

# **DRAFT**

**NOTE:**

**The proposed changes contained in this draft are (i) subject to the approval of the unitholders of American Hotel Income Properties REIT LP at the Annual and Special Meeting thereof to be held on June 17, 2021; and (ii) are shown as changes made to the Amended and Restated Limited Partnership Agreement of American Hotel Income Properties REIT LP dated June 17, 2020.**

**AMERICAN HOTEL INCOME PROPERTIES REIT LP**  
**Amended and Restated Limited Partnership Agreement**

**Last Amended and Restated on June 17, 2021**

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## AMERICAN HOTEL INCOME PROPERTIES REIT LP

### AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of American Hotel Income Properties REIT LP (as the same may be further amended, restated, modified or supplemented hereafter from time to time as provided herein, the “**Agreement**”) is dated and effective as of June 17, 2021. Capitalized terms not otherwise defined shall have the meanings ascribed to them in Section 1.1.

WHEREAS the Partnership was formed by filing the Declaration under the *Limited Partnerships Act* (Ontario) and upon its formation was governed by the limited partnership agreement of the Partnership dated October 12, 2012 (the “**Original Partnership Agreement**”);

WHEREAS the Partnership GP and the Limited Partners amended and restated the Original Partnership Agreement in its entirety on February 20, 2013 (the “**2013 Partnership Agreement**”);

WHEREAS the Partnership GP and the Limited Partners amended the 2013 Partnership Agreement effective June 9, 2015 (the “**2015 Partnership Agreement Amendment**”);

WHEREAS the Partnership GP and the Limited Partners agreed to further amend and restate the 2013 Partnership Agreement on May 10, 2017, which amendments have not yet been implemented and will not be implemented by way of this Agreement, but may be implemented in the future; and

WHEREAS the Partnership GP and the Limited Partners amended and restated the 2013 Partnership Agreement, as amended by the 2015 Partnership Agreement, in its entirety on June 17, 2020 (the “**2020 Partnership Agreement**”);

WHEREAS the Partnership GP and the Limited Partners agreed to further amend and restate the 2020 Partnership Agreement on June 17, 2021, which amendments are to be implemented in accordance with the terms of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT IN CONSIDERATION of the covenants and agreements contained in this Agreement, the parties hereto agree with each other that the 2020 Partnership Agreement is hereby amended and restated and superseded in its entirety by this Agreement, as follows:

#### ARTICLE 1 INTERPRETATION

##### 1.1 Definitions

In this Agreement the following words have the following meanings:

“**2013 Partnership Agreement**” has the meaning set forth in the preamble above;

“**2015 Partnership Agreement Amendment**” has the meaning set forth in the preamble above;

“**2020 Partnership Agreement**” has the meaning set forth in the preamble above;

“**Act**” means the *Limited Partnerships Act* (Ontario);

“**Affiliate**” or “**Associate**” means, where used to indicate a relationship with any Person,

- (a) a partner, other than a Limited Partner, of that Person;
- (b) a trust or estate in which that Person has a substantial beneficial interest or for which that Person serves as trustee or in a similar capacity;
- (c) an entity in respect of which that Person beneficially owns or controls, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the entity; or
- (d) a relative, including the spouse, of that Person or a relative of that Person’s spouse, where the relative has the same home as that Person, and for the purpose of this definition spouse includes a man or woman not married to that Person but who is living with that Person and has lived with that person as husband or wife for a period of not less than 6 months;

“**Agreement**” has the meaning set forth in the preamble above;

“**Applicable Securities Laws**” means the applicable securities legislation of each relevant province and territory of Canada, as amended from time to time, the rules, regulations and forms made or promulgated under any such statute and the published national instruments, multilateral instruments, policies, bulletins and notices of the securities commission and similar regulatory authority of each province and territory of Canada;

“**Auditor**” means KPMG LLP, or such other firm whose partners are members, in good standing, of the Chartered Professional Accountants Canada and which is appointed from time to time as auditor of the Partnership by the Limited Partners;

“**Board of Directors**” means the board of directors of the Partnership GP;

“**Capital Contribution**”:

- (a) of a Limited Partner means the total amount of money or property paid to the Partnership by such Limited Partner in respect of Units owned by such Limited Partner; and
- (b) of the Partnership GP means the total amount of money or property paid to the Partnership by the Partnership GP in respect of its interest in the Partnership;

“**CBCA**” means the *Canada Business Corporations Act*;

“**CDS**” means CDS Clearing and Depository Services Inc. and its successors;

“**CDS Participant**” means a registered securities dealer which maintains a book record of Units held by CDS on behalf of a Limited Partner;

“**Certificate**” means a certificate for Units, which may be issued in such form as approved by the Partnership GP from time to time and shall bear the legends and other information required by Article 4;

“**Closing**” means the closing of an Offering;

“**Code**” means the Internal Revenue Code of 1986;

“**Declaration**” means the declaration of limited partnership filed with the Registrar under the Act and all amendments thereto and renewals or replacements thereof;

“**Distributable Cash**” means, for any period, the aggregate of all amounts received by the Partnership in such period, whether by way of dividends, interest or otherwise, from and in respect of its direct and indirect investment in the Securities held by the Partnership, including its investment in any subsidiaries, less reasonable reserves determined by the Partnership GP to be necessary to operate the affairs of the Partnership in a prudent and businesslike manner and less Taxes, if any, payable by the Partnership;

“**Election of Directors LP Determination**” has the meaning set forth in Section 12.18.2;

“**Fiscal Year**” has the meaning set forth in Section 2.6;

“**Fundamental Matter LP Determination**” has the meaning set forth in Section 12.19(b);

“**Gross Book Value**” means, at any time (i) the cost of the Partnership’s and its consolidated subsidiaries’ property, building and equipment, plus (ii) the book value of the other assets of the Partnership and its consolidated subsidiaries as shown on its then most recent consolidated statement of financial position plus the amount of accumulated amortization shown thereon or in the notes thereto in respect of any such assets that are intangible assets, less (iii) the amount of any receivable reflecting interest rate subsidies on any debt assumed by the Partnership, and less (iv) deferred income tax liabilities arising out of fair value adjustments in respect of indirect acquisitions;

“**IFRS**” means International Financial Reporting Standards as issued by the International Accounting Standards Board and as adopted by the Chartered Professional Accountants Canada in Part I of the CPA Canada Handbook – Accounting, as amended from time to time;

“**investee**” has the meaning set forth in Section 10.2;

“**Limited Partner**” means any holder of at least one Unit whose name appears on the current Record;

“**NCI**” means the non-certificated inventory system of CDS;

“**Net Income**” or “**Net Loss**” means, for accounting purposes, the net income or net loss of the Partnership for a Fiscal Year as determined in accordance with IFRS;

“**Nominating Limited Partner**” has the meaning set forth in Section 12.18.1(a)(iv);

“**Nomination Agreement**” means the nomination agreement between the Partnership GP and the Sponsor dated February 20, 2013 pursuant to which the Partnership GP granted to the Sponsor an exclusive right to nominate for election as a director of the Partnership GP a certain number of nominees;

“**Notice Date**” has the meaning set forth in Section 12.18.1(c)(i);

“**Offering**” means an offering of Units 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 Limited Partners or at any adjournment thereof called in accordance with this Agreement; or

- (b) a written resolution in one or more counterparts signed by Limited Partners holding in the aggregate more than 50% of the aggregate number of outstanding Units;

“**Original Partnership Agreement**” has the meaning set forth in the preamble above;

“**Partners**” means the Partnership GP and the Limited Partners and “**Partner**” means any one of them;

“**Partnership**” means the limited partnership formed hereby;

“**Partnership GP**” means American Hotel Income Properties REIT (GP) Inc., a corporation incorporated under the laws of Canada, in its capacity as the general partner of the Partnership, or any Person which is from time to time admitted as the general partner of the Partnership in accordance with the terms of this Agreement;

“**Partnership GP Shareholders**” means Maverick Management Corp., Darren Investments Inc. and Triple E Investments Ltd. or any successors;

“**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 RRSPs, RRIAs, registered education savings plans, registered disability savings plans, deferred profit sharing plans and TFSAs, each as defined in the Tax Act;

“**Principals**” means, collectively, Rob O’Neill, John O’Neill, Steve Evans and the estate of Darren Latoski;

“**Proportionate Share**”, in respect of each Limited Partner means that fraction which, as of the date of such determination:

- (a) has as its numerator the number of Units held by such Limited Partner; and
- (b) has as its denominator the aggregate number of Units outstanding;

“**public announcement**” shall mean disclosure in a news release reported by a national news service in Canada, or in a document publicly filed by the Partnership under its profile on the System of Electronic Document Analysis and Retrieval at [www.sedar.com](http://www.sedar.com);

“**real property**” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and the securities of trusts, corporations or partnerships the sole or principal purpose and activity of which is to invest in, hold and/or deal in real property;

“**Record**” means the record of the Limited Partners maintained by the Partnership GP pursuant to the Act;

“**Register**” means the register indicating the names and addresses of the Limited Partners of record, the number of Units held by them and a record of all transfers thereof, kept by the Transfer Agent;

“**Requisitioning Partners**” has the meaning set forth in Section 12.1(b);

“**ROC Share**” means a share in the capital of the U.S. REIT which is designated, by the board of directors of the U.S. REIT, within such capital as a preferred share and issued to the Partnership;

“**RRIF**” means a registered retirement income fund as defined in the Tax Act;

“**RRSP**” means a registered retirement savings plan as defined in the Tax Act;

“**Securities**” means any shares, units, partnership interests, joint venture interests or other securities of Persons which hold real property or interests therein;

“**Shares**” means common shares in the capital of the U.S. REIT;

“**Special Resolution**” means:

- (a) a resolution approved by more than 66 2/3% of the votes cast in person or by proxy at a duly constituted meeting of Limited Partners or at any adjournment thereof, called in accordance with this Agreement; or
- (b) a written resolution in one or more counterparts signed by Limited Partners holding in the aggregate more than 66 2/3% of the aggregate number of outstanding Units;

“**Sponsor**” means Sunstone O’Neill Hotel Management Inc.;

“**subsidiary**” includes, with respect to any Person, a company, partnership, limited partnership, trust or other entity controlled, directly or indirectly, by such Person, company, partnership, limited partnership, trust or other entity;

“**Suitable Properties**” means branded hotel properties in close proximity to airports, highway interchanges, railroads other transportation hubs and other demand generators providing select and limited service lodging to corporate and leisure travelers;

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

“**Taxable Income**” and “**Taxable Loss**” means, for income tax purposes, the income or loss of the Partnership determined under the Tax Act or the Code, as the case may be, after applying the following principles, subject to a determination by the Partnership GP that such an application generally would not be in the best interest of Limited Partners:

- (a) deductions in arriving at income or loss for tax purposes will be taken at the earliest time and to the maximum extent permitted by applicable income tax statutes and regulations; and
- (b) the recognition of income for tax purposes will be deferred to the maximum extent permitted by applicable income tax statutes and regulations;

“**Taxation Year**” means the taxation year of the Partnership for the purposes of the Tax Act or the Code, as the case may be;

“**Taxes**” means all forms of taxation, whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory,

governmental, national, federal, state, provincial, local governmental or municipal impositions, duties, contributions and levies (including social security contributions, national insurance contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and in respect of any Person, and all penalties, charges, costs and interest relating thereto;

“**TFSA**” means a tax-free savings account as defined in the Tax Act;

“**Transfer Agent**” means such company as may from time to time be appointed by the Partnership GP to act as registrar and transfer agent of the Units, together with any sub-transfer agent duly appointed by the Transfer Agent;

“**Trustee**” means Computershare Trust Company of Canada in its capacity as trustee pursuant to the Voting Trust Agreement;

“**Unit**” means a limited partnership unit of the Partnership and includes a fraction of a Unit;

“**U.S. REIT**” means American Hotel Income Properties REIT Inc., a Maryland corporation, or such other name as may be determined on behalf of the U.S. REIT from time to time;

“**USRPI**” means United States real property interest, as defined in the Code;

“**Voting Trust Agreement**” means the agreement dated February 20, 2013 among the Partnership GP, the Partnership GP Shareholders and the Trustee pursuant to which the Partnership GP Shareholders agreed to transfer their common shares in the Partnership GP to the Trustee to be held in trust for purposes of, among other things, providing to the Limited Partners certain voting rights in respect of the Partnership GP; and

## **1.2 Headings**

In this Agreement, the headings are for convenience of reference only and are not to be considered in the interpretation of this Agreement.

## **1.3 Interpretation**

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 designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement;
- (c) all accounting terms not otherwise defined will 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 from time to time;
- (d) any reference to a statute will include and will be 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 will include and will be deemed to be a reference to any Person that is a successor to that Person;
- (f) business day will be 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 Ontario; and
- (g) “hereof”, “hereto”, “herein” 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 unless otherwise stated herein.

### **ARTICLE 2 RELATIONSHIP BETWEEN PARTNERS**

#### **2.1 Formation of the Partnership**

The Partnership was formed on October 12, 2012 in accordance with the laws of the Province of Ontario by the filing of the Declaration and shall continue unless dissolved in accordance with Article 14.

#### **2.2 Name of the Partnership**

The name of the Partnership is “American Hotel Income Properties REIT LP” or such other name or names as the Partnership GP may from time to time deem appropriate to comply with the laws of the jurisdictions in which the Partnership may carry on business. The Partnership GP shall have the right to change the name of the Partnership and to file an amendment to the Declaration changing the name of the Partnership. If the Partnership GP changes the name of the Partnership, it will give notice of the new name to the Limited Partners within 30 days of the name change becoming effective.

#### **2.3 Activities of the Partnership**

The activities of the Partnership shall be restricted to directly or indirectly investing in Securities, including, without limitation, investing in and acquiring Shares, the ROC Share and any other class of shares that may be issued by the U.S. REIT from time to time, providing Limited Partners with cash distributions on a periodic basis derived from the income and net proceeds realized by the Partnership from such investments, and deriving income therefrom with a view to making a profit. The Partnership may also engage in such other necessary acts and conduct such other activities related or incidental to the foregoing as the Partnership GP shall in good faith deem necessary. 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.

#### **2.4 Activities in Other Jurisdictions**

- (a) The Partnership shall not carry on its activities in any jurisdiction unless the Partnership GP 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.

- (b) The Partnership shall carry on its activities in such a manner as to ensure, to the greatest extent possible, the limited liability of the Limited Partners, and the Partnership GP shall register the Partnership in other jurisdictions where the Partnership GP considers it appropriate to do so.

## **2.5 Office of the Partnership**

The address of the Partnership's principal place of business in Ontario is c/o Bennett Jones LLP Suite 3400, 100 King Street West, Toronto, M5X 1A4 and the Partnership's head office in British Columbia is Suite 800, 925 West Georgia Street, Vancouver, V6C 3L2 or such other addresses as the Partnership GP may notify the Limited Partners of in writing from time to time. The Partnership may have such other address or place of business for the conduct of its affairs as the Partnership GP determines from time to time as necessary or desirable.

## **2.6 Fiscal Year**

The fiscal period of the Partnership shall end in each and every year on December 31. Each such fiscal period is herein referred to as a "**Fiscal Year**".

## **2.7 Status of Partners**

- (a) The Partnership GP represents, warrants, covenants and agrees with each Limited Partner that the Partnership GP:
  - (i) is a corporation incorporated under the laws of Canada and is validly subsisting under such laws;
  - (ii) will act in good faith 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;
  - (iii) will hold and shall maintain the registrations necessary for the conduct of its business as the general partner of the Partnership and has and shall 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 Partnership GP;
  - (iv) will devote as much time as is reasonably necessary for the conduct and prudent management of the business and affairs of the Partnership; and
  - (v) is, and will continue at all times to be, a resident of Canada for the purposes of the Tax Act.
- (b) Each of the Limited Partners severally represents, warrants, covenants and agrees with each other Partner that such Limited Partner has the capacity and competence and, if a corporation, the necessary corporate authority, to enter into this Agreement.

## **2.8 Survival of Representations, Warranties and Covenants**

The representations, warranties and covenants made pursuant to Section 2.7 shall survive execution of this Agreement and each Partner covenants and agrees to ensure that each representation, warranty and covenant made pursuant to Section 2.7 remains true so long as such Partner remains a Partner.

