50.187 / 50.186.pdf]
26. Temporary Transportation and Storage Rights Agreement, dated as of June 1, 1990, by and between Consumers Energy Company (formerly known as Consumers Power Company) and Bank of Montreal [50.130-50.187 / 50.187.pdf]
27. Backup Steam and Electric Power Agreement dated January 27, 1987 between The Dow Chemical Company and Consumers Energy Company (formerly known as Consumers Power Company) [50.2Xe / Gas Backup Agrmt CECo-MCV-Dow w-Amend 1-5.pdf]

*Gas Gathering, Storage and Transportation Agreements*

T-100

28. Master Transportation Agreement, dated as of August 26, 1987, by and between ANR Pipeline Company and Midland Cogeneration Venture Limited Partnership [50.031 / T100 08 27 87.tif]
29. Letter Agreement, dated September 22, 1989, between ANR Pipeline Company and Midland Cogeneration Venture Limited Partnership re: per dekatherm fee for gas transported through ANR Pipeline Company's facilities [50.031 / T100 9 22 89.TIF]
30. Letter Agreement between ANR Pipeline Company and Midland Cogeneration Venture Limited Partnership re: reduction of MDQ [50.031 / T100 undated.TIF]

#### T-101

31. FTS – 1 Service Agreement, dated as of August 30, 2001, by and between ANR Pipeline Company and Midland Cogeneration Venture Limited Partnership [50.032, 50.035 T-101 / 50.35 T101 8 30 01.tif]
32. Consent and Agreement, dated as of June 15, 1990, by ANR Pipeline Company to the parties on Schedule A attached thereto [50.032, 50.035 T-101 / 50.32 T101 6 15 90.tif]
33. Letter Agreement, dated September 12, 2001, between ANR Pipeline Company and Midland Cogeneration Venture Limited Partnership subjecting ANR Contract 106102 (FTS-1 Service Agreement dated August 30, 2001) to the Consent and Agreement, dated June 15, 1990 [50.032, 50.035 / 50.35\_T101\_9\_12\_01.TIF]

#### T-103

34. Gathering Agreement, dated as of August 30, 2001, by and between ANR Pipeline Company and Midland Cogeneration Venture Limited Partnership [50.033-50.044 T-103 / 50.34 T103 8 30 01.tif]
35. Consent and Agreement, dated as of November 1, 2001, by ANR Pipeline Company to the parties on Schedule A attached thereto [T-103 01-11-01]

#### T-112

36. Letter Agreement, dated as of September 1, 2000, by ANR Pipeline Company and Midland Cogeneration Venture Limited Partnership [50.031a, 50.035a / T112 9 01 00.TIF]

#### T-200

37. Gas Exchange Agreement, dated as of March 2, 1988, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.036-50.038 T-200 / 50.36 T200 3 02 88.tif]

38. Amendment, dated September 21, 1988, to Gas Exchange Agreement, dated as of March 2, 1988, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.036-50.038 T-200 / 50.36 T200 9 21 88.tif]
39. Amendment, dated March 28, 2002, to Gas Exchange Agreement, dated as of March 2, 1998, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.036-50.038 T-200 / 50.36 T200 3 28 02.tif]

#### T-300

40. Transportation Service Agreement (for Use under Transporter's Rate Schedule IT) (Contract Identification IT068), dated as of October 16, 1990, by and between Great Lakes Gas Transmission Company and Midland Cogeneration Venture Limited Partnership [50.291 T-300 TSA / T300 Service Agmnt.TIF T300 Ltr Agmnt understanding IT Agmnt.TIF]
41. Amended Appendix A, dated November 20, 1990, to Transportation Service Agreement between Great Lakes Gas Transmission Company and Midland Cogeneration Venture Limited Partnership [50.291 T-300 TSA / T300 Revised App A sup 101690.TIF]
42. Amended Appendix A, dated November 1, 1993, to Transportation Service Agreement between Great Lakes Gas Transmission Company and Midland Cogeneration Venture Limited Partnership [50.291 T-300 TSA / T300 Revised App A sup 112090.TIF]
43. Letter Agreement, dated October 16, 1990, by and between Great Lakes Gas Transmission Company and Midland Cogeneration Venture Limited Partnership re: Service Agreement IT068 [50.291 T-300 TSA / T300 Ltr Agmnt understanding IT Agmnt.TIF]
44. Letter Agreement, dated November 7, 1990, between Great Lakes Gas Transmission Company and Midland Cogeneration Venture Limited Partnership re: Service Agreement IT068 exculpation [50.291 T-300 TSA / T300 Ltr Agmnt Exculpation.TIF]

#### T-301

45. Transportation Service Agreement, dated as of August 30, 2000, by and between Great Lakes Gas Transmission Limited Partnership and Midland Cogeneration Venture Limited Partnership (FT0028) [50.039 & 50.042 T-301 / 50.39 T301 8 30 00.tif]
46. Letter Agreement, dated August 30, 2000, by and between Great Lakes Gas Transmission Limited Partnership and Midland Cogeneration Venture Limited Partnership

47. Consent and Agreement, dated as of January 26, 2001, by Great Lakes Gas Transmission Limited Partnership to the parties on Schedule A attached thereto [50.039 & 50.042 T-301 / 50.42 T301 1 26 01.tif]

T-303

48. Transportation Service Agreement, dated as of August 30, 2000, by and between Great Lakes Gas Transmission Limited Partnership and Midland Cogeneration Venture Limited Partnership (FT1073) [50.040, 50.042 F303 / 50.40 T303 8 30 00 TSA.tif]
49. Letter Agreement, dated August 30, 2000, by and between Great Lakes Gas Transmission Limited Partnership and Midland Cogeneration Venture Limited Partnership [50.040, 50.042 / 50.40\_T303\_8\_30\_00\_LA.TIF]
50. Consent and Agreement, dated as of January 26, 2001, by Great Lakes Gas Transmission Limited Partnership to the parties on Schedule A attached thereto [50.040, 50.042 F303 / 50.42 T303 1 26 01.tif]

T-304

51. Transportation Service Agreement, dated as of August 11, 2004, by and between Great Lakes Gas Transmission Limited Partnership and Midland Cogeneration Venture Limited Partnership [50.041 / T304 8 11 04]

T-601

52. Transportation Agreement, dated as of May 1, 1993, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 / 50.49\_T601\_5\_01\_93.tif]
53. Amendment No. 1, dated as of July 1, 1993, to Transportation Agreement, dated May 1, 1993, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.50 T601 7 1 93.tif]
54. Amendment No. 2, dated as of October 18, 1993, to Transportation Agreement, dated May 1, 1993, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 / 50.49\_T601\_10\_18\_93.tif]
55. Amendment No. 3, dated as of November 10, 1993, to Firm Transportation Agreement, dated May 1, 1993, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.44 T601 11 10 93.tif]
56. Amendment No. 6, dated as of June 24, 1994, to Transportation Agreement, dated May 1, 1993, by and between Panhandle Eastern Pipe Line Company and

Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.51 T601 6 24 94.tif]

57. Amendment No. 13, dated as of April 24, 2002, to Transportation Agreement, dated May 1, 1993, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.52 T601 4 24 02.tif]
58. Amendment No. 14, dated as of March 25, 2003, to Transportation Agreement, dated May 1, 1993, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.53 T601 4 01 03.tif]
59. Discount Letter Agreement, dated November 9, 1993, between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 / 50.45\_T601\_11\_09\_93.TIF]
60. Amendment, dated December 1, 1996, to Discount Letter Agreement dated November 9, 1993 by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.45 T601 12 01 96.tif]
61. Amendment, dated September 21, 1999, to Discount Letter Agreement dated November 9, 1993 by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.46 T601 9 21 99.tif]
62. Amendment, dated March 10, 2003, to Discount Letter Agreement dated November 9, 1993 by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.47 T601 3 10 03.tif]
63. Amendment, dated March 24, 2003, to Discount Letter Agreement dated November 9, 1993 by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.043-50.053 T-601 / 50.48 T601 3 24 03.tif]
64. Letter Agreement, dated July 10, 1995, between Panhandle Eastern Pipe Line Company (“Panhandle”) and Midland Cogeneration Venture Limited Partnership subjecting Panhandle’s contracts (Nos. 011456, 011458, and 010307) to the Letter Agreement and Consent and Agreement, dated June 15, 1990 [50.043-50.053 / T601 7 10 95.TIF]

T-608

65. Transportation Agreement, dated as of May 1, 2005, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.054-50.058 T-608 / 50.54 T608 5 01 05.tif]

66. Amendment No. 1, dated as of May 26, 2005, to Transportation Agreement, dated May 1, 2005, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.054-50.058 T-608 / 50.55 T608 5 26 05.tif]
67. Amendment No. 2, dated as of June 28, 2005, to Transportation Agreement, dated May 1, 2005, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.054-50.058 T-608 / 50.56 T608 6 28 05.tif]
68. Amendment No. 3, dated as of July 27, 2005, to Transportation Agreement, dated May 1, 2005, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.054-50.058 T-608 / 50.57 T608 7 27 05.tif]
69. Amendment No. 4, dated as of August 24, 2005, to Transportation Agreement, dated May 1, 2005, by and between Panhandle Eastern Pipe Line Company and Midland Cogeneration Venture Limited Partnership [50.054-50.058 T-608 / 50.58 T608 8 24 05.tif]

#### T-901

70. Transportation Service Agreement, dated as of November 1, 1993, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 T-901 / 50.62 T901 11 01 93.tif]
71. Amendment No. 1, dated as of December 1, 1994, to Transportation Service Agreement, dated as of November 1, 1993, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 T-901 / 50.63 T901 11 30 94.tif]
72. Amendment No. 2, dated as of December 9, 1996, to Transportation Service Agreement, dated as of November 1, 1993, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 T-901 / 50.64 T901 12 09 96.tif]
73. Amendment No. 3, dated as of December 31, 1996, to Transportation Service Agreement, dated as of November 1, 1993, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 T-901 / 50.65 T901 12 31 96.tif]
74. Amendment No. 4, dated as of March 1, 1998, to Transportation Service Agreement, dated as of November 1, 1993, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 T-901 / 50.66\_T901\_3\_01\_98.TIF]

75. Letter Agreement, dated October 27, 1994, between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership re: suspense account [50.059-50.066 / T901 10 27 94.tif]
76. Letter Agreement, dated February 17, 1995, between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership subjecting gas transportation service contracts (Nos. T-FTS-013296 and T-ITS-013593) to the Letter Agreement and Consent and Agreement, dated October 30, 1990 [50.059-50.066 / T901 2 17 95.tif]
77. Letter Agreement, dated August 27, 2001, between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership amending the Firm Transportation Agreement No, 013296 [50.059-50.066 / T901 8 27 01.tif]
78. Discount Letter Agreement, dated January 26, 1995, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 T-901 / 50.60 T901 1 26 95 LA.tif]
79. Addendum, dated January 26, 1995, to Discount Letter Agreement, dated January 26, 1995, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 / 50.61 T901 1 26 95 DLA.tif]
80. Amendment, dated October 1, 1996, to Discount Letter dated January 26, 1995 [50.059-50.066 T-901 / 50.61 T901 10 01 96.tif]
81. Discount Letter Agreement, dated August 24, 2001, by and between Trunkline Gas Company and Midland Cogeneration Venture Limited Partnership [50.059-50.066 / T901 8 24 01.tif]

#### ST001

82. Gas Storage Agreement, dated as of March 2, 1988, by and between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.017 / Gas Storage Agr-Consumers.pdf]
83. Gas Storage Letter Agreement dated November 10, 1989, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.302 / 11-10-89 Gas Storage L Agrmt.pdf]

#### *Natural Gas Purchase and Sale Agreements (Physical)*

#### L003

84. Natural Gas Purchase Agreement, dated as of May 1, 1989, by and among Northern Michigan Exploration Company, CMS Energy Corporation and Midland Cogeneration Venture Limited Partnership [L003 89-05-01]

