

**STATESMAN CAPITAL SECURED MORTGAGE INCOME FUND  
LIMITED PARTNERSHIP**

**LIMITED PARTNERSHIP AGREEMENT**

**Effective November 29, 2011**

**as Amended and Restated December 31, 2012**

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**STATESMAN CAPITAL SECURED MORTGAGE INCOME FUND  
LIMITED PARTNERSHIP**

**AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT**

**THIS LIMITED PARTNERSHIP AGREEMENT** is dated for reference November 29, 2011, as amended and restated on December 31, 2012.

**BETWEEN:**

**STATESMAN CAPITAL CORPORATION**, a company duly incorporated under the laws of British Columbia, as general partner

(“**General Partner**”)

**AND:**

**MURCHISON PROPERTIES LTD.**, a corporation duly incorporated under the laws of British Columbia

(the “**Initial Limited Partner**”)

**AND:**

Every person who becomes a Limited Partner as defined in and pursuant to this Agreement

(each a “**Limited Partner**” and collectively the “**Limited Partners**”)

**WHEREAS:**

- (A) The General Partner and the Initial Limited Partner have agreed to establish the Partnership as a limited partnership under the laws of British Columbia and pursuant to the terms of this Agreement;
- (B) The General Partner and the Initial Limited Partner wish to record their agreement in relation to the operation and affairs of the Partnership and to provide for the admission of and the governing of the relationship among additional Limited Partners;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and covenants contained herein and for other good and valuable consideration (the receipt and sufficiency of which each party acknowledges) the parties agree as follows:

## PART 1

### INTERPRETATION

#### Definitions

- 1.1 For all purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:
- (a) “**Act**” means the Partnership Act (British Columbia);
  - (b) “**Additional Limited Partners**” has the meaning given in §4.7;
  - (c) “**Affiliate**” of a particular Person means:
    - (i) an affiliate, within the meaning of that term under the Business Corporations Act of British Columbia, or associate, within the meaning of that term under the Securities Act (British Columbia), of the particular Person, in effect on the date of this Agreement, otherwise than by being a limited partner in a partnership in which the particular Person is a partner, and
    - (ii) a director or a senior officer of the particular Person or of a Person which is an affiliate or associate of the particular Person pursuant to §1.1(c)(i);
  - (d) “**Call Date**” has the meaning given in §5.1;
  - (e) “**Called Amount**” has the meaning given in §5.1;
  - (f) “**Capital Account**” means an account established pursuant to §6.1;
  - (g) “**Capital Call**” has the meaning given in §5.1;
  - (h) “**Capital Call Notice**” has the meaning given in §5.1;
  - (i) “**Capital Contribution**” with respect to a Unit means an amount of cash contributed to the Partnership by the Limited Partner holding such Unit in respect of the Subscription Price for that Unit (either as an Initial Contribution or pursuant to a Capital Call);
  - (j) “**Certificate**” means the certificate to be filed under the Act, by which the Partnership is to be formed pursuant to the Act, and all amendments to the Certificate;
  - (k) “**Commitment**” means, with respect to each Limited Partner, the aggregate Subscription Price in respect of all of the Units held by such Limited Partner;
  - (l) “**Defaulting Partner**” has the meaning given in §5.3;

- (m) **“Distributable Cash”** means the amounts available for distribution pursuant to §8.1;
- (n) **“Entitlement”** has the meaning given in §6.7;
- (o) **“Fiscal Period”** means a fiscal period of the Partnership as established pursuant to §2.7;
- (p) **“Funded Commitment”** means, in respect of each Unit held by a Limited Partner at any particular time, the aggregate amount of Capital Contributions previously made in respect of such Unit less any amount distributed to such Limited Partner and restored to the Unfunded Commitment of such Limited Partner pursuant to §5.2, and **“Funded Commitments”** will mean the aggregate of all such Funded Commitments for all of the Limited Partners;
- (q) **“General Partner”** means Statesman Capital Corporation or a Person who is admitted to the Partnership as herein provided as a successor to a General Partner;
- (r) **“GP Redemption Notice”** has the meaning given in §11.4;
- (s) **“Holder”** means in respect of a Unit, at any time, the Person shown on the Register as the Holder of it at that time;
- (t) **“Ineligible Person”** means (i) a Person that is not a “resident” in Canada for the purposes of the Tax Act or, in the case of a partnership, not a “Canadian partnership” within the meaning of the Tax Act; (ii) a Person that, by holding Units, will constitute any Units in the Partnership as being a tax shelter within the meaning of subsection 237.1(1) of the Tax Act; or (iii) a Person that is a financial institution as defined in section 142.2(1) of the Tax Act;
- (u) **“Initial Contribution”** has the meaning given in §4.13(a);
- (v) **“Initial Limited Partner”** means Murchison Properties Ltd. and its successors and assigns;
- (w) **“Limited Partner”** means, at any time, a Person who has been admitted to the Partnership as a Limited Partner or as a successor to a Limited Partner and who is shown as a Limited Partner on the Register at that time, and may include the General Partner as a Holder of Units and the Initial Limited Partner as a holder of Units;
- (x) **“LP Redemption Notice”** has the meaning given in §11.1;
- (y) **“Manager”** means the Manager or any other manager or party which may be appointed from time to time by the Partnership or the General Partner to provide services pursuant to any Management Agreement;



- (z) **“Management Agreements”** means any agreement entered into by the Partnership or the General Partner with any Manager, any agreement or agreements entered into by the Partnership with the General Partner or any other agreement or agreements the Partnership or the General Partner entered into with other parties, with respect to the provision of management, advisory, asset management, records keeping, administration, consulting or other services to or with respect to the Partnership;
- (aa) **“Net Asset Value of the Partnership”** means the amount determined from time to time in the manner set out in Part 10 herein;
- (bb) **“Net Asset Value per Unit”** means the amount determined from time to time in the manner set out in Part 10 herein;
- (cc) **“Net Income”** and **“Net Loss”**, for a Fiscal Period, mean, respectively, the net income (including capital gains) or net loss (including capital losses) of the Partnership for the Fiscal Period as determined by the General Partner in accordance with generally accepted accounting principles consistently applied and recorded in the accounts of the Partnership;
- (dd) **“Notice Date”** has the meaning given in §11.1;
- (ee) **“Offerings”** means the private placement offerings of Units to be conducted from time to time by the Partnership;
- (ff) **“Ordinary Resolution”** means
  - (i) a resolution passed with an affirmative majority of more than 50% of the votes cast by Limited Partners who, being entitled to do so, vote on the resolution in person or by proxy at a meeting of Partners convened and held in accordance with this Agreement, or an adjournment thereof, or
  - (ii) a written resolution in one or more counterparts consented to in writing by Limited Partners holding, in the aggregate, more than 50% of the aggregate number of Units held by those Limited Partners who would be entitled to vote on the resolution at a meeting of Partners;
- (gg) **“Partner”** means the General Partner or a Limited Partner, as the case may be, and includes Statesman Capital Corporation;
- (hh) **“Partnership”** means Statesman Capital Limited Partnership, the limited partnership governed by this Agreement;
- (ii) **“Person”** means an individual, corporation, body corporate, partnership, joint venture, association, syndicate, trust or unincorporated organization, or a trustee, executor, administrator or other legal representative;
- (jj) **“Receiver”** has the meaning given in §16.4;

- (kk) **“Redemption Date”** has the meaning given in §11.2;
- (ll) **“Redemption Price”** has the meaning given in §11.2(b);
- (mm) **“Register”** means the register to be maintained pursuant to §4.16;
- (nn) **“Security Holder”** has the meaning given in §4.32;
- (oo) **“Special Resolution”** means:
  - (i) a resolution passed with an affirmative majority of not less than 66⅔% of the votes cast by Limited Partners who, being entitled to do so, vote on the resolution in person or by proxy at a meeting of Partners convened and held in accordance with this Agreement, or an adjournment thereof, or
  - (ii) a written resolution in one or more counterparts consented to in writing by Limited Partners holding, in the aggregate, not less than 66⅔% of the aggregate number of Units held by those Limited Partners who would be entitled to vote on the resolution at a meeting of Partners;determined without regard to any vote cast in respect of, and without regard to any Unit held by the Initial Limited Partner;
- (pp) **“Subscription Agreement”** means a subscription agreement between a subscriber of Units and the Partnership in the form as may be approved from time to time by the General Partner;
- (qq) **“Subscription Price”** means in respect of a Unit, the Net Asset Value per Unit;
- (rr) **“Taxable Income”** and **“Tax Loss”**, in respect of a Fiscal Period, means, respectively, the amount of income or loss of the Partnership for that Fiscal Period (including all amounts in respect of taxable capital gains and allowable capital losses from dispositions of capital property of the Partnership), as determined by the General Partner in accordance with the provisions of the Tax Act and the provisions of any other applicable legislation;
- (ss) **“Tax Act”** means the *Income Tax Act (Canada)* in effect on the date of this Agreement;
- (tt) **“Transfer”** means, as a noun, any voluntary or involuntary transfer, sale, pledge, assignment, hypothecation or other disposition and, as a verb, to voluntarily or involuntarily transfer, sell, pledge, assign, hypothecate or otherwise dispose of; **“Transferor”** means a Person that Transfers or proposes to Transfer; and **“Transferee”** means a Person to whom a Transfer is made or is proposed to be made;

- (uu) **“Unfunded Commitment”** means, in respect of each Unit held by a Limited Partner at any particular time, the amount, if any, by which the Subscription Price for such Unit exceeds the Funded Commitment of such Unit;
- (vv) **“Unit”** means a unit of Limited Partner’s interest in the Partnership as provided in §4.1 of this Agreement; and
- (ww) **“Valuation Date”** means March 31, June 30, September 30 and December 31 in each year and any other day determined by the General Partner.

## **Interpretation**

1.2 For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) **“this Agreement”** or **“Limited Partnership Agreement”** means this Limited Partnership Agreement as it may from time to time be supplemented, amended or restated;
- (b) a reference to an Article is to an Article of this Agreement, and the symbol § followed by a number or some combination of numbers and letters refers to the section, paragraph, subparagraph, clause or subclause of this Agreement so designated;
- (c) the words **“herein”**, **“hereof”** and **“hereunder”** and other words of similar import refer to this Agreement as a whole and not to any particular Article or other subdivision of this Agreement;
- (d) the table of contents and headings are for convenience only and do not form a part of this Agreement, nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions;
- (e) a general statement, term or matter when followed by the word **“including”**, will not be construed as limited to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not language such as **“without limitation, or “but not limited to”** or words of similar import are used with reference thereto, but rather the general statement, term or matter will be deemed to refer to all items and matters that could reasonably fall within the broadest possible scope of the general statement, term or matter;
- (f) an accounting term not otherwise defined herein has the meaning assigned to it, and every calculation to be made hereunder is to be made, in accordance with generally accepted accounting principles applicable to the undertaking of the Partnership;
- (g) a reference to a statute includes and will, unless otherwise set out herein, be deemed to be a reference to the statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to

any statute or regulation that has the effect of supplementing or superseding the statute or such regulations;

- (h) a reference to a Person will include and will be deemed to be a reference to a Person that is a successor to that Person;
- (i) a reference to "approval", "authorization" or "consent" of the General Partner means the written approval, written authorization or written consent of the General Partner;
- (j) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and, where applicable, a corporation; and
- (k) all references to currency are in Canadian dollars.