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

A Limited Partner may from time to time inquire as to the state and progress of the business of the Partnership and may provide comment as to its management. However, no Limited Partner shall, except in his, her or its capacity as an officer, director, agent, or employee of the Partnership GP or an Affiliate thereof:

- (a) take part in the administration, control, management or operation of the business of the Partnership or exercise any power in connection therewith or transact business on behalf of the Partnership;
- (b) execute any document which binds or purports to bind any other Partner or the Partnership;
- (c) hold himself, herself or itself out as having the power or authority to bind any other Partner or the Partnership;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other Partner or the Partnership;
- (e) bring any action for partition or sale or otherwise in connection with the Partnership or 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 undischarged any lien or charge in respect of any property of the Partnership; or
- (f) 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.

## **2.10 Power of Attorney**

Each Limited Partner hereby irrevocably nominates, constitutes and appoints the Partnership GP, with full power of substitution, as the Limited Partner's agent and true and lawful attorney to act on the Limited Partner's behalf with full power and authority in the Limited Partner's 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 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 Declaration or the Record as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of Units as contemplated by this Agreement);
- (b) all instruments and any amendments to the Declaration 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 body or 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 2.3;
- (f) the documents on the Limited Partner's behalf and in the Limited Partner's name as may be necessary to give effect to the sale or assignment of a Unit or to give effect to the admission of a subscriber for or transferee of Units to the Partnership;
- (g) any election, determination, designation, information return or similar document or instrument as may be required or desirable at any time under the Tax Act, the *Excise Tax Act* (Canada) 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 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 Partnership GP 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, shall survive the death or disability of a Limited Partner and shall survive the transfer or assignment by the 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 heirs, executors, administrators, other legal representatives and successors, transferees and assigns of the Limited Partner, and may be exercised by the Partnership GP on behalf of each Limited Partner in executing any instrument by affixing its signature thereto with the indication that it is acting on behalf of the Limited Partner 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 Partnership GP 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 Partnership GP taken in good faith under this power of attorney. In accordance with the relevant legislation in each of the provinces and territories of Canada governing powers of attorney and any other applicable legislation, each Limited Partner declares that these powers of attorney may be exercised during any legal incapacity or mental infirmity on the Limited Partner's part. The Partnership GP may require, in connection with the subscription for, or any transfer of, Units, that the subscription agreement or other instrument, if any, be accompanied by the explanatory notes set out in the *Powers of Attorney Act* (Alberta) and a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse, or that the execution of the subscription agreement or other instrument be witnessed as required by *The Powers of Attorney Act* (Manitoba).

This power of attorney shall continue in respect of the Partnership GP so long as it is the general partner of the Partnership, and shall terminate thereafter, but shall continue in respect of a new general partner as if the new general partner were the original attorney.

A transferee of a Unit shall, 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 shall be conclusively deemed to have provided the Partnership GP with the power of attorney described in this Section 2.10.

## **2.11 Limited Liability of Limited Partners**

Subject to the provisions of the Act and of similar legislation in other jurisdictions, the liability of each Limited Partner for the debts, liabilities, losses and obligations of the Partnership shall be limited to the Limited Partner's Capital Contribution, plus the Limited Partner's pro rata share of any undistributed income of the Partnership in accordance with the terms of this Agreement. Where Limited Partners have received the return of all or part of their Capital Contribution, except where the Capital Contribution is reduced in accordance with Section 8.2 hereof, or where the Partnership is dissolved, the Limited Partners shall be liable to the Partnership's 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. Following payment of a Capital Contribution, a Limited Partner shall not be liable for any further claims or assessments or be required to make further contributions to the Partnership.

## **2.12 Compliance with Laws**

Each Limited Partner will, on the request of the Partnership GP from time to time, immediately execute any documents considered by the Partnership GP to be necessary to comply with any applicable law or regulation of any jurisdiction, for the continuation, operation or good standing of the Partnership.

## **2.13 Other Activities of Partnership GP**

Subject to any other agreement among the Partnership GP, its Affiliates and the Partnership, Affiliates of the Partnership GP 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 no such Person shall be 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.

## **2.14 Partnership GP May Not Hold Units**

The Partnership GP may not subscribe for or acquire Units or purchase Units by private contract or in the market.

# **ARTICLE 3 UNITS**

## **3.1 Units and Interests of Limited Partners**

- (a) The Partnership is authorized to issue an unlimited number of Units.
- (b) Each Unit entitles the holder thereof to the same rights and obligations as any other holder of a Unit and no holder of a Unit is entitled to any privilege, priority or preference in relation to any other holder of a Unit.
- (c) Each Unit represents an equal undivided beneficial interest in and to all distributions from the Partnership including to Distributable Cash and an allocation of Net Income, Taxable Income, Net Loss, Taxable Loss or other amounts, in accordance with this Agreement, as well as an undivided beneficial interest in all assets of the Partnership in the event of its termination or winding-up, after payment of all debts, liabilities and liquidation expenses of the Partnership.

- (d) Each Unit when issued shall vest indefeasibly in the holder thereof. The interest of each Limited Partner shall be determined by the number of Units registered in the name of the Limited Partner. The issued and outstanding Units may be subdivided or consolidated from time to time without the approval of Limited Partners, provided that a subdivision or consolidation of Units will not affect the Proportionate Share of any Limited Partner.
- (e) Each Unit has attached to it the right to exercise one vote at meetings of the Partnership.
- (f) The interest of each Partner in the Partnership who is a holder of Units pursuant to this Agreement shall and shall be deemed to be a security for the purposes of the *Securities Transfer Act* (Ontario), as contemplated in Section 12(1)(b) of the *Securities Transfer Act* (Ontario).

### **3.2 Allotment and Issuance of Units**

The Partnership GP may allot and issue Units at such time or times and in such manner (including, without limitation, pursuant to any plan from time to time in effect relating to reinvestment by Limited Partners of distributions of the Partnership in Units) and for such consideration and to such Person or class of Persons as the Partnership GP in its sole discretion shall determine and may do all things in that regard including preparing and filing prospectuses, offering memoranda and other documents, paying the expenses of issue and entering into agreements with any Person providing for a commission or fee. For greater certainty, the Partnership GP may take all steps necessary to give effect to any Offering. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Partnership GP allotting and issuing such Units shall express the fair equivalent in money of the other consideration received.

### **3.3 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 therefore has been received in full by or on behalf of the Partnership. 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 Partnership 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 Partnership GP may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Partnership.

### **3.4 Fractional Units**

If any Person becomes entitled to a fraction of a Unit, such Person shall not be entitled to receive a Certificate therefore. 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 Limited Partners. Subject to the foregoing, such fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

### **3.5 Rights, Warrants, Options and Subscription Receipts**

The Partnership GP may, in its discretion, cause the Partnership to create and issue rights, warrants, options, subscription receipts or other instruments or securities to subscribe for fully paid Units which rights, warrants, options, instruments or securities may be exercisable at such subscription price or prices and at such time or times as the Partnership GP may determine. A right, warrant, option, subscription

receipt, instrument or security shall not be a Unit and a holder thereof shall not be a Limited Partner. The Partnership GP may also, in its discretion, cause the Partnership to issue new Units (or options to acquire, or other instruments or securities exercisable for, or that vest in the form of, Units) pursuant to any incentive, option plan or other securities-based compensation plan or arrangement established by the Partnership from time to time.

### **3.6 Subscription for Units**

- (a) Each subscriber under an Offering shall be deemed to have entered into a subscription agreement with the Partnership as set out below. With respect to any Offering, the Partnership GP shall determine to whom a subscription should be submitted, how it should be submitted and in what form.
- (b) The acceptance of an offer to purchase Units, whether by allotment in whole or in part, by the Partnership GP shall constitute a subscription agreement between the subscriber and the Partnership upon the terms and conditions set out in any final prospectus or other offering document or subscription form delivered to the subscriber and this Agreement, whereby the subscriber, among other things:
  - (i) agrees to provide certain information to the Partnership GP or such other party as authorized by the Partnership GP, including such subscriber's full name, residential address, business or corporation account number, as the case may be, and number of Units subscribed for;
  - (ii) acknowledges that he, she or it is bound by the terms of this Agreement and is liable for all obligations of a Limited Partner;
  - (iii) makes the representations and warranties set out in this Agreement; and
  - (iv) irrevocably nominates, constitutes and appoints the Partnership GP as his, her or its true and lawful attorney with the full power and authority as set out in this Agreement.
- (c) With respect to an Offering, the foregoing subscription agreement shall be evidenced by delivery to each subscriber of a final prospectus or other offering document to the subscriber or by a subscription form, or in such other manner as shall be determined by the Partnership GP, provided in each case that the subscription is accepted by the Partnership GP on behalf of the Partnership.
- (d) The subscription price for any issuance of Units will be determined by the Partnership GP, acting alone or in consultation with other Persons. The subscription price shall be each subscriber's agreed upon Capital Contribution.

### **3.7 Acceptance of Subscriptions by Partnership GP**

The Partnership GP shall have the right, in its sole discretion, to refuse to accept a subscription for Units. The Partnership GP shall reject subscriptions submitted by a subscriber who does not satisfy the requirements contained in Section 2.7(b), and the Partnership GP may require subscribers to provide evidence reasonably satisfactory to it that such subscribers, or Persons who will have a beneficial interest in Units being subscribed for, satisfy such requirements. If, for any reason, a subscription is withdrawn or is not accepted, by the Partnership GP, all documents and subscription monies will be returned to the subscriber, without interest, within 15 days following such withdrawal or rejection.

### **3.8 Admittance as Limited Partner**

Upon acceptance by the Partnership GP of any subscription for Units, all Partners will be deemed to consent to the admission of the subscriber as a Limited Partner, the Partnership GP will execute this Agreement on behalf of the subscriber and will cause the Record 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 the Partnership's books and records.

### **3.9 Payment of Expenses**

The Partnership will pay, to the extent contemplated by any prospectus or other offering document, all costs, disbursements and other fees and expenses incurred in connection with the offering of Units pursuant to such prospectus or other offering document, the organization of the Partnership and the registration of the Partnership under the Act and under similar legislation of other jurisdictions. Such costs may include, among other fees and expenses, underwriting or agency fees.

### **3.10 Effective Date**

The rights and obligations of a subscriber for, or a transferee of, Units, 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 and after the date on which the Record has been amended to reflect such subscription or transfer.

### **3.11 Register and Record of Limited Partners**

The Transfer Agent shall maintain the Register at its office. The Partnership GP shall maintain at the Partnership's principal office in Ontario the Record setting out such information as is prescribed under the Act.

### **3.12 Changes in Information Concerning Limited Partners**

No change of name or address of a Limited Partner shall be effective for the purposes of this Agreement until all reasonable requirements as determined by the Partnership GP with respect thereto have been met, including the requirements set out in this Article, and until such change is duly reflected in an amendment to the Record as may be required by the Act. The names and addresses of the Limited Partners as reflected from time to time in the Record, as from time to time amended, shall be conclusive as to such facts for all purposes of the Partnership.

### **3.13 Transfer of Units**

- (a) Subject to the provisions of this Article 3 and Article 4, Units shall be for all purposes of the Partnership and this Agreement, personal and moveable property, and the Units shall be fully transferable without charge as between persons.
- (b) No Unit may be transferred except in conformity with the following provisions and the provisions of Article 4:
  - (i) no transfer of a Unit shall be recognized unless such transfer is of a whole Unit;
  - (ii) Subject to Section 3.14, 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 Partnership GP or to the Transfer Agent of the Certificate therefor, properly endorsed or accompanied by a duly executed instrument (or electronic customer confirmation, as applicable) 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 Partnership GP or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Certificate (or electronic customer confirmation, as applicable) for the Units may be issued to the transferee and a new Certificate (or electronic customer confirmation, as applicable) for the balance of Units not transferred may be issued to the transferor;

- (iii) the transfer shall be effective and the transferee shall become a Limited Partner on the day that the Record is updated to show the transferee as a Limited Partner; and
  - (iv) the Partnership GP may deny any transfer of Units if the Partnership GP has reason to believe that the transfer is not being made in compliance with Applicable Securities Laws.
- (c) A transferee of Units will automatically become bound and subject to this Agreement without execution of any further instruments from and after the time set forth in Section 3.13(b) above, and, without limiting the generality of the foregoing, such transferee shall be deemed to make all of the representations and warranties, covenants and acknowledgements of a Limited Partner pursuant to this Agreement and to grant the power of attorney provided for in Section 2.10 hereof.

### **3.14 Book-Entry System for Units**

- (a) Except as otherwise provided below, registration of interests in and transfers of Units held through CDS, or its nominee, will be made electronically through the NCI system of CDS. On a Closing, the Partnership, through the Transfer Agent, will electronically deliver the Units registered to CDS or its nominee, and CDS will credit interests in such Units to the accounts of the CDS Participants as directed by the underwriters or agents in respect of an Offering. Units held in CDS will be purchased, transferred and surrendered for redemption through a CDS Participant. All rights of beneficial Limited Partners who hold Units in CDS must be exercised through, and all payments or other property to which such Limited Partners are entitled will be made or delivered by CDS or the CDS Participant through which the Limited Partner holds such Units. A Limited Partner beneficially holding Units through the NCI system will not be entitled to a Certificate or other instrument from the Partnership or the Transfer Agent evidencing that Person's interest in or ownership of Units, nor, to the extent applicable, will such Limited Partner be shown on the records maintained by CDS, except through an agent who is a CDS Participant. CDS will be responsible for establishing and maintaining accounts for CDS Participants having interests in Units, and sales of interests in Units can only be completed through CDS Participants.
- (b) Units will be issued in fully registered form to holders or their nominees, other than CDS or its nominee, only if: (i) the Partnership is required to do so by applicable law; (ii) the

depository system of CDS ceases to exist; (iii) the Partnership determines that CDS is no longer willing, able or qualified to discharge properly its responsibility as depository and the Partnership is unable to locate a qualified successor; or (iv) the Partnership at its option elects to prepare and deliver definitive Certificates representing the Units.

- (c) All references herein to actions by, notices given or payments made to Limited Partners shall, where the Units held by such Limited Partners are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS Participants in accordance with CDS's rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Limited Partners evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Limited Partners acting through CDS and the CDS Participants owning Units evidencing the requisite percentage of the Units. The rights of a Limited Partner whose Units are held through CDS shall be exercised only through CDS and the CDS Participants and shall be limited to those established by law and agreements between such Limited Partners and CDS and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Partnership GP may deal with CDS for all purposes (including the making of payments) as the authorized representative of the relevant Limited Partners and such dealing with CDS shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.

### **3.15 Amendment of Record**

The Partnership GP, on behalf of the Partnership, shall from time to time amend the Record and such other documents and promptly effect such filings, recordings and registrations at such places as in the opinion of counsel to the Partnership are necessary or advisable to reflect changes in the membership of the Partnership, transfers of Units and to constitute a transferee as a Limited Partner.

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

Except as provided in this Agreement, as required by law or as recognized by the Partnership GP in its sole discretion, no Person will be recognized by the Partnership as holding any Unit in trust, or on behalf of another Person with the beneficial interest therein, 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 Unit or in any fractional part of a Unit or any other rights in respect of any Unit except an absolute right to the entirety of the Unit in the Limited Partner shown on the Record as holder of such Unit.

### **3.17 Incapacity, Death, Insolvency or Bankruptcy**

Where a Person becomes entitled to Units on the incapacity, death, insolvency, or bankruptcy of a Limited Partner, or otherwise by operation of law, in addition to the requirements of Section 3.13, such entitlement will not be recognized or entered into the Record until such Person has produced evidence satisfactory to the Partnership GP of such entitlement. The death of a Limited Partner during the continuance of Partnership shall not terminate the Partnership or give the personal representatives or the heirs of the estate of the deceased Limited Partner a right to any accounting or to take any action in the courts or otherwise against other Limited Partners or the Partnership GP, officers of the Partnership GP or the property of the Partnership but shall only entitle the personal representatives or the heirs of the estate of the deceased Limited Partner to succeed to all rights of the deceased Limited Partner under this Agreement.

### 3.18 No Transfer upon Dissolution

No transfer of Units may be made or will be recognized or entered into the Record after the occurrence of any of the events set forth in Section 14.1.