85. Consent and Agreement, dated as of June 15, 1990, by Northern Michigan Exploration Company to the parties on Schedule A attached thereto [L003 90-06-15]
86. First Amendment, dated as of March 1, 1992, to Natural Gas Purchase Agreement, dated May 1, 1989, between Northern Michigan Exploration Company and Midland Cogeneration Venture Limited Partnership [L003 92-03-01]
87. Guaranty Agreement, dated as of March 1, 1995, among MCN Corporation, Midland Cogeneration Venture Limited Partnership and CMS NOMEKO Oil & Gas Co. [L003 95-03-01]
88. Assignment and Release Agreement, dated as of March 14, 1995, by and among CoEnergy Trading Company, CMS NOMEKO Oil & Gas Co. and Midland Cogeneration Venture Limited Partnership [L003 95-03-14]
89. Letter Agreement dated January 18, 1990 between Northern Michigan Exploration Company and Midland Cogeneration Venture Limited Partnership [L003 90-01-18]
90. Letter Agreement dated April 12, 1990 between by Northern Michigan Exploration Company [L003 90-04-12]
91. Letter Agreement dated February 24, 1992 between Northern Michigan Exploration Company and Midland Cogeneration Venture Limited Partnership [L003 92-02-24]
92. Letter Agreement dated May 11, 1994 between Northern Michigan Exploration Company and Midland Cogeneration Venture Limited Partnership [L003 94-05-11]
93. Letter Agreement dated March 1, 2002 between DTE Enterprises Inc. and Midland Cogeneration Venture Limited Partnership [L003 02-03-01]

L004<sup>4</sup>

94. Second Amendment, dated as of June 25, 2001, to Natural Gas Purchase Agreement by and between CMS Oil and Gas Company (formerly known as Northern Michigan Exploration Company), CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) and Midland Cogeneration Venture Limited Partnership [L004 01-06-25 2nd Amend]

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<sup>4</sup> The contracts, agreements and instruments set forth under “L004” have been assigned to and assumed by Sempra Energy Trading Corp. pursuant to the Assignment and Assumption Agreement dated as of February 1, 2003 among Sempra Energy Trading Corp., CMS Marketing Services and Trading Company and Midland Cogeneration Venture Limited Partnership.

95. Settlement Agreement, dated as of June 25, 2001, by and between Midland Cogeneration Venture Limited Partnership and CMS Oil and Gas Company (formerly known as Northern Michigan Exploration Company) [L004 01-06-25 Settlement]
96. Acknowledgement and Agreement, dated as of November 20, 2002, between Perenco LLC, CMS Energy Corporation, CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) and Midland Cogeneration Venture Limited Partnership [L004 02-11-20 AcknowAgree]
97. Third Amendment, dated as of December 13, 2002, to Natural Gas Purchase Agreement by and between CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) and Midland Cogeneration Venture Limited Partnership [L004 02-12-13]
98. Letter Agreement dated February 20, 2002 by CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) [L004 02-02-20]

L012

99. Natural Gas Purchase Agreement, dated as of August 31, 1988, Canterra Energy Ltd. and Midland Cogeneration Venture Limited Partnership [L012 88-08-31]
100. Assignment Agreement, dated as of July 20, 1992, by and among Canterra Energy, Ltd, Husky Oil Operations Ltd and Midland Cogeneration Venture Limited Partnership [L012 92-07-20]
101. Amending Agreement, dated as of January 1, 1995, Husky Oil Operations Ltd. and Midland Cogeneration Venture Limited Partnership to a Natural Gas Purchase Agreement, dated as of August 31, 1998 [L012 95-01-01]
102. Amending Agreement, dated as of January 1, 1999, between Husky Oil Operations Limited and Midland Cogeneration Venture Limited Partnership to a Natural Gas Purchase Agreement, dated as of August 31, 1998 [L012 99-01-01]
103. Amending Agreement, dated as of December 1, 2001, by and between Husky Oil Operations Limited and Midland Cogeneration Venture Limited Partnership [L012 01-12-01]
104. Letter Agreement dated June 12, 1989 between Canterra Energy, Ltd and Midland Cogeneration Venture Limited Partnership [L012 89-06-12]
105. Letter Agreement dated December 1, 1989 between Canterra Energy, Ltd and Midland Cogeneration Venture Limited Partnership [L012 89-12-01]

106. Letter Agreement dated March 1, 1990 between Canterra Energy, Ltd and Midland Cogeneration Venture Limited Partnership [L012 90-03-01]
107. Letter Agreement dated February 24, 2000 between Husky Oil Operations Limited and Midland Cogeneration Venture Limited Partnership [L012 00-02-24]
108. Letter Agreement dated June 6, 2003 between Husky Oil Operations Limited and Midland Cogeneration Venture Limited Partnership [L012 03-06-06]

#### L016

109. Natural Gas Purchase Agreement, dated as of September 1, 1990, Ultramar Oil and Gas Limited and Midland Cogeneration Venture Limited Partnership [L016 90-09-01]
110. Amendment to Natural Gas Purchase Agreement, dated as of June 1, 2002, by and between Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy, LP dated September 1, 1990 [L016-02-06-01]
111. Novation and Amendment Agreement, dated as of October 13, 1992, by and among Midland Cogeneration Venture Limited Partnership, Enron Power Services, Inc. and Ultramar Oil and Gas Limited related to a certain Natural Gas Purchase Agreement dated September 1, 1990 [L016 92-10-13]
112. Consent and Agreement by Ultramar Oil and Gas Limited to the parties on Schedule A attached thereto [L016 90-xx]
113. Amendment No. 2, dated as of April 11, 1994, to Natural Gas Purchase Agreement dated September 1, 1990 by and between Enron Power Services, Inc. and Midland Cogeneration Venture Limited Partnership [L016 94-04-11]
114. Amendment, dated as of August 1, 1996, to Natural Gas Purchase Agreement by and between Enron Capital & Trade Resources Corp. and Midland Cogeneration Venture Limited Partnership [L016 96-08-01]
115. Letter Agreement dated December 26, 2001 by Midland Cogeneration Venture Limited Partnership [L016 01-12-26]
116. Letter Agreement dated May 15, 2002 between Enron North America Corp. and Midland Cogeneration Venture Limited Partnership [L016 02-05-15]

#### L017

117. Natural Gas Purchase Agreement, dated as of September 17, 1990, by and among Apollo Exploration and Development, Delta Oil Co., Force Energy, Inc. and Midland Cogeneration Venture Limited Partnership [L017 90-09-17] (Dow elected to have an assignment provision included in the contract by letter dated October 16, 1990.)

118. First Amendment to Natural Gas Purchase Agreement, dated as of September 17, 1990, by and among Apollo Exploration and Development, Delta Oil Co., Force Energy, Inc. and Midland Cogeneration Venture Limited Partnership [L017 92-04-03]
119. Consent and Agreement, dated October \_\_, 1990, by Apollo Exploration and Development, Inc. Delta Oil Co., Inc. and Force Energy, Inc. to the parties listed on Schedule A attached thereto [L017 90-10-xx]
120. Agreement to Subordinate Security Interest dated as of September 21, 1990, between Delta Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L017 90-09-21]
121. Letter Agreement dated June 7, 1991 between Midland Cogeneration Venture Limited Partnership and Force Energy, Inc. [L017 91-06-07]
122. Letter Agreement dated May 7, 1996 by Delta Oil Company, Inc. [L017 96-05-07]
123. Letter Agreement dated December 3, 1998 between Delta Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L017 98-12-03]
124. Letter Agreement dated June 7, 1999 between Delta Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L017 99-06-07]
125. Letter Agreement dated April 10, 2002 between Delta Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L017 02-04-10]

L018

126. Natural Gas Purchase Agreement, dated January 1, 1991, between Wolverine Gas & Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L018 91-01-01] (Dow elected to have an assignment provision included in the contract by letter dated October 16, 1990.)
127. Consent and Agreement, dated December 31, 1990, by Wolverine Gas & Oil Company, Inc. Petro-Wol Antrim Development Partnership and H&H Star Energy, Inc. to the parties listed on Schedule A attached thereto [L018 90-12-31]
128. Memorandum of Agreement, dated April 30, 1999, by Dominion Midwest Energy Inc. and Midland Cogeneration Venture Limited Partnership [L018 99-04-30]
129. Amendment of Natural Gas Purchase Agreement, dated as of May 1, 1999, between Dominion Midwest Energy, Inc., formerly Wolverine Gas & Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L018 99-05-01 Amend]

130. Limited Performance Guaranty, as of May 1, 1999, by Dominion Energy, Inc. in consideration of Midland Cogeneration Venture Limited Partnership entering into the Amendment of Natural Gas Purchase Agreement with Dominion Midwest Energy, Inc. [L018 99-05-01 Guaranty]
131. Letter Agreement dated March 16, 2001 between Midland Cogeneration Venture Limited Partnership and Dominion Energy, Inc. [L018 01-03-16]
132. Letter Agreement dated June 19, 1991 between Midland Cogeneration Venture Limited Partnership and Wolverine Gas & Oil Company, Inc. [L018 91-06-19]
133. Letter Agreement dated August 3, 1994 by Wolverine Gas & Oil Company, Inc. [L018 94-08-03]
134. Letter Agreement dated November 30, 1994 between Wolverine Gas & Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L018 94-11-30]
135. Letter Agreement dated October 4, 1995 between Wolverine Gas & Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L018 95-10-04]
136. Letter Agreement dated September 5, 1996 between Wolverine Gas & Oil Company, Inc. and Midland Cogeneration Venture Limited Partnership [L018 96-09-05]

#### L019

137. Natural Gas Purchase Agreement, dated as of February 1, 1992, between Nomeco Oil & Gas Co, and Midland Cogeneration Venture Limited Partnership [L019 92-02-01]
138. Assignment and Novation Agreement, dated as of July 22, 1994, by and between CoEnergy Trading Company, Nomeco Oil & Gas Co. and CMS Energy Corporation [L019-94-07-22]
139. Letter Agreement dated July 25, 2002 between Midland Cogeneration Venture Limited Partnership and DTE Enterprises, Inc. [L019 02-07-25]

#### L021

140. Gas Sales Agreement dated August 18, 1994 by and between Midland Cogeneration Venture Limited Partnership and Coastal Gas Marketing Company [L021 94-08-18 LT]
141. Amendment and Addendum to Gas Sales Agreement dated August 18, 1994 by and between Midland Cogeneration Venture Limited Partnership and Coastal Gas Marketing Company [L021 94-08-18 Amend]

142. Consent and Agreement, dated as of November 23, 1994, by Coastal Gas Marketing Company to the parties listed on Schedule A attached thereto [L021 94-11-23]
143. Guaranty dated as of November 3, 1994 by the Coastal Corporation in favor of Midland Cogeneration Venture Limited Partnership [L021 94-11-03]
144. Consent to Assignment by Midland Cogeneration Venture Limited Partnership, consenting Coastal Gas Marketing Company's assignment of rights and delegation of obligations under the Agreement dated June 1, 1997 between Midland Cogeneration Venture Limited Partnership and Coastal Gas Marketing Company [L021 97-06-01]
145. Letter Agreement dated March 5, 1997 by The Coastal Corporation [L021 97-03-05]

L023

146. Gas Sales Agreement, dated as of November 15, 1988, between Midland Cogeneration Venture Limited Partnership and Engage Energy U.S., LP [L023 98-11-15]
147. Guaranty dated as of April 1, 2001 by El Paso Corporation in favor of Midland Cogeneration Venture Limited Partnership [L023 01-04-01]
148. Guaranty dated January 1, 1999 by The Coastal Corporation in favor of Midland Cogeneration Venture Limited Partnership [L023 99-01-01]

L024<sup>5</sup>

149. Gas Sales Agreement, dated as of July 1, 1999 between Midland Cogeneration Venture Limited Partnership and CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) [L024 99-07-01 LT]
150. Guaranty dated November 1, 2000 by CMS Energy Corporation in favor of Midland Cogeneration Venture Limited Partnership [L024 00-11-01]
151. Letter Agreement dated July 1, 1999 between CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) and Midland Cogeneration Venture Limited Partnership [L024 99-07-01]

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<sup>5</sup> The contracts, agreements and instruments set forth under "L024" have been assigned to and assumed by Sempra Energy Trading Corp. pursuant to the Assignment and Assumption Agreement dated as of February 1, 2003 among Sempra Energy Trading Corp., CMS Marketing Services and Trading Company and Midland Cogeneration Venture Limited Partnership.

