

DOMINION COVE POINT LNG, L.P.,

Plaintiff,

v.

THE SIERRA CLUB, THE SIERRA CLUB, MARYLAND CHAPTER, and MARYLAND CONSERVATION COUNCIL, INC.,

Defendants.

IN THE

CIRCUIT COURT

FOR

CALVERT COUNTY

Case No.: C12-598

JURY TRIAL DEMANDED

CALVERT COUNTY, MARYLAND  
CIRCUIT COURT  
2012 MAY 19 AM 8:30

FILED

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**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Dominion Cove Point LNG, L.P. (“Dominion”), The Sierra Club (“Sierra Club”), and the Maryland Conservation Council, Inc. (“MCC”) are all parties to a March 1, 2005 agreement relating to the Cove Point LNG Terminal in Calvert County, Maryland (the “2005 Agreement”). The 2005 Agreement was executed for the Sierra Club by the then-Chair of defendant Sierra Club Maryland Chapter (the “Maryland Chapter”). As part of their nationwide so-called “Beyond Gas” campaign, the Sierra Club and the Maryland Chapter have tried to use the 2005 Agreement to oppose a proposed project in Calvert County known as the Cove Point Liquefaction Project (the “Liquefaction Project”). In fact, the plain language of the 2005 Agreement specifically permits all activities contemplated by the Liquefaction Project.

In support of its Complaint for Declaratory Judgment, Dominion alleges as follows.

**INTRODUCTION**

1. On October 7, 2011, Dominion received preliminary authorization from the Department of Energy (“DOE”) to export liquefied natural gas (“LNG”). To do so, Dominion plans to add additional liquefaction capabilities to its existing LNG terminal located at Cove

Point in Calvert County, Maryland. The Liquefaction Project, once completed, is expected to handle natural gas exports that will reduce the U.S. trade deficit by more than \$2.8 billion per year and will produce hundreds of millions of dollars per year in additional state and federal tax revenues. In Calvert County alone, the Project will produce additional property tax revenue of up to \$40 million per year and will make Dominion the County's largest taxpayer. In addition, over the life of the Project, it will have an estimated economic impact on Calvert County of \$1.3 billion. The Project will also generate from 2,500-3,100 construction jobs and from 70-100 permanent jobs in Calvert County.

2. Beginning in April 2012, more than six months after Dominion received preliminary authorization from DOE and at the same time the Sierra Club was seeking to raise the profile of its opposition to natural gas through its new "Beyond Gas" campaign, defendants Sierra Club and the Maryland Chapter publicly announced that they would attempt to block the Liquefaction Project and sent a "cease and desist" letter to Dominion demanding, among other things, that Dominion abandon the Liquefaction Project and relinquish any export licenses or other approvals for the Project that Dominion already had obtained from the federal government.

3. The 2005 Agreement does not give the Sierra Club or the Maryland Chapter any right to block the Project, because that Agreement contains no provision prohibiting either the expansion of the Cove Point liquefaction facilities or the export of LNG. In fact, the 2005 Agreement expressly permits Dominion to construct liquefaction facilities at Cove Point and to transfer LNG from the LNG Terminal Site to tankers located at an offshore pier for export. In addition, although the 2005 Agreement required the parties to consult regarding new construction projects to ensure that they are undertaken in the most ecologically sound manner possible, the Sierra Club and the Maryland Chapter have rebuffed Dominion's efforts to do so.

4. The Sierra Club and the Maryland Chapter's opposition to the Project has virtually nothing to do with any environmental impact at Cove Point. Instead, their opposition to

the Project is motivated by their nationwide “Beyond Gas” campaign against the use of natural gas as an energy source and their concern that the Liquefaction Project will lead to increased U.S. natural gas production in areas hundreds of miles from Cove Point.

### **PARTIES**

5. Plaintiff Dominion is the owner of the Cove Point LNG Terminal, one of the largest liquefied natural gas terminal facilities in the United States. The Terminal is located on a small portion of a 1,100 acre parcel of land in Calvert County owned by Dominion.

6. Defendant Sierra Club, a California nonprofit corporation, is one of the largest environmental organizations in the United States. One of the Sierra Club’s primary targets is the U.S. natural gas industry, which the Sierra Club characterizes as “dirty [and] dangerous.” In particular, the Sierra Club is leading a nationwide campaign against increased natural gas production.

7. Defendant Maryland Chapter oversees Sierra Club activities in Maryland. The Maryland Chapter has around 15,000 members and is managed by an Executive Committee, currently chaired by David O’Leary. The 2005 Agreement was executed for the Sierra Club by Elizabeth Johnson as the then-Chair of the Maryland Chapter.

8. Defendant MCC is a Maryland nonprofit founded in 1969 that is dedicated to preserving Maryland’s natural heritage. MCC is a party to the 2005 Agreement that is the subject of this litigation.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over the subject matter of this Complaint pursuant to MD. CODE ANN., CTS. & JUD. PROC. § 3-401 *et seq.* A justiciable controversy exists between the parties to the 2005 Agreement concerning Dominion’s right to construct the Liquefaction Project, and a declaratory judgment is necessary to resolve this controversy.

10. This Court has personal jurisdiction over the Defendants pursuant to MD. CODE ANN., CTS. & JUD. PROC. § 6-103 because they are parties to the 2005 Agreement, which was made in Maryland and relates to the permissible uses of real property located in Maryland. Venue is proper in Calvert County pursuant to MD. CODE ANN., CTS. & JUD. PROC. § 6-201 *et seq.*, because, among other reasons, the 2005 Agreement pertains to Dominion's rights with respect to the real property that it owns in Calvert County, Maryland.

## **BACKGROUND**

### **Liquefied Natural Gas**

11. Natural gas is among the most important sources of energy in the world. As concerns regarding the safety and impact of coal and nuclear energy have increased, countries around the world, including the United States, have increasingly turned to natural gas to fuel their energy needs.

12. In recent decades, domestic natural gas supplies have not been sufficient to satisfy the demand for natural gas in the U.S., requiring natural gas to be imported from foreign suppliers. Natural gas cannot be efficiently transported in tankers in its gaseous form, so before being shipped it is piped to facilities with equipment that cools the gas to roughly -260° Fahrenheit -- a process called "liquefaction." Liquefaction reduces the volume of the gas by 600 times, allowing large quantities of liquefied natural gas, or LNG, to be transported in tanker ships.

13. The balance between the domestic supply and demand for natural gas has changed dramatically in recent years with the development of new sources of U.S. natural gas production. The dramatic increase in U.S. natural gas production and expectations concerning potential future growth has generated numerous new projects proposing to export LNG.

### **The Cove Point LNG Terminal Is Constructed**

14. The Cove Point site that is the subject of this litigation is a parcel consisting of approximately 1,100 acres located at Cove Point in Calvert County, Maryland. The parcel was originally owned by Columbia Gas System, Inc. (“Columbia Gas”).

15. In the early 1970s, Columbia Gas sought and obtained federal approval to construct an LNG import terminal on a small part of its Cove Point parcel. In order to settle a challenge to that approval by the Sierra Club and MCC, Columbia Gas entered into a settlement agreement with them (the “1972 Agreement”) in which Columbia Gas agreed to set aside a significant portion of its Cove Point parcel to be maintained in its natural state. The portion set aside by Columbia Gas included 190 acres to be maintained as a freshwater marsh, a beach barrier to be maintained as a wildlife preserve and 600 acres to be preserved as open space.

16. Columbia Gas began importing LNG at the Cove Point LNG Terminal in 1978. Those operations lasted for only two years. In December 1980, imports ceased and operations at the Cove Point LNG Terminal were suspended.

### **The Cove Point LNG Terminal Is Expanded To Add Liquefaction Capabilities**

17. After almost fifteen years of dormancy, Columbia Gas in 1994 sought to restart operations at the Cove Point LNG Terminal. However, rather than recommencing import operations, which had been the original focus of the Terminal, Columbia Gas expanded the Terminal to add liquefaction capabilities.

18. In connection with this expansion, Columbia Gas negotiated a new agreement with the Sierra Club, including the Maryland Chapter, and MCC (the “1994 Agreement”) that modified and clarified the original 1972 Agreement and other existing easements. Among other things, the 1994 Agreement clarified that the Cove Point LNG Terminal, which originally was developed as an import facility, could be expanded to include liquefaction capabilities.

19. The liquefaction capability that Columbia Gas sought to add to the Cove Point LNG Terminal at that time was intended to produce sufficient LNG for Peaking Service. Peaking Service involves liquefying gas, storing it as LNG, and then regasifying to provide gas supplies to utilities during periods of peak use.

