Cdn. $200,000,000 EXTENDIBLE FOUR YEAR

CREDIT AGREEMENT

between

DUKE ENERGY FACILITIES LP
as Borrower

and

EACH OF THE LENDERS NAMED
IN THIS AGREEMENT

and

CANADIAN IMPERIAL BANK OF COMMERCE
as Administrative Agent

and

CANADIAN IMPERIAL BANK OF COMMERCE
BANK OF MONTREAL
as Co-Lead Arrangers

Dated as of December 20, 2005

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FOUR YEAR
CREDIT AGREEMENT

THIS CREDIT AGREEMENT dated as of December 20, 2005 is entered into

BETWEEN:

DUKE ENERGY FACILITIES LP,
(the "**Borrower**")

- and –

THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE B HERETO
(the "**Lenders**")

- and –

CANADIAN IMPERIAL BANK OF COMMERCE,
as administrative agent of the Lenders
(the "**Administrative Agent**")

WHEREAS the Borrower has requested that the Lenders establish a syndicated four year extendable, revolving credit facility in favour of the Borrower for purposes of completing the Acquisition and thereafter for its general corporate purposes and to fund acquisitions and, in connection therewith, the Lenders have agreed to establish the Facility on the terms and conditions herein set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged by each of the parties hereto, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Defined Terms**. In this Agreement, unless the context otherwise requires, the defined terms herein shall have the meanings set out in Schedule A.

1.2 **Accounting Terms**. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Agreement, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties to this Agreement, be made in accordance with GAAP applied on a basis consistent with those principles at the time in effect.

1.3 **General**. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Words importing the singular number include the plural and vice versa. Any reference in this Agreement to a party to this Agreement shall include the permitted successors and assigns of such party.

1.4 **References to Agreements and Enactments**. Reference herein to any agreement, instrument, license or other document shall be deemed to include reference to such agreement, license or other document as the same may from time to time be amended, supplemented or restated and reference herein to any enactment shall be deemed to include reference to such enactment as re-enacted, amended or extended from time to time and to any successor enactment.

1.5 **Law of Agreement**. This Agreement shall be deemed to be made pursuant to the laws of the Province of Alberta and the laws of Canada applicable therein and shall be governed by and construed in accordance with such laws.

1.6 **Attornment**. For the purposes of any legal actions or proceedings brought by any party hereto against any other party hereto, the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of Alberta and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

1.7 **Time**. Time shall be of the essence in this Agreement.

1.8 **Communications with Lenders**. All communications and deliveries between the Borrower and the Lenders in connection with this Agreement shall, except where otherwise stated herein, be made between the Borrower and the Administrative Agent on behalf of the Lenders at the Designated Branch and payments shall be made by the Borrower to the Lenders as set out herein, and without limiting the generality of the foregoing, any communication, payment or delivery by the Borrower to the Administrative Agent shall be deemed to be a communication, payment or delivery to all Lenders and any communication or delivery by the Administrative Agent to the Borrower shall be deemed to be a communication or delivery by all Lenders to the Borrower, in each case binding on the Borrower and the Lenders.

1.9 **Schedules**. The schedules hereto and the terms set out therein shall be deemed fully a part of this Agreement. The following are the Schedules.

Schedule A	-	Definitions
Schedule B	-	Lenders
Schedule C	-	Pricing Schedule
Schedule D	-	Form of Drawing Notice
Schedule E	-	Form of Rollover Notice
Schedule F	-	Form of Conversion Notice
Schedule G	-	Form of Quarterly Compliance Certificate

Schedule H	-	Form of Lender Assignment Agreement
Schedule I	-	List of Guarantors at Closing
Schedule J	-	Form of Guarantee
Schedule K	-	Subsidiaries and Restricted Subsidiaries
Schedule L	-	Form of LC Applications
Schedule M	-	Form of Letter of Credit

ARTICLE 2
THE FACILITY

2.1 **Establishment of Facility**. The Lenders hereby severally establish in favour of the Borrower, and otherwise on the terms and conditions hereof, a four year extendable, revolving credit facility (the "**Facility**"), extendible for further one year periods as provided in Section 8.4, in the maximum principal amount, in Canadian Dollars and/or U.S. Dollars, of the Canadian Dollar Equivalent of Cdn. $200,000,000. The Borrower may borrow, repay and reborrow up to the maximum amount of the Facility, subject to the terms and conditions of this Agreement.

2.2 **Purpose**. Lender Outstandings shall be senior unsecured obligations of the Borrower and the Borrower shall, subject to Section 2.7, initially utilise the Facility to complete the Acquisition and thereafter for general corporate purposes and to fund acquisitions.

2.3 **Drawings under the Facility**. Subject to the terms and conditions hereof, the Borrower may obtain Drawings from time to time prior to the Repayment Date (as such date may be extended pursuant to Section 8.4) by way of Prime Rate Drawings, Base Rate Drawings, LIBOR Drawings and Bankers' Acceptance Drawings, provided that the obligation of the Lenders to provide Bankers' Acceptance Drawings and LIBOR Drawings shall, notwithstanding any other provisions contained in this Agreement, be subject to the condition that if the Lenders, acting reasonably, shall have determined and notified the Borrower that by reasons affecting the money markets, the BA Period or LIBOR Interest Period requested is not available, or if it becomes unlawful for the Lenders to fund a Bankers' Acceptance Drawing or LIBOR Drawing, then the Lenders shall not be obliged to provide a Bankers' Acceptance Drawing or LIBOR Drawing, as the case may be, for the requested BA Period or LIBOR Interest Period until the Lenders have notified the Borrower that such circumstances cease to prevail (and the Lenders agree to act reasonably and promptly in giving such notice).

2.4 **Drawing Amount**. Except for Swing Line Loans, no Drawing shall be of an amount less than the Canadian Dollar Equivalent of Cdn. $10,000,000. All Drawings, Rollovers and Conversions in respect of Bankers' Acceptance Drawings will be in integral multiples of Cdn. $1,000 and LIBOR Drawings will be in integral multiples of U.S. $100,000, as the case may be.

2.5 **Conversions**. Any Conversion hereunder will be effected by the Borrower repaying when due the outstanding Drawing (in the currency of such Drawing) and the Lenders providing in replacement thereof the requested Drawing.

2.6 **Lenders' Obligations Several**. Subject to the terms and conditions hereof, each Lender shall participate in the Facility and in each Drawing thereunder (and Rollovers and Conversions thereof) in its respective Lender's Proportion. The rights and obligations of the Lenders under this Agreement are several. The failure of a Lender to perform its obligations under this Agreement shall neither:

(a) result in the Administrative Agent or any other Lender incurring any additional liability whatsoever; nor

(b) relieve the Borrower, the Administrative Agent or any other Lender of any of their respective obligations under this Agreement.

2.7 **Takeover**. In the event the Borrower wishes to utilize the Facility or any portion thereof to fund, or to provide funds to any Subsidiary to fund, any offer to acquire (which shall include an offer to purchase Securities, solicitation of an offer to sell Securities, an acceptance of an offer to sell Securities, whether or not the offer to sell was solicited, or any combination of the foregoing) outstanding Securities of any Reporting Issuer (the "**Target**") where, as of the date of the offer to acquire, the Securities that are subject to the offer to acquire, together with the Securities of such Reporting Issuer that are beneficially owned, or over which control or direction is exercised, by the Borrower and its Affiliates and any Person acting jointly or in concert with any thereof on the date that the offer to acquire is made, constitute in the aggregate the lesser of such percentage of outstanding Securities as is considered to be a "takeover bid" under any law or regulation applicable to the Target and 10% or more of all of the outstanding Securities of that class of Securities of the Reporting Issuer (a "**Takeover**"), then either:

(a) **Agreement of the Target**. Prior to or concurrently with delivery of any Drawing Notice to the Administrative Agent pursuant to Section 3.2 requesting one or more Drawings which are to be utilized to finance such Takeover, the Borrower shall provide to the Administrative Agent evidence satisfactory to the Administrative Agent (acting reasonably) that the board of directors or like body of the Target has approved or recommended to security holders acceptance of the Takeover; or

(b) **No Conflict by Lenders**. The following steps shall be followed:

(i) at least seven Banking Days prior to the delivery of any Drawing Notice to the Administrative Agent pursuant to Section 3.2 requesting Drawings intended to be utilized for such Takeover, a senior officer of the Borrower shall notify the Administrative Agent (who shall promptly notify the Lenders) of the particulars of such Takeover in sufficient detail to enable each Lender to determine whether it is a Conflicted Lender if Drawings from such Lender are utilized by the Borrower for such Takeover;

(ii) within five Banking Days of being so notified, each Lender shall notify the Administrative Agent of such Lender's determination, acting reasonably, as to whether it is a Conflicted Lender, provided that in the event such Lender does not so notify the Administrative Agent within such five Banking Day period, such Lender shall be deemed to be a Takeover Lender; and

(iii) the Administrative Agent shall promptly notify the Borrower of each Lender's determination or deemed determination, then upon the Administrative Agent so notifying the Borrower, all Conflicted Lenders, if any, shall have no obligation to provide their Lender's Proportion of Drawings for such Takeover notwithstanding any other provision of this Agreement to the contrary; provided, however, that each other Lender (a "**Takeover Lender**") which is not a Conflicted Lender shall have an obligation, up to the amount of its Lender's Proportion of the maximum amount of the Facility, to provide Drawings for such Takeover, and any such Drawings provided for such Takeover shall be provided by each Takeover Lender in accordance with the ratio that its Lender's Proportion bears to the aggregate of the Lender's Proportions of all the Takeover Lenders.

(c) **Conflicted Lender**. For the purposes of this Section 2.7, a Lender shall be a "**Conflicted Lender**" only if:

(i) such Lender has existing commitments (whether funded or unfunded) to provide credit to the Person subject to the Takeover (including the Target);

(ii) such Lender is providing financial advisory or other similar services to the Person subject to the Takeover (including the Target); or

(iii) there exist other circumstances which such Lender has notified the Borrower of and which would make it inappropriate for such Lender, acting reasonably, to fund a Takeover.

2.8 **<u>Takeover Loans</u>**. If Drawings are utilized for the purposes of a Takeover (a "**Takeover Loan**") and there are Lenders other than Takeover Lenders (the "**Non-Takeover Lenders**"), subsequent Drawings shall be funded firstly by Non-Takeover Lenders and subsequent repayments shall be applied firstly to Takeover Lenders, in each case until such time as the Lender's Proportion of each Takeover Lender and Non-Takeover Lender is equal to such Lender's actual interest in all Drawings outstanding hereunder immediately prior to the funding of the Takeover Loan. Nothing in Section 2.7 or this Section 2.8 shall limit the application of Section 16.20.

2.9 **<u>Swing Line Loans</u>**.

(a) **Advance of Swing Line Loans**. Subject to the terms and conditions hereof, the Borrower shall be entitled to request Canadian Dollars and U.S. Dollars Overdrafts and Letters of Credit from the Swing Line Lender, and the Swing Line

Lender agrees to make same available to the Borrower (individually a "**Swing Line Loan**" and collectively, the "**Swing Line Loans**") from time to time prior to the Repayment Date in an aggregate outstanding principal amount at any one time not to exceed Cdn. $15,000,000 or the Canadian Dollar Equivalent in U.S. Dollars (the "**Swing Line Commitment**"), provided that, after giving effect thereto, the aggregate Canadian Equivalent in Canadian Dollars of the Principal Outstandings do not exceed the Total Commitment. Within the limits and on the conditions herein set forth with respect to Swing Line Loans, the Borrower may from time to time borrow, repay and reborrow Swing Line Loans. Overdrafts by way of Swing Line Loans shall bear interest at the same rate as for Prime Rate Drawings for Drawings in Canadian Dollars and at the same rate as Base Rate Drawings for Drawings for U.S. Dollars.

(b) **Refunded Swing Line Loans**. If any Swing Line Loans by way of Overdrafts have been outstanding for thirty (30) Banking Days, the Swing Line Lender may at any time in its sole and absolute discretion, on behalf of the Borrower (which hereby irrevocably directs and authorizes the Swing Line Lender to make such request on its behalf), request each Lender, through the Swing Line Lender, to make an advance (which shall be a Prime Rate Drawing or a Base Rate Drawing having regard to the currency of such Overdraft) to the Borrower in an amount equal to the Lender's Proportion of the principal amount of such Swing Line Loans (the "**Refunded Swing Line Loans**") outstanding on the date such notice is given; provided that the provisions of this Section 2.9(b) shall not affect the Borrower's obligation to repay the Swing Line Loans to the extent they remain outstanding. Unless the Commitments of the Lenders shall have expired or terminated (in which event the procedures of Section 2.9(c) shall apply), each Lender will make the proceeds of any such Drawing available to the Swing Line Lender at the Designated Branch prior to 12:00 noon (Calgary time) on the Banking Day next following the date such notice is given in immediately available funds. The proceeds of such Drawings shall be applied by the Swing Line Lender to the payment in full of the Refunded Swing Line Loans.

(c) **Purchase of Participations**. If the Commitments of the Lenders expire or terminate at any time while Swing Line Loans are outstanding, each Lender (other than the Swing Line Lender in respect of Swing Line Loans made by it) shall immediately purchase an undivided participating interest in the outstanding Swing Line Loans in an amount equal to the Lender's Proportion (determined on the date of, and immediately prior to, expiration or termination of the Commitments of the Lenders) of the aggregate Principal Outstandings of the outstanding Swing Line Loans by immediately transferring to the Swing Line Lender at the Designated Branch, in immediately available funds, the amount of its Lender's Proportion thereof.

(d) **Refund by Swing Line Lender**. If the Swing Line Lender receives payment from any Lender in respect of a Swing Line Loan and the Swing Line Lender thereafter receives any payment on account thereof from the Borrower, the Swing Line Lender will distribute to such Lender its Lender's Proportion of such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded); provided, however, that if any such payment received by the Swing Line Lender is required to be returned by it to the Borrower, such Lender will return to the Swing Line Lender any portion thereof previously distributed by the Swing Line Lender to such Lender.

(e) **Notice from other Lenders**. The Swing Line Lender shall not be obligated to make any Swing Line Loan to the Borrower from and after the date on which it receives a notice from the Borrower or any Lender that a Default or an Event of Default has occurred and is continuing until the date on which such Default or Event of Default is no longer continuing.

(f) **Obligations Absolute**. Each Lender shall be obligated to advance its Lender's Proportion of a Swing Line Loans as contemplated by Section 2.9(b), or complete the purchase of a participation contemplated by Section 2.9(c) and to disburse to the Swing Line Lender at the Designated Branch its Lender's Proportion of the outstanding Swing Line Loans or purchase price of a participation referenced therein irrespective of:

(i) whether a Default or Event of Default is then continuing or whether any other condition in Article 10 is met; and

(ii) in the case of any such advance, whether or not the Borrower has, in fact, actually requested such advance (by delivery of a Borrowing Notice or otherwise).

ARTICLE 3
GENERAL PROVISIONS REGARDING DRAWINGS

3.1 **General Conditions to Each Drawing**. In addition to the conditions set out in Article 10 and in this Article 3, the obligation of the Lenders to provide a new Drawing (as opposed to a Rollover or Conversion of an outstanding Drawing) under the Facility is subject to fulfillment of the following conditions (which are established for the sole benefit of the Administrative Agent and the Lenders and may be waived in whole or in part, with or without conditions) on the Drawing Date:

(a) all representations and warranties of the Borrower contained in Article 11 shall be true and correct on and as of such date both before and after giving effect to the proposed Drawing (except to the extent any change in a matter which is the subject of a representation or warranty has been approved or consented to by the Lenders);

(b) all covenants of the Borrower in this Agreement shall have been complied with on and as of such date both before and after giving effect to the proposed Drawing;

(c) no Default or Event of Default shall have occurred and be continuing, or would occur after giving effect to the proposed Drawing; and

(d) the Administrative Agent shall have received a Drawing Notice signed by a senior financial officer or other authorized Person within the time specified in Section 3.2.

The obligation of the Lenders to provide a Rollover or Conversion is subject to fulfillment of the matters referred to in paragraphs (b), (c) and (d) above, with such provisions being deemed modified to refer to Rollovers and Rollover Notices, or Conversion and Conversion Notices, as the case may be.

3.2 **Notices**. Except as agreed to between the Lenders and the Borrower from time to time or as otherwise applicable to Swing Line Loans, the Borrower shall deliver a Drawing Notice, Rollover Notice or Conversion Notice (signed by a senior financial officer or other authorized Person) to the Administrative Agent at the Designated Branch:

(a) with respect to Prime Rate Drawings or Base Rate Drawings, no later than 12:00 noon (Toronto time) one Banking Day prior to the day on which the Borrower wishes to obtain, or make a Conversion into, a Prime Rate Drawing or Base Rate Drawing;

(b) with respect to Bankers' Acceptance Drawings, no later than 12:00 noon (Toronto time) one Banking Day prior to the day on which the Borrower wishes to obtain, Rollover or make a Conversion into, a Bankers' Acceptance Drawing; and

(c) with respect to LIBOR Drawings, no later than 12:00 noon (Toronto time) three LIBOR Banking Days prior to the day on which the Borrower wishes to obtain, Rollover or make a Conversion into, a LIBOR Drawing.

3.3 **Administrative Agent to Notify Lenders**. Upon receipt of a Drawing Notice, Rollover Notice or Conversion Notice, the Administrative Agent shall promptly notify each of the Lenders of the amount and particulars of the proposed Drawing, Rollover or Conversion and the date on which it is to be made.

3.4 **Advances to Administrative Agent and Borrower**. Where a Drawing, Rollover or Conversion results in the delivery of funds to the Borrower, each Lender shall (subject to the provisions of this Agreement) make available to the Administrative Agent not later than 1:00 p.m. (Toronto time) on the appropriate date its Lender's Proportion of such funds in immediately available funds for same day value at the Designated Branch to the credit of the Borrower's Account.

3.5 **Notices Irrevocable**. Each Drawing Notice, Rollover Notice and Conversion Notice delivered to the Administrative Agent by the Borrower shall be irrevocable by the Borrower.

3.6 **Administrative Agent's Records**. The Administrative Agent shall open and maintain on its books accounts evidencing all Lender Outstandings and shall enter in the foregoing accounts details of all such amounts from time to time owing, paid or repaid by the Borrower to each Lender hereunder. The information entered in the foregoing accounts shall, in the absence of manifest error, constitute *prima facie* evidence of all Lender Outstandings with respect to each Lender's Proportion thereof.

ARTICLE 4
INTEREST AND FEES

4.1 **Interest, Stamping Fees and Other Fees**. Subject to Sections 4.4 and 4.6, the Borrower shall pay interest and BA Stamping Fees on Drawings as follows:

(a) Prime Rate Drawings shall bear interest at a rate of interest per annum (based on a 365 day year) equal to the Prime Rate plus the Applicable Margin in effect from time to time, calculated up to and including the last day of each month and payable in Canadian Dollars on the first Banking Day of the following month;

(b) Base Rate Drawings shall bear interest at a rate of interest per annum (based on a 365 day year) equal to the Base Rate plus the Applicable Margin in effect from time to time, calculated up to and including the last day of each month and payable in U.S. Dollars on the first Banking Day of the following month; and

(c) Bankers' Acceptance Drawings shall be subject to a stamping fee (the "**BA Stamping Fee**"), payable in Canadian Dollars at the time of acceptance of the Bankers' Acceptances in connection therewith, equal to the BA Stamping Fee Rate in effect from time to time (based on a 365 day year) multiplied by the face amount of each such Bankers' Acceptance, calculated for the actual number of days of the term of such Bankers' Acceptance Drawing; and

(d) a LIBOR Drawing shall bear interest at the rate of interest per annum (based on a 360 day year) equal to the LIBOR Rate plus the Applicable Margin in effect from time to time, payable in U.S. Dollars on the last day of the LIBOR Interest Period with respect to such LIBOR Drawing, provided that if the LIBOR Interest Period exceeds 90 days, interest shall be payable every 90 days and then on the last day of such LIBOR Interest Period.

4.2 **Letter of Credit Fees**. The Borrower shall pay to the Swing Line Lender a letter of credit fee (the "**LC Fees**") equal to the Applicable Margin multiplied by the face amount of the Letter of Credit payable on the date of issuance or renewal thereof.

4.3 **Standby Fee**. The Borrower shall pay (a) to the Administrative Agent, for the account of the Lenders, a fee at the Standby Fee Rate in effect from time to time on the unutilized portion of the maximum Commitment of the Lenders in respect of the Facility (other than the Swing Line Commitment), which amount is at the date hereof $185,000,000, calculated daily in arrears, without compounding, and (b) to the Swing Line Lender for its own account a fee at the Standby Fee Rate in effect from time to time on the unutilized portion of the maximum Swing Line Commitment in respect of the Swing Line Facility, which amount is at the date hereof $15,000,000, calculated daily in arrears without compounding. The foregoing Standby Fees will be payable quarterly in arrears in Canadian Dollars promptly following receipt by the Borrower of a statement from the Administrative Agent and the Swing Line Lender setting out the amount of Standby Fees for the applicable quarter and containing reasonably details thereof.

4.4 **Adjustments**. Subject to the specific applications of paragraphs (h) and (i) below, the following shall apply in respect of the determination of, and adjustments to, interest, BA Stamping Fees, LC Fees and Standby Fees payable by the Borrower hereunder:

(a) a change in the Prime Rate or Base Rate will, effective on and after the date of such change, cause a corresponding change in the interest payable on a Prime Rate Drawing or Base Rate Drawing, as the case may be;

(b) a change in the Applicable Margin as a result of a Rating change or upon the Borrower being assigned a Rating, as the case may be, will, effective on and after the date of such change, cause a corresponding change in the interest payable on a Prime Rate Drawing or Base Rate Drawing, as the case may be;

(c) a change in the Applicable Margin as a result of a Rating change or upon the Borrower being assigned a Rating, as the case may be, will, effective on and after the date of such change, cause a corresponding change in the interest payable on a LIBOR Drawing;

(d) a change in the LC Fee as a result of a Rating change or upon the Borrower being assigned a Rating, as the case may be, will, effective on and after the date of such change cause a corresponding change in the fee payable on a LC Drawing;

(e) a change in the BA Stamping Fee Rate as a result of a Rating change or upon the Borrower being assigned a Rating, as the case may be, will apply to an outstanding Bankers' Acceptance Drawing on the next Rollover thereof;

(f) a change in the Standby Fee Rate as a result of a Rating change or upon the Borrower being assigned a Rating, as the case may be, will, effective on and after the date of such change, cause a corresponding change in the Standby Fee;

(g) in circumstances where the Applicable Margin, BA Stamping Fee Rate, LC Fee or Standby Fee Rate changes as a result of a change in the Rating, the following rules will apply:

(i) if the Rating Agencies assign an equivalent Rating, then the Applicable Margin, BA Stamping Fee Rate, LC Fee or Standby Fee Rate will be the rate per annum set forth opposite such Rating;

(ii) if the Ratings assigned by the Rating Agencies differ by only one rating subcategory, then the Applicable Margin, BA Stamping Fee Rate, LC Fee or Standby Fee Rate will be the rate per annum set forth opposite the higher Rating;

(iii) if the Ratings assigned by the Rating Agencies differ by more than one rating subcategory, then the Applicable Margin, BA Stamping Fee Rate, LC Fee or Standby Fee Rate will be the rate per annum set forth opposite one rating subcategory below the highest of such Ratings; or

(iv) if there is only one Rating Agency providing a Rating, then the Applicable Margin, BA Stamping Fee Rate, LC Fee or Standby Fee Rate will be the rate per annum set forth opposite the Rating set by such Rating Agency;

(h) in the event of a change in the Applicable Margin, BA Stamping Fee Rate, LC Fee or Standby Fee Rate as a result of a Debt to EBITDA Ratio change, such change shall become effective on the earlier of (i) the date the Quarterly Compliance Certificate evidencing such Debt to EBITDA Ratio change is delivered to the Agent, and (ii) the last day the Borrower must deliver the Quarterly Compliance Certificate hereunder for the immediately preceding fiscal quarter of the Borrower pursuant to Section 12.1(f). Notwithstanding the foregoing, such a change in the BA Stamping Fee will apply to an outstanding Bankers' Acceptance Drawing on the next Rollover thereof; and

(i) until redetermined in connection with the delivery of the Quarterly Compliance Certificate for the fiscal quarter of the Borrower ending March 31, 2006, the Debt to EBITDA Ratio will be deemed to be at Level 4 in the table in the Debt-to-EBITDA Grid.

The Borrower and the Lenders shall make such adjustments between them from time to time as may be necessary to give effect to this Section 4.4.

4.5 **Authorized Debit**. The Borrower authorizes the Administrative Agent to debit the Borrower's accounts with the amounts required to pay interest, BA Stamping Fees, LC Fees, Standby Fees and other amounts required to be paid by the Borrower in the normal course in connection with Drawings, Rollovers and Conversions hereunder.

4.6 **Overdue Payments**. Any monies payable by the Borrower to the Lenders hereunder, if not paid when due, shall bear interest:

(a) in the case of Canadian Dollar amounts not paid, in Canadian Dollars at the rate of interest per annum applicable at the time to a Prime Rate Drawing; and

(b) in the case of U.S. Dollar amounts not paid, in U.S. Dollars at the rate of interest per annum applicable at the time to a Base Rate Drawing;

in each case for the period such overdue amounts are outstanding, calculated up to and including the last day of each month and payable on the first Banking Day of the following month.

4.7 **General Interest Provisions**. The following shall apply in respect of interest payable hereunder:

(a) in the event of any dispute, disagreement or adjudication involving or pertaining to the determination of the Prime Rate, Base Rate or LIBOR Rate in effect at any time, the certificate of the Administrative Agent as to such rate shall be accepted, in the absence of manifest error, as *prima facie* evidence thereof for all purposes of this Agreement;

(b) each determination by the Administrative Agent of the amount of interest, BA Stamping Fees, Standby Fees, LC Fees or other amounts due from the Borrower hereunder shall, in the absence of manifest error or other error of which the Borrower shall give notice to the Administrative Agent within a period of 60 days from the date of entry of the relevant information, be *prima facie* evidence of the accuracy of such determination;

(c) all interest and other amounts payable shall accrue daily, be computed as described herein, and be payable both before and after demand, maturity, default and, subject to Section 4.7(d), judgment;

(d) to the maximum extent permitted by Requirement of Law, the covenant of the Borrower to pay interest at rates provided herein shall not merge in any judgment relating to any obligation of the Borrower to the Lenders or the Administrative Agent;

(e) in no event shall any interest, fees or other amounts payable hereunder exceed the maximum permitted by Requirement of Law. In the event any such interest or fee exceeds such maximum rate, such interest or fee shall be reduced to the maximum rate recoverable under Requirement of Law and the Lenders and the Borrower shall be deemed to have agreed to such rate by contract;

(f) for the purposes of the *Interest Act* (Canada):

(i) the annual rate of interest which is equivalent to the interest rate determined by reference to the LIBOR Rate hereunder shall be the determined rate multiplied by a fraction, the numerator of which is the total number of days in such year and the denominator of which is 360;

(ii) unless otherwise stated, the rates of interest specified in this Agreement are to be calculated on the basis of a year of 365 days and the annual rate of interest which is equivalent to the interest rate determined by reference to such 365 day period hereunder shall be the determined rate multiplied by a fraction, the numerator of which is the total number of days in such year and the denominator of which is 365;

(iii) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; and

(iv) the rates of interest specified in this Agreement are intended to be nominal rates and not effective rates.

4.8 **Agency Fee**. The Borrower shall pay the Administrative Agent a yearly fee in respect of its duties hereunder as agreed to from time to time between the Administrative Agent and the Borrower. The Lenders shall have no claim to any portion of the said agency fee.

ARTICLE 5
BANKERS' ACCEPTANCES

5.1 **Features of Bankers' Acceptances**. The following provisions shall apply to each Bankers' Acceptance Drawing hereunder:

(a) for determining from time to time amounts outstanding hereunder, the face amount of each Bankers' Acceptance shall be included as an amount outstanding;

(b) the BA Period selected by the Borrower for each Bankers' Acceptance in respect of a Bankers' Acceptance Drawing shall be the same and each such Bankers' Acceptance shall be payable and mature on the same BA Maturity Date selected by the Borrower for such Bankers' Acceptance Drawing, provided that, subject to Section 2.4, nothing herein shall restrict the Borrower from dividing a Bankers' Acceptance Drawing into separate Drawings of smaller amounts; and

(c) unless the Power of Attorney contained in Section 5.3 in respect of a particular Lender is then in effect, Bankers' Acceptances presented by the Borrower for acceptance by such Lender shall be signed by duly authorized officers of the Borrower or, alternatively, the signatures of such officers may be mechanically reproduced in facsimile and Bankers' Acceptances bearing such facsimile signatures shall be binding on the Borrower as if they had been manually executed and delivered by it and notwithstanding that any Person whose manual or facsimile signature appears on any Bankers' Acceptance as one of such officers may no longer hold office at the date of issue of any Bankers' Acceptance.

