

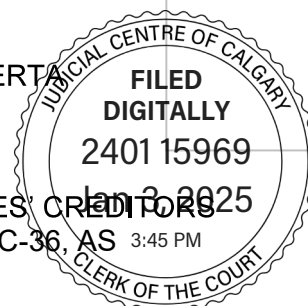
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COURT FILE NUMBER 2401-15969

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c. C-36, AS AMENDED



AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF ANGUS A2A GP INC.,  
ANGUS MANOR PARK A2A GP INC., ANGUS MANOR  
PARK A2A CAPITAL CORP., ANGUS MANOR PARK  
A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE  
A2A GP INC., WINDRIDGE A2A DEVELOPMENTS,  
LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK  
A2A DEVELOPMENTS, LLC, A2A DEVELOPMENTS  
INC., SERENE COUNTRY HOMES (CANADA) INC. and  
A2A CAPITAL SERVICES CANADA INC.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Bennett Jones LLP**  
4500 Bankers Hall East  
855-2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

Attention: Kelsey Meyer  
Phone: 403.298.3323  
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File No. 98939-1

**AFFIDAVIT OF ALLAN WHITEFORD LIND**  
**Sworn December 31, 2024**

I, Allan Whiteford Lind, of the Republic of Singapore, MAKE OATH AND SAY THAT:

1. I am a director of Windridge A2A Developments, LLC ("**Windridge LLC**") and of Fossil Creek A2A Developments, LLC ("**Fossil Creek LLC**") and, together with Windridge LLC, the "**Texas LLCs**", and as such I have knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I do verily believe the same to be true.

2. I am swearing this Affidavit to respond to some specific points in the Third Report of the Monitor dated December 13, 2024 (the “**Third Report**”) and in the First Supplement to the Third Report of the Monitor dated December 17, 2024 (the “**First Supplement**”), as they relate to the Texas LLCs.
3. As stated in my first Affidavit sworn in these proceedings on November 21, 2024, the Texas LLCs do not attorn to the jurisdiction of the Court of King’s Bench of Alberta (the “**Alberta Court**”) in these proceedings and challenge the jurisdiction of the Alberta Court over them, including by way of the application of the respondents to these CCAA proceedings, including the Texas LLCs, to set aside or stay the CCAA proceedings dated November 21, 2024, and the Texas LLCs’ application filed with the Court of Appeal of Alberta on December 16, 2024 for permission to appeal the Amended and Restated Initial Order granted in these proceedings on November 25, 2024. This Affidavit is made without prejudice to the position of the Texas LLCs in that regard.

***Production of Records and Information by the Texas LLCs***

4. As the Alberta Court has ordered the Texas LLCs to produce certain records and information to the Monitor, the Texas LLCs have endeavoured to do so, pending (and without prejudice to) their challenge to the jurisdiction of the Alberta Court over them. My Second Affidavit sworn December 13, 2024 references records and information that have been provided to the Monitor, and also efforts made to obtain the records and information ordered to be produced to the Monitor, including the objections of Mr. Foo, in his capacity as the Trustee of the Hills of Windridge Trust and in his capacity as the Trustee of the Trails of Fossil Creek Trust, and of A2A Capital Management Pte Ltd. to the production of the same.
5. To be clear, the Texas LLCs have not refused to produce records in their power, possession or control that they have been ordered by the Alberta Court to produce to the Monitor, and the Texas LLCs continue to make efforts to do so. On December 30, 2024, the Texas LLCs produced limited partnership agreements in relation to the Hills of Windridge LP and Trails of Fossil Creek Properties LP in response to a request from the Monitor. Copies of those limited partnership agreements are attached hereto at **Exhibits “1” and “2”**, respectively.
6. With respect to bank statements and financial statements of the Texas LLCs, other than Windridge LLC having been appointed as the general partner of Hills of Windridge LP in about June 2024, and Fossil Creek LLC having been appointed as the general partner of Trails of Fossil Creek Properties LP in about May 2024 (which was done, in each case, for expediency and convenience), the Texas LLCs had been effectively dormant since selling the UFI in the lands approximately ten years ago. They do not have bank accounts (any bank accounts they had closed many years ago) or any recent financial statements, and, until they became the general partners of Hills of Windridge LP and Trails of Fossil Creek Properties LP, respectively, their sole purposes had been to hold the lands and sell the UFI in the lands.

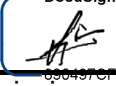
***The Texas LLCs as general partners***


7. The First Supplement references that Windridge LLC is the general partner of Hills of Windridge LP, and that Fossil Creek LLC is the general partner of Trails of Fossil Creek Properties LP. It includes, at Appendix “E”, letters from Reed Smith LLP, which I

understand to be U.S. counsel for the Monitor, stating in each case with respect to the real property known as The Hills of Windridge and The Trails of Fossil Creek (defined, respectively, in the letters from Reed Smith LLP as the “Property”), that the Property—and any proceeds from the sale of such property—is property owned by one or more Debtors in the Canadian Proceeding and Chapter 15 Cases.” That is incorrect. None of the respondents to the within CCAA proceedings, or to the Chapter 15 cases, own the “Property”. Further, the fact that Windridge LLC is the general partner of Hills of Windridge LP, and that Fossil Creek LLC is the general partner of Trails of Fossil Creek Properties LP does not cause Windridge LLC to be the owner of the real property known as The Hills of Windridge, or Fossil Creek LLC to be the owner of the real property known as The Trails of Fossil Creek.

8. I am advised by Jeff Tasker, U.S. counsel for certain of the respondents to these CCAA proceedings, and do believe that according to Section 153.155 of the *Texas Business Organizations Code*, a general partner of a limited partnership incorporated pursuant to the laws of the State of Texas “ceases to be a general partner of a limited partnership upon becoming the subject of an order for relief or is declared insolvent in a federal or state bankruptcy or insolvency proceeding.” I accordingly understand that the Texas LLCs ceased to be the general partners of Hills of Windridge LP and of Trails of Fossil Creek Properties LP, respectively, upon the granting of the Order Granting Recognition of Foreign Main Proceeding and Additional Relief by the U.S. Bankruptcy Court on December 20, 2024.
9. I make this Affidavit in further support of the application of the Texas LLCs to set aside or stay these CCAA proceedings.

SWORN BEFORE ME, by )  
 Audiovisual communication technology )  
 Via Zoom on December 31, 2024 )  
 With the commissioner being in the )  
 City of Blue Mountains, Province of Ontario )  
 During the video conference with the )  
 deponent being in the )  
 Republic of Singapore )  
 during the video conference )

  
 (A Commissioner for Oaths in and for the  
 Province of Ontario)

Signed by:  
  
 6414165457A44EA...  
 ALLAN WHITEFORD LIND

THIS IS EXHIBIT "1" IN THE AFFIDAVIT OF  
ALLAN WHITEFORD LIND SWORN ON  
DECEMBER 31, 2024.

DocuSigned by:



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A Commissioner for Oaths in and for the Province of Ontario



**AGREEMENT OF  
LIMITED PARTNERSHIP OF  
HILLS OF WINDRIDGE LP**

---

**THE LIMITED PARTNERSHIP INTERESTS CREATED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES ACT OF THE STATE OF TEXAS AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM. THE SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF SUCH INTERESTS IS ALSO SUBJECT TO CERTAIN RESTRICTIONS WHICH ARE SET FORTH IN THIS AGREEMENT OF LIMITED PARTNERSHIP. DURING THE PERIOD IN WHICH SUCH LIMITED PARTNERSHIP INTERESTS ARE BEING OFFERED AND SOLD BY THE ISSUER, AND FOR A PERIOD OF NINE MONTHS FROM THE LAST SALE BY THE ISSUER OF ONE OF SUCH LIMITED PARTNERSHIP INTERESTS, ALL REALES OF ANY OF THE LIMITED PARTNERSHIP INTERESTS, BY ANY PERSON, MUST BE MADE ONLY TO THE PERSONS RESIDENT WITHIN THE STATE OF TEXAS WITHIN THE MEANING OF RULE 147 OF THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933. NO SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF ANY LIMITED PARTNERSHIP INTEREST WILL BE RECOGNIZED BY THE PARTNERSHIP UNLESS SUCH SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION IS MADE IN COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THIS AGREEMENT; OF THE SECURITIES ACT OF 1933, AS AMENDED; AND THE SECURITIES ACT OF THE STATE OF TEXAS, AS AMENDED, INCLUDING, WITHOUT LIMITATION, REGISTRATION UNDER SUCH ACTS IF REQUIRED UNDER THE PROVISIONS THEREOF.**

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**EFFECTIVE MAY 2024**

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**THIS AGREEMENT OF LIMITED PARTNERSHIP** (hereinafter referred to as the "Agreement"), is made effective as of May 17, 2024, by between and among Windridge A2A Developments, LLC ("Initial General Partner"), Foo Tiang Meng Dirk Robert, (the "Initial Limited Partner").

## **ARTICLE I - FORMATION, CERTIFICATES, TERM**

**1.1 Formation of Partnership.** The parties hereto hereby form, pursuant to the relevant Chapters under Title 1, to the extent applicable to limited partnerships, of the Texas Business Organizations Code (hereinafter, as from time to time amended, referred to as the "TBOC"), a Limited Partnership, which organization is hereinafter referred to as the "Partnership." The rights, duties, status and liabilities of the Partners shall, except as hereinafter expressly stated to the contrary, be as provided for in the TBOC.

**1.2 Certificate of Formation; Other Documents.** The parties hereto shall execute, file, record and/or publish the Certificate of Formation and other documents conforming hereto, and take all other appropriate action to comply with all legal requirements for the formation of a Limited Partnership under the TBOC, and for its operation in the State of Texas. The Partnership shall not conduct any business until the filing and acknowledgment of filing of such Certificate of Formation.

**1.3 Partnership Name.** The business of the Partnership shall be conducted under the name of "Hills of Windridge LP" or such other name as the General Partners may select from time to time. The General Partners shall promptly execute, file, record and/or publish with the proper offices an assumed name certificate.

**1.4 Registered Agent, Registered Address and Principal Office.** The registered agent and registered office address for the Partnership in the State of Texas is Nicholas Lind and the principal place of business of the Partnership shall be at Suite 111, 6021 Morriss Rd, Flower Mound, TX 75028 U.S.A., but substitute or additional places of business may be established at such other locations as may, from time to time, be determined by the General Partners. A copy of all records of the Partnership required by the TBOC will be available at the Principal Office.

**1.5 Term of Partnership.** The Partnership shall become effective upon the execution of this Agreement and the filing of the Certificate of Formation with the Secretary of State of the State of Texas, and shall remain effective until the Partnership is terminated pursuant to the TBOC.

**1.6 Amendment to Certificate of Formation.** The General Partners shall file amendments to the Certificate of Formation whenever required by the TBOC. If a General Partner is unwilling or unable to sign a required amendment to the Certificate of Formation, the amended Certificate of Formation may be signed by any remaining or successor General Partners. Each General Partner appoints his successor and any remaining General Partners, if any, as his attorney in fact to sign such amended Certificate of Formation.

## **ARTICLE II- DEFINITIONS**

Whenever used in this Agreement, the terms set forth below shall be defined as follows:

**2.1 Additional Capital Contribution** shall mean that amount of money or other property, if any, that the Initial Limited Partner or Additional Limited Partner may contribute to the Partnership for additional capital, if any, to be used for operating capital beyond the Capital Contribution made by such Partner for the acquisition of its initial Partnership interest.

**2.2 Additional Limited Partners** shall have the meaning set forth in Section 4.2 of this Agreement.

**2.3 Adjusted Capital Account Deficit** means, with respect to any Limited Partner, the deficit balance, if any, in such Limited Partner's capital account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such capital account any amounts which such Limited Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Section 704 of the Code and the Regulations thereunder, and

(b) Debit to such capital account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

**2.4 Affiliate** means, with respect to a Partner, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with such Partners. The term "control," as used in this definition means, with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than ten percent (10%) of the voting rights attributable to the shares of the controlled corporation, and with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

**2.5 Assignee** shall mean a Person who has acquired all or a portion of an interest in the Partnership by assignment or Transfer as of the date the assignment or Transfer of such interest becomes effective. An Assignee has only the rights granted to an assignee as provided by Subchapter F, Chapter 153 of the TBOC. An Assignee does not have the right to become a Partner, except as provided in this Agreement or unless all partners consent as provided by Section 153.253 of the TBOC. An Assignee shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, and shall not have any of the rights of a General Partner or a Limited Partner under the TBOC or this Agreement. In addition, no Assignee of an interest in the Partnership shall have the right to assign any transferred interest except as otherwise provided in this Agreement.

**2.6 Capital Contribution** means the total contribution to the capital of the Partnership which a Partner is legally bound and obligated to make, which amount is designated as a Capital Contribution for such Partner pursuant to Article IV of this Agreement.

**2.7 Certificate of Formation** shall mean the Certificate of Formation of Limited Partnership to be filed on behalf of the Partnership as required by the appropriate provisions of Chapter 3 of the TBOC, and all amendments thereto and substitutions thereof.

**2.8 Code** means the Internal Revenue Code of 1986, as amended from time to time.

**2.9 Contribution Agreement** means, with respect to each of the Partners, the agreement respecting the original Capital Contribution to be made by, or on behalf of, each such Partner pursuant to Section 4.2 hereof, as described more fully in Section 4.3 hereof.

**2.10 Default Rate of Interest** shall mean the rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks as its prime commercial or similar reference interest rate, with adjustments to be made on the same date as any change in the rate, and (b) the maximum rate permitted by applicable law.

**2.11 Depreciation** means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, further that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

**2.12 Distributable Cash** shall mean, at the time of determination for any period (on the cash receipts and disbursements method of accounting), all Partnership cash derived from the conduct of the Partnership's business, including distributions from entities owned by the Partnership, cash from operations or investments, and cash from the sale or other disposition of Partnership property, other than (a) Capital Contributions with interest earned pending its utilization; (b) financing or other loan proceeds; (c) reserves for working capital; and (d) other amounts that the General Partner reasonably determines should be retained by the Partnership in accordance with the General Partner's discretion under section 6.1 hereof.

**2.13 General Partner or General Partners** shall initially mean Windridge A2A Developments, LLC and thereafter mean all Persons designated as a General Partner on Exhibit "A" and any successor General Partners pursuant to the terms of this Agreement, but does not include any Person who has ceased to be a General Partner.

**2.14 Gross Asset Value** means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the Partnership, provided that the initial Gross Asset Values of the assets contributed to the Partnership shall be as set forth in Exhibit "A", and provided further that if the contributing Partner is a General Partner, the determination of the fair market value of a contributed asset shall require the agreement of a majority in interest (Limited Partners who own more than 50 percent of the current percentage or other interest in the profits of the Partnership that is owned by all of the Limited Partners) of the Limited Partners (such agreement need not be in writing, and any such agreement will be presumed to have been made by the required percentage ownership interest unless there is clear and convincing evidence to the contrary), except that the determination of the fair market value of a contributed asset of a General Partner may, if such General Partner chooses, be made by written appraisal from a qualified appraiser, and such written appraisal shall control;

(b) The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times: (1) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (2) the distribution by the Partnership to a Partner of more than a de minimis amount of Partnership Property as consideration for an interest in the Partnership; and (3) the liquidation of the Partnership within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations; provided, however, that adjustments pursuant to clauses (1) and (2) above shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(c) The Gross Asset Value of any Partnership asset distributed to any Partner shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining the Partners' capital accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations and Section 5.2(c) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section to the extent the General Partner determines that an adjustment pursuant to Section 2.13(b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 2.13(d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 2.13(a), 2.13(b), or 2.13(d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**2.15 Initial Capital Contribution** shall mean that amount of money or property initially

contributed by the Partners as set forth in Exhibit "A" hereto.

**2.16 Limited Partner or Limited Partners** shall initially mean Foo Tiang Meng Dirk Robert, Trustee of the Hills of Windridge Trust and thereafter the Persons admitted to the Partnership as original, additional or substituted Limited Partners as reflected on Exhibit "A" as amended.

**2.17 Partner or Partners** shall mean individually a General Partner, Initial Limited Partner, Additional Limited Partner, or collectively the General Partners and the Limited Partners.

**2.18 Partnership Property** shall mean that property, real or personal, including but not limited to real estate, investment limited partnerships, cash, stocks, bonds and similar investments, which is contributed to or acquired by the Partnership.

**2.19 Person** shall mean an individual or a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, any other legal or commercial entity, or a particular series of a for-profit entity.

**2.20 Profits or Losses** means, for each fiscal year or other period, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be added to such taxable income or loss;

(b) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 2.13(a) or Section 2.13(c) hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Partnership Property, with respect to which gain or loss is recognized for federal income tax purposes, shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into

account Depreciation for such fiscal year or other period, computed in accordance with Section 2.10 hereof; and

(f) Notwithstanding any other provision in this Section, any items which are specially allocated pursuant to Section 5.2 or Section 5.3 hereof shall not be taken into account in computing Profits or Losses.

**2.21 Regulations** means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**2.22 Securities Act** shall mean the Securities Act of 1933, as amended.

**2.23 Reserved**

**2.24 Transfer** when used as a noun shall mean any voluntary or involuntary transfer, sale, pledge, hypothecation, assignment or other disposition, and as a verb shall mean voluntarily or involuntarily to transfer, sell, pledge, hypothecate, assign or otherwise dispose.

**2.25 Wholly Owned Affiliate** of any Person shall mean an Affiliate of such Person 100% of the voting stock or beneficial ownership of which is owned by such Person, directly or indirectly, through one or more Wholly Owned Affiliates, or by any Person who, directly or indirectly, owns 100% of the voting stock or beneficial ownership of such Person, and an Affiliate of such Person who, directly or indirectly, owns 100% of the voting stock or beneficial ownership of such Person.

