

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

**FORM 8-K**

CURRENT REPORT

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

Date of Report (Date of earliest event reported): July 1, 2009

**TC PipeLines, LP**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

000-26091  
(Commission File Number)

52-2135448  
(IRS Employer  
Identification No.)

13710 FNB Parkway  
Omaha, Nebraska  
(Address of principal executive offices)

68154-5200  
(Zip Code)

Registrant's telephone number, including area code: (877) 290-2772

N/A  
(Former name or former address if changed since last report.)

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

**Item 1.01 Entry into a Material Definitive Agreement.**

*Common Unit Purchase Agreement*

On July 1, 2009, TC PipeLines, LP (the "Partnership"), entered into a Common Unit Purchase Agreement (the "Purchase Agreement") with TransCan Northern Ltd. ("TransCan Northern") to sell 2,609,680 newly issued, unregistered common units representing limited partner interests in the Partnership to TransCan Northern at a price per common unit of \$30.042 for an aggregate amount of approximately \$78.4 million (the "Offering"). The Offering closed on July 1, 2009. TransCan Northern is an indirect, wholly-owned subsidiary of TransCanada Corporation ("TransCanada"), which is the ultimate parent company of TC PipeLines GP, Inc., the sole general partner of the Partnership (the "General Partner"). The Offering was made in reliance upon an exemption from the registration requirements of the Securities Act of 1933 pursuant to Section 4(2) thereof.

The Partnership used the net proceeds from the Offering to fund a portion of the cash consideration for the Partnership's previously announced acquisition of the 100% interest in North Baja Pipeline, LLC, which also closed on July 1, 2009 (the "Acquisition").

Pursuant to the Purchase Agreement, the Partnership agreed to indemnify TransCan Northern and its officers, directors and other representatives against certain losses resulting from any breach of the Partnership's representations, warranties or covenants contained therein.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified by the Purchase Agreement, which is attached as Exhibit 10.1 to this Form 8-K.

*Exchange Agreement*

On July 1, 2009, the Partnership entered into an Exchange Agreement (the "Exchange Agreement") with the General Partner pursuant to which the Partnership issued to the General Partner revised incentive distribution rights (the "Revised IDRs") and 3,762,000 newly issued, unregistered common units representing limited partner interests in the Partnership in exchange for the cancellation of the incentive distribution rights available to the General Partner (the "Old IDRs") under the Amended and Restated Agreement of Limited Partnership of the Partnership (the "Transaction").

The Revised IDRs provide for distribution levels at two per cent, down from the distribution levels of the Old IDRs at 50 per cent. The distribution levels of the Revised IDRs increase to 15% and are capped at 25% when quarterly distributions increase to \$0.81 and \$0.88 per common unit or \$3.24 and \$3.52 per common unit on an annualized basis, respectively. The quarterly distribution level of the Old IDRs was \$0.705 per common unit or \$2.82 on an annualized basis.

The issuance of the common units pursuant to the Exchange Agreement was made in reliance upon an exemption from the registration requirements of the Securities Act of 1933 pursuant to Section 4(2) thereof.

The foregoing description of the Exchange Agreement does not purport to be complete and is qualified by the Exchange Agreement, which is attached as Exhibit 10.2 to this Form 8-K.

*Second Amended and Restated Agreement of Limited Partnership*

As part of the Exchange Agreement, the Partnership's Amended and Restated Agreement of Limited Partnership was amended and restated effective as of July 1, 2009 to: (i) eliminate the Old IDRs and replace them with the Revised IDRs as described above, (ii) eliminate outdated provisions, (iii) incorporate all prior amendments and changes in one document and (iv) correct typographical errors. The Second Amended and Restated Agreement of Limited Partnership dated July 1, 2009 (the "Second Amended LP Agreement") replaces the Amended and Restated Agreement of Limited Partnership in its entirety.

The foregoing description of the Second Amended LP Agreement does not purport to be complete and is qualified by the Second Amended LP Agreement, which is attached as Exhibit 3.1 to this Form 8-K.

#### *Relationships*

As a result of the closing of the Acquisition, described below, and the transactions pursuant to the Purchase Agreement and Exchange Agreement, TransCanada and its affiliates own 17,084,831 common units, representing an aggregate 40.6% limited partner interest in the Partnership. In addition, the general partner owns an aggregate two per cent general partner interest in the Partnership (and its subsidiary limited partnerships on a combined basis) through which it manages and operates the Partnership. As a result, TransCanada's aggregate ownership interest in the Partnership (and its subsidiary limited partnerships on a combined basis) is 42.6% by virtue of its indirect ownership of the general partner and 40.6% aggregate limited partner interest.

The conflicts committee of the board of directors of the General Partner, which is comprised entirely of independent directors, unanimously recommended approval by the board of directors of the Acquisition, the Offering, the Transaction and the terms of the Second Amended LP Agreement. The conflicts committee retained independent legal and financial advisors to assist it in evaluating and negotiating the Acquisition, the Offering and the Transaction. The board of directors of the General Partner unanimously approved the terms of the Acquisition, the Offering, the Transaction and the Second Amended LP Agreement.

#### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

On July 1, 2009, TC PipeLines Intermediate Limited Partnership ("TCILP"), a wholly-owned subsidiary of the Partnership, completed the acquisition of the 100% interest in North Baja Pipeline, LLC. The Acquisition was made pursuant to the Agreement for Purchase and Sale of Membership Interest, dated May 19, 2009 (the "Acquisition Agreement"), between TCILP and Gas Transmission Northwest Corporation ("GTNC"), for an initial total purchase price of \$271,272,459, subject to certain closing adjustments.

GTNC is an indirect, wholly-owned subsidiary of TransCanada, which is the ultimate parent company of the General Partner of the Partnership. The purchase price of the Acquisition was determined through negotiations between the GTNC and the General Partner on behalf of TCILP.

The North Baja Pipeline System is an 80-mile natural gas pipeline that extends from Southwestern Arizona to a point on the California/Mexico border and connects with a natural gas pipeline system in Mexico. North Baja consists of 30 and 36-inch diameter pipeline with a capacity of 600 million cubic feet per day and is underpinned by long-term contracts extending, on average, to 2026.

If GTNC completes an expansion of the pipeline from the Mexico/Arizona border to Yuma City, Arizona (the "Yuma Lateral") by June 30, 2010, TCILP will pay GTNC up to an additional \$10 million for the expansion, which amount shall be determined using a formula that is based on transportation service agreements to be entered into in connection with the expansion.

The Acquisition was financed through a combination of debt and equity. The Partnership funded the Acquisition by (i) drawing approximately \$170 million on the Partnership's \$250 million senior revolving credit facility, which previously had no outstanding borrowings, (ii) selling approximately \$80 million in limited partner interests and general partner interests in the Partnership and in TCILP and (iii) using approximately \$21.3 million in existing cash. The sale of the Partnership and TCILP interests consisted of the (i) Offering described under Item 1.01 above, (ii) issuance of an additional general partner interest in the Partnership for \$791,919 to the General Partner, which was required to maintain the General Partner's 1% general partner interest in the Partnership, and (iii) issuance of an additional general partner interest in TCILP for \$808,081 to the General Partner, which was required to maintain the General Partner's 1% general partner interest in TCILP.

The information set forth under Items 1.01 and 2.03 of this Form 8-K is incorporated by reference.

The foregoing description of the Acquisition Agreement does not purport to be complete and is qualified by the Acquisition Agreement, which was attached as Exhibit 2.1 to TC PipeLines, LP's Form 8-K filed May 20, 2009 and is incorporated by reference herein.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

In conjunction with the Acquisition, the Partnership borrowed approximately \$170 million pursuant to its Credit Agreement by and among the Partnership, SunTrust Bank and the other parties named therein as of February 13, 2007 (the "Credit Agreement") to fund the balance of the purchase price of the Acquisition.

The terms of the Credit Agreement are described under Item 1.01 of TC PipeLines, LP's Form 8-K filed February 13, 2007 and are incorporated by reference herein.

**Item 3.02 Unregistered Sales of Equity Securities.**

The information set forth under Item 1.01 with respect to the Common Unit Purchase Agreement and the Exchange Agreement above is incorporated by reference herein.

**Item 3.03 Material Modification to Rights of Security Holders.**

The information set forth under Item 1.01 above is incorporated by reference herein.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

The information set forth under Item 1.01 with respect to the Second Amended LP Agreement above is incorporated by reference herein.

**Item 7.01 Regulation FD Disclosure.**

The Partnership's press release regarding the closing of the Acquisition and all other matters described above is attached as an exhibit to this Form 8-K.

**Item 9.01 Financial Statements and Exhibits.**

(a) Financial Statements of Businesses Acquired.

Not applicable.

(b) Pro Forma Financial Information.

Not applicable.

(d) Exhibits.

- 2.1 Agreement for Purchase and Sale of Membership Interest, dated May 19, 2009, by and between Gas Transmission Northwest Corporation and TC PipeLines Intermediate Limited Partnership. (Incorporated by reference to Exhibit 2.1 of TC PipeLines, LP's Form 8-K filed May 20, 2009).
- 3.1 Second Amended and Restated Agreement of Limited Partnership of TC PipeLines, LP, dated July 1, 2009.
- 10.1 Common Unit Purchase Agreement, dated July 1, 2009, by and between TC PipeLines, LP and TransCan Northern Ltd.

- 10.2 Exchange Agreement, dated July 1, 2009, by and between TC PipeLines, LP and TC PipeLines GP, Inc.
- 10.3 Amended and Restated Revolving Credit and Term Loan Agreement, dated as of February 13, 2007, among TC PipeLines, LP, SunTrust Bank, and other parties named therein. (Incorporated by reference to Exhibit 10.1 of TC PipeLines, LP's Form 8-K filed February 13, 2007).
- 99.1 Press Release dated July 1, 2009.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**TC PipeLines, LP**

By: TC PipeLines GP, Inc.,  
Its general partner

Date: July 1, 2009

By: /s/ Amy W. Leong  
Amy W. Leong  
*Principal Financial Officer and Controller*

**SECOND AMENDED AND RESTATED**

**AGREEMENT OF LIMITED PARTNERSHIP**

**OF**

**TC PIPELINES, LP**

---

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS 2	
Section 1.1	2
Section 1.2	14
ARTICLE II ORGANIZATION 14	
Section 2.1	14
Section 2.2	14
Section 2.3	15
Section 2.4	15
Section 2.5	15
Section 2.6	15
Section 2.7	16
Section 2.8	17
ARTICLE III RIGHTS OF LIMITED PARTNERS 17	
Section 3.1	17
Section 3.2	17
Section 3.3	17
Section 3.4	17
ARTICLE IV CERTIFICATES; RECORD HOLDERS; TRANSFER OF PARTNERSHIP INTERESTS; REDEMPTION OF PARTNERSHIP INTERESTS 18	
Section 4.1	18
Section 4.2	19
Section 4.3	19
Section 4.4	19
Section 4.5	20
Section 4.6	21
Section 4.7	21
Section 4.8	21
Section 4.9	22
Section 4.10	22
ARTICLE V CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS 23	
Section 5.1	23
Section 5.2	23
Section 5.3	23
Section 5.4	23
Section 5.5	24
Section 5.6	26
Section 5.7	26
Section 5.8	26



TABLE OF CONTENTS

(continued)

Page

Section 5.9	LIMITED PREEMPTIVE RIGHT	26
Section 5.10	SPLITS AND COMBINATION	27
Section 5.11	FULLY PAID AND NON-ASSESSABLE NATURE OF LIMITED PARTNER	27

ARTICLE VI  
ALLOCATIONS AND DISTRIBUTIONS

27

Section 6.1	ALLOCATIONS FOR CAPITAL ACCOUNT PURPOSES	27
Section 6.2	ALLOCATIONS FOR TAX PURPOSES	32
Section 6.3	REQUIREMENT AND CHARACTERIZATION OF DISTRIBUTIONS; DISTRIBUTIONS TO RECORD HOLDERS	33
Section 6.4	DISTRIBUTIONS OF AVAILABLE CASH FROM OPERATING SURPLUS	34
Section 6.5	DISTRIBUTIONS OF AVAILABLE CASH FROM CAPITAL SURPLUS	34
Section 6.6	ADJUSTMENT OF MINIMUM QUARTERLY DISTRIBUTION AND TARGET DISTRIBUTION LEVELS	34
Section 6.7	[INTENTIONALLY OMITTED.]	35
Section 6.8	SPECIAL PROVISIONS RELATING TO THE HOLDERS OF INCENTIVE DISTRIBUTION RIGHTS	35
Section 6.9	ENTITY-LEVEL TAXATION	35

ARTICLE VII  
MANAGEMENT AND OPERATION OF BUSINESS

35

Section 7.1	MANAGEMENT	35
Section 7.2	CERTIFICATE OF LIMITED PARTNERSHIP	37
Section 7.3	RESTRICTIONS ON GENERAL PARTNER'S AUTHORITY	37
Section 7.4	REIMBURSEMENT OF THE GENERAL PARTNER	38
Section 7.5	OUTSIDE ACTIVITIES	38
Section 7.6	LOANS FROM THE GENERAL PARTNER; LOANS OR CONTRIBUTIONS FROM THE PARTNERSHIP; CONTRACTS WITH AFFILIATES; CERTAIN RESTRICTIONS ON THE GENERAL PARTNER	39
Section 7.7	INDEMNIFICATION	40
Section 7.8	LIABILITY OF INDEMNITIES	41
Section 7.9	RESOLUTION OF CONFLICTS OF INTEREST	42
Section 7.10	OTHER MATTERS CONCERNING THE GENERAL PARTNER	43
Section 7.11	PURCHASE OR SALE OF PARTNERSHIP SECURITIES	43
Section 7.12	REGISTRATION RIGHTS OF THE GENERAL PARTNER AND ITS AFFILIATES	44
Section 7.13	RELIANCE BY THIRD PARTIES	45

ARTICLE VIII  
BOOKS, RECORDS, ACCOUNTING AND REPORTS

45

Section 8.1	RECORDS AND ACCOUNTING	45
Section 8.2	FISCAL YEAR	46
Section 8.3	REPORTS	46

ARTICLE IX  
TAX MATTERS

46

Section 9.1	TAX RETURNS AND INFORMATION	46
Section 9.2	TAX ELECTIONS	46

**TABLE OF CONTENTS**  
(continued)

**Page**

Section 9.3	TAX CONTROVERSIES	47
Section 9.4	WITHHOLDING	47

ARTICLE X  
ADMISSION OF PARTNERS

47

Section 10.1	CURRENT PARTNERS	47
Section 10.2	ADMISSION OF SUBSTITUTED LIMITED PARTNER	47
Section 10.3	ADMISSION OF SUCCESSOR GENERAL PARTNER	48
Section 10.4	ADMISSION OF ADDITIONAL LIMITED PARTNERS	48
Section 10.5	AMENDMENT OF AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP	48

ARTICLE XI  
WITHDRAWAL OR REMOVAL OF PARTNERS

48

Section 11.1	WITHDRAWAL OF THE GENERAL PARTNER	48
Section 11.2	REMOVAL OF THE GENERAL PARTNER	50
Section 11.3	INTEREST OF DEPARTING PARTNER AND SUCCESSOR GENERAL PARTNER	50
Section 11.4	[INTENTIONALLY OMITTED.]	51
Section 11.5	WITHDRAWAL OF LIMITED PARTNERS	51

ARTICLE XII  
DISSOLUTION AND LIQUIDATION

51

Section 12.1	DISSOLUTION	51
Section 12.2	CONTINUATION OF THE BUSINESS OF THE PARTNERSHIP AFTER DISSOLUTION	51
Section 12.3	LIQUIDATOR	52
Section 12.4	LIQUIDATION	52
Section 12.5	CANCELLATION OF CERTIFICATE OF LIMITED PARTNERSHIP	53
Section 12.6	RETURN OF CONTRIBUTIONS	53
Section 12.7	WAIVER OF PARTITION	53
Section 12.8	CAPITAL ACCOUNT RESTORATION	53

ARTICLE XIII  
AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE

54

Section 13.1	AMENDMENT TO BE ADOPTED SOLELY BY THE GENERAL PARTNER	54
Section 13.2	AMENDMENT PROCEDURES	55
Section 13.3	AMENDMENT REQUIREMENTS	55
Section 13.4	SPECIAL MEETINGS	56
Section 13.5	NOTICE OF A MEETING	56
Section 13.6	RECORD DATE	56
Section 13.7	ADJOURNMENT	56
Section 13.8	WAIVER OF NOTICE; APPROVAL OF MEETING; APPROVAL OF MINUTES	56
Section 13.9	QUORUM	57
Section 13.10	CONDUCT OF A MEETING	57
Section 13.11	ACTION WITHOUT A MEETING	57
Section 13.12	VOTING AND OTHER RIGHTS	58

TABLE OF CONTENTS

(continued)

**Page**

ARTICLE XIV

MERGER

58

Section 14.1 AUTHORITY	58
Section 14.2 PROCEDURE FOR MERGER OR CONSOLIDATION	58
Section 14.3 APPROVAL BY LIMITED PARTNERS OF MERGER OR CONSOLIDATION	59
Section 14.4 CERTIFICATE OF MERGER	60
Section 14.5 EFFECT OF MERGER	60

ARTICLE XV

RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS

60

Section 15.1 RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS	60
---	----

ARTICLE XVI

GENERAL PROVISIONS

62

Section 16.1 ADDRESSES AND NOTICES	62
Section 16.2 FURTHER ACTION	62
Section 16.3 BINDING EFFECT	62
Section 16.4 INTEGRATION	62
Section 16.5 CREDITORS	62
Section 16.6 WAIVER	62
Section 16.7 COUNTERPARTS	63
Section 16.8 APPLICABLE LAW	63
Section 16.9 INVALIDITY OF PROVISIONS	63
Section 16.10 CONSENT OF PARTNERS	63

EXHIBIT A CERTIFICATE EVIDENCING COMMON UNITS REPRESENTING LIMITED PARTNER INTERESTS IN TC PIPELINES, LP	A-1
--	-----

**SECOND AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
TC PIPELINES, LP**

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF TC PIPELINES, LP dated as of July 1, 2009, is entered into by and among TC PipeLines GP, Inc., a Delaware corporation, as the General Partner, and other Persons who are or who become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**RECITALS**

WHEREAS, TC PipeLines GP, Inc., as the general partner of the Partnership, and TransCan Northern Ltd., as the organizational limited partner, organized the Partnership as a Delaware limited partnership pursuant to the Delaware Act by filing a certificate of limited partnership of the Partnership with the Secretary of State of the State of Delaware.

WHEREAS, the General Partner, TransCan Northern Ltd. and certain other parties as limited partners entered into that certain Amended and Restated Agreement of Limited Partnership of the Partnership dated as of May 28, 1999, as amended (the "*ORIGINAL AGREEMENT*") providing for the operation of the Partnership upon the terms and conditions set forth therein. The Original Agreement was subsequently amended effective November 14, 2007.

WHEREAS, pursuant to Section 5.6 of the Original Agreement, the Partnership and the General Partner have entered into a Exchange Agreement dated as of July 1, 2009 (the "*EXCHANGE AGREEMENT*"), in accordance with which the General Partner has agreed to an exchange of the Incentive Distribution Rights under the Original Agreement for 3,762,000 Common Units and modified Incentive Distribution Rights as set forth in this Agreement.

WHEREAS, (i) TransCan Northern Ltd. and the Partnership have entered into a Common Unit Purchase Agreement dated as of July 1, 2009, in accordance with which TransCan Northern Ltd. has agreed to purchase 2,609,680 Common Units; and (ii) Gas Transmission Northwest Corporation and TC PipeLines Intermediate Limited Partnership have entered into an Agreement for Purchase and Sale of Membership Interest dated as of May 19, 2009, in accordance with which TC PipeLines Intermediate Limited Partnership has agreed to acquire Gas Transmission Northwest Corporation's membership interest in North Baja Pipeline, LLC. The transactions contemplated by the Exchange Agreement and the Agreements referred to in the Recitals will close contemporaneously.

WHEREAS, pursuant to Section 13.1 of the Original Agreement, the General Partner has the authority to adopt certain amendments to the Original Agreement relating to the transactions contemplated by the Exchange Agreement without the approval of any Limited Partner or Assignee to reflect, among other things, a change that, in the discretion of the General Partner, does not adversely affect the Limited Partners in any material respect.

WHEREAS, the General Partner has adopted this Partnership Agreement pursuant to Section 13.1 of the Original Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements made herein, the Original Agreement is hereby amended and restated in its entirety as follows:

---

**ARTICLE I  
DEFINITIONS**

**SECTION 1.1        DEFINITIONS.**

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

“*ACQUISITION*” means (a) any transaction in which any Group Member acquires (through an asset acquisition, merger, stock acquisition or other form of investment) control over all or substantially all of the assets, properties or business of another Person (or a division or line of business of such Person) for the purpose of increasing the operating capacity or revenues of the Partnership Group from the operating capacity or revenues of the Partnership Group existing immediately prior to such transaction, (b) any similar transaction entered into by a JV Entity as a result of which a Group Member becomes obligated to make a capital contribution or similar payment to such JV Entity; and (c) any similar transaction entered into by a JV Entity as a result of which a Group Member is requested, but not obligated, to make a capital contribution or similar payment to such JV Entity and such Group Member reasonably believes such capital contribution or similar payment to be necessary to protect or enhance its investment in the JV Entity.

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

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

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

“*ADDITIONAL BOOK BASIS DERIVATIVE ITEMS*” means any Book Basis Derivative Items that are computed with reference to Additional Book Basis. To the extent that the Additional Book Basis attributable to all of the Partnership’s Adjusted Property as of the beginning of any taxable period exceeds the Aggregate Remaining Net Positive Adjustments as of the beginning of such period (the “*EXCESS ADDITIONAL BOOK BASIS*”), the Additional Book Basis Derivative Items for such period shall be reduced by the amount that bears the same ratio to the amount of Additional Book Basis Derivative Items determined without regard to this sentence as the Excess Additional Book Basis bears to the Additional Book Basis as of the beginning of such period.

“*ADDITIONAL LIMITED PARTNER*” means a Person admitted to the Partnership as a Limited Partner after the date of this Agreement pursuant to Section 10.4 and who is shown as such on the books and records of the Partnership.

“*ADJUSTED CAPITAL ACCOUNT*” means the Capital Account maintained for each Partner as of the end of each taxable period of the Partnership, (a) increased by any amounts that such Partner is obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore under Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5)) and (b) decreased by (i) the amount of all losses and deductions that, as of the end of such period, are reasonably expected to be allocated to such Partner in subsequent years under Sections 704(e)(2) and 706(d) of the Code and Treasury Regulation Section 1.751-1(b)(2)(ii), and (ii) the amount of all distributions that, as of the end of such period, are reasonably expected to be made to such Partner in subsequent years in accordance with the terms of this Agreement or otherwise to the extent they exceed offsetting increases to such Partner’s Capital Account that are reasonably expected to occur during (or prior to) the year in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 6.1(d)(i) or 6.1(d)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith. The “Adjusted Capital Account” of a Partner in respect of a General Partner Interest, a Common Unit or an Incentive Distribution Right or any other specified interest in the Partnership shall be the amount which such Adjusted Capital Account would be if such General Partner Interest, Common Unit, Incentive Distribution Right or other interest in the Partnership were the only interest in the Partnership held by a Partner from and after the date on which such General Partner Interest, Common Unit, Incentive Distribution Right or other interest was first issued.

“*ADJUSTED PROPERTY*” means any property the Carrying Value of which has been adjusted pursuant to Section 5.5(d)(i) or 5.5(d)(ii).

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

“*AGGREGATE REMAINING NET POSITIVE ADJUSTMENTS*” means, as of the end of any taxable period of the Partnership, the sum of the Remaining Net Positive Adjustments of all the Partners.

“*AGREED ALLOCATION*” means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 6.1, including, without limitation, a Curative Allocation (if appropriate to the context in which the term “*AGREED ALLOCATION*” is used).

“*AGREED VALUE*” of any Contributed Property means the fair market value of such property or other consideration at the time of contribution as determined by the General Partner using such reasonable method of valuation as it may adopt. The General Partner shall, in its discretion, use such method as it deems reasonable and appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Partnership in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

“*AGREEMENT*” means this Second Amended and Restated Agreement of Limited Partnership of TC PipeLines, LP, as it may be amended, supplemented or restated from time to time.

“*ASSIGNEE*” means a Non-citizen Assignee or a Person to whom one or more Limited Partner Interests have been transferred in a manner permitted under this Agreement and who has executed and delivered a Transfer Application as required by this Agreement, but who has not been admitted as a Substituted Limited Partner.

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

“*AVAILABLE CASH*” means, with respect to any Quarter ending prior to the Liquidation Date,

(a) the sum of (i) all cash and cash equivalents of the Partnership on hand at the end of such Quarter, and (ii) all additional cash and cash equivalents of the Partnership on hand on the date of determination of Available Cash with respect to such Quarter resulting from Working Capital Borrowings made subsequent to the end of such Quarter, less

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

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

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

"BOOK-DOWN EVENT" means an event which triggers a negative adjustment to the Capital Accounts of the Partners pursuant to Section 5.5(d).

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

"BOOK-UP EVENT" means an event which triggers a positive adjustment to the Capital Accounts of the Partners pursuant to Section 5.5(d).

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

"CAPITAL ACCOUNT" means the capital account maintained for a Partner pursuant to Section 5.5. The "CAPITAL ACCOUNT" of a Partner in respect of a General Partner Interest, a Common Unit, an Incentive Distribution Right or any other Partnership Interest shall be the amount which such Capital Account would be if such General Partner Interest, Common Unit, Incentive Distribution Right or other Partnership Interest were the only interest in the Partnership held by a Partner from and after the date on which such General Partner Interest, Common Unit, Incentive Distribution Right or other Partnership Interest was first issued.

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

"CAPITAL IMPROVEMENT" means any (a) addition or improvement to the capital assets owned by any Group Member, (b) acquisition of existing, or the construction of new, capital assets (including, without limitation, pipeline systems, terminalling and storage facilities and related assets), in each case made to increase the operating capacity or revenues of the Partnership Group from the operating capacity or revenues of the Partnership Group existing immediately prior to such addition, improvement, acquisition or construction, (c) any similar addition, improvement, acquisition or construction by a JV Entity as a result of which a Group Member becomes obligated to make a capital contribution or similar payment to such JV Entity; and (d) any similar addition, improvement, acquisition or construction by a JV Entity as a result of which a Group Member is requested, but not obligated, to make a capital contribution or similar payment to such JV Entity and such Group Member reasonably believes such capital contribution or similar payment to be necessary to protect or enhance its investment in the JV Entity.

“*CAPITAL SURPLUS*” has the meaning assigned to such term in Section 6.3(a).

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

“*CAUSE*” means a court of competent jurisdiction has entered a final, non-appealable judgment finding the General Partner liable for actual fraud, gross negligence or willful or wanton misconduct in its capacity as general partner of the Partnership.

“*CERTIFICATE*” means a certificate or a record from an uncertificated electronic registration system (i) substantially in the form of Exhibit A to this Agreement, (ii) issued in global form in accordance with the rules and regulations of the Depositary or (iii) in such other form as may be adopted by the General Partner in its discretion, such as a record evidencing ownership of one or more Common Units or a certificate, in such form as may be adopted by the General Partner in its discretion, evidencing ownership of one or more other Partnership Securities.

“*CERTIFICATE OF LIMITED PARTNERSHIP*” means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 2.1, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

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

“*CLAIM*” has the meaning assigned to such term in Section 7.12(c).

“*CLOSING DATE*” means the first date on which Common Units were sold by the Partnership to the underwriters in the Initial Offering.

“*CLOSING PRICE*” has the meaning assigned to such term in Section 15.1(a).

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

“*COMBINED INTEREST*” has the meaning assigned to such term in Section 11.3(a).

“*COMMISSION*” means the United States Securities and Exchange Commission.

“*COMMON UNIT*” means a Unit representing a fractional part of the Partnership Interests of all Limited Partners and Assignees (other than holders of Incentive Distribution Rights) and having the rights and obligations specified with respect to Common Units in this Agreement.

“*CONFLICTS COMMITTEE*” means a committee of the Board of Directors of the General Partner composed entirely of two or more directors who are neither security holders, officers nor employees of the General Partner nor officers or employees of any Affiliate of the General Partner.



