

Blueknight Energy Partners, L.P.

Form S-3

September 30, 2016

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As filed with the Securities and Exchange Commission on September 30, 2016

Registration Statement No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-3

REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

**Blueknight Energy Partners, L.P.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or  
organization)

20-8536826

(I.R.S. Employer Identification No.)

201 NW 10th, Suite 200

Oklahoma City, Oklahoma 73103

**(405) 278-6400**

**(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)**

**Alex G. Stallings**

**Blueknight Energy Partners, L.P.**

**201 NW 10th, Suite 200**

**Oklahoma City, Oklahoma 73103**

**(405) 278-6400**

**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

*Copy to:*

**Douglass M. Rayburn**

**Baker Botts L.L.P.**

**2001 Ross Avenue**

**Dallas, Texas 75201-2980**

**Telephone: (214) 953-6500**

**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. "

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer " Accelerated filer b  
 Non-accelerated filer " (Do not check if a smaller reporting company) Smaller reporting company "

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Offering Price Per Share	Proposed Maximum	Proposed Maximum
			Aggregate Offering Price	Amount of Registration Fee
Series A Preferred Units representing limited partnership interests	4,977,578	\$7.96(2)	\$39,621,521(2)	\$3,990(2)
Common Units representing limited partnership interests	4,977,578(3)	(4)	(4)	(4)

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act ), the number of Series A Preferred Units and common units being registered on behalf of the selling unitholders shall be adjusted to include any additional units that may become issuable as a result of any unit distribution, split, combination or similar transaction.

(2) Pursuant to Rule 457(c) of the Securities Act, the registration fee is calculated on the basis of the average of the high and low sale prices of our Series A Preferred Units on September 28, 2016, as reported on the Nasdaq Global

Market ( Nasdaq ).

- (3) Represents the number of common units issuable upon conversion of the Series A Preferred Units being registered hereunder.
- (4) No additional consideration will be received for the common units issuable upon conversion of the Series A Preferred Units and therefore no registration fee is required pursuant to Rule 457(i) with respect thereto.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. Securities may not be sold pursuant to this prospectus until a registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell securities and it is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED SEPTEMBER 30, 2016**

**PROSPECTUS**

**BLUEKNIGHT ENERGY PARTNERS, L.P.**

**4,977,578 Series A Preferred Units**

**Common Units Issuable Upon Conversion of the Series A Preferred Units**

This prospectus relates to up to 4,977,578 Series A Preferred Units representing limited partnership interests in Blueknight Energy Partners, L.P. and common units issuable upon conversion of such Series A Preferred Units that may be offered for sale by the selling unitholders named in this prospectus. The Series A Preferred Units are convertible in whole or in part into common units at the holder's election as set forth in this prospectus. For a more detailed discussion of the selling unitholders, please read "The Selling Unitholders."

The selling unitholders may offer and sell these Series A Preferred Units and common units to or through one or more underwriters, dealers or agents, or directly to investors or through any other means described in this prospectus under "Plan of Distribution," in amounts, at prices and on terms to be determined by market conditions and other factors at the time of the offering. This prospectus describes only the general terms of these Series A Preferred Units and common units and the general manner of offering these Series A Preferred Units and common units by the selling unitholders. We may file one or more prospectus supplements that may describe the specific manner in which the selling unitholders will offer the Series A Preferred Units and common units and also may add, update or change information contained in this prospectus.

Each selling unitholder may elect to sell all, a portion or none of the units it offers hereby. Each selling unitholder will determine the prices and terms of the sales at the time of each offering made by such selling unitholder, and will be responsible for any brokers' or underwriters' discounts or commissions. We will pay all of the other offering expenses. We will not receive any of the proceeds from any sale of the Series A Preferred Units or common units sold pursuant to this prospectus.

You should read this prospectus and any applicable prospectus supplement and the documents incorporated by reference herein or therein carefully before you invest in any of our Series A Preferred Units or common units. You should also read the documents we have referred you to in the "Where You Can Find More Information" section of this prospectus for information about us, including our financial statements.

Our Series A Preferred Units are traded on Nasdaq under the symbol "BKEPP" and our common units are traded on the Nasdaq under the symbol "BKEP."

*Investing in our Series A Preferred Units and our common units involves risk. You should carefully consider the risk factors described under **Risk Factors** beginning on page 2 of this prospectus as well as the risk factors in the documents incorporated by reference herein and in any applicable prospectus supplement before you make any investment in our Series A Preferred Units or our common units.*

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2016

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**You should rely only on the information we have provided or incorporated by reference in this prospectus. Neither we nor the selling unitholders have authorized any person to provide you with additional or different information. You should not assume that the information in this prospectus is accurate as of any date other than the date on the cover page of this prospectus or that any information we have incorporated by reference is accurate as of any date other than the date of the documents incorporated by reference. Our business, financial condition, results of operations and prospects may have changed since those dates.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we have filed with the Securities and Exchange Commission, or the SEC, utilizing a shelf registration process or continuous offering process. This prospectus provides you with a general description of us and the Series A Preferred Units and common units offered under this prospectus, which may be sold by the selling unitholders in one or more offerings. This prospectus may be supplemented from time to time to add, update or change information contained in this prospectus. Any statement that we make in this prospectus will be modified or superseded by any inconsistent statement made by us in a prospectus supplement. You should read carefully this prospectus, any prospectus supplement and the additional information described below under the heading Where You Can Find More Information.