### 3.19 Offers for Units

- (a) In this Section 3.19:
  - (i) **“Dissenting Limited Partner”** means a Limited Partner who does not accept an Offer referred to in Section 3.19(b);
  - (ii) **“Offer”** means an offer to acquire outstanding Units, where, as of the date of the offer to acquire, the Units that are subject to the offer to acquire, together with the Offeror’s Units, constitute in the aggregate 20% or more of all outstanding Units;
  - (iii) **“offer to acquire”** includes an acceptance of an offer to sell;
  - (iv) **“Offeror”** means a Person, or two or more Persons acting jointly or in concert, who make an offer to acquire Units;
  - (v) **“Offeror’s Notice”** means the notice described in Section 3.19(c); and
  - (vi) **“Offeror’s Units”** means Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any Affiliate or Associate of the Offeror or any Person acting jointly or in concert with the Offeror.
- (b) If an Offer for all of the outstanding Units (other than Units held by or on behalf of the Offeror or an Affiliate of the Offeror) is made and:
  - (i) within the time provided in the Offer for its acceptance or within 45 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by Limited Partners representing at least 90% of the outstanding Units, other than the Offeror’s Units;
  - (ii) the Offeror is bound to take up and pay for, or has taken up and paid for the Units of the Partners who accepted the Offer;
  - (iii) the Offeror complies with Sections 3.19(c) and (e); and
  - (iv) the Offeror is entitled to acquire, and the Dissenting Limited Partners are required to sell to the Offeror, the Units held by the Dissenting Limited Partners for the same consideration per Unit payable or paid, as the case may be, under the Offer.

- (c) Where an Offeror is entitled to acquire Units held by Dissenting Limited Partners pursuant to Section 3.19(b), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of expiry of the Offer a notice (the “**Offeror’s Notice**”) to each Dissenting Limited Partner stating that:
  - (i) Limited Partners holding at least 90% of the Units of all Limited Partners, other than Offeror’s Units, have accepted the Offer;
  - (ii) the Offeror is bound to take up and pay for, or has taken up and paid for, the Units of the Limited Partners who accepted the Offer; and
  - (iii) Dissenting Limited Partners must transfer their respective Units to the Offeror on the terms on which the Offeror acquired the Units of the Limited Partners who accepted the Offer within 21 days after the date of the sending of the Offeror’s Notice.
- (d) A Dissenting Limited Partner to whom an Offeror’s Notice is sent pursuant to Section 3.19(c) shall, within 21 days after the sending of the Offeror’s Notice, transfer his, her or its Units to the Partnership GP.
- (e) Within 21 days after the Offeror sends the Offeror’s Notice pursuant to Section 3.19(c), the Offeror shall pay or transfer to the Partnership GP, or to such other Person as the Partnership GP may direct, the cash or other consideration that is payable to Dissenting Limited Partners pursuant to Section 3.19(b).
- (f) The Partnership GP, or the Person directed by the Partnership GP, shall hold in trust for the Dissenting Limited Partners the cash or other consideration it receives under Section 3.19(e). The Partnership GP, or such Person, shall deposit cash in a separate account in a Canadian chartered bank and shall place other consideration in the custody of a Canadian chartered bank or similar institution for safekeeping.
- (g) Within 30 days after the date of the sending of an Offeror’s Notice pursuant to Section 3.19(c), the Partnership GP, if the Offeror has complied with Section 3.19(e), shall:
  - (i) do all acts and things and execute and cause to be executed all instruments as in the Partnership GP’s opinion may be necessary or desirable to cause the transfer of the Units of the Dissenting Limited Partners to the Offeror;
  - (ii) send to each Dissenting Limited Partner who has complied with Section 3.19(d) the consideration to which such Dissenting Limited Partner is entitled under this Section 3.19;
  - (iii) send to each Dissenting Limited Partner who has not complied with Section 3.19(d) a notice stating that:
    - (1) his, her or its Units have been transferred to the Offeror;
    - (2) the Partnership GP or some other Person designated in such notice is holding in trust the consideration for the transfer of such Units to the Offeror; and

- (3) the Partnership GP, or such other Person, will send the consideration to such Dissenting Limited Partner as soon as practicable after receiving ratification of the transfer of his, her or its Units to the Offeror from such Dissenting Limited Partners or such other documents as the Partnership GP, or such other Person may require;

and the Partnership GP is hereby appointed the agent and attorney of the Dissenting Limited Partners for the purposes of giving effect to the foregoing provisions.

- (h) An Offeror shall not be entitled to rely on the provisions of this Section 3.19 unless, concurrent with the communication of the Offer to any Limited Partner, a copy of the Offer is provided to the Partnership GP.
- (i) For greater certainty, this Section 3.19 shall be subject to Applicable Securities Laws and in the event of any discrepancy between this Section 3.19 and such laws, the Applicable Securities Laws shall govern.

### **3.20 Repurchase of Units**

The Partnership shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Units, at a price per Unit and on a basis determined by the General Partner in compliance with all Applicable Securities Laws and the rules of any applicable stock exchange on which the Units are then listed.

## **ARTICLE 4 RESTRICTIONS ON TRANSFER AND OWNERSHIP OF UNITS**

### **4.1 Definitions**

For purposes of this Article 4, the following terms shall have the following meanings:

- (a) “**Beneficial Ownership**” means ownership of Units by a Person, whether the interest in the Units is held directly or indirectly (including by a nominee), who is or would be an actual owner, for United States federal income tax purposes, of such Units or who is or would be treated as a constructive owner of such Units under Section 542(a)(2) of the Code either directly or constructively through the application of Section 544 of the Code, as modified by Sections 856(h)(1)(B) and 856(h)(3) of the Code. The terms “**Beneficial Owner**,” “**Beneficially Owns**,” “**Beneficially Own**” and “**Beneficially Owned**” shall have correlative meanings;
- (b) “**Business Day**” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in Toronto, Ontario, or New York City, New York are authorized or required by law, regulation or executive order to close;
- (c) “**Charitable Beneficiary**” means one or more beneficiaries of a Charitable Trust, as determined pursuant to Section 4.3, each of which shall be an organization described in Sections 170(b)(1)(A), 170(c)(2) and 501(c)(3) of the Code;
- (d) “**Charitable Trust**” means each of the trusts provided for in Section 4.3;

- (e) “**Charitable Trustee**” means any Person unaffiliated with the Partnership and any Purported Beneficial Transferee or Purported Record Transferee that is appointed by the Partnership to serve as a trustee of a Charitable Trust;
- (f) “**Constructive Ownership**” means ownership of Units by a Person, whether the interest in the Units is held directly or indirectly (including by a nominee), who is or would be treated as an owner of such Units either actually or constructively through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms “**Constructive Owner**,” “**Constructively Owns**” and “**Constructively Owned**” shall have correlative meanings;
- (g) “**Excepted Holder**” means a Person who owns Units for whom an Excepted Holder Limit is created by the Board of Directors pursuant to Section 4.2(b);
- (h) “**Excepted Holder Limit**” means, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Directors pursuant to Section 4.2(b)(ii), any other ownership limit with respect to the Units established by the Board of Directors pursuant to Section 4.2(b)(ii) or otherwise (other than the Ownership Limit, but only for so long as the relevant Person is an Excepted Holder) for or in respect of such holder;
- (i) “**Individual**” means an individual, a trust qualified under Section 401(a) or 501(c)(17) of the Code, a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, or a private foundation within the meaning of Section 509(a) of the Code, provided that a trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code shall be excluded from this definition.
- (j) “**Market Price**” on any date shall mean, with respect to the Units, the Closing Price for such Units. The “**Closing Price**” on any date shall mean the last sale price for such Units, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Units, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the Toronto Stock Exchange or, if the Units are not listed or admitted to trading on the Toronto Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Units are listed or admitted to trading or, if such Units are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system on which such Units are quoted, or if such Units are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Units selected by the Board of Directors or, in the event that no trading price is available for such Units, the fair market value of the Units on such date, as determined in good faith by the Board of Directors.
- (k) “**Non-Transfer Event**” means any event or other change in circumstances other than a Transfer or purported Transfer, including without limitation, any change in value of any class of securities of the Partnership or capital stock of the U.S. REIT or any redemption of such securities.

- (l) **“Ownership Limit”** shall mean 9.8% (in value or in number of Units, whichever is more restrictive), and subject to adjustment from time to time by the Board of Directors in accordance with Section 4.8 of the aggregate of the outstanding Units, excluding any such outstanding Units which are not treated as outstanding for U.S. federal income tax purposes. Notwithstanding the foregoing, for purposes of determining the percentage ownership of Units by any Person, Units that are treated as Beneficially Owned or Constructively Owned by such Person shall be deemed to be outstanding. The number and value of outstanding Units shall be determined by the Board of Directors in good faith, which determination shall be conclusive for all purposes hereof.
- (m) **“Person”** means an Individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity; but does not include an underwriter acting in a capacity as such in a public offering or private placement of Units or other securities of the Partnership convertible into or exchangeable for Units provided that the ownership of such Units or other securities of the Partnership by such underwriter would not result in the U.S. REIT being “closely held” within the meaning of Section 856(h) of the Code.
- (n) **“Purported Beneficial Transferee”** means, with respect to any purported Transfer (or Non-Transfer Event) that results in a transfer to a Charitable Trust, as provided in Section 4.2(d), the Purported Record Transferee, unless the Purported Record Transferee would have acquired or owned Units for another Person who is the beneficial transferee or beneficial owner of such Units, in which case the Purported Beneficial Transferee shall be such Person.
- (o) **“Purported Record Transferee”** means, with respect to any purported Transfer (or Non-Transfer Event) that results in a transfer to a Charitable Trust, as provided in Section 4.2(d), the record holder of the Units if such Transfer had been valid under Section 4.2(d).
- (p) **“Restriction Termination Date”** means the first day after the date hereof on which the Board of Directors’ determine that it is no longer in the best interests of the Partnership for the U.S. REIT to attempt to, or continue to, qualify as a REIT.
- (q) **“REIT”** means a “real estate investment trust” under the REIT Provisions of the Code.
- (r) **“REIT Provisions of the Code”** means Sections 856 through 860 of the Code and any successor or other provisions of the Code relating to real estate investment trusts (including provisions as to the attribution of ownership of beneficial interests therein) and the regulations promulgated thereunder.
- (s) **“Transfer”** means any sale, issuance, transfer, gift, assignment, devise or other disposition of Units as well as any Non-Transfer Event that causes any Person to Beneficially Own or Constructively Own Units or change its level of Beneficial Ownership or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Units or the right to vote or receive distributions on Units, including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Units or (ii) the sale, transfer, assignment or other disposition of any securities (or rights convertible into or exchangeable for Units),

whether voluntary or involuntary, whether such transfer has occurred of record or of Beneficial Ownership or Constructive Ownership (including but not limited to transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Units), and whether such transfer has occurred by operation of law or otherwise. The terms “Transferring” and “Transferred” shall have the correlative meanings.

#### **4.2 Restriction on Ownership and Transfers**

- (a) During the period commencing on the date of this Agreement and prior to the Restriction Termination Date, no Person shall Beneficially Own or Constructively Own Units that would or would be reasonably likely to result in the U.S. REIT being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including but not limited to Beneficial Ownership or Constructive Ownership that would result in (a) the U.S. REIT owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the U.S. REIT (either directly or indirectly through one or more subsidiaries) from such tenant (taking into account any other income of the U.S. REIT that would not qualify) would or would be reasonably likely to cause the U.S. REIT to fail to satisfy any of the gross income requirements of Section 856(c) of the Code or comparable provisions of any applicable state law), or (b) any manager or operator of a “qualified lodging facility,” within the meaning of Section 856(d)(9)(D) of the Code, leased by the U.S. REIT (or any subsidiary of the U.S. REIT) to one of the U.S. REIT’s taxable REIT subsidiaries failing to qualify as an “eligible independent contractor,” within the meaning of Section 856(d)(9)(A) of the Code if the income derived by the U.S. REIT from such taxable REIT subsidiary (taking into account any other income of the U.S. REIT) would not qualify under the gross income requirements of Section 856(c) of the Code, and would, or would be reasonably likely to, cause the U.S. REIT to fail to satisfy any of such gross income requirements).
- (b) During the period commencing on the date of this Agreement and prior to the Restriction Termination Date, no Person shall (other than an Excepted Holder) shall Beneficially Own or Constructively Own Units in excess of the Ownership Limit, and no Excepted Holder shall Beneficially Own or Constructively Own Units in excess of the Excepted Holder Limit for such Excepted Holder. Notwithstanding the preceding sentence, however, the Board of Directors, may retroactively or prospectively waive the application of the Ownership Limit to a Person otherwise subject to any such limit and, if the Board of Directors determines necessary, establish or increase an Excepted Holder Limit for such Person. As additional conditions precedent to such waiver and, if applicable, creation of, or increase to, an Excepted Holder Limit:
  - (i) the Board of Directors shall obtain such representations and undertakings from such Person as are reasonably necessary (as determined by the Board of Directors), if any, to ascertain that such Person’s Beneficial Ownership or Constructive Ownership of Units and other securities of the Partnership and the U.S. REIT will not now or in the future (A) result in the U.S. REIT being “closely held” within the meaning of Section 856(h) of the Code, or (B) otherwise cause the U.S. REIT to fail to qualify as a REIT; and

- (ii) such Person shall provide to the Board of Directors such representations and undertakings, if any, as the Board of Directors may require (including, without limitation, an agreement as to a reduced Ownership Limit or Excepted Holder Limit for such Person with respect to the Beneficial Ownership of one or more other classes of securities of the Partnership and the U.S. REIT not subject to the exception), and, insofar as required by the Board of Directors, such Person agrees in writing that any violation or attempted violation of (x) such other limitation as the Board of Directors may establish at the time of such waiver with respect to such Person or (y) such other restrictions and conditions as the Board of Directors may in its sole discretion impose at the time of such waiver with respect to such Person, will result, as of the time of such violation even if discovered after such violation, in the transfer of such Units in excess of the original limit applicable to such Person to the Charitable Trust pursuant to Section 4.2(d) and Section 4.3.

In addition, prior to granting any exception to the Ownership Limit, or creating or increasing any Excepted Holder Limit, the Board of Directors may require a ruling from the U.S. Internal Revenue Service, or an opinion of counsel, or other evidence or undertakings, in each case in form and substance satisfactory to the Board of Directors in their sole and absolute discretion, as they may deem necessary or advisable in order to determine or ensure the U.S. REIT's status as a "real estate investment trust" for U.S. federal income tax purposes. Notwithstanding the receipt of any ruling or opinion, or other evidence or undertakings the Board of Directors may impose such conditions or restrictions as they deem appropriate in connection with granting such exception to the ownership limit or creating or increasing any Excepted Holder Limit.

- (c) Subject to Sections 4.2(a) and 4.2(d) and the rest of this Section 4.2(c), the Board of Directors may, in their sole and absolute discretion, from time to time, increase or decrease the Unit Ownership Limit for one or more Persons; provided, however, that a Unit Ownership Limit will not be effective for any Person who Beneficially Owns or Constructively Owns, as applicable, Units in excess of such decreased Unit Ownership Limit at the time such limit is decreased, until such time as such Person's Beneficial Ownership or Constructive Ownership of Units, as applicable, equals or falls below the decreased Unit Ownership Limit, but any further acquisition of Units or increased Beneficial Ownership or Constructive Ownership of Units, during the period that such decreased Unit Ownership Limit is not effective with respect to such Person, will be in violation of the Unit Ownership Limit and, provided further, that the new Unit Ownership Limit (taking into account any then existing Excepted Holder Limits to the extent appropriate as determined by the Partnership) would not allow five or fewer Individuals to Beneficially Own more than 49% in value of the outstanding Units.
- (d) If, prior to the Restriction Termination Date, any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the Toronto Stock Exchange or any other national securities exchange or automated inter-dealer quotation system or over-the-counter market) or Non-Transfer Event occurs that, if effective, would result in any Person Beneficially Owning or Constructively Owning Units in violation of Section 4.2(a) or 4.2(b):
  - (i) then that number of Units the ownership of which would otherwise cause such Person to violate Section 4.2(a) or 4.2(b) (as applicable) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as

described in Section 4.3, effective as of the close of business on the Business Day prior to the date of such Transfer or Non-Transfer Event, and such Purported Beneficial Transferee shall thereafter have no rights in such Units, or

- (ii) if, for any reason, the transfer to the Charitable Trust described in Section 4.2(d)(i) is not automatically effective as provided therein to prevent any Person from Beneficially Owning or Constructively Owning Units in violation of Section 4.2(a) or 4.2(b) (as applicable), then the Transfer of that number of Units that otherwise would cause any Person to violate Section 4.2(a) or 4.2(b) (as applicable) shall be void *ab initio*, and the Purported Beneficial Transferee shall have no rights in such Units.

