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**MOUNTAINVIEW OPPORTUNISTIC GROWTH FUND L.P.**

**AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT**

**dated**

**September 28, 2007**

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**AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT**

**THIS AGREEMENT** made as of the 28<sup>th</sup> day of September, 2007

**AMONG:**

**2016459 ONTARIO LIMITED,**

a corporation incorporated under the laws of the Province of Ontario  
(hereinafter called the “**General Partner**”)

**OF THE FIRST PART;**

- and -

Each party who from time to time executes this Agreement in counterpart, by separate instrument, by attorney in fact or otherwise, as a subscriber for one or more Units and who is accepted as a Limited Partner,

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

**OF THE SECOND PART.**

**WHEREAS** the General Partner proposes to cause Units (as hereinafter defined) to be sold to those individuals who subscribe therefore;

**AND WHEREAS** in order to facilitate the admission of such Limited Partners and to set forth the ongoing arrangements regarding the Partnership, and regarding the status and rights of each such Limited Partner (as hereinafter defined) it is considered necessary to enter into this Agreement;

**NOW THEREFORE** in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:



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

1.1 Definitions

In this Agreement and in the recitals hereto unless the context otherwise requires:

- (a) “**Act**” means the *Limited Partnerships Act* (Ontario), as amended from time to time;
- (b) “**Agreement**” means this Limited Partnership Agreement, as amended from time to time;
- (c) “**Associate**” means any persons who is an associate of the General Partner (as that term is defined in the *Securities Act* (Ontario));
- (d) “**Auditor**” means the auditor appointed pursuant to Section 9.2;
- (e) “**Business Day**” means any day normally treated as a business day in New York City, New York and Toronto, Ontario and on which day the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange and Nasdaq are open for trading;
- (f) “**Capital**” means, with reference to a Limited Partner, the value of money or other property contributed or agreed to be contributed by such Limited Partner or his predecessor to the Partnership upon subscription for his Units, and “**Capital**” means, with reference to the Partnership, the aggregate Capital of the Limited Partners;
- (g) “**Capital Account**” means the account established for each Limited Partner by the General Partner and to which the Capital Account shall be credited or debited the amounts set out in Section 4.3;
- (h) “**Chairman**” means the Chairman of the meeting of Limited Partners appointed pursuant to Section 8.7;
- (i) “**day**” or “**days**” means calendar days;
- (j) “**Declaration**” means a declaration required to be filed under the Act in respect of the Partnership;
- (k) “**Fiscal Year**” means Fiscal Year as defined in Section 2.5;
- (l) “**GAAP**” means Canadian generally accepted accounting principles;
- (m) “**General Partner**” means 2016459 Ontario Limited, a corporation incorporated under the laws of the Province of Ontario, or if it ceases to be the general partner of the Partnership, any successor general partner appointed in accordance with this Agreement;
- (n) “**Initial Closing Date**” means on or about November 1, 2002;

- (o) “**Investment Advisor**” means Investment Advisor as defined in Section 6.6;
- (p) “**Limited Partner**” means a person who is recorded in the Register as the holder of one or more Units;
- (q) “**Management Fee**” means the management fee payable by the Partnership to the General Partner pursuant to Section 6.7;
- (r) “**Net Asset Value**” means Net Asset Value as defined in Section 2.13;
- (s) “**Net Asset Value Per Unit**” means Net Asset Value Per Unit as defined in Section 2.14;
- (t) “**Net Profits**” means the net profits of the Partnership for a Fiscal Year calculated in accordance with GAAP, provided that if the foregoing results in an amount less than zero such amount shall be referred to herein as “Net Losses”;
- (u) “**Ordinary Resolution**” means a resolution approved by not less than 50% of the votes cast by those Limited Partners who vote on the resolution, in person or by proxy, at a duly constituted meeting of Limited Partners, or at any adjournment thereof, called in accordance with this Agreement, or a resolution consented to in writing by holders of a majority of the Units outstanding;
- (v) “**Partners**” refers collectively to the General Partner and the Limited Partners, and a reference to a “Partner” shall be any one of the Partners;
- (w) “**Partnership**” means, the limited partnership the formation of which is provided for in this Agreement;
- (x) “**Performance Fee**” means the performance fee payable to the General Partner pursuant to Section 6.7;
- (y) “**Proportionate Interest**” means, at any time with reference to a Limited Partner, the proportion which the number of Units owned by the Limited Partner at such time as recorded in the Register is of the total number of Units so recorded in the names of all of the Limited Partners at such time;
- (z) “**Redemption Date**” means, (i) with respect to a Limited Partner who invested in the Partnership prior to the date hereof, the last Business Day of any week following the Initial Closing Date, and (ii) with respect to a Limited Partner who invested in the Partnership on or after the date hereof, the last Business Day of any fiscal quarter of a Fiscal Year following the date hereof, or (iii) such other date as the General Partner in its sole discretion may decide from time to time;
- (aa) “**Register**” means the Register of Limited Partners maintained pursuant to Section 3.10;
- (bb) “**Registered Dealer**” means an investment dealer registered under the *Securities Act* (Ontario), as amended;
- (cc) “**Registrar**” means the Registrar appointed pursuant to Section 3.10;

- (dd) “**Resolution**” means an Ordinary Resolution or a Special Resolution;
- (ee) “**Retiring Limited Partner**” means a Limited Partner that redeems all of the Units held by it during a Fiscal Year and prior to the end of that Fiscal Year;
- (ff) “**Special Resolution**” means a resolution approved by not less than 66 <sup>2</sup>/<sub>3</sub>% of the votes cast by those Limited Partners who vote on the resolution in person or by proxy at a duly constituted meeting of the Limited Partners called in accordance with this Agreement for the purpose of considering such resolution, or an instrument in writing signed by 66 <sup>2</sup>/<sub>3</sub>% of the Limited Partners;
- (gg) “**Subscription Date**” means the last Business Day of any week following the Initial Closing Date, or such other date as the General Partner in its sole discretion may decide from time to time;
- (hh) “**Transfer Agent**” means the Transfer Agent appointed pursuant to Section 3.10;
- (ii) “**Unit**” means a limited partnership interest in the Partnership entitling the holder of such interest as recorded in the Register to the rights provided in this Agreement; and
- (jj) “**Valuation Date**” means a date on which the Net Asset Value of the Partnership is calculated.

## 1.2 Interpretation

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

- (a) this “**Agreement**” means the limited partnership agreement dated October 25, 2002, as amended and restated hereby, as it may from time to time be supplemented or amended by one or more agreements entered into pursuant to the applicable provisions hereof;
- (b) the table of contents, heading, articles and sections hereof are for convenience of reference only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (c) all accounting terms not otherwise defined herein have the meanings ordinarily assigned to them and all computations made pursuant to this Agreement shall be made in accordance with GAAP, as applicable from time to time and applied on a consistent basis;
- (d) accounts of the Partnership shall be maintained in Canadian currency;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto;

- (f) any reference to an entity shall include and shall be deemed to be a reference to any entity that is a successor to such entity; and
- (g) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice-versa.