As used in this prospectus, we, us and our and similar terms mean Blueknight Energy Partners, L.P. and its subsidiaries, unless the context indicates otherwise.

**ABOUT BLUEKNIGHT ENERGY PARTNERS, L.P.**

We are a publicly traded master limited partnership with operations in twenty-four states. We provide integrated terminalling, storage, gathering and transportation services for companies engaged in the production, distribution and marketing of crude oil and liquid asphalt cement.

Our general partner, Blueknight Energy Partners G.P., L.L.C., is a Delaware limited liability company. Our general partner has sole responsibility for conducting our business and managing our operations.

Our principal executive offices are located at 201 NW 10th, Suite 200, Oklahoma City, Oklahoma 73103, and our phone number is (405) 278-6400. Our website is located at <http://www.bkep.com>. We make our periodic reports and other information filed with or furnished to the SEC available, free of charge, through our website, as soon as reasonably practicable. Information on our website or any other website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus unless specifically so designated and filed with the SEC.

For additional information as to our business, properties, and financial condition, please refer to the documents cited in Where You Can Find More Information.

**FORWARD-LOOKING STATEMENTS**

Some of the information included in this prospectus, any prospectus supplement and the documents we incorporate by reference contain forward-looking statements. These statements discuss goals, intentions and expectations as to future trends, plans, events, results of operations or financial condition, or state other information relating to us, based on the current beliefs of our management as well as assumptions made by, and information currently available to, management. Words such as may, will, anticipate, believe, expect, estimate, intend, project and other similar words or expressions identify forward-looking statements.

These forward-looking statements are made based upon management's current plans, expectations, estimates, assumptions and beliefs concerning future events impacting us and therefore involve a number of risks and uncertainties. We caution that forward-looking statements are not guarantees and that actual results could differ materially from those expressed or implied in the forward-looking statements. When considering forward-looking statements, you should keep in mind the risk factors and other cautionary statements in this prospectus, any prospectus supplement and the documents we have incorporated by reference.



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We disclaim any obligation to publicly update or advise of any change in any forward-looking statement, whether as a result of new information, future events or otherwise.

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**RISK FACTORS**

The nature of our business activities subjects us to certain hazards and risks. Additionally, limited partner interests are inherently different from the capital stock of a corporation, although many of the business risks to which we are subject are similar to those that would be faced by a corporation engaged in similar businesses. You should carefully consider the risk factors and all of the other information included in, or incorporated by reference into, this prospectus or any prospectus supplement, including those included in our most recent Annual Report on Form 10-K and, if applicable, in our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, in evaluating an investment in our securities. If any of these risks were to occur, our business, financial condition, or results of operations could be adversely affected. In that case, the trading price of our Series A Preferred Units or common units could decline and you could lose all or part of your investment. When we offer and sell any securities pursuant to a prospectus supplement, we may include additional risk factors relevant to such securities in the prospectus supplement.

**Tax Risks Related to the Series A Preferred Units**

*The Internal Revenue Service could challenge our treatment of the holders of Series A Preferred Units as partners for tax purposes, and if such challenge were sustained, certain holders of Series A Preferred Units could be adversely impacted.*

The treatment of the holders of Series A Preferred Units as partners for tax purposes is uncertain. The IRS may disagree with our treatment of the Series A Preferred Units as equity for tax purposes, and no assurance can be given that our treatment will be sustained. Holders of Series A Preferred Units are encouraged to consult their tax advisors regarding the tax consequences applicable to the recharacterization of the Series A Preferred Units as indebtedness for tax purposes.

*Treatment of distributions on our Series A Preferred Units as guaranteed payments for the use of capital creates a different tax treatment for the holders of our Series A Preferred Units than the holders of our common units.*

We will treat the holders of Series A Preferred Units as partners for tax purposes and will treat distributions on the Series A Preferred Units as guaranteed payments for the use of capital that will generally be taxable to the holders of Series A Preferred Units as ordinary income. Although a holder of Series A Preferred Units could recognize taxable income from the accrual of a guaranteed payment in the absence of a contemporaneous distribution of cash, the partnership anticipates accruing and making the guaranteed payment distributions quarterly. Otherwise, the holders of Series A Preferred Units are generally neither anticipated to share in our items of income, gain, loss or deduction, nor be allocated any share of our nonrecourse liabilities. If the Series A Preferred Units were treated as indebtedness for tax purposes, rather than as guaranteed payments for the use of capital, distributions likely would be treated as payments of interest by us to the holders of Series A Preferred Units.

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**USE OF PROCEEDS**

The Series A Preferred Units and common units to be offered and sold using this prospectus will be offered and sold by the selling unitholders named in this prospectus or in any supplement to this prospectus. We will not receive any proceeds from the sale of such Series A Preferred Units or common units.

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**DESCRIPTION OF COMMON UNITS AND SERIES A PREFERRED UNITS**

**The Common Units and Series A Preferred Units**

The common units and Series A Preferred Units represent limited partner interests in us that entitle the holders to participate in partnership distributions and exercise the rights or privileges available to limited partners under our partnership agreement. For a description of the relative rights and preferences of holders of common units, Series A Preferred Units and subordinated units in and to partnership distributions, please read this section and Cash Distribution Policy. For a description of the rights and privileges of limited partners under our partnership agreement, including voting rights, please see The Partnership Agreement.

