

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 8-K

Current Report Pursuant to Section 13 or 15(d) of  
The Securities Act of 1934

Date of Report (Date of earliest event reported): September 1, 2000

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

110 Turnpike Road, Suite 203  
Westborough, Massachusetts  
(Address of principal executive offices)

01581  
(Zip Code)

(508) 871-7046  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such report(s), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

## ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS

On September 1, 2000, TC PipeLines, LP, through its subsidiary partnership, TC Tuscarora Intermediate Limited Partnership (of which TC PipeLines, LP is the sole limited partner), completed its acquisition (the "Acquisition") of a 49% general partner interest in Tuscarora Gas Transmission Company ("Tuscarora") for a purchase price of \$28 million pursuant to a purchase and sale agreement dated July 19, 2000. The purchase price was financed through a combination of cash and debt. TC PipeLines, LP entered into a 3 year, \$30 million credit facility on August 22, 2000 with Bank One, NA which was used to finance a portion of the purchase price.

Tuscarora is a Nevada general partnership which owns a 229-mile interstate pipeline system that transports natural gas to the northern Nevada market. The Tuscarora pipeline system was constructed in 1995 and currently has a throughput capacity of approximately 111 million cubic feet of natural gas per day. Tuscarora is regulated by the Federal Energy Regulatory Commission.

The 49% interest in Tuscarora was purchased from TCPL Tuscarora Ltd., an indirect wholly owned subsidiary of TransCanada PipeLines Limited ("TransCanada"). TC PipeLines GP, Inc., another wholly-owned subsidiary of TransCanada, is the general partner of both TC PipeLines, LP and TC Tuscarora Intermediate Limited Partnership. Subsidiaries of TransCanada also hold common and subordinated units of TC PipeLines, LP.

TCPL Tuscarora Ltd. has retained a 1% general partner interest in Tuscarora. The remaining 50% interest is held by a wholly-owned subsidiary of Sierra Pacific Resources of Reno, Nevada.

A committee comprised of all three of the independent members of the board of directors of the general partner of TC PipeLines, LP (the "Conflicts Committee") retained a nationally recognized investment banking firm as its financial advisor in connection with the Acquisition. Based on the financial advisor's opinion dated July 19, 2000 that the consideration to be paid by TC Tuscarora Intermediate Limited Partnership in connection with the proposed sale by TCPL Tuscarora Ltd. of a 49% general partner interest in Tuscarora is fair from a financial point of view to TC PipeLines, LP, the Conflicts Committee recommended that the board of directors of the general partner approve the transaction. Based on such recommendation, the board of directors approved the Tuscarora acquisition on July 19, 2000.

ITEM 7. EXHIBITS

1. Certificate of Limited Partnership of TC Tuscarora Intermediate Limited Partnership.
2. Agreement of Limited Partnership of TC Tuscarora Intermediate Limited Partnership dated July 19, 2000.
3. Purchase and Sale Agreement dated July 19, 2000 among TCPL Tuscarora Ltd., TC Tuscarora Intermediate Limited Partnership, TC PipeLines GP, Inc., TransCanada PipeLines Limited, and TransCanada PipeLine USA Ltd.

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 thereunto duly authorized.

TC PipeLines, LP  
By TC PipeLines GP, Inc.,  
its general partner  
(Registrant)

September 14, 2000

By: /s/ Theresa Jang  
-----  
Theresa Jang  
Controller

## EXHIBIT INDEX

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99.2 Agreement of Limited Partnership of TC Tuscarora Intermediate Limited Partnership dated July 19, 2000.

99.3 Purchase and Sale Agreement dated July 19, 2000 among TCPL Tuscarora Ltd., TC Tuscarora Intermediate Limited Partnership, TC PipeLines GP, Inc., TransCanada PipeLines Limited, and TransCanada PipeLine USA Ltd.

CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
TC TUSCARORA INTERMEDIATE LIMITED PARTNERSHIP

The undersigned represents that it has formed a limited partnership pursuant to the Delaware Revised Uniform Limited Partnership Act, 6 Delaware Code, Chapter 17, (the "Act") and that the undersigned has executed this Certificate in compliance with the requirements of the Act. The undersigned further states:

1. The name of the limited partnership is TC Tuscarora Intermediate Limited Partnership (the "Partnership").
2. The address of the registered office of the Partnership in the State of Delaware and the name and address of the registered agent of the Partnership required to be maintained by Section 17-104 of the Act at such address are as follows:

NAME AND ADDRESS OF REGISTERED AGENT	ADDRESS OF REGISTERED OFFICE
The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801	Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801

3. The name and business address of the General Partner is as follows:

GENERAL PARTNER	ADDRESS
TC PipeLines GP, Inc.	203, 110 Turnpike Road Westborough, Massachusetts 01581

WHEREFORE, the undersigned has executed this Certificate as of the 19th of July, 2000.

GENERAL PARTNER:

TC PIPELINES GP, INC.

By: /s/ Paul F. MacGregor

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Name: Paul F. MacGregor  
Title: Vice-President, Business Development

AGREEMENT OF LIMITED PARTNERSHIP  
OF  
TC TUSCARORA INTERMEDIATE LIMITED PARTNERSHIP

TABLE OF CONTENTS

ARTICLE I.....		4
SECTION 1.1	DEFINITIONS.....	4
SECTION 1.2	CONSTRUCTION.....	14
ARTICLE II.....		14
SECTION 2.1	FORMATION.....	14
SECTION 2.2	NAME.....	14
SECTION 2.3	REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE; OTHER OFFICES.....	14
SECTION 2.4	PURPOSE AND BUSINESS.....	15
SECTION 2.5	POWERS.....	15
SECTION 2.6	POWER OF ATTORNEY.....	16
SECTION 2.7	TERM.....	17
SECTION 2.8	TITLE TO PARTNERSHIP ASSETS.....	17
ARTICLE III.....		18
SECTION 3.1	LIMITATION OF LIABILITY.....	18
SECTION 3.2	MANAGEMENT OF BUSINESS.....	18
SECTION 3.3	OUTSIDE ACTIVITIES OF THE LIMITED PARTNERS.....	18
SECTION 3.4	RIGHTS OF LIMITED PARTNERS.....	18
ARTICLE IV.....		19
SECTION 4.1	TRANSFER GENERALLY.....	19
SECTION 4.2	TRANSFER OF GENERAL PARTNER'S PARTNERSHIP INTEREST.....	20
SECTION 4.3	TRANSFER OF A LIMITED PARTNER'S PARTNERSHIP INTEREST.....	20
SECTION 4.4	RESTRICTIONS ON TRANSFERS.....	20
ARTICLE V.....		21
SECTION 5.1	INITIAL CONTRIBUTIONS.....	21
SECTION 5.2	ADDITIONAL CAPITAL CONTRIBUTIONS.....	21
SECTION 5.3	INTEREST AND WITHDRAWAL.....	21
SECTION 5.4	CAPITAL ACCOUNTS.....	21
SECTION 5.5	LOANS FROM PARTNERS.....	24
SECTION 5.6	LIMITED PREEMPTIVE RIGHTS.....	24
SECTION 5.7	FULLY PAID AND NON-ASSESSABLE NATURE OF PARTNERSHIP INTERESTS.....	25
ARTICLE VI.....		25
SECTION 6.1	ALLOCATIONS FOR CAPITAL ACCOUNT PURPOSES.....	25
SECTION 6.2	ALLOCATIONS FOR TAX PURPOSES.....	29
SECTION 6.3	DISTRIBUTIONS.....	31
ARTICLE VII.....		32
SECTION 7.1	MANAGEMENT.....	32
SECTION 7.2	CERTIFICATE OF LIMITED PARTNERSHIP.....	34
SECTION 7.3	RESTRICTIONS ON GENERAL PARTNER'S AUTHORITY.....	34
SECTION 7.4	REIMBURSEMENT OF THE GENERAL PARTNER.....	35
SECTION 7.5	OUTSIDE ACTIVITIES.....	36
SECTION 7.6	LOANS FROM THE GENERAL PARTNER; LOANS OR CONTRIBUTIONS FROM THE PARTNERSHIP; CONTRACTS WITH AFFILIATES; CERTAIN RESTRICTIONS ON THE GENERAL PARTNER.....	37
SECTION 7.7	INDEMNIFICATION.....	38
SECTION 7.8	LIABILITY OF INDEMNITEES.....	40
SECTION 7.9	RESOLUTION OF CONFLICTS OF INTEREST.....	41
SECTION 7.10	OTHER MATTERS CONCERNING THE GENERAL PARTNER.....	42
SECTION 7.11	RELIANCE BY THIRD PARTIES.....	43
ARTICLE VIII.....		44
SECTION 8.1	RECORDS AND ACCOUNTING.....	44
SECTION 8.2	FISCAL YEAR.....	44



ARTICLE IX.....		44
SECTION 9.1	TAX RETURNS AND INFORMATION.....	44
SECTION 9.2	TAX ELECTIONS.....	44
SECTION 9.3	TAX CONTROVERSIES.....	45
SECTION 9.4	WITHHOLDING.....	45
ARTICLE X.....		45
SECTION 10.1	ADMISSION OF PARTNERS.....	45
SECTION 10.2	ADMISSION OF SUBSTITUTED LIMITED PARTNER.....	45
SECTION 10.3	ADMISSION OF ADDITIONAL LIMITED PARTNER.....	46
SECTION 10.4	ADMISSION OF SUCCESSOR OR TRANSFEREE GENERAL PARTNER.....	46
SECTION 10.5	AMENDMENT OF AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP.....	47
ARTICLE XI.....		47
SECTION 11.1	WITHDRAWAL OF THE GENERAL PARTNER.....	47
SECTION 11.2	REMOVAL OF THE GENERAL PARTNER.....	48
SECTION 11.3	INTEREST OF DEPARTING PARTNER.....	49
SECTION 11.4	WITHDRAWAL OF A LIMITED PARTNER.....	49
ARTICLE XII.....		49
SECTION 12.1	DISSOLUTION.....	49
SECTION 12.2	CONTINUATION OF THE BUSINESS OF THE PARTNERSHIP AFTER DISSOLUTION.....	50
SECTION 12.3	LIQUIDATOR.....	51
SECTION 12.4	LIQUIDATION.....	51
SECTION 12.5	CANCELLATION OF CERTIFICATE OF LIMITED PARTNERSHIP.....	52
SECTION 12.6	RETURN OF CONTRIBUTIONS.....	52
SECTION 12.7	WAIVER OF PARTITION.....	53
SECTION 12.8	CAPITAL ACCOUNT RESTORATION.....	53
ARTICLE XIII.....		53
SECTION 13.1	AMENDMENT TO BE ADOPTED SOLELY BY THE GENERAL PARTNER.....	53
SECTION 13.2	AMENDMENT PROCEDURES.....	54
ARTICLE XIV.....		55
SECTION 14.1	AUTHORITY.....	55
SECTION 14.2	PROCEDURE FOR MERGER OR CONSOLIDATION.....	55
SECTION 14.3	APPROVAL BY LIMITED PARTNERS OF MERGER OR CONSOLIDATION.....	56
SECTION 14.4	CERTIFICATE OF MERGER.....	57
SECTION 14.5	EFFECT OF MERGER.....	57
ARTICLE XV.....		57
SECTION 15.1	ADDRESSES AND NOTICES.....	57
SECTION 15.2	FURTHER ACTION.....	58
SECTION 15.3	BINDING EFFECT.....	58
SECTION 15.4	INTEGRATION.....	58
SECTION 15.5	CREDITORS.....	58
SECTION 15.6	WAIVER.....	58
SECTION 15.7	COUNTERPARTS.....	58
SECTION 15.8	APPLICABLE LAW.....	59
SECTION 15.9	INVALIDITY OF PROVISION.....	58
SECTION 15.10	CONSENT OF PARTNERS.....	59

