Penobscot Energy Recovery Company
P.O. Box 160 • 29 Industrial Way
Orrington, Maine 04474
(207) 825 - 4566

ESOCO ORRINGTON, LLC.
Plant Operator

MEMORANDUM

FROM: John Noer

TO: Penobscot Energy Recovery Company Municipal Customers

RE: PERC Post-2018 Final Solid Waste Agreement and Schedule A

DATE: December 14, 2015

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In preparation for the expiration of your current contract for municipal solid waste disposal in 2018, are working hard to give you new options that offer your community proven waste solutions with long-term price stability, flexibility, local control and transparency. We at PERC wish to continue our longstanding relationship with your community. The PERC facility is permitted, fully compliant with all environmental regulations and, based on a recent report from HDR Engineering, Inc., is in very good condition and can operate effectively for at least the next 20 years.

We are pleased to be able to offer you two different but complementary plans:

1. *PERC Standard Option*: An agreement to send your non-recycled municipal solid waste to PERC at specified tipping fees, similar to what you have now but with some important improvements, such as no guaranteed annual tonnage.

2. *Pay-as-You Throw Option:* As a complement to the PERC standard option, an exciting new pay-as-you-throw (PAYT) option in cooperation with WasteZero, where all of your waste disposal costs – including tipping fees – could be paid through the sale of bags. We are committed to increasing recycling and material recovery in Maine and have developed this option to help you increase recycling and reduce the amount you pay to dispose of trash. The PAYT option represents a new path forward in terms of taking waste disposal costs out of your budget and improving your existing recycling rates.

We want to meet with you, either individually or as part of a regional meeting, to go over these options in more detail and address any questions or concerns you may have. **We will contract you directly to schedule a meeting; in the meantime, please contact Rod Carr who is assisting us locally at (207) 622-6924 or Tamara Haley at (612) 284-3380 or thaley@usaegroup.com for questions or to set up a meeting.**

PERC STANDARD OPTION

A few months ago we asked for your comments on a draft agreement. Based on the feedback we received, we've made a few minor changes to the agreement to provide clarity. These changes are listed in a separate memo in front of the attached contract.

Here are some of the Post-2018 contract highlights:

- LONG-TERM, FIXED PRICE AGREEMENTS The tipping fees are $84.36 per ton for a 15-year agreement; $89.57 for a 10-year agreement. There will be no increases over the term of the agreement other than standard increases based on the Consumer Price Index (CPI).

- NO GUARANTEED ANNUAL TONNAGE (GAT) The new agreement is "term-based" as opposed to "tonnage-based," and takes into account changing market conditions and improved recycling efforts by removing the municipal commitment to a guaranteed tonnage requirement.

- LOCAL CONTROL You retain control over how trash is collected in your community and how it is transported to the PERC facility, and you can tailor waste disposal and recycling programs to meet the needs of your community without needing to obtain outside approval.

- GUARANTEED BACK-UP DISPOSAL Similar to what is in place today, we have back-up disposal agreements in place in the unlikely event that PERC should not be operational for any reason what-so-ever.

WASTEZERO PAYT OPTION

PERC is committed to increasing recycling across its service area, and we are eliminating the GAT to help you do that. Our facility offers a world-class disposal option, but we only want you to pay to dispose of things that can not otherwise be reduced, reused or recycled. That's why we are excited to join forces with WasteZero, a national leader in municipal waste reduction, to develop pay-as-you-throw (PAYT) program alternatives for non-recyclable MSW. These alternatives will make it even easier for you to reduce trash and save money.

The advantages of these alternatives are significant:

- STRONG LOCAL CONTROL You decide what costs are built into the sale of bags, everything from tipping fees to transportation, to recycling. Additionally, agreements can be structured to generate revenue through program rebates, but again this is up to your community to decide.

- REDUCE SOLID WASTE WasteZero's PAYT programs cut solid waste tonnage by an average of 44%. Because residents pay on a per-bag basis, there is incentive to reduce MSW and increase recycling.

- MOVE TRASH TO UTILITY PRICING WasteZero's PAYT Programs allow municipalities to charge residents fairly for trash services – just like electricity and water. This allows communities to first reduce costs (by reducing tonnage) and then remove the remainder from your city or town budget to whatever extent you feel is appropriate.

As with the PERC standard agreement, WasteZero PAYT options offer you local control, flexibility and the added protection of back-up disposal agreements. Enclosed is additional information from WasteZero about the services they can offer your town and the effectiveness of their programs.

We urge you to carefully consider not only our two waste disposal options, but any other proposals that are put before you. Compare all of them. Ask lots of questions. Determine what will work best for you because decisions you make in the next few months will have implications for your community and its taxpayers for many years to come.

We want to work with you to find solutions to your solid waste needs and not be just another vendor selling something to your town. The options we have put before you reflect that, and we look forward to meeting with you to discuss them. **Again, we will contract you directly to schedule a meeting; in the meantime, please contact Rod Carr who is assisting us locally at (207) 622-6924 or Tamara Haley at (612) 284-3380 or thaley@usaegroup.com for questions or to set up a meeting.**

We hope to hear from you soon.

KAMINSKI LAW OFFICE, PLLC
TOWN CENTER OFFICE PLAZA
3535 PLYMOUTH BOULEVARD
SUITE 211
PLYMOUTH, MINNESOTA 55447

TO: John Noer

FROM: Stephen Kaminski

DATE: December 14, 2015

SUBJECT: Changes to Waste Disposal Agreement

Attached is the revised Waste Disposal Agreement that should be delivered to the municipalities. I have made several small changes that should be highlighted to each of the municipalities as follows:

1. Due to the positive feedback we have received from various municipalities, I have changed Section 5 so as to delete the requirement that PERC receives commitments for a minimum amount of solid waste from the municipalities.

2. I added the contact information for Penobscot Energy Recovery Company, Limited Partnership in Section 9(a).

3. In Schedule A, I have changed Section 2 so that the municipalities know that PERC is guaranteeing the Tipping Fee through June 30, 2016.

4. In Schedule A, I changed the beginning of Section 3(a) to more clearly state that the amount of the "Estimated Tonnage" that is provided by the municipality is just an approximation and that this "Estimated Tonnage" is NOT a guarantee, in any way, as to the amount of solid waste that the municipality will deliver to the PERC facility.

5. In Schedule A, I have changed Section 4 so as to delete the provision allowing the tipping fee to be increased due to a change in law.

Other than the changes listed above, no other changes have been made to the Waste Disposal Agreement.

Let me know if you have any questions.

Stephen

WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and entered into as of the ____ day of _____, 2015, by and between PENOBSCOT ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP, a Maine limited partnership, and _____, a _____.

RECITALS:

WHEREAS, the Municipality needs a comprehensive, environmentally sound, reliable, long-term management strategy for handling the present and projected volumes of non-hazardous Solid Waste generated within the Municipality;

WHEREAS, it is the policy of the State of Maine, as directed through the State of Maine's adoption of the Solid Waste Hierarchy, to reduce the volume of Solid Waste going into landfills, to recycle Solid Waste whenever possible, and to maximize resource recovery;

WHEREAS, improved waste management within the region of which the Municipality is a part will serve the goals of (1) recovering energy from waste; (2) reducing the indiscriminate disposal of waste; (3) coordinating Solid Waste management among political subdivisions; and (4) developing and maintaining financially secure waste facilities;

WHEREAS, the State of Maine requires that each municipality provide for the disposal of domestic and commercial non-hazardous Solid Waste generated within such municipality;

WHEREAS, Solid Waste issues present communities with serious long-term financial, management, governmental and technical problems in the disposal of Solid Waste;

WHEREAS, the effective management of Solid Waste is crucial to the continued financial well-being of the Municipality and the region of which it is a part;

WHEREAS, PERC owns and operates the PERC Facility that recovers certain recyclable materials and otherwise converts Solid Waste into energy in the Town of Orrington, Penobscot County, Maine;

WHEREAS, the Municipality is willing to commit to delivering to PERC and the PERC Facility the Solid Waste generated within the Municipality so as to assure the ongoing supply of Solid Waste to the PERC Facility for a fixed period of time as defined below; and

WHEREAS, this Agreement will only become effective upon the satisfaction of certain requirements as provided in Section 5 below.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises of the parties hereto, and the mutual benefits to be gained by the performance hereof, the parties hereto agree as follows:

1.) Definitions. The terms defined in this Section 1 (except as may be otherwise expressly provided in this Agreement or unless the context otherwise requires) shall, for all purposes of this Agreement, have the following respective meanings:

(a) Acceptable Waste. The term "Acceptable Waste" shall mean all combustible Solid Waste that the Municipality shall deliver, or cause to be delivered, to the PERC Facility for disposal as may be limited by federal, state, and local laws, ordinances, permits, regulations, approvals and restrictions as they may apply to the receiving facility except for the following:

(1) demolition or construction debris from building and roadway projects or locations;

(2) liquid wastes or sludges;

(3) abandoned or junk vehicles;

(4) Unacceptable Waste;

(5) dead animals or portions thereof or other pathological wastes;

(6) water treatment facility residues;

(7) tree stumps;

(8) tannery sludge;

(9) waste oil;

(10) discarded white goods such as freezers, refrigerators, washing machines, etc.;

(11) electronic waste including, without limitation, television sets, computers, computer monitors, and computer accessories) all as determined by PERC from time-to-time;

(12) Acceptable Waste that, in the reasonable judgment of PERC and based solely upon a visual inspection of the Acceptable Waste, has a BTU content of less than four thousand (4,000) BTUs per pound unless the Acceptable Waste fails to meet the aforementioned BTU minimum requirement solely because of the moisture content of such Acceptable Waste and such moisture content is due primarily to abnormally wet weather conditions; or

(13) Waste which, in the reasonable judgment of PERC and based upon a visual inspection at the time of deliver, could, if processed, result in (a) damage to the PERC Facility, (b) the interruption of normal operations of the PERC Facility, or (c) PERC incurring extraordinary processing or maintenance costs.

(b) Municipality. The term "Municipality" shall mean _____.

(c) PERC. The term "PERC" shall mean Penobscot Energy Recovery Company, Limited Partnership, a Maine limited partnership.

(d) PERC Facility. The term "PERC Facility" shall mean that certain waste-to-energy facility owned by PERC and located on Industrial Way in Orrington, Maine.