20. However, the 1994 Agreement did not limit liquefaction facilities to those necessary to provide Peaking Service nor did it in any way exclude the export of LNG. Rather, the 1994 Agreement defined the LNG Terminal Operations permissible at the site to include the following:

any use or activity related to: (i) the construction, operation or maintenance of facilities and equipment associated with . . . : (a) marine operations involving the importing of LNG; (b) the liquefaction of natural gas; (c) the storage of LNG in tanks; (d) the regasification of LNG; (e) the receipt by tanker and the receipt or delivery by pipeline of LNG, revaporized LNG or natural gas at or from the LNG Terminal Site

1994 Agreement § 1.01 (emphasis supplied).

#### **Dominion Acquires Cove Point and Enters Into the 2005 Agreement**

21. Dominion acquired the Cove Point parcel and the LNG terminal in 2002. In 2005, Dominion applied to the Federal Energy Regulatory Commission (“FERC”) for authorization to expand LNG capabilities at the Cove Point LNG terminal, including the construction of two additional LNG storage tanks and other associated facilities (the “Cove Point Expansion Project”).

22. However, even before applying for FERC approval, Dominion entered into an Agreement in Principle with the Sierra Club and MCC in which they agreed not to oppose the Cove Point Expansion Project. Among other terms, the Agreement in Principle obligated the parties to enter into a new Agreement that would replace in its entirety all prior arrangements and understandings between them regarding the Cove Point site.

23. The 2005 Agreement was executed on March 1, 2005. A true and correct copy of the 2005 Agreement, without attachments, is attached hereto as Exhibit 1. Elizabeth Johnson, as Chair of the Maryland Chapter, executed both the Agreement in principle and the subsequent 2005 Agreement on behalf of the Sierra Club.

24. Section 2.01 of the 2005 Agreement provides in relevant part that Dominion “shall use the LNG Terminal Site solely to conduct and carry on LNG Terminal Operations, and no other, and shall observe the restrictions set forth in this Article.” The definition of LNG Terminal Operations in the 2005 Agreement is the same as the definition that Columbia Gas negotiated in the 1994 Agreement. See 2005 Agreement § 1.01; see also supra ¶ 20 (definition of LNG Terminal Operations in 1994 Agreement).

25. The “LNG Terminal Site” is defined in the 2005 Agreement as the portion of the Cove Point Site zoned as I-1 (Light Industrial District). See id. The 2005 Agreement provides that the LNG Terminal Site includes a Fenced Area which, by definition, is “approximately 131 acres within the LNG Terminal Site depicted on the map attached as Exhibit B and the metes and bounds survey attached as Exhibit I, where the bulk of the LNG tanks and terminal facilities are located.” Id.

26. The 2005 Agreement expressly provides for future expansion projects at the LNG Terminal Site. Section 8.02, for example provides that Dominion shall “notify the Sierra Club and MCC at least 45 days prior to the commencement of construction of any new LNG storage tanks, natural gas liquefaction facilities . . . or other major new construction on the LNG Terminal Site” and “make plans for such construction available . . . for their inspection.” (Emphasis supplied.)

27. Notably, no provision in the 2005 Agreement prohibits Dominion from exporting LNG from Cove Point, and, in fact, as indicated above, the Agreement specifically permits all activities contemplated by the Liquefaction Project.

## **The Sierra Club Attempts to Prevent Dominion from Adding Liquefaction Capabilities and Exporting LNG**

28. The economic development of new U.S. shale gas formations has dramatically increased the nation's natural gas reserves and production. Natural gas prices in the United States are now significantly lower than prices in most of the rest of the world. Thus, for the first time, domestic supplies are sufficient to support exporting gas from the continental U.S. to other countries, such as Japan.

29. In late 2011, Dominion submitted applications to the Department of Energy for authorization to begin exporting up to 1 billion cubic feet per day of LNG from the Cove Point LNG Terminal Site. Dominion's application to export LNG to countries which have free trade agreements with the United States has been approved, and its application to export to non-free trade countries is pending. To support these exporting activities, Dominion announced its intention to expand the liquefaction capabilities at the Cove Point LNG Terminal Site that it is pursuing through the Liquefaction Project.

30. Dominion recently publicly announced that it has signed binding precedent agreements with two customers for all of the planned capacity of the Liquefaction Project. Under the expected service agreements, those customers, which include Sumitomo Corporation, a major Japanese corporation with significant global energy operations, would purchase domestic gas supplies and transport it to the Cove Point Terminal. Dominion would then liquefy the customer's natural gas and then transfer the resulting LNG to tankers to be transported to other countries.

31. Dominion considered two options for the construction of the Liquefaction Project. Dominion's preferred option would have involved limited construction outside the Fenced Area and, therefore, would have required renegotiation of the 2005 Agreement. Under Dominion's second option, all new liquefaction equipment and facilities related to the Liquefaction Project would be within the Fenced Area.



32. In accordance with Section 2.06(b) of the 2005 Agreement, Dominion approached the Sierra Club and MCC in March 2012 to see if they would permit limited construction of the new liquefaction facilities to take place outside of the Fenced Area. However, it quickly became clear that the Sierra Club and the Maryland Chapter would oppose any construction at Cove Point that involved the exporting of LNG because the Sierra Club “[saw] LNG export as a bad idea” in its view because it would result in increased domestic natural gas production – precisely what the Sierra Club is fighting against as part of its “Beyond Gas” campaign.

33. On April 25, 2012, the Sierra Club advised Dominion that it would not agree to renegotiate the 2005 Agreement to permit construction outside of the Fenced Area. This has left Dominion with no choice but to move forward with the second option – constructing all the liquefaction facilities for the Liquefaction Project on that portion of the LNG Terminal Site that is within the Fenced Area.

34. The next day, on April 26, 2012, the Sierra Club and the Maryland Chapter held a press conference at which they announced that they intended to block Dominion from proceeding with the Liquefaction Project, irrespective of whether it was inside or outside the Fenced Area. With a few limited exceptions, the concerns about the Liquefaction Project mentioned during the press conference had nothing to do with the subject of the 2005 Agreement – the environmental impact of LNG Terminal Operations at the Cove Point site. Rather, the Sierra Club and the Maryland Chapter asserted that they were challenging the Liquefaction Project because it would lead to increased natural gas production in the Marcellus Shale in western Pennsylvania, which the Sierra Club opposes as part of its “Beyond Gas” campaign.

35. The Sierra Club and the Maryland Chapter also asserted during their press conference and in a simultaneous press release that the 2005 Agreement “revised” the 1972 agreement and gave them veto power over the Project because it prohibited any further expansion of the Cove Point LNG Terminal and the exporting of LNG from the Cove Point site.

36. On the same day as their press conference, the Sierra Club and the Maryland Chapter sent a letter to Dominion demanding that it “immediately cease any plans to expand the facility and any plans to export LNG from the facility” and immediately cancel export licenses and approvals Dominion had already secured from the federal government. They also asserted that “Dominion is out of compliance with our agreement to the extent that it is seeking to expand the facility or to export LNG, and will be further out of compliance if it moves forward with either of these proposals.” As they did during the press conference, the Sierra Club and the Maryland Chapter asserted in the “cease and desist” letter that the parties’ agreement provided “that the facility would be used only for imports and would not be expanded again.”

37. The Sierra Club and Maryland Chapter’s assertion that the 2005 Agreement merely revised the 1972 agreement is false. Section 9.02 of the 2005 Agreement states in relevant part that the 2005 Agreement “constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes and and all other prior agreements and understandings, written or oral, among the parties with respect to such subject matter, including (without limitation) the 1994 Agreement.” 2005 Agreement § 9.02 (emphasis added); see also id. at p.2 (“All parties have agreed that it is desirable and in the best interests of all of them that the arrangements and understandings regarding the Cove Point Site, as set forth in the 1972 Agreement, the 1973 Easement, and the 1994 Agreement, be replaced in their entirety by this Agreement.”).

38. The Sierra Club and Maryland Chapter’s assertions that the 2005 Agreement precludes any further expansion of LNG facilities at the Cove Point site and prohibits the exporting of LNG are also false and are contradicted by the express terms of that Agreement. Indeed, although the Agreement does contain some express prohibitions, such as Section 2.03, which precludes the transport of LNG from the Terminal Site by truck without the prior written

consent of the Sierra Club and the MCC, there are no comparable restrictions on expanding liquefaction capabilities or on the transport of LNG from the Terminal Site by tanker.

39. To the contrary, the 2005 Agreement provides that Dominion shall use the LNG Terminal Site “to conduct LNG Terminal Operations, “which are defined, in pertinent part, to include the following:

any use or activity related to: (i) the construction, operation or maintenance of facilities and equipment associated with . . . : (a) marine operations involving the importing of LNG; (b) the liquefaction of natural gas; (c) the storage of LNG in tanks; (d) the regasification of LNG; (e) the receipt by tanker and the receipt or delivery by pipeline of LNG, revaporized LNG or natural gas at or from the LNG Terminal Site . . . .

