

3H PROPERTIES 405 MAIN ST W NO. 1 LIMITED PARTNERSHIP

**3H PROPERTIES 405 MAIN STREET W NO.1
GENERAL PARTNERSHIP INC.**

- and -

**EACH PERSON WHO SUBSCRIBES FOR UNITS AND IS ACCEPTED AS A LIMITED
PARTNER IN THE LIMITED PARTNERSHIP FORMED PURSUANT TO THIS
AGREEMENT**

LIMITED PARTNERSHIP AGREEMENT

May 31, 2021

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THIS LIMITED PARTNERSHIP AGREEMENT made effective as of the 7th day of April, 2021,

BETWEEN:

3H PROPERTIES 405 MAIN STREET W NO.1, a corporation
incorporated under the laws of the Province of Ontario

(the “**General Partner**”)

- and -

EACH PERSON WHO SUBSCRIBES FOR UNITS AND IS ACCEPTED AS A LIMITED PARTNER IN THE LIMITED PARTNERSHIP FORMED PURSUANT TO THIS AGREEMENT

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

WHEREAS:

1. The General Partner and Limited Partners formed a limited partnership to be known as the 3H Properties 405 Main St W No. 1 Limited Partnership (the “**Partnership**”) on May 31, 2021 pursuant to the *Limited Partnership Act* (Ontario) to acquire, own, operate and manage 405 Main Street West, Hamilton, Ontario and other properties.
2. On the date hereof, the Partnership intends to enter into a Subscription Agreement whereby Limited Partners subscribe for interests in the Partnership for \$1.00 per unit, and that the General Partner will cause the Partnership to raise additional funds through the issuance of Partnership units.
3. The General Partner intends to acquire, develop, and operate the Property using funds raised from the issuance of new Partnership units.
4. The Partners have agreed to enter into this Agreement for the purposes of recording the relationship among themselves and their respective rights and duties in the Partnership and the ownership by the Partnership of the Lands and the intended development of the Lands.

NOW THEREFORE, in consideration of the covenants and agreements herein and of other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, unless there is something in the context or subject matter inconsistent therewith:

“**Accountant**” means Taylor Leibow LLP or such other accountant as may be appointed for the Partnership by the General Partner from time to time in accordance with the terms of this Agreement;

“**Act**” means the *Limited Partnership Act* (Ontario), as amended and restated from time to time;

“**Affiliate**” means, in relation to a person, another person that directly, or indirectly through one or more intermediaries, controls or owns, is controlled or owned by, or is under common control or ownership with, such first-mentioned person, where, for purposes of this definition, (i) "control" means the power to direct the management or affairs of a person, (ii) "person" means any partnership, corporation (with or without share capital), limited partnership or individual and (iii) "ownership" and "own" mean the beneficial ownership of more than 50% of the equity interests in a person;

“**Agreement**” means this limited partnership agreement and all schedules attached to this limited partnership agreement, in each case as they may be amended or supplemented from time to time, and the expressions “**hereof**”, “**herein**”, “**hereto**”, “**hereunder**”, “**hereby**” and similar expressions refer to this Agreement;

“**Budget**” has the meaning ascribed thereto in the DMA;

“**Arbitrator**” has the meaning ascribed thereto in Section 13.4;

“**Arm’s Length**” has the meaning ascribed thereto in the Tax Act;

“**Associate**”, “**Associates**” or “**Associated**”, where used to indicate a relationship with any person, means any non-corporate entity or entities (as the case may be), which such person Controls;

“**Business Day**” means any day other than a Saturday, Sunday or a statutory holiday in the Province of Ontario and on which the Land Registry Office for Wentworth (No. 62) is open for business;

“**Change In Control**” means:

- (i) with respect to a corporation, any indirect or direct transfer by sale, assignment, transmission on death, trust, operation of law or otherwise of any shares, interest or voting rights, and any other dealings, including re-organization of the corporation or re-structuring, or any issuance, allotment, subscription, cancellation or redemption of shares or other securities which

would result in any shareholder or group of shareholders other than the person or persons holding the shares of such corporation as of the Effective Date or their respective Related Persons acquiring voting shares of such corporation (whether directly or indirectly), or any person (or group of persons acting in concert) other than the person or persons holding such shares as of the Effective Date or their respective Related Persons otherwise acquiring, directly or indirectly (including through Affiliates), the power to elect a majority of the board of directors of such corporation or otherwise direct the management or affairs of such corporation by obtaining proxies, entering into voting agreements or trusts; and

- (ii) with respect to a limited partnership, any transaction that would result in (A) any change in the composition of the shareholders of the general partner of such limited partnership that would result in any shareholder or group of shareholders other than the person or persons holding such shares as of the Effective Date or their respective Related Persons acquiring voting shares of such general partner (whether directly or indirectly), or any person (or group of persons acting in concert) other than the person or persons holding such shares as of the Effective Date or their respective Related Persons otherwise acquiring, directly or indirectly (including through Affiliates), the power to elect a majority of the board of directors of such general partner or otherwise direct the management or affairs of the general partner or the limited partnership by obtaining proxies, entering into voting agreements or trusts, or acquiring securities or (B) any change in the limited partners of such limited partnership that would result in any limited partner or group of limited partners other than the person or persons holding such limited partnership interests as of the Effective Date or their respective Related Persons acquiring limited partnership interests carrying the right to vote for the removal or replacement of the general partner (whether directly or indirectly), or any person (or group of persons acting in concert) other than amongst the person or persons holding such limited partnership interests as of the Effective Date or their respective Related Persons otherwise acquiring, directly or indirectly (including through Affiliates), the power to remove or replace the general partner by obtaining proxies, entering into voting agreements or trusts or acquiring securities or otherwise;

“City” means the City of Hamilton;

“Class A Unit” means a Class A Limited Partner Unit as provided in section 7.1;

“Class B Unit” means a Class B General Partner Unit as provided in section 7.1;

“Closing Date” means the Effective Date;

“Confidential Information” means:

- (i) information or materials relating to the Partnership or the Development that are not generally known to the public;
- (ii) information or materials, the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership; and
- (iii) any other information or materials which the General Partner or the Partnership are required by law or agreement to keep confidential;

“Contributed Capital” means, at any time, except as otherwise provided herein, with reference to a Limited Partner, the amount of cash or other property contributed by such Limited Partner to the capital of the Partnership from time to time;

“Control” means ownership, directly or indirectly, of such number of shares or other securities of a corporation sufficient to elect the board of directors thereof, or in the case of any non-corporate entity, ownership of interests having a similar degree of control over such entity, all as more specifically detailed in the definition of **“Change in Control”** set out in Section 0; and **“Controlled”** and **“Controls”** shall have corresponding meanings;

“Declaration” means the declaration of limited partnership filed and registered in respect of the Partnership pursuant to the Act, as such declaration is amended and renewed from time to time in accordance with the Act;

“Defaulting Limited Partner” has the meaning ascribed thereto in Section 10.1;

“Designated Limited Partner” has the meaning ascribed thereto in Section 9.2(b);

“Development” means the proposed development and construction on the Lands of a mixed use commercial and mid-rise residential project of 4 storeys or more and the installation of all appropriate services to permit the construction and lease-up of such a property and/or project, to be constructed on the Lands;

“Construction Manager” means NGC Construction, who has been retained by the Partnership to manage and coordinate the obtaining of the development approvals required for the development of the Lands, the servicing of the Lands and the marketing and lease-up of the Non-Residential Component on behalf of, at the cost of, and for the benefit of the Partnership, to manage and coordinate the construction of the Residential Component and the Non-Residential Component on the Lands on behalf of and for the benefit of the Partnership and at the cost of the Partnership, subject to the direction of the Partnership from time to time, and in accordance with the terms of the DMA;

“

“Distributable Cash” means, at any time, the amount, if any, by which Gross Receipts exceeds the sum of: (i) Operating Costs relating to the Development; (ii) any amount deemed by the General Partner, acting reasonably and in good faith, to be necessary at that time as a reserve for Operating Costs relating to the Development or obligations of the

Partnership; and (iii) any amount deemed by the General Partner, acting reasonably and in good faith, to be necessary for capital improvements to the Non-Residential Component;

“DMA” means the development and construction management agreement dated the Effective Date between the Partnership and the Construction Manager wherein the Construction Manager has been retained to manage the obtaining of the approvals for Development, the servicing of the Lands and as more particularly outlined in such development and construction management agreement, to manage and coordinate the construction, marketing and leasing of the Residential Component, and the Non-Residential Component on the Lands on behalf of and for the benefit of the Partnership and at the cost of the Partnership, in accordance with the terms of the DMA.

“Effective Date” means the date hereof;

“Encumbrance” or “Encumbered” means any charge, mortgage, lien, pledge, claim, restriction, security interest or other encumbrance with respect to the Property, whether created or arising by contract, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario;

“Event of Default” in respect of a Limited Partner means:

- (i) the Limited Partner making a transfer of the whole or any part of its Interest contrary to the terms hereof, and such transfer is not unwound or reversed within 20 Business Days of written notice of the occurrence thereof;
- (ii) the Limited Partner failing to observe, perform or keep any of such Limited Partner’s material covenants, agreements or obligations hereunder and such Limited Partner shall not have commenced in good faith to cure such failure within 10 Business Days of written notice, or following such commencement shall not have, within a reasonable time thereafter, having due regard to the nature and extent of such failure, prosecuted to completion, with diligence and continuity, the curing thereof;
- (iii) the Limited Partner having a material part or all of its Interest seized or taken in execution or attachment or by other similar action by any creditor of such Limited Partner and such seizure, taking or attachment is not lifted, terminated or released within 30 Business Days of the occurrence thereof; or such longer period as may be necessary in order to have such seizure, taking, attachment or similar action lifted, terminated or released, provided such Limited Partner is diligently pursuing the rectification of such matter and that the threat of any such taking, seizure, attachment or other similar action is effectively stayed; and
- (iv) the Limited Partner permitting or doing, or omitting to do, anything that results in any steps or proceedings being taken with reference to a material

portion or all of a Limited Partner's Interest by the holder of any Encumbrance thereon for the appointment of a liquidator, receiver, receiver and manager, or trustee in bankruptcy for possession, for sale and/or foreclosure in respect of such Limited Partner's Interest and such Limited Partner shall have failed to have effectively eliminated the threat of such steps or proceedings from thereafter continuing within 30 Business Days after the holder of any such Encumbrance shall have given formal notice of its intention to take such steps and/or to commence such proceedings;

“Event of Insolvency” means:

- (i) an Insolvency Proceeding being instituted by a Limited Partner in regard to such Limited Partner;
- (ii) an Insolvency Proceeding being instituted against a Limited Partner that is not contested in good faith by appropriate proceedings or, if so contested, remains outstanding, un-dismissed and un-stayed for more than 60 days from the institution thereof or such longer period as may be reasonable in the circumstances provided that any such Insolvency Proceeding is effectively stayed or held in abeyance;
- (iii) a Limited Partner making a general assignment for the benefit of its creditors;
- (iv) the admission or acknowledgement in writing by a Limited Partner that it is unable to pay its debts generally or that it is otherwise insolvent; and
- (v) in respect of a Limited Partner, any of the foregoing events in clauses (i) to (iv) occurring in respect of a related shareholder of such Limited Partners;