## **ARTICLE 2 THE PARTNERSHIP**

### **2.1 Formation of Limited Partnership**

The Partnership is hereby formed under the laws of the Province of Ontario under the name “Mountainview Opportunistic Growth Fund L.P.”. The Partnership shall continue until terminated in accordance with the provisions of this Agreement.

### **2.2 Name**

The Partnership shall carry on business under the name “Mountainview Opportunistic Growth Fund L.P.” or such other name as the General Partner may determine from time to time. The General Partner shall notify the Limited Partners of any change in the name of the Partnership and shall cause a Declaration to be filed pursuant to the Act.

### **2.3 Office**

The principal office of the Partnership shall be located at 3 Church Street, Suite #204, Toronto, ON M5E 1M2, or at such other location as the General Partner may from time to time determine. The General Partner shall give notice to the Limited Partners of any change in the location of the principal office of the Partnership and shall, if necessary, cause a Declaration to be filed pursuant to the Act.

### **2.4 Filing of Declarations**

The parties hereto agree to form a limited partnership under the provisions of the Act and pursuant to the terms of this Agreement. The General Partner shall execute and file a Declaration and an amendment to the Declaration from time to time when required under the Act. The General Partner shall also execute and file any other certificate, document or instrument as may be required under the laws of the Province of Ontario or any other jurisdiction for any purpose that the General Partner deems advisable. The General Partner and each Limited Partner at the request of the General Partner shall execute and deliver promptly any documents that may be necessary or desirable to accomplish the purposes of this Agreement, to continue to qualify the Partnership as a limited partnership under the laws of the Province of Ontario or to give effect to the continuation of the Partnership under applicable laws. The General Partner shall take all necessary actions on the basis of information available to it in order to maintain the status of the Partnership as a limited partnership in any jurisdiction in which the General Partner deems it advisable to do so.

### **2.5 Fiscal Year**

The Fiscal Year of the Partnership shall end on the 31st day of December in each year or such other date as the General Partner may determine from time to time. The General Partner shall notify the Limited Partners of any change in the fiscal period of the Partnership.

## 2.6 Purpose of the Partnership

The objective of the Partnership is to achieve risk-adjusted positive annual returns. The Partnership will invest primarily in equities of small and mid-cap Canadian companies and, to a lesser extent, large-cap Canadian companies and foreign equities trading on North American stock exchanges, including, but not limited to, the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, the American Stock Exchange and Nasdaq. Assets of the Partnership may also be invested in other securities, including, but not limited to, Exchange Traded Funds, warrants, rights, options, convertible debt instruments and private placement securities, and units of other investment funds managed by the Investment Advisor (as defined in Section 6.6) provided that provisions are in place to ensure against duplication of management fees payable to the Investment Advisor. In addition, the Fund may short sell securities and other investments in an effort to lessen the impact of market volatility and to profit from such securities and other investments as individual investments.

The following investment restrictions will be observed in connection with any investment activity related to the assets of the Partnership:

- (a) not more than 10% of the Net Asset Value of the Partnership may be invested in the securities of any one company;
- (b) borrowing, whether by way of short sales, margin or other facilities, will not exceed 100% of the Net Asset Value of the Partnership; and
- (c) investments in private placement securities will not, in the aggregate, exceed 20% of the Net Asset Value of the Partnership.

The restrictions in (a), (b) and (c) above apply at the time the relevant investment or borrowing is made and any breach of such restriction due to market movements or other factors outside the control of the Partnership may be corrected by the Partnership as soon as it is reasonably practicable. The General Partner shall monitor the Partnership's investment portfolio to ensure that the foregoing restrictions are adhered to.

The Partnership is restricted to the foregoing activities, unless determined otherwise by Special Resolution and by the consent in writing of the General Partner.

## 2.7 Status of Limited Partners

Each Limited Partner covenants and agrees that it shall, at the request of the General Partner, sign such documents as the General Partner may reasonably require establishing the status or residence of the Limited Partner.

## 2.8 Representations of Each Limited Partner

- (a) Each Limited Partner represents, warrants and declares that:
  - (i) if an individual, he or she is of the age of majority, and if any other entity, it is duly authorized to enter into and be bound by this Agreement;
  - (ii) it is resident in Canada for the purposes of the *Income Tax Act* (Canada) (the "**Tax Act**"), or if the Limited Partner is a partnership, that it is a

“Canadian Partnership” as defined in Subsection 102(1) of the Tax Act;  
and

- (iii) an interest in such Limited Partner is not a “tax shelter investment” for purposes of the Tax Act.
  
- (b) If at any time after the date hereof the representations and warranties set out in Section a are no longer correct in respect of any Limited Partner, on the day immediately preceding the date on which such representation becomes incorrect (the “**Tender Acceptance Date**”) the Limited Partner shall be deemed to have tendered to the General Partner for the account of the Partnership, and the General Partner shall be deemed to have accepted the tender of all of the Limited Partner’s Units. The General Partner may, in its sole discretion, cancel or resell some or all of the Units tendered. Subject to Sections 5.1 and 5.3, within 60 days after the Tender Acceptance Date, the General Partner shall, on behalf of the Partnership, pay to the Limited Partner an amount equal to the amount that the General Partner determines, in its sole discretion, would be distributed to the Limited Partner in respect of the tendered Units if the Units were redeemed pursuant to Section 5.1.

## 2.9 Restrictions on Partners of the Partnership

The admittance of any non-resident of Ontario, Alberta or British Columbia as a partner of the Partnership is prohibited. Accordingly, no Units may be purchased by, or transferred to, any non-resident of Ontario, Alberta or British Columbia.

## 2.10 Limitation on Authority of Limited Partners

No Limited Partner shall in his capacity as a Limited Partner:

- (a) take part in the control, operation or management of the business of the Partnership,
- (b) execute any document which binds or purports to bind the Partnership or any other Limited Partner,
- (c) hold himself out as having the power or authority to bind the Partnership or any other Limited Partner, or
- (d) undertake any obligation or responsibility on behalf of the Partnership.

Limited Partners shall comply with the provisions of the Act and shall not take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership. Nothing in this Agreement shall be construed as preventing any Limited Partners from contracting with the Partnership.

## 2.11 Actions Against Property and Assets

No Limited Partner shall, in its capacity as a Limited Partner, register any lien, caveat, charge or other encumbrance against the property or other assets of the Partnership, whether real or personal, or permit any lien, caveat, charge or other encumbrance affecting it personally to be recorded or to remain undischarged against such property or assets, nor shall any Limited Partner bring any action for partition or sale in connection with such property or assets.

## 2.12 Title

Legal title to all assets to be acquired by the Partnership shall be registered in the name of the General Partner or the Partnership or any entity which the General Partner determines to be the registered holder of title to Partnership assets either as nominee or in trust for the Partnership.