### **ARTICLE III - PURPOSE**

**3.1 Purposes of the Partnership.** The Limited Partnership has been formed to facilitate the sale of interests in the Hills of Windridge Project together with holding such other interests in any other A2A legal entity or A2A development project and such other activities as may be necessary, ancillary or incidental to or in furtherance of the foregoing. The purpose of facilitating the sale of these interests is to generate income from these properties or developments, which may also appreciate in value. In addition to the foregoing, the Partnership may engage in any other activities which the Partnership may undertake without violating the TBOC or any other applicable law. However, no material change to the Partnership's fundamental investment objectives will be made unless determined otherwise by resolution of at least 66.66% of the then limited partners and the consent in writing of the General Partner.

**3.2 Powers.** The General Partner may make, enter into, deliver and perform all contracts, agreements or undertakings, pay all costs and expenses and perform all acts deemed appropriate by the General Partner to carry out the Partnership purposes, subject to the limitations of this Agreement and the TBOC.

**3.3 Other Transactions of Partners.**



(a) It is acknowledged that the Partners may in the future, from time to time, obtain additional opportunities to acquire property for investment, development or otherwise. Each Partner shall be free to acquire such interests in other property as such Partner may in such Partner's sole discretion deem desirable without having to offer interests in such property to the other Partners of this Partnership, and such action on the part of any Partner shall not be deemed a breach of any fiduciary relationship owed by that Partner to the other Partners or the Partnership. Participation in the Partnership shall not in any way act as a restraint on the other present or future business activities or investments of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner, whether or not such activities are competitive with the business of the Partnership. As a result of this Agreement, no Partner (or Affiliate of any Partner) shall be obligated or bound to offer or present offered to them or the Partnership or any of the other Partners any business opportunity presented to or offered to them or the Partnership as a prerequisite to the acquisition of or investment in such business opportunity by such Partner (or any Affiliate of a Partner) or any employee, officer, director, member, manager, or shareholder of such Partner for its account or the account of others. In furtherance thereof, the Partners hereby agree that any business activity in which a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner engages, conducts, or participates outside the Partnership shall be conclusively deemed not to be a business activity in competition with, or an opportunity of the Partnership. Any such business or activity of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner may be undertaken with or without prior notice to or participation therein by the Partnership or the other Partners. Each Partner and the Partnership hereby waive any right or claim such Partner or the Partnership may have against a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner with respect to such business or activity or the income or profits thereof.

(b) The Partnership may contract with any of the Partners or their Affiliates for the purchase of goods and services for the benefit of the Partnership at any time provided that the compensation paid to such Person shall be commensurate with rates prevailing for such services at the time such services are performed, and any charges so incurred shall be deemed expenses of the Partnership. The General Partner shall have the authority to enter into any transaction on behalf of the Partnership despite the fact that another party to the transaction may be (a) a trust of which a Partner is a trustee or beneficiary; (b) an estate of which a Partner is a personal representative or beneficiary; (c) a business controlled by one or more Partners or a business of which any Partner is also a director, officer or employee; (d) any Affiliate, employee, stockholder, associate, manager, partner, or business associate; (e) any Partner, acting individually; or (f) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties.

#### **ARTICLE IV - CAPITAL CONTRIBUTIONS AND SHARES OF PROFITS AND LOSSES**

**4.1 Ownership Percentages.** The percentage interest of each Partner are set forth on

Exhibit A. A Partner's percentage interest will be determinative of: (a) a Partner's ownership interest in the Partnership as an entity; (b) a Partner's interest in the distribution of Distributable Cash as set forth in Article VI; (c) a Partner's allocable share of the items of Profits and Losses; as modified by actual distributions set forth in Article VI and (d) a Partner's distributive share of cash and other property upon winding up of the Partnership.

**4.2 Additional Capital Offering.** The Partnership, by a vote of a majority of the Partners, may sell additional Partnership Units to third-parties ("Additional Limited Partners") at a price to be determined by the majority of the Partners ("Additional Capital Offering"). All Additional Limited Partners shall agree to be bound by this Agreement and execute a Subscription Agreement.

**4.3 Capital Accounts.** A Partnership capital account shall be established for each Partner and shall be maintained at all times throughout the existence of the Partnership in a manner so as to correspond to the rules set forth in Article V. The amount in a Partner's capital account shall initially be the amount of such Partner's Initial Capital Contribution which shall be the fair market value of the assets such Partner contributed. A Partner's capital account shall be credited with its Additional Capital Contribution, and any other voluntary Capital Contribution made by such Partner when made, and such Partner's share of Partnership Profits. A Partner's capital account shall be decreased by the amount of money and the fair market value of property distributed to such Partner (net of liabilities securing such distributed property that the Partner is considered to assume or take subject to under Section 752 of the Code) and by the amount of losses allocated to such Partner, by such Partner's distributive share of the items described in Section 705(a)(1)(B) and 705(a)(2)(B) of the Code, and by other items of deduction specially allocated to such Partner. The capital accounts shall not bear interest. Additional Capital Contributions shall be recorded at the fair market value of the assets contributed by the Partner and the distributions to a Partner shall also be recorded at the fair market value of the assets distributed. The provisions in this Agreement regarding the formation and maintenance of capital accounts are intended to comply with Sections 1.704-1(b) and 1.704-1(c) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Partnership, the General Partner, or the Limited Partners), are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Person pursuant to Article XI hereof upon the winding up of the Partnership. The General Partner also shall (a) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Section 1.704-1(b)(2)(iv)(g) of the Regulations, and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations.

**4.4 Limitation of Liability.** No Limited Partner herein shall be liable for any sum of money in excess of the total sums which have been contributed and agreed to be contributed by such Limited Partner in this Agreement.

**4.5 Return of Capital.** No Partner shall have the right to withdraw, demand a return or reduce his Capital Contribution to the Partnership. In the event a return of or reduction in the capital account of a Partner is made, any amounts paid to such Partner shall be reduced by all costs, fees and other expenses incurred by the Partnership in facilitating such return of or reduction in capital.

**4.6 Additional Operating Capital.** Partners may make Additional Capital Contributions or loans to the Partnership. No Partner shall be obligated to make Additional Capital Contributions to the Partnership or make any loan to the Partnership, and no Partner shall have any liability to the Partnership or any other Partner by virtue of refusing to make any Additional Capital Contributions or loans to the Partnership.

**4.7 Use of Contributions.** The cash and property contributed by the Initial Limited Partner, initially being the aggregate amounts reflected on Exhibit "A," will be utilized by the Partnership for the purposes of the Partnership set forth in Article III.

**4.8 Nature of Interests.** 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. No Partner shall have any direct ownership of any Partnership property.

## **ARTICLE V - ACCOUNTING**

**5.1 Profits and Losses.** After giving effect to the special allocations set forth in Sections 5.2 and 5.3 hereof and subject to the limitations of Sections 5.1(a) and 5.1(b), Profits or Losses for any fiscal year shall be allocated among the Partners in proportion to their ownership interests in the Partnership.

(a) Notwithstanding the foregoing, the Losses allocated pursuant to this Section 5.1(a) shall not exceed the maximum amount of Losses that can be so allocated without causing any Limited Partners to have an Adjusted Capital Account Deficit at the end of any fiscal year. All Losses in excess of the limitations set forth in this Section 5.1(a) shall be allocated to the General Partner.

(b) In the event Losses have been allocated to the General Partner pursuant to Section 5.1(a) hereof, 100% of the Profits shall be allocated to the General Partner until the cumulative Profits allocated pursuant to this Section 5.1(b) for the current and all prior fiscal years are equal to the cumulative Losses allocated pursuant to Section 5.1(a) hereof for all prior fiscal years.

**5.2 Special Allocations.** The following special allocations shall be made in the following order:

(a) **Qualified Income Offset.** In the event any Limited Partner unexpectedly

receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Limited Partner as quickly as possible, provided that an allocation pursuant to this Section 5.2(a) shall be made only if and to the extent that such Limited Partner has an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.2(a) were not in this Agreement.

**(b) Gross Income Allocation.** In the event any Limited Partner has a deficit 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, each such Limited Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.2(b) shall be made only if and to the extent that such Limited Partner has a deficit capital account in excess of such sum after all other allocations provided for in this Article V have been tentatively made as if Section 5.2(a) hereof and this Section 5.2(b) were not in this Agreement.

**(c) Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

**5.3 Curative Allocations.** The General Partner shall have reasonable discretion, with respect to each Partnership fiscal year, to (a) apply the provisions of Sections 5.2(a) and 5.2(b) hereof in whatever order is likely to minimize the economic distortions that might otherwise result from such allocations, and (b) divide all allocations pursuant to Sections 5.2(a) and 5.2(b) hereof among the Partners in a manner that is likely to minimize such economic distortions.

**5.4 Other Allocation Rules.**

**(a)** For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly or other basis, as determined by the General Partner using any permissible method under Code Section 706 and the Regulations thereunder.

**(b)** All allocations to the Partners pursuant to this Article V shall, except as otherwise provided, be divided among them in proportion to the Partners' ownership interests in the Partnership.

(c) Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Partners in the same proportions as they share Profits or Losses, as the case may be, for the year.

**5.5 Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the 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 so as to account for any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 2.13(a) hereof). In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 2.13(b) hereof, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

**5.6 Fiscal Year and Annual Accounting.** The Partnership fiscal year shall be the calendar year. The Partnership books shall be kept on the accrual method of accounting or in accordance with generally accepted accounting principles, at the discretion of the General Partner. The General Partner shall furnish to the Partners, on a quarterly basis, accounting reports reflecting Partnership income and expenses. In addition, the General Partner shall provide the Partners with the full annual Partnership tax return for the preceding year in a timely manner to comply with all Code reporting deadlines.

## **ARTICLE VI - DISTRIBUTIONS**

**6.1 Distributions of Partnership Funds.** Distributions of Distributable Cash shall be made in such amounts and at such times as may be determined at the sole discretion of the General Partner, as provided in this Section 6.1. Unless agreed in writing by a transferor and transferee, Distributable Cash allocable to a transferred Partnership interest which may have been transferred during any year shall be distributed to the holder of such Partnership interest who was recognized as the owner on the date of such distribution, without regard to the results of Partnership operations during the year. With regard to Distributable Cash and other Partnership Property, the General Partner shall make a determination, in accordance with such General Partner's duty of care and loyalty to the Partnership, as to the need for the Partnership Property in the operation of the Partnership business, considering current needs for operating capital, prudent reserves for future operating capital, current investment opportunities, and prudent reserves for future investment opportunities, all in keeping with the Partnership's purposes. It is the duty of the General Partner, in determining the amount of Distributable Cash available for the payment of distributions, to take into account the needs of the Partnership in its business and sums necessary in the operation of its

business until the income from further operations is available, the amounts of its debts, the necessity or advisability of paying its debts, or at least reducing such debts within the limits of the Partnership's credit, and the preservation of its capital as represented in the Partnership Property as a fund for the protection of its creditors. Any contributed Partnership Property or borrowed funds by the Partnership shall be considered as needed for Partnership investment purposes, and any cash produced from the sale of Partnership Property contributed to the Partnership or from the sale of any Partnership Property purchased with borrowed funds, or any reinvestment of any of the Partnership Property, including the portion of the sale proceeds representing capital appreciation, shall be considered as needed reserves for Partnership investment purposes. Any Distributable Cash derived from income may, to the extent deemed unnecessary for the purposes of the Partnership by the General Partner under the foregoing standard, be distributed in accordance with this Agreement. Distributions will be calculated in the same manner that Profits and Losses are calculated, as described in Section 5 above.

**6.2 Confidentiality of Information.** Each Partner is entitled to all information under the circumstances and subject to the conditions stated in this Agreement and the TBOC. The Partners agree, however, that the General Partners or 66.33% of the then outstanding ownership interest of the Limited Partners may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, Partnership Property, and financial condition of the Partnership shall be kept confidential and not provided to some or all of the Limited Partners or any Assignee, and that it is not just or reasonable for those Partners or Assignees or their representatives to examine or copy that information. In addition, the Partners acknowledge that they may receive information regarding the Partnership in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Partnership or Persons with which it does business. Each Partner shall hold in strict confidence any information it receives regarding the Partnership that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Partner, except for disclosures compelled by law, or disclosures made to advisers or representatives of the Partner (if they have agreed to be bound by the provisions of this section). The Partners agree that the provisions of this section may be enforced by specific performance.

## **ARTICLE VII - POWERS, RIGHTS AND DUTIES OF GENERAL PARTNERS**

**7.1 Management.** If there is only one General Partner, such General Partner shall be the Managing Partner. If there is more than one General Partner, Windridge A2A Developments, LLC shall be the day to day Managing Partner of the Partnership. A Managing Partner shall serve until the designation is revoked, until such Managing Partner is removed by vote of 66.66% of the then outstanding ownership interest of the General Partner, or until the Managing Partner ceases to serve for any other reason. If a Managing Partner is designated, the Managing Partner is authorized and directed to manage and control the assets and the business of the Partnership. The Managing Partner may exercise all of the powers which could be exercised by majority consent of the General Partner. It is understood and agreed that the Managing Partner shall consult and confer with the General Partner before taking any steps resulting in any substantial change in the operation or policies of the Partnership affairs, or the sale of any portion of the Partnership assets other than in the usual course of business, or in any manner which affects the Partnership business in a manner

judged unusual by the Partners in the ordinary operation of the Partnership business. If a Managing Partner is serving as such, any reference to "General Partner" in this Agreement shall also include "Managing Partner" if applicable.

**7.2 Successor General Partners.** If there are multiple General Partners and one or more of them withdraws or ceases to serve for any reason and there is at least one remaining General Partner, the business of the Partnership is permitted to continue by the remaining General Partner without amendment to this Agreement. Prior to the withdrawal of all multiple General Partners or the withdrawal of a sole General Partner, additional General Partners may be appointed to serve as successor General Partners (each such General Partner is referred to herein as a "Designated Successor General Partner") by all of the remaining Partners acting unanimously. If a General Partner, serving alone, withdraws or ceases to serve for any reason and there are no Designated Successor General Partners remaining, then without amendment to this Agreement, the Limited Partners by vote of 66.66% of the outstanding ownership interests of the Limited Partners entitled to vote (excluding from such election any limited partnership interest controlled by the General Partner who brought about such withdrawal or cessation of service), may agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of such event, of one or more General Partners. Any Designated Successor General Partner will not have the duties nor the liabilities of a General Partner until such time as the successor actually accepts and assumes the position of a General Partner. A General Partner who ceases to be a General Partner will not be personally liable for the debts and obligations of the Partnership incurred following the termination of service as a General Partner.

**7.3 Resignation by General Partner.** No General Partner shall have the right to withdraw from the Partnership before the Partnership is terminated. If such General Partner does attempt to withdraw as a General Partner, such attempt shall be considered a breach of this Agreement, and such General Partner's general Partnership interest shall convert to that of a Limited Partner.

**7.4 Authority of General Partner.** Subject to the limitations of this Agreement, and to the fiduciary obligations and limitations imposed upon the General Partners at law, the General Partners shall manage the day-to-day operations of the Partnership. The General Partners shall have the authority to take any action which the General Partners believes in good faith to be in furtherance of the Partnership business and purposes and to exercise all rights and powers generally conferred by law in connection therewith. No Person dealing with the Partnership shall be required to inquire into, or obtain any consents or other documentation as to the authority of the General Partners to take any such action or to exercise any such rights or powers. Specifically:

(a) The General Partners shall have the right, power and authority on behalf of the Partnership:

(1) To receive and hold all Partnership Property in the name of the Partnership;

(2) To obtain and maintain such insurance as is deemed to be desirable and appropriate by the General Partners;

(3) To open, maintain, and close bank accounts, brokerage accounts and checking accounts in the name of the Partnership, to designate and change signatories on such accounts, and to draw checks and other orders for the payment of monies;

(4) To engage accountants, attorneys and any and all other agents and assistants, both professional and non-professional, which may include the General Partners, and to compensate them reasonably for services rendered;

(5) To collect all sums due to the Partnership;

(6) To prepare and file all tax returns of the Partnership and to make all elections for the Partnership thereunder;

(7) To the extent that funds of the Partnership are available therefor, to pay as they become due all debts and obligations of the Partnership;

(8) To sell, assign, lease, exchange, convert or otherwise transfer or dispose of all or part of the Partnership Property, on such terms and conditions as the General Partners may determine in the General Partner's sole discretion;

(10) To vote and exercise all other rights available to the holder of any securities included in the Partnership Property;

(11) To take any and all other action, including legal action, that the General Partners deems necessary, appropriate or advisable in furtherance of the Partnership's business and purposes; and

(12) To enter into any transaction on behalf of the Partnership despite the fact that another party to the transaction may be (i) a trust of which a Partner is a trustee or beneficiary; (ii) an estate of which a Partner is a personal representative or beneficiary; (iii) a business controlled by one or more Partners or a business of which any Partner is also a director, officer or employee; (iv) any Affiliate, employee, stockholder, associate, manager, partner, or business associate; (v) any Partner, acting individually; or (vi) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties.

(b) The General Partners or his nominee shall hold legal title to the Partnership Property and shall have the sole authority to manage, deal with, negotiate and contract with respect to, and convey the Partnership Property on behalf of the Partnership.

(c) The General Partners shall act in good faith in the performance of the General Partner's obligations hereunder, but shall have no liability or obligation to any of the



Limited Partners or the Partnership for any decision made or action taken in connection with the discharge of the General Partner's duties hereunder if such decision or action is made or taken in good faith and in the exercise of due care in connection with the Partnership business.