(e) Solid Waste. The term "Solid Waste" shall mean non-hazardous solid materials with insufficient liquid content to be free-flowing which are of no value to the immediate source from which they emanate as evidenced by their disposal, discard, or abandonment without consideration in return including, but not limited to, ordinary household, municipal, institutional, and commercial wastes, all as may be defined or limited by applicable federal, state and local laws, ordinances, permits, regulations, licenses, approvals, and restrictions.

(f) Solid Waste Hierarchy. The term "Solid Waste Hierarchy" shall mean the enunciated state government priorities with respect to the generation and disposal of solid waste within the State of Maine as set forth in 38 M.R.S. §1302 or any successor thereto.

(g) Term. The term "Term" shall have the meaning specified in Section 6.

(h) Tipping Fee. The term "Tipping Fee" shall have the meaning specified in Section 3(c) below.

(i) Transportation Vehicles. The term "Transportation Vehicles" shall mean motorized vehicles necessary for the Municipality to transport (or cause to be transported) the Acceptable Waste to the PERC Facility including, without limitation, tractors, trailers, and "packer" trucks (front load and rear load), all of which must be self-unloading.

(j) Unacceptable Waste. The term "Unacceptable Waste" shall mean all Solid Waste that is not Acceptable Waste including, without limitation, (a) any material that by reason of its composition, characteristics or quantity is ineligible for disposal at the facility in question pursuant to any applicable federal, state or local laws, rules, regulations, or permits; (b) hazardous, toxic, radioactive, hospital or laboratory wastes or substances; or (c) any other material that the receiving party reasonably concludes would require special handling outside the normal course or presents an endangerment to its facility, the public health or safety, or the environment.

2.) Representations and Warranties. Each party hereto represents and warrants to the others that:

(a) it is duly organized, validly existing, and qualified to do business and is in good standing in every jurisdiction in which this Agreement requires its performance;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action by such party;

(d) the execution and delivery of this Agreement by such party and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws (or other constituent documents) of such party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which such party is bound;

(e) it and any subcontractors have all necessary permits, licenses and other forms of documentation, and its personnel have received all necessary training including, but not limited to, health and safety training, required to perform its respective obligations hereunder; and

(f) These warranties shall survive the expiration or earlier termination of this Agreement.

3.) Municipality Delivery Obligations. During the Term, the Municipality agrees to the following:

(a) The Municipality shall deliver all Acceptable Waste that is generated within the Municipality to the PERC Facility. The Municipality further agrees that it will not deliver Acceptable Waste collected by the Municipality to any landfill, or other solid waste disposal facility, except in instances where it first obtains prior written consent from PERC to do so. Furthermore, in the event that the Municipality uses a transfer station (or any other type of unloading, loading or transloading facility), Municipality acknowledges that Municipality is obligated to ensure that any Solid Waste delivered to such transfer station shall be delivered to the PERC Facility. The Municipality agrees to use its best efforts to avoid delivering any Unacceptable Waste to the PERC Facility and shall not knowingly mix any Unacceptable Waste with Acceptable Waste.

(b) The Municipality acknowledges and agrees that the Municipality (or a hauler or other designated representative hired by the Municipality) may be denied entrance to the PERC Facility (or to a transfer station serving the PERC Facility) by PERC if Solid Waste is delivered at any time other than the PERC Facility's (or transfer station's) standard receiving hours or if the Municipality has not paid the Tipping Fee, or if PERC has a reasonable basis to believe that a vehicle contains Unacceptable Waste.

(c) The Municipality shall (1) deliver to the PERC Facility the estimated tonnage of Solid Waste; and (2) pay to PERC the tipping fee (the "Tipping Fee") for each ton of

Solid Waste delivered by the Municipality to the PERC Facility as described on Schedule A which is attached hereto and incorporated herein by reference.

4.) PERC's Obligations. During the Term, PERC agrees to the following:

(a) PERC will accept all of the Acceptable Waste delivered by the Municipality to the PERC Facility.

(b) That PERC currently has, and shall have throughout the Term, the ability and capacity to accept the Acceptable Waste.

(c) Deliveries by the Municipality to the PERC Facility of the Acceptable Waste shall be recorded separately. Unless otherwise agreed to by the parties hereto, each incoming Transportation Vehicle shall be labeled with a unique vehicle number and hauler code. Each incoming Transportation Vehicle shall be individually weighed at the time of arrival at the PERC Facility to determine the incoming Transportation Vehicle's gross truck weight. After being unloaded, but prior to departing from the PERC Facility, the incoming Transportation Vehicle shall be weighed empty at the PERC Facility to determine its tare weight (to the nearest hundredth of a ton).

(d) A multi-part weigh ticket shall be produced for each such incoming Transportation Vehicle which weigh ticket shall show (1) the incoming Transportation Vehicle's tare and gross truck weights, (2) the number of tons of Acceptable Waste being delivered to the PERC Facility by the incoming Transportation Vehicle (to the nearest hundredth of a ton), (3) the time of the delivery, and (4) the incoming Transportation Vehicle's vehicle identification number. The weigh ticket shall be signed by PERC's scale house operator and the driver of the incoming Transportation Vehicle. PERC and the driver shall each receive a copy of the weigh ticket.

(e) PERC shall retain all weigh tickets for a period of not less than three (3) years. The weight record shall be used by PERC as the basis for invoicing the Municipality. The Municipality shall have the right to inspect PERC's weight records of Acceptable Waste deliveries upon reasonable written request. Such inspections shall be conducted during business hours in such a manner as to not unreasonably interfere with PERC's business operations.

(f) PERC shall submit a weekly invoice to the Municipality indicating (i) the number of tons of Acceptable Waste disposed of at the PERC Facility during the prior month; and (ii) the fees due therefor pursuant to Section 3. All such invoices shall be due and payable by the Municipality within thirty (30) days from the date of the invoice.

5.) Necessity of Delivery Obligations. Both the Municipality and PERC acknowledge and agree that this Agreement is being signed so that (a) the Municipality can be assured of continuing the Municipality's comprehensive and environmentally sound disposal of its non- hazardous Solid Waste generated within the Municipality; and (b) PERC can be assured of a steady supply of Solid Waste from the Municipality to the PERC Facility for a fixed period.

After signing this Agreement, both the Municipality and PERC acknowledge and agree that PERC needs to receive commitments for the delivery and receipt of Acceptable Solid Waste from other municipalities and private businesses so as to assure the continued operation of the PERC Facility.

6.) Term. The Term of this Agreement shall begin on April 1, 2018 and shall expire on the date specified in Schedule A (including any renewals thereof as provided in Schedule A) unless earlier terminated as provided herein (the "Term").

7.) Termination. The parties hereto acknowledge and agree that this Agreement shall terminate as follows:

(a) Except as provide in Schedule A (relating to the automatic renewal of the Agreement), upon the expiration of the Term; or

(b) Upon mutual written agreement of the Municipality and PERC; or

(c) By either party by providing written notice to the other party if the other party commits a material breach of this Agreement, and the breach is not cured within sixty (60) days after receipt of written notice from the party not in breach, stating the nature of the breach; or

(d) In the event of a "Deemed Termination" by the Municipality as that term is defined in Schedule A; or

(e) By either party, in the event that PERC does not receive written commitments for the delivery of Solid Waste as provided in Section 5 above; or

(f) By either party by providing written notice to the other party in the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the other party, or the appointment with or without such other party's consent of an assignee for the benefit of creditors or of a receiver for such other party, or the going into liquidation voluntarily or otherwise for the making of a composition with creditors of such other party.

8.) Indemnification. PERC agrees to indemnify, defend and hold harmless the Municipality and its managers, employees and agents, and the Municipality agrees to indemnify, defend and hold harmless PERC and its directors, officers, owners, managers, employees and agents, from and against all loss, liability, damage and expense (including attorneys' fees and expenses incurred in enforcing this indemnification), arising out of or relating to (i) any breach by an indemnifying party of this Agreement, (ii) any negligent or willful act or omission of an indemnifying party, or (iii) any violation by an indemnifying party of applicable laws, regulations, permits or licenses. The indemnifying party shall be entitled to control (at its sole expense) the defense of any claim, action, suit or proceeding giving rise to an obligation of such indemnifying party to provide indemnification under this Section 8; provided, however, that no settlement thereof may be entered into without the written consent of the indemnifying party and the indemnified party, which consent shall not be unreasonably withheld, delayed or conditioned.

9.) Miscellaneous.

(a) Notices. All notices to be given under this Agreement shall be in writing and delivered personally, or shall be mailed by U.S. Express, registered or certified mail, return receipt requested or an overnight service with receipt as follows:

PERC Penobscot Energy Recovery Company, Limited Partnership
29 Industrial Way
Orrington, Maine 04474
Attn: John Noer

The Municipality _____
_____
_____
_____

(b) Governing Law. This Agreement and any issues arising hereunder or relating hereto shall be governed by and construed in accordance with the laws of the State of Maine except for conflicts of laws provisions that would apply the substantive law of another state.

(c) Venue. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts having jurisdiction over the parties hereto.

(d) Limitation of Liability. Neither party shall be liable to the other for special, incidental, exemplary, punitive or consequential damages including without limitation loss of use, loss of profits or revenues, or cost of substitute or re-performed services, suffered, asserted or alleged by either party or any third party arising from or relating to this Agreement, regardless of whether those damages are claimed under contract, warranty, indemnity, tort or any other theory at law or in equity.

(e) Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other party.

(f) Force Majeure.

(1) "Force Majeure" shall mean any act, event or condition materially and adversely affecting the ability of a party to perform or comply with any material obligation, duty or agreement required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the party relying thereon,

and the nonperforming party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation: (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (iii) a strike, work slowdown, or similar industrial or labor action; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a party's obligations as contemplated by this Agreement; or (v) adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the Execution Date of this Agreement, preventing performance of or compliance with the obligations hereunder.

(2) Neither party shall be liable to the other for damages without limitation (including liquidated damages) if and to the extent such party's performance is delayed or prevented due to an event of Force Majeure. In such event, the affected party shall promptly notify the other of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure Event, the nonperforming party shall (i) exercise commercially reasonable efforts to mitigate or limit damages to the performing party; (ii) exercise commercially reasonable due diligence to overcome the Force Majeure event; (iii) to the extent it is able, continue to perform its obligations under this Agreement; and (iv) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires.

(3) In the event of a delay in either party's performance of its obligation hereunder for more than sixty (60) days due to a Force Majeure, the other party may, at any time thereafter during the continuation of delayed performance, terminate this Agreement.

