

Clerk's Stamp

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, LCC, A2A DEVELOPMENTS  
INC., SERENE COUNTRY HOMES (CANADA) INC. and  
A2A CAPITAL SERVICES CANADA INC.

DOCUMENT **AFFIDAVIT**

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CONTACT INFORMATION OF  
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**AFFIDAVIT OF ALLAN LIND**  
**Sworn December 13, 2024**

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

1. I am the Director of Hills of Windridge A2A GP Inc., Fossil Creek A2A GP Inc., Fossil Creek A2A Developments Inc., and Serene Country Homes (Canada) Inc., and a manager of Windridge A2A Developments, LLC, 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 supplement my Affidavit sworn in these proceedings on November 21, 2024, and in support of an Application to terminate these proceedings.
3. This Affidavit focuses on the two projects in Texas, namely the Windridge project and the Fossil Creek project, and I anticipate that a further Affidavit from Grayson Ambrose will address the Angus Manor Park project.

**Additional Information Regarding Structure, Agreements, and Title for the Texas Projects**

4. As discussed in my last Affidavit, Alberta investors in the Windridge and Fossil Creek projects were effectively aggregated into a UFI Holder for each project, being Hills of Windridge A2A LP and Fossil Creek A2A Limited Partnership (collectively, the **"Canadian LPs"**).
5. The Canadian investors purchased trust units in Canadian trusts, (the Fossil Creek A2A Trust and Hills of Windridge A2A Trust, collectively, the **"Canadian Trusts"**), which in turn is the limited partner in the Canadian LPs.
6. Attached hereto and marked respectively as **Exhibits "A" and "B"** are copies of the executed limited partnership agreement and the declaration of trust for the Windridge Canadian LP and Windridge Canadian Trust.
7. Attached hereto and marked respectively as **Exhibits "C" and "D"** are copies of the executed limited partnership agreement and the declaration of trust for the Fossil Creek Canadian LP and Fossil Creek Canadian Trust.
8. The Canadian LPs used the funds raised through the public offerings to purchase UFIs in the lands that were initially purchased by American companies, Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC (collectively, the **"Texas LLCs"**). Attached hereto and marked as Exhibits to my Affidavit are the following documents:

**Exhibit "E"** – Sale Agreement, along with all "ancillary" documents, for purchase of UFIs by the Windridge Canadian LP

**Exhibit "F"** – Copy of the original purchase of the lands by Windridge A2A Developments, LLC (note – the company was originally known as White Settlement A2A Developments, LLC but changed its name).

**Exhibit "G"** – Sale Agreement for purchase of UFIs by the Fossil Creek Canadian LP. Note, we have so far been unable to locate the set of sale docs

executed with the Canadian LP, but the key ancillary documents are discussed further below in my Affidavit and would have mirrored the Windridge documents.

**Exhibit "H"** – Copy of closing documents for the original purchase of the lands by Fossil Creek A2A Developments, LLC.

9. With respect to Windridge, I can advise the following:

- a. Total UFI's sold = 4,412
- b. Total UFI Holders = 1,796
- c. UFI's held by Canadian LP = 209

10. With respect to Fossil Creek, I can advise the following:

- a. Total UFI's sold = 2,100
- b. Total UFI Holders = 604
- c. UFI's held by Canadian LP = 295.5

11. As purchasers of undivided fractional interests on title, the UFI Holders became co-owners of the relevant properties<sup>1</sup>. At the time of purchase, each UFI Holder executed identical Restrictive Covenants designed to govern the co-owner's actions for so long as the UFI Holders were on title to the property (the "RC"). For example, the RC outlines the methods for approval of the sale of property, restrictions on sales of the units, the method of development through a facilitator, meetings of co-owners, duties owed to and by the co-owners, calculation of distributions etc. Each RC was recorded in the County records of Tarrant County, Texas. The RC for Windridge can be found at p.27/124 of Exhibit "E".

12. The sale agreements and ancillary documents contemplate that the Co-owners will further transfer their interests to a Trustee to hold the property and develop it on their behalf. Pursuant to the RC, in April 2014, the co-owners voted with over 99% approval to transfer the property to Dirk Foo as Trustee of the Hills of Windridge Trust (Sales Trust). Attached hereto and marked as respectively as **Exhibits "I" and "J"** are copies of the vote tally for various resolutions of the co-owners for the Windridge and Fossil Creek lands.

13. I do not presently have possession of the package of documents that would have been presented at the first AGM which resulted in the resolutions. I have sent a request to the

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<sup>1</sup> Note, each UFI holder would acquire their ownership through individual trusts (Purchase Trust). For example, a fictional UFI holder named Bob Smith acquires his UFI interest as "Bob Smith, Trustee of the Bob Smith Trust." As I understand it, the purpose of this was to ensure a beneficiary could be in place in the event a UFI holder dies or disappears over what could be many years of holding the land. This is dealt with by the "Purchase Trust" document at p.70 of 124 in Exhibit "E".

former marketing manager for Windridge A2A Developments, LLC to provide a copy of the documents.

14. The express purpose of the Sales Trust is "to receive and convey real property on behalf of the Settlers and to distribute the Net Income . . . from the sale of real estate to the Beneficiaries." The Sales Trust gives the Trustee broad powers and protections regarding the ownership, development and/or sale of the property. In addition to broad powers, the Sales Trust requires a majority vote of the Settlers to replace the Trustee and provides the indemnity for the Trustee (including attorneys' fees) from the Trust to the full extent of the Trust assets. The Sales Trust also incorporates the method of calculation of "Net Income" for purposes of distribution to the beneficiaries of the Sales Trust. The Sales Trust document can be found at p.118 of 124 in Exhibit "E".
15. Title to the Windridge Lands, with the exception of the small piece sold to the Tarrant Regional Water District ("**TRWD**") and a few individual parcels (discussed further below in this Affidavit), have remained recorded in the name of Dirk Foo as Trustee of the Hills of Windridge Trust. When the lands are ready to be sold, I understand that a further deed will be recorded showing Hills of Windridge LP as the owner. Reasons for conveying to this LP to close the sale are discussed further below under my discussion of the TRWD and Fossil Creek sales.
16. As noted in my previous Affidavit, the Fossil Creek lands have been sold, and this is also discussed further below in my Affidavit.

**The Global Forest Default Judgment and Lack of Impact on Lands**

17. I confirm my prior evidence that the judgment in the Global Forest case does not negatively impact any of the land involved in the Windridge or Fossil Creek projects.
18. Counsel in Texas has provided copies of the relevant court documents for this matter, all of which have been provided to the Monitor.
19. Dirk Foo, as Trustee of the Hills of Windridge Trust is not subject to the Global Forest default judgment. Although Windridge A2A Developments, LLC was a previous owner of the Windridge lands, it ceased to have any interest when it sold the land to the UFIs.
20. The Trustee of the Sales Trusts acquired 100% of the ownership of the lands from the UFI Holders in 2014—five years before the Global Forrest lawsuit was filed and six years before the judgment was entered. The Trustee of the Sales Trust was the owner of the lands at the time of the Judgment and was not a party to the lawsuit.
21. The Default Judgment initially included "Fossil Creek Trust" as a named party. One of the UFI holders (Mackie) intervened in the case and asked the Court to vacate the

judgment against "Fossil Creek Trust" because the Trustee was not properly served, among other reasons. The Court vacated the judgment against that party. Attached hereto and marked as **Exhibit "K"** is a copy of the Order vacating the judgment.

22. Since selling the Lands to the UFI's, the Texas LLCs have had no ongoing role of any significance in the Texas projects. They have no ownership in the lands and do not control the projects. Their function in the whole structure was effectively concluded once the lands were sold to the UFIs and conveyed to the Trustee.
23. I note that the case was also subsequently dismissed against myself and Dirk Foo. Attached hereto and marked as **Exhibit "L"** is a copy of the Notice of Non-Suit dismissing the claims.

### **Land Title System in Texas**

24. The title system is much different in Texas than it is in Alberta. It is a recording system, not a registration system.
25. As described above, each UFI-Holder was recorded as a co-owner. As such, each UFI Holder was the Grantee and Grantor on deeds. For the UFI Holders to acquire their interest in the lands, they each received a deed from Windridge A2A Developments, LLC. Then, in turn each UFI-Holder executed separate deeds as the Grantor in favor of the Trustee of the Sales Trust.
26. Therefore, there are approximately 1,800 individual deeds to the UFI Holders and approximately 1,800 deeds from the UFI Holders on record in the County records office. When land is sold, anyone investigating title would need to locate each of the individual deeds at the County records office to establish that the Trustee has proper title. There is not one "title", rather there are over 3,500 deeds recorded which must be examined to confirm the Trustee has good title.
27. When a sale occurs, the usual practice is for the purchaser to buy title insurance, and the title insurer will perform a title review. If a title insurance company is concerned about a recorded instrument encumbering the seller's title, it will require it to be dealt with at closing or expressly exclude it from coverage under the policy.
28. To the best of my knowledge, the sales described later in my Affidavit could not have closed if the Global Forest Judgment was encumbering the Trusts' interest in the lands. Simply put, none of the debtors in that action were owners of the land and so the judgment does not encumber their title.



**Nambiar Proceedings**

29. As discussed in my previous Affidavit, there have been previous actions in Texas that were dismissed.
30. One of those was an action by Vijayan Nambiar, whose claim was summarily dismissed and was required to pay costs. A copy of that final judgment was attached to my prior Affidavit as Exhibit "E".
31. Mr. Nambiar was a UFI in Fossil Creek and Windridge who was demanding an accounting from Dirk Foo, as Trustee of the sales trusts. Attached hereto and marked as **Exhibit "M"** is the Motion for Summary Judgment that resulted in the summary dismissal.

**Project Difficulties**

32. I believe that at all times, all parties involved worked in good faith to develop and increase the value of the Fossil Creek and Windridge lands. The paragraphs that follow provide some context as to the development of the lands and some of the challenges that were faced.
33. While Mr. Foo had been involved with many land projects before, the Windridge and Fossil Creek projects were a first in terms of actually conducting the subdivision and development aspects. On previous projects, the land was acquired, re-zoned, and then flipped to builders, who would then do the subdivision themselves.
34. For Fossil Creek and Windridge, the thinking was that more value could be added if the subdivisions were done first and then the lots sold to builders. It was assumed the projects could capture this extra layer of profit that had previously been going to the benefit of the home builders.
35. For the first few years, the Trustee's efforts were focused on subdividing the lands into lots. As demand materialized, lots were sold to developers to build houses on, and distributions were made by the Trustee to UFI holders.
36. Unfortunately, the time and costs associated with the land development were greater than expected. Consistent with the Co-Owner Resolutions, Weir & Associates were hired to assist with filing a plat to subdivide the lands ("platting") into lot sizes approved by the city of Fort Worth. Weir & Associates are a very well-respected firm, but they were expensive and it entailed a lot more work than expected.
37. The platting involved all sorts of surveys, drawings, and submissions to the city of Fort Worth, as well teams of engineers, draftsmen, and designers. There was a lot of back

and forth with the city, and everything seemed to take more time and money than was planned for.

38. In addition, the demand for the land was not at the level hoped for. For example, the Windridge lands are located near the small town of White Settlement. Lockheed Martin has a large facility nearby, and it was thought that this would generate demand in the area. However, demand was still very slow. White Settlement is not within an attractive school district, which is one factor that heavily drives demand in Texas. Fossil Creek is in a bit more of a developed area, but the lands are split over two different school districts, and there are high property taxes in the area.
39. As a result of higher expected costs and lower than expected demand, the concept development funds were eventually exhausted. Despite this, a lot of time and effort (as well as the personal resources of Mr. Foo) has gone into trying to get the properties marketed and sold in an effort to salvage a return for the UFI holders.

**Sale to Tarrant Regional Water District/Individual Parcels**

40. A portion of the Lands were sold to the TRWD. My understanding is that TRWD had sent an expropriation notice, and that the Trustee of the Windridge Trust decided to negotiate a purchase rather than spend time and resources fighting the expropriation action.
41. I note that solely to facilitate the closing of this sale, the lands were transferred to a limited partnership in which Dirk Foo as Trustee of the Hills of Windridge Trust is the sole limited partner. My understanding is that was necessary because the foreign-based trusts that own the lands are not "bankable". There may also have been tax reasons, but I cannot recall for sure.
42. The sale documents and bank account records relevant to this sale are under control of Dirk Foo in his capacity as Trustee of the Hills of Windridge Trust, and this is discussed further below in my Affidavit.
43. I am also advised by Mr. Foo that there were some small individual parcels (5 lots with show homes plus an amenities center) that should be within the Windridge lands that were erroneously deeded to a different limited partnership. Mr. Foo further advises that, at the time these proceedings were filed, he was in the process of working with counsel in Texas to file a "correction deed" for those lots, as they should properly be titled to Dirk Foo as Trustee of the Hills of Windridge Trust. None of these other parcels are in the name of any of the parties named in these proceedings.

**Sale of Fossil Creek Lands**

44. The Fossil Creek property was sold to Bloomfield Homes, L.P. on September 27, 2024 and the net proceeds from the sale are maintained in a bank account for use and distribution to beneficiaries consistent with the powers granted to the Trustee in the Trails of Fossil Creek Trust.
45. Bloomfield Homes is a large homebuilder and completely at arm's length to the Trails of Fossil Creek Trust or any parties to these proceedings. The sale was concluded after the property was marketed by a commercial broker who was also acting at arm's length.
46. I note that solely to facilitate the closing of the land, the lands were transferred to a limited partnership in which Dirk Foo as Trustee of the Trails of Fossil Creek Trust is the sole limited partner. My understanding is that was necessary because the foreign-based trusts that own the lands are not "bankable". There may also have been tax reasons, but I cannot recall for sure.
47. As discussed further below in my Affidavit, the documents relating to the sale of the lands, as well as any relevant banking records, are in the control of Dirk Foo in his capacity as Trustee of the Trails of Fossil Creek Trust.
48. There is one individual lot that that was under contract for sale in a separate transaction to Bloomfield, on which an old Fossil Creek show home had been built. Bloomfield has terminated the sale as a direct result of the Monitor's involvement. Attached hereto and marked as **Exhibit "N"** is an e-mail from Don Dykstra of Bloomfield homes that was forwarded to my counsel by Jeff Tasker, who is long-time legal counsel to various A2A entities.
49. As noted in my previous Affidavit, the Hills of Windridge Trust is in the process of negotiations with a publicly traded company that is one of the largest home builders in Texas to sell the remaining Windridge Lands. Even before the sale in the preceding paragraph was quashed, Dirk Foo, in his capacity as Trustee of the Hills of Windridge Trust, has expressed to me his serious concerns about the impact of these proceedings on those negotiations. I echo Mr. Foo's sentiment, and I firmly believe that the potential buyer will walk away if they get the impression these proceedings impact their negotiations.

**Information to the Monitor**


50. The Monitor has expressed concern that a number of the documents ordered by the Court to be provided to the Monitor have not been provided. Documents that have not been provided to the Monitor include the following:




- a. Sales documents for the sale of a portion of the Windridge lands to TRWD, including the purchase agreement, closing documents, and relevant bank accounts statements.
  - b. Sale documents for the sale of the Fossil Creek lands, including the purchase agreements, closing documents, and relevant bank accounts.
  - c. Investor lists and contacts for the Offshore Investors.
51. With respect to the sales documents and bank accounts, these documents are not within the control of any of the Debtor Companies or Affiliates. I am advised by Dan Jukes and do verily believe that repeated requests were made for these documents to the Trustee via Jeff Tasker.
52. Mr. Foo, in his capacity as Trustee of the Hills of Windridge Trust and Trustee of the Trails of Fossil Creek Trust, has objected to producing the documents and will not release the same.
53. With respect to the investor lists, these are solely in the control of the client services company in Singapore, A2A Capital Management Pte Ltd. ("Client Services"). In response to requests for the information, I was advised that there are harsh penalties (up to \$1 million fine and 3 years in jail) under Singapore's privacy laws for disclosing confidential personal information. Accordingly, Client Services will not release the information, and I was told they will be seeking a legal opinion in Singapore.
54. My counsel has written a letter to the Monitor's counsel outlining the problem of not being able to disclose documents that are within the control of the Trustee, and I do verily believe the contents of the letter to be accurate. Attached hereto and marked as **Exhibit "O"** is a copy of the letter.

I swear this Affidavit in support of a stay of the Initial Order and adjournment of the Monitor's comeback Application pending an Application to set aside or vary the Initial Order.

DECLARED BEFORE ME, by audiovisual }  
communication technology via }  
Zoom on }  
December 13, 2024 }  
With the commissioner being in the City }  
of Markham, Province of Ontario during }  
the video conference with the deponent }  
being in the Republic of Singapore }  
during the video conference }

DocuSigned by:  
  
890497CE8D774C7  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

Signed by:  
  
6414165457A44EA...  
\_\_\_\_\_  
Allan Whiteford Lind

**THIS IS EXHIBIT “A”**

referred to in the Affidavit of Allan Lind  
sworn on December 13, 2024

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Commissioner for Taking Affidavits (or as may be)

**HILLS OF WINDRIDGE A2A LP**

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**LIMITED PARTNERSHIP AGREEMENT**

**February 13, 2013**

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**HILLS OF WINDRIDGE A2A LP**

**LIMITED PARTNERSHIP AGREEMENT**

**THIS LIMITED PARTNERSHIP AGREEMENT** made the 13<sup>th</sup> day of February, 2013.

**BETWEEN:**

**HILLS OF WINDRIDGE A2A GP INC.,**  
a corporation existing under the laws of the Province of Ontario

(hereinafter called the "**General Partner**")

– and –

**HILLS OF WINDRIDGE A2A TRUST,**  
an open-ended investment trust established pursuant to the laws of the Province of Ontario

(hereinafter called the "**Trust**" or the "**Initial Limited Partner**")

– and –

**Each additional Person who becomes, from time to time, a limited partner in the Partnership (as defined below)**

**WHEREAS** the General Partner has formed a limited partnership under the laws of the Province of Ontario by the filing and recording of a declaration (the "**Declaration**") on February 13, 2013 under name "Hills Of Windridge A2A LP" (the "**Partnership**");

**AND WHEREAS** the Partnership was formed for the principal purpose of acquiring up to a 22.67% undivided fractional interest in a 415-acre (more or less), 1,284-home (more or less) residential community development, to be known as "The Hills of Windridge", in Tarrant County within the Dallas/Fort Worth area in Texas, United States of America (the "**Business**");

**AND WHEREAS** the General Partner wishes to facilitate the admission of additional Limited Partners in, and to set forth the ongoing arrangements regarding, the Partnership, and regarding the status and rights of each Limited Partner;

**AND WHEREAS** the parties hereto wish to enter into this Agreement to set out their respective rights and obligations with respect to the Partnership;

**THIS AGREEMENT WITNESSES THAT**, in consideration of the mutual covenants and agreements contained herein, and for good and other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, including the recitals hereto, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have the corresponding meanings:

**"Act"** means the *Limited Partnerships Act* (Ontario), as amended, re-enacted or replaced from time to time;

**"Adverse Claim"** means any security interest, lien, mortgage, charge, pledge, assignment, title retention agreement, hypothec, encumbrance, ownership interest or other right or claim of any Person other than the Partnership;

**"affiliate"** of a person means any person or company that would be deemed to be an affiliated entity of such person within the meaning of National Instrument 45-106 – *Prospectus and Registration Exemptions*;

**"associate"** when used to indicate a relationship with a person or company has the meaning ascribed thereto in the Securities Act (Ontario);

**"Auditors"** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, initially, means Rice & Company LLP;

**"Business"** has the meaning ascribed to it in the recitals to this Agreement, and includes carrying out of the development of the Property;

**"Business Day"** means a day which is not a Saturday, Sunday or a legal holiday in the City of Toronto, in the Province of Ontario;

**"Capital Contribution"** means the capital contributed by a Partner to the Partnership pursuant to Article 4;

**"Cash Flows"** means, for any Distribution Period, an amount equal to the free cash flow for such Distribution Period, less any amount that the General Partner may consider to be necessary to provide for the payment of any costs or expenses, including any tax liabilities, that have been or are reasonably expected to be incurred in the activities and operations of the Partnership (to the extent that such costs or expenses have not otherwise been taken into account in the calculation of the free cash flow) and less such reserves or amounts as are necessary or desirable as determined by the General Partner;

**"Closing"** means a closing of the Offering as described in the Offering Memorandum and **"Closing Date"** means the date on which a Closing occurs;

**"Code"** means the United States *Internal Revenue Code of 1986*;

**"CPOA"** has the meaning ascribed to it in Section 2.13(f);

**"Declaration"** means the declaration of the General Partner forming the Partnership to be filed pursuant to the Act, as the same may be amended, corrected or replaced from time to time;

**"Declaration of Trust"** means the declaration of trust of the Trust dated as of the 13<sup>th</sup> day of February, 2013, pursuant to which the Trust is governed;

**"Departing Partner"** means a former general partner of the Partnership;

**"Distribution Period"** means each calendar year or calendar quarter, as determined by the General Partner from time to time, from and including the first day thereof and to and including the last day thereof; provided that (i) **"Distribution Period"** shall initially mean each calendar year and (ii) the first Distribution Period will begin on (and include) the initial Closing Date and will end on December 31, 2013;

**"Excluded Person"** means (i) a person that is a "non-resident" or a "financial institution" within the meaning of the Tax Act; (ii) a person that is generally exempt from tax under Part I of the Tax Act (including, without limitation, trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and registered education savings plans); (iii) a person, an interest in which is a "tax shelter investment" for the purposes of the Tax Act; (iv) a person which would acquire an interest in the Partnership as a "tax shelter investment" for the purposes of the Tax Act; (v) a partnership that is not a "Canadian partnership" within the meaning of the Tax Act; or (vii) a person who acts as a nominee on behalf of or for the benefit of an Excluded Person.

**"Fiscal Year"** has the meaning ascribed to it in Section 2.7;

**"General Partner"** means Hills of Windridge A2A GP Inc., an Ontario corporation, any of its successors and any successor general partner of the Partnership appointed in accordance with this Agreement;

**"Governmental Authority"** means any:

- (a) multinational, federal, provincial, state, regional, municipal, local or foreign government, governmental or public department, central bank, court, tribunal, arbitral body, arbitrator, commission, board, bureau, agency or instrumentality, domestic or foreign;
- (b) subdivision, agent, commission, board or authority of any of the foregoing;
- (c) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of its members or any of the above and any self-regulatory authority and, for greater certainty, includes the securities commission in each of the provinces and territories of Canada; and
- (d) arbitrator exercising jurisdiction over the affairs of the applicable person, asset, obligation or other matter;

**"Income for Tax Purposes"** means income of the Partnership, determined in accordance with the provisions of the Tax Act and for greater certainty does not include income for U.S. tax purposes

**"Indemnatee"** has the meaning ascribed to it in Section 6.8(a);

**"Insolvency"** means, when used in reference to any person, that such person shall suffer, or there shall have occurred with respect to such person, one or more of the following events:

- (a) such person shall generally not pay its debts as they become due;
- (b) such person shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors;
- (c) a receiver shall be appointed for such person or any substantial part of its property;



- (d) any proceeding shall be instituted by or against such person, seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of such person or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee, custodian or other similar official for such person or any substantial part of its property, where any such proceeding has not been stayed or dismissed within 45 days of a receiver, trustee, custodian or other similar official being appointed for such person or any substantial part of its property; or
- (e) such person, if a corporation, takes any corporate action to authorize any of the actions described in clauses (a) to (e) above;

**"Limited Partners"** means the Initial Limited Partner and any person who is from time to time admitted to the Partnership as a limited partner of the Partnership and **"Limited Partner"** means any of them;

**"Loss for Tax Purposes"** means loss of the Partnership, determined in accordance with the provisions of the Tax Act and for greater certainty does not include losses for U.S. tax purposes;

**"LP Notes"** means the subordinated unsecured promissory notes, if any, to be issued by the Partnership from time to time;

**"LP Units"** means the issued and outstanding limited partner units of the Partnership in the aggregate and **"LP Unit"** means any one of them;

**"New General Partner"** shall have the meaning ascribed to it in Section 2.13(h);

**"Offering"** means the issuance of trust units in connection with the private placement offering of the Trust pursuant to the Offering Memorandum;

**"Offering Memorandum"** means the offering memorandum prepared by the Trust in connection with the Offering, as the same may be amended and/or restated from time to time;

**"Ordinary Resolution"** means:

- (a) a resolution approved by more than 50% of the votes cast in person or by proxy at a duly constituted meeting of Partners (or the relevant class thereof), or at any adjournment of that meeting, who are entitled to vote, called in accordance with this Agreement; or
- (b) a written resolution in one or more counterparts signed by Partners (or the relevant class of Partners) holding in the aggregate more than 50% of the aggregate number of LP Units (or the relevant class thereof) held by those Partners (or the relevant class of Partners) who are entitled to vote on that resolution at a meeting;

**"Partners"** means, collectively, the General Partner and the Limited Partners, and **"Partner"** means any of them;

**"Partnership Units"** means collectively, the general partnership interests and the LP Units;

**"person"** means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;

**"Power of Attorney and Declaration Form"** means a power of attorney and declaration form substantially in the form of Schedule A attached hereto or in any other form or forms as may be approved by the General Partner;

**"Record"** means the current record of the Partners and their respective Capital Contributions required by the Act and this Agreement to be kept current by the General Partner;

**"Requisitioning Partners"** has the meaning ascribed to it in Section 8.1;

**"Securities Laws"** means, collectively, the applicable securities laws of each of the provinces and territories of Canada and the respective regulations and rules made under those securities laws together with all published policy statements, instruments, blanket orders and rulings of Canadian securities commissions and all discretionary orders or rulings, if any, of Canadian securities commissions made in connection with the transactions contemplated by the Offering Memorandum and this Agreement;

**"SIFT Rules"** means the legislation and provisions contained in the Tax Act affecting the tax treatment of publicly traded trusts;

**"Special Resolution"** means:

- (a) a resolution approved by more than 66⅔% of the votes cast in person or by proxy at a duly constituted meeting of Partners (or the relevant class thereof), or at any adjournment of that meeting, who are entitled to vote, called in accordance with this Agreement; or
- (b) a written resolution in one or more counterparts signed by Partners (or the relevant class of Partners) holding in the aggregate more than 66⅔% of the aggregate number of LP Units (or the relevant class thereof) held by those Partners (or the relevant class of Partners) who are entitled to vote on that resolution at a meeting;

**"STA"** shall mean, collectively, the *Securities Transfer Act, 2006* (Ontario) and comparable securities transfer legislation in effect in any other jurisdiction as such legislation may be amended from time to time;

**"Subordination Agreement"** has the meaning ascribed to it in Section 2.14(b);

**"Subscription Form"** means a subscription agreement and power of attorney in a form as approved from time to time by the General Partner, which incorporates language substantially similar to that contained in the Power of Attorney and Declaration Form;

**"Subsidiary"** has the meaning ascribed thereto in National Instrument 45-106 – *Prospectus and Registration Exemptions*;

**"Tax Act"** means the Income Tax Act (Canada) and the regulations thereunder;

**"Termination Date"** has the meaning ascribed to it in Section 10.1;

**"Transfer Form"** means a transfer and power of attorney substantially in the form of Schedule B attached hereto or in any other form or forms as may be approved by the General Partner;

**"Trust Units"** means the units of the Trust; and

**"Unit Certificate"** has the meaning ascribed to it in Section 3.18(a).

## 1.2 Interpretation

In this Agreement, unless otherwise expressly stated or the context otherwise requires:

- (a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Agreement and not to any particular Article or Section of this Agreement;
- (b) references to an "Article" or "Section" are references to an Article or Section of this Agreement;
- (c) words importing the singular shall include the plural and *vice versa*, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (f) references to any person include such person's successors and assigns (to the extent such assigns are permitted by the terms of any applicable agreement);
- (g) unless the context otherwise requires, any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;
- (h) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;
- (i) for greater certainty, where any reference is made in this Agreement to an act to be performed or which may not be performed by the Partnership, such reference shall be construed and applied for all purposes as if it referred to an act to be performed or which may not be performed by the General Partner on behalf of the Partnership or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where reference is made in this Agreement to actions, rights or obligations of the General Partner, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the General Partner in its capacity as general partner of the Partnership, and not in its other capacities;
- (j) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day;
- (k) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in Canada, and any reference herein to generally accepted accounting principles shall mean such principles consistently applied from year to year, to the extent possible;

- (l) time shall be of essence in this Agreement; and
- (m) unless otherwise specified, all references to "\$" or "dollars" are to lawful currency of United States of America.

### 1.3 **Schedules**

The following are the Schedules attached to this Agreement and incorporated by reference and deemed to be an integral part hereof:

- Schedule A — Power of Attorney and Declaration Form
- Schedule B — Transfer and Power of Attorney Form

## **ARTICLE 2 THE PARTNERSHIP**

### 2.1 **Formation of Partnership**

The Partners acknowledge and confirm that the Partnership is a limited partnership formed under the laws of the Province of Ontario as of the 13<sup>th</sup> day of February, 2013. The General Partner shall file, if, as and when required by the Act or this Agreement, any declaration of changes or new declarations, and may file a declaration of change at any time for any proper purpose as the General Partner may determine, and shall take all necessary action on the basis of information available to it in order to maintain the status of the Partnership as a limited partnership.

### 2.2 **Name**

The Partnership shall carry on its business and activities under the name "Hills of Windridge A2A LP" or such other name as the General Partner, acting reasonably, may determine from time to time. The name of the Partnership shall be changed to a name that does not include "A2A" if the name of the General Partner does not also include the name "A2A". The General Partner shall notify the Limited Partners of any change in the name of the Partnership in which case all relevant provisions of this Agreement shall be deemed to be amended to give effect to the new name. The Partnership may be referred to by its French form of name (as determined by the General Partner) where required by law.

### 2.3 **Office of the Partnership**

The principal, registered and head office and centre of administration of the Partnership shall be located at 250 Ferrand Drive, Suite 888 Toronto, Ontario M3C 3G8 or such other office as the General Partner may designate from time to time, provided that the General Partner makes all necessary filings under the Act. The General Partner shall give notice in writing to the Limited Partners of any change in the location of the principal office of the Partnership.

### 2.4 **Purpose of the Partnership**

The purpose of the Partnership shall be to directly acquire, hold, transfer, dispose of or otherwise deal with interests in the Property, and undertake the business, ownership and development of the Property in connection with the Business, and in furtherance thereof, the Partnership shall:

- (a) apply the Cash Flows in accordance with this Agreement; and
- (b) engage in any and all activities reasonably related to the investment of its funds and which the General Partner deems necessary or desirable from time to time.



The General Partner possesses and may exercise, for and on behalf of the Partnership, all the powers and privileges granted under the Act or by any other law or under this Agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the Business.

**2.5 Business in other Jurisdictions**

- (a) The General Partner will not carry on any business for and on behalf of the Partnership in any jurisdiction unless the General Partner has taken all steps that may be required by the laws of that jurisdiction for the Limited Partners to benefit from limited liability to the same extent that Limited Partners enjoy limited liability under the Act. The General Partner will not carry on business for and on behalf of the Partnership in any jurisdiction in which the laws do not recognize the liability of the Limited Partners to be limited unless, in the opinion of the General Partner, the risks associated with the possible absence of limited liability in that jurisdiction are not significant considering the relevant circumstances.
- (b) The General Partner will carry on business for and on behalf of the Partnership in a manner so as to ensure to the greatest extent possible the limited liability of the Limited Partners (other than any Limited Partner that is also the General Partner), and the General Partner will register the Partnership in other jurisdictions where the General Partner considers it appropriate to do so.

**2.6 Duration of Partnership**

The Partnership commenced upon the filing of the Declaration and shall continue until it is dissolved and liquidated in accordance with this Agreement and the Act.

**2.7 Fiscal Year**

In accordance with the provisions of the Tax Act, the current fiscal period of the Partnership will end on December 31, 2013. Thereafter, each fiscal period commences January 1 in each year and ends on the earlier of December 31 in that year or on the date of dissolution or other termination of the Partnership or such other date that the General Partner may determine from time to time, provided that the General Partner has obtained any necessary consents from taxation authorities. Each fiscal period is referred to in this Agreement as a "Fiscal Year".

**2.8 Title to Partnership Assets**

Title to the assets of the Partnership, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entirety, and no Partner individually shall have any ownership interest in the assets of the Partnership or any portion thereof. Title to any or all of the Partnership's assets shall be held in the name of the General Partner for the benefit of the Partnership or in such other names as the General Partner may determine from time to time. The General Partner declares and warrants that any assets of the Partnership of which legal title is held in the name of the General Partner shall be held by the General Partner as agent of the Partnership for the use and benefit of the Partnership in accordance with the provisions of this Agreement. All of the assets of the Partnership shall be recorded as the property of the Partnership on its books and records, irrespective of the name in which legal title to such assets is held.

**2.9 Representations, Warranties and Covenants of General Partner**

The General Partner represents, warrants and covenants to each Limited Partner as follows:

- (a) The General Partner is, and will continue to be for so long as it remains the general partner of the Partnership, incorporated, organized and validly subsisting under the laws of the Province of Ontario and validly registered to carry on business under the laws of the Province of Ontario and

any other Province where the Partnership may be required to be registered in carrying on its business.

- (b) The General Partner has and will continue to have the capacity and corporate authority to act as the general partner of the Partnership and to perform its obligations under this Agreement, and such obligations (i) do not and will not conflict with, nor do they or will they result in a breach of any of the constating documents or by-laws of the General Partner or resolutions of its directors or its shareholders or any agreement by which the General Partner is bound, and (ii) do not and will not require the approval or consent of, or any notice to or filing with, any Governmental Authority.
- (c) The General Partner has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid and binding obligation of the General Partner, enforceable against it in accordance with the terms of this Agreement.
- (d) The General Partner holds and shall maintain the registrations and filings (and any amendments thereto and renewals thereof) necessary for the conduct of its business and activities and that of the Partnership and has and shall continue to have all licences and permits necessary to carry on its business and activities as the General Partner of the Partnership in all jurisdictions where the activities of the Partnership require such licensing or other form of registration of or by the General Partner.
- (e) The General Partner has and will continue to have the authority to manage the business and activities of the Partnership, to make all decisions regarding the business and affairs of the Partnership and to bind the Partnership in respect of any such decision, including the ability to engage agents to assist the General Partner to carry out its management obligations and administrative functions in respect of the Partnership.
- (f) No authorization, consent or approval of, or filing with or notice to, any person is required in connection with the execution, delivery or performance of this Agreement by the General Partner.
- (g) There are no actions, suits or proceedings pending or, to the knowledge of the General Partner, threatened, against or affecting the General Partner or any of its assets or undertakings at law or in equity or before any arbitrator or any Governmental Authority having jurisdiction which, if determined adversely, could affect adversely the General Partner or the Partnership, and the General Partner is not in default with respect to any law, regulation, order, writ, judgment, injunction or award of any competent Governmental Authority which would have such an effect.
- (h) The General Partner is not an Excluded Person and shall ensure that its status as described in this Section 2.9(h) shall not be modified.
- (i) The General Partner shall act with utmost fairness and good faith toward the Partnership and the Limited Partners in respect of the exercise of the powers of the General Partner in pursuance of the purpose and operations of the Partnership.
- (j) The General Partner will, in the conduct of the business and affairs of the Partnership, act in the best interests of the Partnership and, in particular, will diligently enforce the rights of the Partnership pursuant to the terms and provisions of any instrument or document on behalf of and in the name of the Partnership from time to time as may be reasonably determined by the General Partner to be in the best interests of the Partnership.

- (k) The General Partner will do all things and take all actions as may be necessary to ensure and protect, to the extent reasonably possible, the limited liability of the Limited Partners.
- (l) The General Partner will do all things and take all actions as may be necessary to ensure the board of directors of the General Partner consists of at least one director appointed by the Trust.

#### **2.10 Representations, Warranties and Covenants of Limited Partners**

Each Limited Partner severally represents warrants and covenants to the General Partner and each of the other Limited Partners as follows:

- (a) Such Limited Partner is incorporated or formed and validly subsisting under the laws of its jurisdiction of incorporation or formation.
- (b) Such Limited Partner has and will continue to have the capacity and authority to act as a limited partner under this Agreement and to perform its obligations hereunder, and such obligations: (i) do not and will not conflict with, nor do they or will they result in a breach of any of, the constating documents or by-laws of the Limited Partner or resolutions of its trustees, directors or shareholders (or its sole shareholder, as the case may be) or any agreement by which it is bound and, in the case of any Limited Partner that is itself a limited partnership, any resolutions of the directors or shareholders (or its sole shareholder, as the case may be) of its general partner or any agreement by which its general partner is bound or its respective limited partnership agreement; and (ii) do not and will not require the approval or consent of, or any notice to or filing with, any Governmental Authority, other than those which have been obtained.
- (c) Such Limited Partner has taken all necessary corporate, partnership or other action to authorize the execution, delivery and performance of this Agreement and this Agreement constitutes a valid and binding obligation of the Limited Partner, enforceable against it in accordance with the terms of this Agreement.
- (d) No authorization, consent or approval of, or filing with or notice to, any person is required in connection with the execution, delivery or performance of this Agreement by such Limited Partner, other than those which have been obtained.
- (e) Such Limited Partner is not an Excluded Person and such Limited Partner will not otherwise change its status as represented herein or transfer or purport to transfer any of its LP Units to any Person that is an Excluded Person.

#### **2.11 Survival of Representations and Warranties**

Each of the parties agrees that the representations and warranties made by it in Section 2.9 or 2.10, as applicable, are true and correct on the date hereof and that they shall survive the execution of this Agreement, notwithstanding such execution or any investigations made by or on behalf of any of the other Partners and each Partner covenants and agrees to ensure that each representation and warranty it has made remains true and correct so long as such party remains a Partner.

#### **2.12 Limitation on Authority of Limited Partners**

No Limited Partner (other than any Limited Partner that is also the General Partner) shall in his capacity as a Limited Partner:

- (a) take part in the administration, management, control or operations of the Business or exercise any power in connection therewith;

- (b) transact any matters on behalf of the Partnership or make any commitment on behalf of or otherwise obligate or bind the Partnership;
- (c) other than by voting on a resolution of the Partners (where the Partner is entitled to vote), execute any document which binds or purports to bind any other Partner or the Partnership;
- (d) hold itself out as having the power or authority to bind any other Partner or the Partnership or deal with any Person on behalf of the Partnership and, if contacted by any Person in respect of the Partnership, shall inform such Person that it does not take an active part in the activities of the Partnership nor acts or makes decisions on behalf of the Partnership and then refer such Person to the General Partner undertake any obligation or responsibility on behalf of the Partnership;
- (e) have any authority or power to act for, or undertake any obligation or responsibility on behalf of, any other Partner or the Partnership;
- (f) bring any action for partition or sale or otherwise in connection with the Partnership or any interest in any assets of the Partnership, whether real, personal or mixed or whether tangible or intangible, or file or register, or permit to be filed, registered or remain undischarged, any Adverse Claim in respect of any assets of the Partnership;
- (g) bring any action for the dissolution of the Partnership, except as provided under the Act;
- (h) compel or seek a partition, judicial or otherwise, of any of the assets of the Partnership distributed or to be distributed to the Partners in kind in accordance with this Agreement; or
- (i) take any action that will jeopardize or eliminate the status of the Partnership as a limited partnership or a "Canadian partnership" for the purposes of the Tax Act, or result in the Trust being subject to SIFT Rules.

For greater certainty, the General Partner has the exclusive power, right, obligation and authority to administer and bind the Partnership, and the General Partner shall not be subject to the restrictions that apply to Limited Partners (except as provided herein). Each Limited Partner shall comply with the Act and shall not take any action that may jeopardize or eliminate the Partnership's status as a limited partnership.