(d) The General Partners shall have the power to designate, from time to time, a depository of Partnership funds, and to draw upon the same for Partnership purposes.

(e) Any person dealing with the Partnership or the General Partners may rely on a certificate signed by the General Partners concerning:

(1) The identity of the General Partners or any other Partner;

(2) The existence or nonexistence of any fact or facts that constitute conditions precedent to acts by the General Partners or in any other manner germane to the business and affairs of the Partnership;

(3) The person or persons who are authorized to execute and deliver any instrument or document of the Partnership; or

(4) Any act or failure to act by the Partnership or concerning any other matter whatsoever involving the Partnership or any Partner.

**7.5 Requirement of Unanimous Consent.** The General Partners shall not have the authority to enter into any of the following transactions without the unanimous consent of all the Partners:

(a) Terminate, liquidate and wind up the Partnership, except as otherwise provided in this Agreement;

(b) Admit additional or substitute Partners, except as otherwise specifically provided in this Agreement;

(c) Do any act that would make it impossible to carry on the purposes of the Partnership and business of the Partnership (provided, however, that the sale or other disposition of all or any Partnership Property shall not be deemed to be an act making it impossible for the Partnership to carry on its business);

(d) Engage in any business activity other than that which is consistent with the purposes of the Partnership;

(e) Amend this Agreement, except as otherwise provided in this Agreement.

**7.6 Restrictions on General Partners.** The General Partners will not have the authority to enter into any of the following transactions without the consent of 66.66% of the outstanding ownership interest of the Limited Partners:

(a) Prior to the actual termination of the Partnership, sell substantially all of the Partnership Property in liquidation or cessation of business;

(b) Compromise any claim or dispute having an amount or value in issue in excess of 50% of the total value of the Partnership Property;

(c) Confess a judgment against the Partnership in excess of \$100,000;

(d) Do any act in violation of this Agreement;

(e) Make, execute or deliver any assignments for the benefit of creditors;

(f) Do any act for which the consent of the Limited Partners is required by the TBOC.

**7.7 Dissolution or Bankruptcy of a Partner.** On the dissolution, winding up, termination, or bankruptcy of a Partner, such Partner and his successors shall thereafter have the status of an Assignee and shall receive distributions to which such Assignee is entitled. For purposes of this Agreement, the bankruptcy of a Partner shall be deemed to have occurred upon the happening of any event described in subsections (4) and (5) of Section 153.155(a) of the TBOC.

**7.8 Indemnification of the General Partners.** The General Partners shall be jointly and severally indemnified and held harmless by the Partnership and by each other to the extent of each Partner's individual ownership in the Partnership from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever, arising out of or incidental to the management of the Partnership affairs or to any Persons acting as an employee while in the course of managing the Partnership affairs; provided, however, that no General Partner shall be entitled to indemnification hereunder where the claim at issue is based upon any of the following:

(a) A matter entirely unrelated to such General Partner's management of the Partnership affairs.

(b) The proven gross negligence, misconduct, fraud or bad faith of such General Partner.

(c) The proven breach by such General Partner of any provisions of this Agreement.

The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies, and resources to which the General Partners, shall be entitled, whether pursuant to some other provisions of this Agreement, at law or in equity. A General Partner will not have liability for loss of income from or decrease in the value of the property which was retained in the form which such General Partner received it. In addition, the General Partners will not owe a fiduciary duty to the Partnership or to any Partner. The General Partners

will owe a duty of loyalty and a duty of care to the Partnership. To the extent Texas law will permit, a General Partner who succeeds another will be responsible only for the property and records delivered by or otherwise acquired from the preceding General Partner, and may accept as correct the records of the preceding General Partner without duty to audit the records or to inquire further into the administration of the predecessor and without liability for a predecessor's errors or omissions.

**7.9 General Partner with Interest as Limited Partner.** If a General Partner has or acquires an interest in the Partnership as a Limited Partner, such General Partner will, with respect to such limited Partnership interest, enjoy all the rights and be subject to all of the obligations and duties of a Limited Partner. With respect to such General Partner's general Partnership interest, such General Partner will continue to enjoy all the rights and remain subject to all of the obligations and duties of a General Partner.

## **ARTICLE VIII - POWERS, RIGHTS AND DUTIES OF LIMITED PARTNERS**

**8.1 Requirements for Admission of Transferee as Limited Partner.** A transferee of an interest in the Partnership shall be admitted to the Partnership as a substituted Limited Partner only upon satisfaction of the conditions set forth in this Section:

(a) Execution of this Agreement or a counterpart of this Agreement and such other documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Partnership to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Agreement;

(b) Contribution of capital, if any, required by such transferee;

(c) Obtaining consent from 66.66% of the then outstanding ownership interest of the Limited Partners and the General Partners; and

(d) Acquisition of such interest by such transferee by means of a Permitted Transfer.

**8.2 Power of Attorney.** Each Limited Partner does irrevocably constitute and appoint the General Partners, as his or her true and lawful attorney in fact and agent, which power of attorney is hereby declared to be coupled with an interest, in his or her name, place and stead to execute, acknowledge and file (a) the original Certificate of Formation and any later certificate, to be executed in compliance with the requirements of law, to be filed in the Office of the Secretary of the State of Texas; (b) the original assumed name certificate, and any later assumed name certificate, to be executed in compliance with the requirements of law, to be filed in the appropriate County Clerk's office; (c) all instruments required to effectuate the winding up or termination of the Partnership. The power of attorney granted herein shall not terminate upon the death or disability of a Limited Partner. No Person need inquire further than this Agreement of Limited Partnership for other evidence or proof of the General Partner's right and authority to bind the Partnership.

### **8.3 Rights and Restrictions of Limited Partners.**

(a) Except as otherwise limited by the terms and provisions contained in this Agreement, the Limited Partners shall have all of the rights, and be afforded the status, of limited partners as set forth in the TBOC. No Limited Partner shall have any right or power to (1) take part in the management or control of the Partnership or its business or affairs, (2) transact any business for the Partnership, or (3) sign for or bind the Partnership in any way.

(b) No Limited Partner shall have the right to withdraw from the Partnership. A Limited Partner will breach this Agreement if he (1) attempts to withdraw from the Partnership; (2) interferes in the management of the Partnership affairs; (3) engages in conduct which could result in the Partnership losing its tax status as a partnership; (4) engages in conduct that tends to bring the Partnership into disrepute; (5) breaches any confidentiality provisions of this Agreement; (6) fails to meet any commitment to the Partnership; or (7) owns a Partnership interest that becomes subject to a charging order, attachment, garnishment, or similar legal proceedings. A Limited Partner who is in breach of this Agreement shall be liable to the Partnership for damages caused by such breach. The Partnership may offset for the damages against any distributions or return of capital to the Limited Partner who has breached this Agreement.

(c) No Limited Partner shall have the right or power to cause the winding up or termination of the Partnership by court decree or otherwise.

(d) The Limited Partners shall refer all bona fide offers for the purchase or sale of all or any part of the Partnership Property to the General Partners for negotiation.

(e) Nothing contained herein to the contrary, no Limited Partner shall be liable for any of the debts or other obligations of the Partnership or for any of the losses thereof beyond the Initial Capital Contribution and any Additional Capital Contributions of such Limited Partner unless the Limited Partners expressly assume such liability.

(f) All Limited Partners hereby agree to execute any and all instruments that they may be required to execute by any purchaser of said property in order to effect a sale of the Partnership Property.

**8.4 Removal of a General Partner.** Notwithstanding any provision herein to the contrary, a General Partner may not be removed unless there is at least one remaining General Partner. The Limited Partners may remove a General Partner upon the vote of 66.66% of the then outstanding ownership interest of the Limited Partners. Written notice of such determination setting forth the effective date of such removal shall be served upon such General Partner, and as of the effective date, shall terminate all of such Person's rights and powers as a General Partner hereunder, except for any accrued rights to receive payments authorized by Article XI hereunder. Such Partner shall thereafter cease to be a General Partner, and the removed General Partner shall automatically become a Limited Partner, and such removed General Partner's partnership interest

shall be converted to a limited partnership interest. The remaining General Partners shall continue the business of the Partnership. Notwithstanding the foregoing, if a General Partner is in material breach of such General Partner's obligations and does not cure, or commence and diligently prosecute the curing of, such breach ten days (cure breach) (10) days after notice thereof by any of the Limited Partners, or if he has committed any act or omission of fraud or malfeasance to the injury of the Partnership, then such General Partner may be removed upon agreement of 66.66% of the then outstanding ownership interest of the Limited Partners. For purposes of the preceding sentence, a General Partner shall be considered to be in material breach of such General Partner's obligations (1) if a court of last resort determines that such General Partner has committed an act of willful misconduct, gross negligence, or fraud; or (2) if a General Partner declares bankruptcy, becomes insolvent or terminated, or assigns all of such General Partner's assets for the benefit of such General Partner's creditors.

**8.5 Investment Representations and Warranties of the Limited Partners.** Each Limited Partner hereby represents and warrants with respect to such Limited Partner's execution of this Agreement (or by such Limited Partner's subscription and acceptance of this Agreement) and the interest in the Partnership to be acquired by him hereunder as follows:

(a) Such Limited Partner will not sell, assign or otherwise transfer such Limited Partner's interest in the Partnership to any Person except in accordance with this Agreement; such Limited Partner will obtain from any transferee of such Limited Partner's interest in the Partnership representations and warranties for the benefit of such Limited Partner and of the Partnership similar to those made in this Section and has made representations and warranties similar to those made in this Section;

(b) During the course of the discussion of this Agreement and prior to the execution thereof, such Limited Partner had adequate opportunity to ask questions of, and to receive answers from, the General Partners concerning the terms and conditions of this Agreement, the background and experience of the General Partners, the plans of the General Partners for the operation of the Partnership and all other matters related to this Agreement concerning which such Limited Partner desired to ask, and that such Limited Partner has asked and has had answered to the satisfaction of such Limited Partner all questions which such Limited Partner desired to ask;

(c) Such Limited Partner is acquiring the interest in the Partnership for investment and not with a view to a distribution thereof within the meaning of the Securities Act of 1933 and the Securities Act of the State of Texas;

(d) Such Limited Partner has such knowledge and experience in matters of finance, securities and investments, generally, that such Limited Partner is capable of evaluating the risks of entering into this Agreement;

(e) Such Limited Partner has experience and skill in investments based on actual participation;

(f) The General Partners has made available to such Limited Partner the

opportunity to obtain any additional information necessary to verify the accuracy of the information given to such Limited Partner by the General Partners;

(g) Such Limited Partner has been informed by the General Partners that such Limited Partner may have to continue to bear the economic risk of entering into this Agreement for an indefinite period because of the restrictions on disposition of limited partnership interests in the Partnership;

(h) The limited partnership interest acquired pursuant to this Agreement will not be sold, transferred or encumbered in contravention to this Agreement;

(i) Such Limited Partner recognizes that the Partnership will be newly organized and has no history of operations or earnings and is of a speculative nature;

(j) Such Limited Partner understands that no state or Federal governmental authority has made any finding or determination relating to the fairness for public investment of the ownership interests offered by the Partnership and that no state or Federal government authority has or will recommend or endorse these said ownership interests;

(k) Such Limited Partner recognizes that prior to this offering there has been no public market for the ownership interests offered by the Partnership, and it is likely that after the offering there will be no such market for these interests;

(l) Such Limited Partner is financially able to comply with his obligations hereunder; and such Limited Partner has adequate means of providing for current financial needs and possible personal contingencies, exclusive of the investment of such Limited Partner in the Partnership;

(m) Such Limited Partner understands that the Internal Revenue Service (the "Service") may disallow some or all of the deductions to be claimed by the Partnership and that the Service may attempt to treat the Partnership as an association taxable as a corporation which could have an adverse economic effect on the Partners by (1) taxation at the Partnership level resulting in double taxation and no flow through of loss, and (2) substantial reduction in yield, if any, on the Partners' investment in the Partnership; and

(n) Such Limited Partner is aware that the General Partners may be or may engage in business which is competitive with that of the Partnership, and such Limited Partner agrees to such activities even though there are conflicts of interest inherent therein.

## **ARTICLE IX - MANAGEMENT FEES AND OTHER EXPENSES**

**9.1 Management Fees.** Except as provided in this Article, no Partner shall receive any salary, fee, or draw for services rendered to or on behalf of the Partnership, nor shall any Partner be reimbursed for any expenses incurred by such Partner on behalf of the Partnership. In connection with the conduct, operation and sale of the Partnership Property and the operation of the Partnership, the General Partners may charge the Partnership management fees for managing

the Partnership (or delegate, contract or otherwise assign this responsibility to Windridge A2A Developments, LLC or an affiliate) at the rate of 1.5% per annum in arrears based on the total initial capital paid in by the Limited Partners and shall be reimbursed for any direct expenses reasonably incurred in connection with the Partnership's business; provided, however, that no such expense shall be incurred other than at a price which reflects a competitive market rate for such expense; and provided further, that no contract or arrangement entered into by a General Partner on behalf of the Partnership with such General Partner or an Affiliate shall be on terms less advantageous to the Partnership than that generally available from an unaffiliated third party. The General Partners shall not be required to devote full time to the affairs of the Partnership, but shall diligently and faithfully devote whatever time, effort, and skill may be necessary for the conduct of the Partnership's business and shall perform all of the duties of a General Partner which are provided for in this Agreement and the TBOC.

**9.2 Expenses.** The General Partners may charge to the Partnership and pay or recover out of Partnership funds, as and when available, the following: All fees that may be required by applicable state or local authorities relating to the formation and operation of the Partnership or in compliance with the terms of this Agreement, including but not limited to, all filing fees for assumed name certificates, the Certificate of Formation and all amendments thereto, all reasonable expenses incurred by the General Partners in connection with the organization and formation of the Partnership, all reasonable expenses incurred by the General Partners to acquire, preserve, protect, or perfect the title to the Partnership Property or to operate and maintain such property, including, but not limited to, travel expenses, attorneys' fees, accountants' fees and court costs incurred in connection with such matters and any sums owed by the Partnership pursuant to any contract entered by the General Partners pursuant to its authority under this Agreement; the cost of public liability insurance carried in connection with the business of the Partnership; taxes on property of the Partnership; principal and interest, and any other amounts whatsoever owing on any indebtedness of the Partnership, or any part hereof, or any instruments securing any of same, together with any expenses incurred in connection with renewing or rearranging such or any other indebtedness incurred for the benefit of the Partnership deemed necessary by the General Partners; and normal closing costs reasonably incurred in the event of the lease, sale or other disposition of the Partnership Property.

## **ARTICLE X - TRANSFERS OF PARTNERSHIP INTERESTS**

**10.1 Generally.** Except as set forth herein, no Limited Partner may transfer all or any portion of such Partner's interest in the Partnership, without the prior consent of the General Partners, which consent may be granted or withheld in the sole discretion of the General Partner. Each Limited Partner agrees with the Partnership and all of the other Partners that such Limited Partner will not make or permit a disposition of all or any portion of its Partnership Interest in violation of the provisions of this Article X.

**10.2 Permitted Transfers of Limited Partnership Interests.** Notwithstanding the foregoing provisions of Section 10.1, a Limited Partner may Transfer all or any part of the interest of such Limited Partner in the Partnership to: (a) the trustee of a trust created for the benefit of such Limited Partner or such Limited Partner's spouse, children or grandchildren; (b) any Wholly Owned Affiliate of such Limited Partner; (c) the guardian or legal representative of a Limited

Partner as to whose estate a guardian or legal representative is appointed and to the executor or administrator of the estate of a deceased Limited Partner, or (d) to any other Person approved by all of the Partners (any such Transfer described above is referred to in this Agreement as a "Permitted Transfer"). To be a Permitted Transfer, in addition to meeting the other requirements in this Agreement, the Transfer must be in writing, the terms of which are not in contravention of any of the provisions of the Agreement, and the Transfer must be received by the General Partners and recorded on the books of the Partnership. Until the effective date of a Permitted Transfer, both the Partnership and the Partners shall be entitled to treat the assignor of the transferred interest as the absolute owner thereof in all respects. Upon the Transfer to a trust described in 10.2 (a) above, legal title shall rest in such trust, but such interest shall be subject to the same events and circumstances as if the transferring Limited Partner continued to own such interest, and said transferring Limited Partner shall continue to exercise all rights and be liable for all duties imposed by this Agreement. If a transfer is made to a Person approved by all of the Partners, as permitted by Section 10.2(d) above, and the Limited Partner making such transfer will be receiving consideration in return for making such transfer, then prior to approving such transfer, the Partnership shall have the option for thirty (30) days to acquire such interest upon the same price and terms as the Person to whom such interest is being transferred. Any Assignee of a Limited Partner under the terms of this Section shall be entitled to receive the share of the Partnership Profits, Losses and distributions to which the Limited Partner from or under whom such interest was acquired would have been entitled; however, any such Assignee shall not automatically become a substituted Limited Partner unless the conditions of Section 8.1 are satisfied.

**10.3 Additional Restrictions on Transfers.** Notwithstanding Section 10.2, no disposition by a Partner, whether voluntary or involuntary, shall be effective unless (a) the General Partner shall have received a favorable opinion of the Partnership's legal counsel, or of legal counsel acceptable to the General Partner (which opinion shall be rendered at the expense of the transferor), to the effect that such disposition will not (1) violate the Securities Act or the registration requirements of any applicable state securities laws; (2) cause the Partnership or the General Partner to be subjected to any additional regulatory requirement; (3) cause the Partnership to be deemed terminated pursuant to Section 708 of the Code; (4) violate the laws of any state or the rules or regulations of any government agency applicable to such disposition; or (5) result in the Partnership being treated as an association taxable as a corporation for federal income tax purposes.