“Fair Market Value” means the most probable price which a Limited Partner's Interest should bring on the date for determination between a willing seller and a willing buyer, each acting prudently and knowledgeably, and without limiting the generality of the foregoing, the parties or appraisers, as the case may be, in determining such Fair Market Value, shall take into account all relevant factors, including and subject to the matters referred to in Section 12.1;

“Financing” means any loan, credit facility, line of credit, security for deposit and obligations to Tarion, bond, letter of credit or letter of guarantee or any other form of credit availment, secured or unsecured, fixed or non-fixed, revolving or non-revolving, provided to the Partnership by any Arm's Length lender, including a bank, trust company, mortgage investment fund, insurance company, Canada Housing Mortgage Corporation or any non-institutional person (each a **“Financing Lender”**), required at any time and from time to time to fund the expenses of the Development;

“Fiscal Year” means the 12-month period ending December 31 in each year (except the first fiscal year of the Partnership, for which **“Fiscal Year”** means the period from the date hereof to December 31, 2021);

“GAAP” means generally accepted accounting principles and practices applicable to the real estate development industry in Canada and applied on a consistent basis;

“General Partner” means 3H Properties 405 Main Street W No.1 General Partnership Inc., the general partner of the Partnership, or any successor general partner of the Partnership;

“General Partner Unit” means a Class B Unit as provided in section 7.1;

“Gross Receipts” means all cash revenues of the Partnership from and after the Effective Date as determined in accordance with GAAP, including proceeds from the sale of all or any part of the Property, revenues of a capital nature and proceeds from any Financing derived by or on behalf of the Partnership from the ownership and operation of the Property and including:

- (i) all rentals or other moneys earned or received from the leasing of or dealing with the Property or any portion or portions thereof pursuant to any lease, if applicable, including all amounts resulting from the operation of maintenance, escalation, participation and overage clauses;
- (ii) all amounts earned or received as recovery of expenses or for services provided to any tenants or other person with whom the Partnership shall have an arrangement in respect of the Property or any portion or portions thereof;
- (iii) available insurance proceeds received with respect to the Property (except to the extent that such proceeds are retained by any Financing Lender and applied in reduction of monetary obligations outstanding under any Financing or are used to rectify or correct the damage caused by an insured peril);
- (iv) moneys received as a result of expropriation or moneys received in contemplation thereof;
- (v) all amounts earned or received from government grants, except to the extent that such amounts must be allocated directly to a particular expenditure;
- (vi) the sale of all or any part of the Lands; and
- (vii) any interest earned by the Partnership, rebates, and municipal recoveries;

but Gross Receipts shall not include any contributions of Contributed Capital by Limited Partners;

“Improvements” means all services, roads, sidewalks, berms, fencing, landscaping, utilities, buildings, infrastructure and other improvements made to, placed or constructed

upon or located on the Lands or on adjoining lands from time to time necessary to complete the Development of the Lands;

“Indemnified Parties” has the meaning ascribed thereto in Section 3.14;

“Insolvency Proceeding” means a proceeding in bankruptcy, receivership, insolvency, reorganization, liquidation or winding-up instituted in respect of a Limited Partner under the *Bankruptcy and Insolvency Act* (Canada), the *Company Creditors Arrangement Act* (Canada), or the *Winding Up and Restructuring Act* (Canada);

“Interest” means the undivided interest in the Partnership held by a Limited Partner and includes a portion of such interest;

“Lands” means the fee simple interest in the lands, as more particularly described in Schedule A and any additional lands acquired by the Partnership from time to time;

“Limited Partner” means any person who from time to time is admitted to the Partnership as a limited partner or who is admitted to the Partnership as a successor to any Limited Partner, and who is registered as a limited partner on the books and records of the Partnership;

“Limited Partner Unit” means a Class A Unit as provided in section 7.1;

“Management Agreement” means the DMA;

“Material Decision” means:

- (i) the incurring of (A) any debt by the Partnership in connection with the Property, including the terms and conditions of Financing for the Improvements and/or the Development, (B) any obligation on behalf of any person pursuant to any agreement, commitment or understanding, direct or indirect, contingent or otherwise, the practical effect of which is to assure in any way the payment or performance (or payment of damages in the event of non-performance) of any part or all of any indebtedness of such person for borrowed money; provided, however, the selection of the Financing Lenders shall be made solely by the General Partner;
- (ii) the approval of all development and construction schedules, including any material amendments thereto, and budgets, including, the Approved Project Budget as defined in the DMA;
- (iii) the approval of any contracts to construct the Project in excess of \$2,500,000 each;
- (iv) the sale of the Property or any part or parts thereof;
- (v) the lease of any portion of the Non-Residential Component or the Residential Component to an Affiliate of the General Partner;

- (vi) engaging in any business transaction, including loans, payments, or contractual relationships, with persons that do not act at Arm's Length to a Limited Partner;
- (vii) entering into, amending or terminating the DMA;
- (viii) replacing, removing, or appointing the General Partner, as provided in Section 4.4;
- (ix) waiving any breach of this Agreement by the General Partner;
- (x) approving a settlement of an action against the General Partner as a result of a breach of its duties hereunder;
- (xi) creating and/or issuing any other interests in the Partnership;
- (xii) amending, modifying, altering or repealing any Material Decision previously made by the Limited Partners; and
- (xiii) admitting any additional Limited Partners who is not a Permitted Transferee in accordance with Section 3.2(e) hereof.

“Net Income” or “Net Loss” means, in respect of any fiscal period, the net income or net loss of the Partnership, respectively, in respect of such period as determined by the General Partner in accordance with GAAP;

“Non-Defaulting Limited Partner” has the meaning ascribed thereto in Section 10.1;

“Non-Qualified Partner” means a Partner who is:

- (i) a “non-resident”, “tax shelter”, “tax shelter investment” or any entity, an investment in which would be a “tax shelter investment” within the meaning of the Tax Act;
- (ii) a partnership which is not a “Canadian partnership” within the meaning of the Tax Act; or
- (iii) a partnership which does not prohibit investments by the persons named in Sections 1.1(i) or 1.1(ii);

“Non-Residential Component” means the commercial/retail area built on the ground floor and any related parking spaces and/or storage spaces within the Project (as determined during Development design approval) which are exclusively for use of the Non-Residential Component;

“Note Distribution” shall have the meaning ascribed thereto in Section **Error! Reference source not found.**;

“Notice of Arbitration” has the meaning ascribed thereto in Section 13.4;

“Operating Costs” means, at any time, the aggregate of all costs, charges and expenses, whether on account of capital or income, paid or prepaid during such period by or on behalf of the Partnership relating in any way to the Partnership;

“Partners” means the General Partner and the Limited Partners, and **“Partner”** means any of them;

“Partnership” has the meaning ascribed thereto in the recitals of this Agreement;

“Permission” has the meaning ascribed thereto in Section 9.1(b);

“Permitted Transferee” has the meaning ascribed thereto in Section 9.2;

“person” includes any natural person, corporation, partnership, limited partnership, limited liability company, firm, joint venture, co-venture, association, bank, trust company, government, political subdivision, governmental agency, board, commission or authority, trust or any other legal entity;

“Power of Attorney” has the meaning ascribed thereto in Section 3.10(a);

“Pre-Construction Costs” means all costs and expenses incurred by or on behalf of the Partnership in connection with the Development prior to the Effective Date, including legal fees and disbursements and those incurred by the General Partner as set out in Schedule B attached hereto;

“Prime Rate” means the rate of interest per annum announced from time to time by the Royal Bank of Canada as the reference rate of interest to determine rates of interest charged by such bank for moneys borrowed from it by commercial borrowers in Toronto in Canadian dollars and which it refers to as its “prime rate”, as such rate may be changed from time to time;

“Prohibited Transfer” has the meaning ascribed thereto in Section 9.1;

“Property” means the aggregate of and any one or more of the Lands, the Improvements, the Development in connection with the Lands from time to time and all other property and assets of the Partnership;

“Proportionate Share” means, at any time with reference to a Limited Partner or the General Partner, the proportion which the Net Asset Value of Units held by the Limited Partner or General Partner at such time as recorded in the Register is of the total Net Asset Value of the Partnership multiplied by 100%.

“Purchase Notice” has the meaning ascribed thereto in Section 11.1(a);

“Register” means the register of Limited Partners maintained by the General Partner pursuant to the Act and the terms hereof;

“Registrar” has the meaning attributed thereto by the Act;

“Related Person” means, in relation to any person, any one or more of:

- (i) in relation to any person who is an individual, any person to whom that person is married or living in a marriage-like relationship;
- (ii) the natural born and legally adopted children of any person who is an individual and all natural born or legally adopted descendants of such children;
- (iii) a trust, the sole beneficiaries of which are any person or persons specified in any one or more subsections of this definition; and
- (iv) a corporation, partnership, limited partnership or other person, all of the voting securities or other ownership interests of which are owned by any person or persons specified in any one or more subsections of this definition;

“Required Funds” means all funds required to discharge the obligations of the Partnership as they come due, satisfy the equity requirements of any Financing Lender or are otherwise required with respect to the Project as a consequence of cost overruns, or operating shortfalls;

“Residential Component” means the residential component of the proposed mid-rise building with ancillary amenity areas and parking, lockers, super’s suite, administration offices, and other related facilities to be constructed on the Lands;

“Sale Price” means, in respect of any Interest, at any time, the Fair Market Value of such Interest at such time as determined in accordance with Article 12;

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

“Taxable Income” or **“Tax Loss”** means, in respect of any Fiscal Year, the amount of income or loss (including capital gains and capital losses) of the Partnership, respectively, for such Fiscal Year as determined by the General Partner in accordance with this Agreement, the Tax Act and any applicable provincial income tax legislation;

“transfer” has the meaning ascribed thereto in Section 9.1;

“Transfer Documents” has the meaning ascribed thereto in Section 11.2(b);

“Transferor” has the meaning ascribed thereto in Section 9.2; and

“Winding-Up Event” has the meaning ascribed thereto in Section 15.1.

1.2 Headings

The division of this Agreement into articles, sections and subsections and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction

or interpretation hereof. Unless otherwise indicated, any reference in this Agreement to an article, section or subsection refers to the specified article, section or subsection of this Agreement.

1.3 Interpretation

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

- (a) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (b) the word “including” shall mean “including without limitation” and shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;
- (c) any reference to a statute shall mean the statute in force as of the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) accounting terms shall be construed in accordance with Canadian generally accepted accounting principles, consistently applied;
- (e) any reference to an entity (including a partnership) shall include and shall be deemed to be a reference to any entity that is a successor of such entity; and
- (f) any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applied in the interpretation of this Agreement.

1.4 Currency

Except where otherwise expressly provided, all amounts expressed in this Agreement in terms of money are references to the lawful currency of Canada.

1.5 Calculation of Time

Whenever any payment to be made hereunder shall be stated to be due, any period of time shall be stated to begin or end hereunder, any calculation shall be stated to be made hereunder or any other action to be taken hereunder shall be stated to be required to be taken on or as of a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculation shall be made or such action shall be taken on or as of the next succeeding Business Day, and in the case of the payment of any monetary amount on which interest is payable pursuant to the terms of this Agreement, the extension of time shall be included for the purposes of computation of such interest.

1.6 Schedules

The following are the schedules annexed hereto which are incorporated by reference and deemed to be part hereof:

Schedule “A” - Legal Description of Property

ARTICLE 2 THE PARTNERSHIP

2.1 Formation of the Partnership

The parties agree that the Partnership was formed and commenced as of the date of the filing of the Declaration and shall continue until the date on which the Partnership is dissolved in accordance with this Agreement, and the Act. The rights and obligations of the Limited Partners shall be as provided in the Act except as herein otherwise expressly provided.