#### 2.13 **Power of Attorney**

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner, with full power of substitution, as that Limited Partner's agent and true and lawful attorney-in-fact for the Limited Partner and on the Limited Partner's behalf with full power and authority in the Limited Partner's name, place and stead to execute, deliver, swear to, make and record or file as and where required in the opinion of the General Partner (and hereby ratifies and confirms such execution, delivery, swearing, making, recording and filing):
  - (i) this Agreement, the Record, the Declaration, any amendment to this Agreement and any other instruments or documents required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property in order to maintain the limited liability of the Limited Partners and to comply with the applicable laws of that jurisdiction (including any amendments to the Declaration or the Record as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of LP Units as contemplated by this

Agreement, and any changes from time to time in the Capital Contributions made by the Partners);

- (ii) all instruments and documents, including any amendments, corrections or replacements of or to the Declaration or the Record, necessary to reflect any amendments to this Agreement;
  - (iii) any instrument or document required in connection with the winding-up, dissolution and termination of the Partnership in accordance with the provisions of this Agreement, including any elections under the Tax Act and under any similar legislation;
  - (iv) any documents necessary to be filed with the appropriate Governmental Authority in connection with the Business, property, assets and undertaking of the Partnership;
  - (v) any instruments or documents as may be necessary to give effect to the Business;
  - (vi) subject to Section 3.11, the instruments and documents on the Limited Partner's behalf and in the Limited Partner's name as may be necessary to give effect to the admission of a subscriber for, or transferee of, LP Units subject to the terms and restrictions of this Agreement;
  - (vii) any election, determination, designation, information return, objection, notice of objection or similar document or instrument, whether jointly with third parties or otherwise, as may be required or desirable in the opinion of the General Partner at any time under the Code, the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province, territory or jurisdiction which relates to the business or affairs of the Partnership, the interest of any person in the Partnership or any other matter the General Partner determines to be in the interest of the Partnership; and
  - (viii) all other instruments and documents on the Limited Partner's behalf and in the Limited Partner's name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully this Agreement in accordance with its terms.
- (b) To evidence the foregoing, each Subscription Form and Transfer Form will contain a power of attorney incorporating by reference, ratifying and confirming some or all of the powers described above.
- (c) Each of the powers of attorney granted in this Agreement is a special power of attorney, coupled with an interest and is irrevocable during the existence of the Partnership and in connection with the dissolution or winding up thereof, and will survive the insolvency, dissolution, winding up, bankruptcy, death or disability of a Limited Partner and will survive the transfer or assignment by the Limited Partner, to the extent of the obligations of a Limited Partner under this Agreement, of the whole or any part of the interest of the Limited Partner in the Partnership, extends to the heirs, executors, administrators, other legal representatives and successors, transferees and assigns of the Limited Partner, and may be exercised by the General Partner on behalf of each Limited Partner in executing any instrument by a facsimile signature or by listing all the Limited Partners and executing that instrument with a single signature as attorney and agent for all of them.
- (d) Each Limited Partner agrees to be bound by any representations or actions made or taken in good faith by the General Partner pursuant to this power of attorney and hereby waives any and

all defences that may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under this power of attorney.

- (e) In accordance with the *Power of Attorney Act* (Ontario), the *Substitute Decisions Act, 1992* (Ontario) and any similar legislation governing a power of attorney in each jurisdiction in which the Partnership carries on business, each Limited Partner declares that these powers of attorney may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on the Limited Partner's part.
- (f) The power of attorney granted herein is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Limited Partner's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of the power of attorney will not terminate any CPOA granted by the Limited Partner previously and will not be terminated by the execution by the Limited Partner in the future of a CPOA, and the Limited Partner hereby agrees not to take any action in future which results in the termination of the power of attorney.
- (g) The General Partner may require, in connection with the subscription for, or any transfer of, LP Units, that the Subscription Form or Transfer Form, if any, be accompanied by the explanatory notes set out in the applicable power of attorney legislation in certain jurisdictions and a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.
- (h) This power of attorney will continue in respect of the General Partner so long as it is the general partner of the Partnership, and will terminate thereafter, but will continue in respect of the General Partner and, if applicable, a new General Partner (a "**New General Partner**") as if the New General Partner were an original attorney.
- (i) A purchaser or transferee of an LP Unit will, upon becoming a Limited Partner, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement as a Limited Partner and will be conclusively deemed to have provided the General Partner with the power of attorney described in this Section 2.13.

#### 2.14 Limited Liability

- (a) Subject to the Act, Section 2.14(b) and any specific assumption by such Limited Partner, each Limited Partner's liability for the debts, liabilities and obligations of the Partnership is limited to such Limited Partner's Capital Contribution plus such Limited Partner's *pro rata* share of the undistributed income of the Partnership. Following payment of a Limited Partner's Capital Contribution, the Limited Partner will not be liable for any further claims or assessments or be required to make further contributions to the Partnership, except that, where a Limited Partner has received the return of all or part of that Limited Partner's Capital Contribution, the Limited Partner is nevertheless liable to the Partnership or, where the Partnership is dissolved, to its creditors, for any amount, not in excess of the amount returned with interest, necessary to discharge the liabilities of the Partnership to all creditors who extended credit or whose claims otherwise arose before the return of the Capital Contribution.
- (b) If any asset of the Partnership should be distributed or declared to be distributable to Partners contrary to the provisions of any subordination agreement (each a "**Subordination Agreement**") between the Partnership and the persons entitled to enforce any of the indebtedness of the Partnership or the General Partner or their subsidiaries, then the persons entitled to enforce such Subordination Agreements or provisions shall be entitled to pursue whatever remedies may be available to them to enforce such Subordination Agreements or provisions and the limitations in

Section 2.14(a) shall not apply to any judgment in respect of (and to the extent only based on) such contrary distribution and no Partner shall have the right to enforce any distribution contrary to such Subordination Agreements or provisions.

**2.15 Indemnity of Limited Partners**

The General Partner will operate the Partnership to ensure to the greatest extent possible the limited liability of the Limited Partners and will indemnify and hold harmless each Limited Partner (including former Limited Partners) for all costs, expenses, damages or liabilities suffered or incurred by the Limited Partner if the limited liability of that Limited Partner is lost or diminished, but only if that Limited Partner's limited liability is lost or diminished directly as a result of the gross negligence, wilful misconduct or fraud of the General Partner in performing its duties and obligations under this Agreement.

**2.16 Compliance with Laws**

At the request of the General Partner, each Limited Partner shall execute immediately any documents or instruments considered by the General Partner to be necessary to comply with the terms of this Agreement or with any applicable law or regulation or for the continuation, operation or good standing of the Partnership or in connection with the qualification of the Partnership to carry on its activities or own its assets and undertaking.

**2.17 General Partner as a Limited Partner**

A general partner of the Partnership may subscribe for and acquire LP Units or purchase LP Units by private contract or in any market on which the LP Units are sold and will be shown on the Record as a Limited Partner in respect of the number of LP Units held by such general partner from time to time. If the General Partner holds any LP Units, it will be deemed in its capacity as the holder of those LP Units to be a Limited Partner with the same rights and powers and subject to the same restrictions as each other Limited Partner

**2.18 Authority of General Partner to Make Tax Elections**

The General Partner shall be responsible for all tax matters (including objecting to, contesting and/or settling tax disputes relating to the Partnership) and tax elections of the Partnership under the Tax Act or any other taxation legislation and, without limiting the foregoing, the General Partner will be entitled, and is hereby specifically authorized by all Limited Partners, to make or execute any election, determination, designation, returns, objection, notice of objection or other similar documents or instruments under the Tax Act and applicable provincial or foreign taxation legislation that relate to a Fiscal Year that the General Partner determines to be in the interest of the Partnership on behalf of all persons who are Limited Partners or who are the beneficial owners of LP Units during the Fiscal Year and will have the authority to act for the Partnership in connection therewith

**2.19 Limitations on Liability of the Trust**

Each of the parties hereto acknowledges that the obligations of the Trust under this Agreement will not be personally binding upon any of the trustees of the Trust, any registered or beneficial holder of Trust Units or any beneficiary under a plan of which a holder of such units acts as a trustee or carrier, and that resort will not be had to, nor will recourse be sought from, by lawsuit or otherwise, any of the foregoing or the private property of any of the foregoing in respect of any indebtedness, obligation or liability of the Trust arising hereunder, and recourse for such indebtedness, obligations or liabilities of the Trust, as the case may be, will be limited to, and satisfied only out of, the assets of the Trust. Any obligation of the Trust set out in this Agreement will, to the extent necessary to give effect to such obligation, be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the trustees of the Trust in their capacity as trustees of the Trust only.

**ARTICLE 3  
UNITS OF THE PARTNERSHIP**

**3.1     Units**

- (a)     The Partnership is authorized to issue various classes of partnership interests, including an unlimited number of LP Units and an unlimited number of general partnership interests as described herein. A partnership interest is personal property. A Partner has no interest in specific Partnership property by way of his, her or its Partnership Unit interests.
- (b)     Except as otherwise provided in this Agreement, no LP Unit shall have any preference or right in any circumstances over any other LP Unit. The holders of the LP Units shall have the right to one vote for each LP Unit held in respect of all matters to be decided by the Limited Partners. The LP Units represent the right to participate in the distributions of the Partnership as provided for herein.
- (c)     The General Partner, in its capacity as a general partner of the Partnership, shall hold a 0.01% undivided interest in the Partnership. The General Partner shall have the right to receive distributions in respect of its interest only as expressly provided for in this Agreement

**3.2     Issuance of Additional LP Units**

Except as otherwise set forth herein, the General Partner may, in its discretion, cause the Partnership to issue LP Units on any terms and conditions of offering and sale of LP Units as the General Partner, in its discretion, may determine, from time to time hereafter, including accepting payment of consideration therefor in the form of cash, promissory notes, property and/or past services, and may do all things in that regard, including preparing and filing offering memoranda and other documents, and paying the expenses of issue and entering into agreements with any person providing for a commission or fee.

**3.3     Subscription for LP Units**

- (a)     In connection with any issuance of LP Units, each subscribing Person will complete and execute a Subscription Form setting out, among other things, the total subscription price for the LP Units subscribed for, which subscription price will be that person's agreed upon Capital Contribution; provided, however, that a Subscription Form of the Initial Limited Partner is not required to incorporate language substantially similar to that contained in the Power of Attorney and Declaration Form.
- (b)     No subscription may be made by or will be accepted from a person that is an Excluded Person. Should any LP Units be issued to a person (whether legally, beneficially, as agent or nominee) that is determined to be an Excluded Person at the time of issuance then such issuance of LP Units shall be cancelled and be void *ab initio* and such person shall be deemed to have initially subscribed for the equivalent number of Trust Units. Such cancelled LP Units will not be entitled to receive any Cash Flows and the holder of such LP Units shall be deemed to have (i) refunded to the Partnership any Cash Flows that were paid in respect of such LP Units, and (ii) received all distributions of cash that were made by the Trust in respect of the Trust Units deemed to have been so initially subscribed for since the date of such subscription.
- (c)     Notwithstanding any other provision of this Agreement, no Subscription Form shall be required for the issuance of LP Units to the Trust in connection with the Closings, provided that the Trust completes and executes a Power of Attorney and Declaration Form.



### 3.4 **Admittance as Limited Partner**

Upon receipt and acceptance by the General Partner of any duly completed Subscription Form, all Partners will be deemed to consent to the admission of the subscriber as a Limited Partner, and the General Partner will execute this Agreement on behalf of the subscriber and will cause the Record to be amended, and any other documents as may be required by the Act or under legislation similar to the Act in other provinces or the territories to be filed or amended, specifying the prescribed information and will cause the foregoing information in respect of the new Limited Partner to be included in other Partnership books and records.

### 3.5 **Withdrawal as a Limited Partner**

A Limited Partner may only withdraw from the Partnership by transferring his, her or its LP Units in accordance with the provisions of this Agreement or by the Partnership entering into an agreement with the Limited Partner for the re-purchase of his, her or its LP Units.

### 3.6 **Effective Date**

The rights and obligations of a subscriber as a Limited Partner under this Agreement commence and are enforceable by and upon the Limited Partner as between the Limited Partner and the other Partners from the date upon which:

- (a) the Subscription Form has been accepted by the General Partner, if applicable;
- (b) the General Partner has authorized the issuance of LP Units as subscribed;
- (c) the General Partner is in receipt of the consideration for the LP Units; and
- (d) the Limited Partner agrees in writing to be bound by this Agreement.

Subsequently, the General Partner will ensure the Record is amended to reflect the Limited Partner's subscription, and will arrange for the proper filings to be made, as required under the Act, adding that Limited Partner as a Limited Partner of the Partnership.

### 3.7 **Record of Limited Partners**

The General Partner will maintain at the principal office of the Partnership a current Record for each class of LP Units stating, for each Limited Partner in such class, information including the Limited Partner's name, address, corporation number, if any, the amount of money and/or the value of other property contributed or to be contributed by the Limited Partner to the Partnership and the number of LP Units of such class held by each Limited Partner.

### 3.8 **Changes in Membership of Partnership**

No change of name or address of a Limited Partner and no transfer of an LP Unit and no admission of a Limited Partner in the Partnership will be effective for the purposes of this Agreement until all reasonable requirements as determined by the General Partner with respect to that change, transfer or admission have been met, including the requirements set out in this Article 3. The names and Capital Contributions of the Limited Partners as reflected from time to time in the Record, and all addresses of the Partners as reflected from time to time in the records of the Partnership maintained by the General Partner in accordance with Section 3.7, as from time to time amended, will be conclusive as to those facts for all purposes of the Partnership.

### 3.9 **Notice of Change to General Partner**

No name or address of a Limited Partner will be changed and no transfer of an LP Unit or substitution or addition of a Limited Partner in the Partnership will be recorded on the records of the Partnership except pursuant to a notice in writing received by the General Partner.

### 3.10 **Inspection of Record**

The General Partner shall permit any Limited Partner or his agent duly authorized in writing to:

- (a) inspect and take extracts from the Record during normal business hours, and
- (b) upon payment of a reasonable fee, to obtain a copy of the information set forth in the Record within a reasonable period of time after the date of filing of his written request therefor;

provided that such person agrees, in writing, that the information contained in the Record will be kept confidential and will not be used by such Person except in connection with any matter relating to the affairs of the Partnership.

### 3.11 **Transfer and Encumbering of LP Units**

- (a) A Limited Partner may not sell, assign or otherwise transfer or exchange any LP Unit except in accordance with this Section 3.11 or Section 3.12 herein and all other provisions of this Agreement, unless the General Partner otherwise agrees.
- (b) At any time and from time to time, any Limited Partner may, upon prior written notice to the General Partner, grant an Adverse Claim on any or all of the LP Units held by it, directly or indirectly, to any third party as security for any *bona fide* financing of the Limited Partner or as security for any guarantee granted by such Limited Partner in respect of the obligations of its affiliates to such third party for any *bona fide* financing.

### 3.12 **Transfer Procedures**

- (a) Subject to the provisions of this Section 3.12 and Sections 3.8, 3.9, 3.11, 3.13, 3.16, 3.17, 3.19, and 8.5, and compliance with applicable Securities Laws, LP Units may not be transferred: (i) without the payment by the transferee of an administration fee to the Partnership, if any, of up to \$100; (ii) in part; and (iii) without the consent of the General Partner. No transfer of an LP Unit will be accepted by the General Partner unless a Transfer Form, duly completed and signed by the registered holder of the LP Units and the transferee, and such other instruments and documents as the General Partner may require, in appropriate form, is duly completed and executed in a manner acceptable to the General Partner and any Unit Certificate held by such registered holder representing the LP Units being transferred have been remitted to the General Partner.
- (b) The General Partner has the right to deny the transfer of LP Units in respect of which there has been default in payment of the subscription price until all amounts required to be paid on account of the subscription price, including any interest on the subscription price, have been paid in full and no transferee will become a Limited Partner until: (i) the Transfer Form has been accepted by the General Partner; (ii) the General Partner has authorized the transfer of LP Units; and (iii) the transferee agrees in writing to be bound by this Agreement.
- (c) Where the transferee complies with all applicable provisions and is entitled to become a Limited Partner pursuant to the provisions of this Agreement, subject to Section 3.8, the General Partner is authorized to admit the transferee to the Partnership as a Limited Partner and the Limited

Partners hereby consent to the admission of, and will admit, the transferee to the Partnership as a Limited Partner, without further act of the Limited Partners (other than as may be required by law). A transferee who becomes a Limited Partner will be subject to the obligations and be entitled to the rights of a Limited Partner under this Agreement on the date on which the transfer is duly reflected in an amendment to the Record. Subsequent thereto, the General Partner shall ensure that all proper filings have been made, as may be required by the Act, to reflect the transfer. The General Partner will not accept a transfer of LP Units more than 15 days after the sending of a declaration of dissolution under the Act.

- (d) The General Partner will not accept a transfer of LP Units if the transferee is an Excluded Person.

### 3.13 **Form of Transfer**

If required by the General Partner, the Transfer Form will be signed by the transferor and by the transferee and will be accompanied by the LP Unit certificate(s), if any, issued by the Partnership representing the LP Units to be transferred.

### 3.14 **Amendment of Declaration or Record**

The General Partner, on behalf of the Partnership, will from time to time promptly effect filings, recordings, registrations and amendments to the Record and the Declaration and to any other documents and at any places as in the opinion of counsel to the Partnership are necessary or advisable to reflect changes in the membership of the Partnership, transfers or exchanges of LP Units and dissolution of the Partnership as provided in this Agreement and to constitute a transferee as a Limited Partner.

### 3.15 **Non-Recognition of Trusts or Beneficial Interests**

LP Units may be held by nominees on behalf of the beneficial owners of the LP Units (subject to the other terms, conditions and restrictions of this Agreement). Notwithstanding the foregoing, except as provided in this Agreement, as required by law or as recognized by the General Partner in its sole discretion, no person will be recognized by the Partnership or any Limited Partner as holding any LP Unit in trust, or on behalf of another person with the beneficial interest in that other person, and the Partnership and Limited Partners will not be bound or compelled in any way to recognize (even when having actual notice) any equitable, contingent, future or partial interest in any LP Unit or in any fractional part of an LP Unit or any other rights in respect of any LP Unit except an absolute right to the entirety of the LP Unit of the Limited Partner shown on the Record as holder of that LP Unit.

### 3.16 **Insolvency or Bankruptcy**

- (a) Where a Person becomes entitled to LP Units on the insolvency or bankruptcy of a Limited Partner, or otherwise by operation of law, in addition to the requirements of Sections 3.8, 3.9, 3.11, 3.12 and 3.13, that entitlement will not be recognized or entered into the Record until that Person:
  - (i) has produced evidence satisfactory to the General Partner of that person's entitlement;
  - (ii) has agreed in writing to be bound by the terms of this Agreement and to assume the obligations of a Limited Partner under this Agreement and appoints the General Partner as such Person's agent and lawful attorney upon the terms contained herein; and
  - (iii) has delivered such other evidence, approvals and consents in respect of such entitlement as the General Partner may require and as may be required by applicable law and this Agreement.

**3.17 No Transfer upon Dissolution**

Subject to Section 3.12, no transfer of LP Units may be made or will be accepted or entered into the Record after the occurrence of any of the events set out in Section 10.1.

**3.18 LP Unit Certificates**

- (a) The General Partner will issue to each Limited Partner, upon request, an LP Unit certificate ("Unit Certificate") indicating that the holder of the Unit Certificate is the owner of the number and type of LP Units set out on the Unit Certificate.
- (b) Every Unit Certificate must be signed by at least one officer of the General Partner.
- (c) If any Unit Certificate is lost, mutilated, stolen or destroyed, the General Partner will, upon request by a Limited Partner, issue a replacement Unit Certificate to the Limited Partner upon receipt of evidence satisfactory to the General Partner of that loss, mutilation or destruction, and upon receiving such indemnification (including an indemnity bond provided at the expense of the Limited Partner) as it deems appropriate in the circumstances.
- (d) The General Partner, upon request by the transferee, will issue a new Unit Certificate for any LP Units transferred. In the case of a transfer of less than all of the Units represented by a Unit Certificate, the General Partner, upon request by the transferor, will issue a new Unit Certificate for the balance of the LP Units retained by the transferor.

**3.19 Transferee Bound**

As of and from the time referred to in Section 3.12(c), the transferee automatically shall become bound by, and be subject to all of the rights and obligations of a Limited Partner under, this Agreement without execution of further instrument. Without limiting the generality of the foregoing, as of and from the time referred to in Section 3.12(c), the transferee shall be deemed to make all of the representations and warranties and covenants of a Limited Partner contained in Section 2.10 and to grant the power of attorney contained in Section 2.13.

**3.20 Transfer to a Resident of Canada or a Canadian Partnership**

If at any time, any Partner is or becomes a "non-resident" of Canada or a partnership that is not a "Canadian partnership" for the purposes of the Tax Act, such Partner covenants, agrees and undertakes that it will immediately notify the General Partner that it is a "non-resident" of Canada or a partnership that is not a "Canadian partnership" for the purposes of the Tax Act. Upon the General Partner becoming aware of, or determining that, a Partner has become a "non-resident" of Canada (or ceased to be a "Canadian partnership") since becoming a Partner, or if the Partner fails to provide evidence satisfactory to the General Partner with respect to the residency or partnership status of the Partner, the General Partner will require the Partner to dispose of all its LP Units to a Person who does not contravene the foregoing restrictions, failing which the General Partner, subject to compliance with applicable Securities Laws, will be entitled, without any notice to the Partner, to sell the LP Units or to acquire the LP Units on behalf of the Partnership. In addition, in the event that the General Partner determines that a Partner has become a holder of LP Units in contravention of the foregoing restrictions, the holder of the subject LP Units shall be deemed to have ceased to be a Partner with effect immediately before the date of contravention and shall not be entitled to any distributions of Cash Flows from such time and such LP Units shall be deemed conclusively not to be outstanding until acquired by a new Partner who does not contravene the foregoing restrictions; provided, however, that holders of other LP Units shall not be entitled to any portion of the Cash Flows paid in respect of LP Units that have been so deemed not to be outstanding. In the event of the sale or acquisition of a Partner's LP Units by the General Partner pursuant to this section, such Partner shall have the right only to receive the net proceeds therefrom.

## **ARTICLE 4**

### **CAPITAL CONTRIBUTIONS AND ACCOUNTS**

#### **4.1     Capital**

The capital of the Partnership consists of the aggregate of all sums of money or other property contributed by the Partners as Capital Contributions and not returned to them.

#### **4.2     Limited Partner Contributions**

The Initial Limited Partner has contributed \$10.00 to the capital of the Partnership in full satisfaction of its initial Capital Contribution and has received ten (10) LP Units in exchange therefor. The Capital Contribution of each Limited Partner will be set out in the Record and the Declaration will be amended to reflect such transactions.

Immediately after the initial Closing, the Partnership will re-purchase ten (10) LP Units from the Initial Limited Partner, and the Initial Limited Partner will sell such LP Units to the Partners, for a purchase price of \$10.00 and, upon the completion of such purchase and sale, such LP Units shall be cancelled and shall no longer be outstanding for any purpose of this Agreement.

#### **4.3     General Partner Contribution**

The General Partner has contributed \$0.01 to the capital of the Partnership in full satisfaction of its initial Capital Contribution.

#### **4.4     Accounts**

The Partnership shall maintain on its books of account a separate capital account for each of the Partners. The General Partner (i) shall credit the capital account of each Partner with the amount of Capital Contribution made by such Partner to the Partnership (including, for greater certainty, in the case of a Limited Partner, the amount received in respect of the Capital Contribution of such Limited Partner) and (ii) shall debit the capital account of each Partner with the amount of Capital Contribution returned to such Partner by the Partnership. The Partnership shall establish current accounts on its books for the General Partner and each of the Limited Partners to which net income and all amounts, other than capital to which the Partners are entitled, will be credited and to which net loss and all distributions, other than distributions on account of capital, will be charged, all in accordance with generally accepted accounting principles. No Partner has the right to receive interest on any credit balance in any accounts maintained on the books of the Partnership, and no Partner is liable to pay interest to the Partnership on any deficit in any accounts maintained on the books of the Partnership. The interest of a Partner shall not terminate by reason of a negative or zero balance in any accounts maintained on the books of the Partnership. The Partners shall not be obligated to make any further contribution to the capital of the Partnership but may do so in their sole discretion and with the approval of the General Partner. The Capital Contribution of any Limited Partner who acquired its interest upon the transfer by another Limited Partner of its interest shall be equal to the Capital Contribution of the transferring Limited Partner in respect of such interest.

#### **4.5     Interest on Capital Contributions**

No Partner shall be entitled to interest on the amount of its Capital Contribution to the Partnership.

#### **4.6     Withdrawal of capital Contribution**

No Partner has any right to withdraw any of its Capital Contribution to the Partnership or other amount or to receive any cash or other distribution from the Partnership except as provided for in this Agreement and except as permitted by the Act or otherwise at law.

#### 4.7 **Distribution of Capital Contributions**

Subject to the Act, the General Partner may distribute all or part of a Limited Partner's Capital Contribution to such Limited Partner in such amounts and at such times as determined in the General Partner's sole discretion.

### **ARTICLE 5 PARTNERSHIP FINANCE**

#### 5.1 **Expenses of Partnership**

The Partnership shall reimburse the General Partner, as and when determined by the General Partner, for all reasonable costs and expenses incurred on the Partnership's behalf by the General Partner in the performance of its duties hereunder, including costs and expenses of the General Partner reasonably allocable to employees of the General Partner engaged in activities on behalf of the Partnership, all legal and audit expenses, filing and reporting fees and other expenses incurred solely for the purpose of maintaining the corporate existence of the General Partner, unless the General Partner otherwise agrees, but specifically excluding expenses of any action, suit or other proceedings in which, or in relation to which, the General Partner is adjudged to be, or to have been, grossly negligent or to be engaged in, or to have engaged in, wilful misconduct.

#### 5.2 **Allocation of Net Income and Loss for Tax Purposes**

The Income for Tax Purposes or Loss for Tax Purposes for a given Fiscal Year shall be calculated in accordance with the provisions of the Tax Act as determined by the General Partner. Such income will be allocated as follows:

- (a) the General Partner shall be allocated 0.01% of the Income for Tax Purposes or Loss for Tax Purposes from each source for that Fiscal Year; and
- (b) the balance of all Income for Tax Purposes or Loss for Tax Purposes for that Fiscal Year that is not allocated to the General Partner pursuant to subsection 5.2(a) above, and all other items of income, gain, loss, deduction, recapture and credit of the Partnership, which are allocable for the purposes of the Tax Act and other relevant taxing statutes, shall be allocated to the Limited Partners (including, for greater certainty, Limited Partners who become or cease to be Limited Partners during the Fiscal Year of the Partnership) in an amount calculated by multiplying the Income for Tax Purposes or Loss for Tax Purposes to be allocated to the Limited Partners by a fraction, the numerator of which is the sum of the distributions received or receivable by that Limited Partner in that Fiscal Year, and the denominator of which is the aggregate amount of distributions received or receivable by all Limited Partners in that Fiscal Year.

#### 5.3 **Amount of Income Allocated**

The amount of income allocated to a Limited Partner may exceed or be less than the amount of cash distributed by the Partnership to that Limited Partner in respect of a given Fiscal Year.

#### 5.4 **Where No Cash Distribution**

If, with respect to a given Partnership Fiscal Year, no cash distribution is made by the Partnership to its Limited Partners, or the Partnership has a Loss for Tax Purposes, the Income for Tax Purposes or Loss for Tax Purposes from each source for that Fiscal Year will be allocated to the General Partner and the Limited Partners at the end of each quarter in that Fiscal Year, as to 0.01% and 99.99%, respectively, and to each Limited Partner in proportion to the LP Units held by each of them at each of those dates.

5.5 **Distributions**

- (a) The Partnership will distribute to the General Partner and to holders of LP Units whose names appear on the Record on the last day of each Fiscal Year, (i) 0.01% of Cash Flows to the General Partner and (ii) 99.99% of Cash Flows to holders of LP Units. To the extent that Cash Flow permits, distributions will be made sufficiently in advance of the corresponding Distribution Payment Date (as defined in the Declaration of Trust) of the Trust for it to be able to pay the applicable distribution to the holders of Trust Units on such date.
- (b) The Partnership may, in addition, make a distribution at any other time. For greater certainty, distributions that are made after the end of a Fiscal Year, but which are payable on or before the end of that Fiscal Year will be deemed to be distributions with respect to that Fiscal Year for purposes of Article 5.
- (c) Distributions to Limited Partners shall be made net of any applicable withholding taxes. Any amount withheld on account of withholding taxes applicable to distributions to the holders of LP Units shall be considered to have been distributed to the holders of LP Units for the purposes of this Agreement.
- (d) Distributions payable pursuant to this Section 5.5 will be paid in cash or other immediately available funds. Any payment by the General Partner to a Limited Partner pursuant to this Agreement will be conclusively deemed to have been made upon mailing of a cheque in a postage pre-paid envelope, addressed to the Limited Partner at the Limited Partner's address appearing in the Record, unless such cheque is dishonoured upon presentment. Upon such payment, the General Partner will be discharged from all liability to the Limited Partner in respect of such payment; provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the General Partner of such loss or destruction, together with such indemnity as the General Partner may reasonably require, the General Partner will issue a replacement cheque to the Limited Partner. Notwithstanding the foregoing, the General Partner, in lieu of forwarding or causing to be forwarded a cheque, may enter into an agreement with a Limited Partner providing for the payment to such Limited Partner of amounts hereunder by electronic funds transfer or by any other method at a place or places other than the place or places specified herein. Any payment of any amount pursuant to such agreement will, notwithstanding any other provision of this Agreement, be valid and binding on the General Partner, the Partnership and the relevant Limited Partner.

5.6 **Repayments**

If, as determined by the Auditor, it appears that any Partner has received an amount under this Article 5 that is in excess of that Partner's entitlement hereunder, the Partner will, promptly upon notice from the General Partner, reimburse the Partnership to the extent of the excess, and failing immediate reimbursement, the General Partner may withhold the amount of the excess (with interest at the prime rate of interest charged by the Partnership's bank plus 2% per annum from time to time calculated and compounded monthly) from further distributions otherwise due to the Partner.

5.7 **Tax Matters**

- (a) The Partnership shall be treated as a partnership for Canadian federal, provincial and municipal income tax and other tax purposes. The General Partner shall prepare, or cause to be prepared, any Canadian federal, provincial and municipal tax or information returns required to be filed by the Partnership and all financial statements required by each Partner to enable the filing of any tax or information return which is required to be filed by such Partner. The General Partner shall

submit such returns to the Limited Partners for review and approval no later than 30 days prior to the date of such returns.

- (b) The Partnership will make an election under the Code to be classified as a corporation for U.S. federal income tax purposes effective on the date of formation. The General Partner shall prepare, or cause to be prepared, any U.S. tax or information returns required to be filed by the Partnership.

#### 5.8 **Set-Off**

The Partnership may set off any of its obligations to make distributions to any of the Partners against any liabilities or obligations of such Partners to the Partnership under this Agreement or under the Act.

#### 5.9 **Distribution of Assets**

Notwithstanding Section 5.2, where assets of the Partnership are distributed in kind to a Partner and the distribution results in Income for Tax Purposes or Loss for Tax Purposes to the Partnership, for the purposes of computing the Income for Tax Purposes or Loss for Tax Purposes of a Partner, the income or amount shall be allocated to a Partner receiving the distribution, unless the Partners otherwise agree.

### ARTICLE 6 POWERS, DUTIES AND OBLIGATIONS OF GENERAL PARTNER

#### 6.1 **Investment Restrictions and Operating Policies**

The provisions of Article 7 "Investment Restrictions and Operating Policies" of the Declaration of Trust are hereby incorporated by reference into this Agreement and, notwithstanding anything to the contrary in this Agreement, the General Partner shall be bound by such investment restrictions and operating policies applicable to the Trust and shall conduct the Business in a manner consistent therewith and take, or cause to take, all such actions as may be necessary to give full effect to such provisions.

#### 6.2 **Powers, Duties and Obligations**

- (a) The General Partner has:
  - (i) unlimited liability for the debts, liabilities and obligations of the Partnership;
  - (ii) subject to the terms of this Agreement and to any applicable limitations set out in the Act, the full and exclusive right, power and authority to manage, control, administer and operate the business and affairs of the Partnership and to make decisions regarding the undertaking and business of the Partnership and to represent the Partnership; and
  - (iii) subject to the terms of this Agreement and to any applicable limitations set out in the Act, the full and exclusive right, power and authority to do any act, take any proceeding, make any decision and execute and deliver any instrument, deed, agreement or document necessary for or incidental to carrying out the objects, purposes and the Business of the Partnership for and on behalf of and in the name of the Partnership.
- (b) Subject to the terms and conditions of this Agreement, an action taken by the General Partner on behalf of the Partnership is deemed to be the act of the Partnership and binds the Partnership.
- (c) Notwithstanding anything to the contrary herein contained, all material transactions or agreements entered into by the Partnership, other than those agreements entered into in



connection with the formation of the Partnership must be approved by the board of directors of the General Partner.

- (d) The authority and power vested in the General Partner to manage the business and affairs of the Partnership will include all authority necessary or incidental to make all decisions regarding the Partnership, to bind the Partnership in respect of any such decision, to carry out the objects, purposes and Business of the Partnership including the ability to engage agents to assist the General Partner in carrying out, and the ability to delegate all of, its management obligations and administrative functions, provided that the unlimited liability of the General Partner shall not be reduced as a result of such decisions.
- (e) The General Partner will take all actions necessary to ensure that the Partnership constitutes a "Canadian partnership" at all times for the purposes of the Tax Act and does not constitute a "financial institution" or "tax shelter investment", each for the purposes of the Tax Act.

### 6.3 **Specific Powers and Duties of General Partner**

Without limiting the generality of Section 6.2 and subject always to Section 8.17, the General Partner shall have full power and authority for and on behalf of and in the name of the Partnership to:

- (a) negotiate, execute and perform all agreements which require execution by or on behalf of the Partnership involving matters or transactions with respect to the Business (and those agreements may limit the liability of the Partnership to the assets of the Partnership, with the other party to have no recourse to the assets of the General Partner, even if the same results in the terms of the agreement being less favourable to the Partnership) including all agreements contemplated by the Offering Memorandum;
- (b) open and manage bank accounts in the name of the Partnership and spend the capital of the Partnership in the exercise of any right or power exercisable by the General Partner under this Agreement;
- (c) subject to Section 6.4, borrow funds or incur indebtedness or liabilities in the name of the Partnership from time to time, from the General Partner or its affiliates or associates, or from any recognized financial institutions selected by the General Partner and guarantee the payment and performance of the obligations of any affiliate or associate of the Partnership;
- (d) issue LP Units to Limited Partners as contemplated in this Agreement
- (e) make distributions of Cash Flows;
- (f) issue debt and/or debt instruments, including the LP Notes, of the Partnership from time to time;
- (g) mortgage, charge, assign, hypothecate, pledge or otherwise create a security interest in all or any property of the Partnership or any affiliate of the Partnership now owned or later acquired, to secure any present and future borrowings, indebtedness or liabilities or guarantees and related expenses of the Partnership or any of its affiliates, and to sell all or any of that property pursuant to a foreclosure or other realization upon the foregoing encumbrances;
- (h) manage, control and develop all the activities of the Partnership and take all measures necessary or appropriate for the Business of the Partnership or ancillary to the Business and may, from time to time, in its sole discretion propose combinations with other partnerships or other entities, which proposal(s) will be subject to requisite approval by the Partners;

- (i) incur and pay all costs and expenses in connection with the Partnership or relating to the Business of the Partnership;
- (j) employ, retain, engage or dismiss from employment, personnel, agents, representatives or professionals or other investment participants with the powers and duties upon the terms and for the compensation as in the discretion of the General Partner may be necessary or advisable in the carrying on of the Business of the Partnership;
- (k) Subject to Section 6.15, engage agents, including any affiliate or associate of the General Partner (other than any Limited Partner), to assist it to carry out its management obligations to the Partnership or subcontract administrative functions to the General Partner or any of their respective affiliates or associates;
- (l) invest cash assets of the Partnership that are not immediately required for the Business of the Partnership in any investment approved by the General Partner in its sole discretion;
- (m) acquire, hold, transfer, vote or otherwise deal with the interests in the Property or other securities of entities engaged primarily in the Business which are permitted businesses for the Partnership as provided in Section 2.4;
- (n) maintain, improve or change any assets from time to time of the Partnership;
- (o) see to the sound management of the Partnership, and to manage, control and develop all the activities of the Partnership and take all measures necessary or appropriate for the Business of the Partnership or ancillary thereto;
- (p) act as attorney-in-fact or agent of the Partnership in disbursing and collecting moneys for the Partnership, paying debts and fulfilling the obligations of the Partnership and handling and settling any claims of the Partnership;
- (q) commence or defend any action or proceeding by, against or in connection with the Partnership;
- (r) file returns or other documents (including tax returns) required by any Governmental Authority or like authority;
- (s) retain legal counsel, experts, advisors or consultants as the General Partner considers appropriate and rely upon the advice of those Persons;
- (t) acquire or, subject to Section 8.17, dispose of assets of the Partnership;
- (u) enter into hedge contracts or similar arrangements to permit the Partnership to mitigate or eliminate the Partnership's exposure to interest rate, foreign exchange or other risks associated with the Business;
- (v) do anything that is in furtherance of or incidental to the Business or that is provided for in this Agreement;
- (w) execute, acknowledge and deliver the documents necessary to effectuate any or all of the foregoing or otherwise in connection with the Business;
- (x) file any tax elections, forms, objections or notices of objection or similar documents on behalf of the Partnership and (to the extent necessary) on behalf of the Partners under the Tax Act or any other tax legislation;

- (y) obtain any insurance coverage; and
- (z) carry out the objects, purposes and Business of the Partnership.

No persons dealing with the Partnership will be required to enquire into the authority of the General Partner to do any act, take any proceeding, make any decision or execute and deliver any instrument, deed, agreement or document for or on behalf of or in the name of the Partnership. The General Partner will make all reasonable efforts to insert, and to cause agents of the Partnership to insert, the following clause in any contracts or agreements to which the Partnership is a party or by which it is bound:

"The parties hereto acknowledge that Hills of Windridge A2A LP is a limited partnership formed under the laws of the Province of Ontario, a limited partner of which is only liable for any of its liabilities or any of its losses to the extent of the amount that the limited partner has contributed or agreed to contribute to the capital of the limited partnership and the limited partner's pro rata share of any undistributed income. The parties hereto acknowledge that the obligations of Hills of Windridge A2A LP shall not be personally binding upon, nor shall resort be had to, the property of any of the limited partners, their heirs, successors and assigns, and that resort shall only be had to the property of Hills of Windridge A2A LP or the property of Hills of Windridge A2A GP Inc., the sole general partner of the limited partnership."

#### 6.4 **Borrowings**

The General Partner (and its affiliates or associates) or any Limited Partner (and its affiliates or associates) may advance or loan to the Partnership funds that may be necessary for the payment of operating expenses of the Partnership or for any other purpose. The rate of interest and any other expenses relative to those advances or borrowings will not materially exceed that which the Partnership could obtain from a Canadian chartered bank with respect to similar borrowings.

#### 6.5 **Title to Property**

The General Partner may hold legal title to any of the assets or property of the Partnership in its name as bare trustee for the benefit of the Partnership.

#### 6.6 **Exercise of Duties**

The General Partner covenants that it will exercise its powers and discharge its duties under this Agreement honestly, in good faith, and in the best interests of the Partnership, and that it will exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Furthermore, the General Partner covenants that it will maintain the confidentiality of financial and other information and data that it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or a Limited Partner.

#### 6.7 **Limitation of Liability**

The General Partner is not personally liable for the return of any Capital Contribution made by a Limited Partner to the Partnership. Moreover, notwithstanding anything else contained in this Agreement, but subject to Section 2.15, neither the General Partner nor its officers, directors, shareholders, employees or agents are liable, responsible for or accountable in damages or otherwise to the Partnership or a Limited Partner for an action taken or failure to act on behalf of the Partnership within the scope of the authority conferred on the General Partner by this Agreement or by law unless the act or omission constituted negligence or wilful misconduct of the General Partner in performing its obligations under this Agreement.