The Series A Preferred are traded on Nasdaq under the symbol BKEPP and our common units are traded on the Nasdaq under the symbol BKEP. The Series A Preferred Units have no stated maturity, are not subject to mandatory redemptions or to any sinking fund requirements, and will remain outstanding indefinitely unless repurchased or redeemed by us or converted into common units.

**Transfer Agent and Registrar**

**Duties.** American Stock Transfer & Trust Company serves as the registrar and transfer agent for the common units and the Series A Preferred Units. We pay all fees charged by the transfer agent for transfers of common units and Series A Preferred Units, except the following that must be paid by unitholders:

surety bond premiums to replace lost or stolen certificates, taxes, and other governmental charges;

special charges for services requested by a unitholder; and

other similar fees or charges.

There is no charge to the holders of common units or Series A Preferred Units for disbursements of our cash distributions. We will indemnify the transfer agent, its agents, and each of their stockholders, directors, officers, and employees against all claims and losses that may arise out of acts performed or omitted for its activities in that capacity, except for any liability due to any gross negligence or intentional misconduct of the indemnified person or entity.

**Resignation or Removal.** The transfer agent may resign by notice to us or may be removed by us. The resignation or removal of the transfer agent will become effective upon our appointment of a successor transfer agent and registrar and its acceptance of the appointment. If no successor has been appointed and has accepted the appointment within 30 days after notice of the resignation or removal, our general partner may act as the transfer agent and registrar until a successor is appointed.

**Transfer of Units**

By transfer of common units or Series A Preferred Units in accordance with our partnership agreement, each transferee of common units or Series A Preferred Units shall be admitted as a limited partner with respect to the common units or Series A Preferred Units transferred when such transfer and admission is reflected in our books and

records. Each transferee:

represents that the transferee has the capacity, power, and authority to become bound by our partnership agreement;

automatically agrees to be bound by the terms and conditions of, and is deemed to have executed, our partnership agreement; and

gives the consents and approvals contained in our partnership agreement.

A transferee will become a substituted limited partner of our partnership for the transferred common units or Series A Preferred Units automatically upon the recording of the transfer on our books and records. Our general partner will cause any transfers to be recorded on our books and records no less frequently than quarterly.

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We may, at our discretion, treat the nominee holder of a common unit or Series A Preferred Units as the absolute owner. In that case, the beneficial holder's rights are limited solely to those that it has against the nominee holder as a result of any agreement between the beneficial owner and the nominee holder.

Common units and Series A Preferred Units are securities and are transferable according to the laws governing transfers of securities. In addition to other rights acquired upon transfer, the transferor gives the transferee the right to seek to become a substituted limited partner in our partnership for the transferred common units or Series A Preferred Units subject to the conditions of, and in the manner provided under, our partnership agreement.

Until a common unit or Series A Preferred Unit has been transferred and recorded on our books, we and the transfer agent may treat the record holder of the unit as the absolute owner for all purposes, except as otherwise required by law or stock exchange regulations.

Our general partner has the right under our partnership agreement to institute procedures, by giving notice to each of our unitholders, that would require transferees of units and, upon the request of our general partner, existing holders of our units to certify that they are Eligible Holders (as defined below). The purpose of these certification procedures would be to enable us to utilize a federal income tax expense as a component of the pipeline's cost of service upon which tariffs may be established under Federal Energy Regulatory Commission, or FERC rate making policies applicable to entities that pass-through their taxable income to their owners. Eligible Holders are individuals or entities subject to United States federal income taxation on the income generated by us or entities not subject to United States federal income taxation on the income generated by us, so long as all of the entity's owners are subject to such taxation. If these tax certification procedures are implemented, transferees of common units and Series A Preferred Units will be required to certify, and our general partner, acting on our behalf, may at any time require each unitholder to re-certify:

that the transferee or unitholder is an individual or an entity subject to United States federal income taxation on the income generated by us; or

that, if the transferee unitholder is an entity not subject to United States federal income taxation on the income generated by us, as in the case, for example, of a mutual fund taxed as a regulated investment company or a partnership, all the entity's owners are subject to United States federal income taxation on the income generated by us.

In the event that this notice is given by our general partner, which we refer to as a FERC Notice, transfers of a unit will not be recorded by the transfer agent or recognized by us unless the transferee executes and delivers a properly completed tax certification.

Following a FERC Notice, a transferee's broker, agent or nominee may, but is not obligated to, complete, execute and deliver a tax certification. We are entitled to treat the nominee holder of a unit as the absolute owner. In that case, the beneficial holder's rights are limited solely to those that it has against the nominee holder as a result of any agreement between the beneficial owner and the nominee holder.

Following a FERC Notice, in addition to other rights acquired upon transfer, the transferor gives the transferee the right to request admission as a limited partner in our partnership for the transferred units. A purchaser or transferee of units who does not execute and deliver a properly completed tax certification obtains only:

the right to assign the common unit or Series A Preferred Unit to a purchaser or other transferee; and

the right to transfer the right to seek admission as a limited partner in our partnership for the transferred common units or Series A Preferred Units.