5.2 **BA Stamping Fees**. Upon the acceptance by the Lenders of any Bankers' Acceptances, the Borrower shall pay or cause to be paid to Administrative Agent on behalf of the Lenders the BA Stamping Fee in accordance with Section 4.1(c). BA Stamping Fees shall be calculated on the basis of the face amount of the relevant Bankers' Acceptances and the actual number of days in the relevant BA Period.

5.3 **Power of Attorney**. In order to facilitate the issuance of Bankers' Acceptances (including depository bills that comply with the *Depository Bills and Notes Act* (Canada)), the Borrower authorizes each of the Lenders, in accordance with particulars provided under Section 3.3, to complete, sign, endorse, negotiate and deliver Bankers' Acceptances on behalf of the Borrower in handwritten form, or by facsimile or mechanical signature or otherwise and, once so completed, signed, endorsed or delivered, to accept them as Bankers' Acceptances under this Agreement in accordance with the provisions hereof and then to purchase, discount or negotiate such Bankers' Acceptances in accordance with the provisions of this Agreement. Bankers' Acceptances so completed, signed, endorsed, purchased, discounted, negotiated or delivered on behalf of the Borrower by a Lender shall bind the Borrower as fully and effectively as if so completed, signed, endorsed, purchased, discounted, negotiated or delivered by an authorized officer of the Borrower. Each Bankers' Acceptance completed, signed, endorsed, purchased, discounted, negotiated or delivered by a Lender shall mature on the due date set out on such Bankers' Acceptance.

The Borrower hereby agrees to indemnify each of the Lenders and its respective directors, officers, employees, affiliates and agents and to hold it and them harmless from and against any loss, liability, expense or claim of any kind or nature whatsoever incurred by any of them as a result of any action or inaction in any way relating to or arising out of the power of attorney (the "**Power of Attorney**") contained in this Section 5.3 or the acts contemplated hereby; provided that this indemnity shall not apply to any such loss, liability, expense or claim which results from the negligence or wilful misconduct of a Lender or any of its directors, officers, employees, affiliates or agents.

The Power of Attorney may be revoked by the Borrower at any time upon not less than five Banking Days' prior notice served upon the Administrative Agent; provided that no such revocation shall reduce, limit or otherwise affect the obligations of the Borrower in respect of any Bankers' Acceptances executed, completed, endorsed, purchased, discounted, negotiated or delivered in accordance herewith prior to the time at which such revocation becomes effective.

5.4 **Provision of Instruments on Request**. The Borrower shall, upon request by the Administrative Agent from time to time, provide to the Administrative Agent, and the Administrative Agent shall in turn provide to each Lender at its Lending Branch, pre-signed Bankers' Acceptances drawn in blank (pre-endorsed and otherwise in fully negotiable form) by duly authorized representatives of the Borrower in quantities sufficient for each Lender to fulfil its obligations hereunder. Any such pre-signed Bankers' Acceptances which are delivered by the Borrower to the Administrative Agent, or by the Administrative Agent to a Lender, shall be held in safekeeping by such holder with the same degree of care as if they were such holder's property, and shall only be dealt with by the Lenders and the Administrative Agent in accordance herewith. Neither the Administrative Agent nor any Lender shall be responsible or liable for its failure to make its share of any Bankers' Acceptance Drawing as required hereunder if the cause of such failure is, in whole or in part, due to the failure of the Borrower to provide such pre-signed Bankers' Acceptances to the Administrative Agent or such Lender on a timely basis. Neither the Administrative Agent nor any Lender shall make any request of the Borrower pursuant to this Section so long as the Power of Attorney is in effect.

5.5 **Marketing/Acceptance of BAs**.

(a) **Marketing of BA**. Subject to Section 5.5(b) below, the Borrower will have the option to make its own arrangements with respect to the sale of Bankers' Acceptances in the market place. Notwithstanding the foregoing, a Lender may, at the Borrower's request, purchase from the Borrower for its own account any Bankers' Acceptance issued by it at the applicable BA Discount Rate.

(b) **Bankers' Acceptances Purchased by Lenders**. Where the Borrower so elects in the Drawing Notice, Rollover Notice or Conversion Notice as applicable, all Lenders (other than a Non-Acceptance Lender) will purchase Bankers' Acceptances accepted by it for an amount equal to the BA Discount Proceeds having regard to the BA Discount Rate applicable to such Lenders.

(c) **Non-Acceptance Lenders**. Non-Acceptance Lenders will provide a BA Equivalent Drawing net of the BA Discount Rate applicable to such Lenders.

5.6 **Completion of Funding**. With respect to the funding of a Drawing, Rollover or Conversion pursuant to Section 5.5 above:

(a) each Lender is hereby authorized by the Borrower to make available its share of such Bankers' Acceptance Drawing by completing Bankers' Acceptances in accordance with the Power of Attorney, or (if applicable) by completing presigned Bankers' Acceptances held by it pursuant to Section 5.4, as to the issue date and the BA Maturity Date and in amounts which in the aggregate for such Lender are equal to the aggregate face amount of the Bankers' Acceptances to be accepted by such Lender in connection with such Drawing, Rollover or Conversion and by endorsing such Bankers' Acceptances;

(b) each Lender shall make available its share of such Drawing, Rollover or Conversion by either:

(i) where the Borrower has marketed the Bankers' Acceptances, making available the Bankers' Acceptances accepted by such Lender to the purchaser(s) disclosed in exchange for immediately available freely transferable funds equal to the BA Discount Proceeds due on the sale of such Bankers' Acceptances; or

(ii) where the Lender is purchasing its own Bankers' Acceptances, funding internally the BA Discount Proceeds due on the sale of such Bankers' Acceptances; and

(c) on the relevant Drawing Date, Rollover Date or Conversion Date each Lender shall remit the BA Discount Proceeds or BA Equivalent Drawing proceeds referred to in Section 5.7, as the case may be, payable by such Lender (net of the BA Stamping Fee payable to such Lender) to the Administrative Agent in immediately available funds for same day value at the Designated Branch to the credit of the Borrower's Account.

5.7 **BA Equivalent Drawings**. Notwithstanding the foregoing provisions of this Article 5, a Non-Acceptance Lender shall, in lieu of accepting Bankers' Acceptances, provide a BA Equivalent Drawing. The amount of each BA Equivalent Drawing shall be equal to the BA Discount Proceeds which would be realized from a hypothetical sale of those Bankers' Acceptances which, but for this Section 5.7, such Lender would otherwise be required to accept as part of such Bankers' Acceptance Drawing. To determine the amount of such BA Discount Proceeds, the hypothetical sale shall be deemed to take place at the BA Discount Rate applicable to such Non-Acceptance Lender.

Any BA Equivalent Drawing shall be made on the relevant Drawing Date, Rollover Date or Conversion Date as the case may be and shall remain outstanding for the term of the relevant Bankers' Acceptance Drawing. Concurrent with the making of a BA Equivalent Drawing, a Non-Acceptance Lender shall be entitled to deduct therefrom an amount equal to the BA Stamping Fee which, but for this Section 5.7, such Lender would otherwise be entitled to receive as part of such Bankers' Acceptance Drawing. Upon the BA Maturity Date for such Bankers' Acceptance Drawing, the Borrower shall pay to each Non-Acceptance Lender an amount equal to the face amount of the Bankers' Acceptances which are the subject of the hypothetical sale referred to above.

5.8 **Rollover, Conversion or Payment of Bankers' Acceptances**. In anticipation of the maturity of each Bankers' Acceptance Drawing, the Borrower shall do one or a combination of the following:

(a) subject to Section 2.4, request a Rollover of all or part of such Bankers' Acceptance Drawing by delivering a Rollover Notice to the Administrative Agent in accordance with Section 3.2;

(b) subject to Section 2.4, request a Conversion of all or part of such Bankers' Acceptance Drawing by delivering a Conversion Notice to the Administrative Agent in accordance with Section 3.2; or

(c) repay all or part of such Bankers' Acceptance Drawing in accordance with Section 8.2(b) on the relevant BA Maturity Date for such Bankers' Acceptance Drawing by paying the maturing Bankers' Acceptances or, if the maturing Bankers' Acceptances are paid by the relevant Lender, by paying the Administrative Agent (for the account of the relevant Lender) an amount equal to the face amount of the relevant Bankers' Acceptances.

The Borrower shall provide full cash cover to the Administrative Agent on behalf of the Lenders for each Bankers' Acceptance Drawing in immediately available funds for same day value at the Designated Branch on the applicable BA Maturity Date except where a Rollover is requested in respect of such Bankers' Acceptance Drawing, in which case the Borrower shall provide full cash cover as aforesaid less the amount to be provided by the Lenders pursuant to Section 5.6(c) in respect of such Rollover and which the Borrower has directed be applied to such maturing Bankers' Acceptance. If there is no Rollover or Conversion of a Banker's Acceptance Drawing pursuant to the terms hereof, or no repayment of the relevant Bankers' Acceptances in accordance with the foregoing, there shall be deemed to be a Conversion of the Bankers' Acceptance Drawing to a Prime Rate Drawing and the provisions hereof relating to Prime Rate Drawings shall be applicable thereto.

5.9 **Waiver**. To the maximum extent permitted by Requirement of Law, the Borrower waives presentment for payment and any defence to payment (other than those based on the negligence or wilful misconduct of a Lender) which might otherwise exist if for any reason a Bankers' Acceptance is, at the maturity thereof, held by a Lender as holder in its own right, and the Borrower agrees not to claim any days of grace for the payment at maturity of any Bankers' Acceptance.

5.10 **<u>Depository Bills</u>**. At the option of any Lender, Bankers' Acceptances to be accepted and purchased by that Lender under this Agreement may be issued in the form of depository bills for deposit with The Canadian Depository for Securities Limited pursuant to and settled pursuant to the *Depository Bills and Notes Act* (Canada). All depository bills so issued shall be governed by this Article 5.

ARTICLE 6
LIBOR DRAWINGS

6.1 **<u>LIBOR Interest Periods</u>**. The Borrower shall select a single LIBOR Interest Period for each LIBOR Drawing provided that, subject to Section 2.4, nothing herein shall restrict the Borrower from dividing a LIBOR Drawing into separate Drawings of smaller amounts.

6.2 **<u>Notification of Rate</u>**. After the Borrower has selected a LIBOR Interest Period, the Administrative Agent shall advise the Borrower and the Lenders of the LIBOR Rate on the second LIBOR Banking Day before the relevant Drawing Date, Rollover Date or Conversion Date which shall apply to the calculation of the interest rate payable pursuant to such LIBOR Drawing, promptly after the Administrative Agent shall have ascertained the applicable rate; provided, however, that any failure by the Administrative Agent to so notify the Borrower of any applicable rate shall not affect the obligation of the Borrower to pay interest at the rate provided for herein.

6.3 **<u>Rollover, Conversion or Payment of LIBOR Drawing</u>**. In anticipation of the maturity of each LIBOR Drawing, the Borrower shall do one or a combination of the following:

(a) subject to Section 2.4, request a Rollover of all or part of such LIBOR Drawing by delivering a Rollover Notice to the Administrative Agent in accordance with Section 3.2;

(b) subject to Section 2.4, request a Conversion of all or part of such LIBOR Drawing by delivering a Conversion Notice to the Administrative Agent in accordance with Section 3.2; or

(c) repay all or part of such LIBOR Drawing in accordance with Section 8.2(b) on the last day of the relevant LIBOR Interest Period; provided, however, that if there is no Rollover or Conversion of a LIBOR Drawing in accordance with the terms hereof, or no payment of the LIBOR Drawing in accordance with the foregoing, there shall be deemed to be a Conversion of such LIBOR Drawing to a Base Rate Drawing and the provisions hereof relating to Base Rate Drawings shall be applicable thereto.

ARTICLE 7
LETTERS OF CREDIT

7.1 **<u>Letters of Credit</u>**.

(a) **Issuance**. Subject to the terms and conditions set forth herein, the Swing Line Lender shall issue Letters of Credit for the account of the Borrower upon receiving an LC Application for the issuance thereof; provided that no Letter of Credit shall be issued (which shall include any extension of the expiry date of a then outstanding Letter of Credit) by the Swing Line Lender where the Swing Line Lender has liability in respect thereof if after giving effect thereto the amount of the Principal Outstandings with respect to all Swing Line Loans then outstanding exceeds the Swing Line Commitment. Each Letter of Credit shall be substantially in the standard form of the Swing Line Lender with modifications thereto consistent with the applicable provisions of this Agreement.

(b) **Conditions Precedent**. The Swing Line Lender shall not be required to issue any Letter of Credit unless the Swing Line Lender shall have previously received a fully completed LC Application at least three Banking Days prior to the date of issue thereof.

(c) **Records**. The Swing Line Lender shall maintain in respect of each Letter of Credit records showing:

(i) the date of issue and expiration date thereof;

(ii) the face amount thereof; and

(iii) the date and amount of all payments made by the Swing Line Lender thereunder.

The Swing Line Lender shall make copies of such records available to the Borrower upon its request.

7.2 **<u>Letter of Credit Payments</u>**.

(a) **Loans.** Each LC Disbursement made by the Swing Line Lender shall constitute an Overdraft Drawing from the Swing Line Lender even if any condition precedent to the making of such Drawing shall not have been satisfied, in each case, on the date each LC Disbursement is made.

(b) **Presentment for Payment.** The Borrower hereby authorizes the Swing Line Lender to review each draft and other document presented under each Letter of Credit and the determination by the Swing Line Lender as to the conformity of any documents presented under a Letter of Credit to the requirements of such Letter of Credit shall, in the absence of the Swing Line Lender's gross negligence or wilful misconduct, be conclusive and binding on the Borrower and each Lender. The Swing Line Lender shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under any Letter of Credit. The Swing Line Lender shall promptly after such examination:

(i) notify the Borrower of such demand for payment;

(ii) deliver to the Borrower a copy of each document purporting to represent a demand for payment under such Letter of Credit; and

(iii) notify the Borrower whether said demand for payment was properly made under such Letter of Credit.

(c) **LC Disbursement.** The Swing Line Lender will make any LC Disbursement to the beneficiary of such Letter of Credit by promptly remitting the amounts so received, in like funds, to the account identified by such beneficiary in connection with such demand for payment. Promptly following any LC Disbursement, the Swing Line Lender will notify the Borrower of such LC Disbursement; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligations hereunder with respect to any such LC Disbursement. The responsibility of the Swing Line Lender in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are in conformity with such Letter of Credit.

7.3 Obligations Absolute.

(a) **Absolute Obligation**. The obligations of the Borrower under this Agreement in respect of Letters of Credit shall be absolute, unconditional and irrevocable under any and all circumstances and irrespective of any set-off, counterclaim or defence to payment which any Person may have or have had against the Swing Line Lender, any Lender, or any beneficiary of a Letter of Credit.

(b) **No Defences**. The obligations of the Borrower in respect of Letters of Credit shall not be affected by:

(i) any lack of validity or enforceability of any Letter of Credit;

(ii) any draft, demand, certificate or any other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;

(iii) a Default or an Event of Default that has occurred and is continuing;

(iv) any dispute between the Borrower and any beneficiary of any Letter of Credit or any other Person to which such Letter of Credit may be transferred;

(v) any claims, compensation, set-off, defence or other right whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee;

(vi) payment under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit;

(vii) the existence of any proceedings of the type described in Section 14.1(e) or 14.1(f); or

(viii) any other event or circumstance whatsoever that might, but for the provisions of this Section 7.3(b), constitute a legal or equitable discharge of the obligations of the Borrower hereunder or in respect of any Letter of Credit;

save and except only for attributable to the Swing Line Lender's gross negligence or wilful misconduct.

(c) **Notice Delays**. The Swing Line Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions caused by its gross negligence or wilful misconduct.

(d) **Action Binding**. Any action taken or omitted by the Swing Line Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or wilful misconduct and in accordance with the standards of care specified in the Uniform Customs, shall be binding on the Borrower and the Lenders and shall not result in any liability to the Borrower or the Lenders.

(e) **General**. Without limiting the generality of the foregoing:

(i) the Swing Line Lender may accept documents that appear on their face to be in compliance with the terms of a Letter of Credit in all material respects without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in compliance with the terms of such Letter of Credit in all material respects;

(ii) the Swing Line Lender shall have the right, in its discretion acting reasonably, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit;

(iii) this Agreement shall establish the standard of care to be exercised by the Swing Line Lender when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by Requirement of Law, any standard of care inconsistent with the foregoing); and

(iv) in the event of any conflict or inconsistency between the provision of any LC Application and this Agreement, the provisions of this Agreement shall prevail.

(f) **Consequential Damages:** Notwithstanding anything to the contrary contained herein, the Swing Line Lender shall not be liable to the Borrower for any consequential, indirect, punitive or exemplary damages with respect to action taken or omitted to be taken by it under any Letter of Credit.

7.4 Expenses.

(a) **LC Expenses**. The Borrower shall pay and reimburse the Swing Line Lender (without duplication having regard to the LC Fees payable hereunder) for all taxes (other than taxes imposed on or measured by reference to or in respect of overall net income, gains or capital of the applicable party) and reasonable and customary fees, charges and other costs and expenses (other than LC Fees) incurred by the Swing Line Lender in connection with any LC Disbursement ("**LC Expenses**"), as notified by the Swing Line Lender. Each payment in respect of LC Expenses shall be due and payable within five Banking Days after the date on which the Swing Line Lender notifies the Borrower of the amount of such LC Expenses and shall accrue interest if not paid on such date at the Default Rate.

(b) **Other Costs**. The Borrower shall pay to the Swing Line Lender its:

(i) set-up fees, customary cable charges and other customary miscellaneous charges in respect of the issue of Letters of Credit and upon the amendment or transfer of each Letter of Credit and each LC Disbursement made thereunder; and

(ii) customary documentary and administrative charges for amending, transferring or drawing under, as the case may be, Letters of Credit of a similar amount, term and risks.

7.5 Indemnification by Borrower.

(a) **Indemnity**. In addition to amounts payable as elsewhere provided for in this Agreement, the Borrower hereby agrees to protect, indemnify, pay and save the Swing Line Lender harmless from and against any and all claims or losses (including reasonable legal fees and expenses) which it may incur or be subject to as a consequence, direct or indirect, of:

(i) the application for or issuance of or drawing under any Letter of Credit; or

(ii) its failure to honour a drawing under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* Governmental Authority prohibiting the payment of such drawing (all such acts or omissions herein called "**Government Acts**").

(b) **Misuse**. As between the Borrower and the Swing Line Lender, the Borrower assumes all risks of the acts and omissions of, or misuse of any Letter of Credit by, the beneficiary of such Letter of Credit. Except to ensure compliance with the applicable Letter of Credit, the Swing Line Lender shall not have any responsibility for:

(i) the form, validity, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for, issuance of or drawing under any Letter of Credit (even if it should in fact prove to be in any or all respects invalid, inaccurate, fraudulent or forged);

(ii) the validity or sufficiency of any instrument transferring or assigning (or purporting to transfer or assign) any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason;

(iii) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph or otherwise (whether or not they are in cipher);

(iv) errors in interpretation of technical terms;

(v) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof;

(vi) the misapplication by the beneficiary of any Letter of Credit or of the proceeds of any drawing under such Letter of Credit; and

(vii) any consequences arising from causes beyond the control of the Lenders, including any Government Acts.

None of the above shall affect, impair, or prevent the vesting of any of the Lenders' rights and remedies hereunder. Any action taken or omitted by the Swing Line Lender under or in connection with any Letter of Credit issued by it or the related certificates, if taken or omitted in good faith, shall not put the Swing Line Lender under any resulting liability to the Borrower; provided that it has acted without gross negligence and has not engaged in wilful misconduct.

(c) **No Liability**. The Borrower shall have no obligation to indemnify the Swing Line Lender pursuant to paragraph (a) above in respect of any liability incurred by the Swing Line Lender arising out of its gross negligence or wilful misconduct as determined by a court of competent jurisdiction, or out of the wrongful dishonour by it of a proper demand for payment made under any Letter of Credit issued by it.

7.6 Repayments.

If:

(a) the Administrative Agent delivers a notice to the Borrower pursuant to Section 14.2;

(b) the Borrower shall be required to repay Principal Outstandings to the Swing Line Lender pursuant to any Letter of Credit; or

(c) any Letter of Credit is the subject matter of any order, judgement, injunction or other such determination (a "**Judicial Order**") restricting payment under and in accordance with such Letter of Credit or extending the Swing Line Lender's liability beyond the expiration date stated in such Letter of Credit;

then the Borrower shall pay to the Swing Line Lender an amount, in the currency in which the Letter of Credit is denominated, equal to the maximum amount available to be drawn under such unexpired Letter of Credit. Any such amounts paid by the Borrower to the Swing Line Lender shall be held by the Swing Line Lender in a cash collateral account as continuing collateral security for the obligations of the Borrower to reimburse the Swing Line Lender for LC Disbursements made in respect of any such Letter of Credit. Such cash collateral account shall be assigned to the Swing Line Lender as security for the obligations of the Borrower in relation to such Letters of Credit. Amounts held in the cash collateral account shall be applied to satisfy the obligations of the Borrower for such Letters of Credit to the extent any LC Disbursements are made thereunder. Amounts held in such cash collateral account may not be withdrawn by the Borrower; however, interest on such deposited amounts (at the rates and in accordance with the then prevailing practices of the Swing Line Lender for accounts of such type) shall be for the account of the Borrower and may be withdrawn by the Borrower from time to time so long as no Default or Event of Default is then continuing.

The Swing Line Lender shall release to the Borrower any amount remaining in the cash collateral account after applying the amounts necessary to discharge all obligations of the Borrower relating to such Letters of Credit, upon the later of:

(d) the date on which any final and non-appealable Judicial Order has been rendered or issued either terminating any applicable Judicial Order or permanently enjoining the Swing Line Lender from paying under such Letter of Credit;

(e) the earlier of:

  (i) the date on which either the original counterpart of such Letter of Credit is returned to the Swing Line Lender for cancellation or the Swing Line

Lender is released by the beneficiary thereof from any other obligation in respect of such Letter of Credit; and

(ii) the expiry of such Letter of Credit; and

(f) if an Event of Default has occurred, the payment and satisfaction of all Lender Outstandings and cancellation or termination of the Facility.

ARTICLE 8
PAYMENTS

8.1 **Repayment of Excess**. If at any time the Canadian Dollar Equivalent of Principal Outstandings exceeds the Total Commitment by more than 3%, the Borrower shall immediately repay to the Lenders on demand such excess together with accrued interest thereon as provided for herein to the date of such repayment. If to make such repayment it is necessary to repay a Bankers' Acceptance Drawing or LIBOR Drawing, the Borrower shall not be required to repay such Bankers' Acceptance Drawing or LIBOR Drawing until the BA Maturity Date or end of the LIBOR Interest Period, as the case may be, provided that the Borrower has deposited with the Administrative Agent funds equal to such excess to be held in trust to be applied against payment of such excess. In any event, such excess shall be eliminated by the Borrower on the next succeeding Drawing Date, Conversion Date or Rollover Date whichever is earlier to occur.

8.2 **Reduction or Repayment of the Facility**. The Borrower may:

(a) upon not less than five Banking Days' prior notice delivered to the Administrative Agent by 12:00 noon (Toronto time), reduce the maximum amount of the Facility, provided that:

(i) any reduction shall be in an amount equal to or greater than the Canadian Dollar Equivalent of Cdn. $10,000,000 plus integral multiples of the Canadian Dollar Equivalent of Cdn. $1,000,000;

(ii) any notice of reduction given by the Borrower pursuant hereto shall be irrevocable and the Borrower shall be bound to reduce the Facility in accordance with such notice; and

(iii) once reduced the Facility may not be subsequently increased; and/or

(b) upon, in the case of a Prime Rate Drawing, a Base Rate Drawing or a Banker's Acceptance Drawing, one Banking Day's, and in the case of a LIBOR Drawing three LIBOR Banking Days', notice delivered to the Administrative Agent by 12:00 noon (Toronto time), repay all or any part of the Principal Outstandings, provided that:

(i) any partial repayment shall be in an amount equal to or greater than the Canadian Dollar Equivalent of Cdn. $1,000,000;

(ii) the Borrower pays concurrently with such repayment all interest accrued on the amount thereof;

(iii) subject to Section 8.9 with respect to repayment of any Bankers' Acceptance Drawings, the repayment is on the applicable BA Maturity Date and with respect to any LIBOR Drawing, repayment is on the last day of the relevant LIBOR Interest Period unless in respect of such repaid LIBOR Drawing the Borrower indemnifies the Lenders for breakage and other such costs; and

(iv) any notice of repayment given by the Borrower pursuant hereto shall be irrevocable and the Borrower shall be bound to repay in accordance with such notice.

8.3 **Mandatory Payment on Repayment Date**. The Borrower shall, on the Repayment Date, pay in full to the Administrative Agent, for the account of the Lenders, all Lender Outstandings.

8.4 **Extension of Repayment Date**. The Borrower may, not earlier than 120 days or later than 60 days prior to each anniversary date of the date of this Agreement, deliver to the Administrative Agent a notice requesting the extension of the Repayment Date for a further period of one year and confirming that the representations and warranties set out in Section 11.1 are true and correct in all material respects. Each Lender will notify the Administrative Agent in writing whether or not it agrees to so extend the Repayment Date within 30 days after receipt by the Administrative Agent of such notice. Failure by a Lender to notify the Administrative Agent by such time will be deemed to be a refusal by such Lender of such request. The Lenders will consider such extension and, if all Lenders in their sole discretion agree, the Administrative Agent will notify the Borrower and the Repayment Date will be extended in accordance with the request of the Borrower. Otherwise the Administrative Agent shall deliver to the Borrower a notice (a "**Dissent Notice**") advising the Borrower of the refusal to extend the Repayment Date and the names of each Lender (each a "**Dissenting Lender**") which did not, or was deemed to not, agree to such request. If Lenders holding aggregate Lender's Proportions in excess of 66 2/3% of the Total Commitment agree to such extension, the Borrower may elect to do any one or more of the following:

(a) request the Administrative Agent, at the expense of the Borrower, to invite the Lenders (other than Dissenting Lenders) and other financial institutions approved by both the Borrower and Administrative Agent who agree with such extension of the Repayment Date to acquire on or before the Repayment Date, without discount, all or a portion (subject to Section 15.1(b)) of a Dissenting Lender's rights under this Agreement in accordance with Article 15 and in the event such an offer (or offers) is received, such Dissenting Lender shall accept such offer (or offers); and/or

(b) elect to repay, on or before the Repayment Date in effect at the time of the request for extension, all amounts owing to a Dissenting Lender, cancel such Dissenting

Lender's interest in the Facility and reduce the then current maximum amount of the Facility by an amount equal to the Canadian Dollar Equivalent of the principal amount of the Commitment cancelled. The Lender's Proportions of each remaining Lender shall be recalculated according to the ratio which each remaining Lender's maximum Commitment under the Facility immediately prior to repayment bears to the reduced maximum amount of the Facility after repayment.

If the Borrower exercises its rights under Sections 8.4(a) and/or 8.4(b), the Repayment Date will be deemed extended for all Lenders, other than Dissenting Lenders, in accordance with the original request of the Borrower set out in the notice. If the Repayment Date is not extended in accordance with this Section 8.4, the Borrower shall repay all Lender Outstandings and other amounts payable hereunder on the Repayment Date as required under Section 8.3 and the Facility shall be deemed cancelled.

8.5 **Place and Manner of Payments**. All payments to be made by the Borrower hereunder shall be made to the Administrative Agent. Subject to Section 8.9, all such payments shall be made in immediately available funds and received by the Administrative Agent for same day value on the due date at the Designated Branch. Payment of any amount by the Borrower to the Administrative Agent for the account of the Lenders shall, as between the Borrower and the Lenders, constitute payment of such amount by the Borrower to the Lenders. Whenever any payment hereunder is due on a day which is not a Banking Day the due date thereof shall be extended to the next succeeding Banking Day unless such payment is in respect of a LIBOR Drawing and such Banking Day falls in the next calendar month, in which event the due date for such LIBOR Drawing shall be the next preceding Banking Day.