6.8 **Indemnity of General Partner**

(a) To the fullest extent permitted by law, but subject to the limitations expressly provided in this Agreement, the General Partner, a Departing Partner, any person who is or was an affiliate of the General Partner or any Departing Partner, any person who is or was an officer, director, employee, partner, agent or trustee of the General Partner or any Departing Partner or any of their respective affiliates, or any person who is or was serving at the request of the General Partner or any Departing Partner or any of their respective affiliates as a director, officer, employee, partner, agent or trustee of another Person (collectively, an “Indemnitee”) will be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses on a full indemnity basis), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as:

- (i) the General Partner, a Departing Partner or any of their respective affiliates; or an officer, director, employee, partner, agent or trustee of the General Partner,
- (ii) any Departing Partner or any of their respective affiliates; or
- (iii) a person serving at the request of the General Partner, any Departing Partner or any of their respective affiliates as a director, officer, employee, agent or trustee of another person;

provided, that:

- (iv) in each case the Indemnitee acted honestly and in good faith with a view to the best interests of the Partnership;
- (v) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, the Indemnitee had reasonable grounds for believing its conduct was lawful; and
- (vi) no indemnification pursuant to this Section 6.8 will be available to an Indemnitee where the Indemnitee has been adjudged by a final decision of a court of competent jurisdiction in any Province of Canada that is no longer appealable to have been negligent or to have engaged in wilful misconduct or to have acted fraudulently in the performance of its obligations under this Agreement. The termination of any action, suit or proceeding by judgment, order, settlement or conviction will not create a presumption that the Indemnitee acted in a manner contrary to that specified above.

Any indemnification pursuant to this Section 6.8(a) will be made only out of the assets of the Partnership.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses on a full indemnity basis) incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding will, from time to time, be advanced by the Partnership prior to the final disposition of any claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay that amount if it is determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 6.8.

(c) The indemnification provided by this Section 6.8 will be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, as to actions in the Indemnitee's capacity as:

- (i) the General Partner, a Departing Partner or any of their respective affiliates;
- (ii) an officer, director, employee, partner, agent or trustee of the General Partner, any Departing Partner or any of their respective affiliates; or
- (iii) a person serving at the request of the General Partner, any Departing Partner or any of their respective affiliates as a director, officer, employee, agent or trustee of another person,

and will continue as to an Indemnitee who has ceased to serve in that capacity.

(d) The Partnership may purchase and maintain (or reimburse the General Partner or its affiliates for the cost of) insurance, on behalf of those Persons (other than the General Partner itself) as the General Partner determines, against any liability that may be asserted against or expense that may be incurred by that Person in connection with the Partnership's activities, whether or not the Partnership would have the power to indemnify those Persons against those liabilities under the provisions of this Agreement.

(e) The General Partner will hold the benefit of this indemnity in trust and as agent for the Indemnitees.

#### 6.9 **Liability of Indemnitees**

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership or the Partners or their respective successors and assigns for losses sustained or liabilities incurred as a result of any error of judgment or any act or omission, provided the Indemnitee acted in good faith, unless such Indemnitee's actions constituted gross negligence, wilful misconduct or fraud.

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

#### 6.10 **Resolution of Conflicts of Interest**

Unless otherwise expressly provided in this Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its affiliates, on the one hand, and the Partnership, any Partner and the Trust on the other hand, any resolution or course of action in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, or of any standard of care or duty stated or implied by law, if the General Partner reasonably believes such resolution or course of action is fair and reasonable to the Partnership. Subject to this Agreement, the General Partner shall be authorized in connection with its resolution of any conflict of interest to consider: (i) the relative interests of all parties involved in such conflict or affected by such action; (ii) any customary or accepted industry practices; (iii) any applicable generally accepted accounting practices or principles; and (iv) such additional factors as the General Partner determines in its sole discretion to be relevant, reasonable or appropriate under the circumstances. Nothing contained in this Agreement, however, is intended to, nor shall it be construed to, require the General Partner to consider the interests of any Person other than the Partnership.

**6.11 Other Matters Concerning the General Partner**

- (a) The General Partner may rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.
- (b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisors selected by it, and any act taken or omitted in reliance upon the opinion (including an opinion of counsel, who may be an employee of the General Partner or the Partnership) of any of those persons as to matters that the General Partner reasonably believes to be within that person's professional or expert competence will be conclusively presumed to have been done or omitted in good faith and in accordance with that opinion.
- (c) The General Partner has the right, in respect of any of its powers, authorities or obligations under this Agreement, to act through any of its duly authorized officers.

**6.12 Indemnity of Partnership**

The General Partner hereby indemnifies and holds harmless the Partnership and each Limited Partner from and against all costs, expenses, damages or liabilities suffered or incurred by the Partnership or any Limited Partner by reason of an act of wilful misconduct, negligence or fraud by the General Partner or of any act or omission not believed by the General Partner in good faith to be within the scope of the authority conferred on the General Partner by this Agreement.

**6.13 Restrictions upon the General Partner**

The General Partner's powers and authorities do not extend to any powers, actions or authority enumerated in Section 8.17 unless and until the requisite Special Resolution is passed by the applicable Partners. The General Partner will not:

- (a) commingle the funds of the Partnership with its own funds or the funds of any of its affiliates or associates or any other person;
- (b) dissolve, terminate, wind-up or otherwise discontinue the affairs of the Partnership, except in accordance with the provisions of Article 10;
- (c) issue or accept, recognize or register the transfer of any LP Units unless such issuance of transfer has been effected in compliance with the provisions of this Agreement;
- (d) except in accordance with Sections 8.17 and 10.3, sell, exchange or otherwise dispose of all or substantially all of the assets of the Partnership (otherwise than in conjunction with an internal reorganization);
- (e) except as permitted by this Agreement, assign, transfer or otherwise dispose of its entire interest as General Partner without approval of the Limited Partners; or
- (f) waive any default on the part of the General Partner or release the General Partner from any claims in respect thereof.

**6.14 Reimbursement of General Partner**

The Partnership will reimburse the General Partner for all direct costs and expenses incurred by the General Partner in the performance of its duties under this Agreement on behalf of the Partnership.

**6.15 Employment of an Affiliate or Associate**

The General Partner may employ or retain any of its affiliates or associates on behalf of the Partnership to provide goods or services to the Partnership provided that, if the Partnership is to reimburse the General Partner for the costs and expenses of those goods or services, the costs of those goods or services are reasonable and competitive with the costs of similar goods and services provided by independent third parties.

**6.16 Removal of the General Partner**

- (a) Except as provided for in this Section 6.16, the General Partner may not be removed as a general partner of the Partnership.
- (b) Upon the passing of any resolution of the directors or shareholders of the General Partner requiring or relating to the bankruptcy, dissolution, liquidation or winding-up or the making of any assignment for the benefit of creditors of the General Partner, or upon the appointment of a receiver of the assets and undertaking of the General Partner where such appointment is not revoked or withdrawn within 15 days of the appointment, or upon the General Partner failing to maintain its status under Section 2.9, the General Partner will cease to be qualified to act as a general partner under this Agreement and will be deemed to have been removed as the General Partner of the Partnership and, if such removal would result in the Partnership having no General Partner, a New General Partner will be appointed by the Trust within 180 days of receipt of written notice of that event (which written notice will be provided by the General Partner promptly upon the occurrence of that event) provided that the New General Partner must have the same ownership and governance structure as the General Partner and agrees to act as general partner of the Partnership and the General Partner will not cease to be the General Partner until the earlier of the appointment of a New General Partner and the expiry of the 180 day period.
- (c) The Trust may, by Special Resolution and upon 30 days written notice to the General Partner, remove the General Partner without cause.
- (d) The Trust may immediately remove the General Partner for cause if such cause is not remedied after reasonable notice is given by the Trust to the General Partner.
- (e) If the Trust removes the General Partner pursuant to either Section 6.16 (c) or (d) above, the Trust will, concurrently with such removal, appoint a New General Partner to assume all of the responsibilities and obligations of the General Partner and the General Partner will be released of its liabilities under this Agreement and indemnified for any damages and expenses with respect to events which occur in relation to the Partnership after the appoint of the New General Partner.

**6.17 Voluntary Withdrawal of the General Partner**

The General Partner may resign upon written notice to the Limited Partners, which resignation will become effective upon the date prescribed by the General Partner; provided, however, where the resignation of the General Partner would result in the Partnership having no general partner, the resignation will not become effective until the earlier of:

- (a) the appointment of a New General Partner by the Limited Partners pursuant to a Special Resolution; and
- (b) 180 days following the notice by the General Partner;

and provided further that the General Partner will not resign if the effect would be to dissolve the Partnership. The General Partner may withdraw its resignation at any time prior to the effective date of resignation upon written notice to the Limited Partners.

**6.18 Condition Precedent**

As a condition precedent to the resignation or removal of the General Partner, the Partnership will pay all amounts payable by the Partnership to the General Partner pursuant to this Agreement and accrued to the date of resignation or removal subject to any claims or liabilities of the General Partner to the Partnership.

**6.19 Transfer to New General Partner**

On the admission of a New General Partner, if any, to the Partnership on the resignation or removal of the General Partner, the resigning General Partner, or General Partner being removed, will do all things and take all steps to transfer the administration, management, control and operation of the business of the Partnership, the books, records and accounts of the Partnership, the title to the Partnership's property and the general partnership interest in the Partnership (including any general partnership interests) held by the General Partner to the New General Partner and will execute and deliver all deeds, certificates, declarations and other documents necessary or desirable to effect that transfer in a timely fashion.

**6.20 Release by Partnership**

On the resignation or removal of the General Partner, the Partnership will release and hold harmless the General Partner resigning or being removed, from any costs, expenses, damages or liabilities suffered or incurred by the General Partner as a result of or arising out of events which occur in relation to the Partnership after that resignation or removal.

**6.21 New General Partner**

A New General Partner must not be an Excluded Person. The New General Partner will become a party to this Agreement by signing a counterpart of this Agreement and will agree to be bound by all of the provisions of this Agreement and to assume the obligations, duties and liabilities of the General Partner under this Agreement as from the date the New General Partner becomes a party to this Agreement.

**6.22 Fiduciary Duties and Liabilities**

The provisions of this Agreement are intended by the parties to replace entirely any duties (including fiduciary duties) and liabilities relating thereto that at law or in equity any Partner or any other person might otherwise have to another Partner or other Person, and the parties hereby specifically agree that no Partner or any other person shall have any duties (including fiduciary duties) and liabilities relating thereto to any other Partner or other person that derive from the Act, the common law or any other law or principle of equity and the only duties and obligations of the Partners and other persons shall be as expressly set forth in this Agreement.



**ARTICLE 7  
FINANCIAL INFORMATION**

**7.1 Books and Records**

The General Partner shall keep, or cause to be kept on behalf of the Partnership, during the term of the Partnership and for a period of seven years, or such longer period as may be required under applicable law, thereafter, at the principal office of the Partnership, books of proper and complete accounts, records and registers of the operations and affairs of the Partnership, including the record of the names and addresses of all of the Partners. Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard disks, magnetic tape, or any other information storage device, provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with Canadian generally accepted accounting principles.

**7.2 Right to Inspect Partnership Books and Records**

- (a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 7.2(b), each Limited Partner has the right, for a purpose reasonably related to that Limited Partner's own interest as a limited partner in the Partnership, upon reasonable demand and at that Limited Partner's own expense, to receive:
  - (i) a current list of the name and last known address of each Limited Partner;
  - (ii) copies of this Agreement, the Declaration, the Record and amendments to those documents;
  - (iii) copies of all documents, if any, filed by the Partnership with a securities regulatory authority in Canada;
  - (iv) copies of minutes of meetings of the Partners; and
  - (v) any other information regarding the affairs of the Partnership as is just and reasonable or to which a Limited Partner is entitled pursuant to the Act.
- (b) Notwithstanding Section 7.2(a), the General Partner may keep confidential from the Limited Partners for any period of time as the General Partner deems reasonable, any information of the Partnership (other than information referred to in Section 7.2(a)(ii) or (a)(iv)), which, in the reasonable opinion of the General Partner, should be kept confidential in the interests of the Partnership or that the Partnership is required by law or by agreements with third parties to keep confidential.

**7.3 Income Tax Information**

The General Partner will send or cause to be sent to each Person who was a Limited Partner:

- (a) on the last day of a distribution period in any Fiscal Year, or
- (b) at the date of dissolution of the Partnership,

by the 60<sup>th</sup> day of the following year or within 60 days of dissolution, as the case may be, or within any other shorter period as may be required by applicable law, all information, in suitable form, relating to the Partnership

necessary for a person to prepare that person's Canadian federal and provincial income tax returns. The General Partner will file, on behalf of itself and the Limited Partners, annual information returns and any other information returns required to be filed under the Tax Act and any other applicable tax legislation in respect of the Partnership.

#### 7.4 **Accounting Policies**

The General Partner is authorized to establish, from time to time, accounting policies with respect to the financial statements of the Partnership and to change, from time to time, any policy that has been so established, provided that such policies are consistent with generally accepted accounting principles in Canada and this Agreement.

#### 7.5 **Financial Statements**

The Partnership shall maintain separate financial statements from each of the Partners and, in the event the financial results of the Partnership are not consolidated with those of the Trust, the Partnership shall provide to each of the Partners copies of its audited annual financial statements no later than 120 days following each fiscal year end, in each case prepared in accordance with Canadian generally accepted accounting principles.

#### 7.6 **Appointment of Auditors**

The General Partner shall appoint, on behalf of the Partnership, Rice & Company LLP, Chartered Accountants (or such other member firm of the Canadian Institute of Chartered Accountants in good standing as the General Partner shall appoint from time to time) as the Auditors of the Partnership.

### **ARTICLE 8 MEETINGS OF THE LIMITED PARTNERS**

#### 8.1 **Requisitions of Meetings**

It is recognized that while holders of LP Units do not generally have the right to take any part in the management of the Business, such holders may, from time to time, consider certain matters as outlined in Section 8.17. The General Partner may call a general meeting of Partners at any time and place it deems appropriate in its absolute discretion for the purpose of considering any matter set out in the notice of meeting. In addition, where Limited Partners holding not less than 25% of the outstanding LP Units in number (the "**Requisitioning Partners**") give notice signed by each of them to the General Partner, requesting a meeting of the Partners, the General Partner will, within 30 days of receipt of that notice, convene a meeting, and if it fails to do so, any Requisitioning Partner may convene a meeting by giving notice in accordance with this Agreement. Every meeting of Partners, however convened, will be conducted in accordance with this Agreement.

#### 8.2 **Meetings**

It is intended that the any meeting of the Limited Partners will be held on the same date, and in the same place, to follow immediately, and sequentially after, any meeting of the unitholders of the Trust. It is recognized that the Trust holds all of the LP Units and that, as a consequence of the terms of the Declaration of Trust and the terms of this Agreement, the trustees of the Trust shall, where applicable, vote the LP Units as directed and substantially determined by the vote of the holders of the Trust Units of the Trust. Until such time as the Trust no longer holds all of the LP Units, no annual meetings of the Limited Partners shall be required to be held, except as required by applicable law.

#### 8.3 **Place of Meeting**

Every meeting of Partners will be in any place in Canada as the General Partner (or Requisitioning Partners, if the General Partner fails to call the meeting in accordance with Section 8.1) may designate from time to time.

#### 8.4 **Notice of Meeting**

Notice of any meeting of Partners will be given to each Partner entitled to vote at the meeting not less than 10 days (but not more than 30 days) prior to the meeting, and will state:

- (a) the time, date and place of the meeting; and
- (b) in general terms, the nature of the business to be transacted at the meeting in sufficient detail to permit a Partner to make a reasoned decision on that business.

Notice of an adjourned meeting of Partners need not be given if the adjourned meeting is held within 14 days of the original meeting. Otherwise, but subject to Section 8.13, notice of adjourned meetings will be given not less than 10 days in advance of the adjourned meeting and otherwise in accordance with this section, except that the notice need not specify the nature of the business to be transacted if unchanged from the original meeting.

#### 8.5 **Record Dates**

For the purpose of determining the Limited Partners who are entitled to vote or act at any meeting of Partners or any adjournment of a meeting, or for the purpose of any other action, the General Partner may from time to time cause the transfer books of the Partnership to be closed for a period, not exceeding 10 days, as the General Partner may determine or, without causing the transfer books to be closed, the General Partner may fix a date not more than 30 days prior to the date of any meeting of Partners or other action as a record date for the determination of Limited Partners entitled to vote at that meeting or any adjournment of the meeting or to be treated as Limited Partners of record for purposes of any other action, and any Limited Partner who was a Limited Partner at the time so fixed will be entitled to vote (if applicable) at the meeting or any adjournment of the meeting even though that Limited Partner has since that date disposed of the Limited Partner's LP Units, and no Limited Partner becoming a Limited Partner after that fixed date will be a Limited Partner of record for purposes of that action. A person will be a Limited Partner of record at the relevant time if the Person's name appears in the Record, as amended and supplemented, at that time.

#### 8.6 **Proxies**

Any Limited Partner entitled to vote at a meeting of Partners may vote by proxy if a form of proxy has been received by the General Partner or the chairperson of the meeting for verification prior to the time fixed by the General Partner preceding the meeting, or any adjournment of the meeting.

#### 8.7 **Validity of Proxies**

A proxy purporting to be executed by or on behalf of a Limited Partner will be considered to be valid unless challenged at the time of or prior to its exercise. The person challenging the proxy will have the burden of proving to the satisfaction of the chairperson of the meeting that the proxy is invalid and any decision of the chairperson concerning the validity of a proxy will be final.

#### 8.8 **Form of Proxy**

Every proxy will be substantially in the form as may be approved by the General Partner or as may be satisfactory to the chairperson of the meeting at which it is sought to be exercised.

#### 8.9 **Revocation of Proxy**

A vote cast in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death, incapacity, insolvency or bankruptcy of the Limited Partner giving the proxy or the revocation of the proxy

unless written notice of that death, incapacity, insolvency, bankruptcy or revocation has been received by the chairperson of the meeting prior to the commencement of the meeting.

**8.10 Entities**

A Limited Partner that is not an individual may appoint an officer, director or other authorized Person as its representative to attend, vote and act on its behalf at a meeting of Partners.

**8.11 Attendance of Others**

Any officer or director of the General Partner, legal counsel for the General Partner and the Partnership and representatives of the Auditor will be entitled to attend any meeting of Partners. The General Partner has the right to authorize the presence of any person at a meeting regardless of whether the person is a Partner, and, with the approval of the General Partner, any such person is entitled to address the meeting.

The holders of all LP Units shall be entitled to attend all meetings of Partners.

**8.12 Chairperson**

The General Partner may nominate a person, including an officer or director of the General Partner (who need not be a Limited Partner) to be chairperson of a meeting of Partners and the person nominated by the General Partner will be chairperson of that meeting unless the Partners elect another chairperson by Special Resolution.

**8.13 Quorum**

A quorum at any meeting of Partners will consist of one or more Partners holding LP Units present in person or by proxy. If, within half an hour after the time fixed for the holding of the meeting, a quorum for the meeting is not present, the meeting:

- (a) if called by or on the requisition of Limited Partners, will be terminated; and
- (b) if called by the General Partner, may thereafter be held on ten days' prior written notice to all of the Limited Partners of the second meeting to transact the business set forth in the original notice in respect of that meeting and at the reconvened meeting the quorum will consist of the Partners then present in person or represented by proxy.

**8.14 Voting Procedure**

- (a) Every question submitted to a meeting of Partners:
  - (i) which requires a Special Resolution under this Agreement will be decided by a poll; and
  - (ii) which does not require a Special Resolution will be decided by an Ordinary Resolution on a show of hands unless otherwise required by this Agreement or a poll is demanded by a Partner, in which case a poll will be taken;

and, in the case of an equality of votes, the chairperson will not have a casting vote and the resolution will be deemed to be defeated. The chairperson will be entitled to vote in respect of any LP Units held by the chairperson or for which the chairperson may be a proxyholder. On any vote at a meeting of Partners, a declaration of the chairperson concerning the result of the vote will be conclusive. Any Limited Partner who is in default in payment of the subscription price for that Limited Partner's Units will not be entitled to vote in respect of those LP Units.

- (b) On a poll each person present at the meeting and entitled to vote will have one vote for each LP Unit in respect of which the Person is shown on the Record as a Limited Partner at the record date and for each LP Unit in respect of which the person is the proxyholder. Each Partner present at the meeting and entitled to vote at the meeting will have one vote on a show of hands. If LP Units are held jointly by two or more persons and only one of them is present or represented by proxy at a meeting of Limited Partners, that Limited Partner may, in the absence of the other or others, vote with respect those Units, but if more than one of them is present or represented by proxy, they will together on the whole LP Units held jointly.
- (c) The General Partner, as general partner, shall not be entitled to one vote on any poll or on a show of hands at any meeting of Partners.
- (d) Where applicable, the LP Units shall be voted in the manner as set out in Section 8.2 of this Agreement.

**8.15 Poll**

A poll requested or required will be taken at the meeting of Partners or an adjournment of the meeting in any manner as the chairperson directs.

**8.16 Powers of Limited Partners; Resolutions Binding**

The Limited Partners will have only the powers set out in this Agreement and any additional powers provided by the Act or otherwise by law. Subject to the foregoing sentence, any resolution passed in accordance with this Agreement will be binding on each Partner and that Partner's respective heirs, executors, administrators, successors and assigns, whether or not that Partner was present in person or voted against any resolution so passed.

**8.17 Powers Exercisable by Special Resolution**

Subject to Section 8.18, in addition to those powers which are only exercisable by Special Resolution as provided elsewhere in this Agreement, the following powers will only be exercisable by Special Resolution passed by the Partners entitled to vote at the meeting (including the affirmative vote of the General Partner with respect to Sections 8.17(f), (g), (h) and (i)):

- (a) upon 30 days' notice, removing the General Partner without cause and, if such removal would result in the Partnership having no general partner, electing a New General Partner as provided in Section 6.16(e);
- (b) removing the General Partner where the General Partner has committed a material breach of this Agreement, which breach has continued for 30 days after notice and, if such removal would result in the Partnership having no general partner, electing a New General Partner as provided in Section 6.16(e);
- (c) the sale, exchange or other disposition of all or substantially all of the assets of the Partnership, whether in a single transaction or a series of related transactions, except in conjunction with an internal reorganization;
- (d) waiving any default, other than in respect of any insolvency, receivership or bankruptcy of the Partnership, on the part of the General Partner on those terms as the Limited Partners may determine and releasing the General Partner from any claims in respect thereof;

- (e) amending, modifying, altering or repealing any Special Resolution previously passed by the Limited Partners;
- (f) amending this Agreement pursuant to Section 9.1 in accordance with the provisions of this Agreement;
- (g) a merger or consolidation involving the Partnership, except for a merger or consolidation involving only the Partnership and its affiliates;
- (h) a consolidation, subdivision or reclassification of the LP Units or of any class of LP Units;
- (i) electing the chairperson of a meeting of Partners as provided in Section 8.12;
- (j) continuing the Partnership if the Partnership is terminated by operation of law;
- (k) Requiring the General Partner on behalf of the Partnership to enforce any obligation or covenant on the part of any Limited Partner;
- (l) adding to, changing or removing any right, privilege, restriction or condition attaching to the LP Units which may reasonably be considered materially adverse to the holders of the LP Units; and
- (m) consenting to any judgement entered in a court of competent jurisdiction against the Partnership.

#### **8.18 Conditions to Action by Limited Partners**

The right of the Limited Partners to vote to amend this Agreement, to dissolve the Partnership or to remove the General Partner and to admit a replacement or to exercise any of the powers set out in Section 8.17 or to approve or initiate the taking of, or take, any other action at any meeting of Partners will not come into existence or be effective in any manner unless and until, prior to the exercise of any right or the taking of any action, the Partnership has received an opinion of counsel (who may be an employee of the General Partner or the Partnership) advising the Limited Partners (at the expense of the Limited Partners) as to the effect that the exercise of those rights or the taking of those actions may have on the limited liability of any Limited Partners other than those Limited Partners who have initiated that action, each of whom expressly acknowledges that the exercise of the right or the taking of the action may subject each of those Limited Partners to liability as the General Partner.

#### **8.19 Minutes**

The General Partner will cause minutes to be kept of all proceedings and resolutions at every meeting and will cause all minutes and all resolutions of the Partners consented to in writing to be made and entered in books to be kept for that purpose. Any minutes of a meeting signed by the chairperson of the meeting will be deemed *prima facie* evidence of the matters stated in them and the meeting will be deemed to have been duly convened and held and all resolutions and proceedings shown in them will be deemed to have been duly passed and taken.

#### **8.20 Additional Rules and Procedures**

To the extent that the rules and procedures for the conduct of a meeting of the Partners are not prescribed in this Agreement, such rules and procedures will be determined by the General Partner.

#### 8.21 Consent Without Meeting

Any matter that may be addressed by any Limited Partners at a meeting may be addressed by written resolution signed by such Limited Partners in lieu of holding such meeting. In addition, any action required or permitted by this Agreement or any provision of law to be taken at a meeting of the Partners, may be taken without a meeting without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by Partners holding LP Units having not less than the minimum number of votes necessary to authorize or take such action at a meeting at which Partners holding 100% of the outstanding LP Units entitled to vote thereon were present and voted. Such consent shall have the same effect as a vote of such Partners and may be stated as such in any certificate or document. Prompt written notice of the taking of the action without a meeting by less than unanimous written consent of the Partners shall be given to Partners who have not consented in writing.

### ARTICLE 9 AMENDMENT

#### 9.1 Generally

Subject to Sections 8.17, 8.18, 9.2, 9.3 and 9.4, and notwithstanding Section 8.21, this Agreement may be amended only in writing by the General Partner and only with the consent of the holders of LP Units entitled to vote given by Special Resolution provided that, notwithstanding anything to the contrary in this Agreement, no amendment which would adversely affect the rights and obligations of any Limited Partner differently than any other Limited Partner, or any class of Limited Partners differently than any other class of Limited Partners, shall be made without the consent of such holders or class of LP Units.

#### 9.2 Amendments Requiring Unanimous Approval

The unanimous approval of all holders of LP Units shall be required for amendments that: (i) alter the ability of the Limited Partners to remove the General Partner involuntarily; (ii) change the liability of any Limited Partner; (iii) change the right of a Limited Partner to vote at any meeting; (iv) amend Section 9.1; (v) change the Partnership from a limited partnership to a general partnership; (vi) reduce the percentage of net income allocable to the Limited Partners to below 99.99%; or (vii) allow any Limited Partner or an agent thereof to take an active part in the Business or to exercise control over or manage the business of the Partnership.

#### 9.3 Amendments Requiring Approval of the General Partner

No amendment that would adversely affect the rights and obligations of the General Partner, in its role as general partner, may be made without the written consent of the General Partner.

#### 9.4 Amendments by General Partner

From time to time and without prior notice to, or the consent of, any Limited Partner, but subject to Sections 9.1 and 9.2, the General Partner may amend any provision of this Agreement or add any provision hereto if such amendment or addition is, in the opinion of the General Partner based on advice from counsel to the Partnership (who may be an employee of the General Partner or the Partnership), necessary or desirable for the protection or benefit of all the Limited Partners or the Partnership or necessary or desirable to cure an ambiguity in, or to correct or supplement, any provision contained herein which is defective or inconsistent with any other provision contained herein, provided that such cure, correction or supplemental provision does not and will not affect materially adversely the interests of any Limited Partner. For purposes of greater clarity and without limiting the foregoing, but subject to Sections 9.1 and 9.2, the General Partner may make amendments to the Agreement to reflect: (i) a change in the name of the Partnership or the location of the principal office of the Partnership or the registered office of the Partnership; (ii) a change in the governing law of the Partnership to any other province of Canada; (iii) admission, substitution, withdrawal or removal of Limited Partners in accordance with this Agreement; (iv) a change that, as determined by the General Partner, is reasonable and necessary or appropriate

to qualify or continue the qualification of the Partnership as a limited partnership in which the Limited Partners have limited liability under applicable law; (v) a change that, as determined by the General Partner, is reasonable and necessary or appropriate to enable the Partnership to take advantage of, or not be detrimentally affected by, changes in the Tax Act or other taxation laws; or (vi) a change to amend or add any provision, or to cure any ambiguity or to correct or supplement any provisions contained in the Agreement which may be defective or inconsistent with any other provision contained in the Agreement or which should be made to make this Agreement consistent with the disclosure set out in the Offering Memorandum.

**9.5 Notice of Amendment**

General Partner shall notify the Limited Partners of the full details of any amendment to this Agreement that does not require their approval pursuant to Sections 9.1, 9.2, 9.3 or 9.4 within 20 Business Days of the effective date of such amendment.

**ARTICLE 10  
DISSOLUTION AND LIQUIDATION**

**10.1 Dissolution of Partnership**

Unless otherwise agreed by the parties hereto, the Partnership shall terminate on the date (the “**Termination Date**”) of the occurrence of any of the following events:

- (a) the removal or deemed removal of a sole General Partner unless such General Partner is replaced as provided in this Agreement;
- (b) the sale, exchange or other disposition of all or substantially all of the assets of the Partnership, if approved by a Special Resolution in accordance with Section 8.17(c);
- (c) the passage of a Special Resolution approving the dissolution of the Partnership; and
- (d) the date of dissolution caused by operation of law.

**10.2 No dissolution**

The Partnership shall not dissolve or terminate by reason of the admission, withdrawal, death, mental incompetence, removal, Insolvency or dissolution of a Partner or the transfer of LP Units by any Partner or of the general partnership interests by the General Partner in the manner contemplated herein.

**10.3 Procedure on Dissolution**

Upon the occurrence of any of the events set out in Section 10.1, the General Partner (or in the event of an occurrence specified in Section 10.1(a), any other person who may be appointed by Ordinary Resolution of the Limited Partners) will act as a receiver and liquidator of the assets of the Partnership and will liquidate the assets of the Partnership and distribute the proceeds thereof as follows:

- (a) First, to pay all expenses incurred in the winding-up of the Partnership;
- (b) Second, to pay all of the liabilities of the Partnership, including the LP Notes and any other loans or advances made by their respective limited partners and any amounts owing to the General Partner in respect of costs and expenses owing to them;
- (c) Third, to establish such reserves as the General Partner may consider necessary; and



- (d) Fourth, the balance to the General Partner and the Limited Partners.

Alternatively, the Limited Partners may approve by Special Resolution that distributions of all assets of the Partnership occur in specie, in which event the Partnership and each Limited Partner holding Units shall be entitled to receive an undivided interest in each and every asset of the Partnership in accordance with such Limited Partner's proportionate interest as of the date of dissolution or sale.

#### 10.4 Disproportionate Distributions

In connection with any distribution under Section 10.3(d) upon agreement of all Limited Partners, cash and non-cash assets may be distributed on a basis which is not proportional on a class of asset basis, but which is proportional having regard to the fair value of the total assets distributed to each Partner, as determined by the General Partner.

#### 10.5 Termination

Upon completion of the liquidation of the Partnership and the distribution of all Partnership funds, the Partnership shall terminate and the General Partner shall have the authority to execute and record a new Declaration as well as any and all other documents required to effect the dissolution and termination of the Partnership.

#### 10.6 No Right to Dissolve

Except as provided for in Section 10.1 or pursuant to a provision of the Act which cannot be waived by agreement of the Limited Partners, no Limited Partner has the right to ask for the dissolution of the Partnership, for the winding-up of its affairs or for the distribution of its assets.

#### 10.7 Survival

All rights to indemnification permitted in this Agreement and payment or reimbursement of expenses shall survive the termination of this Agreement.

### ARTICLE 11 MISCELLANEOUS

#### 11.1 Notices

Except as otherwise provided in this Agreement, any notice, direction, demand, request or document required or permitted to be given by any party to any other party pursuant to any provision of this Agreement shall be in writing and deemed to have been sufficiently given if signed by or on behalf of the party giving the notice and delivered or sent by prepaid ordinary mail addressed to the other party's address as shown below:

- (a) the General Partner at 250 Ferrand Drive, Suite 888 Toronto, Ontario, M2C 3E5, or to such other address as the General Partner may notify the Limited Partners,
- (b) each Limited Partner, to the address of such Limited Partner as it appears on the Register, or to such other address as a Limited Partner may from time to time notify the General Partner or the registrar and transfer agent of the Partnership.

Any such notice (except notice of a meeting of Limited Partners), direction, request or document shall conclusively be deemed to have been received by any such party, if delivered, on the date of delivery or, if sent by prepaid ordinary mail, on the fifth business day following the mailing thereof to the party or to an officer of the party to whom it is addressed. For such purposes no day during which there is an actual or imminent strike or other occurrence which shall interfere with normal mail service shall be considered a day. Any notice of a meeting of

Limited Partners shall be deemed to have been given on the date on which it was mailed. Accidental omission to give any notice or communication or to make any payment or demand required or permitted to be given or made under this Agreement to any Limited Partner shall not affect the validity of such notice, communication, payment or demand to the other Limited Partners, nor the consequence resulting or being effected therefrom.

#### 11.2 **Further Acts**

The parties hereto shall perform, and cause to be performed, such further and other acts and things and execute and deliver, or cause to be executed and delivered, such further and other documents as counsel to the Partnership considers necessary or desirable to carry out the terms and intent of this Agreement.

#### 11.3 **Competing Interest**

Each Partner is entitled, without the consent of the other Partners, to engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to any business of the same nature as, and in competition with, that of the Partnership, and is not liable to account to the other Partners therefor.

#### 11.4 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and each Limited Partner irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

#### 11.5 **Severability**

Each provision of this Agreement is intended to be severable and if any provision is illegal or invalid, such illegality or invalidity shall not affect the validity of the Agreement or the remaining provisions and the remainder of this Agreement will remain in full force to the extent permitted by law.

#### 11.6 **Entire Agreement**

This Agreement (including any terms of other agreements and documents incorporated herein by reference) constitutes the entire agreement between the parties hereto pertaining to the subject matter thereof. There are no warranties, representations, conditions or agreements in connection with such subject matter except as specifically set forth or referred to in such agreements. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made prior to, contemporaneous with or after entering into this Agreement or any amendment or supplement hereto, by any of the parties hereto, or its directors, trustees, officers or agents, to any other party hereto or its directors, trustees, officers or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement. None of the parties to this Agreement has been induced to enter into it or any amendment or supplement hereto by reason of any such warranty, representation, opinion, advice or assertion of fact. Accordingly, there shall be no liability, either in tort or in contract, assessed in relation to any such warranty, representation, opinion, advice or assertion of fact, except to the extent contemplated above.

#### 11.7 **Counterparts**

This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. This Agreement may also be adopted in any subscription form or similar instrument signed by a Limited Partner, with the same effect as if such Limited Partner had executed a counterpart of this Agreement. All counterparts and adopting instruments shall be construed together and shall constitute one and the same Agreement.

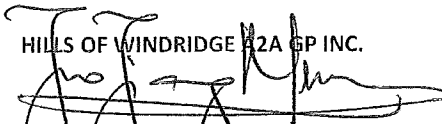
**11.8 Language**

The parties hereto confirm their express wish that this Agreement and all documents and agreements directly or indirectly relating thereto be drawn up in the English language. Les parties reconnaissent leur volonté express que la présente entente ainsi que tous les documents et contrats s'y rattachant directement ou indirectement soient rédigés en anglais.

**11.9 Securities Transfer Legislation**

Pursuant to the STA, (i) each LP Unit interest issued by the Partnership (or hereafter issued by the Partnership) shall for all purposes be a "security" within the meaning of the STA and (ii) each Unit Certificate issued by the Partnership shall for all purposes be a "certificated security" within the meaning of the STA, and the STA shall apply to each such LP Unit and Unit Certificate, without exception, and each Unit Certificate shall include an express endorsement to that effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

By   
HILLS OF WINDRIDGE A2A GP INC.  
Name: Dirk Foo  
Title: President  
I have authority to bind the Corporation.

By \_\_\_\_\_  
HILLS OF WINDRIDGE A2A TRUST  
Name: William Friedman  
Title: Trustee  
I have authority to bind the Trust.

**11.8 Language**

The parties hereto confirm their express wish that this Agreement and all documents and agreements directly or indirectly relating thereto be drawn up in the English language. Les parties reconnaissent leur volonté express que la présente entente ainsi que tous les documents et contrats s'y rattachant directement ou indirectement soient rédigés en anglais.

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**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

**HILLS OF WINDRIDGE A2A GP INC.**

By \_\_\_\_\_

Name: Dirk Foo

Title: President

I have authority to bind the Corporation.

**HILLS OF WINDRIDGE A2A TRUST**

By \_\_\_\_\_

Name: William Friedman

Title: Trustee

I have authority to bind the Trust.

## SCHEDULE A

### POWER OF ATTORNEY AND DECLARATION FORM

#### HILLS OF WINDRIDGE A2A LP

1. The undersigned, a limited partner of Hills of Windridge LP (the "**Partnership**"), hereby agrees to be bound, as a party to and as a limited partner in the Partnership, by the terms of the Limited Partnership Agreement dated February 13, 2013 relating to the Partnership (the "**Agreement**") as from time to time amended, as if the undersigned had executed the Agreement, and hereby ratifies, for all legal purposes, execution of the Agreement on behalf of the undersigned and all actions taken on behalf of the undersigned pursuant to the Agreement.
2. The undersigned declares that the undersigned is not an Excluded Person and the undersigned has the capacity and competence and, if a corporation, it has the necessary corporate authority, to execute this Power of Attorney and Declaration and to enter into the Agreement.
3. The undersigned agrees to be bound as a Limited Partner in the Partnership by the terms of the Agreement, as from time to time amended and in effect and hereby expressly ratifies and confirms the power of attorney given to the General Partner in Section 2.13 of the Agreement.
4. The undersigned hereby irrevocably constitutes and appoints the General Partner, with full power of substitution, as its true and lawful attorney and agent, with full power and authority in its name, place and stead to execute and deliver, for and on its behalf, the Agreement, and any amendments to the Agreement made in accordance with the Agreement.
  - (a) The power of attorney granted in this form and in the Agreement is a special power of attorney, coupled with an interest, and is irrevocable during the existence of the Partnership and in connection with the dissolution or winding up thereof, and will survive the death or disability of a Limited Partner and will survive the transfer or assignment by the Limited Partner, to the extent of the obligations of a Limited Partner under the Agreement, of the whole or any part of the interest of the Limited Partner in the Partnership, extends to the heirs, executors, administrators, other legal representatives and successors, transferees and assigns of the Limited Partner, and may be exercised by the General Partner on behalf of each Limited Partner in executing any instrument by a facsimile signature or by listing all the Limited Partners and executing that instrument with a single signature as attorney and agent for all of them.
  - (b) The undersigned agrees to be bound by any representations or actions made or taken by the General Partner which are contemplated by or provided for in the Agreement, pursuant to the power of attorney contained in this form and in the Agreement and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under the power of attorney.
  - (c) In accordance with the *Power of Attorney Act* (Ontario), the *Substitute Decisions Act, 1992* (Ontario) and any similar legislation governing a power of attorney in each jurisdiction in which the Partnership carries on business, each Limited Partner declares that these powers of attorney may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on the Limited Partner's part.
  - (d) The power of attorney granted in this form and in the Agreement is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Limited Partner's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "**CPOA**").

The execution of the power of attorney will not terminate any CPOA granted by the Limited Partner previously and will not be terminated by the execution by the Limited Partner in the future of a CPOA, and the Limited Partner hereby agrees not to take any action in future which results in the termination of the power of attorney.

- (e) Under the applicable power of attorney legislation in certain jurisdictions, an enduring power of attorney granted by a resident of such jurisdictions must incorporate the explanatory notes set out in the respective Act and must be accompanied by a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.
  - (f) This power of attorney will continue in respect of the General Partner so long as it is the General Partner of the Partnership, and will terminate thereafter, but will continue in respect of each other General Partner and, if applicable, a New General Partner as if the New General Partner were the original attorney.
5. Unless otherwise indicated, capitalized terms used in this form have the meanings given to them in the Agreement.
6. The undersigned accepts that this Power of Attorney and Declaration, the Agreement and related documents be in the English language only. Le soussigné accepte que cette procuration et déclaration, ainsi que tous documents connexes, ne soient rédigés en anglais.

DATED AT \_\_\_\_\_, in the Province of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_.

•

By \_\_\_\_\_  
Name:  
Title:

## SCHEDULE B

### TRANSFER AND POWER OF ATTORNEY FORM

#### HILLS OF WINDRIDGE A2A LP

I, \_\_\_\_\_, a Limited Partner of Hills of Windridge A2A LP (the "**Partnership**"), hereby transfer, assign and sell to: \_\_\_\_\_ (Name of Transferee) (Address) \_\_\_\_\_ LP Unit(s) registered in my name and constitute the above-named transferee as a substitute Limited Partner to the extent of that number of LP Units and I agree to execute and deliver to the General Partner any documents required to effect a valid transfer of the Units or which are necessary or advisable, in the opinion of the General Partner, to preserve the status of the Partnership as a limited partnership. I agree that the power of attorney previously granted to the General Partner will be effective for the purpose of executing and filing all certificates, amendments and other instruments necessary to give effect to this transfer.