As a result, following a FERC Notice, a purchaser or transferee of units who does not execute and deliver a properly completed transfer application:

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will not receive cash distributions;

will not be allocated any of our income, gain, deduction, losses or credits for federal income tax or other tax purposes;

may not receive some federal income tax information or reports furnished to record holders of common units and Series A Preferred Units; and

will have no voting rights, unless the units are held in a nominee or street name account and the nominee or broker has executed and delivered a tax certification as to itself and any beneficial holders.

**Conversion of Series A Preferred Units**

The Series A Preferred Units are convertible in whole or in part into common units at the holder's election at any time on a basis of one common unit for each Series A Preferred Unit (subject to customary anti-dilution adjustments). Any conversion of a Series A Preferred Unit at a holder's election will be effective as of the last day of the calendar quarter in which a conversion notice is delivered by such converting unitholder.

The Series A Preferred Units are convertible in whole, but not in part, into common units at our option at any time when any of the following occurs:

9,156,484 Series A Preferred Units are converted into common units by the holders thereof pursuant to the rights described in the preceding paragraph and there does not exist any accrued but unpaid distributions on such Series A Preferred Units;

the distribution on a Series A Preferred Unit on an as-converted basis (i.e., the actual distribution on a common unit multiplied by the number of common units that a Series A Preferred Unit is convertible into) is equal to or greater than the distribution on a Series A Preferred Unit for two consecutive quarters at a time that there does not exist any accrued but unpaid distributions on such Series A Preferred Units; or

(i) the daily volume-weighted average trading price of our common units on the national securities exchange on which the common units are listed or admitted to trading is greater than \$8.45 for twenty out of the trailing thirty trading days ending two trading days before we furnish notice of conversion and (ii) the average trading volume of our common units on such national securities exchange has exceeded 20,000 common units for twenty out of the trailing thirty trading days ending two trading days before we furnish notice of conversion.



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**THE PARTNERSHIP AGREEMENT**

The following is a summary of the material provisions of our partnership agreement. Our partnership agreement is available as described under [Where You Can Find More Information](#). We will provide prospective investors with a copy of our partnership agreement upon request at no charge.

We summarize the following provisions of our partnership agreement elsewhere in this prospectus:

with regard to distributions of available cash, please see [Cash Distribution Policy](#);

with regard to the rights of holders of our common units and Series A Preferred Units, please read [Description of Common Units and Series A Preferred Units](#);

with regard to the transfer of common units and Series A Preferred Units, please see [Description of Common Units and Series A Preferred Units Transfer of Units](#);

with regard to the conversion of Series A Preferred Units, please see [Description of our Common Units and Series A Preferred Units Conversion of Series A Preferred Units](#); and

with regard to allocations of taxable income, taxable loss and other matters, please see [Material Federal Income Tax Consequences](#).

**Organization and Duration**

Our partnership was organized on February 22, 2007 and will have a perpetual existence unless terminated pursuant to the terms of our partnership agreement.

**Purpose**

Our purpose under the partnership agreement is to engage in any business activities that are approved by our general partner. Our general partner, however, may not cause us to engage in any business activities that the general partner determines would cause us to be treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes.

Although our general partner has the ability to cause us and our subsidiaries to engage in activities other than the midstream energy business, our general partner has no current plans to do so and may decline to do so free of any fiduciary duty or obligation whatsoever to us or the limited partners, including any duty to act in good faith or in the best interests of us or the limited partners. Our general partner is authorized in general to perform all acts it determines to be necessary or appropriate to carry out our purposes and to conduct our business.

**Power of Attorney**

Each limited partner, and each person who acquires a unit from a unitholder, by accepting the unit, automatically grants to our general partner and, if appointed, a liquidator, a power of attorney to, among other things, execute and file documents required for our qualification, continuance, or dissolution. The power of attorney also grants our general partner the authority to amend, and to grant consents and waivers on behalf of the limited partners under, our partnership agreement.

### **Cash Distributions**

Our partnership agreement specifies the manner in which we will make cash distributions to holders of our common units, Series A Preferred Units and other partnership securities as well as to our general partner in respect of its general partner interest and its incentive distribution rights. For a description of these cash distribution provisions, please see [Cash Distribution Policy](#).

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**Capital Contributions**

Unitholders are not obligated to make additional capital contributions, except as described below under Limited Liability.

Our general partner has the right, but not the obligation, to contribute a proportionate amount of capital to us to maintain its general partner interest if we issue additional units. Our general partner's interest, and the percentage of our cash distributions to which it is entitled, will be proportionately reduced if we issue additional units in the future and our general partner does not contribute a proportionate amount of capital to us to maintain its general partner interest. Our general partner will be entitled to make a capital contribution in order to maintain its general partner interest in the form of the contribution to us of common units based on the current market value of the contributed common units.

**Voting Rights**

Below is a summary of the unitholder vote required for the matters specified below. Matters requiring the approval of a unit majority require the approval of a majority of the outstanding common units, Series A Preferred Units (voting on an as if converted basis) and Class B units, if any, voting as a class.

In voting their common units, Series A Preferred Units and Class B units, if any, our general partner and its affiliates will have no fiduciary duty or obligation whatsoever to us or the limited partners, including any duty to act in good faith or in the best interests of us and the limited partners.