See *id.* § 1.02 (emphasis added).

40. The 2005 Agreement also specifically contemplated the expansion of the existing facilities by providing, in Section 8.02, that Dominion shall “notify the Sierra Club and MCC at least 45 days prior to the commencement of construction of any new LNG storage tanks, natural gas liquefaction facilities, storm water structures, new or replacement gas-fired turbines, or other major new construction on the LNG Terminal Site.” *Id.* § 8.02 (emphasis supplied).

41. Finally, the 2005 Agreement permits the export of LNG from Cove Point in that subsection (e) of the definition of “LNG Terminal Operations” expressly provides for “the receipt by tanker and the receipt or delivery by pipeline of LNG, revaporized LNG or natural gas at or from the LNG Terminal Site.” *Id.* § 1.01 (emphasis supplied).

## COUNT I

### Declaratory Judgment (MD. CODE ANN., CTS. & JUD. PROC. § 3-401 *et seq.*)

42. All of the foregoing allegations are re-alleged and incorporated by reference herein.

43. An actual and justiciable controversy exists between Dominion, the Sierra Club, the Maryland Chapter, and MCC with respect to whether the 2005 Agreement prohibits the construction of the Liquefaction Project.

44. In particular, the Sierra Club and the Maryland Chapter contend that the 2005 Agreement prohibits any expansion of the LNG Facilities at the Cove Point site and any export of LNG from the Cove Point Site. These contentions are directly contrary to the 2005 Agreement which does not prohibit those activities and, in fact, expressly permits the construction of new facilities for the liquefaction of natural gas and expressly authorizes the transfer of LNG from the LNG Terminal site to tankers for export of LNG.

45. The entry of a declaratory judgment pursuant to MD. CODE ANN., CTS. & JUD. PROC. § 3-401 *et seq.* is necessary and appropriate to resolve the controversy between the parties concerning these issues. The entry of a declaratory judgment is also necessary because uncertainty regarding Dominion's rights under the 2005 Agreement may jeopardize the financing for, and regulatory approvals of, the Liquefaction Project and, hence, the Project itself. This uncertainty cannot be resolved without a declaration unequivocally confirming Dominion's contractual right to proceed.

WHEREFORE, Dominion prays as follows

a) that the Court enter judgment declaring that the 2005 Agreement permits the construction, operation and maintenance of additional facilities for the liquefaction of natural gas within the Fenced Area of the LNG Terminal Site;

b) that the Court enter a judgment declaring that the 2005 Agreement permits Dominion to export LNG from the LNG Terminal Site;

c) that the Court award Dominion its costs and reasonable attorney's fees;  
and

d) that the Court grant Dominion such other and further relief as the Court may deem appropriate, whether in law or in equity.

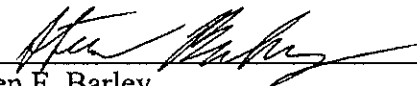
**JURY DEMAND**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully Submitted,

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# **EXHIBIT 1**

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0K3329P60052

AGREEMENT

This Agreement, made this 1<sup>st</sup> day of MARCH, 2005, is by and among Dominion Cove Point LNG, L.P., a Delaware corporation; Sierra Club, a California corporation, including its Maryland Chapter; and Maryland Conservation Council, Inc., a Maryland corporation.

LR IMPROVE SU	20.00
RECORDING FEE	75.00
TOTAL	95.00
Rest CV01	Rcpt # 63550
KPS SES	Rlk # 546
Jun 08, 2009	12:16 PM

RECITALS

Dominion Cove Point LNG, L.P. ("Dominion Cove Point LNG"), a subsidiary of Dominion Resources, Inc., is the owner of a parcel of land containing approximately 1,017 acres, more or less, situate at Cove Point in Calvert County, Maryland (the "Cove Point Site"). Dominion Cove Point LNG owns a terminal for the importation, storage, regasification, and transmission of liquefied natural gas ("LNG") on a portion of that parcel of land and, since 1978, the site has been used as an LNG terminal. The Cove Point LNG terminal was constructed in 1978 by a subsidiary of the Columbia Gas System, Inc., which owned it until 2000. The Cove Point LNG terminal was then purchased by subsidiaries of the Williams Companies, Inc., which owned it until September 5, 2002, when Dominion Resources, Inc. purchased Cove Point LNG. The Cove Point Site is the subject of a letter agreement dated December 4, 1972, recorded among the land records of Calvert County, Maryland, in Liber 160 at Page 380 (the "1972 Agreement") and a related easement between Columbia LNG and the State of Maryland recorded among the land records of Calvert County, Maryland, in Liber 160 at Page 373 (the "1973 Easement"). In addition, as contemplated by the 1972 Agreement, certain portions of the Cove Point Site are subject to an easement granted by Columbia LNG to County Commissioners of Calvert County dated August 6, 1980, and recorded among the land records of Calvert County, Maryland, in Liber 264 at Page 246, and an easement granted

to the Cove Point Beach Association, Inc. dated June 25, 1979, and recorded among the land records of Calvert County, Maryland, in Liber 304 at Page 759. Columbia Gas, Maryland Conservation Council, Inc. and Sierra Club negotiated a new agreement in 1994 to clarify certain terms and add liquefaction to LNG operations. This new agreement ("1994 Agreement") superceded and replaced the 1972 Agreement.

Following consultations and negotiations, the parties have entered into an Agreement in Principle dated June 15, 2004, in which Sierra Club and MCC agree not to oppose the Dominion Cove Point LNG plan to construct certain LNG-related facilities on the Cove Point site as part of its Cove Point Expansion Project, including two new storage tanks and related facilities. Among its terms and conditions, the Agreement in Principle also obligates the parties to enter into a new Agreement. All parties have agreed that it is desirable and in the best interests of all of them that the arrangements and understandings regarding the Cove Point Site, as set forth in the 1972 Agreement, the 1973 Easement, and the 1994 Agreement, be replaced in their entirety by this Agreement. The parties have further agreed that this result can best be accomplished through the execution and delivery of this Agreement, and the concomitant release and termination of the rights and interests created by the previous agreements, as provided for in Article IX.

**NOW, THEREFORE,** the parties hereto, intending to be legally bound and in consideration of the mutual covenants herein contained, DO HEREBY AGREE as follows:



DK3329P60054

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. For purposes of this Agreement, the terms defined in this Section shall have the meanings herein specified, unless the context clearly otherwise requires:

**"Agreement in Principle"** refers to that Agreement between the parties dated June 15, 2004, which allows for the construction of certain facilities at the Cove Point Site as part of the Owner's Cove Point Expansion Project, and which also identifies the completion of this Agreement.

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

**"1972 Agreement"** means the letter agreement relating to the Cove Point Site dated December 4, 1972, recorded among the land records of Calvert County in Liber 160 at Page 380, including the attachments thereto and all amendments, modifications, and supplements thereof.

**"1994 Agreement"** means the agreement dated September 21, 1994, among Columbia LNG, Sierra Club and Maryland Conservation Council, Inc., which superceded the 1972 agreement.

**"Association"** means the Cove Point Beach Association, Inc., a Maryland corporation, and its successors and assigns.

**"Association Area"** means the portion of the Cove Point Site that is subject to and described in the 1979 Association Easement.

**"Association Easement"** means the Modified and Restated Easement dated November 8, 1994, relating to the Association Area between Columbia

LNG Corporation, predecessor-in-interest to Dominion Cove Point, LNG and the Association, recorded in Calvert County at Liber 775 page 772, which modifies and restates the 1979 Association Easement.

**"1979 Association Easement"** means the instrument dated June 25, 1979, between Columbia LNG Corporation, predecessor-in-interest to Dominion Cove Point LNG, and the Association recorded among the land records of Calvert County in Liber 304 at Page 759.

**"Conservancy"** means The Nature Conservancy, a District of Columbia corporation, and its successors and assigns.

**"County"** means County Commissioners of Calvert County, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

**"County Area"** means the portion of the Cove Point Site that is subject to and described in the 1980 County Easement.

**"1980 County Easement"** means the instrument dated August 6, 1980, between Columbia LNG Corporation, predecessor-in-interest to Dominion Cove Point, LNG and the County recorded among the land records of Calvert County in Liber 264 at Page 246.

**"Cove Point Expansion Project"** means the project to expand LNG capacities at the Owner's Cove Point LNG terminal, including the construction of two additional LNG storage tanks and associated facilities, which is the subject of the of the Agreement in Principle. This project is to be the final expansion of the fenced area for the duration of LNG operations at Cove Point.