“*CONTRIBUTED PROPERTY*” means each property or other asset, in such form as may be permitted by the Delaware Act, but excluding cash, contributed to the Partnership (or deemed contributed to a new partnership on termination of the Partnership pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 5.5(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

“*CURATIVE ALLOCATION*” means any allocation of an item of income, gain, deduction, loss or credit pursuant to the provisions of Section 6.1(d)(xi).

“*CURRENT MARKET PRICE*” has the meaning assigned to such term in Section 15.1(a).

“*DELAWARE ACT*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del C. Sections 17-01, *et seq.*, as amended, supplemented or restated from time to time, and any successor to such statute.

“*DEPARTING PARTNER*” means a former General Partner from and after the effective date of any withdrawal or removal of such former General Partner pursuant to Section 11.1 or 11.2.

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

“*DISPOSED OF ADJUSTED PROPERTY*” has the meaning assigned to such term in Section 6.1(d)(xii)(B).

“*ECONOMIC RISK OF LOSS*” has the meaning set forth in Treasury Regulation Section 1.752-2(a).

“*ELIGIBLE CITIZEN*” means a Person qualified to own interests in real property in jurisdictions in which any Group Member or JV Entity does business or proposes to do business from time to time, and whose status as a Limited Partner or Assignee does not or would not subject such Group Member or JV Entity to a significant risk of cancellation or forfeiture of any of its properties or any interest therein.

“*EVENT OF WITHDRAWAL*” has the meaning assigned to such term in Section 11.1(a).

“*EXCHANGE AGREEMENT*” has the meaning assigned to that term in the Recitals.

“*FIRST TARGET DISTRIBUTION*” means \$0.81 per Unit per Quarter, subject to adjustment in accordance with Sections 6.6 and 6.9.

“*GENERAL PARTNER*” means TC PipeLines GP, Inc., a Delaware corporation, and its successors and permitted assigns as general partner of the Partnership.

“*GENERAL PARTNER INTEREST*” means the ownership interest of the General Partner in the Partnership (in its capacity as a general partner without reference to any Limited Partner Interest held by it), and includes any and all benefits to which the General Partner is entitled as provided in this Agreement, together with all obligations of the General Partner to comply with the terms and provisions of this Agreement.

“*GROUP*” means a Person that with or through any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent given to such Person in response to a proxy or consent solicitation made to 10 or more Persons) or disposing of any Partnership Securities with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, Partnership Securities.

“*GROUP MEMBER*” means a member of the Partnership Group.

“*HOLDER*” as used in Section 7.12, has the meaning assigned to such term in Section 7.12(a).

“*INCENTIVE DISTRIBUTION RIGHT*” means a non-voting Limited Partner Interest initially held by the General Partner, which Partnership Interest will confer upon the holder thereof only the rights and obligations specifically provided in this Agreement with respect to Incentive Distribution Rights (and no other rights otherwise available to or other obligations of a holder of a Partnership Interest). Notwithstanding anything in this Agreement to the contrary, the holder of an Incentive Distribution Right shall not be entitled to vote such Incentive Distribution Right on any Partnership matter except as may otherwise be required by law.

“*INCENTIVE DISTRIBUTIONS*” means any amount of cash distributed to the holders of the Incentive Distribution Rights pursuant to Sections 6.4(b) and 6.4(c).

“*INDEMNIFIED PERSONS*” has the meaning assigned to such term in Section 7.12(c).

“*INDEMNITEE*” means (a) the General Partner, (b) any Departing Partner, (c) any Person who is or was an Affiliate of the General Partner or any Departing Partner, (d) any Person who is or was a member, partner, officer, director, employee, agent or trustee of any Group Member, the General Partner or any Departing Partner or any Affiliate of any Group Member, the General Partner or any Departing Partner, and (e) any Person who is or was serving at the request of the General Partner or any Departing Partner or any Affiliate of the General Partner or any Departing Partner as an officer, director, employee, member, partner, agent or trustee of another Person; provided, that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services.

“*INITIAL OFFERING*” means the initial offering and sale of Common Units to the public, as described in the Registration Statement.

“*INITIAL UNIT PRICE*” means (a) with respect to the Common Units, the initial public offering price per Common Unit at which the underwriters offered the Common Units to the public for sale in the Initial Offering as set forth on the cover page of the prospectus included as part of the Registration Statement and first issued at or after the time the Registration Statement first became effective or (b) with respect to any other class or series of Units, the price per Unit at which such class or series of Units is initially sold by the Partnership, as determined by the General Partner, in each case adjusted as the General Partner determines to be appropriate to give effect to any distribution, subdivision or combination of Units.

“*INTERIM CAPITAL TRANSACTIONS*” means the following transactions if they occur prior to the Liquidation Date: (a) borrowings, refinancings or refundings of indebtedness and sales of debt securities (other than Working Capital Borrowings and other than for items purchased on open account in the ordinary course of business) by any Group Member or JV Entity; (b) sales of equity interests by any Group Member or JV Entity (other than the Common Units sold to the Underwriters pursuant to the exercise of their over-allotment option); and (c) sales, exchanges or other voluntary or involuntary dispositions of any assets of any Group Member or JV Entity other than (i) sales, exchanges or other dispositions of inventory, accounts receivable and other assets in the ordinary course of business, and (ii) sales, exchanges or other dispositions of assets as part of normal retirements or replacements.

“*INTERMEDIATE PARTNERSHIPS*” mean TC PipeLines Intermediate Limited Partnership, TC Tuscarora Intermediate Limited Partnership and TC GL Intermediate Limited Partnership and any successors thereto.

“*INTERMEDIATE PARTNERSHIP AGREEMENTS*” means the Agreement of Limited Partnership of TC PipeLines Intermediate Limited Partnership, the Agreement of Limited Partnership of TC Tuscarora Intermediate Limited Partnership and the Agreement of Limited Partnership of TC GL Intermediate Limited Partnership, as such Agreements may be amended, supplemented or restated from time to time.

“*JV ENTITY*” means a Person other than an individual in which a Group Member holds a interest but which does not constitute a Subsidiary, including, without limitation, Northern Border PipeLine.

“*LIMITED PARTNER*” means, unless the context otherwise requires, (a) each limited partner as of the date of this Agreement, each Substituted Limited Partner, each Additional Limited Partner and any Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 11.3 or (b) solely for purposes of Articles V, VI, VII and IX and Sections 12.3 and 12.4, each Assignee; provided, however, that when the term “*LIMITED PARTNER*” is used herein in the context of any vote or other approval, including without limitation Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of an Incentive Distribution Right except as may otherwise be required by law.

“*LIMITED PARTNER INTEREST*” means the ownership interest of a Limited Partner or Assignee in the Partnership, which may be evidenced by Common Units, Incentive Distribution Rights or other Partnership Securities or a combination thereof or interest therein, and includes any and all benefits to which such Limited Partner or Assignee is entitled as provided in this Agreement, together with all obligations of such Limited Partner or Assignee to comply with the terms and provisions of this Agreement; provided, however, that when the term “*LIMITED PARTNER INTEREST*” is used herein in the context of any vote or other approval, including without limitation Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of an Incentive Distribution Right except as may otherwise be required by law.

“*LIQUIDATION DATE*” means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 12.2, the date on which the applicable time period during which the holders of Outstanding Units have the right to elect to reconstitute the Partnership and continue its business has expired without such an election being made, and (b) in the case of any other event giving rise to the dissolution of the Partnership, the date on which such event occurs.

“*LIQUIDATOR*” means one or more Persons selected by the General Partner to perform the functions described in Section 12.3 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

“*MERGER AGREEMENT*” has the meaning assigned to such term in Section 14.1.

“*MINIMUM QUARTERLY DISTRIBUTION*” means \$0.45 per Unit per Quarter, subject to adjustment in accordance with Sections 6.6 and 6.9.

“*NATIONAL SECURITIES EXCHANGE*” means an exchange registered with the Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time, and any successor to such statute, or the Nasdaq Stock Market or any successor thereto.

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

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

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

“*NET POSITIVE ADJUSTMENTS*” means, with respect to any Partner, the excess, if any, of the total positive adjustments over the total negative adjustments made to the Capital Account of such Partner pursuant to Book-Up Events and Book-Down Events.

“*NET TERMINATION GAIN*” means, for any taxable period, the sum, if positive, of all items of income, gain, loss or deduction recognized by the Partnership (a) after the Liquidation Date, or (b) upon the sale, exchange or other disposition of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or series of related transactions (excluding any disposition to a member of the Partnership Group). The items included in the determination of Net Termination Gain shall be determined in accordance with Section 5.5(b) and shall not include any items of income, gain, loss or deduction specially allocated under Section 6.1(d).

“*NET TERMINATION LOSS*” means, for any taxable period, the sum, if negative, of all items of income, gain, loss or deduction recognized by the Partnership (a) after the Liquidation Date, or (b) upon the sale, exchange or other disposition of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or series of related transactions (excluding any disposition to a member of the Partnership Group). The items included in the determination of Net Termination Loss shall be determined in accordance with Section 5.5(b) and shall not include any items of income, gain, loss or deduction specially allocated under Section 6.1(d).

“*NON-CITIZEN ASSIGNEE*” means a Person whom the General Partner has determined in its discretion does not constitute an Eligible Citizen and as to whose Partnership Interest the General Partner has become the Substituted Limited Partner, pursuant to Section 4.9.

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

“*NONRECOURSE DEDUCTIONS*” means any and all items of loss, deduction or expenditures (including, without limitation, any expenditures described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(b), are attributable to a Nonrecourse Liability.

“*NONRECOURSE LIABILITY*” has the meaning set forth in Treasury Regulation Section 1.752-1(a)(2).

“*NORTHERN BORDER PIPELINE*” means Northern Border PipeLine Company, a Texas general partnership.

“*NOTICE OF ELECTION TO PURCHASE*” has the meaning assigned to such term in Section 15.1(b).

“*OPERATING EXPENDITURES*” means all Partnership expenditures, including, but not limited to, operating expenses, taxes, reimbursements of the General Partner, debt service payments, and capital expenditures, subject to the following:

(a) Payments (including prepayments) of principal of and premium on indebtedness shall not be an Operating Expenditure if the payment is (i) required in connection with the sale or other disposition of assets or made in connection with the refinancing or refunding of indebtedness with the proceeds from new indebtedness or from the sale of equity interests. For purposes of the foregoing, at the election and in the reasonable discretion of the General Partner, any payment of principal or premium shall be deemed to be refunded or refinanced by any indebtedness incurred or to be incurred by the Partnership within 180 days before or after such payment to the extent of the principal amount of such indebtedness.

(b) Operating Expenditures shall not include (i) capital expenditures made for Acquisitions or for Capital Improvements, (ii) payment of transaction expenses relating to Interim Capital Transactions or (iii) distributions to Partners. Where capital expenditures are made in part for Acquisitions or for Capital Improvements and in part for other purposes, the General Partner’s good faith allocation between the amounts paid for each shall be conclusive.

“*OPERATING SURPLUS*” means, with respect to any period ending prior to the Liquidation Date, on a cumulative basis and without duplication,

(a) the sum of (i) \$20 million plus all cash and cash equivalents of the Partnership on hand as of the close of business on the Closing Date, (ii) all cash receipts of the Partnership for the period beginning on the Closing Date and ending with the last day of such period, other than cash receipts from Interim Capital Transactions (except to the extent specified in Section 6.5) and (iii) all cash receipts of the Partnership after the end of such period but on or before the date of determination of Operating Surplus with respect to such period resulting from Working Capital Borrowings, less

(b) the sum of (i) Operating Expenditures for the period beginning on the Closing Date and ending with the last day of such period and (ii) the amount of cash reserves that is necessary or advisable in the reasonable discretion of the General Partner to provide funds for future Operating Expenditures; provided, however, that disbursements made (including contributions to a Group Member or disbursements on behalf of a Group Member) or cash reserves established, increased or reduced after the end of such period but on or before the date of determination of Available Cash with respect to such period shall be deemed to have been made, established, increased or reduced, for purposes of determining Operating Surplus, within such period if the General Partner so determines.

Notwithstanding the foregoing, “*OPERATING SURPLUS*” with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

“*OPINION OF COUNSEL*” means a written opinion of counsel (who may be regular counsel to the Partnership or the General Partner or any of its Affiliates) acceptable to the General Partner in its reasonable discretion.

“*ORIGINAL AGREEMENT*” has the meaning assigned to such term in the Recitals.

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

“*PARTNER NONRECOURSE DEBT*” has the meaning set forth in Treasury Regulation Section 1.704-2(b)(4).

“*PARTNER NONRECOURSE DEBT MINIMUM GAIN*” has the meaning set forth in Treasury Regulation Section 1.704-2(i)(2).

“*PARTNER NONRECOURSE DEDUCTIONS*” means any and all items of loss, deduction or expenditure (including, without limitation, any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(i), are attributable to a Partner Nonrecourse Debt.

“*PARTNERS*” means the General Partner and the Limited Partners.

“*PARTNERSHIP*” means TC PipeLines, LP, a Delaware limited partnership, and any successors thereto.

“*PARTNERSHIP GROUP*” means the Partnership, the Intermediate Partnerships and any Subsidiary of any such entity, treated as a single consolidated entity.

“*PARTNERSHIP INTEREST*” means an interest in the Partnership, which shall include the General Partner Interest and Limited Partner Interests.

“*PARTNERSHIP MINIMUM GAIN*” means that amount determined in accordance with the principles of Treasury Regulation Section 1.704-2(d).

“*PARTNERSHIP SECURITY*” means any class or series of equity interest in the Partnership (but excluding any options, rights, warrants and appreciation rights relating to an equity interest in the Partnership), including without limitation, Common Units and Incentive Distribution Rights.

“*PERCENTAGE INTEREST*” means as of any date of determination (a) as to the General Partner (with respect to its General Partner Interest), an aggregate 1%, (b) as to any Unitholder or Assignee holding Units, the product obtained by multiplying (i) 99% less the percentage applicable to paragraph (c) by (ii) the quotient obtained by dividing (A) the number of Units held by such Unitholder or Assignee by (B) the total number of all Outstanding Units, and (c) as to the holders of additional Partnership Securities issued by the Partnership in accordance with Section 5.6, the percentage established as a part of such issuance. The Percentage Interest with respect to an Incentive Distribution Right shall at all times be zero.

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

“*PER UNIT CAPITAL AMOUNT*” means, as of any date of determination, the Capital Account, stated on a per Unit basis, underlying any Unit held by a Person other than the General Partner or any Affiliate of the General Partner who holds Units.

“*PRO RATA*” means (a) when modifying Units or any class thereof, apportioned equally among all designated Units in accordance with their relative Percentage Interests, (b) when modifying Partners and Assignees, apportioned among all Partners and Assignees in accordance with their relative Percentage Interests and (c) when modifying holders of Incentive Distribution Rights, apportioned equally among all holders of Incentive Distribution Rights in accordance with the relative number of Incentive Distribution Rights held by each such holder.

“*PURCHASE DATE*” means the date determined by the General Partner as the date for purchase of all Outstanding Units of a certain class (other than Units held by the General Partner and its Affiliates) pursuant to Article XV.

“*QUARTER*” means, unless the context requires otherwise, a fiscal quarter of the Partnership.

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

“*RECORD DATE*” means the date established by the General Partner for determining (a) the identity of the Record Holders entitled to notice of, or to vote at, any meeting of Limited Partners or entitled to vote by ballot or give approval of Partnership action in writing without a meeting or entitled to exercise rights in respect of any lawful action of Limited Partners or (b) the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

“*RECORD HOLDER*” means the Person in whose name a Common Unit is registered on the books of the Transfer Agent as of the opening of business on a particular Business Day, or with respect to other Partnership Securities, the Person in whose name any such other Partnership Security is registered on the books which the General Partner has caused to be kept as of the opening of business on such Business Day.

“*REDEEMABLE INTERESTS*” means any Partnership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 4.10.

“*REGISTRATION STATEMENT*” means the Registration Statement on Form S-1 (Registration No. 333 69947) as amended or supplemented from time to time, filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Common Units in the Initial Offering.

“*REMAINING NET POSITIVE ADJUSTMENTS*” means as of the end of any taxable period, (i) with respect to the Unitholders holding Common Units, the excess of (a) the Net Positive Adjustments of the Unitholders holding Common Units as of the end of such period over (b) the sum of those Unitholders’ Share of Additional Book Basis Derivative Items for each prior taxable period, (ii) with respect to the General Partner (as holder of the General Partner Interest), the excess of (a) the Net Positive Adjustments of the General Partner as of the end of such period over (b) the sum of the General Partner’s Share of Additional Book Basis Derivative Items with respect to the General Partner Interest for each prior taxable period, and (iii) with respect to the holders of Incentive Distribution Rights, the excess of (a) the Net Positive Adjustments of the holders of Incentive Distribution Rights as of the end of such period over (b) the sum of the Share of Additional Book Basis Derivative Items of the holders of the Incentive Distribution Rights for each prior taxable period.

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

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

“*SECOND TARGET DISTRIBUTION*” means \$0.88 per Unit per Quarter, subject to adjustment in accordance with Sections 6.6 and 6.9.

“*SECURITIES ACT*” means the Securities Act of 1933, as amended, supplemented or restated from time to time and any successor to such statute.

“*SHARE OF ADDITIONAL BOOK BASIS DERIVATIVE ITEMS*” means in connection with any allocation of Additional Book Basis Derivative Items for any taxable period, (i) with respect to the Unitholders holding Common Units, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Unitholders’ Remaining Net Positive Adjustments as of the end of such period bears to the Aggregate Remaining Net Positive Adjustments as of that time, (ii) with respect to the General Partner (as holder of the General Partner Interest), the amount that bears the same ratio to such additional Book Basis Derivative Items as the General Partner’s Remaining Net Positive Adjustments as of the end of such period bears to the Aggregate Remaining Net Positive Adjustment as of that time, and (iii) with respect to the Partners holding Incentive Distribution Rights, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Remaining Net Positive Adjustments of the Partners holding the Incentive Distribution Rights as of the end of such period bears to the Aggregate Remaining Net Positive Adjustments as of that time.

“*SPECIAL APPROVAL*” means approval by a majority of the members of the Conflicts Committee.

“*SUBSIDIARY*” means, with respect to any Person, (a) a corporation of which more than 50% of the voting power of shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors or other governing body of such corporation is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Subsidiary of such Person is, at the date of determination, a general or limited partner of such partnership, but only if more than 50% of the partnership interests of such partnership (considering all of the partnership interests of the partnership as a single class) is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person, or a combination thereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, one or more Subsidiaries of such Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) at least a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person. The foregoing definition shall not include any JV Entity, including, without limitation, Northern Border PipeLine.

“*SUBSTITUTED LIMITED PARTNER*” means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 10.2 in place of and with all the rights of a Limited Partner and who is shown as a Limited Partner on the books and records of the Partnership.

“*SURVIVING BUSINESS ENTITY*” has the meaning assigned to such term in Section 14.2(b).

“*TRADING DAY*” has the meaning assigned to such term in Section 15.1(a).

“*TRANSACTION AGREEMENTS*” means the Agreement for Purchase and Sale of Membership Interest by and between Gas Transmission Northwest Corporation and TC PipeLines Intermediate Limited Partnership dated as of May 19, 2009, the Common Unit Purchase Agreement by and between TransCan Northern Ltd. and the Partnership dated as of July 1, 2009, the Exchange Agreement and the Yuma Transfer Agreement by and between Gas Transmission Northwest Corporation and North Baja Pipeline, LLC.

“*TRANSFER*” has the meaning assigned to such term in Section 4.4(a).

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

“*TRANSFER APPLICATION*” means an application and agreement for transfer of Units in the form set forth on the back of a Certificate or in a form substantially to the same effect in a separate instrument.

“*TREASURY REGULATIONS*” means the permanent, temporary or proposed regulations of the United States Department of the Treasury promulgated under the Code, as such regulations may be amended and in effect from time to time. Any reference herein to a specific section or sections of the Treasury Regulations shall be deemed to include a reference to any corresponding provision of successor law.

“*UNIT*” means a Partnership Security that is designated as a “UNIT” and shall include Common Units but shall not include (i) a General Partner Interest or (ii) Incentive Distribution Rights.

“*UNIT MAJORITY*” means at least a majority of the Outstanding Common Units.

“*UNITHOLDERS*” means the holders of Common Units.

“*UNPAID FTD*” has the meaning assigned to such term in Section 6.1(c)(i)(B).

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



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

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

“U.S. GAAP” means United States Generally Accepted Accounting Principles consistently applied.

“WITHDRAWAL OPINION OF COUNSEL” has the meaning assigned to such term in Section 11.1(b).

“WORKING CAPITAL BORROWINGS” means borrowings exclusively for working capital purposes. Amounts drawn from a credit facility to enable the Partnership to pay distributions to partners of the Partnership if there has been a temporary interruption or delay in receipt of distributions from Northern Border PipeLine shall also constitute Working Capital Borrowings.

## **SECTION 1.2 CONSTRUCTION.**

Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; and (c) the term “INCLUDE” or “INCLUDES” means includes, without limitation, and “INCLUDING” means including, without limitation.

## **ARTICLE II ORGANIZATION**

### **SECTION 2.1 FORMATION.**

The Partnership has been operated as a limited partnership pursuant to the provisions of the Delaware Act pursuant to the Original Agreement. The General Partner hereby amends and restates the Original Agreement in its entirety. This amendment and restatement shall become effective on the date of this Agreement. The Original Agreement shall be controlling for matters prior to the effective date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties (including fiduciary duties), liabilities and obligations of the Partners and the administration, dissolution and termination of the Partnership shall be governed by the Delaware Act. All Partnership Interests shall constitute personal property of the owner thereof for all purposes and a Partner has no interest in specific Partnership property.

### **SECTION 2.2 NAME.**

The name of the Partnership is “TC PipeLines, LP” The Partnership’s business may be conducted under any other name or names deemed necessary or appropriate by the General Partner in its sole discretion, including the name of the General Partner. The words “Limited Partnership,” “L.P.,” “Ltd.” or similar words or letters shall be included in the Partnership’s name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The General Partner in its discretion may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

**SECTION 2.3 REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE; OTHER OFFICES.**

Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. The principal office of the Partnership shall be located at 13710 FNB Parkway, Omaha, NE 68154 or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems necessary or appropriate. The address of the General Partner shall be 13710 FNB Parkway, Omaha, NE 68154 or such other place as the General Partner may from time to time designate by notice to the Limited Partners.

**SECTION 2.4 PURPOSE AND BUSINESS.**

The purpose and nature of the business to be conducted by the Partnership shall be to (a) serve as a partner of the Intermediate Partnerships and, in connection therewith, to exercise all the rights and powers conferred upon the Partnership as a partner of the Intermediate Partnerships pursuant to the Intermediate Partnership Agreements or otherwise, (b) engage directly in, or enter into or form any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that the Intermediate Partnerships are permitted to engage in by the Intermediate Partnership Agreements and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity, (c) engage directly in, or enter into or form any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the General Partner and which lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity; provided, however, that the General Partner reasonably determines, as of the date of the acquisition or commencement of such activity, that such activity (i) generates "QUALIFYING INCOME" (as such term is defined pursuant to Section 7704 of the Code) or (ii) enhances the operations of an activity of the Intermediate Partnerships or a Partnership activity that generates qualifying income, and (d) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member or JV Entity. The General Partner has no obligation or duty to the Partnership, the Limited Partners or the Assignees to propose or approve, and in its discretion may decline to propose or approve, the conduct by the Partnership of any business.

**SECTION 2.5 POWERS.**

The Partnership shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described in Section 2.4.

**SECTION 2.6 POWER OF ATTORNEY.**

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

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements hereof or thereof) that the General Partner or the Liquidator deems necessary or appropriate to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (B) all certificates, documents and other instruments that the General Partner or the Liquidator deems necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the General Partner or the Liquidator deems necessary or appropriate to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article IV, X, XI or XII; (E) all certificates, documents and other instruments relating to the determination of the preferences, rights, powers, privileges and duties of any class or series of Partnership Securities issued pursuant to Section 5.6; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger) relating to a merger or consolidation of the Partnership pursuant to Article XIV; and

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

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

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and, to the maximum extent permitted by law, not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of any Limited Partner or Assignee and the transfer of all or any portion of such Limited Partner's or Assignee's Partnership Interest and shall extend to such Limited Partner's or Assignee's heirs, successors, assigns and personal representatives. Each such Limited Partner or Assignee hereby agrees to be bound by any representation made by the General Partner or the Liquidator acting in good faith pursuant to such power of attorney; and each such Limited Partner or Assignee, to the maximum extent permitted by law, hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or the Liquidator, within 15 days after receipt of the request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator deems necessary to effectuate this Agreement and the purposes of the Partnership.

#### **SECTION 2.7           TERM.**

The term of the Partnership commenced upon the filing of the Certificate of Limited Partnership in accordance with the Delaware Act and shall continue in existence until the close of Partnership business on December 31, 2097 or until the earlier dissolution of the Partnership in accordance with the provisions of Article XII. The existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate of Limited Partnership as provided in the Delaware Act.

#### **SECTION 2.8           TITLE TO PARTNERSHIP ASSETS.**

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

**ARTICLE III  
RIGHTS OF LIMITED PARTNERS**

**SECTION 3.1           LIMITATION OF LIABILITY.**

The Limited Partners and the Assignees shall have no liability under this Agreement except as expressly provided in this Agreement or the Delaware Act.

**SECTION 3.2           MANAGEMENT OF BUSINESS.**

No Limited Partner or Assignee, in its capacity as such, shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. Any action taken by any Affiliate of the General Partner or any officer, director, employee, member, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, member, general partner, agent or trustee of a Group Member, in its capacity as such, shall not be deemed to be participation in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) and shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

**SECTION 3.3           OUTSIDE ACTIVITIES OF THE LIMITED PARTNERS.**

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

**SECTION 3.4           RIGHTS OF LIMITED PARTNERS**

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

- (i) to obtain true and full information regarding the status of the business and financial condition of the Partnership;

(ii) promptly after becoming available, to obtain a copy of the Partnership's federal, state and local income tax returns for each year;

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

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

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

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

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

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

##### **SECTION 4.1 CERTIFICATES.**

Upon the Partnership's issuance of Common Units to any Person, the Partnership shall issue one or more Certificates in the name of such Person evidencing the number of such Units being so issued. In addition, (a) upon the General Partner's request, the Partnership shall issue to it one or more Certificates in the name of the General Partner evidencing its interests in the Partnership and (b) upon the request of any Person holding Incentive Distribution Rights or any other Partnership Securities other than Common Units, the Partnership shall issue to such Person one or more certificates evidencing such Incentive Distribution Rights or other Partnership Securities other than Common Units. Certificates shall be executed on behalf of the Partnership by the Chairman, President or any Executive Vice President or Vice President and the Secretary or any Assistant Secretary of the General Partner. No Common Unit Certificate shall be valid for any purpose until it has been countersigned by the Transfer Agent; provided, however, that if the General Partner elects to issue Common Units in global form, the Common Unit Certificates shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Common Units have been duly registered in accordance with the directions of the Partnership. Notwithstanding anything in this Section 4.1 or any other provision of this Agreement, at the General Partner's discretion, Partnership Securities may be issued, recorded and transferred by electronic or other means not involving the issuance of physical Certificates. The provisions of this Agreement shall be interpreted as reasonably required to implement such a system. For example, no signature shall be required with respect to an uncertificated electronic registration system.

##### **SECTION 4.2 MUTILATED, DESTROYED, LOST OR STOLEN CERTIFICATES.**

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

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

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

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

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

#### **SECTION 4.3 RECORD HOLDERS.**

The Partnership shall be entitled to recognize the Record Holder as the Partner or Assignee with respect to any Partnership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Partnership Interest on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Partnership Interests are listed for trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Partnership Interests, as between the Partnership on the one hand, and such other Persons on the other, such representative Person (a) shall be the Partner or Assignee (as the case may be) of record and beneficially, (b) must execute and deliver a Transfer Application and (c) shall be bound by this Agreement and shall have the rights and obligations of a Partner or Assignee (as the case may be) hereunder and as, and to the extent, provided for herein.