(g) Entire Agreement. It is understood and agreed that all understandings and agreements heretofore had among the parties hereto related to the subject matter of this Agreement are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon among the parties hereto with respect to the subject matter of this Agreement, and that this Agreement is entered into after full investigation, no party relying upon any statement or representation, not embodied in this Agreement, made by any other. All exhibits, schedules and other attachments are a part of this Agreement and the contents thereof are incorporated herein by reference.

(h) Amendment. This Agreement cannot be amended, modified or supplemented, nor can any term or condition be waived in whole or in part, except in writing and signed by all of the parties hereto.

(i) Non-Waiver. No waiver by any party to this Agreement of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No waiver by any party hereto of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by such party giving such waiver. No waiver by any party hereto with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(j) Severability; Modification Required By Law. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions thereof or hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

(k) Headings. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

(l) Successors and Assigns. This Agreement and all of the provisions thereof and hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(m) Assignment. Neither this Agreement nor any of the rights, interests, obligations, and remedies hereunder shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, such consent to not be unreasonably withheld, conditioned or delayed, except (a) to its parents, subsidiaries and affiliates provided that the assigning party shall remain liable for all of the obligations hereunder, (b) at its expense to a person, firm, or corporation acquiring all or substantially all of the business and assets of the assigning party provided that the assignee assumes the obligations of the assigning party arising hereunder from and after the date of acquisition, and (c) as security to entities providing financing for the assigning party or for any of its affiliates or for construction, reconstruction, modification, replacement or operation of any of the facilities of the assigning party or its parents, subsidiaries or affiliates.

(n) Construction. This Agreement and its exhibits and schedules are the result of negotiations between the parties and have been reviewed by all parties. Accordingly, this

Agreement will be deemed to be the product of the parties thereto and no ambiguity will be construed in favor of or against any party.

(o) No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(p) No Brokers. The parties agree that they have entered into this Agreement without the benefit or assistance of any brokers, and each party agrees to indemnify, defend and hold the other harmless from any and all costs, expenses, losses or liabilities arising out of any claim by any person or entity that such person or entity acted as or was retained by the indemnifying party as a finder or broker with respect to the sale of the assets described herein.

(q) Further Acts. Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

(r) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument.

PERC:
THE PENOBSCOT ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP

By: USA Energy Group, LLC
Its: General Partner

By: _____
Its: President

MUNICIPALITY:

_____

By: _____
Its:

By: _____
Its:

By: _____
Its:

By: _____
Its:

Municipality:_____

SCHEDULE A
TO THAT CERTAIN WASTE DISPOSAL AGREEMENT
DATED AS OF THE
___ DAY OF _____, 20___

1.) Statement of Intent. The parties hereto acknowledge and agree that it is the policy of the State of Maine, as directed through the State of Maine's adoption of the Solid Waste Hierarchy, to reduce the volume of Solid Waste going into landfills, to recycle Solid Waste whenever possible, and to maximize resource recovery from the Solid Waste. The parties hereto also understand that the effective management of Solid Waste is crucial to the continued financial well-being of the Municipality. Because of this, the Municipality is seeking a comprehensive, environmentally sound, reliable, long-term strategy for managing the present and projected volumes of non- hazardous Solid Waste generated within the Municipality. PERC owns and operates the PERC Facility that has effectively and efficiently, for many decades, accepted Solid Waste, recovered certain recyclable materials, and otherwise converted Solid Waste into energy. Both the Municipality and PERC seek to have the PERC Facility to continue operating and the delivery of a predictable stream of Solid Waste to the PERC Facility is essential for the continued operation of the PERC Facility. Based on the foregoing, the purpose of the parties entering into this Agreement is to allow (a) the Municipality to effectively manage its Solid Waste within the Solid Waste Hierarchy; and (b) PERC to continue to serve the communities in reducing and reusing its Solid Waste. Therefore, in accordance with the terms of the Solid Waste Hierarchy, the Municipality is willing to commit to delivering to PERC and the PERC Facility the Solid Waste generated within the Municipality so as to assure the ongoing supply of Solid Waste to the PERC Facility for a fixed-period of time as defined below.

2.) Term of Agreement and Tipping Fee.

Authorization Signature	Term of Delivery Commitment	Tipping Fee (per ton)
_____	_____, 2018 through _____, 2033	$84.36
_____	_____, 2018 through _____, 2028	$89.57

The parties hereto agree that any Agreement signed for a either a fifteen (15) year or ten (10) year term shall automatically renew on the same basis unless otherwise terminated, in writing, by either the Municipality or PERC with at least twelve (12) months prior written notice. Also, any contract term that is less than ten (10) years shall be priced on a case-by-case basis and will be based on the then current market pricing. The pricing listed above is guaranteed through June 30, 2016.

3.) Estimated Delivery Amount.

(a) Based on the amount of Solid Waste generated by the Municipality in prior years, the estimated annual tonnage to be delivered by the Municipality shall be approximately _____ tons (the "Estimated Tonnage"). Both PERC and the Municipality acknowledge and agree that the Estimated Tonnage described above does not guarantee that the Municipality will deliver a minimum amount of tonnage to the PERC Facility on an annual basis. Rather, the Estimated Tonnage described above is a good faith estimate of the annual tonnage that the Municipality believes will be generated within the Municipality and that such Estimated Tonnage is subject to change which is a direct result of the Municipality engaging in increased recycling, repurposing or composting (or other materials management process adopted into, and ranked higher by, the Solid Waste Hierarchy) in accordance with the Solid Waste Hierarchy. Notwithstanding the fact that the Estimated Tonnage described above is not a commitment by the Municipality to deliver a minimum amount of Solid Waste to the PERC Facility, the Municipality acknowledges and agrees that the Waste Disposal Agreement (including this Schedule A) is being signed in good faith by both PERC and the Municipality and that PERC is relying upon the Municipality's commitment to deliver to the PERC Facility the Solid Waste generated within the Municipality.

(b) Both the Municipality and PERC believe that the amount of Estimated Tonnage as described above is unlikely to change materially over time. However, if there is a material change in the amount of the Estimated Tonnage, the Municipality will provide written notice to PERC that there has been a material change in the amount of the Estimated Tonnage that will be delivered to the PERC Facility and that such material change is the direct result of a change in the market conditions as to the amount of Acceptable Solid Waste generated within the Municipality.

(c) In the event that PERC becomes aware that the Municipality is not delivering all of its Solid Waste to the PERC Facility as agreed to by the Municipality pursuant to the terms of this Agreement, PERC may give written notice to the Municipality of such delivery failure and both the Municipality and PERC shall meet at the PERC Facility so as to resolve the issue. Such meeting shall occur at such time reasonably agreeable to both PERC and the Municipality but, in no event, more than thirty (30) after delivery of the written notice to the Municipality by PERC. In the event that the Municipality and PERC are unable to resolve such dispute during this meeting, then PERC shall have the right (but no obligation) to declare that this Agreement has been deemed terminated by the Municipality due to the Municipality taking actions that are inconsistent with the terms of this agreement and that have the purpose or effect of interfering with the Municipality's performance of this Agreement (a "Deemed Termination").

4.) Changes to the Tipping Fee – Adjustment for CPI. The Tipping Fee shall be increased on a quarterly basis by a percentage equal to the percentage change in "CPI" for the most recently released 12-month period preceding the one-year anniversary date of this Agreement. The term "CPI" shall mean the Consumer Price Index-All Urban Consumers (U.S. cities average, all items) as published by the U.S. Bureau of Labor Statistics. If this index ceases to be published, a comparable index shall be designated, in writing by the parties hereto.

5.) Early Termination. Notwithstanding the provisions of Section 7 of the Agreement, both PERC and the Municipality acknowledge and agree that this Agreement may be terminated as follows:

(a) Upon ninety (90) days prior written notice by the Municipality to PERC (the "Municipality Termination"); or

(b) Upon PERC's determination that a Deemed Termination has occurred.

Within thirty (30) days after a Municipality Termination or a Deemed Termination, the Municipality shall pay to PERC an amount equal to the product of (i) the average annual amount paid (or required to be paid) by the Municipality to PERC for the immediately preceding two (2) years (and taking into account any amounts paid to PERC prior to the beginning of the Term of this Agreement); multiplied by (ii) three (3). In addition to this amount, the Municipality shall pay to PERC all reasonable legal fees and costs incurred by PERC in obtaining this payment.

Penobscot Energy Recovery Company
29 Industrial Way
Orrington, Maine 04474
(207) 825 - 4566

ESOCO ORRINGTON, LLC.
Plant Operator

Memorandum

To: Equity Charter Municipalities and PERC Holdings, LLC

From: John Noer

Date: July 31, 2015

Re: Draft of the Sixth Amended and Restated Agreement of the Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership

As you each know, Penobscot Energy Recovery Company, Limited Partnership ("PERC") is initiating a program to renew waste disposal agreements and to extend the life of the PERC partnership past the existing 2018-19 period for termination provided for in the governing documents of PERC. Under USA Energy Group's (PERC's managing general partner) oversight, management and staff have been working diligently over the past 11 years on operating and maintaining our facility to prepare it for another 20 years of exemplary performance to meet your community's solid waste disposal requirements.

In fact, a recent evaluation of the plant by HDR, Inc. engineers found that "As a result of the good historical preventative and routine maintenance programs and practices, the equipment at the PERC Facility appears to be in better condition than other similar equipment at other WtE facilities of similar size and age." With continued maintenance and investment, HDR said "it would be expected that the PERC Facility should be capable of continuing to process waste at historical rates in the waste processing facility and efficiently producing steam and electricity in the generation side until at least the year 2035."

In this mailing (which is the last of three we have now sent), please find attached a draft copy of the "Sixth Amended and Restated Agreement of the Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership" (the "New Partnership Agreement"). Also, attached for your files is a copy of the "Fifth Amended and Restated Agreement of the Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership" (the "Current Partnership Agreement") that was previously signed by the Municipal Review Committee on behalf of each of you. Although we assume that the Municipal Review Committee has already delivered to each Equity Charter Municipality a copy of the Current Partnership Agreement, we wanted to make sure that each of you had a copy. This mailing will fulfill the promises made last summer to have all the project documents revised and the draft form made available to all of the partners of PERC (each Equity Charter Municipality is the actual owner of the limited partnership interests of PERC).

The Partnership was originally formed in 1983 for the purpose of constructing, owning and operating a waste-to-energy facility to be located in the Town of Orrington, Maine. Over the years the partnership

agreement (and the terms contained in the partnership agreement) has gone through many changes over time which has resulted in the Current Partnership Agreement.