**10.4 Transfers of General Partnership Interests.** Except as otherwise provided in this Agreement, additional General Partners shall not be admitted to the Partnership without the consent of all the Partners. Notwithstanding the foregoing, each General Partner may Transfer all but not less than all of its General Partner interest in the Partnership at any time to (a) any Person who is such General Partner's Wholly Owned Affiliate, or (b) to any Person who is approved by all of the Partners. A transferee of a General Partner's interest hereunder shall be admitted as a General Partner with respect to such General Partner's interest if, and only if, all of the other Partners consent to such admission. In the event that the transferee of a General Partner's interest is admitted hereunder, such transferee shall be deemed admitted to the Partnership as a General Partner immediately prior to the Transfer, and such transferee shall continue the business of the Partnership without winding up. A transferee who acquires a General Partner's interest hereunder by means of a Transfer that is permitted under this section, but who is not admitted as a General



Partner, shall have no authority to act for or bind the Partnership, to inspect the Partnership's books, or otherwise to be treated as a General Partner.

**10.5 Prohibited Transfers.** Any purported Transfer by any Partner of an interest in the Partnership that is not a Permitted Transfer or a transfer permitted under Section 10.4 of this Agreement shall be null and void and of no effect whatever; provided that if the Partnership is required to recognize a Transfer that is not permitted (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not permitted), the interest transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred interests, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Partnership) to satisfy any debts, obligations or liabilities for damages that the transferor or transferee of such interests may have to the Partnership. In the case of a Transfer or attempted Transfer of an interest that is not a Permitted Transfer or a transfer permitted under Section 10.4 of this Agreement, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Partnership and the other Partners from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

**10.6 Acquisition of an Interest Conveyed to Another Without Authority.** If any Person acquires a Partnership Interest, or becomes an Assignee, as the result of an order of a court which the Partnership is required by law to recognize, if a Partner's interest in the Partnership is subjected to a lawful charging order, or if a Partner makes an unauthorized Transfer of an interest in the Partnership, the Partnership will have the unilateral option to acquire the interest of the Assignee, or any fraction or part thereof, upon the following terms and conditions:

(a) The Partnership will have the option to acquire the interest by giving written notice to the Assignee of its intent to purchase within ninety (90) days from the date it is finally determined that the Partnership is required to recognize the Transfer. If the Partnership fails to exercise its option within such 90-day period, the remaining Partners shall have the option to acquire pro rata shares of such interest by giving written notice to the Assignee of their intent to purchase within ninety (90) days following the expiration of the expired 90-day option period held by the Partnership.

(b) The valuation date for the determination of the purchase price of the interest will be the first day of the month following the month in which the notice is delivered.

(c) Unless the Partnership and the Assignee agree otherwise, the purchase price for the interest, or any fraction to be acquired by the Partnership, shall be its fair market value as determined by a written valuation report prepared by a Person qualified to perform business valuations of partnerships and ownership interests in partnerships describing the value of the ownership interest in the Partnership. Such written valuation report shall take into account all appropriate discounts which are applicable to such interest. Payment for the cost of such valuation report shall be made by such Assignee. Closing of the sale will occur at the principal office of the Partnership at 10:00 a.m. on the first Tuesday of the month following the month in which the Appraisal is rendered. The purchase price paid

by the Partnership shall be reduced by any costs or fees incurred by the Partnership in acquiring the interest of such Assignee.

(d) In order to reduce the burden upon the resources of the Partnership, the Partnership will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in fifteen equal annual installments (or for a period of time equal to the remaining term of the Partnership if such period is less than fifteen years) with interest at the Default Rate of Interest. The first installment of principal, with interest, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership will have the right to prepay all or any part of the purchase money obligation at any time without penalty.

(e) Neither the Assignee of an unauthorized Transfer nor the Partner causing the unauthorized Transfer shall have the right to vote on Partnership matters during the prescribed option period or, if the option to purchase is timely exercised, until the sale is closed.

**10.7 Survival of Liabilities.** It is expressly understood and agreed that no Transfer of a Partnership Interest, even if it subsequently results in the substitution of the Assignee as a Limited Partner herein, shall release the transferor or assignor from those liabilities as to the Partnership which survive such Transfer as a matter of law.

**10.8 Partnership Interest Pledge or Encumbrance.** No Partner may grant a security interest or otherwise pledge, hypothecate or encumber his interest in this Partnership or such Partner's distributions without the consent of all the Partners. It is understood that the Partners are under no obligation to give consent nor are they subject to liability for withholding consent.

**10.9 Nonrecognition of an Unauthorized Transfer.** The Partnership will not be required to recognize the interest of any transferee who has obtained a purported transferred interest as the result of a Transfer that is not authorized by this Agreement and the Transfer shall be null and void for all purposes. If there is doubt as to ownership of an interest in the Partnership or who is entitled to distributions or liquidating proceeds or other property, the General Partners may accumulate such property until the issue is resolved to the satisfaction of the General Partners.

## **ARTICLE XI - WINDING UP AND TERMINATION OF THE PARTNERSHIP**

**11.1 Winding Up and Termination of the Partnership.** The Partnership shall be immediately wound up upon the occurrence of any of the following (a "Liquidating Event"):

(a) The expiration of the term set forth in Section 1.5;

(b) The withdrawal or removal of a General Partner, the assignment by a General Partner of its entire interest in the Partnership, or any other event that causes a General Partner to cease to be a general partner under the TBOC, provided that any such event shall

not constitute a Liquidating Event if the Partnership is continued pursuant to this Article.

(c) The express written agreement executed by all of the Partners; or

(d) Within a reasonable period of time, as determined by the General Partners, after the sale, condemnation, foreclosure or other similar disposition of all of the Partnership Property or upon the happening of any other event which makes it unlawful, impossible, or impractical to carry on the business of the Partnership.

**11.2 Withdrawals; Reconstitution.** Winding up may occur pursuant to Section 11.1(b) of this Agreement, but if there is a remaining General Partner or if the Limited Partners by vote of 66.66% of the outstanding ownership interests of the Limited Partners entitled to vote (excluding from such election any limited partnership interest controlled by the General Partner who brought about such event), agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of such event, of one or more General Partners, the Partnership will be reconstituted and continued. A General Partner may have the power but not the right to withdraw at any time from the Partnership and cease to be a General Partner under the provisions of Section 153.155(b) of the TBOC by giving written notice to the other Partners. Any General Partner who withdraws or ceases to be a General Partner pursuant to Section 153.155(a) of the TBOC, before the expiration of the stated term of this Partnership violates this Agreement, and the Partnership may recover damages from the withdrawing General Partner, including the reasonable cost of obtaining replacement of the services the withdrawn Partner was obligated to perform, for breach of the Agreement. The Partnership may, in addition to pursuing any remedies otherwise available under applicable law, effect that recovery by offsetting those damages against the amount otherwise distributable to the withdrawing General Partner, reducing the Limited Partner's interest into which the withdrawing General Partner's interest may be converted under Section 153.158(a)(1) of the TBOC. Subject to the liability created under Section 153.155(b) of the TBOC, a General Partner who ceases to be a General Partner under Section 153.155(a) of the TBOC shall, at the option of the remaining General Partners or, if there are no remaining General Partners, at the option of a majority in interest (Limited Partners who own more than 50 percent of the current percentage or other interest in the profits of the Partnership that is owned by all of the Limited Partners) of the Limited Partners in a vote that excludes any Limited Partner interest held by the withdrawing General Partner, convert the interest in that General Partner's capital account, including such General Partner's share of Profits, Losses and distributions, to that of a Limited Partner; or pay to the withdrawn General Partner in cash or other Partnership property of equivalent value, or secure by bond approved by a court of competent jurisdiction, the fair market value of such General Partner's interest in the Partnership, less the damages caused by such General Partner's breach of this Agreement.

**11.3 Final Accounting.** Upon winding up of the Partnership, an accounting shall be made of the accounts of the Partnership, the account of each Partner thereof, and of the Partnership's assets, liabilities and operations, from the date of the last previous accounting to the date of such winding up.

**11.4 Liquidation and Priorities on Distribution.** If the Partnership is terminated under Section 11.1, then in such event the Managing Partner shall act as the Liquidating Trustee and

shall liquidate the Partnership as herein provided.

(a) If there is no Managing Partner or if the Managing Partner declines or ceases to serve as Liquidating Trustee, the Liquidating Trustee shall be elected by agreement of those Partners whose percentage interests aggregate 66.66% percent of the ownership interests of the Partners. The General Partners shall execute such documents that are reasonably required to enable the Partner(s) to perform and function as Liquidating Trustee.

(b) The Liquidating Trustee shall proceed to liquidate the assets of the Partnership and the proceeds of such liquidation shall be applied to the Partners in the amount equal to the credit balances in their capital accounts so that the capital account of each Partner shall be brought to zero. For the purpose of determining distributions and liquidation, an Adjusted Capital Account Deficit will be considered to be a loan from the Partnership to a Partner. Said loan will be paid in cash within thirty (30) days after written demand therefor has been made by any of the other Partners. The balance, if any, will be paid to the Partners (both General and Limited), in an amount equal to each Partner's percentage interest in the Partnership, as determined immediately prior to the distribution of the credit balances of the Partner's capital accounts. Any property which is distributed in kind in liquidation shall be treated as if such property had been sold for its fair market value, the gain or losses from such property had been distributed to the Partners in accordance with the provisions herein, and the cash proceeds from the sale of such property had been distributed.

(c) After the foregoing distributions, this Agreement shall terminate and none of the parties shall have any further rights or obligations hereunder.

(d) If a disposition of the Partnership Property has been made on terms that produce a note or contract receivable to the Partnership, the dollar value attributable to each interest in such note or contract receivable distributed pursuant to this Section shall be, as to any distributee thereof, such distributee's pro rata portion of the face amount thereof, and the Liquidating Trustee shall be obliged to make a liquidating distribution in a fashion such that the Partners each are distributed a rateable share of cash items and a rateable share of receivables according to their respective total rights to liquidating distributions.

(e) Notwithstanding anything to the contrary set forth hereinabove, if, after the payment of current Partnership liabilities and obligations to the extent of the funds and/or properties available for that purpose, either any portion of a Partnership borrowing remains unpaid or the Liquidating Trustee determines that additional funds will be required to meet Partnership costs and expenses thereto incurred or for which the Partnership may become responsible, then the Liquidating Trustee shall be obligated to retain such required amounts, if available (or as when they become available), before any Partnership cash or property is distributed to any Partner.

**11.5 Powers and Duties of Liquidating Trustee.** Notwithstanding anything to the contrary contained in this Agreement, the Liquidating Trustee shall be entitled to exercise such of the powers and authorities granted to the General Partners under Article VII hereof as are necessary and appropriate for the winding up and termination of the Partnership, and also shall be subject to

the duties and obligations imposed upon the General Partners under Article VII.

**11.6 Indemnification of the Liquidating Trustee.** The Liquidating Trustee shall be indemnified and held harmless by the Partnership from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever, arising out of or incidental to the Liquidating Trustee taking any action authorized under, or within the scope of, this Article; provided, however, that the Liquidating Trustee shall be entitled to no indemnification hereunder where the claim at issue arose out of:

(a) A matter entirely unrelated to the Liquidating Trustee's acting under the provisions of this Article;

(b) The proven gross negligence, willful misconduct, fraud or bad faith of the Liquidating Trustee; or

(c) The proven breach of the Liquidating Trustee of its obligations under this Article.

The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies, and resources to which the Liquidating Trustee shall be entitled, at law or in equity.

## **ARTICLE XII - MISCELLANEOUS**

**12.1 Notices.** Any notices required hereunder shall be sent to the Partners (i) by electronic transmission, including e-mail, (ii) by personal service, or (iii) by certified or registered mail, return receipt requested at the address set forth for such parties, respectively, on Exhibit "A" of this Agreement. By giving to each General Partner written notice thereof, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America. No transferee of any interest of any Partner shall be entitled to receive a notice independent of the notice sent to the Partner making such transfer.

**12.2 Additional Instruments.** Each Partner hereby agrees to execute all such agreements, certificates, tax statements, tax returns and other documents as may be required by law to effectuate the provisions contained herein.

**12.3 Applicable to Successors.** This Agreement and each provision herein shall be binding upon and applicable to, and shall inure to the benefit of, the parties hereto and their respective heirs, legatees, devisees, successors, assigns and legal representatives, except as otherwise expressly provided herein.

**12.4 Waiver.** No consent or waiver, express or implied, by any parties hereto of the breach or default by any other party or parties hereto in the performance by any such party or parties of its or their obligation hereunder shall be deemed or construed to be a consent to or waiver

of any other breach of default in the performance of such other or others of the same or any other obligations of such other or others hereunder. Failure on the part of any party hereto to complain of any act of any of the other parties or to declare any of the other parties hereto in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

**12.5 Severability.** If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**12.6 Amendment.** This Agreement may be amended or modified at any time only if all Partners agree to such amendment or modification in writing.

**12.7 Waiver of Rights to Partition.** Inasmuch as all real and personal property owned by the Partnership is owned by the Partnership as an entity, and no party hereto, individually, has any ownership in such property, none of the parties hereto shall have any right to partition any of the Partnership Property, and all parties hereto hereby irrevocably waive any and all rights that any party hereto might have to maintain any action for partition of any of the Partnership Property with respect to their undivided interest, if any, therein, either as a partition in kind or a partition by sale.

**12.8 Meetings of the Partners.** Meetings of the Partners may be called by the General Partners and shall be called upon the written request of 66.66% of the then outstanding ownership interests of the Limited Partners. Notice of any such meeting shall be given to all Partners not less than fifteen (minimum notice) (15) business days nor more than forty-five days (maximum notice) (45) business days prior to the date of such meeting and shall state the nature of any business to be transacted thereof. Partners may vote in person or by proxy at such meeting. Whenever the vote or consent of Partners is permitted or required under this Agreement, such vote or consent may be given at a meeting of Partners. Except as otherwise expressly provided in this Agreement, the vote of a majority in interest (Limited Partners who own more than 50 percent of the current percentage or other interest in the profits of the Partnership that is owned by all of the Limited Partners) of the Partners shall control. For the purpose of determining the Partners entitled to vote on, or to vote at, any meeting of the Partners or any adjournment thereof, the General Partners or the Limited Partners requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than forty five (maximum) (45) business days nor less than fifteen days (minimum) (15) business days before any such meeting, but in no case to be earlier than the 60th day before the date the action requiring the determination of Partners is originally to be taken. Each Limited Partner may authorize any Person or Persons to act for it by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable by the Limited Partner executing it. Each meeting of the Partners shall be conducted by the General Partners or such other Person as the General Partners may appoint pursuant to such rules for the conduct of the meeting as the General Partners or such other Person deem appropriate.

**12.9 Action Without Meeting.** Any action required or permitted to be taken at a meeting of the Partners (including meeting of the General Partners) may be taken without a meeting if written consent setting forth the action to be taken is signed by all Partners (or General Partners, if applicable) entitled to vote. This consent will have the same force as a unanimous vote of the Partners (or General Partners, if applicable). The original signed consents shall be kept with the Partnership records.

**12.10 Counterparts.** This Agreement may be signed in a number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.

**12.11 Gender.** Wherever in this Agreement, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this Agreement, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply.

**12.12 Attorney Fees.** In the event a dispute arises between any Partner(s) and the Partnership or between the Partners, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs incurred.

**12.13 Tax Audit.** In the event the Partnership is audited by the IRS, the costs and expenses incurred to defend and comply with the audit shall be an expense of the Partnership. Any audit of any individual Partner shall not be deemed to be an audit of this Partnership.

**12.14 Foreign Qualification.** Prior to the qualification of the Partnership to conduct business in any jurisdiction other than Texas, the General Partners shall cause the Partnership to comply, to the extent procedures are available and those matters are reasonably within the control of the General Partners, with all requirements necessary to qualify the Partnership as a foreign limited partnership in that jurisdiction. At the request of the General Partners, each Partner shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with the terms of this Agreement that are necessary or appropriate to qualify, continue and terminate the Partnership as a foreign limited partnership in all jurisdictions in which the Partnership may conduct business.

**12.15 Governing Law.** This Agreement shall be subject to, and governed by, the laws of the State of Texas.

**12.16 Reliance by Third Parties.** Notwithstanding any other provision of this Agreement, any action taken by the General Partners on behalf of the Partnership shall be binding as to any Person who acts in reliance on the authority of the General Partners taking such action, and such Person shall have no duty to ascertain whether such General Partner has such authority even if such action appears to be prohibited by this Agreement. Any Person dealing with the Partnership or the General Partners may rely upon a certificate signed by the General Partners as

to: (a) the identity of the Partners; (b) any conditions precedent to acts by the Partnership; (c) the Persons who are authorized to execute any documents and bind the Partnership; and (d) any other matter involving the Partnership or any Partner.

**12.17 Entire Agreement.** The Agreements and representations in this Partnership Agreement contain all of the Agreements and representations of the parties hereto, and it is expressly provided that the General Partners shall not be liable for any claim that may hereafter be made alleging any verbal agreement by and between the Parties hereto and the General Partners, or any General Partner's agents, employees or associates.

**12.18 Headings.** The heading of each of the articles and sections of this Agreement are inserted for convenience only and shall not be considered in construing the terms of this Agreement.

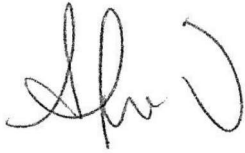
**EXECUTED** in multiple counterparts, by the General Partners and by the Limited Partners on the date indicated opposite their respective signatures below, all effective on the date aforementioned.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW]**



The undersigned agrees to the terms and conditions of the Agreement of Limited Partnership of Hills of Windridge LP.