AGREEMENT OF LIMITED PARTNERSHIP  
OF  
TC TUSCARORA INTERMEDIATE LIMITED PARTNERSHIP

THIS AGREEMENT OF LIMITED PARTNERSHIP of TC TUSCARORA INTERMEDIATE LIMITED PARTNERSHIP, dated as of July 19, 2000 is entered into by and between TC PipeLines GP, Inc., a Delaware corporation, as the General Partner, and TC Pipelines, LP, a Delaware limited partnership, as the Limited Partner, together with any other Persons who hereafter become Partners in the Partnership or parties hereto as provided herein.

RECITALS:

WHEREAS, TC PipeLines GP, Inc. formed the Partnership pursuant to the certificate of Limited Partnership of TC Tuscarora Intermediate Limited Partnership filed with the Secretary of State of the State of Delaware on July 19, 2000 date; and

WHEREAS, the Partners of the Partnership now desire to enter into a partnership agreement to reflect contributions by the Partners and certain other matters.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree with each other 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. Capitalized terms used herein but otherwise defined shall have the meaning assigned to such term in the MLP Agreement (as defined below).

"ADDITIONAL LIMITED PARTNER" means a Person admitted to the Partnership as a Limited Partner 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 or any other specified interest in the Partnership shall be the amount which such Adjusted Capital Account would be if such General Partner Interest, Limited Partner Interest 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 interest was first issued.

"ADJUSTED PROPERTY" means any property the Carrying Value of which has been adjusted pursuant to Section 5.4(d)(i) or 5.4(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.

"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 Agreement of Limited Partnership of TC Tuscarora Intermediate Limited Partnership, as it may be amended, supplemented or restated from time to time.

"ASSETS" means the assets being conveyed to the Partnership on the Closing Date pursuant to the Purchase and Sale Agreement.

"ASSIGNEE" means a Person to whom one or more Partnership Interests have been transferred in a manner permitted under 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) 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 or any JV Entity 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 of the MLP Agreement 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 (iii) above if the effect of such reserves would be that the MLP is unable to distribute the Minimum Quarterly Distribution on all Common Units, plus any Cumulative Common Unit Arrearage 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-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 5.4 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.

"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 5.4. The "Capital Account" of a Partner in respect of a General Partner Interest, Limited Partner Interest or any other specified interest in the Partnership shall be the amount which such Capital Account would be if such General Partner Interest, Limited Partner Interest or other specified interest in the Partnership were the only interest in the Partnership held by a Partner from and after the date on which such interest in the Partnership 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 pursuant to this Agreement or the Contribution and Conveyance Agreement.

"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 5.4(d)(i) and 5.4(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.

"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.

"CLOSING DATE" means the date on which the 49% general partnership interest is sold by TCPL Tuscarora Ltd. to the Partnership pursuant to the provisions of the Purchase and Sale Agreement.

"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.

"COMMISSION" means the United States Securities and Exchange Commission.

"COMMON UNIT" has the meaning assigned to such term in the MLP Agreement.

"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. Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 5.4(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)(ix).

"DELAWARE ACT" means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. Section 17-101, 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.

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

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

"GENERAL PARTNER" means TC PipeLines GP, Inc. 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) 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 MLP Securities with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, MLP Securities.

"GROUP MEMBER" means a member of the Partnership Group.

"ILP SUBSIDIARY" means a Subsidiary of the Partnership.

"INCENTIVE DISTRIBUTION RIGHT" has the meaning assigned to such term in the MLP Agreement.

"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 Indemnatee 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.

"JV ENTITY" means a Person other than an individual in which a Group Member holds an interest but which does not constitute a Subsidiary, including, without limitation, Northern Border Pipeline and Tuscarora.

"LIMITED PARTNER" means any Person that is admitted to the Partnership as a limited partner pursuant to the terms and conditions of this Agreement; but the term Limited Partner shall not include any Person from and after the time such Person withdraws as a Limited Partner from the Partnership.

"LIMITED PARTNER INTEREST" means the ownership interest of a Limited Partner or Assignee in the Partnership 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.

"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 Partners 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" has the meaning assigned to such term in the MLP Agreement.

"MLP" means TC PipeLines, LP.

"MLP AGREEMENT" means the Amended and Restated Agreement of Limited Partnership of TC PipeLines, LP dated May 28, 1999, as it may be amended, supplemented or restated from time to time.

"MLP SECURITY" has the meaning assigned to the term "Partnership Security" in the MLP Agreement.

"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 5.4(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 5.4(b) and shall not include any items specially allocated under Section 6.1(d).

"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).

"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 after the Liquidation Date. The items included in the determination of Net Termination Gain shall be determined in accordance with Section 5.4(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 after the 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.

"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 (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.



"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.

"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.

"PARTNERSHIP" means TC Tuscarora Intermediate Limited Partnership, a Delaware limited partnership, and any successors thereto.

"PARTNERS" means the General Partner and the Limited Partners.

"PARTNERSHIP GROUP" means the Partnership, TCILP, the MLP and any Subsidiary of any such entity, treated as a single consolidated entity.

"PARTNERSHIP INTEREST" means an ownership interest of a Partner in the Partnership, which shall include the General Partner Interest and the Limited Partner Interest(s).

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

"PERCENTAGE INTEREST" means the percentage interest in the Partnership held by each Partner and shall mean, (a) as to the General Partner, an aggregate 1.0101% and (b) as to the MLP, 98.9899%.

"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.

"PRO RATA" means, when modifying Partners and Assignees, apportioned among all Partners and Assignees in accordance with their relative Percentage Interests.

"PURCHASE AND SALE AGREEMENT" means that certain Purchase and Sale Agreement, dated as of July 19, 2000, among the General Partner, the Partnership, TCPL Tuscarora Ltd, TransCanada PipeLines Limited and TransCanada PipeLine USA Ltd. together with the additional documents and instruments contemplated or referenced thereunder.

"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.

"REGISTRATION STATEMENT" means the Registration Statement on Form S-1 (Registration No. 333-69947) as it has been or as it may be amended or supplemented from time to time, filed by the MLP with the Commission under the Securities Act to register the offering and sale of the Common Units in the Initial Offering.

"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)(viii).

"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.

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

"SPECIAL APPROVAL" has the meaning assigned to such term in the MLP Agreement.

"SUBORDINATED UNIT" has the meaning assigned to such term in the MLP Agreement.

"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 and Tuscarora.

"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).

"TCILP" means TC PipeLines Intermediate Limited Partnership, a Delaware limited partnership.

"TRANSCANADA" means TransCanada PipeLines Limited, a Canadian corporation.

"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.

"TRANSFER" has the meaning assigned to such term in Section 4.4(a).

"TUSCARORA" means Tuscarora Gas Transmission Company, a Nevada general partnership.

"UNIT" has the meaning assigned to such term in the MLP Agreement.

"UNIT MAJORITY" has the meaning assigned to such term in the MLP Agreement.

"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 5.4(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.4(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 5.4(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.4(d)).

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

"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 or partners of the MLP if there has been a

temporary interruption or delay in receipt of distributions from Tuscarora 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 was previously formed as a limited partnership pursuant to the provisions of the Delaware Act. This Agreement shall become effective on the date written above. 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 shall be "TC TUSCARORA INTERMEDIATE LIMITED PARTNERSHIP." 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." or "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 other Partner(s) of such change in the next regular communication to the 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, Delaware 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. The principal office of the Partnership shall be located at 203, 110 Turnpike Road, Westborough, Massachusetts 01581 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 203, 110 Turnpike Road, Westborough, Massachusetts 01581 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) acquire, manage, operate and sell the Assets, (b) serve as a general partner of Tuscarora and, in connection therewith, exercise all the rights and powers conferred upon the Partnership as a partner of Tuscarora pursuant to the partnership agreement of Tuscarora or otherwise, (c) (i) acquire, manage, operate and sell any assets or properties similar to the Assets now or hereafter acquired by the Partnership, (ii) 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 Partnership is permitted to engage in, or any type of business or activity engaged in by the General Partner 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, and (iii) 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 in the case of any activity described in this subsection (c), the General Partner reasonably determines, as of the date of the acquisition or commencement of such activity, that such activity (A) generates "QUALIFYING INCOME" (as such term is defined pursuant to Section 7704 of the Code) or (B) enhances the operations of an activity of the Partnership 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, a JV Entity, the MLP or any Subsidiary of the MLP. 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 its 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 Interests issued pursuant hereto; 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 any 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, incompetence, 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 in 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 are 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; and

(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 3.4).

#### ARTICLE IV TRANSFERS OF PARTNERSHIP INTERESTS

##### SECTION 4.1 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 (or an Assignee) or 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 capital stock of the General Partner.

#### SECTION 4.2 TRANSFER OF GENERAL PARTNER'S PARTNERSHIP INTEREST

If the General Partner transfers its interest as the general partner of the MLP to any Person in accordance with the provisions of the MLP Agreement, the General Partner shall contemporaneously therewith transfer all, but not less than all, of its General Partner Interest herein to such Person, and the Limited Partners and Assignees, if any, hereby expressly consent to such transfer. Except as set forth in the immediately preceding sentence, a General Partner may not transfer all or any part of its Partnership Interest as the General Partner.