DATED AT \_\_\_\_\_, in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

\_\_\_\_\_  
Full legal name— please print

\_\_\_\_\_  
Signature of Witness  
Name:

\_\_\_\_\_  
Signature

#### TERMS AND CONDITIONS

1. If requested by the General Partner, the signature of the Limited Partner must be guaranteed by a Canadian chartered bank, a trust company qualified to carry on business in a Province of Canada, a member of The Investment Industry Regulatory Organization of Canada or a member of any recognized Canadian stock exchange.
2. This transfer must be for a whole LP Unit or for whole LP Units. Transfers of fractional LP Units will not be recognized or entered in the register of the Partnership.
3. The undersigned (who is the above-named transferee) hereby accepts this transfer and hereby agrees to be bound, as a party to and as a limited partner in the Partnership, by the terms of the Limited Partnership Agreement dated February 13, 2013 relating to the Partnership (the "Agreement"), as if the undersigned had executed the Agreement and hereby ratifies, for all legal purposes, execution of the Agreement on behalf of the undersigned and all actions taken on behalf of the undersigned pursuant to the Agreement.
4. The undersigned declares that the undersigned is not an Excluded Person and the undersigned declares that it has the capacity and competence and, if a corporation, it has the necessary corporate authority, to execute this Transfer and Power of Attorney and to enter into the Agreement and any amendments to the Agreement.

5. In consideration of the General Partner accepting this transfer and conditional on that acceptance, the undersigned agrees to be bound as a Limited Partner in the Partnership by the terms of the Agreement, as from time to time amended and in effect and hereby expressly ratifies and confirms the power of attorney given to the General Partner in Section 2.13 of the Agreement.
6. The undersigned hereby irrevocably constitutes and appoints the General Partner, with full power of substitution, as its true and lawful attorney and agent, with full power and authority in its name, place and stead to execute and deliver, for and on its behalf, the Agreement, and any amendments to the Agreement made in accordance with the Agreement.
  - (a) The power of attorney granted in this form and in the Agreement is a special power of attorney, coupled with an interest, and is irrevocable during the existence of the Partnership and in connection with the dissolution or winding up thereof, and will survive the death or disability of a Limited Partner and will survive the transfer or assignment by the Limited Partner, to the extent of the obligations of a Limited Partner under the Agreement, of the whole or any part of the interest of the Limited Partner in the Partnership, extends to the heirs, executors, administrators, other legal representatives and successors, transferees and assigns of the Limited Partner, and may be exercised by the General Partner on behalf of each Limited Partner in executing any instrument by a facsimile signature or by listing all the Limited Partners and executing that instrument with a single signature as attorney and agent for all of them.
  - (b) The undersigned agrees to be bound by any representations or actions made or taken by the General Partner which are contemplated by or provided for in the Agreement, pursuant to the power of attorney contained in this form and in the Agreement and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under the power of attorney.
  - (c) In accordance with the *Power of Attorney Act* (Ontario), the *Substitute Decisions Act, 1992* (Ontario) and any similar legislation governing a power of attorney in each jurisdiction in which the Partnership carries on business, each Limited Partner declares that these powers of attorney may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on the Limited Partner's part.
  - (d) The power of attorney granted in this form and in the Agreement is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Limited Partner's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of the power of attorney will not terminate any CPOA granted by the Limited Partner previously and will not be terminated by the execution by the Limited Partner in the future of a CPOA, and the Limited Partner hereby agrees not to take any action in future which results in the termination of the power of attorney.
  - (e) Under the applicable power of attorney legislation in certain jurisdictions, an enduring power of attorney granted by a resident of such jurisdictions must incorporate the explanatory notes set out in the respective Act and must be accompanied by a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.
  - (f) This power of attorney will continue in respect of the General Partner so long as it is the General Partner of the Partnership, and will terminate thereafter, but will continue in respect of each other General Partner and, if applicable, a New General Partner as if the New General Partner were the original attorney.



7. Unless otherwise indicated, capitalized terms used in this form have the meanings given to them in the Agreement.
8. The undersigned accepts that this Transfer and Power of Attorney, the Agreement and related documents be in the English language only. Le soussigné accepte que cette procuration et déclaration, ainsi que tous documents connexes, ne soient rédigés en anglais.

**THIS IS EXHIBIT “B”**

referred to in the Affidavit of Allan Lind  
sworn on December 13, 2024

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Commissioner for Taking Affidavits (or as may be)

**HILLS OF WINDRIDGE A2A TRUST**

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**DECLARATION OF TRUST**

**February 13, 2013**

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**SCHEDULES**

Schedule A	-	Trustees' Regulations
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**HILLS OF WINDRIDGE A2A TRUST**

**DECLARATION OF TRUST**

**THIS DECLARATION OF TRUST** made in Toronto, Ontario the 13<sup>th</sup> day of February, 2013.

**BETWEEN:**

**DIRK FOO, WILLIAM FRIEDMAN, and STEVEN WARSH**, the trustees of the trust constituted by this declaration of trust, and each person who after the date hereof becomes a trustee of the Trust as herein provided (each person, while a trustee of the trust as herein provided, hereinafter called a **"Trustee"** and collectively at any time, the individuals each of whom is at that time a Trustee, hereinafter called the **"Trustees"**)

OF THE FIRST PART

– and –

**A2A INVESTMENTS INC.**, (hereinafter called the **"Initial Unitholder"**), and all persons who after the date hereof become holders of units of the Trust as herein provided (collectively at any time, the **"Unitholders"**)

OF THE SECOND PART

**WHEREAS** the Trust is hereby settled on the date hereof with \$100.00 (the **"Initial Contribution"**) by the Initial Unitholder, in consideration for the issuance by the initial Trustees to the Initial Unitholder of one Trust unit;

**AND WHEREAS** the Trust has been established under the name "Hills of Windridge A2A Trust" for the principal purpose of providing persons who may become the holders of Units with an opportunity to participate indirectly in the ownership of up to 22.67% of the undivided fractional interests in a 415-acre, (more or less), 1,284-home (more or less) residential community development, to be known as "The Hills of Windridge", in Tarrant County within the Dallas/Fort Worth area in Texas, United States of America;

**AND WHEREAS** the Trustees have agreed to hold the Initial Contribution and all amounts and assets subsequently received under this Declaration of Trust or in respect of the investment of the assets of the Trust in accordance with the provisions hereinafter set forth;

**AND WHEREAS** the Initial Unitholder and the Trustees desire that the Trust shall qualify as a "mutual fund trust" pursuant to subsection 132(6) of the Tax Act;

**AND WHEREAS** the parties hereto desire to set out the agreements, terms and conditions which shall govern their mutual and respective rights, powers and obligations with respect to the settlement and administration of the Trust;

**NOW THEREFORE**, the undersigned Trustees, being all of the Trustees, hereby confirm and declare that they agree with the Unitholders to hold in trust, as trustees, the Initial Contribution and any and all other property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by them as Trustees or to which the Trust is otherwise entitled and all rents, income, profits and gains derived therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Declaration of Trust, as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust, including the recitals hereto, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have the corresponding meanings:

**"Administrative Services Agreement"** means the administrative services dated on February 13, 2013 between the Administrator, the Trust and Windridge LP pursuant to which the Administrator will provide certain administrative services to the Trust and Windridge LP;

**"Administrator"** means A2A Capital Management Inc., an Ontario Corporation;

**"affiliate"** of a person means any person or company that would be deemed to be an affiliated entity of such person within the meaning of National Instrument 45-106 – *Prospectus and Registration Exemptions*;

**"Annuitant"** means the annuitant or beneficiary of a Plan or any other plan of which a Unitholder acts as trustee or carrier;

**"associate"** when used to indicate a relationship with a person or company has the meaning ascribed thereto in the *Securities Act* (Ontario);

**"Auditors"** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, initially, means Rice & Company LLP;

**"Board"** means the board of Trustees of the Trust;

**"Business Day"** means a day which is not a Saturday, Sunday or a legal holiday in the City of Toronto, in the Province of Ontario;

**"Cash Flow"** of the Trust means, for any Distribution Period, the sum of all cash amounts received by the Trust for or in respect of such Distribution Period, including interest received on the LP Notes, amounts received as a limited partner holding LP Units in Windridge LP pursuant to the terms of the Windridge LP Agreement and all other income, interest, distributions, dividends, proceeds from the investment in the LP Units (other than by way of security interest), returns of capital and repayments of indebtedness, as well as all amounts received by the Trust in any prior Distribution Period to the extent not previously distributed; less:

- (a) all costs and expenses of the Trust that, in the opinion of the Board, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period;
- (b) all amounts payable in cash that relate to the redemption or repurchase of Units and that have become payable by the Trust in such Distribution Period or prior Distribution Period; and
- (c) any interest expense incurred by the Trust between distributions,

provided that that any funds borrowed by the Trust or the proceeds of the issuance of Units and related transactions in connection therewith will not be included in the calculations of Cash Flow in respect of any Distribution Period;

**"Chair", "President", "Chief Executive Officer", "Chief Financial Officer", and "Secretary"** mean the person(s) holding the respective office from time to time if so elected, appointed, engaged or employed by the Trustees;

**"Closing"** means a closing of the Offering as described in the Offering Memorandum, and **"Closing Date"** means the date on which a Closing occurs;

**"Declaration of Trust"** means this declaration of trust as amended, supplemented or restated from time to time;

**"Deed of Covenant"** means the deed of covenant, in the form attached hereto as Schedule B, to be signed by Windridge LP upon acquisition of a UFI from Windridge Developments;

**"Distributable Cash Flow"** means, for any Distribution Period, an amount equal to the Cash Flow for such Distribution Period less any amount that the Board may reasonably consider to be necessary to provide for the payment of any costs or expenses, including any tax liability of Windridge LP or the Trust, that have been or are reasonably expected to be incurred in the activities and operations of the Trust or Windridge LP (to the extent that such costs or expenses have not otherwise been taken into account in the calculation of the Cash Flow) and less such reserves or amounts as are, by decision of the Board, necessary or desirable;

**"Distribution Date"** means any date on which the Trustees have determined that a distribution will be made by the Trust to the Unitholders;

**"Distribution Payment Date"** in respect of any Distribution Period, means a date on which the Trust is required to make a distribution of Distributable Cash Flow, which date shall be on or before the 15<sup>th</sup> day of the next calendar month immediately following the end of the Distribution Period or, if such day is not a Business Day, the immediately following Business Day, except in the case of the distribution for any Distribution Period ending December 31, in which case the Distribution Payment Date will be the immediately preceding Business Day or such other date determined from time to time by a decision of the Board;

**"Distribution Period"** means each calendar year or calendar quarter, as determined by the Board from time to time, from and including the first day thereof and to and including the last day thereof; provided that (i) **"Distribution Period"** shall initially mean each calendar year and (ii) the first Distribution Period will begin on (and include) the initial Closing Date and will end on December 31, 2013;

**"Distribution Record Date"** in respect of any Distribution Period means the last Business Day of such Distribution Period;

**"General Partner"** means Hills of Windridge A2A GP Inc., an Ontario corporation and the general partner of the Windridge LP;

**"Gross Subscription Proceeds"** means the gross proceeds (in U.S. dollars) received by the Trust for the issuance of Units;

**"IFRS"** means International Financial Reporting Standards, issued by the International Accounting Standards Committee, and as adopted by the Canadian Institute of Chartered Accountants;

**"indebtedness"** means (without duplication) on a consolidated basis:

- (a) any obligation of the Trust for borrowed money (excluding any premium in respect of indebtedness assumed by the Trust for which the Trust has the benefit of an interest rate

subsidy, but only to the extent an amount receivable has been excluded in the calculation of gross book value with respect to such interest rate subsidy);

- (b) any obligation of the Trust incurred in connection with the acquisition of the UFI's or any other property, assets or business other than the amount of future income tax liability arising out of indirect acquisitions;
- (c) any capital lease obligation of the Trust; and
- (d) any obligation of the type referred to in clauses (a) through (c) of another person, the payment of which the Trust has guaranteed or for which the Trust is responsible for or liable,

provided that (i) for the purposes of (a) through (c), an obligation will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with IFRS; and (ii) obligations referred to in clauses (a) and (b) exclude trade accounts payable, distributions payable to Unitholders and accrued liabilities arising in the ordinary course of business;

**"Initial Contribution"** means the amount of \$100.00 paid by the Initial Unitholder to the initial Trustees on the date hereof for the purpose of establishing the Trust;

**"Initial Unit"** means the initial Unit issued by the Trust to the Initial Unitholder;

**"Initial Unitholder"** means the person named herein as the first unit holder of the Initial Unit;

**"LP Notes"** means the subordinated unsecured promissory notes, if any, to be issued by Windridge LP from time to time;

**"LP Units"** means limited partnership units of Windridge LP;

**"Material Agreements"** means, collectively, this Declaration of Trust, the Windridge LP Agreement, the Administrative Services Agreement, the UFI Purchase Agreement and all instruments and agreements contemplated in such agreement to be signed upon acquisition of any UFI's, including, without limitation, the Deed of Covenant;

**"Net Realized Capital Gains"** means, for any taxation year of the Trust, the amount, if any, by which the aggregate of the capital gains of the Trust realized in such year and each amount determined by the Board in respect of any net capital loss for a prior taxation year that the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for such year multiplied by the reciprocal of the fraction applicable in determining the proportion of a capital gain for such prior taxation year that is a taxable capital gain;

**"Non-Resident"** means a person who is not a Resident and a partnership that is not a Canadian partnership within the meaning of the Tax Act;

**"Offering"** means the issuance of Units in connection with the private placement offering of the Trust pursuant to the Offering Memorandum;

**"Offering Memorandum"** means the offering memorandum prepared by the Trust in connection with the Offering, as the same may be amended and/or restated from time to time;

**"person"** means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other

legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;

**"Plans"** means, collectively, trusts governed by registered retirement savings plans, registered retirement income funds, registered education savings plans, deferred profit sharing plans, registered disability savings plans and tax-free saving accounts, each as described in the Tax Act, and **"Plan"** means any of them;

**"Property"** means the land comprising 415-acres (more or less) of land located in Tarrant County within the Dallas/Fort Worth area in Texas, United States of America, as more fully described in Schedule A to the Offering Memorandum, and where the context requires, the UFI in the Property that are acquired by Windridge LP;

**"Redemption Notice"** has the meaning given thereto in Section 13.2(a);

**"Redemption Price"** has the meaning given thereto in Section 13.4;

**"Redemption Value"** means an amount equal to 95% of the fair market value of a Unit determined by the Board, in their sole discretion, using reasonable methods of determining fair market value; provided, however, that (i) fair market value of a Unit may or may not be equal to a *pro rata* share of the net asset value of the Units, depending on the methods used by the Board in making a particular determination of such value and (ii) fair market value of a Unit will reflect a reduction of all commissions and referral and marketing fees paid by or on behalf of the Trust (as disclosed in the Offering Memorandum) at the time the Unit was acquired;

**"Register"** has the meaning given thereto in Section 8.16;

**"Resident"** means a person who is, or is deemed to be, resident in Canada for purposes of the Tax Act;

**"Retiring Trustee"** has the meaning given thereto in Section 3.5(c);

**"Securities Laws"** means, collectively, the applicable securities laws of each of the provinces and territories of Canada and the respective regulations and rules made under those securities laws together with all published policy statements, instruments, blanket orders and rulings of Canadian securities commissions and all discretionary orders or rulings, if any, of Canadian securities commissions made in connection with the transactions contemplated by the Offering Memorandum and this Declaration of Trust;

**"SIFT Trust"** has the meaning given thereto in the Tax Act;

**"Special Resolution"** has the meaning given thereto in Section 9.16(a);

**"subsidiary"** has the meaning ascribed thereto in National Instrument 45-106 – *Prospectus and Registration Exemptions*;

**"Take Over Bid"** has the meaning given thereto in the *Securities Act* (Ontario);

**"Tax Act"** means the *Income Tax Act* (Canada) and the regulations thereunder;

**"taxation year"** means the taxation year of the Trust for the purposes of the Tax Act;

**"Transfer Agent"** means any such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units and, initially, means the Administrator;

**"Trust"** means Hills of Windridge A2A Trust, a trust created pursuant to, and governed by, this Declaration of Trust and the laws of the Province of Ontario;

**"Trust Income"** means the amount by which the income of the Trust for such year computed in accordance with the provisions of the Tax Act, other than paragraph 82(l)(b) and subsection 104(6) thereof, and taking into account such other amounts and adjustments as are determined in the discretion of the Board regarding the calculation of income for the purposes of determining the "taxable income" of the Trust, exceeds each amount determined by the Board in respect of any non-capital loss for a prior taxation year that the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for such year; provided, however, that capital gains and capital losses will be excluded from the computation of Trust Income and, if an amount has been designated by the Trust under subsection 104(19) or subsection 104(22) of the Tax Act, such designation shall be disregarded;

**"Trust Property"** means the properties and assets held from time to time by the Trust or by the Board on behalf of the Trust, including:

- (a) the Initial Contribution;
- (b) all funds or property derived from the issuance or sale of Units or other funds or property received by the Trust;
- (c) any LP Units, LP Notes or other securities of Windridge LP or of any other person held from time to time by or on behalf of the Trust;
- (d) any proceeds of disposition of any of the foregoing property or in respect of the investment or substitution of the properties and assets of the Trust; and
- (e) all proceeds, income, dividends, interest, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition;

**"Trustees"** means the trustee or trustees of the Trust holding office under and in accordance with this Declaration of Trust from time to time, and **"Trustee"** means any one of them;

**"Trustees' Regulations"** means the regulations adopted by the Trustees pursuant to Section 4.3;

**"UFI Purchase Agreement"** means the agreement of purchase and sale dated February 13, 2013 between Windridge LP and Windridge Developments pursuant to which Windridge LP will acquire up to 22.67% of the UFIs in the Property, in one or more transactions;

**"UFIs"** means the undivided fractional ownership interests in the Property, as tenants in common, acquired from time to time by Windridge LP pursuant to the UFI Purchase Agreement, with each UFI comprising a 1/4,412 undivided fractional ownership interest in the Property;

**"Unit Certificate"** means a certificate, in the form stipulated by Article 8, evidencing one or more Units, issued and certified in accordance with the provisions hereof;

**"Unitholder"** means a person whose name appears on the Register as a holder of one or more Units, or a fraction thereof;

**"Windridge Developments"** means Windridge A2A Developments, LLC, a Texas limited liability company and the seller of the UFIs to Windridge LP and the initial facilitator under the Deed of Covenant;

**"Windridge LP"** means Hills of Windridge A2A Limited Partnership, an Ontario limited partnership established by the Trust and the General Partner pursuant to the laws of the Province of Ontario and the Windridge LP Agreement for the ownership of the UFI; and

**"Windridge LP Agreement"** means the agreement establishing Windridge LP between the Trust and the General Partner.

## 1.2 **Interpretation**

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

- (a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;
- (b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;
- (c) words importing the singular shall include the plural and *vice versa*, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (f) references to any person include such person's successors and assigns (to the extent such assigns are permitted by the terms of any applicable agreement);
- (g) unless the context otherwise requires, any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so. referred to;
- (h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;
- (i) for greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or which may not be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed or which may not be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where reference is made in this Declaration of Trust to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees, and not in their other capacities;
- (j) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action



shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day;

- (k) time shall be of essence in this Declaration of Trust; and
- (l) unless otherwise specified, all references to "\$" or "dollars" are to lawful currency of United States of America.

### **1.3 Tax Act**

Any reference herein to a particular provision of the Tax Act shall include a reference to that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

## **ARTICLE 2 DECLARATION OF TRUST**

### **2.1 Establishment of the Trust**

The Trustees hereby agree to hold and administer the property, real, personal or otherwise, tangible or intangible, which has been or is hereafter transferred, conveyed or paid to or otherwise received by the Trust or to which the Trust is otherwise entitled, including the Initial Contribution, and all rents, income, profits and gains therefrom in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

### **2.2 Initial Contribution**

The Initial Unitholder has paid, concurrently with the execution of the Declaration of Trust, the Initial Contribution to the Trustees for the purpose of settling the Trust. The Trustees acknowledge receipt of the Initial Contribution and issue one Trust Unit to the Initial Unitholder.

### **2.3 Name**

The name of the Trust is Hills of Windridge A2A Trust. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name. For greater certainty, where any reference is made in this Declaration of Trust, or any other instrument to which the Trust or the Trustees, as trustees of the Trust, are a party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to (i) the Trust; or (ii) the Trustees, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding taken by or against, or a covenant, representation or warranty by or with respect to the Trustees as trustees of the Trust.

### **2.4 Use of Name**

Should the Trustees determine that the use of the name Hills of Windridge A2A Trust is not practicable, legal or convenient, they may use such other designation, or they may adopt such other name for the Trust as they deem appropriate, and the Trust may hold property and conduct its activities under such other designation or name.

## **2.5     Office**

The principal, registered and head office and center of administration of the Trust shall be located at 250 Ferrand Drive, Suite 888 Toronto, Ontario or at such other address in Canada as may be determined by the Trustees in their discretion. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine to be necessary or desirable.

## **2.6     Nature of the Trust**

The Trust is a limited purpose open-ended unincorporated investment trust. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by (i) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities and (ii) the terms, conditions and trusts set forth in this Declaration of Trust.

The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company (except for purposes of U.S. income tax purposes) nor shall the Trustees or the Unitholders or any of them or any officers or other employees of the Trust or any of them for any purpose be, or be deemed to be, treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders. The relationship of the holders of Trust Units to the Trustees, to the Trust and to the Trust Property shall be solely that of beneficiaries of the Trust, and the rights of the Unitholders will be limited to those expressly conferred upon them by this Declaration of Trust. In filing a return of income for the Trust with respect to its first taxation year under the Tax Act, the Trust shall elect, assuming that the requirements for such election are met, that the Trust shall be deemed a "mutual fund trust" for purposes of the Tax Act throughout such year.

## **2.7     Rights of Unitholders**

The rights of each Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Trustees. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein. Except as specifically provided herein, no Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

# **ARTICLE 3 TRUSTEES**

## **3.1     Number**

There shall be a minimum of one and a maximum of nine Trustees. The number of Trustees within such minimum and maximum numbers may be changed by the Trustees from time to time at their discretion.

### **3.2 Qualifications of Trustees**

A Trustee shall be an individual at least 18 years of age, not under any legal disability and not been found to be of unsound mind or incapable of managing property by a court in Canada or elsewhere, and who does not have the status of bankrupt.

### **3.3 Residency of Trustees**

A majority of the Trustees must be Residents. If at any time a majority of the Trustees or a majority of the Trustees of any committee of the Trustees are not Residents because of the death, resignation, insolvency, bankruptcy, adjudicated incompetence or incapacity, removal or change in circumstance of any Trustee who was a Resident Trustee, or there are no Trustees who are Residents, the Trustee or Trustees who are Non-Residents shall, immediately before that time, be deemed to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation and the remaining Trustees shall appoint a sufficient number of Resident Trustees to comply with this requirement. If at any time the number of Trustees is less than the number required under this Declaration of Trust and the remaining Trustee or Trustees fail or are unable to act in accordance with Section 3.6 to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one or more Trustees there would be no Trustees, then the Board of the Trust shall appoint one or more Trustees so that following such appointment a majority of the Trustees are Residents and, failing such appointment, any remaining Trustee or officer of the Trust or the Administrator or Auditors, as the case may be, may apply to the Superior Court of Justice of Ontario for an order appointing one or more Trustees so that following such appointment a majority of the Trustees are Residents, to act on such other terms as the Court may order. Any Trustee who is a Resident who proposes to become a Non-Resident shall notify the other Trustees thereof as soon as reasonably practicable and shall resign as a Trustee effective upon the day of such notification and shall be replaced with a Trustee who is a Resident.

### **3.4 Appointment of Trustees by the Administrator**

Subject to Sections 3.1, 3.2, 3.3, 3.5 and 3.11 or as otherwise specified herein, the Administrator, in its sole discretion, shall have the right to appoint and remove the Trustees; provided, however, that Unitholders may elect or remove any Trustee by way of Special Resolution (and any such elected Trustee may not subsequently be removed except by the Unitholders through a further Special Resolution). The appointment or election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such appointment or election) shall not become effective unless and until such individual shall have in writing accepted her or her appointment or election and agreed to be bound by the terms of this Declaration of Trust.

### **3.5 Resignations, Removal and Death of Trustees**

- (a) A Trustee may resign at any time by an instrument in writing signed by him or her and delivered or mailed to the Chair or, if there is no Chair, the President of the Trust or, if no President, the Board. A resignation of a Trustee becomes effective at the time a written resignation is received by the Trust upon 30 days' written notice, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee, except in the case of a deemed resignation under Section 3.3 which shall be effective at the time therein prescribed.
- (b) A Trustee may be removed at any time with or without cause by a Special Resolution at a meeting of Unitholders called for that purpose or by the written consent of the Unitholders holding in the aggregate not less than 66⅔% of the outstanding Units entitled to vote thereon, or with cause by the resolution passed by an affirmative vote of not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the

aforesaid vote or resolution or at any later time specified in the notice without need for prior accounting, and any Trustee so removed shall be so notified by the Chief Executive Officer or another officer of the Trust or if there is no officer of the Trust, by any remaining Trustee or if there is no Trustee then remaining, by the Unitholders, following such removal.

- (c) Upon the resignation or removal of any Trustee, or such Trustee otherwise ceasing to be a Trustee (in each case, a **"Retiring Trustee"**), such Retiring Trustee shall immediately cease to have the rights, privileges and powers of a Trustee hereunder, shall promptly account to the remaining Trustees as they may require for all property which he or she holds as Trustee and do all such other things as may be required pursuant to Section 3.8(b) hereof; provided however that notwithstanding any other provision of this Declaration of Trust, each such Retiring Trustee shall always continue to have the protections afforded to Trustees in Article 18.
- (d) Upon the incapacity or death of any Trustee, such Trustee shall cease to be a Trustee. Such Retiring Trustee's legal representative shall promptly execute and deliver on such Trustee's behalf such documents as the remaining Trustees may require as provided in this Section 3.5. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

### **3.6 Appointment of Trustees**

The appointment of the Trustees named of the First Part above is hereby confirmed and the term of office applicable to each Trustee shall expire at the termination of the Trust. Trustees removed pursuant to Section 3.5(b) shall be replaced by a Trustee elected by a majority of the votes cast at a meeting of Unitholders called for that purpose or by the written consent of the Unitholders holding in the aggregate not less than a majority of the outstanding Units entitled to vote thereon. In the event that a Trustee resigns or otherwise ceases to be a Trustee other than pursuant to Section 3.5(b), the Trustees, so long as they constitute a quorum and a majority of the Trustees constituting quorum are Residents, may appoint one or more additional Trustees to fill such vacancy or vacancies for a term expiring at the termination of the Trust. In the event that an independent Trustee ceases to be a Trustee, such vacancy shall be filled by a person that would qualify as an independent Trustee.

### **3.7 Consent to Act**

- (a) A person who is appointed a Trustee hereunder shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent, or such consent is evidenced in minutes of a meeting of Trustees, substantially in the form as follows:

"To: Hills of Windridge A2A Trust (the "Trust")  
And to: The Trustees thereof

The undersigned hereby certifies that he or she or it is/is not a resident of Canada within the meaning of the *Income Tax Act* (Canada) and consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust dated the 13<sup>th</sup> day of February, 2013, as amended, supplemented or amended and restated from time to time, constituting the Trust.

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

\_\_\_\_\_  
[Signature]

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a form of consent substantially as set forth in Section 3.7(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended, supplemented or amended and restated from time to time.
- (c) An act of a Trustee is valid notwithstanding an irregularity in the appointment or election of the Trustee or a defect in the qualification of the Trustee.

### **3.8 Ceasing to Hold Office**

- (a) A Trustee ceases to hold office when:
  - (i) the Trustee ceases to be duly qualified to act as a Trustee as provided under Section 3.2;
  - (ii) the Trustee ceases to be a Trustee in accordance with Section 3.5;
  - (iii) the Trustee dies or resigns; or
  - (iv) the Trustee is removed in accordance with Section 3.4 or 3.5.
- (b) Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 18.2. Such Trustee shall promptly execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in that Trustee's name, shall promptly account to the remaining Trustees as they may reasonably require for all property which that Trustee holds as Trustee, shall promptly resign from all directorship or similar positions held by such Trustee in any entity in which the Trust has an interest and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall promptly execute and deliver on his behalf such documents as the remaining Trustees may reasonably require as provided in this Section 3.8(b). In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

### **3.9 Vacancies by Trustees**

The death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office of a Trustee or the removal or other cessation to hold office of a Trustee shall not operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. In the case of a vacancy, the Unitholders, in the case of a vacancy pursuant to Section 3.5(b), or, so long as they constitute a quorum and a majority of the Trustees constituting such quorum are Residents, a majority of the Trustees continuing in office, in the case of a vacancy other than pursuant to Section 3.5(b), may fill such vacancy. If there is not such a quorum of

Trustees, the Trustees then in office shall promptly call a special meeting of Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Sections 3.4, 3.5 and 3.8, until the termination of the Trust.

### **3.10 Successor and Additional Trustees**

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all individuals who may hereafter become Trustees upon their due election or appointment and qualification without any further act, and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 3.8 or otherwise.

### **3.11 Remuneration and Expenses**

Only Trustees who are not officers or employees of and who do not receive salary from the Trust, the Administrator or any of their affiliates shall receive such fees and other reasonable compensation (including, without limitation, fees for serving as Chair of the Trust, for serving as chair of any committee of Trustees and for attendance at each meeting of Trustees and of each committee of Trustees) as the Trustees may determine from time to time, as well as reimbursement of their reasonable travel and out-of pocket expenses properly incurred in acting as a Trustee.

Each of the Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services, whether performed by a Trustee or any person affiliated with a Trustee.

### **3.12 Validity of Acts**

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or a defect in the qualifications of the Trustees.

## **ARTICLE 4 TRUSTEES' POWERS AND DUTIES**

### **4.1 General Powers**

The Trustees, subject only to the specific limitations contained in this Declaration of Trust including, without limitation, Sections 7.1 and 7.2, shall have, without further or other authorization and free from any control or direction on the part of the Unitholders, full, absolute and exclusive power, control and authority over the Trust Property and over the affairs of the Trust to the same extent as if the Trustees were the sole owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the power and authority having been granted to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by law, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, the Trustees may make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such

length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

For greater certainty and without limiting the generality of this Section 4.1, the Trust is authorized to complete the transactions set forth in the Offering Memorandum, including to (i) prepare, file, execute and deliver the Offering Memorandum and all other agreements, documents and instruments as may be necessary or, in the Trustees' discretion, desirable to complete the Offering; (ii) indirectly acquire on each Closing Date the relevant percentage of UFI's pursuant to the UFI Purchase Agreement and pay the purchase price therefor; (iii) enter into the Material Agreements to which it is a party; and (iv) enter into, or cause Windridge LP to enter into, any arrangements contemplated by, or approved by the Co-Owners under, the Deed of Covenant. For greater certainty, the Trust is not required to complete the Offering unless and until the Trustees are satisfied with the terms and conditions thereof.

#### **4.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Declaration of Trust including, without limitation, Sections 7.1 and 7.2, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders shall have and may exercise, on behalf of the Trust, at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to hold the Trust Property in safekeeping, retaining moneys, securities, property, assets or investments, and investing moneys from time to time forming part of the Trust Property;
- (c) to ensure that the Gross Subscription Proceeds are invested in the LP Units and the LP Notes net of any expenses incurred by the Trust;
- (d) to borrow money (up to a maximum principal amount of \$50,000) from the Administrator as necessary, and to pay interest on such unsecured loan (if any is charged) at a rate not in excess of then current prime rate offered by the Trust's bankers, plus 1.00%;
- (e) to pay properly incurred expenses of the Trust;
- (f) to open, operate and close bank accounts and other similar credit, deposit and banking arrangements, to negotiate and sign banking and financing contracts and agreements and deposit monies from time to time forming part of the Trust Property in such accounts;
- (g) to possess and exercise rights, powers and privileges appertaining to ownership of UFI's in Trust Property;
- (h) to hold legal title to the Trust Property;
- (i) to reinvest income and gains of the Trust and to take other actions besides the mere protection and preservation of the Trust Property;
- (j) to appoint the auditors of and registrar and transfer agent for the Trust;
- (k) to appoint the bankers of the Trust;
- (l) to ensure compliance with applicable Securities Laws;

- (m) to prepare and file or cause to be prepared and filed any and all requisite returns, reports and filings;
- (n) to monitor the Trust's tax status as a "mutual fund trust" within the meaning of the Tax Act;
- (o) to provide all requisite office accommodation and associated facilities;
- (p) to provide or cause to be provided to the Trust all other administrative and other services and facilities required by the Trust;
- (q) to maintain or cause to be maintained complete records of all transactions in respect of the investment portfolio of the Trust;
- (r) to prescribe any instrument provided for or contemplated by this Declaration of Trust;
- (s) to effect payment of distributions to the Unitholders;
- (t) to collect, sue for and receive all sums of money or other property or items that are believed due to the Trust and obtain security, including encumbrances on assets, to secure the full payment of monies owed to the Trust and the performance of all obligations in favour of the Trust, and to exercise all of the rights of the Trust, and to perform all of the obligations of the Trust, under such security;
- (u) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any part of the Trust Property, including the LP Units, to the same extent that any person might, unless otherwise limited herein;
- (v) where reasonably required, to engage, employ, contract with or retain on behalf of the Trust any persons as agents, representatives, employees or independent contractors in one or more capacities;
- (w) except as prohibited by law, to delegate from time to time to the Trust's employees, consultants, agents and other persons including, without limitation, the Administrator, the doing of such things and the exercise of such powers hereunder as the Board may from time to time deem expedient, so long as any such delegation is not inconsistent with any of the provisions of this Declaration of Trust and subject at all times to the general control and supervision of the Board as provided for herein;
- (x) to issue and redeem Units pursuant to the terms and conditions of this Declaration of Trust;
- (y) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Board in connection with the Trust Property, undertaking or income of the Trust, or imposed upon or against the Trust Property in connection with the undertaking or income of the Trust, or any part thereof, and to settle or compromise disputed tax liabilities, and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections, allocations and determinations in respect of Trust Income, Net Realized Capital Gains or any other amounts distributed, allocated and made payable to Unitholders in a year and any other matter as shall be permitted under the Tax Act and analogous provisions of any provincial income tax legislation, and to do all such other acts and things as may be deemed by the Board in its sole discretion to be necessary, desirable or convenient;



- (z) to do all such acts and things, and to execute, deliver and perform the obligations of the Trust under all such agreements and instruments as are necessary to complete the Offering or as are contemplated by the Offering Memorandum; and
- (aa) to do all such other acts and things and execute all such agreements and other instruments as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the purpose and activities of the Trust (including, without limitation, to do all such things and acts as may be required of the Trust under any of the material agreements referred to in the Offering Memorandum), to promote or advance any of the purposes or objectives for which the Trust is formed and to carry out the provisions of this Declaration of Trust whether or not herein specifically mentioned.

#### **4.3 Further Powers of the Trustees**

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, the rights or powers of the Trustees and the rights or powers of the Unitholders or officers, provided that such regulations shall not be inconsistent with law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to Unitholders. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not inconsistent with law or with this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any regulations, decisions, designations or determinations made in accordance with this Section 4.3 shall be conclusive and binding upon all persons affected thereby.

Subject to any agreement between the Trust and any Trustee and subject as otherwise herein provided, the Trustees may from time to time in their discretion appoint, employ, invest in, contract or deal with any person including, without limitation, any affiliate of any of them and any person in which any one or more of them may be directly or indirectly interested and, without limiting the generality of the foregoing, any Trustee may purchase, hold, sell, invest in or otherwise deal with real property or other property of the same class and nature as may be held by the Trustees as Trust Property, whether for the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of his duties and responsibilities hereunder.

#### **4.4 Banking**

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any Trust Property; the execution of any agreement relating to any Trust Property; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such bank to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust as the Trustees may designate, appoint or authorize from time to time.

#### **4.5 Standard of Care**

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly, in

good faith with a view to the best interests of the Trust and in connection therewith, that they exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.

No Trustee shall be liable in carrying out such Trustee's duties under this Declaration of Trust except in cases where the Trustee fails to act honestly, in good faith and in the best interests of the Trust and the Unitholders or, in connection therewith, fails to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario).

#### **4.6 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust Property, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including, without limitation, fees of auditors, accountants, lawyers and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust Property.

#### **4.7 Reliance Upon Trustees**

Any person dealing with the Trust in respect of any matters pertaining to the Trust Property and any right, title or interest therein or to the Trust or to securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any two Trustees or, without limiting the foregoing, such other persons as may be authorized by the Board as to the capacity, power and authority of the Trustees or any such other persons to act for and on behalf and in the name of the Trust. No Persons dealing with the Trustees shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees. The receipt by or on behalf of the Trustees for monies or other consideration shall be binding upon the Trust.

#### **4.8 Determinations of Trustees Binding**

All determinations of a majority of the Trustees which are made in good faith with respect to any matters relating to the Trust, including, without limitation, whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a Plan, or other similar fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

#### **4.9 Limitations on Liability of Trustees**

- (a) Subject to the standard of care set forth in Section 4.5, none of the Trustees, nor any officers, employees or agents of the Trust shall be liable to any Unitholder or any other person in tort, contract or otherwise for any action taken or not taken in good faith in reliance on any documents that are, prima facie, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; for any action or failure to act by any person to whom the Trustees are permitted to delegate and have delegated any of their duties hereunder; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, unless

such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 4.5. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 4.5, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert or advisor to give.

- (b) The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust unless such Trustee shall have failed to meet the standard of care set out in Section 4.5. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any officer, employee or agent of the Trustees or any successor of the Trustees unless such Trustee shall have failed to meet the standard of care set out in Section 4.5. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Property for payment or performance thereof unless such Trustee shall have failed to meet the standard of care set out in Section 4.5.

In the exercise of the powers, authorities or discretion conferred upon the Trustees under this Declaration of Trust, the Trustees are and shall be conclusively deemed to be acting as trustees of the Trust Property.

#### **4.10 Reliance**

The Trustees shall be entitled to rely on statements, reports, advice or opinions (including financial statements and Auditors' reports) of consultants, the Administrator, the Auditors, legal counsel and consultants or agents whose profession gives authority to a statement made by them on the subject in question and who are considered by the Trustees to be competent. The Trustee may rely and act upon any instrument or other document believed by it to be genuine and in force and shall have no liability to any person as a result of such reliance, except in the case of gross negligence or wilful misconduct.

#### **4.11 Exculpatory Clauses in Instruments**

The Trustees must use reasonable means where practicable to inform all persons having dealings with the Trust of the limitations of liability set forth in Sections 4.9, 18.1, 18.2 and 18.6, and must use reasonable means where practicable to cause to be inserted in any written agreement, undertaking or obligation made or issued on behalf of the Trust an appropriate statement of the disavowal and limitation of liability as set forth in Sections 4.9, 18.1, 18.2 and 18.6, but the omission of such statement from any such instrument will not render any Trustee, any Unitholder or officer, consultant or agent of the Trust liable to any person, nor will any Trustee or any Unitholder or any officer of the Trust be liable to any person for such omission. If, notwithstanding this provision, any Trustee, Unitholder or any officer of the Trust is held liable to any other person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee, Unitholder or officer will be entitled to indemnity out of the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined, including without limitation, the fees and disbursements of counsel.

#### **4.12    Liability under Contracts**

Any written instrument creating an obligation with respect to the Trust will be conclusively taken to have been executed or done by a Trustee only in the capacity of a Trustee under this Declaration of Trust. Any written instrument creating an obligation of the Trust will contain a disavowal of liability upon and waiver of claim against the Trustee or any Unitholder and indicate that the obligations under such instrument are not personally binding upon, nor will resort be had to the private property of any Trustee, any Unitholder, or any director, officer, employee or agent of the Unitholder, but only the Trust Property or a specific portion thereof will be bound. The omission of a provision of the nature described in this Section 4.12 will not operate to impose personal liability on any Trustee, any Unitholders, or any of the officers, employees, agents, heirs, executors or personal representatives of any of them.