#### **SECTION 4.4 TRANSFER GENERALLY.**

(a) The term “*TRANSFER*,” when used in this Agreement with respect to a Partnership Interest, shall be deemed to refer to a transaction by which the General Partner assigns its General Partner Interest to another Person who becomes the General Partner, by which the holder of a Limited Partner Interest assigns such Limited Partner Interest to another Person who is or becomes a Limited Partner or an Assignee, and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise.

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

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any stockholder of the General Partner of any or all of the issued and outstanding stock of the General Partner.

#### **SECTION 4.5 REGISTRATION AND TRANSFER OF LIMITED PARTNER INTERESTS.**

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

(b) Except as otherwise provided in Section 4.9, the Partnership shall not recognize any transfer of Limited Partner Interests until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer and such Certificates are accompanied by a Transfer Application duly executed by the transferee (or the transferee's attorney-in-fact duly authorized in writing). No charge shall be imposed by the Partnership for such transfer; provided, that as a condition to the issuance of any new Certificate under this Section 4.5, the Partnership may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto.

(c) Limited Partner Interests may be transferred only in the manner described in this Section 4.5. The transfer of any Limited Partner Interests and the admission of any new Limited Partner shall not constitute an amendment to this Agreement.

(d) Until admitted as a Substituted Limited Partner pursuant to Section 10.2, the Record Holder of a Limited Partner Interest shall be an Assignee in respect of such Limited Partner Interest. Limited Partners may include custodians, nominees or any other individual or entity in its own or any representative capacity.

(e) A transferee of a Limited Partner Interest who has completed and delivered a Transfer Application shall be deemed to have (i) requested admission as a Substituted Limited Partner, (ii) agreed to comply with and be bound by and to have executed this Agreement, (iii) represented and warranted that such transferee has the right, power and authority and, if an individual, the capacity to enter into this Agreement, (iv) granted the powers of attorney set forth in this Agreement and (v) given the consents and approvals and made the waivers contained in this Agreement.

(f) The General Partner and its Affiliates shall have the right at any time to transfer their Common Units to one or more Persons.

#### **SECTION 4.6 TRANSFER OF THE GENERAL PARTNER'S GENERAL PARTNER INTEREST.**

(a) [INTENTIONALLY OMITTED.]

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

(c) Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and of the general partner under the Intermediate Partnership Agreements and to be bound by the provisions of this Agreement and the Intermediate Partnership Agreements, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability of any Limited Partner or of any limited partner of any Intermediate Partnership or cause the Partnership or any Intermediate Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed) and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the interest of the General Partner as the general partner or managing member of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.3, be admitted to the Partnership as a General Partner immediately prior to the transfer of the Partnership Interest, and the business of the Partnership shall continue without dissolution.

#### **SECTION 4.7           TRANSFER OF INCENTIVE DISTRIBUTION RIGHTS.**

The General Partner or any other holder of Incentive Distribution Rights may transfer any or all of its Incentive Distribution Rights without Unitholder approval. Notwithstanding anything herein to the contrary, no transfer of Incentive Distribution Rights to another Person shall be permitted unless the transferee agrees to be bound by the provisions of this Agreement. The General Partner shall have the authority (but shall not be required) to adopt such reasonable restrictions on the transfer of Incentive Distribution Rights and requirements for registering the transfer of Incentive Distribution Rights as the General Partner, in its sole discretion, shall determine are necessary or appropriate.

#### **SECTION 4.8           RESTRICTIONS ON TRANSFERS.**

(a) Except as provided in Section 4.8(d) below, but notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interests shall be made if such transfer would (i) violate the then applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (ii) terminate the existence or qualification of the Partnership or any Intermediate Partnership under the laws of the jurisdiction of its formation, or (iii) cause the Partnership or any Intermediate Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed).

(b) The General Partner may impose restrictions on the transfer of Partnership Interests if it determines based upon a subsequent Opinion of Counsel that such restrictions are necessary to avoid a significant risk of the Partnership or any Intermediate Partnership being treated as an association taxable as a corporation or otherwise being taxed as an entity for federal income tax purposes. The restrictions may be imposed by making such amendments to this Agreement as the General Partner may determine to be necessary or appropriate to impose such restrictions; provided, however, that any amendment that the General Partner believes, in the exercise of its reasonable discretion, could result in the delisting or suspension of trading of any class of Limited Partner Interests on the principal National Securities Exchange on which such class of Limited Partner Interests is then traded must be approved, prior to such amendment being effected, by the holders of at least a majority of the Outstanding Limited Partner Interests of such class.

(c) Nothing contained in this Article IV or elsewhere in this Agreement, shall preclude the settlement of any transactions involving Partnership Interests entered into through the facilities of any National Securities Exchange on which such Partnership Interests are listed for trading.

#### **SECTION 4.9           CITIZENSHIP CERTIFICATES; NON-CITIZEN ASSIGNEES.**

(a) If any Group Member or JV Entity is or becomes subject to any federal, state or local law or regulation that, in the reasonable determination of the General Partner, creates a substantial risk of cancellation or forfeiture of any property in which the Group Member or JV Entity has an interest based on the nationality, citizenship or other related status of a Limited Partner or Assignee, the General Partner may request any Limited Partner or Assignee to furnish to the General Partner, within 30 days after receipt of such request, an executed Citizenship Certification or such other information concerning his nationality, citizenship or other related status (or, if the Limited Partner or Assignee is a nominee holding for the account of another Person, the nationality, citizenship or other related status of such Person) as the General Partner may request. If a Limited Partner or Assignee fails to furnish to the General Partner within the aforementioned 30-day period such Citizenship Certification or other requested information or if upon receipt of such Citizenship Certification or other requested information the General Partner determines, with the advice of counsel, that a Limited Partner or Assignee is not an Eligible Citizen, the Partnership Interests owned by such Limited Partner or Assignee shall be subject to redemption in accordance with the provisions of Section 4.10. In addition, the General Partner may require that the status of any such Partner or Assignee be changed to that of a Non-citizen Assignee and, thereupon, the General Partner shall be substituted for such Non-citizen Assignee as the Limited Partner in respect of his Limited Partner Interests.



(b) The General Partner shall, in exercising voting rights in respect of Limited Partner Interests held by it on behalf of Non-citizen Assignees, distribute the votes in the same ratios as the votes of Partners (including without limitation the General Partner) in respect of Limited Partner Interests other than those of Non-citizen Assignees are cast, either for, against or abstaining as to the matter.

(c) Upon dissolution of the Partnership, a Non-citizen Assignee shall have no right to receive a distribution in kind pursuant to Section 12.4 but shall be entitled to the cash equivalent thereof, and the Partnership shall provide cash in exchange for an assignment of the Non-citizen Assignee's share of the distribution in kind. Such payment and assignment shall be treated for Partnership purposes as a purchase by the Partnership from the Non-citizen Assignee of his Limited Partner Interest (representing his right to receive his share of such distribution in kind).

(d) At any time after he can and does certify that he has become an Eligible Citizen, a Non-citizen Assignee may, upon application to the General Partner, request admission as a Substituted Limited Partner with respect to any Limited Partner Interests of such Non-citizen Assignee not redeemed pursuant to Section 4.10, and upon his admission pursuant to Section 10.2, the General Partner shall cease to be deemed to be the Limited Partner in respect of the Non-citizen Assignee's Limited Partner Interests.

#### **SECTION 4.10 REDEMPTION OF PARTNERSHIP INTERESTS OF NON-CITIZEN ASSIGNEES.**

(a) If at any time a Limited Partner or Assignee fails to furnish a Citizenship Certification or other information requested within the 30-day period specified in Section 4.9(a), or if upon receipt of such Citizenship Certification or other information the General Partner determines, with the advice of counsel, that a Limited Partner or Assignee is not an Eligible Citizen, the Partnership may, unless the Limited Partner or Assignee establishes to the satisfaction of the General Partner that such Limited Partner or Assignee is an Eligible Citizen or has transferred his Partnership Interests to a Person who is an Eligible Citizen and who furnishes a Citizenship Certification to the General Partner prior to the date fixed for redemption as provided below, redeem the Partnership Interest of such Limited Partner or Assignee as follows:

(i) The General Partner shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Limited Partner or Assignee, at his last address designated on the records of the Partnership or the Transfer Agent, by registered or certified mail, postage prepaid. The notice shall be deemed to have been given when so mailed. The notice shall specify the Redeemable Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the Certificate evidencing the Redeemable Interests and that on and after the date fixed for redemption no further allocations or distributions to which the Limited Partner or Assignee would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Limited Partner Interests of the class to be so redeemed multiplied by the number of Limited Partner Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, in the discretion of the General Partner, in cash or by delivery of a promissory note of the Partnership in the principal amount of the redemption price, bearing interest at the rate of 10% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) Upon surrender by or on behalf of the Limited Partner or Assignee, at the place specified in the notice of redemption, of the Certificate evidencing the Redeemable Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank, the Limited Partner or Assignee or his duly authorized representative shall be entitled to receive the payment therefor.

(iv) After the redemption date, Redeemable Interests shall no longer constitute issued and Outstanding Limited Partner Interests.

(b) The provisions of this Section 4.10 shall also be applicable to Limited Partner Interests held by a Limited Partner or Assignee as nominee of a Person determined to be other than an Eligible Citizen.

(c) Nothing in this Section 4.10 shall prevent the recipient of a notice of redemption from transferring his Limited Partner Interest before the redemption date if such transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, provided the transferee of such Limited Partner Interest certifies to the satisfaction of the General Partner in a Citizenship Certification delivered in connection with the Transfer Application that he is an Eligible Citizen. If the transferee fails to make such certification, such redemption shall be effected from the transferee on the original redemption date.

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

**SECTION 5.1 [INTENTIONALLY OMITTED.]**

**SECTION 5.2 CONTRIBUTIONS TO THE PARTNERSHIP.**

(a) The General Partner and the Limited Partners have previously made Capital Contributions for interests in the Partnership.

(b) Upon the issuance of any additional Limited Partner Interests by the Partnership (other than the issuance of the Common Units and modified Incentive Distribution Rights under this Agreement in exchange for the Incentive Distribution Rights under the Original Agreement pursuant to the Exchange Agreement), the General Partner shall be required to make additional Capital Contributions equal to 1/99th of any amount contributed to the Partnership by the Limited Partners in exchange for such additional Limited Partner Interests. Except as set forth in the immediately preceding sentence and Article XII, the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

**SECTION 5.3 [INTENTIONALLY OMITTED.]**

**SECTION 5.4 INTEREST AND WITHDRAWAL.**

No interest shall be paid by the Partnership on Capital Contributions. No Partner or Assignee shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement may be considered as such by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Partner or Assignee shall have priority over any other Partner or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions. Any such return shall be a compromise to which all Partners and Assignees agree within the meaning of Section 17-502(b) of the Delaware Act.

## SECTION 5.5 CAPITAL ACCOUNTS.

(a) The Partnership has maintained and shall continue to maintain for each Partner (or a beneficial owner of Partnership Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner in its sole discretion) holding a Partnership Interest a separate Capital Account with respect to such Partnership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Such Capital Account has been and shall be increased by (i) the amount of all Capital Contributions made to the Partnership with respect to such Partnership Interest pursuant to this Agreement (or pursuant to the Original Agreement) and (ii) all items of Partnership income and gain (including, without limitation, income and gain exempt from tax) computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1 (or allocated pursuant to Section 6.1 of the Original Agreement), and has been and shall be decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest pursuant to this Agreement (or pursuant to the Original Agreement) and (y) all items of Partnership deduction and loss computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1 (or allocated pursuant to Section 6.1 of the Original Agreement). Capital Account maintenance and adjustments prior to the effective date of this Agreement were governed by the terms of the Original Agreement.

(b) For purposes of computing the amount of any item of income, gain, loss or deduction which is to be allocated pursuant to Article VI and is to be reflected in the Partners' Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including, without limitation, any method of depreciation, cost recovery or amortization used for that purpose), provided, that:

(i) Solely for purposes of this Section 5.5, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner based upon the provisions of the Intermediate Partnership Agreements) of all property owned by the Intermediate Partnerships or any other Subsidiary that is classified as a partnership for federal income tax purposes.

(ii) All fees and other expenses incurred by the Partnership to promote the sale of (or to sell) a Partnership Interest that can neither be deducted nor amortized under Section 709 of the Code, if any, shall, for purposes of Capital Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred and shall be allocated among the Partners pursuant to Section 6.1.

(iii) Except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code which may be made by the Partnership and, as to those items described in Section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalized for federal income tax purposes. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

(iv) Any income, gain or loss attributable to the taxable disposition of any Partnership property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Partnership's Carrying Value with respect to such property as of such date.

(v) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Partnership were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 5.5(d) to the Carrying Value of any Partnership property subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such property shall be determined (A) as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment and (B) using a rate of depreciation, cost recovery or amortization derived from the same method and useful life (or, if applicable, the remaining useful life) as is applied for federal income tax purposes; provided, however, that, if the asset has a zero adjusted basis for federal income tax purposes, depreciation, cost recovery or amortization deductions shall be determined using any reasonable method that the General Partner may

(vi) If the Partnership's adjusted basis in a depreciable or cost recovery property is reduced for federal income tax purposes pursuant to Section 48(q)(1) or 48(q)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the year such property is placed in service and shall be allocated among the Partners pursuant to Section 6.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

(c) A transferee of a Partnership Interest shall succeed to a pro rata portion of the Capital Account of the transferor relating to the Partnership Interest so transferred.

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), upon an issuance of additional Partnership Interests for cash or Contributed Property, the issuance of Partnership Interests in consideration for services or the issuance of Partnership Interests to the General Partner under Section 5.6(d), or upon the conversion of all or a portion of the General Partner's Combined Interest to Common Units pursuant to Section 11.3(b), the Capital Account of all Partners and the Carrying Value of each Partnership property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property for an amount equal to its fair market value immediately prior to such issuance and had been allocated to the Partners at such time pursuant to Section 6.1(c) in the same manner as any item of gain or loss actually recognized following an event giving rise to a dissolution of the Partnership would have been allocated. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests shall be determined by the General Partner using such reasonable method of valuation as it may adopt; provided, however, that the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines in its discretion to be reasonable) to arrive at a fair market value for individual properties.

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any actual or deemed distribution to a Partner of any Partnership property (other than a distribution of cash that is not in redemption or retirement of a Partnership Interest), the Capital Accounts of all Partners and the Carrying Value of all Partnership property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such distribution for an amount equal to its fair market value, and had been allocated to the Partners, at such time, pursuant to Section 6.1(c) in the same manner as any item of gain or loss actually recognized following an event giving rise to a dissolution of the Partnership would have been allocated. In determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of an actual distribution that is not made pursuant to Section 12.4 or in the case of a deemed distribution, be determined and allocated in the same manner as that provided in Section 5.5(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined and allocated by the Liquidator using such reasonable method of valuation as it may adopt.

(e) Upon the issuance of Partnership Interests to the General Partner as described in Section 5.6(d), a portion of the General Partner's Capital Account in its Partnership Interest shall be allocated to the Partnership Interests so received. The Capital Account allocated to each Common Unit shall be equal to the Per Unit Capital Amount of the Common Units held by Limited Partners other than the General Partner (after taking into account the adjustments to the Capital Accounts of the Partners under Section 5.5(d)(i) in connection with the issuance of such Partnership Interests and the contemporaneous issuance of Common Units pursuant to the Common Unit Purchase Agreement referred to in the Recitals).

**SECTION 5.6 ISSUANCES OF ADDITIONAL PARTNERSHIP SECURITIES.**

(a) Subject to Section 5.7, the Partnership may issue additional Partnership Securities and options, rights, warrants and appreciation rights relating to the Partnership Securities for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as shall be established by the General Partner in its sole discretion, all without the approval of any Limited Partners.

(b) Each additional Partnership Security authorized to be issued by the Partnership pursuant to Section 5.6(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers, privileges and duties (which may be senior to existing classes and series of Partnership Securities), as shall be fixed by the General Partner in the exercise of its sole discretion, including (i) the right to share Partnership profits and losses or items thereof; (ii) the right to share in Partnership distributions; (iii) the rights upon dissolution and liquidation of the Partnership; (iv) whether, and the terms and conditions upon which, the Partnership may redeem the Partnership Security; (v) whether such Partnership Security is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Security will be issued, evidenced by certificates and assigned or transferred; and (vii) the right, if any, of each such Partnership Security to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Security.

(c) The General Partner is hereby authorized and directed to take all actions that it deems necessary or appropriate (including all actions to assure the economic uniformity of the Common Units) in connection with (i) each issuance of Partnership Securities and options, rights, warrants and appreciation rights relating to Partnership Securities pursuant to this Section 5.6, (ii) the conversion of the General Partner Interest and Incentive Distribution Rights into Units pursuant to the terms of this Agreement, (iii) the admission of Additional Limited Partners and (iv) all additional issuances of Partnership Securities. The General Partner is further authorized and directed to specify the relative preferences, rights, powers, privileges and duties of the holders of the Units or other Partnership Securities being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things it deems to be necessary or advisable in connection with any future issuance of Partnership Securities or in connection with the conversion of the General Partner Interest and Incentive Distribution Rights into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Securities are listed for trading.

(d) The amendments to the Original Agreement effected by this Agreement with respect to the Incentive Distribution Rights issued to the General Partner under the Original Agreement reflects, and will be treated as, a contribution of such Incentive Distribution Rights in exchange for the modified Incentive Distribution Rights under this Agreement and 3,762,000 Common Units. Such modified Incentive Distribution Rights and Common Units shall be deemed issued to the General Partner concurrently with the effectiveness of this Agreement, and the General Partner shall be deemed admitted as a Limited Partner with respect to such modified Incentive Distribution Rights and Common Units as of the date of this Agreement.

**SECTION 5.7 LIMITATIONS ON ISSUANCE OF FRACTIONAL PARTNERSHIP SECURITIES.**

No fractional Units shall be issued by the Partnership.

**SECTION 5.8 [INTENTIONALLY OMITTED.]**

**SECTION 5.9 LIMITED PREEMPTIVE RIGHT.**

Except as provided in this Section 5.9 and in Section 5.2(b), no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Security, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right (but not obligation), which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Securities from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Securities to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Securities.

**SECTION 5.10 SPLITS AND COMBINATION.**

(a) Subject to Sections 5.10(d), 6.6 and 6.9 (dealing with adjustments of distribution levels), the Partnership may make a Pro Rata distribution of Partnership Securities to all Record Holders or may effect a subdivision or combination of Partnership Securities so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis (including any Unrecovered Capital) or stated as a number of Units are proportionately adjusted.

(b) Whenever such a distribution, subdivision or combination of Partnership Securities is declared, the General Partner shall select a Record Date as of which the distribution, subdivision or combination shall be effective and shall send notice thereof at least 20 days prior to such Record Date to each Record Holder as of a date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Partnership Securities to be held by each Record Holder after giving effect to such distribution, subdivision or combination. The General Partner shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

(c) Promptly following any such distribution, subdivision or combination, the Partnership may issue Certificates to the Record Holders of Partnership Securities as of the applicable Record Date representing the new number of Partnership Securities held by such Record Holders, or the General Partner may adopt such other procedures as it may deem appropriate to reflect such changes. If any such combination results in a smaller total number of Partnership Securities Outstanding, the Partnership shall require, as a condition to the delivery to a Record Holder of such new Certificate, the surrender of any Certificate held by such Record Holder immediately prior to such Record Date.

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions of Section 5.7 and this Section 5.10(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

**SECTION 5.11 FULLY PAID AND NON-ASSESSABLE NATURE OF LIMITED PARTNER INTERESTS.**

All Limited Partner Interests issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Limited Partner Interests in the Partnership, except as such non-assessability may be affected by Section 17-607 of the Delaware Act.

**ARTICLE VI  
ALLOCATIONS AND DISTRIBUTIONS**

**SECTION 6.1 ALLOCATIONS FOR CAPITAL ACCOUNT PURPOSES.**

For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss and deduction (computed in accordance with Section 5.5(b)) shall be allocated among the Partners in each taxable year (or portion thereof) as provided herein below.

(a) NET INCOME. After giving effect to the special allocations set forth in Section 6.1(d), Net Income for each taxable period and all items of income, gain, loss and deduction taken into account in computing Net Income for such taxable period shall be allocated as follows:

(i) First, 100% to the General Partner in an amount equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(iii) for all previous taxable periods until the aggregate Net Income allocated to the General Partner pursuant to this Section 6.1(a)(i) for the current taxable period and all previous taxable periods is equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(iii) for all previous taxable periods;

(ii) Second, 1% to the General Partner in an amount equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(ii) for all previous taxable periods and 99% to the Unitholders, in accordance with their respective Percentage Interests, until the aggregate Net Income allocated to such Partners pursuant to this Section 6.1(a)(ii) for the current taxable period and all previous taxable periods is equal to the aggregate Net Losses allocated to such Partners pursuant to Section 6.1(b)(ii) for all previous taxable periods; and

(iii) Third, the balance, if any, 100% to the General Partner and the Unitholders in accordance with their respective Percentage Interests.

(b) **NET LOSSES.** After giving effect to the special allocations set forth in Section 6.1(d), Net Losses for each taxable period and all items of income, gain, loss and deduction taken into account in computing Net Losses for such taxable period shall be allocated as follows:

(i) First, 1% to the General Partner and 99% to the Unitholders, Pro Rata, until the aggregate Net Losses allocated pursuant to this Section 6.1(b)(i) for the current taxable period and all previous taxable periods is equal to the aggregate Net Income allocated to such Partners pursuant to Section 6.1(a)(iii) for all previous taxable periods, provided that the Net Losses shall not be allocated pursuant to this Section 6.1(b)(i) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable period (or increase any existing deficit balance in its Adjusted Capital Account);

(ii) Second, 1% to the General Partner and 99% to the Unitholders, Pro Rata; provided, that Net Losses shall not be allocated pursuant to this Section 6.1(b)(ii) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable period (or increase any existing deficit balance in its Adjusted Capital Account);

(iii) Third, the balance, if any, 100% to the General Partner.

(c) **NET TERMINATION GAINS AND LOSSES.** After giving effect to the special allocations set forth in Section 6.1(d), all items of income, gain, loss and deduction taken into account in computing Net Termination Gain or Net Termination Loss for each taxable period shall be allocated in the same manner as such Net Termination Gain or Net Termination Loss is allocated hereunder. All allocations under this Section 6.1(c) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 6.1 and after all distributions of Available Cash provided under Sections 6.4 and 6.5 have been made; provided, however, that solely for purposes of this Section 6.1(c), Capital Accounts shall not be adjusted for distributions made pursuant to Section 12.4.

(i) If a Net Termination Gain is recognized (or deemed recognized pursuant to Section 5.5(d)), such Net Termination Gain shall be allocated among the Partners in the following manner (and the Capital Accounts of the Partners shall be increased by the amount so allocated in each of the following subclauses, in the order listed, before an allocation is made pursuant to the next succeeding subclause):

(A) First, to each Partner having a deficit balance in its Capital Account, in the proportion that such deficit balance bears to the total deficit balances in the Capital Accounts of all Partners, until each such Partner has been allocated Net Termination Gain equal to any such deficit balance in its Capital Account;

(B) Second, 99% to all Unitholders holding Common Units, Pro Rata, and 1% to the General Partner until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Capital plus (2) the First Target Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(a) with respect to such Common Unit for such Quarter (the amount determined pursuant to this clause (2) is hereinafter defined as the "UNPAID FTD");

(C) Third, 85.8673% to all Unitholders, Pro Rata, 13.1327% to the holders of the Incentive Distribution Rights, Pro Rata, and 1% to the General Partner until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Capital plus (2) the Unpaid FTD, plus (3) the excess of (aa) the Second Target Distribution less the First Target Distribution for each Quarter after the date of this Agreement over (bb) the cumulative per Unit amount of any distributions of Operating Surplus made pursuant to Section 6.4(b) after the date of this Agreement;

(D) Finally, any remaining amount 75.7653% to all Unitholders, Pro Rata, 23.2347% to the holders of the Incentive Distribution Rights, Pro Rata, and 1% to the General Partner.

(ii) If a Net Termination Loss is recognized (or deemed recognized pursuant to Section 5.5(d)), such Net Termination Loss shall be allocated among the Partners in the following manner (and the Capital Accounts of the Partners shall be decreased by the amount so allocated in each of the following subclauses, in the order listed, before an allocation is made pursuant to the next succeeding subclause):

(A) First, 99% to all Unitholders holding Common Units, Pro Rata, and 1% to the General Partner until the Capital Account in respect of each Common Unit then Outstanding has been reduced to zero; and

(B) Second, the balance, if any, 100% to the General Partner.

(d) SPECIAL ALLOCATIONS. Notwithstanding any other provision of this Section 6.1, the following special allocations shall be made for such taxable period:

(i) PARTNERSHIP MINIMUM GAIN CHARGEBACK. Notwithstanding any other provision of this Section 6.1, if there is a net decrease in Partnership Minimum Gain during any Partnership taxable period, each Partner shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i). For purposes of this Section 6.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(d) with respect to such taxable period (other than an allocation pursuant to Sections 6.1(d)(vi) and 6.1(d)(vii)). This Section 6.1(d)(i) is intended to comply with the Partnership Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) CHARGEBACK OF PARTNER NONRECOURSE DEBT MINIMUM GAIN. Notwithstanding any other provision of this Section 6.1 (other than Section 6.1(d)(i)), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Partnership taxable period, any Partner with a share of Partner Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii). For purposes of this Section 6.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(d), other than Section 6.1(d)(i) and other than an allocation pursuant to Sections 6.1(d)(vi) and 6.1(d)(vii), with respect to such taxable period. This Section 6.1(d)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) PRIORITY ALLOCATIONS. (A) If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 12.4) to any Unitholder with respect to its Units for any taxable period is greater (on a per Unit basis) than the amount of cash or the Net Agreed Value of property distributed to the other Unitholders with respect to their Units (on a per Unit basis), then (1) each Unitholder receiving such greater cash or property distribution shall be allocated gross income in an amount equal to the product of (aa) the amount by which the distribution (on a per Unit basis) to such Unitholder exceeds the distribution (on a per Unit basis) to the Unitholders receiving the smallest distribution and (bb) the number of Units held by the Unitholder receiving the greater distribution; and (2) the General Partner shall be allocated gross income in an aggregate amount equal to 1/99th of the sum of the amounts allocated in clause (1) above.



(B) After the application of Section 6.1(d)(iii)(A), all or any portion of the remaining items of Partnership gross income or gain for the taxable period, if any, shall be allocated 100% to the holders of Incentive Distribution Rights, Pro Rata, until the aggregate amount of such items allocated to the holders of Incentive Distribution Rights pursuant to this paragraph 6.1(d)(iii)(B) for the current taxable period and all previous taxable periods is equal to the cumulative amount of all Incentive Distributions made to the holders of Incentive Distribution Rights from the Closing Date to a date 45 days after the end of the current taxable period.

(iv) *QUALIFIED INCOME OFFSET.* In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible unless such deficit balance is otherwise eliminated pursuant to Section 6.1(d)(i) or (ii).

(v) *GROSS INCOME ALLOCATIONS.* In the event any Partner has a deficit balance in its Capital Account at the end of any Partnership taxable period in excess of the sum of (A) the amount such Partner is required to restore pursuant to the provisions of this Agreement and (B) the amount such Partner is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided, that an allocation pursuant to this Section 6.1(d)(v) shall be made only if and to the extent that such Partner would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(d)(v) were not in this Agreement.

(vi) *NONRECOURSE DEDUCTIONS.* Nonrecourse Deductions for any taxable period shall be allocated to the Partners in accordance with their respective Percentage Interests. If the General Partner determines in its good faith discretion that the Partnership's Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Treasury Regulations promulgated under Section 704(b) of the Code, the General Partner is authorized, upon notice to the other Partners, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(vii) *PARTNER NONRECOURSE DEDUCTIONS.* Partner Nonrecourse Deductions for any taxable period shall be allocated 100% to the Partner that bears the Economic Risk of Loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Partner bears the Economic Risk of Loss with respect to a Partner Nonrecourse Debt, such Partner Nonrecourse Deductions attributable thereto shall be allocated between or among such Partners in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) *NONRECOURSE LIABILITIES.* For purposes of Treasury Regulation Section 1.752-3(a)(3), the Partners agree that Nonrecourse Liabilities of the Partnership in excess of the sum of (A) the amount of Partnership Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Partners in accordance with their respective Percentage Interests.