8.6 **Administrative Agent to Transfer Payment to Lenders**. Subject to Section 8.7, the Administrative Agent shall, for same day value on the date of receipt, remit to each Lender, in same day funds, such Lender's Proportion of the payment so made by the Borrower on that day by remitting it to such Lender at such Lender's Lending Branch. In the event that any payment hereunder is received by the Administrative Agent later than as required under Section 8.5, such payment shall be deemed for the purposes of interest and fee computations as between the Administrative Agent and the Lenders to have been received by the Administrative Agent on the next following Banking Day and the Borrower shall indemnify the Administrative Agent or the Lenders, as the case may be, for any loss incurred thereby.

8.7 **Receipt in Lender's Proportion**. Except as otherwise provided herein, and specifically Swing Line Loans, or in any other agreement in writing among the Lenders, each and every payment of principal, interest and other amounts for the account of the Lenders shall be made to the Administrative Agent for the account of each Lender *pro rata* according to its Lender's Proportion. Without limiting the generality of the foregoing, the parties hereto agree that the payments to be made by the Borrower pursuant to Section 4.8 shall be retained by the Administrative Agent for its own benefit, and shall not be received on the account of the Lenders in accordance with this Section 8.7, and shall be received by the Administrative Agent without prejudice to any right that the

Administrative Agent may have to share proportionately in any other payments received from the Borrower under the terms hereof arising in its capacity as Lender hereunder.

8.8 **Net Payments, etc**. All payments by the Borrower hereunder (whether in respect of principal, interest, fees or any other item) shall be made in full without any deduction or withholding (whether in respect of set off, counterclaim, duties, taxes, charges or otherwise whatsoever) unless the Borrower is prohibited by Requirement of Law from doing so, in which event the Borrower shall:

(a) ensure that the deduction or withholding does not exceed the minimum amount legally required;

(b) forthwith pay to the Administrative Agent for the account of each Lender such additional amount so that the net amount received by such Lender shall equal the full amount which would have been received by it had no such deduction or withholding been made, except where such withholding tax is exigible as a result of a Lender being or becoming a non-resident or assigning or granting a participation in all or a portion of its rights under this Agreement to a non-resident as that term is defined in the *Income Tax Act* (Canada), in which case no such payment shall be required;

(c) pay to the relevant taxation or other authorities within the period for payment permitted by Requirement of Law the full amount of the deduction or withholding (including the full amount of any deduction or withholding from any additional amount paid pursuant to this Section 8.8); and

(d) furnish to the Administrative Agent for delivery to such Lender, when received, an official receipt of the relevant taxation or other authorities involved for all amounts deducted or withheld as aforesaid.

Each Schedule III Lender listed in Schedule B hereby (i) certifies that it is exempt from non-resident withholding tax under the *Income Tax Act* (Canada); (ii) agrees to notify the Borrower forthwith if it ceases to be so exempt; and (iii) agrees to indemnify and save the Borrower harmless from all loss, expense and liability incurred by the Borrower if such Schedule III Lender is not exempt from non-resident withholding tax at the date of this Agreement or if it fails to notify the Borrower forthwith after it ceases to be so exempt. Each Person which becomes a Lender after the date of this Agreement shall forthwith notify the Borrower if it is, or becomes, a non-resident of Canada for the purpose of the *Income Tax Act* (Canada), and each Person which becomes a Schedule III Lender after the date of this Agreement shall certify to the Borrower whether it is or is not exempt from non-resident withholding tax under the *Income Tax Act* (Canada) and shall forthwith notify the Borrower of any change in such status. Any Person which becomes a Lender or a Schedule III Lender after the date of this Agreement shall indemnify and save the Borrower harmless from all loss, expense and liability incurred by the Borrower as a result of such Person's failure to give any notice or certification required by this paragraph. If any Lender becomes a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) or ceases to be exempt from non-resident withholding tax under the *Income Tax Act* (Canada), the Borrower may terminate the Commitment of such Lender by notice to the Lender and may repay any Outstandings to such Lender without terminating all Commitments or repaying the Outstandings of any other Lender.

8.9 **Prepayment of BA's**. If for whatever reason a Bankers' Acceptance Drawing is prepaid or otherwise becomes due and payable on a date which is not the BA Maturity Date relevant to such Drawing, then such Bankers' Acceptance Drawing shall be paid by the Borrower paying the face amount of the maturing Bankers' Acceptances to the Administrative Agent, which amount shall be held in an interest bearing trust account for future set off against such maturing Bankers' Acceptances and the interest accrued thereon shall be for the account of the Borrower.

8.10 **Application of Payments Prior to Event of Default**. Prior to the occurrence of an Event of Default, all payments hereunder made by or on behalf of the Borrower shall be applied in the following order:

(a) firstly, to any amounts due hereunder from the Borrower as recoverable costs and expenses, for distribution to the Administrative Agent and relevant Lenders;

(b) secondly, to any amounts due hereunder from the Borrower as agency fees and other amounts due to the Administrative Agent in its capacity as such, for distribution to the Administrative Agent;

(c) thirdly, to any amounts due hereunder from the Borrower as interest, BA Stamping Fees, Standby Fees, LC Fees and other indebtedness hereunder other than principal, for distribution to the Lenders entitled to receive such amounts as herein provided pro rata according to their respective Lender's Proportion; and

(d) fourthly, to any amounts due hereunder from the Borrower as principal, for distribution to the Lenders pro rata according to their respective Lender's Proportion.

After the occurrence of an Event of Default, payments hereunder made by or on behalf of the Borrower shall be applied in such manner as the Lenders in their sole discretion may determine.

ARTICLE 9
CHANGES IN CIRCUMSTANCES

9.1 **Increased Costs**. If at any time a Lender determines in good faith (which determination shall be conclusive) and notifies the Borrower through the Administrative Agent that any future law, regulation, guideline, interpretation bulletin, order, treaty or official directive (whether or not having the force of law), or any change in any present law, regulation, guideline, interpretation bulletin, order, treaty or official directive or in the interpretation or application thereof by any authority charged with administration thereof or by any court or any compliance by such Lender with any request or directive of any applicable monetary, fiscal or other governmental agency or authority (whether or not having the force of law), but specifically excluding any change in capital taxes, the rate of taxation applicable to the general income of such Lender or change in the manner of calculation of the general income of such Lender, has the effect in respect of any Drawing of:

(a) increasing the cost (including the cost of allocating additional capital) of such Lender of making, maintaining or funding its participation in such Drawing; or

(b) reducing the amount of principal, interest or other amount received or receivable by such Lender hereunder or its effective return hereunder; or

(c) causing such Lender to make any payment not required to be made prior to such change or event, or to forego any interest or other return on or calculated by reference to any sum received or receivable by it hereunder not required prior to such change or event;

then, in any such case, upon demand being made to the Borrower by such Lender through the Administrative Agent within 90 days of the occurrence from time to time of the events described in paragraphs (a), (b), or (c) above, the Borrower shall either (i) within 30 days of receipt of such demand pay to the Administrative Agent for the account of such Lender such amount as shall compensate such Lender for such additional cost, reduction, payment, foregone interest or other reduced return, or (ii) repay, as permitted in Section 8.2(b), the portion of the Facility giving rise to such additional cost, reduction, payment, foregone interest or other reduced return to such Lender, provided that the minimum repayment amounts referred to in Section 8.2(b)(i) shall not apply. If the Borrower elects to repay as permitted in (ii) above it may cancel the corresponding Commitment of such Lender. For greater certainty, if the Borrower elects to pay the amounts demanded as provided in (i) and such additional cost, reduction, payment, foregone interest or other reduced return continues beyond the said 90 day period, the Lender may from time to time make additional demands in connection therewith. Notwithstanding the foregoing, each Lender agrees that it will not demand payment of the aforesaid amounts if it is not at the same time passing similar amounts on to customers of the Lender in Canada in respect of whom the Lender is by agreement entitled to pass such amounts on to.

9.2 **Form of Demand**. Any demand for payment made pursuant to Section 9.1 shall include an explanatory statement by such Lender as to the events resulting in the relevant effect upon such Lender as described in Sections 9.1(a), (b) and (c) together with a detailed outline of the calculation of the resulting payment by the Borrower demanded by such Lender. Absent manifest error, such statement and calculation shall be binding and conclusive, provided however that the Lenders shall determine such amounts owing in good faith using reasonable averaging and attribution methods.

9.3 **Consultation**. For a period of 30 days after demand is made under Section 9.1 the Borrower, the Lender and the Administrative Agent shall consult with a view to the Lender taking such steps, including the transfer of the obligations of the Lender to another jurisdiction, to avoid the circumstances giving rise to such event; provided that such steps do not, in the opinion of the Lender acting reasonably, prejudice the Lender. If such consultation does not within such time result in agreement on the steps to be taken to avoid the circumstances concerned, the Administrative Agent shall, at the Borrower's request and for 30 days thereafter and at the expense of the Borrower, invite the other Lenders (if any) and other financial institutions approved by the Borrower which are not affected by such event or circumstances to acquire, without discount, all or a portion (subject to Section 15.1(b)) of the said Lender's rights under this Agreement in accordance with Article 15 and in the event such an offer (or offers) is received, the said Lender shall either waive its right to receive payments under Section 9.1 or accept the said offer (or offers).

9.4 **Illegality**. Notwithstanding anything herein contained, if at any time any Lender determines in good faith (which determination shall be conclusive) and notifies the Borrower through the Administrative Agent that, by reason of any future law, regulation, guideline, interpretation bulletin, order, treaty or official directive, or any future change to any existing law, regulation, guideline, interpretation bulletin, order, treaty or official directive or in the interpretation or application thereof by any authority charged with the administration thereof or by any court, that it is unlawful or contrary to the direction of any competent authority for such Lender to make or maintain any Drawing, then such Lender and the Borrower shall negotiate in good faith means by which such Drawing may be legally maintained by the Lender, including converting such Drawing to another form of Drawing or assigning all or part of such Lender's Proportion of the Facility to another Person determined by the Borrower. If the Borrower and such Lender fail to agree on a solution, such outstanding Drawing and all other amounts payable to or for the account of such Lender hereunder in connection therewith shall be forthwith repaid by the Borrower to the Administrative Agent for the account of such Lender.

ARTICLE 10
CONDITIONS OF LENDERS' OBLIGATIONS

10.1 **Conditions Precedent to Granting of Facility**. The obligation of the Lenders and the Administrative Agent to establish the Facility is subject to the fulfillment of the following conditions (which are established for the sole benefit of the Administrative Agent and the Lenders and may be waived in whole or in part by the Lenders, with or without conditions):

(a) **Corporate Proceedings**. All corporate proceedings to be taken in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Lenders and Lenders' Counsel, and the Administrative Agent shall have received certified copies of all documents which it may reasonably request in connection with such transactions and of the records of all corporate proceedings in connection therewith.

(b) **Representations, Warranties and Defaults**. The representations and warranties of the Borrower contained in this Agreement shall be true and no Defaults or Events of Default shall exist, and the Borrower shall have delivered to the Administrative Agent a certificate to such effect, signed on its behalf by a senior officer.

(c) **Receipt of Documentation**. The Lenders shall have received, in form and substance satisfactory to the Lenders, the following:

(i) duly executed originals of this Agreement;

(ii) the Guarantees, duly executed by each of the General Partner, Duke Energy Midstream Services Canada Corporation and DEFS Canada LP;

(iii) a certificate of status or comparable document (to the extent available) in respect of the Borrower and each Restricted Subsidiary issued under the laws of its jurisdiction of incorporation, amalgamation or formation;

(iv) a certified copy of the constating documents, unanimous shareholders agreements and partnership agreements, if any, of the Borrower and each Restricted Subsidiary;

(v) a certified copy of a directors' or partners' resolution, as applicable, of the Borrower and each Restricted Subsidiary with respect to the Loan Documents and Material Contracts to which each is a party, certified as of the date of this Agreement;

(vi) a certificate of the Borrower and each Restricted Subsidiary setting forth specimen signatures of the individuals who will be executing the Loan Documents and Material Contracts on its behalf;

(vii) evidence of insurance and compliance with Section 12.1(d);

(viii) without duplication, a certified copy of the Acquisition Agreement and the Final Prospectus, certified as of the date of this Agreement;

(ix) a certificate of the Borrower as to the *pro forma* Debt to EBITDA Ratio of the Borrower on closing of the Acquisition (assuming the amount of the initial Drawing was outstanding at such time) including reasonable details of the calculation thereof which shows that such Debt to EBITDA Ratio is not in excess of 4.0 to 1.0;

(x) an opinion of Borrower's Counsel, addressed to the Administrative Agent each Lender and Lenders' counsel, relating to the existence of the Borrower and each Restricted Subsidiary and the authorization, execution, delivery and enforceability of the Acquisition Agreement and the Loan Documents; and

(xi) an opinion of Lenders' Counsel, addressed to the Administrative Agent and each Lender which, among other matters which may be requested by the Lenders, acting reasonably, confirms in all material respects the matters opined on by Borrower's Counsel in the opinion referred to in paragraph (x) above.

(d) **Other Documentation**. The Borrower shall have executed and delivered and shall have caused the Restricted Subsidiaries and the Trusts to have executed and delivered, to the Administrative Agent and each Lender such documentation concerning the administration of this Agreement and the Drawings that the Administrative Agent, the Lenders or Lenders' Counsel may reasonably request, provided that such documentation shall not create charges on property or require guarantees of payment from any Person except from the Guarantors to the extent herein provided.

(e) **No Material Adverse Change**. Since September 30, 2005, there has been no circumstance which has resulted in, or could reasonably be expected to result in, a material adverse effect on the Business and the Borrower shall have delivered to the Administrative Agent a certificate to such effect, signed on its behalf by a senior officer.

(f) **Material Contract**. The Lenders shall have received from the Borrower certified copies of each of the Material Contracts, in form satisfactory to the Lenders, acting reasonably.

(g) **Final Prospectus**. The Lenders shall be satisfied that the initial issue of Trust Units pursuant to the Final Prospectus has closed or will close concurrently with the initial Drawing under the Facility.

(h) **Payment of Fees and Expenses**. The Borrower shall have paid, or made arrangements satisfactory to the Administrative Agent for the payment of, all fees payable to the Administrative Agent and/or Lenders in connection with the Facility and all expenses to be paid or reimbursed hereunder.

10.2 **Conditions Precedents to all Drawings**. The obligation of the Lenders to provide Drawings hereunder is subject to the fulfillment of the following conditions (which are established for the sole benefit of the Administrative Agent and the Lenders and may be waived in whole or in part by the Lenders, with or without conditions):

(a) with respect to the initial Drawing only, a certificate of the Borrower certifying that (i) all required consents and Governmental Actions with respect to the transactions and documentation contemplated by the Acquisition Agreement and the Loan Documents have been obtained by the Borrower, the Trusts and each Restricted Subsidiary, where applicable, and are in full force and effect to the extent that failure to obtain such consents and Governmental Actions, individually or in aggregate, could reasonably be expected to result in a Material Adverse Effect, and (ii) closing/escrow agreements are in place to ensure the transactions contemplated by the Acquisition Agreement will close in accordance with the provisions thereof immediately following the initial Drawing under the Facility and without any material amendment thereto which has not been consented to by the Lenders and without the waiver by any party to the Acquisition Agreement of any material condition precedent provided for therein which has not been consented to by the Lenders;

(b) no Default or Event of Default shall have occurred and be continuing;

(c) the representations and warranties of the Borrower set forth in Article 11 shall be true, subject to the materiality thresholds and limitations set forth in such Article 11; and

(d) receipt by the Administrative Agent of the required Drawing Notice duly executed by the Borrower.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES

11.1 **Representations and Warranties**. To induce the Administrative Agent and the Lenders to enter into this Agreement and establish the Facility, the Borrower hereby represents and warrants to the Administrative Agent and Lenders, upon each of which representations and warranties the Administrative Agent and Lenders specifically rely, as follows:

(a) **Corporate Organization**. The Borrower and each Restricted Subsidiary which is a body corporate:

(i) has been duly incorporated or amalgamated, as applicable, and is a validly existing corporation or company under the laws of its jurisdiction of formation;

(ii) is duly licensed or qualified and authorized to do business in each jurisdiction where the nature of the business transacted by it or the character of its property owned or leased makes such qualification or licensing necessary; and

(iii) is in good standing with respect to all required corporate and similar filings in all jurisdictions where it carries on its business, to the extent that default in any of the foregoing, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(b) **Organization of Partnerships**. Each Partnership:

(i) has been duly formed as a limited partnership and is a validly existing limited partnership under the laws of its jurisdiction of formation;

(ii) is duly licensed or qualified and authorized to do business in each jurisdiction where the nature of the business transacted by it or the character of its property owned or leased makes such qualification or licensing necessary; and

(iii) is in good standing with respect to all required corporate and similar filings in all jurisdictions where it carries on its business, to the extent that default in any of the foregoing, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(c) **Authorization, Consents, Enforceability**. The execution and delivery by the Borrower and each Restricted Subsidiary of the Loan Documents to which it is party and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by the directors of the Borrower or Restricted Subsidiary, as applicable, and each such Loan Document has been duly executed and delivered by the Borrower and each Restricted Subsidiary, as applicable, and constitutes a legal, valid and binding obligation of such party enforceable against it in accordance with its terms, subject to the availability of equitable remedies and enforcement of creditors' rights generally. The Borrower and each Restricted Subsidiary are subject to the relevant commercial law of the Province of Alberta and the law of Canada which is applicable in such province.

(d) **Governmental Approvals**. None of:

(i) the nature of the Borrower or any Restricted Subsidiary, their respective businesses or property;

(ii) any relationship between the Borrower or any Restricted Subsidiary or other Person; or

(iii) any circumstance in connection with the entering into and performance of the Loan Documents,

is such as to require any Governmental Approval or consent of any other Person that has not yet been obtained on the part of the Borrower or any Restricted Subsidiary, as applicable, in connection with the execution, delivery and performance of the Loan Documents to which it is party or require any Governmental Approval or consent of any other Person that has not yet been obtained on the part of the Borrower or any Restricted Subsidiary, as applicable, to the extent that failure of the Borrower or any Restricted Subsidiary to do so could reasonably be expected to result in a Material Adverse Effect.

(e) **Compliance with Requirement of Law**. None of the Borrower or any Restricted Subsidiary is in default with respect to any Requirement of Law relating to its or their respective businesses to the extent that the sanctions, consequences and penalties resulting from such defaults, if applied individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(f) **Environmental Compliance**. Without limiting the generality of paragraph (e) of this Section 11.1, none of the Borrower or any Restricted Subsidiary:

(i) is in violation of, or has any liability under, any Environmental Law applicable to the Borrower or such Restricted Subsidiary;

(ii) knows of the presence, release or disposal of any hazardous substances at any of its prior or currently owned, leased or operated property;

(iii) is subject to any litigation, investigation, order or proceeding in connection with hazardous substances or Environmental Laws; and

(iv) is subject to any environmental, health or safety condition,

which individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(g) **Operating Approvals**. The Borrower and Restricted Subsidiaries have obtained all Governmental Approvals which are necessary for their respective ongoing business operations and each such Governmental Approval is in full force and effect, is a good, valid and subsisting approval which has not been surrendered, forfeited or become void or voidable and there are no defaults under any Governmental Approval of the Borrower or any Restricted Subsidiary to the extent that failure to obtain such Governmental Approval or the sanctions, consequences and penalties resulting from such defaults, if applied individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(h) **No Defaults**. No event has occurred and no condition exists which would constitute a Default or an Event of Default and none of the Borrower or any Restricted Subsidiary is in default, nor is there in existence any event which with the giving of notice or passage of time would be a default, under any charter document, memorandum, articles, by-law, any employee benefit plan or any other Material Contract to which it is a party or by which it or its property may be bound to the extent that such defaults, if applied individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any Restricted Subsidiary has any material unfunded pension liabilities at closing of the Facility and has not failed to comply with applicable pension legislation thereafter.

(i) **No Pending Litigation or Proceedings**. There are no actions, suits, claims, investigations or proceedings pending or, to the knowledge of the Borrower, threatened against any of the Borrower or any Restricted Subsidiary, at law or in equity or before or by any Governmental Authority, which have a reasonable likelihood of being decided adversely to the Borrower or any Restricted Subsidiary and, as a result, would individually or in the aggregate, if adversely determined, reasonably be expected to: (i) result in a Material Adverse Effect, (ii) affect the legality, validity or enforceability of any Loan Document, or (iii) materially impair the ability of the Borrower or any Restricted Subsidiary to perform its obligations under the Loan Documents to which it is party.

(j) **Financial Statements**. The audited and unaudited financial statements of the Borrower and the Public Trust provided to the Lenders from time to time are prepared in accordance with GAAP consistently applied throughout the period involved (except as otherwise noted therein) and present fairly the financial condition, results of operations and changes in financial position of the Borrower and the Public Trust, on a consolidated basis or otherwise, for and as of the end of the period involved.

(k) **No Contingent Liabilities**. None of the Borrower or any Restricted Subsidiary has any contingent liabilities which are material to the Borrower or Restricted Subsidiaries taken as a whole excluding guarantees or similar assurances given by the Borrower in respect of the obligations of Subsidiaries or by Subsidiaries in respect of the obligations of the Borrower or other Subsidiaries other than as indicated on the financial statements including the notes thereto delivered pursuant to the terms hereof or as otherwise advised to the Lenders in writing.

(l) **Title to Property**. The Borrower is in compliance with Section 12.2(b).

(m) **Insurance**. The Borrower is in compliance with Section 12.1(d).

(n) **Taxes**. The Borrower and each Restricted Subsidiary has:

(i) filed all tax returns required to be filed in any jurisdiction and all taxes, assessments, fees and other governmental charges upon it, or upon any of its property, income or franchises, which are due and payable, have been paid timely or within appropriate extension periods or are being contested in good faith by appropriate proceedings;

(ii) collected, deducted, withheld and remitted to the proper taxing authorities when due all taxes required to be collected, deducted, withheld and remitted; and

(iii) made adequate provision on its books for any proposed additional tax assessments against it,

to the extent that failure to do any of the foregoing, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(o) **Ranking with Other Debt**. All payment obligations of the Borrower hereunder rank at least *pari passu* in right of payment with the other most senior unsecured unsubordinated indebtedness for borrowed money of the Borrower.

(p) **Existence of the Trusts**. The Public Trust is a "mutual fund trust" within the meaning of the *Income Tax Act* (Canada) and is a trust validly created and subsisting under the laws of the Province of Alberta and is fully qualified, registered or licensed to carry on business as a trust under the Requirement of Laws of each jurisdiction in which it carries on business, except to the extent the absence of which would not have, or would not be reasonably expected to have, a Material Adverse Effect on the administration of the Public Trust, or the Trustee in its capacity as trustee of the Public Trust, as applicable has full power and capacity to enter into and perform its obligations under each Material Contract to which the Public Trust is a party on behalf of the Public Trust and to carry on its business as currently conducted. The Commercial Trust is a trust validly created and subsisting under the laws of the Province of Alberta and is fully qualified, registered or licensed to carry on business as a trust under the Requirement of Laws of each jurisdiction in which it carries on business, except to the extent the absence of which would not have, or would not be reasonably expected to have, a Material Adverse Effect. The administrator of the Commercial Trust or its trustee, as applicable has full power and capacity to enter into and perform its obligations under each Material Contract to which the Commercial Trust is a party on behalf of the Commercial Trust and to carry on its business as currently conducted.

(q) **Liens**. There are no liens, mortgages, security interests or other encumbrances on the property of the Borrower, any Restricted Subsidiary or any Trust, other than Permitted Liens.

(r) **Intellectual Property**. The Borrower and each Restricted Subsidiary has a right to use all Intellectual Property necessary to continue to conduct its business as heretofore conducted by it, or now conducted by it, the Borrower and each Restricted Subsidiary conducts business without infringement of any Intellectual Property used by the Borrower or any Restricted Subsidiary and to the Borrower's knowledge, the use of the Borrower's or any Restricted Subsidiary's Intellectual Property does not contravene any Requirement of Law, except where the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

(s) **Subsidiaries**. Immediately subsequent to the closing of the Acquisition, the Borrower and the Public Trust have no Subsidiaries other than as set out in Schedule K and the jurisdictions of incorporation or creation, the location of their respective businesses and assets, the trade names of each, if any, used in such locations as set forth in Schedule K. The legal and beneficial owners of all of the issued and outstanding Voting Securities of the Borrower, each Restricted Subsidiary and the Commercial Trust is as set out in Schedule K.

(t) **Restricted Subsidiaries**. Schedule K lists all of the Restricted Subsidiaries.

(u) **Accuracy Information**. All information, materials, reports and data prepared by or on behalf of the Borrower, any Restricted Subsidiary or the Trusts and delivered to the Lenders are true, complete and accurate s of their respective dates, except to the extent that any inaccuracies would not reasonably be expected to have a Material Adverse Effect. With respect to financial models, budgets and sensitivities comprising the information referred to in the previous sentence, the Lenders acknowledge that such information was prepared in good faith based, where applicable, on assumptions believed by the Borrower to be reasonable in the context of which the same were provided and that there can be no guarantee that they will prove to be true, complete and accurate in all respects.

(v) **Subordinated Debt**. The Borrower agrees that all Debt owing to it from time to time by any Restricted Subsidiary who has provided a Guarantee shall be subordinated and rank junior to the greatest extent permitted by law to the claims of the Lenders arising under such Guarantee, provided that, such subordination and ranking shall not prevent the Restricted Subsidiary from making any payment on such Debt unless an Event of Default has occurred and is continuing.

(w) **Final Prospectus**. The Final Prospectus, as of the date thereof, constitutes full, true and plain disclosure of all material facts related to the securities offered by it and to the knowledge of the Borrower as of the date thereof, the Final Prospectus does not contain any misrepresentation likely to affect the value or market price of such securities.

ARTICLE 12
COVENANTS

12.1 **<u>Affirmative Covenants</u>**. The Borrower hereby covenants with the Administrative Agent and each Lender that until the Facility is cancelled and there are no Lender Outstandings payable hereunder, unless otherwise consented to by the Lenders (such consent not to be unreasonably withheld):

(a) **Partnership Existence**. The Borrower shall or shall cause to be done all things necessary to preserve and keep in full force and effect the Partnership's existence as a limited partnership in good standing under the laws of the Province of Alberta and the right to carry on its business, except to the extent that failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(b) **Corporate Existence**. The Borrower shall, and shall cause each Restricted Subsidiary, other than the Partnerships to, maintain and preserve its corporate existence and the right to carry on its business, except to the extent that failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(c) **Trust Existence**. The Borrower shall or shall cause to be done all things necessary to preserve and keep in full force and effect each of the Trust's existence as a trust in good standing under the laws of the Province of Alberta.

(d) **Insurance**. The Borrower shall, and shall cause each Restricted Subsidiary to, cause all its property which is of a character usually insured by companies operating like businesses to be properly insured and kept insured with reputable insurers (which may include associations or other organizations for mutual or reciprocal insurance) against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by companies operating like businesses; provided that from time to time another method or plan of protection against such loss or damage may be substituted, in whole or in part, for the aforesaid insurance if such method is reasonable according to industry standards, and provided further that self-insurance by the Borrower or a Restricted Subsidiary shall be deemed not to be a violation of this covenant to the extent that companies engaged in similar businesses self-insure.

(e) **Taxes**. The Borrower shall, and shall cause each Restricted Subsidiary to, pay and discharge when due:

(i) all taxes, assessments and governmental charges or levies imposed upon it, its income or its property or assets prior to the date on which penalties attach thereto; and

(ii) all lawful claims which, if unpaid, might become a lien (other than a Permitted Lien) upon its property or assets,

to the extent that failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(f) **Financial Information and Reports**. The Borrower shall furnish to the Lenders by delivery to the Administrative Agent the following:

(i) as soon as available, and in any event within 140 days, or such shorter period as may be required by applicable securities laws, after the end of its Fiscal Year, the consolidated audited annual financial statements of the Borrower and the Public Trust, together with a Quarterly Compliance Certificate;

(ii) as soon as available and in any event within 90 days after the end of each of the first three fiscal quarters of each Fiscal Year, the consolidated unaudited quarterly financial statements of the Public Trust and the Borrower together with a Quarterly Compliance Certificate;

(iii) as soon as practicable upon occurrence, notice of any Default or Event of Default;

(iv) concurrently furnish to the Administrative Agent all financial statements, proxy statements, information circulars, prospectuses, notices and other reports the Public Trust sends to holders of the Trust Units; and

(v) such additional information as the Lenders may reasonably request concerning the Borrower, the Restricted Subsidiary or the Trusts.

The Borrower shall be entitled to deliver any of the foregoing by notifying the Administrative Agent that such statements, reports or other filings as are required to be provided to the Administrative Agent have been posted on www.SEDAR.com.