#### SECTION 4.3 TRANSFER OF A LIMITED PARTNER'S PARTNERSHIP INTEREST

A Limited Partner may transfer all, but not less than all, of its Partnership Interest as a Limited Partner in connection with the merger, consolidation or other combination of such Limited Partner with or into any other Person or the transfer by such Limited Partner of all or substantially all of its assets to another Person, and following any such transfer such Person may become a Substituted Limited Partner pursuant to Article X. Except as set forth in the immediately preceding sentence, or in connection with any pledge of (or any related foreclosure on) a Partnership Interest as a Limited Partner solely for the purpose of securing, directly or indirectly, indebtedness of the Partnership or the MLP, a Limited Partner may not transfer all or any part of its Partnership Interest or withdraw from the Partnership.

#### SECTION 4.4 RESTRICTIONS ON TRANSFERS

(a) Notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interest 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 the MLP under the laws of the jurisdiction of its formation or (iii) cause the Partnership or the MLP 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 the MLP 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.

ARTICLE V  
CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

SECTION 5.1 CONTRIBUTIONS

In connection with the formation of the Partnership under the Delaware Act, the General Partner made an initial Capital Contribution to the Partnership in the amount of \$10.10 in exchange for an interest in the Partnership and was admitted as General Partner, and the MLP made an initial Capital Contribution to the Partnership in the amount of \$989.90 in exchange for an interest in the Partnership and was admitted as a Limited Partner. Following the foregoing transactions, the General Partner holds a 1.0101% Partnership Interest as the General Partner and the MLP holds a 98.9899% Partnership Interest as the Limited Partner.

SECTION 5.2 ADDITIONAL CAPITAL CONTRIBUTIONS

With the consent of the General Partner, any Limited Partner may, but shall not be obligated to, make additional Capital Contributions to the Partnership. Contemporaneously with the making of any Capital Contributions by a Limited Partner, in addition to those provided in Sections 5.1, the General Partner shall be required to make an additional Capital Contribution to the Partnership in an amount equal to 1.0101 divided by 98.9899 times the amount of the additional Capital Contribution then made by such Limited Partner. Except, as set forth in the immediately preceding sentence and in Article XII, the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

SECTION 5.3 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 or upon termination of the Partnership 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 5.4 CAPITAL ACCOUNTS

(a) The Partnership shall 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 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 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, and 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 and (y) all items of Partnership deduction and loss computed in accordance with Section 5.4(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1.

(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 5.4, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner) of all property owned by any ILP Subsidiary or JV Entity 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), 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 5.4(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 adopt.

(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), on an issuance of additional Partnership Interests for cash or Contributed Property or the conversion of the General Partner's Partnership Interest to Common Units pursuant to Section 11.3(a), the Capital Accounts 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 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 during such period 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 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 in a sale of 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 during such period 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 a distribution shall (A) in the case of an actual distribution which 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 5.4(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.

#### SECTION 5.5 LOANS FROM PARTNERS

Loans by a Partner to the Partnership shall not constitute Capital Contributions. If any Partner shall advance funds to the Partnership in excess of the amounts required hereunder to be contributed by it to the capital of the Partnership, the making of such excess advances shall not result in any increase in the amount of the Capital Account of such Partner. The amount of any such excess advances shall be a debt obligation of the Partnership to such Partner and shall be payable or collectible only out of the Partnership assets in accordance with the terms and conditions upon which such advances are made.

#### SECTION 5.6 LIMITED PREEMPTIVE RIGHTS

Except as provided in Section 5.2, no Person shall have preemptive, preferential or other similar rights with respect to (a) additional Capital Contributions; (b) issuance or sale of any class or series of Partnership Interests, whether unissued, held in the treasury or hereafter created; (c) issuance of any obligations, evidences of indebtedness or other securities of the Partnership convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any such Partnership Interests; (d) issuance of any right of subscription to or right to receive, or any warrant or option for the purchase of, any such Partnership Interests; or (e) issuance or sale of any other securities that may be issued or sold by the Partnership.

SECTION 5.7 FULLY PAID AND NON-ASSESSABLE NATURE OF PARTNERSHIP INTERESTS

All Partnership Interests issued to Limited Partners pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Partnership Interests, except as such non-accessibility 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 5.4(b)) shall be allocated among the Partners in each taxable period (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 among the Partners as follows:

(i) First, 100% to the General Partner, 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)(ii)(B) for all previous taxable periods; and

(ii) Second, 1.0101% to the General Partner and 98.9899% to the Limited Partners.

(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 among the Partners as follows:

(i) For taxable years 2000, 2001 and 2002, 100% to the General Partner; and

(ii) For taxable years after 2002:

(A) First, 1.0101% to the General Partner and 98.9899% to the Limited Partners; provided, however, that Net Losses shall not be allocated to a Limited Partner pursuant to this Section 6.1(b)(i) to the extent that such allocation would cause a Limited Partner to have a deficit balance in its Adjusted Capital Account at the end of such taxable period (or increase any existing deficit balance in such Limited Partner's Adjusted Capital Account); and

(B) Second, 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 Section 6.4 have been made with respect to the taxable period ending on or before the Liquidation Date; 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 5.4(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, 100% to the General Partner until the General Partner has been allocated Net Termination Gain under this Section 6.1(c)(i)(A) equal to the aggregate amount of Net Losses previously allocated to the General Partner under Section 6.1(b)(i); provided, however, that no amount of Net Termination Gain shall be allocated to the General Partner under this Section 6.1(c)(i)(A) to the extent that such allocation would cause the General Partner's Capital Account balance as a percentage of the total Capital Account balances of the Partners to exceed the Percentage Interest of the General Partner;

(B) Second, 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; and

(C) Third, 1.0101% to the General Partner and 98.9899% to the Limited Partners.

(ii) If a Net Termination Loss is recognized (or deemed recognized pursuant to Section 5.4(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, to the General Partner and the Limited Partners in proportion to, and to the extent of, the positive balances in their respective Capital Accounts; 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)(v) and 6.1(d)(vi)). 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 1.704-20)(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)(v) and 6.1(d)(vi), 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) 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).

(iv) 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)(iv) 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)(iv) were not in this Agreement.

(v) 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.

(vii) 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.

(viii) 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.

(ix) 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)(ix)(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)(ix)(A) shall be deferred with respect to allocations pursuant to Sections 6.1(d)(ix)(A)(1) and (2) 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)(ix)(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)(ix)(A) among the Partners in a manner that is likely to minimize such economic distortions.

## 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 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 5.4(d)(i) or 5.4(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 Units or other limited partner interests of the MLP (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 Units or other limited partner interests of the MLP (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 Units or other limited partner interests of the MLP 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), Proposed Treasury Regulation Section 1.197-2(g)(3), or any successor regulations thereto. 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 of the MLP 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 of the MLP that would not have a material adverse effect on the Partners or the holders of any class or classes of limited partner interests of the MLP.

(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 to take into account those adjustments permitted or required by Sections 734 and 743 of the Code.

(g) The General Partner may adopt such methods of allocation of income, gain, loss or deduction between a transferor and a transferee of a Partnership Interest 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 Partner under the provisions of this Article VI shall instead be made to the 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.

### SECTION 6.3 DISTRIBUTIONS

(a) Within 45 days following the end of each Quarter commencing with the Quarter ending on September 30, 2000, 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 in accordance with their respective Percentage Interests. The immediately preceding sentence shall not require any distribution of cash if and to the extent such distribution would be prohibited by applicable law or by any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Partnership is a party or by which it is bound or its assets are subject. 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.

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 a Partnership Interest, 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, including investments in and any contributions to JV Entities, subject to Section 7.6, the lending of funds to other Persons (including the MLP and any member of the Partnership Group), the repayment of obligations of the MLP or any member 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 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; and

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

(b) Notwithstanding any other provision of this Agreement, the MLP Agreement the Delaware Act or any applicable law, rule or regulation, each of the Partners and Assignees and each other Person who may acquire an interest in the Partnership hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement, the Purchase and Sale Agreement and the other agreements, documents and instruments described in or Purchase and Sale that are related to the transactions contemplated by the Purchase and Sale Agreement; (ii) agrees that the General Partner (on its own or through any officer or attorney-in-fact of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the Purchase and Sale Agreement on behalf of the Partnership without any further act, approval or vote of the Partners or the Assignees or the other Persons who may acquire an interest in the Partnership; and (iii) agrees that the execution, delivery or performance by the General Partner, the MLP, 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 or Assignee.

## SECTION 7.3 RESTRICTIONS ON GENERAL PARTNER'S AUTHORITY

(a) The General Partner may not, without written approval of the specific act by the Limited Partners or by other written instrument executed and delivered by the Limited Partners 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 General Partner Interest.

(b) Except as provided in Articles XII and MV, 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 Partnership, without the approval of the Limited Partners; 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 and shall not apply to any sale of any or all of the assets of the Partnership pursuant to the foreclosure of, or other realization upon, any such encumbrance. Without the approval of at least a Unit Majority, the General Partner shall not, on behalf of the MLP, (i) consent to any amendment to this Agreement or, except as expressly permitted by Section 7.9(d) of the MLP Agreement, take any action permitted to be taken by a Partner, in either case, that would have a material adverse effect on the MLP as a Partner or (ii) except as permitted under Section 4.6, 11.1 or 11.2 of the MLP Agreement, elect or cause the MLP to elect a successor general partner of the Partnership.



(c) The General Partner may not approve or consent to the conversion of Tuscarora 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 66 2/3% of the Outstanding Units during the Subordination Period and at least a majority of the Outstanding Units thereafter.

#### SECTION 7.4 REIMBURSEMENT OF THE GENERAL PARTNER

(a) Except as provided in this Section 7.4 and elsewhere in this Agreement or in the MLP Agreement, the General Partner shall not be compensated for its services as General Partner, general partner of the MLP or 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 5.6, 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, or cause the Partnership to issue Partnership Interests, 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. Expenses incurred by the General Partner in connection with any 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 4.2.

## SECTION 7.5 OUTSIDE ACTIVITIES

(a) 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 of the Partnership, the general partner of TCILP, the general partner of the MLP, and a general partner or managing member of any other partnership or limited liability company of which the Partnership or the MLP 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 MLP) 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 the Partnership, the TCILP, the MLP or 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 the MLP or any Group Member 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 TCILP partnership agreement, the MLP Agreement 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 MLP Securities 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 MLP Securities.

(e) The term "Affiliates" when used in Section 7.5(a) and 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 the 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 the MLP, a Subsidiary of the MLP or a Subsidiary of 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, 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 7.6(c).

(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 Section 5.2, the Purchase and Sale Agreement and any other transactions described in or contemplated by the Purchase and Sale Agreement, (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.