L025

152. Gas Sales Agreement, dated as of October 1, 1999, between Midland Cogeneration Venture Limited Partnership and Coral Energy Resources, Inc. [L025 99-10-01]
153. First Amendment, dated June 6, 2002, to Gas Sales Agreement between Midland Cogeneration Venture Limited Partnership and Reliant Energy Services, Inc. [L025 02-06-06]
154. Guaranty Agreement by Reliant Energy Resources Corporation in favor of Midland Cogeneration Venture Limited Partnership [L025 01-06-18]
155. Amendment to Guaranty Agreement dated as of October 19, 2000 by Reliant Energy Resources Corporation in favor of Midland Cogeneration Venture Limited Partnership [L025 00-10-19]
156. Amendment to Guaranty Agreement dated as of August 24, 2001 by Reliant Energy Resources Corporation in favor of Midland Cogeneration Venture Limited Partnership [L025 01-08-24]
157. Amendment to Guaranty Agreement dated as of June 10, 2002 by Reliant Resources, Inc. in favor of Midland Cogeneration Venture Limited Partnership [L025 02-06-10]
158. Amendment No. 1 to Irrevocable Standby Letter of Credit No. BMCH85214OS dated September 21, 2005 made by Midland Cogeneration Venture Limited Partnership in favor of Reliant Energy Services, Inc.
159. Letter Agreement dated October 20, 1999 between Reliant Energy Services, Inc. and Midland Cogeneration Venture Limited Partnership [L025 99-10-20]

L026

160. Gas Sales Agreement dated October 1, 1999 between Midland Cogeneration Venture Limited Partnership and Reliant Energy Services, Inc. [L026 99-10-01 LT]
161. Consent and Agreement, dated as of October 1, 1999, by Coral Energy LP to the parties listed on Schedule A attached thereto [L026 99-10-01 C+A]
162. Guaranty dated as of November 1, 2004 by Coral Energy L.P. in favor of Midland Cogeneration Venture Limited Partnership [L026 04-11-01]

L027

163. Gas Sales Agreement, dated as of September 20, 1999, between Midland Cogeneration Venture Limited Partnership and Engage Energy U.S., L.P. [L027 99-09-20]

L029

164. Long Term Gas Agreement, dated as of October 10, 2000, between Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy Gas, LP [L029 00-10-10]
165. First Amendment, dated December 1, 2000, to Long Term Gas Agreement dated October 10, 2000 between Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy Gas, LP [L029 00-12-01]
166. Guaranty dated as of March 1, 2001 by El Paso Corporation in favor of Midland Cogeneration Venture Limited Partnership [L029 01-03-01]

L030<sup>6</sup>

167. Long Term Gas Agreement dated October 10, 2000 between Midland Cogeneration Venture Limited Partnership and CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) [L030 00-10-10]
168. Letter Agreement dated January 18, 2001 between CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) and Midland Cogeneration Venture Limited Partnership [L030 01-01-18]

L032

169. Long Term Gas Agreement, dated March 22, 2001, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L032 01-03-22 LT]
170. Guaranty dated October 5, 2001 by Westcoast Energy Inc. in favor of Midland Cogeneration Venture Limited Partnership [L032 01-10-05]
171. Guaranty dated March 22, 2001 by Westcoast Energy Inc. in favor of Midland Cogeneration Venture Limited Partnership [L032 01-03-22G]
172. Amendment, dated October 16, 2001, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L032 01-10-16]

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<sup>6</sup> The contracts, agreements and instruments set forth under “L030” have been assigned to and assumed by Sempra Energy Trading Corp. pursuant to the Assignment and Assumption Agreement dated as of February 1, 2003 among Sempra Energy Trading Corp., CMS Marketing Services and Trading Company and Midland Cogeneration Venture Limited Partnership.

173. Amendment Agreement, dated February 5, 2002, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L032 02-02-05]
174. Assignment, Assumption and Consent Agreement, dated January 24, 2006 by and among Duke Energy Marketing America, LLC, UBS AG and Midland Cogeneration Venture Limited Partnership [L032 06-01-24 UBS A A CA]
175. Amendment to Gas Agreement, dated as of January 24, 2006, between Midland Cogeneration Venture Limited Partnership and UBS AG (effective February 1, 2006) [L032 06-01-24 UBS Amend]

#### L036

176. Long Term Gas Agreement dated October 5, 2001 between Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy, LP [L036 01-10-05 LT]
177. Guaranty by Westcoast Energy Inc. in favor of Midland Cogeneration Venture Limited Partnership [L036 01-10-05]
178. Amendment, dated October 16, 2001, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L036 01-10-16]
179. Amendment Agreement, dated February 5, 2002, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L036 02-02-05]
180. Assignment, Assumption and Consent Agreement, dated January 24, 2006 by and among Duke Energy Marketing America, LLC, UBS AG and Midland Cogeneration Venture Limited Partnership [L036 06-01-24 UBS A A CA]
181. Amendment to Gas Agreement, dated as of January 24, 2006, between Midland Cogeneration Venture Limited Partnership and UBS AG (effective February 1, 2006) [L036 06-01-24 UBS Amend]

#### L037

182. Long Term Gas Agreement dated October 5, 2001 between Midland Cogeneration Venture Limited Partnership and Engage Energy America LLC [L037 01-10-05 LT]
183. Guaranty by Westcoast Energy Inc. in favor of Midland Cogeneration Venture Limited Partnership [L037 01-10-05]
184. Amendment, dated October 16, 2001, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L037 01-10-16]

185. Amendment Agreement, dated February 5, 2002, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L037 02-02-05]
186. Assignment, Assumption and Consent Agreement, dated January 24, 2006 by and among Duke Energy Marketing America, LLC, UBS AG and Midland Cogeneration Venture Limited Partnership [L037 06-01-24 UBS A A CA]
187. Amendment to Gas Agreement, dated as of January 24, 2006, between Midland Cogeneration Venture Limited Partnership and UBS AG (effective February 1, 2006) [L037 06-01-24 UBS Amend]

#### L038

188. Long Term Gas Agreement dated October 5, 2001 between Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy, L.P. [L038 01-10-05 LT]
189. Letter Agreement dated December 14, 2001 by Midland Cogeneration Venture Limited Partnership [L038 01-12-14]

#### L039<sup>7</sup>

190. Long Term Gas Agreement dated October 5, 2001 between Midland Cogeneration Venture Limited Partnership and CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) [L039-01-10-05 LT]
191. Amendment Agreement dated as of March 1, 2002 of the Long Term Gas Agreement dated October 5, 2001 by and between CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) and Midland Cogeneration Venture Limited Partnership [L039 02-03-01]
192. Side Letter to CMS Marketing Services and Trading Company and Midland Cogeneration Venture Limited Partnership Long Term Gas Agreement dated October 5, 2001 [L039 01-10-05 sidke]

#### L040

193. Long Term Gas Agreement dated December 7, 2001 between Midland Cogeneration Venture Limited Partnership and Anadarko Canada Corporation [L040 01-12-07 LT]

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<sup>7</sup> The contracts, agreements and instruments set forth under “L039” have been assigned to and assumed by Sempra Energy Trading Corp. pursuant to the Assignment and Assumption Agreement dated as of February 1, 2003 among Sempra Energy Trading Corp., CMS Marketing Services and Trading Company and Midland Cogeneration Venture Limited Partnership.

194. Amending Agreement dated as of December 7, 2001 between Anadarko Canada Corporation and Midland Cogeneration Venture Limited Partnership [L040 01-12-7 Amend]
195. Amendment dated as of September 12, 2002, by and between Anadarko Canada Corporation and Midland Cogeneration Venture Limited Partnership to the Long Term Gas Agreement dated December 7, 2001 [L040 02-09-12]
196. Letter Agreement dated December 12, 2001 between Midland Cogeneration Venture Limited Partnership and Anadarko Canada Corporation [L040 01-12-19]

#### L041

197. Long Term Gas Agreement, dated May 7, 2002, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L041 02-05-07]
198. Guaranty by Westcoast Energy Inc. in favor of Midland Cogeneration Venture Limited Partnership [L041 01-10-05]
199. Amendment to Guaranty, dated May 7, 2002, by and between Westcoast Energy Inc. and Midland Cogeneration Venture Limited Partnership [L041 02-05-07 Amend]
200. Amendment, dated June 12, 2002, by and between Engage Energy America LLC and Midland Cogeneration Venture Limited Partnership [L041 02-06-12]
201. Assignment, Assumption and Consent Agreement, dated January 24, 2006 by and among Duke Energy Marketing America, LLC, UBS AG and Midland Cogeneration Venture Limited Partnership [L037 06-01-24 UBS A A CA]
202. Amendment to Gas Agreement, dated as of January 24, 2006, between Midland Cogeneration Venture Limited Partnership and UBS AG (effective February 1, 2006) [L037 06-01-24 UBS Amend]

#### L042

203. Long Term Gas Agreement dated as of October 15, 2002 between Midland Cogeneration Venture Limited Partnership and Occidental Energy Marketing, Inc. [L042 02-10-15]
204. Guaranty by Occidental Petroleum Corporation in favor of Midland Cogeneration Venture Limited Partnership [L042 02-11-04]

#### S034

205. Market Gas Purchase and Sales Agreement, December 1, 1995, by and between ANR Storage Company and Midland Cogeneration Venture Limited Partnership [50.294 S-034 / S034 Master Agmnt.TIF]

### S113

206. Base Contract for Sale and Purchase of Natural Gas, dated as of June 1, 2002, by and between DTE Energy Trading, Inc. and Midland Cogeneration Venture Limited Partnership [S113 02-6-1 NAESB]
207. Guaranty Agreement dated as of December 1, 2003 by DTE Energy Company in favor of Midland Cogeneration Venture Limited Partnership [S113 03-12-1 Guaranty]
208. First Amendment, dated as of December 15, 2003, to the Guaranty Agreement dated as of December 1, 2003, by DTE Energy Company in favor of Midland Cogeneration Venture Limited Partnership [S113 03-12-29 Guaranty Amend1]
209. Second Amendment, dated as of December 29, 2003, to the Guaranty Agreement dated as of December 1, 2003, by DTE Energy Company in favor of Midland Cogeneration Venture Limited Partnership [S113 03-12-29 Guaranty Amend2]
210. Amendment Number One, dated as of April 1, 2004, by and between CoEnergy Trading Company and Midland Cogeneration Venture Limited Partnership to the NAESB Base Contract for Sale and Purchase of Natural Gas dated June 1, 2002 [S113 04-4-1 Amend1]

### Other Gas Contracts

211. Base Contract for Sales and Purchase of Natural Gas, dated March 1, 1997, by and between El Paso Energy Marketing Company and Midland Cogeneration Venture Limited Partnership [50.295 / Base\_Contract\_Short\_Term\_Sale.pdf]
212. Net-Out Agreement, dated February 1, 1998, between El Paso Energy Marketing Company and Midland Cogeneration Venture Limited Partnership [50.295 / 6-Net-Out Agreement.pdf]
213. Letter Agreement, dated October 7, 1997, between El Paso Energy Marketing Company and Midland Cogeneration Venture Limited Partnership defining baseload for short-term sale and purchase of natural gas [50.295 / Letter\_Agreement\_-\_Baseload\_Definition.pdf]
214. Market Center Service Agreement (Contract Identification MC030), dated April 28, 1998, between Great Lakes Gas Transmission Limited Partnership and Midland Cogeneration Venture Limited Partnership [50.293 M-007 / M007 Market Center Service Agmnt.TIF]