(g) **Compliance with Laws**. The Borrower shall comply, and shall cause each Restricted Subsidiary to comply, with all Requirements of Law (including all

Environmental Laws) relating to its or their respective businesses to the extent that failure to comply, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(h) **Environmental Indemnity**. The Borrower will, and does hereby, indemnify and hold harmless the Administrative Agent and each of the Lenders and their respective directors, officers, employees and agents in respect of any costs (including for greater certainty legal costs), losses, damages, expenses, judgments, suits, claims, awards, fines, sanctions and liabilities whatsoever (including any costs or expenses of preparing any environmental assessment report or such other reports) arising out of or in respect of:

(i) the release of any hazardous or toxic waste or other substance into the environment from or on to the Borrower's or any Restricted Subsidiary's property or otherwise by the Borrower or any Restricted Subsidiary; and

(ii) the remedial action (if any) taken by the Administrative Agent and/or Lenders in respect of such release,

except this indemnity shall not apply in respect of claims occurring by reason of any actions or omissions of or by any trustee in bankruptcy in operating the said property unless such actions or omissions are found to have been conducted or omitted, as applicable:

(iii) in the course of operating such property in substantially the same manner as it was operated by the Borrower or any Restricted Subsidiary, as the case may be; or

(iv) in accordance with good industry practice as in effect at the time of such operations of the trustee.

This indemnity shall survive repayment of the Facility and termination of this Agreement.

(i) **Governmental Approvals**. The Borrower shall, and cause each Restricted Subsidiary to, obtain (to the extent not in existence on the date hereof), all Governmental Approvals necessary for the operation of its business as presently conducted and comply with the covenants, terms and conditions set out in such Governmental Approvals to the extent that failure to so obtain or non-compliance, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(j) **Business**. The Borrower shall, and shall cause each Restricted Subsidiary to, maintain its property and carry on and conduct its business in accordance with sound business practices.

(k) **Compliance with Material Contracts.** The Borrower will, and will cause each Restricted Subsidiary and each Trust to, comply with the Material Contracts to which each is a party and each other material agreement which evidences Debt of the Borrower, any Restricted Subsidiary or any Trust to the extent default in any of the foregoing, individually or in aggregate, could reasonably be expected to result in a Material Adverse Effect.

(l) **Maintenance of Books and Records**. The Borrower shall, and shall cause each Restricted Subsidiary and each Trust to, keep proper and adequate records and books of account in which true and complete entries will be made in a manner sufficient to enable the preparation of financial statements in accordance with GAAP and, upon the request of the Administrative Agent, make the same available for confidential inspection by the Lenders through the Administrative Agent at all reasonable times.

(m) **Payment**. The Borrower shall duly and punctually pay or cause to be paid to the Administrative Agent for the account of each Lender all principal, interest, fees and other amounts payable by it hereunder on the dates, at the places and in the moneys and manner set forth herein.

(n) **Inspection and Audit**. The Borrower shall, and shall cause each Restricted Subsidiary and each Trust to, at reasonable times and on reasonable notice and subject to observance of applicable safety rules and procedures, allow or enable the Administrative Agent or its representatives to visit and inspect the property and facilities of the Borrower, any Restricted Subsidiary or any Trust during normal business hours; provided however that such Person or Persons representing the Lenders shall hold all information obtained as a result of such visit or visits in confidence for the use of the Administrative Agent and the Lenders in the conduct of their business related to the transactions contemplated by this Agreement and that prior to a Default or Event of Default, any such visit and inspection shall be at the Lenders' expense;

(o) **Defend Title to Assets**. The Borrower shall, and shall cause each Restricted Subsidiary to, maintain, protect and defend title to its assets and take all such acts and steps as are necessary or advisable at any time and from time to time to retain its ownership or other interest and that of any Restricted Subsidiary in its assets in good standing (other than Permitted Title Defects and Permitted Liens).

(p) **Operations of Assets**. The Borrower shall, and shall cause each Restricted Subsidiary to, maintain and operate all of its property in accordance with good industry practice.

(q) **Notice of Certain Events**. The Borrower shall provide the Administrative Agent with prompt notice of any Default or Event of Default or any change in a Rating when a senior officer of the Borrower has knowledge of the same.

(r) **Ranking**. The Borrower shall ensure that the obligations of the Borrower hereunder and of each Restricted Subsidiary under the Loan Documents to which each is party to rank all times at least *pari passu* in right of payment with the other most senior unsecured Debt of the Borrower and such Restricted Subsidiary, as applicable.

(s) **Intellectual Property**. The Borrower will, and will cause each Restricted Subsidiary to, with respect to Intellectual Property owned by it, (i) prosecute diligently each Intellectual Property registration application pending as of the Closing Date or thereafter, as is appropriate in its best interests, (ii) make applications to register its Intellectual Property, as is appropriate in its best interests, and (iii) use its best efforts to preserve and maintain all rights in its Intellectual Property, as its appropriate in its best interests, except where the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

(t) **Restricted Subsidiaries**. The Borrower shall, within 30 days of a wholly-owned Subsidiary becoming, or being designated by the Borrower as, a Restricted Subsidiary, deliver to the Administrative Agent a Guarantee duly executed by such Restricted Subsidiary together with an opinion of Borrower's Counsel substantially in the form of the opinion delivered pursuant to Section 10.1(c) and the documents referred to in paragraphs (iii), (iv), (v) and (vi) of Section 10.1(c), in each case, with respect only to such Restricted Subsidiary. The Borrower shall, at all times, arrange its affairs such that the Borrower and the Restricted Subsidiaries own not less than 90% of the Consolidated Net Tangible Assets. On notice to the Administrative Agent, the Borrower shall be entitled to undesignate a Restricted Subsidiary provided that no Default or Event of Default results from doing so. The Borrower shall, forthwith after the closing of the Acquisition, cause Duke Energy Field Services Canada to deliver a Guarantee to the Administrative Agent, together with an opinion of Borrower's Counsel and an officer's certificate on behalf of Duke Energy Field Services Canada, each in form satisfactory to the Administrative Agent.

(u) **Trusts**. The Borrower shall, before issuing, creating, incurring or assuming any Debt owing to a Trust, cause such Trust to execute and deliver a Subordination Agreement to the Administrative Agent on behalf of the Lenders, together with an opinion of Borrower's Counsel in respect thereof, in form acceptable to the Lenders, acting reasonably.

12.2 **<u>Negative Covenants</u>**. The Borrower hereby covenants with the Administrative Agent and each Lender that until the Facility is cancelled and there are no Lender Outstandings hereunder, unless otherwise consented to by the Lenders (such consent not to be unreasonably withheld), not to, and to cause each Restricted Subsidiary not to:

(a) **Legal Existence**. Enter into any transaction affecting its jurisdiction of incorporation or existence (whether by way of reconstruction, reorganization, consolidation, amalgamation, merger or transfer, sale or lease of substantially all of its assets) except as provided in Article 14.

(b) **Negative Pledge**. Except for Permitted Liens, create or suffer to exist any mortgage, pledge, charge or other encumbrance (whether fixed or floating) on any of its or any Trust's assets.

(c) **Debt Incurrence**. Subject to Section 12.1(u) and Section 12.2(l), issue, create, incur or assume any Debt if after taking into consideration the incurrence thereof, the Borrower would be in breach of its Financial Covenants.

(d) **Maintenance of Assets**. Directly or indirectly make any sale, exchange, lease, transfer or other disposition of all or a majority of its assets to any Person, other than as expressly permitted hereunder.

(e) **Distributions**:

(i) Make or give effect to any Distributions if a Default or Event of Default has occurred and is continuing, except that regularly scheduled monthly cash distributions by the Borrower or any Restricted Subsidiary to either Trusts may be made while a Default is subsisting, but prior to an Event of Default occurring, provided that in any such case, no new Default or Event of Default would reasonably be expected to occur as a result of making such Distribution or other payment;

(ii) make or give effect to any Distributions in excess of Distributable Cash Flow, except that, the Borrower shall be entitled to make Distributions to the Trusts which may result in monthly Distributions by the Borrower in excess of Distributable Cash Flow available for such month, provided that aggregate Distributions by the Borrower in any fiscal year of the Borrower does not exceed Distributable Cash Flow for such fiscal year; or

(iii) make any payment in respect of any Subordinated Debt during a Default or Event of Default or if such payment would reasonably be expected to cause a Default or Event of Default to occur;

other than Distributions by a Subsidiary to the Borrower or a Restricted Subsidiary.

(f) **Restrictions on Swaps**. Enter into any Swap, other than a Swap entered into in the ordinary course of its business and which is in accordance with the policies of the board of directors of the Borrower or such Restricted Subsidiary.

(g) **Transactions with Affiliates**. Engage in, or permit any Restricted Subsidiary to engage in, any material transaction with any Affiliate of the Public Trust or the Borrower (other than the Borrower, or another wholly owned Subsidiary of the Borrower, as applicable) on terms which are materially less favourable to the Borrower or such Restricted Subsidiary than would be obtainable at the time in comparable transactions with any other Person other than in accordance with any Material Contracts.

(h) **Financial Assistance.** Provide any guarantee, loan or other financial assistance to any Person, including any Subsidiary which is not directly or indirectly wholly-owned by the Borrower (other than (i) a wholly owned Subsidiary, or (ii) a Trust provided such Trust has executed and delivered a Subordination Agreement and the other documents required by Section 12.1(u) prior to the provision of such financial assistance), if the amount thereof at any one time exceeds Cdn. $25,000,000, in aggregate.

(i) **Material Contracts**. Modify, alter, amend, extend, renew, replace, knowingly waive strict and timely performance of any compliance with (including waiving any default under), terminate, cancel, suspend or assign any Material Contract or any term, agreement, provision, item, obligation or covenant contained in any Material Contract, if to do so could reasonably be expected to have a Material Adverse Effect, without the prior written consent of the Lenders, such consent not to be unreasonably withheld. Without limiting the foregoing, the Borrower will not permit any amendment to the terms of the Material Contracts as they relate to the determination and calculation of Distributions or Distributable Cash Flow that can be distributed by the Borrower or any Restricted Subsidiary without the prior consent of the Lenders if such amendment would materially change the determination or method of calculation of such Distributions or Distributable Cash Flow.

(j) **Subordinated Debt**. Make any optional prepayments of principal in connection with, or modify the material terms of, Subordinated Debt.

(k) **No Distribution Restrictions**. Enter into any agreement or create any constating documents of a Subsidiary that would prohibit distributions from being made by a Subsidiary to the Borrower.

(l) **Restriction on Subsidiary Debt**. Permit its Debt Affiliates to incur or assume in aggregate any Debt if the aggregate amount of Debt owed by all Debt Affiliates exceeds at any time Cdn. $100,000,000, where such aggregate amount is the sum of each Debt Affiliate's Debt multiplied by the Borrower's direct or indirect percentage ownership interest in each such Debt Affiliate. For purposes of this Section 12.2(l), "**Debt Affiliate**" means (i) Restricted Subsidiaries that are not wholly owned Subsidiaries of the Borrower, and (ii) each Person in which the Borrower has a direct or indirect non-controlling interest.

12.3 **<u>Financial Covenants</u>**. The Borrower hereby covenants with the Administrative Agent and each Lender that until the Facility is cancelled and there is no Lender Outstandings payable hereunder, unless otherwise consented to by the Lenders:

(a) the Debt to EBITDA Ratio will not exceed 4.0 to 1.0; and

(b) the Interest Coverage Ratio will not be less than 3.0 to 1.0;

in each case, subject to paragraphs (h) and (i) of Section 4.4, measured on a rolling four fiscal quarter basis at the end of each fiscal quarter of the Borrower.

ARTICLE 13
SUCCESSOR COMPANIES

13.1 **Certain Requirements in Respect of Mergers, etc**. The Borrower shall not, and shall cause each Restricted Subsidiary not to, enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of another Person (in this Article 13 called a "**Successor Entity**") whether by way of reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale, conveyance or otherwise unless:

(a) the Successor Entity shall execute, prior to or contemporaneously with the consummation of such transaction, an agreement satisfactory to the Administrative Agent and in the opinion of Lenders' Counsel necessary and advisable to evidence the assumption by the Successor Entity of all obligations of the Borrower under this Agreement;

(b) such transaction shall to the satisfaction of the Administrative Agent and in the opinion of Lenders' Counsel be upon such terms as substantially to preserve and not impair any of the rights and powers of the Administrative Agent and the Lenders hereunder;

(c) evidence has been furnished to the Administrative Agent to the effect that no condition or event shall exist with respect to the Borrower or the Successor Entity either:

(i) at the time of or immediately after such reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or conveyance and after giving full effect thereto; or

(ii) immediately after the Successor Entity complying with the provisions of Section 13.1(a) above; which constitutes a Default or an Event of Default; and

(d) evidence has been furnished to the Administrative Agent to the effect that the Successor Entity is lawfully entitled to hold or acquire and operate the said undertaking, property and assets.

13.2 **Vesting of Powers in Successor**. Whenever the conditions of Section 13.1 have been duly observed and performed a Successor Entity shall possess and from time to time may exercise each and every right and power of the Borrower under this Agreement in the name of the Borrower or otherwise and any act or proceeding by any provision of this Agreement required to be done or performed by any directors or officers of the Borrower may be done and performed with like force and effect by the like directors or officers of the Successor Entity.

13.3 **Notwithstanding**. Nothing in this Article 13 applies to or limits in any way any consolidation, amalgamation, merger, transfer, sale, conveyance or other transaction between the Borrower and one or more Restricted Subsidiaries or between Restricted Subsidiaries, provided that no Default or Event of Default is existing at such time or would result therefrom.

ARTICLE 14
DEFAULT AND ENFORCEMENT

14.1 **Events of Default**. The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:

(a) if the Borrower shall fail to pay on the Repayment Date any Principal Outstandings due under the Facility;

(b) if the Borrower shall fail to pay, within three Banking Days after receiving written notice from the Administrative Agent on behalf of the Lenders of a failure to pay on the due date, Lender Outstandings, other than Principal Outstandings under the Facility, provided no grace period shall apply if failure to pay reoccurs on a continuing basis;

(c) except as provided for in paragraphs (a) and (b) above, if the Borrower, a Restricted Subsidiary or a Trust fails to perform or observe any other term, condition, covenant or undertaking contained in any Loan Document or any representation or warranty made by the Borrower, a Restricted Subsidiary or a Trust in any Loan Document (or in any certificate, statement or notice issued related hereto or thereto) is incorrect when made or deemed made, and the Borrower, a Restricted Subsidiary or a Trust fails to cure such default or incorrect representation or warranty within 30 days of receiving written notice from the Administrative Agent on behalf of the Lenders in connection therewith;

(d) if any Debt of the Borrower, any Restricted Subsidiary or a Trust in excess of the Canadian Dollar Equivalent of Cdn. $25,000,000, in aggregate, shall become due prior to its stated maturity owing to a default thereunder and such default is not being contested in good faith and the Lender has accelerated or demanded immediate payment of amounts due;

(e) if any application is made with respect to the Borrower, a Restricted Subsidiary or a Trust under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or similar legislation or if the Borrower, a Restricted Subsidiary or a Trust shall commit any act of bankruptcy or shall become insolvent or shall make an assignment or proposal under the bankruptcy legislation of any jurisdiction or make a general assignment in favour of its creditors;

(f) if a receiver or receiver-manager is appointed of any material part of the assets of the Borrower, a Restricted Subsidiary or a Trust or if a proceeding is instituted for the winding up of the Borrower, a Restricted Subsidiary or a Trust or a bankruptcy petition shall be filed or presented against the Borrower, a Restricted Subsidiary or a Trust, unless such application, appointment, proceeding or petition is being contested in good faith by the Borrower, any Restricted Subsidiary or a Trust and in connection therewith, dismissed, stayed or withdrawn within 30 days of such Borrower, any Restricted Subsidiary or Trust receiving notice, or otherwise having knowledge, of the institution thereof;

(g) if any encumbrancers or lienors take possession of any property of the Borrower, any Restricted Subsidiary or a Trust having a fair market value aggregating in excess of the Canadian Dollar Equivalent of Cdn. $25,000,000 or if any execution or any other process of any court for an amount or amounts in aggregate in excess of the Canadian Dollar Equivalent of Cdn. $25,000,000 shall become enforceable against the Borrower, any Restricted Subsidiary or a Trust at any one time or if a distress or analogous process for an amount or amounts in aggregate in excess of the Canadian Dollar Equivalent of Cdn. $25,000,000 shall be levied upon the property of the Borrower, any Restricted Subsidiary or a Trust or any part thereof at any one time, unless the same is either paid or is being contested in good faith and in connection therewith, dismissed, stayed or withdrawn within 30 days of such Borrower, Restricted Subsidiary or Trust, as applicable, receiving notice or otherwise having knowledge of the institution thereof;

(h) if any Loan Document or Material Contract is terminated or ceases to be an enforceable obligation of the Borrower, the Restricted Subsidiary or the Trust that is party thereto or if the Borrower, any Restricted Subsidiary or a Trust disputes its enforceability;

(i) if the Borrower ceases or threatens to cease to carry on its business or disposes or threatens to dispose of all or substantially all of its assets whether by one transaction or a series of transactions except as permitted under Article 14;

(j) if the Manager is no longer responsible for the management and administration of the Public Trust, the Commercial Trust, the Borrower or any Subsidiaries of the Borrower to the extent provided for in the Management Agreement or the Administration Agreement, as applicable unless a change of the Manager has been consented to by all of the Lenders, in their sole discretion;

(k) if the Public Trust ceases to be a "mutual fund trust" within the meaning of the *Income Tax Act* (Canada) other than by reason of a Requirement of Law;

(l) if the Trust Units cease to be listed or posted for trading on a recognized North American stock exchange; or

(m) if the audited financial statements of the Public Trust or the Borrower contain an Impermissible Qualification, and such Impermissible Qualification is not rectified or otherwise dealt with to the satisfaction of the Majority Lenders within a period of 30 days after notice thereof by the Administrative Agent to the Borrower.

14.2 **Rights upon Default**. Upon the occurrence of an Event of Default and for so long as such Event of Default shall continue the Majority Lenders may, immediately upon notice to the Borrower, cancel the Facility and declare the entire amount of Principal Outstandings, all unpaid accrued interest and all fees and other amounts required to be paid by the Borrower hereunder to be immediately due and payable without the necessity of presentment for payment, notice of non-payment and of protest (all of which are hereby expressly waived) and proceed to exercise any and all rights and remedies hereunder; provided that in the case of any of the Events of Default specified in Section 14.1(e) or (f), without any notice to the Borrower or any other act by the Administrative Agent or the Lenders, the Facility shall thereupon terminate and the entire amount of Principal Outstandings, all unpaid accrued interest and all fees and other amounts required to be paid by the Borrower hereunder shall be immediately due and payable without the necessity of presentment for payment, notice of non-payment and of protest (all of which are hereby expressly waived) and the Administrative Agent and the Lenders may proceed to exercise any and all rights and remedies hereunder.

14.3 **Judgment Currency**. If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in U.S. Dollars into Canadian Dollars, the rate of exchange which shall be applied shall be the Noon Rate for the conversion of U.S. Dollars into Canadian Dollars on the Banking Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any sum due from it hereunder in U.S. Dollars shall, notwithstanding any judgment in Canadian Dollars, be discharged only to the extent that on the Banking Day following receipt by the Lenders of any sum adjudged to be due hereunder in Canadian Dollars the Lenders may purchase U.S. Dollars with Canadian Dollars at the Noon Rate and, if the amount of U.S. Dollars so purchased falls short of the sum originally due to the Lenders in U.S. Dollars, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Lenders against such shortfall.

14.4 **Indemnity**. The Borrower shall fully indemnify and hold the Administrative Agent and the Lenders harmless from and against any loss, expense, damage or liability (as to the amount of which the certificate of the Administrative Agent shall be *prima facie* evidence) incurred directly or indirectly as a result of the entry into and performance of this Agreement, the use of the Facility proceeds or any Event of Default; provided that the foregoing indemnity will not apply to any such loss, expense, damage or liability resulting from the wilful misconduct or negligence of such indemnified party. Without limiting the generality of the foregoing, the foregoing indemnity shall extend to any interest, fees or other sums whatsoever paid or payable on account of any funds borrowed by the Lenders in order to carry any unpaid amount and to any loss, premium, penalty or expense which may be incurred by the Lenders in liquidating or employing deposits from third parties acquired to make, maintain or fund a Drawing or any part thereof or any amount due or to become due under this Agreement.

14.5 **Cash Collateral Accounts**.

(a) **Exchange Rate Fluctuations**. Upon the receipt of cash cover by the Administrative Agent pursuant to Section 4.2 and in addition to any other rights or remedies of the Lenders hereunder, the Administrative Agent, for the benefit of the Lenders hereunder, shall thereafter be entitled to deposit and retain in a cash collateral account, bearing interest at the Administrative Agent 's prevailing rates for demand deposits of comparable amounts which are received by the Administrative Agent from the Borrower until the next Banking Day on which there has been no such excess under Section 8.1 for a period of five (5) consecutive Banking Days whereupon all such amounts shall be immediately credited to the Borrower's Prime Drawings, or if such amounts exceed the amount of such Prime Drawings, returned to the Borrower.

(b) **Bankers' Acceptances, Libor Drawings and Letters of Credit**. Upon the occurrence of an event described in Section 14.1(e) or delivery of a Demand for Repayment, the Borrower shall forthwith pay to the Administrative Agent, for deposit into a cash collateral account, an amount equal to the Lenders' maximum potential liability under the Borrower's then outstanding Bankers' Acceptances and Letters of Credit and, unless the Borrower makes payments of the amount required pursuant to Section 8.1, LIBOR Drawings (collectively, the "**Escrow Funds**"). The Escrow Funds shall be held by the Administrative Agent for set off against future Principal Outstandings owing by the Borrower to the Lenders in respect of such Bankers' Acceptances and Letters of Credit and shall be held until repayment of such Principal Outstandings in full, except to apply the amount represented thereby to the Principal Outstandings or a portion thereof. Escrow Funds shall bear interest at the Administrative Agent's prevailing rates for demand deposits of comparable amounts.

14.6 **Right of Set Off**. Upon the occurrence and during the continuance of an Event of Default, and in addition to any rights now or hereafter granted under Requirement of Law and not by way of limitation of any such rights, the Administrative Agent and the Lenders are authorized at any time and from time to time thereafter, without notice to the Borrower or to any other Person, (any such notice being expressly waived by the Borrower) to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final) and any other Debt at any time held by or owing by the Administrative Agent or such Lender to or for the credit of or the account of the Borrower or any Restricted Subsidiary against and on account of the Lender Outstandings of the Borrower to the Administrative Agent or such Lender under this Agreement or any other Loan Document, including all claims of the Administrative Agent or any Lender of any nature or description arising out of or connected with this Agreement, irrespective of whether or not the Administrative Agent or any Lender has made any demand under this Agreement and although such obligations, liabilities or claims of the Borrower or any of them are contingent or unmatured.

14.7 **Lenders May Perform Covenants**. If the Borrower or any Restricted Subsidiary shall fail to perform any of its obligations under any covenant contained in any of the Loan Documents within the time permitted for the performance of any such covenant or for the cure of any default thereof, the Administrative Agent may on behalf of the Lenders, on the instructions of the Majority Lenders, perform any such covenant capable of being performed by it and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds on behalf of the Lenders. If the Majority Lenders elect to effect such observance or performance, neither the Administrative Agent nor the Majority Lenders shall be liable for any failure or deficiency, apart from fraud or gross negligence, in effecting such observance or performance, nor for the payment of any bills, invoices or accounts incurred or rendered in connection therewith. All amounts so paid by the Administrative Agent hereunder shall be repaid by the Borrower on demand therefor, and shall bear interest at the rate set forth in Section 4.6 from and including the date paid by the Administrative Agent hereunder to but excluding the date such amounts are repaid in full by the Borrower.

ARTICLE 15
ASSIGNMENT

15.1 **Assignment**. A Lender shall not be entitled to assign or otherwise transfer all or a portion of its rights under this Agreement except as follows:

(a) a Lender shall be entitled to assign all or a portion of its rights and obligations under this Agreement to any Canadian financial institution or Schedule III bank with the consent of the Administrative Agent and the Borrower, such consent not to be unreasonably withheld or delayed, provided that it is agreed that it shall not be unreasonable for the Borrower to withhold consent for reasons concerning the creditworthiness of a financial institution or an increase of borrowing cost of the Borrower (other than as a result of a difference, if any, in the BA Discount Rate applicable to the assigning Lender and the assignee Lender). The consent of the Borrower or the Administrative Agent to an assignment by a Lender shall not be required if a Default or Event of Default has occurred and is continuing;

(b) unless a Lender assigns all of its rights and obligations under this Agreement:

(i) it shall not make an assignment of less than Cdn. $5,000,000 plus integral multiples of Cdn. $1,000,000 of its maximum commitment hereunder; and

(ii) after any assignment neither the assignor's nor the assignee's maximum commitment hereunder shall be less than Cdn. $5,000,000;

provided that this Section 15.1(b) shall not apply if an Event of Default has occurred and is not waived by the Lenders;

(c) no assignment shall, in connection therewith, result in increased costs to the Borrower under Sections 8.8 and 9.1; and

(d) any Lender who assigns any interest hereunder shall pay to the Administrative Agent for the Administrative Agent's account a fee of $3,500 at the time of transfer.

Notwithstanding the provisions of this Section 15.1, a Lender shall be entitled to allow a participation in all or any portion of its rights and obligations under this Agreement without notice to or the consent of the Administrative Agent or Borrower; provided, however, that such Lender shall remain responsible for all of its obligations under this Agreement and neither the Administrative Agent nor the Borrower shall have any direct obligation to, or be required to communicate with or otherwise recognize or deal with, such participant.

15.2 **Assignment Agreement**. Any assignee contemplated in Section 15.1(a) shall execute, together with the assignor, the Borrower and the Administrative Agent, a Lender Assignment Agreement and thereupon shall be deemed to be a "Lender" for all purposes of this Agreement, and shall be responsible for all obligations herein and entitled to the full benefit hereof to the same extent as if it was an original party in respect of the rights and obligations assigned to it. Upon any such assignment, each Lender's Proportion shall be deemed adjusted to reflect each Lender's respective percentage interest in the Facility.

15.3 **Further Assurances**. The Borrower will, at the expense (other than the Borrower's legal expenses) of the assignee, execute such further documents and do such other things as the assignee, Administrative Agent or other Lenders may reasonably request for the purpose of any such assignment.

15.4 **Release of Information**. The Borrower hereby authorizes and consents to the release of financial and other information, including the details of this Agreement, to prospective assignees hereunder, and the Borrower agrees, upon reasonable request, to provide prospective assignees with current financial and other information, as is available to the Borrower, and customarily provided by it to financial institutions in connection with financing transactions of this type; provided, however, that in each case the prospective assignee has previously agreed in writing to be bound by the provisions of Section 17.4 with respect to such information.

15.5 **Assignment by Borrower**. Except as permitted by Section 13.1, the Borrower shall not, and shall not permit any Restricted Subsidiary to, assign all or any portion of its rights or obligations under any Loan Document without the prior written consent of the Lenders, which consent may be arbitrarily withheld.

15.6 **Enurement**. Subject to the foregoing provisions of this Article 15, this Agreement shall be binding upon and enure to the benefit of each of the parties and their respective permitted successors and assigns.

ARTICLE 16
THE ADMINISTRATIVE AGENT

16.1 **Authorization**. Subject to Section 16.8, each Lender hereby irrevocably designates and appoints the Administrative Agent as its agent and each such Lender hereby irrevocably authorizes the Administrative Agent to take such action on its behalf and to exercise such rights and powers as are specifically delegated to it by this Agreement and such other rights and powers as are incidental thereto. The Administrative Agent shall not have any responsibilities or be required to exercise any right or power or take any action as to any matters not expressly provided for by and specified in this Agreement and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Administrative Agent. For greater certainty, the Administrative Agent shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of the Borrower, to inspect the property (including the books and records) of the Borrower or to see to the satisfaction of any condition precedent, due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement. The Administrative Agent shall never be required to take any action that is contrary to this Agreement or Requirement of Law or which may, in the Administrative Agent's sole discretion, expose it to liability. In connection with its rights, responsibilities and powers under this Agreement, the Administrative Agent shall act solely as the agent of each of the Lenders and the Administrative Agent shall not assume, and shall not be deemed to have assumed, any obligations to, or fiduciary relationship with, the Lenders or the Borrower other than as specifically provided in this Agreement.