#### **4.13    Conflicts of Interest**

(a)      Subject to Section 19.20, if a Trustee or officer of the Trust:

- (i)        is a party to a material contract or transaction or proposed material contract or transaction with the Trust (or an affiliate thereof); or
- (ii)       is a director or officer of, or otherwise has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust (or an affiliate thereof),

such Trustee or officer of the Trust shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of such interest as follows:

- (iii)      the disclosure required in the case of a Trustee shall be made:
  - (A)       at the meeting of Trustees at which a proposed material contract or transaction is first considered;
  - (B)       if the Trustee was not then interested in a proposed material contract or transaction, at the first such meeting after he becomes so interested;
  - (C)       if the Trustee becomes interested after a material contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or
  - (D)       if a person who is interested in a material contract or transaction later becomes a Trustee, at the first such meeting after he becomes a Trustee;
- (iv)      the disclosure required in the case of an officer of the Trust who is not a Trustee shall be made:
  - (A)       forthwith after such person becomes aware that the material contract or transaction or proposed material contract or transaction is to be considered or has been considered at a meeting of the Trustees;
  - (B)       if such person becomes interested after a material contract is made or transaction is entered into, forthwith after such person becomes aware that he has become so interested; or

- (C) if a person who is interested in a material contract or a transaction later becomes an officer of the Trust, forthwith after he becomes an officer of the Trust.
- (b) Notwithstanding Sections 4.13(a)(i) and (a)(ii), where this Section 4.13 applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such person shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of such person's interest forthwith after such person becomes aware of the material contract or transaction or proposed material contract or transaction.
- (c) A Trustee referred to in this Section 4.13 shall not vote on any resolution to approve the said material contract or transaction unless the material contract or transaction is:
  - (i) one relating primarily to such Trustee's remuneration as a Trustee, officer, employee or agent of the Trust; or
  - (ii) one for indemnity of such Trustee under Section 18.1 hereof or the purchase of liability insurance;

provided, however, that the presence of such Trustee at the relevant meeting or the written recognition by such Trustee of any resolution in writing shall be counted toward any quorum requirement or requirement that at least a minimum number of Trustees act.
- (d) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that such person is a director or officer of or has a material interest in a person and is to be regarded as interested in any material contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any material contract so made or transaction so entered into. In the event that a meeting of Unitholders is called to confirm or approve a material contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of the interest in the material contract or transaction of the person giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of Unitholders or in any information circular to be provided by this Declaration of Trust or by law.
- (e) Where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another person in which a Trustee or an officer of the Trust is a director or officer or in which he has a material interest:
  - (i) such person is not accountable to the Trust or to the Unitholders for any profit or gain realized from the material contract or transaction; and
  - (ii) the material contract or transaction is neither void nor voidable, by reason only of that relationship or by reason only that such person is present at or is counted to determine the presence of a quorum at the meeting of the Trustees that authorized the material contract or transaction, if such person disclosed such person's interest in accordance with this Section 4.13, and the material contract or transaction was reasonable and fair to the Trust at the time it was so approved.
- (f) Notwithstanding anything in this Section 4.13, but without limiting the effect of Section 4.13(c), a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the

Trust or to the Unitholders for any profit or gain realized from any such material contract or transaction by reason only of such person holding such office or position, and the material contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of such person's interest therein void or voidable, where:

- (i) the material contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
- (ii) the nature and extent of such person's interest in the material contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law.
- (g) Subject to Sections 4.13(c), (e) and (f), where a Trustee or an officer of the Trust fails to disclose such person's interest in a Material Agreement or material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 4.13, any Trustee or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the material contract or transaction and directing that such person account to the Trust for any profit or gain realized.

#### **4.14 Decisions of the Board**

All decisions of the Board or the Trustees will require the approval of a majority of the Trustees present in person or by phone at a meeting of the Board.

#### **4.15 Conditions Precedent**

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust Property to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

### **ARTICLE 5 OFFICERS OF THE TRUST**

#### **5.1 General**

The Trust shall have a Chair of Trustees, and may have one or more other officers as the Trustees may appoint from time to time, including without limitation a Chief Executive Officer and Chief Financial Officer. Any officer of the Trust, other than the Chair of Trustees may, but need not be, a Trustee. One person may hold two or more offices. Officers of the Trust may be appointed and, without prejudice to rights under any employment contract, removed or discharged, and their powers, responsibilities and remuneration determined by the Trustees and, in the absence of such determination, their responsibilities shall be those usually applicable to the office held. All officers so appointed shall be Residents.

## **5.2 Chair of Trustees**

The Chair of Trustees shall be appointed from among the Trustees. When present, the Chair of Trustees shall be chairperson of meetings of Trustees and Unitholders and shall have such other powers and duties as the Trustees may determine from time to time to manage the affairs of the Board and monitor the effectiveness of the Trustees.

## **5.3 Term of Office**

The Chair of Trustees and any officer appointed by the Trustees shall hold such position until his or her successor is elected or appointed, provided, without prejudice to rights under any employment contract, that the Trustees may at any time remove an officer from office in their sole discretion.

## **5.4 Independent Contractors**

Any office of the Trust appointed by the Trustees may be held by an individual who is not an employee of the Trust but has been retained by the Trust to hold such office pursuant to an independent service agreement entered into between the Trust and that individual or that individual's employer.

# **ARTICLE 6 THE ADMINISTRATOR**

## **6.1 Administration of the Trust**

The Trustee is hereby authorized to enter into the Administration Services Agreement with the Administrator containing terms set out in the Offering Memorandum and such other terms as may be determined by the Trustees and delegating to the Administrator responsibility for the services set out therein. Pursuant to the Administration Services Agreement, the Administrator will have discretion to administer and manage the day-to-day operations of the Trust, act as agent for the Trust, execute documents on behalf of the Trust and to make decisions which conform to general policies and general principles set forth herein or established by the Trustees. The Administrator shall have the powers and duties expressly provided for herein and in the Administration Services Agreement, and the Manager will have the power to further delegate administration of the Trust where in the discretion of the Administrator it is in the best interests of Unitholders to do so, provided that the Administrator shall not be relieved of its obligations in respect of the matters so delegated. To the extent that there is any conflict or inconsistency between the provisions of this Declaration of Trust and the provisions of such Administration Services Agreement, the provisions of this Declaration of Trust shall govern.

## **6.2 Standard of Care of Administrator**

The Administrator shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Trust and shall exercise the degree of care, diligence and skill of a reasonably prudent person in the circumstances. Subject to the foregoing, the Administrator shall not be required to devote its full time and attention to the affairs of the Trust but need only devote such time as it may deem appropriate or necessary to discharge its duties under this Declaration of Trust and the Administration Services Agreement in a responsible manner.

## **6.3 Services of Administrator**

The Administrator has the authority to manage the day-to-day activities of the Trust and, as applicable, any entity which the Trust may control from time to time, including Windridge LP, in accordance with the terms of the Administration Services Agreement.

#### **6.4     Liability of Trustees**

Subject to applicable law, the Trustees shall have no liability or responsibility for any matters delegated to the Administrator hereunder or under the Administration Services Agreement, and the Trustees, in relying on the Administrator shall be deemed to have complied with its obligations under Section 4.5 and shall be entitled to the benefit of the indemnity provided in Section 18.1.

### **ARTICLE 7**

#### **INVESTMENT RESTRICTIONS AND OPERATING POLICIES**

#### **7.1     Investment Restrictions**

Notwithstanding any other provision hereof, the assets of the Trust may be invested only with the approval of the Trustees and only in accordance with the following restrictions:

- (a) the Trust may only invest, indirectly through Windridge LP, in UFI's of the Property and assets ancillary thereto necessary for the operation and development of such real estate and such other activities as are consistent with the other investment restrictions of the Trust;
- (b) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of Canada or of a province of Canada, short-term government debt securities, or money market instruments of, or guaranteed by, a Canadian bank listed on Schedule I to the *Bank Act* (Canada) maturing prior to one year from the date of issue, the Trust shall not hold securities other than securities of Windridge LP or an entity associated with the operation and development of the Property;
- (c) notwithstanding anything else contained in the Declaration of Trust, the Trust shall not make any investment, take any action or omit to take any action that would result in the Trust not qualifying, at all times, as a "mutual fund trust" within the meaning of the Tax Act; and
- (d) the Trust shall not take any action, or acquire, retain or hold any investment in any entity or other property that would result in the Trust being a "SIFT trust" as defined in the Tax Act.

For the purpose of the foregoing restrictions, the assets, liabilities and transactions of a corporation or other entity wholly or partially-owned by the Trust will be deemed to be those of the Trust on a proportionate consolidation basis.

#### **7.2     Operating Policies**

The operations and affairs of the Trust are to be conducted in accordance with the following policies:

- (a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term "hedging" has the meaning ascribed thereto by National Instrument 81-102 — *Mutual Funds* adopted by the Canadian Securities Administrators;
- (b)
  - (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage; and
  - (ii) to the extent the Board determines to be practicable and consistent with its fiduciary duty to act in the best interest of the Trust, any written instrument which is, in the



judgment of the Board, a material obligation, shall contain a provision, or be subject to an acknowledgement to the effect, that the obligation being created is not personally binding upon, and that resort must not be had to, nor will recourse or satisfaction be sought from, by lawsuit or otherwise the private property of any of the Trustees, Unitholders, annuitants or beneficiaries under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only Trust Property or a specific portion thereof is bound; the Trust, however, is not required, but must use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of the UFI; and

- (c) title to UFIs shall be held by and registered in the name of Windridge LP.

For the purpose of the foregoing restrictions, the assets, liabilities and transactions of a corporation or other entity wholly or partially-owned by the Trust will be deemed to be those of the Trust on a proportionate consolidation basis.

### **7.3 Amendments to Investment Restrictions and Operating Policies**

All of the investment restrictions set out in Section 7.1 and operating policies in Section 7.2 may be amended only with the approval of two-thirds of the votes cast by Unitholders at a meeting called for such purpose.

### **7.4 Tax Election**

The Trustees shall cause the Trust to elect, in its return of income for the first taxation year of the Trust, pursuant to Subsection 132(6.1) of the Tax Act, that the Trust be deemed to be a "mutual fund trust" for the purposes of the Tax Act from the date it was established, provided that prior to filing such return of income the Trust has sufficient Unitholders so as to be entitled to make such election and has otherwise complied with the requirements thereof. Notwithstanding anything else contained in this Declaration of Trust, the Trust shall not make any investment, take any action or omit to take any action that would result in the Trust failing or ceasing to qualify as a "mutual fund trust" or qualifying as a "SIFT Trust" within the meaning of the Tax Act.

### **7.5 Regulatory Matters**

If at any time a government or regulatory authority having jurisdiction over the Trust or any property of the Trust shall enact any law, regulation or requirement which is in conflict with any investment restrictions or operating policy of the Trust then in force, the investment restrictions or operating policies causing such conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and, notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of the Unitholders.

## **ARTICLE 8 UNITS**

### **8.1 Units**

- (a) The beneficial interests in the Trust shall be represented by a single class, described and designated as "Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein. Each Unit shall vest indefeasibly in the holder thereof and the interest of each Unitholder shall be determined by the number of Units registered in the name of the Unitholder. The number of Units that the Trust may issue shall be unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees without notice to or approval of the Unitholders. The Units are not "deposits" within

the meaning of the Canada Deposit Insurance Corporation Act and are not insured under the provisions of such act or any other legislation.

- (b) The Units shall be denominated in U.S. dollars.
- (c) Each Trust Unit shall represent an equal undivided beneficial interest in the Trust, in any distribution from the Trust (whether of Trust Income, Net Realized Capital Gains or other amounts), and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank among themselves equally and rateably without discrimination, preference or priority.
- (d) Each Unit shall entitle the holder of record thereof to one vote at all meetings of Unitholders or in respect of any written resolution of the Unitholders.

## **8.2 Consideration for Units**

No Units shall be issued other than as fully paid and non-assessable. A Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust

## **8.3 Repurchase of Initial Unit by Trust**

Immediately after the initial Closing, the Trust will re-purchase the Initial Unit from the Initial Unitholder, and the Initial Unitholder will sell the Initial Unit to the Trust, for a purchase price of \$100.00 and, upon the completion of such purchase and sale, the Initial Unit shall be cancelled and shall no longer be outstanding for any purpose of this Declaration of Trust.

## **8.4 Pre-Emptive Rights**

Subject to any binding agreement entered into by the Trust, no person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust.

## **8.5 Fractional Units**

If as a result of any act of the Trustees hereunder, any person becomes entitled to a fraction of a Unit, such person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units shall have attached thereto the rights, limitations, restrictions and conditions attaching to whole Units in the proportion that they bear to a whole Unit.

## **8.6 Allotment and Issue**

The Trustees may allot and issue Units at such time or times and in such manner and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received. The price or value of the consideration for which Units may be issued will be determined by the Trustees in their sole

discretion, generally in consultation with investment or exempt market dealers or brokers who may act as agents in connection with the Offering.

#### **8.7 Rights, Warrants, Options, Convertible Indebtedness and Other Securities**

The Trust may not create and issue rights, warrants or options or other instruments or securities to subscribe for fully paid Units. Subject to the provisions of Article 7 hereof, the Board may not create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid Units, or which indebtedness, by its terms, may be convertible into Units at such time and for such prices as the Board may determine.

#### **8.8 Commissions and Discounts**

The Trustees may provide for the payment of commissions or may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Trust Units or other securities issued by the Trust or of their agreeing to procure subscriptions therefor, whether absolute or conditional.

#### **8.9 Transferability**

The Units are freely transferable and, except as stipulated in Section 8.10, the Board shall not impose any restriction on the transfer of Units by any Unitholder except with the consent of such Unitholder.

#### **8.10 Transfer of Units**

- (a) Subject to the provisions of this Article 8, the Units shall be for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and the Units shall be fully transferable without charge as between persons, but no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Unit shall be recognized unless such transfer is of a whole Unit.
- (b) Subject to the provisions of this Article 8, Units shall be transferable on the Register only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Unit Certificate for the Units shall be issued to the transferee and a new Unit Certificate for the balance of Units not transferred shall be issued to the transferor.
- (c) Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit Certificates pursuant to the provisions of this Article 8. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

**8.11 Non-Resident Ownership Constraint**

- (a) At no time may Non-Residents be the beneficial owners of more than 49% of the Units then outstanding and the Board will inform the Transfer Agent and Registrar of this restriction. The Board may require declarations as to the jurisdictions in which beneficial owners of Units are resident for the purposes of the Tax Act. If the Board becomes aware, as a result of requiring such declarations as to beneficial ownership or otherwise, that the beneficial owners of 49% of the Units then outstanding are, or may be, Non-Residents or that such a situation is imminent, the Trustees shall inform the Transfer Agent and the Transfer Agent shall not accept a subscription for Units from or issue Units to a person unless the person provides a declaration that the person is not a Non-Resident.
- (b) If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Units are held by Non-Residents, the Trustees may send a notice to Non-Resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold the specified number of Units or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may, on behalf of such Unitholders sell such Units without further notice and, in the interim, suspend the voting and distribution rights attached to such Units. Upon such sale the affected holders shall cease to be holders of Units and their rights will be limited to receiving the net proceeds of sale, subject to the right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Unitholders. The Trustees shall have no liability for the amount received provided that they act in good faith.
- (c) For greater certainty, the Trust may sell Units in accordance with the terms hereof despite the fact that the Trust does not possess the Unit Certificate or Unit Certificates, if any, representing the Units at the time of the sale. Where, in accordance with this Section 8.11, Units are sold by the Trust without possession of the Unit Certificate or Unit Certificates, if any, representing the same and, after the sale, a person establishes that it is a *bona fide* purchaser without notice of the Units from the Unitholder, then, subject to applicable law:
  - (i) the Trust shall be entitled to treat the Units so purchased by the *bona fide* purchaser as validly issued and outstanding Units in addition to the Units sold by the Trust; and
  - (ii) notwithstanding any other provisions of this Declaration of Trust, the Trust is entitled to the deposit made with respect to such sale and shall add the amount of the deposit to the capital account maintained by the Trust in respect of outstanding Units.
- (d) The Trustees shall have the sole right and authority to make any determination required or contemplated under this Section 8.11. The Trustees shall make all determinations necessary for the administration of the provisions of this Section 8.11 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the non-resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination to any officer of the Trust.

**8.12 Certificate Fee**

The Trustees may establish a reasonable fee to be charged for every certificate issued evidencing the ownership of Units.

**8.13 Form of Unit Certificate**

The form of certificate representing Units shall be in such form as is from time to time authorized by the Trustees.

**8.14 Unit Certificates**

- (a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificates shall:
  - (i) be in the English language;
  - (ii) be dated the date of issue thereof; and
  - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) Each Unit Certificate shall be signed by the Administrator on behalf of the Trustees and, unless otherwise decided by the Trustees, signed or certified by the Transfer Agent of the Trust (if different than the Administrator). The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains the printed or mechanically reproduced signature of a person, then the Trust may issue the Unit Certificate even though such person has ceased to be a Trustee or an authorized representative thereof and such Unit Certificate is a valid as if such person continued to be a Trustee or an authorized representative thereof at the date of its issue.

**8.15 Contents of Unit Certificates**

- (a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, inter alia, the following:
  - (i) the name of the Trust and the words "A trust governed under the laws of the Province of Ontario governed by an Declaration of Trust made the 13<sup>th</sup> day of February, 2013, as amended from time to time" or words of like effect;
  - (ii) the name of the person to whom the Unit Certificate is issued as Unitholder;
  - (iii) the number of Units represented thereby and whether or not the Units represented thereby are fully paid;
  - (iv) that the Units represented thereby are transferable;
  - (v) "The Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all

holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Units represented thereby are issued, may be obtained by a Unitholder on demand and without fee from the head office of the Trust" or words of like effect; and

- (vi) "For information as to personal liability of a Unitholder, see the reverse side of this certificate" or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia*, the following:
  - (i) "The Declaration of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect; and
  - (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units.

#### **8.16 Register of Unitholders**

A register (the "**Register**") shall be kept at the principal office of the Trust in Toronto, Ontario, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of certificates representing such Units and a record of all transfers and redemptions thereof. Only Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Units for all purposes, including, without limitation, payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders.

#### **8.17 Successors in Interest to the Unitholders**

Persons purporting to become entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded in the Register as the holder of such Units, but until such record is made, the Unitholder of record shall continue to be and shall be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustees or the Transfer Agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event, and any person becoming entitled to such Units shall be bound by every notice or other document in respect of the Units which shall have been duly given to the person from whom such person derives title to such Units. Once such record is made, the Trustees shall deal with the new holder of such units as Unitholder from thereon and shall have no liability to any other person purporting to have been entitled to the Units prior to the making of such record.

#### **8.18 Units Held Jointly or in Fiduciary Capacity**

The Trust may treat two or more Persons holding any Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded on the Register, but no entry shall be made in the Register or on any certificate that any Person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any Person recorded in the Register or on any certificate as a Unitholder may, subject to the provisions herein contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

#### **8.19 Performance of Trusts**

None of the Trustees of the Trust, the officers of the Trust, the Unitholders or the Transfer Agent or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit or other security of the Trust was or would be wrongful or that a particular adverse person is the owner of or has an interest in the Unit or other security or any other adverse claim, or be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or other securities or interest therein by any such Unitholder or holder of such security or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder.

#### **8.20 Lost Unit Certificates**

In the event that any certificate for Units is lost, stolen, destroyed or mutilated, the Trustees or any officer of the Trust may authorize the issuance of a new certificate for the same number of Units in lieu thereof. The Trustees or any officers of the Trust may in their discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make such affidavit or statutory declaration, setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees or any officers of the Trust deem necessary and may require the applicant to supply to the Trust a "lost certificate" or similar bond in such reasonable amount as the Trustees or any officers of the Trust direct indemnifying the Trustees or any officers of the Trust, the Transfer Agent and Registrar for so doing. The Trustees or any officers of the Trust shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated certificates. The Trust shall pay all premiums and other sums of money payable for such purpose out of the property of the Trust with such contribution, if any, by those, insured as may be determined by the Trustees or any officers of the Trust. If such blanket lost security bond is acquired, the Trustees or any officers of the Trust may authorize and direct (upon such terms and conditions as they may from time to time impose) any Registrar, Transfer Agent, Trustee, or others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees or any officers of the Trust.

#### **8.21 Death of the Unitholders**

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust or Trust Property, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

#### **8.22 Unclaimed Payments**

In the event that the Trustees hold any amounts to be paid to the holders of Trust Units under Article 12 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company pending payment to the Person or Persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its principal office or to the Public Guardian and Trustee of Ontario (or other similar government official or agency in the province where the Trust has its principal office) whose receipt shall be a fulfilment and discharge of the obligations of the Trustees.

### **8.23 Repurchase of Trust Units**

The Trust shall be entitled to purchase for cancellation at any time and from time to time the whole or any part of the outstanding Trust Units, at a price per Trust Unit and for such forms of consideration as may be determined by the Trustees in compliance with all applicable Securities Laws.

### **8.24 Take-Over Bids**

- (a) If within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than 90% of the Units, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this Section 8.24, to acquire the Units held by holders of Units that did not tender to the take-over bid (the “**dissenting offerees**”).
- (b) An offeror may acquire Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror’s notice to each dissenting offeree stating that:
  - (i) offerees holding more than 90% of the Units, calculated on a fully diluted basis, accepted the take-over bid, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror;
  - (ii) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
  - (iii) a dissenting offeree is required to elect:
    - (A) to transfer his Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the takeover bid, or
    - (B) to demand payment of the fair value of his Units in accordance with Section 8.24(h) to (q) by notifying the offeror within 20 days after he receives the offeror’s notice;
  - (iv) a dissenting offeree who does not notify the offeror in accordance with Section 8.24(b)(iii)(B) is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and
  - (v) a dissenting offeree must send his Units to which the take-over bid relates to the Trust within 20 days after he receives the offeror’s notice.
- (c) Concurrently with sending the offeror’s notice under Section 8.24(b), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror’s notice is sent under Section 8.24 (b) shall, within 20 days after he receives that notice, send his Unit Certificates to the Trust.
- (e) Within 20 days after the offeror sends an offeror’s notice under Section 8.24 (b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would



have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under Section 8.24 (b)(iii)(A).

- (f) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under Section 8.24(e) and the Trust shall deposit the money in a separate account in a bank or other body corporate any deposits of which are insured by the Canada Deposit Insurance Corporation or guaranteed by the Québec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.
- (g) Within 30 days after the offeror sends an offeror's notice under Section 8.24 (b), the Trust shall:
  - (i) issue to the offeror a Unit Certificate in respect of the Units that were held by dissenting offerees;
  - (ii) give to each dissenting offeree who elects to accept the take-over bid terms under Section 8.24(b)(iii)(A) and who sends his Unit Certificates as required under Section 8.24(d), the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money; and
  - (iii) send to each dissenting offeree who has not sent his Unit Certificates as required under Section 8.24(d) a notice stating that:
    - (A) his Units have been cancelled;
    - (B) the Trust or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his Units, and
    - (C) the Trust will, subject to Section 8.24(h) to (q), send that money or other consideration to him forthwith after receiving his Units.
- (h) If a dissenting offeree has elected to demand payment of the fair value of his Units under Section 8.24(b)(iii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration, under Section 8.24(e), apply to a court to fix the fair value of the Units of that dissenting offeree.
- (i) If an offeror fails to apply to a court under Section 8.24(h), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (j) Where no application is made to a court under Section 8.24(i) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid.
- (k) An application under Section 8.24(h) or (i) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (l) A dissenting offeree is not required to give security for costs in an application made under Sections 8.24(h) or (i).
- (m) On an application under Sections 8.24(h) or (i):

- (i) all dissenting offerees referred to in Section 8.24 (b)(iii)(B) whose Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
- (ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.
- (n) On an application to a court under Sections 8.24(h) or (i) the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.
- (o) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of a dissenting offeree.
- (p) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Units as fixed by the court.
- (q) In connection with proceedings under this Section 8.24, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
  - (i) fix the amount of money or other consideration that is required to be held in trust under Section 8.24(f);
  - (ii) order that money or other consideration be held in trust by a person other than the Trust; and
  - (iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit Certificates under Section 8.24(d) until the date of payment.

## **ARTICLE 9**

### **MEETINGS OF THE UNITHOLDERS**

#### **9.1 Meetings of Unitholders**

Annual meetings of Unitholders are not required. However, meetings of Unitholders may be called at any time by the Board and must be called by the Trustees upon a written request of Unitholders holding in the aggregate not less than 25% of the Units then outstanding, such request specifying the purpose or purposes for which such meeting is to be called. Meetings of Unitholders will be held at a location in Canada as determined by the Trustees. The Chair of any meeting will be a person designated by the Board for the purpose of such meeting except that in lieu of the person so designated or if no person has been so designated, on the motion of any Unitholder, any person may be elected as Chair by a majority of the votes cast at the meeting.

#### **9.2 Notice of Meeting of the Unitholders**

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder and to the Auditors of the Trust not less than 21 nor more than 60 days or within such other number of days as required by law before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall state briefly the general nature of the business to be transacted at such meeting, and shall otherwise include such information as would be provided to shareholders of a corporation governed by the *Business Corporations Act* (Ontario) in connection with a meeting of shareholders. Notice of any meeting of the Unitholders

shall state the purposes of the meeting. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 9.4, may be held as adjourned without further notice. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Unitholder (or a duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section 9.2, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. Attendance at a meeting of Unitholders shall constitute a waiver of notice unless the Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

### **9.3     Chairperson**

The chairperson of any meeting shall be the Chair of the Trustees or any other Trustee specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Unitholders present.

### **9.4     Quorum**

A quorum for any meeting of the Unitholders shall be individuals present in person or represented by proxy, not being less than two in number and such persons holding or representing by proxy in aggregate not less than 10% of the total number of outstanding Units, provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. If a quorum is present at the opening of a meeting, the Unitholders may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. The Chair of any meeting at which a quorum of Unitholders is present may, with the consent of the majority of the Unitholders present in person or by proxy, adjourn at such meeting and no notice of any such adjournment need be given. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Unitholders, shall be cancelled and, if otherwise called, shall stand adjourned to such day being not less than 10 days later and to such place and time as may be determined by the Board. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

### **9.5     Voting**

- (a)     Holders of Units may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit shall entitle the holder of record thereof to one vote at all meetings of the Unitholders.
- (b)     Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The Chair of any such meeting shall not have a second or casting vote. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every person present and entitled to vote shall be entitled to one vote.
- (c)     At any such meeting, unless a poll is demanded, a declaration by the Chair that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of that fact. If a poll is demanded concerning the election of a chairperson or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the Chair may direct. The demand for a poll shall

not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

- (d) At any meeting of Unitholders, on a show of hands every person who is present and entitled to vote, whether as a Unitholder or as a proxy, shall have one vote. At any meeting of Unitholders on a poll, each Unitholder present in person or represented by a duly appointed proxy shall have one vote for each Unit held on the applicable record date, except as otherwise set forth herein.

#### **9.6 Approval by Ordinary Resolution**

The following matters require approval by Ordinary Resolution and shall be deemed approved, consented to or confirmed, as the case may be, upon the adoption of such Ordinary Resolution:

- (a) matters relating to the administration of the Trust for which the approval of the Unitholders is required by policies of the securities regulatory authorities or other applicable laws and regulations in effect from time to time, and such policies, laws or regulations do not require approval by Special Resolution;
- (b) subject to the requirements for a Special Resolution, any matter or thing stated in this Declaration of Trust to be required to be consented to or approved by the Unitholders; and
- (c) any matter which the Board considers appropriate to present to the Unitholders for their confirmation or approval.

#### **9.7 Approval by Special Resolution**

Subject to Section 15.1, none of the following shall occur unless the same has been duly approved by Special Resolution:

- (a) the removal of any Trustee appointed by the Administrator;
- (b) the amendment of this Declaration of Trust or changes to the Trust, including changes to the investment restrictions and operating policies as specified in Article 7;
- (c) a reduction in the amount payable on any outstanding Units upon liquidation of the Trust;
- (d) an increase in the liability of any Unitholders; or
- (e) an amendment, modification or variation in the provisions or rights attaching to the Units.

#### **9.8 Record Dates**

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment(s) or postponement(s) thereof or for the purpose of any other action, the Trustees may from time to time, without notice to the Unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or without closing the transfer, books the Trustees may fix a date not less than 21 days and not more than 60 days prior to the date of any meeting of the Unitholders or other action as a record date for the determination of the Unitholders entitled to receive notice of and to vote at such meeting or any adjournment(s) or postponement(s) thereof or to be treated as the Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment(s) or postponement(s) thereof, even though it has since that date disposed of its Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment(s) or postponement(s) thereof or to be treated as a Unitholder of record

for purposes of such other action. If, in the case of any meeting of the Unitholders, no record date with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. on the last Business Day before the meeting.

#### **9.9 Proxies**

- (a) Whenever the vote or consent of the Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy in such form as the Trustees may prescribe from time to time or, in the case of a Unitholder that is a body corporate or association, by an individual authorized by the board of directors or governing body of the body corporate or association to represent it at a meeting of the Unitholders. A proxyholder need not be a Unitholder. The Trustees may solicit such proxies from the Unitholders or any of them in any matter requiring or permitting the Unitholders' vote, approval or consent.
- (b) The Trustees may adopt, amend or repeal such regulations relating to the appointment of proxyholders, and the solicitation, execution, validity, revocation and deposit of proxies, as they in their discretion from time to time determine.
- (c) An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise, and the persons challenging the instrument shall have the burden of proving, to the satisfaction of the Chair of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the Chair of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment(s) or postponement(s) thereof.
- (d) A vote cast, in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy or revocation of the proxy has been received by the Chair of the meeting prior to the time when the vote is cast.

#### **9.10 Personal Representatives**

If a Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Unitholders as the Unitholder would have been entitled to exercise if he were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 8.18 relating to joint holders shall apply. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

#### **9.11 Attendance by Others**

Any Trustee, officer of the Trust, representative of the Auditors, representative of the legal counsel of the Trust or other individual approved by the Trustees may attend and speak at any meeting of the Unitholders.

#### **9.12 Conduct of Meetings**

To the extent that the rules and procedures for the conduct of a meeting of the Unitholders are not prescribed herein or in the Trustees' Regulations, the rules and procedures shall be such reasonable rules and procedures as

are determined by the chair of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

**9.13 Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this Declaration of Trust shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to Sections 9.6 and 9.7, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without approval of the Trustees.

**9.14 Resolution in Lieu of Meeting**

A resolution signed in writing by all of the Unitholders entitled to vote on that resolution at a meeting of Unitholders is as valid as if it had been passed at a meeting of Unitholders. Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Unitholders holding a proportion of the outstanding Units equal to the proportion required to vote in favour thereof at a meeting of Unitholders to approve that resolution is valid as if it had been passed at a meeting of Unitholders.

**9.15 Action by Unitholders**

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a Special Resolution in lieu thereof) in accordance with this Article 9.

**9.16 Meaning of "Special Resolution"**

- (a) The expression "**Special Resolution**" when used in this Declaration of Trust means, subject to this Article 9, a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section 9.16 at which two or more individuals present in person or represented by proxy and holding or representing by proxy in aggregate not less than 10% of the total number of outstanding Units and passed by the affirmative votes of the holders of more than 66⅔% of the Units represented at the meeting and voted on a poll upon such resolution.
- (b) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

**9.17 Meaning of "Outstanding"**

Every Unit issued, certified and delivered hereunder will be deemed to be outstanding until it is cancelled or delivered to the Trustees or Transfer Agent for cancellation, provided that:

- (a) when a new certificate has been issued in substitution for a Trust Unit certificate that has been lost, stolen, mutilated or destroyed, only the later of such Trust Unit certificates will be counted for the purposes of determining the number of Units outstanding;
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Units owned directly or indirectly, legally or equitably, by the Trust, or any Subsidiary thereof will be disregarded, except that:

- (i) for the purpose of determining whether the Trustees will be protected in relying on any such vote, consent, requisition or other instrument or action, only the Units that the Trustees know are so owned will be so disregarded; and
- (ii) Units so owned that have been pledged in good faith other than to the Trust or a Subsidiary thereof will not be so disregarded if the pledgee establishes, to the satisfaction of the Trustees the pledgee's right to vote such Units in its discretion free from the control of the Trust or any Subsidiary thereof.

## **ARTICLE 10 MEETINGS OF THE TRUSTEES**

### **10.1 Trustees May Act Without Meeting**

The Trustees may act with or without a meeting. Any action of the Trustees or any committee of the Trustees may be taken at a meeting by vote, or without a meeting by written consent signed by all of the Trustees or the members of the applicable committee, as the case may be.

### **10.2 Notice of Meeting**

Meetings of the Trustees may be held from time to time upon the giving of notice by the Chair or any Trustee. Regular meetings of the Trustees may be held without notice at a time and place fixed in accordance with the Trustees' Regulations. Notice of the time and place of any other meetings shall be mailed or otherwise given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. Notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. If a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following a meeting of Unitholders. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Each committee of Trustees appointed by the Trustees may adopt its own rules or procedures for the calling, conduct, adjournment and regulation of the meetings of such committees as it sees fit and may amend or repeal such rules or procedures from time to time; provided, however, that the Trustees' Regulations and any such rules or procedures shall not be inconsistent with this Declaration of Trust.

### **10.3 Place of Meeting**

Meetings of the Trustees may be held at any place in Canada and may not be held outside Canada. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when he or she attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not lawfully called or convened. A majority of Trustees participating in a meeting of Trustees must be present in person in Canada or participating from a location in Canada.

### **10.4 Chair**

The chair of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chair of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairperson. The Chair of the Trustees and the chairperson of any meeting of Trustees shall be a Resident.

### **10.5 Quorum**

A quorum for all meetings of the Trustees or any committee thereof shall be a majority of the Trustees then holding office or of the Trustees on such committee, provided that a majority of the Trustees comprising the

quorum must be Residents. Notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

#### **10.6 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the chairperson of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

#### **10.7 Voting at Meetings**

Questions arising at any meeting of the Trustees or of a committee of Trustees shall unless otherwise specified herein, be decided by a majority of the votes cast. In the case of an equality of votes at any meeting of Trustees or of a committee of Trustees, the chairperson of the meeting shall not have a second or casting vote in addition to his original vote, if any. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

#### **10.8 Meeting by Telephone**

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other communication facilities by means of which all persons participating in the meeting can hear each other and a Trustee so participating shall be considered for the purposes of this Declaration of Trust to be present in person at that meeting, provided that a majority of Trustees are present in person in Canada or participating from a location in Canada.

### **ARTICLE 11 COMMITTEES**

#### **11.1 General**

Except as prohibited by law, the Trustees may appoint from among their number a committee of Trustees and may delegate to such committee any of the powers of the Trustees, provided that a majority of the Trustees appointed to any committee, shall be Residents. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its assets or affairs. For greater certainty, the Trustees may delegate to any person (including, without limitation any one or more officers of the Trust) the power to execute any document or enter into any agreement on behalf of the Trust or exercise any discretion or make any amendment in relation thereto. The Trustees may grant or delegate such authority to an advisor or a committee of Trustees as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees. The Trustees shall have the power to determine the term and compensation of an advisor or any other person whom they may employ or with whom they may contract. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto.

#### **11.2 Committees**

The Trustees may create such number of committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the Trust; provided that the Trustees may not delegate to any committee any powers or authority in respect of which a board of directors of a corporation governed by the *Business Corporations Act* (Ontario) may not so delegate.



### **11.3 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members provided that a majority of the Trustees comprising such quorum must be Residents. Each committee shall have the power to appoint its chairperson who must be a Resident and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

## **ARTICLE 12 DISTRIBUTIONS**

### **12.1 Distributions of Distributable Cash Flow**

The Board will, in respect of each Distribution Period, on or before each Distribution Record Date, declare payable to the Unitholders of record at the close of business on each Distribution Record Date, all or any part of the Distributable Cash Flow for the Distribution Period, with the first of these distributions, if any, declared December 31, 2013. Subject to Section 12.7, any Distributable Cash Flow that has been declared to be payable to Unitholders in respect of a Distribution Period will be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

### **12.2 Currency of Distributions**

Distributions on the Units, including any returns of capital and the distribution of proceeds on the termination of the Trust, will be determined, declared and paid in U.S. dollars.

### **12.3 Distributions of Trust Income, Gains, Capital and Other Amounts**

- (a) The Board may allocate, declare payable and/or make distributions, from time to time, out of Trust Income, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates and to Unitholders of record on such dates, as the Board may determine.
- (b) The Board intends to allocate, distribute and make payable to Unitholders all of the Trust Income, Net Realized Capital Gains and other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, such that on the last day of each taxation year (whether or not such day is a Business Day) of the Trust, the Board may declare the following amounts to be due and payable:
  - (i) the amount of Trust Income for such year, other than (A) any Trust Income realized by the Trust as a result of a redemption of Units pursuant to Article 13 and that are payable to redeeming Unitholders under Section 13.7, and (ii) any other Trust Income that was previously paid or made payable to Unitholders in such year; and
  - (ii) the amount of Net Realized Capital Gains for such year, other than (A) any capital gains that are realized by the Trust as a result of a redemption of Units pursuant to Article 13 and that are payable to redeeming Unitholders under Section 13.7, and (B) any other capital gains that were previously paid or made payable to Unitholders in such year.
- (c) Any distribution made pursuant to this Section 12.3 will be payable to each Unitholder of record on the applicable record date in respect of a distribution pursuant to Section 12.3(a), or on the

last day of the taxation year in the year of distribution in respect of a distribution pursuant to Section 12.3(b), Subject to Section 12.7, amounts that have been declared to be payable to Unitholders pursuant to Section 12.3(a) will be paid in cash on the Distribution Payment Date determined by the Board in respect of such distribution and, subject to Section 12.7, amounts that are payable pursuant to Section 12.3(b) will be paid in cash on the Distribution Payment Date for the Distribution Period ending December 31.

- (d) As contemplated by Section 13.7, the Board may designate as payable to redeeming Unitholders as part of the redemption price any capital gain and/or income realized by the Trust as a result of an in specie distribution on a redemption of Units pursuant to Article 13.

#### **12.4 Character of Distributions, Designations and Allocation**

In accordance with and to the extent permitted by the Tax Act and analogous provisions of any applicable provincial income tax legislation, the Board in each year will make designations in respect of the amounts paid or payable to Unitholders for such amounts that the Board considers to be reasonable in all of the circumstances, including without limiting the generality of the foregoing, net capital gains realized by the Trust in the year and foreign source income of and foreign taxes paid by the Trust for the year. Distributions paid or payable to Unitholders pursuant to this Article 12 will be distributed from Trust Income, Net Realized Capital Gains, trust capital or other items in such amounts as the Board may, in its absolute discretion, determine and allocated to the Unitholders in the same proportions as distributions received by the Unitholders, subject to the discretion of the Board to adopt an allocation method which the Board considers to be more reasonable in the circumstances. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains will include the non-taxable portion of the capital gains of the Trust that are encompassed in such distribution.

#### **12.5 Special Distribution Provisions**

- (a) To the extent distributions are calculated in respect of a Distribution Period and payable at the end of such Distribution Period, if for any reason, including the termination of the Trust, such Distribution Period is not completed or such amounts are no longer payable, then the distribution will be pro-rated to the end of the shortened Distribution Period and be payable at the end of such shortened Distribution Period.
- (b) The Board will have the right but not the obligation, at any time, to distribute and allocate Distributable Cash Flow, Trust Income, Net Realized Capital Gains and any other applicable amounts among Unitholders.

#### **12.6 Enforceability of Right to Receive Distributions**

Notwithstanding any other provision of this Article 12, each Unitholder will have the legal right to enforce payment on the Distribution Payment Date or December 31, as the case may be, of any amount payable to such Unitholder as a result of any distribution declared or otherwise made payable pursuant to this Article 12 on the applicable Distribution Record Date or the applicable December 31, as the case may be, to, and not yet received by, such Unitholder pursuant to this Article 12.