As you each know, the terms of the Current Partnership Agreement had been based on many important considerations relating to the business and operations of PERC that are now changing. These changes include the following:

1. The Current Partnership Agreement is based upon the assumption that the PERC facility is subject to debt financing and a banking institution is concerned about the repayment of the debt. Currently, PERC operates with little or no debt and, because of this, we do not have the same banking concerns as compared to when the Current Partnership Agreement was signed.
2. Previously, because of the issues related to PERC's debt financing, each Equity Charter Municipality has signed a waste disposal agreement promising to deliver a minimum amount of solid waste to the PERC facility (the "Guaranteed Annual Tonnage"). As we have promised, after 2018, each Equity Charter Municipality will no long be subject to the Guaranteed Annual Tonnage.
3. Many Equity Charter Municipalities have expressed their interest in continuing their involvement in the ownership of PERC because of the significant benefit PERC has been to the communities as well as the profit they each will receive from their continued ownership of PERC.
4. Because the Current Partnership Agreement was originally drafted many years ago, the Current Partnership Agreement needs to be updated so as to conform with the business practices currently in use and that will regulate the facility post-2018 including, specifically, removing provisions of the Current Partnership Agreement which call for the termination, dissolution and windup of the Current Partnership Agreement on or about February 14, 2018;
5. We would like to extend the term of the Current Partnership Agreement to December 31, 2068,

Additionally, the New Partnership Agreement is more consistent with today's partnership documents and allows for a more concise definition of partner duties, responsibilities and obligations as well as partnership finances.

As referenced above, the schedule is designed to allow each community time to review, comment and discuss these proposed new agreements prior to their annual town meetings or council meetings. Please read all three documents as a package which describes the various aspects of the Partnership, its business and governance on a go-forward basis. Furthermore the agreements are being extended to all current customer communities and partners, as well as any community seeking to utilize PERC's services for the first time. PERC is not capacity limited and will service all prior agreements as well as new ones.

- Draft Waste Disposal Agreement — Mailed May 28, 2015
  - Out for review
  - Comments due on or before October 31, 2015
- Schedule A (Tipping Fee Structure and Pricing): — Mailed June 29, 2015
  - Out for review
  - Comments due on or before October 31, 2015
- Revised and Extended PERC, LP Partnership Agreement: — Mailed July 29, 2015
  - Out for review to all partners
  - Comments due on or before October 31, 2015
- A series of public forums to be held at various locations — 3rd to 4th Qtr'15
- Final Agreements: — December, 2015

PERC, which continues to operate efficiently and effectively based on time-proven technology, has nearly 30 years of operating history and USA Energy Group has over 11 years of experience in properly managing the PERC facility to serve your needs. USA Energy Group was formed in 2003 in order to purchase ownership in PERC and to become its operator. Each member of the management team at USA Energy Group has over 30 years of experience in the power and energy industry. They have held positions ranging from Plant Manager, to project development to project financing. USA Energy Group has been and will continue to be actively involved in the day-to-day operation of the PERC facility.

Together, we can continue this legacy of managing your community's waste disposal needs in an efficient, environmentally-responsible and cost-effective manner. We look forward to the opportunity to discuss any questions you may have about PERC, its continued operation and any and all of the issues and agreements discussed above.

In the event that you would like additional information or have questions at any time during this process, I would ask you to contact any of the following individuals:

NAME	CONTACT NUMBER
John Noer	612-284-3380
Bob Knudsen	612-961-5628 (cell), or 612-284-3383 (direct)
Tamara Haley	612/284-3380
Peter Prata	207-825-4566 ext. 116
Gary Stacey	207-825-4566 ext. 117

Thank you for your ongoing participation in PERC.

SIXTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF PENOBSCOT ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP

THIS SIXTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP, dated as of _____, _____ relative to the Maine limited partnership known as PENOBSCOT ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP (the "Partnership"), is entered into by and among USA ENERGY GROUP, LLC, a Minnesota limited liability company ("USA Energy"), PERC HOLDINGS, LLC, a Minnesota limited liability company ("PERC Holdings"), and such other Persons a may be admitted to the partnership as a Partner pursuant to the terms of this Agreement and as such Partners are listed and identified in Schedule A which is attached hereto and made a part hereof.

RECITALS

WHEREAS, all or a portion of the Partners are parties to that certain Fifth Amended and Restated Agreement of Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership dated effective as of July 18, 2011 (the "Original Partnership Agreement"); and

WHEREAS, the Original Partnership Agreement provides that the Partners who are parties to the Original Partnership Agreement, together, can amend the Original Partnership Agreement; and

WHEREAS, such Partners desire to amend and restate the Original Partnership Agreement as set forth in this Agreement which shall supersede and replace the Original Partnership Agreement and which shall be the entire agreement between the parties hereto related to the subject matter hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the above-named parties agree as follows:

ARTICLE 1.

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1.1) Adjusted Deficit Capital Account Balance. "Adjusted Deficit Capital Account Balance" shall have the meaning specified in Section 4.1(c).

1.2) Affiliate. "Affiliate" means any of the following:

(a) any Person or other entity controlling, controlled by or under common control with the Person in question, whether directly or indirectly through one or more intermediaries. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise. or

(b) any member, partner, shareholder, director, officer, employee or agent of the Person in question.

1.3) Assigning Limited Partner. "Assigning Limited Partner" shall have the meaning specified in Section 8.4.

1.4) Bankruptcy. "Bankruptcy", with respect to the Partnership or a Partner thereof, means (a) an adjudication that such Partner or Partnership is bankrupt or insolvent, or the entry of an order for relief under the Federal Bankruptcy Code, (b) the making by it of an assignment for the benefit of creditors, (c) the filing by it of a petition in bankruptcy or a petition for relief under any section of the Federal Bankruptcy Code or any other applicable bankruptcy or insolvency statute or an answer admitting or failing to deny the allegations of any such petition, (d) the filing against it of any such petition (unless such petition is dismissed within 60 days from the date of filing thereto), or (e) the appointment of a trustee, conservator or receiver for all or a substantial part of its assets (unless such appointment is vacated or stayed Within 60 days from its effective date).

1.5) Capital Account. "Capital Account" shall mean the account of any owner of a Partnership Interest that is maintained in accordance with the provisions of Section 3.2.

1.6) Code. "Code" means the Internal Revenue Code of 1986, as amended, and any successor to that Code. Any reference herein to specific sections of the Code, and to the Treasury Regulations thereunder, shall be deemed to include a reference to any corresponding provisions of future law.

1.7) Estimated Tax Amount. "Estimated Tax Amount" means the product of the following:

(a) forty percent (40%); multiplied by

(b) the estimated amount of profits and losses allocated to the Partners pursuant to Section 4.1 (but not less than zero).

1.8) Fiscal Year. "Fiscal Year" shall have the meaning specified in Section 11.2(a).

1.9) GAAP. "GAAP" means United States generally accepted accounting principles in effect from time to time and as consistently applied from year-to-year.

1.10) General Partner. "General Partner" means USA Energy or its successors or lawful assigns.

1.11) Incentive Bonus. The term "Incentive Bonus" shall have the meaning specified in the Operating and Maintenance Agreement.

1.12) Independent Accountant. "Independent Accountant" means the firm of certified public accountants as the General Partner may elect from time to time.

1.13) Limited Partner. "Limited Partner" means any person who is admitted as a "limited partner" in accordance with the terms of this Agreement and is shown as a "limited partner" on the books and records of the Partnership.

1.14) Limited Partnership Interest. "Limited Partnership Interest" means the Interest of the Limited Partners. Each Interest of the Limited Partners in the Partnership shall be denominated as a unit with each unit representing a prorata percentage interest in the aggregate Interests of the Limited Partners. Each such unit shall be referred to herein as a Limited Partnership Interest and all references in this Agreement to number of Limited Partnership Interests shall be deemed to refer to the specified number of such units of the Interests of the Limited Partners. All Limited Partnership Interests shall be considered to constitute a single class and all Limited Partners shall vote as a single class under the Partnership Act in accordance with the terms of this Agreement.

1.15) Liquidating Trustee. "Liquidating Trustee" shall have the meaning specified in Section 9.2.

1.16) Management Fee. "Management Fee" shall have the meaning specified in the Operating and Maintenance Agreement.

1.17) Offered Partnership Interest. "Offered Partnership Interest" shall have the meaning specified in Section 8.4(c).

1.18) Operating and Maintenance Agreement. "Operating and Maintenance Agreement" means that certain Amended and Restated Operating and Maintenance dated as of _____, 2015, and which shall be effective only as of the date of this Agreement, all as such agreement is amended and restated from time to time.

1.19) Partners. "Partners" means the General Partner and the Limited Partners, collectively; "Partner" refers to anyone of the Partners, or its successors or assigns.

1.20) Partnership. "Partnership" means Penobscot Energy Recovery Company, Limited Partnership, a Maine limited partnership, which is the subject of this Partnership Agreement, as such Partnership may from time to time be constituted.

1.21) Partnership Act. "Partnership Act" is the Maine Uniform Limited Partnership Act of 2007 as contained in Title 31 Maine Revised Statutes, Chapter 19, as such may be amended from time to time and any successors thereto.

1.22) Person. "Person" means any individual, firm, corporation, trust, partnership or other entity, including any municipality or regional waste disposal district.

1.23) Required Records. "Required Records" shall have the meaning specified in Section 11.1.

1.24) Substitute Limited Partner. "Substitute Limited Partner" shall mean a Person who is admitted as a Limited Partner in the Partnership pursuant to Section 8.5 of this Agreement with all of the rights of a Limited Partner and who is shown as a Limited Partners on the books and records of the Partnership.

1.25) Tax Return. "Tax Return" means the annual Federal income tax return of the Partnership, whether on Form 1065 or such other form as may hereafter be required to be filed by the Partnership pursuant to the Code and Treasury Regulations.

1.26) Transfer. "Transfer" means a sale, transfer, assignment, hypothecation, or other disposition of an interest in the Partnership.

1.27) Transferee. "Transferee" means a purchaser, transferee, assignee or pledgee of, or Person who takes an interest by means of hypothecation in, a Partnership interest.

1.28) Transferor. "Transferor" means a seller, assignor or hypothecator of a Partnership interest.

1.29) Treasury Regulations. The term "Treasury Regulations" shall mean the income tax regulations promulgated under the Code.

ARTICLE 2.

THE PARTNERSHIP AND ITS BUSINESS

2.1) Continuation. The Partners hereby agree to continue the Partnership under the laws of the State of Maine. The General Partner shall take or cause to be taken all such further actions as are appropriate for the Partnership's continuance under the Partnership Act, including any required filings with the Office of the Secretary of State of the State of Maine.