2.2 Name of the Partnership

The Partnership shall carry on business under the name **“3H Properties 405 Main St W No. 1 Limited Partnership”** or such other name or names as the General Partner may determine from time to time.

2.3 Maintaining Status of the Partnership

The General Partner confirms that it has caused to be executed and filed such declarations, instruments and documents as may be required to form the Partnership as a limited partnership under the laws of the Province of Ontario. The General Partner shall file on a timely basis whenever required, any amendment to the Declaration and shall do all things and cause to be executed and filed such certificates, declarations, instruments, and documents, and shall amend the Register in such manner, as may be required under the laws of the Province of Ontario and the laws of any other province having jurisdiction in which the Partnership may carry on business to reflect the constitution of the Partnership. The General Partner and each Limited Partner shall execute and deliver as promptly as possible any documents that may be necessary or desirable to accomplish the purposes of this Agreement or to give effect to the formation and continuance of the Partnership under all applicable laws. The General Partner shall take all necessary actions based on the information available to it to maintain the status of the Partnership as a limited partnership under the Act. The General Partner shall take every reasonable action necessary to preserve the limited liability of the Limited Partners and shall not take any action which, or omit to take any action the omission of which, could reasonably be expected to jeopardize the limited liability of the Limited Partners.

2.4 Purposes of the Partnership

The Partnership has been formed to:

- (a) acquire, own, develop, market, and lease, if applicable, the Residential Component and the Non-Residential Component of the Property;

- (b) finance or re-finance the Property in accordance with this Agreement;
- (c) engage in such other activities as are reasonably incidental to the foregoing; and
- (d) construct the Improvements and carry out the Development of the Lands.

2.5 Head Office and Mailing Addresses

The Partnership shall maintain its head office and mailing address and the General Partner shall maintain its registered office and mailing address at 594 Aberdeen Ave, Hamilton Ontario L8P 2T1. The General Partner may change the head office or any mailing address of the Partnership and the registered office or any mailing address of the General Partner from time to time, provided that the General Partner shall notify the Limited Partners of such change in writing within 15 days thereof.

2.6 Term

The Partnership shall continue until the date on which the Partnership is dissolved in accordance with this Agreement and the Act.

2.7 Status of General Partner

The General Partner represents, warrants, and covenants to each Limited Partner that it:

- (a) is and shall continue to be (i) a corporation duly incorporated and existing under the laws of the Province of Ontario or such other jurisdiction under which the General Partner may continue or under which a successor to the General Partner may be incorporated or may continue, and (ii) duly registered to carry on business in the Province of Ontario;
- (b) has and shall continue to have the appropriate capacity and corporate authority to act as the general partner of the Partnership and to perform its obligations under this Agreement and that such obligations do not and shall not conflict with or constitute a default under its articles or any agreement by which it is bound;
- (c) is not and shall continue not to be a Non-Qualified Partner; and
- (d) will make commercially reasonable efforts to ensure that an acknowledgement substantially in the form set out below is inserted in any agreement to which the Partnership is a party or to which it is or may be bound:

“The parties hereto acknowledge that 3H Properties 405 Main St W No. 1 Limited Partnership (the “Partnership”) is a limited partnership formed under the laws of the Province of Ontario. The parties hereto acknowledge that the obligations of the Partnership shall not be personally binding upon, nor shall resort be had to, the property of any of the limited partners of the partnership, their heirs, executors, administrators and other legal representatives,

successors and assigns, and that resort shall only be had to the property of the Partnership, or the property of its general partner, 3H Properties 405 Main Street W No.1 General Partnership Inc.”

The representations, warranties and covenants made pursuant to this Section 2.7 shall survive the execution of this Agreement.

2.8 Status of Limited Partners

Each Limited Partner represents and warrants to the other Limited Partner and to the General Partner that they or it:

- (a) are not a Non-Qualified Partner;
- (b) has not borrowed on a line of credit, demand loan or otherwise incurred any debt to purchase any Interest, where such debt would constitute a “limited-recourse amount” within the meaning of the Tax Act;
- (c) if an individual, has attained the age of majority and has the legal capacity and competence to enter into and be bound by this Agreement and all other agreements contemplated hereby and to take all actions required pursuant hereto and thereto; and
- (d) if a corporation, body corporate, partnership, trust, unincorporated association, or other legal entity, has the legal capacity and competence to enter into and be bound by this Agreement and all other agreements contemplated hereby and to take all actions required pursuant hereto and thereto and it further certifies that all necessary approvals of directors, shareholders, partners, trustees, members or otherwise have been given in connection herewith and therewith.

2.9 Covenant of Limited Partners

Each Limited Partner covenants and agrees that it shall not change its status as represented and warranted in Section 2.8, shall promptly provide evidence of such status to the General Partner upon request and shall not transfer or purport to transfer any of its Interest to any person which would be unable to make the representations and warranties set out in Section 2.8. The representations, warranties and covenants made pursuant to Sections 2.8 and 2.9 shall survive execution of this Agreement.

2.10 Limited Partner Becoming Non-Qualified Partner

All the Interest of a Limited Partner who becomes a Non-Qualified Partner shall be deemed to have been purchased for cancellation by the Partnership immediately prior to the time at which the Limited Partner became a Non-Qualified Partner. On any such purchase by the General Partner, the price shall be Ninety Percent (90%) the Sale Price of the Interest cancelled (the “**Cancellation Price**”). The cost of determining the Sale Price shall be borne by the Limited Partner whose Interest is purchased by the Partnership and may be deducted from the Cancellation Price together with any other expenses incurred in connection therewith. The balance of the Cancellation Price

shall be payable by the Partnership no later than 220 days after the date on which the Interest was purchased for cancellation. Notwithstanding the foregoing, the Partners acknowledge and agree that the General Partner may allocate Taxable Income or Tax Loss for the purposes of the Tax Act and any applicable provincial taxing authority to such Non-Qualified Partner in any manner which the General Partner deems advisable or appropriate.

2.11 Partner Becoming Financial Institution

A Limited Partner who is or becomes a “financial institution” within the meaning of the Tax Act may be required to sell its Interest and must notify the General Partner in writing of its intention to become a financial institution. The General Partner may require those Limited Partners who are or become financial institutions to transfer all or portion of their Interest. If a financial institution Limited Partner fails to transfer its Interest to a person who qualifies to hold the Interest under the terms of this Agreement within 15 days of receipt of Notice to such financial institution Limited Partner to so transfer its Units, the General Partner shall be entitled to sell such Interest on behalf of such Limited Partner on such terms and conditions as it deems reasonable and may itself become the purchaser of such Interest. On any such sale by the General Partner, the price shall be the Cancellation Price. The cost of determining the Sale Price shall be borne by the financial institution Limited Partner whose Interest is sold by the General Partner and may be deducted from the proceeds of such sale, together with any other expenses incurred in connection therewith. Notwithstanding the foregoing, the Partners acknowledge and agree that the General Partner may allocate Taxable Income or Tax Loss for the purposes of the Tax Act and any applicable provincial taxing authority to such financial institution Limited Partner in the year in which the financial institution Limited Partner ceases to be a Limited Partner in any manner which the General Partner deems advisable or appropriate.

2.12 Right of Rescission

The General Partner reserves the right to rescind the issuance or transfer of an Interest to any person who cannot make the representations and warranties set out in Section 2.8 or who is a “financial institution” within the meaning of the Tax Act.

2.13 Compliance with Laws

Each Limited Partner shall, on request by the General Partner, promptly execute all certificates, declarations, instruments, and documents necessary to comply with any law or regulation of any jurisdiction in Canada regarding the formation, continuance, operation, or dissolution of the Partnership and regarding the maintenance of the limited liability of the Limited Partners.

2.14 Limitation on Authority of Limited Partners

No Limited Partner shall:

- (a) take part in the management of the business of the Partnership or transact any business on behalf of the Partnership;
- (b) execute any document or take any action pursuant to which it purports to bind the Partnership, the General Partner or any other Limited Partner as such;

- (c) hold itself out as having the power or authority to bind the Partnership, the General Partner or any other Limited Partner as such;
- (d) have any authority to undertake any obligation or responsibility on behalf of the Partnership; or
- (e) bring any action for partition or sale in connection with any assets of the Partnership, whether real or personal, or register or permit any lien or charge to be filed or registered or remain undischarged against the Interest of such Limited Partner or any assets of the Partnership in respect of such Limited Partner's Interest, other than as specifically provided for in this Agreement.

Limited Partners shall comply with the Act and shall not take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership.

2.15 No Fiduciary

Each Limited Partner shall have the free and unrestricted right, independent of the other Limited Partners to engage in and to receive the full benefits of any endeavour of any sort whatsoever whether or not competitive with the endeavours contemplated herein, all without consulting the other Limited Partners or inviting or allowing the other Limited Partners to participate therein. None of the Limited Partners shall be under any fiduciary or other duty to the other Limited Partners which would prevent them from engaging in endeavours in competition with those contemplated by this Agreement. The legal doctrines of "corporate opportunity" or "business opportunity" sometimes applied to co-tenancies, co-owners, partners or directors or to persons having a fiduciary relationship shall not apply to any other such endeavour of any of the Limited Partners, and none of the Limited Partners or any shareholder thereof shall be accountable to the Partnership or to the other Limited Partners in respect of any such endeavour in any manner whatsoever, even if it competes with the endeavours contemplated by this Agreement or appropriates a "corporate opportunity" or "business opportunity".

2.16 Confidentiality

- (a) Each Limited Partner shall keep confidential and not disclose any information and materials regarding the Partnership and the Property in such Limited Partner's possession (whether or not such information or materials have been designated by the General Partner as Confidential Information) except to the extent:
 - (i) the disclosure of such information or materials is required by law;
 - (ii) the information or materials were previously known to such Limited Partner;
 - (iii) the information or materials were previously in the public domain or become publicly known except through the actions or omissions of such Limited Partner;

- (iv) the information was lawfully in the possession of such Limited Partner prior to the receipt thereof from the General Partner or was developed independently by such Limited Partner; or
 - (v) the information was disclosed by the General Partner to any person without confidentiality restrictions.
- (b) In the event any Limited Partner is required by law to disclose any Confidential Information, such Limited Partner shall promptly notify the General Partner in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure and shall cooperate with the General Partner to preserve the confidentiality of such information consistent with applicable law.

ARTICLE 3 MANAGEMENT OF THE PARTNERSHIP

3.1 Powers of the General Partner

Subject to any limitation set out elsewhere in this Agreement such as Material Decisions and to the limitations provided for in the Act, the General Partner has full power and exclusive authority for and on behalf of the Partnership to manage, conduct, control, administer and operate the business and affairs of the Partnership and shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business of the Partnership described in this Agreement and for the protection and benefit of the Partnership and the Partners.