### *Master Netting Agreements*

215. Master Collateral and Netting Agreement by and between Sempra Energy Trading Corp. and Midland Cogeneration Venture Limited Partnership, effective January 1, 2004 [SEMPRA Ks 04-1-1 MNA]
216. Master Netting, Setoff, and Security Agreement, dated as of December 11, 2002, by and between Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy LP [EPM Ks MNA]
217. First Amendment to Master Netting, Setoff and Security Agreement by and among Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy LP, effective as of December 11, 2002 [EPM Ks MNA first amendment]
218. Second Amendment to Master Netting, Setoff and Security Agreement by and between Midland Cogeneration Venture Limited Partnership and El Paso Merchant Energy, LP, effective December 11, 2002 [EPM Ks MNA second amendment]
219. Guaranty Agreement by El Paso Corporation and Midland Cogeneration Venture Limited Partnership [EPM Ks MNA Guaranty]

*Commodity Agreements; ISDA Master Agreements*

220. Corporate Authorization & Commodity Agreement, dated as of April 18, 1991, between Midland Cogeneration Venture Limited Partnership and Citigroup Global Markets Inc. (as successor in interest of Shearson Lehman Hutton)
221. Commodity Account Agreement of Midland Cogeneration Venture Limited Partnership with Wachovia Securities LLC, dated November 23, 2005
222. Commodity Account Agreement of Midland Cogeneration Venture Limited Partnership with Man Financial Inc., dated March 16, 2004
223. ISDA Master Agreement, dated as of July 21, 2005 by and between Merrill Lynch Commodities, Inc. and Midland Cogeneration Venture Limited Partnership
224. ISDA Master Agreement, dated as of June 23, 2003 by and between Morgan Stanly Capital Group Inc. and Midland Cogeneration Venture Limited Partnership
225. Agency Agreement – MCV dated as of April 1, 2001 between Michigan Electric Transmission Company and Consumers Energy Company
226. Letter Agreement re MCV Fuel Gas Line 8100 Facility Installation for Pipeline Inspection, dated as of July 12, 2006, by and between Midland Cogeneration Venture Limited Partnership and CMS Engineering Company

**IV. Cogeneration Agreements (as defined in Appendix A of the Participation Agreement)**

1. Steam and Electric Power Agreement, dated as of January 27, 1987, by and between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
2. First Amendment, dated May 4, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
3. Second Amendment, dated March 1, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
4. Third Amendment, dated April 27, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
5. Fourth Amendment, dated May 27, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
6. Fifth Amendment, dated June 9, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
7. Sixth Amendment, dated November 20, 1989, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
8. Seventh Amendment, effective November 1, 1994, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
9. Conformed Composite Copy of Power Purchase Agreement, dated as of July 17, 1986, by and between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
10. Settlement Agreement dated as of April 6, 2006 by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company
11. Settlement Agreement dated as of January 1, 1999 by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company

12. Facilities Agreement dated as of July 8, 1988 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership

**V. Tax Exempt Financing Documents (as defined in Appendix A of the Participation Agreement)**

1. Tax-Exempt Collateral Trust Indenture, dated as of July 1, 1990, by and among The Economic Development Corporation of the County of Midland, Midland Cogeneration Venture Limited Partnership and Meridian Trust Company
2. First Amendatory Supplemental Indenture, dated as of August 1, 1990, to Tax-Exempt Collateral Trust Indenture, dated as of July 1, 1990, between The Economic Development Corporation of the County of Midland and Meridian Trust Company
3. Series 2000A and Series 2000B Supplemental Indenture, dated as of June 1, 2000 to Tax-Exempt Collateral Trust Indenture, dated as of July 1, 1990, by and among The Economic Development Corporation of the County of Midland, Midland Cogeneration Venture Limited Partnership and First Union National Bank
4. Loan Agreement [Bell Atlantic Credit Corporation] dated as of June 1, 2000 among The Economic Development Corporation of the County of Midland, State Street Bank and Trust Company, as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
5. Loan Agreement [Mission Funding Epsilon] dated as of June 1, 2000 among The Economic Development Corporation of the County of Midland, State Street Bank and Trust Company, as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
6. Loan Agreement [First Midland Limited Partnership] dated as of June 1, 2000 among The Economic Development Corporation of the County of Midland, State Street Bank and Trust Company, as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
7. Loan Agreement [Resources Capital Management Corporation] dated as of June 1, 2000 among The Economic Development Corporation of the County of Midland, State Street Bank and Trust Company, as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership
8. Loan Agreement [DCC Project Finance One, Inc.] dated as of June 1, 2000 among The Economic Development Corporation of the County of Midland, State Street Bank and Trust Company, as successor in interest to The Connecticut National Bank, and Midland Cogeneration Venture Limited Partnership

9. Nonrecourse Subordinated Secured Promissory Note, Series G with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [DCC Project Finance One, Inc.]
10. Nonrecourse Subordinated Secured Promissory Note, Series G with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [Bell Atlantic Credit Corporation]
11. Nonrecourse Subordinated Secured Promissory Note, Series G with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [Resources Capital Management Corporation]
12. Nonrecourse Subordinated Secured Promissory Note, Series G with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [Mission Funding Epsilon]
13. Nonrecourse Subordinated Secured Promissory Note, Series G with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [First Midland Limited Partnership]
14. Nonrecourse Subordinated Secured Promissory Note, Series H with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [DCC Project Finance One, Inc.]
15. Nonrecourse Subordinated Secured Promissory Note, Series H with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [Bell Atlantic Credit Corporation]
16. Nonrecourse Subordinated Secured Promissory Note, Series H with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [Resources Capital Management Corporation]
17. Nonrecourse Subordinated Secured Promissory Note, Series H with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [Mission Funding Epsilon]
18. Nonrecourse Subordinated Secured Promissory Note, Series H with the Maturity Date of July 23, 2009 by State Street Bank and Trust Company in favor of First Union National Bank [First Midland Limited Partnership]
19. User Agreement dated as of June 1, 1990 between The Economic Development Corporation of the County of Midland and Midland Cogeneration Venture Limited Partnership Relating to \$200,000,000 The Economic Development Corporation of the County of Midland Pollution Control Limited Obligation Revenue Bonds

## **VI. Dow Contracts (as defined in Appendix A of the Participation Agreement)**

1. Demineralized Water Supply Agreement, dated as of January 27, 1987, by and between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
2. Gas Backup Agreement, dated as of January 27, 1987, as amended by First Amendment dated March 27, 1987, Second amendment dated April 29, 1987, Third Amendment dated May 18, 1987, Fourth Amendment dated March 1, 1988, and Fifth Amendment dated August 1, 1989, by and among Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
3. Gas Supply Option, dated as of January 27, 1987, by and between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
4. Steam and Electric Power Agreement, dated as of January 27, 1987, by and between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
5. First Amendment, dated May 4, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
6. Second Amendment, dated March 1, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
7. Third Amendment, dated April 27, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
8. Fourth Amendment, dated May 27, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
9. Fifth Amendment, dated June 9, 1988, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
10. Sixth Amendment, dated November 20, 1989, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987
11. Seventh Amendment, effective November 1, 1994, to Steam and Electric Power Agreement between The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership dated January 27, 1987

12. Amended and Restated Consent and Agreement, dated as of June 1, 1990, by The Dow Chemical Company with Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company, Midland Cogeneration Venture Limited Partnership and Consumers Energy Company (formerly known as Consumers Power Company)
13. Package Boiler Sale and Support Agreement, dated as of January 27, 1987, by and among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company), and Midland Cogeneration Venture Limited Partnership
14. Access Easement, dated as of August 31, 1989, by and between CMS Midland, Inc., Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company, MEC Development Corporation and Midland Cogeneration Venture Limited Partnership
15. Alternative Generating Equipment Easements, dated as of August 31, 1989, by and among Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
16. Package Boiler Facility Access Easement between Consumers Energy Company (formerly known as Consumers Power Company) and The Dow Chemical Company dated January 27, 1987
17. Beaver Creek Connection Option dated January 27, 1987 between MCV and The Dow Chemical Company
18. Electric Transmission Lines Easement Agreement dated August 31, 1989, among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
19. Combination Shop Easement Agreement dated August 31, 1989, among The Dow Chemical Company, CMS Midland, Inc., Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
20. Evaporator Building Easement Agreement dated August 31, 1989 among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company), MEC Development Corporation and Midland Cogeneration Venture Limited Partnership
21. Switchyard Facilities Easements Agreement dated August 31, 1989, among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership

22. Gas Line Easement Agreement dated August 31, 1989, among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership, including amendment correcting an error in this description dated as of August 31, 1989, executed in June 1990, recorded June 8, 1990
23. Waste Water Agreement dated December 1, 1989, between Midland Cogeneration Venture Limited Partnership and The Dow Chemical Company
24. NYPDES Discharge Coordination Agreement between Midland Cogeneration Venture Limited Partnership and The Dow Chemical Company dated September 21, 1988
25. Package Boiler Facility Lease between Consumers Energy Company (formerly known as Consumers Power Company) and The Dow Chemical Company dated as of January 27, 1987

## **VII. Certain Environmental Agreements**

1. Environmental Agreement, dated as of June 1, 1990, by CMS Energy Corporation in favor of United States Trust Company of New York as Senior Collateral Trust Trustee, and Meridian Trust Company as Subordinated Collateral Trust Trustee and each other Subordinated Collateral Trust Trustee and Holders from Time to Time of Senior Bonds and Subordinated Bonds and Participants from Time to Time in Senior Bonds and Subordinated Bonds
2. Environmental Agreement, dated as of June 1, 1990, by CMS Energy Corporation in connection with the Ground Lease and Sale and Leaseback of Undivided Interests in the Site of the Midland 1370 MW Gas-Fired Cogeneration Facility to Bank of America, N.A., as successor in interest to The Connecticut National Bank, as Owner Trustee and others
3. Environmental Indemnification Agreement, dated as of June 1, 1990, by Midland Cogeneration Venture Limited Partnership to and in favor of CMS Energy Corporation
4. Indemnity Agreement, dated as of June 1, 1990, by CMS Energy Corporation to and in favor of Midland Cogeneration Venture Limited Partnership
5. Environmental Agreement, dated as of March 15, 1990, by Consumers Energy Company (formerly known as Consumers Power Company) to and in favor of Bank of America, N.A., as successor in interest to The Connecticut National Bank, and the owner participants listed on Schedule A attached thereto

### **VIII. Alanna Corporation and Alanna Holdings Corporation Related Documents**

1. Stock Pledge Agreement dated as of June 1, 1990 between Alanna Holdings Corporation and First Midland Limited Partnership - Sale and Leaseback of an Undivided Interest in the Midland 1370 MW Gas-Fired Cogeneration Facility
2. Stock Pledge Agreement, dated as of June 1, 1990, between Alanna Holdings Corporation and DCC Project Finance One, Inc.
3. Stock Pledge Agreement, dated as of June 1, 1990, between Alanna Holdings Corporation and NYNEX Credit Company
4. Stock Pledge Agreement, dated June 1, 1990, between Alanna Holdings Corporation and Resources Capital Management Corporation
5. Stock Pledge Agreement, dated June 1, 1990, between Alanna Holdings Corporation and Mission Funding Epsilon
6. Stockholder's Agreement dated as of June 14, 1990 between Alanna Holdings Corporation and CMS Energy Corporation
7. Stockholder's Agreement dated as of June 14, 1990 between Alanna Holdings Corporation and Coastal Natural Gas Company
8. Stockholder's Agreement dated as of June 14, 1990 between Alanna Holdings Corporation and Panhandle Eastern Corporation
9. Stockholder's Agreement dated as of June 14, 1990 between Alanna Holdings Corporation and Fluor Corporation
10. Stockholder's Agreement dated as of June 14, 1990 between Alanna Holdings Corporation and Asea Brown Boveri, Inc.
11. Stockholder's Agreement dated as of June 14, 1990 between Alanna Holdings Corporation and Asea Brown Boveri, Inc.
12. Stockholder's Agreement dated as of June 14, 1990 between Alanna Holdings Corporation and The Dow Chemical Company