## 2.13 Net Asset Value

The Net Asset Value of the Partnership is equivalent to its assets less its liabilities as at the last Business Day of each week, Subscription Date or Redemption Date (each, for the purposes of this Section, a “**Valuation Date**”). The initial Net Asset Value of the Partnership shall equal the aggregate subscription price of the Units subscribed for prior to or on the Initial Closing Date. Thereafter, on each Valuation Date, the Net Asset Value shall be calculated by crediting or debiting, as the case may be, the profits and gains or losses (realized and unrealized) and expenses and liabilities of the Partnership, including the Management Fee and Performance Fee then accruing, any distributions made to Unit holders and any subscriptions and redemptions. The total net assets of the Partnership on any Valuation Date shall be determined in Canadian dollars on an accrual basis of accounting in accordance with GAAP subject to the following:

- (a) no value will be assigned to goodwill;
- (b) estimated administrative expenses and investment expenses of the Partnership and such reserves for contingent liabilities of the Partnership, if any, as the General Partner shall determine, will be treated as liabilities;
- (c) securities and instruments which are listed or quoted on a securities or other exchange market (including NASDAQ), other than securities and instruments which are in the form of put or call options, shall be valued at their last sales prices on the date of determination, or, if no sales occurred on such date, at the mean between the “bid” and “ask” prices on the most immediate prior date on which such prices were quoted, or if no such prices were quoted during the 15 Business Days prior to the date of such determination, at the value reasonably assigned to such securities and instruments by the General Partner;
- (d) securities and instruments which are in the form of put or call options and are listed or quoted on a securities or other exchange or market shall be valued at the mean between the “bid” and “ask” prices on the date of determination, or if no such prices were quoted on such date, at the mean between the “bid” and “ask” prices on the most immediate prior date on which such prices were quoted, or if no such prices were quoted during the 15 Business Days prior to the date of such

determination, at the value reasonably assigned to such securities and instruments by the General Partner;

- (e) securities and instruments, other than securities and instruments which are in the form of put or call options, which are not listed or quoted on a securities or other market shall be valued at the mean between the “bid” and “asked” prices on the date of determination, or if no such prices were quoted on such date on the most immediate prior date on which such prices were quoted, or if no such prices were quoted during the 15 Business Days prior to the date of such determination, at the value reasonably assigned to such securities and instruments by the General Partner;
- (f) securities and instruments which are in the form of put and call options and are not listed or quoted on a securities, commodities or futures exchange or market shall be valued at parity value, except when the General Partner has reasonably assigned some other value to such securities and instruments; and
- (g) all other assets of the Partnership shall be valued in the manner determined by the General Partner to reflect their market value.

If the General Partner determines, in its sole discretion, that the valuation of any security or instrument pursuant to the foregoing does not fairly represent its market value, the General Partner shall value such security or instrument as it reasonably determines and shall set forth the basis of such valuation in writing in the Partnership’s records. The value of any investment, security or instrument as aforesaid or other property for which no price quotations are available as above provided shall be determined in such manner as the General Partner, in its sole discretion, reasonably determines and the basis of such valuation shall be set forth in writing in the Partnership’s records. Notwithstanding the foregoing, where on any Valuation Date, any cash or other asset of the Partnership has been realized or contracted to be realized, there shall be included in the assets of the Partnership, in place of such cash or other asset, the assets receivable by the Partnership in respect thereof, provided that if the value of such assets is not then known exactly, then the value shall be as estimated by the General Partner, and provided that if the net amount receivable is not payable until some future time after the Valuation Date, the General Partner may make such allowance (discounting of claims) as is considered appropriate to reflect the true current value thereof. In no event and under no circumstances shall the General Partner or its directors, officers or employees incur any individual liability or responsibility for any determination made or other action taken or omitted by any of them in good faith.

#### 2.14 Net Asset Value Per Unit

As at any Valuation Date, Net Asset Value Per Unit means the amount obtained by dividing Net Asset Value as at such Valuation Date by the total number of Units outstanding as at such Valuation Date.

### **ARTICLE 3 THE UNITS**

#### 3.1 Capital

The capital of the Partnership shall be divided into an unlimited number of Units.

### 3.2 Nature of a Unit

Except as otherwise provided in this Agreement, each issued and outstanding Unit shall be equal to each other issued and outstanding Unit with respect to all matters. Each Limited Partner shall be entitled to one vote for each Unit held by it in respect of all matters to be decided by the Limited Partners. Except as otherwise provided in this Agreement, all net income and losses of the Partnership shall be allocated to the Limited Partners according to their Proportionate Interests as provided for in Section 4.7.

### 3.3 Offering(s) of Units

The General Partner is entitled to raise capital for the Partnership from time to time in the Provinces of Alberta, British Columbia and Ontario and such other jurisdictions where the General Partner may lawfully do so.

### 3.4 Terms of Offering(s)

The General Partner may, in its discretion, determine the terms and conditions of the offering and sale of Units or other securities of the Partnership and may do all things in that regard including preparing and filing prospectuses, offering memoranda and other documents, and entering into agreements with any person providing for a commission or fee, and all things done by the General Partner in that regard prior to the execution of this Agreement are hereby ratified and confirmed.

### 3.5 Subscription for Units

The Units are being offered for sale on a continuous basis in the Provinces of Alberta, British Columbia and Ontario. Units will initially be offered at a price of CDN \$10.00 per Unit and following the Initial Closing Date, Units will be offered at a price per Unit equal to the Net Asset Value Per Unit as at the Subscription Date together with any subscription fee payable to the subscriber's Registered Dealer.

Units are being offered to persons resident in the Provinces of Alberta, British Columbia and Ontario that meet the definition of an "accredited investor" set out in National Instrument 45-106 – *Prospectus and Registration Exemptions* ("NI 45-106"). Pursuant to the prospectus and registration exemptions contained in NI 45-106, Units are also being offered to residents of the Provinces of British Columbia and Ontario for a minimum subscription amount of CDN \$150,000. The General Partner may, in its sole discretion, accept subscriptions in excess of an aggregate of CDN \$200,000,000. However, it is intended that Units will be available for subscription up to an aggregate limit of CDN \$200,000,000 and additional Units will not be available for subscription once this limit has been reached.

The offering of Units is not subject to any minimum subscription level, and therefore any funds received from a purchaser are available to the Partnership and need not be refunded to the purchaser. The General Partner has the unconditional right to accept or reject any subscription submitted and will promptly give notice thereof to the investor. If a subscription is not accepted by the General Partner, all subscription proceeds will be returned, without interest, deduction or penalty to the investor.

### 3.6 Subscription Form

A person wishing to become a Limited Partner or a Limited Partner wishing to subscribe for additional Units shall subscribe by means of the Subscription Agreement attached as Schedule "A" hereto or in such other form or forms as may be approved by the General Partner from time to time, and shall execute and deliver, under seal or otherwise, such other documents and instruments, including powers of attorney, as the General Partner may request.

### 3.7 Unit Certificates

No certificate representing the Units shall be sent to Unit holders.

### 3.8 Fractional Units

The General Partner will issue fractional Units up to three decimal points. The General Partner may subdivide or consolidate the Units in such a manner as it deems appropriate.

### 3.9 Receipt

The receipt of any money, securities and other property from the Partnership by a person in whose name any Unit is recorded or by the duly authorized agent of such party, or if such Unit is recorded in the names of more than one party, the receipt thereof by any one such parties or by the duly authorized agent of any such party, shall be a sufficient discharge for all money, securities and other property payable, issuable or deliverable in respect of such Unit and from all liability of the Partnership to see to the application thereof.