In determining which Units are to be transferred to a Charitable Trust in accordance with this Section 4.2(d) and Section 4.3, Units shall be so transferred to a Charitable Trust in such manner as minimizes the aggregate value of the Units that are transferred to the Charitable Trust (except as provided in Section 4.8) and, to the extent not inconsistent therewith, on a *pro rata* basis (unless otherwise determined by the Board of Directors in their sole and absolute discretion).

#### **4.3 Transfers of Units in Charitable Trust**

- (a) *Ownership in Charitable Trust.* Upon any purported Transfer or Non-Transfer Event described in Section 4.2(d) that would result in a transfer to a Charitable Trust, such Units shall be deemed to have been transferred to the Charitable Trustee in its capacity as trustee of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or Non-Transfer Event that results in the transfer to the Charitable Trust pursuant to Section 4.2(d). The Charitable Trustee shall be appointed by the Partnership and shall be a Person unaffiliated with the Partnership, any Purported Beneficial Transferee or any Purported Record Transferee. Each Charitable Beneficiary shall be designated by the Partnership as provided in Section 4.3(f).
- (b) *Status of Units Held by the Charitable Trustee.* Units held by the Charitable Trustee shall be issued and outstanding Units of the Partnership. The Purported Beneficial Transferee or Purported Record Transferee shall have no rights in the Units held by the Charitable Trustee. The Purported Beneficial Transferee or Purported Record Transferee shall not benefit economically from ownership of any Units held in trust by the Charitable Trustee, shall have no rights to distributions and shall not possess any rights to vote or other rights attributable to the Units held in the Charitable Trust. The Purported Beneficial Transferee and the Purported Record Transferee shall have no claim, cause of action, or any other recourse whatsoever against the purported transferor of such Units.
- (c) *Distribution and Voting Rights.* The Charitable Trustee shall have all voting rights and rights to distributions with respect to Units held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any distribution paid to or on behalf of the Purported Record Transferee or Purported Beneficial Transferee prior to the discovery by the Partnership that Units have been transferred to the Charitable Trustee shall be paid by the recipient of such distribution to the Charitable Trustee upon demand, and any distribution declared but unpaid shall be paid when due to the Charitable Trustee with respect to such Units. Any distributions so paid over to the

Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Purported Record Transferee and Purported Beneficial Transferee shall have no voting rights with respect to the Units held in the Charitable Trust and, subject to the Ontario law, effective as of the date the Units have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole and absolute discretion) (i) to rescind as void any vote cast by a Purported Record Transferee with respect to such Units prior to the discovery by the Partnership that the Units have been transferred to the Charitable Trustee and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Partnership has already taken irreversible action, then the Charitable Trustee shall not have the authority to rescind and recast such vote. Notwithstanding any other provision of this Agreement to the contrary, until the Partnership has received notification that Units have been transferred into a Charitable Trust, the Partnership shall be entitled to rely on its Unit transfer and other records with respect to holders of Units for purposes of preparing lists of holders of Units entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of holders of Units.

- (d) *Sale of Units by Charitable Trustee.* Within 20 days after receiving notice from the Partnership that Units have been transferred to the Charitable Trust, the Charitable Trustee of the Charitable Trust shall sell the Units held in the Charitable Trust to a Person, designated by the Charitable Trustee, whose ownership of the Units shall not violate the ownership limitations set forth in Section 4.2(a) or 4.2(b). Upon such sale, the interest of the Charitable Beneficiary in the Units sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and to the Charitable Beneficiary as provided in this Section 4.3(d). The Purported Record Transferee shall receive the lesser of (i) the price paid by the Purported Record Transferee for the Units in the transaction that resulted in such transfer to the Charitable Trust (or, if the event that resulted in the transfer to the Charitable Trust did not involve a purchase of such Units at Market Price, the Market Price of such Units on the day of the event that resulted in the transfer of such Units to the Charitable Trust) and (ii) the price per Unit received by the Charitable Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the Units held in the Charitable Trust. The Charitable Trustee shall reduce the amount payable to the Purported Record Transferee by the amount of any distributions which have been paid to the Purported Record Transferee and are owed by the Purported Beneficial Transferee to the Charitable Trustee pursuant to Section 4.3(c). Any net sales proceeds in excess of the amount payable to the Purported Record Transferee shall be immediately paid to the Charitable Beneficiary together with any distributions thereon. If, prior to the discovery by the Partnership that Units have been transferred to the Charitable Trustee, such Units are sold by a Purported Record Transferee, (i) such Units shall be deemed to have been sold on behalf of the Charitable Trust and (ii) to the extent that the Purported Record Transferee received an amount for such Units that exceeds the amount that such Purported Record Transferee was entitled to receive pursuant to this Section 4.3(d), such excess shall be paid to the Charitable Trustee upon demand.
- (e) *Purchase Right in Units Transferred to the Charitable Trustee.* Units transferred to the Charitable Trustee shall be deemed to have been offered for sale to the Partnership, or its designee (subject to the approval of such designee by the Toronto Stock Exchange), at a price per Unit equal to the lesser of (i) the price paid by the Purported Record Transferee for the Units in the transaction that resulted in such transfer to the Charitable Trust (or, if

the event that resulted in the transfer to the Charitable Trust did not involve a purchase of such Units at Market Price, the Market Price of such Units on the day of the event that resulted in the transfer of such Units to the Charitable Trust) and (ii) the Market Price on the date the Partnership, or its designee, accepts such offer. The Partnership shall reduce the amount payable to the Purported Record Transferee by the amount of any distributions which have been paid to the Purported Record Transferee and are owed by the Purported Beneficial Transferee to the Charitable Trustee pursuant to Section 4.3(c). The Partnership shall have the right to accept such offer until the Charitable Trustee has sold the Units held in the Charitable Trust pursuant to Section 4.3(d). Upon such a sale to the Partnership, the interest of the Charitable Beneficiary in the Units sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and any distributions held by the Charitable Trustee with respect to such Units shall thereupon be paid to the Charitable Beneficiary.

- (f) *Designation of Charitable Beneficiaries.* By written notice to the Charitable Trustee, the Partnership shall designate one or more non-profit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that the Units held in the Charitable Trust would not violate the restrictions set forth in Section 4.2(a) or 4.2(b) in the hands of such Charitable Beneficiary. Neither the failure of the Partnership to make such designation nor the failure of the Partnership to appoint the Charitable Trustee before the automatic transfers provided for in Section 4.2(d) shall make such transfer ineffective, provided that the Charitable Trust thereafter makes such designation and appointment. The designation of a non-profit organization as a Charitable Beneficiary shall not entitle such non-profit organization to continue to serve in such capacity and the Partnership may, in its sole discretion, designate a different non-profit organization as the Charitable Beneficiary at any time and for any or no reason, provided, however, that if a Charitable Beneficiary was designated at the time the Units were placed in the Charitable Trust, such Charitable Beneficiary shall be entitled to the rights set forth herein with respect to such Units, unless and until the Partnership opts to purchase such Units under Section 4.3(e).

#### **4.4 Remedies for Breach**

If the Board of Directors or a committee thereof shall at any time determine in good faith that a Transfer or Non-Transfer Event has taken place in violation of Section 4.2(a) or Section 4.2(b) or that a Person intends to acquire, has attempted to acquire or may acquire Beneficial Ownership or Constructive Ownership of any Units in violation of Section 4.2(a) or Section 4.2(b), the Board of Directors or a committee thereof shall be entitled to and shall take such action as they or it deems advisable, in their or its sole and absolute discretion, to refuse to give effect or to prevent such Transfer or Non-Transfer Event, including, but not limited to, causing the Partnership to redeem Units, refusing to give effect to such Transfer on the books of the Partnership or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers or attempted Transfer (or, in the case of events other than a Transfer, ownership or Constructive Ownership or Beneficial Ownership) in violation of Section 4.2(a) or Section 4.2(b) shall automatically result in the transfer to a Charitable Trust as described in Section 4.2(d), or, where applicable, such Transfer (or Non-Transfer Event) shall automatically be void *ab initio* irrespective of any action (or non-action) by the Board of Directors.

#### **4.5 Notice of Restricted Transfer**

Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Units that will or may violate Section 4.2(a) or Section 4.2(b), or any Person who is a

Purported Beneficial Transferee such that an automatic transfer to a Charitable Trust results or would result under Section 4.2(d), shall immediately give written notice to the Partnership of such event or, in the case of such a proposed or attempted transaction, give at least 15 days' prior written notice, and shall provide to the Partnership such other information as the Partnership may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the U.S. REIT's status as a REIT.

#### **4.6 Owners Required to Provide Information**

From the date hereof and prior to the Restriction Termination Date, each Person who is a Beneficial Owner or Constructive Owner of Units and each Person (including the unitholder of record) who is holding Units for a Beneficial Owner or Constructive Owner shall, on demand, provide to the Partnership in writing such information that the Partnership may request, in good faith, in order to determine the effect, if any, of such Beneficial Ownership or Constructive Ownership on the U.S. REIT's status as a REIT and to ensure compliance with the Ownership Limit and the other restrictions set forth herein, and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

#### **4.7 Remedies Not Limited**

Nothing contained in this Agreement shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Partnership and the interests of the holders of its Units by preservation of the U.S. REIT's status as a REIT.

#### **4.8 Ambiguity**

In the case of an ambiguity in the application of any of the provisions of this Article 4, including Section 4.2, Section 4.3, or any definition contained in Section 4.1 or any defined term used in this Article 4 but defined elsewhere in this Agreement, the Board of Directors shall have the power to determine the application of the provisions of this Article 4 with respect to any situation based on the facts known to it. If any Section of this Article 4 requires an action by the Board of Directors and this Agreement fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article 4.

#### **4.9 Legend**

Each Certificate and direct registration advice representing Units shall bear substantially the following Legend:

“THE UNITS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL OWNERSHIP AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE PARTNERSHIP'S MAINTENANCE OF ITS SUBSIDIARY'S, U.S. REIT'S, STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT, NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN UNITS THAT WOULD RESULT IN U.S. REIT BEING “CLOSELY HELD” UNDER SECTION 856(h) OF THE CODE AND NO INDIVIDUAL MAY BENEFICIALLY OWN UNITS STOCK IF SUCH OWNERSHIP WOULD EXCEED THE OWNERSHIP LIMIT UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE), OR (IN EACH CASE) WOULD OTHERWISE CAUSE U.S. REIT TO FAIL TO QUALIFY AS A REIT. ANY PERSON WHO BENEFICIALLY OWNS OR CONSTRUCTIVELY OWNS OR

ATTEMPTS TO BENEFICIALLY OWN OR CONSTRUCTIVELY OWN UNITS WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN UNITS IN EXCESS OF OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE PARTNERSHIP. IF ANY OF THE ABOVE RESTRICTIONS ON TRANSFER OR OWNERSHIP ARE VIOLATED, THE UNITS REPRESENTED HEREBY PURPORTEDLY TRANSFERRED IN EXCESS OF OR IN VIOLATION OF SUCH RESTRICTIONS SHALL BE AUTOMATICALLY TRANSFERRED TO THE CHARITABLE TRUSTEE OF A CHARITABLE TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE PARTNERSHIP MAY TAKE OTHER ACTIONS, INCLUDING REDEEMING UNITS UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR NON-TRANSFER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL TERMS IN THIS LEGEND THAT ARE DEFINED IN THE AMENDED AND RESTATED PARTNERSHIP AGREEMENT SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THE AMENDED AND RESTATED PARTNERSHIP AGREEMENT, AS THE SAME MAY BE AMENDED OR AMENDED AND RESTATED FROM TIME TO TIME. A COPY OF THE AMENDED AND RESTATED PARTNERSHIP AGREEMENT, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, SHALL BE FURNISHED TO EACH HOLDER OF UNITS ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE PARTNERSHIP GP AT ITS PRINCIPAL OFFICE.”

Instead of the foregoing legend, a Certificate may state that the Partnership will furnish a full statement about certain restrictions on ownership and transfer of the Units to a unitholder on request and without charge.

#### **4.10 Toronto Stock Exchange and other Exchange Transactions**

Nothing in this Article 4 shall preclude the settlement of any transaction entered into through the facilities of the Toronto Stock Exchange or any other national securities exchange or automated inter-dealer quotation system or over-the-counter market. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article 4 and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article 4.

#### **4.11 Enforcement**

The Partnership GP, on behalf of the Partnership, is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article 4.

#### **4.12 Non-Waiver**

No delay or failure on the part of the Partnership or the Partnership GP in exercising any right hereunder shall operate as a waiver of any right of the Partnership or the Partnership GP, as the case may be, except to the extent specifically waived in writing.

**4.13 Severability**

If any provision of this Article 4 or any application of any such provision is determined to be invalid by any court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provisions shall be affected only to the extent necessary to comply with the determination of such court.

**ARTICLE 5  
CAPITAL CONTRIBUTIONS AND ACCOUNTS**

**5.1 Capital**

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

**5.2 Partnership GP Contribution**

The Partnership GP is entitled to a 0.01% interest in the Partnership in consideration for the Partnership GP having contributed \$100.00 as a Capital Contribution to the Partnership.

**5.3 Intentionally Deleted.**

**5.4 Limited Partner Contributions**

The Capital Contribution of each Limited Partner is the subscription price for Units paid or agreed to be paid by the Limited Partner, as determined from time to time by the Partnership GP. No Limited Partner is required to make additional Capital Contributions to the Partnership over and above the purchase price paid for such Limited Partner's Units.

**5.5 Capital Accounts**

- (a) The Partnership GP may establish and maintain capital accounts for the Partnership GP and the Limited Partners in such manner as the Partnership GP determines appropriate.
- (b) No Limited Partner shall be entitled to receive interest on the amount of his, her or its Capital Contribution or any balance in his, her or its capital account from the Partnership. No Limited Partner shall be liable to pay interest to the Partnership on any negative balance of capital or on a negative balance in his, her or its capital account unless interest may be charged pursuant to a specific provision hereof. No Limited Partner shall be responsible for any of the Net Losses of any other Limited Partner, nor share in the Net Income or allocation of Net Losses attributable to the Units of any other Limited Partner. A Limited Partner is only entitled to demand a return of such Limited Partner's Capital Contribution upon the dissolution, winding-up or liquidation of the Partnership as provided in Article 14 hereof.

**ARTICLE 6  
ALLOCATIONS AND DISTRIBUTIONS**

**6.1 Allocation of Net Income and Taxable Income**

- (a) Where Distributable Cash was paid in respect of a Fiscal Year, the Net Income and Taxable Income of the Partnership in respect of that Fiscal Year shall be allocated

among all Partners that were Partners at any time in the Fiscal Year on the following basis:

- (i) first, to the Partnership GP 0.01% of the Net Income and Taxable Income of the Partnership to a maximum of \$100 per annum; and
  - (ii) as to the balance, to the Limited Partners as a class, and to each Limited Partner an amount equal to the balance multiplied by a fraction, the numerator of which is the sum of the distributions received by such Limited Partner in respect of the Fiscal Year and the denominator of which is the aggregate amount of distributions made by the Partnership to the Limited Partners as a group in respect of the Fiscal Year.
- (b) Where no Distributable Cash was paid in respect of a Fiscal Year, Net Income and Taxable Income of the Partnership in respect of that Fiscal Year shall be allocated among all Partners that were Partners at any time in that Fiscal Year on the following basis:
- (i) first, to the Partnership GP 0.01% of the Net Income and Taxable Income of the Partnership to a maximum of \$100 per annum; and
  - (ii) as to the balance, to the Limited Partners as a class, and within that class to each Limited Partner who was a holder of Units at the end of each month in such Fiscal Year an amount equal to the balance multiplied by a fraction, the numerator of which is the aggregate number of Units held by such Limited Partner at the end of each month in such Fiscal Year and the denominator of which is the aggregate number of Units issued and outstanding at the end of each month in such Fiscal Year.