2.2) Name of Partnership. The name of the Partnership shall continue to be the "Penobscot Energy Recovery Company, Limited Partnership." The Partnership may use the assumed name "Penobscot Energy Recovery Company, L.P."

2.3) Address of Partnership. The address of the Partnership shall be 100 N. Sixth Street, Suite 300A, Minneapolis, MN 55403, or such other location as determined by the General Partner in its sole discretion.

2.4) Purpose. The sole purpose of the Partnership shall be to own, maintain, enhance and operate the waste-to-energy facility currently located in Orrington Maine and to undertake any and all other acts and things necessary, proper, convenient, or advisable to effectuate and carry out such purpose.

2.5) Term. The term of the Partnership shall continue until December 31, 2068, unless the Partnership is sooner dissolved as herein provided or by operation of law.

2.6) Place of Business. The principal office and place of business of the Partnership shall be at 29 Industrial Way, Orrington, Maine. The Partnership may also maintain such other offices at such other places as the General Partner may deem advisable.

ARTICLE 3.

TAX MATTERS; CAPITAL ACCOUNTS

3.1) Tax Characterization and Returns. The Partners acknowledge that the Partnership will be treated as a "partnership" for federal and state income tax purposes. All provisions of this Agreement and the Partnership's Certificate of Limited Partnership are to be construed so as to preserve that tax status. Furthermore, each Partner acknowledges and agrees as to the following:

(a) The General Partner will cause federal, state and local income tax returns for the Partnership to be prepared and timely filed (subject to the General Partner's discretion to obtain extensions) with the appropriate authorities. The General Partner, in its sole and absolute discretion, shall determine the accounting methods and conventions under the tax laws of the United States, the several states and other relevant jurisdictions as to the treatment of tax items or any other method or procedure relating to the preparation of such tax returns. In addition, the General Partner, in its sole and absolute discretion, may cause the Partnership to make (or refrain from making) any and all tax elections permitted by such tax laws, including the election referred to in Section 754 of the Code, and may charge the costs of complying with such election to the Partner(s) who requested that such election be made.

(b) As soon as reasonably practicable after the end of each Fiscal Year, the General Partner shall cause to be delivered to each Person who was a Partner at any time during such Fiscal Year such tax information and schedules as are necessary to enable such Person to prepare its federal income tax return (it being understood and agreed that the tax returns of the Partnership may be delayed so that it may be necessary for the Limited Partners to obtain extensions for the filing of their own tax returns). Each Limited Partner agrees in respect of any year in which such Limited Partner had an investment in the Partnership that, unless the General Partner expressly agrees otherwise, such Limited Partner shall not: (i) treat, on its individual tax returns, any tax item relating to such investment in a manner inconsistent with the treatment of such tax item by the Partnership, as reflected on the Schedule K-1 or other information statement furnished by the Partnership to such Partner; or (ii) file any claim for refund relating to any such tax item based on, or which would result in, any such inconsistent treatment.

3.2) Capital Accounts. The Partnership shall establish and maintain on the books of the Partnership: (a) a single capital account for the General Partner (including any capital account relating to any Interest as a Limited Partner owned by the General Partner), and (b) a capital account for each Limited Partner (each, a "Capital Account") all according to the following rules:

(a) A Capital Account shall be maintained with respect to each Partner in accordance with Federal income tax accounting principles and Treasury Regulations Section 1.704-1(b). Each Capital Account shall be credited with the amount of the cash contribution to the capital of the Partnership by such Partner, the fair market value of property contributed to the Partnership by such Partner (net of liabilities assumed with respect to such interest and liabilities to which such contributed property is subject), the distributive share of partnership income and gain (or items thereof) as allocated to such Partner pursuant to Section 4.1, and the distributive share of income exempt from tax. Each Capital Account shall be charged for the amount of any loss or deduction (or items thereof) allocated to such Partner pursuant to Section 4.1, the amount of all distributions in cash to such Partner pursuant to this Agreement, the fair market value of property distributed to such Partner (net of liabilities assumed with respect to such interest and liabilities to which such distributed property is subject), and the distributive share of expenditures of the Partnership described in Section 705(a)(2)(B) of the Code (which share shall be determined in accordance with the allocable interests in the Partnership). The following rules shall apply in maintaining Capital Accounts with respect to interests in the Partnership:

(b) For purposes of this Section 3.2, amounts described in Section 709 of the Code (other than amounts with respect to which an election is in effect under Section 709(b) of the Code) shall be treated as described in Section 705(a)(2)(B) of the Code.

(c) If property is distributed by the Partnership, Capital Accounts shall be adjusted as though such property had been sold on the date of such distribution for its then fair market value, and any gain or loss on such sale had been allocated in accordance with Section 4.1.

(d) If property is contributed to the Partnership, Capital Accounts shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(d)(3).

(e) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners in accordance with the number of Partnership Interests owned by the Partners so as to take into account any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its fair market value as of the date of contribution. In the event any Partnership asset is adjusted as a result of a revaluation pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(f), subsequent allocations of income, gain, loss and deduction with respect to such asset shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its fair market value as of the date of such revaluation in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder. Any election or other decision relating to such allocations shall be made by the President in any manner that reasonably reflects the purpose and intention of this Agreement.

(f) if, in any taxable year, the Partnership has in effect an election under Section 754 of the Code, Capital Accounts shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m).

(g) No interest shall be paid by the Partnership on capital contributions or any Capital Account balance.

3.3) Accounting Decisions. The General Partner shall make all decisions relating to accounting matters and may cause the Partnership to make whatever elections the Partnership may make under the Code, including the election referred to in Section 754 of the Code to adjust the basis of Partnership assets.

3.4) Tax Matters Partner. The General Partner shall act on behalf of the Partnership as the "tax matters partner" within the meaning of Section 6231(a)(7) of the Code.

3.5) Additional Capital Contributions. Except as provided in this Article 3, the Partners shall have no right to make any Additional Capital Contributions or loans to the Partnership and the Partnership shall have no right to make any Partner make a capital contribution or loan to the Partnership.

3.6) Capital Withdrawals and Returns. Partners shall not have the right to withdraw or reduce their contributions to the capital of the Partnership except in accordance with this Agreement. Except as otherwise provided herein, Partners shall not have the right to demand or receive property, other than cash, in return for their capital contributions or have priority over another Partner, either as to the return of contribution of capital or as to profits, losses, or distributions, or as to compensation by way of income.

3.7) Waiver of Partition Right. The Partners hereby waive and forfeit all rights arising out of statute or operation of law to seek, bring or maintain in any court an action for partition pertaining to any asset of the Partnership.

3.6) Optional Loans from General Partner and Affiliates. The Partnership may borrow funds from the General Partner or their Affiliates, provided that no General Partner or Affiliate shall be obligated to make such loans. Any such loans shall be on terms no less favorable to the Partnership than would be reasonably available to the Partnership from non-affiliated commercial lenders.

ARTICLE 4.

ALLOCATIONS AND DISTRIBUTIONS

4.1) Allocation of Profits and Losses. All Partnership items of income, gain, loss, deduction, or credit (including without limitation investment tax credits and accelerated cost recovery deductions), as determined for Federal income tax purposes, shall be allocated as follows:

(a) All Partnership items of income, gain, loss, deduction, or credit (including without limitation investment tax credits and accelerated cost recovery deductions), as

determined for Federal income tax purposes, shall be allocated ten percent (10%) to the General Partner and ninety percent (90%) among the Limited Partners prorata according to the number of Limited Partnership Interests issued and outstanding at such time.

(b) If the Capital Account of a Partner has a deficit balance at any time and the deficit or increase in deficit was caused by the allocation of nonrecourse deductions as defined in Treasury Regulations § 1.704-2(b), then beginning in the first taxable year of the Partnership in which there are nonrecourse deductions or in which the Partnership makes a distribution of proceeds of a nonrecourse liability that are allocable to an increase in minimum gain as defined in Treasury Regulations § 1.704-2(d) and thereafter throughout the full term of the Partnership, the following rules shall apply:

(1) Nonrecourse deductions shall be allocated to the Partners in a manner that is reasonably consistent with the allocations that have substantial economic effect as defined in Treasury Regulations § 1.704-1 or some other significant item attributable to the property securing the nonrecourse liabilities; and

(2) If there is a net decrease in minimum gain for a taxable year, each Partner will be allocated items of Partnership income and gain for that year equal to such Partners share of the net decrease in minimum gain as defined in Treasury Regulations § 1.704-2(g)(2).

(c) Notwithstanding the foregoing, except as provided in Section 4.1(b) above, in the event any Limited Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-l(b)(2)(ii)(d)(4), (5) or (6), then items of Partnership income and gain shall be specially allocated to such Limited Partner in an amount and manner sufficient to eliminate as quickly as possible the Adjusted Deficit Capital Account Balance in such Limited Partner's Capital Account created by such adjustments, allocations, or distributions. Any special allocations of items of income or gain pursuant to this subsection shall be taken into account in computing subsequent allocations of other net profits, net losses and all other items allocated to the Limited Partner pursuant to Article 4 shall, to the extent possible, be equal to the net amount that would have been allocated to the Limited Partner pursuant to the provisions of this Article 4 had such unexpected adjustments, allocations or distributions not occurred. "Adjusted Deficit Capital Account Balance" shall mean the deficit Capital Account balance of a Limited Partner, if any, as of the end of the relevant fiscal year of the Partnership, after giving effect to the following: (1) credit to such Capital Account any amounts the Limited Partner is obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704-l(b)(4)(iv)(f); and (2) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). It is intended that this Section 4.1 will meet the requirements of a "qualified income offset" as defined in Treasury Regulations § 1.704-1(b)(2)(ii)(d) and is to be interpreted and applied consistent with that intention.

(d) Except as provided in Section 4.1(b) above, in the event a Limited Partner has an Adjusted Deficit Balance Capital Account at the end of any Partnership fiscal year which

is in excess of the sum of (1) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement; and (2) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704-1(b)(4)(iv)(f), such Limited Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible.

4.2) Allocations to Transferred Partnership Interests. Profits, losses, gains, deductions and credits allocated to a Partnership Interest assigned or reissued during a Fiscal Year shall be allocated to each Person who was the holder of the Partnership interest during such Fiscal Year, in proportion to the number of days that each such holder was recognized as the owner of such Partnership Interest during such Fiscal Year or during an interim period in respect of which the books of the Partnership shall be closed, as the case may be, or in any other manner required or permitted by the Code and selected by the General Partner in accordance with this Agreement, without regard to the results of Partnership operations or the date, amount or recipient of any distributions which may have been made with respect to such Partnership interest. The effective date of the assignment shall be (a) in the case of a voluntary assignment, the actual date the assignment as recorded on the books of the Partnership, or (b) in the case of involuntary assignment, the date of the operative event.