(ix) *CODE SECTION 754 ADJUSTMENTS.* To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(c) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(x) *[INTENTIONALLY OMITTED.]*

(xi) *CURATIVE ALLOCATION.*

(A) Notwithstanding any other provision of this Section 6.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss and deduction allocated to each Partner pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Partner under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in this Section 6.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain and (2) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Nonrecourse Debt Minimum Gain. Allocations pursuant to this Section 6.1(d)(xi)(A) shall only be made with respect to Required Allocations to the extent the General Partner reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners. Further, allocations pursuant to this Section 6.1(d)(xi)(A) shall be deferred to the extent the General Partner reasonably determines that such allocations are likely to be offset by subsequent Required Allocations.

(B) The General Partner shall have reasonable discretion, with respect to each taxable period, to (1) apply the provisions of Section 6.1(d)(xi)(A) in whatever order is most likely to minimize the economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations pursuant to Section 6.1(d)(xi)(A) among the Partners in a manner that is likely to minimize such economic distortions.

(xii) *CORRECTIVE AND OTHER ALLOCATIONS.* In the event of any allocation of Additional Book Basis Derivative Items or any Book-Down Event or any recognition of a Net Termination Loss, the following rules shall apply:

(A) Except as provided in Section 6.1(d)(xii)(B), in the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 5.5(d) hereof) with respect to any Partnership property, the General Partner shall allocate such Additional Book Basis Derivative Items (1) to (aa) the holders of Incentive Distribution Rights and (bb) the General Partner in the same manner that the Unrealized Gain or Unrealized Loss attributable to such property is allocated pursuant to Section 5.5(d)(i) or Section 5.5(d)(ii) and (2) to all Unitholders, Pro Rata, to the extent that the Unrealized Gain or Unrealized Loss attributable to such property is allocated to any Unitholders pursuant to Section 5.5(d)(i) or Section 5.5(d)(ii).

(B) In the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 5.5(d) or an allocation of Net Termination Gain or Net Termination Loss under Section 6.1(c)) as a result of a sale or other taxable disposition of any Partnership asset that is an Adjusted Property ("*DISPOSED OF ADJUSTED PROPERTY*"), the General Partner shall allocate additional items of gross income and gain away from the holders of Incentive Distribution Rights and the General Partner to the Unitholders, or additional items of deduction and loss away from the Unitholders to the holders of Incentive Distribution Rights and the General Partner, to the extent that the Additional Book Basis Derivative Items allocated to the Unitholders exceed their Share of Additional Book Basis Derivative Items with respect to such Disposed of Adjusted Property. For this purpose, the Unitholders shall be treated as being allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Unitholders under this Agreement (e.g., Additional Book Basis Derivative Items taken into account in computing cost of goods sold would reduce the amount of book income otherwise available for allocation among the Partners). Any allocation made pursuant to this Section 6.1(d)(xii)(B) shall be made after all of the other Agreed Allocations have been made as if this Section 6.1(d)(xii) were not in this Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

(C) In the case of any negative adjustments to the Capital Accounts of the Partners resulting from a Book-Down Event or from the recognition of a Net Termination Loss, such negative adjustment (1) shall first be allocated, to the extent of the Aggregate Remaining Net Positive Adjustments, in such a manner, as reasonably determined by the General Partner, that to the extent possible the aggregate Capital Accounts of the Partners will equal the amount that would have been the Capital Account balance of the Partners if no prior Book-Up Events had occurred, and (2) any negative adjustment in excess of the Aggregate Remaining Net Positive Adjustments shall be allocated pursuant to Section 6.1(c).

(D) In making the allocations required under this Section 6.1(d)(xii), the General Partner, in its sole discretion, may apply whatever conventions or other methodology it deems reasonable to satisfy the purpose of this Section 6.1(d)(xii).

## **SECTION 6.2 ALLOCATIONS FOR TAX PURPOSES.**

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Partners in the same manner as its correlative item of "BOOK" income, gain, loss or deduction is allocated pursuant to Section 6.1.

(b) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for federal income tax purposes among the Partners as follows:

(i) (A) In the case of a Contributed Property, such items attributable thereto shall be allocated among the Partners in the manner provided under Section 704(c) of the Code that takes into account the variation between the Agreed Value of such property and its adjusted basis at the time of contribution; and (B) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Partners in the same manner as its correlative item of "BOOK" gain or loss is allocated pursuant to Section 6.1.

(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 5.5(d)(i) or 5.5(d)(ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 6.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of "BOOK" gain or loss is allocated pursuant to Section 6.1.

(iii) The General Partner shall apply the principles of Treasury Regulation Section 1.704-3(d) to eliminate Book-Tax Disparities.

(c) For the proper administration of the Partnership and for the preservation of uniformity of the Limited Partner Interests (or any class or classes thereof), the General Partner shall have sole discretion to (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations for federal income tax purposes of income (including, without limitation, gross income) or deductions; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.2(c) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Limited Partner Interests issued and Outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(d) The General Partner in its discretion may determine to depreciate or amortize the portion of an adjustment under Section 743(b) of the Code attributable to unrealized appreciation in any Adjusted Property (to the extent of the unamortized Book-Tax Disparity) using a predetermined rate derived from the depreciation or amortization method and useful life applied to the Partnership's common basis of such property, despite any inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6). If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Limited Partner Interests in the same month would receive depreciation and amortization deductions, based upon the same applicable rate as if they had purchased a direct interest in the Partnership's property. If the General Partner chooses not to utilize such aggregate method, the General Partner may use any other reasonable depreciation and amortization conventions to preserve the uniformity of the intrinsic tax characteristics of any Limited Partner Interests, so long as such conventions would not have a material adverse effect on the Limited Partners or the Record Holders of any class or classes of Limited Partner Interests.

(e) Any gain allocated to the Partners upon the sale or other taxable disposition of any Partnership asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 6.2, be characterized as Recapture Income in the same proportions and to the same extent as such Partners (or their predecessors in interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

(f) All items of income, gain, loss, deduction and credit recognized by the Partnership for federal income tax purposes and allocated to the Partners in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code which may be made by the Partnership; provided, however, that such allocations, once made, shall be adjusted as necessary or appropriate, as determined by the General Partner, to take into account those adjustments permitted or required by Sections 734 and 743 of the Code.

(g) Each item of Partnership income, gain, loss and deduction shall, for federal income tax purposes, be determined on an annual basis and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of each month; provided, however, that gain or loss on a sale or other disposition of any assets of the Partnership other than in the ordinary course of business shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the month in which such gain or loss is recognized for federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation as it determines necessary, to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

(h) Allocations that would otherwise be made to a Limited Partner under the provisions of this Article VI shall instead be made to the beneficial owner of Limited Partner Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner in its sole discretion.

### **SECTION 6.3 REQUIREMENT AND CHARACTERIZATION OF DISTRIBUTIONS; DISTRIBUTIONS TO RECORD HOLDERS.**

(a) Within 45 days following the end of each Quarter, an amount equal to 100% of Available Cash with respect to such Quarter shall, subject to Section 17-607 of the Delaware Act, be distributed in accordance with this Article VI by the Partnership to the Partners as of the Record Date selected by the General Partner in its reasonable discretion. All amounts of Available Cash distributed by the Partnership on any date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash theretofore distributed by the Partnership to the Partners pursuant to Section 6.4 equals the Operating Surplus from the Closing Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Partnership on such date shall, except as otherwise provided in Section 6.5, be deemed to be "*CAPITAL SURPLUS*." All distributions required to be made under this Agreement shall be made subject to Section 17-607 of the Delaware Act.

(b) Notwithstanding Section 6.3(a), in the event of the dissolution and liquidation of the Partnership, all receipts received during or after the Quarter in which the Liquidation Date occurs, other than from borrowings described in (a)(ii) of the definition of Available Cash, shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

(c) The General Partner shall have the discretion to treat taxes paid by the Partnership on behalf of, or amounts withheld with respect to, all or less than all of the Partners, as a distribution of Available Cash to such Partners.

(d) Each distribution in respect of a Partnership Interest shall be paid by the Partnership, directly or through the Transfer Agent or through any other Person or agent, only to the Record Holder of such Partnership Interest as of the Record Date set for such distribution. Such payment shall constitute full payment and satisfaction of the Partnership's liability in respect of such payment, regardless of any claim of any Person who may have an interest in such payment by reason of an assignment or otherwise.

#### **SECTION 6.4 DISTRIBUTIONS OF AVAILABLE CASH FROM OPERATING SURPLUS.**

Available Cash with respect to any Quarter that is deemed to be Operating Surplus pursuant to the provisions of Section 6.3 or 6.5, subject to Section 17-607 of the Delaware Act, shall be distributed as follows, except as otherwise required by Section 5.6(b) in respect of additional Partnership Securities issued pursuant thereto:

(a) First, 99% to all Unitholders, Pro Rata, and 1% to the General Partner until there has been distributed in respect of each Unit then Outstanding an amount equal to the First Target Distribution for such Quarter;

(b) Second, 85.8673% to all Unitholders, Pro Rata, and 13.1327% to the holders of the Incentive Distribution Rights, Pro Rata, and 1% to the General Partner until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution for such Quarter;

(c) Thereafter, 75.7653% to all Unitholders, Pro Rata, and 23.2347% to the holders of the Incentive Distribution Rights, Pro Rata, and 1% to the General Partner;

provided, however, if the First Target Distribution and the Second Target Distribution have been reduced to zero pursuant to the second sentence of Section 6.6(a), the distribution of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made solely in accordance with Section 6.4(c).

#### **SECTION 6.5 DISTRIBUTIONS OF AVAILABLE CASH FROM CAPITAL SURPLUS.**

Available Cash that is deemed to be Capital Surplus pursuant to the provisions of Section 6.3(a) shall, subject to Section 17-607 of the Delaware Act, be distributed, unless the provisions of Section 6.3 require otherwise, 99% to all Unitholders, Pro Rata, and 1% to the General Partner until a hypothetical holder of a Common Unit acquired on the Closing Date has received with respect to such Common Unit, during the period since the Closing Date through such date, distributions of Available Cash that are deemed to be Capital Surplus in an aggregate amount equal to the Initial Unit Price. Thereafter, all Available Cash shall be distributed as if it were Operating Surplus and shall be distributed in accordance with Section 6.4.

#### **SECTION 6.6 ADJUSTMENT OF MINIMUM QUARTERLY DISTRIBUTION AND TARGET DISTRIBUTION LEVELS.**

(a) The Minimum Quarterly Distribution, First Target Distribution and Second Target Distribution shall be proportionately adjusted in the event of any distribution, combination or subdivision (whether effected by a distribution payable in Units or otherwise) of Units or other Partnership Securities in accordance with Section 5.10. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the then applicable Minimum Quarterly Distribution, First Target Distribution and Second Target Distribution shall be adjusted proportionately downward to equal the product obtained by multiplying the otherwise applicable Minimum Quarterly Distribution, First Target Distribution and Second Target Distribution, as the case may be, by a fraction of which the numerator is the Unrecovered Capital of the Common Units immediately after giving effect to such distribution and of which the denominator is the Unrecovered Capital of the Common Units immediately prior to giving effect to such distribution. These adjustments will not apply to the quarter in which the distributions of Available Cash that are deemed to be from Capital Surplus trigger these adjustments.

(b) The Minimum Quarterly Distribution, First Target Distribution and Second Target Distribution shall also be subject to adjustment pursuant to Section 6.9.

**SECTION 6.7 [INTENTIONALLY OMITTED.]**

**SECTION 6.8 SPECIAL PROVISIONS RELATING TO THE HOLDERS OF INCENTIVE DISTRIBUTION RIGHTS.**

Notwithstanding anything to the contrary set forth in this Agreement, the holders of the Incentive Distribution Rights (a) shall (i) possess the rights and obligations provided in this Agreement with respect to a Limited Partner pursuant to Articles III and VII and (ii) have a Capital Account as a Partner pursuant to Section 5.5 and all other provisions related thereto and (b) shall not (i) be entitled to vote on any matters requiring the approval or vote of the holders of Outstanding Units, (ii) be entitled to any distributions other than as provided in Sections 6.4(b), 6.4(c) and 12.4 or (iii) be allocated items of income, gain, loss or deduction other than as specified in this Article VI.

**SECTION 6.9 ENTITY-LEVEL TAXATION.**

If legislation is enacted or the interpretation of existing legislation is modified by the relevant governmental authority which causes the Partnership, any Intermediate Partnership or Northern Border PipeLine to be treated as an association taxable as a corporation or otherwise subjects the Partnership, any Intermediate Partnership or Northern Border PipeLine to entity-level taxation for federal income tax purposes, the then applicable Minimum Quarterly Distribution, First Target Distribution and Second Target Distribution shall be adjusted to equal the product obtained by multiplying (a) the amount thereof by (b) one minus the sum of (i) the highest marginal federal corporate (or other entity, as applicable) income tax rate that could apply to the Partnership, any Intermediate Partnership or Northern Border PipeLine for the taxable year of the Partnership, any Intermediate Partnership or Northern Border PipeLine in which such Quarter occurs (expressed as a decimal) plus (ii) the effective overall state and local income tax rate (expressed as a decimal) that would have been applicable to the Partnership, any Intermediate Partnership or Northern Border PipeLine for the calendar year next preceding the calendar year in which such Quarter occurs (after taking into account the benefit of any deduction allowable for federal income tax purposes with respect to the payment of state and local income taxes), but only to the extent of the increase in such rates resulting from such legislation or interpretation. Such effective overall state and local income tax rate shall be determined for the taxable year next preceding the first taxable year during which the Partnership, any Intermediate Partnership or Northern Border PipeLine is taxable for federal income tax purposes as an association taxable as a corporation or is otherwise subject to entity-level taxation by determining such rate as if the Partnership, any Intermediate Partnership or Northern Border PipeLine had been subject to such state and local taxes during such preceding taxable year.

**ARTICLE VII  
MANAGEMENT AND OPERATION OF BUSINESS**

**SECTION 7.1 MANAGEMENT.**

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner or Assignee shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or which are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 7.3, shall have full power and authority to do all things and on such terms as it, in its sole discretion, may deem necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

(i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness, including indebtedness that is convertible into Partnership Securities, and the incurring of any other obligations;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.3);

(iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership Group or making investments in or loans to JV Entities; subject to Section 7.6(a), the lending of funds to other Persons (including the Intermediate Partnerships); the repayment of obligations of the Partnership Group or any JV Entity and the making of capital contributions to any Group Member or JV Entity;

(v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including contracts, conveyances or instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if these arrangements result in the terms of the transaction being less favorable to the Partnership than would otherwise be the case);

(vi) the distribution of Partnership cash;

(vii) the selection and dismissal of employees (including employees having titles such as “president,” “vice president,” “secretary” and “treasurer”) and agents, outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring;

(viii) the maintenance of such insurance for the benefit of the Partnership Group and the Partners as it deems necessary or appropriate;

(ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any further limited or general partnerships, joint ventures, corporations or other relationships (including the acquisition of interests in, and the contributions of property to, the Intermediate Partnerships from time to time) subject to the restrictions set forth in Section 2.4;

(x) the control of any matters affecting the rights and obligations of the Partnership, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation and the incurring of legal expense and the settlement of claims and litigation;

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Limited Partner Interests from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 4.8);

(xiii) unless restricted or prohibited by Section 5.7, the issuance, purchase, sale or other acquisition or disposition of Partnership Securities or options, rights, warrants and appreciation rights relating to Partnership Securities; and

(xiv) the undertaking of any action in connection with the Partnership’s participation in the Intermediate Partnerships as a partner.

(b) Notwithstanding any other provision of this Agreement, the Intermediate Partnership Agreements, the Delaware Act or any applicable law, rule or regulation, each of the Partners and the Assignees and each other Person who may acquire an interest in Partnership Securities agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them, of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XV), shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

**SECTION 7.2 CERTIFICATE OF LIMITED PARTNERSHIP.**

The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act and shall use all reasonable efforts to cause to be filed such other certificates or documents as may be determined by the General Partner in its sole discretion to be reasonable and necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware or any other state in which the Partnership may elect to do business or own property. To the extent that such action is determined by the General Partner in its sole discretion to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all things to maintain the Partnership as a limited partnership (or a partnership or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner.

**SECTION 7.3 RESTRICTIONS ON GENERAL PARTNER'S AUTHORITY.**

(a) The General Partner may not, without written approval of the specific act by holders of all of the Outstanding Limited Partner Interests or by other written instrument executed and delivered by holders of all of the Outstanding Limited Partner Interests subsequent to the date of this Agreement, take any action in contravention of this Agreement, including, except as otherwise provided in this Agreement, (i) committing any act that would make it impossible to carry on the ordinary business of the Partnership; (ii) possessing Partnership property, or assigning any rights in specific Partnership property, for other than a Partnership purpose; (iii) admitting a Person as a Partner; (iv) amending this Agreement in any manner; or (v) transferring its interest as general partner of the Partnership.

(b) Except as provided in Articles XII and XIV, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the Partnership's assets in a single transaction or a series of related transactions (including by way of merger, consolidation or other combination) or approve on behalf of the Partnership the sale, exchange or other disposition of all or substantially all of the assets of the Intermediate Partnerships, taken as a whole, without the approval of holders of a Unit Majority; provided however that this provision shall not preclude or limit the General Partner's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Partnership or the Intermediate Partnerships and shall not apply to any sale of any or all of the assets of the Partnership or the Intermediate Partnerships pursuant to the foreclosure of, or other realization upon, any such encumbrance. Without the approval of holders of a Unit Majority, the General Partner shall not, on behalf of the Partnership, (i) consent to any amendment to any Intermediate Partnership Agreement or, except as expressly permitted by Section 7.9(d), take any action permitted to be taken by a partner of an Intermediate Partnership, in either case, that would have a material adverse effect on the Partnership as a partner of the Intermediate Partnership or (ii) except as permitted under Sections 4.6, 11.1 or 11.2, elect or cause the Partnership to elect a successor general partner of the Partnership or any Intermediate Partnership.

(c) The General Partner may not approve or consent to the conversion of Northern Border PipeLine or any other JV Entity that is not then taxable as an entity for federal income tax purposes to corporate form without first obtaining the approval of the holders of at least a majority of the Outstanding Units.



## **SECTION 7.4 REIMBURSEMENT OF THE GENERAL PARTNER.**

(a) Except as provided in this Section 7.4 and elsewhere in this Agreement or in any Intermediate Partnership Agreement, the General Partner shall not be compensated for its services as general partner or managing member of any Group Member.

(b) The General Partner shall be reimbursed on a monthly basis, or such other reasonable basis as the General Partner may determine in its sole discretion, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership (including salary, bonus, incentive compensation and other amounts paid to any Person including Affiliates of the General Partner to perform services for the Partnership or for the General Partner in the discharge of its duties to the Partnership), and (ii) all other necessary or appropriate expenses allocable to the Partnership or otherwise reasonably incurred by the General Partner in connection with operating the Partnership's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership in any reasonable manner determined by the General Partner in its sole discretion. Reimbursements pursuant to this Section 7.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.7.

(c) Subject to Section 5.7, the General Partner, in its sole discretion and without the approval of the Limited Partners (who shall have no right to vote in respect thereof), may propose and adopt on behalf of the Partnership employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Partnership Securities or options to purchase Partnership Securities), or cause the Partnership to issue Partnership Securities in connection with, or pursuant to, any employee benefit plan, employee program or employee practice maintained or sponsored by the General Partner or any of its Affiliates, in each case for the benefit of employees of the General Partner, any Group Member or any Affiliate, or any of them, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group. The Partnership agrees to issue and sell to the General Partner or any of its Affiliates any Partnership Securities that the General Partner or such Affiliate is obligated to provide to any employees pursuant to any such employee benefit plans, employee programs or employee practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliate of Partnership Securities purchased by the General Partner or such Affiliate from the Partnership to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.4(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices adopted by the General Partner as permitted by this Section 7.4(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 11.1 or 11.2 or the transferee of or successor to all of the General Partner's General Partner Interest pursuant to Section 4.6.

## **SECTION 7.5 OUTSIDE ACTIVITIES.**

(a) After the Closing Date, the General Partner, for so long as it is the General Partner of the Partnership (i) agrees that its sole business will be to act as the general partner (or managing member) of the Partnership, the Intermediate Partnerships, and any other partnership or limited liability company of which the Partnership or an Intermediate Partnership is, directly or indirectly, a partner or member and to undertake activities that are ancillary or related thereto (including being a limited partner in the Partnership) and (ii) shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (A) its performance as general partner (or managing member) of one or more Group Members or as described in or contemplated by the Registration Statement or (B) the acquiring, owning or disposing of debt or equity securities or interests in any Group Member.

(b) Except as specifically restricted by Section 7.5(a), each Indemnitee (other than the General Partner) shall have the right to engage in businesses of any and every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by any Group Member or JV Entity, independently or with others, including business interests and activities in direct competition with the business and activities of any Group Member or JV Entity, and none of the same shall constitute a breach of this Agreement or any duty express or implied by law to any Group Member or JV Entity or any Partner or Assignee. Neither any Group Member, any JV Entity, any Limited Partner nor any other Person shall have any rights by virtue of this Agreement, the Intermediate Partnership Agreements or the partnership relationship established hereby or thereby in any business ventures of any Indemnitee.

(c) Subject to the terms of Section 7.5(a) and Section 7.5(b), but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Indemnitees (other than the General Partner) in accordance with the provisions of this Section 7.5 is hereby approved by the Partnership and all Partners, (ii) it shall be deemed not to be a breach of the General Partner's fiduciary duty or any other obligation of any type whatsoever of the General Partner for the Indemnitees (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership and (iii) the General Partner and the Indemnitees shall have no obligation to present business opportunities to the Partnership.

(d) The General Partner and any of its Affiliates may acquire Units or other Partnership Securities in addition to those acquired on the Closing Date and, except as otherwise provided in this Agreement, shall be entitled to exercise all rights, powers and privileges (as General Partner, Limited Partner or Assignee, as applicable) relating to such Units or Partnership Securities.

(e) The term "AFFILIATES" when used in Section 7.5(d) with respect to the General Partner shall not include any Group Member or any Subsidiary of a Group Member.

(f) Anything in this Agreement to the contrary notwithstanding, to the extent that provisions of Sections 7.7, 7.8, 7.9, 7.10 or other Sections of this Agreement purport or are interpreted to have the effect of restricting the fiduciary duties that might otherwise, as a result of Delaware or other applicable law, be owed by the General Partner to the Partnership and its Limited Partners, or to constitute a waiver or consent by the Limited Partners to any such restriction, such provisions shall be inapplicable and have no effect in determining whether the General Partner has complied with its fiduciary duties in connection with determinations made by it under Section 7.5(a).

#### **SECTION 7.6 LOANS FROM THE GENERAL PARTNER; LOANS OR CONTRIBUTIONS FROM THE PARTNERSHIP; CONTRACTS WITH AFFILIATES; CERTAIN RESTRICTIONS ON THE GENERAL PARTNER.**

(a) The General Partner or its Affiliates may lend to any Group Member or JV Entity, and any Group Member or JV Entity may borrow from the General Partner or any of its Affiliates, funds needed or desired by the Group Member or JV Entity for such periods of time and in such amounts as the General Partner may determine; provided, however, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arm's-length basis (without reference to the lending party's financial abilities or guarantees). The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 7.6(a) and Section 7.6(b), the term "GROUP MEMBER" shall include any Affiliate of a Group Member that is controlled by the Group Member. No Group Member may lend funds to the General Partner or any of its Affiliates (other than another Group Member).

(b) The Partnership may lend or contribute to any Group Member or JV Entity, and any Group Member or JV Entity may borrow from the Partnership, funds on terms and conditions established in the sole discretion of the General Partner; provided, however, that the Partnership may not charge the Group Member or JV Entity interest at a rate less than the rate that would be charged to the Group Member or JV Entity (without reference to the General Partner's financial abilities or guarantees) by unrelated lenders on comparable loans. The foregoing authority shall be exercised by the General Partner in its sole discretion and shall not create any right or benefit in favor of any Group Member, JV Entity or any other Person.

(c) The General Partner may itself, or may enter into an agreement with any of its Affiliates to, render services to a Group Member or JV Entity or to the General Partner in the discharge of its duties as general partner of the Partnership. Any services rendered to a Group Member or JV Entity by the General Partner or any of its Affiliates shall be on terms that are fair and reasonable to the Partnership; provided, however, that the requirements of this Section 7.6(c) shall be deemed satisfied as to (i) any transaction approved by Special Approval, (ii) any transaction, the terms of which are no less favorable to such Group Member or JV Entity than those generally being provided to or available from unrelated third parties or (iii) any transaction that, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to such Group Member or JV Entity), is equitable to such Group Member or JV Entity. The provisions of Section 7.4 shall apply to the rendering of services described in this Section

(d) The Partnership Group may transfer assets to joint ventures, other partnerships, corporations, limited liability companies or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions as are consistent with this Agreement and applicable law.

(e) Neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to, or purchase any property from, the Partnership, any other Group Member or any JV Entity directly or indirectly, except pursuant to transactions that are fair and reasonable to the Partnership; provided, however, that the requirements of this Section 7.6(e) shall be deemed to be satisfied as to (i) the transactions effected pursuant to the Transaction Agreements, (ii) any transaction approved by Special Approval, (iii) any transaction, the terms of which are no less favorable to the Partnership than those generally being provided to or available from unrelated third parties, or (iv) any transaction that, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership), is equitable to the Partnership. With respect to any contribution of assets to the Partnership in exchange for Partnership Securities, the Conflicts Committee, in determining whether the appropriate number of Partnership Securities are being issued, may take into account, among other things, the fair market value of the assets, the liquidated and contingent liabilities assumed, the tax basis in the assets, the extent to which tax-only allocations to the transferor will protect the existing partners of the Partnership against a low tax basis, and such other factors as the Conflicts Committee deems relevant under the circumstances.

(f) The General Partner and its Affiliates will have no obligation to permit any Group Member or JV Entity to use any facilities or assets of the General Partner and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use, nor shall there be any obligation on the part of the General Partner or its Affiliates to enter into such contracts.

(g) Without limitation of Sections 7.6(a) through 7.6(f), and notwithstanding anything to the contrary in this Agreement (including Sections 7.6(a) through 7.6(f)), the existence of the conflicts of interest described in the Registration Statement have previously been approved by the Partners.

#### **SECTION 7.7 INDEMNIFICATION.**

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee; provided, that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in, or (in the case of a Person other than the General Partner) not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful; and provided further that no indemnification pursuant to this Section 7.7 shall be available to the General Partner or its Affiliates with respect to their obligations incurred pursuant to the Transaction Agreements (other than obligations incurred by the General Partner on behalf of the Partnership or the Intermediate Partnerships). The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.7(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 7.7.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Limited Partner Interests, as a matter of law or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Partnership may purchase and maintain (or reimburse the General Partner or its Affiliates for the cost of) insurance, on behalf of the General Partner, its Affiliates and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expense that may be incurred by such Person in connection with the Partnership's activities or such Person's activities on behalf of the Partnership, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "FINES" within the meaning of Section 7.7(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is in, or not opposed to, the best interests of the Partnership.

(f) In no event may an Indemnitee subject the Limited Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.7 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnitee under and in accordance with the provisions of this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

## **SECTION 7.8 LIABILITY OF INDEMNITIES.**

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Limited Partners, the Assignees or any other Persons who have acquired interests in the Partnership Securities, for losses sustained or liabilities incurred as a result of any act or omission if such Indemnitee acted in good faith.

(b) Subject to its obligations and duties as General Partner set forth in Section 7.1(a), the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

(c) To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to the Partners, the General Partner and any other Indemnitee acting in connection with the Partnership's business or affairs shall not be liable to the Partnership or to any Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict or otherwise modify the duties and liabilities of an Indemnitee otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of such Indemnitee.