(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)), (i) the existence of the conflicts of interest described in the Registration Statement as may be applicable, MUTATIS MUTANDIS, to the Partners of the Partnership, (ii) the Revolving Credit Facility described in the Registration Statement and any extension, refunding or replacement on substantially similar terms, including interest rate, and (iii) the Credit Agreement with Bank One, NA relating to the three year US\$30 million loan to the MLP, are hereby approved by all 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; provided, further, no indemnification pursuant to this Section 7.7 shall be available to the General Partner with respect to its obligations incurred pursuant to the Purchase and Sale Agreement (other than obligations incurred by the General Partner on behalf of the MLP or the Partnership). 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 Partners, 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 (including any capacity under the Underwriting Agreement), 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 INDEMNITEES

(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 Units or other MLP 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 Limited 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 the MLP 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, the MLP, 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 or the MLP Agreement, 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, the MLP 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 definition of Available Cash 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 (A) enable distributions to the General Partner or its Affiliates to exceed 1.0101% of the total amount distributed to all Partners or (B) hasten the expiration of the Subordination Period or the conversion of any Subordinated Units into Common Units.

(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 Limited Partner hereby authorizes 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 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 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.

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 the Partners 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.

(b) The Partnership shall elect to deduct expenses incurred in organizing the Partnership ratably over a sixty-month period as provided in Section 709 of the Code.

(c) 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 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 ADMISSION OF PARTNERS

The General Partner shall be the sole general partner of the Partnership and the MLP shall be the sole limited partner of the Partnership.

#### 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 Limited Partner Interest shall, however, only have the authority to convey to a purchaser or other transferee (a) the right to negotiate such Limited Partner Interest to a purchaser or other transferee and (b) 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 shall 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 remain 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 Partnership Interests will not be voted. An Assignee shall have no other rights of a Limited Partner.

#### SECTION 10.3 ADMISSION OF ADDITIONAL LIMITED PARTNER

(a) A Person (other than the General Partner, the MLP 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 10.3, 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 10.4 ADMISSION OF SUCCESSOR OR TRANSFEREE GENERAL PARTNER

A successor General Partner approved pursuant to Section 1.11 or 11.2 or the transferee of or successor to all of the General Partner's Partnership Interest pursuant to Section 4.2 who is proposed to be admitted as a successor General Partner shall, subject to compliance with the terms of Section 11.3, if applicable, 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 4.2, provided, however, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.2 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 10.5 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;

(ii) The General Partner transfers all of its rights as General Partner pursuant to Section 4.2;

(iii) The General Partner is removed pursuant to Section 11.2;

(iv) The General Partner withdraws from, or is removed as the General Partner of, the MLP;

(v) 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)(v); 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;

(vi) 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

(vii) (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 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 incompetence; 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) (with respect to withdrawal), (v), (vi) or (vii)(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 date of this agreement 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 the Limited Partners 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 the limited partners of the MLP or cause the Partnership or the MLP 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 Limited Partners, 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)(iii) or (iv). If the General Partner gives a notice of withdrawal pursuant to Section 11.1(a)(i) hereof or Section 11.1(a)(i) of the MLP Agreement, the Limited Partners may, prior to the effective date of such withdrawal, elect a successor General Partner; provided, however, that such successor shall be the same person, if any, that is elected by the limited partners of the MLP pursuant to Section 11.1 of the MLP Agreement as the successor to the general partner of the MLP. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Limited Partners 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 shall be removed if the General Partner is removed as the general partner of the MLP pursuant to Section 11.2 of the MLP Agreement. Such removal shall be effective concurrently with the effectiveness of the removal of the General Partner as the general partner of the MLP pursuant to the terms of the MLP Agreement. If a successor general partner for the MLP is elected in connection with the removal of the General Partner, such successor general partner for the MLP shall, upon admission pursuant to Article X of the MLP Agreement, automatically become the successor General Partner of the Partnership. The admission of any such successor General Partner to the Partnership shall be subject to the provisions of Section 10.3.

#### SECTION 11.3 INTEREST OF DEPARTING PARTNER

(a) The Partnership Interest of the Departing Partner departing as a result of withdrawal or removal pursuant to Section 11.1 or 11.2 shall (unless it is otherwise required to be converted into Common Units pursuant to Section 11.3(b) of the MLP Agreement) be purchased by the successor to the Departing Partner for cash in the manner specified in the MLP Agreement. Such purchase (or conversion into Common Units, as applicable) shall be a condition to the admission to the Partnership of the successor as the General Partner. Any successor General Partner shall indemnify the Departing Partner as to all debts and liabilities of the Partnership arising on or after the effective date of the withdrawal or removal of the Departing Partner.

(b) 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 such Departing Partner for the benefit of the Partnership.

#### SECTION 11.4 WITHDRAWAL OF A LIMITED PARTNER

Without the prior written consent of the General Partner, which may be granted or withheld in its sole discretion, and except as provided in Section 10.1, no Limited Partner shall have the right to withdraw from the Partnership.

### 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 all of the Limited Partners;

(d) the entry of a decree of judicial dissolution of the Partnership the provisions of the Delaware Act;

(e) the sale of all or substantially all of the assets and properties of the Partnership Group; or

(f) the dissolution of the MLP.

## 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, all of the Limited Partners 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 a general partner a Person approved by a majority in interest of the Limited Partners (subject to the proviso in the last sentence of this Section 12.2). In addition, upon dissolution of the Partnership pursuant to Section 12.1(f), if the MLP is reconstituted pursuant to Section 12.2 of the MLP Agreement, the reconstituted MLP may, within 180 days after such event of dissolution, acting alone, regardless of whether there are any other Limited Partners, elect to reconstitute the Partnership in accordance with the immediately preceding sentence. Upon any such election by the Limited Partners or the MLP, as the case may be, all Partners shall be bound thereby and shall be deemed to have approved same. 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:

(a) 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;

(b) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be purchased by the successor General Partner or converted into Common Units as provided in the MLP Agreement; and



(c) 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 power of attorney granted the General Partner pursuant to Section 2.6;

provided, that the right of the Limited Partners 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 the Limited Partners or any limited partner of the MLP and (y) neither the Partnership, the reconstituted limited partnership, the MLP nor any Group Member 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 a majority in interest of the Limited Partners. 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 a majority in interest of the Limited Partners. 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 at least a majority in interest of the Limited Partners, 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 Partnership shall be terminated and 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 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

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 no Group Member will be treated as an association taxable as a corporation or otherwise taxed as an entity 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 limited partner interests of the MLP (including the division of any class or

classes of outstanding limited partner interests of the MLP into different classes to facilitate uniformity of tax consequences within such classes of limited partner interests of the MLP) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which such 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 MLP and the limited partners of the MLP, (iii) 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 or (iv) is required to conform the provisions of this Agreement with the provisions of the MLP Agreement as the provisions of the MLP Agreement may be amended, supplemented or restated from time to time;

(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) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(h) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(i) 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;

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

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

## SECTION 13.2 AMENDMENT PROCEDURES

Except with respect to amendments of the type described in Section 13.1, 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 Limited Partners.

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 (a "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 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 the Limited Partners, whether at a special meeting or by written consent. 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 Limited Partners.

(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 the MLP or cause the Partnership or the MLP 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 Limited Partners 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 GENERAL PROVISIONS

#### SECTION 15.1 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 at the address described below. 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 15.2 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 15.3 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 15.4 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 15.5 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 15.6 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 15.7 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, independently of the signature of any other party.



SECTION 15.8 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 15.9 INVALIDITY OF PROVISION

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 15.10 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/ Garry P. Mihaichuk

-----  
Name: Garry P. Mihaichuk  
Title: President and Chief Executive  
Officer

By: /s/ Paul F. Macgregor

-----  
Name: Paul F. MacGregor  
Title: Vice-President, Business  
Department

LIMITED PARTNER:

TC PIPELINES, LP

By: TC Pipelines Gp, Inc.

Its: General Partner

By: /s/ Garry P. Mihaichuk

-----  
Name: Garry P. Mihaichuk  
Title: President and Chief Executive  
Officer

By: /s/ Paul F. MacGregor

-----  
Name: Paul F. MacGregor  
Title: Vice-President, Business  
Department

PURCHASE  
AND  
SALE AGREEMENT  
FOR A  
49% GENERAL PARTNERSHIP INTEREST  
IN  
TUSCARORA GAS TRANSMISSION COMPANY

DATED AS OF JULY 19, 2000

TABLE OF CONTENTS

1.	DEFINITIONS .....	1
2.	SALE AND PURCHASE.....	3
3.	ADJUSTMENTS.....	3
4.	CONDITIONS TO CLOSING AND EFFECTIVENESS OF INDEMNIFICATION.....	5
5.	CLOSING; COVENANTS OF SELLER PENDING CLOSING.....	6
6.	REPRESENTATIONS AND WARRANTIES OF THE SELLER.....	6
7.	REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND GP.....	9
8.	SURVIVAL.....	10
9.	INDEMNIFICATION; GUARANTEE OF PERFORMANCE.....	10
10.	ARBITRATION.....	15
11.	ADDITIONAL AGREEMENTS.....	16
12.	MISCELLANEOUS.....	16

This PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of July 19, 2000 is entered into by and among TCPL TUSCARORA LTD., a Delaware corporation (the "SELLER"), TC TUSCARORA INTERMEDIATE LIMITED PARTNERSHIP, a Delaware limited partnership (the "PURCHASER"), TC PIPELINES GP, INC., a Delaware corporation (the "GP"), TRANSCANADA PIPELINES LIMITED, a Canadian corporation ("TRANSCANADA") and TRANSCANADA PIPELINE USA LTD., a Nevada corporation ("TRANSCANADA USA").

#### RECITALS

WHEREAS the Seller, an indirect wholly owned subsidiary of TransCanada, owns a 50% general partner interest in Tuscarora Gas Transmission Company, a Nevada general partnership ("TUSCARORA");

AND WHEREAS the Seller proposes to sell, and the Purchaser proposes to purchase, a 49% general partner interest in Tuscarora (the "TUSCARORA PARTNERSHIP INTEREST");

AND WHEREAS the Purchaser intends to fund the purchase price for the Tuscarora Partnership Interest through a credit agreement;

AND WHEREAS the Seller shall retain a 1% general partner interest in Tuscarora and the associated rights and obligations under the Tuscarora Partnership Agreement;

AND WHEREAS the parties hereto desire to set forth their mutual agreement regarding the Tuscarora Partnership Interest and related matters;

NOW, THEREFORE, in consideration of the covenants, conditions and agreements contained herein, the parties hereto agree as follows:

#### 1. DEFINITIONS.

1.1 Any capitalized term used herein but not otherwise defined shall have the meanings ascribed to them in this Section 1:

(a) "Agreement" means this agreement (including any Schedules hereto) and all amendments made hereto by written agreement between the Parties.