The Series A Preferred Units have voting rights that are identical to the voting rights of common units and vote with the common units as a single class, so that each Series A Preferred Unit is entitled to one vote for each common unit into which such Series A Preferred Unit is convertible on each matter with respect to which each common unit is entitled to vote. In addition, the approval of a majority of the Series A Preferred Units, voting separately as a class, is necessary on any matter that adversely affects any of the rights of the Series A Preferred Units or amends or modifies the terms of the Series A Preferred Units in any material respect or affects the holders of the Series A Preferred Units disproportionately in relation to the holders of common units, including, without limitation, any action that would (i) reduce the distribution amount to the Series A Preferred Units or change the time or form of payment of distributions, (ii) reduce the amount payable to the Series A Preferred Units upon the liquidation of our partnership, (iii) modify the conditions relating to the conversion of the Series A Preferred Units or (iv) issue any equity security that, with respect to distributions or rights upon liquidation, ranks equal to or senior to the Series A Preferred Units or issue any additional Series A Preferred Units.

<b>Matter</b>	<b>Vote Requirement</b>
Issuance of additional common units or units of equal or junior rank to the common units	No approval right.
Issuance of units senior to the common units	No approval with respect to the common unitholders. We need the consent of a majority of the outstanding Series A Preferred Units to issue any additional Series A Preferred Units or issue any equity security that, with respect to distributions or rights upon liquidation, ranks equal to or senior to the Series A Preferred Units.

Amendment of the partnership agreement

Certain amendments may be made by the general partner without the approval of the unitholders. Other amendments generally require the approval of a unit majority. Please see Amendment of the Partnership Agreement.

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Merger of our partnership or the sale of all or substantially all of our assets	Unit majority in certain circumstances. Please see Merger, Consolidation, Conversion, Sale or Other Disposition of Assets.
Dissolution of our partnership	Unit majority. Please see Termination and Dissolution.
Continuation of our business upon dissolution	Unit majority. Please see Termination and Dissolution.
Withdrawal of the general partner	Under most circumstances, the approval of a majority of the common units and Series A Preferred Units, voting as a class, excluding common units and Series A Preferred Units held by our general partner and its affiliates, is required for the withdrawal of our general partner prior to June 30, 2017 in a manner that would cause a dissolution of our partnership. Please see Withdrawal or Removal of the General Partner.
Removal of the general partner	Not less than 66 <sup>2</sup> / <sub>3</sub> % of the outstanding units, voting as a single class, including units held by our general partner and its affiliates. Please see Withdrawal or Removal of the General Partner.
Transfer of the general partner interest	Our general partner may transfer all, but not less than all, of its general partner interest in us without a vote of our unitholders to an affiliate or another person in connection with its merger or consolidation with or into, or sale of all or substantially all of its assets to, such person. The approval of a majority of the common units and Series A Preferred Units, voting as a class, excluding common units and Series A Preferred Units held by the general partner and its affiliates, is required in other circumstances for a transfer of the general partner interest to a third party prior to June 30, 2017. Please see Transfer of General Partner Units.
Transfer of incentive distribution rights	Except for transfers to an affiliate or another person as part of our general partner's merger or consolidation, sale of all or substantially all of its assets or the sale of all of the ownership interests in such holder, the approval of a majority of the common units and Series A Preferred Units, voting as a class, excluding common units and Series A Preferred Units held by the general partner and its affiliates, is required in most circumstances for a transfer of the incentive distribution rights to a third party prior to June 30, 2017. Please see Transfer of Incentive Distribution Rights.
Transfer of ownership interests in our general partner	No approval required at any time. Please see Transfer of Ownership Interests in the General Partner.

**Limited Liability**

Assuming that a limited partner does not participate in the control of our business within the meaning of the Delaware Act and that he otherwise acts in conformity with the provisions of the partnership agreement, his liability under the Delaware Act will be limited, subject to possible exceptions, to the amount of capital he is obligated to contribute to us for his common units plus his share of any undistributed profits and assets. If it were determined, however, that the

right, or exercise of the right, by the limited partners as a group:

to remove or replace our general partner;

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to approve some amendments to the partnership agreement; or

to take other action under the partnership agreement;

constituted participation in the control of our business for the purposes of the Delaware Act, then the limited partners could be held personally liable for our obligations under the laws of Delaware, to the same extent as the general partner. This liability would extend to persons who transact business with us who reasonably believe that the limited partner is a general partner. Neither the partnership agreement nor the Delaware Act specifically provides for legal recourse against the general partner if a limited partner were to lose limited liability through any fault of the general partner. While this does not mean that a limited partner could not seek legal recourse, we know of no precedent for this type of a claim in Delaware case law.

Under the Delaware Act, a limited partnership may not make a distribution to a partner if, after the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specific property of the partnership, would exceed the fair value of the assets of the limited partnership. For the purpose of determining the fair value of the assets of a limited partnership, the Delaware Act provides that the fair value of property subject to liability for which recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds the nonrecourse liability. The Delaware Act provides that a limited partner who receives a distribution and knew at the time of the distribution that the distribution was in violation of the Delaware Act shall be liable to the limited partnership for the amount of the distribution for three years. Under the Delaware Act, a substituted limited partner of a limited partnership is liable for the obligations of his assignor to make contributions to the partnership, except that such person is not obligated for liabilities unknown to him at the time he became a limited partner and that could not be ascertained from the partnership agreement.

Our subsidiaries conduct business in a number of states and we may have subsidiaries that conduct business in additional states in the future. Maintenance of our limited liability as a limited partner of the operating company may require compliance with legal requirements in the jurisdictions in which the operating company conducts business, including qualifying our subsidiaries to do business there.