### **IX. Other Agreements**

1. Unwind Agreement, dated as of December 10, 1991, by and among CMS Energy Corporation, Midland Group Ltd., Consumers Energy Company (formerly known as Consumers Power Company), CMS Midland Inc., MEC Development Corporation and CMS Midland Holdings Company
2. Assignment and Assumption Agreement by and among CMS Marketing Services & Trading Company (as predecessor in interest to CMS Energy Management

- Resource Company), Sempra Energy Trading Corp. and Midland Cogeneration Venture Limited Partnership, effective February 1, 2003 [SEMPRA Ks AssignAssumpt]
3. Collective Bargaining Agreement between Midland Cogeneration Venture Limited Partnership and the Utility Workers Union of America, AFL-CIO Local 564, effective March 1, 2004 to February 28, 2009
  4. Working Capital Side Letter dated August 5, 2005 by CMS Energy Corporation
  5. Amended and Restated Agreement for the Allocation of Income Tax Liabilities and Benefits dated as of January 1, 1994 by and among CMS Energy Corporation and certain other parties signatory thereto
  6. Standstill Agreement (NOx Emissions Allowances) dated March 25, 2004 between Consumers Energy Company and Midland Cogeneration Venture Limited Partnership
  7. Amended and Restated MDC Transfer Agreement, dated as of June 13, 1988, among Consumers Energy Company (formerly known as Consumers Power Company), MEC Development Corporation and Midland Cogeneration Venture Limited Partnership
  8. Memorandum of Agreement with respect to Amended and Restated MDC Transfer Agreement dated as of March 2, 1990 among Consumers Energy Company (formerly known as Consumers Power Company), MEC Development Corporation and Midland Cogeneration Venture Limited Partnership
  9. Agreement among Partners and MDC, dated as of June 15, 1990, among CMS Midland, Inc., Rofan Energy, Inc., Micogen Limited Partnership, MEI Limited Partnership, Source Midland Limited Partnership, Coastal Midland, Inc., C-E Midland Energy, Inc. and MEC Development Corporation
  10. CMS Transfer Agreement, dated as of January 27, 1987, as amended as of June 13, 1988, among Consumers Energy Company (formerly known as Consumers Power Company), CMS Midland, Inc. and Midland Cogeneration Venture Limited Partnership
  11. Transmission (Wheeling) Agreement dated June 9, 1988 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.299 / Transmission (Wheeling) Agreement.pdf]
  12. Letter, dated July 9, 2001, from Consumers Energy Company to Midland Cogeneration Venture Limited Partnership and Consumers Energy Company re: Facilities Agreement, dated July 8, 1988 [50.299 / 7-9-01 Letter re Wheeling Agrmt.pdf]

13. Consumers/MCV Operating Practices Manual dated November 20, 1989
14. License (Laydown Area) dated July 1, 1988 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
15. Residual Capacity/Energy Agreement dated March 17, 1990 between Consumers Energy Company (formerly Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.300 / Residual Capacity Energy Agreement.pdf]
16. Amendment No. 1, dated as of January 1, 1991, to the Residual Capacity/Energy Agreement dated March 17, 1990 between Consumers Energy Company (formerly Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.300 / Amend 1 Residual Capacity Energy Agreement.pdf]
17. Amendment No. 2, dated as of July 2, 1999, to the Residual Capacity/Energy Agreement dated March 17, 1990 between Consumers Energy Company (formerly Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.300 / Amend 2 Residual Capacity Energy Agreement.pdf]
18. Ontario Residual Agreement dated May 1, 1990 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.301 / Ontario Residual Agreement.pdf]
19. Conveyed Facilities Easement dated October 4, 1989, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
20. Shippers Undertakings dated February 17, 1989, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.302 / Shipper's Agreement (Undertakings).pdf]
21. Service Contract, dated as of January 1, 2006, by and between First Midland Limited Partnership and Investment Management Advisors, LLC
22. Promissory Note dated December 30, 2005 in the amount of US\$10,000,000 made by Consumers Energy Company to the order of CMS Midland, Inc.
23. Limited Liability Company Agreement of Midland Cogeneration Venture Expansion, LLC dated as of October 15, 2001 among CMS Enterprises Company, El Paso Midland, Inc. and Midland Cogeneration Venture Expansion, LLC

24. Capital Contribution Certificate, dated January 19, 2001, by CMS Enterprises Company [50.297 / MCV2 Expansion Documents.pdf]
25. Power Sales Enabling Agreement, dated as of November 9, 1998, between Midland Cogeneration Venture Limited Partnership and El Paso Power Services Company [50.292 E-005 / E005 Enabling Agreement.TIF]
26. Letter of Intent, dated November 4, 1998, between Midland Cogeneration Venture Limited Partnership and El Paso Power Services Company re: 50MW Power Option [50.292 E-005 / E005 Letter of Intent (Expired).TIF]

**Schedule 3.11(b)(i)**  
**Contracts – B**

Pursuant to Section 22.1 of the Maintenance Services and Parts Agreement for MCV 11NM Gas Turbines, dated as of December 31, 2002, by and between MCV and General Electric International, Inc., MCV is bound by certain confidentiality obligations which restrict MCV from disclosing certain terms of this agreement and all drafts thereof. Therefore, only a redacted version of this agreement is publicly available on the website of the U.S. Securities and Exchange Commission at [www.sec.gov](http://www.sec.gov).

**Schedule 3.11(b)(ii)**  
**Contracts -- C**

None.

**Schedule 3.12**  
**Environmental Matters**

1. See item 1 on Schedule 3.6 of the Company Disclosure Schedules.
  
2. In April 2006, two gas turbine units at the MCV facility had visible emissions that exceeded a six-minute average 10% opacity during start-up. The facility's previous Permit to Install, PTI No. 209-02 (which has been superceded), provided that visible emissions from the relevant equipment shall not exceed a six-minute average of 10% opacity. This limitation, however, did not include periods of start-up, shutdown and initial shakedown of turbines. Notwithstanding that the successor Permit to Install, PTI No. 316-05, did not contain the same language, MCV contended that since both of the units exceeded the six-minute average opacity limitation during periods of start-up, there was no violation of an applicable emissions limit. In an e-mail correspondence dated April 25, 2006, a MCV representative disclosed the visible emissions readings to the Michigan Department of Environmental Quality and the Partnership's no-violation interpretation.
  
3. On June 22, 2006, MCV filed an application for amendment of its successor Permit to Install (PTI) No. 316-05 with the Michigan Department of Environmental Quality. Such application was filed in connection with MCV's reporting requirements associated with the NOx continuous emission monitoring system to comply with the Michigan Oxides of Nitrogen budget trading program and not necessarily to demonstrate compliance for duct burners with 40CFR Part 60, Subpart Db. However, in addition, in such application, MCV requested that the language contained in the previous permit to install, clarifying that visible emission limits do not apply during periods of start-up and shut-down, be inserted into PTI No. 316-05.

**Schedule 3.13(a)**  
**Labor Matters -- A**

Collective Bargaining Agreement between MCV and the Utility Workers Union of America, AFL-CIO Local 564, Effective March 1, 2004 to February 28, 2009

Memorandum of Acknowledgement Regarding Access to MCV Health Care Plan by The Utility Workers of America, AFL-CIO, its Michigan State Utility Workers Council and The Utility Workers Union of America Local 564, dated July 19, 2004

Memorandum of Agreement Regarding Call In Overtime Rate Temporary Trial Provisions (Program) between MCV and The Utility Workers Union of America Local 564, dated July 19, 2004

Memorandum of Agreement between The Utility Workers of America, AFL-CIO, its Michigan State Utility Workers Council, The Utility Workers Union of America Local 564 and MCV Regarding Termination and Severance, dated March 24, 2006

Memorandum of Agreement Regarding Voluntary Severance Program between The Utility Workers of America, AFL-CIO, its Michigan State Utility Workers Council, The Utility Workers Union of America Local 564 and MCV, dated July 19, 2004

Relief Operator Agreement between The Utility Workers Union of America Local 564 and MCV, dated October 14, 2002

**Schedule 3.13(b)**  
**Labor Matters – B**

See Collective Bargaining Agreement between MCV and the Utility Workers Union of America, AFL-CIO Local 564 (the "Union"), effective March 1, 2004 to February 28, 2009. As of the date hereof, approximately 46 employees of MCV are represented by the Union and covered by this Collective Bargaining Agreement.

**Schedule 3.15**  
**Affiliate Contracts**

See separate attachment.

**Schedule 3.15**  
**Affiliate Contracts**

1. Second Amended and Restated Agreement of Lease [Part A], dated as of June 1, 1990, by and between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
2. Second Amended and Restated Agreement of Lease [Part B], dated as of June 1, 1990, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
3. Second Amended and Restated Agreement of Lease [Part C] between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
4. Second Amended and Restated Agreement of Lease [Part D] between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
5. Second Amended and Restated Agreement of Lease [Part E] between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
6. Ground Lease Assignment and Assumption Agreement dated as of June 1, 1990 among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company) (Trust 1)
7. Ground Lease Assignment and Assumption Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank and Consumers Energy Company (formerly known as Consumers Power Company) (Trust 2)
8. Ground Lease Assignment and Assumption Agreement, dated as of June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company) (Trust 3)
9. Ground Lease Assignment and Assumption Agreement, dated June 1, 1990, between Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company) (Trust 4)
10. Ground Lease Assignment and Assumption Agreement, dated June 1, 1990, among Midland Cogeneration Venture Limited Partnership, Bank of America, N.A., as successor in interest to The Connecticut National Bank, and Consumers Energy Company (formerly known as Consumers Power Company) (Trust 5)

11. Decertification Event Guaranty, dated June 1, 1990, by CMS Energy Corporation, as guarantor, to First Midland Limited Partnership, as beneficiary, and CMS Midland, Inc. as partner
12. Amended and Restated Investor Partners Tax Indemnification Agreement, dated as of June 1, 1990, among Deerpath Capital Partners, Inc. I, PMCC Investors No. 1 Corporation, PMCC Investors No. 2 Corporation, PMCC Investors No. 3 Corporation, PMCC Investors No. 4 Corporation, Alpha Dearborn Limited Partnership, MCOG Leasing Corp., Commercial Funding, Inc., CMS Midland Holdings Corporation and CMS Energy Corporation
13. Expense Reimbursement Agreement, dated as of June 1, 1990, between First Midland Limited Partnership and CMS Energy Corporation
14. Consent and Agreement, dated as of June 1, 1990, by Consumers Energy Company (formerly known as Consumers Power Company) with Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company and Midland Cogeneration Venture Limited Partnership
15. 1988 Dow Consent Release, dated as of June 14, 1990, by and among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company), The First National Bank of Chicago, MEC Development Corporation, Midland Cogeneration Venture Limited Partnership and Citibank, N.A.
16. Pipeline Easement Assignment and Assumption Agreement, dated as of June 14, 1990, between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company (formerly known as Consumers Power Company)
17. Gas Backup Agreement, dated as of January 27, 1987, as amended by First Amendment dated March 27, 1987, Second Amendment dated April 29, 1987, Third Amendment dated May 18, 1987, Fourth Amendment dated March 1, 1988, and Fifth Amendment dated August 1, 1989, by and among Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
18. MCV Backup Agreement, dated as of June 9, 1988, by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company (formerly known as Consumers Power Company)
19. Reduced Dispatch Agreement, dated as of July 7, 2004, by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company
20. Resource Conservation Agreement, dated as of February 12, 2004, by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company
21. Service Agreement, dated as of October 1, 1990, between CMS Midland, Inc. and Consumers Energy Company (formerly known as Consumers Power Company)