(b) "Business Day" means a day, excluding Saturday and Sunday, or which banking institutions are open for business in Calgary, Alberta.

(c) "Closing" means the consummation of the purchase and sale of the Tuscarora Partnership Interest pursuant to this Agreement, which shall occur on the first day of the month agreed to by the Seller and the Purchaser.

(d) "Closing Date" means the date upon which the Closing occurs.

(e) "Closing Time" means 10:00 a.m. Calgary time on the Closing Date.

(f) "Credit Facility" means the credit agreement expected to be entered into in August of 2000 among the Purchaser, the GP and Bank One, NA, as amended, restated, supplemented or otherwise modified from time to time, and all contracts and agreements related thereto.

(g) "Environmental Laws" means any and all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgements, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other government restrictions relating to the environment, to the release of materials into the environment or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals, industrial substances, toxic substances, hazardous substances or wastes.

(h) "Independent Accounting Firm" means a firm of independent public accountants selected by the Seller.

(i) "IRS" means the Internal Revenue Service of the United States.

(j) "Laws" means the laws, rules, regulations, decrees and orders of the United States of America and all other governmental bodies having jurisdiction over or affecting the obligations of the parties created hereby or the other provisions contained in this Agreement, or any part thereof, or any site where any part of the obligations of the parties created hereby are performed, whether such now exists or hereafter comes into effect.

(k) "Lien" means mortgages, deeds of trust, liens, pledges, security interests, leases, conditional sale contracts, claims, right of first refusal, options, charges, liabilities, obligations, agreements, privileges, liberties, easements, rights-of-way, limitations, reservations, restrictions and other encumbrances of any kind.

(l) "Parents" means TransCanada and TransCanada USA.

(m) "Party" means individually the Purchaser, the GP or the Seller, and collectively, the "Parties".

(n) "Person" means any individual or entity, including, without limitation, any corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, unincorporated organization or government (including any board, agency, political subdivision or other body thereof).

(o) "Taxes" or "Tax" means any taxes, duties, assessments, fees, levies or similar governmental charges, together with interest, penalties and additions to tax, imposed by any taxing authority, wherever located, including, without limitation, all net income, gross income, gross receipts, net receipts, sales, use, sell, franchise, privilege, profits, social security, disability, withholding, payroll, unemployment, excise, severance,

property, windfall profits, value added, ad valorem, occupation or any other similar governmental charge or imposition.

(p) "Tax Returns" means all material federal, state, local and foreign returns, reports or forms in respect to Taxes.

(q) "TGPC" means Tuscarora Gas Pipeline Co. a company formed under the laws of the State of Nevada and a wholly owned indirect subsidiary of Sierra Pacific Resources Company.

(r) "Tuscarora Partnership Agreement" means the General Partnership Agreement of Tuscarora Gas Transmission Company by and between TGPC and the Seller dated June 11, 1993, as amended, restated, supplemented or otherwise modified from time to time.

(s) "Tuscarora Partnership Interest" means the 49% general partnership interest in Tuscarora Gas Transmission Company to be sold by the Seller to the Purchaser under the terms of this Agreement.

1.2 GENERAL DEFINITIONS. Capitalized terms used in this Agreement and not defined in Section 1(a) hereof shall have the meanings ascribed to them elsewhere in this Agreement.

## 2. SALE AND PURCHASE.

2.1 SALE AND PURCHASE. Upon and subject to the terms and conditions hereof, the Seller agrees to sell, transfer and deliver to the Purchaser and the Purchaser agrees to purchase from the Seller at the Closing, all of the right, title and interest of the Seller in the Tuscarora Partnership Interest.

2.2 PURCHASE PRICE. In consideration of the Tuscarora Partnership Interest, the Purchaser will pay to the Seller \$28,000,000 at the Closing (the "Closing Payment"), which amount shall be increased by all capital contributions made by the Seller to Tuscarora from the date of this Agreement to the Closing, and decreased by all distributions made by Tuscarora to Seller from the date of this Agreement to the Closing), in lawful money of the United States (such amount, as adjusted, being hereinafter referred to as the "Purchase Price").

2.3 PAYMENT OF PURCHASE PRICE. Closing Payment will be payable by the Purchaser to the Seller at the Closing by certified cheque or wire transfer.

## 3. ADJUSTMENTS

3.1 Not later than three (3) Business Days, but not earlier than five (5) Business Days, before the Closing Date, the Seller shall prepare and deliver to the Purchaser a statement (the "Estimated Adjustment Statement") containing the Seller's good faith estimates of ninety-eight percent (98%) of the capital contributions, if any, made by the Seller to Tuscarora and ninety-eight percent (98%) of the distributions, if any, made by Tuscarora to the Seller, during the period beginning on the date of this

Agreement and ending on the Closing Date. The amount reflected in the Estimated Adjustment Statement is referred to as the "Estimated Adjustment Amount". The Seller agrees to cooperate with the Purchaser in connection with the preparation of the Estimated Adjustment Statement, and shall endeavour to provide to the Purchaser such books and records of Tuscarora and information relating to Tuscarora as may be reasonably requested from time to time.

3.2 Within thirty (30) days after the Closing Date, the Seller shall prepare and deliver to the Purchaser a revised statement (the "Adjustment Statement") detailing the actual capital contributions, if any, made by the Seller to Tuscarora and the distributions, if any, made by Tuscarora to the Seller. The amount of the difference between ninety-eight percent (98%) of the capital contributions made and ninety-eight percent (98%) of the distributions made as reflected in the Adjustment Statement is referred to as the "Adjustment Amount". The Adjustment Statement shall be prepared in accordance with US Generally Accepted Accounting Principles consistently applied. The Seller agrees to cooperate with the Purchaser in connection with the preparation of the Adjustment Statement and related information, and shall endeavour to provide to the Purchaser such books, records and information as may be reasonably requested from time to time. If the Purchaser does not dispute the Adjustment Amount, the Purchaser shall pay the Seller the Adjustment Amount (or if the Adjustment Amount is a negative amount the Seller shall pay the Purchaser the Adjustment Amount) within thirty (30) days of the Purchaser's receipt of the Adjustment Statement by certified cheque or wire transfer.

3.3 The Purchaser may dispute the Adjustment Amount; provided, however, that the Purchaser shall notify the Seller in writing of the disputed amount, and the basis of such dispute, within thirty (30) days of the Purchaser's receipt of the Adjustment Statement. In the event of a dispute with respect to any part of the Adjustment Amount, the Purchaser and the Seller shall attempt to reconcile their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the parties. If the Purchaser and the Seller are unable to reach a resolution of such differences within thirty (30) days after receipt of the Purchaser's written notice of dispute to the Seller, the Purchaser and the Seller shall submit the amounts remaining in dispute for determination and resolution to the Independent Accounting Firm, which shall be instructed to determine and report to the Parties, within thirty (30) days after such submission, upon such remaining disputed amounts, and such report shall be final, binding and conclusive on the parties hereto with respect to the amounts disputed. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Purchaser and the Seller so that the Purchaser's share of such fees and disbursements shall be in the same proportion as the aggregate amount of such disputed amounts so submitted that is unsuccessfully disputed by the Purchaser (as finally determined by the Independent Accounting Firm) bears to the total amount of the disputed amounts so submitted.

3.4 If there is a dispute with respect to any amount on the Adjustment Statement, the Purchaser shall pay to the Seller an amount equal to the Adjustment Amount as finally determined within five (5) Business Days after such determination (or in the event that the Adjustment Amount is a negative amount, the Seller shall pay to the Purchaser an amount equal to the Adjustment Amount as finally determined within five



(5) Business Days after such determination) by certified cheque or wire transfer. Any disputed amount paid under this Section 3.4 shall be paid with interest for the period commencing on the date the Adjustment Amount would have been payable absent a dispute through the date of payment, calculated at the prime rate announced by Chase Bank for its corporate customers on the date the Adjustment Amount would have been payable absent a dispute

#### 4. CONDITIONS TO CLOSING AND EFFECTIVENESS OF INDEMNIFICATION.

4.1 The obligations of each party to close the transactions contemplated by this Agreement shall be subject to the prior satisfaction, or waiver by the GP on behalf of the Purchaser, of each of the following conditions:

(a) There shall not be in effect any injunction or restraining order issued by a court of competent jurisdiction barring the consummation of any of the transactions contemplated by this Agreement.

(b) Each of the representations and warranties of each Party contained in this Agreement shall be true and correct in all material respects at the Closing Date with the same force and effect as though made at that time. Each Party shall have performed and complied in all material respects with all of its obligations required by this Agreement to be performed or complied with at or prior to the Closing Date. Each Party shall have delivered to the other Party a certificate, dated as of the Closing Date and signed by an authorized officer, certifying that each of the representations and warranties are true and correct in all material respects and that all such obligations have been performed and complied with in all material respects.

(c) All of the conditions under the Credit Facility (other than those conditions relating to the consummation of the transactions contemplated by this Agreement) shall have been (or on the Closing Date, will be) satisfied or waived and the Credit Facility shall be in full force and effect, enforceable against the parties in accordance with its terms (subject to the consummation of the transactions contemplated by this Agreement).

(d) The Purchaser shall have received in a form reasonably acceptable to the Conflicts Committee of the Board of Directors of the GP, an opinion from a financial adviser, with respect to the fairness, from a financial point of view, of the consideration paid by the Purchaser to the Seller for the Tuscarora Partnership Interest.

(e) The Seller and TGPC shall have executed an amendment to the Tuscarora Partnership Agreement substantially in the form of Exhibit I and such other documents as are required to admit the Purchaser as a general partner with a 49% general partner interest in Tuscarora immediately following the Closing.

(f) Subject to the rights of waiver of the Management Committee of Tuscarora, Tuscarora shall have received the legal opinions contemplated in Section 10.1.3 of the Tuscarora Partnership Agreement.

(g) The Purchaser shall have received in a form reasonably acceptable to Purchaser evidence of approval by the Management Committee of Tuscarora of the distribution policy substantially in the form of Exhibit II hereto.

(h) All necessary consents of third parties, including governmental authorities, required for the consummation of the transactions contemplated by this Agreement shall have been made and obtained and remain in force.

4.2 Section 9 shall become operative upon the closing of the transactions contemplated by this Agreement.

## 5. CLOSING; COVENANTS OF SELLER PENDING CLOSING.

5.1 Subject to the satisfaction of the conditions in Section 4 of this Agreement, the Closing of the transactions contemplated by this Agreement shall take place at the offices of TransCanada at 111 - 5th Avenue SW, Calgary, Alberta T2P 3Y6 (or at such other place as the Parties may agree).