## PART 2

### FORMATION OF PARTNERSHIP

#### Formation of Partnership

- 2.1 The General Partner and the Initial Limited Partner hereby agree to form the Partnership to carry on business with a view to profit until termination in accordance with this Agreement.
- 2.2 The General Partner and the Initial Limited Partner will operate the Partnership as a limited partnership under the Act and will prepare, complete and file all Certificates required by the Act, and will do all things and execute and deliver all such documents, instruments and assurances as are necessary to constitute, form and keep the Partnership in good standing as a limited partnership.

#### Name

- 2.3 The name of the Partnership is "Statesman Capital Secured Mortgage Income Fund Limited Partnership" or such other name or names as the General Partner determines from time to time.

#### Business of Partnership

- 2.4 The Partnership will carry on the business of directly or indirectly creating and managing mortgages or other real estate backed security, or any direct or indirect interests therein, with a view to making a profit from that business, and may carry on any other business and exercise all powers ancillary and incidental thereto or in furtherance thereof. For greater clarity, the Partnership will:
  - (a) originate mortgages in the name of the Partnership directly or through an agent retained by the Partnership and acting on its behalf;

- (b) fund mortgages;
  - (c) enter into mortgage agreements as the mortgagee; and
  - (d) administer mortgages, either directly or through an agent acting on its behalf.
- 2.5 The Partnership will not carry on any business or invest any of its funds other than as provided in §2.4, and will not invest otherwise than as permitted by §12.7 any of its funds not being used in any such business.

### **Principal Place of Business**

- 2.6 The principal place of business of the Partnership will be in Vancouver, British Columbia, or in such other place as determined by the General Partner.

### **Fiscal Period**

- 2.7 The first Fiscal Period of the Partnership will begin on January 1 and end on December 31 or on such other date as is determined by the General Partner and, subject to §2.8, each subsequent Fiscal Period will end on the anniversary of the immediately preceding Fiscal Period.
- 2.8 The General Partner may from time to time change the Fiscal Period of the Partnership in accordance with Canadian income tax and fiscal laws.

## **PART 3**

### **RELATIONSHIP BETWEEN PARTNERS**

#### **Status of General Partner**

- 3.1 The General Partner represents and warrants to and covenants with each Limited Partner that:
- (a) the General Partner is and will continue to be a valid and subsisting corporation under the laws of British Columbia or such other jurisdiction under which the General Partner is continued or under which a successor to the General Partner is incorporated, amalgamated or continued, and is and will continue to be qualified to carry on business in British Columbia and in every other jurisdiction in which that qualification is necessary, and
  - (b) the General Partner has and will continue to have the legal capacity and authority to act as the General Partner and to perform its obligations under this Agreement, and those obligations do not and will not conflict with or constitute a default under its constating documents or any agreement by which it is bound.

### **Status of Each Limited Partner**

- 3.2 Each Limited Partner represents and warrants to and covenants with each other Partner that such Limited Partner:
- (a) is, and while a Holder will continue to be, “resident” in Canada within the meaning of the Tax Act;
  - (b) is not, and while a Holder will never be, a “non-Canadian” within the meaning of the *Investment Canada Act* (Canada);
  - (c) has and will continue to have the capacity and competence to enter into and be bound by this Agreement; and
  - (d) will, at the request of the General Partner, from time to time provide such evidence of compliance with such representations, warranties and covenants as the General Partner requires.

### **Limitations on Authority of Limited Partners**

- 3.3 No Limited Partner may or will, in the capacity of a Limited Partner:
- (a) take part in the control or management of the business of the Partnership;
  - (b) execute any document which binds or purports to bind the Partnership or any other Partner as such;
  - (c) purport to have the power or authority to bind the Partnership or any other Partner as such;
  - (d) have any authority to undertake any obligation or responsibility on behalf of the Partnership;
  - (e) bring any action against any property of the Partnership, whether real or personal, or file or register, or permit any lien or charge to be filed or registered or remain undischarged, against any property of the Partnership in respect of the interest of the Limited Partner in the Partnership; or
  - (f) compel a partition, judicial or otherwise, of any property of the Partnership or require any property of the Partnership to be distributed to the Partners in kind.

### **Power of Attorney**

- 3.4 Each Person who is a Limited Partner, a subscriber for a Unit, or a Transferee of a Unit, hereby irrevocably nominates, constitutes and appoints under seal the General Partner, with full power of substitution, as such Person’s agent and true and lawful attorney to act on such Person’s behalf with full power and authority in such Person’s name, place and stead to execute, swear to, acknowledge, deliver, record, complete and file as and where required:

- (a) this Agreement, the Certificate, and any amendment to this Agreement, to the Certificate or any other instrument if the amendment is required:
  - (i) to qualify, continue and keep the Partnership in good standing as a limited partnership in or otherwise to comply with the laws of any jurisdiction in which the Partnership is organized, offers Units of the Partnership for sale, carries on business or owns or leases property; or
  - (ii) in order to maintain the limited liability of the Limited Partners, (including such amendments to the Register or the Certificate as are necessary to reflect the admission to the Partnership of a Partner or the Transfer of a Unit);
- (b) any amendment to this Agreement that the General Partner is permitted to make hereunder and any amendment to the Register or the Certificate necessary to reflect an amendment to this Agreement;
- (c) any instrument required in connection with the dissolution and termination of the Partnership;
- (d) any Transfer of a Unit pursuant to §4.22 or §4.23;
- (e) any instrument required in connection with any election or filing made under the Tax Act or other fiscal or taxation legislation of any jurisdiction applicable to the Partnership or the Partners, and any application for a tax identification number or tax shelter registration under any such legislation;
- (f) on behalf of the Partnership, any document deemed necessary or advisable by the General Partner in connection with carrying on the business of the Partnership or to carry out fully the provisions of this Agreement, including any instrument required by a governmental body in connection with the Partnership or its business;
- (g) on behalf of the Partnership, any instrument or deed which requires or provides for execution under seal; and
- (h) on behalf of the Partnership, any agreement, document or instrument in connection with the acquisition, holding, development, operation, financing or disposition of or investment in any real property, directly or indirectly, including any deed or transfer of title to or an interest in any real property, any agreement, easement or encumbrance required to be delivered in connection with the development of any real property, and any note, deed of trust or mortgage or other instrument of security or encumbrance charging title to or an interest in any real property.

3.5 To evidence the empowering of the General Partner under §3.4, each Limited Partner, in executing the Subscription Agreement, or such other form as is accepted by the General

Partner, has executed under seal a power of attorney containing the powers set forth in §3.4.

- 3.6 The power of attorney granted under §3.4 and in forms executed as described in §3.5 is made under seal, is irrevocable, is a power coupled with an interest and will survive the mental infirmity, disability or legal incapacity of a Limited Partner or the Transfer by a Limited Partner of the whole or any part of the interest of the Limited Partner in the Partnership and extends to and is binding upon the heirs, executors, administrators and other legal representatives and successors and assigns of the Limited Partner and, if the Limited Partner is an individual, will survive the death or disability of the Limited Partner until notice of the death or disability is delivered to the General Partner and, if required, may be exercised by the General Partner on behalf of each Limited Partner in executing any instrument by listing the names of all the Limited Partners thereon or on a schedule thereto and executing it with a single signature as attorney and agent for all of them or by executing the instrument on behalf of the Partnership as General Partner.
- 3.7 Each Limited Partner will be bound by any representation or action made or taken by the General Partner pursuant to the power of attorney referred to in §3.6 and hereby waives any and all defences that may be available to such Limited Partner to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.
- 3.8 Each Limited Partner hereby appoints the General Partner as agent of such Limited Partner with authority upon receipt of notice of the death or disability of the Limited Partner to Transfer Units held by such Limited Partner into the name of the General Partner in trust for the estate of such Limited Partner and thereafter to Transfer those Units into the name of the executor, administrator, committee or personal representative of such Limited Partner.

#### **Unlimited Liability of General Partner**

- 3.9 The General Partner will have unlimited liability for the debts, liabilities and obligations of the Partnership.

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

- 3.10 The Limited Partners will not be personally liable for any obligations of the Partnership and will have no obligation to make contributions to the Partnership in excess of their respective Unfunded Commitments except as otherwise provided herein or under the Act; provided that a Limited Partner will be required to return any distribution either made to it in error or as required hereunder or by the Act. To the extent that any Limited Partner is required to return to the Partnership any distributions made to it and does so, such Limited Partner will have a right of contribution from each other Limited Partner similarly liable to return distributions made to it to the extent that such Limited Partner has returned a greater percentage of the total distributions made to it and required to be returned by it than the percentage of the total distributions made to such other Limited Partner and so required to be returned by it.



### **Indemnity of Limited Partners**

- 3.11 The General Partner will indemnify and hold harmless each Limited Partner from all costs, damages, liabilities, expenses and losses suffered or incurred by the Limited Partner by reason that the liability of the Limited Partner is not limited in the manner provided in §3.10 otherwise than as a result of or arising out of any act or omission of the Limited Partner.

### **Limitation of Liability of General Partner**

- 3.12 Subject to §3.11, the General Partner will not be liable to the Partnership or to any Limited Partner for any act, omission or error in judgment that does not result from or arise out of a failure of the General Partner to act as required by §12.8.

### **Indemnity of Partnership**

- 3.13 The General Partner will indemnify and hold harmless the Partnership from all costs, damages, liabilities, expenses and losses (including legal expenses on a solicitor and own client basis) suffered or incurred by the Partnership resulting from or arising out of a failure of the General Partner to act as required by §12.8.
- 3.14 No action, suit or proceeding alleging a failure of the General Partner to act as required by §12.8 will be settled unless the settlement is approved by Special Resolution.

### **Indemnity of General Partner**

- 3.15 The Partnership will indemnify and hold harmless the General Partner from all costs, damages, liabilities, expenses and losses suffered or incurred by the General Partner resulting from or arising out of any act or omission of the General Partner on behalf of the Partnership or in furtherance of the business of the Partnership, except to the extent any cost, damage, liability, expense or loss arises in circumstances where the General Partner did not act in accordance with §12.8.

### **Other Activities of Limited Partners**

- 3.16 A Limited Partner may engage in or hold an interest in any other business, venture, investment or activity whether or not similar to or competitive with the business of the Partnership, and will not be liable to account therefor to the Partnership or to any Partner.
- 3.17 Notwithstanding anything herein to the contrary, no Limited Partner may do any act or purport to cause the Partnership to do any act which attempts to avoid or frustrate the payment of any fee or other amount to the General Partner and the Manager or either of them pursuant to any agreement or contract with the Partnership.

### **Other Activities of General Partner**

- 3.18 The General Partner, in acting as General Partner hereunder, will not be required to devote its efforts or those of any of its officers or employees exclusively to or for the benefit of the Partnership.
- 3.19 The General Partner and its Affiliates may engage in or hold an interest in any other business, venture, investment or activity as they consider appropriate, whether or not similar to or competitive with the business of the Partnership, and neither the Partnership nor any Partner will have any right, by virtue of this Agreement or the partnership relationship with the General Partner created hereby, in or to any such other business, venture, investment or activity or to the income, proceeds or profits derived therefrom, and the pursuit of such other businesses, ventures, investments and activities, even if competitive with the business of the Partnership, will not be wrongful or improper.
- 3.20 Neither the General Partner nor any of its Affiliates will be required to offer or make available to the Partnership any property or other business or investment opportunity which the General Partner or any of its Affiliates determines to acquire or engage in for its separate account.

### **General Partner May Hold Units**

- 3.21 The General Partner may subscribe for and acquire Units or purchase Units and will be entered on the Register as a Limited Partner in respect of the number and class of Units held by it from time to time.