## **6.2 Allocation of Net Loss and Taxable Loss**

Net Loss and Taxable Loss of the Partnership in respect of a Fiscal Year shall be allocated among all Partners that were Partners at any time in that Fiscal Year on the following basis:

- (a) first, to the Partnership GP 0.01% of the Net Loss and Taxable Loss of the Partnership to a maximum of \$100 per annum; and
- (b) as to the balance, to the Limited Partners as a class, and within that class to each Limited Partner who was a holder of Units at the end of each month in such Fiscal Year an amount equal to the balance multiplied by a fraction, the numerator of which is the aggregate number of Units held by such Limited Partner at the end of each month in such Fiscal Year and the denominator of which is the aggregate number of Units issued and outstanding at the end of each month in such Fiscal Year.

## **6.3 Distributable Cash**

- (a) Subject to Section 6.3(b) and (h), the Partnership GP will distribute to those Limited Partners who are Limited Partners as of the record date set by the Partnership GP for such distribution all Distributable Cash, as follows:
  - (i) first, to the Partnership GP 0.01% of the Distributable Cash to a maximum of \$100 per annum; and

- (ii) as to the balance, to the Limited Partners, pro rata in accordance with their respective Proportionate Shares,

which distributions shall be paid on such date as the Partnership GP may determine in its sole discretion.

- (b) The Partnership GP may, in its sole discretion, distribute (a “**Special Distribution**”) Distributable Cash to Partners at such dates as it may determine other than those set out in Section 6.3(a), which Special Distributions may be made in lieu of ordinary distributions provided for in Section 6.3(a).
- (c) Any distribution shall be made directly by the Partnership GP on behalf of the Partnership or through the Transfer Agent or through any other Person or agent, as approved by the Partnership GP, to the Limited Partners as of the particular record date set for such distribution.
- (d) Distributions shall be made by cheque payable to or to the order of the Limited Partner or by electronic fund transfer or by such other manner of payment approved by the Partnership GP from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Limited Partner or to his, her or its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Limited Partner at his, her or its address as it appears on the Register unless the cheque is not paid on presentation. The Partnership GP may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that it may in its discretion consider necessary.
- (e) For greater certainty, distributions made shall constitute full payment and satisfaction of the Partnership’s liability in respect of such distribution, regardless of any claim of any Person who may have an interest in such distribution by reason of an assignment or otherwise.
- (f) The Partnership GP shall deduct or withhold from distributions payable to any Limited Partner all amounts required or permitted by law to be withheld from such distribution and shall remit such Taxes to the appropriate governmental authority within the times prescribed by law.
- (g) The amount of Taxes withheld or paid by or on behalf of the Partnership or its subsidiary in respect of a Limited Partner shall be treated either as a distribution to such Limited Partner pursuant to Section 6.3(a) or as a general expense of the Partnership, as determined by the Partnership GP in its sole discretion, and the Partnership GP shall report to the Limited Partners on an annual basis the amount of such Taxes withheld or paid.
- (h) Notwithstanding the foregoing, the Partnership GP may in its sole and unfettered discretion elect to not distribute Distributable Cash in any period or to reduce the amount of any distribution of Distributable Cash in whole or in part.

#### **6.4 Repayments**

If, as determined by the Partnership GP, it appears that any Partner has received an amount under this Article 6 which is in excess of that Partner's entitlement, the Partner will, forthwith upon notice from the Partnership GP, reimburse the Partnership to the extent of the excess, and failing immediate reimbursement, the Partnership GP may withhold the amount of the excess (with interest at the annual rate determined by the Partnership GP from time to time calculated and compounded monthly) from further distributions otherwise due to the Partner.

#### **6.5 Allocations for United States Tax Purposes**

If applicable, for United States federal income tax purposes, allocations of Net Income, Taxable Income, Net Loss and Taxable Loss for each Fiscal Year or other relevant period of the Partnership shall be allocated among the Partners as set out in Sections 6.1 and 6.2 except to the extent: (i) that any such allocations would not have substantial economic effect or are not in accordance with the interests of the Limited Partners in the Partnership (in each case, as determined pursuant to Section 704(b) of the Code) or (ii) otherwise required by applicable law or by reason of tax elections made by the Partnership GP on behalf of the Partnership, and, in the case of either clause (i) or (ii), the Partnership GP shall adjust allocations as necessary so as to comply with the requirements of Sections 704(b) and 704(c) of the Code and the regulations promulgated thereunder, relevant provisions of law or elections made by the Partnership GP on behalf of the Partnership (as applicable).

#### **6.6 Partnership GP Discretion in Allocation**

The Partnership GP shall have the discretion but not the obligation, acting in good faith, to allocate income, loss and other amounts on a basis which ensures a fair distribution among Limited Partners after taking into consideration any matters that may be relevant. Adjustments may be made in respect of revenue earned or expenses incurred prior to the time each Limited Partner became a Limited Partner of the Partnership and adjustments may be made in respect of fees paid in years prior to the year in which the Limited Partner became a Limited Partner. The Partnership GP shall also have the right but not the obligation to allocate Net Income and Taxable Income and Net Loss and Taxable Loss among Limited Partners to ensure they are treated equitably taking into account differences that may arise as a result of the acquisition of Units at different times in a year or in different calendar years.

#### **6.7 Effect of Assignment on Allocation**

Each Limited Partner who is a Partner of the Partnership at any time in each Fiscal Year will be allocated his, her or its share of such Net Income and Taxable Income or Net Loss and Taxable Loss, as the case may be, for such Fiscal Year in accordance with this Article 6. Where a Limited Partner assigns a Unit prior to the end of the Fiscal Year, the portion of Net Income and Taxable Income or Net Loss and Taxable Loss, as the case may be, which would have been attributed to such assigning Limited Partner shall continue to be so allocable in accordance with Sections 6.1 and 6.2, instead of being allocated to the assignee who holds the Unit at the end of the Fiscal Year. For greater certainty, any Person who was a Limited Partner at any time during a Fiscal Year but who has transferred all of such Person's Units before the last day of that Fiscal Year may be deemed to be a Partner on the last day of such Fiscal Year for the purposes of subsection 96(1) of the Tax Act. Where a Unit was initially subscribed for after the beginning of the Fiscal Year, Net Income and Taxable Income, or Net Loss and Taxable Loss, as the case may be, for the entire Fiscal Year will be allocated to the holder thereof in accordance with the mechanics of the provisions of Sections 6.1 and 6.2 on account of the portion of the Fiscal Year that the Person was a Limited Partner.

## **6.8 Tax Matters Partner**

The Partnership GP is hereby designated by the Partners as the tax matters partner for all Canadian and United States federal income tax purposes, and state or provincial equivalents. Anything in Sections 6.1 and 6.2 to the contrary notwithstanding, the Partnership GP, acting as tax matters partner, in its reasonable discretion and from time to time may modify the manner in which Net Income, Taxable Income, Net Loss and Taxable Loss are allocated to or among the Limited Partners and their capital accounts and for tax purposes in order that in the reasonable judgment of the Partnership GP, and in its sole discretion, such allocations will reasonably reflect the purpose of this Agreement and the intention of the parties; provided, however, that no such modification shall materially and adversely affect the amounts distributable to any Partner. For greater certainty, the Partnership GP is also hereby designated and appointed to have the authority (but not the obligation) to make or execute elections, designations or other determinations for Canadian and United States federal income tax purposes, and state or provincial equivalents, that relate to a Fiscal Year on behalf of all Persons who are Partners or who are Limited Partners during the Fiscal Year and shall have the authority (but not the obligation) to act for the Partnership in connection therewith. The Partnership GP shall be authorized to act for, and on behalf of, the Partnership for the purposes of subsection 165(1.15) of the Tax Act. The Partnership GP shall designate the “partnership representative” of the Partnership within the meaning under Section 6223(a) of the Code. The Partnership GP shall have the authority to remove and replace the partnership representative and designate a successor.

## **6.9 Adjustments**

If the Auditor determines that the share of a Limited Partner in the distribution or allocation of Net Income and Taxable Income or Net Loss and Taxable Loss, calculated in accordance with this Agreement, differs from the Limited Partner’s share as determined by the Partnership GP, then the determination of the Auditor shall be deemed to be final and binding upon the Partnership and the Limited Partners. The Partnership GP will cause the necessary adjustments to be made by payment or reallocation to or from such Limited Partner as the case may be.

## **6.10 Payment of Adjustments**

The Partnership GP will, within seven days after receiving a report of the Auditor under Section 6.9 hereof, notify in writing each Limited Partner whose share of the Net Income and Taxable Income or Net Loss and Taxable Loss is to be adjusted, of the amount of the adjustment, together with a cheque for the amount payable to the Limited Partner or a request for payment in respect of the amount payable by the Limited Partner, as the case may be. Each Limited Partner hereby agrees to pay any amount owing by the Limited Partner under Section 6.9, within 15 days from the date of notice of an adjustment given under this Section 6.10.

# **ARTICLE 7 REIMBURSEMENT OF EXPENSES**

## **7.1 Expenses of the Partnership**

The Partnership will reimburse the Partnership GP for all direct costs and expenses incurred on the Partnership’s behalf by the Partnership GP in the performance of its duties hereunder (which costs and expenses shall be the Partnership’s responsibility). For greater certainty, such costs and expenses for which the Partnership GP is to be reimbursed include, without limitation, the Partnership’s direct general and administrative expenses, including legal and audit fees, stock exchange listings fees, fees of the Transfer Agent, 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 Units.

## **ARTICLE 8 WITHDRAWAL OF CAPITAL CONTRIBUTIONS**

### **8.1 Withdrawal**

No Limited Partner has the right to withdraw any of the Limited Partner's Capital Contribution 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 law.

### **8.2 Return of Capital Contribution**

Subject to compliance with the Act, all Distributable Cash and other cash distributed to Partners shall be and shall be deemed to be withdrawals of or returns of Capital Contributions to the applicable Partners until the Partners have received 99.99% of the original Capital Contribution applicable to each Unit, after which no further withdrawals or returns of capital shall be made until dissolution of the Partnership. The Partnership GP and each of the Limited Partners hereby consents to the withdrawal or return of Capital Contributions contemplated in this Section 8.2.

## **ARTICLE 9 POWERS, DUTIES AND OBLIGATIONS OF THE PARTNERSHIP GP**

### **9.1 Powers, Duties and Obligations**

- (a) The Partnership GP has:
  - (i) unlimited liability for the debts, liabilities, losses 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 activities and affairs and to make decisions regarding the undertaking and activities of the Partnership; and
  - (iii) subject to the terms of this Agreement, 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 activities of the Partnership.

An action taken by the Partnership GP on behalf of the Partnership is deemed to be the act of the Partnership and binds the Partnership.

- (b) Notwithstanding any other agreement the Partnership or the Partnership GP may enter into, all material transactions or agreements entered into by the Partnership must be approved by the Board of Directors.

## 9.2 Specific Powers and Duties

Without limiting the generality of Section 9.1 and subject to the provisions of this Agreement and the Act, the Partnership GP will 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 Partnership's activities (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 Partnership GP, 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 Partnership GP hereunder;
- (c) borrow funds in the name of the Partnership from time to time, from financial institutions as the Partnership GP may determine without limitation with regard to amount, cost or conditions of reimbursement of such loan;
- (d) 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 indebtedness 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;
- (e) establish cash reserves that are determined to be necessary or appropriate for the proper management and operation of the Partnership including, but not limited to, cash reserves for future capital and maintenance expenditures, to reduce debt or as necessary to comply with the terms of any agreement or obligation of the Partnership;
- (f) acquire Securities of entities engaged primarily in activities which are permitted activities for the Partnership as provided in Section 2.3;
- (g) maintain, improve, upgrade or expand the assets from time to time of the Partnership;
- (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 Partnership GP may be necessary or advisable in the carrying on of the business of the Partnership;
- (j) engage agents to assist the Partnership GP in carrying out its management obligations to the Partnership, provided that no such delegation shall relieve the Partnership GP of any of its obligations hereunder;
- (k) invest cash assets of the Partnership that are not immediately required for the activities of the Partnership in investments which the Partnership GP 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 Partnership GP considers appropriate and rely upon the advice of such Persons;
- (p) appoint the Transfer Agent to, among other things, maintain and update the Register and fulfil the Partnership's obligations with respect to the Units, and appoint a transfer agent to, among other things, maintain and update the any register and fulfil the Partnership's obligations with respect to any other class of security of the Partnership that may be issued and outstanding from time to time;
- (q) do anything that is in furtherance of or incidental to the activities of the Partnership or that is provided for in this Agreement;
- (r) execute, acknowledge and deliver the documents necessary to effectuate any or all of the foregoing or otherwise in connection with the activities of the Partnership;
- (s) obtain any insurance coverage;
- (t) acquire or, subject to Section 12.17(l), dispose of assets of the Partnership; and
- (u) generally carry out the objects, purposes and activities of the Partnership.

No Persons dealing with the Partnership will be required to enquire into the authority of the Partnership GP 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 Partnership GP shall insert, and cause agents of the Partnership to insert, substantially the following clause in any contracts or agreements to which the Partnership is a party or by which it is bound:

“American Hotel Income Properties REIT LP (the “Partnership”) is a limited partnership formed under the *Limited Partnerships Act* (Ontario), a limited partner of which is only liable for any of the Partnership's liabilities or any of the Partnership's losses to the extent of the amount that such limited partner has contributed to the Partnership's capital and such limited partner's pro rata share of any undistributed income.”

### **9.3 Title to Property**

The Partnership GP may hold legal title to any of the assets or property of the Partnership in its name for the benefit of the Partnership. If any of the property of the Partnership is held by the Partnership GP, the Partnership GP will hold legal title to such property as nominee for the Partnership and for the use and benefit of the Partners in accordance with the terms hereof and may from time to time execute one or more declarations of trust or beneficial ownership in favour of the Partnership in respect of all or any of such property thereby confirming that such property is held as “partnership property” and not as the separate property of the Partnership GP alone. All partnership property must be held and applied by the Partners exclusively for the purposes of the Partnership and in accordance with this Agreement and as provided by the Act. Except for the legal title of property held by the Partnership GP as nominee for the

Partnership and for the use and benefit of the Partnership, no Partner shall have any legal, equitable or beneficial interest in any of the property of the Partnership.

#### **9.4 Exercise of Duties**

Except as provided herein, the Partnership GP covenants that it will exercise the 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 Partnership GP covenants that it will maintain the confidentiality of financial and other information and data which 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, except to the extent that disclosure is permitted as provided herein, is required by law or is in the best interests of the Partnership.

#### **9.5 Limitation of Liability**

The Partnership GP is not 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 9.10, neither the Partnership GP nor any Affiliates thereof nor their respective 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 Partnership GP by this Agreement or by law provided the Partnership GP has acted in good faith, in a manner which the Partnership GP believed to be in, or not opposed to, the best interests of the Partnership.

#### **9.6 Indemnity of Partnership GP**

- (a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, the Partnership GP, any former Partnership GP (a “**Departing Partner**”), any Person who is or was an Affiliate of the Partnership GP or any Departing Partner, any Person who is or was an officer, director, employee, partner, agent or trustee of the Partnership GP or any Departing Partner or any such Affiliate, or any Person who is or was serving at the request of the Partnership GP or any Departing Partner or any such Affiliate as a director, officer, employee, partner, agent or trustee of another Person (each, an “**Indemnitee**”) shall be 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 Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as: (i) the Partnership GP, a Departing Partner or any of their Affiliates; (ii) an officer, director, employee, partner, agent or trustee of the Partnership GP, any Departing Partner or any of their Affiliates; or (iii) a Person serving at the request of the Partnership GP, 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 Indemnitee acted honestly and in good faith with a view to the best interests of the Partnership and, 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. The termination of any action, suit or proceeding by judgment, order, settlement or conviction shall not create a presumption that the Indemnitee acted in a manner contrary to that specified

above. Any indemnification pursuant to this Section 9.6 shall 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 Indemnitee in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 9.6.
- (c) The indemnification provided by this Section 9.6 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, as to actions in the Indemnitee's capacity as: (i) the Partnership GP, a Departing Partner or an Affiliate thereof; (ii) an officer, director, employee, partner, agent or trustee of the Partnership GP, any Departing Partner or an Affiliate thereof; or (iii) a Person serving at the request of the Partnership GP, 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 Indemnitee who has ceased to serve in such capacity and as to actions in any other capacity.
- (d) The Partnership will purchase and maintain (or reimburse the Partnership GP or its Affiliates for the cost of) insurance, on behalf of the Partnership GP and such other Persons as the Partnership GP shall determine, against any liability that may be asserted against or expense that may be incurred by such Person in connection with the Partnership's activities, if the Partnership would have the power to indemnify such Person against such liabilities under the provisions of this Agreement.