5.2 From the date of this Agreement until the Closing Date, the Seller covenants that it will use its best efforts to cause to be preserved Tuscarora's business organization and to cause Tuscarora to be operated in the ordinary course of business consistent with past practices and in accordance with its current approved business plan.

## 6. REPRESENTATIONS AND WARRANTIES OF THE SELLER.

6.1 The Seller hereby represents and warrants to the Purchaser as follows:

(a) ORGANIZATION AND GOOD STANDING. The Seller is duly incorporated, validly existing and in good standing under the laws of the state of its incorporation with all requisite power and authority to carry on the business in which it is engaged.

(b) AUTHORITY. The Seller has all requisite power and authority (i) to execute and deliver, or to cause to be executed and delivered, this Agreement, (ii) to consummate the transactions contemplated hereby and (iii) to perform, or cause to be performed, all the terms and conditions hereof to be performed by the Seller. The execution and delivery by the Seller of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all requisite corporate action.

(c) ENFORCEABILITY. This Agreement is, and will be, a valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, subject to bankruptcy, moratorium, insolvency and other Laws generally affecting creditors' rights and general principles of equity (whether applied in a proceeding in a court of law or equity).

(d) NO VIOLATION. Except for the consent of TGPC to the admission of Buyer as a partner of Tuscarora, this Agreement, and the execution and delivery of this Agreement by the Seller and the consummation of the transactions contemplated hereby will not, (i) conflict with or require the consent of any Person under the certificate of

incorporation and bylaws of the Seller or general partnership agreement of Tuscarora, (ii) violate any provision of any law or administrative regulation or any judicial, administrative or arbitration order, award judgment, writ, injunction or decree applicable to Seller or Tuscarora; (iii) conflict with, result in a breach of, constitute a default under (whether with notice or lapse of time or both), or accelerate or permit the acceleration of the performance required by, or require any consent, authorization or approval under, any indenture, mortgage or lien, or, any material agreement, contract, commitment or instrument to which the Seller or Tuscarora is a party or by which either is bound or to which any property of either is subject; or (iv) result in the creation of any material lien, charge or encumbrance on the Tuscarora Partnership Interest or Tuscarora under any such indenture, mortgage, lien, lease, agreement or instrument.

(e) TITLE TO PARTNERSHIP INTEREST; NO LIENS. The Seller has, and at the Closing the Purchaser shall obtain, good and valid title to the Tuscarora Partnership Interest, free and clear of any and all Liens.

(f) TUSCARORA PARTNERSHIP AGREEMENT. The Seller is not in default or in breach of any provision of the Tuscarora Partnership Agreement and there exists no condition, event or act which, with the giving of notice or lapse of time or both, would constitute such a default or breach.

(g) LITIGATION. Except as expressly set forth in Schedule A hereto, to the knowledge of the Seller, there are no pending suits or actions or other proceedings or suits which affect the Tuscarora Partnership Interest (including, without limitation, any actions challenging or pertaining to the Seller's right, title and interest to the Tuscarora Partnership Interest) or which could affect the consummation of the transactions contemplated hereby or, in any material adverse respect, Tuscarora or the business or prospects of Tuscarora.

(h) CONFORMITY WITH LAWS. The ownership and operation of Tuscarora has been in conformity, in all material respects, with all applicable Laws including Environmental Laws. Without in any way limiting the foregoing representation and warranty (i) Tuscarora is not subject to any pending suit, action, investigation or inquiry by any governmental authority under any applicable Laws or Environmental Laws, the outcome of which would have a material adverse effect on Tuscarora or the business and prospects of Tuscarora and (ii) no judgment, order, writ, injunction or decree of any governmental entity has been issued or entered against the Seller which continues to be in effect with respect to or affecting Tuscarora.

(i) NO CONSENTS. No consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality or other Person is required to be obtained or made in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby other than those that will be obtained prior to the Closing.

(j) NO SUBSCRIPTIONS, OPTIONS. Except for the options of TGPC under the Tuscarora Partnership Agreement, there are no outstanding subscriptions, options, convertible securities, warrants, calls or rights of any kind to purchase or otherwise acquire any equity interest in Tuscarora.

(k) FINANCIAL STATEMENTS. The Seller has delivered to the Purchaser true and correct copies of audited financial statements for the years ended December 31, 1995 to December 31, 1999, inclusive (the "Financial Statements"). The Financial Statements are accurate, complete and consistent with the books and records of Tuscarora and fairly present, in all material respects, in accordance with US generally accepted accounting principles consistently applied, the financial condition of Tuscarora as and at their respective dates and the results of their operations for the period covered thereby.

(l) NO ADVERSE CHANGES. Since the date of the most recent balance sheet included in the Financial Statements, there have been no material adverse changes in the assets, liabilities, operations, financial condition, business plans and prospects of Tuscarora and no event has occurred or circumstance exists that may result in such a material adverse change.

(m) NO OUTSTANDING LIABILITIES. Except as set forth in the Financial Statements or reflected in the notes thereto, Tuscarora has no outstanding liabilities or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due), other than normal and ordinary liabilities which have arisen after the date of the most recent balance sheet included in the Financial Statements in the ordinary course of business, consistent with past practices. The Seller has no outstanding liabilities or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, and whether due or to become due) with respect to the Tuscarora Partnership Interest.

(n) ASSETS. All of the assets necessary to conduct the business of Tuscarora, as such business is conducted on the date hereof are owned, leased or licensed by Tuscarora or Tuscarora otherwise has full legal right to hold and use such assets. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NOTHING IN THIS AGREEMENT IS INTENDED TO CREATE, AND THE SELLER EXPRESSLY DISCLAIMS AND NEGATES, ANY AND ALL REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY MADE HEREIN RELATING TO THE ASSETS AND OPERATIONS OF TUSCARORA, INCLUDING, WITHOUT LIMITATION, IMPLIED OR STATUTORILY IMPOSED WARRANTIES OF FITNESS FOR PURPOSE OR MERCHANTABILITY, AND THE PURCHASER HEREBY ACKNOWLEDGES SAME.

(o) LICENSES, PERMITS. Tuscarora has all material licenses, permits and authorizations that are necessary or desirable for the conduct of its business. Tuscarora has complied in all material respects with all terms and conditions thereof.

(p) INSURANCE. Tuscarora maintains, or another Person maintains on its behalf, policies of fire and casualty, liability and other forms of insurance in such

amounts, with such deductibles and against such risks and losses as are reasonable for the business and assets of Tuscarora.

(q) TAXES. Tuscarora has (i) duly filed all Tax Returns required to be filed by or with respect to Tuscarora or its assets or operations with the IRS or other applicable taxing authority and all such returns are complete and accurate, (ii) paid, or adequately reserved against, all Taxes due or claimed due by a taxing authority from or with respect to Tuscarora or its assets or operations and (iii) made all material deposits required with respect to Taxes. There has been no material issue raised or material adjustment proposed (and none is pending) by the IRS or any other taxing authority in connection with any Tax Returns relating to the assets or operations of Tuscarora, and no waiver or extension of any statute of limitations as to any federal, state, local or foreign tax matter relating to the assets or operations of Tuscarora has been given by or requested from Tuscarora with respect to any tax year. Tuscarora qualifies, has qualified since the date of its formation and will qualify immediately after the Closing Time, to be treated as a partnership for federal income tax purposes, and neither Tuscarora, the Seller, nor any taxing authority has taken a position inconsistent with such treatment. The Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code and it will furnish the Purchaser with an affidavit that satisfies the requirements of Section 1445(b)(2) of the Internal Revenue Code.

(r) SECTION 754 ELECTION. Tuscarora has made, or all partners of Tuscarora have consented to, Tuscarora making the election pursuant to Section 754 of the Internal Revenue Code.

(s) RELATIONSHIP WITH SIERRA PACIFIC. The Seller has no agreements or understandings, formal or informal, with Sierra Pacific Resources or any affiliate thereof that have not been disclosed to the Purchaser.

(t) DISCLOSURE. All material facts known to the Seller or any of its affiliates as to the assets, liabilities, financial condition, operations, business plans and prospects of Tuscarora and/or the transactions contemplated hereby have been disclosed to the Conflicts Committee of the Board of Directors of GP prior to its approval of such transactions. No representation or warranty of the Seller contained in this Agreement and no information furnished or statement made by the Seller to the Purchaser contains any untrue statement of a material fact, or omits or will omit to state any material fact necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein not misleading.

6.2 With respect to the representations and warranties contained in this Section 6, and with respect to the provisions of Section 9, the terms "believe", "knowledge" and "experience" refer to that of those persons who from time to time have held the office of the Chief Executive Officer, President, Chief Financial Officer or any Vice President or equivalent position of the Seller and the terms "knowledge" and "known" mean the actual conscious awareness of any such person.

7. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND GP.

7.1 The Purchaser and GP hereby represents and warrants to the Seller as follows:

(a) ORGANIZATION AND GOOD STANDING. The Purchaser and GP are duly formed and validly existing and in good standing under the laws of its state of formation, with all requisite power and authority to carry on the business in which each is engaged.

(b) AUTHORITY. The Purchaser and GP have all requisite power and authority (i) to execute and deliver, or to cause to be executed and delivered, this Agreement, (ii) to consummate the transactions contemplated hereby and (iii) to perform or cause to be performed, all the terms and conditions hereof to be performed by the Purchaser and GP. The execution and delivery by the Purchaser and GP of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all requisite corporate or partnership action.

(c) ENFORCEABILITY. This Agreement is, and will be, a valid and binding obligation of the Purchaser and GP, enforceable against the Purchaser and GP in accordance with its terms, subject to bankruptcy, moratorium, insolvency and other Laws generally affecting creditors' rights and general principles of equity (whether applied in a proceeding in a court of law or equity).

(d) NO VIOLATION. The execution and delivery of the Agreement does not, and consummation of the transactions contemplated herein will not, violate (i) any of the provisions of the organizational documents of the Purchaser or GP, (ii) any order, rule, decree or material agreement pursuant to which the Purchaser or GP is bound or (iii) any applicable Laws.

8. SURVIVAL

8.1 The Parties agree that the representations and warranties of the Seller set forth in Section 6 will survive the completion of the sale and purchase of the Tuscarora Partnership Interest herein and notwithstanding such completion, will continue in full force and effect for the benefit of the Purchaser and GP for a period of 1 year from the Closing Date; except for the representations and warranties in paragraph (h), which shall be in full force and effect for the benefit of the Purchaser and GP for a period of 2 years from the Closing Date and in paragraphs (a), (b), (c), (e), (i), (j) and (q), which shall be in full force and effect for the benefit of the Purchaser and GP for a period equal to the statute of limitations applicable to the subject matter thereof.