### **General Partner as Limited Partner**

- 3.22 If the General Partner is shown on the Register as a Limited Partner, the General Partner will have all of the rights of a Limited Partner under this Agreement with respect to the Units it holds, except as provided herein, and will have the same rights and powers and be subject to the same restrictions as a general partner except that in respect of its contribution as a Limited Partner it will have the same rights against the other Partners that it would have if it were not also a general partner.

### **Compliance with Laws**

- 3.23 Each Limited Partner and each Person who is a subscriber for a Unit, or a Transferee of a Unit and Transferee of the interest as Limited Partner of the Holder of a Unit, on request by the General Partner, will immediately execute such certificates and other instruments necessary to comply with any law or regulation of any jurisdiction for the continuation, good standing or business of the Partnership.

## **PART 4**

### **UNITS**

#### **Number of Units**

- 4.1 The interest in the Partnership of the Limited Partners will be divided into and represented by an unlimited number of Units.

#### **Classes of Units**

- 4.2 The Units may comprise of one or more series or classes of Units with a series or class of Units. All series or classes of Units will have the same rights and obligations as set out in §4.3.

#### **Nature of Units**

- 4.3 Except as expressly provided herein, a Partner holding a Unit will have with respect thereto the same rights and obligations as each other Partner holding a Unit, including:
- (a) the right to one vote for each Unit held;
  - (b) the right to allocations of Net Income, Net Loss, Taxable Income and Tax Loss equally in respect of each Unit; and
  - (c) the right to share in distributions of Distributable Cash equally in respect of each Unit,

and no Partner will in respect of a Unit held by that Partner have any preference, priority or right in any circumstance, except as expressly provided herein, over any other Partner in respect of a Unit held by the other Partner.

#### **Amendment of Rights**

- 4.4 Notwithstanding anything herein, the rights of Holders of Units to allocations and distributions as provided herein will not be amended or affected, directly or indirectly, except as approved by Special Resolution.

#### **Capital Commitments**

- 4.5 The minimum subscription amount for each Limited Partner shall be \$50,000, although subscriptions for lesser subscription amounts may be accepted at the discretion of the General Partner.

#### **Offerings of Units**

- 4.6 Subject to the provisions hereof, the General Partner, on behalf of the Partnership, may raise capital for the Partnership by private placement offerings (the “**Offerings**”) of Units as may be conducted from time to time and may in its absolute discretion

determine the terms and conditions of the Offerings and may do all things in that regard including preparing and filing documents, paying the expenses of issue and entering into agreements with any Person providing for a commission or fee.

#### **Additional Limited Partners**

- 4.7 The General Partner may, subject to the receipt of a Subscription Agreement, and subject to the other terms and limits hereof, admit one or more Persons ("**Additional Limited Partners**") to the Partnership as Limited Partners, and the Partners hereby consent to such admission of, and will admit, such Additional Limited Partners to the Partnership, without further act of the Partners.
- 4.8 Upon the admission of each Additional Limited Partner, the General Partner will amend the Register by showing the full name and residential address of the Additional Limited Partner or, if the Additional Partner is not an individual, its name and address, the Commitment amount of the Additional Limited Partner and the number of Units held by the Additional Limited Partner, and will make such other filings and recordings as are required by law or this Agreement.

#### **Subscription Agreement**

- 4.9 A Person may subscribe for Units only by delivering to the General Partner or to such other Person at such address as the General Partner prescribes, a Subscription Agreement, or such other form as is accepted by the General Partner, and such other instruments, including powers of attorney, as the General Partner requests, all of which are to be completed and executed in a manner acceptable to the General Partner.

#### **Fractional Units**

- 4.10 Interests in Units may be issued in whole Units or in a fraction of a Unit.

#### **Subscription for Units and Payment of Subscription Price**

- 4.11 The General Partner may refuse to accept a subscription for a Unit.
- 4.12 If, for any reason, a subscription for a Unit is not accepted or the subscription is accepted but the subscriber is not entered on the Register as a Limited Partner, the General Partner will cause the Partnership to refund to the subscriber any payment for the Unit by the subscriber as nearly as possible in the form in which payment was made.
- 4.13 A subscriber whose subscription for a Unit is accepted agrees to contribute the Subscription Price for the Unit to the capital of the Partnership, such Subscription Price to be paid as follows:
- (a) subject to the discretion of the General Partner, 10% of the Subscription Price (the "**Initial Contribution**") for the Unit will be contributed to the Partnership at the time of issue of the Unit to the Limited Partner;

- (b) the balance of the Subscription Price for the Unit (or such partial amount thereof as may be requested from time to time) will be payable as set forth in §5.1.

Amounts paid pursuant to §4.13(a) and, if applicable §4.13(b), on account of the Subscription Price for a Unit will constitute Capital Contributions to the capital of the Partnership and will be credited to the Capital Account for the registered holders of the Units in respect of which the contributions were made.

The General Partner may, in its discretion, schedule a closing of a subscription for Units pursuant to this §4.13 on any day it determines.

### **Issue Expenses**

- 4.14 The Partnership will pay all costs, commissions, disbursements, fees and expenses incurred in connection with an Offering of Units.

### **No Unit Certificates**

- 4.15 The Partnership will not issue any certificates for Units.

### **Register and Other Records**

- 4.16 The General Partner or such other Person as the General Partner appoints will:
  - (a) maintain a registered office for the Partnership;
  - (b) make on behalf of the Partnership all recordings or filings with any governmental authority that are required to be made by the Partnership;
  - (c) act as a transfer agent for the Transfer of Units;
  - (d) maintain at the registered or other designated office:
    - (i) a Register consisting of a list, in alphabetical order, of the full name and last known residential address of each Partner, or in the case of a Partner that is not an individual, an address in British Columbia, indicating whether the Partner is a General Partner or a Limited Partner and the number of Units held by each Limited Partner and particulars of registration and Transfer of Units;
    - (ii) a copy of the Certificate and all amendments thereto; and
    - (iii) a copy of this Agreement and all amendments thereto,
  - (e) act as an agent to facilitate Transfers of Units in jurisdictions other than British Columbia; and
  - (f) maintain such other records as are required by law.

- 4.17 The information contained in the Register will be made available for inspection free of charge during normal business hours at the office of the General Partner or at a place designated by the General Partner, by Partners or their representatives duly authorized in writing.
- 4.18 The General Partner may make such rules and regulations, in compliance with the requirements of the Act, as it from time to time considers necessary or desirable from time to time in connection with the inspection of the Register and other records of the Partnership by other Persons, including creditors of the Partnership.
- 4.19 Within ten days after the date of receipt of a written request by a Partner therefor, the General Partner will provide the Partner by mail or electronic transmission with a copy of the information contained in the Register by mail, subject to payment by the Partner of a fee not exceeding the reasonable costs of providing the information.
- 4.20 The General Partner may make such reasonable rules and regulations as it from time to time considers necessary or desirable in connection with the services to be performed in respect of the Register, including the appointment of an agent to perform the functions of the General Partner under §4.16 to §4.19, the form and content of the Register, the establishment of record dates and the documentation required to record Transfers of Units and other matters.
- 4.21 The appointment by the General Partner of an agent will not relieve the General Partner of any of its duties or obligations hereunder.

#### **Transfer Unit by Limited Partner**

- 4.22 Except as otherwise expressly set forth herein, no Limited Partner may Transfer all or any part of its Units (including any transfer of all or a part of its Units to a person who becomes an assignee of a beneficial interest in the Partnership's income, losses and distributions even though not becoming a substitute Limited Partner) unless the General Partner has, in its sole discretion, consented thereto in writing. In making a decision to give or withhold such consent, the General Partner may take into consideration such factors as the General Partner determines in its sole discretion, including, without limitation the identity of the proposed Transferee, adverse tax consequences that may result to the Partnership or any Limited Partner from the Transfer, and securities laws and other legal or regulatory requirements. No consent of any other Limited Partner (in its capacity as such) will be required as a condition precedent to any Transfer. As a condition to any Transfer of Units hereunder (including a Transfer not requiring the consent of the General Partner pursuant to §4.23), the Transferor and the Transferee will provide such legal opinions and documentation as the General Partner will reasonably request. The General Partner will not consent to any Transfer of Units unless the Transferee satisfies criteria (ii) and (iii) in §4.23.
- 4.23 Notwithstanding §4.22, Transfers may be made by any Limited Partner without the prior consent of the General Partner provided that: (i) such Transfer is to an Affiliate of such Limited Partner; (ii) the prospective Transferee is not an Ineligible Person; (iii) the prospective Transferee agrees in writing, to the satisfaction of the General Partner, to be

bound by the provisions of this Agreement (including, without limitation, the obligation to satisfy Capital Calls in a timely manner when so requested by the General Partner) to the same extent as the Transferor and pursuant to which the Transferee provides representations, warranties covenants and indemnities comparable to those given by the Limited Partners in their Subscription Agreements; and (iv) the Transferor covenants and agrees to remain liable for its obligations hereunder, notwithstanding such Transfer. The voting rights of any Limited Partner will automatically terminate upon any Transfer of such Units to a trust, heir, beneficiary, guardian or conservator or upon any other Transfer if the Transferor no longer retains control over such voting rights and the General Partner in its sole discretion has not consented in writing to such Transferee becoming a substitute Limited Partner.

- 4.24 The Transferor and Transferee of any Limited Partner's Units will be jointly and severally obligated to reimburse the General Partner and the Partnership for all reasonable expenses (including lawyer's fees and other expenses) incurred by them in relation to any Transfer or proposed Transfer of a Limited Partner's Units, whether or not consummated.
- 4.25 A Transferee of Units will be treated as having made all of the Funded Commitments made by, and received all of the allocations and distributions received by, the Transferor of the relevant part of such Units.
- 4.26 Any Transfer which violates the terms of this Agreement will be null and void and the prospective Transferee will have no interest in or right to Partnership assets, profits, losses or distributions and neither the General Partner nor the Partnership will be required to recognize any such interest or rights.

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

- 4.27 Where a Person becomes entitled to a Unit on the incapacity, death, insolvency or bankruptcy of a Limited Partner, or otherwise by operation of law, in addition to the requirements of §4.22 to §4.26, the entitlement will not be recognized nor the Person entered in the Register in respect of the entitlement until that Person has:
- (a) produced evidence satisfactory to the General Partner of the entitlement; and
  - (b) delivered such other evidence, approvals and consents in respect of the entitlement as the General Partner requires and as are required by law or by this Agreement.

#### **Ceasing to be Resident**

- 4.28 A Holder of a Unit who ceases to be "resident" in Canada within the meaning of the Tax Act or becomes a "non-Canadian" within the meaning of the *Investment Canada Act* must forthwith so advise the General Partner.

### **Parties Not Bound to See to Trust or Equity**

- 4.29 The General Partner will not be bound to see to or take notice of the execution of any trust (whether express, implied or constructive), lien, charge, pledge or equity to which a Unit or any interest therein is subject, nor to ascertain or inquire whether a sale or Transfer of a Unit or an interest therein by a Limited Partner is authorized by the trust, lien, charge, pledge or equity, nor to recognize any Person as having any interest in a Unit except for the Person recorded on the Register as the Holder of the Unit.
- 4.30 The receipt of the Person in whose name a Unit is recorded in the Register, or of the Person to whom the Unit has been pledged or hypothecated and who has requested and received an outstanding written acknowledgement of pledge or hypothecation from the General Partner as contemplated in §4.32, will be a sufficient discharge for all money, security and other property payable, issuable or deliverable in respect of the Unit and from all liability therefor.
- 4.31 Unless the General Partner has been requested to and has given an outstanding written acknowledgement of pledge or hypothecation in respect of a Unit as contemplated in §4.32, the Partnership and the General Partner may treat the Holder of the Unit, as the absolute owner of it.