3.2 Specific Powers of the General Partner

Without limiting the generality of Section 3.1, subject to the Act and this Agreement (including Section 3.8), the General Partner has the power and authority for and on behalf of the Partnership to:

- (a) acquire, own, manage, administer, convert, develop, operate, exchange, sell or otherwise transfer, dispose of or otherwise deal with, any and all assets of the Partnership or any part thereof as may be necessary, convenient or beneficial for the Partnership;
- (b) hold all assets of the Partnership in its name as general partner of the Partnership, whether disclosed or undisclosed;
- (c) borrow money and issue evidences of indebtedness, to refinance the indebtedness, and to secure the same by mortgages, deeds of trust, security interests, pledges or other liens on all or any part of the assets of the Partnership, to enter into contracts of guaranty or suretyship;
- (d) secure, maintain and pay for insurance against liability or other loss with respect to the activities of the Partnership or the Property;

- (e) employ or retain such persons as may be necessary or appropriate for the conduct of the Partnership's business, including agents, advisors, consultants and contractors, and permanent, temporary or part-time employees;
- (f) engage such counsel, accountants, auditors, experts and such professional or other consultants as the General Partner considers advisable in order to perform its duties hereunder;
- (g) open and operate one or more bank accounts, with full and exclusive signing authority on behalf of the Partnership, in order to deposit, disburse and distribute funds of the Partnership;
- (h) incur expenses and enter into, perform and carry out contracts or commitments of any kind, assume obligations and execute, deliver, acknowledge and file documents in furtherance of the purposes and business of the Partnership;
- (i) invest funds not immediately required for the business and affairs of the Partnership in a reasonably prudent manner;
- (j) pay all taxes, fees and other expenses relating to orderly maintenance and management of the business of the Partnership, from time to time;
- (k) act on behalf of the Partnership with respect to any and all actions or other proceedings brought by or against the Partnership and pay, collect compromise, arbitrate or otherwise adjust, contest or settle any and all claims or demands of or against the Partnership;
- (l) prepare and file all tax returns, information returns, elections, determinations and designations under the Tax Act or any other taxation statute or other legislation of like import of Canada or any of the provinces or other jurisdictions as are necessary or advisable on behalf of both the Partnership and the Limited Partners in respect of the affairs of the Partnership;
- (m) execute and file with any governmental body any documents necessary or appropriate to be filed in connection with the business of the Partnership or in connection with this Agreement;
- (n) execute any and all deeds, documents and instruments and to do all other acts as may be necessary or desirable to carry out the business and affairs of the Partnership;
- (o) apply any contributions of capital to the Partnership in the manner described in this Agreement;
- (p) distribute the assets of the Partnership in accordance with this Agreement; and
- (q) engage in any kind of activity and to enter into and perform obligations of any kind necessary to or in connection with, or incidental to, the accomplishment of the

purposes and business of the Partnership, so long as the activities and obligations may be lawfully engaged in or performed by a limited partnership under the Act.

3.3 Authority of the General Partner

No person dealing with the Partnership is required to enquire into the authority of the General Partner to take any action or to make any decision on behalf of and in the name of the Partnership.

3.4 Covenants of the General Partner

The General Partner covenants with each Limited Partner that it shall:

- (a) act with the utmost fairness and good faith towards the Limited Partners in the business of the Partnership;
- (b) devote such time as is necessary for the prudent carrying on of the management, control, administration, and operation of the undertaking, business, affairs, properties and assets of the Partnership;
- (c) exercise its powers and authorities hereunder and manage and operate the Partnership and the undertaking, properties and assets thereof in a reasonable and prudent manner;
- (d) not carry on any business or activity other than in connection with and in furtherance of its role as general partner as set forth herein and in the Act;
- (e) not borrow from the Partnership;
- (f) not commingle the funds of the Partnership with the funds of the General Partner or any other person;
- (g) maintain its status as an existing corporation;
- (h) not become a Non-Qualified Partner;
- (i) notify the Limited Partners in writing forthwith upon becoming aware of any steps or proceedings relating to the bankruptcy, assignment for the benefit of creditors generally, dissolution, liquidation, winding-up, or appointment of a receiver, manager or receiver and manager of the General Partner;
- (j) file on behalf of the Partnership the partnership information return (or any other filing requirements under the Tax Act) required to be filed under the Tax Act or the regulations to the Tax Act in prescribed form and within the prescribed time; and
- (k) not exercise its rights as set out in Section 3.2 if such exercise involves a Material Decision that has not been approved by the Limited Partners in accordance with Section 3.8.

3.5 Exercise of Powers and Discharge of Duties

The General Partner shall exercise its powers and discharge its duties under this Agreement honestly, in good faith and in the best interest of the Partnership and of the Limited Partners as a group and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent manager of a business similar to that of the Partnership would exercise in comparable circumstances.

3.6 Reimbursement for Costs and Expenses

The General Partner is entitled to reimbursement from the Partnership for all reasonable costs and expenses that are incurred by the General Partner on behalf of the Partnership in the ordinary course of business or other costs and expenses incidental to acting as general partner of the Partnership so long as the General Partner is not in default of its obligations hereunder in connection with such costs and expenses.

3.7 Insurance

The General Partner, at the expense of the Partnership, shall at all times maintain or cause to be maintained liability and other insurance ordinarily maintained by persons carrying on business similar to that of the Partnership in such amount as is deemed by the General Partner to be prudent in the circumstances.

3.8 Approval of Material Decisions

Each Material Decision, and any other decision to which this Section 3.8 expressly applies, shall require a simple majority of Partners.

3.9 Amendment of Agreement

This Agreement may only be amended by an instrument in writing executed by all the parties hereto.

3.10 Power of Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner, and any successor to the General Partner under the terms of this Agreement, as its true and lawful attorney and agent (the “**Power of Attorney**”), with full power and authority in its name, place and stead to execute, ratify, swear to, acknowledge, confirm, deliver, file and/or record in the appropriate public offices in any jurisdiction which the General Partner considers appropriate any and all of:
 - (i) this Agreement and any amendment, change or modification thereto, all declarations and other instruments necessary or appropriate to qualify, or to continue the qualification of, the Partnership as a limited partnership in the Province of Ontario and each other jurisdiction where the Partnership may conduct business;

- (ii) all instruments and certificates necessary or appropriate to reflect any amendment, change or modification of the Partnership in accordance with the terms of this Agreement;
 - (iii) any documents necessary or appropriate to be filed in connection with the business of the Partnership or in connection with this Agreement;
 - (iv) all elections, determinations, designations, forms or other documents or instruments under the Tax Act or any other taxation or other legislation or laws of like import in respect of the affairs of the Partnership or of the Interests, including any elections, determinations, designations, forms or other documents or instruments associated with the acquisition, financing or disposition of any Property; and
 - (v) all conveyances and other instruments or documents necessary to reflect the liquidation and dissolution of the Partnership, including cancellation of any declarations.
- (b) The Power of Attorney is given for valuable consideration received by each Limited Partner from the General Partner, is hereby declared by each Limited Partner to be an irrevocable power coupled with an interest, shall survive the death, disability, or bankruptcy of such Limited Partner and shall extend to and bind the heirs, executors, administrators, successors and assigns of such Limited Partner.
- (c) Each Limited Partner hereby releases the General Partner from all liability of any kind that may arise in consequence of any act or omission of the General Partner pursuant to the Power of Attorney, so long as the General Partner exercises its authority thereunder in good faith.
- (d) The Power of Attorney becomes effective on the date hereof and shall continue in respect of the General Partner so long as it is the general partner of the Partnership, and shall terminate thereafter, but shall continue in respect of a new general partner as if the new general partner were the original attorney. The Power of Attorney is in addition to any other power of attorney granted by the Limited Partner in connection with its Interest. The Power of Attorney shall survive the granting of any subsequent power of attorney by the Limited Partner.

3.11 Income Tax Claims and Deductions

The General Partner shall cause the Partnership to claim the maximum amount allowable in each Fiscal Year for income tax purposes in respect of capital cost allowance and other discretionary deductions under the Tax Act.

3.12 Transactions Involving Affiliates

The General Partner may employ or retain an Affiliate of the General Partner on behalf of the Partnership to provide goods or services to the Partnership, provided that the cost of such goods

or services is reasonable and competitive with the cost of similar goods or services provided by an independent third party.

3.13 Safekeeping of Assets; Title to Property

The General Partner is responsible for the safekeeping and use of all funds and assets of the Partnership, whether or not in its immediate possession or control and will not employ or permit another person to employ such funds or assets except for the exclusive benefit of the Partnership and in trust therefor. The General Partner hereby declares that title to all property and assets of the Partnership now or hereafter held by it or by its nominee is held for the benefit of the Partnership. The General Partner will execute additional declarations and instruments in favour of the Partnership in respect thereof and cause such declarations or instruments to be delivered, filed, or registered whenever and wherever the General Partner considers the same advisable or necessary for the protection of the interests of the Partnership.

3.14 Indemnity of the General Partner

- (a) The Partnership will indemnify and hold harmless the General Partner and its Affiliates, shareholders, employees and agents (collectively, the “**Indemnified Parties**”) from and against any losses, costs, expenses, liabilities and damages (including reasonable legal fees and disbursements) incurred by the General Partner by reason of acts, omissions or alleged acts or omissions arising out of the activities of the General Partner on behalf of the Partnership or in furtherance of the interest of the Partnership, but only if the acts, omissions or the alleged acts or omissions in respect of which any actual or threatened action, proceeding or claim are based, were: (i) performed in good faith and were not performed or omitted in wilful breach of this Agreement, fraudulently, in bad faith or as a result of the wilful misconduct or gross negligence of the Indemnified Parties, or any of them; (ii) performed or omitted as a result of reliance on the opinion or advice as to legal matters of legal counsel or as to accounting matters of the Accountant, in each case selected or retained by an Indemnified Party, or any of them, with reasonable care; or (iii) performed or omitted by an agent, contractor or consultant selected or retained by an Indemnified Party, or any of them, with reasonable care.
- (b) The Partnership will further indemnify and hold harmless each of the Indemnified Parties for any loss or damage incurred by such Indemnified Party in connection with the Partnership’s activities, including loss or damage incurred by an Indemnified Party who is a Limited Partner, to the extent that such Indemnified Party is deemed to have taken part in the management and control of the Partnership, except for any liability, loss or damage resulting from such Indemnified Party’s fraud, gross negligence or wilful misconduct.
- (c) The indemnification herein provided for shall be made from the assets of the Partnership and no Limited Partner shall be personally liable therefor.

3.15 Payments on behalf of Partnership

The General Partner shall pay or cause to be paid out of the funds of the Partnership on hand or borrowed for the purpose of the Partnership's business, costs, or expenses as and when they become due.

3.16 Liability of the General Partner

The General Partner shall not be liable to the Limited Partners for any mistakes or errors in judgment, or for any act or omission believed by it in good faith to be within the scope of the authority conferred by this Agreement (other than an act, omission or error in judgment that is in wilful contravention of this Agreement or that is a result of gross negligence or wilful misconduct), or for any loss or damage to any of the property or assets of the Partnership attributable to an event beyond the control of the General Partner or its Affiliates.

3.17 Compensation of the General Partner

The General Partner shall invoice the Partnership for any salary expenses, including related expenses typical for an employer, for the principals of the General Partner. In consideration for the General Partner's covenants herein, and for the performance of its duties, the General Partner shall be issued a 35% interest in the Partnership as Class B Units of the Partnership on a fully diluted basis. The General Partner shall be issued additional Class B Units for nominal value in conjunction with any subsequent subscription for Class A Units by Limited Partners, such that the General Partner's Proportionate Interest shall be 35%.

ARTICLE 4 RESIGNATION OF THE GENERAL PARTNER

4.1 Resignation of the General Partner

The General Partner shall not sell, assign, or otherwise dispose of its rights and obligations under this Agreement (other than to an Affiliate as hereinafter provided). The General Partner may resign as general partner of the Partnership on not less than 90 days' written notice thereof to the Limited Partners and such resignation shall become effective upon the appointment of a successor general partner by the Limited Partners pursuant to Section 3.8.