4.3) Operating Distributions. Except as provided in Sections 4.4 and 4.5, the Partnership shall make such distributions of cash as the General Partner may from time to time determine, in the General Partner's sole and absolute discretion. Except as expressly provided in this Agreement, no Partnership shall have any right to cause or receive any distribution prior to the termination of the Partnership. Any distributions authorized by the Partnership, other than tax distributions pursuant to Section 4.4 and liquidating distributions pursuant to Section 4.5, shall be allocated as provided in Section 4.1(a).

4.4) Tax Distributions. Notwithstanding anything in this Agreement to the contrary, within one hundred twenty (120) days after the end of each Fiscal Year, and prior to making any distributions described in Sections 4.3 or 4.5, the Partnership shall distribute an amount of cash equal to the Estimated Tax Amount to each Person who was an owner of Partnership Interest during the Fiscal Year but only to the extent funds are available and such distribution: (i) will not render the Partnership unable to pay its debts in the ordinary course of business after making such distribution; and (ii) is not otherwise prohibited by any loan agreement, mortgage, promissory note or other financing agreement or document to which the Partnership is a party.

4.5) Liquidating Distributions. If the Partnership is terminated pursuant to Section 10.1 and its business is being liquidated in accordance with the Partnership Act, the Partnership shall cease to carry on its business, except to the extent necessary for the winding up of the business of the Partnership. The Partnership shall thereafter be wound up and terminated as provided by the Partnership Act. All tangible or intangible property of the Partnership, including money, remaining after the winding up of the business and affairs of the Partnership including, without limitation, the discharge of the debts, obligations, and liabilities of the Partnership shall be distributed as follows:

(a) First, to the Partners in proportion to, and to the extent of the positive balances in their Capital Accounts; and

(b) Second, to the Partners as provided in Section 4.1(a).

ARTICLE 5.

POWERS, RIGHTS AND DUTIES OF THE GENERAL PARTNER

5.1) Rights, Powers and Authority of the General Partner. Subject to the provisions of this Agreement and the requirements of applicable law, the General Partner shall possess and may exercise full and exclusive right, power and authority to manage and conduct the business and affairs of the Partnership and to take such actions for and on behalf of the Partnership as the General Partner may reasonably determine to be necessary, appropriate, advisable or convenient to carry on its business and realize its objectives, including causing the Partnership to enter into agreements or otherwise transact business with such banks (or other financial institutions), legal counsel, accountants, auditors, appraisers, Partners, consultants, other service-providers and counterparties as the General Partner may select from time to time, on such terms and subject to such conditions as the General Partner may determine, and regardless of whether such service providers or parties are General Partner Associates.

5.2) Liability of the General Partner.

(a) The General Partner shall have unlimited liability for the repayment, satisfaction and discharge of all debts, liabilities and obligations of the Partnership to the full extent (but only to the extent) of the General Partner's assets. The General Partner, however, shall not be required to maintain any minimum net worth, and shall not be required to discharge any of its duties under this Agreement that require the payment of funds to third parties unless adequate Partnership funds are not readily available for that purpose.

(b) The General Partner shall not be deemed to be a guarantor of the value of any Capital Account, or have any personal liability for the repayment of any Capital Contribution, to any Limited Partner.

5.3) Compensation and Reimbursement of Expenses.

(a) The Partnership shall pay the General Partner the Management Fee and Inventive Bonus in effect from time to time.

(b) The Partnership shall pay such costs and expenses as the General Partner shall reasonably determine to be necessary, appropriate, advisable or convenient to carry on its business and realize its objectives (and shall reimburse the General Partner Associates for any such costs and expenses incurred by them on behalf of the Partnership), including: (i) the Management Fee; (ii) the Incentive Bonus; (iii) costs and expenses incurred by the General Partner in connection with investigating investment opportunities for the Partnership and reviewing the continuing suitability of the Partnership's investments in light of the Partnership's investment objectives; (iv) costs and expenses incurred in connection with the investment and reinvestment of the Partnership's assets, including

brokerage commissions, dealer mark-ups, mark-downs and spreads, and related clearing and settlement charges; (v) borrowing charges and other costs and expenses associated with short sales; (vi) interest expense and loan commitment fees relating to the Partnership's borrowings (including margin debt); (vii) administrative, legal, accounting, auditing, record-keeping, tax form preparation, compliance and consulting costs and expenses; fees, costs and expenses of third-party service providers that provide such services; costs and expenses associated with preparing investor communications; and printing and mailing costs; (viii) governmental licensing, filing and exemption fees; (ix) the Partnership's indemnification obligations under this Agreement and other agreements to which the Partnership may be a party; and (x) extraordinary costs and expenses, if any.

5.4) Reliance by Third Parties.

(a) Notwithstanding any other provision of this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner has full right, power and authority to sell, pledge, mortgage, hypothecate, encumber or otherwise use or dispose of, in any manner, any and all assets of the Partnership and to enter into any agreements on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner as if it were the Partnership's sole party in interest, both legally and beneficially. In no event shall any Person dealing with the General Partner (or any of its representatives) be obligated to ascertain that the provisions of this Agreement have been complied with or to inquire into the necessity or expedience of any action of the General Partner or any of its representatives.

(b) Each and every certificate, instrument or other document executed on behalf of the Partnership by the General Partner shall be conclusive evidence in favor of each and every Person relying thereon or claiming thereunder that: (i) at the time of the execution and delivery of such certificate, instrument or document, this Agreement was in full force and effect; (ii) the Person executing and delivering such certificate, instrument or document was duly authorized and empowered to do so for and on behalf of the Partnership; and (iii) such certificate, instrument or other document was duly executed and delivered in accordance with this Agreement and is binding upon the Partnership.

5.5) Devotion of Time; Affiliates. The General Partner shall devote such time to the Partnership business as the General Partner determines is necessary to supervise the Partnership's business and affairs in an efficient manner; but nothing contained in this Agreement shall preclude the employment, at the expense of the Partnership, of any agent or other third party to operate and manage all or any portion of the property, business or operations of the Partnership, subject to the control of the General Partner. Subject to Section 5.7 of this Agreement, Affiliates of the General Partner may be employed by the Partnership to perform any other services for the Partnership as the General Partner determines is necessary in the General Partner's sole and absolute discretion.

5.6) Other Activities. The General Partner shall not be required to manage the Partnership as its sole and exclusive function, and it may have other business interests and may engage in other activities in addition to those relating to the Partnership. Neither the Partnership nor any Partner shall have any right by virtue of this Agreement or the Partnership relationship

created hereby in or to such other ventures or activities or to the income or proceeds derived therefrom, and the pursuit of such ventures shall not be deemed wrongful or improper. Partners and their Affiliates shall not be obligated to present any particular investment opportunity to the Partnership even if such opportunity is of a character which, if presented to the Partnership, could be taken by the Partnership, and, each of them shall have the right to take for its own account (individually or otherwise) or to recommend to others any such particular investment opportunity.

5.7) Business with Affiliates. The General Partner shall have the absolute right to cause the Partnership to transact any business with the General Partner, or an Affiliate of the General Partner, for goods or services in connection with the conduct of the Partnership's business, provided that that such transaction must be on terms no less favorable to the Partnership than would be available in a bona fide arm's length transaction with an unaffiliated Person as determined by the General Partner in its sole and absolute discretion.

ARTICLE 6.

LIMITED PARTNERS

6.1) Limited Partners Have Limited Personal Liability. No Limited Partner shall be personally liable for the debts, liabilities or obligations of the Partnership, whether arising in tort, contract or otherwise, unless such Limited Partner expressly agrees otherwise or such Limited Partner, in addition to exercising its rights, powers and authority as a Limited Partner, is admitted to the Partnership as a general partner. Notwithstanding the foregoing, any Limited Partner who receives any amount distributed by the Partnership (a) in violation of the Partnership Act shall be liable to the Partnership for the return of such amount regardless of whether such Partner had no knowledge of such violation at the time of its receipt of such amount; or (b) is in excess of the amount to which such Limited Partner was entitled under this Agreement because the amounts attributable to such Limited Partner's Capital Account were miscalculated, shall be liable to the Partnership for the return of such amount, regardless of whether the event or circumstance giving rise to such miscalculation was known or unknown to the General Partner or such Limited Partner at the time of such distribution.

6.2) Authority of Limited Partners Is Limited.

(a) No Limited Partner, in its capacity as such, shall take part in the management or conduct of the business or affairs of the Partnership or transact any business in the name of or otherwise for or on behalf of the Partnership. Without limiting the scope of the foregoing, no Limited Partner shall have the right, power or authority to sign documents for, incur any indebtedness or expenditures on behalf of, or otherwise bind the Partnership.

(b) No Limited Partner, in its capacity as such, shall have the right, power or authority to authorize, approve, agree or consent to, or vote on, any matter affecting the Partnership except to the extent any such right, power or authority is expressly granted to such Limited Partner by this Agreement or by provisions of the Partnership Act that may

not lawfully be modified or nullified by agreement among the partners of a limited partnership formed under the Partnership Act.

6.3) Limited Partners May Not Partition Partnership Property. No Limited Partner or Limited Partners, individually or collectively, shall have any right, title or interest in or to specific Partnership Property. Each Limited Partner irrevocably waives any right that it may have to maintain an action for partition with respect to its Interest or any Partnership Property.

6.4) Limited Partners May Not Remove or Expel General Partner. No Limited Partner or Limited Partners, individually or collectively, shall have any right, power or authority to remove or expel the General Partner, cause the General Partner to withdraw from the Partnership, or appoint a successor general partner.

ARTICLE 7.

EXCULPTATION AND INDEMNIFICATION

7.1) Exculpation. Notwithstanding any other provision of this Agreement, to the extent that, at law or in equity, the General Partner has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or any Limited Partner, the General Partner shall not be liable for monetary or other damages to the Partnership or such Limited Partner for the General Partner's good faith reliance on the provisions of this Agreement or for: (a) losses sustained or liabilities incurred by the Partnership or such Limited Partner as a result of errors in judgment on the part of the General Partner, or any act or omission of the General Partner, if such losses or liabilities were not the result of the General Partner's willful misfeasance, bad faith or gross negligence in the performance of, or reckless disregard of, its duties under this Agreement; (b) errors in judgment on the part of any Person, or any act or omission of any Person, selected by the General Partner to perform services for or otherwise transact business with the Partnership, provided that, in selecting such Person, the General Partner acted without willful misfeasance, bad faith or gross negligence; or (c) circumstances beyond the General Partner's control, including the Bankruptcy or suspension of normal business activities of any Person with whom the Partnership does business;

7.2) Indemnity for Acts and Omissions.