**GENERAL PARTNER:**



---

Windridge A2A Developments, LLC

By: Allan Lind

Its: Director

Date: May 23, 2024

The undersigned agrees to the terms and conditions of the Agreement of Limited Partnership of Hills of Windridge LP.

**LIMITED PARTNERS:**



---

Foo Tiang Meng Dirk Robert, Trustee of Hills of Windridge Trust

Date: May 23, 2024

**EXHIBIT "A"**

| <b>Name</b>   | <b>Type of Partner</b> | <b>Initial Capital Contribution</b> | <b>% of Partnership Interest</b> |
|---|------------------------|-------------------------------------|----------------------------------|
| Windridge A2A Developments, LLC                                     | General                | \$0.10                              | 00.01%                           |
| Foo Tiang Meng Dirk Robert, Trustee of the Hills of Windridge Trust | Limited                | \$299.90                            | 99.99%                           |

THIS IS EXHIBIT “2” IN THE AFFIDAVIT OF  
ALLAN WHITEFORD LIND SWORN ON  
DECEMBER 31, 2024.

DocuSigned by:



890497CF8D774C7...

A Commissioner for Oaths in and for the Province of Ontario

**AGREEMENT OF  
LIMITED PARTNERSHIP OF  
TRAILS OF FOSSIL CREEK PROPERTIES LP**

---

**THE LIMITED PARTNERSHIP INTERESTS CREATED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES ACT OF THE STATE OF TEXAS AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM. THE SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF SUCH INTERESTS IS ALSO SUBJECT TO CERTAIN RESTRICTIONS WHICH ARE SET FORTH IN THIS AGREEMENT OF LIMITED PARTNERSHIP. DURING THE PERIOD IN WHICH SUCH LIMITED PARTNERSHIP INTERESTS ARE BEING OFFERED AND SOLD BY THE ISSUER, AND FOR A PERIOD OF NINE MONTHS FROM THE LAST SALE BY THE ISSUER OF ONE OF SUCH LIMITED PARTNERSHIP INTERESTS, ALL REALES OF ANY OF THE LIMITED PARTNERSHIP INTERESTS, BY ANY PERSON, MUST BE MADE ONLY TO THE PERSONS RESIDENT WITHIN THE STATE OF TEXAS WITHIN THE MEANING OF RULE 147 OF THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933. NO SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF ANY LIMITED PARTNERSHIP INTEREST WILL BE RECOGNIZED BY THE PARTNERSHIP UNLESS SUCH SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION IS MADE IN COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THIS AGREEMENT; OF THE SECURITIES ACT OF 1933, AS AMENDED; AND THE SECURITIES ACT OF THE STATE OF TEXAS, AS AMENDED, INCLUDING, WITHOUT LIMITATION, REGISTRATION UNDER SUCH ACTS IF REQUIRED UNDER THE PROVISIONS THEREOF.**

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**EFFECTIVE JUNE 2024**

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**THIS AGREEMENT OF LIMITED PARTNERSHIP** (hereinafter referred to as the "Agreement"), is made effective as of June 13, 2024, by between and among Fossil Creek A2A Developments, LLC ("Initial General Partner"), and Foo Tiang Meng Dirk Robert, Trustee of the Trails of Fossil Creek Trust (the "Initial Limited Partners").

## **ARTICLE I - FORMATION, CERTIFICATES, TERM**

**1.1 Formation of Partnership.** The parties hereto hereby form, pursuant to the relevant Chapters under Title 1, to the extent applicable to limited partnerships, of the Texas Business Organizations Code (hereinafter, as from time to time amended, referred to as the "TBOC"), a Limited Partnership, which organization is hereinafter referred to as the "Partnership." The rights, duties, status and liabilities of the Partners shall, except as hereinafter expressly stated to the contrary, be as provided for in the TBOC.

**1.2 Certificate of Formation; Other Documents.** The parties hereto shall execute, file, record and/or publish the Certificate of Formation and other documents conforming hereto, and take all other appropriate action to comply with all legal requirements for the formation of a Limited Partnership under the TBOC, and for its operation in the State of Texas. The Partnership shall not conduct any business until the filing and acknowledgment of filing of such Certificate of Formation.

**1.3 Partnership Name.** The business of the Partnership shall be conducted under the name of "Trails of Fossil Creek Properties LP" or such other name as the General Partners may select from time to time. The General Partners shall promptly execute, file, record and/or publish with the proper offices an assumed name certificate.

**1.4 Registered Agent, Registered Address and Principal Office.** The registered agent and registered office address for the Partnership in the State of Texas is Nicholas Lind, Suite 111, 6021 Morriss Rd, Flower Mound, TX 75028 U.S.A. and the principal place of business of the Partnership shall be at Suite 111, 6021 Morriss Rd, Flower Mound, TX 75028 U.S.A., but substitute or additional places of business may be established at such other locations as may, from time to time, be determined by the General Partners. A copy of all records of the Partnership required by the TBOC will be available at the Principal Office.

**1.5 Term of Partnership.** The Partnership shall become effective upon the execution of this Agreement and the filing of the Certificate of Formation with the Secretary of State of the State of Texas, and shall remain effective until the Partnership is terminated pursuant to the TBOC.

**1.6 Amendment to Certificate of Formation.** The General Partners shall file amendments to the Certificate of Formation whenever required by the TBOC. If a General Partner is unwilling or unable to sign a required amendment to the Certificate of Formation, the amended Certificate of Formation may be signed by any remaining or successor General Partners. Each General Partner appoints his successor and any remaining General Partners, if any, as his attorney in fact to sign such amended Certificate of Formation.

## **ARTICLE II- DEFINITIONS**

Whenever used in this Agreement, the terms set forth below shall be defined as follows:

**2.1 Additional Capital Contribution** shall mean that amount of money or other property, if any, that the Initial Limited Partner or Additional Limited Partner may contribute to the Partnership for additional capital, if any, to be used for operating capital beyond the Capital Contribution made by such Partner for the acquisition of its initial Partnership interest.

**2.2 Additional Limited Partners** shall have the meaning set forth in Section 4.2 of this Agreement.

**2.3 Adjusted Capital Account Deficit** means, with respect to any Limited Partner, the deficit balance, if any, in such Limited Partner's capital account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such capital account any amounts which such Limited Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Section 704 of the Code and the Regulations thereunder, and

(b) Debit to such capital account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

**2.4 Affiliate** means, with respect to a Partner, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with such Partners. The term "control," as used in this definition means, with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than ten percent (10%) of the voting rights attributable to the shares of the controlled corporation, and with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

**2.5 Assignee** shall mean a Person who has acquired all or a portion of an interest in the Partnership by assignment or Transfer as of the date the assignment or Transfer of such interest becomes effective. An Assignee has only the rights granted to an assignee as provided by Subchapter F, Chapter 153 of the TBOC. An Assignee does not have the right to become a Partner, except as provided in this Agreement or unless all partners consent as provided by Section 153.253 of the TBOC. An Assignee shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, and shall not have any of the rights of a General Partner or a Limited Partner under the TBOC or this Agreement. In addition, no Assignee of an interest in the Partnership shall have the right to assign

any transferred interest except as otherwise provided in this Agreement.

**2.6 Capital Contribution** means the total contribution to the capital of the Partnership which a Partner is legally bound and obligated to make, which amount is designated as a Capital Contribution for such Partner pursuant to Article IV of this Agreement.

**2.7 Certificate of Formation** shall mean the Certificate of Formation of Limited Partnership to be filed on behalf of the Partnership as required by the appropriate provisions of Chapter 3 of the TBOC, and all amendments thereto and substitutions thereof.

**2.8 Code** means the Internal Revenue Code of 1986, as amended from time to time.

**2.9 Contribution Agreement** means, with respect to each of the Partners, the agreement respecting the original Capital Contribution to be made by, or on behalf of, each such Partner pursuant to Section 4.2 hereof, as described more fully in Section 4.3 hereof.

**2.10 Default Rate of Interest** shall mean the rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks as its prime commercial or similar reference interest rate, with adjustments to be made on the same date as any change in the rate, and (b) the maximum rate permitted by applicable law.

**2.11 Depreciation** means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, further that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

**2.12 Distributable Cash** shall mean, at the time of determination for any period (on the cash receipts and disbursements method of accounting), all Partnership cash derived from the conduct of the Partnership's business, including distributions from entities owned by the Partnership, cash from operations or investments, and cash from the sale or other disposition of Partnership property, other than (a) Capital Contributions with interest earned pending its utilization; (b) financing or other loan proceeds; (c) reserves for working capital; and (d) other amounts that the General Partner reasonably determines should be retained by the Partnership in accordance with the General Partner's discretion under section 6.1 hereof.

**2.13 General Partner or General Partners** shall initially mean Fossil Creek A2A Developments, LLC and thereafter mean all Persons designated as a General Partner on Exhibit "A" and any successor General Partners pursuant to the terms of this Agreement but does not include any Person who has ceased to be a General Partner.

**2.14 Gross Asset Value** means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the Partnership, provided that the initial Gross Asset Values of the assets contributed to the Partnership shall be as set forth in Exhibit "A", and provided further that if the contributing Partner is a General Partner, the determination of the fair market value of a contributed asset shall require the agreement of a majority in interest (Limited Partners who own more than 50 percent of the current percentage or other interest in the profits of the Partnership that is owned by all of the Limited Partners) of the Limited Partners (such agreement need not be in writing, and any such agreement will be presumed to have been made by the required percentage ownership interest unless there is clear and convincing evidence to the contrary), except that the determination of the fair market value of a contributed asset of a General Partner may, if such General Partner chooses, be made by written appraisal from a qualified appraiser, and such written appraisal shall control;

(b) The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times: (1) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (2) the distribution by the Partnership to a Partner of more than a de minimis amount of Partnership Property as consideration for an interest in the Partnership; and (3) the liquidation of the Partnership within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations; provided, however, that adjustments pursuant to clauses (1) and (2) above shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(c) The Gross Asset Value of any Partnership asset distributed to any Partner shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining the Partners' capital accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations and Section 5.2(c) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section to the extent the General Partner determines that an adjustment pursuant to Section 2.13(b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 2.13(d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 2.13(a), 2.13(b), or 2.13(d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**2.15 Initial Capital Contribution** shall mean that amount of money or property initially contributed by the Partners as set forth in Exhibit "A" hereto.

**2.16 Limited Partner or Limited Partners** shall initially mean Foo Tiang Meng Dirk Robert, Trustee of the Trails of Fossil Creek Trust and thereafter the Persons admitted to the Partnership as original, additional or substituted Limited Partners as reflected on Exhibit "A" as amended.

**2.17 Partner or Partners** shall mean individually a General Partner, Initial Limited Partner, Additional Limited Partner, or collectively the General Partners and the Limited Partners.

**2.18 Partnership Property** shall mean that property, real or personal, including but not limited to real estate, investment limited partnerships, cash, stocks, bonds and similar investments, which is contributed to or acquired by the Partnership.

**2.19 Person** shall mean an individual or a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, any other legal or commercial entity, or a particular series of a for-profit entity.

**2.20 Profits or Losses** means, for each fiscal year or other period, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be added to such taxable income or loss;

(b) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 2.13(a) or Section 2.13(c) hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Partnership Property, with respect to which gain or loss is recognized for federal income tax purposes, shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into

account Depreciation for such fiscal year or other period, computed in accordance with Section 2.10 hereof; and

(f) Notwithstanding any other provision in this Section, any items which are specially allocated pursuant to Section 5.2 or Section 5.3 hereof shall not be taken into account in computing Profits or Losses.

**2.21 Regulations** means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**2.22 Securities Act** shall mean the Securities Act of 1933, as amended.

**2.23 Reserved**

**2.24 Transfer** when used as a noun shall mean any voluntary or involuntary transfer, sale, pledge, hypothecation, assignment or other disposition, and as a verb shall mean voluntarily or involuntarily to transfer, sell, pledge, hypothecate, assign or otherwise dispose.

**2.25 Wholly Owned Affiliate** of any Person shall mean an Affiliate of such Person 100% of the voting stock or beneficial ownership of which is owned by such Person, directly or indirectly, through one or more Wholly Owned Affiliates, or by any Person who, directly or indirectly, owns 100% of the voting stock or beneficial ownership of such Person, and an Affiliate of such Person who, directly or indirectly, owns 100% of the voting stock or beneficial ownership of such Person.

### **ARTICLE III - PURPOSE**

**3.1 Purposes of the Partnership.** The Limited Partnership has been formed to facilitate the sale of interests in the Trails of Fossil Creek Properties Project together with holding such other interests in any other A2A legal entity or A2A development project and such other activities as may be necessary, ancillary or incidental to or in furtherance of the foregoing. The purpose of facilitating the sale of these interests is to generate income from these properties or developments, which may also appreciate in value. In addition to the foregoing, the Partnership may engage in any other activities which the Partnership may undertake without violating the TBOC or any other applicable law. However, no material change to the Partnership's fundamental investment objectives will be made unless determined otherwise by resolution of at least 66.66% of the then limited partners and the consent in writing of the General Partner.

**3.2 Powers.** The General Partner may make, enter into, deliver and perform all contracts, agreements or undertakings, pay all costs and expenses and perform all acts deemed appropriate by the General Partner to carry out the Partnership purposes, subject to the limitations of this Agreement and the TBOC.

**3.3 Other Transactions of Partners.**

(a) It is acknowledged that the Partners may in the future, from time to time, obtain additional opportunities to acquire property for investment, development or otherwise. Each Partner shall be free to acquire such interests in other property as such Partner may in such Partner's sole discretion deem desirable without having to offer interests in such property to the other Partners of this Partnership, and such action on the part of any Partner shall not be deemed a breach of any fiduciary relationship owed by that Partner to the other Partners or the Partnership. Participation in the Partnership shall not in any way act as a restraint on the other present or future business activities or investments of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner, whether or not such activities are competitive with the business of the Partnership. As a result of this Agreement, no Partner (or Affiliate of any Partner) shall be obligated or bound to offer or present offered to them or the Partnership or any of the other Partners any business opportunity presented to or offered to them or the Partnership as a prerequisite to the acquisition of or investment in such business opportunity by such Partner (or any Affiliate of a Partner) or any employee, officer, director, member, manager, or shareholder of such Partner for its account or the account of others. In furtherance thereof, the Partners hereby agree that any business activity in which a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner engages, conducts, or participates outside the Partnership shall be conclusively deemed not to be a business activity in competition with, or an opportunity of the Partnership. Any such business or activity of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner may be undertaken with or without prior notice to or participation therein by the Partnership or the other Partners. Each Partner and the Partnership hereby waive any right or claim such Partner or the Partnership may have against a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner with respect to such business or activity or the income or profits thereof.

(b) The Partnership may contract with any of the Partners or their Affiliates for the purchase of goods and services for the benefit of the Partnership at any time provided that the compensation paid to such Person shall be commensurate with rates prevailing for such services at the time such services are performed, and any charges so incurred shall be deemed expenses of the Partnership. The General Partner shall have the authority to enter into any transaction on behalf of the Partnership despite the fact that another party to the transaction may be (a) a trust of which a Partner is a trustee or beneficiary; (b) an estate of which a Partner is a personal representative or beneficiary; (c) a business controlled by one or more Partners or a business of which any Partner is also a director, officer or employee; (d) any Affiliate, employee, stockholder, associate, manager, partner, or business associate; (e) any Partner, acting individually; or (f) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties.

#### **ARTICLE IV - CAPITAL CONTRIBUTIONS AND SHARES OF PROFITS AND LOSSES**

**4.1 Ownership Percentages.** The percentage interest of each Partner are set forth on

Exhibit A. A Partner's percentage interest will be determinative of: (a) a Partner's ownership interest in the Partnership as an entity; (b) a Partner's interest in the distribution of Distributable Cash as set forth in Article VI; (c) a Partner's allocable share of the items of Profits and Losses; as modified by actual distributions set forth in Article VI and (d) a Partner's distributive share of cash and other property upon winding up of the Partnership.

**4.2 Additional Capital Offering.** The Partnership, by a vote of a majority of the Partners, may sell additional Partnership Units to third-parties ("Additional Limited Partners") at a price to be determined by the majority of the Partners ("Additional Capital Offering"). All Additional Limited Partners shall agree to be bound by this Agreement and execute a Subscription Agreement.

**4.3 Capital Accounts.** A Partnership capital account shall be established for each Partner and shall be maintained at all times throughout the existence of the Partnership in a manner so as to correspond to the rules set forth in Article V. The amount in a Partner's capital account shall initially be the amount of such Partner's Initial Capital Contribution which shall be the fair market value of the assets such Partner contributed. A Partner's capital account shall be credited with its Additional Capital Contribution, and any other voluntary Capital Contribution made by such Partner when made, and such Partner's share of Partnership Profits. A Partner's capital account shall be decreased by the amount of money and the fair market value of property distributed to such Partner (net of liabilities securing such distributed property that the Partner is considered to assume or take subject to under Section 752 of the Code) and by the amount of losses allocated to such Partner, by such Partner's distributive share of the items described in Section 705(a)(1)(B) and 705(a)(2)(B) of the Code, and by other items of deduction specially allocated to such Partner. The capital accounts shall not bear interest. Additional Capital Contributions shall be recorded at the fair market value of the assets contributed by the Partner and the distributions to a Partner shall also be recorded at the fair market value of the assets distributed. The provisions in this Agreement regarding the formation and maintenance of capital accounts are intended to comply with Sections 1.704-1(b) and 1.704-1(c) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Partnership, the General Partner, or the Limited Partners), are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Person pursuant to Article XI hereof upon the winding up of the Partnership. The General Partner also shall (a) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Section 1.704-1(b)(2)(iv)(g) of the Regulations, and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations.