4.2 Deemed Resignation of the General Partner

The General Partner shall, on the effective date determined in accordance with Section 4.3, be deemed to resign as general partner of the Partnership in the event of:

- (a) the bankruptcy, involuntary 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;
- (b) the insolvency of the General Partner;

- (c) the appointment of a trustee, receiver or receiver and manager of the affairs or properties of the General Partner; or
- (d) if a mortgagee or other encumbrancer shall take possession of the property or assets of the General Partner or a substantial part thereof, or if a writ of execution, attachment or similar process is issued or levied against all or substantially all of the property or assets of the General Partner (and such writ of execution, attachment or similar process is not released, satisfied, discharged, vacated or stayed within 60 days after its entry, commencement or levy, as the case may be).

The General Partner shall forthwith advise the Limited Partners by written notice of the occurrence of any event referred to in this Section 4.2.

4.3 Effective Date of Deemed Resignation of the General Partner

In the event of the deemed resignation of the General Partner as the general partner of the Partnership by virtue of Section 4.2, the General Partner shall be deemed to have resigned and shall cease to be the general partner of the Partnership upon the earlier of the appointment of a successor general partner of the Partnership by the Limited Partners pursuant to Section 3.8 and the expiration of 90 days from the date of the giving of the notice of an occurrence of an event referred to in Section 4.2.

4.4 Removal of General Partner

Any Limited Partner may institute Arbitration in accordance with Section 12.1 hereof to remove the General Partner for “cause” and such removal shall become effective upon the appointment of a successor general partner by the Limited Partners pursuant to Section 3.8.

4.5 Transfer of Management to Successor General Partner

Upon the appointment of a successor general partner of the Partnership, the former General Partner covenants and agrees to do all things and to take all steps to immediately and effectively transfer the management, control, administration and operation of the Partnership and the assets, books, records and accounts thereof to the successor general partner by the Limited Partners, including the execution and delivery of all deeds, certificates, declarations and other documents whatsoever which may be necessary or desirable to effect such change and to assign, transfer and convey all the undertaking, property and assets of the Partnership to the successor general partner of the Partnership. All costs and expenses associated with the foregoing shall be paid by the Partnership. If a successor general partner is admitted to the Partnership pursuant to this Agreement, each Limited Partner shall be deemed to have consented thereto.

4.6 Release of the General Partner

Upon the removal or resignation of the general partner of the Partnership, the Partnership shall release and hold harmless such removed or resigned General Partner and the Indemnified Parties from all actions, claims, costs, demands, losses, damages and expenses with respect to events that occur in relation to the Partnership after the effective date of such removal or resignation other than those caused by or deriving from any negligent or fraudulent act or omission or wilful

misconduct of the General Partner; provided, however, that any such holding harmless shall be made from the assets of the Partnership and no Limited Partner shall be personally liable to the former General Partner.

4.7 Powers, Duties, and Obligations of Successor General Partner

In the event of a change of the General Partner of the Partnership, the successor general partner of the Partnership shall execute a counterpart hereof and shall from that time forward, for all purposes and in all ways, assume the powers, duties and obligations of the General Partner under this Agreement and shall be subject to the terms of this Agreement.

ARTICLE 5 OBLIGATIONS OF THE PARTNERS

5.1 Unlimited Liability of the General Partner

The General Partner has unlimited liability for the debts, liabilities, losses, and obligations of the Partnership.

5.2 Limited Liability of Limited Partners

Subject to the Act, the liability of each Limited Partner for the debts, liabilities, losses, and obligations of the Partnership is limited to the amount of its Contributed Capital contributed or agreed to be contributed to the Partnership by it, as the case may be, as stated in the Register, and its share of any undistributed income of the Partnership as provided herein.

5.3 Indemnity of the Limited Partners

Notwithstanding Section 3.16, the General Partner will indemnify and save harmless each Limited Partner and every former Limited Partner from any costs, damages, liabilities, or expenses incurred by a Limited Partner as a result of the liability of the Limited Partner not being limited in the manner herein described, except where such liability was caused by the act or omission of such Limited Partner.

5.4 Indemnity of the Partnership

The General Partner will indemnify and save harmless the Partnership from any costs, damages, liabilities and expenses incurred by the Partnership as a result of any breach by the General Partner of its duties under this Agreement, including any reasonable legal expenses incurred by the Partnership in defending an action based in whole or in part upon an allegation that the General Partner has been guilty of such breach if such defence is substantially unsuccessful.

ARTICLE 6 INTERESTS

6.1 Proportions of Limited Partners

Except as otherwise provided herein, each Limited Partner shall have voting, distribution, and liquidation rights in proportion to their Proportionate Share and shall have no preference, conversion, exchange, pre-emptive or redemption rights.

6.2 Records

The General Partner shall maintain:

- (a) a registered office for the Partnership;
- (b) the Register; and
- (c) such other records as may be required by applicable law;

and permit such persons as are authorized by either this Agreement or by law to inspect such records. The General Partner shall cause the records relating to the Partnership available for inspection by any Limited Partner or its agent duly authorized in writing, at the expense of the Limited Partner. A copy of the Register shall be provided to any Limited Partner as soon as is practicable after notice in writing to the General Partner, at the expense of the Limited Partner requesting the same.

6.3 Parties Not Bound to See to Trust or Equity

Except as otherwise provided herein, neither the General Partner nor the Limited Partners shall be bound to see to the execution of any trust, express, implied or constructive, or any charge, pledge or equity to which any Interest is subject, or to ascertain or inquire whether any sale or transfer or any such Interest by any Limited Partner or its personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person having any interest therein except for the person or persons recorded as such Limited Partner.

6.4 Pledge of an Interest

No Limited Partner may pledge, charge, mortgage, hypothecate or otherwise encumber its Interest without the prior written consent of the General Partner.

6.5 Successors in Interest of Partners

The Limited Partnership shall continue notwithstanding the admission of any new General Partner or Limited Partner or the withdrawal, death, insolvency, bankruptcy or other disability or incapacity of the General Partner or any Limited Partner or the assignment, transfer or transmission of any Interest. The Partnership shall be dissolved only in the manner provided for in Article 15.

6.6 Incapacity, Death, Insolvency or Bankruptcy

Where a person becomes entitled to an Interest on the incapacity, death, insolvency, or bankruptcy of a Limited Partner, or otherwise by operation of law, that person will not be recorded as or become a Limited Partner until:

- (a) it produces evidence satisfactory to the General Partner of such entitlement;
- (b) it has agreed in writing to be bound by the terms of this Agreement, to make the representations, warranties and covenants set out in Section 2.8 and Section 2.9 and to assume the obligations of a Limited Partner under this Agreement; and
- (c) it has delivered such other evidence, approvals, and consents in respect of such entitlement as the General Partner may require and as may be required by law or by this Agreement.

ARTICLE 7 UNITS

7.1 Number of Units

The interest in the Partnership of the General Partner will be divided into and represented by Class B Units. The interests in the Partnership of the Limited Partners will be divided into and represented by Class A Units. Except as provided herein, an unlimited number of General Partner Units and Limited Partner Units of any class may be issued pursuant to this Agreement.

7.2 Subscription Form

A person may subscribe for Limited Partner Units by delivering to the General Partner or to such other person or persons at such address as the General Partner may prescribe a subscription in the form set out in Schedule B hereto or such other form as may be prescribed or accepted by the General Partner (either in respect of such person or otherwise), in each case completed and executed in a manner acceptable to the General Partner, and such other instruments, certificates, assurances and documents as the General Partner may require in connection with such subscription.

7.3 Subscription for Limited Partner Units

Subscriptions may be accepted for a fraction of a Limited Partner Unit in the discretion of the General Partner. The General Partner will have the right, in its discretion, to refuse to accept any subscription for Limited Partner Units. If, for any reason, a subscription for Limited Partner Units is not accepted or such subscription is accepted but the subscriber is not entered on the Register as a limited partner of the Partnership, the General Partner will cause the Partnership to refund to the subscriber any amount contributed by the subscriber to the capital of the Partnership in respect of such Limited Partner Units. The General Partner will be deemed to have accepted a subscription for Limited Partner Units when a Unit Certificate in the name of the subscriber representing the number and class of Limited Partner Units for which the subscriber has subscribed is delivered to the subscriber. Upon the acceptance of a subscription by the General Partner, the General Partner

will amend the Register to show the name of the subscriber as a limited partner of the Partnership and the number and class of Limited Partner Units held by the subscriber because of such subscription.

7.4 Additional Limited Partners

The General Partner is authorized, subject to the receipt of a subscription form as provided for in section 4.5 and subject to the provisions of section 7.8, to admit subscribers for Limited Partner Units to the Partnership as limited partners in respect of Limited Partner Units subscribed for by each and the limited partners hereby consent to the admission of such persons to the Partnership as limited partners in respect of such Limited Partner Units without further consent or action of any Limited Partner.

7.5 Issue Expenses

The Partnership will pay all costs, commissions, disbursements, fees, and expenses incurred in connection with any offering or issuance of Limited Partner Units, provided that any Limited Partner subscribing for such units shall be responsible for their own professional fees, and any fees or commissions claimed by persons not retained by the Partnership for the marketing and sale of Limited Partner Units.

7.6 No Encumbrance of Limited Partner Units

A Limited Partner may not charge, hypothecate, mortgage, pledge or otherwise encumber the Class A Units held by such Limited Partner except with the prior written consent of the General Partner (which consent the General Partner may withhold in its sole discretion).

7.7 Lien on Limited Partner Units

The Partnership will have a first and paramount lien on the Limited Partner Units registered in the name of a Partner, and upon any amounts payable to such Partner in respect thereof and any proceeds of sale thereof, for debts and liabilities of such Partner to the Partnership (including any amount to be contributed to the Partnership in respect of such Limited Partner Units), whether the time for the payment, fulfilment or discharge thereof shall have actually arrived or not, and no equitable interest in any Limited Partner Unit will be created except upon the footing and condition that this section is to have full force and effect.

7.8 Right of First Refusal

When the General Partner issues Class A Units or additional Class A Units (as the case may be), it may offer all or any number of Class A Units that are authorized, but not initially subscribed for, in one or more tranches, it must offer them first to the then existing Class A Unit holders *pro rata* based on the number of Units held by them as a fraction of the aggregate number of Units held by all Unit holders at such time. To the extent that any of the Unit holders declines to purchase such Class A Units or fail to respond to the notice from the General Partner within 10 business days, such Class A Units may be purchased by the other Unit holders, in such numbers as it or they

desire. If any such Class A Unit holder does not subscribe for any of the new or additional Class A Units offered to it, such Class A Units may be offered to third parties.

ARTICLE 8

CAPITAL ACCOUNT, CONTRIBUTIONS, DISTRIBUTIONS AND ALLOCATIONS

8.1 Capital Account

The General Partner shall establish and maintain on the books of the Partnership a capital account for the General Partner and each of the Limited Partners (each, a “Capital Account”), which account shall be credited with the amount of each contribution to the Capital of the Partnership made by the Partners and credited or debited, as the case may be in accordance with the provisions of this Agreement, with the amount of each Distribution of Capital to the Partners from time to time

8.2 Contributions

The parties hereto acknowledge and agree that, subject to the completion of the contributions and distributions set out in this Section 8.2 and in Section 8.3, the Contributed Capital of each of the Limited Partners from time to time shall be aggregate amount of the Contributed Capital of the Limited Partners. The parties hereto further acknowledge and agree that on the date of formation of the Partnership, the General Partner contributed capital to the Partnership in the aggregate amount of \$20.00.