#### **12.7 Method of Payment of Distributions**

Where the Board determines that the Trust does not have cash in an amount sufficient to make payment of the full amount of any distribution that has been declared payable, or otherwise made payable, pursuant to this Article 12 on the due date for such payment or for any other reason cannot pay the distribution in cash, or the Board otherwise elects in respect of any such distribution at the sole and absolute discretion of the Board, the payment will be distributed to the Unitholders in the form of additional Units, or fractions of Units, if necessary or desirable, having a value equal to the difference between the amount of such distribution declared to be payable and the

amount of cash that has been determined by the Board to be available for the payment of such distribution. Such additional Units will be issued based pro rata in proportion to the number of Units held as of record by each Unitholder on such date. Such additional Units will be issued pursuant to applicable exemptions under applicable securities laws, discretionary exemptions granted by applicable securities regulatory authorities or a prospectus or similar filing. Immediately after a proportionate pro rata distribution of such Units to all Unitholders in satisfaction of any non-cash distribution, the number of outstanding Units will be consolidated so that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the non-cash distribution. Each Unit Certificate representing a number of Units prior to the non-cash distribution is deemed to represent the same number of Units after the non-cash distribution and consolidation.

#### **12.8 Withholding Taxes**

The Board may deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distributions. In the event of a distribution in the form of additional Units, the Board may sell Units of such Unitholder to pay such withholding taxes and to pay all of the Trustee's reasonable expenses with regard thereto and the Board shall have the power of attorney of such Unitholder to do so. Upon such sale, the affected Unitholder shall cease to be the holder of such Units.

#### **12.9 Definitions**

Unless otherwise specified or the context otherwise requires, any term in this Article 12 that is defined in the Tax Act will have for the purposes of this Article 12 the meaning that it has in the Tax Act.

#### **12.10 Payments in Cash**

Any payment of cash by the Trust to a Unitholder pursuant to this Article 12 or any other provision of this Declaration of Trust will be conclusively deemed to have been made upon mailing of a cheque in a postage pre-paid envelope, addressed to the Unitholder at the Unitholder's address appearing in the Register, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the Unitholder in respect of such payment; provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the Board of such loss or destruction, together with such indemnity as the Board may reasonably require, the Trust will issue a replacement cheque to the Unitholder. Notwithstanding the foregoing, the Trust may, in lieu of forwarding or causing to be forwarded a cheque to a Unitholder pursuant to this Article 12, enter into an agreement with a Unitholder or with the person for whom such Unitholder is acting as nominee providing for the payment to such Unitholder of the amounts to which such Unitholder is entitled, from time to time, hereunder by electronic funds transfer or by any other method at a place or places other than the place or places specified herein as the place or places for such payment. Any payment made hereunder or in connection with this Declaration of Trust that is made pursuant to any such agreement will, notwithstanding any other provision of this Declaration of Trust, be valid and binding on the Trust and the relevant Unitholder.

#### **12.11 Unclaimed Distributions**

In the event that the Board holds any distributable amount that is unclaimed or that cannot be paid for any reason, the Board will be under no obligation to invest or reinvest the same, but will only be obliged to hold the same in a current interest-bearing account pending payment with interest earned (and less applicable taxes) to the person or persons entitled thereto. The Board will, as and when required by law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the appropriate government official or agency, whose receipt shall be a good and sufficient discharge and release of the Trustees.

**ARTICLE 13**  
**REDEMPTION OF UNITS**

**13.1     Right of Redemption by Unitholders**

Each Unitholder will be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Units registered in the name of the Unitholder at the prices determined and payable in accordance with this Article 13.

**13.2     Exercise of Redemption Right**

- (a)     The redemption right must be exercised by causing notice (the “**Redemption Notice**”) to be given to the Board in the manner described in this Section 13.2. Such notice will be irrevocable except with respect to any Units surrendered for redemption in respect of which the redemption proceeds are not paid by the Trust on or before the date on which such payment is due and except as otherwise provided herein.
- (b)     Any Redemption Notice which the Board determines to be incomplete, not in proper form or not duly executed will for all purposes be void and of no effect and the redemption privilege to which it relates will be considered for all purposes not to have been exercised thereby. A failure by a Unitholder to exercise redemption privileges properly will not give rise to any obligations or liability on the part of the Trust to the Unitholder.

**13.3     Effect of Redemption Notice**

Upon receipt by the Trust of the Redemption Notice, the Unitholder of such Units shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor unless the redemption payment is not made as provided for herein) including the right to receive any distributions thereon that are declared payable to the Unitholders of record on a date that is subsequent to the date of receipt by the Trust of the Redemption Notice. Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Board, received the Redemption Notice and further documents or evidence the Trust may reasonably require with respect to the identity, capacity or authority of the person giving such notice.

Subject to applicable laws, the Trust will redeem the Units specified in such Redemption Notice. Such redemption will be effective as of the redemption date.

**13.4     Redemption Price**

The redemption price per Unit (the “**Redemption Price**”) payable in respect of the Units will be equal to the Redemption Value divided by the total number of outstanding Units.

**13.5     Payment of Redemption Price in Cash**

The redemption price per Unit multiplied by the number of Units tendered for redemption will be paid to a Unitholder by way of a cash payment no later than the last day of the calendar month following the calendar quarter in which the redemption date occurs, provided that:

- (a)     the total amount payable by the Trust by cash payment in respect of the redemption of Units for the calendar quarter in which the redemption date occurs will not exceed \$25,000; and
- (b)     the total amount payable by the Trust by cash payment in respect of the redemption of Units in any twelve month period ending at the end of the calendar quarter in which the redemption date

occurs will not exceed 1% of the aggregate Gross Subscription Proceeds of all Units that were issued and outstanding at the start of such twelve month period.

**13.6 Payment of Redemption Price in Specie**

If either of the conditions in Section 13.5 preclude the payment of the Redemption Price in cash (and the Board does not, in its sole discretion, waive such limitation in respect of all Units tendered for redemption in any particular calendar quarter), the redemption price shall be paid and satisfied by way of an *in specie* distribution of property of the Trust and/or unsecured subordinated notes of the Trust, as determined by the Trustees in their sole discretion. The terms of such notes, if issued, shall be determined by the Trustees in their sole discretion.

**13.7 Capital Gains and Income on In Specie Distribution**

Where the Trust makes a distribution *in specie* on a redemption of Units pursuant to Section 13.6, the Board may designate as payable to the particular redeeming Unitholders receiving such *in specie* property portions of the amount of the value of such property (i) not exceeding the amount of any capital gain of the Trust as a result of the distribution of such property as an amount payable out of the Net Realized Capital Gains of the Trust; and (ii) not exceeding an allocable share of income in respect of such property so distributed together with any other income realized by the Trust as a result of a distribution of such property, as an amount payable out of Trust Income.

**13.8 General**

Units will be redeemed according to the order in which Redemption Notices are received.

**ARTICLE 14  
FEES AND EXPENSES**

**14.1 Expenses**

The Trust shall pay all expenses incurred in connection with the administration and management of the Trust and its investments out of the Trust Property, including without limitation:

- (a) interest and other costs of borrowed money;
- (b) fees and expenses of lawyers, accountants, Auditors and other agents or consultants employed by or on behalf of the Trust;
- (c) compensation, remuneration and expenses of the Trustees;
- (d) fees and expenses connected with the acquisition, disposition and ownership of Trust Property permitted in this Declaration of Trust including, without limitation, any costs payable under the Deed of Covenant;
- (e) insurance, including trustees' and officers' liability insurance, as considered necessary by the Trustees;
- (f) expenses in connection with payments of distributions of Trust Units;
- (g) expenses in connection with communications to the Unitholders and the other bookkeeping and clerical work necessary in maintaining relations with the Unitholders;
- (h) expenses of changing or terminating the Trust;

- (i) fees and charges of Transfer Agents, and other trustees and custodians;
- (j) all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of Units and other required governmental filings (other than such fees and expenses payable by Windridge Developments (or affiliates thereof) in connection with the Offering, as described in the Offering Memorandum); and
- (k) all costs and expenses in connection with the establishment, organization and maintenance of corporations and other entities formed to hold the UFI or other Trust Property (other than such fees and expenses payable by Windridge Developments (or affiliates thereof) in connection with the Offering, as described in the Offering Memorandum).

**ARTICLE 15**  
**AMENDMENTS TO THE DECLARATION OF TRUST**

**15.1 Amendments by the Trustees**

Notwithstanding Section 9.7, the Trustees may, without the approval of or notice to the Unitholders, make certain amendments to the Declaration of Trust, including amendments:

- (a) removing any conflicts or other inconsistencies which may exist between any terms of the Declaration of Trust and any provisions of any law or regulation applicable to or affecting the Trust;
- (b) providing, in the opinion of the Board, additional protection for the Unitholders or to obtain, preserve or clarify the provision of desirable tax treatment to Unitholders;
- (c) making amendments which, in the opinion of the Board, are necessary or desirable in the interests of the Unitholders as a result of changes in taxation laws or accounting rules or in their interpretation or administration;
- (d) which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the Offering Memorandum and the Declaration of Trust;
- (e) making changes or corrections in the Declaration of Trust which are of a typographical nature or are required to cure or correct any ambiguity or defective or inconsistent provision, clerical omission, mistake or manifest error contained therein;
- (f) bringing the Declaration of Trust into conformity with applicable laws, including the rules and policies of Canadian securities regulators or with current practice within the securities or investment fund industries provided that any such amendment does not adversely affect the rights, privileges or interests of Unitholders;
- (g) maintaining, or permitting the Administrator to take such steps as may be desirable or necessary to maintain, the status of the Trust as a "mutual fund trust" and a "unit trust" for the purposes of the Tax Act or to respond to amendments to the Tax Act or to the interpretation thereof;
- (h) subject to (g), removing the limitation on Non-Resident ownership;
- (i) providing added protection to Unitholders; or

- (j) making amendments as are required to undertake an internal reorganization involving the sale, lease, exchange or other transfer of the Trust as a result of which the Trust has substantially the same interest, whether direct or indirect, in the Trust Property that it had prior to the reorganization and, for greater certainty, includes an amalgamation, arrangement or merger of the Trust and its affiliates with any entities provided that in the opinion of the Trustees, based on the advice of counsel, the rights of Unitholders are not materially prejudiced thereby.

Notwithstanding the foregoing, no such amendment shall modify the right to vote attached to any Unit or reduce the proportionate interest in the Trust Property or the entitlement to distributions from the Trust provided hereunder (including those provided for in Article 12 and Article 17) represented by any Unit without the consent of the Unitholders provided in accordance with Sections 15.2 and 9.7, as applicable.

#### **15.2 Amendments by Unitholders**

Subject to Sections 9.7 and 15.3, this Declaration of Trust may be amended by the vote of a majority of the votes cast at a meeting of Unitholders called for that purpose.

#### **15.3 Amendment by Sole Unitholder**

Notwithstanding Sections 15.1, 15.2 and 9.7, so long as the Initial Unitholder is the sole Unitholder of the Trust, the Initial Unitholder may make any amendment to this Declaration of Trust.

#### **15.4 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 15 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

#### **15.5 Trustees to Sign Amendment**

When a vote of the Unitholders approves an amendment to this Declaration of Trust or when the Trustees may amend this Declaration of Trust alone as provided herein, then the Trustees shall sign such documents as may be necessary to effect such amendment.

### **ARTICLE 16 SUPPLEMENTAL INDENTURES**

#### **16.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustees may, without approval of or notice to the Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 15.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Ordinary Resolution, Special Resolution or, if required, with the consent of the holders of all of the Units.

## **ARTICLE 17 TERMINATION OF THE TRUST**

### **17.1 Term of the Trust**

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in full force and effect so long as the Trustees hold any property of the Trust, and the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust.

### **17.2 Termination**

The Board may at any time terminate and dissolve the Trust. At least 90 days before the date on which the Trust is to be terminated, the Board must give written notice to each of the then Unitholders of its intention to terminate the Trust. Such notice will specify the location(s) at which Unitholders may receive, or the manner in which Unitholders will be paid, the payments due to them under this Declaration of Trust and, where applicable, surrender certificates representing their Units for cancellation.

### **17.3 Requirement to Call Meeting**

Notwithstanding Section 17.2, in the event that the Board has not terminated and dissolved the Trust by December 31, 2023, the Trust will call a meeting of Unitholders to determine by Special Resolution whether the Trust will:

- (a) sell Windridge LP, or cause Windridge LP to sell the UFI, for cash or securities listed on a stock exchange or a combination of cash and securities listed on a stock exchange; or
- (b) continue in operation.

### **17.4 Sale of Investments**

Upon termination, the net assets of the Trust will be distributed to the Unitholders on a proportionate basis. Prior to the termination date, the Board will convert the assets of the Trust to cash. After payment of the liabilities of the Trust, the Unitholder registered as such at the close of business on the date fixed as the termination date will be entitled to receive from the Trust the proportionate share of the value of the Trust attributable to such Unitholder's Units.

### **17.5 Powers of the Trustees Upon Termination**

After the Termination Date, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust and protecting the Trust Property pending such winding up as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

### **17.6 Distribution of Proceeds.**

On the termination of the Trust, the assets of the Trust shall be liquidated and the proceeds distributed in the following order:

- (a) to pay the liabilities of the Trust and to establish reserves for the contingent liabilities of the Trust; and
- (b) to redeem the Units from Unitholders on a proportionate basis.



**17.7 Further Notice to Unitholders**

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six months after the time specified in the notice referred to in Section 17.2, the Trustees shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their *pro rata* share of the remaining Trust Property, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

**17.8 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Property after the date referred to in Section 17.4 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 17.6.

**ARTICLE 18  
LIABILITIES OF THE TRUSTEES AND OTHERS**

**18.1 Liability and Indemnification of the Trustees**

The Trustees shall at all times, including, for the purposes of this Article 18, the time after they have ceased to be a Trustee, be indemnified and saved harmless out of the Trust Property from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including, without limitation, legal fees and disbursements on a solicitor and client basis) which they sustain or incur in or about or in relation to the affairs of the Trust (whether accrued, actual, contingent or otherwise), claims, costs, charges or expenses arising out of or in connection with the presence, release, discharge or disposal of any hazardous substance or any adverse environmental conditions at, on, under or near any real property or any investigation, remediation or clean up action required to be undertaken in connection with any real property. Further, the Trustees shall not be liable to the Trust or to any Unitholder or Annuitant for any loss or damages relating to any matter regarding the Trust, including, without limitation, any loss or diminution in the value of the Trust or its assets. The foregoing provisions of this Section 18.1 in favour of any Trustee do not apply unless:

- (a) the Trustee acted honestly and in good faith with a view to the best interests of the Trust;
- (b) the Trustee exercised that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
- (c) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing his or her conduct was lawful.

**18.2 Indemnification of the Trustees**

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust Property in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or former Trustee or officer or former officer in consequence of its performance of its duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred

in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, a trustee or officer or any subsidiary or affiliate thereof. A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Property, and no Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

### **18.3 Contractual Obligations of the Trust**

The omission of the statement described in Section 7.2(b)(ii) from any document or instrument shall not render the Trustees or the Unitholders liable to any person, nor shall the Trustees or the Unitholders be liable for such omission. If, the Trustees or any Unitholder shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee or Unitholder shall be entitled to indemnity and reimbursement out of the Trust Property to the full extent of such liability.

### **18.4 Liability of the Trustees**

The Trustees shall not be liable to the Trust or to any Unitholder, Annuitant or any other person for the acts, omissions, receipts, neglects or defaults of any person, firm or corporation employed or engaged by it as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or Trust Property shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with Sections 18.1(a) and (c).

### **18.5 Reliance Upon Advice**

The Trustees may rely and act upon any statement, report or opinion prepared by or any advice received from the Auditors, lawyers or other professional advisors of the Trust and shall not be responsible or held liable for any loss or damage resulting from so relying or acting.

### **18.6 Liability of the Unitholders and Others**

No Unitholder or Annuitant or any officer, employee or agent of the Trust shall be held to have any personal liability as such, and no resort shall be had to his private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the Trust) for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or Annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for such satisfaction. Any written instrument creating an obligation which is or includes the granting by the Trust of a lease, sublease or mortgage or which is, in the judgment of the Trustees, a material obligation, shall contain a provision to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the Trust) of any of the Unitholders or Annuitant or officers, employees and agents of the Trust, but the Trust Property or a specific portion thereof only shall be bound. If the Trust acquires any real property investment subject to existing contractual obligations, the Trustees shall use their reasonable efforts to have any such obligations under material agreements, modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted in such a way and in such jurisdictions as to avoid, as far as reasonably possible, any material risk of liability on the Unitholders or Annuitant for claims against the Trust, and shall, to the extent which they determine to be possible and reasonable, including in the cost or premiums, to

cause the Trust to carry insurance for the benefit of such persons in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of Sections 18.1, 18.4 and 18.5. Nothing in this Declaration will preclude the Trustees from exercising any rights granted to them under the Tax Act or any other applicable taxation legislation to withhold from amounts payable to Unitholders or otherwise recover from Unitholders any taxes that the Trustees have paid on behalf of Unitholders.

## **ARTICLE 19**

### **GENERAL**

#### **19.1    Execution of Instruments**

The Trustees shall have power from time to time to appoint any Trustee or Trustees or any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing. Provisions respecting the foregoing may be contained in the Trustees' Regulations.

#### **19.2    Manner of Giving Notice**

- (a) Any notice or other document required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder, a Trustee or the Auditors shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to the Unitholder at the address shown in the Register, to a Trustee at the last address provided by such Trustee to the President of the Trust, or to the Auditors of the Trust at the last address provided by the Auditors to the Trustees, as the case may be provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust, and shall be deemed to have been given on the date of delivery or date sent by facsimile or other means of prepaid, transmitted or recorded communications or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by facsimile or other means of prepaid, transmitted or recorded communication.

#### **19.3    Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Unitholder, any Trustee or the Auditors any notice provided for herein shall not affect the validity, effect, taking effect or time of taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Unitholder for any such failure.

**19.4 Joint Holders**

Service of a notice or document on any one of several joint holders of Units shall be deemed effective service on the other joint holders.

**19.5 Service of Notice**

Any notice or document sent by post to or left at the address of a Unitholder pursuant to this Article 19 shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Units concerned.

**19.6 Trust's Auditors**

The Auditors shall be appointed by the Trustees. If at any time a vacancy occurs in the position of auditors of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practice in any province of Canada to act as the Auditors. The Auditors shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the Trust.

**19.7 Fiscal Year**

The fiscal year of the Trust shall end on December 31 in each year.

**19.8 Reports to the Unitholders**

The Trust will furnish to Unitholders annual audited financial statements and other reports as are from time to time required by this Declaration of Trust and by applicable law. The Trust will also make available to the Unitholders any documents or reports received from Windridge Developments (or any replacement facilitator) pursuant to the Deed of Covenant.

**19.9 Trust Property to be Kept Separate**

The Trustees shall maintain the property of the Trust separate from all other property in their possession.

**19.10 Electronic Documents**

Any requirement under this Declaration of Trust, applicable Securities Laws or any other applicable law that a notice, statement, document or other information be created or provided is satisfied by the creation or provision of an electronic document to the extent permitted by law.

**19.11 Trustees May Hold Units**

Any Trustee or associate of a Trustee may be a Unitholder or may be an Annuitant, and may be required to hold Units as the Board may determine from time to time.

**19.12 Trust Records**

The Trustees shall prepare and maintain, at its principal office or at any other place designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of the Unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and any committee thereof. Such records shall be kept at the principal office of the

Trust or at such other place as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

**19.13 Right to Inspect Documents**

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust, the Trustees' Regulations, the minutes of meetings and resolutions of the Unitholders, and any other documents or records which the Trustees determine should be available for inspection by such Person, during normal business hours at the principal office of the Trust. The Unitholders and creditors of the Trust shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the *Business Corporations Act* (Ontario).

**19.14 Taxation Information**

On or before March 31 in each year, or such earlier day as is required by applicable legislation or regulation, the Administrator will provide to Unitholders who received distributions from the Trust in the prior calendar year, such information required by Canadian law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of such distributions. In particular, each Unitholder shall be informed each year of the composition of the amounts payable by the Trust to such Unitholder in terms of net income, taxable dividends, net taxable gains, foreign source income and return of capital, and will be informed of the portion of such net income that has been designated as taxable dividends on shares of taxable Canadian corporations and taxable capital gains and of the amount of any foreign taxes paid by the Trust in respect of which the Unitholder may claim a credit for tax purposes to the extent permitted by the Tax Act, where those items are applicable.

**19.15 Consolidations**

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as amended and/or restated.

**19.16 Counterparts**

This Declaration of Trust may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

**19.17 Severability**

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of the Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdictions such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

**19.18 Headings for Reference Only**

The headings preceding the articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction, interpretation or effect of this Declaration of Trust.

**19.19 Governing Law**

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and each of the Trustees hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

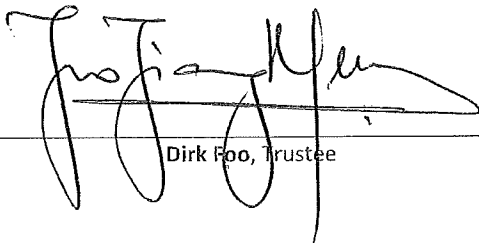
**19.20 Transition**

Notwithstanding any other provision hereof, if otherwise applicable, the provisions of Section 4.13 shall not be operative or effective with respect to the entering into or performance of any Material Agreement, or any other transaction or arrangement or proposed transaction or arrangement disclosed in the Offering Memorandum.

**19.21 Language**

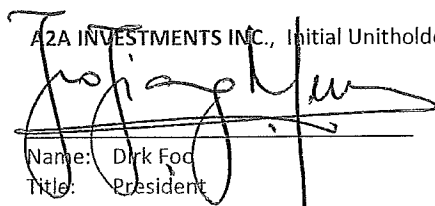
Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

**IN WITNESS WHEREOF** the Trustees appearing below and the Initial Unitholder have caused these presents to be signed and sealed as of the date first above written.

  
\_\_\_\_\_  
Dirk Foo, Trustee

\_\_\_\_\_  
William Friedman, Trustée

\_\_\_\_\_  
Steven Warsh, Trustee

A2A INVESTMENTS INC., Initial Unitholder  
By   
\_\_\_\_\_  
Name: Dirk Foo  
Title: President  
I have authority to bind the Corporation.

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Dirk Foo, Trustee

  
\_\_\_\_\_  
William Friedman, Trustee

  
\_\_\_\_\_  
Steven Warsh, Trustee

**A2A INVESTMENTS INC.,** Initial Unitholder

By \_\_\_\_\_

Name: Dirk Foo  
Title: President

I have authority to bind the Corporation.

## SCHEDULE A

### HILLS OF WINDRIDGE A2A TRUST TRUSTEES' REGULATIONS

#### INTERPRETATION

1. **Interpretation.** In these Trustees' Regulations, unless the context otherwise specifies or requires:
  - (a) all terms used in these Trustees' Regulations not otherwise defined herein shall have the meanings given to such terms in the Declaration of Trust;
  - (b) words importing the singular number only shall include the plural and *vice versa* and words importing a specific gender shall include the other gender; and
  - (c) the headings used in these Trustees' Regulations are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.

#### MEETINGS OF TRUSTEES

2. **Place and Time of Meeting.** All meetings of the Trustees called by the giving of notice shall be held at a place in Canada and, unless consented to in writing by a majority of the Trustees, on a business day which place and time shall be specified in the notice.
3. **Notice.** The notice of any meeting need not specify the purpose of or the business to be transacted at the meeting.
4. **Adjournment.** Any meeting of Trustees may be adjourned from time to time by the chairperson of the meeting, with the consent of the meeting, to a fixed time and place. Notice of any adjourned meeting of Trustees is not required to be given if the time and place of the adjourned meeting is announced at the original meeting, but notice of the adjourned meeting shall be given to the Trustees not present at such original meeting by delivering (not mailing) the same not less than one day (exclusive of the day on which the notice is delivered but inclusive of the day for which notice is given) before the adjourned meeting. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The Trustees who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.
5. **Minutes of Meetings.** The Chairperson shall appoint a secretary to act as secretary of each meeting of the Trustees and of the Unitholders. Written records and minutes of all meetings of Trustees shall be maintained by the secretary of each meeting and shall be placed in the minute book of the Trust. Any written records and minutes of meetings of any committee of Trustees shall be maintained by the secretary of such meeting may but need not be placed in the minute book of the Trust. Subject to Section 19.20, there shall be inserted or entered into the records and minutes of the meetings of Trustees all written disclosures or requests made to have entered into the minutes of the meeting, of the nature and extent of a Person's interest in a material agreement or transaction or proposed material agreement or transaction with the Trust made pursuant to Section 4.13 of the Declaration of Trust.



#### FOR THE PROTECTION OF TRUSTEES AND OFFICERS

6. **For the Protection of Trustees and Officers.** The provisions of the Declaration of Trust pertaining to the liability and indemnification of Trustees shall apply *mutatis mutandis* to the officers of the Trust or persons who act or acted at the Trust's request as a director or officer of a body corporate of which the Trust is or was a shareholder or creditor, and his heirs and legal representatives.

The Trust shall also indemnify any such person in such other circumstances as the Declaration of Trust or law permits, subject to the Declaration of Trust, or requires. Nothing in these Trustees' Regulations shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of these Trustees' Regulations to the extent permitted by the Declaration of Trust or law.

#### OFFICERS

7. **Appointment and Removal.** The Trustees may pursuant to the provisions of the Declaration of Trust, appoint the officers of the Trust who may or may not be Trustees. Notwithstanding the foregoing, each incumbent officer of the Trust shall continue in office until the earliest of (a) his resignation, which resignation shall be effective at the time a written resignation is received by the Trust upon 30 days' written notice or at the time specified in the resignation, whichever is later, (b) the appointment of his successor, (c) his removal, and (d) his death. The Trustees may from time to time and subject to the provisions of the Declaration of Trust, prescribe, vary, add to or limit the duties and powers of any officer.

All officers, in the absence of agreement to the contrary, shall be subject to removal by resolution of the Trustees at any time, with or without cause.

8. **Chairperson.** The Chairperson of Trustees shall be appointed from among the Trustees provided that the chairperson of the Trustees shall be a non-executive appointment. When present, the Chairperson shall preside as chair at all meetings of the Trustees and at all meetings of the Unitholders, unless a Trustee who is not the Chairperson is selected to do so by the Trustees in accordance with Section 9.3 of the Declaration of Trust.
9. **Powers and Duties.** Subject to the provisions of the Declaration of Trust, all officers of the Trust shall sign such contracts, documents or instruments in writing as require their respective signatures and shall respectively have and perform all powers and duties incident to their respective offices and such other powers and duties respectively as may from time to time be assigned to them by the Trustees.
10. **Duties May be Delegated.** Subject to the provisions of the Declaration of Trust, in case of the absence or inability to act of any officer of the Trust or for any other reason that the Trustees may deem sufficient, the Trustees may delegate all or any of the powers of such officer to any other officer or to any Trustee for the time being.
11. **Vacancies.** If the office of any officer of the Trust shall be or become vacant by reason of death, resignation, removal or otherwise, the Trustees may appoint a Person to fill such vacancy.

#### UNITHOLDERS' MEETINGS

12. **Place and Time of Meetings.** Each meeting of the Unitholders shall be held at a place in Canada on a Business Day which place and time shall be specified in the notice calling the meeting.
13. **Notice.** A printed, written or typewritten notice stating the day, hour and place of any meeting of the Unitholders as well as the purpose shall be given by serving such notice on each Unitholder entitled to vote at such meeting, on each Trustee and on the auditor of the Trust in the manner provided for in the Declaration of Trust and in these Trustees' Regulations. A meeting of the Unitholders may be held for any

purpose on any day and at any time without notice if all of the Unitholders and all other Persons entitled to attend such meeting are present in Person or, where appropriate, represented by proxy at the meeting (except where a Unitholder or other Person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all of the Unitholders and all other persons entitled to attend such meeting who are not present in person or, where appropriate, represented by proxy thereat waive notice before or after the date of such meeting.

14. **Waiver of Notice.** A Unitholder and any other Person entitled to attend a meeting of the Unitholders may in any manner waive notice of a meeting of the Unitholders and attendance of any such person at a meeting of the Unitholders shall constitute a waiver of notice of the meeting except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.
15. **Votes.** Every question submitted to any meeting of the Unitholders, other than in respect of a Special Resolution, shall be decided in the first instance by a show of hands unless a person entitled to vote at the meeting has demanded a ballot.

A ballot may be demanded either before or after any vote by show of hands by any person entitled to vote at the meeting. If at any meeting a ballot is demanded on the election of a chairperson or on the question of adjournment it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the chairperson may direct. If at any meeting a ballot is demanded on any other question or as to the election of Trustees, the vote shall be taken by ballot in such manner and either at once, later in the meeting or after adjournment as the chairperson of the meeting directs. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. A demand for a ballot may be withdrawn.

Where two or more persons hold the same Unit or Units jointly, one of those holders present at a meeting of the Unitholders may, in the absence of the other or others, vote the Unit or Units but if two or more of those persons who are present, in person or by proxy vote, they shall vote as one on the Unit or Units jointly held by them.

At any meeting of the Unitholders unless a ballot is demanded, a declaration by the chairperson of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

16. **Proxies.** At every meeting at which he is entitled to vote, every Unitholder and/or person appointed by proxy and/or individual so authorized to represent a Unitholder who is present in person shall have one vote on a show of hands. Upon a ballot at which he is entitled to vote, every Unitholder present in person or represented by proxy or by an individual so authorized shall (subject to the provisions, if any, of the Declaration of Trust) have one vote for every Unit held by him.

A proxy shall be executed by the Unitholder or his attorney authorized in writing or, if the Unitholder is a body corporate or association, by an officer or attorney thereof duly authorized. If the Units are publicly traded, a proxy appointing a proxyholder ceases to be valid one year from its date.

A proxy may be in the following form:

The undersigned Unitholder of Hills of Windridge A2A Trust hereby appoints \_\_\_\_\_ of \_\_\_\_\_ or falling him, \_\_\_\_\_ as the nominee of the undersigned to attend and act for the undersigned and on behalf of the undersigned at the said meeting of the Unitholders of the said Trust to be held on the day of and at any adjournment hereof in the same manner, to the same extent and with the same power as if the undersigned were present at the said meeting or such adjournment thereof. This proxy is [not] solicited by or on behalf of management of the Trust.

DATED this day of \_\_\_\_\_

\_\_\_\_\_  
Signature of Unitholder

The Trustees may from time to time institute procedures regarding the lodging of proxies at some place or places other than the place at which a meeting or adjourned meeting of the Unitholders is to be held and for particulars of such proxies to be sent by telecopier or in writing before the meeting adjourned meeting to the Trust or any agent of the Trust for the purpose of receiving such particulars and providing that proxies so lodged may be voted upon as though the proxies themselves were produced at the meeting or adjourned meeting and votes given in accordance with such procedures shall be valid and shall be counted. The chairperson of any meeting of the Unitholders may, in his discretion, accept telecopier or written communication as to the authority of any person claiming to vote on behalf of and to represent a Unitholder notwithstanding that no proxy conferring such authority has been lodged with the Trust, and any votes given in accordance with such telecopier or written communication accepted by the chairperson of the meeting shall be valid and shall be counted.

17. **Adjournment.** The chairperson of any meeting of the Unitholders may with the consent of the majority of the meeting adjourn the same from time to time to another Business Day at a fixed time and place and no notice of such adjournment need be given, with the exception of a meeting adjourned for a lack of quorum pursuant to Section 9.4 of the Declaration of Trust, to the Unitholders. Any business may be brought before or dealt with at any adjourned meeting for which no notice is required which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The persons who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting the original meeting shall be deemed to have terminated forthwith after its adjournment.

18. **Quorum.** No business shall be transacted at any meeting of the Unitholders unless the requisite quorum be present at the time of the transaction of such business. If a quorum is not present at the time appointed for a meeting of the Unitholders or within 30 minutes thereafter, the persons present and entitled to vote may adjourn the meeting to another business day not less than 10 days later at a fixed time and place as selected by the Board, but may not transact any other business and the provisions of paragraph 17 with regard to notice shall apply to such adjournment.
19. **Minutes of Meetings.** Written records and minutes of each meeting of the Unitholders shall be maintained by the secretary of each meeting and shall be placed in the minute book of the Trust.

## CERTIFICATES

20. **Certificates.** Certificates representing Units shall be signed by at least one Trustee or officer of the Trust holding office at the time of signing and unless otherwise decided by the Trustees, by or on behalf of a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent of the Trust and any signatures required on a certificate representing Units may be printed or otherwise mechanically reproduced thereon.

A certificate representing Units containing the signature of a person which is printed, engraved, lithographed or otherwise mechanically reproduced thereon may be issued notwithstanding that the Person has ceased to be a Trustee or an officer, as the case may be, of the Trust and shall be as valid as if he were a Trustee or an officer, as the case may be, at the date of its issue.

## TRANSFER OF UNITS

21. **Register.** The Register shall be kept as provided for in the Declaration of Trust at the principal office of the Trust in Toronto, Ontario.

## VOTING SHARES AND SECURITIES IN BODIES CORPORATE

22. **Voting Shares and Securities in Bodies Corporate.** All of the shares or other securities carrying voting rights of any body corporate held from time to time by the Trust may be voted at any and all meetings of shareholders or holders of other securities (as the case may be) of such body corporate and in such manner and by such person or persons as the Trustees shall from time to time determine. The duly authorized signing officers of the Trust may also from time to time execute and deliver for and on behalf of the Trust proxies and/or arrange for the issuance of voting certificates and/or other evidence of the right to vote in such names as they may determine without the necessity of a resolution or other action by the Trustees.

## NOTICES

23. **Service.** If a notice or document is sent to a Unitholder by prepaid first-class mail in accordance with the provisions of the Declaration of Trust and the notice or document is returned on three consecutive occasions because the Unitholder cannot be found, it shall not be necessary to send any further notices or documents to the Unitholder until he informs the Trust in writing of his new address.
24. **Units Registered in More Than One Name.** All notices or other documents with respect to any Units registered in more than one name shall be given to whichever of such persons is named first in the records of the Trust and any notice or other document so given shall be sufficiently given to all of the holders of such Units.
25. **Deceased Unitholders.** Any notice or other document delivered or sent in a manner contemplated in the Declaration of Trust to the address of any Unitholder as the same appears in the records of the Trust shall, notwithstanding that such Unitholder be then deceased, and whether or not the Trust has notice of his death, be deemed to have been duly served in respect of the Units held by such Unitholder (whether held solely or with any other person or persons) until some other person be entered in his stead in the records of the Trust as the holder or one of the holders thereof and such service shall for all purposes be deemed a sufficient service of such notice or document on his heirs, executors or administrators and on all persons, if any, interested through him or with him in such Units.
26. **Signature to Notices.** The signature of any Trustee or officer of the Trust to any notice or document to be given by the Trust may be written, stamped, typewritten or printed or partly written, stamped, typewritten or printed.

27. **Computation of Time.** Where a given number of days' notice or notice extending over a period is required to be given under any provisions of the Declaration of Trust or these Trustees' Regulations, the day of service or posting of the notice or document shall not, unless it is otherwise provided, be counted in such number of days or other period, but the day of receipt of the notice or document shall, unless it is otherwise provided, be counted in such number of days or other period.
28. **Proof of Service.** With respect to every notice or other document sent by post it shall be sufficient to prove that the envelope or wrapper containing the notice or other document was properly addressed as provided in the Declaration of Trust and in these Trustees' Regulations and put into a post office or into a letter box. A certificate of an officer of the Trust in office at the time of the making of the certificate or of a transfer officer of any transfer agent or branch transfer agent of Units of the Trust as to facts in relation to the sending or delivery of any notice or other document to any Unitholder, Trustee, officer or auditor of the Trust or publication of any notice or other document shall be conclusive evidence thereof and shall be binding on every Unitholder, Trustee, officer or auditor of the Trust, as the case may be.

#### **CHEQUES, DRAFTS AND NOTES**

29. **Cheques, Drafts and Notes.** All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such officer or officers of the Trust or person or persons, whether or not officers of the Trust, and in such manner as the Trustees may from time to time designate.

#### **CUSTODY OF SECURITIES**

30. **Custody of Securities.** All shares and other securities owned by the Trust shall be lodged (in the name of the Trust) with a chartered bank or a trust company, in a safety deposit box or with a law firm acting on behalf of the Trust or, if so authorized by resolution of the Trustees, with such other depositories or in such other manner as may be determined from time to time by the Trustees.

All shares and other securities belonging to the Trust may be issued, or held in the name of a nominee or nominees of the Trust (and if issued or held in the names of more than one nominee shall be held in the names of the nominees jointly with right of survivorship) and any shares or other securities so issued or held shall be endorsed in blank with endorsement guaranteed in order to enable transfer to be completed and registration to be effected.

#### **EXECUTION OF INSTRUMENTS**

31. **Execution of Instruments.** All contracts, documents or instruments in writing requiring the signature of the Trust may be signed by any two Trustees and all contracts, documents and instruments in writing so signed shall be binding upon the Trust without any further authorization or formality. The Trustees shall have power from time to time to appoint any officer or officers, or any person or persons, on behalf of the Trust either to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.

The term "contracts, documents or instruments in writing" as used in these Trustees' Regulations shall include (without limitation) security certificates, deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations and conveyances, transfers and assignments of shares, share warrants, stocks, bonds, debentures or other securities and all paper writings.

Without limiting the foregoing, any officer or Trustee of the trust shall have authority to sell, assign, transfer, exchange, convert or convey any and all shares, stocks, bonds, debentures, rights, warrants or

other securities owned by or registered in the name of the Trust and to sign and execute all assignments, transfers, conveyances, powers of attorney and other instruments that may be necessary for the purpose of selling, assigning, transferring, exchanging, converting or conveying any such shares, stocks, bonds, debentures, rights, warrants or other securities.

The signature or signatures of the officers and Trustees of the Trust and/or of any other person or persons appointed as aforesaid by the Trustees may, if specifically authorized by the Trustees, be printed, engraved, lithographed or otherwise mechanically reproduced upon any contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust executed or issued by or on behalf of the Trust and all contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust on which the signature or signatures of any one or more of the foregoing officers or Trustees or the officers or persons authorized as aforesaid shall be so reproduced pursuant to such authorization by the Trustees shall be deemed to have been manually signed by each such officer, Trustee or person whose signature is so reproduced and shall be as valid to all intents and purposes as if they had been signed manually and notwithstanding that any such officer, Trustee or person whose signature is so reproduced may have ceased to hold office at the date of the delivery or issue of such contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust.

#### **INCONSISTENCIES WITH DECLARATION OF TRUST**

32. **Inconsistencies.** In the event of any conflict or inconsistency between these Trustees' Regulations and the provisions of the Declaration of Trust, as amended, restated or amended and restated from time to time, the provisions hereof shall be ineffective and shall be superseded by the provisions of such Declaration of Trust to the extent necessary to resolve such conflict or inconsistency.

**THIS IS EXHIBIT “C”**

referred to in the Affidavit of Allan Lind  
sworn on December 13, 2024

---

Commissioner for Taking Affidavits (or as may be)

**FOSSIL CREEK A2A LIMITED PARTNERSHIP**

**LIMITED PARTNERSHIP AGREEMENT**

**BETWEEN**

**- FOSSIL CREEK A2A GP INC. -**

**AND**

**- GRAYSON AMBROSE -**

**AND EACH PERSON WHO IS ADMITTED TO THE  
PARTNERSHIP AS A LIMITED PARTNER IN ACCORDANCE  
WITH THE TERMS HEREOF**



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# FOSSIL CREEK A2A LIMITED PARTNERSHIP

## LIMITED PARTNERSHIP AGREEMENT

**THIS LIMITED PARTNERSHIP AGREEMENT** dated as of the 17th day of March, 2014, and made between Fossil Creek A2A GP Inc., a corporation incorporated under the laws of the Province of Alberta, as General Partner and Grayson Ambrose of the Province of Alberta, as initial Limited Partner and each person who is admitted to the Partnership as a Limited Partner in accordance with the terms hereof.