16.2 **Notices, etc**. The Administrative Agent shall, by original delivery, facsimile, electronic communication or otherwise, forthwith provide to each Lender a copy of all notices and documents served or delivered by the Borrower under this Agreement. For greater certainty, notices permitted or required under the terms hereof between the Borrower and the Administrative Agent on behalf of the Lenders will be given in accordance with Section 17.3. The Administrative Agent and the Lenders may provide each other with such information concerning the financial position and operation of the Borrower as the Administrative Agent and the Lenders may see fit.

16.3 **Action by Administrative Agent**. The Administrative Agent shall not be obliged:

(a) to take any steps to ascertain whether any Default or Event of Default has occurred, so that until the Administrative Agent has received express written notice to the contrary from the Borrower or a Lender, it shall be entitled to assume that no Default or Event of Default has occurred; or

(b) to transmit to the Lenders any information in any way relating to the Borrower or this Agreement which the Administrative Agent may have acquired otherwise than in connection with the performance of their respective duties under this Agreement;

and the Administrative Agent at its sole discretion may refrain from exercising any right or taking any action against the Borrower for the recovery of any sum due hereunder until it has been fully indemnified against any and all costs, losses, expenses or liabilities (including legal fees) which it would or might sustain or incur as a result of such exercise or action, by each Lender in its respective Lender's Proportion. If any indemnity furnished to the Administrative Agent for any purpose shall, in the opinion of the Administrative Agent, be insufficient or become impaired, the Administrative Agent may call for additional indemnity and not commence or cease to do the acts indemnified against until such additional indemnity is furnished.

16.4 **No Reliance**. Each Lender hereby acknowledges in favour of the Administrative Agent:

(a) that neither the Administrative Agent nor any of its directors, officers, employees, agents, legal counsel or affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower, shall be deemed to constitute any representation or warranty by the Administrative Agent to such Lender;

(b) that it has made such enquiries and taken such care on its own behalf as would have been the case had its participation in the Facility been made directly by such Lender to the Borrower without the intervention of the Administrative Agent or any other Person and that it has not relied, and does not rely, upon any information or advice provided, or any appraisal of, or investigation into the financial condition, creditworthiness, affairs, status or nature of the Borrower effected by the Administrative Agent in such capacity; and

(c) that it shall, independently and without reliance upon the Administrative Agent or any Person other than the Borrower, and based upon such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower; and

(d) that the Administrative Agent shall not be obliged either before or at any time after the signing of this Agreement to provide such Lender with any information or advice or to make any investigation or appraisal into the financial condition, creditworthiness, operations, property, affairs, status or nature of the Borrower.

16.5 **Liability of Administrative Agent**. Neither the Administrative Agent nor any of its directors, officers, employees or agents shall be responsible or liable:

(a) for the execution, legality, validity, sufficiency, enforceability or effectiveness of this Agreement;

(b) for any failure of the Borrower or any Lender to duly and punctually observe and perform any of their respective obligations under this Agreement;

(c) for any statement, representation or warranty made or referred to in this Agreement or in any certificate, report, statement, or document given to any of the Lenders;

(d) for any action taken or omitted by any of them under or in connection with this Agreement unless such action is directly due to their own negligence or wilful misconduct;

(e) for the consequences of relying on any communication or document believed by any of them to be genuine and correct and to have been communicated or signed by the Person by whom it purports to be communicated or signed;

(f) for the financial condition of the Borrower; or

(g) for the consequences of relying in good faith on the advice of any professional advisers selected by any of them in connection with this Agreement.

16.6 **Dealings by Administrative Agent**. With respect to its own participation in the Facility and the borrowings hereunder, the Administrative Agent, in its capacity as a Lender, shall have the same rights and powers under this Agreement as any other Lender and may exercise them as though it was not also acting as agent for the Lenders. The Administrative Agent and its affiliates may, without liability to disclose or account, engage in any kind of financial, trust or commercial business with, or acquire or dispose of any kind of security of, the Borrower or any of its affiliates as if the Administrative Agent was not the agent for the Lenders and neither the Administrative Agent nor any of its affiliates shall have any obligation to disclose or account for any dealings which it may have had with the Borrower or any of its affiliates prior to or after the date of this Agreement.

16.7 **Dealings by Lenders**. Subject to the provisions of this Agreement, each Lender may deal with the Borrower in all transactions and generally may engage in any banking business with or provide any financial services to the Borrower without any liability to account to any other Lender therefor.

16.8 **Termination of Agency**.

(a) The Administrative Agent may, as hereinafter provided, resign at any time by giving 30 days written notice thereof to the Lenders and Borrower. Upon such resignation, the Borrower, with the consent of the Majority Lenders, such consent not to be unreasonably withheld or delayed, shall have the right to appoint from among the Lenders a successor agent. No such resignation shall be effective until a successor agent has been appointed. If no successor agent shall have been appointed, and shall have accepted such appointment, within 30 days after delivery of the retiring Administrative Agent's notice of resignation, then the retiring Administrative Agent may within a further 30 days appoint, on behalf of the Lenders, a successor, which shall be a Canadian chartered bank with an office in Toronto.

(b) Upon the written acceptance by the successor agent of its appointment as Administrative Agent:

(i) as regards the Borrower and each of the Lenders, such successor shall become bound by all the obligations of the Administrative Agent and become entitled to all the rights, privileges, powers, authorities and discretions of the Administrative Agent hereunder; and

(ii) the agency of the retiring Administrative Agent shall terminate but without prejudice to any liabilities which the retiring Administrative Agent may have incurred prior to the termination of its agency; and (iii) the retiring Administrative Agent shall be discharged from any further liability or obligation under this Agreement.

The provisions of this Agreement shall continue in effect for the benefit of any retiring Administrative Agent in respect of any actions taken or omitted to be taken by it or any event occurring before the termination of its agency.

16.9 **Notice of Default by Administrative Agent**. In the event that the Administrative Agent receives express written notice from the Borrower of the occurrence of any Default or Event of Default, the Administrative Agent shall give prompt notice thereof to the Lenders and consult with the Lenders with respect to the action to be taken. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed in writing by the Majority Lenders (subject to Section 14.2 and Section 16.13); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

16.10 **Reliance by Administrative Agent on Notices**. The Administrative Agent shall be entitled to rely upon any writing, letter, notice, certificate, telex, cable, statement, order or other document believed by the Administrative Agent to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and, with respect to legal matters, to act upon advice of legal advisers selected by the Administrative Agent (including in-house counsel of the Administrative Agent) concerning all matters pertaining to this Agreement and the Administrative Agent's duties hereunder.

16.11 **Action by Lenders**. Except as provided otherwise in Section 14.2 or Section 16.13, where the terms of this Agreement refer to any action to be taken hereunder or thereunder by the Lenders or to any such action that requires the consent, approval, satisfaction, agreement or other determination of the Lenders, the action taken by and consent, approval, satisfaction, agreement or other determination given or made by the Majority Lenders shall constitute the action, consent, approval, agreement or other determination of the Lenders herein or therein referred to.

16.12 **Amendment**. Except as provided in Section 16.13, any provision of this Agreement may be amended only if the Borrower and the Majority Lenders so agree in writing and any Default or Event of Default may be waived before or after it occurs only if consented to by the Majority Lenders.

16.13 **Unanimity**. Any amendment, extension or waiver of, or consent to, the terms of this Agreement which changes or relates to:

(a) the amount of the Facility or any Lender's Proportion thereof (except for the permanent reductions and assignments expressly contemplated hereby);

(b) the rate or dates or order of payment of interest, reductions in the Applicable Margin or any BA Stamping Fees or other fees payable hereunder;

(c) subject to Section 8.4, the Repayment Date;

(d) any alteration of the amount, currency or mode of calculation or computation of any principal, interest or other amounts owing hereunder;

(e) Section 14.1(j);

(f) the definition of Majority Lenders;

(g) the assignment or transfer by the Borrower of any or all of its rights and obligations under this Agreement unless permitted under Article 13; and

(h) this Article 16 or any amendment hereof,

shall require the consent, approval or agreement of all Lenders.

16.14 **Enforcement**. Each Lender hereby acknowledges that, to the extent permitted by law, the remedies provided in this Agreement to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder are to be exercised not severally, but collectively by the Administrative Agent upon the decision of the Majority Lenders, as the case may be. Accordingly, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder including any declaration of an Event of Default but that any such action shall be taken only by the Administrative Agent with the prior agreement of the Majority Lenders, as the case may be.

16.15 **Apportionment of Drawings**. If the apportionment of a Drawing or Drawings among the Lenders cannot be evenly made in the Lender's Proportions, the Administrative Agent shall round allocations among the Lenders consistent with the Administrative Agent's money market practices.

16.16 **Inter-Lender Payments**. Promptly upon receipt of any payment from the Borrower under this Agreement, the Administrative Agent shall remit to each Lender entitled thereto its share of such payment, as determined by the Administrative Agent in accordance herewith, by payment to such Lender's Lending Branch.

16.17 **Failure of Borrower to Repay**. Unless the Administrative Agent has been notified in writing by the Borrower at least one Banking Day prior to the date on which any payment to be made by the Borrower hereunder is due that the Borrower does not intend to remit all or any part of such payment, the Administrative Agent may, in its discretion (and absolutely without obligation) assume that the Borrower has remitted such payment when so due and the Administrative Agent may, in its discretion and in reliance upon such assumption, make available to each Lender on such payment date an amount equal to the amount of such payment which is due to such Lender pursuant to this Agreement. If the Borrower does not in fact remit such payment to the Administrative Agent, the

Administrative Agent shall promptly notify each Lender and each Lender shall forthwith on demand by the Administrative Agent repay to the Administrative Agent the amount of such assumed payment made available to such Lender, together with interest thereon until the date of repayment thereof at a rate determined by the Administrative Agent (such rate to be conclusive and binding on such Lender) in accordance with the Administrative Agent's usual banking practice for such advances to financial institutions of like standing to such Lender.

16.18 **Failure of Lender to Advance**. Unless the Administrative Agent has been notified in writing by a Lender at least one Banking Day prior to a Drawing Date, Rollover Date or Conversion Date that such Lender does not intend to make available the portion of the Drawing due to be made available by such Lender pursuant to this Agreement on such date, the Administrative Agent may, in its discretion, assume that such Lender has remitted funds to the Administrative Agent in an amount equal to the amount required to be made available by such Lender pursuant to this Agreement and the Administrative Agent may, in its discretion (and absolutely without obligation) assume that the Lenders have remitted such funds when so due and the Administrative Agent may in reliance upon such assumption make available to the Borrower on such Drawing Date, Rollover Date or Conversion Date an amount equal to the amount required to be made available by such Lender pursuant to this Agreement. If a Lender does not remit such funds to the Administrative Agent, the Administrative Agent shall promptly notify such Lender and such Lender shall forthwith remit such funds to the Administrative Agent, failing which the Borrower shall forthwith on demand by the Administrative Agent repay to the Administrative Agent (without prejudice to the Borrower's rights against the Lender that has not remitted funds to the Administrative Agent) the amount made available by the Administrative Agent on behalf of such Lender, together with interest thereon until the date of repayment thereof at a rate determined by the Administrative Agent (such rate to be conclusive and binding on such Lender or the Borrower, as the case may be) in accordance with the Administrative Agent's usual banking practice for advances to financial institutions of like standing to such Lender, which rate shall not exceed the rate applicable hereunder.

16.19 **Overpaid Lender**. If a Lender (an "**Overpaid Lender**") shall obtain any payment, whether voluntary, involuntary or otherwise (other than any amounts expressly permitted to be paid solely to such Lender pursuant to this Agreement), to be applied on account of any portion of the Drawings owed to it which is in excess of its Lender's Proportion thereof (such excess portion is the "**Excess Payment**") then:

(a) such Overpaid Lender shall immediately pay to the Administrative Agent an amount equal to the Excess Payment, together with interest thereon at a rate determined in accordance with such Overpaid Lender's usual banking practice in respect of deposits of amounts comparable to the amount of such payment at the time such payment is made, whereupon the Administrative Agent shall notify the Borrower of its receipt by the Administrative Agent;

(b) the Administrative Agent shall remit to each Lender (other than the Overpaid Lender) its share of such Excess Payment (calculated without reference to the share of the Overpaid Lender); and

(c) as between the Borrower and the Overpaid Lender, the Excess Payment shall be treated as not having been paid and as between the Borrower and each Lender (other than the Overpaid Lender), the applicable share of the Excess Payment shall be treated as having been paid to each such Lender on the date such Excess Payment was made to the Overpaid Lender;

provided that if all or any portion of such Excess Payment is subsequently required to be repaid by the Overpaid Lender to the Borrower each other Lender shall promptly repay to the Administrative Agent for the account of such Overpaid Lender an amount equal to any amount which such other Lender had received pursuant to this Section 16.19.

16.20 Adjustments Among Lenders.

(a) After the occurrence of an Event of Default and acceleration of all or any portion of the Drawings and other amounts outstanding hereunder, each Lender shall, at any time and from time to time upon the request of the Administrative Agent as required by any Lender, purchase portions of the Drawings and other amounts made available by the other Lenders which remain outstanding and make any other adjustments which may be necessary or appropriate to ensure each Lender is owed its Lender's Proportion of each outstanding Drawing and other amounts owing hereunder.

(b) After the occurrence of an Event of Default and acceleration of all or any portion of the Drawings outstanding and other amounts owing hereunder, the amount of any repayment made by the Borrower under this Agreement, and the amount of any proceeds from the exercise of any rights or remedies of the Lenders under this Agreement, which are to be applied against such Drawings and amounts, shall be so applied in a manner so that to the extent possible each Lender is owed its Lender's Proportion of each outstanding Drawing and other amounts owing hereunder.

(c) Notwithstanding anything contained in this Agreement, there shall not be taken into account for the purposes of computing any amount payable to any Lender pursuant to this Section 16.20 any amount which a Lender receives as a result of any payment (whether voluntary, involuntary or otherwise) on account of any monies owing by the Borrower to such Lender other than on account of Drawings or other amounts owing hereunder.

16.21 Indemnity. Each of the Lenders does hereby fully indemnify the Administrative Agent (to the extent not reimbursed by the Borrower), its directors, officers, employees and agents rateably according to its respective Lender's Proportion, from and against any and all costs, expenses, claims, obligations, losses, penalties, actions, judgments, suits, causes or disbursements of any nature or kind whatsoever which may be imposed on, incurred by, or asserted against the Administrative Agent (unless directly due to negligence or wilful misconduct on the part of the Administrative Agent) and which in any way relate to or arise out of this Agreement or transactions contemplated herein or any action taken or omitted by the Administrative Agent under or in connection with this Agreement or in enforcing or preserving, or in attempting to preserve, any of the rights of the Administrative Agent or the Lenders under this Agreement; provided, however, that the foregoing indemnity shall not extend to any overhead or salary expenses incurred by the Administrative Agent in connection with this Agreement. If the Administrative Agent makes available to the Borrower, in accordance with this Agreement, an amount which has not been made unconditionally available to the Administrative Agent by a Lender, then such Lender shall indemnify the Administrative Agent upon demand by the Administrative Agent against any loss which the Administrative Agent suffers or incurs as a result; provided that such Lender shall not be liable for any portion of such loss resulting from the Administrative Agent's negligence or wilful misconduct.

16.22 **Certain Provisions for Benefit of Administrative Agent and Lenders**. The provisions of this Article 16 which relate to the rights and obligations of the Lenders to each other or to the rights and obligations between the Administrative Agent and the Lenders shall be for the exclusive benefit of the Administrative Agent and the Lenders, and the Borrower shall not have any rights or obligations thereunder or be entitled to rely for any purpose upon such provisions. Any Lender may waive in writing any right or rights which it may have against the Administrative Agent or the other Lenders hereunder without the consent of or notice to the Borrower.

ARTICLE 17
MISCELLANEOUS

17.1 **Payment of Expenses**. Whether or not the transactions contemplated by this Agreement shall be consummated, the Borrower shall on demand by the Administrative Agent pay to the Administrative Agent for its own account or for the account of the Lenders, as the case may be:

(a) all reasonable out-of-pocket expenses of the Administrative Agent, incurred in its capacity as agent hereunder (including the reasonable fees and disbursements of any lawyers, accountants and independent consultants, which consultants are agreed to by the Borrower, retained by the Administrative Agent on behalf of the Lenders) incurred in connection with the negotiation and preparation of this Agreement, the administration of the Facility, any amendment, modification or waiver of any of the provisions of this Agreement and also in connection with the protection and enforcement of the rights of the Administrative Agent and each of the Lenders provided for in this Agreement; and

(b) all reasonable out-of-pocket expenses incurred by CIBC in connection with the initial syndication of the Facility, provided that subsequent to the initial syndication, no Lender shall be entitled to claim from the Borrower expenses incurred in any subsequent assignment of an interest in this Agreement.

17.2 **Rights and Waivers**. The respective rights and remedies of the Administrative Agent and each Lender under this Agreement are cumulative, may be exercised as often as considered appropriate, are in addition to all other rights and remedies under the general law, and shall not be capable of being waived or varied except by virtue of an express waiver or variation in writing signed by an authorized officer of the Administrative Agent or such Lender (as the case may be); and in particular any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy; any defective or partial exercise of any of such rights shall not preclude any other or future exercise of that or any other such right or remedy; and no act or course of conduct or negotiation on the part of the Administrative Agent or a Lender or on its behalf shall in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

17.3 **Communication**. Subject to the express provisions of this Agreement, all notices, consents, demands and other communications provided for or permitted hereunder shall be in writing, personally delivered to an officer or other responsible employee of the addressee or sent by facsimile to the address set forth below the name of the applicable party in the execution pages of this Agreement or in Schedule B or to such other address as the recipient hereto may from time to time designate to the other in such manner. Any such communication so personally delivered or sent by facsimile shall be deemed to have been validly and effectively given on the date of such delivery or facsimile, as the case may be.

17.4 **Confidentiality**. The Administrative Agent and the Lenders agree to treat any information obtained from the Borrower as confidential; provided, however, that nothing herein contained shall limit or impair the right or obligation of the Administrative Agent or any Lender to disclose such information:

(a) to its affiliates, directors, auditors, lawyers, employees or agents who would have access to such information in the normal course of the performance of such Person's duties;

(b) when required by any Requirement of Law;

(c) as may be required in any report, statement or testimony submitted to any Governmental Authority having or claiming to have jurisdiction over such Lender;

(d) in connection with the enforcement of the terms and conditions of this Agreement;

(e) which is publicly available or readily ascertainable from public sources, or which is received by any Lender from a third Person who or which is not bound to keep the same confidential;

(f) in connection with any proceeding, case or matter pending (or on its face purported to be pending) before any Governmental Authority;

(g) to the extent permitted by Section 15.4 in connection with any contemplated transfer of any of a Lender's rights and/or obligations under this Agreement; or

(h) to the Administrative Agent or any Lender.

17.5 **Survival of Representations, Warranties and Covenants**. All agreements, representations, warranties and covenants made by the Borrower in this Agreement and any certificate hereunder are material, shall be considered to have been relied upon by the Administrative Agent and each Lender and shall survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Administrative Agent and each Lender and, subject to Section 12.1(h), until repayment in full of the Drawings and of all other amounts owing under this Agreement and cancellation in full of the Facility.

17.6 **Further Assurances**. The Borrower shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the Administrative Agent may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and conditions of this Agreement.

17.7 **Severability**. Any provision in this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

17.8 **Counterparts**. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed to be an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

17.9 **No Partnership, etc**. Nothing contained in this Agreement nor any action taken pursuant hereto shall be deemed to constitute the Lenders and Borrower a partnership, joint venture or any other similar such entity.

17.10 **Entire Agreement**. Except for any fee letter between the Borrower and the Administrative Agent which is currently in effect, this Agreement, including the Schedules hereto, constitutes the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contain all the representations and warranties of the respective parties.

IN WITNESS WHEREOF the parties hereto have executed this Credit Agreement as of the 20th day of December, 2005.

DUKE ENERGY FACILITIES LP, by **DUKE ENERGY FACILITIES MANAGEMENT INC.**, as general partner and on behalf of Duke Energy Facilities Management LP, Manager of Duke Energy Facilities LP

Per: *(signed) "Douglas J. Haughey"*
Name: Douglas J. Haughey
Title: President

Per: *(signed) "Bruce E. Pydee"*
Name: Bruce E. Pydee
Title: Director

address: 1333 West Georgia Street
Vancouver, B.C. V6E 3K9

facsimile no.: (604) 488-8070

CANADIAN IMPERIAL BANK OF COMMERCE
in its capacity as Administrative Agent

Per: *(signed) "Chelsea Lucyk Kittleson"*
Name: Chelsea Lucyk Kittleson
Title: Director

Per: *(signed) "David J. Swain"*
Name: David J. Swain
Title: Managing Director

address: BCE Place
161 Bay Street
8th Floor
Toronto, ON M5J 2S8

facsimile no.: (416) 956-3830

CANADIAN IMPERIAL BANK OF COMMERCE in its capacity as Lender

Per: *(signed) "Chelsea Lucyk Kittleson"*
Name: Chelsea Lucyk Kittleson
Title: Director

Per: *(signed) "David J. Swain"*
Name: David J. Swain
Title: Managing Director

BANK OF MONTREAL in its capacity as Lender

Per: *(signed) "R. P. Heinrichs"*
Name: R. P. Heinrichs
Title: Vice-President

Per: *(signed) "Ebba Jantz"*
Name: Ebba Jantz
Title: Associate

THE TORONTO-DOMINION BANK in its capacity as Lender

Per: *(signed) "Clark Terriff"*
Name: Clark Terriff
Title: Vice President and Director

Per: ____________________
Name:
Title:

THE BANK OF NOVA SCOTIA in its capacity as Lender

Per: *(signed) "Richard Lee"*
Name: Richard Lee
Title: Managing Director

Per: *(signed) "Angela Becker"*
Name: Angela Becker
Title: Associate

SCHEDULE A
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

DEFINITIONS

"**Acquisition**" means the acquisition by the Borrower of those certain assets described in, and pursuant to the terms and conditions of the Acquisition Agreement.

"**Acquisition Agreement**" means the Purchase and Sale Agreement made as of December 20, 2005, between the Borrower, as purchaser, the Vendor, the Commercial Trust, the Public Trust, Westcoast Energy Inc. and DEGT Midstream Holdings Corporation.

"**Administration Agreement**" means the administration and governance agreement dated as of December 19, 2005, among the Manager, the Public Trust, the Trustee and the Commercial Trust, as amended, restated or supplemented from time to time as permitted hereunder.

"**Administrative Agent** " means CIBC in its capacity as Administrative Agent of the Lenders as set out herein, or any other Canadian chartered bank appointed as a successor Administrative Agent of the Lenders under this Agreement.

"**Affiliate**" shall have the meaning set out in the *Canada Business Corporations Act* (Canada).

"**Agreement**" means this Credit Agreement, as amended, supplemented or modified from time to time.

"**Applicable Margin**" means, at any time or for any period, with respect to a Drawing (other than a Bankers' Acceptance Drawing):

(a) until such time as the Borrower has been assigned a Rating, the percentage rate per annum as expressed in basis points, determined in accordance with the Debt-to-EBITDA Based Grid set forth in Schedule C, by reference to the applicable type of Drawing and the corresponding applicable Debt to EBITDA Ratio level at such time or for such period; and

(b) after such time as the Borrower has been assigned a Rating, the percentage rate per annum as expressed in basis points, determined in accordance with the Ratings Based Grid set forth in Schedule C, by reference to the applicable type of Drawing and the corresponding applicable Rating level at such time or for such period.

"**BA Discount Proceeds**" means, in respect of any Bankers' Acceptance, an amount (rounded to the nearest full cent, with one-half of one cent being rounded up) calculated on the applicable Drawing Date, Rollover Date or Conversion Date which is equal to the face amount of such Bankers' Acceptance multiplied by the price, where the price is calculated by dividing one by the sum of one plus the product of (i) the BA Discount Rate applicable thereto expressed as a decimal fraction multiplied by (ii) a fraction, the numerator of which is the term of such Bankers'

Acceptance in days and the denominator of which is 365, which calculated price will be rounded to the nearest multiple of 0.001%.

"**BA Discount Rate**" means on any day:

(a) with respect to Bankers' Acceptances being marketed by the Borrower and accepted by a Lender on any date (i) for a Lender that is listed in Schedule I to the *Bank Act* (Canada), the discount rate applicable to such Lenders will be the rate obtained by the Borrower for such Bankers' Acceptances from the purchasers thereof, as notified by the Borrower to the Administrative Agent (ii) for a Lender that is listed in Schedule II or Schedule III to the *Bank Act* (Canada) (A) whose Bankers' Acceptances are being marketed by the Borrower, the discount rate applicable to such Lenders will be the rate obtained by the Borrower for such Banker's Acceptances from the purchasers thereof, as notified by the Borrower to the Administrative Agent, or (B) whose Bankers' Acceptances are not being marketed by the Borrower, the discount rate applicable to such Lenders will be the simple average of the rates applicable to those Lenders under clause (ii)(A) above whose Bankers' Acceptances have been marketed by the Borrower;

(b) with respect to Bankers' Acceptances which the Borrower has not marketed and which are being purchased by a Lender for its own account on any date, (i) for a Lender that is listed in Schedule I to the *Bank Act* (Canada), the CDOR Rate, or (ii) for a Lender that is listed in Schedule II or Schedule III to the *Bank Act* (Canada), the lesser of (A) such Lender's quoted rate and (B) the CDOR Rate plus 7 basis points; and

(c) with respect to a BA Equivalent Drawing provided by a Non-Acceptance Lender, the CDOR Rate plus 7 basis points.

"**BA Equivalent Drawing**" means, in relation to a Bankers' Acceptance Drawing, a Drawing in Canadian Dollars made by a Non-Acceptance Lender as part of such Bankers' Acceptance Drawing in accordance with Section 5.7.

"**BA Maturity Date**" means, in relation to a Bankers' Acceptance Drawing, the stated maturity date of each Bankers' Acceptance which forms part of such Bankers' Acceptance Drawing, which shall be the same date for each such Bankers' Acceptance.

"**BA Period**" means, in relation to a Bankers' Acceptance Drawing, the term to maturity selected by the Borrower hereunder, commencing on the date that the relevant Bankers' Acceptances are issued in connection with such Bankers' Acceptance Drawing; provided, however, that:

(a) each BA Period in respect of a Bankers' Acceptance Drawing shall have a term of 1, 2, 3 or 6 months (or such other term agreed to by the Lenders) and shall be subject to the availability of a market for such term, provided that if the Borrower selects Option #1 the term shall be determined by the Borrower in its discretion;

(b) if the last day of a BA Period selected by the Borrower is not a Banking Day, such BA Period shall end on the next following Banking Day; and

(c) no BA Period may extend beyond the Repayment Date (as from time to time extended pursuant to Section 8.4).

"**BA Stamping Fee**" shall have the meaning set out in Section 4.1(c).

"**BA Stamping Fee Rate**" means at any time or for any period in relation to a Bankers' Acceptance Drawing:

(a) until such time as the Borrower has been assigned a Rating, the percentage rate per annum as expressed in basis points at which the BA Stamping Fee is calculated, determined in accordance with the Debt-to-EBITDA Based Grid set forth in Schedule C, by reference to the applicable Debt to EBITDA Ratio level at such time or for such period; and

(b) after such time as the Borrower has been assigned a Rating, the percentage rate per annum as expressed in basis points at which the BA Stamping Fee is calculated, determined in accordance with the Ratings Based Grid set forth in Schedule C, by reference to the applicable Rating at such time or for such period,

as adjusted pursuant to Section 4.4.

"**Bankers' Acceptance**" means a depository bill as defined by the *Depository Bills and Notes Act* (Canada) or a blank non-interest bearing bill of exchange as defined by the *Bills of Exchange Act* (Canada), in either case drawn by the Borrower, denominated in Canadian Dollars and accepted by a Lender as a bankers' acceptance, as evidenced by such Lender's endorsement thereof at the request of the Borrower pursuant to a Drawing Notice, Rollover Notice or Conversion Notice. Any depository bill may be made payable to "CDS & Co." and be deposited with The Canadian Depository for Securities Limited.

"**Bankers' Acceptance Drawing**" means a Drawing of Canadian Dollars made available by way of Bankers' Acceptances or a BA Equivalent Drawing.

"**Banking Day**" means any day on which banks are open for business in Calgary, Alberta and Toronto, Ontario.

"**Base Rate**" means a fluctuating rate of interest per annum, expressed on the basis of a year of 365 days, which is equal at all times to the greater of: (i) the rate of interest most recently announced by the Administrative Agent as its base rate for lending U.S. Dollars in Canada; and the Federal Funds Rate (adjusted to reflect a 365 day year) in effect from time to time, plus 1.0%.