8.3 Subsequent Adjustments to Contributed Capital

- (a) For the purposes of this Section 7.3, “**Lender Required Equity**” means the amount of total equity in the Partnership required by any Financing Lender providing construction financing (in this Section 7.3, the “**Construction Lender**”), less the amount of the value which the Construction Lender attributes to the Property (for the purposes of the Construction Lender’s underwriting analysis and which value may include deferred expenses, deposits, and similar credits) exceeds the cost of the Property.
- (b) If the Construction Lender should require Lender Required Equity in an amount greater than the actual amount of Contributed Capital at that time, then the Limited Partners shall provide same as further Contributed Capital.

8.4 Distributions

- (a) Subject to Sections 8.2, Distributable Cash shall be distributed to Partners at such time or times and in respect of such period or periods as shall be determined by the General Partner (as soon as would be prudent) in the following priority:
 - (i) first to the Limited Partners, pro rata, as a return of capital; and
 - (ii) the balance to Partners, pro rata in accordance with each Partner’s Proportionate Share (subject to Section 8.8 hereof).

8.5 Allocation of Taxable Income and Tax Loss

- (a) Taxable Income in a Fiscal Period shall be allocated to each of the General Partner and the Limited Partners in an amount up to the sum of the aggregate amount of Distributable Cash paid or payable to such Limited Partner in such Fiscal Period pursuant to Section 8.4(a) in accordance with their Proportionate Share and the balance of the Taxable Income in such Fiscal Period shall be allocated to the Limited Partners pro rata in accordance each Limited Partner's Proportionate Share.
- (b) Tax Loss for any Fiscal Year shall be allocated entirely to the General Partner and the Limited Partners pro rata in accordance with each Partner's Proportionate Share.
- (c) Notwithstanding any other provision of this Agreement, the General Partner may allocate Taxable Income or Tax Loss to Partners in a Fiscal Year in such a manner as is reasonable, in the sole opinion of the General Partner, to account for:
 - (i) any Interest which is transferred or redeemed during the Fiscal Year;
 - (ii) the timing of receipt of income or loss or the realization of any gain or loss by the Partnership during any Fiscal Year;
 - (iii) any distributions made in any Fiscal Year; and
 - (iv) any allocations of Taxable Income or Tax Loss in any previous Fiscal Year.

For greater certainty, Taxable Income or Tax Loss may be allocated to a former Limited Partner who is not a Limited Partner at the end of a Fiscal Year.

8.6 Allocation of Net Income and Net Loss

Net Income for any Fiscal Year shall be allocated in the same manner as Taxable Income is allocated pursuant to Section 8.5 and Net Loss for any Fiscal Year shall be allocated in the same manner as Tax Loss is allocated pursuant to Section 8.5.

8.7 Financing of Development

- (a) The General Partner shall arrange on behalf of the Partnership, from external sources, all financing required for the Development and maintenance of the Property, including, without limitation, any loans, mortgages or other financing to fund, including all interim and permanent financing, loans required to complete the Development and to maintain the Property, and the Partnership shall secure such financing by charging and encumbering the Property in such manner as may be required by the party or parties providing such financing (collectively the "**Financing**"). The Limited Partners acknowledge that it is their mutual intention that, to the extent possible, all Financing shall to the maximum extent possible come from external sources on the security of the Property and from internal revenues generated from the Property.

- (b) Approval of the terms of the Financing pursuant to Section 7.7(a), including the selection of the Financing Lender, shall constitute a Material Decision for the purposes of Section 3.8 of this Agreement.
- (c) Each Limited Partner agrees to execute all documents, and provide all financial information necessary, in connection with any financing.

8.8 No Interest Payable

Notwithstanding any other provision hereof, no Limited Partner shall be entitled to receive interest on the amount of its Initial Contributed Capital from the Partnership. No Limited Partner shall be liable to pay interest to the Partnership on any negative balance of its Contributed Capital. Repayment of Excess Distribution

If, as determined by the General Partner, any person has received a distribution that exceeds that entitlement of such person, such person shall forthwith repay to the Partnership the amount thereof upon receipt of notice to such effect from the General Partner and, if such amount is not then repaid, the General Partner may deduct such amount from any subsequent distribution to such person.

8.9 Limitations Prescribed by Statute

Notwithstanding any other provision of this Agreement, neither the Partnership nor the General Partner shall be liable to any Limited Partner for any failure to make any distribution contemplated by this Agreement if failure to make such distribution arises by reason of any statutory prohibition thereof, including the Act.

8.10 Return of Contributed Capital

A Limited Partner is entitled to demand a withdrawal or receive a return of its Contributed Capital only upon the winding-up and dissolution of the Partnership as provided in Article 15.

ARTICLE 9 PROHIBITIONS ON DISPOSITION OF INTERESTS

9.1 General Prohibition

No Limited Partner shall either directly or indirectly sell, exchange, transfer, assign, part with possession of, Encumber or otherwise dispose of (“**transfer**”) its Interest, except:

- (a) pursuant to the terms of this Agreement (which, for greater certainty, means the transfer rights set out in Sections 9.2 and 11.1 and the encumbering obligations set out in Section 6.4); and
- (b) with the express prior written consent of the other Limited Partners (“**Permission**”), it being hereby acknowledged that any such Permission shall be

in the sole and absolute discretion of the other Limited Partners and may be unreasonably withheld;

and any purported transfer in contravention hereof (a **“Prohibited Transfer”**) shall be absolutely null and void and of no effect whatsoever at law or in equity.

9.2 Transfer to Affiliates and Associates

Notwithstanding anything contained in this Agreement to the contrary, but subject to the provisions of this Section 9.2, each Limited Partner (the **“Transferor”**) shall be entitled at any time and from time to time, during the term of this Agreement to transfer all or any portion of its Interest to its Affiliates or Associates (the **“Permitted Transferee”**) upon the following conditions precedent having been satisfied:

- (a) the Transferor has not then committed an Event of Default which remains uncured;
- (b) the Permitted Transferee remains an Affiliate or Associate of the Transferor; and
- (c) the Permitted Transferee shall enter into an agreement with the other Limited Partner whereby the Permitted Transferee agrees to assume and be bound by the obligations of the Transferor and, to the extent of the Interest transferred, be entitled to the benefits and rights under this Agreement to the extent and with the same effect as if such Permitted Transferee was the original party to this Agreement and had paid Contributed Capital commensurate with the Interest transferred. The Permitted Transferee and the Transferor shall be jointly and severally liable for the performance by the Permitted Transferee of its obligations contained in this Agreement.

9.3 Transfers of Interests Generally

- (a) Any transfer of an Interest otherwise permitted herein shall be conditional upon:
 - (i) the transferor delivering to the General Partner an executed transfer of the Interest in such form as is acceptable to the General Partner;
 - (ii) the transferee paying such costs, expenses and disbursements, including legal fees, as are reasonably incurred by the Partnership by reason of the transfer; and
 - (iii) such other requirements as may be required by law,

provided that a transferee of any Interest will not become a Limited Partner in respect of such Interest until all filings and recordings required by law to validly effect a transfer have been duly made as referred to herein, including the filing and registration of an amendment to the Declaration in respect of such transfer in accordance with the Act giving notice of such change.

- (b) When a transferee is entitled to become a Limited Partner pursuant to the provisions hereof, the General Partner shall be authorized to admit such person to the Partnership as a Limited Partner, the Limited Partners hereby consent to the admission of, and will admit, the transferee to the Partnership as a Limited Partner, without any further act of the Limited Partners and the General Partner shall:
 - (i) record such assignment and transfer in the books and records of the Partnership; and
 - (ii) amend the Register showing the name of the transferee as a substituted Limited Partner.

9.4 Changes In Control

If, after the Effective Date, there is a Change In Control of any Limited Partner, such Change In Control shall be deemed to be a transfer within the meaning of Section 9.1 and, if made without Permission, such transfer shall be a Prohibited Transfer and shall be absolutely null and void and of no effect whatsoever at law or in equity. Any transfer of shares or other ownership interests in a Limited Partner which does not result in a Change In Control is expressly permitted herein.

9.5 Prohibition Against Disposition

No transfer otherwise permitted pursuant to Sections 9.2 or 9.3 to be made by a Limited Partner or the owners of a Limited Partner may be made pursuant to this Agreement:

- (a) if, as a result thereof, the Partnership would become subject to any more onerous governmental controls or regulations affecting the Property or the Development to which such other Limited Partner was not previously subject by reason solely of the nationality or residence of the Transferee;
- (b) if, by reason of such transfer, a remaining Limited Partner would become subject to taxation to which it was not previously subject;
- (c) if the transfer would be prohibited or rendered nugatory by law (such as the *Investment Canada Act* (Canada)) or would be prohibited or constitute a default under any term of any contract or Financing entered into by the Partnership in respect of the Property or the Development unless any required approval has been obtained and is in effect; or
- (d) the Transferee is a Non-Qualified Partner.

ARTICLE 10 DEFAULT

10.1 Default

If, during the term of this Agreement, an Event of Default or an Event of Insolvency in respect of any Limited Partner (the “**Defaulting Limited Partner**”) occurs and is continuing, then the other

Limited Partner, if not also in default hereunder, or the Designated Limited Partner of such other Limited Partner's LP Group, in the case where such other Limited Partner previously transferred a part of its Interest (either, the "**Non-Defaulting Limited Partner**"), shall, subject to the terms of this Agreement, have the right, in addition to all of its other rights and remedies at law, in equity, by statute or otherwise, to do any one or more of the following:

- (a) bring any proceeding seeking specific performance, injunction (whether for a mandatory order or otherwise) or any equitable remedy, it being acknowledged by the parties hereto that damages at law may be an inadequate remedy for a default or threatened breach of this Agreement;
- (b) bring any action at law or in equity as may be permitted in order to recover damages;
- (c) acquire the Interest of the Defaulting Limited Partner pursuant to the procedure set forth in Section 11.1;
- (d) remedy any such default or any other default of the Defaulting Limited Partner under this Agreement, and, in such circumstances, the Non-Defaulting Limited Partner shall be entitled on demand to be reimbursed by the Defaulting Limited Partner for any monies expended to remedy any such default and any other expense incurred by the Non-Defaulting Limited Partner in connection therewith, together with interest thereon at the rate per annum equal to Fifteen Percent (15%) per annum, calculated and payable daily, and in addition, the Defaulting Limited Partner hereby directs that all amounts distributable to it pursuant to this Agreement shall be re-directed and paid to the Non-Defaulting Limited Partner to the extent necessary to reimburse such Non-Defaulting Limited Partner for such monies with interest as aforesaid but, for all purposes, shall be considered to have been distributed to the Defaulting Limited Partner; and
- (e) to do such other acts or things as the Non-Defaulting Limited Partner may be authorized or entitled to do under this Agreement, at law, or in equity.