**"Cove Point Natural Heritage Trust, Inc."** <sup>AK3329P60056</sup> Means the Trust

established in the 1994 Agreement and incorporated in Maryland as a nonprofit charitable, educational and scientific tax-exempt organization. Cove Point Natural Heritage Trust By-Laws are incorporated into this Agreement in Exhibit H.

**"Cove Point Site"** means a parcel of land containing approximately 1,017 acres, more or less, situate at Cove Point in Calvert County, Maryland, and described in Exhibit A attached hereto. A map of the Cove Point Site is attached hereto as Exhibit B.

**"1973 Easement"** means the instrument relating to the Cove Point Site dated August 6, 1973, between Columbia LNG Corporation and now held by Dominion Cove Point, LNG and the State, recorded among the land records of Calvert County in Liber 160 at Page 373.

**"Emergency"** means an event or sudden condition that requires immediate action to prevent harm to human life, safety or the environment.

**"Existing Generating Capacity"** means the full potential generating capacity of all electrical generating equipment located at the LNG Terminal Site, including capacity added as part of the Cove Point Expansion Project and capacity added by expansion or enhancements to the air separation units.

**"Fenced Area"** means the area of approximately 131 acres within the LNG Terminal Site and depicted on the map attached as Exhibit B and the metes and bounds survey attached as Exhibit I, where the bulk of the LNG tanks and terminal facilities are located.

**"Freshwater Marsh"** means the marsh generally described in Section 4.04.

**"LNG"** means liquefied natural gas.

**"LNG Terminal Operations"** means and is limited to any use or activity related to (i) the construction, operation or maintenance of facilities and equipment associated with the following activities (a) through (j): (a) marine operations involving the importing of LNG; (b) the liquefaction of natural gas; (c) the storage of LNG in tanks; (d) the regasification of LNG; (e) the receipt by tanker and the receipt or delivery by pipeline of LNG, revaporized LNG or natural gas at or from the LNG Terminal Site; (f) the treatment of LNG or revaporized LNG by nitrogen injection or the separation and removal of constituent parts; (g) the provisioning of LNG tankers with water and miscellaneous supplies, provided that the principal method of provisioning LNG tankers shall be by means of shipments of materials and supplies from locations other than the Cove Point Site to the off-shore pier for storage and transfer to LNG tankers docked at the off-shore pier; (h) the recovery and use on the LNG Terminal Site for other LNG Terminal Operations of the cryogenic properties of LNG; (i) the recovery and use on the LNG Terminal Site of waste heat for other LNG Terminal Operations; (j) the generation or cogeneration of electricity within the limitations prescribed herein; and (ii) the construction, operation or maintenance of facilities and equipment directly supporting the foregoing activities (a) through (j), including office buildings, warehouses, maintenance shops, firefighting equipment and utilities.

**"LNG Terminal Site"** means a portion of the Cove Point Site, containing approximately 323 acres, more or less, and currently zoned I-1 (Light Industrial District), as described in Exhibit A attached hereto and depicted in the map attached as Exhibit B.

**"MCC"** means Maryland Conservation Council, Inc., a Maryland corporation, and its successors and assigns.

**"MET"** means Maryland Environmental Trust, established and existing under Subtitle 2 of Title 3 of the Natural Resources Article of the Annotated Code of Maryland (1989 Replacement Volume, as amended), and its successors and assigns.

**"MET/Conservancy Easement"** means an instrument dated September 21, 1994 relating to the Cove Point Site made by Columbia LNG Corporation, as grantor, to MET and the Conservancy, as grantees, which is recorded in Calvert County at Liber 775 page 644.

**"Methane Hydrates"** means methane gas hydrates encapsulated in a clathrate compound extracted from sea-floor sediments and the Arctic permafrost.

**"Onshore Pier"** means the pier described in Section 4.03.

**"Open Land"** means all of the land constituting the Cove Point Site, excepting and excluding the LNG Terminal Site and the County area.

**"Open Space"** means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved under the terms of the MET/Conservancy Easement.

**"Owner"** means Dominion Cove Point LNG, LP, and its successors and assigns; provided, however, that the term "Owner" does not include any person or entity acquiring title to the Cove Point Site pursuant to the provisions of Article VI of this Agreement.

**"Permitted Encumbrances"** means, with respect to the Open Land:

(a) the MET/Conservancy Easement, and such easements, rights-of-way, servitudes, restrictions and other defects, liens and encumbrances as may exist on the date of recordation of the MET/Conservancy Easement;

(b) the 1979 Association Easement and, upon the execution and delivery of the Association Easement by the parties thereto, the Association Easement;

(c) easements and rights-of-way for underground utility lines on the LNG Terminal Site and on the Open Land if within the corridors shown on Exhibit B hereto; and

(d) such easements, rights-of-way, servitudes and encumbrances in favor of parties other than the Owner as may hereafter be created as a result of eminent domain proceedings.

**"Proprietary Information"** means information describing or revealing the nature of any product or process made and/or marketed by any person or entity (or combination of persons and/or entities) having the exclusive right to manufacture and sell such product or process, and includes, without limitation, any information constituting a trade secret.

**"Sierra Club"** means the Sierra Club, a California corporation, and its successors and assigns.

**"State"** means the State of Maryland.

**"Tiger Beetle"** means the Northeastern Beach Tiger Beetle (*Cicindela dorsalis*) and the Puritan Tiger Beetle (*Cicindela puritana*).

## ARTICLE II

## LNG TERMINAL OPERATIONS

Section 2.01. Use of LNG Terminal Site; Restrictions. The Owner shall use the LNG Terminal Site solely to conduct and carry on LNG Terminal Operations, and no other, and shall observe the restrictions set forth in this Article.

Section 2.02. Additional Storage Tanks. As of the date of this Agreement, the LNG Terminal Site contains five (5) LNG Storage Tanks at the Cove Point Site, all within the Fenced Area of the LNG Terminal Site as depicted on Exhibit B. In addition, the parties have agreed that two (2) more LNG Tanks may be constructed by Owner as part of the Cove Point Expansion Project, both tanks to be within the Fenced Area of the LNG Terminal Site, as shown on the map attached as Exhibit B. If the Owner elects to construct an additional tank for the storage of LNG on the LNG Terminal Site beyond these seven (7) constructed or approved tanks, the following restrictions shall apply:

(a) No more than one additional storage tank shall be allowed, and it shall be within the fenced area of the LNG Terminal Site as designated on the map attached hereto as Exhibit B;

(b) the exterior surfaces of the additional tanks shall be painted as the existing storage tanks;

(c) the height of the two tanks to be constructed as part of the Cove Point Expansion Project or the potential eighth tank shall not exceed 162 feet, measured by a vertical line running from the base of the tank to the center of the dome at the top of the tank; and

(d) the total combined volumetric capacity of all eight tanks permitted under this agreement shall not exceed 5,600,000 U.S. Barrels or 18.85 bcf equivalent.

Section 2.03. Trucking of LNG. The Owner may not transport LNG from the LNG Terminal Site by means of trucks without the prior written consent of Sierra Club and MCC.

Section 2.04. Removal and Storage of Hydrocarbons. The Owner may elect to construct and install facilities for the separation and removal from LNG of non-methane hydrocarbons (e.g., ethane, propane and butane), provided that (a) storage of non-methane hydrocarbons shall be limited to no more than two tanks, of a total capacity not exceeding 70,000 gallons, and (b) the separated hydrocarbons may be used only as fuel on the LNG Terminal Site.

Section 2.05. Generation and Cogeneration of Electricity.

(a) The Owner may from time to time install such additional and/or replacement electrical generating units as may be reasonably required to carry on LNG Terminal Operations at the LNG Terminal Site (including a reasonable margin for reserve). The parties recognize and agree that additional electrical generating units and capacity will be installed as part of the Cove Point Expansion Project in the 2006 to 2008 time frame, and that additional capacity may be required by expansion or enhancements to the air separation units, all of which is designed to meet the requirements of plant operations (plus a reasonable reserve) and not for the generation of electric power to be sold off the Cove Point Site.

(b) Without the prior written consent of Sierra Club and MCC, the Owner may not generate electricity for transmission and sale off the Cove Point Site,



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except that from time to time the Owner may without such prior consent transmit and sell electricity for consumption off the Cove Point Site to the extent that the Existing Generating Capacity exceeds the capacity reasonably required to carry on LNG Terminal Operations.