(a) The General Partner shall be indemnified and held harmless by the Partnership from and against any and all reasonable attorneys' fees, claims, demands, liabilities, costs, damages and causes of action arising out of or incidental to its management or administration of the affairs of the Partnership; provided, however, that the same were the result of action or inaction of the General Partner which it, in good faith, determined was in the best interests of the Partnership and which course of conduct did not constitute gross negligence or willful misconduct on the part of the General Partner or breach of any representation, warranty or covenant of the General Partner under this Article 7; provided further, however, that all claims for indemnification made by the General Partner under this Section 7.2(a) shall be made only against and shall be limited to the assets of the Partnership, and the General Partner shall have no recourse against the other Partners with respect to such claims.

(b) Each of the Limited Partners shall be indemnified and held harmless by the Partnership from and against any and all reasonable attorneys' fees, claims, demands, liabilities and costs, damages and causes of action arising out of or incidental to the affairs of the Partnership, provided, however, that the same were the result of action or inaction of such Limited Partner which it, in good faith, determined was in the best interests of the Partnership and which course of conduct did not constitute gross negligence or willful misconduct on the part of such Limited Partner. Notwithstanding the foregoing, all claims for indemnification made by the Limited Partners under this Section 7.2(b) shall be made only against and shall be limited to the assets of the Partnership and the Limited Partners shall have no recourse against the General Partner with respect to such claims.

(c) Indemnifications authorized under this Section 7.2 shall include payment of reasonable attorneys' fees or other expenses incurred in connection with settlement or in any legal proceeding, claims or demands and the removal of any liens affecting any property of the indemnitee. Such indemnification rights shall be cumulative of, and in addition to, any and all rights, remedies and recourses to which a Partner or the Partnership shall be entitled, whether or not pursuant to the provisions of this Agreement, at law or in equity. Payment obligations of the Partnership under this Section 7.2 shall be junior in right of payment to the prior payment in full of any debt obligations of the Partnership.

ARTICLE 8.

ISSUANCE AND TRANSFER OF LIMITED PARTNERSHIP INTERESTS

8.1) Additional Issuance of Limited Partnership Interests. For any reasonable Partnership purpose as determined in good faith by the General Partner to be in the best interests of the Partnership (including, without limitation, for the purpose of raising additional capital, acquiring assets, redeeming Partnership interests or retiring Partnership debt), the General Partner is authorized to cause the Partnership to issue Limited Partnership Interests to Partners or other Persons. All of the Partners acknowledge and agree that the issuance of such Limited Partnership Interests, and the admittance of such Persons as additional Limited Partners of the Partnership shall not require the approval of the Limited Partners provided that any such Person must agree to be bound by the terms of this Agreement. Each of the Partners acknowledge and agree that no Partner has any preemptive, preferential or other similar right with respect to the issuance or sale of any new or unissued Limited Partnership Interests.

8.2) Prohibited Transfers. The Limited Partners may not Transfer or otherwise encumber their interest in the Partnership or any part thereof in any way whatsoever except as permitted in this Article 8, and any such Transfer or encumbrance in violation of this Article 8 shall be null and void as against the Partnership, except as otherwise provided by law.

8.3) Permitted Transfers by Limited Partners. Subject to any requirements of this Agreement, a Limited Partner may transfer all or any part of its interest in the Partnership (but only if the Transferor shall not then be in material default under this Agreement), provided that:

(a) Any Transferee shall take such interest subject to the terms, provisions and conditions of this Agreement and shall acknowledge its acceptance of this Agreement by executing and delivering to the remaining Partners an instrument in form satisfactory to said Partners whereby such Transferee assumes and agrees to be bound by all the terms, provisions and conditions hereof and to become, in the place of the transferring Limited Partner, a Partner for all purposes herein (although in connection with such transferee's assumption of obligations hereunder, such Transferee shall be entitled to the benefit of any limitation upon the liability of the Transferor hereunder).

(b) Such Transfer must be for cash consideration, and all costs to the Partnership of such Transfer shall be paid by the Transferee or Transferor.

(c) The General Partner shall have consented to the Transfer, which consent may be granted or withheld in its sole discretion.

8.4) Right of First Refusal. Prior to the Transfer of a Limited Partnership Interest by a Limited Partner (the "Assigning Limited Partner") to any other Person, the remaining Limited Partners shall have the option to purchase all (but not less than all) of the Limited Partnership Interests of the Assigning Limited Partner to be transferred to such Person as set forth in this Section 8.4. Prior to a Transfer of a Limited Partnership Interest, the Assigning Limited Partner shall deliver to the Partnership and the remaining Limited Partners a written notice setting forth the following:

(a) An offer to the remaining Limited Partners to sell the Limited Partnership Interests of the Assigning Limited Partner. Such offer shall be subject to the terms and conditions set forth in the written notice and shall include a statement of the address to which notice of acceptance may be sent.

(b) Any notice provided pursuant to this Section 8.4 shall include a statement identifying the Person to whom the Limited Partnership Interest is proposed to be transferred and shall contain all of the material terms and conditions of the proposed Transfer of the Limited Partnership Interest by the Assigning Limited Partner including, without limitation, the amount of the purchase price, the date and manner of the payment thereof, the terms of any security, pledge, lien or other encumbrance, and copies of any documentation related thereto.

(c) The purchase price for the Limited Partnership Interest of the Assigning Limited Partner that are to be subject to the proposed sale (the "Offered Partnership Interest") shall be equal to the price at which the Offering Limited Partner proposes to Transfer the Offered Partnership Interest to the third Person as described in the written notice.

(d) The remaining Limited Partners shall have the right to purchase all (but not less than all) of the Offered Partnership Interest within one hundred eighty (180) days after delivery of the written notice to the Partnership and the remaining Limited Partners. If more than one (1) of the remaining Limited Partners desires to purchase the Offered Partnership Interest, the Offered Partnership Interest shall be allocated among the remaining Limited Partners in any manner the remaining Limited Partners agree. If the

remaining Limited Partners cannot agree on such allocation within ten (10) days after receiving written notice from the Assigning Limited Partner, then the Offered Partnership Interest shall be allocated between the remaining Limited Partners in proportion to the remaining Limited Partners Limited Partnership Interest. If the remaining Limited Partners do not elect to purchase all of the Offered Partnership Interest, or if the closing does not occur within the one hundred eighty (180) day period through no fault of the Assigning Limited Partner, the Assigning Limited Partner may then sell the Offered Partnership Interest to the third Person referred to in the written notice within thirty (30) days after the expiration of such one hundred eighty (180) day period, subject to the same terms and conditions set forth in the written notice, unless the Offered Partnership Interest is first reoffered to the remaining Limited Partners this Section 8.4.

8.5) Substitute Limited Partner. If a Transferee of a Limited Partnership interest does not become a Substitute Limited Partner pursuant to this Section 8.5, the Partnership shall not recognize the Transfer and the Transferee shall hot have any rights to require any information on account of the Partnership's business, inspect the Partnership's books, receive distributions, or vote on Partnership matters. A Transferee of the whole or any part of a Limited Partnership Interest shall have the right to become a Substitute Limited Partner in place of its Transferor only if all of the following conditions are satisfied:

(a) a fully executed and acknowledged written instrument of assignment has been filed with the Partnership setting forth a statement of the intention of the Transferor that the Transferee become a Substitute Limited Partner in its place;

(b) the Transferee executes, adopts and acknowledges this Agreement and agrees to assume all the obligations of its Transferor, and

(c) any reasonable costs to the Partnership of the Transfer shall have been paid to the Partnership.

8.6) Involuntary Withdrawal by the Limited Partner.

(a) Upon the Bankruptcy, dissolution or other cessation of existence of a Limited Partner which is not a natural person, the authorized representative of such entity shall have all the rights of a Partner for the purpose of effecting the orderly winding up and disposition of the business of such entity and such power as such entity possessed to designate a successor as a Transferee of its Limited Partnership Interest and to join with such Transferee in making application to substitute such Transferee as a Substitute Limited Partner.

(b) The death, Bankruptcy, disability or legal incapacity of a Limited Partner shall not dissolve or terminate the Partnership.

ARTICLE 9.

WITHDRAWAL OF A GENERAL PARTNER

9.1) Assignment or Withdrawal by a General Partner. A General Partner may not Transfer its interest as a General Partner, in whole or in part, or withdraw from the Partnership, except as permitted by this Article 9.

9.2) Voluntary Assignment or Withdrawal of the General Partner. The General Partner may at any time sell, assign or transfer any or all of its interest as a General Partner to any entity under common control with the General Partner at any time. In addition, upon giving one hundred and twenty (120) days prior written notice to the Limited Partners, the General Partner may sell, transfer or assign its interest to a Person who is not under common control with the General Partner if:

(a) the Person agrees to serve as successor General Partner;

(b) the Person has satisfied the terms and conditions set forth in Section 9.3; and

(c) the substitution of such Person will not cause the Partnership to lose its status as a limited partnership for Federal income tax purposes.

9.3) Successor General Partner. A Person shall be admitted a successor General Partner only if the following terms and conditions are satisfied:

(a) the Person shall have accepted and agreed to be bound by all the terms and provisions of this Agreement by executing a counterpart thereof and such other documents or instruments as may be required or appropriate in order to effect the admission of such Person as a General Partner;

(b) a certificate evidencing the admission of such Person as a General Partner shall have been filed for recordation in accordance with the Partnership Act;

(c) if the successor General Partner is a corporation or a limited liability company, it shall have provided counsel for the Partnership with a certified copy of a resolution of its Board of Directors, managers or members, as appropriate, authorizing it to become a General Partner; and

(d) none of the actions taken in connection with such transfer or admission will have a material adverse tax effect upon the Partnership.

9.4) Pledge of Interest. Nothing contained in this Agreement shall prohibit any Partner from assigning or pledging as collateral its economic interest as a Limited or General Partner in the Partnership provided, however, that such Partnership Interest shall continue to be subject to the terms, conditions, restrictions and limitations of this Agreement and such Partnership Interests shall be subject to compliance with this Agreement.

ARTICLE 10.