### **Pledge of a Unit**

- 4.32 A Partner may pledge or hypothecate a Unit held by the Partner as security for a loan to, or an obligation of, the Partner and, if a Unit is so pledged or hypothecated the General Partner will, upon receipt of a written request from the Partner, deliver a written acknowledgement to the Person (the "**Security Holder**") specified by the Partner in the request acknowledging the pledge or hypothecation and confirming that, upon receipt by the General Partner of a written order from the Security Holder setting forth an address for service, all distributions by the Partnership in respect of the Unit after the receipt by the General Partner of the order will be made, subject to the provisions of any applicable law to the contrary, to the Security Holder at the address set forth in the order, until the Security Holder delivers a release of the acknowledgement to the General Partner, and a Partner, by delivering such a request to the General Partner, will thereby authorize the General Partner to make and consent to the making of all such distributions pursuant to it.

## **PART 5**

### **CALLS FOR CAPITAL CONTRIBUTIONS**

#### **Capital Calls**

- 5.1 Subject to §5.3, each Limited Partner will make Capital Contributions to the Partnership in the aggregate amount equal to the Unfunded Commitment for their Units by contributing specified amounts (each such specified amount, a "**Called Amount**") when and as called by the General Partner (any such request for capital, a "**Capital Call**") upon not less than five days' prior written notice from the General Partner (any such



notice, a “**Capital Call Notice**”), and such specified instalments will be made *pro rata* by all Limited Partners based upon their respective Units on or before the date specified in the Capital Call Notice (the “**Call Date**”). Each Capital Contribution to the Partnership will be made in Canadian dollars and will be made by means of a cheque or bank draft. Each Capital Call Notice will specify the purpose(s) of the Capital Call and the amount to be allocated to each purpose.

- 5.2 The General Partner, may at any time, return to the Limited Partners an amount it determines to be excess capital *pro rata* to the Limited Partners in accordance with their respective Funded Commitments, and all such amounts so returned to a Limited Partner shall be restored to the Limited Partner’s Unfunded Commitment and shall be subject to subsequent Capital Calls by the General Partner pursuant to the provisions of §5.1 as if such returned amount had not been previously called by the General Partner.

Notwithstanding the foregoing, if a Limited Partner notifies the General Partner in writing prior to a distribution by the Partnership of any returned amounts pursuant to this §5.2 that such Limited Partner believes in good faith that it is prohibited by law or institutional policy from being able to re-contribute all amounts distributed to it by the Partnership under this §5.2 in order to satisfy subsequent Capital Calls, the General Partner shall arrange to deposit the amount that would otherwise be distributed to such Limited Partner pursuant to this §5.2 in a segregated account and will hold such amount as agent for such Limited Partner, subject to any subsequent Capital Call made by the General Partner pursuant to §5.1 hereof. Any such amounts shall be treated for all purposes of this Agreement as having been distributed to the Limited Partners that are beneficiaries of such segregated accounts. Amounts contributed to the Partnership in satisfaction of subsequent Capital Calls shall, to the extent of any amounts deposited in such segregated account, be funded by the Limited Partner first from such account. Any amounts remaining in each such account, together with all income thereon, shall at the end of the Commitment Period be distributed to the Limited Partner on whose behalf such amounts are held. Any such income shall be held for the benefit of the Limited Partner on whose benefit the amounts are held and shall not be held for the benefit of the Partnership generally.

## **Default**

- 5.3 Subject to §5.4, if any Limited Partner fails to make full payment of any portion of its Called Amount by the Call Date or any other payment required hereunder when due (such Limited Partner, a “**Defaulting Partner**”) and such failure is not cured within ten days after receipt by such Defaulting Partner of written notice from the General Partner with respect to such failure to pay, the General Partner may in its sole discretion undertake any one or more of the following steps:
- (a) the Partnership may pursue and enforce all rights and remedies that it may have against such Defaulting Partner with respect thereto, including a lawsuit to collect the overdue amount and any amount of a management fee that would have been payable to the General Partner by the Partnership in respect of such overdue amount, with interest calculated thereon at a rate equal to 12% per annum;

- (b) at any time and from time to time after the date that is 20 business days following the expiry of the ten-day cure period, the General Partner may offer all or any portion of the Defaulting Partner's Units to any party or parties that the General Partner may in its sole discretion determine (including any other Limited Partner or any third party) at such price as the General Partner, in its sole discretion, determines that is equal to or greater than 50% of the Defaulting Partner's Capital Account (not including any unrealized appreciation, but including all unrealized depreciation, in the Partnership's assets as determined by the General Partner). The closing of such purchase will occur on a date and at a place designated by the General Partner. At the closing of such purchase, each purchaser of the Defaulting Partner's Units will, as payment in full for such Units:
- (i) deliver to the General Partner, for the benefit of and onward payment to the Defaulting Partner, cash payment in Canadian dollars of the purchase price for the Defaulting Partner's Units by way of certified cheque or bank draft or by wire transfer of immediately available funds to an account designated by the General Partner; and
  - (ii) assume the portion of the Defaulting Partner's obligation to make both defaulted and future Capital Contributions in respect of the Units purchased;
- and such purchaser will, if not already a Limited Partner, become a party to this Agreement by executing and delivering to the General Partner an agreement to be bound by the provisions of this Agreement together with such other documents and instruments as the General Partner may reasonably require in order to complete the Transfer of the Defaulting Partner's Units to the purchaser;
- (c) the General Partner may assist the Defaulting Partner in finding a third-party purchaser for the Defaulting Partner's Units (provided that the General Partner will have no obligation to contact any particular Limited Partner or other Person with regard to such sale);
- (d) in addition to, or instead of, the other remedies and undertakings available to the General Partner pursuant to this §5.3, the General Partner may, in its sole discretion, at any time and from time to time after the date that is 20 business days following the expiry of the ten-day cure period, require the relinquishment and forfeiture to the Partnership for no consideration, and the cancellation of up to 50% of the Defaulting Partner's Units (effective on the date of the default, excluding the ten-day cure period) and the portion of the Defaulting Partner's Capital Account attributable to the forfeited Units will:
- (i) be allocated to the other non-Defaulting Partners *pro rata* in accordance with the Units that they hold in the Partnership; and

- (ii) will increase the amount to which such non-Defaulting Limited Partners are entitled pursuant to receive upon liquidation of the Partnership,
  - (e) notwithstanding anything contained herein to the contrary, from and after any date on which a Defaulting Partner's Units are forfeited pursuant to subparagraph (d) above:
    - (i) such Defaulting Partner will have no right to receive any distributions from the Partnership, except for distributions made upon the Partnership's liquidation;
    - (ii) such Defaulting Partner's Capital Account will not be credited with any Net Income, which will instead be allocated to the Partners (other than any Defaulting Partners) in accordance with §7.2;
    - (iii) until such Defaulting Partner's Capital Account is reduced to zero, such Defaulting Partner's Capital Account will continue to be debited for such Defaulting Partner's proportionate share of fund expenses and management fees as if there had been no forfeiture in such Defaulting Partner's Units;
    - (iv) once such Defaulting Partner's Capital Account is reduced to zero, such Defaulting Partner's Commitment in respect of its Units will be reduced to zero for all purposes of this Agreement; and
  - (f) no consent of any Limited Partner will be required as a condition precedent to any Transfer, forfeiture, cancellation or other disposition of a Defaulting Partner's Units pursuant to this §5.3.
- 5.4 The provisions of §5.3 applicable to a Defaulting Partner and its Units will not apply to a Partner for so long (but only for so long) as such Partner, despite its best efforts, is actually prevented from remitting funds as a result of damage to or destruction of its facilities, or substantial interruption of its operations, from fire, explosion, earthquake, flood, volcanic eruption, catastrophic weather and such other acts of God, acts of war or acts of terrorism.
- 5.5 To the extent that the General Partner acquires the Units of a Defaulting Partner or any other Limited Partner or otherwise acquires Units, the General Partner will be deemed to be a Limited Partner with respect to such Units for all purposes of this Agreement.
- 5.6 For so long as the Defaulting Partner is in default with respect to the payment of all or any portion of a Called Amount with respect to its Units, the Defaulting Limited Partner is prohibited from exercising any voting rights with respect to such Units.
- 5.7 The General Partner, in its discretion, may require the non-defaulting Limited Partners to make Capital Contributions to the Partnership to make up any shortfall in Capital Contributions resulting from the failure of the Defaulting Partner to fund its required Called Amount; provided, however, that no Limited Partner will be obligated as a result thereof to contribute an amount in excess of such Limited Partner's Unfunded

Commitment. If the non-defaulting Limited Partners are required to make additional Capital Contributions pursuant to this §5.7, the General Partner will deliver to such Partners an additional Capital Call Notice in accordance with §5.1, except that such additional Capital Call Notice may require such additional Capital Contributions to be made within three business days after the giving of such Capital Call Notice.

## **PART 6**

### **CAPITAL ACCOUNTS AND ALLOCATIONS**

#### **Capital Accounts**

- 6.1 The General Partner will maintain a separate capital account for each Partner (the “**Capital Account**”) and will, on receipt of a Capital Contribution from a Limited Partner, credit the Capital Account of such Limited Partner with such amount. The General Partner will also credit to the Capital Account of each Partner with the amount of all Net Income allocated to such Limited Partner and will debit the Capital Account of each Limited Partner with the amount of all Net Loss and all distributions allocated to such Limited Partner.

#### **No Right to Withdraw Amounts**

- 6.2 No Partner will have any right to withdraw any amount or receive any distribution from the Partnership except as expressly provided herein and no distribution to a Partner will be deemed a return or withdrawal of capital (except as expressly provided herein), but if a court of competent jurisdiction at any time determines that notwithstanding the provisions of this Agreement a Limited Partner is obligated to pay an amount distributed to that Limited Partner to or for the account of the Partnership or to a creditor of the Partnership, then that obligation will be the obligation of that Limited Partner.

#### **No Interest Payable on Accounts**

- 6.3 No Partner will have the right to receive interest on any credit balance in that Partner’s Capital Account except as expressly provided herein.
- 6.4 No Partner will be liable to pay interest to the Partnership on any capital returned to that Partner or on any authorized negative balance in that Partner’s Capital Account except as required by law.

#### **Negative Balance of Capital**

- 6.5 The interest of a Partner in the Partnership will not terminate by reason that there is a negative balance in the Partner’s Capital Account.

#### **Withdrawal and Resignation**

- 6.6 No Limited Partner will have the right to withdraw or resign from the Partnership except as permitted by a Special Resolution.

- 6.7 If a Person voluntarily withdraws or resigns as a Limited Partner pursuant to §6.6, the General Partner will continue to make distributions of Distributable Cash to that Person, as if that Person were still a Limited Partner, up to an amount (the “**Entitlement**”) that represents the aggregate of the balance in that Person’s Capital Account at the time of such withdrawal or resignation and when the Entitlement has been distributed to such Person, that Person will have no further interest in the Partnership and no right to receive distributions of Distributable Cash or repayments of capital or other payments or allocations of any kind whatsoever, but notwithstanding the foregoing, the Special Resolution permitting the withdrawal or resignation may modify the provisions of this §6.7 to permit the repayment of the Entitlement immediately upon such withdrawal or resignation or at some other time. The withdrawal or resignation of such Person will be entered on the Register and the Units held by such Person will be cancelled at the time of such withdrawal or resignation.

## **PART 7**

### **ALLOCATIONS**

#### **Determination of Net Income or Net Loss**

- 7.1 The Net Income or Net Loss of the Partnership for each Fiscal Period will be determined by the General Partner in accordance with generally accepted accounting principles in Canada, consistently applied, and all such determinations will be binding on the Limited Partners.