8.2 The Parties agree that the representations and warranties of the Purchaser and GP set forth in Section 7 will survive the completion of the sale and purchase of the Tuscarora Partnership Interest herein and notwithstanding such completion, will continue in full force and effect for the benefit of the Seller for a period of 1 year from the Closing Date, except for the representations and warranties in paragraphs (a), (b) and (c) which shall be in full force and effect for the benefit of the Seller for a period equal to the statute of limitations applicable to the subject matter thereof.

9. INDEMNIFICATION; GUARANTEE OF PERFORMANCE.

9.1 EXCULPATION AND INDEMNIFICATION BY THE SELLER. Subject to SECTION 9.3, the Seller and its Parents shall, without any further responsibility or liability of, or recourse to the Purchaser, absolutely and irrevocably be joint and severally liable and responsible for (i) the respective Tax liabilities of the Seller and its Parents (including Tax liabilities attributable to ownership of the Tuscarora Partnership Interest prior to the Closing Time), including any such income Tax liabilities of the Seller and its Parents that may result from the consummation of the transactions contemplated by this Agreement, and (ii) any and all claims, liabilities and obligations of the Seller and its Parents (whether accruing or arising before, on or after the Closing Time) which primarily arise out of or relate to any property, operations or business of the Seller or its Parents other than with respect to the Tuscarora Partnership Interest (the items in (i) and (ii), collectively the "EXCLUDED LIABILITIES"). The Purchaser shall not be liable to the Seller and its Parents or any third parties for any reason whatsoever on account of any of the Excluded Liabilities.

The Seller and its Parents shall indemnify, defend, save and hold harmless the Purchaser from and against all claims, liabilities, obligations, losses, costs, costs of defense (as and when incurred), including expenses, fines, charges, penalties, allegations, demands, damages (including but not limited to actual, punitive or consequential, foreseen or unforeseen, known or unknown), settlements, awards or judgments of any kind or nature whatsoever and reasonable outside attorneys' and consultants' fees, to the extent arising out of (a) the Excluded Liabilities, or (b) any inaccuracy, violation or the breach by the Seller or its Parents of any representation, warranty, condition or covenant under this Agreement, all of which are hereinafter collectively referred to as the "PURCHASER DAMAGES".

Notwithstanding anything else contained in this Section 9, the aggregate liability of the Seller and its Parents hereunder under clause (b) above will be limited to the Purchase Price.

Purchaser Damages with respect to which, but only to the extent that, any proceeds are received by, or on behalf of, the Purchaser or any of its Parents, from any third party insurance policy (and are non-reimbursable by the Purchaser or any of its Parents), shall not be the subject of indemnification under this Agreement.

9.2 EXCULPATION AND INDEMNIFICATION BY THE PURCHASER. Subject to SECTION 9.3, the Purchaser shall, without any further responsibility or liability of, or recourse to, any of the Seller and its Parents, absolutely and irrevocably assume and be solely liable and responsible for any and all claims, liabilities and obligations (whether accruing or arising before, on or after the Closing Time) which primarily arise out of or relate to the Tuscarora Partnership Interest (including pursuant to the Tuscarora Partnership Agreement and other partnership documents and the business conducted by Tuscarora, other than claims, liabilities and obligations as to which the Purchaser would be entitled to indemnification under Section 9.1 of this Agreement (the "ASSUMED LIABILITIES"). Except as set forth in the immediately preceding sentence, none of the Seller and its Parents shall be liable to the Purchaser or any third parties for any reason whatsoever on account of any of the Assumed Liabilities.

The Purchaser shall indemnify, defend, save and hold harmless the Seller and its Parents from and against all claims, liabilities, obligations, losses, costs, costs of defense (as and when incurred), including expenses, fines, charges, penalties, allegations, demands, damages (including but not limited to actual, punitive, or consequential, foreseen or unforeseen, known or unknown), settlements, awards or judgments of any kind or nature whatsoever and reasonable outside attorney's and consultants' fees, to the extent arising out of (a) the Assumed Liabilities or (b) any inaccuracy, violation or the breach by the Purchaser of any representation, warranty, condition or covenant under this Agreement, all of which are hereinafter collectively referred to as the "SELLER DAMAGES".

Seller Damages with respect to which, but only to the extent that, any proceeds are received by, or on behalf of, the Seller, or by any of its Parents, from any third party insurance policy (and are non-reimbursable by the Seller or any of its Parents), shall not be the subject of indemnification under this Agreement.

9.3 SPECIFIC INDEMNIFICATION ISSUES. (a) In the event a claim, demand, action or proceeding is brought by a third party in which the liability as between the Seller and its Parents, on the one hand, and the Purchaser, on the other hand, is determined after trial in any judgment, award or decree to be joint or concurrent or in which the entitlement to indemnification hereunder is not readily determinable, the Parties shall negotiate in good faith in an effort to agree, as between the Seller and its Parents, on the one hand, and the Purchaser, on the other hand, on the proper allocation of liability or entitlement to indemnification, as well as the proper allocation of the costs of any joint defense or settlement pursuant to SECTION 9.5(d) of this Agreement, all in accordance with the provisions of, and the principles set forth in, this Agreement. In the absence of any such agreement, such allocation of liability, entitlement to indemnification and allocation of costs shall be subject to ultimate resolution between the Seller and its Parents, on the one hand, and the Purchaser, on the other hand, pursuant to SECTION 10 of this Agreement.

(b) It is acknowledged that after the Closing Time, the parties may have various business relationships, which relationships will be described in contracts, agreements and other documents entered into by the relevant parties. Such documents may include agreements by the parties and their Parents to supply, after the Closing Time, credit or services. Such business relationships shall not be subject to the indemnity provisions hereof, unless the parties expressly agree to the contrary in the agreements governing such relationships.

9.4 NOTICE AND PAYMENT OF CLAIMS. (a) If any person entitled to a defense and/or indemnification under this Agreement (the "INDEMNIFIED PARTY") determines that it is or may be entitled to a defense or indemnification by the Purchaser or any of the Seller or its Parents, as the case may be (the "INDEMNIFYING Party"), under this Agreement:

(i) The Indemnified Party shall deliver promptly to the Indemnifying Party a written notice and demand for a defense or indemnification, specifying the basis for the claim for defense and/or indemnification, the nature of the claim, and if known, the amount for which the Indemnified Party reasonably believes it is entitled to be indemnified. Nothing in this subparagraph shall be interpreted to invalidate any claim by the Indemnified Party to be entitled to indemnification,



except to the extent the failure of the Indemnified Party to deliver such notice resulted in actual prejudice.

(ii) The Indemnifying Party shall have 30 days from receipt of the notice requesting indemnification within which to either: (A) assume the defense of such litigation or claim; (B) pay the claim in immediately available funds; (C) reserve its rights pending resolution under SECTION 9.5(d); or (D) object in accordance with CLAUSE (b) of this SECTION 9.4. This 30-day period may be extended by agreement of the Parties. Nothing in this subparagraph shall be interpreted to abrogate or delay a Party's obligation to provide the other with a defense under this Agreement.

(b) The Indemnifying Party may object to the claim for defense and/or indemnification set forth in any notice; PROVIDED, HOWEVER, that if the Indemnifying Party does not give the Indemnified Party written notice setting forth its objection to such claim (or the amount thereof) and the grounds therefor within the same 30-day period (or any extended period), the Indemnifying Party shall be deemed to have acknowledged its liability to provide a defense or to pay the amount of such claim and, subject to SECTION 10 of this Agreement, the Indemnified Party may exercise any and all of its rights under applicable law to collect such amount or obtain such defense. Any objection to a claim for a defense or indemnification shall be resolved in accordance with SECTION 10 of this Agreement.

(c) To the extent provided in the last sentence of SECTION 9.1 of this Agreement or the last sentence of SECTION 9.2 of this Agreement, the right to a defense or indemnification under this Agreement applies only insofar as defense and indemnification are not provided for by insurance (whether through a third party or otherwise). Nevertheless, the potential availability of insurance coverage to the Seller, its Parents, or the Purchaser shall not relieve the other party of its obligations for defense or indemnification hereunder, or delay either party's obligations to the other to assume a defense or pay any sums due hereunder.

(d) Payments due to be made to any Indemnified Party under this SECTION 9 shall bear interest from the date on which the Indemnified Party paid any amount or actually suffered a loss in respect of Purchaser Damages or Seller Damages, as the case may be, to but excluding the date of actual payment (whether before or after judgment) at the prime rate announced by Chase Bank for its corporate customers during such period.

(e) Payments due to be made under this Agreement shall be free and clear of all deductions, withholdings, set-offs or counterclaims whatsoever, except as may be required by law.

9.5 DEFENSE OF THIRD PARTY CLAIMS. (a) If the Indemnified Party's claim for indemnification is based, under this Agreement, on a claim, demand, investigation, action or proceeding, judicial or otherwise, brought by a third party, and the Indemnifying Party does not object under SECTION 9.4(b) of this Agreement, the Indemnifying Party shall, within the 30 day period (or any extended period) referred to in SECTION 9.4(a) of this

Agreement, assume the defense of such third-party claim at its sole cost and expense and shall thereafter be designated as the "CASE HANDLER." Any such defense shall be conducted by attorneys employed by the Indemnifying Party. The Indemnified Party may retain attorneys of its own choosing to participate in such defense at the Indemnified Party's sole cost and expense.

(b) If the Indemnifying Party assumes the defense of any such third-party claim, the Indemnifying Party may settle or compromise the claim without the prior consent of the Indemnified Party so long as all present and future claims relating to the compromised claim against the Indemnified Party are irrevocably and unconditionally released in full.

(c) The Indemnifying Party shall pay to the Indemnified Party in immediately available funds the amount for which the Indemnified Party is entitled to be indemnified within 30 days after the settlement or compromise of such third-party claim or the judgment of a court of competent jurisdiction (or within such longer period as agreed to by the parties). If the Indemnifying Party does not assume the defense of any such third-party claim, the Indemnifying Party shall be bound by the result obtained with respect thereto by the Indemnified Party, except that the Indemnifying Party has the right to contest that it is obligated to the Indemnified Party under the terms of this Agreement, provided the Indemnifying Party shall have raised its objection in a timely manner under SECTION 9.4 of this Agreement.