**IN CONSIDERATION** of the covenants and agreements contained in this Agreement, the Partners agree with each other as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, the following words have the following meanings:

- (a) “**Act**” means the *Partnership Act* (Alberta), as amended;
- (b) “**Affiliate**” where used to indicate a relationship with any Person, has the meaning ascribed thereto in the *Securities Act* (Alberta);
- (c) “**Agreed Value**” means in respect of a Limited Partner, at the time and from time to time, the amount in such Partner’s Capital Account as at such date, plus the amount of any Distributable Cash due to such Partner, if any, for the previous full Fiscal Quarter, to the extent such amount has been determined to be payable by the General Partner pursuant to Section 5.3(a) but has not yet been paid, less any amounts of every nature and kind due by the Limited Partner to the Partnership, including reasonable costs of the Partnership or General Partner incurred in connection with the transaction contemplated in Section 2.8. For clarity, the Agreed Value shall not include any amount in respect of Distributable Cash accrued during the Fiscal Quarter in which the calculation of the Agreed Value is made;
- (d) “**Agreement**” or “**Partnership Agreement**” means this Limited Partnership Agreement dated as of the 17th day of March, 2014 and made between Fossil Creek A2A GP Inc., a corporation incorporated under the laws of the Province of Alberta, as General Partner and Grayson Ambrose of the Province of Alberta, as initial Limited Partner and those parties referred to as Limited Partners herein, as from time to time amended, supplemented or restated;
- (e) “**Applicable Laws**” means any statute, bylaw, rule or regulation or any judgment, order, writ, injunction or decree of any Governmental Authority to which a specified person or property is subject;
- (f) “**Associate**”, where used to indicate a relationship with any Person, has the meaning ascribed thereto in the *Securities Act* (Alberta);
- (g) “**Auditor**” means a member, in good standing, of the Canadian Institute of Chartered Accountants and who has been appointed as auditor of the Partnership;
- (h) “**Capital Contribution**” has the meaning ascribed thereto in Section 4.3;
- (i) “**Certificate**” means the certificate of limited partnership for the Partnership to be filed under the Act and all amendments thereto and renewals, replacements or restatements thereof;
- (j) “**Current Accounts**” means the accounts established pursuant to Section 4.5;
- (k) “**Discretion**” means the sole, absolute and unfettered discretion without any requirement to be reasonable or to maintain an even hand, to be exercised as, when and however (including retroactively) deemed fit by the General Partner;

- (l) **“Distributable Cash”** means with respect to a particular period, the amount by which the Partnership’s cash on hand or to be received in respect of that period (excluding any proceeds from any Financing) exceeds:
  - (i) unpaid administration expenses of the Partnership;
  - (ii) amounts required for the business and operations of the Partnership, including operating expenses and capital expenditures;
  - (iii) amounts required in order to meet all debts, liabilities and obligations in respect of any Financing, including reserves to ensure compliance with agreements to which the Partnership is subject; and
  - (iv) any amounts which the General Partner in its Discretion determines is necessary to satisfy the Partnership’s current and anticipated debts, liabilities and obligations and to comply with applicable laws;
- (m) **“Financing”** means any credit facility granted or extended to or for the benefit of, or investment by way of debt in, the Partnership whereby or pursuant to which money, credit or other financial accommodation has been or may be provided, made available or extended to the Partnership by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation, and includes any and all trust deeds, indentures, mortgages, bonds or debentures (whether issued and delivered as security or sold to a purchaser), security agreements and other deeds, instruments or documents in respect thereof;
- (n) **“Fiscal Year”** has the meaning ascribed thereto in Section 2.5 and **“Fiscal Quarter”** means a quarter of the Fiscal Year;
- (o) **“Force Majeure”** means any act of God, flood, earthquake, lightning or other natural physical disaster, explosion, fire, act of war, act of terrorism, riot, rebellion or civil unrest, and regional strikes or similar labour disputes which prevents the conduct of the business of the Partnership;
- (p) **“GAAP”** means, at any time, accounting principles generally accepted in Canada, including those set out in the Handbook of the Canadian Institute of Chartered Accountants;
- (q) **“General Partner”** means the general partner of the Partnership;
- (r) **“Governmental Authority”** means any applicable court or tribunal in any jurisdiction or any federal, provincial, municipal or other governmental entity, agency, authority, department, commission, stock exchange, board, instrumentality official or tribunal thereof;
- (s) **“Limited Partner”** means any Person who is admitted to the Partnership as a Limited Partner from time to time by subscription for or by succession to or as transferee of LP Unit’s as long as they are registered holders of at least one LP Unit;
- (t) **“LP Unit Certificate”** means a certificate for LP Units in such form as approved by the General Partner from time to time;
- (u) **“LP Units”** means the limited partnership units of the Partnership;
- (v) **“Net Income”** or **“Net Loss”** for a Fiscal Period of the Partnership means the net income or net loss, as the case may be, of the Partnership for that period determined in the financial statements of the Partnership; and for income tax purposes, means the income or loss of the Partnership determined under all applicable income tax statutes and regulations after applying the following principles, subject to a determination by the General Partner that such an application generally would not be in the best interest of the Limited Partners:
  - (i) deductions in arriving at income will be taken at the earliest time and to the maximum extent permitted by applicable income tax statutes and regulations but without creating or increasing a Net Loss for income tax purposes; and
  - (ii) the recognition of income will be deferred to the maximum extent permitted by applicable income tax statutes and regulations;

- (w) **“Ordinary Resolution”** means:
  - (i) a resolution approved through the votes cast in person or by proxy at a duly constituted meeting of Limited Partners holding LP Units or at any adjournment thereof called in accordance with this Agreement and representing more than 50% of the votes attaching to the LP Units cast in person or by proxy in accordance with Section 10.9; or
  - (ii) a written resolution in one or more counterparts signed by the Limited Partners holding in the aggregate more than 50% of the votes attaching to the LP Units in accordance with Section 10.9;
- (x) **“Partners”** means the General Partner and the Limited Partners and **“Partner”** means any one of them;
- (y) **“Partnership”** means Fossil Creek A2A Limited Partnership formed under the laws of the Province of Alberta as a limited partnership by the filing of the Certificate under the Act;
- (z) **“Person”** includes any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, limited liability company, unincorporated association, trust (including any beneficiary thereof), trustee, executor, administrator or other legal personal representative, Governmental Authority, or entity however designated or constituted;
- (aa) **“Property”** means that parcel of land comprising 93-acres (more or less) located in Tarrant County within the Fort Worth area in the State of Texas, United States of America;
- (bb) **“Proportionate Share”** of any amount at any time, means a fraction equal to the number of LP Units of which a Limited Partner is the registered holder at that time divided by the total number of issued and outstanding LP Units at that time;
- (cc) **“Redemption Price”** has the meaning ascribed thereto in Section 3.9(a) herein;
- (dd) **“Register”** means the register indicating the names and addresses of the Limited Partners and the number of LP Units held by them, to be kept by the General Partner;
- (ee) **“Requisitioning Partners”** has the meaning ascribed thereto in Section 10.1;
- (ff) **“Reserves”** means reasonable reserves which the General Partner determines are necessary or desirable to withhold from any advance or distribution to Limited Partners having regard to the current and anticipated cash requirements of the Partnership, including for operating expenses, maintenance expenses, upgrade, renovation and renewal expenditures, payments in respect of any Financing or other commitments, obligations in respect of incentive plans of the Partnership, and reserves to ensure compliance with the agreements to which the Partnership is subject (including any Financing);
- (gg) **“Special Resolution”** means:
  - (i) a resolution approved through the votes cast in person or by proxy at a duly constituted meeting of Limited Partners holding LP Units or at any adjournment thereof called in accordance with this Agreement and representing 66⅔ % or more of the votes attaching to the LP Units cast in person or by proxy in accordance with Section 10.9; or
  - (ii) a written resolution in one or more counterparts signed by Limited Partners holding LP Units representing in the aggregate 66⅔ % or more of the votes attaching to the LP Units in accordance with Section 10.9;
- (hh) **“Subscription Price”** means the amount payable or the value of any consideration paid for an LP Unit. Subscription means a subscription for LP Units made by a Person;
- (ii) **“Tax Act”** means the *Income Tax Act* (Canada);

- (jj) “**Taxable Income**” or “**Tax Loss**”, means in respect of any fiscal period, respectively, the amount of income or loss for tax purposes of the Partnership for such period as determined in accordance with this Agreement and the provisions of the Tax Act (including the amount of the taxable capital gain or allowable capital loss from the disposition of capital property of the Partnership);
- (kk) “**Transfer Form**” means a transfer form substantially in the form set out in Exhibit 1 hereto or in any other form or forms as may be approved by the General Partner.

## 1.2 Headings

In this Agreement, the headings are for convenience of reference only, do not form a part of this Agreement and are not to be considered in the interpretation of this Agreement.

## 1.3 Expanded Meanings

In this Agreement,

- (a) words importing the masculine gender include the feminine and neuter genders, corporations, partnerships and other Persons, and words in the singular include the plural, and vice versa, wherever the context requires;
- (b) all references to “**Articles**”, “**Sections**” and other subdivisions are references to designated Articles, Sections and other subdivisions of this Agreement;
- (c) all accounting terms not otherwise defined have the meanings assigned to them by, and all computations to be made will be made in accordance with, generally accepted accounting principles in Canada;
- (d) any reference to a statute includes and is deemed to be a reference to the regulations made pursuant to it, and to all amendments made to the statute and regulations in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute referred to or the relevant regulation;
- (e) any reference to a Person includes and is deemed to be a reference to any Person that is a successor to that Person;
- (f) business day is deemed to be a reference to any day which is not a Saturday, Sunday or a day which is generally observed as a holiday in Alberta;
- (g) the words “**include**” or “**including**”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting such general term or statement to refer to all other items or matters that could reasonably fall within its broadest possible scope; and
- (h) “**hereof**”, “**hereto**”, “**herein**”, “**hereby**” and “**hereunder**” mean and refer to this Agreement and not to any particular Article, Section or other subdivision.

## 1.4 Currency

All references to currency herein are references to lawful money of Canada.

# ARTICLE 2 RELATIONSHIP AMONG PARTNERS

## 2.1 Formation and Name of Partnership

The General Partner and the Limited Partner agreed to form a limited partnership under the laws of the Province of Alberta and the provisions of this Agreement to carry on business in common with a view to profit under the firm name and style of **Fossil Creek A2A Limited Partnership** or any other name or names as the General Partner may determine from time to time. The Partnership is effective as a limited partnership from the date on which the Certificate is registered in accordance with the Act. The General Partner has the right to change the name of the Partnership and to file an amendment to the Certificate recording the change of name of the Partnership.

## **2.2 Business of the Partnership**

- (a) The Partnership was formed to directly acquire, hold, transfer, dispose of or otherwise deal with undivided interests in the Property, and undertake the business, ownership and development of the Partnership's interest in the Property;
- (b) The Partnership shall have the power to do any and every act and thing necessary, proper, convenient or incidental to the accomplishment of its business and purposes; and
- (c) The purposes of the Partnership set forth in this Section 2.2 are to be construed as both purposes and powers of the Partnership.

## **2.3 Business in Other Jurisdictions**

- (a) The Partnership will not carry on business in any jurisdiction unless the General Partner has taken all steps which may be required by the laws of that jurisdiction for the Limited Partners to benefit from limited liability to the same extent that such Limited Partners enjoy limited liability under the Act. The Partnership will not carry on business in any jurisdiction in which the laws do not recognize the liability of the Limited Partners to be limited unless, in the opinion of the General Partner, the risks associated with the possible absence of limited liability in such jurisdiction are not significant considering the relevant circumstances.
- (b) The Partnership will carry on business in such a manner as to ensure, to the greatest extent possible, the limited liability of the Limited Partners, and the General Partner will register the Partnership in other jurisdictions where the General Partner considers it appropriate to do so.

## **2.4 Office of the Partnership**

The principal place of business of the Partnership is Calgary, Alberta, or such other place as the General Partner may designate in writing from time to time to the Limited Partners.

## **2.5 Fiscal Year**

The first fiscal period for the Partnership shall end on December 31, 2014. The General Partner shall determine the fiscal years thereafter. Each such fiscal period is herein referred to as a "**Fiscal Year**".

## **2.6 Status of Partners and Conduct of Partnership Business**

- (a) The General Partner represents, warrants, covenants and agrees with each Limited Partner that the General Partner:
  - (i) is a corporation incorporated under the laws of the Province of Alberta and is validly subsisting under such laws;
  - (ii) is not a "non-resident" of Canada for the purposes of the Tax Act;
  - (iii) has the capacity and corporate authority to act as a general partner and to perform its obligations under this Agreement, and such obligations do not conflict with nor do they result in a breach of any of its constating documents, by-laws or any agreement by which it is bound;
  - (iv) will act in a manner which it believes to be in, or not opposed to, the best interests of the Partnership, subject to the provisions of this Agreement;
  - (v) will, at the necessary times, hold and maintain the registrations necessary for the conduct of its business and has and will continue to have all licences and permits necessary to carry on its business as the general partner of the Partnership in all jurisdictions where the activities of the Partnership require such licensing or other form of registration of the General Partner; and
  - (vi) will devote as much time as is reasonably necessary for the conduct and prudent management of the business and affairs of the Partnership.



- (b) Each of the Limited Partners severally represents, warrants, covenants and agrees with each other Partner that such Limited Partner:
  - (i) if a corporation, is a corporation incorporated under the laws of its incorporating jurisdiction, and is duly registered in all jurisdictions necessary in order to enter into this Agreement and perform its obligations hereunder, has the capacity and corporate authority to enter into this Agreement and perform its obligations hereunder and such obligations do not conflict with nor do they result in a breach of any of its constating documents, by-laws or any agreement by which it is bound;
  - (ii) is not acquiring LP Units and will not hold LP Units as a tax shelter investment for the purposes of the Tax Act, is not a Person an interest in which would be a tax shelter investment for the purposes of the Tax Act, is not a “non-resident” of Canada for the purposes of the Tax Act;
  - (iii) meets all requirements under Applicable Laws and of any Governmental Authority, in any way, directly or indirectly, related to the Limited Partner’s ownership of LP Units in the Partnership; and
  - (iv) will ensure that its status is not modified with the result that, at any time and from time to time, it would be unable to represent and warrant as set forth in sub-sections (i), (ii) and (iii) above, and such Limited Partner will not transfer its LP Units, or any beneficial interest therein, in whole or in part to a Person who is not able to make these representations, warranties and covenants.

## 2.7 Survival of Representations, Warranties and Covenants

- (a) The representations, warranties and covenants made pursuant to Section 2.6 above survive execution of this Agreement and each Partner covenants and agrees to ensure that each representation, warranty and covenant made pursuant to Section 2.6 remains true so long as such Partner remains a Partner, and upon request by the General Partner, provide within five (5) Business Days of the date of such request, written evidence to the General Partner that such representations, warranties and covenants of such Limited Partner are true.
- (b) If at any time any Limited Partner becomes aware that the Limited Partner will be unable to represent and warrant the matters in Section 2.6(b), such Limited Partner covenants, agrees and undertakes that it will: (a) immediately notify the General Partner of that fact (prior to becoming unable to so represent) and (b) comply with the provisions of Section 2.8.

## 2.8 Sale of Affected LP Units

- (a) If, at any time a Limited Partner:
  - (i) is unable to make the representations and warranties or breaches any of its covenants set out in Section 2.6(b); or
  - (ii) fails to comply with its obligations pursuant to Section 2.7(a) or (b); or
  - (iii) the General Partner otherwise determines that a Person has become a Limited Partner in contravention of Section 2.6(b)(iv),

the General Partner, by written notice (a “**Sell Notice**”) to such Limited Partner (the “**Affected Partner**”) shall require the Affected Partner to sell to the Partnership on the date set out in the Sell Notice (the “**Transfer Date**”) the Affected Partner’s entire interest in all LP Units held by the Affected Partner (the “**Affected LP Units**”) for (A) the Agreed Value as determined by the General Partner, or (B) at the sole Discretion of the General Partner, the amount determined pursuant to Section 2.8(c). On the Transfer Date, the Affected Partner shall deliver to the General Partner the LP Unit Certificate(s) representing the Affected LP Units duly endorsed for transfer to the Partnership. Upon receipt of such LP Unit Certificate(s), the Partnership shall deliver the Agreed Value or the amount set out in Section 2.8(c) to the Affected Partner.

- (b) If, on the Transfer Date, the Affected Partner fails to complete the subject transaction of purchase and sale as contemplated in Section 2.8(a), the General Partner shall have the right to execute and deliver, on behalf of and in the name of the Affected Partner, the LP Unit Certificate(s) and other documents that may be necessary to complete the subject transaction and the Affected Partner hereby irrevocably appoints the General Partner as its attorney in that behalf.
- (c) If the Agreed Value of the Affected LP Units is greater than the fair market value thereof, the General Partner may, at its sole option, pay the Limited Partner the fair market value thereof rather than the Agreed Value. The fair market value shall be determined by an independent valuator selected by the General Partner and such determination shall be final and binding. There shall be no obligation on the General Partner to conduct any valuation if the General Partner determines to pay the Agreed Value to the Affected Partner.

## **2.9 Limitation on Authority of Limited Partners**

No Limited Partner (except a Limited Partner who is also the General Partner) will or will be entitled to:

- (a) take an active part in the business of the Partnership or take part in the administration, operation, management or control of the business of the Partnership or exercise any power in connection therewith;
- (b) transact any business on behalf of the Partnership or make any commitment on behalf of, or otherwise obligate or bind, the Partnership;
- (c) execute any document which binds or purports to bind the Partnership or any other Partner;
- (d) hold himself, herself or itself out as having the power or authority to bind any other Partner or the Partnership;
- (e) have any authority to act for or undertake any obligation or responsibility on behalf of any other Partner or the Partnership;
- (f) bring any action for partition or sale or otherwise in connection with any interest in any of the property and assets of the Partnership;
- (g) bring any action for partition or sale or otherwise in connection with the Partnership, any interest in any property of the Partnership, whether real or personal, tangible or intangible, or file or register or permit to be filed, registered or remain un-discharged any lien or charge in respect of any property of the Partnership; or
- (h) take any action that will jeopardize or eliminate the status of the Partnership as a limited partnership.

## **2.10 Power of Attorney**

Each Limited Partner hereby irrevocably nominates, constitutes and appoints the General Partner, with full power of substitution, as his or her agent and true and lawful attorney to act on his or her behalf with full power and authority in his or her name, place and stead to execute and record or file as and where required:

- (a) this Agreement, any amendment to this Agreement and any other instruments or documents required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property in any jurisdiction where the General Partner considers it prudent to be registered in order to maintain the limited liability of the Limited Partners and to comply with the applicable laws of such jurisdiction (including such amendments to the Register or the Certificate as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of LP Units as contemplated by this Agreement);
- (b) all instruments and any amendments to or renewals, replacements or restatements of the Certificate necessary to reflect any amendment to this Agreement;

- (c) any instrument required in connection with the dissolution and termination of the Partnership in accordance with the provisions of this Agreement, including any elections, determinations or designations under the Tax Act and under any similar legislation;
- (d) the documents necessary to be filed with the appropriate Governmental Authority in connection with the business, property, assets and undertaking of the Partnership;
- (e) such documents as may be necessary to give effect to the business of the Partnership as described in Section 2.2;
- (f) such documents as may be necessary to give effect to the provisions of Section 2.8 hereof;
- (g) any election, determination, designation, information return or similar document or instrument as may be required at any time under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province, territory or jurisdiction which relates to the affairs of the Partnership or the interest of any Person in the Partnership; and
- (h) all other instruments and documents on his or her behalf and in his or her name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully this Agreement in accordance with its terms.

The power of attorney granted herein is irrevocable, is a power coupled with an interest and survives the transfer or assignment by a Limited Partner, to the extent of the obligations of a Limited Partner hereunder, of the whole or any part of the interest of the Limited Partner in the Partnership, extends to the legal representatives and successors, transferees and assigns of the Limited Partner, and may be exercised by the General Partner on behalf of each Limited Partner in executing any instrument by a facsimile signature or by listing all the Limited Partners and executing such instrument with a single signature as attorney and agent for all of them. Each Limited Partner agrees to be bound by any representations or actions made or taken by the General Partner pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under this power of attorney.

This power of attorney continues in respect of the General Partner so long as it is the general partner of the Partnership, and terminates thereafter, but continues in respect of a new General Partner as if the new General Partner were the original attorney.

A transferee of an LP Unit, upon becoming a Limited Partner, is conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement as a Limited Partner, and is conclusively deemed to have provided the General Partner with the power of attorney described in this Section 2.10.

## **2.11 General Partner May Hold LP Units**

The General Partner may subscribe for and acquire LP Units or purchase LP Units by private contract or in the market and is to be shown on the Register as a Limited Partner in respect of the number of LP Units held by the General Partner from time to time.

## **2.12 Limited Liability of Limited Partners**

Subject to the provisions of the Act, the liability of a Limited Partner for the indebtedness, liabilities and obligations of the Partnership will be limited to its Capital Contribution paid or contributed or agreed to be paid or contributed by such Limited Partner in respect of the LP Units plus its share of any undistributed income of the Partnership and a Limited Partner will not be liable for any further claims, assessments or contributions to the Partnership. The Partnership will operate in a manner as to ensure to the greatest extent possible the limited liability of the Limited Partners.

### **2.13 Indemnity of Limited Partners**

The General Partner will indemnify and hold harmless each Limited Partner (including former Limited Partners) for all costs, expenses, damages or liabilities suffered or incurred by the Limited Partner if the limited liability of such Limited Partner is lost for or by reason of the gross negligence or wilful misconduct of the General Partner in performing its duties and obligations hereunder. The foregoing indemnification shall only cover, in respect of each Limited Partner, the amount in excess of such Limited Partner's liability as described in Section 2.12.

## **ARTICLE 3 GENERAL PARTNER INTEREST AND LP UNITS**

### **3.1 Interest of Limited Partners**

The interests of the Limited Partners will be divided into and represented by 50,000 LP Units having the rights, privileges, restrictions and conditions referred to herein.

### **3.2 Issuance of LP Units**

- (a) The General Partner is authorized to, in its Discretion, cause the Partnership to issue at any time and from time to time LP Units, with each LP Unit having a Capital Contribution amount of \$100 per LP Unit or such other amount as the General Partner may authorize, on such terms and conditions of the offering and sale of LP Units as the General Partner, in its Discretion, may determine including accepting payment of consideration therefore in the form of cash, property and/or past services, and may do all things in that regard, including preparing and filing prospectuses, offering memoranda and other documents.
- (b) The General Partner may do all things necessary or advisable in connection with the issue of LP Units from time to time including determining the requirements for a satisfactory subscription form, preparing and filing prospectuses, offering memoranda and other documents, paying the expenses of issue and entering into agreements with any Person for a commission or fee.
- (c) Upon acceptance by the General Partner of any subscription for LP Units, all Partners are deemed to consent to the admission of the subscriber as a Limited Partner, the General Partner will cause the Register to be amended, and such other documents as may be required by the Act or under legislation similar to the Act in other provinces or the territories to be filed or amended, specifying the prescribed information and will cause the foregoing information in respect of the new Limited Partner to be included in Partnership books and records.

### **3.3 LP Unit Certificates**

A Limited Partner is entitled, without charge, to an LP Unit Certificate or LP Unit Certificates evidencing the LP Units held by such Limited Partner. Every LP Unit Certificate must be signed by at least one officer or director of the General Partner. If any LP Unit Certificate is lost, mutilated, stolen or destroyed, the General Partner will, upon request by a Limited Partner, issue a replacement LP Unit Certificate to the Limited Partner upon receipt of evidence satisfactory to the General Partner of such loss, mutilation or destruction, and upon receiving such indemnification (including an indemnity bond provided at the expense of the Limited Partner) as it deems appropriate in the circumstances. The General Partner upon request by a transferee will issue a new LP Unit Certificate for any LP Units transferred, as the case may be. In the case of a transfer of less than all of the LP Units represented by an LP Unit Certificate, the General Partner, upon request by the transferor, will issue a new LP Unit Certificate for the balance of the LP Units retained by the transferor.

### **3.4 Subscription for LP Units**

No Person will be admitted to the Partnership as a Limited Partner unless such Person delivered to the General Partner:

- (i) a subscription in such form as may be prescribed or accepted by the General Partner (either in respect of such Person or otherwise) from time to time completed and executed in a manner acceptable to the General Partner;

- (ii) payment by bank draft or certified cheque or in such other form as the General Partner may accept in respect of such subscription of the amount to be contributed to the capital of the Partnership in respect of such LP Units to be acquired; and
- (iii) such other instruments, declarations, assurances and documents as the General Partner may require to effect such subscription.

No subscription may be made or will be accepted for a fraction of an LP Unit. The General Partner will be deemed to have accepted a subscription for LP Units when an LP Unit Certificate in the name of such subscriber representing the number of LP Units for which such subscriber has subscribed is delivered to such subscriber. Upon the acceptance of such subscription by the General Partner, the General Partner will cause the name of the subscriber to be entered on the Register along with the number of LP Units held by such subscriber as a result of such subscription.

### **3.5 Transfer of LP Units**

- (a) No Limited Partner may transfer any of the LP Units owned by it except to Persons under the manner expressly permitted in this Agreement. Any attempted transfer of LP Units made in violation of this Agreement will be null and void and the General Partner will not approve any transfer of LP Units made in contravention of this Agreement.
- (b) An LP Unit is not transferable in part and no transfer of an LP Unit will be accepted by the General Partner unless:
  - (i) a Limited Partner has complied with the provisions of Article 6 in respect of the transfer of its LP Units (other than a transfer by a Limited Partner to an Affiliate that is a corporation);
  - (ii) a Transfer Form, duly completed and signed by the registered holder of the LP Units and the transferee and any LP Unit Certificate held by the registered holder representing the LP Units being transferred have been remitted to the General Partner;
  - (iii) the transferee is able to make the representations and warranties set forth in Section 2.6(b);
  - (iv) the transfer is in compliance with all applicable securities laws;
  - (v) the transferee pays such costs, expenses and disbursements, including legal fees, as they are reasonably incurred by the Partnership by reason of the transfer; and
  - (vi) the General Partner has consented to the transfer.
- (c) Where the transferee complies with all applicable provisions and is entitled to become a Limited Partner pursuant to the provisions of this Agreement, the General Partner is authorized to admit the transferee to the Partnership as a Limited Partner and the Limited Partners hereby consent to the admission of, and will admit, the transferee to the Partnership as a Limited Partner, without further act of the Limited Partners.
- (d) A transferee of LP Units transferred in accordance with this Agreement will automatically become bound by the provisions of this Agreement without execution of further instruments.
- (e) No transfer of LP Units will be accepted by the General Partner after any notice of dissolution of the Partnership has been given to the Limited Partners in accordance with this Agreement.

### **3.6 Register and Other Records**

The General Partner will:

- (a) maintain a registered office for the Partnership;
- (b) maintain and update, either directly or indirectly, the Register;
- (c) maintain and update such other records in respect of the Partnership as may be required by law;
- (d) make on behalf of the Partnership all recordings or filings with any governmental authority that are required to be made by the Partnership; and

- (e) keep a copy of the Certificate and a copy of this Agreement.

The General Partner will be authorized to make such rules and regulations as the General Partner may from time to time consider necessary or desirable in connection with the foregoing, including the form and content of the Register, the times when the Register may be closed, the establishment of record dates and the documentation required to record assignments of LP Units and other matters.

### **3.7 Amendment of Certificate or Record**

The General Partner, on behalf of the Partnership, will from time to time promptly effect filings, recordings, registrations and amendments to the Register and the Certificate and to any other documents and at any places as are necessary or advisable to reflect changes in the membership of the Partnership, transfers of LP Units and to constitute a transferee as a Limited Partner. Subject to the provisions of this Agreement, no change of name or address of a Partner, no transfer of LP Units and no admission of an additional Partner will be effective until all requirements set out in Sections 3.4 and 3.5 (as applicable) have been satisfied and such change, transfer, substitution or addition is duly reflected in the Register and the Certificate.

### **3.8 Bankruptcy or Insolvency; Renunciation of Interest**

Where a Person becomes entitled to LP Units on the insolvency or bankruptcy of a Limited Partner, or otherwise by operation of law, in addition to the requirements of this Article 3, none of the Partnership, the General Partner or any of the Limited Partners will recognize such entitlement and the General Partner will make no entry into the Register or amendment to the Certificate until such Person:

- (a) has produced evidence satisfactory to the General Partner of such entitlement;
- (b) has agreed in writing to be bound by the terms of this Agreement and to assume the obligations of a Limited Partner under this Agreement; and
- (c) has delivered such other evidence, approvals and consents in respect to such entitlement as the General Partner may require, as may be required by law, and as may be required by this Agreement.

### **3.9 Redemption Rights**

- (a) Each holder of LP Units shall be entitled to require the Partnership, on demand subject to the terms and conditions set out herein, to redeem all or any part of the LP Units registered in the name of such holder of LP Units for a price per LP Unit being 95% of the fair market value of an LP Unit as of the date of redemption (the “**Redemption Price**”), as determined by the General Partner in its sole Discretion;
- (b) Subject to the laws of general application, the General Partner shall be entitled in its Discretion to determine and designate whether any payments in respect of any redemption are on account of income or capital.

#### ***No Cash Redemption in Certain Circumstances***

- (c) A cash redemption shall not be applicable to LP Units tendered for redemption by a holder of LP Units, if the total amount payable by the Partnership in respect of such Units and all other LP Units tendered for redemption in the same Fiscal Quarter exceeds \$25,000 (the “**Quarterly Limit**”); provided that the General Partner may, in its sole discretion, waive such limitation in respect of all LP Units tendered for redemption in any Fiscal Quarter. Where the total amount payable by the Partnership with respect to LP Units tendered for redemption in any Fiscal Quarter exceeds the Quarterly Limit, such LP Units will be redeemed for cash on a *pro rata* basis up to the Quarterly Limit and thereafter in accordance with the terms and conditions of sub-section (c) below for the balance.
- (d) If a cash redemption is not applicable to LP Units tendered for redemption by a holder of LP Units, then instead of receiving the Redemption Price per LP Unit in cash, the Redemption Price per Unit, subject to all necessary regulatory approvals, if any, shall be paid and satisfied:
  - (i) by the Partnership issuing a promissory note (each a “**Redemption Note**”) having an interest rate that is equal to five percent (5%) simple interest per annum, calculated from

the day the Note is issued and such other commercially reasonable terms as the General Partner may prescribe, subject to a maximum term of three (3) years from the date of issue, as determined in the sole discretion of the General Partner, provided that the applicable interest shall be paid annually on the anniversary date of the issue of the Note; or

- (ii) by any combination of Redemption Notes or other assets held by the General Partner.
- (e) The Redemption Price payable in respect of the LP Units tendered for redemption during any month shall be paid to or to the order of the holder of LP Units who exercised the right of redemption, on or before the 30<sup>th</sup> day of the month proceeding the last month of the Fiscal Quarter in which the LP Units were tendered for redemption.
- (f) Payments by the Partnership of the Redemption Price are conclusively deemed to have been made upon the mailing of the instruments representing the Redemption Price issued by the Partnership by registered mail in a postage prepaid envelope addressed to the former holder of LP Units. Upon such payment, the Partnership shall be discharged from all liability to the former holder of LP Units in respect of Units so redeemed.

## **ARTICLE 4**

### **CAPITAL CONTRIBUTIONS AND ACCOUNTS**

#### **4.1 Capital**

The capital of the Partnership consists of the aggregate of all sums of money or other property contributed by the Limited Partners as Capital Contributions and not withdrawn or returned to them.

#### **4.2 Capital Accounts**

The General Partner will establish separate capital accounts on the books of the Partnership for the General Partner and each of the Limited Partners (the “**Capital Accounts**”), to which contributions of capital will be credited and amounts distributed as a return of capital to the General Partner and the Limited Partners will be debited. No Limited Partner is responsible for any losses of any other Limited Partner, nor will it share in the allocation of Net Income or Net Loss attributable to the LP Units of any other Limited Partner.

#### **4.3 Limited Partner Contributions**

- (a) The contribution of capital by each Limited Partner is the total amount of money or property paid to the Partnership in respect of LP Units held by such Limited Partner, or a predecessor Limited Partner (the “**Capital Contribution**”), which Capital Contribution may be increased or reduced from time to time pursuant to the provisions of this Agreement.
- (b) The initial Limited Partner has made the following initial Capital Contribution to the capital of the Partnership:

Grayson Ambrose - \$100

#### **4.4 Further Capital Contributions**

Except as otherwise agreed in an instrument in writing executed by the General Partner and the Limited Partners, no Limited Partner is obligated to make any additional contributions to the capital of the Partnership.

#### **4.5 Current Accounts**

The General Partner will establish an account (a “**Current Account**”) on the books of the Partnership for each Partner to which Net Income will be credited and to which Net Loss and advances or distributions to Partners will be charged.

#### **4.6 No Right to Withdraw Amounts**

No Partner will have any right to withdraw any amount or receive any advance or distribution from the Partnership except as expressly provided for in this Agreement and no advance or distribution to any Partner will be deemed a return or withdrawal of amounts contributed to the capital of the Partnership.

except as expressly provided in this Agreement, but if any court of competent jurisdiction at any time determines that notwithstanding the provisions of this Agreement a Limited Partner is obligated to pay any amount distributed to such Limited Partner to or for the account of the Partnership or to any creditor of the Partnership such obligation will be the obligation of such Limited Partner.

#### **4.7 No Interest Payable on Capital or Current Accounts**

No Partner will have the right to receive interest on any capital or any credit balance in the Capital Account or Current Account of such Partner. No Partner will be liable to pay interest to the Partnership on any capital or Designated Capital returned to such Partner or on any authorized negative balance in the Capital Account or Current Account of such Partner.

#### **4.8 Negative Balance in Capital or Current Accounts**

The interest of a Partner in the Partnership will not terminate by reason of the return of amounts contributed to the capital of the Partnership or a negative balance in the Capital Account or Current Account of such Partner.

#### **4.9 Set-Off**

The Partnership may set-off against and withhold from any amount that would otherwise be distributed to a Limited Partner, any amount that may be due and owing to the Partnership by such Limited Partner.

### **ARTICLE 5 ALLOCATIONS AND ADVANCES OR DISTRIBUTIONS**

#### **5.1 Allocation of Net Income or Net Loss**

Net Income or Net Loss of the Partnership for accounting purposes will be allocated to each Partner in the same proportion as Taxable Income or Tax Loss of the Partnership as provided in Section 5.2.

#### **5.2 Allocation of Taxable Income or Tax Losses**

- (a) In all circumstances Taxable Income or Tax Loss for a given Fiscal Year of the Partnership is to be allocated as follows:
  - (i) firstly, 0.01% thereof, to the General Partner;
  - (ii) secondly, 99.99% to the Limited Partners in accordance with their Proportionate Shares;
- (b) If at any time there are no Limited Partners, then any amount which would have been allocated to the Limited Partners will be allocated to the General Partner.
- (c) The amount of Taxable Income or Tax Loss allocated to a Limited Partner may exceed or be less than the amount of Distributable Cash distributed to such Limited Partner.

#### **5.3 Distributable Cash**

- (a) The General Partner may in its Discretion make distributions of Distributable Cash as follows:
  - (i) firstly, 0.01% to the General Partner; and
  - (ii) secondly, to the Limited Partners in accordance with their Proportionate Shares.
- (b) If the General Partner determines to make a distribution of Distributable Cash, the General Partner will distribute Distributable Cash pursuant to Section 5.3(a) above to the Partners whose names appear on the Register on the date on which such distribution is being made. Distributions made under this Agreement will be net of any tax required by law to be withheld by the General Partner on behalf of the Partnership.

#### **5.4 Other Advances or Distributions**

Subject to and in the same priority as set forth in Section 5.3, the General Partner may, in addition to the advances or distributions described in Section 5.3 advance or distribute Distributable Cash at any other time and establish a record date for making of such advance or distribution. Notwithstanding the foregoing, the General Partner will not make any such advance or distribution if and to the extent such



advance or distribution would be contrary to any provision of any other agreement to which the Partnership is a party, or by which the Partnership is bound (including any loan agreement) or to any applicable law.

### **5.5 General Partner's Discretion to Return Capital**

- (a) The General Partner may, in its Discretion at any time, make return to the Limited Partners their Capital Contribution (less the amount of cash or the agreed value of property which has been previously paid or distributed in respect of such LP Unit on account of capital) in such amounts as the General Partner may determine, pro rata in proportion to the number of LP Units held by each Limited Partner; provided that the General Partner may not make any such advance or distribution if and to the extent:
  - (i) any Partner's share thereof would exceed the Capital Contribution of such Partner (less the amount of cash or the agreed value of property which has been previously paid or distributed in respect of such LP Unit on account of capital); or
  - (ii) such distribution would be contrary to any provision of any agreement to which the Partnership is a party or by which the Partnership is bound (including any financing) or to any applicable law.

### **5.6 Determination of Taxable Income and Tax Loss**

For the purpose of determining Taxable Income or Tax Loss in respect of any fiscal period, the General Partner may claim capital cost allowance in respect of the property of the Partnership and other discretionary deductions and reserves in such amounts as the General Partner may determine.

### **5.7 Repayment of Excess Distribution**

If, as determined by the General Partner, it appears that any Partner has received an amount under this Article 5 which is in excess of that Partner's entitlement, the Partner will, forthwith upon notice from the General Partner, reimburse the Partnership to the extent of the excess, and failing immediate reimbursement, the General Partner may withhold the amount of the excess (with interest at the rate of 12% per annum calculated and compounded monthly) from further distributions otherwise due the Partner.

## **ARTICLE 6 SALE, TRANSFER AND ASSIGNMENT OF LP UNITS**

### **6.1 Right of First Refusal**

- (a) Except in respect of a transfer to an Affiliate that is a corporation, no Limited Partner holding LP Units may sell, assign, transfer or otherwise dispose of any of its LP Units (the "**Offered LP Units**") unless it (the "**Offeror**") first offers to sell its LP Units to the General Partner by written offer (the "**Offer**") setting out the Offered LP Units offered to be sold, the consideration for the Offered LP Units expressed and payable entirely in lawful money of Canada and the terms and conditions of sale which the Offeror is willing to accept. The Offer shall be sent in accordance with the notice provisions contained herein.
- (b) The General Partner shall be required to notify the Offeror within 20 days of the date of receipt of the Offer of the General Partner's intent to purchase Offered LP Units under the Offer (the "**General Partner Intent to Purchase**").
- (c) The General Partner Intent to Purchase shall indicate the number of Offered LP Units the General Partner wishes to acquire. In the event no General Partner Intent to Purchase is received from the General Partner within such 20 day period, the Offer shall be deemed to have been refused or rejected by the General Partner and the General Partner shall have no further rights to purchase the Offered LP Units under that Offer.

(i) **Unaccepted LP Units**

- A. If any Offered LP Units still remain unaccepted after the process set out in Section 6.1 (a), the Offeror may:
- (1) within 60 days from the expiry of the period set out in Section 6.1(c) sell some or all of the remaining Offered LP Units to the third party purchaser (a “**New Purchaser**”) at a price and upon the terms no more favourable than those set out in the Offer subject to the satisfaction by the New Purchaser of the terms relating to a transfer of LP Units contained elsewhere in this Agreement; or
  - (2) if it does not wish to sell any of the remaining Offered LP Units, unilaterally revoke any Offers relating to the remaining Offered LP Units, in which case those Offers shall be null and void and the Offeror shall be released from all obligations in respect thereof.

(d) **Closing**

- (i) The closing of any transaction of purchase and sale contemplated by this Section 6.1 shall take place at the offices of the Partnership on the fourteenth (14<sup>th</sup>) day following the receipt by the Offeror of the General Partner Intent to Purchase for the Offered LP Units (the “**Closing Date**”).
- (ii) On the Closing Date:
  - A. the Offeror shall deliver to General Partner and/or the New Purchaser(s) each of the following documents: a duly endorsed transfer in blank of the Offered LP Units acceptable in form and content to the General Partner, which transfer shall contain, among other things, a representation and warranty of the Offeror that it has legal and beneficial title to the Offered LP Units, that it has the power and authority to sell and transfer the Offered LP Units, that it is not insolvent or subject to any insolvency or bankruptcy proceedings and that the Offered LP Units are free and clear of any and all liens, encumbrances, claims, charges and rights of first refusal; and
  - B. the New Purchasers shall provide to the General Partner a certified cheque or money order, payable to the Offeror for the number of Offered LP Units allocated to and to be purchased by the Offeree along with instructions to release such funds to the Offeror against delivery of the Offeror’s deliveries set out in this Section 6.1(d)(ii)(A) above.