#### **Allocation of Net Income or Net Loss**

- 7.2 Subject to §11.2(f) and §11.5, the Net Income or Net Loss of the Partnership for each Fiscal Period will be allocated between the General Partner and each of the Limited Partners by the General Partner in a manner consistent with the distribution provisions set out in Part 8 and the adjustment provisions of §11.4(b). In so allocating the Net Income or Net Loss, the General Partner will act reasonably and fairly, taking into account the amount and timing of actual and anticipated distributions to each of the Limited Partners, with a view to ensuring that, over the term of the Partnership, each Limited Partner is allocated a portion of the Partnership’s Net Income that substantially corresponds to the income that is distributed to that Partner.

#### **Computation of Taxable Income or Taxable Loss**

- 7.3 The General Partner will have the right, in computing the Taxable Income or Taxable Loss, to adopt a different method of accounting than required by §7.1, to adopt different treatments of particular items and to make and revoke such elections on behalf of the Partnership and the Limited Partners as the General Partner deems to be appropriate in order to comply with the provisions of any taxing legislation and reflect the terms of this Agreement; provided that the same method or treatment will be adopted and the same elections will be made and revoked in respect of all Limited Partners.

## **Tax Allocations**

- 7.4 Subject to the following sentence, §11.2(f) and §11.5, the Taxable Income or Taxable Loss for a Fiscal Period, its income or loss from a particular source or a source in a particular place and all capital gains and capital losses will be allocated to the Partners in the same proportions as amounts are allocated to the Limited Partners pursuant to §7.2. Amounts recognized as income, gains, losses, deductions or credits of the Partnership for income tax purposes in a fiscal period but not taken into account in §7.2 in such fiscal period will be allocated for income tax purposes among the Limited Partners on the basis on which they would be allocated pursuant to §7.2 as if such amounts were taken into account in computing net income or loss of the Partnership, and the allocation of income, loss, capital gains and capital losses for income tax purposes in subsequent Fiscal Periods will be made taking such prior allocations into account.

## **PART 8**

### **DISTRIBUTIONS**

#### **Distributions of Distributable Cash**

- 8.1 The General Partner will determine the Distributable Cash, being amounts generated by the Partnership, including all amounts otherwise payable to the Partnership (if any), determined by the General Partner to be available for distribution to Partners and not required:
- (a) for working capital of the Partnership; or
  - (b) to pay capital expenditures or other costs or expenses (including operating expenses or fees payable under the Management Agreements) incurred by or on behalf of the Partnership or payable by the Partnership in connection with its business.

#### **Distributions**

- 8.2 The General Partner will, to the extent available and subject to §6.7 and §8.5, distribute to the Partners the amount of Distributable Cash and at the time determined by the General Partner, as follows:
- (a) 0.01% of the Distributable Cash will be distributed to the General Partner, and
  - (b) all other Distributable Cash arising from the Partnership's business will be distributed among the Limited Partners *pro rata* in proportion to their respective Funded Commitments on the last day of the month in respect of which a distribution is made.
- 8.3 Each Partner expressly consents to such distributions.

### **Repayment of Excess Distribution**

- 8.4 If, as determined by the General Partner, a Partner has received a distribution which exceeds the Partner's entitlement, the Partner will forthwith repay to the Partnership the amount thereof upon receipt of notice to that effect from the General Partner and, if the amount is not then repaid, in addition to any other remedies provided under this Agreement, the General Partner may deduct the amount from any subsequent distribution to the Partner.

### **Distribution to Non-Resident**

- 8.5 The General Partner will not be required to make all or any part of a distribution to a Partner who the General Partner reasonably considers not to be resident in Canada within the meaning of the Tax Act, without having obtained a favourable legal opinion from its solicitors that a distribution to the Partner will not adversely affect the other Partners.
- 8.6 A distribution withheld pursuant to §8.5 will be accumulated and held for and on behalf of the Partner, and the General Partner may apply any part of those funds and the income arising from the investment thereof toward the payment of any tax exigible under the Tax Act in respect of those funds or allocations to the Partner.

### **General**

- 8.7 For greater certainty, the General Partner will determine all distributions or allocation of Distributable Cash, Net Income, Net Loss, Taxable Income or Tax Loss on a cumulative basis, and in particular may adjust the amount of any such distribution or allocation to any Partner in a Fiscal Period to eliminate any discrepancy between such distributions or allocations to the Partner calculated on a cumulative basis, and the aggregate of all such distributions or allocations actually made to the Partner in all preceding Fiscal Periods.

## **PART 9**

### **TERM OF PARTNERSHIP**

#### **Commencement of Term**

- 9.1 The Partnership will be formed upon the filing and recording of the Certificate required under the Act.

#### **Term of Partnership**

- 9.2 The Partnership will continue until dissolved by operation of law unless sooner dissolved pursuant to §16.1.

## PART 10

### VALUATION OF THE PARTNERSHIP

#### Valuation Dates

- 10.1 The General Partner will have the power to determine conclusively the Net Asset Value of the Partnership and the Net Asset Value per Unit on each Valuation Date. The Net Asset Value per Unit determined on a Valuation Date will remain in effect until the next time the Net Asset Value per Unit is determined.

#### Net Asset Values

- 10.2 The Net Asset Value per Unit will be the quotient obtained by dividing the Net Asset Value of the Partnership as of the Valuation Date by the total number of Units of the Partnership outstanding at that Valuation Date. The Net Asset Value of the Partnership as of any Valuation Date will equal the market value of the assets of the Partnership as of that Valuation Date, less an amount equal to the total liabilities of the Partnership as of that Valuation Date.

#### Determination of Net Asset Value

- 10.3 The determination of the Net Asset Value of the Partnership will be made on the following bases:
- (a) the value of any mortgage or other real estate backed security will be the fair value thereof determined from time to time in such manner as the General Partner will from time to time provide;
  - (b) the value of any real estate or investment in real estate held directly or indirectly by or on behalf of the Partnership, will be:
    - (i) if the Valuation Date is December 31, then the appraised value as determined by an accredited real estate appraiser retained by the General Partner on behalf of the Partnership, provided that if the appraised value is within 5% of the previous year's value, then the value will be the previous year's value; and
    - (ii) if the Valuation Date is a date other than December 31, then the last appraised value will be adjusted using the capitalization rate set out in the last appraisal, applied to the net operating income of the real estate or investment, as calculated by the General Partner;
  - (c) the value of any cash on hand or on deposit, bills, demand notes, accounts receivable, prepaid expenses, cash dividends received (or to be received and declared to shareholders of record on a date before the date as of which the Net Asset Value of the Partnership is being determined), and interest accrued and not yet received, will be deemed to be the full amount thereof unless the General



Partner will have determined that any such deposit, bill, demand note, account receivable, repaid expense, cash dividend received or interest is not worth the full amount thereof, in which event the value thereof will be deemed to be such value as the General Partner will determine to be the reasonable value thereof;

- (d) the value of any security or other property for which no price quotations are available as above provided, will be the fair value thereof determined from time to time in such manner as the General Partner will from time to time provide; and
- (e) the value of all assets of the Partnership valued in terms of a currency other than Canadian currency and liabilities payable in a currency other than Canadian currency will be translated to Canadian currency at the Bank of Canada noon rate of exchange on the Valuation Date.

### **Liabilities**

10.4 The liabilities of the Partnership will be deemed to include:

- (a) all accounts payable;
- (b) all operating and administrative expenses payable and/or accrued, including but not limited to the fees payable under the Management Agreements;
- (c) all obligations for the payment of money or property, including the amount of any declared but unpaid distributions;
- (d) all allowances authorized or approved by the General Partner for taxes or contingencies; and
- (e) all other liabilities of the Partnership of whatever kind and nature, except liabilities represented by outstanding Units.

## **PART 11**

### **REDEMPTION**

#### **Redemption Initiated by Limited Partner**

- 11.1 Any Limited Partner may deliver to the Partnership on any date (the "**Notice Date**"), a notice (the "**LP Redemption Notice**") requesting that the Partnership redeem some or all of the Units of such Limited Partner, which notice will specify the number of Units which the Limited Partner wishes to redeem. Any LP Redemption Notice, once delivered to the Partnership, will be irrevocable by such Limited Partner.
- 11.2 Subject to §11.3, on a date as determined by the General Partner within 60 days of the receipt of an LP Redemption Notice (a "**Redemption Date**"), the Partnership will redeem Units in accordance with the following terms, as may be amended or supplemented from time to time by the General Partner in its discretion:

- (a) the obligation of the Partnership to redeem Units will be subject to the General Partner determining in its sole discretion that sufficient funds are available to the Partnership for the purposes of redemption;
- (b) the amount payable per Unit in respect of the redemption (the “**Redemption Price**”), which will be the Net Asset Value per Unit as of the last day of the month prior to receipt of the LP Redemption Notice;
- (c) in the case of a LP Redemption Notice given on any date prior to the date that is one year from the date such Limited Partner made its Initial Contribution, unless the General Partner determines otherwise in its sole discretion, the Limited Partner shall pay to the Manager an early redemption fee equal to 2% of the Redemption Price;
- (d) if by any Notice Date, the Partnership has received LP Redemption Notices requesting the Partnership to redeem a number of Units in excess of 10% of the number of Units issued and outstanding on the applicable Notice Date, or if on a Redemption Date the General Partner determines that sufficient funds are not available to pay the Redemption Price of the Units in respect of which LP Redemption Notices have been received, then the redemption of Units will be made pro rata according to the Net Asset Value per Unit of the Units specified on LP Redemption Notices for redemption, and any Units not then redeemed will be given priority for redemption on the next Redemption Date;
- (e) the Partnership will pay the Redemption Price in respect of a LP Redemption Notice within ten business days of the Redemption Date; and
- (f) except for distributions paid to a Limited Partner pursuant to Part 8, notwithstanding §7.2, §7.3 and §7.4, the General Partner will not allocate Net Income, Net Loss, Taxable Income and Taxable Loss to a Limited Partner for a Fiscal Period for Units that have been redeemed by the Limited Partner on any date other than at the end of a Fiscal Period.

11.3 If the General Partner determines in its sole discretion that insufficient funds are available to the Partnership for the purposes of redemption, the Redemption Date will be such date that sufficient funds become available, to be determined by the General Partner.

#### **Redemption Initiated by General Partner**

11.4 The General Partner, on behalf of the Partnership, is entitled, at any time and from time to time, to redeem all or any of the Limited Partner’s Units and pay the Redemption Price for each Unit redeemed by giving written notice to the Limited Partner whose Units are being redeemed (the “**GP Redemption Notice**”). The amount payable per Unit in respect of the redemption will be the aggregate of:

- (a) the Net Asset Value per Unit as of the last day of the month prior to delivery of the GP Redemption Notice; and

- (b) in the case of a redemption other than at the end of a Fiscal Period, plus or minus any adjustment equal to the Net Income or Net Loss for the prior Fiscal Period multiplied by the number of months in the current Fiscal Period that the Limited Partner held the Units divided by 12 (but only to the extent that such resulting Net Income or Net Loss was not reflected in the amount paid pursuant to §11.4(a) or in distributions received by the Limited Partner).
- 11.5 Except to the extent of an adjustment pursuant to §11.4(b) which shall be allocated in a manner consistent with Part 8 and distributions paid pursuant to Part 8 or §11.4(b), notwithstanding §7.2, §7.3 and §7.4, the General Partner will not allocate Net Income, Net Loss, Taxable Income and Taxable Loss to a Limited Partner for a Fiscal Period for Units redeemed by the General Partner that have been redeemed on any date other than at the end of a Fiscal Period.
- 11.6 The General Partner will pay the portion of the redemption price referred to in §11.4 within 30 business days of delivery of a GP Redemption Notice.