"**Base Rate Drawing**" means a Drawing in U.S. Dollars in respect of which interest is payable by reference to the Base Rate.

"**basis point**" means one one-hundredth of one percent, or 0.01%.

"**Borrower's Account**" means such account of the Borrower at the Designated Branch as the Administrative Agent, with the approval of the Borrower, may specify to the Lenders.

"**Borrower's Counsel**" means McCarthy Tétrault LLP, or any replacement counsel appointed by the Borrower.

"**Business**" has the meaning given to such term in the Final Prospectus.

"**Canadian Dollar Equivalent**" means, at any time:

(a) in relation to an amount in U.S. Dollars, the amount obtained by converting such amount into Canadian Dollars at the Noon Rate; and

(b) in relation to any amount in Canadian Dollars, such amount.

"**Canadian Dollars**" or "**Cdn. $**" means lawful currency of Canada.

"**Capital Adequacy Guidelines**" means the capital adequacy requirements from time to time specified by the Office of the Superintendent of Financial Institutions Canada and published by it as one or more guidelines for banks.

"**CDOR Rate**" means, on any day, the annual rate of discount determined by the Administrative Agent which is equal to the simple average of the yield rates per annum (calculated on the basis of a year of 365 days and calculated to two decimal places, with 0.005 or more being rounded upward) applicable to bankers' acceptances denominated in Canadian Dollars having, where applicable, comparable issue dates and maturity dates as the Bankers' Acceptances proposed to be issued by the Borrower, displayed and identified as such on the CDOR Page (or any display substituted therefor) of Reuters Monitor Money Rates Service at approximately 10:00 a.m. (Toronto time) on that day or, if that day is not a Banking Day, then on the immediately preceding Banking Day (as adjusted by the Administrative Agent after 10:00 a.m. (Toronto time) to reflect any error in the posted average annual rate of discount); provided, however, if those rates do not appear on the CDOR Page (or the display substituted therefor), then the CDOR Rate shall be the annual rate of discount determined by the Administrative Agent which is equal to the simple average of the yield rates per annum (calculated on the basis of a year of 365 days and calculated to two decimal places, with 0.005 or more being rounded upward) applicable to those bankers' acceptances in a comparable amount to the Bankers' Acceptances proposed to be issued by the Borrower, quoted by three of the five largest (as to total assets) Canadian chartered banks listed in Schedule I to the *Bank Act* (Canada) (as selected by the Administrative Agent) as of 10:00 a.m. (Toronto time) on that day or, if that day is not a Banking Day, on the immediately preceding Banking Day. Each determination of the CDOR Rate by the Administrative Agent shall be conclusive and binding, absent demonstrated error.

"**CIBC**" means Canadian Imperial Bank of Commerce, and its successors and assigns.

"**Commercial Trust**" means Duke Energy Commercial Trust.

"**Commitment**" means, in respect of each Lender, the obligation of such Lender to funds its Lender's Proportion of a Drawing, subject to the terms of this Agreement, at any one time outstanding up to but not exceeding the amount set forth opposite each Lender's name in Schedule B, as amended from time to time in accordance with the provisions of this Agreement.

"**Commodity Swap**" means any transaction, arrangement or agreement (whether financial or physical) entered into between the Borrower or any Restricted Subsidiary and a counterparty on a case by case basis, including a futures contract, a commodity option, a swap, a forward sale or otherwise, the purpose of which is to mitigate, manage or eliminate its exposure to fluctuations in commodity prices.

"**Conflicted Lender**" shall have the meaning set out in Section 2.7(c).

"**Consolidated Net Tangible Assets**" means, as at any date of determination, all consolidated assets of the Borrower as shown in the most recent consolidated balance sheet of the Borrower, less the aggregate of the following amounts reflected upon such balance sheet:

(a) all goodwill, deferred assets, trademarks, copyrights and other similar intangible assets; and

(b) to the extent not already deducted in computing such assets and without duplication, depreciation, depletion, amortization, reserves and any other account which reflects a decrease in the value of an asset or a periodic allocation of the cost of an asset, provided that no deduction will be made under this paragraph (b) to the extent that such account reflects a decrease in value or periodic allocation of the cost of any asset referred to in paragraph (a) of this definition,

all as determined in accordance with GAAP.

"**Conversion**" means the conversion of a Drawing to another form of Drawing hereunder.

"**Conversion Date**" means the date notified to the Administrative Agent by the Borrower in accordance with Section 3.2 as being the date (which shall be a Banking Day) on which a requested Conversion be made.

"**Conversion Notice**" means a notice substantially in the form of Schedule F, duly executed by a senior officer of the Borrower.

"**CT Trust Indenture**" means the trust indenture dated as of December 5, 2005 between Douglas J. Haughey, Barclay A. Laughland, the Public Trust and the Manager, as it may be amended, restated, supplemented or replaced from time to time as permitted hereunder.

"**Currency Swap**" means a financial arrangement entered into between the Borrower or any Restricted Subsidiary and a counterparty on a case by case basis in connection with a foreign exchange futures contract, currency swap, currency option, currency exchange or other similar currency related transactions, the purpose of which is to mitigate, manage or eliminate the exposure to fluctuations in exchange rates.

"**DBRS Rating**" means the Dominion Bond Rating Service Limited and its successors.

"**Debt**" of any Person means the following, determined on a consolidated basis and without duplication:

(a) all obligations of such Person for borrowed money;

(b) all debt of such Person for the deferred purchase price of property or services purchased (excluding current accounts payable incurred in the ordinary course of business) net of payments and prepayments and only to the extent that such property has been delivered or services provided;

(c) all debt created or arising under any conditional sale or other title retention agreement with respect to property acquired;

(d) all obligations under leases which have been or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable as lessee and in any event includes obligations in respect of sale and leaseback transactions;

(e) the face amount of all outstanding letters of credit issued for the account of such Person (other than letters of credit relating to Debt included in Debt of such Person pursuant to another clause of this definition) and, without duplication, the unreimbursed amount of all drawings thereunder;

(f) debt covered by paragraph (a) above of this definition secured by any lien on property or assets of such Person, whether or not assumed (but in any event not exceeding the fair market value of the property or asset);

(g) any obligations of such Person (in the nature of principal or interest) in respect of bankers' acceptances or similar obligations issued or created for the account of such Person; and

(h) all direct and indirect guarantees of Debt referred to above of another Person.

"**Debt-to-EBITDA Based Grid**" means the Debt-to-EBITDA grid set forth in Schedule C.

"**Debt to EBITDA Ratio**" means, as at the end of each fiscal quarter of the Borrower, the ratio of Debt to EBITDA.

"**Default**" means an event which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

"**Default Rate**" means a rate per annum that is equal to, in the case of amounts owed in Canadian Dollars, the Prime Rate plus 2.0% per annum, or in the case of amounts owed in U.S. Dollars, the Base Rate plus 2.0% per annum.

"**Depreciation Expense**" means, with respect to the Borrower, for any period, depreciation, amortization, depletion and other like reductions to income of the Borrower for that period not involving any outlay of cash, determined in accordance with GAAP.

"**Designated Branch**" means Canadian Imperial Bank of Commerce, 161 Bay Street, 8th Floor, Toronto, ON, M5J 2S8, Facsimile No. (416) 956-3830 or such other branch in Toronto as the Administrative Agent may from time to time designate.

"**Dissent Notice**" shall have the meaning set out in Section 8.4.

"**Dissenting Lender**" shall have the meaning set out in Section 8.4.

"**Distributable Cash Flow**" shall have the meaning given to it in the Limited Partnership Agreement as at the date hereof.

"**Distribution**" means , in respect of a Person:

(a) any declaration, payment or setting aside for payment of any dividend, return of capital or other distribution on or in respect of any of the share, partnership or trust capital of such Person, including in respect of any Trust Units;

(b) any redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any of the share, partnership or trust capital of such Person (including any Trust Units) or any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for share, partnership or trust capital of such Person, including options, warrants, conversion or exchange privileges and similar rights;

(c) the payment of any principal, interest, fees or other amounts on or in respect of any Debt owing at any time by such Person to any shareholder, partner or unitholder of such Person, Affiliates of such Person, shareholders, partners or unitholders of Affiliates of such Person;

(d) any loan, advance, payment of management or consulting fees or reimbursement of costs (other than fees and reimbursable costs payable under the Management Agreement and the Administration Agreement) which is made by such Person to or in favour of a holder of shares, partnership interests or Trust Units of such Person or an Affiliate of such holder;

(e) the transfer by such Person of any assets for consideration of less than its or their fair market value to any of its Affiliates; or

(f) to the extent not a Distribution described in paragraphs (a) through (e), inclusive, of this definition, (i) the payment of any amount or (ii) any granting or creation of any rights or interests, at any time, by such Person to, in either case, any shareholder, partner or unitholder of such Person, Affiliates of such Person or shareholders, partners or unitholders of Affiliates of such Person (a "**Related Transaction**"), other than in circumstances where the Related Transaction is made in the ordinary course of business of such Person and based on arm's length terms.

"**Drawing**" means any of a Prime Rate Drawing, Bankers' Acceptance Drawing, Base Rate Drawing, LIBOR Drawing and LC Drawing.

"**Drawing Date**" means the date notified to the Administrative Agent or the Swing Line Lender, as applicable, by the Borrower in accordance with Section 3.2 as being the date (which shall be a Banking Day) on which a requested Drawing be made.

"**Drawing Notice**" means a notice substantially in the form of Schedule D.

"**EBITDA**" means, for any period, with respect to the Borrower, determined on a consolidated basis, the Borrower's Net Income for that period, increased (without duplication) by the sum of:

(a) Total Interest Expense, plus interest on Subordinated Debt;

(b) Income Tax Expense;

(c) Depreciation Expense;

(d) losses from extraordinary, unusual or non-recurring items;

(e) any aggregate net loss arising from the sale, exchange or other disposition of capital assets (including any fixed assets, whether tangible or intangible, all inventory sold in conjunction with the disposition of fixed assets and all securities);

(f) net losses of Affiliates and any other losses in respect of investments which are accounted for on an equity basis;

(g) amounts in respect of losses of non-controlling interests and cash distributions received by the Borrower in respect of non-controlling interests; and

(h) any other non-cash losses which were required to be accrued for a future period;

in each case, to the extent that such amounts were included in the calculation of Net Income;

and decreased (without duplication) by the sum of:

(i) income tax credits or reductions in deferred taxes;

(j) interest income;

(k) gains from extraordinary, unusual or non-recurring items;

(l) any aggregate net gain arising from the sale, exchange or other disposition of capital assets by the Borrower (including any fixed assets, whether tangible or intangible, all inventory sold in conjunction with the disposition of fixed assets and all securities);

(m) net profits of Affiliates and any other profits in respect of investments which are accounted for on an equity basis;

(n) amounts in respect of gains and/or income of non-controlling interests; and

(o) any other non-cash gains which have been added in determining Net Income;

in each case, to the extent that such amounts were included in the calculation of Net Income for such period.

EBITDA may be adjusted to include or exclude, as applicable, EBITDA associated with any acquisition or disposition made within the applicable twelve month period (provided it is done so on a consistent basis) and shall be adjusted for acquisitions and dispositions which have a purchase price in excess of $5,000,000, in each case, as if that acquisition or disposition had been made at the beginning of such twelve month period (in a manner satisfactory to the Lenders, acting reasonably). Notwithstanding the foregoing, EBITDA (and correspondingly Net Income) for the fiscal quarters of the Borrower ending March 31, 2006, June 30, 2006 and September 30, 2006 shall be calculated by multiplying the EBITDA (i) for the fiscal quarter commencing January 1, 2006 and ending March 31, 2006 by four, (ii) for the period commencing January 1, 2006 and ending June 3, 2006 by two, and (iii) for the period commencing January 1, 2006 and ending September 30, 2006 by 4/3.

"**Environmental Law**" means any Requirement of Law relating to public health, safety or the environment, including those relating to the protection of the environment, health or safety of Persons, natural resources, conservation, wildlife, waste management, hazardous substance management, removal and remedial cost recovery, and pollution, including regulation of releases and disposals to air, land, water and groundwater.

"**Escrow Funds**" shall have the meaning set out in Section 14.5(b).

"**Excess Payment**" shall have the meaning set out in Section 16.19.

"**Exchange Agreement**" means the exchange, voting and registration rights agreement dated as of December 5, 2005, among the Public Trust, the Commercial Trust, the Borrower, the General Partner and DEGT Midstream Holdings Partnership, as amended, restated or supplemented from time to time as permitted hereunder.

"**Event of Default**" shall have the meaning set out in Section 14.1.

"**Facility**" shall have the meaning set out in Section 2.1.

"**Federal Funds Rate**" means, for each day, a fluctuating interest rate per annum equal to the weighted average of the rates for overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers as published for such day or, if such day is not a Banking Day, for the next preceding Banking Day, by the Federal Reserve Bank of New York or if such rates are not so published for such day, the average of the quotations for such transactions received by the Administrative Agent from three federal funds brokers of nationally recognized standing reasonably selected by the Administrative Agent.

"**Financial Covenants**" means the financial covenants set out in Section 12.3.

"**Final Prospectus**" means the final prospectus of the Public Trust dated December 5, 2005 as filed with the securities regulatory authorities in each of the provinces of Canada.

"**Fiscal Year**" means a fiscal year of the Borrower being that yearly period ending on December 31 of each year or such other date determined by the Borrower and agreed to by the Lenders from time to time.

"**General Partner**" means Duke Energy Facilities Inc. and its successors and permitted assigns.

"**GAAP**" means Canadian generally accepted accounting principles.

"**Government Acts**" shall have the meaning set out in Section 7.5(a)(ii).

"**Governmental Approvals**" means all licenses, permits, consents, authorizations or approvals from, withholding of objection on the part of, or filing, registration or qualification with, any and all Governmental Authorities required for any particular decision, act or event.

"**Governmental Authority**" means the government of Canada or the United States, the government of any province, state, municipality or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

"**Guarantee**" means a guarantee, substantially in the form of Schedule J, with respect to the Borrower's obligations to the Administrative Agent and the Lenders pursuant to the Loan Documents executed by the General Partner, Duke Energy Midstream Services Canada Corporation, Duke Energy Field Services Canada and DEFS Canada LP and each wholly-owned Restricted Subsidiary that is required to provide a guarantee in accordance with Section 12.1(t).

"**herein**", "**hereof**", "**hereto**" and similar expressions mean and refer to this "Credit Agreement" and include any instrument amending, supplementing or modifying the same, and the expression "Section" followed by a number means and refers to the specified Section of this Agreement.

"**Impermissible Qualification**" means with respect to the report of the Borrower's auditor as to any financial statement, any qualification or exception to such report which:

(a) is of a "going concern" or similar nature with respect to a material part of the business of the Borrower;

(b) relates to any limited scope or examination of material matters relevant to such financial statement, if such limitation results from the refusal or the failure of the Borrower to grant access to necessary information; or

(c) relates to the treatment or classification of any item in such financial statement and which, if the relevant qualification were to be removed, would require an adjustment to such item resulting in an Event of Default.

"**including**" means "including without limitation".

"**Income Tax Expense**" means, with respect to the Borrower, for any period, the aggregate of all Taxes on the income of the Borrower for that period, whether current or deferred, determined in accordance with GAAP.

"**Intellectual Property**" means all intellectual and industrial property, including all patents, industrial designs, copyrights, trademarks, trade names, trade secrets, computer software and options and rights to use any of the foregoing and, when the context permits, all registrations and applications that have been made or shall be made or filed in any office in any jurisdiction in respect of the foregoing and all reissues, extensions and renewals thereof.

"**Interest Coverage Ratio**" means the ratio of EBITDA to Total Interest Expense.

"**Interest Swap**" means a financial arrangement entered into between the Borrower or any Restricted Subsidiary and a counterparty on a case by case basis, in connection with interest rate swap transactions, interest rate options, cap transactions, floor transactions, collar transactions or other similar interest rate related transactions, the purpose of which is to mitigate, manage or eliminate its exposure to fluctuations in interest rates.

"**Judicial Order**" shall have the meaning set out in Section 7.6(c).

"**LC Application**" means the customary application documentation required by the Swing Line Lender to issue Letters of Credit substantially in the forms set out in Schedule L, as applicable.

"**LC Disbursement**" means a payment made by the Swing Line Lender to the beneficiary of a Letter of Credit pursuant to a demand for payment thereunder.

"**LC Drawing**" means a Drawing in Canadian Dollars or U.S. Dollars made available by way of Letters of Credit.

"**LC Expenses**" shall have the meaning set out in Section 7.4(a).

"**LC Fee**" shall have the meaning set out in Section 4.2.

"**Lender Assignment Agreement**" means an instrument in the form set out as Schedule H.

"**Lenders**" means the financial institutions listed in Schedule B, subject to adjustment for assignment of an interest in the Facility and this Agreement in accordance with Section 15.1, and "**Lender**" means any one of them, as the context so requires and includes the Administrative Agent in its capacity as the Swing Line Lender.

"**Lenders' Counsel**" means Blake, Cassels & Graydon LLP or any replacement counsel appointed by the Lenders.

"**Lender Outstandings**" means, in relation to the Facility, the aggregate at any such time of :

(a) the Principal Outstandings;

(b) the amount of all accrued and unpaid LC Fees, BA Stamping Fees, Standby Fees and interest outstanding in respect of Prime Drawings, Base Rate Drawings and Libor Drawings; and

(c) all fees, indemnities and other amounts due and payable by the Borrower to the Lenders or the Swing Line Lender under this Agreement or any other Loan Documents not included in any of the foregoing paragraphs.

"**Lender's Proportion**" means, in respect of each Lender, the percentage interest set out opposite each Lender's name in Schedule B, as amended from time to time in accordance with the provisions of this Agreement.

"**Lending Branch**" means the branch or office designated in writing from time to time by each Lender to the Administrative Agent as the branch or office from which such Lender funds its Lender's Proportion of Drawings and to which the Administrative Agent is to forward payments made by the Borrower hereunder, the initial branch or offices being those set forth in Schedule B.

"**Letter of Credit**" means any letter of credit issued by the Swing Line Lender substantially in the form of Schedule M, as the same may be amended, supplemented, extended or otherwise modified from time to time in accordance with the terms hereof and thereof. Each such Letter of Credit shall be either:

(a) a standby letter of credit ("**Standby LC**"), if it serves as a direct credit substitute of the Borrower's financial obligations for purposes of the Capital Adequacy Guidelines; or

(b) a performance letter of credit ("**Performance LC**"), if it does not constitute a direct credit substitute for the purposes of the Capital Adequacy Guidelines;

and "**Letters of Credit**" shall refer collectively to all Letters of Credit outstanding at any time.

"**LIBOR Banking Day**" means any day on which banks are open for business in Calgary, Alberta, Toronto, Ontario, New York, New York and London, England.

"**LIBOR Drawing**" means a Drawing in U.S. Dollars to be outstanding for a specified LIBOR Interest Period in respect of which interest is payable by reference to the LIBOR Rate.

"**LIBOR Interest Period**" means, in relation to a LIBOR Drawing, the term to maturity selected by the Borrower hereunder, commencing on the date that the relevant LIBOR Drawing is made; provided, however, that:

(a) each LIBOR Interest Period shall have a term of 1, 2, 3 or 6 months and shall be subject to the availability of a market for such term;

(b) the first LIBOR Interest Period for a LIBOR Drawing shall commence on the date it is advanced by the Lenders and, in the case of a Rollover, each subsequent

LIBOR Interest Period relative thereto shall commence on and include the last day of such immediately preceding LIBOR Interest Period;

(c) if the last day of a LIBOR Interest Period selected by the Borrower is not a LIBOR Banking Day, such LIBOR Interest Period shall end on the next following LIBOR Banking Day unless such LIBOR Banking Day falls in the next calendar month in which case such LIBOR Interest Period shall end on the next preceding LIBOR Banking Day; and

(d) no LIBOR Interest Period may extend beyond the Repayment Date (as from time to time extended pursuant to Section 8.4).

"**LIBOR Rate**" means, for any LIBOR Interest Period:

(a) the rate of interest (expressed as an annual rate on the basis of a 360 day year) determined by the Administrative Agent to be the arithmetic mean (rounded upwards if necessary to the next 0.01%) of the offered rates for deposits in U.S. Dollars for a period equal to the particular LIBOR Interest Period, which rates appear on the Reuters screen LIBOR page or, if such Reuters screen page is not readily available to the Administrative Agent, page 3750 of the Telerate screen, in either case as of 11:00 a.m. (London time) on the second LIBOR Banking Day before the first day of that LIBOR Interest Period; or

(b) if neither the Reuters screen LIBOR page nor page 3750 of the Telerate screen is readily available to the Administrative Agent for any reason, the rate of interest determined by the Administrative Agent which is equal to the simple average of the rates of interest (expressed as a rate per annum on the basis of a year of 360 days and rounded upwards if necessary to the next 0.01%) at which three of the five largest (as to total assets) Schedule I banks (as selected by the Administrative Agent) would be prepared to offer leading banks in the London interbank market a deposit in U.S. Dollars for a term coextensive with that LIBOR Interest Period in an amount substantially equal to the relevant LIBOR Drawing at or about 10:00 a.m. (Toronto time) on the second Banking Day before the first day of such LIBOR Interest Period.

"**Loan Documents**" means this Agreement, the Guarantees and the Subordination Agreements, to the extent required under the Agreement.

"**Majority Lenders**" means, at any time, any Lender or combination of Lenders whose aggregate Lender's Proportions exceed 66 2/3%.

"**Manager**" means Westcoast Energy Inc., through its interest in Duke Energy Facilities Management LP and its permitted successors and assigns.

"**Management Agreement**" means the management agreement dated as of December 19, 2005 between the Manager, the Commercial Trust, the General Partner, the Borrower and Duke

Energy Midstream Services Canada Corporation, as amended, restated or supplemented from time to time as permitted hereunder.

"**Material Adverse Effect**" means a material adverse effect on the business, financial position or results of operations of the Borrower and its Restricted Subsidiaries, considered as a whole.

"**Material Contracts**" means the Trust Documents, the Acquisition Agreement and the Management Agreement.

"**Net Income**" means, for any period, with respect to the Borrower, the net revenue of the Borrower, on a consolidated basis, for such period, less all expenses and other charges not otherwise deducted in computing such net revenue for such period, all as determined in accordance with GAAP.

"**Non-Acceptance Lender**" means a Lender other than a Schedule I Lender, a Schedule II Lender or Schedule III Lender.

"**Non-Takeover Lender**" shall have the meaning set out in Section 2.8.

"**Noon Rate**" means, in relation to the conversion of one currency into another currency, the rate of exchange for such conversion as quoted by the Bank of Canada (or if not quoted, the spot rate of exchange quoted for wholesale transactions by the Administrative Agent in accordance with its standard money market practices) at approximately noon (Toronto time) on the Banking Day such conversion is to be made.

"**Overdraft**" means, in respect of the Swing Line Facility, an amount owing by the Borrower to the Swing Line Lender from time to time as a result of clearance of cheques or drafts drawn on, or transfers of funds from, accounts of the Borrower maintained with the Swing Line Lender in U.S. Dollars or Canadian Dollars.

"**Overpaid Lender**" shall have the meaning set out in Section 16.19.

"**Partnerships**" means the Borrower and the Manager, and each of their successors and permitted assigns.

"**Performance LC**" shall have the meaning set out in the definition of Letter of Credit.

"**Permitted Liens**" means:

(a) any mortgage, lien or other encumbrance on property of any Person existing at the time such Person is amalgamated, merged or consolidated with or into the Borrower, any Restricted Subsidiary or any Trust and not created in contemplation of such event;

(b) any mortgage, lien or other encumbrance on property prior to the acquisition thereof by the Borrower, any Restricted Subsidiary or any Trust not created in contemplation of such acquisition;

(c) liens for taxes and assessments not at the time overdue and liens securing workers' compensation assessments;

(d) liens for specified taxes and assessments which are overdue but the validity of which is being contested at the time by the Borrower, any Restricted Subsidiary or any Trust, as applicable, in good faith;

(e) liens or rights of distress reserved in or exercisable under any lease for rent and for compliance with the terms of such lease;

(f) any obligations or duties, affecting the property of the Borrower, any Restricted Subsidiary or any Trust to any municipality or governmental, statutory or public authority, with respect to any franchise, grant, licence or permit and any defects in title to structures or other facilities arising solely from the fact that such structures or facilities are constructed or installed on lands held by the Borrower, any Restricted Subsidiary or any Trust under government permits, leases or other grants, which obligations, duties and defects in the aggregate do not materially impair the use of such property, structures or facilities for the purpose for which they are held by the Borrower, any Restricted Subsidiary or any Trust;

(g) deposits in connection with contracts, bids, tenders or expropriation proceedings, or to secure workers' compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, public and statutory obligations, liens or claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens;

(h) security to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the operations of the Borrower, any Restricted Subsidiary or any Trust;

(i) liens and privileges arising out of judgments or awards with respect to which the Borrower, any Restricted Subsidiary or any Trust shall be prosecuting an appeal or proceedings for review and with respect to which it shall have secured a stay of execution pending such appeal or proceedings for review; or

(j) any other mortgages, liens or other encumbrances on the property of the Borrower, any Restricted Subsidiary or any Trust which are not otherwise Permitted Liens, not to exceed at any time in aggregate the Canadian Dollar Equivalent of Cdn. $25,000,000.

"**Permitted Title Defects**" means, in respect of any particular asset of the Borrower or any Restricted Subsidiary, the following defects in its title thereto:

(a) Permitted Encumbrances;

(b) title defects or irregularities which are of a minor nature and which in the aggregate will not materially impair the use of the asset for the purposes for which it is held, or impair its saleability, or cause a material disruption or reduction in the production or cash flow associated therewith and which asset is material in the normal course operations of the Borrower or any Restricted Subsidiary; or

(c) title defects which are disclosed to and expressly consented to in writing by the Majority Lenders as constituting Permitted Title Defects hereunder.

"**Person**" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department, political subdivision or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

"**Power of Attorney**" shall have the meaning set out in Section 5.3.

"**Prime Rate**" means a fluctuating rate of interest per annum, expressed on the basis of a year of 365 days, which is equal at all times to the greater of: (i) the rate of interest most recently announced by CIBC as its prime rate for lending Canadian Dollars in Canada; and (ii) the average rate for 30 day Canadian Dollar Banker's Acceptances which appears on the Reuters' Screen CDOR page at 10:00 a.m. Toronto time, plus 1.0%.

"**Prime Rate Drawing**" means a Drawing in Canadian Dollars in respect of which interest is payable by reference to the Prime Rate.

"**Principal Outstandings**" at any time means, in relation to the Facility, the aggregate at any such time of:

(a) the principal amounts outstanding of all Drawings including all Swing Line Loans;

(b) the face amount of outstanding Bankers' Acceptances Drawings; and

(c) the maximum undrawn amounts in respect of outstanding Letters of Credit.

"**Public Record**" means the documents available in the public file of the Borrower at the applicable securities commissions in Alberta and Ontario.

"**Public Trust**" means Duke Energy Income Fund, and its successors and permitted assigns.

"**Quarterly Compliance Certificate**" means a certificate of a senior officer of the Borrower in the form set out in Schedule G.

"**Rating**" means, at any given time, the rating assigned by a Rating Agency on the Borrower in respect of unsecured long term debt securities issued by it.

"**Rating Agencies**" means S&P and DBRS and "**Rating Agency**" means either one of them.

"**Ratings Based Grid**" means the Ratings Based Grid set forth in Schedule C.

"**Refunded Swing Line Loans**" has the meaning given to it in Section 2.9(b).

"**Release**" means any presence, release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, leeching or migration of any element or compound in or into the indoor or outdoor environment (including the abandonment or disposal of any barrels, tanks, container or receptacles containing any contaminant), or in, into or out of any vessel or facility, including the movement of any contaminant through the air, soil, subsoil, surface, water, groundwater, rock formation or otherwise which is or may be (under any circumstances, whether or not they have occurred) contrary to any Requirement of Law, the terms of any title or operating documents, or to any other authorization, permit or license.

"**Repayment Date**" means December 20, 2009, subject to extension pursuant to Section 8.4.

"**Reporting Issuer**" means "reporting issuer" as defined in the *Securities Act* (Alberta) or a Person having similar status under the securities legislation of any other jurisdiction, but does not include the Borrower or any Affiliate of the Borrower.

"**Requirement of Law**" means, as to any Person, any present or future applicable Canadian or United States federal, provincial, state or local statute, law, regulation, order of any Governmental Authority and all Governmental Actions in which the Person is a party or by which it is bound, applicable to or binding upon such Person or any of the property of such Person.