Limitations on the liability of limited partners for the obligations of a limited partner have not been clearly established in many jurisdictions. If, by virtue of our membership interest in the operating company or otherwise, it were determined that we were conducting business in any state without compliance with the applicable limited partnership or limited liability company statute, or that the right or exercise of the right by the limited partners as a group to remove or replace the general partner, to approve some amendments to the partnership agreement, or to take other action under the partnership agreement constituted participation in the control of our business for purposes of the statutes of any relevant jurisdiction, then the limited partners could be held personally liable for our obligations under the law of that jurisdiction to the same extent as the general partner under the circumstances. We will operate in a manner that the general partner considers reasonable and necessary or appropriate to preserve the limited liability of the limited partners.

## **Issuance of Additional Securities**

Our partnership agreement authorizes us to issue an unlimited number of additional partnership securities for the consideration and on the terms and conditions determined by our general partner without the approval of the unitholders, except that we will need the consent of a majority of the outstanding Series A Preferred Units to issue any additional Series A Preferred Units or issue any equity security that, with respect to distributions or rights upon liquidation, ranks equal to or senior to the Series A Preferred Units.

It is possible that we will fund acquisitions through the issuance of additional common units or other partnership securities. Holders of any additional common units we issue will be entitled to share equally with the



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then-existing holders of common units in our distributions of available cash. In addition, the issuance of additional common units or other partnership securities may dilute the value of the interests of the then-existing holders of common units in our net assets.

In accordance with Delaware law and the provisions of our partnership agreement, we may also issue additional partnership securities that, as determined by our general partner, may have special voting rights to which the common units are not entitled. In addition, our partnership agreement does not prohibit the issuance by our subsidiaries of equity securities, which may effectively rank senior to the common units.

Upon issuance of additional partnership securities (other than the issuance of partnership securities issued in connection with a reset of the incentive distribution target levels relating to our general partner's incentive distribution rights or the issuance of partnership securities upon conversion of outstanding partnership securities), our general partner will be entitled, but not required, to make additional capital contributions to the extent necessary to maintain its general partner interest in us. Our general partner's interest in us will be reduced if we issue additional units in the future (other than issuance of partnership securities issued in connection with a reset of the incentive distribution target levels relating to our general partner's incentive distribution rights or the issuance of partnership securities upon conversion of outstanding partnership securities) and our general partner does not contribute a proportionate amount of capital to us to maintain its general partner interest. Moreover, our general partner will have the right, which it may from time to time assign in whole or in part to any of its affiliates, to purchase common units or other partnership securities whenever, and on the same terms that, we issue those securities to persons other than our general partner and its affiliates, to the extent necessary to maintain the percentage interest of the general partner and its affiliates, including such interest represented by common units, that existed immediately prior to each issuance. The holders of common units do not have preemptive rights to acquire additional common units or other partnership securities.

## **Amendment of the Partnership Agreement**

**General.** Amendments to our partnership agreement may be proposed only by or with the consent of our general partner. However, our general partner will have no duty or obligation to propose any amendment and may decline to do so free of any fiduciary duty or obligation whatsoever to us or the limited partners, including any duty to act in good faith or in the best interests of us or the limited partners. In order to adopt a proposed amendment, other than the amendments discussed below, our general partner is required to seek written approval of the holders of the number of units required to approve the amendment or call a meeting of the limited partners to consider and vote upon the proposed amendment. Except as described below, an amendment must be approved by a unit majority.

**Prohibited Amendments.** No amendment may be made that would:

enlarge the obligations of any limited partner without its consent, unless approved by at least a majority of the type or class of limited partner interests so affected; or

enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable by us to our general partner or any of its affiliates without the consent of our general partner, which consent may be given or withheld at its option.

The provision of our partnership agreement preventing the amendments having the effects described in any of the clauses above can be amended upon the approval of the holders of at least 90% of the outstanding units voting together as a single class (including units owned by our general partner and its affiliates).

***No Unitholder Approval.*** Our general partner may generally make amendments to our partnership agreement without the approval of any limited partner or assignee to reflect:

a change in our name, the location of our principal place of our business, our registered agent or our registered office;

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the admission, substitution, withdrawal, or removal of partners in accordance with our partnership agreement;

a change that our general partner determines to be necessary or appropriate for us to qualify or to continue our qualification as a limited partnership or a partnership in which the limited partners have limited liability under the laws of any state or to ensure that neither we, nor the operating company, nor any of its subsidiaries will be treated as an association taxable as a corporation or otherwise taxed as an entity for federal income tax purposes;

a change in our fiscal year or taxable year and related changes;

an amendment that is necessary, in the opinion of our counsel, to prevent us or our general partner or the directors, officers, agents, or trustees of our general partner from in any manner being subjected to the provisions of the Investment Company Act of 1940, the Investment Advisors Act of 1940, or plan asset regulations adopted under the Employee Retirement Income Security Act of 1974, or ERISA, whether or not substantially similar to plan asset regulations currently applied or proposed;

subject to the provisions of our partnership agreement, an amendment that our general partner determines to be necessary or appropriate for the authorization or issuance of additional partnership securities, including any amendment that our general partner determines is necessary or appropriate in connection with:

the adjustments of the minimum quarterly distribution, first target distribution, second target distribution and third target distribution in connection with the reset of our general partner's incentive distribution rights as described under Cash Distribution Policy General Partner's Right to Reset Incentive Distribution Levels; or

the implementation of the provisions relating to our general partner's right to reset its incentive distribution rights in exchange for Class B units; and

any modification of the incentive distribution rights made in connection with the issuance of additional partnership securities or rights to acquire partnership securities, provided that, any such modifications and related issuance of partnership securities have received approval by a majority of the members of the conflicts committee of our general partner;

any amendment expressly permitted in our partnership agreement to be made by our general partner acting alone;

an amendment effected, necessitated, or contemplated by a merger agreement that has been approved under the terms of the partnership agreement;

any amendment that our general partner determines to be necessary or appropriate for the formation by us of, or our investment in, any corporation, partnership, or other entity, as otherwise permitted by our partnership agreement;

any amendment necessary to require limited partners to provide a statement, certification or other evidence to us regarding whether such limited partner is subject to United States federal income taxation on the income generated by us;

conversions into, mergers with or conveyances to another limited liability entity that is newly formed and has no assets, liabilities or operations at the time of the conversion, merger or conveyance other than those it receives by way of the conversion, merger or conveyance; or

any other amendments substantially similar to any of the matters described in the clauses above.

In addition, our general partner may make amendments to our partnership agreement without the approval of any limited partner if our general partner determines that those amendments:

do not adversely affect in any material respect the limited partners considered as a whole or any particular class of limited partners as compared to other classes of limited partners;

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are necessary or appropriate to satisfy any requirements, conditions, or guidelines contained in any opinion, directive, order, ruling, or regulation of any federal or state agency or judicial authority or contained in any federal or state statute;

are necessary or appropriate to facilitate the trading of limited partner interests or to comply with any rule, regulation, guideline, or requirement of any securities exchange on which the limited partner interests are or will be listed for trading;

are necessary or appropriate for any action taken by our general partner relating to splits or combinations of units under the provisions of our partnership agreement; or

are required to effect the intent expressed in the registration statement for our initial public offering or the definitive proxy statement filed with the SEC on July 28, 2011 or the intent of the provisions of the partnership agreement or are otherwise contemplated by our partnership agreement.

***Opinion of Counsel and Unitholder Approval.*** For amendments of the type not requiring unitholder approval, our general partner will not be required to obtain an opinion of counsel that an amendment will not result in a loss of limited liability to the limited partners or result in our being treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes in connection with any of the amendments. No other amendments to our partnership agreement will become effective without the approval of holders of at least 90% of the outstanding units voting as a single class unless we first obtain an opinion of counsel to the effect that the amendment will not affect the limited liability under applicable law of any of our limited partners.

In addition to the above restrictions, any amendment that would have a material adverse effect on the rights or preferences of any type or class of outstanding units in relation to other classes of units will require the approval of at least a majority of the type or class of units so affected. Any amendment that reduces the voting percentage required to take any action is required to be approved by the affirmative vote of limited partners whose aggregate outstanding units constitute not less than the voting requirement sought to be reduced.

## **Merger, Consolidation, Conversion, Sale or Other Disposition of Assets**

A merger, consolidation or conversion of us requires the prior consent of our general partner. However, our general partner will have no duty or obligation to consent to any merger, consolidation or conversion and may decline to do so free of any fiduciary duty or obligation whatsoever to us or the limited partners, including any duty to act in good faith or in the best interest of us or the limited partners.

In addition, the partnership agreement generally prohibits our general partner, without the prior approval of the holders of a unit majority, from causing us to, among other things, sell, exchange, or otherwise dispose of all or substantially all of our assets in a single transaction or a series of related transactions, including by way of merger, consolidation, or other combination, or approving on our behalf the sale, exchange, or other disposition of all or substantially all of the assets of our subsidiaries. Our general partner may, however, mortgage, pledge, hypothecate, or grant a security interest in all or substantially all of our assets without that approval. Our general partner may also sell all or substantially all of our assets under a foreclosure or other realization upon those encumbrances without that approval. Finally, our general partner may consummate any merger without the prior approval of our unitholders if we are the surviving entity in the transaction, our general partner has received an opinion of counsel regarding limited liability and tax matters, the transaction would not result in a material amendment to the partnership agreement, each

of our units will be an identical unit of our partnership following the transaction, and the partnership securities to be issued do not exceed 20% of our outstanding partnership securities immediately prior to the transaction.

If the conditions specified in the partnership agreement are satisfied, our general partner may convert us or any of our subsidiaries into a new limited liability entity or merge us or any of our subsidiaries into, or convey

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some or all of our assets to, a newly formed entity if the sole purpose of that conversion, merger or conveyance is to effect a mere change in our legal form into another limited liability entity, our general partner has received an opinion of counsel regarding limited liability and tax matters, and the governing instruments of the new entity provide the limited partners and the general partner with the same rights and obligations as contained in the partnership agreement. The unitholders are not entitled to dissenters' rights of appraisal under the partnership agreement or applicable Delaware law in the event of a conversion, merger or consolidation, a sale of substantially all of our assets, or any other similar transaction or event.