22. Service Agreement, dated as of October 1, 1990, between CMS Midland Holdings Company and Consumers Energy Company (formerly known as Consumers Power Company)
23. Minimum Offer of Relief Letter dated December 10, 1993 by Consumers Energy Company (formerly known as Consumers Power Company)
24. Conformed Composite Copy of Power Purchase Agreement, dated as of July 17, 1986, as amended by Amendment No. 3 dated August 28, 1989 and Amendment No. 4A dated May 25, 1989, by and between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
25. Settlement Agreement dated as of April 6, 2006 by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company
26. Settlement Agreement dated as of January 1, 1999 by and between Midland Cogeneration Venture Limited Partnership and Consumers Energy Company
27. Facilities Agreement dated as of July 8, 1988 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
28. Access Easement, dated as of August 31, 1989, by and between CMS Midland, Inc., Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company, MEC Development Corporation and Midland Cogeneration Venture Limited Partnership
29. Alternative Generating Equipment Easements, dated as of August 31, 1989, by and among Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership
30. Electric Transmission Lines Easement Agreement dated August 31, 1989, among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
31. Combination Shop Easement Agreement dated August 31, 1989, among The Dow Chemical Company, CMS Midland, Inc., Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
32. Evaporator Building Easement Agreement dated August 31, 1989 among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company), MEC Development Corporation and Midland Cogeneration Venture Limited Partnership

33. Switchyard Facilities Easements Agreement dated August 31, 1989, among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
34. Gas Line Easement Agreement dated August 31, 1989, among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership, including amendment correcting an error in this description dated as of August 31, 1989, executed in June 1990, recorded June 8, 1990
35. Environmental Agreement, dated as of June 1, 1990, by CMS Energy Corporation in connection with the Ground Lease and Sale and Leaseback of Undivided Interests in the Site of the Midland 1370 MW Gas-Fired Cogeneration Facility to Bank of America, N.A., as successor in interest to The Connecticut National Bank, as Owner Trustee and others
36. Environmental Indemnification Agreement, dated as of June 1, 1990, by Midland Cogeneration Venture Limited Partnership to and in favor of CMS Energy Corporation
37. Indemnity Agreement, dated as of June 1, 1990, by CMS Energy Corporation to and in favor of Midland Cogeneration Venture Limited Partnership
38. Environmental Agreement, dated as of March 15, 1990, by Consumers Energy Company (formerly known as Consumers Power Company) to and in favor of Bank of America, N.A., as successor in interest to The Connecticut National Bank, and the owner participants listed on Schedule A attached thereto
39. Unwind Agreement, dated as of December 10, 1991, by and among CMS Energy Corporation, Midland Group Ltd., Consumers Energy Company (formerly known as Consumers Power Company), CMS Midland Inc., MEC Development Corporation and CMS Midland Holdings Company
40. Standstill Agreement (NOx Emissions Allowances) dated March 25, 2004 between Consumers Energy Company and Midland Cogeneration Venture Limited Partnership
41. Amended and Restated MDC Transfer Agreement, dated as of June 13, 1988, among Consumers Energy Company (formerly known as Consumers Power Company), MEC Development Corporation and Midland Cogeneration Venture Limited Partnership
42. Memorandum of Agreement with respect to Amended and Restated MDC Transfer Agreement dated as of March 2, 1990 among Consumers Energy Company (formerly known as Consumers Power Company), MEC Development Corporation and Midland Cogeneration Venture Limited Partnership
43. CMS Transfer Agreement, dated as of January 27, 1987, as amended as of June 13, 1988, among Consumers Energy Company (formerly known as Consumers Power

- Company), CMS Midland, Inc. and Midland Cogeneration Venture Limited Partnership
44. Transmission (Wheeling) Agreement dated June 9, 1988 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.299 / Transmission (Wheeling) Agreement.pdf]
  45. Letter, dated July 9, 2001, from Consumers Energy Company to Midland Cogeneration Venture Limited Partnership and Consumers Energy Company re: Facilities Agreement, dated July 8, 1988 [50.299 / 7-9-01 Letter re Wheeling Agrmt.pdf]
  46. Consumers/MCV Operating Practices Manual dated November 20, 1989
  47. License (Laydown Area) dated July 1, 1988 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
  48. Residual Capacity/Energy Agreement dated March 17, 1990 between Consumers Energy Company (formerly Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
  49. Amendment No. 1, dated as of January 1, 1991, to the Residual Capacity/Energy Agreement dated March 17, 1990 between Consumers Energy Company (formerly Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.300 / Amend 1 Residual Capacity Energy Agreement.pdf]
  50. Amendment No. 2, dated as of July 2, 1999, to the Residual Capacity/Energy Agreement dated March 17, 1990 between Consumers Energy Company (formerly Consumers Power Company) and Midland Cogeneration Venture Limited Partnership [50.300 / Amend 2 Residual Capacity Energy Agreement.pdf]
  51. Ontario Residual Agreement dated May 1, 1990 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
  52. Conveyed Facilities Easement dated October 4, 1989, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
  53. Amended and Restated Consent and Agreement, dated as of June 1, 1990, by The Dow Chemical Company with Bank of America, N.A., as successor in interest to The Connecticut National Bank, United States Trust Company of New York, Meridian Trust Company, Midland Cogeneration Venture Limited Partnership and Consumers Energy Company (formerly known as Consumers Power Company)

54. Package Boiler Sale and Support Agreement, dated as of January 27, 1987, by and among The Dow Chemical Company, Consumers Energy Company (formerly known as Consumers Power Company), and Midland Cogeneration Venture Limited Partnership
55. Amended and Restated Agreement for the Allocation of Income Tax Liabilities and Benefits dated as of January 1, 1994 by and among CMS Energy Corporation and certain other parties signatory thereto
56. Amended and Restated Agreement for the Allocation of Income Tax Liabilities and Benefits dated as of January 1, 1994 by and among CMS Energy Corporation and certain other parties signatory thereto
57. Letter Agreement re MCV Fuel Gas Line 8100 Facility Installation for Pipeline Inspection, dated as of July 12, 2006, by and between Midland Cogeneration Venture Limited Partnership and CMS Engineering Company
58. Shippers Undertakings dated February 17, 1989, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
59. Assignment and Assumption Agreement by and among CMS Marketing Services & Trading Company (as predecessor in interest to CMS Energy Management Resource Company), Sempra Energy Trading Corp. and Midland Cogeneration Venture Limited Partnership, effective February 1, 2003 [SEMPRA Ks AssignAssumpt]
60. Promissory Note dated December 30, 2005 in the amount of US\$10,000,000 made by Consumers Energy Company to the order of CMS Midland, Inc.
61. Residual Open Access Interconnection Service Purchase Agreement dated December 5, 1991 between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
62. Limited Liability Company Agreement of Midland Cogeneration Venture Expansion, LLC dated as of October 15, 2001 among CMS Enterprises Company, El Paso Midland, Inc. and Midland Cogeneration Venture Expansion, LLC

*Gas Purchase and Sales Contracts (Physical)*

63. Natural Gas Purchase Agreement, dated as of May 1, 1989, by and between Northern Michigan Exploration Company, CMS Energy Corporation and Midland Cogeneration Venture Limited Partnership [L003 89-05-01]
64. Consent and Agreement, dated as of June 15, 1990, by Northern Michigan Exploration Company to the parties on Schedule A attached thereto [L003 90-06-15]

65. First Amendment, dated as of March 1, 1992, to Natural Gas Purchase Agreement, dated May 1, 1989, between Northern Michigan Exploration Company and Midland Cogeneration Venture Limited Partnership [L003 92-03-01]
66. Guaranty Agreement, dated as of March 1, 1995, among MCN Corporation, Midland Cogeneration Venture Limited Partnership and CMS NOMECCO Oil & Gas Co. [L003 95-03-01]
67. Assignment and Release Agreement, dated as of March 14, 1995, by and among CoEnergy Trading Company, CMS NOMECCO Oil & Gas Co. and Midland Cogeneration Venture Limited Partnership [L003 95-03-01]
68. Acknowledgement and Agreement, dated as of November 20, 2002, between Perenco LLC, CMS Energy Corporation, CMS Marketing Services and Trading Company (as predecessor in interest to CMS Energy Management Resource Company) and Midland Cogeneration Venture Limited Partnership [L004 02-11-20 AcknowAgree]
69. Guaranty dated November 1, 2000 by CMS Energy Corporation in favor of Midland Cogeneration Venture Limited Partnership [L024 00-11-01]
70. Gas Backup Agreement, dated as of January 27, 1987, as amended by First Amendment dated March 27, 1987, Second amendment dated April 29, 1987, Third Amendment dated May 18, 1987, Fourth Amendment dated March 1, 1988, and Fifth Amendment dated August 1, 1989, by and among Consumers Energy Company (formerly known as Consumers Power Company), The Dow Chemical Company and Midland Cogeneration Venture Limited Partnership

*Gas Gathering, Storage and Transportation Agreements*

71. Gas Storage Agreement, dated as of March 2, 1988, by and between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
72. Gas Storage Letter Agreement dated November 10, 1989, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
73. Gas Exchange Agreement, dated as of March 2, 1998, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
74. Amendment, dated March 28, 2002, to Gas Exchange Agreement, dated as of March 2, 1998, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership
75. Amendment, dated September 21, 1998, to Gas Exchange Agreement, dated as of March 2, 1998, between Consumers Energy Company (formerly known as Consumers Power Company) and Midland Cogeneration Venture Limited Partnership

**Schedule 3.16**  
**Insurance**

**Summary of Insurance Policies for MCV**

<b>Policy</b>	<b>Coverage</b>	<b>Insurer</b>	<b>Term</b>	<b>Limit of Liability</b>	<b>Deductibles</b>
Travel	-Officers – business and personal travel accidental death and dismemberment -others – business travel accidental death and dismemberment	CIGNA Group Insurance	1-1-04 to 1-1-07	Officers - \$200,000 Others - \$100,000 \$1,000,000 per one accident	NONE
Directors & Officers	-MCV’s directors and officers for wrongful acts they may commit while acting in their respective capacities	AEGIS	1-31-06 to 1-31-07	\$15,000,000 each wrongful act \$15,000,000 aggregate limit	\$200,000 each wrongful act
Directors & Officers	-excess directors and officers	XL Specialty Insurance Company	1-31-06 to 1-31-07	\$15,000,000 excess of \$15,000,000	primary D & O coverage
Employment Practices	-claims against MCV for wrongful acts : breach of employment contract, employment discrimination, employment harassment, wrongful termination, etc.	Federal Insurance Company	5-1-06 to 5-1-07	\$2,000,000 per claim \$2,000,000 annual aggregate	\$25,000 per claim
Workers’ Compensation	-State of MI statutory benefits for injuries to employees while in the course of their employment -employment related lawsuits	Wausau Business Insurance Company	7-1-05 to 7-1-06	Workers’ compensation - Michigan statutory Employers’ Liability – Bodily injury by accident \$1,000,000 each accident Bodily injury by disease \$1,000,000 policy limit Bodily injury by disease \$1,000,000 each employee	NONE
Pollution Third-Party	-bodily injury, property damage and clean-up caused by a pollution incident	Federal Insurance Company	7-1-05 to 7-1-06	\$25,000,000 Each Pollution Incident Limit \$25,000,000 Aggregate Limit	\$100,000 per incident
Fiduciary and Employee Benefit	-employee breach of responsibility, obligations or duties imposed by ERISA or any negligent act, error or omission	Federal Insurance Company	7-1-05 to 7-1-06	\$10,000,000 each claim \$10,000,000 each policy period	\$25,000 each claim
Crime	-employee dishonesty, forgery, theft (inside/outside), computer fraud and counterfeit paper	Federal Insurance Company	7-1-05 to 7-1-06	\$10,000,000	\$100,000 per incident \$1,000 credit card forgery
Business Automobile Insurance	-third party bodily injury and property damage liability for occurrences arising out of the use of owned, hired and non-owned vehicles -physical damaged on owned and hired vehicles	Federal Insurance Company	7-1-05 to 7-1-06	\$1,000,000 each accident \$1,000,000 each accident for uninsured	\$500 – comprehensive \$500 – broad form collision
Primary General Liability	-third party personal injury and property damage liability for occurrences arising out of MCV operations	Federal Insurance Company	7-1-05 to 7-1-06	\$1,000,000 each occurrence \$2,000,000 general aggregate	\$1,000 per occurrence
Excess \$1 MM Liability	-excess third party legal liability and automobile liability	Federal Insurance Company	7-1-05 to 7-1-06	\$25,000,000 each occurrence \$25,000,000 umbrella coverage aggregate	primary policy aggregates
Excess \$25 MM Liability	-excess third party legal liability and automobile	Great American Assurance	7-1-05 to 7-1-06	\$25,000,000 each occurrence	primary/excess policy