### 3.10 Registrar and Transfer Agent

The Registrar and Transfer Agent shall be the General Partner or such other person as the General Partner may designate from time to time by notice in writing to the Limited Partners. The Registrar and Transfer Agent shall:

- (a) maintain the Register to record the name and addresses of the Limited Partners, the number of Units held by each Limited Partner, particulars of the issue and transfer of Units;
- (b) maintain such other records as may be required by law; and
- (c) cause transfers of Units to be recorded in accordance with the provisions of Section 3.12.

The General Partner shall be authorized to make reasonable rules and regulations pertaining to the maintenance of the Register and the period of time during normal business hours that the Register is open for inspection as provided for in Section 3.11.

### 3.11 Inspection of Records

The Register shall be kept at the Partnership's principal office. The General Partner shall permit any Limited Partner or his agent duly authorized in writing to:

- (a) inspect the Register during normal business hours; and

- (b) upon payment of a reasonable fee, to obtain a copy of or take extracts from the information set forth in the Register within a reasonable period of time after the date of filing of his written request therefore,

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

### 3.12 Transfer of Units

Units may not be transferred without the prior written consent of the General Partner and any transfer not consented to by the General Partner will not be registered by the Partnership. The General Partner will not consent to a transfer of Units to a person that is not a resident of Canada for the purposes of the Tax Act. The General Partner may withhold its consent to a transfer of the Units if the transfer would lead to legal, regulatory, pecuniary or material administrative disadvantage for the Partnership or Unit holders. Any attempt to transfer the Units without the prior consent of the General Partner may subject such Units to compulsory redemption.

### 3.13 Successors in Interest of Limited Partners

The Partnership shall continue notwithstanding the withdrawal, expulsion, death or insolvency of any Limited Partner and, subject to applicable legislation, no Limited Partner may require dissolution of the Partnership, the intent being that the Partnership shall be dissolved only in the manner provided for in this Agreement.

Any person becoming entitled to any Units in consequence of the death or insolvency of any Limited Partner, or otherwise by operation of law, shall be recorded in the Register as the holder of such Units upon:

- (a) production of the proper evidence of such entitlement and such other evidence as may be required by law and upon compliance with the requirements of the General Partner;
- (b) delivery of the Form of Transfer set forth as Schedule "B" hereto duly completed and properly executed; and
- (c) compliance with Section 3.12.

### 3.14 Pledge of Units

Units may be pledged for security purposes provided the lender agrees to be bound by the terms of this Agreement. No trust or beneficial interest will be recognized other than as recorded in the Register. If a Limited Partner pledges a Unit held by such Limited Partner as security for a loan then, upon the written request of such Limited Partner, the General Partner will deliver an acknowledgment to the person making such loan acknowledging such pledge and confirming that all distributions by the Partnership in respect of such Unit will be paid to such person upon receipt by the General Partner of a written order from such person, until such person delivers a release of such acknowledgment to the General Partner.

## **ARTICLE 4 CONTRIBUTIONS, ALLOCATIONS AND DISTRIBUTIONS**

### **4.1 General Partner Contribution**

The General Partner is not required to make a contribution to the Capital of the Partnership.

### **4.2 Limited Partner Contributions**

The contribution of each Limited Partner to the Capital of the Partnership is the subscription price for Units paid by the Limited Partner, which in the case of Units issued prior to or on the Initial Closing Date shall be CDN \$10.00 for each Unit purchased, and thereafter shall be the Net Asset Value Per Unit for each Unit purchased. Unless otherwise provided by law, in no event shall any Limited Partner be required to make any additional contribution to the Capital of the Partnership in excess of that required for the purchase of its Units.

### **4.3 Individual Capital Accounts**

An individual Capital Account shall be established and maintained in the records of the Partnership for each Limited Partner.

- (a) The Capital Account of each Limited Partner shall be credited with:
  - (iv) the amount of the Capital contributed by such Limited Partner to the Partnership from time to time; and
  - (v) any Net Income of the Partnership allocated to such Limited Partner pursuant to the provisions of Section 4.7.
- (b) The Capital Account of each Limited Partner shall be debited with:
  - (vi) the amount of the Capital withdrawn by such Limited Partner or returned to the Limited Partner by the Partnership on a redemption of Units or otherwise;
  - (vii) any Net Losses of the Partnership allocated to such Limited Partner pursuant to the provisions of Section 4.7; and
  - (viii) any distributions of Net Income of the Partnership pursuant to Section 4.8.

No Limited Partner shall be entitled to withdraw any part of his Capital Account or to receive any distribution except as provided in this Agreement.

### **4.4 No Interest Payable on Capital**

No Limited Partner has the right to receive interest on his Capital.

#### 4.5 Determination of Income and Losses

The Net Income or Net Losses of the Partnership for any particular period will be calculated in accordance with GAAP, consistently applied. Net Income or Net Losses of the Partnership will be calculated annually as at December 31 in each year (or such other date as the General Partner may determine from time to time, provided the General Partner notifies the Limited Partners of such change).

#### 4.6 Reserves

In determining the Net Income or the Net Losses of the Partnership, the General Partner shall make provision for adequate reserves for contingencies by retention of a reasonable percentage of proceeds from the sale of Units and/or the regular revenue of the Partnership in all amount as the General Partner, in its sole discretion, shall determine to be adequate.

#### 4.7 Allocation and Distributions

The income of the Partnership not allocated to Retiring Limited Partners for a Fiscal Year (as discussed below), calculated in accordance with the Tax Act, up to and including an annual threshold of 10% of Net Asset Value the “**Threshold Amount**”) will be allocated for income tax purposes to Units held by the Limited Partners as at the last Business Day of such Fiscal Year. To the extent that the Net Profits of the Partnership in a Fiscal Year fall below the Threshold Amount, Units held by the Limited Partners will be allocated for income tax purposes additional income in the immediately following Fiscal Year in an amount equal to the shortfall. Shortfall not recouped after one subsequent Fiscal Year will not be carried forward to future Fiscal Years. 80% of the income of the Partnership for a Fiscal Year above the annual Threshold Amount together with the shortfall amount, if any, will be allocated for income tax purposes to Units held by the Limited Partners and the balance of the income of the Partnership will be allocated for income tax purposes to the General Partner as a Performance Fee as at the last Business Day of such Fiscal Year. 99.99% of the losses of the Partnership calculated in accordance with the Tax Act for any Fiscal Year will be allocated for income tax purposes to Units held by the Limited Partners and the remaining 0.01% of such losses will be allocated to the General Partner at the last Business Day of such Fiscal Year. Income and losses of the Partnership will be allocated to Limited Partners in proportion to the number of Units held by each of them as at the last Business Day of a Fiscal Year.

The General Partner in its sole discretion, reasonably exercised, will allocate in a manner that the General Partner considers just and reasonable, income or loss of the Partnership for a Fiscal Year calculated in accordance with the Tax Act to Limited Partners that redeem all of the Units held by each such Limited Partner prior to the end of a Fiscal Year. For greater certainty and for purposes of the Tax Act, the provisions of this section 4.7 shall be considered to constitute an agreement among the Partners as to the allocation of capital, income and losses of the Partnership.