#### **Redemption Payment Not Made**

- 11.7 If payment of the amount required to be paid in connection with a redemption of a Unit is not made, all rights attaching to such Unit will revive and continue as if such Unit or fraction of a Unit had not been called for redemption.

#### **Dispute**

- 11.8 In case any question arises as to whether any LP Redemption Notice or GP Redemption Notice has been given as above provided and any deposit referred to below made, such question will be decided by an arbitration conducted in accordance with the *Commercial Arbitration Act* (British Columbia).

#### **Effect of Redemption**

- 11.9 If the Redemption Price has been paid to the Holder of such Unit due for payment, such Unit will cease to be outstanding hereunder.

## **PART 12**

### **MANAGEMENT OF PARTNERSHIP**

#### **Authority of General Partner**

- 12.1 The General Partner may carry on the business of the Partnership, with full power and authority to administer, manage, control and operate the business of the Partnership, and has all power and authority to do any act, take any proceeding, make any decision and execute and deliver, under the seal of the General Partner or otherwise, for and on behalf of and in the name of the Partnership, any instrument, deed, agreement or document necessary for or incidental to carrying out the business of the Partnership.

## **Powers of General Partner**

12.2 Without limiting the generality of §12.1, the General Partner has, in connection with the business of the Partnership, except as expressly provided herein, full power and authority for and on behalf of and in the name of the Partnership to carry out any and all of the business of the Partnership and to perform all acts and enter into and perform all contracts and other undertakings which it deems necessary, advisable or incidental thereto including, the full power and authority, without the specific approval by the Limited Partners:

- (a) to enter into and to perform any agreement in connection with the business of the Partnership, including but not limited to the acquisition of property, both real and personal or in connection with the sale of the Partnership's interest in its property or parts thereof, on such terms and conditions as the General Partner considers appropriate;
- (b) to borrow and obtain loans and advances from time to time, without restriction as to the amount of such borrowings for the purpose of financing the acquisition of property, both real and personal, or the making of investments by the Partnership or for the refinancing of the same, including loans and advances upon the credit of the Partnership, and to incur and to assume and covenant to pay indebtedness, liabilities and obligations of all kinds, to guarantee obligations of, co-covenant with and join in the covenants of, others, whether in respect of the indebtedness, liabilities or obligations of the Partnership or of others, and to raise or secure the repayment thereof, in such manner, upon such terms and conditions, and in all respects as the General Partner thinks fit, and in particular the General Partner may, without limiting the generality of the foregoing;
  - (i) draw, make, accept, endorse, execute, negotiate, issue and deliver bills of exchange, promissory notes, cheques, drafts, orders for payment or delivery of money, receipts, directions, evidences of indebtedness, other negotiable and non-negotiable instruments and bonds, debentures, debenture stock and other debt obligations either outright or as security for any indebtedness, liabilities or obligations of the Partnership or of any other person;
  - (ii) mortgage, pledge, charge, whether by way of specific or floating charge, or give other security on the undertaking and on the whole or any part of the property and assets of the Partnership (both present and future); and
  - (iii) execute and deliver all agreements, instruments and documents relative to the foregoing,
- (b.1) to lend and advance funds to any Person, without restriction as to the amount of such lending;

- (c) to sell or cause to be sold on such terms and conditions as the General Partner deems appropriate in the circumstances, the whole or substantially the whole of the business and undertaking of the Partnership;
  - (d) to provide indemnities or other forms of assurance to third parties in respect of the indebtedness, liabilities or obligations of the Partnership or of any other Person;
  - (e) to open, maintain and close on behalf of and in the name of the Partnership bank accounts and to appoint signing officers from time to time and to make deposits and draw cheques and other orders for the payment of money;
  - (f) to incur and pay all costs, expenses and expenditures of the Partnership;
  - (g) to retain such legal counsel, experts, advisors or consultants as the General Partner deems necessary or advisable and to rely upon their advice;
  - (h) to commence or defend any action or proceeding in connection with the Partnership, its business or its property;
  - (i) to file returns and make all other filings required by any governmental or like authority;
  - (j) to make any election or filing that may be made under the Tax Act or any other taxation or fiscal legislation of any jurisdiction applicable to the Partnership or the Partners including applications for tax identification numbers and tax shelter registration;
  - (k) to enter into the Management Agreements and any other agreement ancillary to the management or operation of the business of the Partnership or any part thereof;
  - (l) to employ all persons necessary for the conduct of the business of the Partnership;
  - (m) to execute, acknowledge and deliver any agreement, instrument or document and to take any other step that the General Partner deems necessary or advisable to effect the power and authority of the General Partner and any and all of the foregoing for and on behalf of and in the name of the Partnership, and
  - (n) to do all other acts and things necessary, incidental or advisable in connection with or for the furtherance of the business of the Partnership.
- 12.3 Any lending or borrowing permitted by this Agreement may be made to or from, as applicable, a Partner, an Affiliate of a Partner, or any other Person.
- 12.4 The General Partner may contract with any Person to carry out any of the duties of the General Partner hereunder and may delegate to that Person any power and authority of

the General Partner hereunder, but no such contract or delegation will relieve the General Partner of any of its obligations hereunder.

### **Execution of Documents**

12.5 Any and all powers of the General Partner may be exercised by the execution and delivery by the General Partner (or an agent or employee designated by it) for and on behalf of and in the name of the Partnership, and under seal or otherwise, of instruments, deeds, agreements or documents in such forms as the General Partner (or an agent or employee designated by it) deems sufficient.

### **Reliance by Third Parties**

12.6 The power of the General Partner to represent the Partnership in dealings with third parties is unrestricted in so far as a third party is concerned, and no person dealing with the Partnership need enquire into the authority of the General Partner to do any act, take any proceeding, make any decision or execute and deliver any instrument, deed, agreement or document for or on behalf of or in the name of the Partnership.

### **Interim Investments**

12.7 The General Partner may invest funds of the Partnership not immediately required for the business of the Partnership in short-term interest bearing deposits and Guaranteed Investment Certificates.

### **Exercise of Powers and Discharge of Duties**

12.8 The General Partner will exercise its powers and discharge its duties under this Agreement honestly, with the utmost fairness and in good faith towards and in the best interests of the Limited Partners and in connection therewith, will exercise the degree of care, diligence and skill that a reasonably prudent person in comparable circumstances would exercise.

### **Transactions with Affiliated Entities and Others**

12.9 The General Partner may, on behalf of the Partnership, enter into and carry out any agreement or transaction with or involving the General Partner (in its own capacity) or an Affiliate of the General Partner if the price, costs and other terms of the agreement or transaction are comparable to the price, costs and other terms of similar agreements or transactions with arm's length parties. Without limitation, each Partner agrees that the Partnership shall be entitled to receive all principal and interest payments on mortgages held by the Partnership, and any Management Agreement may provide that, in addition to the fees payable by the Partnership to the Manager under the Management Agreement, the Manager is entitled to all fees relating to the mortgages and other transactions that the Partnership enters into, including lender, broker, origination, commitment, renewal, extension, discharge, participation, NSF (not sufficient funds), documentation, and administrative fees.

12.10 Nothing in §12.9 will limit the authority of the General Partner to enter into the Management Agreements or to amend this Agreement from time to time as herein provided and nothing in §12.9 will limit the ability of the Manager to pay or agree to pay to a Limited Partner or any other Person all or any portion of the fees paid to the Manager by the Partnership, the General Partner or any Limited Partner pursuant to this Agreement, the Management Agreement or any other agreement or arrangement.

#### **Reimbursement of Expenses**

12.11 The General Partner and/or Manager will be reimbursed by the Partnership for all costs actually incurred in the performance of its duties hereunder, including all appraisal fees, financing commitment fees and closing cost fees including legal fees, consultant reports not provided by affiliates or associates of the Manager, insurance costs, fees, costs and expenses of the Partnership relating to the preparation of financial statements of the Partnership and the auditing thereof, fees, costs and expenses of the Partnership relating to the preparation of the Partnership's tax returns, the Partnership's legal costs and expenses incurred with maintaining the Partnership, a proportionate share of the costs of the maintenance of the General Partner's corporate existence, and all other costs directly incurred for the benefit of the Partnership or the performance of this Agreement and including such portion of the indirect and general and administrative costs of the General Partner as is reasonably allocable to the services rendered by the General Partner under this Agreement.

#### **Commingling of Funds**

12.12 The funds and assets of the Partnership will not be commingled with the funds or assets of any other Person (including those of the General Partner) and will not be used by the General Partner or any of its Affiliates for its own benefit.

### **PART 13**

#### **BOOKS AND RECORDS AND FINANCIAL INFORMATION**

##### **Books of Account**

13.1 The General Partner will keep and maintain at the principal office of the Partnership full, complete and accurate books of account and records of the business of the Partnership.

##### **Access to Information**

13.2 A Partner will not have access to any information of the Partnership which in the reasonable opinion of the General Partner should be kept confidential in the interests of the Partnership.

### **Appointment of Auditor**

- 13.3 The General Partner may, on behalf of the Partnership, engage an auditor to review and report to the Partners upon the financial statements of the Partnership for and as at the end of each applicable Fiscal Period.

### **Annual Report and Income Tax Information**

- 13.4 Within 120 days after the end of each Fiscal Period (except if the Fiscal Period is less than six months), the General Partner will forward reports to each Person who was shown on the Register as a Partner at any time during the Fiscal Period as follows:
- (a) to each Person shown on the Register as a Partner at the end of the Fiscal Period, an annual report for the Fiscal Period containing:
    - (i) audited financial statements of the Partnership as at the end of, and for, the Fiscal Period, prepared in accordance with generally accepted accounting principles consistently applied and in accordance with the provisions of this Agreement, with comparative financial statements as at the end of, and for, the immediately preceding Fiscal Period, containing:
      - (A) a balance sheet; and
      - (B) a statement of income, and
    - (ii) a report on allocations and distributions to Partners; and
    - (iii) subject to §13.2, such other information as, in the opinion of the General Partner, is material to the business of the Partnership, and
  - (b) to each Person shown on the Register as a Partner at the end of or at any time during the Fiscal Period, information concerning the amount of Taxable Income or Tax Loss (to be provided by March 31st of the calendar year following each taxation year for Canadian tax reporting) and credits and charges to the Capital Accounts allocated to that Person in respect of the Fiscal Period and such other information as is necessary to enable that Person to file income tax returns with respect to that Person's Taxable Income or Tax Loss from the Partnership in respect of the Fiscal Period.

## **PART 14**

### **PARTNERSHIP MEETINGS**

#### **Meetings of Partners**

- 14.1 The General Partner may at any time, and will upon receipt of a written request from Limited Partners holding in the aggregate not less than 25% of all Units issued and outstanding specifying the purpose or purposes of the meeting, call a meeting of Partners.



- 14.2 If the General Partner fails to call a meeting of Partners within 21 days after receipt of such a request, any Limited Partner may call the meeting in accordance with the terms hereof.
- 14.3 Meetings will be held in the City of Vancouver, British Columbia, or at such other place as determined by the General Partner, at the time and place set out in the notice.
- 14.4 The expenses of calling and holding a meeting will be for the account of the Partnership.
- 14.5 The Manager must be given the same notice of each meeting as a Partner and may attend all meetings, but neither will have any right to vote on any matter except as a Holder of Units.