**ARTICLE 7**

**REIMBURSEMENT OF EXPENSES AND PAYMENT OF FEES TO THE GENERAL PARTNER AND RELATED PARTIES**

**7.1 Expenses of the Partnership**

The Partnership will reimburse the General Partner for all direct costs and expenses incurred by the General Partner prior to the formation of the Partnership and all direct costs and expenses incurred by the General Partner on behalf of or for the benefit of the Partnership (which costs and expenses are the Partnership’s responsibility), excluding any general and administrative costs of the General Partner.

The Partnership will, at the request of the General Partner (which request, in order to be valid, must include a written estimate of all such costs and expenses), compensate the General Partner in advance for such costs and expenses. For greater certainty, such costs and expenses for which the General Partner is to be reimbursed include the Partnership’s direct general and administrative expenses, including legal and audit fees, Limited Partner information costs, consulting and advisory fees incurred in connection with the Partnership’s business or the evaluation of investment opportunities by the Partnership and expenses associated with the issuance of LP Units.

## **7.2 Organization of the Partnership**

The Partnership will pay all costs, disbursements and other fees and expenses incurred in connection with the organization of the Partnership and the registration of the Partnership under the Act and under similar legislation of other jurisdictions, including without limitation legal, accounting and consulting expenses.

### **ARTICLE 8 POWERS, DUTIES AND OBLIGATIONS OF GENERAL PARTNER**

#### **8.1 Powers, Duties and Obligations**

- (a) The General Partner has:
  - (i) unlimited liability for the debts, liabilities and obligations of the Partnership;
  - (ii) subject to the terms of this Agreement, and to any applicable limitations set forth in the Act and applicable similar legislation, the full and exclusive right, power and authority to manage, control, administer and operate the business and affairs and to make decisions regarding the undertaking and business of the Partnership; and
  - (iii) the full and exclusive right, power and authority to do any act, take any proceeding, make any decision and execute and deliver any instrument, deed, agreement or document necessary for or incidental to carrying out the business of the Partnership.
- (b) An action taken by the General Partner on behalf of the Partnership is deemed to be the act of the Partnership and binds the Partnership.
- (c) Notwithstanding any other agreement the Partnership or the General Partner may enter into, all material transactions or agreements entered into by the Partnership must be approved by the board of directors of the General Partner.

#### **8.2 Specific Powers and Duties**

Without limiting the generality of Section 8.1, the General Partner has full power and authority for and on behalf of and in the name of the Partnership to:

- (a) negotiate, execute and perform all agreements which require execution by or on behalf of the Partnership involving matters or transactions with respect to the Partnership's business (and such agreements may limit the liability of the Partnership to the assets of the Partnership, with the other party to have no recourse to the assets of the General Partner, even if the same results in the terms of the agreement being less favourable to the Partnership);
- (b) open and manage bank accounts in the name of the Partnership and spend the capital of the Partnership in the exercise of any right or power exercisable by the General Partner hereunder;
- (c) borrow funds in the name of the Partnership from time to time, from financial institutions or other lenders as the General Partner may determine without limitation with regard to amount, cost or conditions of reimbursement of such loan;
- (d) guarantee the debts, liabilities and obligations of a third party;
- (e) mortgage, charge, assign, hypothecate, pledge or otherwise create a security interest in all or any property of the Partnership now owned or hereafter acquired, to secure any present and future borrowings and related expenses of the Partnership and to sell all or any of such property pursuant to a foreclosure or other realization upon the foregoing encumbrances;
- (f) see to the sound management of the Partnership, and to manage, control and develop all the activities of the Partnership and take all measures necessary or appropriate for the business of the Partnership or ancillary thereto;
- (g) acquire, maintain, improve, upgrade, expand or dispose of the assets of the Partnership from time to time;
- (h) incur all costs and expenses in connection with the Partnership;

- (i) employ, retain, engage or dismiss from employment, personnel, agents, representatives or professionals or other investment participants with the powers and duties upon the terms and for the compensation as in the Discretion of the General Partner may be necessary or advisable in the carrying on of the business of the Partnership;
- (j) engage agents or subcontract administrative functions, to assist the General Partner to carry out its management obligations to the Partnership;
- (k) invest cash assets of the Partnership that are not immediately required for the business of the Partnership in investments which the General Partner considers appropriate;
- (l) act as attorney in fact or agent of the Partnership in disbursing and collecting moneys for the Partnership, paying debts and fulfilling the obligations of the Partnership and handling and settling any claims of the Partnership;
- (m) commence or defend any action or proceeding in connection with the Partnership;
- (n) file returns or other documents required by any governmental or like authority;
- (o) retain legal counsel, experts, advisors or consultants as the General Partner considers appropriate and rely upon the advice of such Persons;
- (p) do anything that is in furtherance of or incidental to the business of the Partnership or that is provided for in this Agreement;
- (q) execute, acknowledge and deliver the documents necessary to effectuate any or all of the foregoing or otherwise in connection with the business of the Partnership;
- (r) obtain any insurance coverage; and
- (s) generally carry out the objectives, purposes and business of the Partnership.

No Person dealing with the Partnership is required to enquire into the authority of the General Partner to do any act, take any proceeding, make any decision or execute and deliver any instrument, deed, agreement or document for or on behalf of or in the name of the Partnership. The General Partner may insert, and may cause agents of the Partnership to insert, the following clause in any contracts or agreements to which the Partnership is a party or by which it is bound:

“Fossil Creek A2A Limited Partnership is a limited partnership formed under the *Partnership Act* (Alberta), a limited partner of which is only liable for any of its liabilities or any of its losses to the extent of the amount that it has contributed or agreed to contribute to its capital and its pro rata share of any undistributed income.”

### **8.3 Borrowings**

Where the directors of the General Partner, acting in their sole discretion, approve any borrowing by the Partnership as being in the best interests of the Partnership, the General Partner may make a borrowing as approved by the board of directors. Borrowings by the Partnership in accordance with the approval of the directors of the General Partner do not constitute a breach of fiduciary duty by the General Partner to the Partnership.

### **8.4 Title to Property**

The General Partner will hold legal title to any of the assets or property of the Partnership in its name for the benefit of the Partnership.

### **8.5 Exercise of Duties**

The General Partner will exercise its powers and discharge its duties under this Agreement honestly and in the best interests of the Partnership and in connection therewith will exercise the care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

## 8.6 Indemnity of Partnership

The General Partner hereby indemnifies and holds harmless the Partnership and each Limited Partner from and against all costs, expenses, damages or liabilities suffered or incurred by the Partnership or such Limited Partners by reason of an act of wilful misconduct or gross negligence by the General Partner or of any act or omission not believed by the General Partner in good faith to be within the scope of the authority conferred on the General Partner by this Agreement.

## 8.7 Limitation of Liability

- (a) The General Partner is not personally liable for the return of any Capital Contribution made by a Limited Partner to the Partnership.
- (b) Subject to Section 2.13, the General Partner will not be liable to a Limited Partner for any act, omission or error in judgment taken or made hereunder by the General Partner honestly and in good faith in the conduct of the business of the Partnership.
- (c) The General Partner may rely, and is protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.
- (d) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted in reliance upon the opinion (including, without limitation, an opinion of counsel) of such Persons as to matters that the General Partner reasonably believes to be within such Person's professional or expert competence will be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.
- (e) The General Partner may exercise any of the powers or authority granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents (as contemplated in Section 8.2(j)), and the General Partner is not responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.
- (f) Any standard of care or duty imposed under the Act or any applicable law shall be modified, waived or limited as required to permit the General Partner to act under this Agreement or any other agreement contemplated by this Agreement and to make any decision pursuant to the power or authority prescribed in this Agreement, so long as such action is reasonably believed by the General Partner to be in, or not opposed to, the best interests of the Partnership.

## 8.8 Indemnity of General Partner

- (a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, each General Partner, any former General Partner (a "**Departing Partner**"), any Person who is or was an Affiliate of the General Partner or any Departing Partner, any Person who is or was an officer, director, employee, partner, agent or trustee of the General Partner or any Departing Partner or any such Affiliate, or any Person who is or was serving at the request of the General Partner or any Departing Partner or any such Affiliate as a director, officer, employee, partner, agent or trustee of another Person (collectively, an "**Indemnatee**") is indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities (joint or several), expenses (including, without limitation, legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnatee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as:
  - (i) the General Partner, a Departing Partner or any of their Affiliates;
  - (ii) an officer, director, employee, partner, agent or trustee of the General Partner, any Departing Partner or any of their Affiliates; or

- (iii) a Person serving at the request of the General Partner, any Departing Partner or any of their Affiliates as a director, officer, employee, agent or trustee of another Person; provided, that in each case the Indemnatee acted in good faith, in a manner which such Indemnatee believed to be in, or not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful.

The termination of any action, suit or proceeding by judgment, order, settlement or conviction does not create a presumption that the Indemnatee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 8.8 is to be made only out of the assets of the Partnership.

- (b) To the fullest extent permitted by law, expenses (including, without limitation, legal fees and expenses) incurred by an Indemnatee in defending any claim, demand, action, suit or proceeding are to be, from time to time, advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnatee to repay such amount if it is determined that the Indemnatee is not entitled to be indemnified as authorized in Section 8.8(a).
- (c) The indemnification provided by Section 8.8(a) is in addition to any other rights to which an Indemnatee may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, both as to actions in the Indemnatee's capacity as:
  - (i) the General Partner, a Departing Partner or an Affiliate thereof,
  - (ii) an officer, director, employee, partner, agent or trustee of the General Partner, any Departing Partner or an Affiliate thereof, or
  - (iii) a Person serving at the request of the General Partner, any Departing Partner or any of their Affiliates as a director, officer, employee, agent or trustee of another Person, and shall continue as to an Indemnatee who has ceased to serve in such capacity and as to actions in any other capacity.
- (d) The Partnership may purchase and maintain insurance (or reimburse the General Partner or its Affiliates for the cost of insurance), on behalf of the General Partner and such other Persons as the General Partner determines, against any liability that may be asserted against or expense that may be incurred by such Person in connection with the Partnership's activities, whether or not the Partnership would have the power to indemnify such Person against such liabilities under the provisions of this Agreement.

## **8.9 Other Activities of General Partner**

Affiliates, Associates, directors or officers of the General Partner may engage in businesses, ventures, investments and activities which may be similar to or competitive with those in which the Partnership is or might be engaged and neither the General Partner nor any such Affiliate, Associate, director or officer is required to offer or make available to the Partnership any other business or investment opportunity which any such Person may acquire or be engaged in for its own account. The Partners acknowledge and agree that the General Partner may act as a general partner for one or more other limited partnerships (which may but are not required to be formed under the Act), and the business purpose and powers of such other limited partnerships may or may not be the same as those of the Partnership. In addition, the General Partner may hold any shares, units or other interest in any corporation or partnership which conducts business similar to that of the Partnership which shall not be a conflict of interest.

## **8.10 Restrictions upon the General Partner**

The General Partner's power and authority does not extend to any powers, actions or authority not enumerated in Sections 8.1 and 8.2 or that is otherwise *ultra vires* the powers and purposes of the Partnership as set out in Article 2 of this Agreement, unless and until the requisite Special Resolution is passed by the Partners. Further, the General Partner will not:

- (a) commingle the funds of the Partnership with the funds of the General Partner or any of its Affiliates, Associates or with the funds of any other Person;

- (b) dissolve the affairs of the Partnership except in accordance with the provisions of Article 11 hereof; or
- (c) withdraw as General Partner except in accordance with the provisions of Section 8.13 hereof.

#### **8.11 Employment of an Affiliate or Associate**

The General Partner may employ or retain Affiliates or Associates of the General Partner or the Limited Partners on behalf of the Partnership to provide goods or services to the Partnership provided that, if the Partnership is to reimburse the General Partner for the costs and expenses of such goods or services, the costs of such goods or services must be reasonable and competitive with the costs of similar goods and services provided by independent third parties.

#### **8.12 Removal of General Partner**

The General Partner may not be removed as general partner of the Partnership, except as follows:

- (a) the occurrence of any of the following events which has not been cured by the General Partner within thirty (30) days of the occurrence thereof:
  - (i) the passing of any resolution of the directors or shareholders of the General Partner requiring or relating to the bankruptcy or the making of any assignment for the benefit of creditors of the General Partner (or the commencement of any act or proceeding in connection with any of the foregoing which is not contested in good faith by the General Partner); or
  - (ii) the appointment of a receiver of all or substantially all of the assets and undertakings of the General Partner; or
- (b) the occurrence of any gross negligence, wilful misconduct or fraud on the part of the General Partner; and
- (c) the passing of a Special Resolution by the Limited Partners for the removal of the General Partner.

Upon the occurrence of any of the preceding events and the passing of a Special Resolution by the Limited Partners for the removal of the General Partner, the General Partner shall be removed as the General Partner of the Partnership effective upon the appointment of a new general partner and acceptance of such appointment. Any such action by the Limited Partners for removal of the General Partner must also provide for the election and succession of a new general partner.

#### **8.13 Voluntary Withdrawal of General Partner**

The General Partner has agreed not to voluntarily withdraw as general partner, provided that the General Partner may withdraw if such withdrawal is approved by a Special Resolution, after which time the General Partner may withdraw as such by giving 90 days' notice.

#### **8.14 Transfer of General Partner Interest**

The General Partner may transfer all, but not less than all, of its general partner interest in the Partnership:

- (a) without the approval of the Limited Partners:
  - (i) in connection with the General Partner's merger or amalgamation with or into another entity; or
  - (ii) to the purchaser of all or substantially all of its assets; or
- (b) if such transfer is approved by a Special Resolution;

in all cases provided that such transferee assumes the rights and duties of the General Partner and agrees to be bound by the provisions of this Agreement, as general partner.

### **8.15 Condition Precedent**

As a condition precedent to the resignation or removal of the General Partner, the Partnership will pay all amounts payable by the Partnership to the General Partner pursuant to this Agreement accrued to the date of resignation or removal subject to any claims or liabilities of the General Partner to the Partnership.

### **8.16 Transfer to New General Partner**

On the admission of a new general partner to the Partnership on the resignation or removal of the General Partner, the resigning or retiring General Partner will do all things and take all steps to transfer the administration, management, control and operation of the business of the Partnership and the books, records and accounts of the Partnership to the new general partner and will execute and deliver all deeds, certificates, declarations and other documents necessary or desirable to effect such transfer in a timely fashion. In addition, the resigning or retiring General Partner will, at the cost of the Partnership, transfer title to the Partnership's property to such new general partner and will execute and deliver all deeds, certificates, declarations and other documents necessary or desirable to effect such transfer in a timely fashion.

### **8.17 Release by Partnership**

On the resignation or removal of the General Partner, the Partnership will release and hold harmless the General Partner resigning or being removed, from any costs, expenses, damages or liabilities suffered or incurred by the General Partner as a result of or arising out of events which occur in relation to the Partnership after such resignation or removal.

### **8.18 New General Partner**

A new general partner is not to be a "non-resident" of Canada within the meaning of the Tax Act and will become a party to this Agreement by signing a counterpart hereof and will agree to be bound by all of the provisions hereof and to assume the obligations, duties and liabilities of the General Partner hereunder as from the date the new general partner becomes a party to this Agreement.

## **ARTICLE 9 FINANCIAL INFORMATION**

### **9.1 Books and Records**

The General Partner will keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business. Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including, without limitation, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard disks, magnetic tape, or any other information storage device, provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership are to be maintained, for financial reporting purposes, on an accrual basis in accordance with generally accepted accounting principles.

### **9.2 Reports**

As soon as practicable, but in no event later than 120 days after the end of each Fiscal Year, the General Partner will cause to be mailed to each Limited Partner as of a date selected by the General Partner in its sole Discretion, an annual report containing financial statements of the Partnership in accordance with GAAP or International Financial Reporting Standards.

### **9.3 Income Tax Information**

The General Partner will use reasonable efforts, as determined by the General Partner in its sole Discretion, to distribute to each Person who is a Limited Partner during the previous Fiscal Year, or at the date of dissolution of the Partnership, within 90 days after the end of such previous Fiscal Year or within 90 days of dissolution, as the case may be, or within such other shorter period of time as may be required by applicable law, all information, in suitable form, relating to the Partnership necessary for such Person to prepare his Canadian Federal and Provincial income tax returns. The General Partner will file, on behalf of itself and the Limited Partners, annual Partnership information returns and any other



information returns required to be filed under the Tax Act and any other applicable tax legislation in respect of the Partnership.

#### **9.4 Right to Inspect Partnership Books and Records**

In addition to other rights provided by this Agreement or by applicable law, each Limited Partner has the right, upon reasonable demand and at such Limited Partner's own expense, to have furnished to it copies of this Agreement, the Certificate, and amendments thereto.

#### **9.5 Accounting Policies**

The General Partner is authorized to establish from time to time accounting policies with respect to the financial statements of the Partnership and to change from time to time any policy that has been so established so long as such policies are consistent with the provisions of this Agreement and with generally accepted accounting principles in Canada.

#### **9.6 Appointment of Auditor**

The General Partner may select an Auditor on behalf of the Partnership to review and report to the Partners upon the financial statements of the Partnership for and as at the end of each Fiscal Year.

### **ARTICLE 10 MEETINGS OF THE LIMITED PARTNERS**

#### **10.1 Requisitions of Meetings**

The General Partner may call a general meeting of Limited Partners at such time and place as it deems appropriate in its absolute Discretion for the purpose of considering any matter set forth in the notice of meeting. In addition, where Limited Partners holding not less than 50% of the outstanding LP Units (the "**Requisitioning Partners**") give notice signed by each of them to the General Partner, requesting a meeting of the Limited Partners and stating the proposed business to be transacted at the meeting in reasonable detail sufficient to give valid notice, the General Partner will, within 45 days of receipt of such notice, convene such meeting, and if it fails to do so, any Requisitioning Partners may convene such meeting by giving notice in accordance with this Agreement. Every meeting of Limited Partners, however convened, must be conducted in accordance with this Agreement.

#### **10.2 Place of Meeting**

Every meeting of Limited Partners is to be held in Calgary, Alberta or at such other place in Canada as the General Partner (or Requisitioning Partners, if the General Partner fails to call such meeting in accordance with Section 10.1) may designate.

#### **10.3 Notice of Meeting**

Notice of any meeting of Limited Partners is to be given to each Limited Partner not less than seven days (but not more than 45 days) prior to such meeting, and to be valid for the purposes hereof, must state:

- (a) the time, date and place of such meeting; and
- (b) in general terms, the nature of the business to be transacted at the meeting in sufficient detail to permit a Limited Partner to make a reasoned decision thereon.

Notice of an adjourned meeting of Limited Partners need not be given if the adjourned meeting is held within 14 days of the original meeting. Otherwise, but subject to Section 10.8, notice of adjourned meetings is to be given not less than three days in advance of the adjourned meeting and otherwise in accordance with this Section 10.3, except that the notice need not specify the nature of the business to be transacted if unchanged from the original meeting.

#### **10.4 Record Dates**

For the purpose of determining the Limited Partners who are entitled to vote or act at any meeting of Limited Partners or any adjournment thereof or for the purpose of any other action, the General Partner may give a date not more than 45 days prior to the date of any meeting of Limited Partners or other action as a record date for the determination of Limited Partners entitled to vote at such meeting or any adjournment thereof or to be treated as Limited Partners of record for purposes of such other action, and

any Limited Partner holding LP Units who was a Limited Partner at the time so fixed is to be entitled to vote at such meeting or any adjournment thereof even though he or she has since that date disposed of his or her LP Units, and no Limited Partner becoming such after that date is a Limited Partner of record for purposes of such action. A Person is a Limited Partner of record at the relevant time if the Person's name appears in the Certificate as amended and supplemented at such time. The General Partner will file an amendment to the Certificate required by the Act no later than the close of business on the day immediately preceding the record date established in respect of any meeting of Limited Partners.

### **10.5 Corporations**

A Limited Partner which is a corporation may appoint an officer, director or other authorized person as its representative to attend, vote and act on its behalf at a meeting of Limited Partners.

### **10.6 Attendance of Others**

In addition to the Limited Partners and the General Partner, any officer or director of the General Partner, legal counsel for the General Partner and the Partnership and representatives of the Auditor may attend any meeting of Limited Partners. The General Partner has the right to authorize the presence of any Person at a meeting regardless of whether the Person is a Limited Partner. With the approval of the General Partner, that Person is entitled to address the meeting.

### **10.7 Chairman**

The General Partner may nominate a Person, including, without limitation, an officer or director of the General Partner (who need not be a Limited Partner), to be chairman of a meeting of Limited Partners and the person nominated by the General Partner is the chairman of such meeting unless the Limited Partners elect another chairman by Special Resolution.

### **10.8 Quorum**

A quorum at any meeting of Limited Partners consists of one or more Limited Partners present in person or by proxy holding greater than 50% of the outstanding LP Units. If, within half an hour after the time fixed for the holding of such meeting, a quorum for the meeting is not present, the meeting:

- (a) if called by, or on the requisition of Limited Partners, is terminated; and
- (b) if called by the General Partner, is to be held at the same time and place on the day which is 14 days later (or if that date is not a business day, the first business day after that date). The General Partner will give three days' notice to all Limited Partners of the date of the reconvening of the adjourned meeting and at such meeting the quorum will consist of the Limited Partners then present.

### **10.9 Voting Rights attaching to LP Units**

In respect of all matters which require a resolution to be passed by the Limited Partners holding LP Units (whether by Special Resolution or Ordinary Resolution), each Limited Partner holding LP Units shall have voting rights proportionate to the number of LP Units held by such Limited Partner as at the record date in relation to the aggregate of the LP Units issued and outstanding as at the record date.

### **10.10 Voting Procedure**

- (a) Every question submitted to a meeting of Limited Partners (whether in respect of a Special Resolution or an Ordinary Resolution) shall be decided by a poll. In the case of an equality of votes, the chairman does not have a casting vote and the resolution is deemed to be defeated. On any vote at a meeting of Limited Partners, a declaration of the chairman concerning the result of the vote is conclusive.
- (b) On a poll, each Limited Partner holding LP Units present or represented by proxy at the meeting shall have voting rights for each LP Unit in respect of which he is shown on the Certificate as the Limited Partner at the record date as provided in Section 10.9. If LP Units are held jointly by two or more persons and only one of them is present or represented by proxy at a meeting of Limited Partners, such Limited Partner may, in the absence of the other or others, vote with respect thereto, but if more than one of them is present or represented by proxy, they shall vote together on the whole LP Units held jointly.

- (c) The General Partner, as such, is not entitled to vote at any meeting of Limited Partners. Any Limited Partner holding LP Units who is in default of payment of the subscription price for its LP Units is not entitled to vote in respect of any of its LP Units.

#### **10.11 Powers of Limited Partners, Resolutions Binding**

The Limited Partners have only the powers set forth in this Agreement and any additional powers provided by law. Subject to the foregoing sentence, any resolution passed in accordance with this Agreement is binding on all the Partners and their respective heirs, executors, administrators, successors and assigns, whether or not any such Partner was present in person or by proxy or voted against any resolution so passed.

#### **10.12 Powers Exercisable by Special Resolution**

The following powers are only exercisable by Special Resolution passed by the Limited Partners holding LP Units:

- (a) dissolving the Partnership, except as otherwise provided for under Section 11.2 (b);
- (b) removing the General Partner and electing a new general partner as provided for in accordance with the terms of Section 8.12;
- (c) amending, modifying, altering or repealing any Special Resolution previously passed by the Limited Partners;
- (d) amending this Agreement pursuant to Section 12.1; and
- (e) determining to reconstitute the Partnership under Section 11.4.

#### **10.13 Minutes**

The General Partner will cause minutes to be kept of all proceedings and resolutions at every meeting and will cause all such minutes and all resolutions of the Limited Partners holding LP Units consented to in writing to be made and entered into books to be kept for that purpose. Any minutes of a meeting signed by the chairman of the meeting are deemed to evidence the matters stated in them and such meeting is deemed to have been duly convened and held and all resolutions and proceedings shown in them are deemed to have been duly passed and taken.

#### **10.14 Additional Rules and Procedures**

To the extent that the rules and procedures for the conduct of a meeting of the Limited Partners are not prescribed in this Agreement (including rules pertaining to the right of Limited Partners holding LP Units to vote by proxy and the appointment, validity and revocation of proxies), the rules and procedures will be determined by the General Partner.

### **ARTICLE 11 TERM, DISSOLUTION AND LIQUIDATION**

#### **11.1 Term**

Subject to the terms and conditions of Section 11.2 below, the term for which the Partnership shall exist is until December 31, 2024.

#### **11.2 Events of Dissolution**

Notwithstanding Section 11.1 above, the Partnership will be dissolved upon the occurrence of any of the following events:

- (a) the Partnership is dissolved or wound-up by the express written mutual agreement of the Partners; or
- (b) upon the occurrence of any of the following events whereupon the Partnership will follow the procedure for dissolution established in Section 11.5:
  - (i) the election of the General Partner to dissolve the Partnership, if approved by a Special Resolution;

- (ii) the removal or resignation of the General Partner unless the General Partner is replaced as provided in Sections 8.12 or 8.13; or
- (iii) except as otherwise provided herein, any event which causes the dissolution of a limited partnership under the laws of the Province of Alberta.

### **11.3 No Dissolution**

The Partnership does not come to an end by reason of the death, bankruptcy, assignment of property for the benefit of creditors, insolvency, mental incompetency or other disability of any Limited Partner or upon transfer of any LP Units or upon the issue or conversion of LP Units.

### **11.4 Continuation After Event of Dissolution**

Upon the occurrence of an event described in Section 11.2, if within 90 days thereafter, holders of LP Units by a Special Resolution so elect, the Limited Partners will reconstitute the Partnership and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited partnership on terms identical to those set forth in this Agreement and having as a general partner a Person approved by the holders pursuant to the Special Resolution. Upon any such election by Special Resolution, all Partners are bound thereby and are deemed to have approved thereof. Unless such an election is made within the applicable time period as set forth above, the Partnership will conduct only activities necessary to wind up its affairs. If such an election is so made, then:

- (a) the reconstituted Partnership will continue until the end of the term set forth in Section 11.1 unless earlier dissolved in accordance with this Article 11; and
- (b) all necessary steps shall be taken to cancel this Agreement and the Certificate and to enter into and, as necessary, to file a new partnership agreement and certificate of limited partnership, and the successor general partner may for this purpose exercise the powers of attorney granted the General Partner pursuant to Section 2.10; provided that the right of holders of LP Units by a Special Resolution to approve a successor general partner and to reconstitute and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an opinion of counsel that the exercise of the right would not result in the loss of limited liability of any Limited Partner.

### **11.5 Procedure on Dissolution**

Upon the occurrence of any of the events set forth in Section 11.2(a) or (b), the General Partner (or in the event of an occurrence specified in Section 11.2(b) (ii), such other Person as may be appointed by Ordinary Resolution of the Limited Partners) will act as receiver and liquidator of the assets of the Partnership and is empowered hereby to:

- (a) sell or otherwise dispose of such part of the Partnership's assets as the receiver considers appropriate;
- (b) pay or provide for the payment of the debts and liabilities of the Partnership and liquidation expenses;
- (c) if there are any assets of the Partners remaining, distribute such remaining assets 100% to the Limited Partners holding LP Units in accordance with their Proportionate Shares;
- (d) file the notice of dissolution prescribed by the Act and satisfy all applicable formalities in such circumstances as may be prescribed by the laws of other jurisdictions where the Partnership is registered. In addition, the General Partner will give prior notice of the dissolution of the Partnership by mailing to each Limited Partner such notice at least 21 days prior to the filing of the declaration of dissolution prescribed by the Act; and
- (e) file any elections, determinations or designations under the Tax Act or under any similar legislation which may be necessary or desirable.

### **11.6 Dissolution**

The Partnership is dissolved upon the completion of all matters set forth in Section 11.5.

### **11.7 No Right to Dissolve**

Except as provided for in Section 11.2, no Limited Partner has the right to ask for the dissolution of the Partnership, the winding-up of its affairs or the distribution of its assets.

### **11.8 Agreement Continues**

Notwithstanding the dissolution of the Partnership, this Agreement does not terminate until the provisions of Section 11.5 have been satisfied.

## **ARTICLE 12 AMENDMENT**

### **12.1 Amendment Procedures**

Except as provided in Section 12.3, all amendments to this Agreement are to be made in accordance with the following requirements. To be valid for the purposes hereof, each such proposal must contain the text of the proposed amendment. If an amendment is proposed, the General Partner will seek the approval of the Limited Partners by a Special Resolution.

### **12.2 Amendment Requirements**

Notwithstanding the provisions of Sections 12.1 and 12.3, no amendment to this Agreement may:

- (i) reduce the term of the Partnership as provided in Section 11.1;
- (ii) give any Person the right to dissolve the Partnership, other than the General Partner's right to dissolve the Partnership with the approval of the Limited Partners by a Special Resolution; or
- (iii) modify the amendment provisions in this Article 12,

without the express prior written consent of the General Partner, which consent may be unreasonably withheld.

### **12.3 Amendment by General Partner**

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

- (a) a change in the name of the Partnership or the location of the principal place of business of the Partnership or the registered office of the Partnership;
- (b) admission, substitution, withdrawal or removal of Limited Partners in accordance with this Agreement;
- (c) a change that, in the sole Discretion of the General Partner, is reasonable and necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership in which the Limited Partners have limited liability under the applicable laws;
- (d) a change that, in the sole Discretion of the General Partner, is reasonable and necessary or appropriate to enable Partners to take advantage of, or not be detrimentally affected by, changes in the Tax Act or other taxation laws; and
- (e) a change that, in the sole Discretion of the General Partner, does not materially adversely affect the Limited Partners in any respect.

### **12.4 Notice of Amendments**

The General Partner will notify the Limited Partners in writing of the full details of any amendment to this Agreement within 30 days of the effective date of the amendment.

## **ARTICLE 13 NOTICES**

### **13.1 Address**

Any notice or other written communication which must be given or sent under this Agreement shall be given by first-class mail, e-mail or personal delivery to the General Partner and to the Limited Partners as follows:

- (a) in the case of the General Partner, to:

Suite 900, 744 - 4 Avenue SW  
Calgary, Alberta T2P 3T4  
Attention: President  
Email: fossilcreektrust@a2acanada.ca

- (b) in the case of Limited Partners, to the postal address inscribed in the Register maintained by the General Partner, or any other new address following a change of address in conformity with Section 13.2.

### **13.2 Change of Address**

A Limited Partner may, at any time, change his address for the purpose of service by written notice to the General Partner. The General Partner may change its address for the purpose of service by written notice to all the Limited Partners.

### **13.3 Accidental Failure**

An accidental omission in the giving of, or failure to give, a notice required by this Agreement will not invalidate or affect in any way the legality of any meeting or other proceeding in respect of which such notice was or was intended to be given.

### **13.4 Disruption in Mail**

In the event of any disruption, strike or interruption in the Canadian postal service after mailing and before receipt or deemed receipt of a document, it will be deemed to have been received on the sixth business day following full resumption of the Canadian postal service.

### **13.5 Receipt of Notice**

Subject to Section 13.4, notices given by first-class mail are deemed to have been received on the fifth business day following the deposit of such notice in the mail, notices given by personal delivery or facsimile shall be deemed to have been received on the date of their delivery or date of facsimile transmission.

### **13.6 Undelivered Notices**

If the General Partner sends a notice or document to a Limited Partner in accordance with Section 13.1 and the notice or document is returned on three consecutive occasions because the Limited Partner cannot be found, the General Partner is not required to send any further notices or documents to the Limited Partner until the Limited Partner informs the General Partner in writing of the Limited Partner's new address.

## **ARTICLE 14 MISCELLANEOUS**

### **14.1 Binding Agreement**

Subject to the restrictions on assignment and transfer herein contained, this Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

### **14.2 Time**

Time is of the essence hereof.

### **14.3 Counterparts**

This Agreement, or any amendment to it, may be executed in multiple counterparts, each of which is deemed an original agreement. This Agreement may also be executed and adopted in any subscription form, transfer form or similar instrument acceptable to the General Partner and signed by a Limited Partner with the same effect as if such Limited Partner had executed as counterparts of this Agreement. All counterparts and adopting instruments shall be construed together and shall constitute one and the same agreement.

### **14.4 Governing Law**

This Agreement and the Schedules hereto are governed and construed exclusively according to the laws of the Province of Alberta and the laws of Canada applicable thereto and the parties hereto irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta.

### **14.5 Severability**

If any part of this Agreement is declared invalid or unenforceable, then such part is deemed to be severable from the Agreement and does not affect the remainder of this Agreement.

### **14.6 Further Acts**

The parties will perform and cause to be performed such further and other acts and things and execute and deliver or cause to be executed and delivered such further and other documents as counsel to the Partnership considers necessary or desirable to carry out the terms and intent of this Agreement.

### **14.7 Entire Agreement**

This Agreement together with the acknowledgements and undertakings of LP Unit transferees, if any, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements.

### **14.8 Limited Partner Not a General Partner**

If any provision of this Agreement has the effect of imposing upon any Limited Partner (other than the General Partner) any of the liabilities or obligations of a general partner under the Act, such provision is of no force and effect.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date set out above.

**FOSSIL CREEK A2A GP INC.**  
in its capacity as the General Partner

Per: \_\_\_\_\_

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**GRAYSON AMBROSE**  
as initial limited partner

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## EXHIBIT 1

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### TRANSFER FORM

#### FOSSIL CREEK A2A LIMITED PARTNERSHIP

The undersigned limited partner (the “**Limited Partner**”) of Fossil Creek A2A Limited Partnership (the “**Partnership**”), hereby transfers, assigns and sells to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

(the “**Transferee**”),

all of its right, title and interest as a Limited Partner in the Partnership and constitutes the above-named Transferee as a substituted Limited Partner to the extent of \_\_\_\_\_ LP Units in the Partnership and agrees to execute and deliver to the General Partner any documents required to effect a valid transfer of the said interest in the Partnership (and rights) as necessary or advisable, in the opinion of the General Partner, to preserve the status of the Partnership as a limited partnership. The undersigned Limited Partner agrees that the power of attorney previously granted the General Partner together with the power of attorney granted under the Partnership Agreement continues until all certificates, amendments to certificates or other instruments necessary to give effect to this transfer have been executed and filed as required.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Limited Partner:**

\_\_\_\_\_  
(Print Name of Limited Partner)

Per: \_\_\_\_\_

(Signature of authorized signatory)

The Transferee acknowledges that it has read the limited partnership agreement for Fossil Creek A2A Limited Partnership dated March 17, 2014, as amended from time to time, (the “**Partnership Agreement**”) and accepts this transfer and agrees to be bound, as a limited partner in the Partnership, by the terms of the Partnership Agreement.



The Transferee represents, warrants, covenants and agrees with each other Partner that such Transferee:

- (i) if the Transferee is a corporation, it is incorporated under the laws of its incorporating jurisdiction, and is duly registered in all jurisdictions necessary in order to enter into this Transfer Form and the Partnership Agreement and perform its obligations hereunder and thereunder;
- (ii) has the capacity and corporate authority to enter into this Transfer Form and the Partnership Agreement and perform its obligations hereunder and thereunder and such obligations do not conflict with nor do they result in a breach of any of its constating documents, by-laws or any agreement by which it is bound;
- (iii) is not acquiring LP Units and will not hold LP Units as a tax shelter investment for the purposes of the Tax Act, is not a Person an interest in which would be a tax shelter investment for the purposes of the Tax Act, is not a “non-resident” of Canada for the purposes of the Tax Act;
- (iv) meets all requirements under Applicable Laws and of any Governmental Authority, in any way, directly or indirectly, related to the Transferee’s ownership of LP Units in the Partnership; and
- (v) such Transferee will ensure that its status is not modified with the result that, at any time and from time to time, it would be unable to represent and warrant as set forth in subparagraphs (i), (ii) (iii) and (iv) above, and such Transferee will not transfer its LP Units, or any beneficial interest therein, in whole or in part to a Person who is not able to make these representations, warranties and covenants.

Without limiting the application of the Partnership Agreement, the Transferee hereby irrevocably constitutes, nominates and appoints the General Partner, with full power of substitution, as his or her agent and true and lawful attorney to act on his or her behalf with full power and authority in his or her name, place and stead to execute and record or file as and where required:

- (a) the Partnership Agreement, any amendment to the Partnership Agreement and any other instruments or documents required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property in any jurisdiction where the General Partner considers it prudent to be registered in order to maintain the limited liability of the Limited Partners and to comply with the applicable laws of such jurisdiction (including such amendments to the Register or the Certificate as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of LP Units as contemplated by the Partnership Agreement);
- (b) all instruments and any amendments to or renewals, replacements or restatements of the Certificate necessary to reflect any amendment to the Partnership Agreement;
- (c) any instrument required in connection with the dissolution and termination of the Partnership in accordance with the provisions of the Partnership Agreement, including any elections, determinations or designations under the Tax Act and under any similar legislation;
- (d) the documents necessary to be filed with the appropriate Governmental Authority in connection with the business, property, assets and undertakings of the Partnership;
- (e) such documents as may be necessary to give effect to the business of the Partnership as described in the Partnership Agreement;
- (f) such documents as may be necessary to give effect to the provisions of Section 2.8 of the Partnership Agreement;

- (g) any election, determination, designation, information return or similar document or instrument as may be required at any time under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province, territory or jurisdiction which relates to the affairs of the Partnership or the interest of any Person in the Partnership; and
- (h) all other instruments and documents on his or her behalf and in his or her name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully the Partnership Agreement in accordance with its terms.

The power of attorney granted herein is irrevocable, is a power coupled with an interest and survives the transfer or assignment by the Transferee, to the extent of the obligations of the Transferee under the Partnership Agreement, of the whole or any part of the interest of the Transferee in the Partnership, extends to the legal representatives and successors, transferees and assigns of the Transferee, and may be exercised by the General Partner on behalf of the Transferee in executing any instrument by a facsimile signature or by listing all the Limited Partners and executing such instrument with a single signature as attorney and agent for all of them. The Transferee agrees to be bound by any representations or actions made or taken by the General Partner pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under this power of attorney.

This power of attorney continues in respect of the General Partner so long as it is the general partner of the Partnership, and terminates thereafter, but continues in respect of a new General Partner as if the new General Partner were the original attorney.

The Transferee hereby agrees and acknowledges that, upon acceptance of this transfer and the declaration by the General Partner of the Transferee's status as a Limited Partner (as defined in the Partnership Agreement), it shall become a limited partner of the Partnership on the effective date thereof and that as a Limited Partner, the Transferee is bound by the provisions of the Partnership Agreement and by any representations and actions made or taken by the General Partner and any successor thereto, while acting in good faith pursuant to this power of attorney hereby granted and will make contributions of capital as required pursuant to the Partnership Agreement, all notwithstanding the date of amendment to the Register (as defined in the Partnership Agreement) or amendment of the Certificate (as defined in the Limited Partnership Agreement) reflecting this transfer.

The effective date of this transfer is the day on which the General Partner declares the Transferee's status as a Limited Partner, notwithstanding the date that the Register is updated or the date of amendment of the Certificate to evidence to this transfer, which effective date is the date this transfer is accepted by the General Partner (or such other time as the General Partner may declare), and the undersigned acknowledges and agrees that the General Partner is not be required to recognize the undersigned as a "substituted limited partner" for the purposes of the *Partnership Act* (Alberta) until the effective date of filing the amendment of the Certificate to evidence to this transfer.

All capitalized terms utilized but not otherwise defined in this Transfer Form shall have the meaning ascribed thereto in the Partnership Agreement.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Transferee**

\_\_\_\_\_  
(Name of Limited Partner)

Per: \_\_\_\_\_  
(Signature of authorized signatory)

**ACCEPTANCE OF TRANSFER BY GENERAL PARTNER**

This transfer is accepted by the General Partner in the City of \_\_\_\_\_, in the Province  
of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Fossil Creek A2A GP Inc.**  
*in its capacity as General Partner of*  
Fossil Creek A2A Limited Partnership

Per: \_\_\_\_\_