#### 4.8 Distributions to the Limited Partners

Distributions of Net Income of the Partnership or Capital shall be made at such times and in such amounts as the General Partner, in its sole discretion, may determine from time to time.

#### 4.9 Repayments

If the General Partner determines that the Partnership has paid any Limited Partner an amount in excess of an amount to which it is entitled pursuant to this Agreement, such Limited Partner shall forthwith reimburse the Partnership to the extent of such excess within 15 days after receiving written notice by the General Partner. The Limited Partner shall be liable for interest on the excess amount at the prime commercial lending rate of the Partnership's bankers plus 3 percentage points from the date of payment of the excess amount to the date of refund thereof if payment of the excess amount is not made to the Partnership by the Limited Partner within 15 days as aforesaid. The General Partner may set off and apply any sums otherwise payable to a Limited Partner against such amounts due from such Limited Partner.

#### 4.10 Debit Balance in Accounts

The existence of a zero or negative balance in the Capital Account of a Limited Partner shall operate to terminate the interest of that Limited Partner in the Partnership.

### **ARTICLE 5 REDEMPTION**

#### 5.1 Redemption

A Limited Partner may redeem Units on a Redemption Date, provided that, with respect to Units acquired from the date hereof onward, there shall be no redemption for a period of one year from the date of a Limited Partner's initial purchase of Units. Redemption orders may be made directly to the Partnership or through the Limited Partner's Registered Dealer by delivering to the General Partner or the Limited Partner's Registered Dealer a duly completed Redemption Form attached hereto as Schedule "C". Redemption orders must be received by the General Partner prior to 2:00 p.m. (Toronto time) 60 Business Days prior to the Redemption Date on which the Limited Partner wishes to redeem the Units. Orders received after that time will be effective on the next Redemption Date. Redemption orders must be in writing with the Limited Partner's signature guaranteed by a registered dealer, Canadian chartered bank, trust company, a member of a stock exchange in Canada or otherwise guaranteed to the satisfaction of the General Partner. If Units are registered in the name of an intermediary such as a registered dealer, clearing agency or its nominee, redemption orders must be made through such intermediary.

The amount payable to a Limited Partner for each Unit redeemed will be an amount equal to the Net Asset Value Per Unit on the Redemption Date, less: (i) any Short Term Trading Redemption Charge; and (ii) any taxes required under applicable law to be deducted or withheld. The General Partner may distribute the net income and net realized capital gains attributable to Units being redeemed, if any, to Limited Partners on the redemption of such Units.

Payment for Units which are redeemed will be made by the Partnership by electronic transfer of funds to the Limited Partner's bank account. Payments will be made within three Business Days following the Redemption Date or such earlier date as may be specified by the General Partner.

## 5.2 Forced Redemption

The General Partner may at any time and for any reason upon not less than five days' prior written notice to a Limited Partner compel redemption of any or all of such Limited Partner's Units.

## 5.3 Suspension of Redemption

The Partnership may suspend redemption of the Units for any period when normal trading is suspended on any security or exchange which represents more than 5% by value or underlying market exposure of the Net Asset Value of the Partnership, and at such other times as the General Partner is of the opinion that the Net Asset Value cannot reasonably be determined. In the event of a suspension of redemption, the General Partner will give notice to Unit holders of such suspension.

During the suspension period, requests for redemption of Units may be withdrawn. To the extent that a request for redemption is not withdrawn, the redemption shall be effected as of the first Redemption Date following the recommencement of redemptions. Where possible, all reasonable efforts will be made to bring any period of suspension to an end as soon as possible.

# **ARTICLE 6 THE GENERAL PARTNER**

## 6.1 Authority of the General Partner

The General Partner has exclusive authority to manage and control the activities of the Partnership. The General Partner shall have the sole power and authority to do such acts and things and to execute and deliver such documents as it considers necessary for or incidental to carrying out the objects, purpose and business of the Partnership for and on behalf of and in the name of the Partnership, including, without limitation, the formation and operation of the Partnership, the offering and sale of the Units, and the investment of the assets of the Partnership. The General Partner shall be entitled to delegate any of its powers subject always to its overriding control and direction. No person dealing with the Partnership is required to inquire into the authority of the General Partner to take any action or make any decision on behalf of and in the name of the Partnership and the Partnership will be bound by all agreements made by the General Partner on its behalf.

## 6.2 Duties of General Partner

The General Partner shall exercise the powers and discharge the duties of its office hereunder honestly, in good faith, and with a view to the best interests of the Partnership and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The General Partner shall be entitled to retain advisors, experts or consultants to assist in the exercise of its powers and the performance of its duties hereunder.

## 6.3 Specific Powers

Without limiting the generality of the foregoing, it is acknowledged and agreed that the General Partner is authorized, at the appropriate times, on behalf of and in the name of the Partnership and without further authority from the Limited Partners:

- (a) to act as Transfer Agent or to appoint a Transfer Agent in respect of the Units;
- (b) to engage such counsel and such other advisors or consultants as the General Partner considers advisable in order to perform its duties hereunder;
- (c) to open and operate one or more bank accounts, brokerage and trading accounts, and similar accounts for the Partnership in its own name or that of the Partnership, and to designate, and, from time to time, to change the signatories to such accounts;
- (d) to do all acts and things and to execute deliver and carry out all documents, instruments or contracts which, from time to time, require execution by or on behalf of the Partnership, or which may be necessary or desirable to carry out the intent and purpose of this Agreement;
- (e) to pay all taxes, fees and other expenses relating to the business and investments of the Partnership;
- (f) to determine the amount and type of insurance coverage to be maintained in order to protect the General Partner, the partnership and the directors and officers of the General Partner;
- (g) to act on behalf of the Partnership with respect to any and all actions and other proceedings brought by or against the Partnership;
- (h) to execute loan and credit agreements on behalf of the Partnership and to borrow funds on behalf of the Partnership and to pledge the Partnership's assets to secure such borrowings, provided that such borrowings will be on standard commercial terms; and
- (i) to generally do all things and take all steps in connection with the investments and assets of the Partnership which would be customarily carried out by a reasonable owner of similar investments or assets in Canada, provided the General Partner complies with the investment restrictions set out in Section 2.6.

#### 6.4 Power of Attorney

Each Limited Partner hereby irrevocably nominates and appoints the General Partner and any person appointed to replace the General Partner pursuant to Section 11.2 as his true and lawful attorney on his behalf with full power and authority in his name to execute, acknowledge, deliver, record and file any and all of the following:

- (a) this Agreement and all instruments and declarations that the General Partner deems necessary to reflect any amendment to this Agreement in accordance with its terms;
- (b) all Declarations, declarations of change and other instruments necessary to form, qualify or continue the Partnership as a limited partnership in the Province of Ontario and any other instruments required by law;

- (c) any instrument or document on behalf of and in the name of the Limited Partner as may be necessary in connection with the sale, transfer or assignment of Units or the admission, substitution or deletion of Limited Partners;
- (d) any instrument or document necessary to be filed in connection with the business, property, assets and undertaking of the Partnership, including, but not limited to, all conveyances, agreements and instruments which the General Partner deems necessary to reflect the sale or transfer of the assets of the Partnership, including, but not limited to, all or substantially all of the assets of the Partnership;
- (e) any instrument or document that the General Partner deems necessary to be filed in connection with the qualification for sale of the Units in the Province of Ontario or any other province of Canada;
- (f) any instrument or document required in connection with any election that may be made under the Tax Act and any analogous provincial legislation;
- (g) any instrument or document required in connection with the dissolution and termination of the Partnership; and
- (h) such other instruments or documents on behalf of and in the name of the Limited Partner or in the name of the Partnership as the General Partner deems necessary to give effect to the provisions of this Agreement in accordance with its terms.