DISSOLUTION AND WINDING UP AFFAIRS

10.1) Events Causing Dissolution. The Partnership shall be dissolved upon the first to occur of the following events, and, except as otherwise required by the Partnership Act or other applicable law, no other event shall cause the dissolution of the Partnership:

(a) the General Partner declares in writing that the Partnership shall be dissolved and gives written notice of such declaration to the Limited Partners;

(b) the sale of substantially all of the Partnership's property;

(c) the expiration of the term of the Partnership pursuant to Section 2.5;

(d) the Bankruptcy of the General Partner or the General Partner ceasing all business operations; or

(e) the entry of a decree of judicial dissolution of the Partnership under the Partnership Act.

10.2) Winding Up. If the Partnership is dissolved pursuant to Section 10.1, its business and affairs shall be wound up as soon as reasonably practicable thereafter in the manner set forth below.

(a) The winding up of the business and affairs of the Partnership shall be carried out by a liquidating trustee (the "Liquidating Trustee"). Unless otherwise required by law, the Liquidating Trustee shall be the General Partner or a Person selected by the General Partner.

(b) The Liquidating Trustee shall possess full and exclusive right, power and authority, in the name of and for and on behalf of the Partnership, to take such actions as are permitted to be taken by a liquidating trustee under the Partnership Act, to the extent the Liquidating Trustee reasonably determines such actions are necessary, appropriate, advisable or convenient to effect the orderly winding up of the Partnership's business and affairs.

10.3) Compensation of Liquidating Trustee. The Liquidating Trustee shall be entitled to receive reasonable compensation from the Partnership, but only from the Partnership's assets, for its services as liquidating trustee.

10.4) Distribution of Property and Proceeds of Sale Thereof.

(a) Upon completion of all desired sales, retirements and other dispositions of Partnership Property on behalf of the Partnership, the Liquidating Trustee shall, in accordance with the provisions of the Partnership Act, distribute the net proceeds of such sales, retirements and dispositions, and any Partnership Property that is to be distributed in kind, in the following order of priority:

(1) to pay or make reasonable provision for the payment of the debts, liabilities and obligations of the Partnership to creditors of the Partnership, including, to the extent permitted by applicable law, Partners and former Partners who are creditors of the Partnership (other than liabilities for distributions to Partners and former Partners under the Partnership Act); to satisfy liabilities of the Partnership to Partners and former Partners for distributions under the Partnership Act; and

(2) to the Partners, in proportion to the positive balances in their respective Capital Accounts after allocating all items for all periods prior to and including the date of distribution, including items relating to sales and distributions pursuant to this Article X.

(b) All distributions required under Section 10.4(a) shall be made no later than ninety (90) calendar days of the close of the Fiscal Year in which the completion of the winding up of the Partnership's business and affairs occurs.

(c) Pursuant to the provisions of the Partnership Act, if there are sufficient assets to satisfy the claims of all priority groups specified above, such claims shall be paid in full and any such provision for payment shall be made in full. If there are sufficient assets to satisfy the claims of one or more but not all priority groups specified above, the claims of the highest priority groups that may be paid or provided for in full shall be paid or provided for in full, before paying or providing for any claims of a lower priority group. If there are insufficient assets to pay or provide for the claims of a particular priority group specified above, such claims shall be paid or provided for ratably to the claimants in such group to the extent of the assets available to pay such claims.

(d) Amounts in reserves established by the Liquidating Trustee pursuant to the Partnership Act shall be paid to creditors of the Partnership as set forth in Section 10.4(a).

10.5) Final Audit. Within a reasonable time following the completion of the winding up of the business and affairs of the Partnership (excluding, for purposes of this Section 10.5, the disposition of reserves described in Section 10.4(d)), the Liquidating Trustee shall furnish to each Partner a statement setting forth the assets and the liabilities of the Partnership as of the date of such completion and each Partner's share of distributions pursuant to Section 10.4.

10.6) Deficit Capital Accounts. Notwithstanding any other provision of this Agreement, to the extent that, upon completion of the winding up of the business and affairs of the Partnership, there is a deficit in any Partner's Capital Account, such deficit shall not be an asset of the Partnership and such Partner shall not be obligated to contribute such amount to the Partnership to bring the balance of such Capital Account to zero.

ARTICLE 11.

RECORDS, ACCOUNTING, AND REPORTS

11.1) Partnership Books and Records; Inspection Rights. The General Partner shall cause the Partnership to maintain such books and records relating to the business and affairs of

the Partnership as are required to be maintained under the Partnership Act (the "Required Records") and such other books and records as the General Partner may determine to be appropriate. Each Partner (or its duly authorized representative), upon reasonable demand to the General Partner (which demand shall be in writing and shall state the purpose thereof), shall have the right, subject to such reasonable standards as may be established from time to time by the General Partner (including standards governing what information and documents are to be furnished at what time and location and at whose expense), to inspect the Required Records at the principal office of the Partnership (during usual business hours), or to obtain copies of the Required Records from the General Partner, for any purpose reasonably related to such Partner's interest as a Partner.

11.2) Fiscal Year; Accounting Period; Accounting Methods.

(a) The "fiscal year" of the Partnership shall end on December 31 of each year (except that the last Fiscal Year of the Partnership shall end upon the date of the cancellation of the Certificate) (each a "Fiscal Year").

(b) The Partnership shall keep its financial books under the accrual method of accounting, and, as to matters not specifically covered in this Agreement, in accordance with GAAP consistently applied.

(c) The General Partner may establish such "reserves" for the Partnership for contingent, unknown or unfixed debts, liabilities or obligations of the Partnership as the General Partner may reasonably determine to be advisable, whether or not in accordance with GAAP. Any such "reserve," if and when reversed, shall be allocated among the Capital Accounts of the Partners who are Partners at the time of such reversal unless the General Partner determines that it would be more equitable to allocate such reversal among the Capital Accounts of those Persons who were Partners at the time such Reserve was established.

11.3) Reports and Annual Meeting. As soon as reasonably practicable after the end of each Fiscal Year, the General Partner will cause to be delivered to each Person who was a Partner at any time during such Fiscal Year a report on the Partnership's operations during such year. Such report shall include an audited balance sheet of the Partnership as of the end of such Fiscal Year and audited statements of income and cash flows of the Partnership for such Fiscal Year. Each year, within a reasonable period of time after the delivery of the report described above, the Partnership shall hold a meeting of the Partners which meeting shall be held at the principal office of the Partnership as described in Section 2.6 or at such other place and location as the General Partner may designate in its sole discretion.

ARTICLE 12.

GENERAL PROVISIONS

12.1) Amendments. No other change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by all of the Partners at the time such change, modification or amendment is to take effect.

12.2) Title to Partnership Property. All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually, shall have any ownership of such property. The Partnership may hold any of its assets in its own name or in the name of its nominee for the benefit of the Partnership, which nominee may be one or more individuals, corporations, partnerships, trusts or other entities.

12.3) Notices and Addresses. All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a party hereto by any other party hereto shall be in writing and shall be deemed duly served and given when received after being delivered by hand or sent by registered or certified mail, return receipt requested, postage prepaid addressed as follows: For purposes of this Agreement, the addresses of each Partner shall be the address as listed on the books and records of the Partnership from time-to-time and as may be changed by each Partner with thirty (30) days prior written notice to the Partnership. The initial address to be listed on the books and records of the Partnership for each Limited Partners shall be the address as stated in that certain Joinder Agreement signed by each Limited Partner.

12.4) Governing Law. This Agreement shall be governed by the laws of the State of Maine, without reference to the conflicts of laws or principles thereof.

12.5) Headings. The headings of the articles and sections of this Agreement are inserted for convenience only and are not to be deemed to constitute a part of this Agreement.

12.6) Further and Additional Documents and Reports. Each of the parties hereto agrees to execute, acknowledge and verify, if required to do so, all further or additional documents as may be reasonably necessary to effectuate fully the terms of this Agreement.

12.7) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. Any writing, including that certain Joinder Agreement, that has been duly executed by a Person in which such Person has agreed to be bound hereby as a Limited Partner shall be considered a counterpart for purposes of the foregoing.

12.8) Binding on Successors and Assigns. Except as otherwise specifically provided herein, this Agreement shall be binding upon and inure to the benefit of the executors, administrators, successors, and assigns of the respective Partners.

12.9) Waiver. The terms, conditions, covenants, representations, and warranties hereof may be waived only by a written instrument executed by the Partner waiving compliance. The failure of a Partner at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. The waiver of any breach of any term, covenant, or condition of this Agreement by any of the parties hereto shall not constitute a continuing waiver or waiver of any subsequent breach, either of the same or of any other additional or different term, covenant, or condition of this Agreement.

12.10) Severability. Whenever possible, each provision of this Agreement and all related documents shall be interpreted in such a manner as to be valid under applicable law, but if any such provision is invalid or prohibited under said applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of the affected documents.

12.11) Attorneys' Fees. The parties hereto agree that in the event any party to this Agreement shall be required to initiate legal or arbitration proceedings to enforce performance of any term or condition of this Agreement including, but not limited to, the payment of monies or the enjoining of any action prohibited hereunder, the prevailing party shall be entitled to recover from the Partnership such sums, in addition to any other damages or compensation received, as will reimburse such prevailing party for attorneys' fees and court and arbitration costs incurred on account thereof, regardless of whether such action proceeds to final judgment or determination.

12.12) Remedies. Except as may be provided explicitly in this Agreement, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Each of the Partners confirms that monetary damages may be an inadequate remedy for breach or threat of breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other for a breach or threat of breach of any provision hereof, it being the intention by this Section 12.12 to make clear the agreement of the parties hereunder that this Agreement shall be enforce

12.13) Schedules and Exhibits. Each of the Schedules and Exhibits attached hereto is hereby incorporated herein and made a part hereof for all purposes, and references thereto contained herein shall be deemed to include this reference and incorporation.

12.14) Number and Gender. Where appropriate, each definition and pronoun in this Agreement includes the singular and the plural, and reference to the neuter gender includes the masculine and feminine, and *vice versa*. As used in this Agreement, the word "including" shall mean "including without limitation," and the word "or" is not exclusive.

IN WITNESS WHEREOF, the parties hereto have signed and sworn to this Fourth Amended and Restated Agreement of Limited Partnership the day and year stated above.

THE GENERAL PARTNER:
USA ENERGY GROUP, LLC

By:_____
John Noer
Its: President

LIMITED PARTNERS: The signatures of all Limited Partners shall be by and through a Joinder Agreement in form contained as Schedule A which is attached hereto and incorporated herein.