(c) The Owner's right to transmit and sell electricity for consumption off the Cove Point Site shall not be affected if the Owner replaces one or more of the generating units located on the LNG Terminal Site with one or more replacement units, so long as the aggregate generating capacity of the units located on the LNG Terminal Site does not exceed the Existing Generating Capacity by more than twenty-five percent (25%); however, if and when the aggregate generating capacity of the units located on the LNG Terminal Site exceeds the Existing Generating Capacity by more than twenty-five percent (25%), the Owner may not thereafter generate any electricity for sale off the Cove Point Site without the prior written consent of Sierra Club and MCC. The Owner shall notify Sierra Club and MCC when it installs any additional or replacement generating capacity at the LNG Terminal Site beyond the capacity referenced above, and shall furnish Sierra Club and MCC with a copy of all contracts or arrangements that it enters into for the sale of electricity off the Cove Point Site.

Section 2.06. New Construction. Except as otherwise permitted hereby, following the date of this Agreement:

(a) The Owner shall not erect new structures or clear trees on the LNG Terminal Site outside the fenced area depicted on Exhibit B, except that previously disturbed areas may be used for temporary construction activities and impacts related to the Cove Point Expansion Project.

(b) The Owner shall not erect new structures or clear trees on those portions of the LNG Terminal Site within the fenced area that will be occupied by trees following completion of the Cove Point Expansion Project, unless (i) the Owner in consultation with Sierra Club and MCC and in good faith determines that no reasonably feasible alternative site is available at the LNG Terminal Site, and (ii) for each tree removed, the Owner plants two trees within the LNG Terminal Site, either within or outside the fenced area; provided that if there are no suitable sites for additional tree planting within the LNG Terminal Site, the parties will work cooperatively to identify other locations for planting of replacement trees within the site area, other property owned or controlled by the Cove Point Natural Heritage Trust or other property in the County, to mitigate the need for the Owner to purchase additional property in order to plant replacement trees.

(c) With respect to areas outside the fenced area but located within the LNG Terminal Site, the Owner shall be permitted at all times to maintain, replace or add such structures as are necessary for the control of storm water runoff or erosion, or for the continued maintenance of the dams, or to comply with available best practices under Md Code Ann. Envir. 4-202.

### ARTICLE III

#### PERMITTED ENCUMBRANCES

Section 3.01. The parties recognize and accept the terms and conditions of the existing easements burdening the Cove Point Site, including the MET/Conservancy Easement, the County Easement, and the Association Easement.

## ARTICLE IV

## ENVIRONMENTAL PROGRAMS

Section 4.01. Environmental Undertakings. The Owner will continue to exercise its rights and responsibilities as owner of the Cove Point Site in an environmentally responsible manner. With respect to the construction of any additional facilities authorized by this Agreement and the operation and maintenance of the facilities on the LNG Terminal Site, and in order to minimize adverse environmental impacts upon the Cove Point Site and, in particular, the freshwater marsh, the Owner hereby agrees to undertake the programs and observe the restrictions set forth in this Article.

Section 4.02. Open Space. The Owner shall maintain all of the Cove Point Site that is not included in the LNG Terminal Site as open space and in its natural state as required by the terms of the MET/Conservancy Easement. The Owner shall maintain and enforce the restrictions on the use of the County Area set forth in the County Easement and the Association Easement.

Section 4.03. Shoreline Structures.

(a) There shall be no piers or other structures along the shoreline of the LNG Terminal Site or between the landward edge of the freshwater marsh and the shoreline except (i) an underground tunnel (containing pipelines, utilities and access corridors) running from the land side fenced area to the offshore pier, and the cathodic protection system associated with the underground tunnel; (ii) the boardwalk that currently runs from the landward edge of the Freshwater Marsh to the shoreline; and (iii) the pier currently existing on the shoreline, which was constructed in accordance with the plans set forth in Exhibit G (the "Onshore Pier"); (iv) the walkway that connects to the boardwalk.

(b) The Owner shall make no alterations to the Onshore Pier, boardwalk or walkway (other than repair or replacement of such facilities to existing specifications) without the approval of Sierra Club and MCC. Specifications for the Onshore Pier are referenced in subsection (a) above and shown on Exhibit G.

(c) If it is ever determined by MCC, Sierra Club or the Owner that the Onshore Pier or boardwalk are interfering with natural beach movement, erosion or accretion or otherwise causing damage to the beach, the parties shall consult with each other to determine what modifications, if any, should be made to the Onshore Pier and/or boardwalk to resolve the problem. It is understood that removal of the Onshore Pier shall be undertaken only if there are no other possible solutions to the problem; provided, however, that the decision of MCC and Sierra Club on removal shall be final.

(d) The Owner shall not dredge around the Onshore Pier. Furthermore, no boat shall be permitted to dock at the Onshore Pier overnight except when necessitated by weather conditions or an Emergency nor shall any maintenance or refueling of a boat take place at the Onshore Pier. No vehicular or any other type of traffic other than foot traffic will be permitted on the Onshore Pier, walkway or boardwalk except that the walkway can be used by emergency vehicles to access the boardwalk and onshore pier as shown on Exhibit G. The walkway may be paved to allow emergency use, but the paving shall not exceed 10 feet in width.

Section 4.04. Freshwater Marsh. The Owner shall maintain the freshwater marsh of approximately 190 acres ("Freshwater Marsh") and the barrier beach as a wildlife preserve and a critical habitat area in cooperation with the Maryland Natural Heritage Program and under such restrictions as are necessary to preserve the area as a wildlife preserve, including limited access by the public so as to preserve the ecological

value of the Freshwater Marsh and to reduce, insofar as considered necessary, public proximity to the LNG Terminal Site. Insofar as the Owner attempts to separate the Freshwater Marsh area from the balance of the Cove Point Site by a fence, the fence shall be located insofar as practicable so as to avoid visual impact of the fence from the beach.

Section 4.05. Forestation. With respect to the uplands situated between (a) the security fence located approximately ten yards northeast of the building containing the landside entrance to the underground tunnel and (b) the landward side of the Freshwater Marsh, the Owner shall plant and maintain trees on such lands which shall be allowed to grow into a permanent and mature forest sufficient to screen the facilities at the entrance to the tunnel from the Chesapeake Bay; provided, however, that the Owner shall be permitted to maintain the existing walkway providing access to the boardwalk and to have such access to the tunnel as may be required for its maintenance and operation. Any trees removed by the Owner in connection with the maintenance or operation of the tunnel shall be replanted by the Owner. Maintenance of the corridor over the tunnel shall at all times be subject to applicable government regulations.

Section 4.06. Specific Programs. Unless otherwise directed by the Conservancy and MET in the exercise of the rights granted to those parties in the MET/Conservancy Easement with respect to the Open Land, in order to protect and enhance the environmental quality of the Cove Point Site, the Owner shall undertake and administer the specific environmental programs described in the following Sections 4.07, 4.08 and 4.09.

Section 4.07. Control of Phragmites australis.

(a) The Owner shall budget, and spend as needed, up to \$3,000 per year for the continued control of Phragmites australis (including a Tiger Beetle census) on both the Open Land and the LNG Terminal Site. The Owner shall in addition make available sufficient personnel (up to eight persons) to assist with the control program for one day each year between September 15 and November 1. To the extent monies are budgeted and unspent, these sums shall be carried over to the future to be made available as needed for the Phragmites control program, provided, however, that total budgeted funds carried over at any one time shall not exceed \$20,000.

(b) The Owner shall consult with MET, the Conservancy and the Cove Point Natural Heritage Trust concerning the details of the program to be implemented each year.

(c) Any control activities undertaken by the Owner shall be subject to the receipt of any necessary governmental approval and the receipt of any approval required from MET and the Conservancy as grantees under the MET/Conservancy Easement. The Owner shall use its best efforts to secure such approvals.

(d) The person who supervises the Phragmites control program shall have (i) valid Maryland Class 5 and Class 10 Pesticide Applicator's Licenses, and (ii) at least five years experience controlling Phragmites in environmentally sensitive areas, if such a person is reasonably available. If one person having the qualifications described in (i) and (ii) is not reasonably available, the requirements of this subsection will be deemed satisfied if the personnel supervising the Phragmites control program

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include one person meeting the qualifications described in (i) and another meeting the qualifications described in (ii).

Section 4.08. Stream Bank Stabilization and Erosion Control.

(a) With respect to any new construction at the LNG Terminal Site, the Owner shall develop, obtain approval of, and comply with, all governmentally required erosion or sedimentation control plans, obtain all necessary permits for grading, and with respect to any new construction that may increase the volume of runoff from the facility over the volume that would otherwise have been generated without the new construction, the Owner shall design storm water management structures and systems to minimize the volume and impact of such increased runoff.

(b) The Owner shall take corrective action, including the stabilization of storm water runoff areas, to control non-beach erosion caused by previous or new construction on the LNG Terminal Site.