## **9.7 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 Limited Partners for losses sustained or liabilities incurred as a result of any act or omission if such Indemnitee acted in good faith, in a manner which the Indemnitee believed to be in, or not opposed to, the best interests of the Partnership.
- (b) The Partnership GP 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 9.2(j)), and the Partnership GP shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the Partnership GP in good faith.

## **9.8 Resolution of Conflicts of Interest**

Unless otherwise expressly provided in this Agreement, whenever a potential conflict of interest exists or arises between the Partnership GP or any of its Affiliates, on the one hand, and the Partnership, or any Limited Partner 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 Limited 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 resolution or course of action is fair and reasonable to the Partnership. The Partnership GP 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; and (iii) any

applicable generally accepted accounting practices or principles. Nothing contained in this Agreement, however, is intended to, nor shall it be construed to, require the Partnership GP to consider the interests of any Person other than the Partnership. In the absence of bad faith by the Partnership GP, the resolutions, actions or terms so made, taken or provided by the Partnership GP with respect to such matter shall not constitute a breach of this Agreement or a breach of any standard of care or duty imposed herein or stated or implied under the Act, any law, rule or regulation.

### **9.9 Other Matters Concerning the Partnership GP**

- (a) The Partnership GP may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.
- (b) The Partnership GP 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 Partnership GP reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.
- (c) The Partnership GP shall have the right, in respect of any of its power, authority or obligations hereunder, to act through any of its duly authorized officers.
- (d) 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 Partnership GP 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 Partnership GP to be in, or not opposed to, the best interests of the Partnership.

### **9.10 Indemnity of Partnership**

The Partnership GP hereby indemnifies and holds harmless the Partnership and each Limited Partner (including former Limited Partners) 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, negligence by the Partnership GP or of any act or omission not believed by the Partnership GP in good faith to be within the scope of the authority conferred on the Partnership GP by this Agreement.

### **9.11 Restrictions upon the Partnership GP**

The Partnership GP's power and authority does not extend to any powers, actions or authority not enumerated in Sections 9.1 and 9.2 unless and until the requisite Special Resolution is passed by the Limited Partners. Further, the Partnership GP will not:

- (a) commingle the funds of the Partnership with the funds of the Partnership GP or any of its Affiliates or Associates or with the funds of any other Person other than as permitted in this Agreement;
- (b) dissolve the affairs of the Partnership except in accordance with the provisions of Article 14 hereof;

- (c) except in accordance with Section 12.17(l), effect a sale, exchange or other disposition of all or substantially all of the assets of the Partnership in a single transaction or series of related transactions; or
- (d) withdraw as Partnership GP except in accordance with the provisions of Section 9.14 hereof.

#### **9.12 Employment of an Affiliate or Associate**

The Partnership GP may employ or retain Affiliates or Associates of the Partnership GP on behalf of the Partnership to provide goods or services to the Partnership provided that, if the Partnership is to reimburse the Partnership GP 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.

#### **9.13 Removal of Partnership GP**

Subject to Section 14.1(c), the Partnership GP may be removed as general partner of the Partnership only by a Special Resolution to that effect and only if the Partnership GP has committed a material breach of this Agreement which subsists for a period of 90 days after notice is provided to the Partnership GP by Limited Partners holding not less than 5% of the outstanding Units. In the event the Partnership GP is so removed, the Limited Partners shall appoint by Ordinary Resolution, concurrently with the removal of the Partnership GP, a successor Partnership GP.

#### **9.14 Voluntary Withdrawal of Partnership GP**

The Partnership GP agrees not to voluntarily withdraw as general partner, unless (i) such withdrawal is approved by holders of at least 75% of the Units voted at a meeting, (ii) it gives 120 days' notice of such intention and nominates a qualified successor, (iii) holders of at least 50% of the issued and outstanding Units are present in person or by proxy at the said meeting, or by written consent of holders of at least 75% of the issued and outstanding Units and (iv) the appointment of such successor Partnership GP is approved by Ordinary Resolution.

#### **9.15 New Partnership GP**

A successor Partnership GP pursuant to Sections 9.13 or 9.14 or the transferee of or successor to all of the general partnership interest pursuant to Section 9.20 who is proposed to be admitted as a successor Partnership GP shall be admitted to the Partnership as the Partnership GP, effective immediately prior to the withdrawal or removal of the predecessor or transferring Partnership GP, provided, however, that no such successor shall be admitted to the Partnership until (i) such successor Partnership GP has executed and delivered a counterpart to this Agreement and such other documents and instruments as may be required to effect such admission, (ii) such successor Partnership GP and each of the shareholders of such successor Partnership GP have entered into a voting trust agreement, on substantially the same terms as the Voting Trust Agreement, providing the Limited Partners with voting rights in such successor Partnership GP at least equivalent to the voting rights set out in Sections 12.18.2 and 12.19 hereunder, (iii) such successor Partnership GP has entered into a nomination agreement, on substantially the same terms as the Nomination Agreement, providing the Sponsor with nomination rights in respect of the board of directors of such successor Partnership GP at least equivalent to the nomination rights set out in the Nomination Agreement and (iv) the Partnership GP has taken all steps necessary or appropriate under the Act to amend the records of the Partnership to reflect such admission, including the filing of an amendment to the Declaration.

**9.16 Condition Precedent**

As a condition precedent to the removal or voluntary withdrawal of the Partnership GP, the Partnership shall pay all amounts payable by the Partnership to the Partnership GP pursuant to this Agreement accrued to the date of removal or voluntary withdrawal subject to any claims or liabilities of the Partnership GP to the Partnership.

**9.17 Transfer to New Partnership GP**

On the admission of a new general partner to the Partnership on the removal or voluntary withdrawal of the Partnership GP, the resigning or retiring Partnership GP 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.

**9.18 Transfer of Title to New Partnership GP**

On the removal or voluntary withdrawal of the Partnership GP and the admission of a new general partner, the resigning or retiring Partnership GP 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.

**9.19 Release by Partnership**

On the removal or voluntary withdrawal of the Partnership GP, the Partnership will release and hold harmless the Partnership GP being removed or voluntarily withdrawing from any costs, expenses, damages or liabilities suffered or incurred by the Partnership GP as a result of or arising out of events which occur in relation to the Partnership after such removal or voluntary withdrawal.

**9.20 Transfer of Partnership GP Interest**

The Partnership GP may not assign, mortgage, pledge or transfer its general partner interest in the Partnership without the approval of the Limited Partners provided that, without such approval, the Partnership GP may transfer all, but not less than all, of its general partner interest:

- (a) to an Affiliate of the Partnership; or
- (b) to a successor of the Partnership GP in connection with the Partnership GP's merger or amalgamation with or into an Affiliate of the Partnership,

in all cases provided that such transferee assumes the rights and duties of the Partnership GP and agrees to be bound by the provisions of this Agreement, the Voting Trust Agreement and the Nomination Agreement.

**ARTICLE 10**  
**INVESTMENT GUIDELINES AND OPERATING POLICIES**

**10.1 Investment Guidelines**

The assets of the Partnership may only be invested, and the Partnership shall not permit the assets of any subsidiary to be invested otherwise than, with the approval of the Partnership GP and in accordance with the following investment guidelines:

- (a) The Partnership will not make any investment, take action or omit to take any action that would result in Units not being a “qualified investment” for investment by Plans.
- (b) The Partnership shall not make any investments or take any action or omit to take any action which would cause the Partnership to be a “SIFT partnership” within the meaning of the Tax Act (or proposed amendments thereto) at any time during a Taxation Year.
- (c) The Partnership shall cause the U.S. REIT to only make investments and adopt operating policies and undertake activities that will allow the U.S. REIT to meet all requisite organizational, operational, income, asset and distribution requirements for the U.S. REIT to qualify as a REIT under Section 856 of the Code.
- (d) The Partnership shall not make investments or undertake activities that will cause the Partnership to be actually engaged in a U.S. trade or business for U.S. federal income tax purposes, or to generate income treated as effectively connected with a U.S. trade or business other than amounts attributable to USRPI in connection with the investment in the U.S. REIT or similar subsidiary.
- (e) The Partnership shall not acquire any interest in real property directly and in the case of indirect interests in real property, the Partnership shall not indirectly acquire any interest in a single real property if, after giving effect to the proposed acquisition, the cost of such acquisition will exceed 15% of the Partnership’s Gross Book Value.
- (f) Except as otherwise permitted, the Partnership may only invest in indirect interests (including ownership and leasehold interests) in Suitable Properties in the U.S. and Canada and such other investments and activities related or incidental thereto as are consistent with the investment restrictions and guidelines of the Partnership and approval by a majority of the directors of the Partnership GP from time to time.
- (g) Except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities, securities issued by subsidiaries or Affiliates, and except as otherwise permitted pursuant to the investment guidelines and operating policies of the Partnership, the Partnership may not hold securities other than to the extent such securities would constitute an indirect investment in real property (as determined by the Partnership GP).
- (h) The Partnership may, with the prior approval of the Partnership GP, indirectly invest in a joint venture arrangement for the purposes of indirectly owning interests or investments otherwise permitted to be held by the Partnership; provided that such joint venture arrangement contains terms and conditions which, in the opinion of management, are commercially reasonable, including such terms and conditions relating to restrictions on the transfer, acquisition and sale of the Partnership’s interest and any joint venturer’s

interest in the joint venture arrangement, provisions to provide liquidity to the Partnership, provisions to limit the liability of the Partnership and its Limited Partners to third parties, and provisions to provide for the participation of the Partnership in the management of the joint venture arrangement. For purposes hereof, a joint venture arrangement is an arrangement between the Partnership and one or more other Persons pursuant to which the Partnership indirectly conducts an undertaking for one or more of the purposes set out in the investment guidelines of the Partnership and in respect of which the Partnership may hold its interest jointly or in common or in another manner with others through the ownership of securities of a corporation or other entity, including a limited partnership or a limited liability company.

- (i) The Partnership shall not invest, directly or indirectly, in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property.
- (j) The Partnership will not invest in operating businesses unless an indirect investment is incidental to a transaction: (i) where revenue will be derived indirectly, principally from the Suitable Properties, or (ii) which principally involves the ownership, maintenance, improvement, leasing, operation or management indirectly, of Suitable Properties (in each case as determined by the Board of Directors) including for greater certainty any business relating to hotel, lodging or other activity ancillary to such business conducted on or in connection with the Suitable Properties.
- (k) The Partnership may, with the prior approval of the Partnership GP, invest, directly or indirectly, by way of mezzanine loans, in the development of new Suitable Properties, with rights to cause a subsidiary to acquire such properties on pre-agreed terms.
- (l) The Partnership may invest, directly or indirectly, in immovable hypothecs, mortgages, hypothecary bonds or mortgage bonds (including a participating or convertible immovable hypothec or mortgage) and similar instruments where:
  - (i) the hypothec, mortgage, hypothecary bond or mortgage bond is issued by a subsidiary;
  - (ii) the immovable property, which is security therefor, is income producing real property which otherwise complies with the other investment guidelines of the Partnership adopted from time to time in accordance with the guidelines set out herein;
  - (iii) the immovable hypothec or mortgage is an immovable hypothec or mortgage registered on title to the real property which is security therefor; and
  - (iv) the aggregate value of the investments of the Partnership in these instruments, after giving effect to the proposed investment, will not exceed 20% of the adjusted Limited Partners' equity.

The Partnership may invest, directly or indirectly, in immovable hypothecs or mortgages which are not first ranking for the purposes of providing, directly or indirectly, financing in connection with a transaction in which a subsidiary of the Partnership is the vendor or with the intention of using such hypothec or mortgage as part of a method for subsequently indirectly acquiring an interest in or control of a real property or a portfolio of properties.

- (m) The Partnership may invest an amount (which, in the case of an amount invested to indirectly acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by the Partnership) up to 15% of the Gross Book Value of the Partnership (calculated in accordance with this Agreement) in investments which do not comply with one or more of the operating policies.

## **10.2 Operating Policies**

The operations and affairs of the Partnership shall be conducted in accordance with the following policies, the whole subject to the investment guidelines above. For the purpose of these policies, the assets, liabilities and transactions of a corporation, trust or other entity wholly or partially owned by the Partnership (an “investee”) will be deemed to be those of the Partnership on a proportionate consolidated basis. In applying these guidelines, the Partnership will cause each investee to adhere to operating policies, and the Partnership will otherwise manage its investments in its investees, such that it shall remain in compliance with the operating policies. In addition, any references in the below guidelines to investment in real property will be deemed to include an investment in a joint venture:

- (a) The Partnership 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” shall have the meaning ascribed thereto by National Instrument 81-102 – *Investment Funds* adopted by the Canadian Securities Administrators, as amended from time to time.
- (b) The Partnership may engage, indirectly, in construction or development of Suitable Properties, businesses or assets in order to maintain its indirect interests in real properties in good repair or to enhance the income-producing potential of Suitable Properties, businesses or assets in which the Partnership has an indirect interest, provided that the aggregate value of investments in properties under development, including advances of mezzanine loans, after giving effect to the proposed investment in the development or mezzanine loan will not exceed 5% of the Partnership’s Gross Book Value.
- (c) Unless otherwise approved by the Board of Directors, title to each real property shall be held by and registered in the name of an entity owned, directly or indirectly, by the Partnership or jointly-owned, directly or indirectly, by a subsidiary of the Partnership, with joint venturers or a corporation which is a nominee of a subsidiary of the Partnership which holds registered title to such real property pursuant to a nominee agreement with a subsidiary of the Partnership.
- (d) The Partnership shall not, directly or indirectly, incur or assume any indebtedness if, after giving effect to the incurring or assumption of the indebtedness, the total consolidated indebtedness of the Partnership would be more than 65% of the Partnership’s Gross Book Value (excluding convertible debentures) and 70% of the Partnership’s Gross Book Value (including convertible debentures). For the purposes of this paragraph, the term “indebtedness” means any obligation of the Partnership or its subsidiaries for borrowed money, including the face amount outstanding under any convertible debentures but excluding any premium in respect of indebtedness assumed, directly or indirectly, by the Partnership for which the Partnership or its subsidiaries 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, provided that:

- (i) an obligation will constitute indebtedness only to the extent that it would appear as a liability on the consolidated statement of financial position of the Partnership in accordance with IFRS;
  - (ii) indebtedness excludes trade accounts payable, distributions payable to Limited Partners, accrued liabilities arising in the ordinary course of business and short-term acquisition credit facilities; and
  - (iii) indebtedness excludes any amount shown on the consolidated statement of financial position of the Partnership in accordance with IFRS in respect of the Units, if they shall be characterized as a liability under IFRS.
- (e) The Partnership will not, directly or indirectly, guarantee any indebtedness or liabilities of any kind of any Person, except indebtedness or liabilities assumed or incurred by a Person in which the Partnership holds an interest, directly or indirectly, or by an entity jointly-owned indirectly by the Partnership with joint venturers and operated solely for the purpose of holding a particular property or properties where such indebtedness, if granted by the Partnership directly, would not cause the Partnership to otherwise contravene the guidelines. The Partnership is not required but shall use its reasonable best efforts to comply with this requirement if doing so is necessary or desirable in order to further the initiatives of the Partnership permitted under this Agreement.
- (f) The Partnership will not invest indirectly in any properties unless a subsidiary of the Partnership:
- (i) will obtain or has received an independent appraisal of each property or an independent valuation of a portfolio of properties that it intends to acquire; and
  - (ii) will obtain or review a preliminary site investigation report (or reliance letter from an environmental consultant in respect of a preliminary site investigation report) of each real property to be acquired by it, dated within eighteen months of the date of acquisition, and, if the preliminary site investigation report recommends or recommended a Phase II environmental audit be obtained, the subsidiary shall obtain or review a Phase II environmental audit, in each case by an independent and experienced environmental consultant; as a condition to any acquisition, such audit must be satisfactory to the Partnership GP.