"**Restricted Subsidiary**" means the General Partner and any Subsidiary of the Borrower which owns 5% or more of the Consolidated Net Tangible Assets, or which is otherwise designated as such by the Borrower by notice to the Administrative Agent.

"**Rollover**" means a rollover of a Drawing to a further Drawing of the same form, and for greater certainty includes the issuance of Bankers' Acceptances the proceeds of which are used directly or indirectly to repay maturing Bankers' Acceptances and the continuation of a LIBOR Drawing for a further LIBOR Interest Period.

"**Rollover Date**" means the date notified to the Administrative Agent by the Borrower in accordance with Section 3.2 as being the date (which shall be a Banking Day) on which the Borrower has requested a Rollover be made.

"**Rollover Notice**" means a notice substantially in the form of Schedule E, duly executed by a senior officer of the Borrower.

"**S&P**" means the Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc. and its successors.

"**Schedule I Lender**" means a Lender which is a Canadian chartered bank listed under Schedule I to the *Bank Act* (Canada).

"**Schedule II Lender**" means a Lender which is a Canadian chartered bank listed under Schedule II to the *Bank Act* (Canada).

"**Schedule III Lender**" means a Lender which is an authorized foreign bank under Schedule III of the *Bank Act* (Canada).

"**Securities**" means "security" as defined in the *Securities Act* (Alberta) or Voting Securities.

"**Standby Fee**" means the fees payable by the Borrower to the Lenders and the Swing Line Lender as set out in Section 4.3.

"**Standby Fee Rate**" means at any time or for any period:

(a) until such time as the Borrower has been assigned a Rating, the percentage rate per annum as expressed in basis points at which the Standby Fee is calculated, determined in accordance with Debt-to-EBITDA Based Grid set forth in Schedule C, by reference to the applicable financial ratio level of the Borrower as such time or for such period; and

(b) after such time as the Borrower has been assigned a Rating, the percentage rate per annum as expressed in basis points at which the Standby Fee is calculated, determined in accordance with the Ratings Based Grid set forth in Schedule C, by reference to the applicable Rating of the Borrower as such time or for such period,

as adjusted pursuant to Section 4.4.

"**Standby LC**" shall have the meaning set out in the definition of Letter of Credit.

"**Subordinated Debt**" means all Debt created, incurred, assumed or guaranteed by the Borrower or any Restricted Subsidiary and which is owing to a Person or Persons (other than the Borrower or a Restricted Subsidiary) and which Debt has been fully postponed and subordinated to the Lenders, on terms satisfactory to the Lenders, acting reasonably.

"**Subordination Agreement**" means the subordination agreements to be executed and delivered by one or both of the Trusts in accordance with Section 12.1(u), to be in form and substance satisfactory to the Lenders, acting reasonably.

"**Subsidiary**" means any Person of which more than 50% of the outstanding Voting Securities are owned, directly or indirectly by or for the Borrower or the Public Trust (as applicable), provided that the ownership of such securities confers the right to elect at least a majority of the board of directors of such Person, or a majority of Persons serving similar roles and includes any legal entity in like relationship to a Subsidiary.

"**Successor Entity**" shall have the meaning set out in Section 13.1.

"**Swap**" means any Commodity Swap, Currency Swap or Interest Swap.

"**Swing Line Commitment**" shall have the meaning set out in Section 2.9(a).

"**Swing Line Lender**" means initially CIBC in respect of Drawings in connection with the Swing Line Commitment and any other Lender who replaces or succeeds CIBC in such capacity from time to time.

"**Swing Line Loans**" shall have the meaning set out in Section 2.9.

"**Takeover**" shall have the meaning set out in Section 2.7.

"**Takeover Lender**" shall have the meaning set out in Section 2.7.

"**Takeover Loan**" shall have the meaning set out in Section 2.8.

"**Target**" shall have the meaning set out in Section 2.7.

"**Total Commitment**" means Cdn. $200,000,000 or the Canadian Dollar Equivalent in U.S. Dollars.

"**Total Interest Expense**" of the Borrower means, for any period and on a consolidated basis, without duplication, the aggregate amount of interest and other financing charges expensed by the Borrower, on account of such period with respect to Debt including interest, discount and financing fees, commissions, discounts, the interest or time value of money component of costs related to factoring or securitizing receivables or monetizing inventory and other fees and charges payable with respect to letters of credit, letters of guarantee and bankers' acceptance financing, standby fees (but excluding commitment or similar fees), and the interest component of capital leases, all as determined in accordance with GAAP less interest earned by the Borrower for such period, and less interest on Subordinated Debt.

"**Trusts**" means the Public Trust and the Commercial Trust.

"**Trustee**" means the trustee from time to time of the Trusts and means, as at the Closing Date, Computershare Trust Company of Canada.

"**Trust Indenture**" means the trust indenture dated as of November 2, 2005 between the Trustee, Ian D. Bock, Duke Energy Facilities Management LP and the holders of the Trust Units, as amended and restated as of December 20, 2005, as it may be further amended, restated, supplemented or replaced from time to time as permitted hereunder.

"**Trust Documents**" means, collectively, the Trust Indenture, the CT Trust Indenture, any document evidencing Debt of a Trust to the other Trust, the Administration Agreement and the Exchange Agreement.

"**Trust Units**" means the units of the Public Trust, each unit representing an equal undivided beneficial interest in the Public Trust.

"**U.S. Dollars**" or "**U.S. $**" means lawful currency of the United States of America.

"**Uniform Customs**" means the Uniform Customs and Practice for Documentary Credit of the International Chamber of Commerce, as amended from time to time.

"**Vendor**" means DEGT Midstream Holdings Partnership.

"**Voting Securities**" means "voting security" as defined in the *Securities Act* (Alberta).

SCHEDULE B
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

LENDERS

Lender	Lending Branch	Commitment	Lender's Proportion
Canadian Imperial Bank of Commerce	c/o CIBC World Markets - Global Energy 9th Floor, Bankers Hall East 855 - 2nd Street S.W. Calgary, Alberta T2P 2P2 fax no.: (403) 221-5779	$65 million	32.5%
Bank of Montreal	2200, 333 – 7th Avenue S.W. Calgary, Alberta T2P 2Z1	$65 million	32.5%
The Toronto-Dominion Bank	800, 324 – 8th Avenue S.W. Calgary, Alberta T2P 2Z2	$35 million	17.5%
The Bank of Nova Scotia	2000, 700 – 2nd Street S.W. Calgary, Alberta T2P 2N7	$35 million	17.5%
	TOTALS	$200 million	100%

SCHEDULE C
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

PRICING SCHEDULE

(basis points per annum)

A. Debt-to-EBITDA Grid

Level	Total Debt-to-EBITDA	Applicable Margin (Prime Rate and Base Rate)	Applicable Margin (LIBOR and Standby LCs)/BA Stamping Fee Rate	Applicable Margin (Performance LCs)	Standby Fee Rate
I	<1.5 x	Nil	50.0	32.5	10.0
II	≥ 1.5 x - <2.0 x	Nil	60.0	39.0	12.5
III	≥ 2.0 x - <2.5 x	Nil	70.0	45.5	15.0
IV	≥ 2.5 x - <3.0 x	Nil	85.0	55.25	20.0
V	≥ 3.0 x - <3.5 x	Nil	100.0	65.0	27.5
VI	≥ 3.5 x	25.0	125.0	81.25	32.5

B. Ratings Based Grid

Level	Rating	Applicable Margin (Prime Rate and Base Rate)	Applicable Margin (LIBOR and Standby LCs)/BA Stamping Fee Rate	Applicable Margin (Performance LCs)	Standby Fee Rate
I	>A-	Nil	40.0	24.0	10.0
II	A-	Nil	50.0	32.5	10.0
III	BBB+	Nil	60.0	39.0	12.5
IV	BBB	Nil	70.0	45.5	15.0
V	BBB-	Nil	85.0	55.25	20.0
VI	BB+	Nil	100.0	65.0	27.5
VII	<BB+	25.0	125.0	81.25	32.5

SCHEDULE D
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF DRAWING NOTICE

____
Date

Re: Cdn.$200,000,000 Extendible Four Year Credit Agreement (the "**Agreement**") dated as of December 20, 2005 made among Duke Energy Facilities LP (the "**Borrower**"), the Lenders as defined in the Agreement, and Canadian Imperial Bank of Commerce (the "**Administrative Agent**") as administrative agent for the Lenders.

To: The Lenders through the Administrative Agent, Canadian Imperial Bank of Commerce; facsimile no.: (416) 956-3830; Attention: Syndicate Agency.

We refer to the Facility constituted by the Agreement and we hereby give you notice that we wish to make following Drawing pursuant to the Agreement on _________, 200__ (the "**Drawing Date**"):

A. PRIME RATE DRAWING

Amount of proposed Drawing: $________________

B. BASE RATE DRAWING

Amount of proposed Drawing: $________________

C. BANKERS' ACCEPTANCE DRAWING

Amount of proposed Drawing: $________________

BA Period: _______ days.

BA Maturity Date: ________.

[The Borrower will make its own arrangements with respect to the sale of such Bankers' Acceptance in the market place.] [Delete if not applicable.]

D. LIBOR DRAWING

Amount of proposed Drawing: $______________

LIBOR Interest Period: ____________

Due Date: ____________

E. <u>LC DRAWING</u>

Amount of proposed Drawing: **[Cdn.] [U.S.]** $_____________

Term: _______________

We confirm that as of the Drawing Date:

(a) all representations and warranties of the Borrower contained in Article 11 of the Agreement are true subject to the materiality thresholds and limitation set forth in such article; and

(b) no Default or Event of Default has occurred and is continuing.

The Drawing requested is made in accordance with the terms and conditions set forth in the Agreement.

All capitalized terms defined in the Agreement and used herein shall have the meaning set out in the Agreement.

DUKE ENERGY FACILITIES LP,
by **DUKE ENERGY FACILITIES MANAGEMENT INC.**, as general partner and on behalf of Duke Energy Facilities Management LP, Manager of Duke Energy Facilities LP.

Per: ______________________________
Name:
Title:

SCHEDULE E
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF ROLLOVER NOTICE

____
Date

Re: Cdn.$200,000,000 Extendible Four Year Credit Agreement (the "**Agreement**") dated as of December 20, 2005 made among Duke Energy Facilities LP (the "**Borrower**"), the Lenders as defined in the Agreement, and Canadian Imperial Bank of Commerce (the "**Administrative Agent**") as administrative agent for the Lenders.

To: The Lenders through the Administrative Agent, Canadian Imperial Bank of Commerce; facsimile No.: (416) 956-3830; Attention: Syndicate Agency.

We refer to the Facility constituted by the Agreement and we hereby give you notice that we wish to effect a Rollover of the following existing Drawings on _____________, 200__ (the "**Rollover Date**"):

(a) Bankers' Acceptance Drawing dated ____________ in the amount of Cdn. $___________ having a BA Period of _____________ and a BA Maturity Date of __________________, to a Bankers' Acceptance Drawing in the amount of Cdn. $__________ and having a BA Period of __________ and a BA Maturity Date of __________

[The Borrower will make its own arrangements with respect to the sale of such Bankers' Acceptance in the market place.] [Delete if not applicable.]

(b) LIBOR Drawing dated ____________, in the amount of U.S.$_______________ having a LIBOR Interest Period of _________________ and a maturity date of ________________, to a LIBOR Drawing in the amount of U.S.$_____________ and having a LIBOR Interest Period of _______________ and a maturity date of _________________.

The Rollover requested is made in accordance with the terms and conditions set forth in the Agreement.

All capitalized terms defined in the Agreement and used herein shall have the meaning set out in the Agreement.

DUKE ENERGY FACILITIES LP,
by **DUKE ENERGY FACILITIES MANAGEMENT INC.**, as general partner and on behalf of Duke Energy Facilities Management LP, Manager of Duke Energy Facilities LP.

Per: ______________________________
Name:
Title:

SCHEDULE F
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF CONVERSION NOTICE

____
Date

Re: Cdn.$200,000,000 Extendible Four Year Credit Agreement (the "**Agreement**") dated as of December 20, 2005 made among Duke Energy Facilities LP (the "**Borrower**"), the Lenders as defined in the Agreement, and Canadian Imperial Bank of Commerce (the "**Administrative Agent**") as administrative agent for the Lenders.

To: The Lenders through the Administrative Agent, Canadian Imperial Bank of Commerce; facsimile No.: (416) 956-3830; Attention: Syndicate Agency.

We refer to the Facility constituted by the Agreement and we hereby request a Conversion under the Facility as follows:

(a) Existing type and amount of Drawing to be converted:

____

(b) Conversion Date:

____

(c) Type, amount and currency of Drawing to be converted to:

____

(d) LIBOR Interest Period(s) selected (if applicable):

____

(e) Term of Bankers' Acceptance (if applicable)

____

[The Borrower will make its own arrangements with respect to the sale of such Bankers' Acceptance in the market place.] [Delete if not applicable.]

The Conversion requested is made in accordance with the terms and conditions set forth in the Agreement.

All capitalized terms defined in the Agreement and used herein shall have the meaning set out in the Agreement.

DUKE ENERGY FACILITIES LP, by **DUKE ENERGY FACILITIES MANAGEMENT INC.**, as general partner and on behalf of Duke Energy Facilities Management LP, Manager of Duke Energy Facilities LP.

Per: ________________________________
Name:
Title:

SCHEDULE G
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF QUARTERLY COMPLIANCE CERTIFICATE

____
Date

Re: Cdn.$200,000,000 Extendible Four Year Credit Agreement (the "**Agreement**") dated as of December 20, 2005 made among Duke Energy Facilities LP (the "**Borrower**"), the Lenders as defined in the Agreement, and Canadian Imperial Bank of Commerce (the "**Administrative Agent**") as administrative agent for the Lenders.

To: The Lenders through the Administrative Agent, Canadian Imperial Bank of Commerce; facsimile No.: (416) 956-3830; Attention: Syndicate Agency.

I, **[name], [insert office held]** of the Manager of the Borrower, hereby certify, to the best of my knowledge as of the date hereof with respect to the relevant fiscal quarter, as follows except as described in Schedule A hereto:

(a) all covenants of the Borrower and the Restricted Subsidiaries under the Loan Document have been complied with;

(b) no Default or Event of Default has occurred and is continuing; and

(i) there are no actions, suits, litigation or other proceedings which are commenced or threatened against the Borrower or any Restricted Subsidiary which, if successful, would involve a claim against the Borrower or a Restricted Subsidiary in excess of Cdn. $15,000,000, in the aggregate, or could reasonably be expected to have a Material Adverse Effect;

(ii) there has been no discovery of any contaminant or material Release from or upon the property of the Borrower or any Restricted Subsidiary which could reasonably be expected to include liability to the Borrower or any Restricted Subsidiary in excess of Cdn. $15,000,000 in the aggregate;

(iii) there are no Governmental Actions that have been issued or made by any Governmental Authority to the effect that the Borrower or any Restricted Subsidiary has failed to comply in any material respect with any Environmental Laws or requiring any remediation, stop work, cleanup or otherwise which would otherwise require a non-budgeted expenditure as a result thereof in excess of Cdn. $15,000,000 in the aggregate;

(iv) there have been no defaults by the Borrower or any Restricted Subsidiary under any term or provision of any agreement between itself and any

Person which provides for recourse against it of an amount in excess of Cdn. $15,000,000, in the aggregate, where the result of such default (and assuming any requirement for notice or lapse of time or other condition precedent has been satisfied) would be that such Person has the right to accelerate any Debt in excess of Cdn. $15,000,000 or demand payment of any Debt in excess of Cdn. $15,000,000 it owes to such Person as a result thereof;

(v) no matter has had, or could reasonably be expected to have, a Material Adverse Effect; and

(vi) there have been no material amendments to any Material Contract.

I confirm to you that, as of the most recent fiscal quarter end of the Borrower:

(a) The Debt to EBITDA Ratio of the Borrower was ______________ to 1.0.

(b) The Interest Coverage Ratio of the Borrower was ______________ to 1.0.

I confirm to you that, as of the date hereof:

(a) **[The DBRS Rating is ______________.] [if applicable]**

(b) **[The S&P Rating is _______________.] [if applicable]**

Attached hereto as Schedule B are the calculations and a detailed breakdown in respect of the ratios set forth in paragraphs 1 and 2 above.

There have been no changes to Schedule K of the Credit Agreement **[except as follows: ●]**.

This certificate is made in accordance with the terms and conditions set forth in the Agreement. This certificate is given on behalf of the Borrower and no personal liability shall be incurred by the undersigned in connection herewith.

All capitalized terms defined in the Agreement and used herein shall have the meaning set out in the Agreement.

____
[Officer] [Title]

Schedule A

Disclosure

Schedule B

Financial Ratio Calculations

SCHEDULE H
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF LENDER ASSIGNMENT AGREEMENT

THIS AGREEMENT dated [•] is among:

[•]
(the "**Assignor**")

AND

[•]
(the "**Assignee**")

AND

DUKE ENERGY FACILITIES LP
(the "**Borrower**")

AND

CANADIAN IMPERIAL BANK OF COMMERCE
(the "**Administrative Agent**")

WHEREAS the Assignor is a Lender under the Cdn.$200,000,000 Extendible Four Year Credit Agreement (the "**Agreement**") dated as of December 20, 2005 made among the Borrower, the Lenders (as defined in the Agreement) and Canadian Imperial Bank of Commerce (the "**Administrative Agent**"), as administrative agent for the Lenders;

AND WHEREAS the Assignor has agreed to assign and transfer to the Assignee certain rights under the Agreement in compliance with Section 15.1 of the Agreement and the Assignee has agreed to accept such rights and assume certain obligations of the Assignor under the Agreement;

AND WHEREAS as a condition to the effectiveness of this assignment, Section 15.2 of the Agreement requires the parties hereto to enter into this agreement;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby agree as follows:

1. **DEFINITIONS AND INTERPRETATION**

(a) In this agreement, including the recitals, capitalized terms used herein, and not otherwise defined herein, shall have the meanings attributed thereto in the Agreement.

(b) This agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta shall be treated as a Alberta contract. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of Alberta without prejudice to the rights of the parties to take proceedings in any other jurisdictions.

2. ASSIGNMENT OF RIGHTS BY ASSIGNOR

Effective as of the date hereof, the Assignor absolutely assigns and transfers to the Assignee **[all Cdn. $• and/or U.S. $• or •%]** of the Facility and Drawings thereunder owing by the Borrower to the Assignor, as more particularly described in Schedule "A" hereto, together with all of the Assignor's other rights under the Agreement but only insofar as such other rights relate to the interest assigned hereunder (collectively, the "**Assigned Interests**").

3. ASSUMPTION OF OBLIGATIONS BY ASSIGNEE

The Assignee assumes and covenants and agrees to be responsible for all obligations relating to the Assigned Interests to the extent such obligations arise or accrue on or after the date hereof (the "**Assumed Obligations**") and agrees that it will be bound by the Agreement to the extent of the Assumed Obligations as fully as if it had been an original party to the Agreement.

4. CONSENT OF BORROWER AND ADMINISTRATIVE AGENT

[If no Default or Event of Default has occurred and is continuing.]
The Borrower and the Administrative Agent on behalf of the Lenders consent to the assignment of the Assigned Interests to the Assignee and the assumption of the Assumed Obligations by the Assignee and agree to recognize the Assignee as a Lender under the Agreement as fully as if the Assignee had been an original party to the Agreement. The Borrower and the Administrative Agent on behalf of the Lenders agree that the Assignor shall have no further liability or obligation in respect of the Assumed Obligations.

5. ASSIGNEE CREDIT DECISION

The Assignee acknowledges to the Administrative Agent and Assignor that the Assignee has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, condition, affairs, status and nature of the Loan Parties. Accordingly, the Assignee confirms with the Administrative Agent and Assignor that it does not rely, and it will not hereafter rely, on the Administrative Agent and Assignor and agrees:

(a) to check or inquire on its behalf into the adequacy, accuracy or completeness of any information provided by the Borrower or any other Person under or in connection with the Agreement or the transactions therein contemplated (whether or not such information has been or is hereafter distributed to the Assignee by the Administrative Agent); or

(b) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Loan Parties and the Subsidiaries.

The Assignee acknowledges that a copy of the Agreement (including a copy of the Schedules) has been made available to it for review and the Assignee acknowledges that it is satisfied with the form and substance of the Agreement. The Assignee hereby covenants and agrees, except as specifically contemplated by the Agreement, that it has not heretofore and shall not hereafter take any security interest for any Indebtedness owing under the Agreement and that it will not make any arrangements with any Loan Party or any Subsidiary for the satisfaction of any such outstanding Indebtedness without the prior consent of all other Lenders.

6. TAX RESIDENCY OF ASSIGNEE

If the Assignee is, or becomes, a non-resident of Canada for the purpose of the *Income Tax Act* (Canada) it shall forthwith notify the Borrower of such circumstance. If the Assignee is an authorized foreign bank listed in Schedule III to the *Bank Act* (Canada) it shall certify to the Borrower whether it is or is not exempt from non-resident withholding tax under the *Income Tax Act* (Canada) and shall forthwith notify the Borrower of any change in such status. The Assignee shall indemnify and save the Borrower harmless from all loss, expense and liability incurred by the Borrower as a result of the Assignee’s failure to give any notice or certification required by this paragraph.

7. SETTLEMENT

The Assignor and the Assignee acknowledge and agree that all payments under the Agreement in respect of the Assigned Interests received by the Administrative Agent on or after the date hereof shall be the property of the Assignee and the Administrative Agent shall be entitled to treat the Assignee as solely entitled thereto. The Assignor and the Assignee represent and warrant to the Administrative Agent that the Assignor and the Assignee have made satisfactory arrangements for the settlement of any amounts owing or which may become owing by one to the other in connection with this agreement without any action on the part of the Administrative Agent.

8. GENERAL PROVISIONS

(a) The Assignee designates the following office as its Lender's Lending Branch:

Fax No.: [•]

Attention: [•]

(b) The parties hereto shall from time to time and at all times do all such further acts and things and execute and deliver all such documents as are required in order to fully perform and carry out the terms of this agreement.

(c) The provisions of this agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

(d) This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one full set of counterparts.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by its duly authorized representative(s) as of the date first above written.

[ASSIGNOR]

Per: ______________________________
Name:
Title:

[ASSIGNEE]

Per: ______________________________
Name:
Title:

[If no Default or Event of Default has occurred and is continuing.]

DUKE ENERGY FACILITIES LP, by **DUKE ENERGY FACILITIES MANAGEMENT INC.**, as general partner and on behalf of Duke Energy Facilities Management LP, Manager of Duke Energy Facilities LP.

Per: ______________________________
Name:
Title:

CANADIAN IMPERIAL BANK OF COMMERCE, in its capacity as Administrative Agent

Per: ______________________________
Name:
Title:

SCHEDULE I
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

LIST OF GUARANTORS AT CLOSING

Duke Energy Midstream Services Canada Corporation

Duke Energy Facilities Inc.

DEFS Canada LP

SCHEDULE J
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF GUARANTEE

TO: CANADIAN IMPERIAL BANK OF COMMERCE, as Agent
BCE Place
161 Bay Street, 8th Floor
Toronto, Ontario M5J 2S8

PREAMBLE:

A. Duke Energy Facilities LP (the "**Borrower**"), Canadian Imperial Bank of Commerce ("**CIBC**"), and those other financial institutions which hereafter become lenders thereunder (collectively, the "**Lenders**") and CIBC, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "**Agent**") are parties to a credit agreement dated December 20, 2005 (such credit agreement as it may be amended, supplemented or otherwise modified or restated from time to time, the "**Credit Agreement**").

B. Pursuant to the Credit Agreement and the other Loan Documents, the Borrower has or may become indebted to the Agent and the Lenders.

C. It is in the best interests of **[•]** (the "**Guarantor**"), as a wholly-owned Restricted Subsidiary of the Borrower, that the Lenders extend credit to the Borrower pursuant to the Credit Agreement and therefore the Guarantor is prepared to issue this Guarantee to the Agent for and on behalf of the Lenders.

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged by the Guarantor, the Guarantor hereby agrees in favour of the Agent for its own benefit and on behalf of the Lenders as follows:

1. **Defined Terms**. In this Guarantee, capitalized words and phrases which are not otherwise defined have the respective meanings given to such terms in the Credit Agreement.

2. **Guarantee**. The Guarantor hereby unconditionally and irrevocably guarantees the prompt payment and performance to the Agent for its own benefit and on behalf of the Lenders forthwith upon demand by the Agent (after or concurrently with a demand being made under the Credit Agreement) of all indebtedness, liabilities and obligations of any kind whatsoever (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) which the Borrower has from time to time incurred or is under or may hereafter incur or be under to the Agent or any Lender under, in connection with or with respect to the Credit Agreement (collectively, the "**Obligations**"). All amounts

payable by the Guarantor hereunder will be paid to the Agent for its own benefit and on behalf of the Lenders at the address of the Agent shown above or as otherwise directed in writing by the Agent. Any amounts payable by the Guarantor under this Guarantee which are not paid forthwith upon demand therefore by the Agent will bear interest from the date of such demand at the rate or rates applicable to the corresponding Obligations.

3. **Continuing, Unconditional and Absolute Guarantee**. The obligations of the Guarantor under this Guarantee are continuing, unconditional and absolute and, without limiting the generality of the foregoing, will not be released, discharged, diminished, limited or otherwise affected by (and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable law):

(a) any extension, other indulgence, renewal, settlement, discharge, compromise, waiver, subordination or release in respect of any Obligation, security, Person or otherwise, unless such settlement, discharge, compromise or release shall specifically release the Guarantor from its obligations, indebtedness or liabilities hereunder or any part thereof;

(b) any waiver, modification, restatement or amendment of or supplement to any Loan Document or the Obligations, including any increase or decrease in the principal, the rates of interest or other amounts payable thereunder;

(c) any change in the time, manner or place of payment of or in any other term of any Loan Document or the Obligations, or the failure on the part of the Borrower to carry out any of its Obligations under any Loan Document;

(d) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;

(e) any release, non-perfection or invalidity of any direct or indirect security for any Obligation;

(f) any change in the existence, structure, constitution, name, objects, powers, business, direct or indirect control or ownership of any Loan Party or any other Person, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Loan Party or any other Person or its assets;

(g) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Borrower, the Agent, any Lender or any other Person, whether in connection herewith or any unrelated transactions;

(h) any invalidity, illegality or unenforceability relating to or against the Borrower or any provision of applicable law purporting to prohibit the payment by the Borrower of the principal or interest under the Obligations;

(i) any limitation, postponement, prohibition, subordination or other restriction on the rights of the Agent or any Lender to receive payment of the Obligations;

(j) any release, substitution or addition of any co-signer, endorser or other guarantor of the Obligations;

(k) any defence arising by reason of any failure of the Agent or any Lender to make any presentment, demand for performance, notice of non-performance, protest and any other notice, including notice of all of the following: acceptance of this Guarantee, partial payment or non-payment of all or any part of the Obligations and the existence, creation or incurring of new or additional Obligations;

(l) any defence arising by reason of any failure of the Agent or any Lender to proceed against the Borrower or any other Person, to proceed against, apply or exhaust any security held from the Borrower or any other Person for the Obligations, to proceed against, apply or exhaust any security held from the Guarantor or any other Person for this Guarantee or to pursue any other remedy in the power of the Agent or any Lender whatsoever;

(m) any law which provides that the obligation of a guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal obligation or which reduces a guarantor's obligation in proportion to the principal obligation;

(n) any defence arising by reason of any incapacity, lack of authority or other defence of the Borrower or any other Person, or by reason of any limitation, postponement or prohibition on the Agent's or any Lender's right to receive payment of the Obligations or any part thereof, or by reason of the cessation from any cause whatsoever of the liability of the Borrower or any other Person with respect to all or any part of the Obligations, or by reason of any act or omission of the Agent or any Lender or others which directly or indirectly results in the discharge or release of the Borrower or any other Person, unless such discharge or release shall specifically release the Guarantor or the Borrower or any other Persons from their respective obligations, indebtedness or liabilities hereunder or any part thereof, or all or any part of the Obligations or any security or guarantee therefore, whether by contract, operation of law or otherwise;

(o) any defence arising by reason of any failure by the Agent or any Lender to obtain, perfect or maintain a perfected or prior (or any) security interest in or lien upon any property of the Borrower or any other Person, or by reason of any interest of the Agent or any Lender in any property, whether as owner thereof or the holder of a security interest therein or lien thereon, being invalidated, voided, declared fraudulent or preferential or otherwise set aside, or by reason of any impairment by the Agent or any Lender of any right to recourse or collateral;

(p) any defence arising by reason of the failure of the Agent or any Lender to marshal any assets;

(q) any defence based upon any failure of the Agent or any Lender to give to the Borrower or the Guarantor notice of any sale or other disposition of any property securing any or all of the Obligations or any guarantee thereof, or any defect in any notice that may be given in connection with any sale or other disposition of any such property, or any failure of the Agent or any Lender to comply with any provision of applicable law in enforcing any security interest of lien upon any such property, including any failure by the Agent or any Lender to dispose of any such property in a commercially reasonable manner;

(r) any dealing by the Agent or any Lender whatsoever with the Borrower or other Person or any security, whether negligently or not, or any failure to do so;

(s) any defence based upon or arising out of any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against the Borrower or any other Person, including any discharge of, or bar against collecting, any of the Obligations, in or as a result of any such proceeding; or

(t) any other act or omission to act or delay of any kind by the Borrower, the Agent, a Lender or any other Person or any other circumstance whatsoever, whether similar or dissimilar to the foregoing, which might, but for the provisions of this Section 3, constitute a legal or equitable discharge, limitation or reduction of the Guarantor's obligations hereunder (other than the irrevocable and unconditional payment in full of all of the Obligations).