Section 4.09. Protection of Endangered Tiger Beetles.

(a) No vehicles shall be allowed access to the beach across the Open Land except in an Emergency.

(b) The Owner may operate vehicles on the beach solely as may be required in the event of an Emergency or for the maintenance of the tunnel, the cathodic protection system associated with the tunnel and the Onshore Pier. Vehicles working on the beach in connection with such maintenance activities shall limit their activity to as narrow an area as possible on either side of the tunnel. The Owner shall be required to restore any area disturbed as a result of such maintenance activity and vehicle access to the condition in which it existed preceding such maintenance and vehicle access. All maintenance activity, vehicle access, and restoration pursuant to this

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Section 4.09(b) shall be conducted after consultation with MET and the Conservancy so as to minimize harm to Tiger Beetles; provided, however, the Owner shall not be required to first consult with MET and the Conservancy in Emergency situations.

(c) The Owner shall use its best efforts to minimize all human activity on the beach by restricting access to the beach across the Open Land and the LNG Terminal Site and, to the extent that the Owner has the legal authority to do so, the Owner shall not permit boats to land on the beach nor permit trespassers to use the beach. The Owner, its agents, and its employees may visit or use the beach only as necessary in the conduct of LNG Terminal Operations. It is understood, however, that individuals and small groups may use the beach with the permission of the Owner for naturalist activities, such as bird watching and scientific studies and research, subject to such reasonable regulations as the Owner may prescribe with respect to visitation at the Cove Point Site.

Section 4.10. Use of Lake Waters.

(a) The Owner may not withdraw water from either of the bodies of water, Lake Levy and Osborn Pond, on the Cove Point Site for use in connection with LNG Terminal Operations, except that the Owner may from time to time withdraw water from the larger of such bodies of water, for fire suppression purposes only and subject to the following restrictions and conditions: first-use and small quantity needs for fire control must be satisfied from other sources; no more than half of the then-existing volume may be withdrawn at any time; any required governmental approvals or permits must be obtained; the amount withdrawn must be replaced within sixty (60) days in spray form in a manner that will not materially alter the ambient temperature of the lake; any equipment to accomplish these purposes must be located on the LNG Terminal Site and not be



visible from the Chesapeake Bay; and the existing groundwater flow to the Freshwater Marsh may not be altered.

(b) Notwithstanding the above, the parties recognize that by agreement certain waters from Lake Levy were utilized during 2004 for the testing of the fifth LNG storage tank. The parties agree to negotiate in good faith toward a similar agreement by which waters from one or both bodies of water can be used in the testing of tanks constructed in the future, provided that MCC and Sierra Club are satisfied that environmental concerns over the impact to aquatic life can be satisfactorily addressed through the technology and methodology to be employed, and that all required permits are secured.

Section 4.11. Methane Hydrates. The parties recognize that Owner can neither restrict nor police the origins of natural gas that is liquefied and delivered to the Cove Point Terminal. Owner shall not, however, conduct LNG Terminal Operations in such a manner as to specifically encourage or promote LNG derived from the mining or production of methane hydrates. The parties shall periodically review new projects or developments involving methane hydrates at meetings of the Cove Point Natural Heritage Trust. Nothing in this Agreement shall be construed as restricting the ability of MCC or Sierra Club to monitor, contest, study, or otherwise challenge the mining or production of methane hydrates.

## ARTICLE V

### COVE POINT NATURAL HERITAGE TRUST FUND

Section 5.01. Funding of the Cove Point Natural Heritage Trust. Upon the execution of this Agreement, the Owner shall contribute to the endowment of the Cove

Point Natural Heritage Trust, Inc. (the "Cove Point Natural Heritage Trust") a one-time payment of two hundred and fifty thousand dollars (\$250,000).

Section 5.02. Owner's Annual Contribution.

(a) Owner shall make an annual contribution of \$120,000, to be paid during March of every year. This annual contribution may increase to \$250,000 under Section 5.02(c) below, or terminate under 5.02(b) or 5.02(d).

(b) In the event that a Federal Energy Regulatory Commission Certificate of Public Convenience and Necessity is not granted or is not accepted for the Cove Point Expansion Project and the liquefaction facilities existing as of the date of this Agreement are decommissioned under Section 5.02 of the 1994 Agreement, then the \$120,000 annual payment obligation will cease.

(c) In the event that a Federal Energy Regulatory Commission Certificate of Public Convenience and Necessity is granted and accepted for the Cove Point Expansion Project, the Owner will increase the annual contribution to the Cove Point Natural Heritage Trust to \$250,000, such payment to begin the month the Cove Point Expansion Project is placed into service. It shall thereafter be paid annually during that same month.

(d) Owner's obligation to make an annual contribution to the Cove Point Natural Heritage Trust shall terminate the date on which the Owner first makes a tender of title to the Cove Point Site in accordance with the provisions of Article VI of this Agreement.

Section 5.03. Failure of Timely Payment. If the Owner has failed to make a required payment at the time and in the amount specified in Subsection (a), (b) or (c) of Section 5.02 and the trustees of the Cove Point Natural Heritage Trust have sent a notice

in writing to the Owner in the manner specified in Section 9.04 hereof, demanding payment and specifying the amount claimed to be due, and if the Owner has failed to make a required payment within sixty (60) days following the Owner's receipt of such a notice (unless such time period is extended by the trustees), the required payment will be doubled. In the event that the owner has failed to make a required payment within one hundred and twenty (120) days of the notice, a lien on the property of the LNG terminal site will be filed in accordance with MD R. Civ. P. 2-101. The trustees may then seek a Writ of Attachment against Cove Point LNG facility under MD R. Civ. P. 2-115.

## ARTICLE VI

### TENDER OF TITLE

Section 6.01. Cove Point Site. As used in this Article VI, the term "Cove Point Site" means the entire Cove Point Site, excepting and excluding the County Area and, at the option of the Owner, the Association Area.

Section 6.02. Voluntary Tender. The Owner may at any time, at its option, make a voluntary tender of title of the Cove Point Site in accordance with the provisions of this Article.

Section 6.03. LNG Operations. The Owner shall be entitled to operate the Cove Point LNG Facility for as long as it finds the facility to be commercially viable. If the owner decides to cease operations at the Cove Point Site, it shall tender title to the Cove Point Site in accord with this Article VI.

Section 6.04. Order of Tenders. A tender of title to the Cove Point Site shall be made first to the State, then to the Cove Point Natural Heritage Trust, then to the Conservancy, and then to another conservation organization.

Section 6.05. Tender to State. The Owner shall tender title to the Cove Point Site to the State by means of a notice in writing mailed to the Governor of the State, and a copy of such notice shall be mailed to MET, the Cove Point Natural Heritage Trust, the Conservancy, Sierra Club and MCC. The notice shall state that the Owner is offering to grant title to such property to the State in accordance with the provisions of this Agreement, and that such offer will remain open to acceptance by the State for a period of twelve consecutive months following the date of said notice. The State must agree to the following restrictions on the deed:

- 1) no commercial enterprise,
- 2) no permanent road, except fire roads,
- 3) no harvesting of timber,
- 4) no use of motor vehicles, motorized equipment, motorboats, landing of aircraft, or other forms of mechanical transport,
- 5) no construction of new roads, buildings, and other structures,
- 6) no manipulation of vegetation for wildlife management or other purposes unless needed to maintain or restore habitat for a species listed as rare, threatened or endangered, or in order to remove non-native invasive species as identified in a written management plan for the area, and
- 7) no introduction of non-indigenous species.

The notice shall specify that, if the State elects to accept the tender of title, it shall so notify the Owner by means of an acceptance in writing signed by the Governor and mailed to the Owner, and a copy of such acceptance shall be mailed to MET, the Cove Point Natural Heritage Trust, the Conservancy, Sierra Club and MCC.

Section 6.06. Tender to the Cove Point Natural Heritage Trust. If the State declines to accept title to the property or fails to notify the Owner of its acceptance in the manner and within the time prescribed in Section 6.05, the Owner shall tender title to the Cove Point Site to the Cove Point Natural Heritage Trust by a notice in writing mailed to the Cove Point Natural Heritage Trust. The notice shall state that the Owner is offering to grant title to such property to the Cove Point Natural Heritage Trust in accordance with the provisions of this Agreement, and that such offer will remain open to acceptance by Cove Point Natural Heritage Trust for a period of twelve consecutive months following the date of said notice. The notice shall also specify that, if the Cove Point Natural Heritage Trust elects to accept the tender of title, it shall so notify the Owner by means of an acceptance in writing signed by an authorized officer of the Cove Point Natural Heritage Trust and mailed to the Owner.