<b>Policy</b>	<b>Coverage</b>	<b>Insurer</b>	<b>Term</b>	<b>Limit of Liability</b>	<b>Deductibles</b>
	liability	Company		\$25,000,000 umbrella coverage aggregate	aggregates
Property	-real and personal property, including improvements and betterments, owned, operated or controlled by MCV and for which MCV is legally liable, unless otherwise excluded	-Lloyd's of London -AIG/Hartford Steam Boiler/Star Tech -AEGIS -ACE American -Liberty Ins. Underwriters -Federal Insurance Company – Chubb	7-31-05 to 7-31-06	\$600,000,000 \$400,000,000 certified and non-certified terrorism	\$1,000,000 per occurrence; 1080 hours (45 days) for business interruption

### Summary of Insurance Policies for CMS Midland and CMS Holdings

**Note: The following insurance policies are part of CMS Energy’s corporate insurance policies covering CMS Energy and its subsidiaries. As subsidiaries of Consumers Energy Company, both CMS Midland and CMS Holdings are included under the definition of “Insured.” The insurance policies are not assignable or transferable.**

Policy	Coverage	Insurer	Term	Limit of Liability	Deductibles
Primary and Excess Directors & Officers Liability Insurance	Insures the Corporation’s Directors and Officers for wrongful acts in their respective capacities as directors and officers. (claims made policy form)	AEGIS XL Specialty EIM American Casualty The Hartford (Twin City Fire) US Specialty	December 27, 2005 to December 27, 2006	\$110,000,000	Individuals: \$nil deductible Company reimbursement: \$10,000,000 Non-Nuclear \$10,000,000 Nuclear
Excess General Liability	Third party legal liability and automobile liability. (claims first-made policy form)	AEGIS EIM	June 30, 2006 to June 30, 2007	\$135,000,000	\$500,000 each occurrence
Fidelity	Covers Employee Dishonesty, Loss of money inside and outside the premises, credit card forgery and computer & funds transfer fraud coverage	National Union Great American	April 1, 2006 to April 1, 2007	\$10,000,000	\$150,000 per loss \$10,000 Credit Card Forgery Coverage
Primary General Liability	Third party personal injury and property damage liability for occurrences. (occurrence based policy form)	Federal Insurance Company	November 1, 2005 to November 1, 2006	\$5,000,000 Gen Agg Limit (per location) \$1,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal & Advertising Injury \$1,000,000 Each Occurrence \$1,000,000 each claim Employee Benefits Liability \$1,000,000 Aggregate Employee Benefits Liability	\$5,000 per claim property damage liability subject to \$10,000 per occurrence  Employee Benefits Liability \$1,000 per claim  \$1,000 per occurrence – Garagekeeper’s Legal Liability

**Schedule 5.1**  
**Conduct of Business**

1. MCV will renew its Property General Liability Insurance policy and expects to reduce its coverage under such policy from \$600 million to \$500 million. The policy renews in July 2006.
2. MCV expects to effectuate the termination of the Steam Purchase Agreement dated November 15, 1995 between the Partnership and Dow Corning Corporation effective September 2006.
3. MCV expects to finalize a settlement regarding a breach of contract dispute over gas transportation with ANR Pipeline Company. See item 7 of Schedule 3.6 for more information.
4. MCV expects to renew its Credit Agreement, dated as of June 1, 1990, with the Bank of Montreal, as agent, and lenders listed therein. The terms and conditions of such renewal may vary from prior agreements.
5. MCV expects to enter into one or more agreements with Consumers Energy Company and CMS Engineering Company to design and install launchers and receivers in and remediate as necessary MCV's 26-mile gas pipeline.
6. MCV expects to purchase one or more sets of compressor blades.

**Schedule 5.4**  
**Access**

Pursuant to Section 22.1 of the Maintenance Services and Parts Agreement for MCV 11NM Gas Turbines, dated as of December 31, 2002, by and between MCV and General Electric International, Inc., MCV is bound by certain confidentiality obligations which restrict MCV from disclosing certain terms of this agreement and all drafts thereof. Therefore, only a redacted version of this agreement is publicly available on the website of the U.S. Securities and Exchange Commission at [www.sec.gov](http://www.sec.gov).

**Schedule 5.8**  
**Termination of Affiliate Contracts**

The following Affiliate Contracts shall not survive the Closing in accordance with Section 5.8 of the Agreement:

1. Service Agreement, dated as of October 1, 1990, between CMS Midland, Inc. and Consumers Energy Company (formerly known as Consumers Power Company)
2. Service Agreement, dated as of October 1, 1990, between CMS Midland Holdings Company and Consumers Energy Company (formerly known as Consumers Power Company)
3. Amended and Restated Agreement for the Allocation of Income Tax Liabilities and Benefits dated as of January 1, 1994 by and among CMS Energy Corporation and certain other parties signatory thereto
4. Certain agreements referenced in Schedule A of the Unwind Agreement as more particularly set forth in Section 5.15 of the Agreement

**Schedule 6.1(a)**  
**Statutory Approvals**

See Schedule 2.3(c) of the Seller Disclosure Schedules and Schedule 4.2(c) of the Purchaser Disclosure Schedules.

**Schedule 6.2(e)**  
**Resignations of Certain Officers and Directors**

**CMS Midland**

**Directors:** David W. Joos  
Thomas W. Elward  
S. Kinnie Smith, Jr.  
Thomas J. Webb

**Officers:** David W. Joos  
Chairman of the Board and Chief Executive Officer

Thomas W. Elward  
President and Chief Operating Officer  
Member of MCV Management Committee

Thomas J. Webb  
Executive Vice President and Chief Financial Officer

James E. Brunner  
General Counsel

Glenn P. Barba  
Vice President and Controller

Laura L. Mountcastle  
Vice President and Treasurer

Michael D. VanHemert  
Vice President and Secretary

Theodore J. Vogel  
Vice President and Chief Tax Counsel

Jane M. Kramer  
Assistant Secretary

Joyce H. Norkey  
Assistant Secretary

Beverly S. Burger  
Assistant Treasurer

James L. Loewen  
Assistant Treasurer

## **CMS Holdings**

**Directors:** David W. Joos  
Thomas W. Elward  
S. Kinnie Smith, Jr.  
Thomas J. Webb

**Officers:** David W. Joos  
Chairman of the Board and Chief Executive Officer

Thomas W. Elward  
President and Chief Operating Officer

Thomas J. Webb  
Executive Vice President and Chief Financial Officer

James E. Brunner  
General Counsel

Glenn P. Barba  
Vice President and Controller

Laura L. Mountcastle  
Vice President and Treasurer

Michael D. VanHemert  
Vice President and Secretary

Theodore J. Vogel  
Vice President and Chief Tax Counsel

Jane M. Kramer  
Assistant Secretary

Joyce H. Norkey  
Assistant Secretary

Beverly S. Burger  
Assistant Treasurer

James L. Loewen  
Assistant Treasurer

**Schedule 9.2(a)**  
**Knowledge Groups**

**CMS Midland**

Thomas W. Elward

- President and Chief Operating Officer
- Member of MCV Management Committee

Thomas J. Webb

- Executive Vice President and Chief Financial Officer

Glenn P. Barba

- Vice President and Controller

James E. Brunner

- General Counsel

Theodore J. Vogel

- Vice President and Chief Tax Counsel

**CMS Holdings**

Thomas W. Elward

- President and Chief Operating Officer

Thomas J. Webb

- Executive Vice President and Chief Financial Officer

James E. Brunner

- General Counsel

Glenn P. Barba

- Vice President and Controller

Theodore J. Vogel

- Vice President and Chief Tax Counsel

**CECo**

Thomas J. Webb

- Executive Vice President and Chief Financial Officer

James E. Brunner

- Senior Vice President, General Counsel and Chief Compliance Officer

Theodore J. Vogel

- Vice President and Chief Tax Counsel

**Schedule 9.2(c)**  
**Unwind Agreement**

Attached.

## UNWIND AGREEMENT

THIS UNWIND AGREEMENT is made as of December 10, 1991, by and among CMS ENERGY CORPORATION, a Michigan corporation ("CMS ENERGY"), MIDLAND GROUP, LTD., a Michigan corporation ("MGL"), CONSUMERS POWER COMPANY, a Michigan corporation ("Consumers"), CMS MIDLAND, INC., a Michigan corporation ("CMS Midland"), MEC DEVELOPMENT CORP., a Michigan corporation ("MEC"), and CMS MIDLAND HOLDINGS COMPANY, a Michigan corporation ("Holdings").

### RECITALS:

1. CMS Energy and MGL entered into a Stock Purchase Agreement and a Debenture Agreement, each dated as of March 12, 1990 (together, the "March 12 Agreements"), pursuant to which MGL transferred to CMS Energy all of MGL's right, title and interest in the common stock of CMS Midland and MEC, and CMS Energy issued to MGL its 11.80% series debenture due 2005 in the principal amount of approximately \$1.4 billion (the "Debenture").

2. Subsequent to the transfer of the shares of MEC and CMS Midland to CMS Energy, certain assets of CMS Midland were transferred to a newly formed corporation, Holdings, a wholly owned subsidiary of CMS Energy. MEC, CMS Midland, and Holdings are hereinafter referred to collectively as the "Subsidiaries."

3. CMS Energy has paid interest on the Debenture to MGL in the form of payment-in-kind debentures aggregating, to date, approximately \$300 million (the "PIK Debentures").

4. On May 23, 1990, the Michigan Public Service Commission ("MPSC") issued an opinion and order (the "May 23 MPSC Order") in which the MPSC asserted jurisdiction over the proceeds from the sale of certain assets originally owned by Consumers and transferred to CMS Midland and MEC, and ordered the proceeds returned to Consumers.

5. The May 23 MPSC Order was affirmed by the Michigan Court of Appeals in a decision issued on July 9, 1991, which decision was not appealed.

6. On August 9, 1991, Consumers and CMS Energy filed a report with the MPSC setting forth a plan to rescind the March 12 Agreements and take certain other steps to comply with the May 23 MPSC Order. This report was approved, with minor modification, by the MPSC by order issued on November 8, 1991 (the "November 8 Order.")

7. To carry out the plan approved in the November 8 Order, the parties desire to enter into this agreement to rescind the March 12 Agreements, return in its present form the consideration exchanged under the March 12 Agreements, and provide for certain distributions, certain payments and the assumption of certain liabilities.

NOW, THEREFORE, in consideration of the Recitals and of their mutual promises and undertakings herein, the parties hereto agree as follows:

1. The March 12 Agreements are hereby rescinded and shall be deemed void from their inception, and no person shall have any rights, obligations or liabilities to any other person under or in connection therewith.

2. Promptly after the discharge of loans under the Credit Agreement dated as of December 20, 1990, as amended, among MEC and various banks, expected to occur on or about December 12, 1991, (i) CMS Energy shall surrender to MGL the share certificates representing all the outstanding common stock of the Subsidiaries, together with any and all appropriate assignments and endorsements, and (ii) MGL shall surrender to CMS Energy the Debenture and the PIK Debentures.

3. CMS Midland and Holdings hereby assume, jointly and severally, effective with the transfer of the common stock of the Subsidiaries from CMS Energy to MGL, all liabilities, indemnities and undertakings of CMS Energy

under the documents, guarantees and agreements set forth in Schedule A hereto (the "CMS Agreements"), and agree to discharge all obligations and liabilities of CMS Energy thereunder when due, as if CMS Midland and Holdings, rather than CMS Energy, had been parties to the CMS Agreements from inception.

4. Promptly after the transfer of the common stock of the Subsidiaries from CMS Energy to MGL, (i) MEC will distribute to MGL, and MGL will distribute to Consumers, the assets of MEC, except for approximately \$1000 of capital, and (ii) CMS Midland and Holdings will each distribute to MGL, and MGL will distribute to Consumers, any cash not required for normal working capital of each such company.