(d) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability to the Partnership, the Limited Partners, the General Partner, and the Partnership's and General Partner's directors, officers and employees under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

## **SECTION 7.9 RESOLUTION OF CONFLICTS OF INTEREST.**

(a) Unless otherwise expressly provided in this Agreement or any Intermediate Partnership Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership, any Intermediate Partnership, any Partner or any Assignee, on the other, any resolution or course of action by the General Partner or its Affiliates in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, of the Intermediate Partnership Agreements, of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action is, or by operation of this Agreement is deemed to be, fair and reasonable to the Partnership. The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of such resolution. Any conflict of interest and any resolution of such conflict of interest shall be conclusively deemed fair and reasonable to the Partnership if such conflict of interest or resolution is (i) approved by Special Approval (as long as the material facts known to the General Partner or any of its Affiliates regarding any proposed transaction were disclosed to the Conflicts Committee at the time it gave its approval), (ii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iii) fair to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner may also adopt a resolution or course of action that has not received Special Approval. The General Partner (including the Conflicts Committee in connection with Special Approval) shall be authorized in connection with its determination of what is "fair and reasonable" to the Partnership and in connection with its resolution of any conflict of interest to consider (A) the relative interests of any party to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interest; (B) any customary or accepted industry practices and any customary or historical dealings with a particular Person; (C) any applicable generally accepted accounting practices or principles; and (D) such additional factors as the General Partner (including the Conflicts Committee) determines in its sole discretion to be relevant, reasonable or appropriate under the circumstances. Nothing contained in this Agreement, however, is intended to nor shall it be construed to require the General Partner (including the Conflicts Committee) to consider the interests of any Person other than the Partnership. In the absence of bad faith by the General Partner, the resolution, action or terms so made, taken or provided by the General Partner with respect to such matter shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or, to the extent permitted by law, under the Delaware Act or any other law, rule or regulation.

(b) Whenever this Agreement or any other agreement contemplated hereby provides that the General Partner or any of its Affiliates is permitted or required to make a decision (i) in its "sole discretion" or "discretion," that it deems "necessary or appropriate" or "necessary or advisable" or under a grant of similar authority or latitude, except as otherwise provided herein, the General Partner or such Affiliate shall be entitled to consider only such interests and factors as it desires and shall have no duty or obligation to give any consideration to any interest of, or factors affecting, the Partnership, any other Group Member or JV Entity, any Limited Partner or any Assignee, (ii) it may make such decision in its sole discretion (regardless of whether there is a reference to "sole discretion" or "discretion") unless another express standard is provided for, or (iii) in "good faith" or under another express standard, the General Partner or such Affiliate shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement, any Intermediate Partnership Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation. In addition, any actions taken by the General Partner or such Affiliate consistent with the standards of "reasonable discretion" set forth in the definitions of Available Cash or Operating Surplus shall not constitute a breach of any duty of the General Partner to the Partnership or the Limited Partners. The General Partner shall have no duty, express or implied, to sell or otherwise dispose of any asset of the Partnership Group other than in the ordinary course of business. No borrowing by any Group Member or the approval thereof by the General Partner shall be deemed to constitute a breach of any duty of the General Partner to the Partnership or the Limited Partners by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to enable distributions to the General Partner or its Affiliates (including in their capacities as Limited Partners) to exceed 1% of the total amount distributed to all Partners.

(c) Whenever a particular transaction, arrangement or resolution of a conflict of interest is required under this Agreement to be “fair and reasonable” to any Person, the fair and reasonable nature of such transaction, arrangement or resolution shall be considered in the context of all similar or related transactions.

(d) The Unitholders hereby authorize the General Partner, on behalf of the Partnership as a partner or member of a Group Member, to approve of actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the General Partner pursuant to this Section 7.9.

**SECTION 7.10 OTHER MATTERS CONCERNING THE GENERAL PARTNER.**

(a) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of Counsel) of such Persons as to matters that the General Partner reasonably believes to be within such Person’s professional or expert competence and in accordance with such opinion shall be conclusively presumed to have been done or omitted in good faith.

(c) The General Partner shall have the right, in respect of any of its rights, powers or obligations hereunder, to act through any of its duly authorized officers, a duly appointed attorney or attorneys-in-fact or the duly authorized officers of the Partnership.

(d) Any standard of care and duty imposed by this Agreement or under the Delaware Act or any applicable law, rule or regulation shall be modified, waived or limited, to the extent permitted by law, as required to permit the General Partner to act under this Agreement or any other agreement contemplated by this Agreement and to make any decision pursuant to the authority prescribed in this Agreement, so long as such action is reasonably believed by the General Partner to be in, or not inconsistent with, the best interests of the Partnership.

**SECTION 7.11 PURCHASE OR SALE OF PARTNERSHIP SECURITIES.**

The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Securities. As long as Partnership Securities are held by any Group Member, such Partnership Securities shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner may also purchase or otherwise acquire and sell or otherwise dispose of Partnership Securities for its own account, subject to the provisions of Articles IV and X.

(a) If (i) the General Partner or any Affiliate of the General Partner (including for purposes of this Section 7.12, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner) holds Partnership Securities that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Partnership Securities (the "*HOLDER*") to dispose of the number of Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then upon the request of the General Partner or any of its Affiliates, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Securities covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Partnership Securities specified by the Holder; provided, however, that the Partnership shall not be required to effect more than three registrations pursuant to this Section 7.12(a); and provided further, however, that if the Conflicts Committee determines in its good faith judgment that a postponement of the requested registration for up to six months would be in the best interests of the Partnership and its Partners due to a pending transaction, investigation or other event, the filing of such registration statement or the effectiveness thereof may be deferred for up to six months, but not thereafter. In connection with any registration pursuant to the immediately preceding sentence, the Partnership shall promptly prepare and file (x) such documents as may be necessary to register or qualify the securities subject to such registration under the securities laws of such states as the Holder shall reasonably request; provided, however, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such registration, and (y) such documents as may be necessary to apply for listing or to list the Partnership Securities subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and do any and all other acts and things that may reasonably be necessary or advisable to enable the Holder to consummate a public sale of such Partnership Securities in such states. Except as set forth in Section 7.12(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(b) If the Partnership shall at any time propose to file a registration statement under the Securities Act for an offering of equity securities of the Partnership for cash (other than an offering relating solely to an employee benefit plan), the Partnership shall use all reasonable efforts to include such number or amount of securities held by the Holder in such registration statement as the Holder shall request. If the proposed offering pursuant to this Section 7.12(b) shall be an underwritten offering, then, in the event that the managing underwriter or managing underwriters of such offering advise the Partnership and the Holder in writing that in their opinion the inclusion of all or some of the Holder's Partnership Securities would adversely and materially affect the success of the offering, the Partnership shall include in such offering only that number or amount, if any, of securities held by the Holder which, in the opinion of the managing underwriter or managing underwriters, will not so adversely and materially affect the offering. Except as set forth in Section 7.12(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(c) If underwriters are engaged in connection with any registration referred to in this Section 7.12, the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under Section 7.7, the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder and each Person who controls the Holder (within the meaning of the Securities Act) and their respective directors, officers, employees, members, partners or agents (collectively, "*INDEMNIFIED PERSONS*") against any losses, claims, demands, actions, causes of action, assessments, damages, liabilities (joint or several), costs and expenses (including interest, penalties and reasonable attorneys' fees and disbursements), resulting to, imposed upon, or incurred by the Indemnified Persons, directly or indirectly, under the Securities Act or otherwise (hereinafter referred to in this Section 7.12(c) as a "*CLAIM*" and in the plural as "*CLAIMS*") based upon, arising out of or resulting from any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any Partnership Securities were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; provided, however, that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

(d) The provisions of Section 7.12(a) and Section 7.12(b) shall continue to be applicable with respect to the General Partner (and any of the General Partner's Affiliates) after it ceases to be a Partner of the Partnership, during a period of two years subsequent to the effective date of such cessation and for so long thereafter as is required for the Holder to sell all of the Partnership Securities with respect to which it has requested during such two-year period inclusion in a registration statement otherwise filed or that a registration statement be filed; provided, however, that the Partnership shall not be required to file successive registration statements covering the same Partnership Securities for which registration was demanded during such two-year period. The provisions of Section 7.12(c) shall continue in effect thereafter.

(e) Any request to register Partnership Securities pursuant to this Section 7.12 shall (i) specify the Partnership Securities intended to be offered and sold by the Person making the request, (ii) express such Person's present intent to offer such shares for distribution, (iii) describe the nature or method of the proposed offer and sale of Partnership Securities, and (iv) contain the undertaking of such Person to provide all such information and materials and take all action as may be required in order to permit the Partnership to comply with all applicable requirements in connection with the registration of such Partnership Securities.

#### **SECTION 7.13 RELIANCE BY THIRD PARTIES.**

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that (i) the General Partner and (ii) any officer or attorney-in-fact of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership, has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer or attorney-in-fact as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner or any such officer or attorney-in-fact in connection with any such dealing. In no event shall any Person dealing with the General Partner or any such officer or attorney-in-fact be obligated to ascertain that the terms of the Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or attorney-in-fact. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or any such officer or attorney-in-fact shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

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

#### **SECTION 8.1 RECORDS AND ACCOUNTING.**

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders and Assignees of Units or other Partnership Securities, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device; provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.



**SECTION 8.2 FISCAL YEAR.**

The fiscal year of the Partnership shall be a fiscal year ending December 31.

**SECTION 8.3 REPORTS.**

(a) As soon as practicable, but in no event later than 120 days after the close of each fiscal year of the Partnership, the General Partner shall cause to be mailed or made available by any reasonable means (including posting on or accessible through the Partnership's or the SEC's website) to each Record Holder of a Unit, as of a date selected by the General Partner in its discretion, an annual report containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with U.S. GAAP, including a balance sheet and statements of operations, Partnership equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the General Partner.

(b) To the extent required by applicable law, regulation or rule of any National Securities Exchange on which the Common Units are listed for trading or as the General Partner determines to be necessary or appropriate, as soon as practicable, but in no event later than 90 days after the close of each Quarter except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available by any reasonable means (including posting on or accessible through the Partnership's or the SEC's website) to each Record Holder of a Unit, as of a date selected by the General Partner in its discretion, a report containing unaudited financial statements of the Partnership and such other information as so required, or as the General Partner determines to be necessary or appropriate.

**ARTICLE IX  
TAX MATTERS**

**SECTION 9.1 TAX RETURNS AND INFORMATION.**

The Partnership shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and a taxable year ending on December 31. The tax information reasonably required by Record Holders for federal and state income tax reporting purposes with respect to a taxable year shall be furnished to them within 90 days of the close of the calendar year in which the Partnership's taxable year ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for federal income tax purposes.

**SECTION 9.2 TAX ELECTIONS.**

(a) The Partnership shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the best interests of the Limited Partners. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Limited Partner Interest will be deemed to be the lowest quoted closing price of the Limited Partner Interests on any National Securities Exchange on which such Limited Partner Interests are traded during the calendar month in which such transfer is deemed to occur pursuant to Section 6.2(g) without regard to the actual price paid by such transferee.

(b) Except as otherwise provided herein, the General Partner shall determine whether the Partnership should make any other elections permitted by the Code.

### **SECTION 9.3 TAX CONTROVERSIES.**

Subject to the provisions hereof, the General Partner is designated as the Tax Matters Partner (as defined in the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

### **SECTION 9.4 WITHHOLDING.**

Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines in its discretion to be necessary or appropriate to cause the Partnership and the Intermediate Partnerships to comply with any withholding requirements established under the Code or any other federal, state or local law including, without limitation, pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner or Assignee (including, without limitation, by reason of Section 1446 of the Code), the amount withheld may at the discretion of the General Partner be treated by the Partnership as a distribution of cash pursuant to Section 6.3 in the amount of such withholding from such Partner.

## **ARTICLE X ADMISSION OF PARTNERS**

### **SECTION 10.1 CURRENT PARTNERS.**

The General Partner and the Limited Partners who are Record Holders of the Outstanding Common Units are the current Partners of the Partnership as of the date of this Agreement.

### **SECTION 10.2 ADMISSION OF SUBSTITUTED LIMITED PARTNER.**

By transfer of a Limited Partner Interest in accordance with Article IV, the transferor shall be deemed to have given the transferee the right to seek admission as a Substituted Limited Partner subject to the conditions of, and in the manner permitted under, this Agreement. A transferor of a Certificate representing a Limited Partner Interest shall, however, only have the authority to convey to a purchaser or other transferee who does not execute and deliver a Transfer Application (a) the right to negotiate such Certificate to a purchaser or other transferee and (b) the right to transfer the right to request admission as a Substituted Limited Partner to such purchaser or other transferee in respect of the transferred Limited Partner Interests. Each transferee of a Limited Partner Interest (including any nominee holder or an agent acquiring such Limited Partner Interest for the account of another Person) who executes and delivers a Transfer Application shall, by virtue of such execution and delivery, be an Assignee and be deemed to have applied to become a Substituted Limited Partner with respect to the Limited Partner Interests so transferred to such Person. Such Assignee shall become a Substituted Limited Partner (x) at such time as the General Partner consents thereto, which consent may be given or withheld in the General Partner's discretion, and (y) when any such admission is shown on the books and records of the Partnership. If such consent is withheld, such transferee shall be an Assignee. An Assignee shall have an interest in the Partnership equivalent to that of a Limited Partner with respect to allocations and distributions, including liquidating distributions, of the Partnership. With respect to voting rights attributable to Limited Partner Interests that are held by Assignees, the General Partner shall be deemed to be the Limited Partner with respect thereto and shall, in exercising the voting rights in respect of such Limited Partner Interests on any matter, vote such Limited Partner Interests at the written direction of the Assignee who is the holder of such Limited Partner Interests. If no such written direction is received, such Limited Partner Interests will not be voted. An Assignee shall have no other rights of a Limited Partner.

**SECTION 10.3          ADMISSION OF SUCCESSOR GENERAL PARTNER.**

A successor General Partner approved pursuant to Section 11.1 or 11.2 or the transferee of or successor to all of the General Partner Interest pursuant to Section 4.6 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the predecessor or transferring General Partner pursuant to Section 11.1 or 11.2 or the transfer of the General Partner Interest pursuant to Section 4.6, provided, however, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

**SECTION 10.4          ADMISSION OF ADDITIONAL LIMITED PARTNERS.**

(a) A Person (other than the General Partner, an Initial Limited Partner or a Substituted Limited Partner) who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the General Partner (i) evidence of acceptance in form satisfactory to the General Partner of all of the terms and conditions of this Agreement, including the power of attorney granted in Section 2.6, and (ii) such other documents or instruments as may be required in the discretion of the General Partner to effect such Person's admission as an Additional Limited Partner.

(b) Notwithstanding anything to the contrary in this Section 10.4, no Person shall be admitted as an Additional Limited Partner without the consent of the General Partner, which consent may be given or withheld in the General Partner's discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded as such in the books and records of the Partnership, following the consent of the General Partner to such admission.

**SECTION 10.5          AMENDMENT OF AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP.**

To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership, and the General Partner may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.

**ARTICLE XI  
WITHDRAWAL OR REMOVAL OF PARTNERS**

**SECTION 11.1          WITHDRAWAL OF THE GENERAL PARTNER.**

(a) The General Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any one of the following events (each such event herein referred to as an "*EVENT OF WITHDRAWAL*");

- (i) The General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners (and it shall be deemed that the General Partner has withdrawn pursuant to this Section 11.1(a)(i) if the General Partner voluntarily withdraws as general partner of any Intermediate Partnership);
- (ii) The General Partner transfers all of its rights as General Partner pursuant to Section 4.6;
- (iii) The General Partner is removed pursuant to Section 11.2;

(iv) The General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A)-(C) of this Section 11.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;

(v) A final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the General Partner; or

(vi) (A) in the event the General Partner is a corporation, a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) in the event the General Partner is a partnership or a limited liability company, the dissolution and commencement of winding up of the General Partner; (C) in the event the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) in the event the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise in the event of the termination of the General Partner.

If an Event of Withdrawal specified in Section 11.1(a)(iv), (v) or (vi)(A), (B), (C) or (E) occurs, the withdrawing General Partner shall give notice to the Limited Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on the Closing Date and ending at 12:00 midnight, Eastern Standard Time, on June 30, 2009, the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners; provided that prior to the effective date of such withdrawal, the withdrawal is approved by Unitholders holding at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) and the General Partner delivers to the Partnership an Opinion of Counsel ("*WITHDRAWAL OPINION OF COUNSEL*") that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner or of a limited partner of any Intermediate Partnership or cause the Partnership or any Intermediate Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such); (ii) at any time after 12:00 midnight, Eastern Standard Time, on June 30, 2009, the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Unitholders, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be the General Partner pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2; or (iv) notwithstanding clause (i) of this sentence, at any time that the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners, such withdrawal to take effect on the date specified in the notice, if at the time such notice is given one Person and its Affiliates (other than the General Partner and its Affiliates) own beneficially or of record or control at least 50% of the Outstanding Units. The withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the General Partner as general partner or managing member, as the case may be, of the other Group Members. If the General Partner gives a notice of withdrawal pursuant to Section 11.1(a)(i), the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become the successor general partner or managing member, as the case may be, of the other Group Members of which the General Partner is a general partner or a managing member. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Unitholders as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 12.1. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.3.

## SECTION 11.2 REMOVAL OF THE GENERAL PARTNER.

The General Partner may be removed if such removal is approved by the Unitholders holding at least 66 2/3% of the Outstanding Units (including Units held by the General Partner and its Affiliates). Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the Unitholders holding a Unit Majority (including Units held by the General Partner and its Affiliates). Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.3. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner or managing member, as the case may be, of the other Group Members of which the General Partner is a general partner or a managing member. If a Person is elected as a successor General Partner in accordance with the terms of this Section 11.2, such Person shall, upon admission pursuant to Section 10.3, automatically become a successor general partner or managing member, as the case may be, of the other Group Members of which the General Partner is a general partner or a managing member. The right of the holders of Outstanding Units to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion opining as to the matters covered by a Withdrawal Opinion of Counsel. Any successor General Partner elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.3.

## SECTION 11.3 INTEREST OF DEPARTING PARTNER AND SUCCESSOR GENERAL PARTNER.

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the General Partner by the holders of Outstanding Units under circumstances where Cause does not exist, if a successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2, the Departing Partner shall have the option exercisable prior to the effective date of the departure of such Departing Partner to require its successor to purchase its General Partner Interest and its general partner interest (or equivalent interest) in the other Group Members and all of its Incentive Distribution Rights (collectively, the “*COMBINED INTEREST*”) in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its departure. If the General Partner is removed by the Unitholders under circumstances where Cause exists or if the General Partner withdraws under circumstances where such withdrawal violates this Agreement or any Intermediate Partnership Agreement, and if a successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2, such successor shall have the option, exercisable prior to the effective date of the departure of such Departing Partner, to purchase the Combined Interest for such fair market value of such Combined Interest. In either event, the Departing Partner shall be entitled to receive all reimbursements due such Departing Partner pursuant to Section 7.4, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by the Departing Partner for the benefit of the Partnership or the other Group Members.

For purposes of this Section 11.3(a), the fair market value of the Combined Interest shall be determined by agreement between the Departing Partner and its successor or, failing agreement within 30 days after the effective date of such Departing Partner’s departure, by an independent investment banking firm or other independent expert selected by the Departing Partner and its successor, which, in turn, may rely on other experts, and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such departure, then the Departing Partner shall designate an independent investment banking firm or other independent expert, the Departing Partner’s successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually select a third independent investment banking firm or independent expert, which third independent investment banking firm or other independent expert shall determine the fair market value of the Combined Interest. In making its determination, such third independent investment banking firm or other independent expert may consider the then current trading price of Units on any National Securities Exchange on which Units are then listed, the value of the Partnership’s assets, the rights and obligations of the Departing Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing Partner (or its transferee) shall become a Limited Partner and its Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 11.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing Partner (or its transferee) as to all debts and liabilities of the Partnership arising on or after the date on which the Departing Partner (or its transferee) becomes a Limited Partner. For purposes of this Agreement, conversion of the Combined Interest to Common Units will be characterized as if the Departing Partner (or its transferee) contributed its Combined Interest to the Partnership in exchange for the newly issued Common Units.

(c) If a successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2 and the option described in Section 11.3(a) is not exercised by the party entitled to do so, the successor General Partner shall, at the effective date of its admission to the Partnership, contribute to the Partnership cash in the amount equal to 1/99th of the Net Agreed Value of the Partnership's assets on such date. In such event, such successor General Partner shall, subject to the following sentence, be entitled to 1% of all Partnership allocations and distributions. The successor General Partner shall cause this Agreement to be amended to reflect that, from and after the date of such successor General Partner's admission, the successor General Partner's interest in all Partnership distributions and allocations shall be 1%.

**SECTION 11.4 [INTENTIONALLY OMITTED.]**

**SECTION 11.5 WITHDRAWAL OF LIMITED PARTNERS.**

No Limited Partner shall have any right to withdraw from the Partnership; provided, however, that when a transferee of a Limited Partner's Limited Partner Interest becomes a Record Holder of the Limited Partner Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Limited Partner Interest so transferred.

**ARTICLE XII  
DISSOLUTION AND LIQUIDATION**

**SECTION 12.1 DISSOLUTION.**

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 11.1 or 11.2, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

- (a) the expiration of its term as provided in Section 2.7;
- (b) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.3;
- (c) an election to dissolve the Partnership by the General Partner that is approved by the holders of a Unit Majority;
- (d) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or
- (e) the sale of all or substantially all of the assets and properties of the Partnership Group.

**SECTION 12.2 CONTINUATION OF THE BUSINESS OF THE PARTNERSHIP AFTER DISSOLUTION.**

Upon (a) dissolution of the Partnership following an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or (iii) and the failure of the Partners to select a successor to such Departing Partner pursuant to Section 11.1 or 11.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a Unit Majority may elect to reconstitute the Partnership and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited partnership on terms identical to those set forth in this Agreement and having as the successor General Partner a Person approved by the holders of a Unit Majority (subject to the proviso in the last sentence of this Section 12.2). Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

(i) the reconstituted Partnership shall continue until the end of the term set forth in Section 2.7 unless earlier dissolved in accordance with this Article XII;

(ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be treated in the manner provided in Section 11.3; and

(iii) all necessary steps shall be taken to cancel this Agreement and the Certificate of Limited Partnership and to enter into and, as necessary, to file a new partnership agreement and certificate of limited partnership, and the successor General Partner may for this purpose exercise the powers of attorney granted the General Partner pursuant to Section 2.6; provided, that the right of the holders of a Unit Majority to approve a successor General Partner and to reconstitute and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that (x) the exercise of the right would not result in the loss of limited liability of any Limited Partner and (y) neither the Partnership, the reconstituted limited partnership nor any Intermediate Partnership would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of such right to continue.

### **SECTION 12.3 LIQUIDATOR.**

Upon dissolution of the Partnership, unless the Partnership is continued under an election to reconstitute and continue the Partnership pursuant to Section 12.2, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Common Units. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Common Units. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Common Units, who shall also approve the compensation payable to such Liquidator. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale or other disposition set forth in Section 7.3(b)) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided for herein.

### **SECTION 12.4 LIQUIDATION.**

The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as the Liquidator determines to be in the best interest of the Partners, subject to Section 17-804 of the Delaware Act and the following:

(a) **DISPOSITION OF ASSETS.** The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may, in its absolute discretion, defer liquidation or distribution of the Partnership's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Partnership's assets would be impractical or would cause undue loss to the Partners. The Liquidator may, in its absolute discretion, distribute the Partnership's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) **DISCHARGE OF LIABILITIES.** Liabilities of the Partnership include amounts owed to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) **LIQUIDATION DISTRIBUTIONS.** All property and all cash in excess of that required to discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) for the taxable period during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable period (or, if later, within 90 days after said date of such occurrence).

**SECTION 12.5 CANCELLATION OF CERTIFICATE OF LIMITED PARTNERSHIP.**

Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the liquidation of the Partnership, the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

**SECTION 12.6 RETURN OF CONTRIBUTIONS.**

The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

**SECTION 12.7 WAIVER OF PARTITION.**

To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

**SECTION 12.8 CAPITAL ACCOUNT RESTORATION.**

No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable period during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.



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

**SECTION 13.1 AMENDMENT TO BE ADOPTED SOLELY BY THE GENERAL PARTNER.**

Each Partner agrees that the General Partner, without the approval of any Partner or Assignee, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

- (a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;
- (b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;
- (c) a change that, in the sole discretion of the General Partner, is necessary or advisable to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the Limited Partners have limited liability under the laws of any state or to ensure that the Partnership and the Intermediate Partnerships will not be treated as associations taxable as corporations or otherwise taxed as entities for federal income tax purposes;
- (d) a change that, in the discretion of the General Partner, (i) does not adversely affect the Limited Partners in any material respect, (ii) is necessary or advisable to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Limited Partner Interests (including the division of any class or classes of Outstanding Limited Partner Interests into different classes to facilitate uniformity of tax consequences within such classes of Limited Partner Interests) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Limited Partner Interests are or will be listed for trading, compliance with any of which the General Partner determines in its discretion to be in the best interests of the Partnership and the Limited Partners, (iii) is necessary or advisable in connection with action taken by the General Partner pursuant to Section 5.10 or (iv) is required to effect the intent expressed in the Registration Statement or the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;
- (e) a change in the fiscal year or taxable year of the Partnership and any changes that, in the discretion of the General Partner, are necessary or advisable as a result of a change in the fiscal year or taxable year of the Partnership including, if the General Partner shall so determine, a change in the definition of “*QUARTER*” and the dates on which distributions are to be made by the Partnership;
- (f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership, or the General Partner or its directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or “plan asset” regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;
- (g) an amendment that, in the discretion of the General Partner, is necessary or advisable in connection with the authorization or issuance of any class or series of Partnership Securities (or options, rights, warrants and appreciation rights relating to such Partnership Securities) pursuant to Section 5.6;
- (h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;
- (i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(j) an amendment that, in the discretion of the General Partner, is necessary or advisable to reflect, account for and deal with appropriately the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 2.4;

(k) a merger or conveyance pursuant to Section 14.3(d); or

(l) any other amendments substantially similar to the foregoing.

## **SECTION 13.2 AMENDMENT PROCEDURES.**

Except as provided in Sections 13.1 and 13.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by or with the consent of the General Partner which consent may be given or withheld in its sole discretion. A proposed amendment shall be effective upon its approval by the holders of a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments.

## **SECTION 13.3 AMENDMENT REQUIREMENTS.**

(a) Notwithstanding the provisions of Sections 13.1 and 13.2, no provision of this Agreement that establishes a percentage of Outstanding Units (including Units held, or deemed held, by the General Partner or its Affiliates) required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing such voting percentage unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Sections 13.1 and 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c), (ii) enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld in its sole discretion, (iii) change Section 12.1(a) or 12.1(c), or (iv) change the term of the Partnership or, except as set forth in Section 12.1(c), give any Person the right to dissolve the Partnership.

(c) Except as provided in Section 14.3 or otherwise as may be provided in this Agreement and without limitation of the General Partner's authority to adopt amendments to this Agreement as contemplated in Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must be approved by the holders of not less than a majority of the Outstanding Partnership Interests of the class affected.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Outstanding Common Units unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not (i) adversely affect the limited liability of any Limited Partner under the Delaware Act or the law of any other state in which the Partnership is registered as a foreign limited partnership or is otherwise qualified to do business or (ii) cause the Partnership or any Intermediate Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such).

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Common Units.

**SECTION 13.4 SPECIAL MEETINGS.**

All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners holding 20% or more of the Outstanding Limited Partner Interests of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the general or specific purposes for which the special meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is registered as a foreign limited partnership or is otherwise qualified to do business.

**SECTION 13.5 NOTICE OF A MEETING.**

Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Limited Partner Interests for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

**SECTION 13.6 RECORD DATE.**

For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11 the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Limited Partner Interests are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals.