#### **Notice**

- 14.6 At least five days' notice (but not more than 45 days' notice) of a meeting of Partners or of a resolution proposed to be passed by the written consent of the Partners pursuant hereto must be given to all Partners stating the time and place of the meeting, if any, and, in reasonable detail (including the subject matter, but not necessarily the text, of any resolution proposed to be passed at the meeting or otherwise), all matters which are to be the subject of a vote at the meeting or for the consent.

#### **Chairman**

- 14.7 The President, or in the absence of the President any officer, of the General Partner will be the chairman of a meeting of Partners if present thereat.
- 14.8 If neither the President nor any officer of the General Partner is present at a meeting of Partners, the Partners will appoint a chairman of the meeting by Ordinary Resolution.

#### **Quorum**

- 14.9 Subject to §14.11, a quorum at a meeting of Partners will consist of not less than two individuals present in person and holding or representing by proxy, in the aggregate, not less than 10% of all Units.
- 14.10 If a quorum is present at the beginning of a meeting, a quorum will be deemed to be present throughout the meeting.

#### **Adjourned Meetings**

- 14.11 If a quorum is not present at a meeting of Partners called by the General Partner within 30 minutes after the time fixed for holding the meeting, the meeting will be adjourned by the chairman of the meeting to a date, not less than 5 and not later than 21 days after the date of the meeting, determined by the General Partner and at a time and place determined by the General Partner.
- 14.12 At least five days' notice of the adjourned meeting must be given to all Partners and the requirements of §14.6 will apply to the notice *mutatis mutandis*.

- 14.13 At the adjourned meeting, the Partners present in person or represented by proxy will form a quorum and may transact the business for which the meeting was originally convened notwithstanding that they hold or represent by proxy, in the aggregate, less than 10% of all Units.
- 14.14 If a quorum is not present at a meeting called or requested by the Limited Partners, the meeting will be dissolved.

#### **Voting Rights of General Partner and its Affiliates**

- 14.15 The General Partner may not, as such, vote at a meeting of Partners but, except as otherwise provided herein, may vote in respect of Units held by it as a Limited Partner in the same manner as any other Limited Partner.
- 14.16 An Affiliate of the General Partner that is a Holder of Units may vote in respect of those Units, except as otherwise provided herein.

#### **Voting**

- 14.17 Except as otherwise provided herein, at all meetings of Partners, each Limited Partner (including the General Partner in respect of Units held by it) may cast one vote for each Unit of which the Limited Partner is the Holder.
- 14.18 Only Limited Partners shown on the Register at the earlier of the time of a meeting and the record date for the meeting, or a Person appointed by such a Partner by proxy, may vote at the meeting.
- 14.19 At all meetings of the Partners:
- (a) on a matter voted on for which no poll is required or requested, a declaration made by the chairman of the meeting as to the vote thereon will be conclusive evidence thereof; and
  - (b) on a matter voted on for which a poll is required or requested, the result of the poll will be deemed to be the vote of the meeting on the matter in respect of which the poll was taken.

#### **Voting on Units' Rights**

- 14.20 At all meetings of Partners a matter presented for a vote that is in respect of the amendment directly or indirectly of the rights of the Holders of Units to allocations and distributions will not be passed and approved except a Special Resolution.

#### **Corporations**

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

### **Attendance of Others**

14.22 Any officer or director of the General Partner, of the Manager, counsel for the General Partner and the Partnership and representatives of the auditor of the Partnership, may attend and speak at a meeting of Partners.

### **Voting**

14.23 Every question submitted to a meeting of Partners:

- (a) which requires a Special Resolution will be decided by a poll; and
- (b) which does not require a Special Resolution will be decided by Ordinary Resolution on a show of hands unless a poll is demanded, either before or immediately after the declaration of the results of a show of hands, in which case a poll will be taken.

14.24 The chairman of a meeting of Partners may vote in respect of Units held by the Chairman or represented by the chairman as proxy but, in the case of an equality of votes, will not have a casting vote.

14.25 A declaration by the chairman of a meeting concerning the result of a vote taken at the meeting will be conclusive.

### **Record Dates**

14.26 The General Partner may from time to time but not more than 26 days before a meeting, cause the Register to be closed for a period of time, not exceeding five days, for the purpose of determining the Holders of Units who may vote at the meeting and the number of votes each may cast.

14.27 A Person who was shown as a Holder of Units at the time so fixed will be treated as a Holder even though the Person has since that record date disposed of those Units, and no Person becoming a Partner after that date will be entitled to receive notice of or to vote at a meeting or any adjournment thereof or to be treated as a Partner of record for any purpose relating to the meeting.

### **Poll**

14.28 At a meeting of Partners:

- (a) a poll requested or required concerning the election of a chairman or an adjournment will be taken immediately on request; and
- (b) a poll requested or required concerning any other matter will be taken at such time as the chairman directs.

### **Resolutions Binding**

- 14.29 A Special Resolution or Ordinary Resolution passed in accordance with this Agreement will be binding on each Partner and each Partner's heirs, executors, administrators, other legal representatives, successors and assigns, whether or not the Partner is present or represented by proxy at the meeting at which the resolution is passed, whether or not the Partner voted against such resolution, and whether or not the Partner received notice of the meeting or a copy of the resolution in writing passed pursuant to this Agreement.

### **Appointment of Proxy and Voting**

- 14.30 A Partner may attend a meeting of Partners personally or may be represented thereat by proxy, and votes at meetings of Partners may be cast on a poll personally or by proxy.
- 14.31 The instrument appointing a proxy must be in writing under the hand of the appointor or the appointor's agent duly authorized in writing, or, if the appointor is not an individual, under its seal or by an officer or agent thereof duly authorized, and will cease to be valid one year after the date thereof.
- 14.32 Any individual may be appointed a proxy, whether or not the individual is a Partner.
- 14.33 No proxy will be voted at a meeting unless it has been placed or deposited with the General Partner for verification before the opening of the meeting.

### **Validity of Proxies**

- 14.34 An instrument appointing a proxy purporting to be executed by or on behalf of a Partner will be valid unless challenged at the time of or before its exercise, and a Person challenging it will have the burden of proving to the satisfaction of the chairman of the meeting at which it is proposed to be used that it is invalid, and a decision of the chairman as to its validity will be final.

### **Revocation of Proxy**

- 14.35 A vote cast in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death, incapacity, insolvency or bankruptcy of the Partner giving the instrument or its revocation unless, before the vote is cast, the chairman of the meeting receives written notice of the death, incapacity, insolvency, bankruptcy or revocation.

### **Form of Proxy**

- 14.36 An instrument of proxy, whether for a specified meeting of Partners or otherwise, will as nearly as circumstances permit be in the following form:

"I, \_\_\_\_\_, of \_\_\_\_\_, in the Province of \_\_\_\_\_ being a Partner of Statesman Capital Secured Mortgage Income Fund Limited Partnership hereby appoint \_\_\_\_\_ of \_\_\_\_\_ in the Province of \_\_\_\_\_ of failing such individual, \_\_\_\_\_ of \_\_\_\_\_ in the Province of \_\_\_\_\_, as my proxy

to attend and vote for me and on my behalf at the meeting of Partners of Statesman Capital Secured Mortgage Income Fund Limited Partnership to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and any adjournment thereof.

As witness my hand this \_\_\_\_ day \_\_\_\_\_, 20\_\_.”

### **Conduct of Meetings**

14.37 The rules and procedures for the conduct of a meeting of Partners not prescribed herein will be determined by the chairman of the meeting.

### **Minutes**

14.38 The General Partner will cause minutes of all proceedings and resolutions at each meeting of Partners, and of all consent resolutions of the Partners, to be made and entered in books to be kept for that purpose and those minutes, when signed by the chairman of the meeting or by the chairman of the next succeeding meeting, will be conclusive of the matters stated in them and the meeting will be deemed to have been duly convened and held and all proceedings and resolutions recorded in them will be deemed to have been duly taken and passed.

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

14.39 In addition to all other powers conferred upon them by this Agreement, the Partners may, by Special Resolution:

- (a) admit a new General Partner to the Partnership in anticipation of the bankruptcy, insolvency, dissolution, liquidation, winding up or removal of the General Partner, such admission to become effective only upon the actual bankruptcy, insolvency, dissolution, liquidation, winding up or removal of the General Partner;
- (b) continue the Partnership if the Partnership is terminated by operation of law;
- (c) agree to any compromise or arrangement by the Partnership with any creditor or creditors or class or classes of creditors, or with the Holders of any shares or securities of the General Partner;
- (d) subject to Part 16, dissolve the Partnership;
- (e) subdivide or consolidate, from time to time, the Units;
- (f) waive any rights under this Agreement;
- (g) subject to Part 17, amend this Agreement;
- (h) amend, modify, alter or repeal any Special Resolution;

- (i) waive any default on the part of the General Partner on such terms as they determine and release it from any claims in respect thereof;
- (j) require the General Partner on behalf of the Partnership to enforce any obligation or covenant on the part of the General Partner or any Limited Partner;
- (k) remove the General Partner pursuant to §15.6; and
- (l) extend the date for termination of the Partnership set out herein.

14.40 The foregoing powers, and any other powers conferred on the Limited Partners by this Agreement, will not be exercised if the exercise thereof would constitute management of the business of the Partnership.

## **PART 15**

### **CHANGE, RESIGNATION OR REMOVAL OF GENERAL PARTNER**

#### **Transfer of Interest of General Partner**

15.1 The General Partner may not Transfer its interest in the Partnership as General Partner except if the Transfer is in connection with and ancillary to a merger or amalgamation of the General Partner resulting in the surviving or continuing corporation or body corporate being the General Partner.

#### **Resignation of General Partner**

15.2 The General Partner may resign as such on not less than 60 days notice thereof to the Limited Partners and the resignation will become effective upon the earlier of:

- (a) the vote of the Limited Partners, by Special Resolution, to continue the Partnership and to the appointment of a new General Partner; and
- (b) the expiry of such 60-day period.

15.3 If no new general partner has been appointed by the time the resignation of the existing General Partner becomes effective, the Partnership will be dissolved pursuant to Part 16.

#### **Bankruptcy or Dissolution**

15.4 The General Partner by agreeing to be bound by this Agreement, will be deemed to resign as the General Partner in the event of the bankruptcy, dissolution, liquidation or winding up of the General Partner (or the commencement of any act or proceeding in connection therewith which is not contested in good faith by the General Partner) or the appointment of a trustee, receiver or receiver-manager of the affairs of the General Partner but the resignation will not be effective until, and the General Partner will not cease to be the General Partner until, the earlier of:

- (a) the admission of a new General Partner to the Partnership by Special Resolution;  
or
  - (b) 180 days after the occurrence of the event or appointment.
- 15.5 If no new General Partner has been admitted to the Partnership by the time the deemed resignation becomes effective, the Partnership will be dissolved pursuant to Part 16.

### **Removal of General Partner**

- 15.6 Subject to this §15.6, the General Partner may be removed as the General Partner by Special Resolution if the resolution also admits a new General Partner to the Partnership as a replacement of the General Partner being removed.
- 15.7 The right of the Limited Partners to remove the General Partner and to admit a replacement therefor will not be effective in any manner unless and until the General Partner has received a notice from Limited Partners holding not less than 10% of all of the Units stating that the General Partner has failed to exercise its powers and carry out its duties as required by this Agreement or under any Material Contract or by law and describing, in general terms, the event giving rise to the failure, and:
- (a) the General Partner has not, within 21 days after it receives the notice, delivered a notice to those Limited Partners denying the existence or continuance of the failure described in their notice; or
  - (b) the General Partner has, within 21 days after it receives the notice, delivered a notice to those Limited Partners denying the existence or continuance of the failure described in their notice, and a single arbitrator has determined that, by reason of that failure, the General Partner has failed to exercise its powers and carry out its duties as required by this Agreement, by a Material Contract or by law in a material respect and, by reason thereof, it is reasonable and justifiable for the Limited Partners to have a lack of confidence in the ability of the General Partner to continue to exercise its powers and carry out its duties as such.
- 15.8 For the purpose of 15.7, either the General Partner after delivering a notice pursuant to §15.7(b), or any Limited Partner after receiving such a notice, may submit the matter for determination by a single arbitrator appointed pursuant to such statute governing arbitration in general as is in force in British Columbia at the time, except that the remuneration to be paid to the arbitrator and the cost of the arbitration will be borne by the Partnership.