5. MEC and CMS Midland have and will continue to have substantial tax liabilities related to the ownership of the MCV bond proceeds payable either directly or pursuant to the Agreement for the Allocation of Income Tax Liabilities and Benefits, dated as of January 1, 1990, as amended and supplemented from time to time, among CMS Energy and its subsidiaries. Consumers hereby assumes these liabilities, effective with the transfer of the common stock of the Subsidiaries from CMS Energy to MGL, and agrees to discharge all such liabilities when due.

6. Consumers hereby assumes, effective with the transfer of the common stock of the Subsidiaries from CMS Energy to MGL, all obligations and liabilities of CMS Energy and Holdings, that may arise if certain MCV bonds are not sold by certain dates, under the Amended and Restated Investor Partner Tax Indemnification Agreement dated as of June 1, 1990, among CMS Energy, Holdings, Deerpath Capital Partners, Inc. I, and seven other investor partners (the "Indemnification Agreement") and agrees to discharge all such obligations and liabilities thereunder when due, as if Consumers, rather than CMS Energy and Holdings, had been party to the Indemnification Agreement from inception.

7. Five days after the transfer of the stock of the Subsidiaries from CMS Energy to MGL, CMS Energy shall submit to the escrow agent, NBD Bank, N.A., a request for certain payments from an escrow account established pursuant to orders dated November 5, 1990, December 12, 1990 and March 13, 1991 of the Ingham County Circuit Court in Docket No. 90-67867-AA, such escrow account being Trust Account No. 80-804-29-20 at NBD Bank, N.A., in the following amounts: (i) \$3.5 million to Consumers, which payment is on account of the requirement in the November 8 Order that CMS Energy reimburse Consumers for the cost of the fairness opinion rendered by Morgan Stanley & Company, Inc., in connection with the March 12 Agreements; (ii) \$21,035,077 to CMS Midland, which payment is to reimburse CMS Midland for \$8 million in prior dividends, as required by the November 8 Order, and \$13,035,077 owed by CMS Energy to CMS Midland because of the final allocation of 1990 tax liabilities; (iii) \$27,645,932 to Holdings, which represents the final allocation to Holdings of 1990 tax benefits; (iv) \$517,981 to MEC, which consists of \$2.6 million ordered to be paid over by the November 8 Order net of the final allocation of 1990 tax liabilities to MEC; and (v) the remaining balance of escrowed funds of \$72,301,010, plus accrued interest, to CMS Energy. In addition, CMS Energy will repay to MEC the \$2,082,019 previously paid to CMS Energy by MEC as final allocation of 1990 tax liabilities.

8. The parties agree to take such actions and execute such instruments and documents as may be reasonably necessary to effectuate the foregoing. This Agreement shall be governed and construed in accordance with the laws of

the State of Michigan. This Agreement shall not be amended except in writing signed by all the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized officers, as of the date first mentioned above.

CMS ENERGY CORPORATION

by *[Signature]*  
title \_\_\_\_\_

MIDLAND GROUP, LTD.

by *[Signature]*  
title \_\_\_\_\_

CONSUMERS POWER COMPANY

by *[Signature]*  
title *Vice President*  
APPROVED AS TO FORM

CMS MIDLAND, INC.

by *[Signature]*  
title *V.P. & Controller*

CMS MIDLAND HOLDINGS COMPANY

by *[Signature]*  
title *V.P. & Controller*

MEC DEVELOPMENT CORP.

by *[Signature]*  
title *V.P. & Controller*

**LIST OF AGREEMENTS CONTAINING CERTAIN  
CMS ENERGY UNDERTAKINGS ENTERED INTO IN  
CONNECTION WITH THE SALE/LEASEBACK**

1. Decertification Event Guaranty, dated as of June 1, 1990, between CMS Energy Corporation and each of the Owner Participants in the MCV Sale Leaseback transaction. (CMS Energy agrees to pay large amounts if a "Decertification Event" should occur.)
2. June 15, 1990 Letter Agreement among CMS Energy Corporation, MCV and each of the Owner Participants in the MCV Sale Leaseback transaction. (CMS Energy agrees to lend up to \$5.261 million to MCV for working capital.)
3. Expense Reimbursement Agreement, dated as of June 14, 1990 between First Midland Limited Partnership and CMS Energy Corporation. (CMS Energy agrees to indemnify other partners of First Midland Limited Partnership against certain expenses.)
4. June 14, 1990 Letter from CMS Energy Corporation to each of the Owner Participants in the MCV Sale Leaseback transaction, each of the Owner Trustees in the MCV Sale Leaseback transaction, each of the Indenture Trustees in the MCV Sale Leaseback transaction and each of the Initial Purchasers of Senior Bonds in the MCV Sale Leaseback transaction. (CMS Energy agrees to take reasonable actions to comply with any FERC orders necessary to maintain MCV's QF status.)
5. Parent Guaranty dated as of June 14, 1990 from CMS Energy Corporation to MCV, each of the Owner Trustees, the Indenture Trustees, the Owner Participants and the Initial Purchasers of Senior Bonds in the MCV Sale Leaseback transaction, and MEC Development. (CMS Energy guarantees (i) certain obligations of CMS Midland Holdings under the First Midland Limited Partnership Agreement; (ii) all obligations of CMS Midland Holdings under the Amended and Restated Investor Partner Tax Indemnification Agreement dated as of June 1, 1990 among the partners of First Midland Limited Partnership; (iii) a portion of the obligations of First Midland Limited Partnership under an Amended and Restated Tax Indemnification Agreement dated as of June 1, 1990 between MCV and First Midland Limited Partnership, and (iv) the obligation of CMS Midland Holdings to permit First Midland Limited Partnership to perform certain of its obligations under the Amended and Restated Participation Agreement dated as of June 1, 1990 among, MCV, First Midland Limited Partnership, MEC Development Corporation and the Owner Trustee, Indenture Trustees and the Initial Purchasers of Senior Bonds in the MCV Sale Leaseback Transaction.)
6. Stipulated ACE Release Amount Payment Agreement dated as of June 1, 1990 among CMS Energy Corporation, Consumers Power Company and The Dow Chemical Company. (CMS Energy agrees to make certain payments (the amount by which fair market value exceeds \$85 million) if necessary to secure the release of the Dow Alternative Generating Equipment from the lien of the sale leaseback indentures.)

**SCHEDULE A**

7. Environmental Indemnity Agreements by CMS Energy in favor of: (a) the Owner Participants, (b) the Bondholders (through the Indenture Trustees) and MCV.
8. Continuing Letter of Credit Agreement dated February 14, 1991 from CMS Midland, Inc and each of the other Partners in MCV to Swiss Bank, which is guaranteed in part by a Guaranty dated as of February 1, 1991 by CMS Energy Corporation. (CMS Midland, Inc and CMS Energy (through a separate guaranty) agree to reimburse 49% of any drawings made under a \$19.274 million Swiss Bank letter of credit, which supports \$19 million of Pollution Control Revenue Bonds. This guarantee no longer is operative after the PCRBS are refunded.)

Disclosure Letter of MCV Power Partners, Inc.  
July 24, 2006

This is a letter of MCV Power Partners, Inc. ("Purchaser") pursuant to which it makes certain disclosures and provides certain information as contemplated by the Stock Purchase Agreement dated as of July 24, 2006 (the "SPA") between Purchaser and Consumers Energy Company ("Seller"), among others. Capitalized terms used herein without definition have the respective meanings specified in the SPA.

<u>Section</u>	<u>Disclosure / Information</u>
4.2(b)(ii)	No third party Consents are required.
4.2(c)	None required other than possibly Hart-Scott-Rodino pre-merger notification and clearance ( and the parties remain in consultation as to this possible requirement)..
4.3	Purchaser has binding commitments from its investors and their respective affiliates to provide all requisite funding necessary at closing.
4.4	No litigation, etc., to disclose.
9.2(e)	D. Dwight Scott  David Yeager

MCV POWER PARTNERS, Inc.

By:   
Authorized Signatory

## EXHIBIT C to STOCK PURCHASE AGREEMENT

### INSTRUMENT OF ASSIGNMENT AND ASSUMPTION OF CERTAIN INTERESTS

This INSTRUMENT OF ASSIGNMENT AND ASSUMPTION OF CERTAIN INTERESTS (this “Instrument”) is made and entered into as of \_\_\_\_\_, 2006 (the “Effective Date”) by and between CMS GENERATION CO. (“Assignor”) and MCV POWER PARTNERS, INC. (“Assignee”).

WHEREAS effective as of the Effective Date, pursuant to (i) that certain Amended and Restated Partnership Agreement of MCV2 Development Company dated as of December 13, 1991 (the “Partnership Agreement”) by and among the parties signatory thereto, (ii) that certain Limited Liability Company Agreement of Midland Cogeneration Venture Expansion, LLC dated as of October 15, 2001 (the “LLC Agreement”) and (iii) that certain Stock Purchase Agreement dated as of July 24, 2006 by and among Consumers Energy Company, Assignee, CMS Midland Holdings, Inc. and MCV Power Partners, Inc., and subject to the terms and conditions of this Instrument, (x) Assignor desires to sell, assign, transfer and convey to Assignee (the “MCV2 Assignment”) all its right, title and interest in and to all the partnership interests in MCV2 Development Company (the “Assigned MCV2 Interest”), a Michigan general partnership (the “Partnership”), and as a result of such MCV2 Assignment, to withdraw as a Partner from the Partnership and (y) Assignor desires to sell, assign, transfer and convey to Assignee (the “MCV Expansion Assignment”) all the limited liability company interests in Midland Cogeneration Venture Expansion, LLC (the “Assigned MCV Expansion Interest”, and, together with the Assigned MCV2 Interest, the “Assigned Interests”), a Michigan limited liability company (“MCV Expansion”), and as a result of such MCV Expansion Assignment, to withdraw as a Member (as defined in the LLC Agreement) from MCV Expansion.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Subject to the waiver by the Partners (as defined in the Partnership Agreement) of the requirements set forth in Section 7.1(a) of the Partnership Agreement, Assignor, as of the Effective Date, hereby sells, assigns, transfer and convey to Assignee all of Assignor’s right, title and interest in and to the Assigned MCV2 Interest and all of Assignor’s rights under the Partnership Agreement. Assignor, as of the Effective Date, hereby withdraws from the Partnership and shall no longer be a Partner (as defined in the Partnership Agreement) in the Partnership.

Subject to the consent by the Members (as defined in the LLC Agreement) of the MCV Expansion Assignment, Assignor, as of the Effective Date, hereby sells, assigns, transfer and convey to Assignee all of Assignor’s right, title and interest in and to the Assigned MCV Expansion Interest and all of Assignor’s rights under the LLC Agreement. Assignor, as of the Effective Date, hereby withdraws from MCV Expansion and shall no longer be a Member (as defined in the LLC Agreement) in MCV Expansion.

Assignee, as of the Effective Date, hereby agrees to be bound by, and comply with, all of the terms and provisions of the Partnership Agreement and the LLC Agreement, as applicable.

The Assigned Interests are hereby sold, transferred, assigned and delivered “as-is” and “where-is” with all faults and without any representations or warranties, express or implied, except for representations and warranties that are expressly provided in the Partnership Agreement or the LLC Agreement, as the case may be.

This Instrument shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

This Instrument may be executed in one or more counterparts and by different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature to this Instrument by facsimile or emailing of a pdf file shall be as effective as delivery of a manually executed counterpart of this Instrument.

This Instrument shall be governed by the internal laws of the State of Michigan, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan.

If any term or provision of this Instrument is held invalid, unenforceable or contrary to law, such term or provision shall be deemed to be severable from the other terms and provisions hereof, but only to the extent necessary to bring this Instrument within the requirements of law, and the remainder of this Instrument shall be given effect as if the parties had not included the severed term herein.

**(signature page follows)**

IN WITNESS WHEREOF, each of the parties hereto has caused this Instrument to be executed as of the date first above written.

**CMS GENERATION CO.**

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

**MCV POWER PARTNERS, INC.**

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

# MCV Ownership and Risk Structure