Section 6.07. Tender to Conservancy. If the Cove Point Natural Heritage Trust declines to accept title to the property or fails to notify the Owner of its acceptance in the manner and within the time prescribed in Section 6.06, the Owner shall tender title to the Cove Point Site to the Conservancy by a notice in writing mailed to the Conservancy. The notice shall state that the Owner is offering to grant title to such property to the Conservancy in accordance with the provisions of this Agreement, and that such offer will remain open to acceptance by the Conservancy for a period of twelve consecutive months following the date of said notice. The notice shall also specify that, if the Conservancy elects to accept the tender of title, it shall so notify the Owner by means of an acceptance in writing signed by an authorized officer of the Conservancy and mailed to the Owner.

Section 6.08. Tender to Other Organizations.

(a) If the Conservancy declines to accept title to the property or fails to notify the Owner of its acceptance within the time prescribed in Section 6.07, the Owner shall tender title to the Cove Point Site to other conservation organizations with purposes and objectives similar to the Cove Point Natural Heritage Trust and the Conservancy until a conservation organization that will accept title is found. Upon the request of the Owner, Sierra Club and MCC shall each diligently assist the Owner in identifying a suitable conservation organization that is willing to accept title.

(b) If a suitable conservation organization willing to accept title to the Cove Point Site has not been found within two years following the date on which the Owner's obligation to make a tender of title to such an organization arises under the provisions of subsection (a) of this Section, the Owner shall have the right to convey title to the Cove Point Site to any person or entity willing to accept it, including (without limitation) a trust or other entity established by the Owner for the purpose of accepting and holding title to the Cove Point Site.

Section 6.09. Obligations Upon Receipt of Acceptance. Upon the receipt by the Owner of an acceptance of title signed by an authorized officer of the State, the Cove Point Natural Heritage Trust, the Conservancy, or another conservation organization or person or entity in accordance with the provisions of this Article, the Owner shall (a) as soon as practicable, cease all LNG Terminal Operations at the LNG Terminal Site, (b) promptly commence the restoration activities described in Article VII hereof, and (c) upon the completion of such restoration activities, execute and deliver a deed conveying title to the Cove Point Site in fee simple, subject to Permitted Encumbrances, to the entity accepting title. The instrument conveying title to the Cove

Point Site shall be subject to an easement or shall contain deed restrictions as provided in Section 5 of the MET/Conservancy Easement. As used in this Section 6.09, the term "Permitted Encumbrances" does not include a mortgage, deed of trust, or other lien securing indebtedness of the Owner or an easement or right-of-way for utility lines of the Owner.

Section 6.10. Taxes and costs. Upon the date of delivery by the Owner of a deed conveying the Cove Point Site to the State, the Cove Point Natural Heritage Trust, the Conservancy or another conservation organization in accordance with the provisions of this Article, all taxes, general or special, and all other public or governmental charges or assessments against the property conveyed which are or may be payable on an annual basis, whether assessments therefore have been levied or not, shall be adjusted and apportioned as of such date and shall be assumed and paid thereafter by the grantee. Costs of preparation of the deed and any transfer and recordation taxes shall be borne by the Owner.

Section 6.11. Association Area. At such time as the Owner becomes obligated to make a tender of title to the State in accordance with the provisions of this Article, the Owner shall tender title to the Association Area to either the Association or the State. In the event of a conveyance by the Owner to the Association, the instrument conveying title shall contain restrictions providing that (a) the Association Area shall be kept as open space with no structures to be erected thereon, and (b) the Association may not convey, sell, lease, or otherwise alienate the land except by a conveyance to the State.

Section 6.12. Reservation of Rights to Equipment. The Owner reserves all rights to sell, salvage or dispose of any and all fixtures, equipment, paved surfaces,

rubble or other personal property in accordance with Article VII hereof and shall have the right to retain title to all such property and not include such property in any tender of title made under this Article VI.

## ARTICLE VII

### RESTORATION OF COVE POINT SITE

Section 7.01. Owner's Restoration Obligations. Prior to any transfer of title to the Cove Point Site pursuant to the provisions of Article VI hereof, and within 24 months following an acceptance of tender of title to the Cove Point Site by the State, the Cove Point Natural Heritage Trust, the Conservancy or another conservation organization or appropriate entity, the Owner shall at the Owner's cost and expense take and complete the measures specified in this Article regarding the land constituting the LNG Terminal Site. The restoration activities described in this Section shall be conducted in an environmentally responsible manner. The Owner shall not be required to undertake any land restoration activities that the Owner has good faith reason to believe are inconsistent with applicable laws, rules or regulations.

Section 7.02. Above-Ground Structures. All above-ground structures including but not limited to buildings, tanks, pipes, pipe racks, pumps, compressors, blowers, fences, heaters, boilers, vaporizers, vessels, drums, vent stacks, dewars, light poles and the Onshore Pier will be either (a) removed from the LNG Terminal Site for salvage or sale, or (b) demolished and disposed of in the manner provided in Section 7.05 hereof.

Section 7.03. Below-Ground Structures. All below-ground structures, including but not limited to building foundations, equipment foundations, tunnels,



basements, pilings, piping, conduits, storm sewers, drainage ditches, pipeline drains and septic systems will be abandoned in place, but filled with suitable material where necessary to prevent future hazards from soil subsidence. All belowground pipelines serving the LNG Terminal Site will be abandoned in place.

Section 7.04. Roadways. All roadways and pavement will be broken up and either (a) removed from the LNG Terminal Site for salvage or (b) disposed of in the manner provided in Section 7.05 hereof.

Section 7.05. Nonsalvageable Material. All debris and nonsalvageable material from plant demolition will, at the option of the Owner, be buried on site or removed from the premises. The Owner shall remove from the LNG Terminal Site all hazardous wastes and petroleum products and any other noxious or polluting material required by law to have special handling. The Owner shall dispose of hazardous wastes in accordance with 42 USCA § 924 and Md. Code Ann. Envir. §§ 7-502, 506 and 508.

Section 7.06. Grading. After all demolition and salvage are completed, the LNG Terminal Site will be graded using existing fill from the dikes and elsewhere within the disturbed area and seeded with grass. The Owner is not required to return the LNG Terminal Site to its pre-construction topography; however, the Owner shall consult with the Cove Point Natural Heritage Trust, MET and the Conservancy regarding the plans for the grading and reseeding of the LNG Terminal Site.

Section 7.07. Remaining Facilities. The following above-ground facilities or structures, some of which are wholly or partially located on the Open Land, will remain in place: the main earthen dam, the secondary earthen dam, the dam spillways and all other sedimentation control impoundments and earthen dams existing within the LNG Terminal Site. At all times prior to the transfer of title to the Cove Point Site under

Article VI hereof, and so long as the dams remain in place during such period of time, the Owner shall maintain the dams in a safe condition in accordance with all applicable federal, state and local laws and regulations.

**ARTICLE VIII**  
**NATURE OF COVENANTS; NOTIFICATION**  
**AND ENFORCEMENT**

Section 8.01. Covenants Running with the Land. This Agreement shall be deemed a covenant running with the land and any and every conveyance of the Cove Point Site shall be subject to these covenants, and shall be binding obligations of any transferee of the Cove Point Site. All rights, privileges and immunities granted or reserved to the Owner hereunder shall inure to the benefit of any such transferee. In addition, the Owner agrees and acknowledges that the Association Easement, the 1980 County Easement, and the MET/Conservancy Easement are likewise to be construed as Covenants running with the Land.

Section 8.02. Notification and Access to Documents.

(a) The Owner shall notify Sierra Club and MCC at least 45 days prior to the commencement of construction of any new LNG storage tanks, natural gas liquefaction facilities, storm water structures, new or replacement gas-fired turbines, or other major new construction on the LNG Terminal Site. The Owner shall make plans for such construction available to Sierra Club and MCC for their inspection, and the Owner shall provide Sierra Club and MCC copies of such plans as they may reasonably request; provided, however, that the Owner shall not be required to disclose any Proprietary Information in violation of any confidentiality agreement. Sierra Club and MCC each shall

have the right, upon reasonable advance notice and subject to such reasonable regulations as the Owner may prescribe with respect to visitation at the Cove Point Site, to enter upon the Cove Point Site for the purpose of determining whether the Owner is complying with the provisions of this Agreement. The Owner shall provide Sierra Club and MCC copies of such documents as they may reasonably request relating to the implementation of this Agreement and the environmental effects of LNG Terminal Operations on the Cove Point Site. As a condition to providing Sierra Club or MCC access to any plans or documents, the Owner may require the requesting party to execute a confidentiality agreement provided by the Owner for the purpose of protecting information of a proprietary nature. Nothing herein shall be construed to constitute or require a waiver by the Owner of the attorney-client privilege.