### **Transfer of Management**

- 15.9 On the admission of a new General Partner to the Partnership on the resignation or removal of the General Partner, the resigning or retiring General Partner will do all things and take all steps to transfer the administration, management, control and operation of the business of the Partnership and the books, records and accounts of the Partnership to the new General Partner and will execute and deliver all deeds,

certificates, declarations and other documents necessary or desirable to effect the transfer.

#### **Transfer of Title**

15.10 On the resignation or removal of the General Partner and the admission of a new General Partner, the resigning or retiring General Partner will transfer legal title to any property and assets of the Partnership held by the retiring General Partner to the new General Partner and will execute and deliver all transfers, certificates, declarations and other documents necessary or desirable to effect the transfer.

#### **Release**

15.11 On the resignation or removal of a Person as the General Partner, the Partnership will release and hold harmless that Person from all costs, damages, liabilities or expenses suffered or incurred by that Person as a result of or arising out of events occurring in relation to the Partnership after the resignation or removal, other than any wilful act or omission by that Person.

#### **Rights upon Resignation or Removal**

15.12 Upon the resignation or removal of the General Partner, the Partnership will pay to the withdrawing General Partner the Capital Amount of such General Partner at the time of such resignation or removal and such General Partner will have no further interest in the Partnership and no further right to payments or allocations of any kind whatsoever.

#### **New General Partner**

15.13 A new General Partner will become a party to this Agreement by signing a counterpart hereof and by doing so will agree to be bound by all of the provisions hereof and to assume the obligations, duties and liabilities of the General Partner hereunder as and from the date the new General Partner becomes a party to this Agreement.

15.14 Concurrently with admission to the Partnership, a new General Partner will pay as a contribution of capital by the new General Partner to the Partnership the amount of the existing General Partner's Capital Account and such contribution will be reflected in the new General Partner's Capital Account.

### **PART 16**

#### **DISSOLUTION OF PARTNERSHIP**

##### **Events of Dissolution**

16.1 The Partnership will be dissolved on the earliest of:

- (a) December 31, 2100;
- (b) the authorization of its dissolution by Special Resolution;



- (c) the end of the Fiscal Period in which all of the property of the Partnership has been disposed of;
  - (d) the end of 60 days after the General Partner gives notice of resignation pursuant to §15.2 unless, within 60 days after the notice is given, a new General Partner is appointed by the Limited Partners by Special Resolution and is admitted to the Partnership as set forth herein;
  - (e) the end of 180 days after the deemed resignation of the General Partner pursuant to §15.4 unless, within 180 days after the time of the deemed resignation, a new General Partner is admitted to the Partnership as set forth herein; and
  - (f) the date on which the Partnership is otherwise dissolved by operation of law;
- unless all of the Partners elect to continue the Partnership.

### **Events Not Causing Dissolution**

- 16.2 The Partnership will not be dissolved or terminated by the resignation, removal, death, incompetence, bankruptcy, insolvency, dissolution, liquidation, winding up or receivership of, or the admission, resignation or withdrawal of, a Limited Partner.
- 16.3 No Partner will bring an application pursuant to the Act to dissolve the Partnership except pursuant to this Article or except as otherwise permitted by the Act.

### **Receiver**

- 16.4 On dissolution of the Partnership, the General Partner will act as the receiver (the “**Receiver**”) of the Partnership.
- 16.5 If the General Partner is unable or unwilling to act as the receiver, the Partners, by Ordinary Resolution, may appoint an appropriate Person to act as the Receiver.

### **Liquidation of Assets**

- 16.6 The Receiver will:
- (a) prepare or cause to be prepared a statement of financial position of the Partnership, and will forward a copy to each Person who was a Partner at the date of dissolution;
  - (b) wind up the affairs of the Partnership and liquidate all its property in an orderly manner;
  - (c) manage and operate the property of the Partnership (unless then sold) and have all powers and authority of the General Partner under this Agreement; and
  - (d) be entitled to be paid and to recover from the assets of the Partnership for its reasonable fees and disbursements incurred in carrying out its duties as such.

### **Distribution of Proceeds of Liquidation**

16.7 The Receiver will distribute the net proceeds from liquidation of the Partnership:

- (a) first, to pay the expenses of dissolution and liquidation and the debts and liabilities of the Partnership to its creditors or to make due provision for payment thereof;
- (b) second, to provide reserves the Receiver considers reasonably necessary for any contingent or unforeseen liability or obligation of the Partnership which will be paid to an escrow agent to be held for payment of liabilities or obligations of the Partnership; and
- (c) third, to the Partners in the proportions set out in §8.2.

### **Return of Capital**

16.8 Except as provided herein, no Partner will have the right to demand or receive a return of capital in a form other than cash.

16.9 Notwithstanding anything else contained herein to the contrary, where a distribution of Distributable Cash would be charged against the Capital Accounts of Partners, the distribution will not be made unless approved specifically by the General Partner as a distribution from the Capital Accounts.

### **Termination of Partnership**

16.10 The Partnership will terminate when all of its assets have been disposed of and the net proceeds therefrom, after payment of or due provision for the payment of all debts, liabilities and obligations of the Partnership to creditors, have been distributed as provided in this Part 16.

### **Tax Election**

16.11 If on dissolution or termination any asset other than cash is distributed, such distribution will be such as to permit an election to be made under subsection 98(3) of the Tax Act or the then current equivalent thereof and all Partners will join in making such an election.

## **PART 17**

### **AMENDMENTS**

#### **Change of Partners**

17.1 This Agreement may be amended by the General Partner, without notice to or consent of any other Partner, to reflect the admission, resignation or withdrawal of a Partner, or the Transfer by a Partner of all or any part of that Partner's interest in the Partnership, under or pursuant to the terms hereof or of the Act.

### **Amendment with Approval of Limited Partners and General Partner**

17.2 This Agreement may be amended by the General Partner if the amendment is authorized by Special Resolution and does not in any manner allow the Limited Partners to take part in the control or management of the business of the Partnership.

### **Amendment by General Partner**

17.3 The General Partner may, without prior notice to or consent from any Partner, amend this Agreement:

- (a) to add covenants, restrictions or provisions which are for the protection of the Limited Partners as a group and do not derogate from or adversely affect their rights as a group;
- (b) to cure any ambiguity or to correct, amend or supplement any provision hereof which, in the opinion of the General Partner, are necessary or desirable and do not in a material way adversely affect the rights of the Limited Partners as a group; or
- (c) to give effect to any Additional Units issued pursuant to §4.6;

but all Partners will be notified of full details of any amendment to this Agreement under this §17.3 within 30 days after its effective date.

## **PART 18**

### **NOTICE**

#### **Notices**

18.1 To be effective, a notice, communication or demand required or permitted to be given hereunder (each, for the purposes of this Part 18, a "notice") must be in writing.

18.2 A notice or payment required or permitted to be given or made hereunder will be sufficiently given or made for all purposes if:

- (a) delivered personally to the Person or to an officer of the Person to whom it is directed or;
- (b) sent by ordinary first class mail within Canada, postage prepaid, addressed:
  - (i) if to the General Partner to 304 - 2902 West Broadway, Vancouver, British Columbia, V6K 2G8; or
  - (ii) if to a Holder, to the address of the Holder as it appears on the Register.

- 18.3 A notice so sent by mail will be deemed to have been received on the 3rd day after the day on which it is sent or deposited in a regularly maintained receptacle for the deposit of mail.
- 18.4 If there is a disruption, strike or interruption in the Canadian postal service after mailing and before receipt or deemed receipt, notice sent by mail will be deemed to have been received on the 3rd business day after full resumption of the Canadian postal service.
- 18.5 A Holder may change the Holder's address by giving notice of the change to the General Partner and the General Partner may change its address by giving notice of the change to each Limited Partner.
- 18.6 Accidental omission to give a notice within the time required by this Agreement will not affect the validity of the notice.

### **Registered Holder**

- 18.7 Notice will be well and sufficiently given or a document or a distribution or allocation will be duly made or delivered by the Partnership to the first named individual or any Person which is not an individual or a body corporate and the Partnership need give no further notice nor deal with nor recognize any other Holder.

## **PART 19**

### **MISCELLANEOUS**

#### **Strict Performance of Covenants**

- 19.1 A failure of a party to seek redress for a violation of or to insist upon strict performance of any provision hereof will not prevent a subsequent act, which would have originally constituted a violation of that provision or any other provision hereof, from having the effect of an original violation of that provision or any other provision hereof.

#### **Severability**

- 19.2 Each provision of this Agreement is intended to be severable, and if any provision hereof is illegal or invalid, the illegality or invalidity will not affect the validity of the remainder hereof.

#### **Governing Law**

- 19.3 This Agreement and all matters arising hereunder will be governed by and construed in accordance with the laws of British Columbia and, except as otherwise provided herein, all disputes and claims, whether for specific performance, injunction, declaration or otherwise howsoever both at law and in equity, arising out of or in any way connected with this Agreement will be referred to the courts of British Columbia and, by execution and delivery of this Agreement, each party hereto irrevocably submits to such jurisdiction.

**Limited Partner Not a General Partner**

19.4 If a provision of this Agreement has the effect of imposing upon a Limited Partner any of the liabilities or obligations of a general partner, the provision will be of no force and effect.

**Counterparts**

19.5 This Agreement may be executed in any number of counterparts with the same effect as if all parties had all signed the same document, and may be adopted in any subscription or similar instrument signed by a Person who is to become a Limited Partner with the same effect as if the Limited Partner had executed a counterpart of this Agreement.

19.6 This Agreement may be executed and transmitted by facsimile, email or other electronic means and if so executed and transmitted, will be for all purposes as effective as if the parties and delivered and executed an original copy of the Agreement.

19.7 All counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

**Time**

19.8 Time will be of the essence hereof.

**Further Assurances**

19.9 The parties will execute and deliver such further and other documents and perform or cause to be performed such further and other acts as are necessary or desirable in order to give full effect to this Agreement.

**Binding Effect**

19.10 This Agreement will be binding upon and enure to the benefit of the respective heirs, executors, administrators and other legal representatives of the parties and, to the extent permitted hereunder, their respective successors and assigns.

19.11 This Agreement will bind a person who has been a Limited Partner but subsequently ceases to be a Limited Partner to the extent specifically provided herein.

*[Signature Page Follows]*

IN WITNESS WHEREOF this Agreement is executed as of November 29, 2011 as amended and restated December 31, 2012.

*General Partner:*

**STATESMAN CAPITAL CORPORATION**

Per: 

Authorized Signatory

*Initial Limited Partner:*

**MURCHISON PROPERTIES LTD.**

Per: 

Authorized Signatory

*Limited Partners:*

Each person who from time to time becomes a Limited Partner of **STATESMAN CAPITAL SECURED MORTGAGE INCOME FUND LIMITED PARTNERSHIP**, by its agent and attorney, **STATESMAN CAPITAL CORPORATION**

Per: 

Authorized Signatory