**4.4 Limitation of Liability.** No Limited Partner herein shall be liable for any sum of money in excess of the total sums which have been contributed and agreed to be contributed by such Limited Partner in this Agreement.



**4.5 Return of Capital.** No Partner shall have the right to withdraw, demand a return or reduce his Capital Contribution to the Partnership. In the event a return of or reduction in the capital account of a Partner is made, any amounts paid to such Partner shall be reduced by all costs, fees and other expenses incurred by the Partnership in facilitating such return of or reduction in capital.

**4.6 Additional Operating Capital.** Partners may make Additional Capital Contributions or loans to the Partnership. No Partner shall be obligated to make Additional Capital Contributions to the Partnership or make any loan to the Partnership, and no Partner shall have any liability to the Partnership or any other Partner by virtue of refusing to make any Additional Capital Contributions or loans to the Partnership.

**4.7 Use of Contributions.** The cash and property contributed by the Initial Limited Partner, initially being the aggregate amounts reflected on Exhibit "A," will be utilized by the Partnership for the purposes of the Partnership set forth in Article III.

**4.8 Nature of Interests.** 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. No Partner shall have any direct ownership of any Partnership property.

## **ARTICLE V - ACCOUNTING**

**5.1 Profits and Losses.** After giving effect to the special allocations set forth in Sections 5.2 and 5.3 hereof and subject to the limitations of Sections 5.1(a) and 5.1(b), Profits or Losses for any fiscal year shall be allocated among the Partners in proportion to their ownership interests in the Partnership.

(a) Notwithstanding the foregoing, the Losses allocated pursuant to this Section 5.1(a) shall not exceed the maximum amount of Losses that can be so allocated without causing any Limited Partners to have an Adjusted Capital Account Deficit at the end of any fiscal year. All Losses in excess of the limitations set forth in this Section 5.1(a) shall be allocated to the General Partner.

(b) In the event Losses have been allocated to the General Partner pursuant to Section 5.1(a) hereof, 100% of the Profits shall be allocated to the General Partner until the cumulative Profits allocated pursuant to this Section 5.1(b) for the current and all prior fiscal years are equal to the cumulative Losses allocated pursuant to Section 5.1(a) hereof for all prior fiscal years.

**5.2 Special Allocations.** The following special allocations shall be made in the following order:

(a) **Qualified Income Offset.** In the event any Limited Partner unexpectedly

receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Limited Partner as quickly as possible, provided that an allocation pursuant to this Section 5.2(a) shall be made only if and to the extent that such Limited Partner has an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.2(a) were not in this Agreement.

**(b) Gross Income Allocation.** In the event any Limited Partner has a deficit 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, each such Limited Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.2(b) shall be made only if and to the extent that such Limited Partner has a deficit capital account in excess of such sum after all other allocations provided for in this Article V have been tentatively made as if Section 5.2(a) hereof and this Section 5.2(b) were not in this Agreement.

**(c) Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

**5.3 Curative Allocations.** The General Partner shall have reasonable discretion, with respect to each Partnership fiscal year, to (a) apply the provisions of Sections 5.2(a) and 5.2(b) hereof in whatever order is likely to minimize the economic distortions that might otherwise result from such allocations, and (b) divide all allocations pursuant to Sections 5.2(a) and 5.2(b) hereof among the Partners in a manner that is likely to minimize such economic distortions.

**5.4 Other Allocation Rules.**

**(a)** For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly or other basis, as determined by the General Partner using any permissible method under Code Section 706 and the Regulations thereunder.

**(b)** All allocations to the Partners pursuant to this Article V shall, except as otherwise provided, be divided among them in proportion to the Partners' ownership interests in the Partnership.

(c) Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Partners in the same proportions as they share Profits or Losses, as the case may be, for the year.

**5.5 Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the 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 so as to account for any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 2.13(a) hereof). In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 2.13(b) hereof, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

**5.6 Fiscal Year and Annual Accounting.** The Partnership fiscal year shall be the calendar year. The Partnership books shall be kept on the accrual method of accounting or in accordance with generally accepted accounting principles, at the discretion of the General Partner. The General Partner shall furnish to the Partners, on a quarterly basis, accounting reports reflecting Partnership income and expenses. In addition, the General Partner shall provide the Partners with the full annual Partnership tax return for the preceding year in a timely manner to comply with all Code reporting deadlines.

## **ARTICLE VI - DISTRIBUTIONS**

**6.1 Distributions of Partnership Funds.** Distributions of Distributable Cash shall be made in such amounts and at such times as may be determined at the sole discretion of the General Partner, as provided in this Section 6.1. Unless agreed in writing by a transferor and transferee, Distributable Cash allocable to a transferred Partnership interest which may have been transferred during any year shall be distributed to the holder of such Partnership interest who was recognized as the owner on the date of such distribution, without regard to the results of Partnership operations during the year. With regard to Distributable Cash and other Partnership Property, the General Partner shall make a determination, in accordance with such General Partner's duty of care and loyalty to the Partnership, as to the need for the Partnership Property in the operation of the Partnership business, considering current needs for operating capital, prudent reserves for future operating capital, current investment opportunities, and prudent reserves for future investment opportunities, all in keeping with the Partnership's purposes. It is the duty of the General Partner, in determining the amount of Distributable Cash available for the payment of distributions, to take into account the needs of the Partnership in its business and sums necessary in the operation of its

business until the income from further operations is available, the amounts of its debts, the necessity or advisability of paying its debts, or at least reducing such debts within the limits of the Partnership's credit, and the preservation of its capital as represented in the Partnership Property as a fund for the protection of its creditors. Any contributed Partnership Property or borrowed funds by the Partnership shall be considered as needed for Partnership investment purposes, and any cash produced from the sale of Partnership Property contributed to the Partnership or from the sale of any Partnership Property purchased with borrowed funds, or any reinvestment of any of the Partnership Property, including the portion of the sale proceeds representing capital appreciation, shall be considered as needed reserves for Partnership investment purposes. Any Distributable Cash derived from income may, to the extent deemed unnecessary for the purposes of the Partnership by the General Partner under the foregoing standard, be distributed in accordance with this Agreement. Distributions will be calculated in the same manner that Profits and Losses are calculated, as described in Section 5 above.

**6.2 Confidentiality of Information.** Each Partner is entitled to all information under the circumstances and subject to the conditions stated in this Agreement and the TBOC. The Partners agree, however, that the General Partners or 66.33% of the then outstanding ownership interest of the Limited Partners may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, Partnership Property, and financial condition of the Partnership shall be kept confidential and not provided to some or all of the Limited Partners or any Assignee, and that it is not just or reasonable for those Partners or Assignees or their representatives to examine or copy that information. In addition, the Partners acknowledge that they may receive information regarding the Partnership in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Partnership or Persons with which it does business. Each Partner shall hold in strict confidence any information it receives regarding the Partnership that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Partner, except for disclosures compelled by law, or disclosures made to advisers or representatives of the Partner (if they have agreed to be bound by the provisions of this section). The Partners agree that the provisions of this section may be enforced by specific performance.

## **ARTICLE VII - POWERS, RIGHTS AND DUTIES OF GENERAL PARTNERS**

**7.1 Management.** If there is only one General Partner, such General Partner shall be the Managing Partner. If there is more than one General Partner, Fossil Creek A2A Developments, LLC shall be the day to day Managing Partner of the Partnership. A Managing Partner shall serve until the designation is revoked, until such Managing Partner is removed by vote of 66.66% of the then outstanding ownership interest of the General Partner, or until the Managing Partner ceases to serve for any other reason. If a Managing Partner is designated, the Managing Partner is authorized and directed to manage and control the assets and the business of the Partnership. The Managing Partner may exercise all of the powers which could be exercised by majority consent of the General Partner. It is understood and agreed that the Managing Partner shall consult and confer with the General Partner before taking any steps resulting in any substantial change in the operation or policies of the Partnership affairs, or the sale of any portion of the Partnership assets other than in the usual course of business, or in any manner which affects the Partnership business in a manner

judged unusual by the Partners in the ordinary operation of the Partnership business. If a Managing Partner is serving as such, any reference to "General Partner" in this Agreement shall also include "Managing Partner" if applicable.

**7.2 Successor General Partners.** If there are multiple General Partners and one or more of them withdraws or ceases to serve for any reason and there is at least one remaining General Partner, the business of the Partnership is permitted to continue by the remaining General Partner without amendment to this Agreement. Prior to the withdrawal of all multiple General Partners or the withdrawal of a sole General Partner, additional General Partners may be appointed to serve as successor General Partners (each such General Partner is referred to herein as a "Designated Successor General Partner") by all of the remaining Partners acting unanimously. If a General Partner, serving alone, withdraws or ceases to serve for any reason and there are no Designated Successor General Partners remaining, then without amendment to this Agreement, the Limited Partners by vote of 66.66% of the outstanding ownership interests of the Limited Partners entitled to vote (excluding from such election any limited partnership interest controlled by the General Partner who brought about such withdrawal or cessation of service), may agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of such event, of one or more General Partners. Any Designated Successor General Partner will not have the duties nor the liabilities of a General Partner until such time as the successor actually accepts and assumes the position of a General Partner. A General Partner who ceases to be a General Partner will not be personally liable for the debts and obligations of the Partnership incurred following the termination of service as a General Partner.

**7.3 Resignation by General Partner.** No General Partner shall have the right to withdraw from the Partnership before the Partnership is terminated. If such General Partner does attempt to withdraw as a General Partner, such attempt shall be considered a breach of this Agreement, and such General Partner's general Partnership interest shall convert to that of a Limited Partner.

**7.4 Authority of General Partner.** Subject to the limitations of this Agreement, and to the fiduciary obligations and limitations imposed upon the General Partners at law, the General Partners shall manage the day-to-day operations of the Partnership. The General Partners shall have the authority to take any action which the General Partners believes in good faith to be in furtherance of the Partnership business and purposes and to exercise all rights and powers generally conferred by law in connection therewith. No Person dealing with the Partnership shall be required to inquire into, or obtain any consents or other documentation as to the authority of the General Partners to take any such action or to exercise any such rights or powers. Specifically:

(a) The General Partners shall have the right, power and authority on behalf of the Partnership:

(1) To receive and hold all Partnership Property in the name of the Partnership;

(2) To obtain and maintain such insurance as is deemed to be desirable and appropriate by the General Partners;

(3) To open, maintain, and close bank accounts, brokerage accounts and checking accounts in the name of the Partnership, to designate and change signatories on such accounts, and to draw checks and other orders for the payment of monies;

(4) To engage accountants, attorneys and any and all other agents and assistants, both professional and non-professional, which may include the General Partners, and to compensate them reasonably for services rendered;

(5) To collect all sums due to the Partnership;

(6) To prepare and file all tax returns of the Partnership and to make all elections for the Partnership thereunder;

(7) To the extent that funds of the Partnership are available therefor, to pay as they become due all debts and obligations of the Partnership;

(8) To sell, assign, lease, exchange, convert or otherwise transfer or dispose of all or part of the Partnership Property, on such terms and conditions as the General Partners may determine in the General Partner's sole discretion;

(10) To vote and exercise all other rights available to the holder of any securities included in the Partnership Property;

(11) To take any and all other action, including legal action, that the General Partners deems necessary, appropriate or advisable in furtherance of the Partnership's business and purposes; and

(12) To enter into any transaction on behalf of the Partnership despite the fact that another party to the transaction may be (i) a trust of which a Partner is a trustee or beneficiary; (ii) an estate of which a Partner is a personal representative or beneficiary; (iii) a business controlled by one or more Partners or a business of which any Partner is also a director, officer or employee; (iv) any Affiliate, employee, stockholder, associate, manager, partner, or business associate; (v) any Partner, acting individually; or (vi) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties.

(b) The General Partners or his nominee shall hold legal title to the Partnership Property and shall have the sole authority to manage, deal with, negotiate and contract with respect to, and convey the Partnership Property on behalf of the Partnership.

(c) The General Partners shall act in good faith in the performance of the General Partner's obligations hereunder, but shall have no liability or obligation to any of the

Limited Partners or the Partnership for any decision made or action taken in connection with the discharge of the General Partner's duties hereunder if such decision or action is made or taken in good faith and in the exercise of due care in connection with the Partnership business.

(d) The General Partners shall have the power to designate, from time to time, a depository of Partnership funds, and to draw upon the same for Partnership purposes.

(e) Any person dealing with the Partnership or the General Partners may rely on a certificate signed by the General Partners concerning:

(1) The identity of the General Partners or any other Partner;

(2) The existence or nonexistence of any fact or facts that constitute conditions precedent to acts by the General Partners or in any other manner germane to the business and affairs of the Partnership;

(3) The person or persons who are authorized to execute and deliver any instrument or document of the Partnership; or

(4) Any act or failure to act by the Partnership or concerning any other matter whatsoever involving the Partnership or any Partner.

**7.5 Requirement of Unanimous Consent.** The General Partners shall not have the authority to enter into any of the following transactions without the unanimous consent of all the Partners:

(a) Terminate, liquidate and wind up the Partnership, except as otherwise provided in this Agreement;

(b) Admit additional or substitute Partners, except as otherwise specifically provided in this Agreement;

(c) Do any act that would make it impossible to carry on the purposes of the Partnership and business of the Partnership (provided, however, that the sale or other disposition of all or any Partnership Property shall not be deemed to be an act making it impossible for the Partnership to carry on its business);

(d) Engage in any business activity other than that which is consistent with the purposes of the Partnership;

(e) Amend this Agreement, except as otherwise provided in this Agreement.

**7.6 Restrictions on General Partners.** The General Partners will not have the authority to enter into any of the following transactions without the consent of 66.66% of the outstanding ownership interest of the Limited Partners:

(a) Prior to the actual termination of the Partnership, sell substantially all of the Partnership Property in liquidation or cessation of business;

(b) Compromise any claim or dispute having an amount or value in issue in excess of 50% of the total value of the Partnership Property;

(c) Confess a judgment against the Partnership in excess of \$100,000;

(d) Do any act in violation of this Agreement;

(e) Make, execute or deliver any assignments for the benefit of creditors;

(f) Do any act for which the consent of the Limited Partners is required by the TBOC.

**7.7 Dissolution or Bankruptcy of a Partner.** On the dissolution, winding up, termination, or bankruptcy of a Partner, such Partner and his successors shall thereafter have the status of an Assignee and shall receive distributions to which such Assignee is entitled. For purposes of this Agreement, the bankruptcy of a Partner shall be deemed to have occurred upon the happening of any event described in subsections (4) and (5) of Section 153.155(a) of the TBOC.

**7.8 Indemnification of the General Partners.** The General Partners shall be jointly and severally indemnified and held harmless by the Partnership and by each other to the extent of each Partner's individual ownership in the Partnership from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever, arising out of or incidental to the management of the Partnership affairs or to any Persons acting as an employee while in the course of managing the Partnership affairs; provided, however, that no General Partner shall be entitled to indemnification hereunder where the claim at issue is based upon any of the following:

(a) A matter entirely unrelated to such General Partner's management of the Partnership affairs.

(b) The proven gross negligence, misconduct, fraud or bad faith of such General Partner.

(c) The proven breach by such General Partner of any provisions of this Agreement.

The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies, and resources to which the General Partners, shall be entitled, whether pursuant to some other provisions of this Agreement, at law or in equity. A General Partner will not have liability for loss of income from or decrease in the value of the property which was retained in the form which such General Partner received it. In addition, the General Partners will not owe a fiduciary duty to the Partnership or to any Partner. The General Partners



will owe a duty of loyalty and a duty of care to the Partnership. To the extent Texas law will permit, a General Partner who succeeds another will be responsible only for the property and records delivered by or otherwise acquired from the preceding General Partner, and may accept as correct the records of the preceding General Partner without duty to audit the records or to inquire further into the administration of the predecessor and without liability for a predecessor's errors or omissions.

**7.9 General Partner with Interest as Limited Partner.** If a General Partner has or acquires an interest in the Partnership as a Limited Partner, such General Partner will, with respect to such limited Partnership interest, enjoy all the rights and be subject to all of the obligations and duties of a Limited Partner. With respect to such General Partner's general Partnership interest, such General Partner will continue to enjoy all the rights and remain subject to all of the obligations and duties of a General Partner.

## **ARTICLE VIII - POWERS, RIGHTS AND DUTIES OF LIMITED PARTNERS**

**8.1 Requirements for Admission of Transferee as Limited Partner.** A transferee of an interest in the Partnership shall be admitted to the Partnership as a substituted Limited Partner only upon satisfaction of the conditions set forth in this Section:

(a) Execution of this Agreement or a counterpart of this Agreement and such other documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Partnership to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Agreement;

(b) Contribution of capital, if any, required by such transferee;

(c) Obtaining consent from 66.66% of the then outstanding ownership interest of the Limited Partners and the General Partners; and

(d) Acquisition of such interest by such transferee by means of a Permitted Transfer.

**8.2 Power of Attorney.** Each Limited Partner does irrevocably constitute and appoint the General Partners, as his or her true and lawful attorney in fact and agent, which power of attorney is hereby declared to be coupled with an interest, in his or her name, place and stead to execute, acknowledge and file (a) the original Certificate of Formation and any later certificate, to be executed in compliance with the requirements of law, to be filed in the Office of the Secretary of the State of Texas; (b) the original assumed name certificate, and any later assumed name certificate, to be executed in compliance with the requirements of law, to be filed in the appropriate County Clerk's office; (c) all instruments required to effectuate the winding up or termination of the Partnership. The power of attorney granted herein shall not terminate upon the death or disability of a Limited Partner. No Person need inquire further than this Agreement of Limited Partnership for other evidence or proof of the General Partner's right and authority to bind the Partnership.