### **10.3 Amendments to Investment Guidelines and Operating Policies**

Notwithstanding Section 12.17(n), if at any time a government or regulatory authority having jurisdiction over the Partnership or any property of the Partnership shall enact any law, regulation or requirement which is in conflict with any investment guideline of the Partnership then in force (other than the restriction on making any investments, taking action or omitting to take any action that would result in Units not being a “qualified investment” for investment by Plans), such guideline in conflict shall, if the directors on the advice of legal counsel to the Partnership GP 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 Partnership GP shall not require the prior approval of Limited Partners.

#### **10.4 Application of Investment Guidelines and Operating Policies**

With respect to Sections 10.1 and 10.2, where any maximum or minimum percentage limitation is specified in any of the guidelines and policies therein contained, such guidelines and policies shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment or the taking of such action. Any subsequent change relative to any percentage limitation which results from a subsequent change in the Gross Book Value or adjusted Limited Partners' equity will not require divestiture of any investment (other than with respect to paragraphs (a) and (b) of the investment guidelines in Section 10.1, which must be complied with at all times).

### **ARTICLE 11 FINANCIAL INFORMATION**

#### **11.1 Books and Records**

- (a) The Partnership GP shall keep or cause to be kept at the principal office of the Partnership in British Columbia, or such other jurisdiction as determined by the Partnership GP from time to time, appropriate books and records with respect to the Partnership's business (other than the Register, which shall be maintained by the Transfer Agent). 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 in electronic format or on any 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, in accordance with IFRS.
- (b) Such books and records will be kept available for inspection by any Limited Partner or his, her or its duly authorized representatives during normal business hours. However, the Partnership GP may keep confidential from the Limited Partners for such period of time as the Partnership GP deems reasonable, any information contained in its books and records that the Partnership GP reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Partnership GP in good faith believes is not in the best interests of the Partnership or could damage the Partnership or that the Partnership is required by law or by agreements with third parties to keep confidential

#### **11.2 Reports**

- (a) As soon as practicable, but in no event later than the time prescribed by applicable law, the Partnership GP shall cause to be mailed to each Limited Partner as indicated on the Register as of a date selected by the Partnership GP in its sole discretion, financial statements of the Partnership for such Fiscal Year, presented in accordance with IFRS, including statements of financial position, comprehensive income (loss), Partners' capital and cash flows, such statements to be reported upon by the Auditor.
- (b) As soon as practicable, but in no event later than the time prescribed by applicable law, the Partnership GP shall cause to be mailed to each Limited Partner as indicated on the Register as of a date selected by the Partnership GP in its sole discretion, a report containing unaudited financial statements of the Partnership and such other information as may be required by Applicable Securities Laws, or the rules of any stock exchange on which any of the Units are listed for trading, or as the Partnership GP determines to be necessary or appropriate.

### **11.3 Income Tax Information**

The Partnership GP will use reasonable efforts to send or cause to be sent to each Person who was a Limited Partner during the previous Fiscal Year, or at the date of dissolution of the Partnership, within 90 days of the end of each such Fiscal Year or within 90 days of dissolution, as the case may be, or within such other shorter period of time as may be permitted or required by applicable law, all information, in suitable form, relating to the Partnership necessary for such Person to prepare such Person's Canadian federal and provincial income tax returns. The Partnership GP shall 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 Code and any other applicable Canadian or United States tax legislation in respect of the Partnership.

### **11.4 Right to Inspect Partnership Books and Records**

In addition to other rights provided by this Agreement or by applicable law, each Limited Partner shall have the right to inspect the following documents during normal business hours:

- (a) the Record; and
- (b) copies of this Agreement, the Declaration and any amendments thereto.

### **11.5 Accounting Policies**

The Partnership GP 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 generally accepted accounting principles in Canada.

### **11.6 Appointment of Auditor**

The Auditor shall be appointed at each annual meeting of the Limited Partners save that, until the first such annual meeting, the Partnership GP will, on behalf of the Partnership, select the Auditor. The Auditor will review and report to the Partners upon the financial statements of the Partnership for and as at the end of each Fiscal Year, and advise upon and make determinations with regard to financial questions relating to the Partnership or required by this Agreement.

## **ARTICLE 12 MEETINGS OF THE LIMITED PARTNERS**

### **12.1 Meetings**

- (a) There shall be an annual meeting of the Limited Partners at such time and place as the Partnership GP shall prescribe for the purpose of electing directors of the Partnership GP, receiving audited financial statements, appointing or removing the auditors of the Partnership and transacting such other business as the Partnership GP may determine or as may properly be brought before the meeting. The annual meeting shall be held after delivery to the Limited Partners of the annual financial statements in accordance with Section 11.2(a) and, in any event, within 180 days after the end of each Fiscal Year.
- (b) The Partnership GP shall have power at any time to call special meetings of Limited Partners at such time and place as the Partnership GP may determine. Limited Partners holding in the aggregate not less than 10% of the outstanding Units (the "**Requisitioning**

**Partners**”) may requisition the Partnership GP in writing to call a special meeting of the Limited Partners for the purposes stated in the requisition. The Partnership GP shall, within 60 days of receipt of such notice, convene such meeting, and if it fails to do so, any Requisitioning Partner may convene such meeting by giving notice in accordance with this Agreement, unless:

- (i) a record date for the meeting of Limited Partners has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
- (ii) the Partnership GP has called a meeting of the Limited Partners and has given notice thereof pursuant to Section 12.3; or
- (iii) in connection with the business as stated in the requisition:
  - (1) it clearly appears to the Partnership GP, acting reasonably, that the matter covered by the requisition is submitted by the Requisitioning Partner primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Partnership, the Partnership GP, the directors of the Partnership GP or its security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (2) the Partnership, at the Limited Partner’s request, included a matter covered by a requisition in an information circular relating to a meeting of Limited Partners held within two years preceding the receipt of such request, and the Limited Partner failed to present the matter, in person or by proxy, at the meeting;
  - (3) substantially the same matter covered by the requisition was submitted to Limited Partners in an information circular (including a dissidents information circular) relating to a meeting of Limited Partners held within two years preceding the receipt of the Limited Partner’s request and the matter covered by the requisition was defeated; or
  - (4) the rights conferred by this Section 12.1(b) are being abused to secure publicity.
- (c) Every meeting of Limited Partners, however convened, will be conducted in accordance with this Agreement.

## **12.2 Place of Meeting**

Every meeting of Limited Partners shall be held in Vancouver, British Columbia or at such other place in Canada as the Partnership GP (or Requisitioning Partners, if the Partnership GP fails to call such meeting in accordance with Section 12.1) may designate.

## **12.3 Notice of Meeting**

- (a) Notice of all meetings of the Limited Partners shall be mailed or delivered by the Transfer Agent to the Limited Partners as indicated on the Register as of the date selected by the Partnership GP, each director of the Partnership GP and to the auditors of the

Partnership not less than 21 nor more than 50 days (or within such other number of days as required by law or relevant stock exchange) 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 CBCA in connection with a meeting of shareholders.

- (b) Any adjourned meeting, other than a meeting adjourned for lack of a quorum, may be held as adjourned without further notice. Notwithstanding the foregoing, a meeting of Limited Partners may be held at any time without notice if all of the Limited Partners are present or represented thereat or those not so present or represented have waived notice. Any Limited Partner (or a duly appointed proxy thereof) may waive any notice required to be given under this Agreement, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.
- (c) Attendance at a meeting of Limited Partners shall constitute a waiver of notice unless the Limited Partner 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.
- (d) For certainty and notwithstanding any other provision of this Agreement, the Partnership shall be permitted to utilize the “notice and access” delivery procedures set out in National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*, as replaced or amended from time to time, for the purposes of providing notice of a meeting of Limited Partners to the Limited Partners and for purposes of delivery of such other meeting materials required to be delivered to the Limited Partners pursuant to this Agreement (including, without limitation, any information circular required to be delivered to the Limited Partners pursuant to Section 12.5 hereof) and Applicable Securities Laws.

#### **12.4 Record Dates**

For the purpose of determining the Limited Partners who are entitled to receive notice of and to vote or act at any meeting of Limited Partners or any adjournment thereof, or for the purpose of any other action, the Partnership GP may give a date not more than 60 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 receive notice of and 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 who was a Limited Partner at the time so fixed shall be entitled to receive notice of and to vote at such meeting or any adjournment thereof even though it has since that date disposed of its Units, and no Limited Partner becoming such after that date shall be a Limited Partner of record for purposes of such action. A Person shall be a Limited Partner of record at the relevant time if the Person’s name appears in the Register as amended and supplemented at such time.

#### **12.5 Information Circular**

If proxies are solicited from Limited Partners in connection with a meeting of Partners, the Person or Persons soliciting such proxies shall prepare an information circular which shall contain, to the extent that it is relevant and applicable, the information prescribed for information circulars by Applicable Securities Laws.

## **12.6 Proxies**

Any Limited Partner entitled to vote at a meeting of Limited Partners may vote by proxy if a form of proxy, as further described in Section 12.8, has been received by the Partnership GP or the chairperson of the meeting for verification prior to the commencement of the meeting provided that in connection with any meeting the Partnership GP may require that such proxies be delivered to the Partnership GP or the Transfer Agent not more than 48 hours prior to any such meeting.

## **12.7 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. Proxies shall be valid only at the meeting with respect to which they were solicited, or any adjournment hereof, but in any event shall cease to be valid one year from their date. A proxy given on behalf of joint holders must be executed by all of them and may be revoked by any of them, and if more than one of several joint holders is present at a meeting and they do not agree which of them is to exercise any vote to which they are jointly entitled, they will for the purposes of voting be deemed not to be present. A proxy holder need not be a holder of a Unit.

## **12.8 Form of Proxy**

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

## **12.9 Revocation of Proxy**

A vote cast in accordance with the terms of an instrument of proxy shall 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 such death, incapacity, insolvency, bankruptcy or revocation shall have been received by the chairperson of the meeting prior to the commencement of the meeting.

## **12.10 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.

## **12.11 Attendance of Others**

Any officer or director of the Partnership GP, legal counsel for the Partnership GP and the Partnership and representatives of the Auditor will be entitled to attend any meeting of Limited Partners. The Partnership GP 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 Partnership GP, that Person is entitled to address the meeting.

## **12.12 Chairperson**

The chairperson of any annual or special meeting shall be the chair of the Partnership GP or any other director or officer of the Partnership GP specified by resolutions of the Partnership GP or, in the absence

of any director or officer of the Partnership GP, any Person appointed as chairperson of the meeting by the Limited Partners present.

### **12.13 Quorum**

A quorum for any meeting of Limited Partners shall be individuals present not being less than two in number and being Limited Partners or representing by proxy Limited Partners who hold in the aggregate not less in aggregate than 5% of the total number of outstanding Units provided that if the Partnership has only one Limited Partner, the Limited Partner 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 Limited Partners may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. The chairperson of any meeting at which a quorum of Limited Partners is present may, with the consent of the majority of the Limited Partners 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 Limited Partners, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than seven days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Limited Partners 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.

### **12.14 Voting**

Limited Partners may attend and vote at all meetings of Limited Partners either in person or by proxy. Each Unit shall entitle the holder of record thereof to one vote at all meetings of the Limited Partners. Any action to be taken by the Limited Partners shall, except as otherwise required by this Agreement or by law, be authorized when approved by an Ordinary Resolution. The chairperson 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 at a meeting of Limited Partners shall be entitled to one vote. At any such meeting, unless a poll is demanded, a declaration by the chairperson 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 chairperson 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. At any meeting of Limited Partners on a poll, each Limited Partner 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.

### **12.15 Poll**

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

### **12.16 Powers of Limited Partners; Resolutions Binding**

The Limited Partners shall 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 will be 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, withheld from voting on, or failed to vote on, any resolution so passed.

### **12.17 Powers Exercisable by Special Resolution**

The following powers shall only be exercisable by Special Resolution passed by the Limited Partners:

- (a) dissolving the Partnership, except as otherwise provided for under Sections 14.1(b) and (c);
- (b) removing the Partnership GP in accordance with Section 9.13;
- (c) waiving any default on the part of the Partnership GP on such terms as the Limited Partners may determine;
- (d) amending, modifying, altering or repealing any Special Resolution previously passed by the Limited Partners;
- (e) requiring the Partnership GP on behalf of the Partnership to enforce any obligation or covenant on the part of any Limited Partner;
- (f) any amendment to the provisions of this Agreement dealing with amendments to this Agreement;
- (g) any exchange, reclassification or cancellation (except as provided in Section 3.20) of all or part of the Units;
- (h) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units, including:
  - (i) the removal or change of rights to distributions;
  - (ii) the addition or removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
  - (iii) the reduction or removal of a distribution preference or liquidation preference;
- (i) any constraint of the issue, transfer or ownership of Units or the change or removal of such constraint, except as provided herein;
- (j) any distribution of the Partnership's property upon its termination;
- (k) any amendment relating to the powers, duties, obligations, liabilities or indemnification of the Partnership GP;
- (l) any sale or transfer of the assets of the Partnership as an entirety or substantially as an entirety (other than as part of an internal reorganization of assets of the Partnership as approved by the Partnership GP);
- (m) the combination, amalgamation or arrangement of any of the Partnership or its subsidiaries with any other entity (other than as part of an internal reorganization of the assets of the Partnership approved by the Partnership GP);

- (n) any amendment to the investment guidelines or operating policies of the Partnership, except for any amendments aimed at ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Partnership GP or over the Partnership;
- (o) any other matter required by an applicable securities regulator, by the Toronto Stock Exchange or by any other applicable stock exchange where the Units trade from time to time; and
- (p) any matter required to be passed by a Special Resolution under this Agreement.

#### **12.18.1 Nomination of Directors**

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Partnership GP. Nominations of persons for election to the Board of Directors may be made at any annual meeting of Limited Partners (and any special meeting of the Limited Partners, if one of the purposes for which the special meeting was called is electing the directors of the Partnership GP). Such nominations may be made in the following manner:
  - (i) by or at the direction of the Board of Directors, including pursuant to a notice of meeting of the Limited Partners;
  - (ii) by or at the direction or request of one or more Limited Partners pursuant to Section 12.1(b);
  - (iii) by the Sponsor in accordance with the Nomination Agreement; or
  - (iv) by any Person (a “**Nominating Limited Partner**”):
    - (1) who, at the close of business on the date of the giving of the notice provided for below in this Section 12.18.1 and on the record date for notice of such meeting, is entered in the Register as a holder of one or more Unit carrying the right to vote at such meeting or who beneficially owns Units that are entitled to be voted at such meeting; and
    - (2) who complies with the notice procedures set forth below in this Section 12.18.1.
- (b) In addition to any other applicable requirements, for a nomination to be made by a Nominating Limited Partner, the Nominating Limited Partner must have given timely notice thereof to the Partnership GP in proper written form in accordance with Section 13.1.
- (c) To be timely, a Nominating Limited Partner’s notice to the Partnership GP must be made:
  - (i) in the case of an annual meeting of Limited Partners, not less than 30 days prior to the date of the annual meeting of Limited Partners; provided, however, that in the event that the annual meeting of Limited Partners that is to be held on a date that is less than 50 days after the date on which the first public announcement (the “**Notice Date**”) of the date of the annual meeting was made, notice by the

Nominating Limited Partner may be made not later than the close of business on the 10th day following the Notice Date; and

- (ii) in the case of a special meeting (which is not also an annual meeting) of Limited Partners called for the purpose of electing directors of the Partnership GP (whether or not called for other purposes), not later than the close of business on the 15th day following the day on which the first public announcement of the date of the special meeting of Limited Partners was made.

In no event shall any adjournment or postponement of a meeting of Limited Partners or the announcement thereof commence a new time period for the giving of a Nominating Limited Partner's notice as described above.