10.2 Suspension of Distributions and Right to Vote

During the continuance of an Event of Default or Event of Insolvency in respect of a Defaulting Limited Partner:

- (a) any distribution that the Defaulting Limited Partner would otherwise be entitled pursuant to the terms of this Agreement shall be made subject to Section 10.1(d) and shall be suspended until the closing of the purchase transaction if the Non-Defaulting Limited Partner has elected the purchase remedy set out in Section 10.1(c) and Section 11.1; and
- (b) the right of such Defaulting Limited Partner to vote in respect of any Material Decision shall be suspended. The vote of such Defaulting Limited Partner shall be excluded for purposes of determining whether a decision, action or matter has been approved by Material Decision.

ARTICLE 11 SALE OF INTERESTS

11.1 Purchase Election in Favour of Non-Defaulting Limited Partner

- (a) If a Non-Defaulting Limited Partner is entitled to exercise the remedies set out in Section 10.1 upon the other Limited Partner committing an Event of Default or being the subject of an Event of Insolvency, the Non-Defaulting Limited Partner shall have the right (but not the obligation) to purchase the Interest of the Defaulting Limited Partner as provided in Section 10.1(c) by the delivery of written notice of such right to the Defaulting Limited Partner (the “**Purchase Notice**”), whereupon the Defaulting Limited Partner shall sell and the Non-Defaulting Limited Partner shall purchase all of the Defaulting Limited Partner’s Interest (including all of its shares in the capital of the General Partner) at a total price to be agreed upon by the Non-Defaulting Limited Partner and the Defaulting Limited Partner within 15 days of delivery of the Purchase Notice or, failing agreement within such 15-day period, at a total price equal to 90% of the Fair Market Value of the Defaulting Limited Partner’s Interest, determined as of the date of the Purchase Notice in accordance with Article 12, provided that if the Defaulting Limited Partner has committed an Event of Insolvency, the total price shall equal 100% of the Fair Market Value of the Defaulting Limited Partner’s Interest, determined as of the date of the Purchase Notice in accordance with Article 12.
- (b) The closing of the purchase and sale transaction contemplated by Section 11.1(a) shall take place on the date which is 60 days after the Fair Market Value of the Defaulting Limited Partner’s Interest is determined, whether by agreement of the Limited Partners as contemplated by the terms of Section 11.1(a) or by evaluation pursuant to Article 12, as the case may be.

11.2 Sale Provisions

In this Section 11.2, reference to the term “vendor” or “purchaser” shall mean the vendor or vendors and the purchaser or purchasers in the subject transaction, as the case may be. Any purchase and sale of an Interest effected in accordance with the foregoing provisions of Section 11.1, shall be subject to the provisions set out in this Section 11.2.

- (a) Time and Place of Closing. Unless otherwise specifically provided herein, the closing of any purchase and sale transaction provided for in Section 11.1 shall be held at a place in the City of Toronto, Ontario specified by the purchaser of the Interest (or Sale Interest) at 10:00 a.m. on the Closing Date unless such earlier or later date has been mutually agreed upon by the vendor and the purchaser.
- (b) Transfer Documents. On the Closing Date, the vendor shall deliver to the purchaser a transfer of the vendor’s Interest together with such instruments and documents (reasonably satisfactory to counsel for the purchaser) as may be necessary or desirable to give effect to the sale and transfer of the Interest of the vendor, such

documents to be legally sufficient to transfer to the purchaser the Interest of the vendor (collectively, the “**Transfer Documents**”).

- (c) Good Title. The vendor shall and does hereby covenant to deliver a good and marketable title to its Interest being conveyed free from any encumbrance.
- (d) Adjustments. The purchase and sale shall be subject to an adjustment of any amounts owing by one Limited Partner to the other pursuant to this Agreement.
- (e) Tender of Documents. Any tender of documents or money may be made on the parties or their respective solicitors and money shall be made by LVTS wire transfer of immediately available funds from a Schedule 1 Canadian bank.
- (f) Transfer of Shares in General Partner. In conjunction with the conveyance of its Interest pursuant to Section 11.1, the vendor shall cause to be transferred, conveyed and assigned to the purchaser, for their aggregate issue price, all the shares in the capital of the General Partner held by the vendor or a related party and the vendor shall tender its or its related party’s nominees’ resignation from all offices and the board of directors of the General Partner.
- (g) Releases of Guarantees. The purchaser shall obtain the release of the vendor and any party guaranteeing any obligation of the Partnership on behalf of the vendor, from all liabilities to third parties relating to the Non-Residential Component and shall indemnify, defend and hold harmless the vendor, and any such guarantor from and against any and all claims (including reasonable solicitor’s fees on a solicitor and its own client basis), incurred in or arising, directly or indirectly, in whole or in part, out of the giving of any such guarantee.
- (h) Deposit of Purchase Price. If the vendor is not represented at the closing of the purchase and sale transaction or is represented but fails for any reason whatsoever to produce and deliver the Transfer Documents to the purchaser, then the purchase price (or estimate thereof), increased or decreased by all adjustments and payments specifically referred to herein, may be deposited by the purchaser into a special account at a branch of the bankers used by the Partnership with respect to the Property in the name of the vendor. Such deposit shall constitute valid and effective payment of the purchase price to the vendor even though the vendor may have, in breach of this Agreement, voluntarily Encumbered or transferred any of its Interest if such sale is being completed pursuant to Section 11.1 and notwithstanding the fact that a transfer of any of such Interest may have been delivered or made in breach of this Agreement to any alleged encumbrancer, Transferee or other party having or claiming any interest, legal or equitable, therein or thereto. For greater certainty, the parties agree that any such transfer made contrary to the provisions of this Agreement is void.
- (i) Deemed transfer. From and after the date on which the purchaser pays the purchase price, and even though the Transfer Documents have not been delivered to the purchaser, at the option of the purchaser, the purchase of such Interest shall be

deemed to have been fully completed and all right, title, benefit and interest, both at law and in equity, in and to such Interest shall be conclusively deemed to have been transferred and assigned to and become vested in the purchaser and all right, title, benefit and interest, both in law and in equity, of the vendor, or of any unauthorized encumbrancer, Transferee or other party having or claiming any interest, legal or equitable, therein or thereto shall cease and determine; provided, however, that the vendor shall be entitled to receive the purchase price so deposited, as adjusted, without interest, upon delivery to the purchaser of the Transfer Documents.

- (j) Termination of Rights. Upon the completion of a sale resulting from Section 11.1, all rights or privileges accruing hereunder in favour of the vendor, including the right to have any say in or participate in any Material Decision, shall terminate and be of no further force or effect.
- (k) Release of Purchaser. On the completion of a sale resulting from Section 11.1, the vendor shall deliver to the purchaser a release by the vendor of all of its Claims against the purchaser, its nominees, partners, shareholders and the Nominee and each of their respective directors and officers with respect to any matter or thing relating to the Development and the Property up to and including the Closing Date, but excluding any claims for payment of the balance, if any, of the purchase price for its Interest.

11.3 Remedies for Non-Performance

If the vendor or purchaser fails to execute any documents to implement a sale resulting from the provisions of Section 11.1, as the case may be, the other party shall be entitled, without prejudice to its rights hereunder, to pursue any other remedies available to it hereunder or at law, including, without limitation, the right of specific performance and/or damages.

11.4 Power of Attorney

For the purposes of any purchase and sale transaction pursuant to this Article 11, the vendor hereby irrevocably constitutes and appoints the purchaser as its true and lawful attorney-in-fact and agent for, in the name of and on behalf of the vendor to execute and deliver in the name of the vendor all such assignments, transfers, deeds or instruments as may be necessary to effectively transfer and assign the Interest being sold to the purchaser. Such appointment and power of attorney, being coupled with an interest, shall not be revoked by the dissolution, winding-up, bankruptcy or insolvency of the vendor and the vendor hereby ratifies and confirms and agrees to ratify and confirm all that the purchaser may lawfully do or cause to be done by virtue of the provisions hereof.

ARTICLE 12
DETERMINATION OF FAIR MARKET VALUE

12.1 Appraisal Procedure

- (a) In the event that purchase and sale proceedings are commenced under Section 11.1 and the Limited Partners were unable to determine a value for the Defaulting Limited Partner's Interest within the period of time provided in Section 11.1(a), each Limited Partner at its own expense, shall retain an independent appraiser to provide an appraisal of the Fair Market Value of the Partnership, including any Improvements. The appraisal shall be made of the entirety of the Partnership and the Development and shall then be limited to a Limited Partner's Proportionate Share thereof. The Fair Market Value of the Partnership shall be reduced by the amount outstanding or the value or cost of the obligations under all financial Encumbrances registered against title to the Lands. The two appraisers shall select a third appraiser. The Limited Partners shall equally bear the cost of all three appraisers retained to provide an appraisal of such Fair Market Value. If a Limited Partner fails to appoint an appraiser within five Business Days after being notified of the appraiser appointed by the other Limited Partner, the other Limited Partner will have the right to make application to a court having jurisdiction for the appointment of a second appraiser.
- (b) Each appraiser shall be accredited with an A.A.C.I. designation by the Appraisal Institute of Canada (or any successor organization and, if none, any like or similar organization) and shall have had extensive experience in appraising high-rise residential developments (under construction) and land as well as retail developments within mixed use buildings, as applicable, in the Greater Toronto Area within the ten year period before his or her retainer hereunder and further provided that each such appraiser shall be arm's length to each Limited Partner and their respective Affiliates or Associates and be a wholly disinterested person having no financial or other business interest in the affairs of any Limited Partner or their respective Affiliates or Associates (other than payment for such appraisal services in accordance with this Agreement). Each Limited Partner shall provide the appraisers with such information within its possession and control with respect to the Partnership, Property and Development as such appraisers may reasonably require in their determination of the Fair Market Value of the Partnership.
- (c) In conducting their appraisals, the appraisers shall take into account all relevant factors, including, without duplication and not in any particular order:
 - (i) the number of leased units in the Development, if any;
 - (ii) comparables, if available, for comparable projects in a comparable location in the Burlington Area, adjusted to take into account the actual location of the Property;
 - (iii) the status of completion of the Development;

- (iv) all of the Improvements, systems, facilities, amenities and other features and attributes of the Property;
- (v) the location of the Lands and their future development potential for the remainder of the Development; and
- (vi) reasonable market criteria, including listings for leased units like those created or being created in the Development which have been developed or are being actively at the time in question,

but shall not consider any obligations to which the Limited Partners are then subject with respect to the Property or any liquidity factor or control rights or any of the DMA.

- (d) The Partners shall co-operate with the appraisers for such purpose and shall provide the appraisers with access to all books of account and records and all vouchers, cheques, papers, and documents of, or which may relate to, the Property and the Partnership and any other reasonable information and documents pertaining to the Property and the Partnership requested by the appraisers. Each appraiser shall be obliged to deliver to the Limited Partners his or her appraisal within 30 days of being retained.

12.2 Average of Two Appraisals Govern

Of the three appraisals of the Fair Market Value received, the one that is the furthest from the median appraisal shall be discarded and disregarded. The average of the two remaining appraisals shall be deemed the Fair Market Value of the Partnership.

12.3 Final and Binding

The Fair Market Value determined in accordance with this Article 12 shall be final, conclusive, and binding upon all parties and shall not be subject to any appeal or arbitration.

ARTICLE 13 ARBITRATION

13.1 Arbitration of Disputes and Scope

Whether arising before or after the expiration or termination of this Agreement, all differences, disputes, claims or controversies relating to an actual or alleged occurrence of an Event of Default (save and except for an Event of Default caused by, or relating to, the non-payment of monies) shall be referred to arbitration under the *Arbitration Act, 1991* (Ontario) or any successor legislation in effect at the time of the arbitration.