Without limiting the generality of this Agreement, it is expressly agreed and understood that the power of attorney granted herein is a power coupled with an interest and will survive the death or disability of a Limited Partner and extend to the heirs, executors, administrators, successors and assigns of the Limited Partner and may be exercised by the General Partner on behalf of each Limited Partner by listing all the Limited Partners executing any instrument with a single signature as an attorney and agent for all of them. Each Limited Partner agrees to be bound by any representations and actions made or taken by the General Partner pursuant to such power of attorney, and each Limited Partner hereby waives any and all defences and defects which may be available to him to contest, negate or disaffirm the action of the General Partner taken in accordance with the terms of the power of attorney granted herein. The power of attorney granted herein by each Limited Partner is irrevocable.

#### 6.5 Indemnification of the General Partner

The Partnership shall indemnify the General Partner and its directors, officers and employees for any liabilities incurred by them in respect of the execution of their duties, responsibilities, powers or authorities, unless the liabilities are attributable to their wilful misfeasance, bad faith or gross negligence in the performance of their obligations or to their reckless disregard of such obligations

#### 6.6 Investment Advisor

The General Partner will retain an investment advisor (the “**Investment Advisor**”) that will be either an investment dealer or investment counsel registered under the *Securities Act* (Ontario).

#### 6.7 Management and Performance Fees

In consideration of the General Partner managing the activities of the Partnership and providing the services to the Partnership provided for in this Agreement the Partnership will pay to the General Partner: (i) a Management Fee calculated and accrued weekly and paid monthly in arrears equal to  $\frac{1}{12}$  of 2 $\frac{1}{4}$ % per annum of the Partnership's Net Asset Value as at the last Business Day of each month; and (ii) a Performance Fee calculated and accrued weekly and paid annually in arrears equal to 20% per annum of the amount by which the Partnership's Net Profits in a Fiscal Year exceed 10% of the Net Asset Value of the Partnership as at the last Business Day of the immediately preceding Fiscal Year (the "**Threshold Amount**"); provided, however, to the extent that in the immediately preceding Fiscal Year the Partnership's Net Profits were less than the Threshold Amount, the Performance Fee payable to the General Partner shall be decreased by an amount equal to such shortfall.

#### 6.8 Expenses of the General Partner

The General Partner is responsible for the organizational expenses of the Partnership until the establishment of the Partnership. Subsequent to the establishment of the Partnership, except as otherwise provided for herein, the Partnership will be responsible for all fees and expenses of the Partnership, other than advertising and promotional expenses which will be paid by the General Partner. Following the establishment of the Partnership, the Partnership shall be responsible for, and the General Partner shall be entitled to reimbursement from the Partnership for expenses the General Partner incurs with respect to the payment of all fees and expenses relating to the Partnership's operation including, without limitation, registrar and transfer agent fees, audit, accounting, administration, record keeping and legal or other professional fees, custody and safekeeping charges, all taxes, assessments or other governmental charges levied against the Partnership, interest charges, commissions, all brokerage, banking and other fees related to the business of the Partnership and the Units, and all fees and expenses relating to providing financial and other reports to Limited Partners.

### **ARTICLE 7 LIABILITIES OF PARTNERS**

#### 7.1 Unlimited Liability of General Partner

The General Partner shall be responsible and liable for all debts, obligations and any other liabilities of the Partnership in the manner and to the extent required by the Act and as set forth in this Agreement.

#### 7.2 Limited Liability of Limited Partners

Subject to the provisions of the Act and any specific assumption of liability, the liability of each Limited Partner for the liabilities and obligations of the Partnership is limited to the amount of its contributed Capital plus its *pro rata* share of any undistributed income of the Partnership and any improperly distributed amounts.

## **ARTICLE 8 PARTNERSHIP MEETINGS**

### **8.1 Meetings of Limited Partners**

Meetings of the Limited Partners may be called at any time by the General Partner and shall be called by the General Partner upon the written request of Limited Partners holding in aggregate not less than 30% of the outstanding Units. Any such request shall be given at least 21 days before the date of the meeting and shall specify the purpose for which the meeting is to be held and any Resolutions which Limited Partners may vote on pursuant to this Agreement that are to be voted on at the meeting. Any meeting called by such requesting Limited Partners shall be conducted in accordance with the provisions of this Agreement. Meetings shall be held in the City of Toronto, Ontario or in such other city as the General Partner may determine. If the General Partner fails to call a meeting upon such request within a period of 15 days after the giving of such request, the requesting Limited Partners may call such meeting and the notice calling such meeting shall be signed by such requesting Limited Partners.

### **8.2 Notice of Meetings and Quorum**

Notice of any meeting of the Limited Partners called by the General Partner shall be given to each Limited Partner at its address shown in the Register, to the General Partner and to the Auditor. Any such notice shall be mailed by prepaid mail at least 10 days and not more than 21 days prior to the meeting and shall state the time and place where such meeting is to be held. The notice shall specify, in general terms, the nature of all business to be transacted thereat in sufficient detail to enable the Limited Partners to make a reasoned judgement on each matter to be considered at the meeting. A copy of the text of any proposed Special Resolution shall accompany the mailing of the notice. Accidental failure to give notice to a Limited Partner shall not invalidate a meeting, any adjournment thereof, or any proceeding thereat. A quorum for a meeting of Limited Partners shall consist of two or more Limited Partners present in person or represented by proxy holding not less than 30% of the outstanding Units. If a quorum is not present on the date for which the meeting is called within one-half hour of the time fixed for the holding of such meeting, the meeting shall be adjourned to be held on a date fixed by the Chairman, which date shall be not later than 14 days thereafter, at which adjourned meeting two or more Limited Partners present in person or represented by proxy shall constitute a quorum. Notice for adjourned meetings shall be given not less than two days in advance and otherwise in accordance with the provisions for notice contained in this Section 8.2 except that such notice need not specify the nature of business to be transacted. Any business may be transacted at the adjourned meeting which might properly have been transacted at the original meeting in accordance with this Agreement.

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

The Limited Partners may by Special Resolution:

- (a) amend this Agreement pursuant to Section 10.1;
- (b) make an election under Subsection 98(3) or any other section or subsection of the Tax Act and under any analogous provincial legislation in connection with the dissolution of the Partnership;

- (c) approve or disapprove the sale or exchange of all or substantially all of the property and assets of the Partnership;
- (d) dissolve the Partnership;
- (e) amend or rescind any Special Resolution;
- (f) replace the Auditor; or
- (g) approve the assignment of the General Partner's interest pursuant to Section 11.1 or remove the General Partner for cause, pursuant to Section 11.2.