**SECTION 13.7 ADJOURNMENT.**

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

**SECTION 13.8 WAIVER OF NOTICE; APPROVAL OF MEETING; APPROVAL OF MINUTES.**

The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, Limited Partners representing such quorum who were present in person or by proxy and entitled to vote, sign a written waiver of notice or an approval of the holding of the meeting or an approval of the minutes thereof. All waivers and approvals shall be filed with the Partnership records or made a part of the minutes of the meeting. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner does not approve, at the beginning of the meeting, of the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

## **SECTION 13.9 QUORUM.**

The holders of a majority of the Outstanding Limited Partner Interests of the class or classes for which a meeting has been called (including Limited Partner Interests held or deemed held by the General Partner or its Affiliates) represented in person or by proxy shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Limited Partner Interests, in which case the quorum shall be such greater percentage. At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Outstanding Limited Partner Interests that in the aggregate represent a majority of the Outstanding Limited Partner Interests entitled to vote and be present in person or by proxy at such meeting shall be deemed to constitute the act of all Limited Partners, unless a greater or different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the Limited Partners holding Outstanding Limited Partner Interests that in the aggregate represent at least such greater or different percentage shall be required. The Limited Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Limited Partner Interests specified in this Agreement (including Limited Partner Interests deemed owned by the General Partner). In the absence of a quorum any meeting of Limited Partners may be adjourned from time to time by the affirmative vote of holders of at least a majority of the Outstanding Limited Partner Interests entitled to vote at such meeting (including Limited Partner Interests held or deemed held by the General Partner or its Affiliates) represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

## **SECTION 13.10 CONDUCT OF A MEETING.**

The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

## **SECTION 13.11 ACTION WITHOUT A MEETING.**

If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Limited Partners holding not less than the minimum percentage of the Outstanding Limited Partner Interests (including Limited Partner Interests held or deemed held by the General Partner or its Affiliates) that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Limited Partner Interests are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Limited Partner Interests held by a Limited Partner, the Partnership shall be deemed to have failed to receive a ballot for the Limited Partner Interests that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and (c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

**SECTION 13.12 VOTING AND OTHER RIGHTS.**

(a) Only those Record Holders of the Limited Partner Interests on the Record Date set pursuant to Section 13.6 (and also subject to the limitations contained in the definition of “*OUTSTANDING*”) shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Limited Partner Interests have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Limited Partner Interests shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Limited Partner Interests.

(b) With respect to Limited Partner Interests that are held for a Person’s account by another Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), in whose name such Limited Partner Interests are registered, such other Person shall, in exercising the voting rights in respect of such Limited Partner Interests on any matter, and unless the arrangement between such Persons provides otherwise, vote such Limited Partner Interests in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this Section 13.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 4.3.

**ARTICLE XIV  
MERGER**

**SECTION 14.1 AUTHORITY.**

The Partnership may merge or consolidate with one or more corporations, limited liability companies, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership or limited partnership, formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation (“*MERGER AGREEMENT*”) in accordance with this Article XIV.

**SECTION 14.2 PROCEDURE FOR MERGER OR CONSOLIDATION.**

Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior approval of the General Partner. If the General Partner shall determine, in the exercise of its discretion, to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

- (a) The names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;
- (b) The name and jurisdiction of formation or organization of the business entity that is to survive the proposed merger or consolidation (the “*SURVIVING BUSINESS ENTITY*”);
- (c) The terms and conditions of the proposed merger or consolidation;

(d) The manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their general or limited partner interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

(e) A statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;

(f) The effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of the certificate of merger, the effective time shall be fixed no later than the time of the filing of the certificate of merger and stated therein); and

(g) Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or appropriate by the General Partner.

#### **SECTION 14.3 APPROVAL BY LIMITED PARTNERS OF MERGER OR CONSOLIDATION.**

(a) Except as provided in Section 14.3(d), the General Partner, upon its approval of the Merger Agreement, shall direct that the Merger Agreement be submitted to a vote of Limited Partners, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) Except as provided in Section 14.3(d), the Merger Agreement shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority unless the Merger Agreement contains any provision that, if contained in an amendment to this Agreement, the provisions of this Agreement or the Delaware Act would require for its approval the vote or consent of a greater percentage of the Outstanding Limited Partner Interests or of any class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement.

(c) Except as provided in Section 14.3(d), after such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 14.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

(d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, in its discretion, without Limited Partner approval, to merge the Partnership or any Group Member into, or convey all of the Partnership's assets to, another limited liability entity which shall be newly formed and shall have no assets, liabilities or operations at the time of such Merger other than those it receives from the Partnership or other Group Member if (i) the General Partner has received an Opinion of Counsel that the merger or conveyance, as the case may be, would not result in the loss of the limited liability of any Limited Partner or any limited partner in any Intermediate Partnership or cause the Partnership or any Intermediate Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such), (ii) the sole purpose of such merger or conveyance is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the governing instruments of the new entity provide the Limited Partners and the General Partner with the same rights and obligations as are herein contained.

**SECTION 14.4 CERTIFICATE OF MERGER.**

Upon the required approval by the General Partner and the Unitholders of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

**SECTION 14.5 EFFECT OF MERGER.**

(a) At the effective time of the certificate of merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities, shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were property of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and shall not in any way be impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) A merger or consolidation effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another.

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

**SECTION 15.1 RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS.**

(a) Notwithstanding any other provision of this Agreement, if at any time not more than 20% of the total Limited Partner Interests of any class then Outstanding is held by Persons other than the General Partner and its Affiliates, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General Partner, exercisable in its sole discretion, to purchase all, but not less than all, of such Limited Partner Interests of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 15.1(b) is mailed and (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed. As used in this Agreement, (i) "CURRENT MARKET PRICE" as of any date of any class of Limited Partner Interests listed or admitted to trading on any National Securities Exchange means the average of the daily Closing Prices (as hereinafter defined) per Limited Partner Interest of such class for the 20 consecutive Trading Days (as hereinafter defined) immediately prior to such date; (ii) "CLOSING PRICE" for any day means the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted for trading on the principal National Securities Exchange (other than the Nasdaq Stock Market) on which such Limited Partner Interests of such class are listed or admitted to trading or, if such Limited Partner Interests of such class are not listed or admitted to trading on any National Securities Exchange (other than the Nasdaq Stock Market), the last quoted price on such day or, if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by the Nasdaq Stock Market or such other system then in use, or, if on any such day such Limited Partner Interests of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined reasonably and in good faith by the General Partner; and (iii) "TRADING DAY" means a day on which the principal National Securities Exchange on which such Limited Partner Interests of any class are listed or admitted to trading is open for the transaction of business or, if Limited Partner Interests of a class are not listed or admitted to trading on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Limited Partner Interests granted pursuant to Section 15.1(a), the General Partner shall deliver to the Transfer Agent notice of such election to purchase (the “*NOTICE OF ELECTION TO PURCHASE*”) and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited Partner Interests of such class (as of a Record Date selected by the General Partner) at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be published for a period of at least three consecutive days in at least two daily newspapers of general circulation printed in the English language and published in the Borough of Manhattan, New York. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of Certificates representing such Limited Partner Interests in exchange for payment, at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Limited Partner Interests (including any rights pursuant to Articles IV, V, VI, and XII) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) for Limited Partner Interests therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Limited Partner Interests, and such Limited Partner Interests shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the holder of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the holder of such Limited Partner Interests (including all rights as holder of such Limited Partner Interests pursuant to Articles IV, V, VI and XII).

(c) At any time from and after the Purchase Date, a holder of an Outstanding Limited Partner Interest subject to purchase as provided in this Section 15.1 may surrender his Certificate evidencing such Limited Partner Interest to the Transfer Agent in exchange for payment of the amount described in Section 15.1(a), therefor, without interest thereon.



**ARTICLE XVI  
GENERAL PROVISIONS**

**SECTION 16.1 ADDRESSES AND NOTICES.**

Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner or Assignee at the address described below. Any notice, payment or report to be given or made to a Partner or Assignee hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Partnership Securities at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Securities by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner or Assignee at the principal office of the Partnership for a period of one year from the date of the giving or making of such notice, payment or report to the other Partners and Assignees. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 2.3. The General Partner may rely and shall be protected in relying on any notice or other document from a Partner, Assignee or other Person if believed by it to be genuine.

**SECTION 16.2 FURTHER ACTION.**

The parties hereto shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

**SECTION 16.3 BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

**SECTION 16.4 INTEGRATION.**

This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**SECTION 16.5 CREDITORS.**

None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

**SECTION 16.6 WAIVER.**

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any subsequent breach or any breach of any other covenant, duty, agreement or condition.

**SECTION 16.7 COUNTERPARTS.**

This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Unit, upon accepting the certificate evidencing such Unit or executing and delivering a Transfer Application as herein described, independently of the signature of any other party.

**SECTION 16.8 APPLICABLE LAW.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

**SECTION 16.9 INVALIDITY OF PROVISIONS.**

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

**SECTION 16.10 CONSENT OF PARTNERS.**

Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

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

GENERAL PARTNER:

TC PIPELINES GP, INC.

By: /s/ Russell K. Girling  
Name: Russell K. Girling  
Title: Chief Executive Officer

By: /s/ Donald J. DeGrandis  
Name: Donald J. DeGrandis  
Title: Secretary

All Limited Partners now and hereafter admitted as Limited Partners of the Partnership, pursuant to powers of attorney now and hereafter executed in favor of, and granted and delivered to the General Partner.

TC PIPELINES GP, INC.

By: /s/ Mark Zimmerman  
Name: Mark Zimmerman  
Title: President

By: /s/ Amy W. Leong  
Name: Amy W. Leong  
Title: Principal Financial Officer and Controller

---

**EXHIBIT A**  
**TO**  
**SECOND AMENDED AND RESTATED**  
**AGREEMENT OF LIMITED PARTNERSHIP**  
**OF**  
**TC PIPELINES, LP**

**CERTIFICATE EVIDENCING COMMON UNITS**  
**REPRESENTING LIMITED PARTNER INTERESTS IN**  
**TC PIPELINES, LP**

No. \_\_\_\_\_ Common Units

In accordance with Section 4.1 of the Second Amended and Restated Agreement of Limited Partnership of TC PipeLines, LP, as amended, supplemented or restated from time to time (the "PARTNERSHIP AGREEMENT"), TC PipeLines, LP, a Delaware limited partnership (the "PARTNERSHIP"), hereby certifies that \_\_\_\_\_ (the "HOLDER") is the registered owner of \_\_\_\_\_ Common Units representing limited partner interests in the Partnership (the "COMMON UNITS") transferable on the books of the Partnership, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed and accompanied by a properly executed application for transfer of the Common Units represented by this Certificate. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Partnership Agreement. Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at \_\_\_\_\_. Capitalized terms used herein but not defined shall have the meanings given them in the Partnership Agreement.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (iii) granted the powers of attorney provided for in the Partnership Agreement and (iv) made the waivers and given the consents and approvals contained in the Partnership Agreement.

Except as otherwise provided in the Partnership Agreement, this Certificate shall not be valid for any purpose unless it has been countersigned and registered by the Transfer Agent and Registrar.

Dated: \_\_\_\_\_

TC PIPELINES, LP

Countersigned and Registered by:

By: TC PipeLines GP, Inc., its General Partner

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

as Transfer Agent and Registrar

Name: \_\_\_\_\_

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

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

Authorized Signature

Secretary

[REVERSE OF CERTIFICATE]

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM – as tenants in common
TEN ENT – as tenants by the entireties

JT TEN – as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT/TRANSFERS MIN ACT –
(Name of Custodian) as Custodian for

(Name of Minor)
Under Uniform Gifts/Transfers to Minors Act
(Name of State)

Additional abbreviations, though not in the above list, may also be used.

FOR VALUE RECEIVED,
HEREBY ASSIGNS, CONVEYS, SELLS AND TRANSFERS UNTO

Please print or typewrite name and address of Assignee:

Please insert Social Security or other identifying number of Assignee:

Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint as its attorney-in-fact with full power of substitution to transfer the same on the books of TC PipeLines, LP

Date:
SIGNATURE(S) MUST BE GUARANTEED BY A MEMBER FIRM OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. OR BY A COMMERCIAL BANK OR TRUST COMPANY

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular, without alteration, enlargement or change.

(Signature)

(Signature)

SIGNATURE(S) GUARANTEED

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer and an Application for Transfer of Common Units has been executed by a transferee either (a) on the form set forth below or (b) on a separate application that the Partnership will furnish on request without charge. A transferor of the Common Units shall have no duty to the transferee with respect to execution of the transfer application in order for such transferee to obtain registration of the transfer of the Common Units.

APPLICATION FOR TRANSFER OF COMMON UNITS

The undersigned ("ASSIGNEE") hereby applies for transfer to the name of the Assignee of the Common Units evidenced hereby.

The Assignee (a) requests admission as a Substituted Limited Partner and agrees to comply with and be bound by, and hereby executes, the Second Amended and Restated Agreement of Limited Partnership of TC PipeLines, LP (the "PARTNERSHIP"), as amended, supplemented or restated to the date hereof (the "PARTNERSHIP AGREEMENT"), (b) represents and warrants that the Assignee has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (c) appoints the General Partner of the Partnership and, if a Liquidator shall be appointed, the Liquidator of the Partnership as the Assignee's attorney-in-fact to execute, swear to, acknowledge and file any document, including, without limitation, the Partnership Agreement and any amendment thereto and the Certificate of Limited Partnership of the Partnership and any amendment thereto, necessary or appropriate for the Assignee's admission as a Substituted Limited Partner and as a party to the Partnership Agreement, (d) gives the powers of attorney provided for in the Partnership Agreement, and (e) makes the waivers and gives the consents and approvals contained in the Partnership Agreement. Capitalized terms not defined herein have the meanings assigned to such terms in the Partnership Agreement.

Date: \_\_\_\_\_

\_\_\_\_\_  
Social Security or other identifying number of Assignee

\_\_\_\_\_  
Signature of Assignee

\_\_\_\_\_  
Purchase Price including commissions, if any:

\_\_\_\_\_  
Name and Address of Assignee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type of Entity (check one):

- Individual
- Partnership
- Trust
- Corporation
- Other (specify)

\_\_\_\_\_

Nationality (check one):

- U.S. Citizen, Resident or Domestic Entity
- Foreign Corporation
- Non-Resident Alien

If the U.S. Citizen, Resident or Domestic Entity box is checked, the following certification must be completed.

Under Section 1445(e) of the Internal Revenue Code of 1986, as amended (the "CODE"), the Partnership must withhold tax with respect to certain transfers of property if a holder of an interest in the Partnership is a foreign person. To inform the Partnership that no withholding is required with respect to the undersigned interestholder's interest in it, the undersigned hereby certifies the following (or, if applicable, certifies the following on behalf of the interestholder).

\_\_\_\_\_

Complete Either A or B:

A. Individual Interestholder

1. I am not a non-resident alien for purposes of U.S. income taxation.
2. My U.S. taxpayer identification number (Social Security Number) is: \_\_\_\_\_
3. My home address is: \_\_\_\_\_

B. Partnership, Corporation or Other Interestholder

1. The Interestholder is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Treasury Regulations). \_\_\_\_\_ (Name of Interestholder)
2. The Interestholder's U.S. employer identification number is: \_\_\_\_\_
3. The Interestholder's office address and place of incorporation (if applicable) is: \_\_\_\_\_

The Interestholder agrees to notify the Partnership within sixty (60) days of the date the interestholder becomes a foreign person.

The interestholder understands that this certificate may be disclosed to the Internal Revenue Service by the Partnership and that any false statement contained herein could be punishable by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete and, if applicable, I further declare that I have authority to sign this document on behalf of:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Interestholder

\_\_\_\_\_  
Title (if applicable)

Note: If the Assignee is a broker, dealer, bank, trust company, clearing corporation, other nominee holder or an agent of any of the foregoing, and is holding for the account of any other person, this application should be completed by an officer thereof or, in the case of a broker or dealer, by a registered representative who is a member of a registered national securities exchange or a member of the National Association of Securities Dealers, Inc., or, in the case of any other nominee holder, a person performing a similar function. If the Assignee is a broker, dealer, bank, trust company, clearing corporation, other nominee owner or an agent of any of the foregoing, the above certification as to any person for whom the Assignee will hold the Common Units shall be made to the best of the Assignee's knowledge.

**COMMON UNIT PURCHASE AGREEMENT**

**BY AND AMONG**

**TC PIPELINES, LP**

**AND**

**TRANSCAN NORTHERN LTD.**

**DATED**

**July 1, 2009**

---



## COMMON UNIT PURCHASE AGREEMENT

COMMON UNIT PURCHASE AGREEMENT, dated as of July 1, 2009 (this "Agreement"), by and among TC PIPELINES, LP, a Delaware limited partnership (the "Partnership"), and TRANSCAN NORTHERN LTD., a Delaware corporation (the "Purchaser").

WHEREAS, (i) TC Pipelines GP, Inc., a Delaware corporation (the "General Partner"), is an indirect wholly owned subsidiary of TransCanada PipeLines Limited, a Canadian corporation ("TransCanada"); (ii) the General Partner is the general partner of the Partnership and TC Tuscarora Intermediate Limited Partnership, a Delaware limited partnership ("TCT Intermediate Partnership"), TC PipeLines Intermediate Limited Partnership, a Delaware limited partnership ("TCP Intermediate Partnership"), and TC GL Intermediate Partnership, a Delaware limited partnership ("TCGL Intermediate Partnership" and, together with TCT Intermediate Partnership and TCP Intermediate Partnership, the "Intermediate Partnerships"); (iii) the Partnership owns all of the limited partner interests in each of the Intermediate Partnerships; (iv) TCT Intermediate Partnership owns directly and indirectly a 100% general partner interest in Tuscarora Gas Transmission Company, a Nevada general partnership ("Tuscarora"); (v) TCP Intermediate Partnership owns a 50% general partner interest in Northern Border Pipeline Company, a Texas general partnership ("NBPC"), and (vi) TCGL Intermediate Partnership owns a 46.45% general partner interest in Great Lakes Gas Transmission Limited Partnership, a Delaware limited partnership ("Great Lakes"). The Partnership, the General Partner and the Intermediate Partnerships are collectively referred to herein as the "TCP Parties;"

WHEREAS, on May 19, 2009, TCP Intermediate Partnership entered into an agreement with Gas Transmission Northwest Corporation, a California corporation ("GTNC"), to purchase a 100% membership interest in North Baja Pipeline, LLC, a Delaware limited liability company (the "Acquisition");

WHEREAS, coincident with the entry into the transactions contemplated by this Agreement, the General Partner will enter into an agreement with the Partnership for the exchange by the General Partner of the current incentive distribution rights available to it under the Amended and Restated Agreement of Limited Partnership of TC PipeLines, LP for 3,762,000 common units of the Partnership and revised incentive distribution rights; and

WHEREAS, the Partnership desires to cause TCP Intermediate Partnership to pay a portion of the purchase price related to the Acquisition out of the proceeds of the sale of an aggregate of \$78,400,000 of Common Units representing limited partner interests in the Partnership ("Common Units"), and the Purchaser desires to purchase an aggregate of \$78,400,000 of Common Units from the Partnership, each in accordance with the provisions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1.1        Definitions. As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings indicated:

“Acquisition” shall have the meaning specified in the recitals.

“Acquisition Agreement” means that certain Agreement for Purchase and Sale of Membership Interests by and between GTNC and TC Intermediate Partnership dated as of May 19, 2009.

“Action” against a Person means any lawsuit, action, proceeding, investigation or complaint before any Governmental Authority, mediator or arbitrator.

“Affiliate” means, with respect to a specified Person, any other Person, whether now in existence or hereafter created, directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, “controlling,” “controlled by” and “under common control with”) means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning specified in the introductory paragraph.

“Basic Documents” means, collectively, this Agreement and any and all other agreements or instruments executed and delivered by the Parties to evidence the execution, delivery and performance of this Agreement, and any amendments, supplements, continuations or modifications thereto.

“Board of Directors” means the board of directors of the General Partner or the Purchaser, as the case may be.

“Closing” shall have the meaning specified in Section 2.2.

“Closing Date” shall have the meaning specified in Section 2.2.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Commission” means the United States Securities and Exchange Commission.

“Commitment Amount” means \$78,400,000.

“Common Units” shall have the meaning specified in the recitals.

“DGCL” shall have the meaning specified in Section 3.2.

“DRULPA” shall have the meaning specified in Section 3.2.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time.

“General Partner” shall have the meaning specified in the recitals.

“Governmental Authority” shall include the country, state, county, city and political subdivisions in which any Person or such Person’s property is located or that exercises valid jurisdiction over any such Person or such Person’s property, and any court, agency, department, commission, board, bureau or instrumentality of any of them and any monetary authorities that exercise valid jurisdiction over any such Person or such Person’s property. Unless otherwise specified, all references to Governmental Authority herein shall mean a Governmental Authority having jurisdiction over, where applicable, the Partnership, its Subsidiaries or any of their property or the Purchaser.

“Great Lakes” shall have the meaning set forth in the recitals.

“GTNC” shall have the meaning set forth in the recitals.

“Incentive Distribution Rights” shall have the meaning specified in Section 3.5(a).

“Indemnified Party” shall have the meaning specified in Section 8.3.

“Indemnifying Party” shall have the meaning specified in Section 8.3.

“Intermediate Partnership Agreements” shall have the meaning specified in Section 3.4.

“Intermediate Partnerships” shall have the meaning specified in the recitals.

“Law” means any federal, state, local or foreign order, writ, injunction, judgment, settlement, award, decree, statute, law, rule or regulation.

“Lien” means any mortgage, claim, encumbrance, pledge, lien (statutory or otherwise), security agreement, conditional sale or trust receipt or a lease, consignment or bailment, preference or priority or other encumbrance upon or with respect to any property of any kind.

“NBPC” shall have the meaning specified in the recitals.

“Partnership” shall have the meaning specified in the introductory paragraph.

“Partnership Agreement” shall have the meaning specified in Section 2.1(a).

“Partnership Material Adverse Effect” shall have the meaning specified in Section 3.2.

“Partnership Related Parties” shall have the meaning specified in Section 8.2.

“Partnership SEC Documents” shall have the meaning specified in Section 3.1.

“Party” or “Parties” means the Partnership and the Purchaser, individually or collectively, as the case may be.

“Person” means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or government or any agency, instrumentality or political subdivision thereof, or any other form of entity.

“Purchase Price” means the Commitment Amount.

“Purchaser” shall have the meaning specified in the introductory paragraph.

“Purchaser Material Adverse Effect” means any material and adverse effect on (i) the ability of the Purchaser to meet its obligations under the Basic Documents on a timely basis or (ii) the ability of the Purchaser to consummate the transactions under any Basic Document.

“Purchaser Related Parties” shall have the meaning specified in Section 8.1.

“Representatives” of any Person means the officers, directors, employees, Affiliates, control persons, counsel, investment banker, agents and other representatives of such Person.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“Subsidiary” means, as to any Person, any corporation or other entity of which a majority of the outstanding equity interest having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation or other entity (irrespective of whether or not at the time any equity interest of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more of its Subsidiaries.

“TCGL Intermediate Partnership” shall have the meaning specified in the recitals.

“TCP Intermediate Partnership” shall have the meaning specified in the recitals.

“TCP Parties” shall have the meaning specified in the recitals.

“TCT Intermediate Partnership” shall have the meaning specified in the recitals.

“TransCanada” shall have the meaning specified in the recitals.

“Tuscarora” shall have the meaning specified in the recitals.

“Unit Price” shall have the meaning specified in Section 2.1(b).

“Unitholders” means the Unitholders of the Partnership (within the meaning of the Partnership Agreement).

“Units” means the Units to be issued and sold to the Purchaser pursuant to this Agreement.

Section 1.2 Accounting Procedures and Interpretation. Unless otherwise specified in this Agreement, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters under this Agreement shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the Purchaser under this Agreement shall be prepared, in accordance with GAAP applied on a consistent basis during the periods involved (except, in the case of unaudited statements, as permitted by Form 10-Q promulgated by the Commission) and in compliance as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the Commission with respect thereto.

## ARTICLE II SALE AND PURCHASE

Section 2.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, at the Closing, the Partnership hereby agrees to issue and sell to the Purchaser, and the Purchaser hereby agrees to purchase from the Partnership, 2,609,680 Units. The Purchaser agrees to pay the Partnership the Unit Price for each Unit.

(a) Units. 2,609,680 Units will be issued and sold to the Purchaser. The Units shall have those rights, preferences, privileges and restrictions governing the Common Units as set forth in the agreement of limited partnership of the Partnership, as amended to date (the "Partnership Agreement").

(b) Consideration. The amount per Unit that the Purchaser will pay to the Partnership to purchase the Units (the "Unit Price") shall be \$78,400,006.56, which is the average of the closing bid prices of the Common Units as traded on the Nasdaq Stock Market over the five trading day period ending on May 19, 2009.

(c) Funding by the Purchaser. On the Closing Date, upon receipt of satisfactory evidence that the conditions set forth in Article VI have been satisfied, the Purchaser shall pay the Commitment Amount by wire transfer of immediately available funds to an account directed by the Partnership.

Section 2.2 Closing. The execution and delivery of the Basic Documents (other than this Agreement), the delivery of certificates representing the Units, the payment by the Purchaser of its Commitment Amount, and execution and delivery of all other instruments, agreements and other documents required by this Agreement (the "Closing") shall take place concurrently with the closing of the Acquisition (the date of such Closing being referred to herein as the "Closing Date") at the offices of Orrick, Herrington & Sutcliffe LLP, 405 Howard Street, San Francisco, CA 94105.

## ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE PARTNERSHIP

The Partnership represents and warrants to the Purchaser, on and as of the date of this Agreement and on and as of the Closing Date, as follows:

Section 3.1 Partnership SEC Documents. The Partnership has timely filed with the Commission all forms, registration statements, reports, schedules and statements required to be filed by it under the Exchange Act or the Securities Act (all such documents as filed, collectively, the “Partnership SEC Documents”). The Partnership SEC Documents prior to the date hereof, when they were filed, conformed in all material respects to the requirements of the Exchange Act and did not, as of the time each such document was filed, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made not misleading.

Section 3.2 Formation and Qualification of the TCP Parties. The Partnership and each of its Subsidiaries has been duly formed and is validly existing in good standing as a corporation or limited partnership under the Delaware General Corporation Law (“DGCL”) or the Delaware Revised Uniform Limited Partnership Act (“DRULPA”), as the case may be, with full corporate or partnership power and authority to own or lease its properties and to conduct the businesses in which it is engaged, in each case in all material respects, and has all material governmental licenses, authorizations, consents and approvals as described in the Partnership SEC Documents. Each of the General Partner, the Partnership and its Subsidiaries is or, at the Closing Date will, be duly registered or qualified as a foreign corporation or limited partnership, as the case may be, for the transaction of business under the laws of each jurisdiction in which the character of the business conducted by it or the nature or location of the properties owned or leased by it makes such registration or qualification necessary, except where the failure so to register or qualify would not (i) have a material adverse effect on (A) the condition (financial or otherwise), business, prospects, assets, liabilities, affairs or results of operations of the Partnership and its Subsidiaries, taken as a whole, (B) the ability of the Partnership and its Subsidiaries, taken as a whole, to carry out their business as of the date of this Agreement or to meet their obligations under the Basic Documents on a timely basis or (C) the ability of the Partnership to consummate the transactions under any Basic Document (any of the foregoing a “Partnership Material Adverse Effect”) or (ii) subject the limited partners of the Partnership to any material liability or disability.

Section 3.3 Formation and Qualification of NBPC, Tuscarora and Great Lakes. Each of NBPC, Tuscarora and Great Lakes has been duly formed and is validly existing in good standing as a general partnership under the laws of the State of Texas, the laws of the State of Nevada and the laws of the State of Delaware, respectively, with full partnership power and authority to own or lease its properties and to conduct its businesses in which it is engaged, in each case in all material respects as described in the Partnership SEC Documents. Each of NBPC, Tuscarora and Great Lakes is or, at the Closing Date will be duly registered or qualified as a foreign general partnership for the transaction of business under the laws of each jurisdiction in which the character of the business conducted by it or the nature or location of the properties owned or leased by it makes such registration or qualification necessary, except where the failure so to register or qualify would not (i) have a Partnership Material Adverse Effect or (ii) subject the limited partners of the Partnership to any material liability or disability.

Section 3.4 Ownership of the General Partner Interests. The General Partner is the sole general partner of the Partnership and each of the Intermediate Partnerships with a 1.0% general partner interest in the Partnership and a 1.0101% general partner interest in each of the Intermediate Partnerships; such general partner interests have been duly authorized and validly issued in accordance with the Partnership Agreement, or the partnership agreements of each of the Intermediate Partnerships, each as amended to date (collectively, the “Intermediate Partnership Agreements”); and the General Partner owns such general partner interests free and clear of all Liens (except restrictions on transferability as described in the Partnership SEC Documents).