### **8.3 Rights and Restrictions of Limited Partners.**

(a) Except as otherwise limited by the terms and provisions contained in this Agreement, the Limited Partners shall have all of the rights, and be afforded the status, of limited partners as set forth in the TBOC. No Limited Partner shall have any right or power to (1) take part in the management or control of the Partnership or its business or affairs, (2) transact any business for the Partnership, or (3) sign for or bind the Partnership in any way.

(b) No Limited Partner shall have the right to withdraw from the Partnership. A Limited Partner will breach this Agreement if he (1) attempts to withdraw from the Partnership; (2) interferes in the management of the Partnership affairs; (3) engages in conduct which could result in the Partnership losing its tax status as a partnership; (4) engages in conduct that tends to bring the Partnership into disrepute; (5) breaches any confidentiality provisions of this Agreement; (6) fails to meet any commitment to the Partnership; or (7) owns a Partnership interest that becomes subject to a charging order, attachment, garnishment, or similar legal proceedings. A Limited Partner who is in breach of this Agreement shall be liable to the Partnership for damages caused by such breach. The Partnership may offset for the damages against any distributions or return of capital to the Limited Partner who has breached this Agreement.

(c) No Limited Partner shall have the right or power to cause the winding up or termination of the Partnership by court decree or otherwise.

(d) The Limited Partners shall refer all bona fide offers for the purchase or sale of all or any part of the Partnership Property to the General Partners for negotiation.

(e) Nothing contained herein to the contrary, no Limited Partner shall be liable for any of the debts or other obligations of the Partnership or for any of the losses thereof beyond the Initial Capital Contribution and any Additional Capital Contributions of such Limited Partner unless the Limited Partners expressly assume such liability.

(f) All Limited Partners hereby agree to execute any and all instruments that they may be required to execute by any purchaser of said property in order to effect a sale of the Partnership Property.

**8.4 Removal of a General Partner.** Notwithstanding any provision herein to the contrary, a General Partner may not be removed unless there is at least one remaining General Partner. The Limited Partners may remove a General Partner upon the vote of 66.66% of the then outstanding ownership interest of the Limited Partners. Written notice of such determination setting forth the effective date of such removal shall be served upon such General Partner, and as of the effective date, shall terminate all of such Person's rights and powers as a General Partner hereunder, except for any accrued rights to receive payments authorized by Article XI hereunder. Such Partner shall thereafter cease to be a General Partner, and the removed General Partner shall automatically become a Limited Partner, and such removed General Partner's partnership interest

shall be converted to a limited partnership interest. The remaining General Partners shall continue the business of the Partnership. Notwithstanding the foregoing, if a General Partner is in material breach of such General Partner's obligations and does not cure, or commence and diligently prosecute the curing of, such breach ten days (cure breach) (10) days after notice thereof by any of the Limited Partners, or if he has committed any act or omission of fraud or malfeasance to the injury of the Partnership, then such General Partner may be removed upon agreement of 66.66% of the then outstanding ownership interest of the Limited Partners. For purposes of the preceding sentence, a General Partner shall be considered to be in material breach of such General Partner's obligations (1) if a court of last resort determines that such General Partner has committed an act of willful misconduct, gross negligence, or fraud; or (2) if a General Partner declares bankruptcy, becomes insolvent or terminated, or assigns all of such General Partner's assets for the benefit of such General Partner's creditors.

**8.5 Investment Representations and Warranties of the Limited Partners.** Each Limited Partner hereby represents and warrants with respect to such Limited Partner's execution of this Agreement (or by such Limited Partner's subscription and acceptance of this Agreement) and the interest in the Partnership to be acquired by him hereunder as follows:

(a) Such Limited Partner will not sell, assign or otherwise transfer such Limited Partner's interest in the Partnership to any Person except in accordance with this Agreement; such Limited Partner will obtain from any transferee of such Limited Partner's interest in the Partnership representations and warranties for the benefit of such Limited Partner and of the Partnership similar to those made in this Section and has made representations and warranties similar to those made in this Section;

(b) During the course of the discussion of this Agreement and prior to the execution thereof, such Limited Partner had adequate opportunity to ask questions of, and to receive answers from, the General Partners concerning the terms and conditions of this Agreement, the background and experience of the General Partners, the plans of the General Partners for the operation of the Partnership and all other matters related to this Agreement concerning which such Limited Partner desired to ask, and that such Limited Partner has asked and has had answered to the satisfaction of such Limited Partner all questions which such Limited Partner desired to ask;

(c) Such Limited Partner is acquiring the interest in the Partnership for investment and not with a view to a distribution thereof within the meaning of the Securities Act of 1933 and the Securities Act of the State of Texas;

(d) Such Limited Partner has such knowledge and experience in matters of finance, securities and investments, generally, that such Limited Partner is capable of evaluating the risks of entering into this Agreement;

(e) Such Limited Partner has experience and skill in investments based on actual participation;

(f) The General Partners has made available to such Limited Partner the

opportunity to obtain any additional information necessary to verify the accuracy of the information given to such Limited Partner by the General Partners;

(g) Such Limited Partner has been informed by the General Partners that such Limited Partner may have to continue to bear the economic risk of entering into this Agreement for an indefinite period because of the restrictions on disposition of limited partnership interests in the Partnership;

(h) The limited partnership interest acquired pursuant to this Agreement will not be sold, transferred or encumbered in contravention to this Agreement;

(i) Such Limited Partner recognizes that the Partnership will be newly organized and has no history of operations or earnings and is of a speculative nature;

(j) Such Limited Partner understands that no state or Federal governmental authority has made any finding or determination relating to the fairness for public investment of the ownership interests offered by the Partnership and that no state or Federal government authority has or will recommend or endorse these said ownership interests;

(k) Such Limited Partner recognizes that prior to this offering there has been no public market for the ownership interests offered by the Partnership, and it is likely that after the offering there will be no such market for these interests;

(l) Such Limited Partner is financially able to comply with his obligations hereunder; and such Limited Partner has adequate means of providing for current financial needs and possible personal contingencies, exclusive of the investment of such Limited Partner in the Partnership;

(m) Such Limited Partner understands that the Internal Revenue Service (the "Service") may disallow some or all of the deductions to be claimed by the Partnership and that the Service may attempt to treat the Partnership as an association taxable as a corporation which could have an adverse economic effect on the Partners by (1) taxation at the Partnership level resulting in double taxation and no flow through of loss, and (2) substantial reduction in yield, if any, on the Partners' investment in the Partnership; and

(n) Such Limited Partner is aware that the General Partners may be or may engage in business which is competitive with that of the Partnership, and such Limited Partner agrees to such activities even though there are conflicts of interest inherent therein.

## **ARTICLE IX - MANAGEMENT FEES AND OTHER EXPENSES**

**9.1 Management Fees.** Except as provided in this Article, no Partner shall receive any salary, fee, or draw for services rendered to or on behalf of the Partnership, nor shall any Partner be reimbursed for any expenses incurred by such Partner on behalf of the Partnership. In connection with the conduct, operation and sale of the Partnership Property and the operation of the Partnership, the General Partners may charge the Partnership management fees for managing

the Partnership (or delegate, contract or otherwise assign this responsibility to Fossil Creek A2A Developments, LLC or an affiliate) at the rate of 1.5% per annum in arrears based on the total initial capital paid in by the Limited Partners and shall be reimbursed for any direct expenses reasonably incurred in connection with the Partnership's business; provided, however, that no such expense shall be incurred other than at a price which reflects a competitive market rate for such expense; and provided further, that no contract or arrangement entered into by a General Partner on behalf of the Partnership with such General Partner or an Affiliate shall be on terms less advantageous to the Partnership than that generally available from an unaffiliated third party. The General Partners shall not be required to devote full time to the affairs of the Partnership, but shall diligently and faithfully devote whatever time, effort, and skill may be necessary for the conduct of the Partnership's business and shall perform all of the duties of a General Partner which are provided for in this Agreement and the TBOC.

**9.2 Expenses.** The General Partners may charge to the Partnership and pay or recover out of Partnership funds, as and when available, the following: All fees that may be required by applicable state or local authorities relating to the formation and operation of the Partnership or in compliance with the terms of this Agreement, including but not limited to, all filing fees for assumed name certificates, the Certificate of Formation and all amendments thereto, all reasonable expenses incurred by the General Partners in connection with the organization and formation of the Partnership, all reasonable expenses incurred by the General Partners to acquire, preserve, protect, or perfect the title to the Partnership Property or to operate and maintain such property, including, but not limited to, travel expenses, attorneys' fees, accountants' fees and court costs incurred in connection with such matters and any sums owed by the Partnership pursuant to any contract entered by the General Partners pursuant to its authority under this Agreement; the cost of public liability insurance carried in connection with the business of the Partnership; taxes on property of the Partnership; principal and interest, and any other amounts whatsoever owing on any indebtedness of the Partnership, or any part hereof, or any instruments securing any of same, together with any expenses incurred in connection with renewing or rearranging such or any other indebtedness incurred for the benefit of the Partnership deemed necessary by the General Partners; and normal closing costs reasonably incurred in the event of the lease, sale or other disposition of the Partnership Property.

## **ARTICLE X - TRANSFERS OF PARTNERSHIP INTERESTS**

**10.1 Generally.** Except as set forth herein, no Limited Partner may transfer all or any portion of such Partner's interest in the Partnership, without the prior consent of the General Partners, which consent may be granted or withheld in the sole discretion of the General Partner. Each Limited Partner agrees with the Partnership and all of the other Partners that such Limited Partner will not make or permit a disposition of all or any portion of its Partnership Interest in violation of the provisions of this Article X.

**10.2 Permitted Transfers of Limited Partnership Interests.** Notwithstanding the foregoing provisions of Section 10.1, a Limited Partner may Transfer all or any part of the interest of such Limited Partner in the Partnership to: (a) the trustee of a trust created for the benefit of such Limited Partner or such Limited Partner's spouse, children or grandchildren; (b) any Wholly Owned Affiliate of such Limited Partner; (c) the guardian or legal representative of a Limited

Partner as to whose estate a guardian or legal representative is appointed and to the executor or administrator of the estate of a deceased Limited Partner, or (d) to any other Person approved by all of the Partners (any such Transfer described above is referred to in this Agreement as a "Permitted Transfer"). To be a Permitted Transfer, in addition to meeting the other requirements in this Agreement, the Transfer must be in writing, the terms of which are not in contravention of any of the provisions of the Agreement, and the Transfer must be received by the General Partners and recorded on the books of the Partnership. Until the effective date of a Permitted Transfer, both the Partnership and the Partners shall be entitled to treat the assignor of the transferred interest as the absolute owner thereof in all respects. Upon the Transfer to a trust described in 10.2 (a) above, legal title shall rest in such trust, but such interest shall be subject to the same events and circumstances as if the transferring Limited Partner continued to own such interest, and said transferring Limited Partner shall continue to exercise all rights and be liable for all duties imposed by this Agreement. If a transfer is made to a Person approved by all of the Partners, as permitted by Section 10.2(d) above, and the Limited Partner making such transfer will be receiving consideration in return for making such transfer, then prior to approving such transfer, the Partnership shall have the option for thirty (30) days to acquire such interest upon the same price and terms as the Person to whom such interest is being transferred. Any Assignee of a Limited Partner under the terms of this Section shall be entitled to receive the share of the Partnership Profits, Losses and distributions to which the Limited Partner from or under whom such interest was acquired would have been entitled; however, any such Assignee shall not automatically become a substituted Limited Partner unless the conditions of Section 8.1 are satisfied.

**10.3 Additional Restrictions on Transfers.** Notwithstanding Section 10.2, no disposition by a Partner, whether voluntary or involuntary, shall be effective unless (a) the General Partner shall have received a favorable opinion of the Partnership's legal counsel, or of legal counsel acceptable to the General Partner (which opinion shall be rendered at the expense of the transferor), to the effect that such disposition will not (1) violate the Securities Act or the registration requirements of any applicable state securities laws; (2) cause the Partnership or the General Partner to be subjected to any additional regulatory requirement; (3) cause the Partnership to be deemed terminated pursuant to Section 708 of the Code; (4) violate the laws of any state or the rules or regulations of any government agency applicable to such disposition; or (5) result in the Partnership being treated as an association taxable as a corporation for federal income tax purposes.

**10.4 Transfers of General Partnership Interests.** Except as otherwise provided in this Agreement, additional General Partners shall not be admitted to the Partnership without the consent of all the Partners. Notwithstanding the foregoing, each General Partner may Transfer all but not less than all of its General Partner interest in the Partnership at any time to (a) any Person who is such General Partner's Wholly Owned Affiliate, or (b) to any Person who is approved by all of the Partners. A transferee of a General Partner's interest hereunder shall be admitted as a General Partner with respect to such General Partner's interest if, and only if, all of the other Partners consent to such admission. In the event that the transferee of a General Partner's interest is admitted hereunder, such transferee shall be deemed admitted to the Partnership as a General Partner immediately prior to the Transfer, and such transferee shall continue the business of the Partnership without winding up. A transferee who acquires a General Partner's interest hereunder by means of a Transfer that is permitted under this section, but who is not admitted as a General

Partner, shall have no authority to act for or bind the Partnership, to inspect the Partnership's books, or otherwise to be treated as a General Partner.

**10.5 Prohibited Transfers.** Any purported Transfer by any Partner of an interest in the Partnership that is not a Permitted Transfer or a transfer permitted under Section 10.4 of this Agreement shall be null and void and of no effect whatever; provided that if the Partnership is required to recognize a Transfer that is not permitted (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not permitted), the interest transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred interests, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Partnership) to satisfy any debts, obligations or liabilities for damages that the transferor or transferee of such interests may have to the Partnership. In the case of a Transfer or attempted Transfer of an interest that is not a Permitted Transfer or a transfer permitted under Section 10.4 of this Agreement, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Partnership and the other Partners from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

**10.6 Acquisition of an Interest Conveyed to Another Without Authority.** If any Person acquires a Partnership Interest, or becomes an Assignee, as the result of an order of a court which the Partnership is required by law to recognize, if a Partner's interest in the Partnership is subjected to a lawful charging order, or if a Partner makes an unauthorized Transfer of an interest in the Partnership, the Partnership will have the unilateral option to acquire the interest of the Assignee, or any fraction or part thereof, upon the following terms and conditions:

(a) The Partnership will have the option to acquire the interest by giving written notice to the Assignee of its intent to purchase within ninety (90) days from the date it is finally determined that the Partnership is required to recognize the Transfer. If the Partnership fails to exercise its option within such 90-day period, the remaining Partners shall have the option to acquire pro rata shares of such interest by giving written notice to the Assignee of their intent to purchase within ninety (90) days following the expiration of the expired 90-day option period held by the Partnership.

(b) The valuation date for the determination of the purchase price of the interest will be the first day of the month following the month in which the notice is delivered.

(c) Unless the Partnership and the Assignee agree otherwise, the purchase price for the interest, or any fraction to be acquired by the Partnership, shall be its fair market value as determined by a written valuation report prepared by a Person qualified to perform business valuations of partnerships and ownership interests in partnerships describing the value of the ownership interest in the Partnership. Such written valuation report shall take into account all appropriate discounts which are applicable to such interest. Payment for the cost of such valuation report shall be made by such Assignee. Closing of the sale will occur at the principal office of the Partnership at 10:00 a.m. on the first Tuesday of the month following the month in which the Appraisal is rendered. The purchase price paid

by the Partnership shall be reduced by any costs or fees incurred by the Partnership in acquiring the interest of such Assignee.

(d) In order to reduce the burden upon the resources of the Partnership, the Partnership will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in fifteen equal annual installments (or for a period of time equal to the remaining term of the Partnership if such period is less than fifteen years) with interest at the Default Rate of Interest. The first installment of principal, with interest, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership will have the right to prepay all or any part of the purchase money obligation at any time without penalty.

(e) Neither the Assignee of an unauthorized Transfer nor the Partner causing the unauthorized Transfer shall have the right to vote on Partnership matters during the prescribed option period or, if the option to purchase is timely exercised, until the sale is closed.

**10.7 Survival of Liabilities.** It is expressly understood and agreed that no Transfer of a Partnership Interest, even if it subsequently results in the substitution of the Assignee as a Limited Partner herein, shall release the transferor or assignor from those liabilities as to the Partnership which survive such Transfer as a matter of law.

**10.8 Partnership Interest Pledge or Encumbrance.** No Partner may grant a security interest or otherwise pledge, hypothecate or encumber his interest in this Partnership or such Partner's distributions without the consent of all the Partners. It is understood that the Partners are under no obligation to give consent nor are they subject to liability for withholding consent.

**10.9 Nonrecognition of an Unauthorized Transfer.** The Partnership will not be required to recognize the interest of any transferee who has obtained a purported transferred interest as the result of a Transfer that is not authorized by this Agreement and the Transfer shall be null and void for all purposes. If there is doubt as to ownership of an interest in the Partnership or who is entitled to distributions or liquidating proceeds or other property, the General Partners may accumulate such property until the issue is resolved to the satisfaction of the General Partners.

## **ARTICLE XI - WINDING UP AND TERMINATION OF THE PARTNERSHIP**

**11.1 Winding Up and Termination of the Partnership.** The Partnership shall be immediately wound up upon the occurrence of any of the following (a "Liquidating Event"):

(a) The expiration of the term set forth in Section 1.5;

(b) The withdrawal or removal of a General Partner, the assignment by a General Partner of its entire interest in the Partnership, or any other event that causes a General Partner to cease to be a general partner under the TBOC, provided that any such event shall



not constitute a Liquidating Event if the Partnership is continued pursuant to this Article.