(d) In the event a claim, demand, action or proceeding is brought by a third party in which the liability as between the Purchaser and the Seller and its Parents is alleged to be joint or in which the entitlement to indemnification hereunder is not readily determinable, the Parties shall cooperate in a joint defense. Such joint defense shall be under the general management and supervision of the party which is expected to bear the greater share of the liability, and which will be considered the Case Handler, unless otherwise agreed; PROVIDED, HOWEVER, that neither Party shall settle or compromise any such joint defense matter without the consent of the other. The costs of such joint defense, any settlement and any award or judgment (unless the award or judgment specifies otherwise) shall be borne as the Parties may agree; or in the absence of such agreement, such costs shall be borne by the Party incurring such costs, subject to ultimate resolution between the Purchaser and the Seller pursuant to SECTION 10 of this Agreement.

9.6 COOPERATION AND PRESERVATION OF RECORDS. (a) The Purchaser and the Seller and its Parents shall cooperate with one another fully and in a timely manner in connection with the defense of any litigation and claims pending as of the Closing Time or brought, threatened or alleged after the Closing Time, against the Purchaser and/or the Seller and its Parents, as such claims or litigation relate to the Tuscarora Partnership Interest in Tuscarora.

(b) Such cooperation shall include, without limitation, making available to the other Party, during normal business hours and upon reasonable notice, all books, records and information ("LITIGATION RECORDS"), officers and employees (without substantial interruption of employment) necessary or useful in connection with any actual or threatened claim, audit, action or proceeding.

(c) Each Party shall maintain the Litigation Records, or at the request of the other party, shall issue, notices exempting from destruction any Litigation Records which the requesting Party represents may be necessary to the defense of, or required to be produced in discovery in connection with, any such claim, investigation, audit, action or proceeding and shall refrain from destroying any such Litigation Records until authorized by the requesting Party. The requesting Party shall notify the other Party promptly when the Litigation Records are no longer required to be maintained.

(d) The Party requesting access to Litigation Records or officers and employees pursuant to CLAUSE (b) hereof or preservation of Litigation Records pursuant to CLAUSE (c) hereof shall bear all reasonable out-of-pocket expenses (except reimbursement of salaries, employee benefits and general overhead) incurred by the other Party in connection with providing such Litigation Records or officers and employees.

(e) The Party providing Litigation Records hereunder may elect, upon a reasonable basis and within a reasonable time, to designate all or a portion of the Litigation Records as confidential or proprietary. If Litigation Records are so designated, the Party receiving them will treat them as it would its own confidential or proprietary information and will take all reasonable steps to protect and safeguard the Litigation Records while in its own custody and will attempt to shield such information from disclosure by motions to quash, motions for a protective order, redaction or other appropriate actions.

9.7 GUARANTEE OF PERFORMANCE. In addition to the indemnification obligations of Parents set forth in this SECTION 9, Parents hereby, jointly and severally, absolutely and unconditionally guarantee to the Purchaser the performance by the Seller of all of its agreements and obligations under this Agreement, subject to any limitations on the Seller set forth in this Agreement, subject to the limitations on the liability of the Seller and its Parents contained in the third paragraph of Section 9.1.

## 10. ARBITRATION.

10.1 Resolution of any and all disputes arising from or in connection with this Agreement, whether based on contract, tort, statute or otherwise, including but not limited to, disputes over arbitrability and disputes in connection with claims by third parties (collectively, "DISPUTES"), shall be exclusively governed by and settled in accordance with the provisions of this SECTION 10; PROVIDED, HOWEVER, that nothing contained herein shall preclude any party from seeking or obtaining (a) injunctive relief or (b) equitable or other judicial relief, in each case to preserve the status quo, pending resolution of Disputes hereunder. Any Party may commence proceedings hereunder by delivering a written notice to any other Party providing reasonable description of the Dispute to the other, and expressly requesting arbitration hereunder. The Parties hereby agree to submit all Disputes to arbitration under the terms hereof, which arbitration shall be final, conclusive and binding upon the parties, their successors and assigns. The arbitration shall be conducted in Calgary, Alberta, by a single arbitrator (the "ARBITRATOR") selected by agreement of the parties not later than ten (10) days after delivery of the Demand or, failing such agreement, appointed pursuant to the commercial arbitration rules of the American Arbitration Association, as amended from time to time (the "AAA

RULES"). If the arbitrator so selected becomes unable to serve, his or her successor shall be similarly selected or appointed. The arbitration shall be conducted pursuant to the Federal Arbitration Act and such procedures as the parties involved in any Dispute may agree, or, in the absence of or failing such agreement, pursuant to the AAA Rules. Notwithstanding the foregoing: (i) each Party shall have the right to audit the books and records of each other party that are reasonably related to the Dispute; (ii) each Party shall provide to each other Party involved in the applicable Dispute, reasonably in advance of any hearing, copies of all documents which such Party intends to present in such hearing; and (iii) each Party shall be allowed to conduct reasonable discovery through written requests for information, document requests, requests for stipulation of fact and depositions, the nature and extent of which discovery shall be determined by the Arbitrator, taking into account the needs of the parties and the desirability of making discovery expeditious and cost effective. All hearings shall be conducted on an expedited schedule, and all proceedings shall be confidential. Any Party may, at its expense, make a stenographic record thereof. The Arbitrator shall complete all hearings not later than 90 days after its selection or appointment, and shall make a final award not later than 30 days thereafter. The award shall be in writing and shall specify the factual and legal basis for the award. The Arbitrator shall apportion all costs and expenses of arbitration, including the Arbitrator's fees and expenses and fees and expenses of experts, between the prevailing and non-prevailing Party as the Arbitrator deems fair and reasonable. Notwithstanding the foregoing, in no event may the Arbitrator award multiple, punitive or exemplary damages. Any arbitration award shall be binding and enforceable against each Party involved in the particular Dispute and judgment may be entered thereon in any court of competent jurisdiction.

#### 11. ADDITIONAL AGREEMENTS

11.1 The Seller agrees to cooperate with the Purchaser in causing Tuscarora to obtain the consent of the holders of Series A Notes issued under the Indenture, Assignment and Security Agreement of Tuscarora to Wilmington Trust dated December 21, 1995 such that any future acquisition of an additional general partner interest in Tuscarora by Purchaser does not result in a requirement for prepayment of the Series A Notes under the terms of such indenture; provided that the terms of obtaining such consents are commercially reasonable and acceptable to Tuscarora and all costs associated therewith are borne solely by the Purchaser.

11.2 The Seller agrees not to take any action as a partner of Tuscarora that would adversely affect the Purchaser as a partner of Tuscarora.

#### 12. MISCELLANEOUS.

12.1 HEADINGS; REFERENCES; INTERPRETATION. All article and section headings in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any of the provisions hereof. All references herein to articles and sections shall, unless the context requires a different construction, be deemed to be references to the articles and sections of this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa. The use herein

of the word "including" following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set immediately following such work or to similar items or matters, whether or not nonlimiting language (such as "without limitation", "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. Except as otherwise expressly provided herein, any reference in this Agreement to any document shall mean such document as amended, restated, supplemented or otherwise modified from time to time.

12.2 SUCCESSORS AND ASSIGNS. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

12.3 NO THIRD PARTY RIGHTS. The provisions of this Agreement are not intended to and do not create rights in any other person or confer upon any other person any benefits, rights or remedies and no person is or is intended to be a third party beneficiary of any of the provisions of this Agreement.

12.4 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement binding on the parties hereto.

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

12.6 SEVERABILITY. If any of the provisions of this Agreement are held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, and an equitable adjustment shall be made and necessary provision added so as to give effect to the intention of the parties as expressed in this Agreement at the time of execution of this Agreement.

12.7 DEED; BILL OF SALE; ASSIGNMENT. To the extent required by applicable law, this Agreement shall also constitute a "deed", "bill of sale" or "assignment" of the Tuscarora Partnership Interest.

12.8 AMENDMENT OR MODIFICATION. This Agreement may be amended or modified, or any provision waived or rescinded, from time to time only by the written agreement of the Parties directly bound by, or benefited from, the provisions in respect of which such amendment, modification, waiver or rescission is sought.

12.9 INTEGRATION. This Agreement supersedes all previous understandings or agreements between the parties, whether oral or written, with respect to its subject matter. This Agreement constitutes an integrated agreement which contain the entire understanding of the parties with respect to the subject matter hereto. No understanding,

representation, promise or agreement, whether oral or written, is intended to be or shall be included in or form part of this Agreement unless it is contained in a written amendment hereto executed by the parties hereto after the date of this Agreement.

12.10 FEES. Each of the Parties will pay their respective legal fees and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred; provided, however, that Purchaser will pay all costs incurred by Tuscarora in connection with the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of the date first above written.

TCPL TUSCARORA LTD.

By: /s/ Paul F. Macgregor

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Name: Paul F. MacGregor  
Title: President

By: /s/ Rhondda E.s. Grant

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Name: Rhondda E. S. Grant  
Title: Secretary

TC TUSCARORA INTERMEDIATE LIMITED PARTNERSHIP

By: TC PIPELINES GP, INC.  
its general partner

By: /s/ Garry P. Mihaichuk

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Name: Garry P. Mihaichuk  
Title: President and Chief Executive Officer

By: /s/ Paul F. Macgregor

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Name: Paul F. MacGregor  
Title: Vice-President, Business Development

TC PIPELINES GP, INC.

By: /s/ Paul F. Macgregor

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Name: Paul F. MacGregor  
Title: Vice-President, Business Development

TRANSCANADA PIPELINES LIMITED

By: /s/ Garry P. Mihaichuk

-----  
Name: Garry P. Mihaichuk  
Title: Executive Vice-President,  
Operations and Engineering

By: /s/ Rhondda E.S. Grant

-----  
Name: Rhondda E.S. Grant  
Title: Vice President and Corporate  
Secretary

TRANSCANADA PIPELINE USA LTD.

By: /s/ Garry P. Mihaichuk

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Name: Garry P. Mihaichuk  
Title: President

By: /s/ Paul F. Macgregor

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Name: Paul F. MacGregor  
Title: Vice-President

SCHEDULE A  
LITIGATION

1. Complaint filed March 24, 2000 in the Second Judicial District Court of the State of Nevada in and for the County of Washoe, Case No. CV00 01517, Department No. 8, between FOUR-FOUR, INC., a Nevada corporation, Plaintiff, vs. UNITED STATES GYPSUM COMPANY, a Nevada corporation, QUALITY INSPECTION SYSTEMS, an Oklahoma corporation, HIGH MOUNTAIN INSPECTION SERVICES, INC., a Wyoming Corporation, TUSCARORA GAS TRANSMISSION COMPANY, a partnership of TUSCARORA GAS PIPELINE COMPANY, a wholly owned subsidiary of SIERRA PACIFIC RESOURCES, and TCPL TUSCARORA LTD. a wholly owned subsidiary of TRANSCANADA PIPELINE USA LTD. and DOES 1-10, Defendants.