## **Termination and Dissolution**

We will continue as a limited partnership until terminated under our partnership agreement. We will dissolve upon:

the election of our general partner to dissolve us, if approved by the holders of units representing a unit majority;

there being no limited partners, unless we are continued without dissolution in accordance with applicable Delaware law;

the entry of a decree of judicial dissolution of our partnership; or

the withdrawal or removal of our general partner or any other event that results in its ceasing to be our general partner other than by reason of a transfer of its general partner interest in accordance with our partnership agreement or withdrawal or removal following approval and admission of a successor.

Upon a dissolution under the last clause above, the holders of a unit majority may also elect, within specific time limitations, to continue our business on the same terms and conditions described in our partnership agreement by appointing as a successor general partner an entity approved by the holders of units representing a unit majority, subject to our receipt of an opinion of counsel to the effect that:

the action would not result in the loss of limited liability of any limited partner; and

neither our partnership, our operating company nor any of our other subsidiaries would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of that right to continue.

## **Liquidation and Distribution of Proceeds**

Upon our dissolution, unless we are continued as a new limited partnership, the liquidator authorized to wind up our affairs will, acting with all of the powers of our general partner that are necessary or appropriate, liquidate our assets and apply the proceeds of the liquidation as described in Cash Distribution Policy Distributions of Cash Upon Liquidation. The liquidator may defer liquidation or distribution of our assets for a reasonable period of time or distribute assets to partners in kind if it determines that a sale would be impractical or would cause undue loss to our

partners.

### **Withdrawal or Removal of the General Partner**

Except as described below, our general partner has agreed not to withdraw voluntarily as our general partner prior to June 30, 2017 without obtaining the approval of the holders of at least a majority of the outstanding common units and Series A Preferred Units, voting as a class, excluding common units and Series A Preferred Units held by the general partner and its affiliates, and furnishing an opinion of counsel regarding limited liability and tax matters. On or after June 30, 2017, our general partner may withdraw as general partner without first obtaining approval of any unitholder by giving 90 days written notice, and that withdrawal will not constitute a violation of our partnership agreement. Notwithstanding the information above, our general partner may withdraw without unitholder approval upon 90 days notice to the limited partners if at least 50% of the



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outstanding units are held or controlled by one person and its affiliates other than the general partner and its affiliates. In addition, the partnership agreement permits our general partner in some instances to sell or otherwise transfer all of its general partner interest in us without the approval of the unitholders. Please see [Transfer of General Partner Units](#) and [Transfer of Incentive Distribution Rights](#).

Upon withdrawal of our general partner under any circumstances, other than as a result of a transfer by our general partner of all or a part of its general partner interest in us, the holders of a unit majority may select a successor to that withdrawing general partner. If a successor is not elected, or is elected but an opinion of counsel regarding limited liability and tax matters cannot be obtained, we will be dissolved, wound up, and liquidated, unless within a specified period of time after that withdrawal, the holders of a unit majority agree in writing to continue our business and to appoint a successor general partner. Please see [Termination and Dissolution](#).

Our general partner may not be removed unless that removal is approved by the vote of the holders of not less than 66  $\frac{2}{3}$ % of the outstanding units, voting together as a single class, including units held by our general partner and its affiliates, and we receive an opinion of counsel regarding limited liability and tax matters. Any removal of our general partner is also subject to the approval of a successor general partner by the vote of the holders of a majority of the outstanding common units and Class B units, if any, voting as a separate class. The ownership of more than 33  $\frac{1}{3}$ % of the outstanding units by our general partner and its affiliates would give them the practical ability to prevent our general partner's removal.

Our partnership agreement also provides that, if our general partner is removed as our general partner under circumstances where cause does not exist and units held by our general partner and its affiliates are not voted in favor of that removal, our general partner will have the right to convert its general partner interest and its incentive distribution rights into common units or to receive cash in exchange for those interests based on the fair market value of those interests at that time.

In the event of removal of a general partner under circumstances where cause exists or withdrawal of a general partner where that withdrawal violates our partnership agreement, a successor general partner will have the option to purchase the general partner interest and incentive distribution rights of the departing general partner for a cash payment equal to the fair market value of those interests. Under all other circumstances where our general partner withdraws or is removed by the limited partners, the departing general partner will have the option to require the successor general partner to purchase the general partner interest of the departing general partner and its incentive distribution rights for their fair market value. In each case, this fair market value will be determined by agreement between the departing general partner and the successor general partner. If no agreement is reached, an independent investment banking firm or other independent expert selected by the departing general partner and the successor general partner will determine the fair market value. Or, if the departing general partner and the successor general partner cannot agree upon an expert, then an expert chosen by agreement of the experts selected by each of them will determine the fair market value.

If the option described above is not exercised by either the departing general partner or the successor general partner, the departing general partner's general partner interest and its incentive distribution rights will automatically convert into common units equal to the fair market value of those interests as determined by an investment banking firm or other independent expert selected in the manner described in the preceding paragraph.

In addition, we will be required to reimburse the departing general partner for all amounts due the departing general partner, including, without limitation, all employee-related liabilities, including severance liabilities, incurred for the termination of any employees employed by the departing general partner or its affiliates for our benefit.

**Transfer of General Partner Units**

Except for the transfer by our general partner of all, but not less than all, of its general partner units to:

an affiliate of our general partner (other than an individual); or

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another entity as part of the merger or consolidation of our general partner with or into another entity or the transfer by our general partner of all or substantially all of its assets to ano