(c) The express written agreement executed by all of the Partners; or

(d) Within a reasonable period of time, as determined by the General Partners, after the sale, condemnation, foreclosure or other similar disposition of all of the Partnership Property or upon the happening of any other event which makes it unlawful, impossible, or impractical to carry on the business of the Partnership.

**11.2 Withdrawals; Reconstitution.** Winding up may occur pursuant to Section 11.1(b) of this Agreement, but if there is a remaining General Partner or if the Limited Partners by vote of 66.66% of the outstanding ownership interests of the Limited Partners entitled to vote (excluding from such election any limited partnership interest controlled by the General Partner who brought about such event), agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of such event, of one or more General Partners, the Partnership will be reconstituted and continued. A General Partner may have the power but not the right to withdraw at any time from the Partnership and cease to be a General Partner under the provisions of Section 153.155(b) of the TBOC by giving written notice to the other Partners. Any General Partner who withdraws or ceases to be a General Partner pursuant to Section 153.155(a) of the TBOC, before the expiration of the stated term of this Partnership violates this Agreement, and the Partnership may recover damages from the withdrawing General Partner, including the reasonable cost of obtaining replacement of the services the withdrawn Partner was obligated to perform, for breach of the Agreement. The Partnership may, in addition to pursuing any remedies otherwise available under applicable law, effect that recovery by offsetting those damages against the amount otherwise distributable to the withdrawing General Partner, reducing the Limited Partner's interest into which the withdrawing General Partner's interest may be converted under Section 153.158(a)(1) of the TBOC. Subject to the liability created under Section 153.155(b) of the TBOC, a General Partner who ceases to be a General Partner under Section 153.155(a) of the TBOC shall, at the option of the remaining General Partners or, if there are no remaining General Partners, at the option of a majority in interest (Limited Partners who own more than 50 percent of the current percentage or other interest in the profits of the Partnership that is owned by all of the Limited Partners) of the Limited Partners in a vote that excludes any Limited Partner interest held by the withdrawing General Partner, convert the interest in that General Partner's capital account, including such General Partner's share of Profits, Losses and distributions, to that of a Limited Partner; or pay to the withdrawn General Partner in cash or other Partnership property of equivalent value, or secure by bond approved by a court of competent jurisdiction, the fair market value of such General Partner's interest in the Partnership, less the damages caused by such General Partner's breach of this Agreement.

**11.3 Final Accounting.** Upon winding up of the Partnership, an accounting shall be made of the accounts of the Partnership, the account of each Partner thereof, and of the Partnership's assets, liabilities and operations, from the date of the last previous accounting to the date of such winding up.

**11.4 Liquidation and Priorities on Distribution.** If the Partnership is terminated under Section 11.1, then in such event the Managing Partner shall act as the Liquidating Trustee and

shall liquidate the Partnership as herein provided.

(a) If there is no Managing Partner or if the Managing Partner declines or ceases to serve as Liquidating Trustee, the Liquidating Trustee shall be elected by agreement of those Partners whose percentage interests aggregate 66.66% percent of the ownership interests of the Partners. The General Partners shall execute such documents that are reasonably required to enable the Partner(s) to perform and function as Liquidating Trustee.

(b) The Liquidating Trustee shall proceed to liquidate the assets of the Partnership and the proceeds of such liquidation shall be applied to the Partners in the amount equal to the credit balances in their capital accounts so that the capital account of each Partner shall be brought to zero. For the purpose of determining distributions and liquidation, an Adjusted Capital Account Deficit will be considered to be a loan from the Partnership to a Partner. Said loan will be paid in cash within thirty (30) days after written demand therefor has been made by any of the other Partners. The balance, if any, will be paid to the Partners (both General and Limited), in an amount equal to each Partner's percentage interest in the Partnership, as determined immediately prior to the distribution of the credit balances of the Partner's capital accounts. Any property which is distributed in kind in liquidation shall be treated as if such property had been sold for its fair market value, the gain or losses from such property had been distributed to the Partners in accordance with the provisions herein, and the cash proceeds from the sale of such property had been distributed.

(c) After the foregoing distributions, this Agreement shall terminate and none of the parties shall have any further rights or obligations hereunder.

(d) If a disposition of the Partnership Property has been made on terms that produce a note or contract receivable to the Partnership, the dollar value attributable to each interest in such note or contract receivable distributed pursuant to this Section shall be, as to any distributee thereof, such distributee's pro rata portion of the face amount thereof, and the Liquidating Trustee shall be obliged to make a liquidating distribution in a fashion such that the Partners each are distributed a rateable share of cash items and a rateable share of receivables according to their respective total rights to liquidating distributions.

(e) Notwithstanding anything to the contrary set forth hereinabove, if, after the payment of current Partnership liabilities and obligations to the extent of the funds and/or properties available for that purpose, either any portion of a Partnership borrowing remains unpaid or the Liquidating Trustee determines that additional funds will be required to meet Partnership costs and expenses thereto incurred or for which the Partnership may become responsible, then the Liquidating Trustee shall be obligated to retain such required amounts, if available (or as when they become available), before any Partnership cash or property is distributed to any Partner.

**11.5 Powers and Duties of Liquidating Trustee.** Notwithstanding anything to the contrary contained in this Agreement, the Liquidating Trustee shall be entitled to exercise such of the powers and authorities granted to the General Partners under Article VII hereof as are necessary and appropriate for the winding up and termination of the Partnership, and also shall be subject to

the duties and obligations imposed upon the General Partners under Article VII.

**11.6 Indemnification of the Liquidating Trustee.** The Liquidating Trustee shall be indemnified and held harmless by the Partnership from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever, arising out of or incidental to the Liquidating Trustee taking any action authorized under, or within the scope of, this Article; provided, however, that the Liquidating Trustee shall be entitled to no indemnification hereunder where the claim at issue arose out of:

(a) A matter entirely unrelated to the Liquidating Trustee's acting under the provisions of this Article;

(b) The proven gross negligence, willful misconduct, fraud or bad faith of the Liquidating Trustee; or

(c) The proven breach of the Liquidating Trustee of its obligations under this Article.

The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies, and resources to which the Liquidating Trustee shall be entitled, at law or in equity.

## **ARTICLE XII - MISCELLANEOUS**

**12.1 Notices.** Any notices required hereunder shall be sent to the Partners (i) by electronic transmission, including e-mail, (ii) by personal service, or (iii) by certified or registered mail, return receipt requested at the address set forth for such parties, respectively, on Exhibit "A" of this Agreement. By giving to each General Partner written notice thereof, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America. No transferee of any interest of any Partner shall be entitled to receive a notice independent of the notice sent to the Partner making such transfer.

**12.2 Additional Instruments.** Each Partner hereby agrees to execute all such agreements, certificates, tax statements, tax returns and other documents as may be required by law to effectuate the provisions contained herein.

**12.3 Applicable to Successors.** This Agreement and each provision herein shall be binding upon and applicable to, and shall inure to the benefit of, the parties hereto and their respective heirs, legatees, devisees, successors, assigns and legal representatives, except as otherwise expressly provided herein.

**12.4 Waiver.** No consent or waiver, express or implied, by any parties hereto of the breach or default by any other party or parties hereto in the performance by any such party or parties of its or their obligation hereunder shall be deemed or construed to be a consent to or waiver

of any other breach of default in the performance of such other or others of the same or any other obligations of such other or others hereunder. Failure on the part of any party hereto to complain of any act of any of the other parties or to declare any of the other parties hereto in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

**12.5 Severability.** If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**12.6 Amendment.** This Agreement may be amended or modified at any time only if all Partners agree to such amendment or modification in writing.

**12.7 Waiver of Rights to Partition.** Inasmuch as all real and personal property owned by the Partnership is owned by the Partnership as an entity, and no party hereto, individually, has any ownership in such property, none of the parties hereto shall have any right to partition any of the Partnership Property, and all parties hereto hereby irrevocably waive any and all rights that any party hereto might have to maintain any action for partition of any of the Partnership Property with respect to their undivided interest, if any, therein, either as a partition in kind or a partition by sale.

**12.8 Meetings of the Partners.** Meetings of the Partners may be called by the General Partners and shall be called upon the written request of 66.66% of the then outstanding ownership interests of the Limited Partners. Notice of any such meeting shall be given to all Partners not less than fifteen (minimum notice) (15) business days nor more than forty-five days (maximum notice) (45) business days prior to the date of such meeting and shall state the nature of any business to be transacted thereof. Partners may vote in person or by proxy at such meeting. Whenever the vote or consent of Partners is permitted or required under this Agreement, such vote or consent may be given at a meeting of Partners. Except as otherwise expressly provided in this Agreement, the vote of a majority in interest (Limited Partners who own more than 50 percent of the current percentage or other interest in the profits of the Partnership that is owned by all of the Limited Partners) of the Partners shall control. For the purpose of determining the Partners entitled to vote on, or to vote at, any meeting of the Partners or any adjournment thereof, the General Partners or the Limited Partners requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than forty-five (maximum) (45) business days nor less than fifteen days (minimum) (15) business days before any such meeting, but in no case to be earlier than the 60th day before the date the action requiring the determination of Partners is originally to be taken. Each Limited Partner may authorize any Person or Persons to act for it by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable by the Limited Partner executing it. Each meeting of the Partners shall be conducted by the General Partners or such other Person as the General Partners may appoint pursuant to such rules for the conduct of the meeting as the General Partners or such other Person deem appropriate.

**12.9 Action Without Meeting.** Any action required or permitted to be taken at a meeting of the Partners (including meeting of the General Partners) may be taken without a meeting if written consent setting forth the action to be taken is signed by all Partners (or General Partners, if applicable) entitled to vote. This consent will have the same force as a unanimous vote of the Partners (or General Partners, if applicable). The original signed consents shall be kept with the Partnership records.

**12.10 Counterparts.** This Agreement may be signed in a number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.

**12.11 Gender.** Wherever in this Agreement, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this Agreement, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply.

**12.12 Attorney Fees.** In the event a dispute arises between any Partner(s) and the Partnership or between the Partners, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs incurred.

**12.13 Tax Audit.** In the event the Partnership is audited by the IRS, the costs and expenses incurred to defend and comply with the audit shall be an expense of the Partnership. Any audit of any individual Partner shall not be deemed to be an audit of this Partnership.

**12.14 Foreign Qualification.** Prior to the qualification of the Partnership to conduct business in any jurisdiction other than Texas, the General Partners shall cause the Partnership to comply, to the extent procedures are available and those matters are reasonably within the control of the General Partners, with all requirements necessary to qualify the Partnership as a foreign limited partnership in that jurisdiction. At the request of the General Partners, each Partner shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with the terms of this Agreement that are necessary or appropriate to qualify, continue and terminate the Partnership as a foreign limited partnership in all jurisdictions in which the Partnership may conduct business.

**12.15 Governing Law.** This Agreement shall be subject to, and governed by, the laws of the State of Texas.

**12.16 Reliance by Third Parties.** Notwithstanding any other provision of this Agreement, any action taken by the General Partners on behalf of the Partnership shall be binding as to any Person who acts in reliance on the authority of the General Partners taking such action, and such Person shall have no duty to ascertain whether such General Partner has such authority even if such action appears to be prohibited by this Agreement. Any Person dealing with the Partnership or the General Partners may rely upon a certificate signed by the General Partners as

to: (a) the identity of the Partners; (b) any conditions precedent to acts by the Partnership; (c) the Persons who are authorized to execute any documents and bind the Partnership; and (d) any other matter involving the Partnership or any Partner.

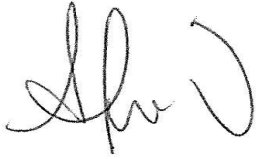
**12.17 Entire Agreement.** The Agreements and representations in this Partnership Agreement contain all of the Agreements and representations of the parties hereto, and it is expressly provided that the General Partners shall not be liable for any claim that may hereafter be made alleging any verbal agreement by and between the Parties hereto and the General Partners, or any General Partner's agents, employees or associates.

**12.18 Headings.** The heading of each of the articles and sections of this Agreement are inserted for convenience only and shall not be considered in construing the terms of this Agreement.

**EXECUTED** in multiple counterparts, by the General Partners and by the Limited Partners on the date indicated opposite their respective signatures below, all effective on the date aforementioned.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW]**  
The undersigned agrees to the terms and conditions of the Agreement of Limited Partnership of Trails of Fossil Creek Properties LP.

**GENERAL PARTNER:**



---

Fossil Creek A2A Developments, LLC

By: Allan Lind

Its: Director

Date: July 15, 2024

The undersigned agrees to the terms and conditions of the Agreement of Limited Partnership of Trails of Fossil Creek Properties LP.

**LIMITED PARTNERS:**



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Foo Tiang Meng Dirk Robert, Trustee of  
the Trails of Fossil Creek Trust

Date: July 15, 2024

**EXHIBIT "A"**

| <b>Name</b>  | <b>Type of Partner</b> | <b>Initial Capital Contribution</b> | <b>% of Partnership Interest</b> |
|--|------------------------|-------------------------------------|----------------------------------|
| Fossil Creek A2A Developments, LLC   | General                | \$0.01                              | 00.01%                           |
| Foo Tiang Meng Dirk Robert, as Trustee of the Trails of Fossil Creek Trust | Limited                | \$99.99                             | 99.99%                           |



## Certificate Of Completion

Envelope Id: CB26C782-AAE8-4320-8766-531DE17806A8

Status: Completed

Subject: Complete with Docusign: Affidavit of Allan Lind - December 30\_24 re LLCs - KM.pdf, Hills of Win...

Source Envelope:

Document Pages: 81

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 0

Emily Ho

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Envelopeld Stamping: Enabled

nil

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North York, ON M2M 4B2

emilyho@mbb.ca

IP Address: 199.7.238.8

## Record Tracking

Status: Original

Holder: Emily Ho

Location: DocuSign

12/31/2024 5:28:58 AM

emilyho@mbb.ca

## Signer Events

Allan Whiteford Lind

allan.lind@serenehomes.com

Security Level: Email, Account Authentication  
(None)

## Signature

Signed by:

  
6414165457A44EA...

Signature Adoption: Pre-selected Style

Using IP Address: 116.89.109.84

## Timestamp

Sent: 12/31/2024 10:13:09 AM

Resent: 12/31/2024 10:29:12 AM

Viewed: 12/31/2024 10:40:25 AM

Signed: 12/31/2024 10:41:13 AM

## Electronic Record and Signature Disclosure:

Accepted: 12/31/2024 10:40:25 AM

ID: 02f2f1d5-3ea0-4b68-a35d-5afdce7d24ea

Sammy Lee

sammylee@mbb.ca

Security Level: Email, Account Authentication  
(None)

DocuSigned by:

  
890497CF8D774C7...

Signature Adoption: Drawn on Device

Using IP Address: 72.136.107.164

Signed using mobile

Sent: 12/31/2024 10:41:15 AM

Viewed: 12/31/2024 10:41:48 AM

Signed: 12/31/2024 10:42:02 AM

## Electronic Record and Signature Disclosure:

Accepted: 12/31/2024 10:41:48 AM

ID: d2da327f-44c3-4d90-938c-c32875782a10

## In Person Signer Events

## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

## Intermediary Delivery Events

## Status

## Timestamp

## Certified Delivery Events

## Status

## Timestamp

## Carbon Copy Events

## Status

## Timestamp

Kelsey Meyer

MEYERK@bennettjones.com

Security Level: Email, Account Authentication  
(None)

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Sent: 12/31/2024 10:42:04 AM

## Electronic Record and Signature Disclosure:

Not Offered via DocuSign

| Carbon Copy Events   | Status           | Timestamp                    |
|--|------------------|------------------------------|
| Edward Choi<br>edwardchoi@mbb.ca<br>Metcalf, Blainey & Burns LLP<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>Accepted: 12/19/2024 11:08:02 AM<br>ID: a3ad07df-9de3-46af-93fe-825e8f69afe0 | COPIED           | Sent: 12/31/2024 10:42:05 AM |
| Jonathan Ku<br>jonathanku@mbb.ca<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>Accepted: 11/20/2024 10:07:03 PM<br>ID: 66b1c6da-0fba-47f2-83f0-f4bece9d0fa6                                 | COPIED           | Sent: 12/31/2024 10:42:06 AM |
| Emily Ho<br>emilyho@mbb.ca<br>Metcalf, Blainey & Burns LLP<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>Accepted: 5/12/2022 9:07:43 PM<br>ID: 6ccbef9e-d9ef-411d-b47a-8286ed9d7ab6         | COPIED           | Sent: 12/31/2024 10:42:07 AM |
| Witness Events   | Signature        | Timestamp                    |
| Notary Events  | Signature        | Timestamp                    |
| Envelope Summary Events  | Status           | Timestamps                   |
| Envelope Sent  | Hashed/Encrypted | 12/31/2024 10:13:09 AM       |
| Envelope Updated   | Security Checked | 12/31/2024 10:28:31 AM       |
| Envelope Updated   | Security Checked | 12/31/2024 10:28:31 AM       |
| Envelope Updated   | Security Checked | 12/31/2024 10:28:32 AM       |
| Certified Delivered  | Security Checked | 12/31/2024 10:41:48 AM       |
| Signing Complete   | Security Checked | 12/31/2024 10:42:02 AM       |
| Completed  | Security Checked | 12/31/2024 10:42:07 AM       |
| Payment Events   | Status           | Timestamps                   |
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