The foregoing provisions apply (and the foregoing waivers will be effective) even if the effect of any action (or failure to take action) by the Agent or any Lender is to destroy or diminish the Guarantor's subrogation rights, the Guarantor's right to proceed against the Borrower for reimbursement, the Guarantor's right to recover contribution from any other guarantor or any other right or remedy.

4. **Release of Obligations**. This Guarantee will remain in full force and effect until the Obligations are irrevocably and unconditionally performed and paid in full.

5. **Validity of Agreements**. The Guarantor will not contest or otherwise challenge the legality, validity or enforceability of any term, condition or other provision contained in the Loan Documents. The Guarantor represents to the Agent for and on behalf of the Lenders that it is familiar with and consents to the terms and conditions of the Loan Documents.

6. **Assumption of Authority**. The Agent for and on behalf of the Lenders is entitled to assume, notwithstanding any investigation by or on behalf of the Agent or any Lender, the power and authority of the officers, directors, agents or other Persons acting or purporting to act on behalf of the Borrower, the Guarantor or any other Restricted Subsidiary, and any Obligations made or created in reliance upon the exercise of such power and authority will be guaranteed hereunder.

7. **Recourse against Borrower**. The Agent for and on behalf of the Lenders is not required to exhaust its recourse against the Borrower, any other guarantor or other Person or under

any security or any other guarantee before being entitled to payment from the Guarantor under this Guarantee.

8. **Settlement of Accounts**. Any account settled or stated between the Agent for and on behalf of the Lenders and the Borrower will be accepted by the Guarantor as *prima facie* evidence, subject to manifest error, that the amount thereby appearing due by the Borrower to the Agent and the Lenders is so due.

9. **No Waiver**. No delay on the part of the Agent for and on behalf of the Lenders in exercising any of its options, powers or rights, or partial or single exercise thereof, will constitute a waiver thereof. No waiver of any of the Agent's or any Lender's rights hereunder, and no modification or amendment of this Guarantee, will be deemed to be made by the Agent for and on behalf of the Lenders unless the same will be in writing, duly signed by the Agent, for and on behalf of the Lenders, and, in the case of a modification or amendment, the Guarantor and each such waiver, if any, will apply only with respect to the specific instance involved, and will in no way impair the rights of the Agent and the Lenders or the obligations, indebtedness or liabilities of the Guarantor to the Agent and the Lenders in any other respect at any other time.

10. **Guarantee of all Credit Obtained; Indemnity**. All moneys and credits in fact borrowed or obtained by the Borrower from the Agent and any Lender under the Credit Agreement will be deemed to form part of the Obligations notwithstanding any incapacity, disability or lack or limitation of status or power of the Borrower or any other Person or of the directors, officers, employees, partners or agents thereof, or that the Borrower or any other Person may not be a legal entity, or any irregularity, defect or informality in the borrowing or obtaining of such moneys or credits. If any amount in respect of the Obligations is not recoverable from the Guarantor hereunder on the basis of a guarantee, then, notwithstanding any other provision hereof, the Guarantor will indemnify and save harmless the Agent and any Lender from and against any and all losses, damages, costs, expenses or liabilities suffered or incurred by the Agent and any Lender resulting or arising from or relating to any failure of the Borrower to unconditionally and irrevocably pay in full or fully perform the Obligations as and when due provided that the amount of such indemnification shall not exceed the amount of such Obligations and any amounts due and owing hereunder.

11. **Stay of Acceleration**. If acceleration of the time for payment, or the liability of the Borrower to make payment, of any amount specified to be payable by the Borrower in respect of the Obligations is stayed, prohibited or otherwise affected upon the insolvency, bankruptcy, reorganization or winding-up of the Borrower or any other Person or any moratorium affecting the payment of the Obligations, all such amounts otherwise subject to acceleration or payment will nonetheless be deemed for all purposes of this Guarantee to be and to become due and payable by the Borrower and will be payable by the Guarantor hereunder forthwith on demand by the Agent for its own benefit and on behalf of the Lenders.

12. **Reinstatement**. If, at any time, all or any part of any payment previously applied by the Agent or any Lender to any Obligation is or must be rescinded or returned by the Agent

or any Lender for any reason whatsoever (including the insolvency, bankruptcy or reorganization of the Borrower or any other Person), such Obligation will, for the purpose of this Guarantee, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Agent or any such Lender, and this Guarantee will continue to be effective or be reinstated, as the case may be, as to such Obligation, all as though such application by the Agent or any such Lender had not been made.

13. **Assignment**. Following the occurrence and during the continuance of an Event of Default, all present and future indebtedness and liability of the Borrower to the Guarantor is hereby assigned by the Guarantor to the Agent for its own benefit and on behalf of the Lenders and all moneys received by the Guarantor in respect thereof will be received in trust for and, unless prior written authorization from the Agent to the contrary will have been obtained by the Guarantor, will be paid over to the Agent for its own benefit and on behalf of the Lenders upon demand by the Agent. If the Agent receives from the Guarantor a payment or payments in full or on account of the liability of the Guarantor hereunder, the Guarantor will not be entitled to claim repayment against the Borrower until the Agent's and the Lenders' claims against the Borrower have been irrevocably and unconditionally paid in full. In case of liquidation, winding up or bankruptcy of the Borrower (whether voluntary or involuntary) or any composition with creditors or scheme of arrangement, the Agent for its own benefit and on behalf of the Lenders will have the right to rank for its full claims and receive all distributions, dividends or other payments in respect thereof in priority to the Guarantor until the claims of the Agent and the Lenders have been irrevocably and unconditionally paid in full, and the Guarantor will continue to be liable hereunder for any balance which may be owing to the Agent for its own benefit and on behalf of the Lenders by the Borrower. The foregoing provisions of this Section 13 will not in any way limit or lessen the liability of the Guarantor under any other section of this Guarantee.

14. **No Subrogation**. Notwithstanding any payment made by the Guarantor under this Guarantee or any setoff or application of funds of the Guarantor by the Agent or any Lender, the Guarantor will have no right of subrogation to, and waives, to the fullest extent permitted by applicable law, any right to enforce any remedy which the Agent or any Lender now has or may hereafter have against the Borrower, until all of the Obligations have been irrevocably and unconditionally paid in full; and until that time, the Guarantor waives any benefit of, and any right to participate in, any security, whether real or personal property, now or hereafter held by the Agent or any Lender for the Obligations.

15. **Foreign Currency Obligations**. The Guarantor will make payment relative to each Obligation in the currency (the "**Original Currency**") in which the Borrower is required to pay such Obligation. If the Guarantor makes payment relative to any Obligation to the Agent or the Lender in a currency other than the Original Currency (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction), such payment will constitute a discharge of the liability of the Guarantor hereunder in respect of such Obligation only to the extent of the amount of the Original Currency which the Agent is able to purchase at Calgary, Alberta with the amount it receives on the date of

receipt. If the amount of the Original Currency which the Agent is able to purchase is less than the amount of such currency originally due to it in respect to the relevant Obligation, the Guarantor will indemnify and save the Agent and each Lender harmless from and against any loss or damage arising as a result of such deficiency. This indemnity will constitute an obligation separate and independent from the other obligations contained in this Guarantee, will give rise to a separate and independent cause of action, will apply irrespective of any indulgence granted by the Agent for and on behalf of the Lenders and will continue in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order.

16. **Taxes and Set-off by Guarantor**. All payments to be made by the Guarantor hereunder will be made without set-off or counterclaim and without deduction for any taxes, levies, duties, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever. If at any time any applicable law, regulation or international agreement requires the Guarantor to make any such deduction or withholding from any such payment, the sum due from the Guarantor with respect to such payment will be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Agent for its own benefit and on behalf of the Lenders receives a net sum equal to the sum which it would have received had no deduction or withholding been required.

17. **Payment of Expenses; Indemnification**. The Guarantor will pay on demand, and will indemnify and save the Agent and each Lender harmless from, any and all liabilities, costs and expenses (including reasonable legal fees and expenses on a solicitor and his own client full indemnity basis and any sales, goods and services or other similar taxes payable to any Governmental Authority with respect to any such liabilities, costs and expenses) (a) incurred by the Agent for its own benefit and on behalf of the Lenders in the enforcement of this Guarantee, (b) with respect to, or resulting from, any failure or delay by the Guarantor in performing or observing any of its obligations under this Guarantee.

18. **Additional Security**. This Guarantee is in addition and without prejudice to any security of any kind (including other guarantees) now or hereafter held by or for the benefit of the Agent or the Lenders and any other rights or remedies that the Agent or the Lenders might have.

19. **Governing Law; Attornment**. This Guarantee will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without giving affect to the conflict of law principles thereof. Without prejudice to the ability of the Agent or any Lender to enforce this Guarantee in any other proper jurisdiction, the Guarantor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta, or any appellate court thereof, for the purposes of this Guarantee.

20. **Successors and Assigns**. The provisions of this Guarantee will be binding upon and enure to the benefit of the Agent and the Lenders and their respective successors and assigns and will be binding upon the Guarantor and its successors. The Guarantor's

obligations hereunder will not be assigned or delegated. The Agent or any Lender may from time to time, and without notice to or the consent of the Guarantor, assign or transfer all or any of the Obligations or any interest therein in accordance with the Credit Agreement and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, any such Obligation or part thereof so transferred or assigned will remain an "Obligation" for the purposes of this Guarantee and any immediate and successive assignee or transferee of any Obligation or any interest therein will, to the extent of the interest so assigned or transferred, be entitled to the benefit of, and the right to enforce, this Guarantee. This Guarantee shall be discharged and cease to bind the Guarantor if the Guarantor is undesignated as a Restricted Subsidiary in accordance with Section 12.1 (t) of the Credit Agreement.

21. **Time**. Time will be of the essence in this Guarantee.

22. **Severability**. If any portion of this Guarantee or the application thereof to any circumstance will be held invalid or unenforceable by a court of competent jurisdiction in any jurisdiction from which no further appeal has or is taken, to an extent that does not affect in a fundamental way the operation of this Guarantee, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Guarantee will not be affected thereby and will be valid and enforceable to the fullest extent permitted by applicable law in such jurisdiction, and any such invalidity or enforceability in any jurisdiction does not invalidate or render unenforceable the whole or any such portion of this Guarantee in any other jurisdiction.

23. **Notice**. All notices, demands, offers, consents and other instruments and communications to be made or given pursuant to this Guarantee will be in writing and may be made or given by personal delivery or by transmittal by telecopier or other electronic means of communication addressed to the respective parties as follows:

To the Agent for and on behalf of the Lenders:

Canadian Imperial Bank of Commerce, as Agent
BCE Place
161 Bay Street, 8th Floor
Toronto, Ontario M5J 2S8

Telecopier: (416) 956-3830
Attention: Director, Agent Administration

To the Guarantor:

[•]
[1333 West Georgia Street
Vancouver, B.C. V6E 3K9

Telecopier: (604) 488-8070
Attention: **[•]**

or to such other address or telecopy number as any party may from time to time notify the other in accordance with this Section 23. Any notice, demand, offer, consent, instrument or other communication made or given by personal delivery or by telecopier or other electronic means of communication during normal business hours at the place of receipt on a Banking Day will be conclusively deemed to have been made or given at the time of actual delivery or transmittal, as the case may be, on such Banking Day. Any notice, demand, offer, consent, instrument or other communication made or given by personal delivery or by telecopier or other electronic means of communication after normal business hours at the place of receipt or otherwise than on a Banking Day will be conclusively deemed to have been made or given at 11:00 a.m. (Toronto time) on the first Banking Day following actual delivery or transmittal, as the case may be.

24. **Financial Condition**. The Guarantor is fully aware of the financial condition of the Borrower.

25. **Negotiated Document**. This Guarantee is the result of negotiations between the Guarantor and the Agent and has been reviewed by counsel to the Guarantor and the Agent and is the product of both the Guarantor and the Agent. Accordingly, this Guarantee is not to be construed against the Agent merely because of its involvement in this Guarantee's preparation.

26. **Interpretation**. The division of this Guarantee into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Guarantee. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Guarantee, the word "including" (or includes) means "including (or includes) without limitation".

27. **Receipt of Copy**. The Guarantor acknowledges receipt of an executed copy of this Guarantee. The Guarantor waives the right to receive any amount that it may now or hereafter be entitled to receive (whether by way of damages, fine, penalty or otherwise) by reason of the failure of the Agent to deliver to the Guarantor a copy of any financing statement or any statement issued by any registry that confirms registration of a financing statement relating to this Guarantee.

THIS GUARANTEE executed effective the **[•]** day of **[•]**, 20_____.

[NAME OF THE GUARANTOR]

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

SCHEDULE K
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

SUBSIDIARIES AND RESTRICTED SUBSIDIARIES

List of Subsidiaries

Duke Energy Midstream Services Canada Corporation

DEGT Midstream Partner Corporation

DEGT Midstream Management Corporation

DEFS Canada LP

Duke Energy Field Services Canada

Duke Energy Facilities Holdings Partnership

List of Restricted Subsidiaries

Duke Energy Midstream Services Canada Corporation

Duke Energy Facilities Inc.

DEFS Canada LP

Duke Energy Field Services Canada

CORPORATE INFORMATION OF BORROWER, RESTRICTED SUBSIDIARIES AND COMMERCIAL TRUST

Legal Name	Trade Names	Jurisdiction of Formation	Location of Business and Assets	Ownership of Voting Securities
Duke Energy Facilities LP	None	Alberta	Alberta and British Columbia	0.01% general partnership interests owned by Duke Energy Facilities Inc. (held through ordinary units) 61.45% limited partnership interest owned by DEGT Midstream Holdings Partnership (held through exchangeable units) 38.54% limited partnership interest owned by Duke Energy Commercial Trust (held through ordinary units)
Duke Energy Commercial Trust	None	Alberta	Alberta and British Columbia	100% owned by Duke Energy Income Fund
Duke Energy Midstream Services Canada Corporation	None	Nova Scotia	Alberta, British Columbia and Nova Scotia	100% owned by Duke Energy Facilities LP
Duke Energy Field Services Canada	None	Alberta	Alberta and British Columbia	0.01% general partnership interest owned by DEGT Midstream Corporation 0.01% general partnership interest owned by Duke Energy Midstream Services Canada Corporation 99.98% general partnership interest owned by Duke Energy Facilities Holdings Partnership
DEFS Canada LP	None	Alberta	Alberta and British Columbia	0.9% general partnership interest owned by DEGT Midstream Management Corporation 99.1% limited partnership interest owned by Duke Energy Facilities Holdings Partnership
Duke Energy Facilities Inc.	None	Canada	Alberta and British Columbia	100% owned by Duke Energy Commercial Trust

SCHEDULE L
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF LC APPLICATIONS

CIBC

Application for Standby Letter of Credit/Guarantee

Terms and Conditions applicable to the Standby Letter of Credit/Guarantee accompany this form.
For assistance, in Canada call Trade Finance Support Lines 1-800-268-6331, or the Trade Finance Centre/Letter of Credit Issuing Office in your area.

FOR TRADE FINANCE USE ONLY

Bank Reference No.	Date Received

FOR BANK USE ONLY

To: **The Manager** **Canadian Imperial Bank of Commerce**	Branch of Account

Place an "X" in the appropriate box(es):

☐ Applicant is a new CIBC Letter of Credit customer ☐ Applicant is an existing CIBC Letter of Credit customer ☐ Applicant information requires updating

FOR COMPLETION BY APPLICANT

Please issue the following Standby Letter of Credit/Guarantee:

☐ Irrevocable ☐ Revocable ☐ By Mail ☐ By Teletransmission

Note: The name of the applicant appearing on this application must be the same as the name of the party signing the application. If other arrangements are desired, contact your Trade Finance Centre/Letter of Credit Issuing Office.

Currency	Amount	Expiry Date *(yyyy/mm/dd)*
->		

Automatic renewal clause ☐ Yes ☐ No -> (No. of days) Days notice to beneficiary in order to prevent the automatic renewal of the Letter of Credit on its expiry date or on any subsequent expiry date.

Important: The automatic renewal clause will, unless you request otherwise under "Details" below, provide for the automatic renewal of the letter of credit for successive one year periods commencing on the expiry date. As well, an automatic renewal clause may, in certain circumstances, change the conditions under which the beneficiary may draw under the letter of credit. If you are uncertain as to the effect of an automatic renewal clause on the letter of credit, please contact your Trade Finance Centre/Letter of Credit Issuing Office for further information.

Beneficiary *(full name and address including postal code)*	**Applicant** *(full name and address including postal code)*
Do not enter more than 4 lines of text	Do not enter more than 4 lines of text

Details including purpose and documentation required in the event of a drawing.

Do not enter more than 8 lines of text

☐ Suggested pro forma attached ____________________ ☐ Use similar format as L/C No. ____________

The undersigned hereby request(s) Canadian Imperial Bank of Commerce (the "Bank") to issue its standby letter of credit substantially in accordance with the foregoing instructions and the Bank's usual practice and authorize(s) the Bank to issue a bank guarantee in lieu thereof on the basis of its usual practice. The Bank is authorized to arrange for the issuance of the requested standby letter of credit or a guarantee in lieu thereof by another institution of its choice against the Bank's counter-guarantee or supporting letter of credit. The undersigned acknowledges receipt of Terms and Conditions applicable to the Standby Letter of Credit/Guarantee and agrees to be bound thereby upon issuance by the Bank of its standby letter of credit, bank guarantee, counter-guarantee or supporting letter of credit. Nothing herein shall oblige the Bank to issue its standby letter of credit, or bank guarantee or to arrange for the issuance of a standby letter of credit or guarantee by another institution.

Date	Authorized Signature of Applicant	Authorized Signature of Applicant

Important: This application requests the Bank to establish its standby letter of credit or to arrange for the issuance of a standby letter of credit by another institution. It also authorizes the Bank to issue a bank guarantee or to arrange for the issuance of a guarantee by another institution in lieu of a standby letter of credit. If you require a specific type of instrument, your requirements should be discussed with the branch prior to completion of this form. Upon issuance of a standby letter of credit, bank guarantee or other guarantee, the Bank or other issuing institution will be bound to make payment thereunder upon timely compliance by the party entitled to request payment thereunder with the terms of the instrument and presentation of the documents, if any, described therein. Pursuant to the terms and conditions set out in this application, you are responsible for providing the Bank with a sum equivalent to that which the Bank or other institution properly pays or is or may be required to pay. In addition, please note that each irrevocable instrument issued pursuant hereto may only be amended or cancelled with the consent of all parties thereto.

FOR COMPLETION BY THE BRANCH OF ACCOUNT/CBC

Authorizing Branch/CBC Transit No., Domicile and Date			Post No.
Account No.	Currency	Transit	
Account Holder Name *(if different from applicant name)*			

We hereby authorize issuance of the above Standby Letter of Credit.

Check appropriate box: Collaterized by Cash/CIBC Deposit Cert. ☐ Yes ☐ No

Pricing Matrix applicable ☐ Yes - Risk Rating ____________

☐ No - Commission Rate ____________ Minimum $ ____________

____ Auth. No. ____________ Authorized Signature ____ Auth. No. ____________ Authorized Signature or Countersignature

Branch/CBC Contact Person and Telephone Number

Branch/CBC Instructions to the Issuing Office

☐ Return completed Letter of Credit to originating Branch/CBC ☐ Call customer at ____________ (Telephone No.) for pick-up by same

☐ Print L/C at designated branch/CBC transit no. ________ ☐ Call Branch/CBC at above number for pick-up by same

☐ Forward original Letter of Credit to ____________ Full Name ____________ Telephone No.

____________ Attention ____________ Fax No.

____________ Full Address

☐ Other: ____________

CIBC

Application for Irrevocable Documentary Credit

Instructions for Completion and the Terms and Conditions applicable to the Irrevocable Documentary Credit accompany this form. For further assistance, call our Customer Support Line at 1-877-905-0365.

FOR BANK USE ONLY		
To: **Canadian Imperial Bank of Commerce** (the "Bank") Branch of Account (Address):	Bank Reference No.	Date Received

Note: *The name of the Applicant appearing on this Application must be the same as the name of the party signing the Application. If other liability arrangements are desired, contact the Customer Support Line for assistance.*

Place an "X" in the appropriate box(es):

☐ Applicant is a new CIBC Letter of Credit customer ☐ Applicant is an existing CIBC Letter of Credit customer ☐ Applicant information requires updating

→ START HERE

(1) Please issue the following Irrevocable Documentary Credit ☐ By Mail ☐ By Teletransmission

Note: *If the Beneficiary is located in Hong Kong, the Bank will issue the Credit through its Hong Kong Branch.*

Please issue the Credit as Transferable ☐ Yes ☐ No

(2) Expiry Date of Credit *(yyyy/mm/dd)*

Beneficiary's Bank *(full name and address of Beneficiary's Bank, if known - refer to Instructions for Completion, Item 4)*

Do not enter more than 3 lines of text

(3) Applicant *(full name, address and fax number)*

Do not enter more than 3 lines of text

(4) Beneficiary *(full name, address, contact name, telephone and fax number)*

Do not enter more than 3 lines of text

(5) Currency ->

Amount -> ______ % more or less allowed

(6) Drafts to be drawn at

☐ Sight ☐ __________ days Sight ☐ __________ days after Bill of Lading date

☐ Payable on ______________________________ *(specify date)* ☐ Drafts not required

(7) Partial Shipments - If left blank, partial shipments will be prohibited.

☐ Permitted ☐ Prohibited

(8) Transhipments - If left blank, transhipments will be prohibited.

☐ Permitted ☐ Prohibited

Latest Shipment Date *(yyyy/mm/dd)*

(9) Shipment:

From To Via

(10) Covering *(brief description of merchandise)*

Do not enter more than 3 lines of text

(11) Shipping Terms

☐ FOB ______________________________
Named port of shipment

☐ CPT ______________________________
Named place of destination

☐ FCA ______________________________
Named place

☐ CIF ______________________________
Named port of destination

☐ CFR ______________________________
Named port of destination

☐ CIP ______________________________
Named place of destination

☐ EXW ______________________________
Named place

☐ Other ______________________________
Incoterm and named place

-> ________ Version of Incoterms (if known) (e.g. CPT Toronto Incoterms 2000) *(refer to Instructions for Completion, Item 11)*

Documents Required *(refer to Instructions for Completion, Items 12-16)*

(12) ☐ Commercial Invoice in -> copies (13) ☐ Canada Customs Invoice in -> copies

(14) Transport Documents: ☐ Full Set OR ☐ Full set less -> Issued by: ______

☐ Multimodal (Combined) Transport Bill of Lading *(covering at least 2 modes of transport)*

☐ Clean on board Marine Bill of Lading *(covering port to port shipment)*

☐ Air Waybill ☐ Forwarder's Cargo Receipt ☐ Other *(please specify)*: ______

Consigned to: ☐ Shipper's order blank endorsed ☐ Applicant ☐ Other *(please specify)*: ______

Marked notify ______ Freight: ☐ Prepaid ☐ Collect

(15) ☐ Insurance Policy/Certificate covering ______ *(specify risks or requirements)* OR ☐ Insurance covered by applicant

(16) Other Documents *(please specify title, content and number of copies)*

Do not enter more than 3 lines of text

(17) ☐ Additional Conditions *(refer to Instructions for Completion, Item 17)*

Do not enter more than 3 lines of text

(18) ☐ All banking charges other than the issuing bank's charges are for the beneficiary's account

OR

☐ All banking charges are for the applicant's account

(19) Documents must be presented not later than ______ days after date of shipment

IMPORTANT

This Application requests the Bank to establish an **Irrevocable** Documentary Credit ("Credit") subject to Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, current at the time of issuance of the Credit ("UCP"). After establishing the Credit, the Bank will be bound to make payment thereunder upon timely compliance by the party entitled to request payment thereunder with the terms of the Credit and presentation of the documents described therein. The Applicant is responsible for providing the Bank with a sum equivalent to that which the Bank so pays or is or may be required to pay.

After establishing the Credit, in accordance with the international banking practice, the Bank will be unable either to vary or to cancel the Credit on the Applicant's instructions alone. Variation or cancellation of the Credit will require the consent of all parties thereto, including the Beneficiary. In particular, the Bank may **not** be able to refuse payment under the Credit should a dispute arise between the Applicant and the Beneficiary or any other party concerning performance of any sales contract, any transport contract, or other underlying transaction in connection with which the Applicant has requested the Bank to issue the Credit.

Please refer to the text of UCP for the complete terms of the agreements between the parties to the Credit.

The undersigned hereby request(s) the Bank to issue its Irrevocable Documentary Credit substantially in accordance with the foregoing instructions and the Bank's usual practice. The undersigned acknowledges receipt of and agrees to be bound by the Instructions for Completion applicable to the Application for Irrevocable Documentary Credit and the Terms and Conditions applicable to the Irrevocable Documentary Credit. Nothing herein shall oblige the Bank to issue its Irrevocable Documentary Credit.

Name of Applicant

______ ______ ______

Authorized Signature of Applicant | Authorized Signature of Applicant

Date | Contact Person | Telephone No.

______ ______ ______

FOR BRANCH USE ONLY

Instructions for Branch:

a) Please make a copy of the original completed, signed application and provide it to the Applicant.

b) Send the completed, signed application to Trade Finance Division (TFD) via fax or inter-office mail. If sent by fax, retain the original completed, signed application in your records. If the original completed, signed application is sent to TFD via inter-office mail, please retain a signed copy for your records.

______

Branch Transit No. and Domicile

Contact Person | Telephone No.

______ ______

We hereby authorize issuance of the above Credit.

______ ______ ______ ______

Auth. No. | Authorized Signature | Auth. No. | Authorized Signature of Countersignature

SCHEDULE M
TO THE DUKE ENERGY FACILITIES LP CREDIT AGREEMENT
DATED DECEMBER 20, 2005

FORM OF LETTER OF CREDIT

Letter of Credit Reference No:	Date:
Beneficiary:	Applicant:
Amount:	Date of expiry:

We, Canadian Imperial Bank of Commerce, Trade Finance Centre, 400 Burrard Street, 6th Floor, Vancouver, B.C. V6C 3A6 ("**CIBC**"), at the request of the above-mentioned applicant, hereby issue in favour of ________________ (the "**Beneficiary**") this irrevocable standby letter of credit for the above-mentioned amount.

This standby letter of credit is available for payment upon receipt by CIBC at its above noted address of the Beneficiary's dated and signed written demand, addressed to CIBC and completed as follows: "we, the undersigned____________________, hereby demand payment of the sum of $_______________ (amount & currency in words) under Canadian Imperial Bank of Commerce Standby Letter Of Credit No. ____________________ and certify that the amount demanded is due and owing to us by ___(Applicant or other party)__relative to____________."

Partial drawings are permitted.

This standby letter of credit shall be reduced automatically, by the amount of each drawing paid hereunder and/or by amendment, by the amount of reduction that may be authorized by the Beneficiary from time to time by their signed written request given to CIBC.

CIBC hereby agrees that it will honour the Beneficiary's demand for payment, presented in compliance with the terms of this standby letter of credit, without enquiring whether the Beneficiary has a right as between itself and the Applicant to make such demand, and without recognizing any claim of the said Applicant.

Notwithstanding the expiration date, this standby letter of credit shall be cancelled effective the date of receipt by CIBC of the original standby letter of credit instrument and a dated letter addressed to CIBC, signed by the Beneficiary, referencing this standby letter of credit number and requesting the cancellation of same.

This standby letter of credit is subject to the "Uniform Customs And Practice For Documentary Credits (1993 Revision) International Chamber Of Commerce, Publication No. 500" and engages us in accordance with the terms thereof.