(a) As of the date hereof and prior to the issuance and sale of the Units, the issued and outstanding limited partner interests of the Partnership consist of 34,856,086 Common Units and the Incentive Distribution Rights (as defined in the Partnership Agreement, the “Incentive Distribution Rights”). All outstanding Common Units and Incentive Distribution Rights and the limited partner interests represented thereby have been duly authorized and validly issued in accordance with the Partnership Agreement and are fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the DRULPA and as otherwise disclosed in the Partnership SEC Documents).

(b) Except for the Share Unit Plan for Non-Employee Directors (2007) filed as Exhibit 10.25 to the Partnership’s Form 10-K for the fiscal year ended December 31, 2008, the Partnership has no equity compensation plans that contemplate the issuance of Common Units (or securities convertible into or exchangeable for Common Units). The Partnership has no outstanding indebtedness having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters on which the Unitholders may vote. Except as contemplated by this Agreement or as are contained in the Partnership Agreement, there are no outstanding or authorized (i) options, warrants, preemptive rights, subscriptions, calls or other rights, convertible securities, agreements, claims or commitments of any character obligating the Partnership or any of its Subsidiaries to issue, transfer or sell any equity interests in the Partnership or any of its Subsidiaries or securities convertible into or exchangeable for such equity interests, (ii) obligations of the Partnership or any of its Subsidiaries to repurchase, redeem or otherwise acquire any equity interests in the Partnership or any of its Subsidiaries or any such securities or agreements listed in clause (i) of this sentence or (iii) voting trusts or similar agreements to which the Partnership or any of its Subsidiaries is a party with respect to the voting of the equity interests of the Partnership or any of its Subsidiaries.

Section 3.6 Authorization and Rights of Units. The offer and sale of the Units and the limited partnership interests represented thereby will be duly authorized by the Partnership pursuant to the Partnership Agreement prior to the Closing and, when issued and delivered to the Purchaser against payment therefor in accordance with the terms of this Agreement, will be validly issued, fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the DRULPA and as otherwise disclosed in the Partnership SEC Documents) and will be free of any and all Liens and restrictions on transfer, other than restrictions on transfer under the Partnership Agreement and applicable state and federal securities Laws and other than such Liens as are created by the Purchaser. The Units shall have those rights, preferences, privileges and restrictions governing the Units as set forth in the Partnership Agreement. A true and correct copy of the Partnership Agreement, as amended through the date hereof, was filed by the Partnership with the Commission as Exhibit 3.1 to the Partnership’s Annual Report on Form 10-K for the year ended December 31, 1999, as amended by the Amendment to the Partnership Agreement filed with the Commission as Exhibit 3.1.1 to the Partnership’s Annual Report on Form 10-K for the year ended December 31, 2007 (it being understood that the Partnership Agreement will be amended concurrent with the Closing as set forth the Acquisition Agreement).

Section 3.7 Ownership of the Limited Partner Interests in the Intermediate Partnerships. The Partnership owns a 98.9899% limited partner interest in each of the Intermediate Partnerships; such limited partner interests have been duly authorized and validly issued in accordance with the applicable Intermediate Partnership Agreement and are fully paid (to the extent required under the applicable Intermediate Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the DRULPA); and the Partnership owns such limited partner interests free and clear of all Liens or claims.

Section 3.8 Ownership of Interest in NBPC. TCP Intermediate Partnership owns a 50% general partner interest in NBPC; such general partner interest has been duly authorized and validly issued in accordance with the partnership agreement of NBPC, as amended to date; and TCP Intermediate Partnership owns such general partner interest free and clear of all Liens or claims.

Section 3.9 Ownership of Interest in Tuscarora. TCT Intermediate Partnership owns a 99% general partner interest in Tuscarora and 100% of the membership interest in TC Pipelines Tuscarora LLC which owns a 1% general partner interest in Tuscarora; such general partner interests have been duly authorized and validly issued in accordance with the partnership agreement of Tuscarora, as amended to date; and TCT Intermediate Partnership and TC Pipelines Tuscarora LLC own such general partner interests free and clear of all Liens or claims.

Section 3.10 Ownership of Interest in Great Lakes. TCGL Intermediate Partnership owns a 46.45% general partner interest in Great Lakes; such general partner interest has been duly authorized and validly issued in accordance with the partnership agreement of Great Lakes, as amended to date; and TCGL Intermediate Partnership owns such general partner interest free and clear of all Liens or claims.

Section 3.11 No Other Subsidiaries. Other than (i) the Partnership's ownership interest in the Intermediate Partnerships and (ii) the Intermediate Partnerships' ownership interests in each of NBPC, Tuscarora, Great Lakes and TC Pipelines Tuscarora LLC, as applicable, neither the Partnership nor the Intermediate Partnerships own, directly or indirectly, any equity or long-term debt securities of any corporation, partnership, limited liability company, joint venture, association or other entity. Other than its ownership of its partnership interests in the Partnership and each of the Intermediate Partnerships, the General Partner does not own, directly or indirectly, any equity or long-term debt or other securities of any corporation, partnership, limited liability company, joint venture, association or other entity.

Section 3.12 No Preemptive Rights, Registration Rights or Options. Except as described in the Partnership SEC Documents, there are no preemptive rights or other rights to subscribe for or to purchase, nor any restriction upon the voting or transfer of, any partnership or equity interests of the Partnership. None of the execution of this Agreement nor the issuance or sale of the Units as contemplated by this Agreement gives rise to any rights for or relating to the registration of any Common Units or other securities of the Partnership other than as provided in the Partnership SEC Documents. There are no outstanding options or warrants to purchase any Common Units.



Section 3.13 MLP Status. The Partnership met for the taxable years ended December 31, 2007 and 2008, and the Partnership expects to meet for the taxable year ending December 31, 2009, the gross income requirements of Section 7704(c)(2) of the Code, and accordingly the Partnership is not, and does not reasonably expect to be, taxed as a corporation for U.S. federal income tax purposes or for applicable state tax purposes.

Section 3.14 Offering. Assuming the accuracy of the representations and warranties of the Purchaser contained in this Agreement, the sale and issuance of the Units pursuant to this Agreement are exempt from the registration requirements of the Securities Act, and neither the Partnership nor, to the Partnership's knowledge, any authorized Representative acting on its behalf has taken or will take any action that would cause the loss of such exemption.

Section 3.15 Certain Fees. No fees or commissions will be payable by the Partnership to brokers, finders or investment bankers with respect to the sale of any of the Units or the consummation of the transactions contemplated by this Agreement.

Section 3.16 Authorization and Enforceability of Basic Documents and Other Agreements. The Partnership has all necessary limited partnership power and authority to execute, deliver and perform its obligations under the Basic Documents and the Acquisition Agreement to which it is a party and to consummate the transactions contemplated thereby. The Basic Documents and the Acquisition Agreement have been duly authorized, validly executed and delivered and are valid and legally binding agreements, enforceable against the Partnership in accordance with their terms; *provided* that, with respect to each such agreement, the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and, *provided further*, that the indemnity, contribution and exoneration provisions contained in any of such agreements may be limited by applicable laws and public policy. No approval of the Unitholders is required as a result of the Partnership's issuance and sale of the Units pursuant to this Agreement.

Section 3.17 No Conflicts. None of the sale by the Partnership of the Units, the execution, delivery and performance of the Basic Documents or the Acquisition Agreement by the Partnership and all other agreements and instruments in connection with the transactions contemplated by the Basic Documents or the Acquisition Agreement, or the consummation of the transactions contemplated hereby or thereby by the Partnership (i) conflicts or will conflict with or constitutes or will constitute a violation of the Partnership Agreement, (ii) conflicts or will conflict with or constitutes or will constitute a breach or violation of, or a default under (or an event that, with notice or lapse of time or both, would constitute such a default), any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Partnership or any of its Subsidiaries is a party or by which any of them or any of their respective properties may be bound, (iii) violates or will violate any statute, law or regulation, including exchange regulation, or any order, judgment, decree or injunction of any court or governmental agency or body directed to any of the Partnership or its Subsidiaries or any of their properties in a proceeding to which any of them or their property is a party, or (iv) results or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Partnership or any of its Subsidiaries, which conflicts, breaches, violations, defaults or liens, in the case of clauses (ii), (iii) or (iv), would, individually or in the aggregate, have a Partnership Material Adverse Effect or would materially impair the ability of the Partnership to perform its obligations under the Basic Documents or the Acquisition Agreement.

Section 3.18 No Consents. No permit, consent, approval, authorization, waiver, license, declaration, order, registration, filing or qualification (“consent”) of or with any court, governmental agency or body having jurisdiction over the Partnership or any of its properties is required in connection with the offering and sale by the Partnership of the Units, the execution, delivery and performance of the Basic Documents and the Acquisition Agreement by the Partnership, or the consummation by the Partnership of the transactions contemplated by the Basic Documents and the Acquisition Agreement, except for such consents required under the Securities Act or state securities or “Blue Sky” laws.

Section 3.19 Independent Registered Public Accounting Firm. The independent registered public accounting firm, KPMG LLP, who has audited the financial statements of the Partnership, NBPC and Great Lakes included in the Partnership SEC Documents is a registered independent public accounting firm with respect to the Partnership, NBPC and Great Lakes, as required by the Exchange Act or the Securities Act, as applicable, and has not resigned or been dismissed as independent registered public accountants of the Partnership as a result of or in connection with any disagreement with the Partnership on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures.

Section 3.20 Financial Statements. At March 31, 2009, the Partnership had a capitalization as indicated in the Partnership’s Quarterly Report on Form 10-Q for the three months ended March 31, 2009. The historical financial statements (including the related notes and supporting schedules) of the Partnership, NBPC and Great Lakes included in the Partnership SEC Documents comply as to form in all material respects with the requirements of Regulation S-X under the Exchange Act or the Securities Act, as applicable, and present fairly in all material respects the financial position, results of operations and cash flows of the Partnership, NBPC and Great Lakes on the basis stated therein at the respective dates or for the respective periods which have been prepared in accordance with GAAP consistently applied through the periods involved, except to the extent disclosed therein.

Section 3.21 No Material Adverse Change. None of the Partnership or any of its Subsidiaries or NBPC, Great Lakes or Tuscarora has sustained, since the date of the latest financial statements included in the Partnership’s Quarterly Report on Form 10-Q for the three months ended March 31, 2009, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, investigation, order or decree, otherwise than as set forth or contemplated in the Partnership SEC Documents. Except as disclosed in the Partnership SEC Documents, subsequent to the respective dates as of which such information is given in the Partnership SEC Documents, (i) none of the Partnership or any of its Subsidiaries or NBPC, Great Lakes or Tuscarora has incurred any liability or obligation, indirect, direct or contingent, or entered into any transactions, not in the ordinary course of business, that, individually or in the aggregate, is material to the Partnership and its Subsidiaries, taken as a whole, (ii) there has not been any material change in the capitalization or material increase in the short-term debt or long-term debt of the Partnership and its Subsidiaries, NBPC, Great Lakes and Tuscarora taken as a whole, except for debt incurred to finance the Acquisition, (iii) there has been no acquisition or disposition of any material asset by the Partnership or any of its Subsidiaries or NBPC, Great Lakes or Tuscarora or any contract or arrangement therefor, otherwise than for fair value in the ordinary course of business, (iv) there has been no material change in the Partnership’s accounting principles, practices or methods and (v) there has not been any material adverse change, or any development, individually or in the aggregate, that has had or would be reasonably expected to have a Partnership Material Adverse Effect.

Section 3.22      Investment Company. The Partnership is not now, and after issuance and sale of the Units to be issued and sold by the Partnership hereunder and application of the net proceeds from such sale as described in Section 5.2 hereof will not be, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 3.23      Litigation. Except as described in the Partnership SEC Documents or the forms, reports, schedules and statements filed with the Commission by the Partnership under the Exchange Act or the Securities Act, there is (i) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to the best of the Partnership’s knowledge, threatened, to which the Partnership or any of its Subsidiaries or NBPC, Great Lakes or Tuscarora is or may be a party or to which the business or property of any of the Partnership or its Subsidiaries or NBPC, Great Lakes or Tuscarora is or may be subject, (ii) no statute, rule, regulation or order that has been enacted, adopted or issued by any governmental agency or that has been formally proposed by any governmental agency, and (iii) no injunction, restraining order or order of any nature issued by a federal or state court or foreign court of competent jurisdiction to which any of the Partnership or its Subsidiaries or NBPC, Great Lakes or Tuscarora is or may be subject, that, in the case of clauses (i), (ii) and (iii) above, is reasonably expected to (A) individually or in the aggregate have a Partnership Material Adverse Effect, (B) prevent or result in the suspension of the offering and sale of the Units, or (C) in any manner draw into question the validity of this Agreement.

Section 3.24      Listing. The Common Units are listed on the Nasdaq Global Select Market. The Units will be issued in compliance with all applicable rules of The Nasdaq Market. Prior to the Closing, the Partnership will have submitted to The Nasdaq Market a “Notification Form: Listing of Additional Shares” with respect to the Units. The Partnership has not received a notice of delisting with respect to the Common Units.

Section 3.25      Acknowledgment Regarding Certificates. Any certificate signed by any officer of any of the General Partner on behalf of the Partnership and delivered to the Purchaser or counsel for the Purchaser in connection with the offering of the Units shall be deemed a representation and warranty by the Partnership as to matters covered thereby to the Purchaser.

Section 3.26 Insurance. The Partnership and its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Partnership believes are prudent for its businesses. The Partnership does not have any reason to believe that it or any Subsidiary will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business.

Section 3.27 Form S-3 Eligibility. The Partnership is eligible to register the Units for resale by the Purchaser on a registration statement on Form S-3 under the Securities Act.

Section 3.28 No Integration. Neither the Partnership, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Units to be integrated with prior offerings by the Partnership for purposes of the Securities Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of the exchange on which the Units are currently listed or quoted.

Section 3.29 Taxes. Each of the Partnership and its Subsidiaries has filed all necessary federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon except for taxes being contested in good faith by the Partnership for which adequate reserves have been established, and neither the Partnership nor any of its subsidiaries has knowledge of a tax deficiency which has been asserted in writing against it which would reasonably be expected to have a Material Adverse Effect.

Section 3.30 Registration Rights. The Purchaser is an "Affiliate" of the General Partner within the meaning of the Partnership Agreement, as such Partnership Agreement will be amended in connection with the Acquisition, and is therefore entitled to rely upon the registration rights set forth in Section 7.12(a) of the Partnership Agreement .

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Partnership, on and as of the date of this Agreement and on and of the Closing Date, as follows:

Section 4.1 Valid Existence. The Purchaser (i) is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and (ii) has all requisite power, and has all material governmental licenses, authorizations, consents and approvals, necessary to own its properties and carry on its business as its business is now being conducted, except where the failure to obtain such licenses, authorizations, consents and approvals would not have and would not reasonably be expected to have a Purchaser Material Adverse Effect.

Section 4.2 No Breach. The execution, delivery and performance by the Purchaser of the Basic Documents to which it is a party and all other agreements and instruments in connection with the transactions contemplated by the Basic Documents to which it is a party, and compliance by the Purchaser with the terms and provisions hereof and thereof and the purchase of the Units by the Purchaser do not and will not (a) violate any provision of any Law, governmental permit, determination or award having applicability to the Purchaser or any of its properties, (b) conflict with or result in a violation of any provision of the organizational documents of the Purchaser or (c) require any consent (other than standard internal consents), approval or notice under or result in a violation or breach of or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under (i) any note, bond, mortgage, license, loan or credit agreement to which the Purchaser is a party or by which the Purchaser or any of its properties may be bound or (ii) any other such agreement, instrument or obligation, except in the case of clauses (a) and (c) where such violation, default, breach, termination, cancellation, failure to receive consent or approval, or acceleration with respect to the foregoing provisions of this Section 4.2 would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect.

Section 4.3 Investment. The Units are being acquired for the Purchaser's own account, not as a nominee or agent, and with no present intention of distributing the Units or any part thereof, and the Purchaser has no present intention of selling or granting any participation in or otherwise distributing the same in any transaction in violation of the securities Laws of the United States of America or any state, without prejudice, however, to the Purchaser's right at all times to sell or otherwise dispose of all or any part of the Units under a registration statement under the Securities Act and applicable state securities Laws or under an exemption from such registration available thereunder (including, if available, Rule 144 promulgated thereunder). If the Purchaser should in the future decide to dispose of any of the Units, the Purchaser understands and agrees (a) that it may do so only (i) in compliance with the Securities Act and applicable state securities Law, as then in effect, or pursuant to an exemption therefrom or (ii) in the manner contemplated by any registration statement pursuant to which such securities are being offered, and (b) that stop-transfer instructions to that effect will be in effect with respect to such securities. Notwithstanding the foregoing, the Purchaser may at any time enter into one or more total return swaps with respect to the Purchaser's Units with a third party provided that such transactions are exempt from registration under the Securities Act.

Section 4.4 Nature of the Purchaser. The Purchaser represents and warrants to, and covenants and agrees with, the Partnership that (a) it is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated by the Commission pursuant to the Securities Act and (b) by reason of its business and financial experience it has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Units, is able to bear the economic risk of such investment and, at the present time, would be able to afford a complete loss of such investment.

Section 4.5 Receipt of Information; Authorization. The Purchaser acknowledges that it has (a) had access to the Partnership SEC Documents, (b) had access to information publicly disclosed regarding the Acquisition and its potential effect on the Partnership's operations and financial results and (c) been provided a reasonable opportunity to ask questions of and receive answers from Representatives of the Partnership regarding such matters.

Section 4.6 Restricted Securities. The Purchaser understands that the Units it is purchasing are characterized as "restricted securities" under the federal securities Laws inasmuch as they are being acquired from the Partnership in a transaction not involving a public offering and that under such Laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. In this connection, the Purchaser represents that it is knowledgeable with respect to Rule 144 of the Commission promulgated under the Securities Act.

Section 4.7 Certain Fees. No fees or commissions will be payable by the Purchaser to brokers, finders or investment bankers with respect to the sale of any of the Units or the consummation of the transactions contemplated by this Agreement.

Section 4.8 Legend. It is understood that the certificates evidencing the Units initially will bear the following legend: “These securities have not been registered under the Securities Act of 1933. These securities may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or pursuant to an exemption from registration thereunder and, in the case of a transaction exempt from registration, unless sold pursuant to Rule 144 under such Act or the issuer has received documentation reasonably satisfactory to it that such transaction does not require registration under such Act.”

## ARTICLE V COVENANTS

Section 5.1 Taking of Necessary Action. Each of the Parties hereto shall use its commercially reasonable efforts promptly to take or cause to be taken all action and promptly to do or cause to be done all things necessary, proper or advisable under applicable Law and regulations to consummate and make effective the transactions contemplated by this Agreement. Without limiting the foregoing, the Partnership and the Purchaser will, and the Partnership shall cause each of its Subsidiaries to, use its commercially reasonable efforts to make all filings and obtain all consents of Governmental Authorities that may be necessary or, in the reasonable opinion of the Purchaser or the Partnership, as the case may be, advisable for the consummation of the transactions contemplated by this Agreement or the other Basic Documents.

Section 5.2 Use of Proceeds. The Partnership shall use the collective proceeds from the sale of the Units to provide funds to TCP Intermediate Partnership to partially fund the purchase price set forth in the Acquisition Agreement.

Section 5.3 Tax Information. The Partnership shall provide the Purchaser with any reasonably requested tax information related to its ownership of the Units.

Section 5.4 Certain Special Allocations of Book and Taxable Income. To the extent that the Unit Price is more or less than the trading price of the Common Units of the Partnership on the Nasdaq Global Select Market as of the Closing Date, the General Partner intends to specially allocate items of book and taxable loss or income to the Purchaser so that its capital account in its Units is consistent, on a per-Unit basis, with the capital accounts of the other holders of Common Units (and thus to assure fungibility of all Common Units). The Purchaser acknowledges and agrees to such special allocations.

Section 5.5 Non-Disclosure; Interim Public Filings. Promptly following the execution of this Agreement and in any event within the time period proscribed by applicable Law, the Partnership shall issue a press release reasonably acceptable to the Purchaser or otherwise disclose the transactions contemplated hereby as required by applicable Law. In addition and without limitation of the foregoing, the Partnership shall timely file a Current Report on Form 8-K with the Commission in the form required by the Exchange Act (the “8-K Filing”) describing the terms of the transactions contemplated by this Agreement and containing all other information required to be disclosed by the Exchange Act in connection with the transactions contemplated hereby (and, if necessary, attaching this Agreement as an exhibit thereto). Thereafter, the Partnership shall timely file any filings and notices required by the Commission or applicable Law with respect to the transactions contemplated hereby. Except with respect to the 8-K Filing (a copy of which will be provided to the Purchaser for its review as early as practicable prior to its filing), the Partnership shall, at least two Business Days prior to the filing or dissemination of any disclosure required by this Section 5.5, provide a copy thereof to the Purchaser for their review. The Partnership and the Purchaser shall consult with each other in issuing any press releases or otherwise making public statements or filings and other communications with the Commission or any regulatory agency or The Nasdaq Stock Market (or other exchange on which securities of the Partnership are listed or traded) with respect to the transactions contemplated hereby, and neither Party shall issue any such press release or otherwise make any such public statement, filing or other communication without the prior consent of the other, except if such disclosure is required by Law, in which case the disclosing Party shall promptly provide the other Party with prior notice of such public statement, filing or other communication.

**ARTICLE VI**  
**CONDITIONS TO CLOSING**

Section 6.1 Mutual Conditions. The respective obligation of each Party to consummate the purchase and issuance and sale of the Units shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by a particular Party on behalf of itself in writing, in whole or in part, to the extent permitted by applicable Law):

(a) no Law shall have been enacted or promulgated, and no action shall have been taken, by any Governmental Authority of competent jurisdiction which temporarily, preliminarily or permanently restrains, precludes, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement or makes the transactions contemplated by this Agreement illegal; and

(b) there shall not be pending any Action by any Governmental Authority seeking to restrain, preclude, enjoin or prohibit the transactions contemplated by this Agreement.

Section 6.2 The Purchaser's Conditions. The obligation of the Purchaser to consummate the purchase of its Units shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by the Purchaser on behalf of itself in writing, in whole or in part, to the extent permitted by applicable Law):

(a) the Partnership shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement that are required to be performed and complied with by it on or prior to the Closing Date;

(b) the representations and warranties of the Partnership contained in this Agreement that are qualified by materiality or Partnership Material Adverse Effect shall be true and correct when made and as of the Closing Date and all other representations and warranties shall be true and correct in all material respects when made and as of the Closing Date, in each case as though made at and as of the Closing Date (except that representations made as of a specific date shall be required to be true and correct as of such date only);

(c) since the date of this Agreement, no Partnership Material Adverse Effect shall have occurred and be continuing;

(d) the Partnership shall have delivered, or caused to be delivered, to the Purchaser at the Closing, its closing deliveries described in Section 7.1; and

(e) the Partnership shall have submitted to The Nasdaq Market a “Notification Form: Listing of Additional Shares” with respect to the Units and no notice of delisting from The Nasdaq Market shall have been received by the Partnership with respect to the Common Units.

Section 6.3 The Partnership’s Conditions. The obligation of the Partnership to consummate the sale of the Units to the Purchaser shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions with respect to the Purchaser (any or all of which may be waived by the Partnership in writing, in whole or in part, to the extent permitted by applicable Law):

(a) the Purchaser shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement that are required to be performed and complied with by the Purchaser on or prior to the Closing Date;

(b) the representations and warranties of the Purchaser contained in this Agreement that are qualified by materiality or Purchaser Material Adverse Effect shall be true and correct when made and as of the Closing Date and all other representations and warranties of the Purchaser shall be true and correct in all material respects when made and as of the Closing Date, in each case as though made at and as of the Closing Date (except that representations or warranties made as of a specific date shall be required to be true and correct as of such date only); and

(c) the Purchaser shall have delivered, or caused to be delivered, its closing deliveries described in Section 7.2 (including payment of its Commitment Amount as provided in Section 7.2(b) and Section 2.1(c)).



**ARTICLE VII**  
**CLOSING DELIVERIES**

Section 7.1        The Partnership Deliveries. At the Closing, subject to the terms and conditions of this Agreement, the Partnership shall have delivered, or caused to be delivered, to the Purchaser:

- (a)            the Units by delivering certificates (bearing the legend set forth in Section 4.8) evidencing such Units, all free and clear of any Liens, encumbrances or interests of any other party;
- (b)            a certificate signed on behalf of the Partnership by the Chairman of the Board of Directors or the President and the principal financial or accounting officer of the General Partner, dated the Closing Date, to the effect that:
  - (i)            the representations and warranties of the Partnership in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Partnership has performed and complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;
  - (ii)           since the date of the most recent financial statements included or incorporated by reference in the Partnership SEC Documents, there has been no Partnership Material Adverse Effect, except as set forth in or contemplated in the Partnership SEC Documents;
  - (iii)           the conditions to the closing of the Acquisition set forth in the Acquisition Agreement (other than the payment of the purchase price by the Partnership) have been satisfied or waived;
- (c)            a certificate dated as of a recent date of the Secretary of State of the State of Delaware with respect to the due organization and good standing in the State of Delaware of the Partnership; and
- (d)            a receipt, dated the Closing Date, executed by the Partnership and delivered to the Purchaser certifying that the Partnership has received the Purchase Price with respect to the Units issued and sold to the Purchaser.

Section 7.2        The Purchaser Deliveries. Subject to the terms and conditions of this Agreement, the Purchaser will deliver, or cause to be delivered, at the Closing:

- (a)            a certificate signed on behalf of the Purchaser by the Chairman of the Board of Directors or the President and the principal financial or accounting officer, dated the Closing Date, to the effect that the representations and warranties of the Purchaser in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Purchaser has performed and complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(b) payment to the Partnership of Purchaser's Commitment Amount by wire transfer(s) of immediately available funds to an account designated by the Partnership.

## ARTICLE VIII INDEMNIFICATION, COSTS AND EXPENSES

Section 8.1 Indemnification by the Partnership. The Partnership agrees to indemnify the Purchaser and its Representatives (collectively, the "Purchaser Related Parties") from, and hold each of them harmless against, any and all actions, suits, proceedings (including any investigations, litigation or inquiries), demands and causes of action, and, in connection therewith, and promptly upon demand, pay and reimburse each of them for all costs, losses, liabilities, damages or expenses of any kind or nature whatsoever, including the reasonable fees and disbursements of counsel and all other reasonable expenses incurred in connection with investigating, defending or preparing to defend any such matter that may be incurred by them or asserted against or involve any of them as a result of, arising out of or in any way related to (i) any actual or proposed use by the Partnership of the proceeds of the sale of the Units or (ii) the breach of any of the representations, warranties or covenants of the Partnership contained herein; *provided* that such claim for indemnification relating to a breach of a representation or warranty is made prior to the expiration of such representation or warranty; *provided further*, that no Purchaser Related Party shall be entitled to recover special, consequential (including lost profits or diminution in value) or punitive damages.

Section 8.2 Indemnification by the Purchaser. The Purchaser agrees to indemnify the Partnership and its Representatives (collectively, the "Partnership Related Parties") from, and hold each of them harmless against, any and all actions, suits, proceedings (including any investigations, litigation or inquiries), demands and causes of action, and, in connection therewith, and promptly upon demand, pay and reimburse each of them for all costs, losses, liabilities, damages or expenses of any kind or nature whatsoever, including the reasonable fees and disbursements of counsel and all other reasonable expenses incurred in connection with investigating, defending or preparing to defend any such matter that may be incurred by them or asserted against or involve any of them as a result of, arising out of or in any way related to the breach of any of the covenants of the Purchaser contained herein; *provided further*, that no Partnership Related Party shall be entitled to recover special, consequential (including lost profits or diminution in value) or punitive damages.

Section 8.3 Indemnification Procedure. Promptly after any the Partnership Related Party or Purchaser Related Party (hereinafter, the "Indemnified Party") has received notice of any indemnifiable claim hereunder, or the commencement of any action or proceeding by a third party, which the Indemnified Party believes in good faith is an indemnifiable claim under this Agreement, the Indemnified Party shall give the indemnitor hereunder (the "Indemnifying Party") written notice of such claim or the commencement of such action or proceeding, but failure to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability it may have to such Indemnified Party hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure. Such notice shall state the nature and the basis of such claim to the extent then known. The Indemnifying Party shall have the right to defend and settle, at its own expense and by its own counsel who shall be reasonably acceptable to the Indemnified Party, any such matter as long as the Indemnifying Party pursues the same diligently and in good faith. If the Indemnifying Party undertakes to defend or settle, it shall promptly notify the Indemnified Party of its intention to do so, and the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in all commercially reasonable respects in the defense thereof and the settlement thereof. Such cooperation shall include furnishing the Indemnifying Party with any books, records and other information reasonably requested by the Indemnifying Party and in the Indemnified Party's possession or control. Such cooperation of the Indemnified Party shall be at the cost of the Indemnifying Party. After the Indemnifying Party has notified the Indemnified Party of its intention to undertake to defend or settle any such asserted liability, and for so long as the Indemnifying Party diligently pursues such defense, the Indemnifying Party shall not be liable for any additional legal expenses incurred by the Indemnified Party in connection with any defense or settlement of such asserted liability; *provided, however*, that the Indemnified Party shall be entitled (i) at its expense, to participate in the defense of such asserted liability and the negotiations of the settlement thereof and (ii) if (A) the Indemnifying Party has failed to assume the defense or employ counsel reasonably acceptable to the Indemnified Party or (B) if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and counsel to the Indemnified Party shall have concluded that there may be reasonable defenses available to the Indemnified Party that are different from or in addition to those available to the Indemnifying Party or if the interests of the Indemnified Party reasonably may be deemed to conflict with the interests of the Indemnifying Party, then the Indemnified Party shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the expenses and fees of such separate counsel and other expenses related to such participation to be reimbursed by the Indemnifying Party as incurred. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not settle any indemnified claim without the consent of the Indemnified Party, unless the settlement thereof imposes no liability or obligation on, involves no admission of wrongdoing or malfeasance by, and includes a complete release from liability of, the Indemnified Party.

**ARTICLE IX**  
**MISCELLANEOUS**

Section 9.1 Interpretation. Article, Section, Schedule and Exhibit references are to this Agreement, unless otherwise specified. All references to instruments, documents, contracts and agreements are references to such instruments, documents, contracts and agreements as the same may be amended, supplemented and otherwise modified from time to time, unless otherwise specified. The word “including” shall mean “including but not limited to”. Whenever the Partnership has an obligation under the Basic Documents, the expense of complying with such obligation shall be an expense of the Partnership unless otherwise specified. Whenever any determination, consent or approval is to be made or given by the Purchaser under this Agreement, such action shall be in the Purchaser’s sole discretion unless otherwise specified. If any provision in the Basic Documents is held to be illegal, invalid, not binding or unenforceable, such provision shall be fully severable and the Basic Documents shall be construed and enforced as if such illegal, invalid, not binding or unenforceable provision had never comprised a part of the Basic Documents, and the remaining provisions shall remain in full force and effect. The Basic Documents have been reviewed and negotiated by sophisticated parties with access to legal counsel and shall not be construed against the drafter.

Section 9.2 Survival of Provisions. The representations and warranties set forth in Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.12, 3.13, 3.15, 3.16, 3.22, 3.23, 4.1, 4.3, 4.4, 4.6, 4.7 and 4.8 of this Agreement shall survive the execution and delivery of this Agreement indefinitely, and the other representations and warranties set forth in this Agreement shall survive for a period of twelve (12) months following the Closing Date regardless of any investigation made by or on behalf of the Partnership or the Purchaser. The covenants made in this Agreement or any other Basic Document shall survive the closing of the transactions described herein and remain operative and in full force and effect regardless of acceptance of any of the Units and payment therefor and conversion, exercise or repurchase thereof. All indemnification obligations of the Partnership and the Purchaser pursuant to Article VIII of this Agreement shall remain operative and in full force and effect unless such obligations are expressly terminated in a writing by the Parties referencing the particular Article or Section, regardless of any purported general termination of this Agreement.

Section 9.3 No Waiver; Modifications in Writing.

(a) Delay. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to a Party at law or in equity or otherwise.

(b) Specific Waiver. Except as otherwise provided in this Agreement, no amendment, waiver, consent, modification or termination of any provision of this Agreement or any other Basic Document shall be effective unless signed by each of the Parties or each of the original signatories thereto affected by such amendment, waiver, consent, modification or termination. Any amendment, supplement or modification of or to any provision of this Agreement or any other Basic Document, any waiver of any provision of this Agreement or any other Basic Document and any consent to any departure by the Partnership from the terms of any provision of this Agreement or any other Basic Document shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement, no notice to or demand on any Party in any case shall entitle any Party to any other or further notice or demand in similar or other circumstances.

Section 9.4 Binding Effect; Assignment.

(a) Binding Effect. This Agreement shall be binding upon the Partnership, the Purchaser, and their respective successors and permitted assigns. Except as expressly provided in this Agreement, this Agreement shall not be construed so as to confer any right or benefit upon any Person other than the Parties to this Agreement and as provided in Article VII, and their respective successors and permitted assigns.

(b) Assignment of Units. All or any portion of the Purchaser's Units purchased pursuant to this Agreement may be sold, assigned or pledged by the Purchaser, subject to compliance with applicable securities Laws.

(c) Assignment of Rights. The Purchaser may assign all or any portion of its rights and obligations under this Agreement without the consent of the Partnership (i) to any Affiliate of the Purchaser or (ii) in connection with a total return swap or similar transaction with respect to the Units purchased by the Purchaser, and in each case the assignee shall be deemed to be the Purchaser hereunder with respect to such assigned rights or obligations and shall agree to be bound by the provisions of this Agreement. Except as expressly permitted by this Section 9.4(c), such rights and obligations may not otherwise be transferred except with the prior written consent of the Partnership (which consent shall not be unreasonably withheld), in which case the assignee shall be deemed to be the Purchaser hereunder with respect to such assigned rights or obligations and shall agree to be bound by the provisions of this Agreement.

Section 9.5 Aggregation of Units. All Units held or acquired by Persons who are Affiliates of one another shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

Section 9.6 Communications. All notices and demands provided for hereunder shall be in writing and shall be given by regular mail, registered or certified mail, return receipt requested, facsimile, air courier guaranteeing overnight delivery, electronic mail or personal delivery to the following addresses:

(a) If to the Purchaser:

TransCan Northern Ltd.  
13710 First National Bank Parkway  
Omaha, Nebraska 68154-5200

Attention: Marcia Anderson  
Facsimile: (XXX) XXX-XXX

with a copy to:

Attention: Donald DeGrandis  
Facsimile: (403) 920-2460

(b) If to the Partnership:

TC Pipelines, LP  
450 – 1st Street S.W.  
Calgary, Alberta, Canada T2P 5H1

Attention: Mark Zimmerman  
Facsimile: (403) 920-2363

with a copy to:

Attention: Donald DeGrandis  
Facsimile: (403) 920-2460

with a copy to:

Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, California 94105

Attention: Alan Talkington  
Facsimile: (415) 773-5759;

or to such other address as the Partnership or the Purchaser may designate in writing. All notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; upon actual receipt if sent by registered or certified mail, return receipt requested, or regular mail, if mailed; when receipt acknowledged, if sent via facsimile; and upon actual receipt when delivered by an air courier guaranteeing overnight delivery or via electronic mail.

Section 9.7 Removal of Legend. The Partnership shall remove the legend described in Section 4.8 from the certificates evidencing the Units at the request of the Purchaser submitting to the Partnership such certificates, together with such other documentation as may be reasonably requested by the Partnership or required by its transfer agent, unless the Partnership, with the advice of counsel, reasonably determines that such removal is inappropriate; *provided* that no opinion of counsel shall be required in the event the Purchaser is effecting a sale of such Units pursuant to Rule 144 or an effective registration statement (unless required by the Partnership's transfer agent). The Partnership shall cooperate with the Purchaser to effect removal of such legend. The legend described in Section 4.8 shall be removed and the Partnership shall issue a certificate without such legend to the holder of Units upon which it is stamped, if, unless otherwise required by state securities Laws, (i) such Units are sold pursuant to an effective Registration Statement, (ii) in connection with a sale, assignment or other transfer, such holder provides the Partnership with an opinion of a law firm reasonably acceptable to the Partnership, in a generally acceptable form, to the effect that such sale, assignment or transfer of such Units may be made without registration under the applicable requirements of the Securities Act, or (iii) such holder provides the Partnership with reasonable assurance that such Units can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A under the Securities Act.

Section 9.8 Expenses. Each Party shall bear its own fees and expenses incurred in connection with the preparation of and performance under this Agreement.

Section 9.9 Entire Agreement. This Agreement and the other Basic Documents are intended by the Parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the Parties hereto and thereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein with respect to the rights granted by the Partnership or the Purchaser set forth herein or therein. This Agreement and the other Basic Documents supersede all prior agreements and understandings between the Parties with respect to such subject matter.

Section 9.10 Governing Law. This Agreement will be construed in accordance with and governed by the Laws of the State of New York without regard to principles of conflicts of Laws.

Section 9.11 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 9.12 Expenses. If any action at law or equity is necessary to enforce or interpret the terms of the Basic Documents, the prevailing Party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such Party may be entitled.

Section 9.13 Termination.

(a) Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time at or prior to the Closing by the mutual written consent of the Purchaser and the Partnership.

(b) Notwithstanding anything herein to the contrary, this Agreement shall automatically terminate at any time at or prior to the Closing:

(i) if a Law shall have been enacted or promulgated, or if any action shall have been taken by any Governmental Authority of competent jurisdiction which permanently restrains, precludes, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement or makes the transactions contemplated by this Agreement illegal;

(ii) if the Closing shall not have occurred on or before December 31, 2009; or

(iii) if the Acquisition Agreement shall have been terminated in accordance with its terms.

(c) In the event of the termination of this Agreement as provided in Section 9.13(a) or Section 9.13(b), this Agreement shall forthwith become null and void. In the event of such termination, there shall be no liability on the part of any Party hereto; *provided* that nothing herein shall relieve any Party from any liability or obligation with respect to any willful breach of this Agreement.

Section 9.14 Recapitalization, Exchanges, Etc. Affecting the Units. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all units or other equity interests of the Partnership or any successor or assign of the Partnership (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for or in substitution of, the Units, and shall be appropriately adjusted for combinations, unit splits, recapitalizations and the like occurring after the date of this Agreement.

Section 9.15 Obligations Limited to Parties to Agreement. Each of the parties hereto covenants, agrees and acknowledges that no Person other than the Purchaser (and their permitted assignees) and the Partnership shall have any obligation hereunder and that, notwithstanding that the Purchaser may be a corporation, partnership or limited liability company, no recourse under this Agreement or the other Basic Documents or under any documents or instruments delivered in connection herewith or therewith shall be had against any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of the Purchaser or the Partnership or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the foregoing, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable Law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of the Purchaser or the Partnership or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the foregoing, as such, for any obligations of the Purchaser and the Partnership under this Agreement or the other Basic Documents or any documents or instruments delivered in connection herewith or therewith or for any claim based on, in respect of or by reason of such obligation or its creation.

*[The remainder of this page is intentionally left blank.]*



IN WITNESS WHEREOF, the Parties hereto execute this Agreement, effective as of the date first above written.

**PARTNERSHIP**

TC PipeLines, LP

By: TC PipeLines GP, Inc., its general partner

By: /s/ Mark Zimmerman  
Name: Mark Zimmerman  
Title: President

By: /s/ Donald DeGrandis  
Name: Donald DeGrandis  
Title: Secretary

*[Signature page to Common Unit Purchase Agreement]*

---

**PURCHASER**

TransCan Northern Ltd.

By: /s/ Ron Cook

Name: Ron Cook

Title: Vice-President, Taxation

By: /s/ Julie E. Willett

Name: Julie E. Willett

Title: Vice-President, Finance

*[Signature page to Common Unit Purchase Agreement]*

---

**EXCHANGE AGREEMENT**

**by and between**

**TC PipeLines, LP**

**and**

**TC PipeLines GP, Inc.**

**Dated as of July 1, 2009**

---

## EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT (this "Agreement") dated as of July 1, 2009 (the "Closing Date"), is entered into by and between TC PipeLines, LP, a Delaware limited partnership (the "Partnership"), and TC PipeLines GP, Inc., a Delaware corporation (the "General Partner").

### RECITALS

- A. The General Partner is the general partner of the Partnership and holds (i) a 1% General Partner Interest in the Partnership, as defined in the Current Partnership Agreement (as defined below), and (ii) limited partnership interests in the Partnership defined in the Current Partnership Agreement as "Common Units".
- B. The General Partner is also the holder of certain limited partnership interests in the Partnership defined in the Current Partnership Agreement as "Incentive Distribution Rights" ("IDRs"). The IDRs as defined in the Current Partnership Agreement immediately prior to the effectiveness of the Revised Partnership Agreement (as defined below) are referred to herein as the "Old IDRs".
- C. The General Partner has agreed to transfer and assign all of the Old IDRs held by it to the Partnership for cancellation in exchange for the issuance by the Partnership to the General Partner of (i) all of the new IDRs to be issued by the Partnership under the Revised Partnership Agreement, having the rights, preferences, privileges and restrictions set forth therein (the "New IDRs") and (ii) 3,762,000 Common Units (the "Additional Units"), and the Partnership has agreed to issue the New IDRs and Additional Units to the General Partner as consideration for the transfer of the Old IDRs to the Partnership.
- D. The parties hereto have agreed to amend and restate the Amended and Restated Agreement of Limited Partnership of TC PipeLines, LP in effect as of the date hereof (the "Current Partnership Agreement") so as effectively to eliminate the Old IDRs and replace them with the New IDRs and to make certain other changes to the Current Partnership Agreement (such amended and restated agreement being referred to as the "Revised Partnership Agreement").
- E. The execution and adoption of the Revised Partnership Agreement, the transfer and assignment by the General Partner to the Partnership of the Old IDRs, and the issuance by the Partnership of the New IDRs and Additional Units, as described above, (collectively, the "Transactions") are conditioned on each other.
- F. The Transactions are part of, and coincident with the completion of, another transaction that includes the sale by Gas Transmission Northwest Corporation, a California corporation and an affiliate of the General Partner, to TC Pipelines Intermediate Limited Partnership, a Delaware limited partnership and an affiliate of the Partnership, of a 100% membership interest in North Baja Pipeline, LLC, a Delaware limited liability company.

NOW, THEREFORE, in consideration of their mutual undertakings and agreements hereunder, the parties undertake and agree as follows:

**ARTICLE I  
DEFINITIONS**

“*Additional Units*” has the meaning given such term in the Recitals.

“*Agreement*” has the meaning given such term in the Preamble.

“*Closing Date*” has the meaning given such term in the Preamble.

“*Current Partnership Agreement*” has the meaning given such term in the Recitals.

“*General Partner*” has the meaning given such term in the Preamble.

“*IDRs*” has the meaning given such term in the Recitals.

“*New IDRs*” has the meaning given such term in the Recitals.

“*Old IDRs*” has the meaning given such term in the Recitals.

“*Partnership*” has the meaning given such term in the Preamble.

“*Revised Partnership Agreement*” has the meaning given such term in the Recitals. The Revised Partnership Agreement shall be in the form attached hereto as Exhibit 1.

“*Securities Act*” has the meaning given such term in Section 3.2(c).

“*Transactions*” has the meaning given such term in the Recitals.

“*Units*” means limited partnership interests in the Partnership defined in the Current Partnership Agreement and the Revised Partnership Agreement as “Common Units.”

**ARTICLE II  
THE TRANSACTIONS**

2.1 Transfer and Assignment of Old IDRs. On the Closing Date and immediately upon the execution of the Revised Partnership Agreement, the General Partner shall, by its execution of the Revised Partnership Agreement, transfer and assign to the Partnership all of its right, title and interest in the Old IDRs held by it on the Closing Date, and the Old IDRs shall thereupon be cancelled and shall cease to exist.

2.2 Consideration. As consideration for the transfer and assignment of the Old IDRs to the Partnership, the Partnership shall issue to the General Partner, on the Closing Date, the New IDRs and Additional Units. Such issuance shall be deemed to have occurred immediately upon execution of the Revised Partnership Agreement.

2.3 Partnership Agreement. On the Closing Date, the General Partner shall, in order to evidence the exchange of the Old IDRs for the New IDRs, execute and adopt the Revised Partnership Agreement on its own behalf in its capacity as general partner of the Partnership and by power of attorney on behalf of the limited partners of the Partnership.

2.4 Certificates for Additional Units. On the Closing Date, the Partnership shall issue to the General Partner a certificate or certificates representing the Additional Units. The certificate(s) evidencing the Additional Units shall bear a legend substantially in the form set forth below and containing such other information as the Partnership may deem necessary or appropriate:

**THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND SUCH LAWS OR PURSUANT TO AN EXEMPTION THEREFROM WHICH, IN THE OPINION OF COUNSEL FOR THE HOLDER, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO COUNSEL FOR THIS LIMITED PARTNERSHIP, IS AVAILABLE.**

No fractional Units or scrip shall be issued as a result of the transactions contemplated by this Agreement.

2.5 Listing of Units. The Partnership shall apply to have the Additional Units listed on the Nasdaq Global Select Market prior to or on the Closing Date.

2.6 Further Assurances. The Partnership and the General Partner agree to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be reasonably necessary or convenient to carry out the transactions contemplated hereby.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Partnership. The Partnership represents and warrants to the General Partner as follows:

(a) the Partnership is a limited partnership duly formed and in good standing under the laws of the State of Delaware and has the partnership power and authority to execute and deliver this Agreement and, subject to the terms and conditions hereof, to carry out its terms;

(b) the Partnership has taken all action as may be necessary to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement and the performance of its obligations hereunder. This Agreement constitutes a legal, valid and binding obligation of the Partnership, enforceable against the Partnership in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' or secured parties' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law;

(c) neither the execution and delivery hereof nor the performance of the Partnership's obligations hereunder will violate or contravene any applicable law, the Current Partnership Agreement or any of the Partnership's material agreements;

(d) on the Closing Date, the Additional Units, the New IDRs and the limited partner interests represented thereby will have been duly and validly authorized and, when issued and delivered in accordance with the terms and provisions of this Agreement, will be duly and validly issued and fully paid (to the extent required under the Revised Partnership Agreement) and non-assessable (except as such nonassessability may be affected by matters described in the Partnership's filings with the Securities and Exchange Commission); and

(e) on the Closing Date and prior to the issuance of the New IDRs and issuance and sale of the Additional Units, the issued and outstanding limited partner interests of the Partnership consist of the Old IDRs and 34,856,086 Common Units. Except for the Share Unit Plan for Non-Employee Directors (2007) filed as Exhibit 10.25 to the Partnership's Form 10-K for the fiscal year ended December 31, 2008, the Partnership has no equity compensation plans that contemplate the issuance of Common Units (or securities convertible into or exchangeable for Common Units). The Partnership has no outstanding indebtedness having the right to vote (or convertible into or exchangeable for the right to vote) on any matters on which the Unitholders of the Partnership (as defined in the Revised Partnership Agreement) may vote. Except as contemplated by this Agreement or as are contained in the Revised Partnership Agreement, there are no outstanding or authorized (i) options, warrants, preemptive rights, subscriptions, calls or other rights, convertible securities, agreements, claims or commitments of any character obligating the Partnership or any of its subsidiaries to issue, transfer or sell any equity interests in the Partnership or any of its subsidiaries or securities convertible into or exchangeable for such equity interests, (ii) obligations of the Partnership or any of its subsidiaries to repurchase, redeem or otherwise acquire any equity interests in the Partnership or any of its subsidiaries or any such securities or agreements listed in clause (i) of this sentence, or (iii) voting trusts or similar agreements to which the Partnership or any of its subsidiaries is a party with respect to the voting of the equity interests of the Partnership or its subsidiaries.

3.2. General Partner. The General Partner represents and warrants to the Partnership as follows:

(a) the General Partner is a company duly formed and in good standing under the laws of the State of Delaware and has the corporate power and authority to execute and deliver this Agreement and, subject to the terms and conditions hereof, to carry out its terms;

(b) this Agreement constitutes a legal, valid and binding obligation of the General Partner, enforceable against the General Partner in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' or secured parties' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law;

(c) the General Partner is an “Accredited Investor” as defined in Rule 501(a) promulgated under the United States Securities Act of 1933, as amended (the “Securities Act”), and is acquiring the Additional Units for its own account, and not with a view to any distribution, resale, subdivision, or fractionalization thereof in violation of the Securities Act or any other applicable domestic or foreign securities law, and the General Partner has no present plans to enter into any contract, undertaking, agreement or arrangement for any such distribution, resale, subdivision, or fractionalization of the Additional Units; and

(d) the General Partner is the beneficial and record holder of the Old IDRs and the Old IDRs are owned by the General Partner free and clear of all liens; there is no subscription, option, warrant, call, right, agreement or commitment relating to the issuance, sale, delivery, repurchase or transfer by the General Partner of such Old IDRs, except as set forth in the Current Partnership Agreement.

#### **ARTICLE IV CONDITIONS**

4.1. Conditions to Obligations of Each Party. Notwithstanding any other provision of this Agreement, the respective obligations of each party to effect the transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions:

(a) no order shall have been entered and remained in effect in any action or proceeding before any federal, foreign, state or provincial court or governmental agency or other federal, foreign, state or provincial regulatory or administrative agency or commission that would prevent or make illegal the consummation of the transactions contemplated herein; and

(b) the representations and warranties of the other party shall remain true and correct on the Closing Date.

4.2. Conditions to Obligations of the Partnership. Notwithstanding any other provision of this Agreement, the obligations of the Partnership to effect the transactions contemplated by this Agreement shall be subject to the fulfillment of the condition that the agreements and covenants of the General Partner to be complied with or performed pursuant to the terms hereof shall have been duly complied with or performed.

4.3. Conditions to Obligations of the General Partner. Notwithstanding any other provision of this Agreement, the obligations of the General Partner to effect the transactions contemplated by this Agreement shall be subject to the fulfillment of the condition that the agreements and covenants of the Partnership to be complied with or performed pursuant to the terms hereof shall have been duly complied with or performed.



**ARTICLE V  
MISCELLANEOUS**

- 5.1. Governing Law. The laws of the State of Delaware shall govern the construction, interpretation and effect of this Agreement without giving effect to any conflicts of law principles.
- 5.2. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which when taken together shall constitute one and the same original document.
- 5.3. Amendments. All waivers, modifications, amendments or alterations of this Agreement shall require the written approval of each of the parties to this Agreement.
- 5.4. Termination. This Agreement and all rights and obligations hereunder may be terminated by any party hereto if a final unappealable order to restrain, enjoin or otherwise prevent, or awarding substantial damages in connection with, consummation of this Agreement or the transactions contemplated in connection herewith shall have been entered.
- 5.5. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and the respective successors and assigns. This Agreement shall not be assignable until after the Closing Date by the parties hereto, except with the prior written consent of the other party.
- 5.6. Benefits of Agreement Restricted to Parties. This Agreement is made solely for the benefit of the parties to this Agreement, and no other person (including employees) shall have any right, claim or cause of action under or by virtue of this Agreement.
- 5.7. Severability. In the event that any provision of this Agreement shall finally be determined to be unlawful, such provision shall, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to any of the parties to this Agreement, be deemed severed from this Agreement and every other provision of this Agreement shall remain in full force and effect.
- 5.8. Titles. The article, section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.
- 5.9. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered if delivered in person, by cable, telegram, telex, or telecopy and shall be deemed to have been duly given three business days after deposit with a United States post office if delivered by registered or certified mail (postage prepaid, return receipt requested) to the respective parties as follows:

if to the Partnership, at

TC PipeLines, LP  
450 – 1<sup>st</sup> Street S.W.  
Calgary, Alberta, Canada T2P 5H1  
Attn: Mark Zimmerman  
Facsimile: (403) 920-2363

if to the General Partner, at

TC PipeLines GP, Inc.  
450 – 1<sup>st</sup> Street S.W.  
Calgary, Alberta, Canada T2P 5H1  
Attn: Secretary  
Facsimile: (403) 920-2460

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this Agreement has been executed on behalf of each of the parties hereto effective as of the day and year first above written.

**TC PIPELINES, LP**

By: **TC PipeLines GP, Inc.**  
its general partner

By: /s/ Mark Zimmerman

Name: Mark Zimmerman  
Title: President

By: /s/ Donald J. DeGrandis

Name: Donald J. DeGrandis  
Title: Secretary

**TC PIPELINES GP, INC.**

By: /s/ Mark Zimmerman

Name: Mark Zimmerman  
Title: President

By: /s/ Donald J. DeGrandis

Name: Donald J. DeGrandis  
Title: Secretary



---

# NewsRelease

## **TC PipeLines, LP Completes Acquisition of North Baja and Restructures Incentive Distribution Rights**

**OMAHA, Nebraska – July 1, 2009** – TC PipeLines, LP (NASDAQ: TCLP) (the Partnership) today announced it has completed the acquisition of North Baja Pipeline, LLC (North Baja) from TransCanada Corporation (TSX, NYSE: TRP) (TransCanada) and amended the Incentive Distribution Rights (IDRs) held by TC PipeLines GP, Inc. (the General Partner). The aggregate consideration provided to TransCanada included a combination of cash and common units totalling approximately \$395 million. On a per unit basis, the transaction is expected to be accretive to Partnership cash flows.

“The acquisition of North Baja from TransCanada allows the Partnership to continue to grow its portfolio of high quality energy infrastructure assets,” said Russ Girling, chairman and chief executive officer of TC PipeLines GP, Inc. “In addition, the restructuring of the General Partner IDRs reduces the Partnership’s cost of capital and positions it to potentially play a greater role in the financing of TransCanada’s C\$22 billion capital program.”

The North Baja acquisition fits well with the Partnership’s business by providing a low-risk, regulated energy infrastructure asset underpinned by long-term contracts, and strong business fundamentals that provide stable cash flows. The restructuring of the IDRs better positions the Partnership to pursue future acquisitions and expansion projects by reducing the Partnership’s cost of capital and strengthening its competitive position.

TC PipeLines, LP has interests in approximately 3,700 miles of federally regulated U.S. interstate natural gas pipelines, including Great Lakes Gas Transmission Limited Partnership (46.45 per cent ownership), Northern Border Pipeline Company (50 per cent ownership), Tuscarora Gas Transmission Company (100 per cent ownership) and North Baja Pipeline, LLC (100 per cent ownership). Great Lakes is a 2,115-mile pipeline serving markets in Minnesota, Wisconsin, Michigan and eastern Canada. The 1,249-mile Northern Border Pipeline transports natural gas from the Montana-Saskatchewan border to markets in the midwestern United States. Tuscarora owns a 240-mile pipeline system that transports natural gas from Oregon, where it interconnects TransCanada’s Gas Transmission Northwest System, to markets in Oregon, Northern California, and Northwestern Nevada. North Baja is an 80-mile natural gas pipeline that extends from Southwestern Arizona to a point on the California/Mexico border and connects with a natural gas pipeline system in Mexico. TC PipeLines, LP is managed by its general partner, TC PipeLines GP, Inc., an indirect wholly owned subsidiary of TransCanada Corporation. TC PipeLines GP, Inc. also holds common units of TC PipeLines, LP. Common units of TC PipeLines, LP are quoted on the NASDAQ Stock Market and trade under the symbol “TCLP.” For more information about TC PipeLines, LP, visit the Partnership’s website at [www.tcpipelineslp.com](http://www.tcpipelineslp.com).

---

**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION**

This news release may include forward-looking statements regarding future events and the future financial performance of TC PipeLines, LP. Words such as “believes,” “expects,” “intends,” “forecasts,” “projects,” and similar expressions identify forward-looking statements. All forward-looking statements are based on the Partnership’s current beliefs as well as assumptions made by and information currently available to the Partnership. These statements reflect the Partnership’s current views with respect to future events. The Partnership assumes no obligation to update any such forward-looking statement to reflect events or circumstances occurring after the date hereof. Important factors that could cause actual results to materially differ from the Partnership’s current expectations include our ability to identify, negotiate and finance potential business opportunities, market conditions, and other risks inherent in an investment in us as discussed in the Partnership’s filings with the Securities and Exchange Commission, including the Partnership’s Annual Report on Form 10-K for the year ended December 31, 2008 and the Partnership’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2009.

- 30 - -

Media Inquiries:	Cecily Dobson/Terry Cunha	(403) 920-7859 (800) 608-7859
Unitholder and Analyst Inquiries:	Terry Hook	(877) 290-2772 investor_relations@tcpipelineslp.com

---