- (d) To be in proper form, a Nominating Limited Partner's notice to the Partnership GP must set forth:
  - (i) as to each person whom the Nominating Limited Partner proposes to nominate for election as a director of the Partnership GP: (1) the name, age, business address and residential address of the person; (2) the principal occupation or employment of the person, both present and within the five years preceding the notice; (3) the citizenship of the person; (4) the class or series and number of Units and other securities of the Partnership which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of Limited Partners (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice; and (5) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to Applicable Securities Laws;
  - (ii) as to the Nominating Limited Partner giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Limited Partner has a right to vote any Units and any other information relating to such Nominating Limited Partner that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to Applicable Securities Laws; and
  - (iii) a written consent duly signed by each proposed director nominee to being named as a nominee for election to the Board of Directors and to serve as a director of the Partnership GP, if elected.
- (e) The Partnership GP may require any proposed director nominee to furnish such other information as may reasonably be required by the Partnership GP to determine the eligibility of such proposed director nominee to serve as an independent director of the Partnership GP or that would reasonably be expected to be material to a reasonable Limited Partner's understanding of the independence and/or qualifications, or lack thereof, of such proposed director nominee.
- (f) No person shall be eligible for election as a director of the Partnership GP unless nominated in accordance with the provisions of this Section 12.18.1; provided, however, that nothing in this Section 12.18.1 shall be deemed to preclude discussion by a Limited Partner (as distinct from the nomination of directors) at a meeting of Limited Partners of any matter in respect of which it would have been entitled to submit a proposal in

accordance with this Agreement. The chairperson of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in this Section 12.18.1 and, if any proposed nomination is determined by the chairperson not to be in compliance with this Section 12.18.1, to declare that such defective nomination shall be disregarded.

- (g) Notwithstanding any provisions in this Section 12.18.1 to the contrary, in the event that the number of directors to be elected at an annual meeting of Limited Partners (or any special meeting of the Limited Partners, if one of the purposes for which the special meeting was called is electing the directors of the Partnership GP) is increased effective after the time period for which the Nominating Limited Partner's notice would otherwise be due under this Section 12.18.1, a notice with respect to nominees for the additional directorships required by this Section 12.18.1 shall be considered timely if it shall be given not later than the close of business on the 10th day following the day on which the first public announcement of such increase was made by the Partnership.
- (h) Notwithstanding the foregoing provisions in this Section 12.18.1, the Partnership GP may, in its sole discretion, waive any requirement in this Section 12.18.1.

#### **12.18.2 Voting Rights in Respect of the Election of Directors of the Partnership GP**

Subject to Section 12.21 and the terms and conditions of the Voting Trust Agreement, the Limited Partners shall have the right to direct the Trustee with respect to the election of directors to the Board of Directors at annual meetings of the Limited Partners held in accordance with Section 12.1 (and any special meeting of the Limited Partners, if one of the purposes for which the special meeting was called is electing the directors of the Partnership GP). At each such meeting of the Limited Partners, the Limited Partners shall vote together as a single class for the persons to serve on the Board of Directors who are nominated in accordance with Section 12.18.1 (the "**Election of Directors LP Determination**"). Pursuant to the terms of the Voting Trust Agreement, the Trustee, as directed in writing by the Partnership GP, shall vote the common shares of the Partnership GP deposited with the Trustee in accordance with the Election of Directors LP Determination.

#### **12.19 Other Voting Rights in Respect of the Partnership GP**

- (a) In addition to the voting rights set forth in Section 12.18.2, the Limited Partners will also have the right to vote in respect of the following matters relating to the Partnership GP:
  - (i) any amendment to the articles of the Partnership GP to change the authorized minimum or maximum number of directors of the Partnership GP;
  - (ii) any sale or transfer of the assets of the Partnership GP as an entirety or substantially as an entirety (other than as part of an internal reorganization of assets of the Partnership GP);
  - (iii) the combination, amalgamation or arrangement of the Partnership GP or its subsidiaries with any other entity (other than as part of an internal reorganization that does not result in a change of control of the Partnership GP);
  - (iv) any amendments to the articles of the Partnership GP which would create other classes of shares that rank *pari passu* or senior to the issued and outstanding common shares of the Partnership GP;

- (v) any plan or proposal for a complete or partial liquidation or dissolution, or any reorganization of the Partnership GP or any case, proceeding or action pursuant to which the Partnership GP is seeking relief under any existing laws or future laws relating to bankruptcy or insolvency;
  - (vi) the sale, exchange, assignment, gift, bequest, disposal, mortgage, charge, pledge, encumbrance of any common shares of the Partnership GP or the grant of any security interest or other arrangement by which possession, legal title or beneficial ownership of any common shares of the Partnership GP passes from one Person to another unless such transfer is to an Affiliate of the applicable shareholders of the Partnership GP; and
  - (vii) any other matter for which the Limited Partners will have the right to vote pursuant to the Voting Trust Agreement.
- (b) The voting rights set forth in subsection 12.19(a) shall be exercisable by Special Resolution passed by the Limited Partners in accordance with the terms and conditions of the Voting Trust Agreement. The Trustee, as directed in writing by the Partnership GP, shall vote the common shares of the Partnership GP deposited with the Trustee in accordance with the vote of the Limited Partners (with respect to each such matter, a “**Fundamental Matter LP Determination**”).

#### **12.20 Acknowledgment of Sponsor Nomination Right**

The Limited Partners hereby acknowledge that the Sponsor has the exclusive right to nominate a certain number of directors of the Partnership GP based on the collective holdings of the Principals and their Affiliates pursuant to the Nomination Agreement.

#### **12.21 Director Vacancies**

Subject to Section 12.22, the Board of Directors may appoint a person to fill a vacancy on the Board of Directors created by a director ceasing to hold office as a director of the Partnership GP, except a vacancy resulting from an increase in the number or the minimum or maximum number of directors or a failure to elect the number or minimum number of directors provided in the charter documents of the Partnership GP in which case such vacancy shall be filled in accordance with Section 12.18.2.

#### **12.22 Sponsor Nominee**

If a nominee of the Sponsor elected as a director of the Partnership GP or appointed to fill a vacancy created by a director of the Partnership GP ceasing to hold office as a director of the Partnership GP, ceases to hold office as a director of the Partnership GP for any reason, the Partnership GP will act to ensure that, and will take such reasonable steps as may be necessary to ensure that, another individual designated by the Sponsor as a nominee will fill the vacancy created as reasonably possible, subject to the approval of the Board of Directors.

#### **12.23 Direction to Trustee**

Without limiting any other provision of this Agreement, the Partnership GP will do all things and take all steps necessary to implement the provisions of Sections 12.18.2 through 12.23, including without limitation, authorizing and directing any two persons on behalf of the Partnership GP to provide a written direction to the Trustee in accordance with any Election of Directors LP Determination or any Fundamental Matters LP Determination.

#### **12.24 Partnership GP to Comply with the Voting Trust Agreement and Nomination Agreement**

The Partnership GP hereby agrees to perform its obligations and duties under the Voting Trust Agreement and the Nomination Agreement upon the terms, conditions, restrictions set forth therein, subject to all the terms and conditions set forth therein.

#### **12.25 Minutes**

The Partnership GP will cause minutes to be kept of all proceedings and resolutions at every meeting of Limited Partners and will cause all such minutes and all resolutions of the Limited Partners 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 chairperson of the meeting will be deemed evidence of the matters stated in them and such 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.

#### **12.26 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, the rules and procedures will be determined by the Partnership GP, including without limitation, and for certainty, any procedures determined by the Partnership GP to be reasonably necessary to allow for the orderly conduct of a meeting of Limited Partners held in accordance with Section 12.27 hereof.

#### **12.27 Telephonic and Electronic Meetings and Voting**

- (a) If the Partnership GP calls, or Limited Partners requisition, a meeting of Limited Partners in accordance with Section 12.1 hereof, the directors of the Partnership GP may determine that such meeting of Limited Partners shall be held entirely by means of one or more telephonic, electronic or other communication facilities (which may include teleconference and/or webcast platforms) that permit all participants to communicate reasonably adequately with each other during the meeting, and, notwithstanding Section 12.14, any vote at that meeting of Limited Partners in respect of matters set forth in the notice of meeting for such meeting shall be held entirely by means of such communication facilities; provided, for greater clarity, that voting in respect of such matters shall also be permitted (i) in advance of such a meeting by way of a proxy duly completed and submitted by a Limited Partner in accordance with, and subject to the terms of, this Agreement, or (ii) through such communication facilities by a duly appointed proxy holder of a Limited Partner who attends such a meeting and is entitled to vote thereat.
- (b) A meeting of Limited Partners may also be held at which some, but not all, persons entitled to attend may participate and, notwithstanding Section 12.14, vote by means of one or more telephonic, electronic or other communication facilities (which may include teleconference and/or webcast platforms) that permit all participants to communicate reasonably adequately with each other during the meeting, if the Partnership GP determines to make such a communication facility available.
- (c) Any person participating in a meeting of Limited Partners by way of a telephonic, electronic or other communication facility contemplated under Section 12.27(a) or Section 12.27(b) shall be deemed to be present at the meeting "in person" for purposes of this Agreement, including, without limitation, for purposes of establishing quorum for the meeting under Section 12.13 hereof (provided such person was a Limited Partner of

record or the beneficial owner of any Units of record at the relevant time set by the Partnership GP under Section 12.4 in respect of such meeting, or the duly appointed proxy holder thereof).

- (d) A meeting of Limited Partners held entirely by telephonic, electronic or other communication facility in accordance with Section 12.27(a), shall for purposes of Section 12.2 hereof be deemed to have been held in the city where the head office of the Partnership GP is then located.
- (e) Notwithstanding Section 12.14, any vote at a meeting of Limited Partners may be also held entirely by means of a telephonic, electronic or other communication facility (which may include teleconference and/or webcast platforms), if the Partnership GP determines to make one available, even if none of the persons entitled to attend otherwise participates in the meeting by means of a communication facility.
- (f) For the purpose of voting, a communication facility that is made available by the Partnership GP must enable the votes to be gathered in a manner that permits their subsequent verification and permits the tallied votes to be presented to the Corporation.

## **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 or personal delivery to the address of the Partnership GP and the Limited Partners as follows: in the case of the Partnership GP, to: Attention: Chief Executive Officer, Suite 800, 925 West Georgia Street, Vancouver, British Columbia V6C 3L2; and in the case of Limited Partners: to the postal address inscribed in the Register 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 its address for the purpose of service by written notice to the Partnership GP. The Partnership GP 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 shall be deemed to have been received on the third business day following the deposit of such notice in the mail and notices given by delivery shall be deemed to have been received on the date of their delivery.

### **13.6 Undelivered Notices**

If the Partnership GP 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 Partnership GP is not required to send any further notices or documents to the Limited Partner until the Limited Partner informs the Partnership GP in writing of the Limited Partner's new address.

## **ARTICLE 14 DISSOLUTION AND LIQUIDATION**

### **14.1 Events of Dissolution**

The Partnership shall follow the procedure for dissolution established in Section 14.3 upon the occurrence of any of the following events:

- (a) the election of the Partnership GP to dissolve the Partnership, if approved by the passage of a Special Resolution;
- (b) the sale, exchange or other disposition of all or substantially all of the property of the Partnership, if approved by a Special Resolution; or
- (c) on the date which is 120 days following the date of the bankruptcy, dissolution, liquidation or winding-up of the Partnership GP or the making of any assignment for the benefit of creditors of the Partnership GP (or the commencement of any act or proceeding in connection with any of the foregoing which is not contested in good faith by the Partnership GP), or upon the appointment of a trustee, receiver or receiver-manager of the assets and undertaking of the Partnership GP, unless a new Partnership GP is admitted to the Partnership by Ordinary Resolution prior to the expiration of such 120-day period.

### **14.2 No Dissolution**

The retirement, substitution, death, dissolution, bankruptcy or legal incapacity of, or the admission or voluntary withdrawal of, the Partnership GP or any Limited Partner will not, in and of itself, affect the existence of the Partnership, and the Partnership will continue for a term of this Agreement unless the Partnership is dissolved as provided herein.

### **14.3 Distributions on Dissolution**

Upon the occurrence of any of the events set forth in Section 14.1, the Partnership GP (or in the event of an occurrence specified in Section 14.1(c), such other Person as may be appointed by Ordinary Resolution) shall act as a receiver and liquidator of the assets of the Partnership and shall cause the assets of the Partnership to be liquidated and the proceeds thereof to be distributed as follows:

- (a) to pay any costs involved in the sale of the assets of the Partnership and to pay all amounts required to discharge any mortgages or encumbrances registered against the assets;
- (b) to pay all expenses incurred in the winding-up of the Partnership;
- (c) to pay all of the liabilities of the Partnership;
- (d) to establish such reserves as the Partnership GP considers necessary;
- (e) to return to the Partnership GP the balance in its capital account; and
- (f) to pay the balance to the Limited Partners, pro rata in accordance with their respective Proportionate Shares.

Such distribution may be made in cash or in kind or partly in each, all as the Partnership GP in its sole discretion may determine.

#### **14.4 Dissolution**

The Partnership shall be dissolved upon the completion of all matters set forth in Section 14.3.

#### **14.5 No Right to Dissolve**

Except as provided for in Section 14.1, no Limited Partner shall have the right to ask for the dissolution of the Partnership, the winding-up of its affairs or the distribution of its assets.

#### **14.6 Agreement Continues**

Notwithstanding the dissolution of the Partnership, this Agreement shall not terminate until the provisions of Section 14.3 shall have been satisfied.

### **ARTICLE 15 AMENDMENT**

#### **15.1 Amendment Procedures**

Except as provided in Section 15.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed solely by the Partnership GP. Each such proposal shall contain the text of the proposed amendment. If an amendment is proposed, the Partnership GP shall seek the approval of the Limited Partners by a Special Resolution.

#### **15.2 Amendment Requirements**

Notwithstanding the provisions of Sections 15.1 and 15.3, no amendment to this Agreement may: (i) enlarge the obligations of the Partnership GP without its consent; (ii) restrict in any way any action by or rights of the Partnership GP as set forth in this Agreement without its consent; (iii) modify the amounts distributable, reimbursable or otherwise payable by the Partnership to the Partnership GP or any of its Affiliates without its consent; (iv) give any Person the right to dissolve the Partnership, other than the Partnership GP's right to dissolve the Partnership with the approval of the Limited Partners by a Special Resolution; (v) modify the amendment provisions in this Article 15; or (vi) modify the Partnership's

capital structure as described in Section 3.1 and the definition of “Units”, in this Agreement without the express prior written consent of the Partnership GP, which consent may be unreasonably withheld.

### **15.3 Amendment by Partnership GP**

Each Limited Partner agrees that the Partnership GP (pursuant to its powers of attorney from the Limited Partners or as expressly provided herein), 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) change in the name of the Partnership or the location of the principal place of business of the Partnership or its registered office;
- (b) admission, substitution, withdrawal or removal of Limited Partners in accordance with this Agreement;
- (c) a change that, in the sole discretion of the Partnership GP, 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 Partnership GP, 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, including without limitation, the continuing status of the U.S. REIT as a “real estate investment trust” under the Code for U.S. federal income tax purposes; and
- (e) a change that, in the sole discretion of the Partnership GP, does not materially adversely affect the Limited Partners.

### **15.4 Notice of Amendments**

The Partnership GP shall 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 16 MISCELLANEOUS**

### **16.1 Binding Agreement**

Subject to the restrictions on assignment and transfer herein contained, this Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives, successors and assigns, as the case may be.

### **16.2 Time**

Time shall be of the essence hereof.

### **16.3 Counterparts**

This Agreement, or any amendment to it, may be executed in multiple counterparts, each of which will be deemed an original agreement. This Agreement may also be executed and adopted in any subscription agreement 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.

**16.4 Governing Law**

This Agreement shall be governed and construed exclusively according to the laws of the Province of Ontario 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 Ontario.

**16.5 Severability**

If any part of this Agreement is declared invalid or unenforceable, then such part shall be deemed to be severable from this Agreement and will not affect the remainder of this Agreement.

**16.6 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.

**16.7 Entire Agreement**

This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof.

**16.8 Limited Partner Not a General Partner**

If any provision of this Agreement has the effect of imposing upon any Limited Partner (other than the Partnership GP) any of the liabilities or obligations of a general partner under the Act, such provision shall be of no force and effect.

*[Remainder of page intentionally left blank - signature page follows]*

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

**AMERICAN HOTEL INCOME PROPERTIES  
REIT (GP) INC.** as Partnership GP

Per: \_\_\_\_\_  
Authorized Signatory

Each person who from time to time becomes a  
Limited Partner, by his, her or its agent and  
attorney, **AMERICAN HOTEL INCOME  
PROPERTIES REIT (GP) INC.**

Per: \_\_\_\_\_  
Authorized Signatory