#### 8.4 Voting

At all meetings of Limited Partners each Limited Partner or its duly appointed proxy shall be entitled to one vote for each Unit recorded in its name on the Register on the date of the meeting. Every question submitted to a meeting, except those matters which require a vote by Special Resolutions shall be decided by Ordinary Resolution on a show of hands unless a poll is demanded by any person entitled to vote at the meeting in which case a poll shall be taken by the Chairman of the meeting. A poll shall be taken on every Special Resolution to be voted on at any meeting of the Limited Partners. In the case of an equality of votes, the Chairman of the meeting shall have a casting vote.

With respect to the voting on any Resolution:

- (a) for which no poll is required or requested, a declaration made by the Chairman of the meeting as to the results of the voting on any such Resolution shall be conclusive evidence thereof; and
- (b) for which a poll is required or requested, the result of the poll shall be deemed to be the decision of the meeting on such Resolution.

#### 8.5 Proxies

Any Limited Partner entitled to vote may vote in person or by proxy at any meeting of Limited Partners provided that a proxy shall have been received by the General Partner for verification two days prior to the meeting. The form of proxy shall comply in form and content with the rules pertaining to forms of proxy in the *Securities Act* (Ontario) and the Regulations thereunder. A person appointed as proxy holder need not be a Limited Partner. Every proxy purporting to be executed by or on behalf of a Limited Partner shall be valid unless challenged by any Limited Partner or holder of another proxy prior to or at the time of its exercise, and the burden of proving an invalidity shall rest on the person so challenging. Any challenge to the validity of any proxy shall be made in such form and shall contain such material as the Chairman of the meeting shall reasonably require and all the decisions concerning the validity of proxies shall be made by the Chairman of the meeting. Such proxy is effective until notice in writing, including a subsequent form of proxy, revoking such proxy is delivered to the General Partner. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Unit.

#### 8.6 Notice of Revocation of Proxy

A vote cast in accordance with the terms of a proxy shall be valid notwithstanding the previous death or insanity of the Limited Partner or revocation of the proxy or transfer of the Unit in respect of which the proxy was given provided that no notice in writing of such death, insanity, revocation or transfer shall have been received by the General Partner prior to the time fixed for the holding of the meeting.

#### 8.7 Conduct of Meetings

The Chairman of any meeting of Limited Partners shall be the person nominated as such by the General Partner and need not be a Limited Partner, failing which the Chairman shall be any other person approved by Ordinary Resolution at the outset of the meeting. The General Partner and its representatives may attend and address any meeting of Limited Partners. The General Partner shall have the right to authorize the presence of any person at any meeting of Limited Partners regardless of whether such person is a Limited Partner and with the approval of the General Partner, such persons shall be entitled to address the meeting. Any legal advisor of a Limited Partner and the Auditor may attend any meeting of Limited Partners and shall be entitled to address the meeting and to move resolutions thereat. To the extent that the rules and procedures for the conduct of a meeting of the Limited Partners are not prescribed in this Agreement, such rules and procedures shall be determined by the Chairman of the meeting.

#### 8.8 Effect of Resolutions

Any Resolution passed in accordance with this Agreement at a meeting or in writing shall be binding on all Limited Partners and their respective heirs, executors, administrators, other legal representatives, successors and assigns, whether or not such Limited Partners were present or represented by proxy at the meeting at which such Resolution was passed, voted against such Resolution or elected not to sign a Resolution in writing.

#### 8.9 Minute Book

Minutes of all Resolutions passed and proceedings taken at every meeting of Limited Partners shall be made and recorded in a minute book by the General Partner, which minute book shall be available for inspection by the Limited Partners at all meetings of Limited Partners and at all other reasonable times during normal business hours at the offices of the Partnership. Minutes when signed by the Chairman of the meeting of Limited Partners shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of which minutes shall have been made shall be taken to have been duly held and convened, and all Resolutions passed or proceedings taken as referred to in the minutes shall be deemed to have been duly passed and taken in accordance with this Agreement.

### **ARTICLE 9 ACCOUNTING AND REPORTING**

#### 9.1 Books and Records

The General Partner will keep and maintain, or cause to be kept and maintained, at the Partnership's principal place of business, books of account and records of the business of the Partnership and a Register listing all Limited Partners and the Units held by them. The General Partner shall give notice to each Limited Partner of such location. Each Limited Partner or his

duly authorized representatives shall have access to such information during normal business hours, and may make copies of or take extracts from such books and records at his expense.

## 9.2 Appointment of Auditor

The Auditor shall be Silver Gold Glatt & Grosman LLP, or if Silver Gold Glatt & Grosman LLP ceases to be the Auditor for any reason or is replaced by Special Resolution of the Limited Partners, such other member in good standing with the Canadian Institute of Chartered Accountants as may be appointed by the Limited Partners as auditor for the Partnership. The General Partner shall retain the Auditor to:

- (a) review and report to the Limited Partners on the financial statements of the Partnership for, and as at the end, of each Fiscal Year; and
- (b) review, as at the end of each fiscal quarter of the Partnership, the amount in the Capital Account of each Limited Partner.

## 9.3 Annual Reports

Within 90 days after the end of each Fiscal Year, with the exception of the initial Fiscal Year of the Partnership where only a “notice to reader” will be provided to the Limited Partners, the General Partner will forward to each Limited Partner an annual report for such Fiscal Year consisting of:

- (a) audited financial statements of the Partnership as at the end of such Fiscal Year and for the immediately preceding Fiscal Year consisting of:
  - (ix) a balance sheet;
  - (x) a statement of income;
  - (xi) a statement of change in financial position;
  - (xii) a statement of Partners’ equity;
  - (xiii) all other statements as are required by GAAP; and
  - (xiv) a report of the Auditors on the financial statements referred to in this Section 9.3;
- (b) a report on allocations to the Partners’ equity accounts and taxable income or losses and distributions of cash to the General Partner and the Limited Partners for such fiscal period; and
- (c) tax information to enable each Limited Partner to properly complete and file his tax returns in Canada in relation to his investment in Units.

## 9.4 Financial Reporting

The General Partner will forward to each Limited Partner unaudited financial information respecting the Net Asset Value Per Unit within 15 Business Days of each fiscal quarter. The

General Partner will also provide a quarterly review detailing the investment activities of the Partnership.

## **ARTICLE 10 AMENDMENT OF AGREEMENT**

### **10.1 Amendment by General Partner**

Unless otherwise provided for herein, this Agreement may only be amended on the initiative of the General Partner with the consent of the Limited Partners given by Special Resolution. The General Partner may, without prior notice to or consent from any Limited Partner, amend this Agreement from time to time:

- (a) in order to protect the interests of the Limited Partners, if necessary in the opinion of counsel for the Partnership,
- (b) to cure any ambiguity or to correct or supplement any provision contained herein which, in the opinion of counsel for the Partnership, may be defective or inconsistent with any other provision if, in the opinion of counsel, such amendment does not and shall not in any manner adversely affect the interests of any Limited Partner, or
- (c) if in the opinion of counsel for the Partnership, such amendment does not and shall not adversely affect the interests of any Limited Partner.

Within 30 days following the date of any amendment to this Agreement made pursuant to this Section 10.1, the General Partner shall provide the Limited Partners with a copy of the amendment together with a written explanation of the reasons for the amendment.