(b) If because of an Emergency the Owner takes any action not otherwise permitted under this Agreement, the Owner shall notify Sierra Club and MCC by telephone within twenty-four (24) hours, providing details of the Emergency and the action taken. Sierra Club and MCC shall each provide the Owner the name and telephone number of a representative or representatives who are authorized to receive such notifications.

Section 8.03. Enforcement Proceedings. Sierra Club and MCC each shall have the right, acting jointly or individually, to enforce by proceedings at law or in equity the covenants of the Owner set forth herein. In the event that one of such parties becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, such party shall give written notice to the Owner, in the manner herein provided, of such event or circumstance of non-compliance and request corrective action sufficient to abate such event or circumstance of non-compliance.

Failure by the Owner to cause such corrective action as may be reasonably requested by a party within thirty (30) days after receipt of such written notice shall entitle such party to bring an action at law or equity in a court of competent jurisdiction in the State to enforce the terms of this Agreement; to enjoin such non-compliance; and/or to recover any damages arising from such non-compliance. Nothing herein shall be construed to give to any person other than Sierra Club and MCC the right to bring or maintain any action, suit, or proceeding against the Owner to enforce any provision of this Agreement.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01. Rights Reserved to Owner. Except as expressly set forth in this Agreement, nothing herein shall be construed to restrict, impair, or otherwise adversely affect (a) the Owner's right to quiet enjoyment of the Cove Point Site for the purpose of conducting and carrying on LNG Terminal Operations at the LNG Terminal Site, or (b) the right of the Owner to grant, convey, assign, encumber or otherwise transfer all or any portion of its interest in the Cove Point Site and the improvements thereon to one or more persons or entities, provided, however, that the Owner may not subdivide the land constituting the Cove Point Site, or (c) the right of the holder of any interest in the Owner to grant, convey, assign, encumber, or otherwise transfer that interest. Notwithstanding anything to the contrary herein contained, this Agreement shall not be construed to obligate the Owner or any of its directors, officers, employees, affiliates, shareholders, successors and/or assigns to take or refrain from taking action in an Emergency.

Section 9.02. Entire Agreement; Prior Agreements; Release of Claims.

This Agreement, which includes the Recitals hereof and the Exhibits hereto, constitutes

the entire agreement among the parties with respect to the subject matter hereof and supersedes any and all other prior agreements and understandings, written or oral, among the parties with respect to such subject matter, including (without limitation) the 1994 Agreement. The Agreement in Principle shall likewise be superceded by this Agreement, except that Sections 2, 4, and 7 thereof are not superceded and shall continue after the effective date of this Agreement, and are hereby incorporated by reference. From and after the effective date of this Section, as specified in Section 9.03 hereof, the 1994 Agreement shall be null, void and of no further force or effect, and no recourse shall be had for any claims at law or in equity based on the 1994 Agreement or the 1973 Easement, all such claims, if any, and all rights under the 1994 Agreement and the 1973 Easement being expressly waived and released by each party hereto by its execution of this Agreement. This waiver and release is expressly made for the benefit of the parties hereto.

Section 9.03. Effective Date; Termination. This Agreement shall become effective as of the date set forth in the first paragraph hereof. This Agreement and all obligations of the Owner hereunder shall terminate and be of no further effect upon the conveyance by the Owner of the Cove Point Site in accordance with the provisions of Article VI of this Agreement.

Section 9.04. Notices. Except as provided in Section 8.02(b) hereof, all notices hereunder shall be in writing and shall be addressed as set forth below. Any notices or other communications required or permitted hereby shall be deemed given on the business day following the day of mailing if mailed by overnight express mail, postage prepaid, at a post office regularly maintained by the United States Postal Service, or by other established overnight courier service such as Federal Express. Any notices or

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other communications sent in any other manner shall be effective upon actual receipt.

The following are the addresses of the parties:

(a) If to the Owner:

President  
Dominion Cove Point LNG  
2100 Cove Point Road  
Lusby, Maryland 20657

(b) If to Sierra Club:

Sierra Club Maryland Chapter Chair  
7338 Baltimore Avenue, No. 101A  
College Park, Maryland 20740

AND

Sierra Club Environmental Law Program  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, California 94105-3441

(c) If to MCC:

Maryland Conservation Council, Inc.  
President  
P.O. Box 477  
Arnold, Maryland 21012

(d) If to the State:

Governor  
State of Maryland  
State House  
Annapolis, Maryland 21404

with a copy to:

Secretary  
Department of Natural Resources  
Tawes State Office Building  
580 Taylor Avenue  
Annapolis, Maryland 21401

(e) If to MET:

Director  
Maryland Environmental Trust  
100 Community Place, First Floor  
Crownsville, Maryland 21032-2023

(f) If to the Conservancy:

The Nature Conservancy  
4245 North Fairfax Drive, Suite 100  
Arlington, Virginia 22203-1606

And

The Nature Conservancy  
Maryland Chapter  
5410 Grosvenor Lane, Suite 100  
Bethesda, Maryland 20814

(g) If to the Cove Point Natural Heritage Trust:

Cove Point Natural Heritage Trust  
P.O. Box 336  
Lusby, Maryland 20657

Any party may change its address for notices by providing notice to the other parties as set forth above. Upon any transfer of the Cove Point Site to more than one person or entity (corporate or other), the persons or entities owning the Cove Point Site shall designate one person or entity to serve as the Owner's representative for purposes of implementing this Agreement and shall notify Sierra Club and MCC of such designation in the manner prescribed herein.

Section 9.05. Amendments. This Agreement may only be amended by written agreement signed by the parties hereto.

Section 9.06. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Section 9.07. Severability. If any provision of this Agreement is found to be invalid, the remainder of the provisions of this Agreement, and the application of such provision to the persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

IN WITNESS WHEREOF, the parties have entered into this Agreement by causing it to be executed by their respective duly authorized officers or attorneys as of the day and year first above written.

**Dominion Cove Point LNG, LP**

By: Paul E. Ruppert  
Title: Vice President

**Sierra Club**

By: Elizabeth C. Johnson  
Title: Chair

**Maryland Conservation Council, Inc.**

By: Marjorie M. Mank  
Title: President



LIST OF EXHIBITS

Exhibit A - Description of Site

Exhibit B - Map of Site

Exhibit C – MET/Conservancy Easement

Exhibit D – Calvert County Easement

Exhibit E – Cove Point Beach Association Easement

Exhibit F – Form of State Release

Exhibit G – Drawing of Onshore Pier and drawing of paved path/access road to the beach

Exhibit H – Articles of Incorporation and By-laws of Charitable Trust

Exhibit I – Metes and Bounds Survey of the Fenced Area (to be provided at completion of Cove Point LNG Expansion Project)

State of Maryland

County of Calvert

On this 1 day of March 2005, before me, the undersigned officer,  
personally appeared Paul Edward Ruppert, Vice President, Dominion Transmission, Inc.,  
known to me to be the person described in the foregoing instrument, and acknowledged  
that he executed the same in the capacity therein stated and for the purposes therein  
contained.

In witness whereof I hereunto set my hand and official seal.

Linda J. Canary  
Notary Public

**LINDA J. CANARY**  
**NOTARY PUBLIC STATE OF MARYLAND**  
Notary Public (Printed Name) **MY COMMISSION EXPIRES FEB. 1, 2008**

My Commission Expires 2-1-08

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State of Maryland

County of Calvert

On this 1 day of March 2005, before me, the undersigned officer,  
personally appeared Mary Patricia Marsh, President, Maryland Conservation Council,  
known to me to be the person described in the foregoing instrument, and acknowledged  
that she executed the same in the capacity therein stated and for the purposes therein  
contained.

In witness whereof I hereunto set my hand and official seal.

Linda J. Canary  
Notary Public

**LINDA J. CANARY**  
**NOTARY PUBLIC, STATE OF MARYLAND**  
Notary Public, State of Maryland  
**MY COMMISSION EXPIRES FEB. 1, 2008**

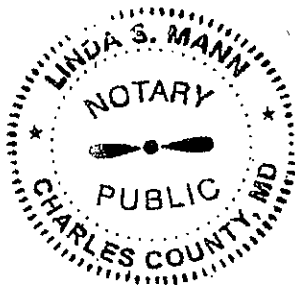
My Commission Expires 2-1-08

State of Maryland

County of Montgomery

On this 23<sup>rd</sup> day of February 2005, before me, the undersigned officer, personally appeared Elizabeth Ann Johnson, Chair of the Sierra Club, Maryland Chapter of the County of Montgomery, known to me to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Linda S Mann  
Notary Public

Linda S Mann  
Notary Public (Printed Name)

My Commission Expires 11-08-08