13.2 Limitation Period

The right to seek to arbitrate any matter hereunder or to seek any remedy which may have been available pursuant to an arbitration hereunder shall be brought within two years from the date at

which the facts giving rise to the subject matter proposed to be arbitrated were known or ought to have been known with reasonable diligence by the party seeking to invoke the arbitration or seeking the remedy.

13.3 Applicable Law

The laws of the Province of Ontario shall be applicable in regard to all questions of governance and interpretation of all matters in any way relating to the arbitration(s) applicable hereunder.

13.4 Appointment of Arbitrator

A party desiring arbitration hereunder shall give written notice of arbitration to the other party containing a concise description of the matter submitted for arbitration (the “**Notice of Arbitration**”). Within ten days after a party gives a Notice of Arbitration, the parties shall jointly appoint a single arbitrator (the “**Arbitrator**”). If the parties fail to appoint an Arbitrator within such time, either party may apply to the Superior Court of Justice for the appointment of such Arbitrator.

13.5 Powers of Arbitrator

The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest and, without limiting the generality of the foregoing or the Arbitrator’s jurisdiction at law, may:

- (a) determine any question of good faith, dishonesty or fraud arising in the dispute;
- (b) order any party to furnish further details of that party’s case, in fact or in law;
- (c) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with this Article 13 or with the Arbitrator’s orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
- (d) receive and take into account written or oral evidence tendered by the parties that the Arbitrator determines is relevant, whether or not strictly admissible in law;
- (e) make one or more interlocutory determinations and/or interim awards;
- (f) hold meetings and hearings, and make a decision (including a final decision) in the Province of Ontario (or elsewhere with the concurrence of the parties to the arbitration);
- (g) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power that the Arbitrator determines to be relevant;

- (h) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the parties; and
- (i) make interim orders to secure all or part of any amount in dispute in the arbitration.

13.6 Arbitration Procedure

The arbitration shall take place in the City of Hamilton, or virtually, at such place therein and time as the Arbitrator may fix. The arbitration shall be conducted in English. Within 20 days of the appointment of the Arbitrator, the parties shall either agree on the procedure to be followed for the arbitration or the Arbitrator shall determine the appropriate procedure, in accordance with the principles of natural justice, to be followed. It is agreed that the arbitration and all matters arising directly or indirectly (including all documents exchanged, the evidence and the award) shall be kept strictly confidential by the parties and shall not be disclosed to any third party except as may be compelled by law.

The Parties, unless otherwise agreed to in writing, shall be limited to one (1) hour each for their presentation and fifteen (15) minutes for their rebuttal of the other parties' presentation.

13.7 Arbitrator's Decision

No later than 20 Business Days after hearing the representations and evidence of the parties, the Arbitrator shall make his or her determination in writing and deliver one copy to each of the parties to the arbitration. The decision of the Arbitrator shall be final and binding upon the parties in respect of all matters relating to the arbitration, the conduct of the parties during the proceedings, and the final determination of the issues in the arbitration.

13.8 Awards and Appeal

There shall be no appeal from the determination of the Arbitrator to any court. Judgement upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

13.9 Costs of Arbitration

The costs of any arbitration hereunder shall be borne by the parties in the manner specified by the Arbitrator in his or her determination.

13.10 Condition Precedent

Submission to arbitration under this Article 13 is intended by the parties to preclude any action in matters, which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder, provided however that neither party shall be precluded from seeking injunctive or other equitable relief to prevent the other party from taking any action which is the subject of arbitration while arbitration proceedings are contemplated or have commenced.

13.11 Continuing Obligations

The obligations of the parties hereunder shall continue during the dispute resolution proceedings contemplated by this Article 13, provided that in the case of any such proceedings pertaining to prices, fees, expenses or other amounts payable under this Agreement, the parties shall make any payments or reimbursements required as a result thereof, of such prices, fees, expenses or other amounts upon completion of the proceedings effective as of a date to be determined in such proceedings, and interest shall be paid by the party required to make any such payment or reimbursement on the amount thereof as if such amount was a payment in arrears under this Agreement unless otherwise determined in the dispute resolution proceedings.

ARTICLE 14 ACCOUNTING AND REPORTING

14.1 Books and Records

The General Partner will keep or cause to be kept on behalf of the Partnership books and records reflecting the assets, liabilities, income and expenditures of the Partnership and the Register listing all Limited Partners and their respective Contributed Capital. Such books, records and Register will be kept available for inspection (to the extent permitted by applicable law) by any Limited Partner or its duly authorized representative (at the expense of such Limited Partner) during business hours at the offices of the General Partner.

14.2 Financial and Income Tax Information

The General Partner shall be responsible for the preparation of annual unaudited financial statements of the Partnership as at the end of each Fiscal Year of the Partnership. The General Partner shall distribute a copy of such annual unaudited financial statements to each Limited Partner within 75 days after the end of each Fiscal Year. The General Partner shall provide each Limited Partner with annual income tax information for each Fiscal Year by March 15 of the following year to assist in declaring his or its share of Taxable Income or Tax Loss; provided, however, that each Limited Partner shall be solely responsible for filing all income tax returns and reporting its share of Taxable Income or Tax Loss.

14.3 Other Information

The General Partner shall provide to the Limited Partners such additional financial and other information as may be required from time to time under applicable legislation or as the General Partner may from time to time deem appropriate, provided the cost of providing such additional information shall be at the sole cost of the Limited Partner requesting such information.

ARTICLE 15 WINDING-UP AND LIQUIDATION

15.1 Winding-Up of Partnership

The affairs of the Partnership shall be wound-up, its assets liquidated, and the Partnership shall thereafter be dissolved, as soon as practicable, upon the earliest of (a “**Winding-Up Event**”):

- (a) the dissolution of the Partnership by operation of law; and
- (b) the sale or other complete disposition of the Property.

15.2 Distribution upon Winding-Up

Upon the occurrence of a Winding-Up Event, the assets of the Partnership shall be liquidated, and the proceeds distributed as follows and in the following order of priority:

- (a) to pay all expenses incurred in the winding-up of the Partnership;
- (b) to pay all of the liabilities of the Partnership in the manner required by law;
- (c) to establish such reserves as the General Partner considers necessary for any contingent liabilities;
- (d) to distribute any balance then remaining in the manner and order provided in Section 8.4(a).

Thereafter, provided the Partnership has no liabilities for which a reserve has not been established in accordance with Section 15.2(c), the General Partner shall dissolve the Partnership in accordance with the Act. Notwithstanding any other provision herein, the General Partner shall not dissolve the Partnership if to do so would or would reasonably be expected to expose the Limited Partners to liability for any liability of the Partnership.

15.3 Events Not Causing Dissolution

Notwithstanding any rule of law or equity to the contrary, the Partnership shall not be dissolved except in accordance with this Agreement. In particular, but without restricting the generality of the foregoing, the Partnership shall not be dissolved or terminated by the actual or deemed resignation, removal, death, incompetence, bankruptcy, insolvency, other disability or incapacity, dissolution, liquidation, winding-up or receivership, or withdrawal of the General Partner or any Limited Partner or by the assignment, transfer or transmission of any Interest.

ARTICLE 16 GENERAL PARTNER NAME

16.1 3H Properties Names

The Limited Partners acknowledge that they have no right, title or interest in the name "3H Properties", or any trademark, logo or other identification feature particular to that name, or any part thereof, and that the name "3H" and any trademark, logo or identification feature particular to the General Partner or its affiliates are the sole property of the General Partner or its Affiliates, and that any use of such name, trademark, logo or identification feature in connection with the Partnership, shall be determined by the General Partner alone.

ARTICLE 17
MISCELLANEOUS

17.1 Notices

Any notice, communication, payment, demand, resolution or consent (a “**Notice**”) required or permitted to be given, made or passed under this Agreement shall be sufficiently given, made or passed for all purposes if:

- (a) delivered personally;
- (b) sent by ordinary first-class mail within Canada, postage prepaid; or
- (c) sent by facsimile transmission or email transmission:

to the number and attention of the person set forth below:

- (d) if to the General Partner:

594 Aberdeen Avenue
Hamilton, Ontario
L8P 2T1

With a courtesy copy, which shall not constitute notice, to:

SimpsonWigle LAW LLP
1 Hunter Street East, 2nd floor
Hamilton, Ontario
L8N 3W1
Attn: Hussein Hamdani

- (e) if to any Limited Partner, to the address of the Limited Partner as it appears in the Register or to any email address or facsimile transmission number of the Limited Partner set out in its subscription agreement with the Partnership.

Notices delivered personally shall be deemed given and received upon delivery, those sent by first-class prepaid mail, on the fourth Business Day after posting, and those sent by facsimile transmission or by email, on the day of transmission; provided that during any period of mail disruption, Notices shall be delivered or sent by facsimile transmission or by email transmission. If any such day is not a Business Day or if a Notice is received after ordinary office hours (time of place of receipt), such Notice shall be deemed to have been sent and received on the next Business Day. Any Limited Partner may change its address by giving notice of the change to the General Partner pursuant to this Section 17.1 and the General Partner may change its address by giving notice of it to the Limited Partners. Notices delivered by email shall be valid and effective provided that the sender can reasonably be identified and shall not require an electronic signature or any electronic information that a person creates or adopts in order to sign a document and that is in, attached to or associated with the document.

17.2 Further Acts

The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effects to this Agreement and every part thereof.

17.3 Binding Effect

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

17.4 Severability

The provisions of this Agreement are severable and, in the event that any court or officials of any regulatory agency of competent jurisdiction shall determine that any one or more of the provisions or part of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement and this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of such provision, had never been contained herein, so that such provisions would be valid, legal and enforceable to the maximum extent possible. To the extent possible, any provision of this Agreement or part thereof which is held invalid, illegal or unenforceable shall be replaced by a provision or part that meets, as closely as possible, the intent of the provision or part which is held invalid, illegal or unenforceable.

17.5 Entire Agreement

Except as expressly provided in this Agreement, this Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written.

17.6 Time

Time shall be of the essence hereof.

17.7 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereto: (i) irrevocably consents to the non-exclusive jurisdiction of the Courts of the Province of Ontario in connection with any matter or dispute based upon or arising out of this Agreement or the matters contemplated herein; (ii) agrees that process may be served upon them in any manner authorized by the laws of the Province of Ontario for such persons; and (iii) waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

17.8 Counterparts

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

**3H PROPERTIES 405 MAIN STREET W
NO.1 GENERAL PARTNERSHIP INC.**

By: 

Name: Alfredo Hermano

Title: CEO

By: 

Name: Praveen Varshney

Title: Director

**SCHEDULE A
PROPERTY DESCRIPTION**

MUNICIPAL ADDRESS: 405 Main Street West, Hamilton, Ontario

LEGAL DESCRIPTION:




**SCHEDULE B
PRE-CONSTRUCTION COSTS**

B

Signature Certificate

Document Ref.: KDI89-VV8FH-LGVDU-QOM3S

Document signed by:

	Alfredo Hermano Verified E-mail: alfredoh@3hproperties.com	
IP: 69.156.7.12 Date: 30 Sep 2021 13:58:12 UTC		

	Praveen Varshney Verified E-mail: praveen@varshneycapital.com	
IP: 154.5.55.207 Date: 30 Sep 2021 14:05:04 UTC		

Document completed by all parties on:
30 Sep 2021 14:05:04 UTC

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