## **ARTICLE 11 REMOVAL OF GENERAL PARTNER**

### **11.1 Assignment of Interest of General Partner**

The General Partner may sell, assign, or otherwise transfer its interest or rights as the General Partner in the Partnership at any time upon 20 Business Days' prior written notice to the Limited Partners.

### **11.2 Removal of General Partner**

The General Partner may be removed as the general partner of the Partnership for cause at any time by a Special Resolution of the Limited Partners, which Special Resolution shall also appoint a new general partner and the removal of the General Partner shall be effective upon the date specified in such Special Resolution. For purposes hereof, cause shall mean the fraudulent actions or gross negligence of the General Partner in performing its obligations hereunder. Upon the bankruptcy, dissolution or making of an assignment for the benefit of creditors of or by the General Partner or upon the appointment of a receiver of the assets and undertaking of the General Partner, the General Partner will be deemed to have been removed as the General Partner of the Partnership and a new general partner shall, in such instances, be appointed by an Ordinary Resolution of the Limited Partners within 180 days of the bankruptcy, dissolution, assignment or appointment. Upon passage of such Resolution approving the removal of the

General Partner, the General Partner shall do all things necessary to effectively transfer the management, control and operation of the Partnership and to convey all assets, books, records and accounts of the Partnership (including legal and beneficial title to the assets of the Partnership) to the newly appointed general partner. All costs and expenses associated with the foregoing shall be paid by the Partnership. The removal and replacement of the General Partner as aforesaid shall not dissolve the Partnership.

### 11.3 Payment to General Partner on Removal

In the event of the removal of the General Partner under Section 11.2, the Partnership shall pay to the removed General Partner in cash an amount equal to the Management Fee and Performance Fee to which the General Partner is entitled pursuant to Section 6.7 as at the most recent Valuation Date prior to the effective date of such removal together with any reimbursement for expenses payable to the General Partner pursuant to Section 6.8.

The General Partner shall be entitled to receive copies of all financial statements prepared for the Fiscal Year in which the General Partner's removal occurs.

### 11.4 Release of General Partner

Upon the removal of a General Partner, the Partnership shall release and hold harmless such removed General Partner and its directors, officers and employees from all actions, claims, costs, demands, losses, damages and expenses with respect to events which occur in relation to the Partnership after the effective date of such removal.

### 11.5 Powers, Duties and Obligations of New General Partner

In the event of the removal of the General Partner, the new 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 12**

### **DISSOLUTION OF THE PARTNERSHIP AND TERMINATION OF AGREEMENT**

#### 12.1 Term and Dissolution of the Partnership

The term of the Partnership will commence upon the filing of a Declaration under the Act after the execution and delivery of this Agreement and will end on the earlier of (i) 60 days following delivery by the General Partner to all Limited Partners of a notice of termination, (ii) 180 days after the bankruptcy, dissolution, resignation or winding-up of the General Partner, unless within such 180-day period the General Partner is replaced pursuant to Section 11.2, or (iii) the passage of a Special Resolution by the Limited Partners approving the dissolution.

The Partnership will commence to liquidate and distribute its remaining net assets 60 days after the end of the term of the Partnership in accordance with Sections 12.3 and 12.4.

#### 12.2 No Dissolution on Death, etc. of Limited Partners

The Partnership shall not come to an end by reason of the death, bankruptcy, insolvency, mental incompetence or other disability of any Limited Partner.

### 12.3 Liquidation of Assets

In the event of the dissolution of the Partnership, the General Partner shall wind up the affairs of the Partnership and the assets of the Partnership shall be liquidated in a timely and orderly manner in anticipation of such dissolution. The General Partner shall prepare or cause to be prepared a statement of financial position of the Partnership which shall be reported upon by the Auditor and a copy of which shall be forwarded to each person who was shown on the Register as a Limited Partner at the date of dissolution. The General Partner shall have full right and unlimited discretion to determine the time, the manner and terms of any sale or sales of Partnership assets pursuant to such liquidation having due regard to activity and condition of the relevant market and general financial and economic conditions.

### 12.4 Distribution of Proceeds of Liquidation

The General Partner shall distribute the net proceeds from liquidation of the Partnership in the following order:

- (a) to pay the expenses of liquidation and the debts and liabilities of the Partnership or to make due provision for payments thereof;
- (b) to set up any reserves which the General Partner may reasonably deem necessary for any contingent or unforeseen liability or obligation of the Partnership. The General Partner may select a bank or a trust company to act as trustee in lieu of the General Partner and shall pay over to such trustee the reserve to be held by that institution for the purpose of distributing such reserve in payment of any of the contingencies and to distribute the balance remaining, after the expiration of whatever period the General Partner in its discretion deems reasonable, in the manner hereinafter set forth;
- (c) to the Limited Partners, the amount in their Capital Accounts (in cash or in kind); and
- (d) the balance, if any, to the General Partner.

### 12.5 Termination

Upon completion of the liquidation of the Partnership and the distribution of all Partnership funds, the Partnership shall terminate and the General Partner shall have the authority to execute and record any and all documents required to effect the dissolution and termination of the Partnership under the Act or any other applicable legislation.

## **ARTICLE 13 MISCELLANEOUS**

### 13.1 Competing Interests

Each Partner is entitled, without the consent of the other Partners, to engage in or possess an interest in other business ventures of the same nature as or competing with those activities of the Partnership, and is not liable to account to the other Partners or the Partnership therefore.

### 13.2 Transactions Involving Associates

The General Partner or any of its associates or affiliates may be employed by or retained by the Partnership to provide goods and services to the Partnership, provided that the goods and services are provided on terms no less favourable than could be obtained in an arm's length transaction. The validity of any transaction, agreement or payment involving the Partnership and any associate or affiliate of the General Partner otherwise permitted by the terms of this Agreement shall not be affected by reason of the relationship between the General Partner and such associate or affiliate.

### 13.3 Notice

Any notice, direction or request required or permitted to be given to the Partnership, the General Partner, or the Limited Partners hereunder shall be in writing and shall be given by personal service or by mailing the same by first class mail, with postage thereon fully prepaid, to be addressed as follows:

- (a) to the Partnership or General Partner at: 3 Church Street, Suite #204, Toronto, ON M5E 1M2; and
- (b) to each Limited Partner at its last address as shown on the Register.

Any notice, direction or request mailed as aforesaid shall be deemed to have been given to the addressee, when personally served, if mailed, on the third Business Day following the date of mailing, provided that for such purposes, no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a Business Day. The General Partner may change its address for receipt of notice by giving notice of its new address to each Limited Partner as herein contemplated.

### 13.4 Counterparts

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

### 13.5 Severability

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

### 13.6 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 effect to this Agreement and every part thereof.

13.7 Governing Law

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

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

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

**MOUNTAINVIEW OPPORTUNISTIC  
GROWTH FUND L.P.**

by its General Partner,  
**2016459 ONTARIO LIMITED**

Per: Andrew Coolestone  
Name:  
Title:

**2016459 ONTARIO LIMITED**  
as attorney for all Limited Partners,

Per: Andrew Coolestone  
Name:  
Title:

