

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N :**

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

– and –

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants – Moving Party)

**APPLICATION UNDER**  
**Sections 126 and 129 of the *Securities Act*, R.S.O. 1990 c. s.5, as amended**

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**RESPONDING MOTION RECORD**

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December 21, 2021

**ONTARIO SECURITIES COMMISSION**  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8

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Lawyers for the Receiver, KSV Restructuring Inc.

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Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Electronically issued  
Délivré par voie électronique : 10-Dec-2021  
Toronto

**D E L I V E R E D :**

**ONTARIO SECURITIES COMMISSION**

**Applicant**

**- and -**

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

**Respondents**

**APPLICATION UNDER  
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended**

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following pages.



**THIS APPLICATION** will come on for a hearing

☒ By video conference

at the following location:

via Zoom meeting to be arranged by the Court, details of which will be provided when available;

on Thursday, December 9, 2021 at 2 p.m., or as soon after that time as the matter can be heard.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: December <sup>10</sup>~~6~~, 2021

Issued by \_\_\_\_\_  
Local Registrar

Address of Court Office:

Commercial List Office,  
9th Floor, 330 University Avenue,  
Toronto, Ontario  
M5G 1R7

**TO: Oscar Furtado  
Furtado Holdings Inc.**

2354 Salcome Drive  
Oakville, ON  
L6H 7N3

**AND TO: Go-To Developments Holdings Inc.  
Go-To Developments Acquisitions Inc.  
Go-To Glendale Avenue Inc.  
Go-To Glendale Avenue LP  
Go-To Major Mackenzie South Block Inc.  
Go-To Major Mackenzie South Block LP  
Go-To Major Mackenzie South Block II Inc.  
Go-To Major Mackenzie South Block II LP  
Go-To Niagara Falls Chippawa Inc.  
Go-To Niagara Falls Chippawa LP  
Go-To Niagara Falls Eagle Valley Inc.  
Go-To Niagara Falls Eagle Valley LP  
Go-To Spadina Adelaide Square Inc.  
Go-To Spadina Adelaide Square LP  
Go-To Stoney Creek Elfrida Inc.  
Go-To Stoney Creek Elfrida LP  
Go-To St. Catharines Beard Inc.  
Go-To St. Catharines Beard LP  
Go-To Vaughan Islington Avenue Inc.  
Go-To Vaughan Islington Avenue LP  
Aurora Road Limited Partnership  
2506039 Ontario Limited**

1267 Cornwall Road  
Suite 301  
Oakville, ON  
L6J 7T5

## APPLICATION

1. **THE APPLICANT MAKES APPLICATION FOR:**

- (a) Orders pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the **Act**), substantially in the form attached at Tab 5 of the application record, appointing KSV Restructuring Inc. (**KSV**) as receiver and manager (in such capacities, the **Receiver**), without security, of all of the assets, undertakings and properties (collectively, the **Property**) of each of the Respondents except Oscar Furtado (collectively, the **Go-To Respondents**), and all proceeds thereof;
- (b) Orders pursuant to section 126 of the Act continuing two freeze directions issued by the Ontario Securities Commission on December 6, 2021 (the **Directions**) in relation to assets held by Furtado, until further order of this Honourable Court or until the Commission revokes the Directions or consents to the release of assets from the Directions;
- (c) Orders, if necessary, abridging the time for service and filing of this Application or, alternatively, validating service of same, such that this Application is properly returnable on the date it is heard;
- (d) An order, if necessary, appointing KSV as interim Receiver of all the Property of the Go- To Respondents; and
- (e) Such further and other relief as counsel may advise and this Honourable Court permit.

## 2. THE GROUNDS FOR THE APPLICATION ARE:

### Overview

- (a) This application arises from an investigation into a principal of a property development group (Furtado) who appears to have used his position to defraud investors and engage in undisclosed self-dealing to enrich himself. The Ontario Securities Commission (**Commission**) thus seeks the: (i) immediate appointment of the Receiver; and (ii) continuation of the Directions to preserve assets in Furtado's hands; to safeguard the best interests of stakeholders, and in the interests of the the due administration of Ontario securities law, and/or the regulation of the capital markets;
- (b) Furtado is the founder and directing mind of all the Go-To Respondents. He is an Ontario resident. Each of the Go-To Respondents are Ontario entities, whether corporations or limited partnerships (**LPs**), involved in real estate development;
- (c) Between 2016 and 2020, Furtado and Go-To Developments Holdings Inc. (**GTDH**) raised almost \$80 million from approximately 85 Ontario investors for nine projects, by selling LP units;
- (d) For each Go-To project, Furtado and GTDH set up an LP and a wholly-owned subsidiary of GTDH to act as the general partner (**GP**) (for one project, they set up two LPs and GPs). The projects contemplate development of land and/or of a variety of buildings, including condos, townhouses and single-family homes. No project has begun construction yet, although it appears one has begun site servicing;

- (e) Staff of the Enforcement Branch of the Commission (**Staff**) have been investigating the Go-To business, Furtado and others (the **Investigation**). The Investigation has uncovered evidence indicating that Furtado has engaged some of the Go-To Respondents in transactions to improperly divert partnership funds to his personal benefit, failed to act in the best interests of the Go-To Respondents or their stakeholders, and breached the Act in several ways, including by misleading Staff during the Investigation;

The Investigation & Breaches of the *Securities Act*

- (f) The Investigation has focused on, among other things, the Go-To business and potential breaches of the Act, including fraud, misleading statements to investors, and misleading Staff;
- (g) The Investigation has uncovered evidence that, among other things:
- (i) From February to October 2019, Furtado raised capital from investors for the Go-To Spadina Adelaide Square LP (**Adelaide LP**);
  - (ii) Commencing in or before April 2019, Furtado caused the Adelaide LP to undertake a number of transactions with Adelaide Square Developments Inc. (**ASD**) and others, which ultimately resulted in his personal holding company, Furtado Holdings Inc. (**Furtado Holdings**), receiving ASD shares and undisclosed payments of \$388,087.33 and \$6 million from ASD;
  - (iii) The transactions with ASD relate to the Adelaide LP's acquisition of two properties in downtown Toronto in April 2019, for which ASD had the purchase rights. As part of the acquisition, the Adelaide LP paid ASD a

\$20.95 million assignment fee. Less than 2 weeks later, Furtado Holdings received ASD shares and a \$388,087.33 payment from ASD, which were not disclosed to investors.

- (iv) Within a day of the property acquisitions, the Adelaide LP received a purported \$19.8 million loan from ASD (**Demand Loan**). The majority of the loan proceeds were paid to redeem the units of one Adelaide LP investor together with a significant return;
- (v) Furtado raised additional investor funds for the Adelaide LP in September and October 2019. On October 1, 2019, he used investor funds to pay \$12 million on the Demand Loan, even though no payment was due or demanded. The same day, ASD paid Furtado Holdings a \$6 million dividend. This payment was not disclosed to investors;
- (vi) Furtado's key contact for ASD was Alfredo Malanca. A holding company belonging to Malanca's spouse (AKM Holdings Inc. (**AKM**)) received the same quantum of shares and payments from ASD that Furtado Holdings received, on the same dates;
- (vii) Furtado continues to allow Malanca to be involved with the Adelaide LP project, and to further his, Malanca's and/or ASD's interests by:
  - (1) giving Malanca a Go-To email account under a different last name;

- (2) causing the Adelaide LP to accrue \$1.5 million in fees in 2020 for “development management services”, which are payable, in equal amounts, to GTDH and to AKM; and
  - (3) allowing the registration of a \$19.8 million charge for ASD on the Adelaide LP’s properties in June 2021;
- (viii) Furtado used the \$6 million Furtado Holdings received to, among other things:
  - (1) make investments in his personal investment account;
  - (2) pay personal expenses, including credit card bills; and
  - (3) provide funds to Go-To entities, which they then used to fund operating expenses and make payments to investors;
- (ix) Further, as part of the Adelaide LP’s acquisition of properties in April 2019, Furtado pledged the assets of two other Go-To LPs to secure obligations of the Adelaide LP, which was prohibited by the applicable LP agreements. He did not disclose this misuse of partnership assets to investors for more than a year, and only after he was questioned by Staff; and
- (x) Furtado has provided shifting, misleading evidence to Staff during examinations under oath, including about his contacts at ASD and the payments received by Furtado Holdings;

- (h) Fraud is among the most egregious violations of the Act. The Investigation has revealed evidence of misappropriation, undisclosed payments to Furtado, improper use and intermingling of partnership assets, and deception to conceal transactions from investors and from Staff of the Commission. Furtado's conduct has jeopardized the assets of the Go-To LPs and investors' interests;
- (i) Furtado also failed to provide complete and accurate information to Staff during the Investigation, including during examinations under oath;
- (j) The requirements to deal honestly with investors and to provide full and accurate information to the Commission are cornerstones of the Act's regulatory regime;

Need for a Receiver

- (k) Given Furtado's conduct and its effect on the Go-To Respondents and their assets, the appointment of the Receiver is in the best interests of investors and other stakeholders;
- (l) By his actions, Furtado has demonstrated that he lacks the necessary integrity to continue to control projects involving investor funds. The most effective way to safeguard the best interests of stakeholders and the integrity of Ontario's capital markets is to appoint the Receiver and remove Furtado from the positions of trust he occupies with the Go-To Respondents. This is especially so given that:
  - (i) The primary vehicle via which Furtado Holdings was improperly enriched, the Demand Loan payable to ASD, has an outstanding balance of several million dollars; and



- (ii) Furtado has allowed Malanca to remain involved in the Adelaide LP project;
- (m) Appointment of the Receiver is needed to ensure the Go-To business is in the hands of an honest, competent, and responsible custodian, and is appropriate for the due administration of Ontario securities law;

Continuation of the Directions is Reasonable and Expedient

- (n) As some of the \$6 million received by Furtado Holdings from ASD was used by Furtado to make investments in his personal investment account, Staff sought and on December 6, 2021, the Commission issued, the Directions;
- (o) Subject to the terms therein, the Directions essentially require:
  - (i) RBC Direct Investing Inc. to retain all funds, securities and property on deposit in investment accounts belonging to Furtado; and,
  - (ii) Furtado to maintain any funds, securities or property derived from Go-To investor funds, (collectively, the **Assets**);
- (p) Continuation of the Directions would be reasonable and expedient in the circumstances, having due regard to the public interest and,
  - (i) the due administration of Ontario securities law; and/or
  - (ii) the regulation of the capital markets in Ontario;
- (q) There is a serious issue to be tried with respect to possible contraventions of the Act by Furtado and others, including potential fraud;

- (r) The Assets subject to the Directions were obtained by Furtado using proceeds obtained from the conduct at issue. Alternatively, there is at least a basis to suspect that the Assets are connected to the conduct at issue;
- (s) The Directions are necessary for the due administration of Ontario securities law. The Directions preserve assets connected to the conduct in issue for the benefit of investors and prevent dissipation of those assets by Furtado, to ensure such assets are available in the event that enforcement proceedings are brought before the Commission;

Legislative provisions, etc.

- (t) Sections 1.1, 2.1(2), 44(2), 122, 126, 126.1, 129, and 129.2 of the Act;
- (u) Sections 135 and 137 of the *Courts of Justice Act*;
- (v) Rules 1.04, 2.03, 3.02, 14.05(2), 16.08 and 38 of the *Rules of Civil Procedure*; and
- (w) Such further and other grounds as counsel may advise and this Court may permit.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- (a) the Affidavit of Stephanie Collins sworn December 6, 2021;
- (b) the Directions;
- (c) the Consent of KSV to act as Receiver; and
- (d) such further and other evidence as counsel may advise and this Honorable Court permit.

10  
December 6, 2021

**ONTARIO SECURITIES COMMISSION**

20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

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Email: ehault@osc.gov.on.ca

Lawyers for the Ontario Securities Commission

Court File No. \_\_\_\_\_

ONTARIO SECURITIES COMMISSION  
Applicant

- and -  
GO-TO DEVELOPMENTS HOLDINGS INC. *et al.*  
Respondents

	<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b></p> <p>Proceeding commenced at Toronto</p>
	<p><b>NOTICE OF APPLICATION</b> (Application under sections 126 and 129 of the <i>Securities Act</i>)</p>
	<p><b>Ontario Securities Commission</b> 20 Queen Street West, 22<sup>nd</sup> Floor Toronto, ON M5H 3S8</p> <p><b>Erin Hault (LSO No. 54002C)</b> Tel.: (416) 593-8290 Email: ehault@osc.gov.on.ca</p> <p>Lawyers for the Ontario Securities Commission</p>

This is Exhibit “15” referred to  
in the Affidavit of Stephanie Collins  
sworn before me, this  
6<sup>th</sup> day of December, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

---

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,  
Province of Ontario, for the Government of Ontario,  
Ontario Securities Commission.  
Expires March 22, 2024.**

## **LIMITED PARTNERSHIP AGREEMENT**

**THIS AGREEMENT** made with effect as of the 22<sup>nd</sup> day of June, 2017.

**BETWEEN:**

**GO-TO NIAGARA FALLS EAGLE VALLEY INC.,**  
a corporation incorporated under the laws of the Province of Ontario  
(together with any other Person admitted as a general partner of **Go-To Niagara Falls Eagle Valley LP**, the “**General Partner**”)

– and –

**GO-TO DEVELOPMENTS HOLDINGS INC.,**  
a corporation incorporated under the laws of the Province of Ontario  
(“**Go-To Holdings**”)

– and –

**EACH PARTY WHO FROM TIME TO TIME EXECUTES  
THIS AGREEMENT AND THEREBY AGREES TO BE BOUND  
AS A LIMITED PARTNER, OR ANY SUCCESSOR THEREOF**

**WHEREAS:**

A. Go-To Niagara Falls Eagle Valley LP (the “**Partnership**”) wishes to issue Class A Units at a subscription price of \$50,000 per Class A Unit, Class C Units at a subscription price of \$50,000 per Class C Unit and one (1) Class D Unit at a subscription price of \$1.00 to such subscribers that execute and deliver a Subscription Agreement;

B. The Partnership was formed for the purpose of acquiring the developing the Property; and

C. The parties wish to enter into this limited partnership agreement for the purposes of recording the relationship among them and their respective rights and duties in relation to the Partnership;

**NOW THEREFORE** in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, the parties hereto agree as follows:

### **ARTICLE 1 THE PARTNERSHIP**

1.1 **Definitions.** Wherever used in this Agreement, the following terms will have the following meanings, respectively, unless the context indicates otherwise:

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

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- (b) **"Accountants"** means the accountants appointed by the General Partner to act as accountants for the Partnership from time to time;
- (c) **"Administrative Services Agreement"** means the services agreement dated on or around the date hereof by and between Go-To Holdings and the Partnership with respect to provision of certain administrative services in connection with the Property;
- (d) **"Advisory Committee"** has the meaning attributed to such term in Section 7.1;
- (e) **"Affiliates"** has the meaning ascribed thereto in the *Securities Act* (Ontario);
- (f) **"Agreement"** means this agreement, as it may be amended, restated or revised from time to time;
- (g) **"Arm's Length"** has the meaning attributed to such term in the Tax Act;
- (h) **"Business Day"** means any day, other than a Saturday or Sunday or a day on which chartered banks in the City of Toronto, Ontario are not open for business during normal banking hours;
- (i) **"Capital Contribution"** means the amount of money paid in cash in exchange for Units and any additional capital contributions made in cash by the Unitholders pursuant to ARTICLE 3;
- (j) **"Class A Units"** means class A units of the Partnership;
- (k) **"Class B Units"** means class B units of the Partnership;
- (l) **"Class C Units"** means class C units of the Partnership;
- (m) **"Class D Unit"** means class D units of the Partnership;
- (n) **"Class A Unitholders"** means the holders of Class A Units from time to time;
- (o) **"Class B Unitholders"** means the holders of Class B Units from time to time;
- (p) **"Class C Unitholders"** means the holders of Class C Units from time to time;
- (q) **"Class D Unitholder"** means the holder of the Class D Unit from time to time;
- (r) **"Class D Unitholder Return"** means an amount equal to 37.5% of the positive difference between the Balance (as defined in Section 4.2(h)) and the Imputed Interest Deduction;
- (s) **"Construction Commencement Date"** means the commencement of construction of family residences on the Property;
- (t) **"Deferred Return"** means in respect of each Class A Unitholder, the four percent (4%) annual, cumulative, non-compounding, priority return, calculated on

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the Capital Contribution of such Class A Unitholder, for the period of time commencing on the date such Capital Contribution (or portion thereof) was made and ending on the day that such Class A Unitholder's Capital Contribution is repaid in full;

- (u) **"Excluded Person"** means a Person:
  - (i) that is a "non-resident" of Canada or a partnership that is not a "Canadian partnership" for purposes of the Tax Act;
  - (ii) an interest in which is a "tax shelter investment" or whose interest in the Partnership if acquired by such Person, would be a "tax shelter investment" within the meaning of the Tax Act;
  - (iii) that is a "financial institution" for purposes of the Tax Act unless the issuance of Units to such Person would not cause the Partnership to be a "financial institution" for purposes of the Tax Act; or
  - (iv) who has financed or will finance the acquisition of Units for which recourse is limited for purposes of the Tax Act;
- (v) **"Former General Partner"** has the meaning attributed to such term in Section 5.21;
- (w) **"Imputed Interest Deduction"** means the aggregate amount of Manager Advance Shortfall Imputed Interest deducted from the Development Management Fee (as defined in the Management Agreement) from time to time in accordance with Section 6.8 of the Management Agreement, but only to the extent not previously deducted as part of the calculation of the Class D Unitholder Return;
- (x) **"Income for Tax Purposes"** and **"Loss for Tax Purposes"** means, in respect of any fiscal year of the Partnership, the amount of income, or loss, of the Partnership as determined by the General Partner in accordance with this Agreement and the provisions of the Tax Act;
- (y) **"Insolvency Event"** means with respect to a Unitholder or the General Partner, as the case may be: (i) the adjudication by a court of competent jurisdiction as bankrupt or insolvent; (ii) an encumbrancer takes possession of all or any material part of the General Partner's property or the Unitholder's Units, as the case may be; (iii) if a distress or execution or any similar process is levied or enforced upon or against all or any material part of the General Partner's property or the Unitholder's Units, as the case may be; (iv) the voluntary taking of any formal proceeding for the rearrangement of its financial affairs by arrangement or compromise with its creditors; (v) involuntary formal proceedings being taken against it for the rearrangement of its financial affairs by arrangement or compromise with its creditors;



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- (z) **"Management Agreement"** means the management agreement dated on or around the date hereof by and between the Manager and the General Partner with respect to development and construction in connection with the Property;
- (aa) **"Manager"** means Capital Build (Eagle Valley) Holdings Inc. and any replacement appointed by the General Partner to replace such entity;
- (bb) **"Manager Advance Shortfall Imputed Interest"** has the meaning ascribed to that term in Section 6.8 of the Management Agreement;
- (cc) **"Manager's Advances"** has the meaning ascribed to that term in Section 6.2 of the Management Agreement;
- (dd) **"Net Income"** means for any fiscal period, the net income of the Partnership during the period determined in accordance with generally accepted accounting principles;
- (ee) **"Net Loss"** means for any fiscal period, the net loss of the Partnership during the period determined in accordance with generally accepted accounting principles;
- (ff) **"New General Partner"** has the meaning attributed to such term in Section in Section 5.21;
- (gg) **"Ordinary Resolution"** means a resolution approved by more than fifty percent (50%) of the votes cast by the Voting Unitholders entitled to vote, in person or by proxy at a duly convened meeting of the Voting Unitholders, or at any adjournment thereof, called in accordance with this Agreement or a written resolution in one or more counterparts, signed by Voting Unitholders holding in the aggregate more than fifty percent (50%) of the aggregate number of votes held by the Voting Unitholders who are entitled to vote;
- (hh) **"Person"** means and includes any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, limited liability company, unincorporated association or organization, governmental entity, syndicate or other entity, whether or not having legal status;
- (ii) **"Prime Rate"** means, at any time, the annual rate of interest which the bank with whom the Partnership holds its main operating accounts establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge at such time for demand loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest";
- (jj) **"Pro-Rata Basis"** means: (i) in relation to any particular Class A Unitholder, a fraction which has as its numerator the number of Class A Units held by such Class A Unitholder and which has as its denominator the total number of Class A Units which are issued and outstanding at the time; (ii) in relation to any particular Class C Unitholder, a fraction which has as its numerator the number of Class C Units held by such Class C Unitholder and which has as its denominator

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the total number of Class C Units which are issued and outstanding at the time and (iii) in relation to any particular Voting Unitholder, a fraction which has as its numerator the number of Class A Units and/or Class C Units, as the case may be, held by such Voting Unitholder and which has as its denominator the total number of Class A Units and Class C Units which are issued and outstanding at the time. Where "Pro-Rata Basis" is used in respect of a specific group of Class A Unitholders, Class C Unitholders or Voting Unitholders, as the case may be, it shall mean, in relation to any particular Class A Unitholder, Class C Unitholder or Voting Unitholder, as the case may be, a fraction which has as its numerator the number of that specified class of Class A Units or Class C Units, as the case may be, held by such Class A Unitholder, Class C Unitholder or Voting Unitholder, as the case may be, and which has as its denominator the total number of Class A Units and/or Class C Units held by the specific group of Class A Unitholders, Class C Unitholders or Voting Unitholders, as the case may be, at the time;

- (kk) **"Project"** has the meaning attributed thereto in the Management Agreement;
- (ll) **"Project Security"** means the aggregate amount of security deposits paid or delivered by the Partnership or the Manager to: (i) Tarion Warranty Corporation relating to the Project in compliance with all requirements of Tarion Warranty Corporation and the *Ontario New Home Warranties Plan Act*, S.O. 1998 c.18; and/or (ii) the municipality, county or regional municipality in which the Property is located in connection with development obligations pursuant to any agreements with such municipality, county or regional municipality;
- (mm) **"Property"** means the parcel of land municipally known as PIN 64269-0559; Part TWP LT 16 STAMFORD; Part TWP LT 24 STAMFORD; Part TWP 25 STAMFORD; Part RDAL BTN TWP LT 24 & 25 STAMFORD; Part RDAL BTN TWP LT 16 & 25 STAMFORD; being Parts 2,3,4,5,7,8,9 & 10 59R14717; together with an easement as in RO756108; subject to an easement over Parts 7,8,9 & 10 59R14717 in favour of Part 1 59R14717 as in DN370529; subject to an easement over Parts 2,7,4 & 9 59R14717 in favour of Part 1 59R14717 as in SN370529; together with an easement over Part TWP LT 24 STAMFORD being Part 1 ON 59R15044 as in SN402290; City of Niagara Falls;
- (nn) **"Property Closing Date"** means the date hereof;
- (oo) **"Registrar and Transfer Agent"** means the General Partner or an agent appointed by the General Partner to keep a register of Unitholders and a register of the Transfer of Units;
- (pp) **"Reserves"** means amounts from time to time transferred or credited, in the discretion of the General Partner, to a reserve or contingent account on the books and records of the Partnership for operating expenses or contingent or unforeseen liabilities and obligations;
- (qq) **"Securities Laws"** means, collectively, the applicable securities laws of any jurisdiction and the respective regulations, rules, blanket orders and blanket

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rulings made under those securities laws together with applicable published policies, policy statements and notices, and shall include all discretionary orders or rulings, if any, of Canadian securities commissions or other securities commissions in any applicable jurisdiction granted in connection with the transactions contemplated by this Agreement;

- (rr) **"Semi-Annual Return"** means in respect of each Class A Unitholder, the six percent (6%) annual, cumulative, non-compounding, priority return, calculated on the Capital Contribution of such Class A Unitholder, for the period of time commencing on the date such Capital Contribution (or portion thereof) was made and ending on the day that such Class A Unitholder's Capital Contribution is repaid in full;
- (ss) **"Special Resolution"** means a resolution approved by more than seventy-five and one-third percent ( $75\frac{1}{3}\%$ ) of the votes cast by the Voting Unitholders entitled to vote, in person or by proxy at a duly convened meeting of the Voting Unitholders, or at any adjournment thereof, called in accordance with this Agreement or a written resolution in one or more counterparts, signed by Voting Unitholders holding in the aggregate more than seventy-five and one-third percent ( $75\frac{1}{3}\%$ ) of the aggregate number of votes held by the Voting Unitholders who are entitled to vote;
- (tt) **"Specified Transfer"** means a Transfer of legal and/or beneficial ownership of Units to the executors and estate administrators of a Unitholder upon the death, insolvency or bankruptcy of a Unitholder;
- (uu) **"Subscription Agreement"** means the form of subscription agreement, in such form and substance as required by the General Partner, to be executed and delivered by a subscriber to the General Partner for the subscription of Class A Units, Class C Units and/or Class D Units, as the case may be;
- (vv) **"Tax Act"** means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time;
- (ww) **"Transfer"** means and includes any sale, exchange, transfer, assignment, gift, pledge, encumbrance, hypothecation, alienation, transmission or other transaction, whether voluntary, involuntary or by operation of law, by which the beneficial ownership of, or a security interest or other interest in, the security or any part thereof passes from one Person to another, or to the same Person in a different capacity or to a successor of such Person such as by amalgamation (except an amalgamation with an affiliate), whether or not for value, and any option, agreement or other commitment in respect of any of the foregoing, and "transferred", "transferor" and "transferee" and similar expressions have corresponding meanings;
- (xx) **"Unit"** means an undivided ownership interest in the Partnership entitling the holder of record thereof to the rights provided in this Agreement represented by a Class A Unit, a Class B Unit, a Class C Unit, or Class D Unit as the case may be;

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- (yy) **“Unitholder”** means the holder of a Unit and **“Unitholders”** has a corresponding meaning;
  - (zz) **“Unit Certificate”** means the form of certificate issued by the General Partner, evidencing the type and number of Units owned by a Unitholder; and
  - (aaa) **“Voting Unitholders”** means the Class A Unitholders and the Class C Unitholders and **“Voting Unitholder”** has a corresponding meaning.
- 1.2 **Agreement.** This Agreement contains the entire agreement between the General Partner and the Unitholders as to the formation, organization and management of the Partnership. The General Partner and each Unitholder may hereinafter be referred to individually as a **“Partner”**, and collectively as the **“Partners”**.
  - 1.3 **Formation of Partnership.** The General Partner hereby warrants and represents that the Partnership became a limited partnership under the laws of the Province of Ontario on March 6, 2017, under the name **“Go-To Niagara Falls Eagle Valley LP”**, the date the General Partner filed a declaration under the Act. The Partnership shall continue as a limited partnership until terminated in accordance with the provisions of this Agreement.
  - 1.4 **Limited Liability.** Subject to the Act (and any other similar legislation applicable in any other jurisdiction) and any specific assumption of liability, the liability of each Unitholder for the debts, liabilities and obligations of the Partnership is limited to the amount of capital that such Unitholder has contributed or agrees to contribute to the Partnership, as provided in the Act. A Unitholder shall have no further personal liability for any debts, liabilities and obligations of the Partnership.
  - 1.5 **Name.** The Partnership shall carry on business under the name **“Go-To Niagara Falls Eagle Valley LP”** or such other name or names as the General Partner may determine from time to time, provided that the General Partner files a declaration under the Act as required, giving effect thereto. The General Partner shall promptly advise the Unitholders of any such change.
  - 1.6 **Head Office and Mailing Address.** The head office and mailing address of the Partnership shall be located at Suite 301-1267 Cornwall Road, Oakville, Ontario L6J 7T5 and may be changed from time to time by the General Partner giving written notice to that effect to all the Unitholders.
  - 1.7 **Registrar and Transfer Agent.**
    - (a) The General Partner shall act as the Registrar and Transfer Agent of the Partnership and shall maintain such books and records as are necessary to record the names and addresses of the Unitholders, the type and number of Units held by each Unitholder and particulars of Transfers of Units. The General Partner shall cause the Registrar and Transfer Agent to perform all other duties usually performed by a registrar and transfer agent of certificates of shares in a corporation, except as the same may be modified by reason of the nature of such Units;



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- (b) For so long as the General Partner shall be Registrar and Transfer Agent, the register of Unitholders shall be kept by the General Partner at the address referred to in Section 1.6 hereof or at the offices of the solicitors for the General Partner; and
  - (c) The General Partner shall promptly advise the Unitholders in writing of any change in the Registrar and Transfer Agent or the location of the register of Unitholders.
- 1.8 **Inspection of Records.** Upon two (2) Business Days' notice in writing from any Unitholder to the General Partner, the General Partner shall cause the Registrar and Transfer Agent to make the records relating to the Partnership available for inspection by the Unitholder, or its agent duly authorized in writing, during normal business hours, at the expense of the Unitholder requesting such inspection. A copy of the register of the Unitholders shall be provided to any Unitholder on forty-eight (48) hours' notice in writing to the Registrar and Transfer Agent, at the expense of the Unitholder requesting same.
- 1.9 **Filing of Declarations.** As soon as practicable following the execution hereof, the General Partner shall cause to be executed and filed such declarations, instruments and documents as may be required under the laws of the Province of Ontario, in connection with the Partnership, and shall keep a register of the Unitholders in accordance with applicable legislation. The General Partner and each Unitholder 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 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.
- 1.10 **Year End.** The fiscal year end of the Partnership shall be December 31 in each year or such other date as the Voting Unitholders may determine by Special Resolution.
- 1.11 **Business of the Partnership.** The Partnership has been formed for the purpose of purchasing, holding an interest in, conducting pre-development planning with respect to, development and construction of the Property, and the sale or other disposition of the Property (or part thereof). The Partnership shall have the power to do any and every act and thing necessary, proper, convenient or incidental to the accomplishment of such purposes. Unless approved by the Voting Unitholders in accordance with the terms of this Agreement, the Partnership shall not carry on any other business.
- 1.12 **Status of Each Unitholder.** Each Unitholder represents, warrants and covenants to each other Unitholder and to the General Partner that it:
  - (a) It is not, and will not become, an Excluded Person or otherwise change its status as represented herein;
  - (b) If an individual, he/she is of the age of majority and has the legal capacity and competence to enter into and be bound by this Agreement and to take all actions required pursuant hereto and the performance of his/her obligations herein do not

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and will not conflict with or give rise to a breach of any other agreement by which he/she is bound; and

- (c) If a corporation, partnership, unincorporated association or other entity, it has the legal capacity or competence to enter into and be bound by this Agreement and to take all actions required pursuant hereto, and further that all necessary approvals of directors, shareholders, partners, members or others have been given to accomplish the foregoing, and the performance of its obligations herein do not and will not conflict with or give rise to a breach of its constating document(s) or agreement(s), articles of incorporation, by-laws, or any other agreement by which it is bound;

and each Unitholder covenants and agrees that: (i) each of the foregoing representations and warranties shall be true and accurate at all times; (ii) it shall promptly provide such evidence of the accuracy of the foregoing representations and warranties to the General Partner upon the reasonable request of the General Partner; and (iii) it will not Transfer or purport to Transfer any of its Units to any Person that is unable to make the representations and warranties contained in this Section 1.12.

- 1.13 **Mandatory Transfer of Units.** If at any time, any Unitholder is or becomes an Excluded Person, such Unitholder covenants, agrees and undertakes that it will immediately notify the General Partner that it is an Excluded Person. Upon the General Partner becoming aware of, or determining that, a Unitholder has become an Excluded Person since becoming a Unitholder, or if the Unitholder fails to provide evidence satisfactory to the General Partner that it is not an Excluded Person, the General Partner will require the Unitholder to dispose of all its Units to a Person that is not an Excluded Person, failing which the General Partner, subject to compliance with applicable Securities Laws, will be entitled to sell the Units to the remaining Unitholders on a Pro-Rata Basis or to acquire the Units on behalf of the Partnership.
- 1.14 **Status of the General Partner.** The General Partner represents, warrants and covenants to each Unitholder that the General Partner:
  - (a) Is, and shall continue to be, a corporation incorporated and subsisting in good standing under the laws of the Province of Ontario; and
  - (b) Has the capacity and corporate authority to act as the General Partner of the Partnership and to perform its obligations under this Agreement and that the performance of such obligations do not and will not conflict with or give rise to a breach of its articles of incorporation, by-laws, or any other agreement by which it is bound.
- 1.15 **Compliance with Laws.** The Unitholders shall comply with the provisions of the Act and any other applicable legislation in force from time to time and shall not take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership. Without limiting the generality of the foregoing, each Unitholder shall, on request by the General Partner, immediately execute all certificates, declarations, instruments and documents, including declarations to be filed under the Act, that are

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necessary to comply with any law or regulation of any jurisdiction in Canada in regard to the formation, continuance, operation or dissolution of the Partnership.

- 1.16 **Limitation on Authority of Unitholder.** No Unitholder shall (save and except for the General Partner where the General Partner is also a Unitholder):
- (a) Take part in the control or management of the business of the Partnership provided that each Unitholder shall have the right from time to time to examine into the state and progress of the business and affairs of the Partnership;
  - (b) Execute any document which binds or purports to bind the Partnership, the General Partner or any Unitholder as such;
  - (c) Hold itself out as having the power or authority to bind or sign on behalf of the Partnership, the General Partner or any Unitholder;
  - (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 property or other assets of the Partnership, whether real, personal or mixed and whether tangible or intangible, or, except as permitted herein, register or permit any lien or mortgage in respect of the Units of such Unitholder to be filed or registered or remain undischarged against such Units.
- 1.17 **Title.** The General Partner, or its nominee, from time to time, shall at all times hold the rights, assets and agreements in relation to the business of the Partnership in the name of the General Partner, but on behalf of the Partnership, unless otherwise directed by the Partnership.
- 1.18 **Title to Partnership Assets.** Title to the property and assets of the Partnership, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner individually shall have any ownership interest in the assets of the Partnership or any portion thereof. Title to any or all of the Partnership's property and assets shall be held in the name of the General Partner or as the General Partner may determine from time to time. The General Partner declares, represents, and warrants to each of the Unitholders as a continuing declaration, representation and warranty, that any property and assets of the Partnership of which legal title is held in the name of the General Partner shall be held by the General Partner as agent and nominee for the beneficial entitlement and interest of the Partnership for the use and benefit of the Partnership in accordance with the provisions of this Agreement.
- 1.19 **Commingling of Funds.** The funds and assets of the Partnership shall not be commingled with the funds or assets of any other Person, including those of the General Partner.
- 1.20 **Survival of Representations and Warranties.** Each of the parties agrees that the representations and warranties made by it in this Agreement, as applicable, are true and correct on the date hereof and that they shall survive the execution of this Agreement,

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indefinitely, notwithstanding such execution or any investigations made by or on behalf of any of the other Partners and each Partner covenants and agrees to ensure that each such representation and warranty it has made remains true and correct so long as such Partner remains a Partner.

## **ARTICLE 2**

### **UNITS**

- 2.1 **Number and Classes of Units.** The interest of the Unitholders in the Partnership shall be divided into Units, represented by an unlimited number of Class A Units, an unlimited number of Class B Units, an unlimited number of Class C Units and an unlimited number of Class D Units. Except as may otherwise be specifically contemplated in this Agreement, no Unit shall have any preference or right in any circumstances over any other Unit.
- 2.2 **Unit Attributes.**
- (a) Each Class A Unit shall have the following rights and obligations:
    - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
    - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
    - (iii) The right to receive distributions in accordance with the terms hereof.
  - (b) Except for the rights explicitly granted to the General Partner under this Agreement, each Class B Unit shall be non-voting, and shall entitle the holder thereof to receive the following (but no more than the following):
    - (i) Payment of distributions in accordance with the terms hereof; and
    - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof.
  - (c) Each Class C Unit shall have the following rights and obligations:
    - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
    - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
    - (iii) The right to receive distributions in accordance with the terms hereof.
  - (d) Each Class D Unit shall be non-voting, and shall entitle the holder thereof to receive the following (but no more than the following):



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- (i) Payment of distributions in accordance with the terms hereof; and
- (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof.

2.3 **Securities Transfer Act.** It is acknowledged that the Units shall be considered a "security" for the purposes of the *Securities Transfer Act, 2006* (Ontario) and any other applicable securities transfer laws.

2.4 **Unit Certificates.** Certificates may be issued to evidence the Units and a Unit Certificate for each class of Units shall be in such form as is from time to time approved by the General Partner and shall be signed by the General Partner. It is acknowledged and agreed that the General Partner shall not be required to issue a Unit Certificate to a Unitholder, and a Unitholder shall not be entitled to receive a Unit Certificate, until such time that a Unitholder makes a written request for a Unit Certificate to be issued. All Unit Certificates issued or to be issued by the General Partner will be endorsed with a memorandum as follows:

"This certificate is a "security" for the purposes of the *Securities Transfer Act, 2006* (Ontario) and is subject to a Limited Partnership Agreement and the units represented by this certificate cannot be sold, transferred, assigned or otherwise disposed of or mortgaged, pledged, hypothecated, charged or otherwise encumbered except pursuant to the terms of the said Limited Partnership Agreement."

2.5 **Lost Unit Certificates.** Where a Unitholder claims that the Unit Certificate for its Unit has been defaced, lost, apparently destroyed or wrongly taken, the General Partner shall cause a new Unit Certificate to be issued to such Unitholder, provided that the Unitholder files with the Registrar and Transfer Agent an indemnity bond in the form and in an amount satisfactory to the General Partner to protect the Registrar and Transfer Agent and the Partnership from any loss, cost or damage that they may incur or suffer by complying with the request to issue a new Unit Certificate and provided further that the Unitholder satisfies all other reasonable requirements imposed by the Registrar and Transfer Agent, including delivery of a form of proof of loss.

2.6 **Transfer and Encumbering of Units.**

- (a) A Unitholder shall not, without the prior written consent of the General Partner (which consent may be unreasonably withheld), Transfer (other than a Specified Transfer) any of such Unitholder's Units or interest in the Partnership;
- (b) (A) No Transfer of a fraction of a Unit will be permitted unless it is transferred as part of the Transfer of all, but not less than all, of the Units held by such transferring Unitholder; and (B) Units may not be Transferred by a Unitholder, or its agent duly authorized in writing, unless and until the following conditions are satisfied:

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- (i) to the extent required, the consent of the General Partner shall have been obtained in accordance with Section 2.6(a);
- (ii) the transferee has delivered to the Registrar and Transfer Agent an executed transfer document in respect of the Units being transferred (a "**Unit Transfer**") in such form and substance as required by the General Partner;
- (iii) the transferee has agreed in writing, in such form and substance as required by the General Partner, to be bound by the terms of this Agreement and to assume the obligations of the transferor that pertain to the Units being transferred to it;
- (iv) the provisions of all applicable Securities Laws have been complied with;
- (v) the transferor or transferee pays such costs, expenses, disbursements and transfer fees as determined by the General Partner from time to time, and such reasonable legal and other professional fees and disbursements, as are reasonably incurred by the Partnership by reason of the Transfer;
- (vi) the transferor surrenders or causes to be surrendered to the General Partner or the Registrar and Transfer Agent the Unit Certificate(s) issued pursuant to this Agreement for the Units being Transferred duly endorsed for Transfer by the transferor;
- (vii) the transferee has delivered to the General Partner an executed declaration whereby such transferee makes the representations, warranties and covenants set forth in Section 1.12 of this Agreement and grants the power of attorney contained in Section 5.7; and
- (viii) such other requirements as may be required by law or may reasonably be required by the General Partner and/or the Registrar and Transfer Agent are satisfied;

provided that a transferee of a Unit will not become a Unitholder in respect of that Unit until it is recorded in the register of Unitholders maintained by the General Partner and all filings and recordings required by law to validly effect a Transfer have been duly made as referred to hereunder; and

- (c) When a transferee is entitled to become a Unitholder pursuant to the provisions hereof, the General Partner shall be authorized to admit such transferee to the Partnership as a Unitholder and the Unitholders hereby consent to the admission of, and will admit, the transferee to the Partnership as a Unitholder without further act of the Unitholders. The General Partner or the Registrar and Transfer Agent will:
  - (i) record at the registered office of the Partnership any such assignment and Transfer;

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- (ii) make such filings and cause to be made such recordings as are required by law;
- (iii) forward a notice of the Transfer to the transferee; and
- (iv) subject to Section 2.4, issue a Unit Certificate to the transferee in respect of the Units Transferred to it.

- 2.7 **Parties Not Bound to See to Trust or Equity.** Except where specific provision has been made therefor in this Agreement, the Registrar and Transfer Agent shall not, nor shall the General Partner or the Unitholders, be bound to see to the execution of any trust, express, implied or constructive, or any mortgage, pledge or equity to which any Unit or any interest therein is subject, or to ascertain or inquire whether any Transfer of any such Unit or interest therein by any Unitholder or its representatives is authorized by such trust, mortgage, pledge or equity, or to recognize any Person having any interest therein except for the entity recorded as such Unitholder in the register of Unitholders maintained by the Registrar and Transfer Agent.
- 2.8 **Liability on Transfer.** When a Transfer of any Unit is completed and the transferee is registered as a Unitholder, the transferor of that Unit will be thereupon be relieved of all obligations and liabilities relating to such Unit, including the obligations and liabilities under this Agreement to the extent permitted by law and the transferee will assume all such obligations and liabilities; provided, however, that no Transfer of Units shall relieve the transferor from any obligations to the Partnership arising or incurred prior to the Transfer becoming effective.
- 2.9 **Successors in Interest of Partners.** The Partnership shall continue notwithstanding the admission of any new General Partner or Unitholder or the withdrawal, death, insolvency, bankruptcy or other disability or incapacity of the General Partner or any Unitholder. The Partnership shall be dissolved only in the manner provided for in ARTICLE 9 hereof.
- 2.10 **Entitlement upon Death, Insolvency or Bankruptcy.** Where a Person becomes entitled to a Unit as a result of a Specified Transfer, in addition to the requirements of Section 2.6(b), that Person will not be recorded as or become a Unitholder until it produces evidence satisfactory to the General Partner of such entitlement and 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.
- 2.11 **Option to Purchase.** Upon the occurrence of an Insolvency Event in respect of a Class A Unitholder, Class C Unitholder or Class D Unitholder, as the case may be (the “**Insolvent Unitholder**”), the Insolvent Unitholder shall immediately provide the General Partner with written notice setting out the details of the Insolvency Event (who shall promptly provide a copy of such written notice to each of the other Unitholders). Each of the other Voting Unitholders, as of and from the date of such Insolvency Event (the “**Date of Default**”), have an option to purchase all, but not less than all, of the Insolvent Unitholder’s Units (the “**Default Units**”), which option will be exercisable by the delivery of written notice (the “**Purchase Notice**”) to the Insolvent Unitholder on or before the 40<sup>th</sup> Business Day following the Date of Default, which notice shall contain

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the price that such Voting Unitholder is willing to pay for the Default Units. If more than one Voting Unitholder elects to exercise the option herein granted, the Voting Unitholder that stated the highest purchase price for the Default Units in its Purchase Notice (the "**Purchasing Unitholder**" in this section) shall purchase the Default Units at the purchase price stated in its Purchase Notice.

In the event that no Voting Unitholder delivers a Purchase Notice within the applicable time period, the General Partner may, at its sole discretion, cause the Partnership to purchase the Default Units from the Insolvent Unitholder for cancellation at a purchase price equal to fifty percent (50%) of the fair market value of the Default Units, as determined by the Partnership's Accountants with no right to appeal by the Insolvent Unitholder or any other Unitholder.

The purchase price for the Default Units shall be paid as follows:

- (a) 25% of the purchase price payable by the Purchasing Unitholder or the General Partner, as the case may be, will be paid on the date that is 90 days following the Date of Default; and
- (b) The balance of the purchase price payable by the Purchasing Unitholder or the General Partner, as the case may be, shall not accrue interest and will be paid in three equal consecutive annual payments, with the first such payment due and payable on the date that is one (1) year following the Date of Default and the last such payment due and payable on the date that is three (3) years following the Date of Default.

Any costs and expenses incurred by the General Partner or the Partnership in connection with the purchase and sale of the Default Units shall be deducted from the purchase price paid to the Insolvent Unitholder for the Default Units and shall be paid by the Purchasing Unitholder or the General Partner, as the case may be, on behalf of the Insolvent Unitholder to the General Partner or the Partnership, as the case may be.

### **ARTICLE 3** **CAPITAL CONTRIBUTIONS**

- 3.1 **Capital Contributions.** The initial capital of the Partnership shall be the Capital Contributions of the Unitholders, being: (i) in the case of the Class A Units, the amount of \$50,000 per Class A Unit in accordance with the Subscription Agreement executed and delivered by each Class A Unitholder; (ii) in the case of the Class C Units, the amount of \$50,000 per Class C Unit in accordance with the Subscription Agreement executed and delivered by each Class C Unitholder; and (iii) in the case of the Class D Unit, the amount of \$1.00 for the Class D Unit in accordance with the Subscription Agreement executed and delivered by the Class D Unitholder. The General Partner's interest in the Partnership, as at the date hereof, is reflected by one (1) Class B Unit.
- 3.2 **Acknowledgment re Capital Contributions.** Save and except for Section 3.3, it is expressly provided that there shall be no requirement of any of the Unitholders to contribute further capital.



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- 3.3 **Additional Capital Contributions for Class D Unitholder.** It is acknowledged and agreed that in the event that the General Partner reasonably determines that an amount is required in order to fund the Semi-Annual Return (such amount the “**Required Funds**”) then in such event the General Partner may give written notice (the “**Capital Call Notice**”) to the Class D Unitholder of the requirement for the Class D Unitholder to provide further Capital Contributions in the amount of the Required Funds. The Capital Call Notice must be given by the General Partner to the Class D Unitholder at least thirty (30) days prior to the date of the payment of the upcoming Semi-Annual Return to the Class A Unitholders. The Capital Call Notice shall specify: (i) the amount of the Required Funds; and (ii) the date of the payment of the upcoming Semi-Annual Return to the Class A Unitholders. Upon receiving the Capital Call Notice the Class D Unitholder shall provide Capital Contributions to the Partnership in the amount of the Required Funds no later than the date (the “**Deadline Date**”) that is ten (10) days prior to the payment of the upcoming Semi-Annual Return to the Class A Unitholders.
- 3.4 **Default – Class D Unitholder.** In the event that the Class D Unitholder defaults by failing to pay the Required Funds (or any portion thereof) (such deficit, the “**Default Amount**”) by the Deadline Date then from the day immediately following the Deadline Date the Default Amount shall bear interest payable to the Partnership at a rate equal to twelve percent (12%) per annum, calculated and compounded monthly. The parties acknowledge and agree that all distributions otherwise required to be made to the Class D Unitholder under Section 4.2 or Section 9.4 shall be used to the fullest extent possible to pay and satisfy the Default Amount plus all interest thereon and all costs and expenses incurred by the Partnership in connection with the collection of same (collectively, the “**Default Payment**”), applied first in payment of interest and collection costs and then in payment of the Default Amount. The Class D Unitholder hereby authorizes and directs the General Partner to make the Default Payments in the manner herein set out. All distributions owing to the Class D Unitholder in excess of the Default Payments shall be paid to the Class D Unitholder in accordance with the terms of Section 4.2 or Section 9.4.

## **ARTICLE 4**

### **DISTRIBUTIONS AND ALLOCATIONS**

#### **4.1 Semi Annual Distributions.**

Subject to applicable law and commencing on the first Business Day following the six (6) month anniversary of the Property Closing Date and on each six (6) month anniversary thereafter (or, if such day is not a Business Day then on the immediately following Business Day), the General Partner shall cause the Partnership to pay the Semi-Annual Return to the Class A Unitholders, on a Pro-Rata Basis.

#### **4.2 Other Distributions.**

The General Partner may, from time to time, in its sole discretion, cause the Partnership to make distributions, in addition to the distributions under Section 4.1, of cash or other property to the Partners from funds or property that are not otherwise reasonably necessary for the conduct of the Partnership’s business, including without limitation, the payment of operating costs and expenses of the Partnership (including, without

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limitation, fees pursuant to the Administrative Services Agreement, the fees to be paid to the Manager pursuant to Section 5.1 of the Management Agreement and the fees to be paid to Go-To Holdings pursuant to Section 5.2 of the Management Agreement). In addition, the General Partner may, from time to time, in its sole discretion, retain or establish one or more Reserves in such amounts that it considers prudent with respect to contingent or unforeseen liabilities and obligations. Subject to Section 4.3, whenever the Partnership is to make a distribution to its Partners under this Section 4.2 the Partnership shall make such distributions in the following order and priority:

- (a) *first*, to pay the Semi-Annual Return to the Class A Unitholders, on a Pro-Rata Basis, to the extent not previously paid to them;
- (b) *second*, subject to Section 3.4, to repay to the Class D Unitholder, any outstanding Capital Contributions made by the Class D Unitholder to the Partnership;
- (c) *third*, to pay the Deferred Return to the Class A Unitholders, on a Pro-Rata Basis, to the extent not previously paid to them;
- (d) *fourth*, to repay to each Class A Unitholder, on a Pro-Rata Basis, any outstanding Capital Contributions made by such Class A Unitholder, as the case may be, to the Partnership;
- (e) *fifth*, to repay to each Class C Unitholder, on a Pro-Rata Basis, any outstanding Capital Contributions made by such Class C Unitholder, as the case may be, to the Partnership; and
- (f) *sixth*, if the General Partner is not also a Unitholder, to pay the General Partner 0.0001% of Net Income;
- (g) *seventh*, to pay to the Manager the amount of all Manager's Advances made by the Manager to the Partnership;
- (h) *eighth*, to pay the balance thereof (the "**Balance**"), on a pro-rata and contemporaneous basis as among (i) and (ii) below, as follows:
  - (i) the Class D Unitholder Return, to the Class D Unitholder (subject to Section 3.4); and
  - (ii) the remainder of the Balance, on a pro-rata basis as among (A) and (B) below:
    - (A) as to 16.22% of such amount, to the Class A Unitholders, on a Pro-Rata Basis as among them; and
    - (B) as to 83.78% of such amount, to the Class B Unitholder.

For greater certainty none of the payments in the list set out in Section 4.2 shall be made until such time as the immediately preceding payment in such list has been paid in full.

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Distributions under this Section 4.2 to the Unitholders are to be made at such time or times and in such manner as the General Partner may determine as being in the best interests of the Partnership. Notwithstanding anything to the contrary herein:

- i. the General Partner has full and absolute discretion to delay the payment of distributions and/or the return of Capital Contributions to the Unitholders;
- ii. the General Partner upon receiving prior written instructions from the Class B Unitholder in connection with same, shall, allocate or direct, all or a portion of the distributions of the Class B Unitholder pursuant to Section 4.2(h)(ii)(B) or 4.3(b) to any specific Class C Unitholder selected by the Class B Unitholder in its sole and absolute discretion in accordance with a written agreement by and between the Class B Unitholder and such Class C Unitholder(s);
- iii. the General Partner upon receiving prior written instructions from the Class B Unitholder in connection with same, shall, decrease the distribution amount given to the Class B Unitholder pursuant to Section 4.2(h)(ii)(B) or 4.3(b), while correspondingly increasing the distribution amount to be distributed amongst the Class A Unitholders pursuant to Section 4.2(h)(ii)(A) by the same amount as was decreased from the Class B Unitholder; and
- iv. the General Partner upon receiving prior written instructions from the Class B Unitholder in connection with same, shall, allocate or direct, all or a portion of the distributions of the Class B Unitholder pursuant to Section 4.2(h)(ii)(B) or 4.3(b) to any specific Class A Unitholder selected by the Class B Unitholder in its sole and absolute discretion in accordance with a written agreement by and between the Class B Unitholder and such Class A Unitholder(s).

4.3 **Special Distribution re Project Security.** The Partnership, immediately prior to the first distribution made by the Partnership to its Partners pursuant to Section 4.2(h) following the completion of the sale of the final condominium unit in the Project, shall distribute an amount equal to 10.1375% of the amount of the Project Security to the Class A Unitholders, on a Pro-Rata Basis as among them. Subject to satisfaction of the foregoing (and the discretion of the Partnership provided for in the opening paragraph of Section 4.2), the Partnership shall distribute all or any part of the Project Security received by or released to it, from time to time, on a pro-rata and contemporaneous basis as among (a) and (b) below, as follows:

- (a) subject to Section 3.4, an amount equal to 37.5% of the positive difference between the amount of Project Security released to the Partnership and the Imputed Interest Deduction to the Class D Unitholder; and
- (b) the balance thereof, to the Class B Unitholder.

Notwithstanding anything to the contrary herein, the distributions contemplated under this Section 4.3 are to be made at such time as the General Partner may determine as being in the best interests of the Partnership and, accordingly, the General Partner has full and absolute discretion to delay the payment of the distributions contemplated under this Section 4.3.



- 4.4 **Allocation of Income and Loss for Tax Purposes.** For each fiscal year of the Partnership, the Income for Tax Purposes or Loss for Tax Purposes in accordance with the Tax Act and any other applicable taxing statute from each source for that fiscal year shall be allocated amongst the Partners as follows:
- (a) Income for Tax Purposes or Loss for Tax Purposes will be allocated as among the Partners, pro rata in proportion to the aggregate distributions (which, for greater certainty, shall include the Semi-Annual Return and the Deferred Return but not the repayment of Capital Contributions contemplated in Sections 4.2(d) and 4.2(e)) made to each of them, from time to time, and (i) as among the Voting Unitholders, on a Pro-Rata Basis; (ii) as among the Class B Unitholders, in equal amounts per Class B Unit; and (iii) as among the Class D Unitholders, in equal amounts per Class D Unit; and
  - (b) All other items of income, gain, loss, deduction, recapture and credit of the Partnership which are allocable for purposes of the Tax Act and any other applicable taxing statute shall be allocated among the Voting Unitholders on a Pro-Rata Basis.
- 4.5 **Allocation of Income and Loss for Accounting Purposes.** The Net Income or Net Loss of the Partnership for accounting purposes for a given fiscal year of the Partnership shall be allocated among the Partners in the same proportion as Income for Tax Purposes or Loss for Tax Purposes is allocated for such fiscal year of the Partnership.
- 4.6 **Effect of Assignment.** If, during any fiscal year of the Partnership, a Unitholder Transfers a Unit, the allocation to such transferor Unitholder and transferee Unitholder of Net Income, Net Loss, Income for Tax Purposes or Loss for Tax Purposes of the Partnership, as applicable, for such fiscal year of the Partnership, shall be made in a manner that is fair and equitable in the circumstances, as determined by the General Partner, acting reasonably, in consultation with the Accountants.
- 4.7 **Adjustments.** If the Accountants determine the proportionate share of a Partner, in the distribution or allocation of Net Income, Net Loss, Income for Tax Purposes or Loss for Tax Purposes, differs from such Partner's share as determined by the General Partner, then the determination of the Accountants shall, absent manifest error, be deemed to be correct and binding upon the Partnership and the applicable Partner. The General Partner will cause the necessary adjustments to be made in respect of such Unitholder as the case may be.
- 4.8 **Repayments.** If, as determined by the Accountants, it appears that any Partner has received an amount under Section 4.2 that is less than the Partner's entitlement hereunder, the Partnership will reimburse the Partner to the extent of such deficiency within thirty (30) days following the date of notice from the General Partner to the Partner of any such determination by the Accountants. If, as determined by the Accountants, it appears that any Partner has received an amount under Section 4.2 that is in excess of the Partner's entitlement hereunder, the Partner will reimburse the Partnership to the extent of the excess within thirty (30) days following the date of notice from the General Partner to the Partner of any such determination by the Accountants. If such excess is not reimbursed by the Partner within such thirty (30) day time period, such



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excess shall thereafter bear interest in favour of the Partnership at a rate equal to five percent (5%) per annum, calculated and compounded monthly, and the General Partner may set-off and deduct from any amounts otherwise payable to such Partner hereunder, the amount of any such adjustment and accrued and unpaid interest owing by such Partner to the Partnership.

- 4.9 **Separate Capital Accounts.** A separate capital account for accounting purposes shall be established by the General Partner for each Unitholder.
- 4.10 **No Interest Payable.** No Unitholder shall be entitled to receive interest on the amount of its Capital Contribution or any balance in its capital account from the Partnership. No Unitholder shall be liable to pay interest to the Partnership on any negative balance in its capital account.
- 4.11 **Return of Capital.** A Unitholder is only entitled to call for a return of its Capital Contribution upon the dissolution, winding-up or liquidation of the Partnership as provided for in ARTICLE 9 hereof.
- 4.12 **Withholding Taxes.** The General Partner shall deduct or withhold from distributions payable to any Unitholder all amounts required by applicable laws to be withheld from such distribution. To the extent that amounts are so deducted or withheld, such amounts shall be treated for all purposes hereof as having been paid to the holder of such Units in respect of which such deduction and withholding was made. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a Unitholder exceeds the cash portion of the distribution otherwise payable to the holder, the General Partner is hereby authorized to set-off against any amounts owed to, or other non-cash distribution being made to, the Unitholder as is necessary to provide sufficient funds to the Partnership to enable the Partnership to comply with such deduction or withholding requirement. The General Partner may make such other arrangements as it, in its sole discretion, considers appropriate, including seeking funding of the withholding from the Unitholder or selling the Unitholder's Units to the remaining Voting Unitholders on a Pro-Rata Basis or acquiring the Unitholder's Units on behalf of the Partnership, to satisfy the Partnership's deduction, withholding and remittance obligations.

## **ARTICLE 5**

### **THE GENERAL PARTNER**

- 5.1 **General Partner and Duties of the General Partner.** Subject to any delegation of its powers properly authorized hereunder and to those matters requiring either an Ordinary Resolution or a Special Resolution, the General Partner will control and have full and exclusive power, authority and responsibility for the business of the Partnership and will do or cause to be done in a prudent and reasonable manner any and all acts necessary, appropriate or incidental to the business of the Partnership. The General Partner shall have unlimited liability for the debts, liabilities and obligations of the Partnership. The General Partner represents and warrants that it has entered into, or covenants that it will enter into, as the case may be, the agreements reasonably necessary to the undertaking of business on behalf of the Partnership, including all agreements to purchase the interest of the Partnership in the Property and assume the obligations therefor. Without limiting the

generality of the foregoing, the General Partner shall diligently enforce the obligations and commitments contained in the aforementioned agreements on behalf of the Partnership without further authorization from any Unitholder.

5.2 **Authority of the General Partner.** 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.

5.3 **Specific Powers.** Subject, in all cases, to the provisions of this Agreement specifying the requirement for Unitholder approval, without limiting the generality of Section 5.1 or any other specific power in this section or elsewhere in this Agreement and subject to compliance with agreements made on behalf of the Partnership, the General Partner is authorized, at the appropriate time, on behalf of and without further authority from the Unitholders:

- (a) To retain or act as the Registrar and Transfer Agent;
- (b) To engage such professional advisers as the General Partner considers advisable in order to perform or assist it in the performance of its duties hereunder;
- (c) To open and operate in the name of the Partnership a separate bank account in order to deposit and distribute funds with respect to the Partnership;
- (d) To execute, deliver and carry out all agreements and other instruments or documents which require execution by or on behalf of the Partnership;
- (e) To establish such Reserves as the General Partner considers necessary, in each case in accordance with usual and prudent commercial practices;
- (f) To pay all taxes, fees and other expenses relating to the orderly maintenance and management of the Partnership and the assets owned by the Partnership;
- (g) In relation to the purchase, ownership, management, development, sale or other disposition of the Property (or part thereof), to enter into and perform its or the Partnership's obligations under any agreements contemplated therein, and any other agreement of purchase and sale, joint venture agreement, co-ownership agreement or management agreement that, in the opinion of the General Partner is required in connection with the ownership and development of the Property;
- (h) To make all payments relating to the purchase and development of the Property including, without limitation, all of its costs and expenses incurred in connection with the purchase, and development of the Property including, without limitation, all legal and other professional fees and disbursements, mortgage-related fees and expenses, mutation taxes, due diligence costs and Arm's Length broker commissions;
- (i) To commence or defend on behalf of the Partnership any and all actions and other proceedings pertaining to the Partnership or the Property;

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- (j) To determine the amount and type of insurance coverage, if any, to be maintained in order to protect the Partnership from all usual perils of the type covered in respect of comparable assets and businesses and in order to comply with the requirements of the lenders of funds to the Partnership;
- (k) To determine the amount, if any, to be claimed by the Partnership in any year for income tax purposes in respect of capital cost allowance and amortization or deduction of other costs of services incurred by the Partnership;
- (l) To invest funds not immediately required for the business of the Partnership in interest-bearing accounts, term deposits, money market mutual funds, guaranteed investment certificates of banks or trust companies or in other similar money market securities of banks or trust companies;
- (m) To make distributions to Unitholders in accordance with the provisions of this Agreement;
- (n) Prior to the Construction Commencement Date to raise additional capital by the sale of further Class A Units and/or Class C Units of the Partnership;
- (o) To provide or arrange for the provision of such financial and other reporting functions as may be required by the provisions hereof or applicable regulatory authorities;
- (p) To make such determinations, attend meetings, vote, pass such resolutions and exercise all rights of and on behalf of the Partnership, as the General Partner may deem necessary or desirable for the Partnership; and
- (q) To execute any and all deeds, documents, income tax election forms, information returns and instruments and to do all acts as may be necessary or desirable to carry out the intent and purpose of this Agreement, including, without limitation, retaining qualified agents to carry out any of the foregoing.

5.4 **Reimbursement of the General Partner.** The General Partner is entitled to reimbursement by the Partnership for all reasonable third-party costs and expenses that are incurred by the General Partner on behalf of the Partnership in the ordinary course of business, and all reasonable other costs and expenses incidental to acting as General Partner to the Partnership, provided the General Partner is not in default of its duties hereunder in connection with such costs and expenses.

5.5 **Borrowing.** The General Partner may borrow funds in the name of and on the security of the assets of the Partnership for the purposes of financing and refinancing the business and operations of the Partnership, but not for any other purpose.

5.6 **Amendment of Agreement.** Unless otherwise provided for herein, this Agreement may be amended on the initiative of the General Partner with the consent of the Voting Unitholders given by Special Resolution, except that any amendment affecting the rights of the General Partner shall be ineffective unless consented to in writing by the General Partner. Notwithstanding the foregoing, the General Partner may, without prior notice to



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or consent from any Unitholder, amend any provision of this Agreement from time to time:

- (a) For the purpose of adding to this Agreement any further covenant, restriction or provision which in the opinion of the General Partner is necessary for the protection of the Unitholders and/or for the efficient and orderly management of the Partnership or its business;
- (b) To cure any ambiguity or to correct or supplement any provisions contained herein which, in the opinion of the General Partner, may be defective or inconsistent with any other provisions contained herein provided that such cure, correction or supplemental provision does not and will not, in the opinion of the General Partner, adversely affect the interests of the Unitholders; and
- (c) To make such other provisions in regard to matters or questions arising under this Agreement which in the opinion of the General Partner do not and will not adversely affect the interest of the Unitholders.

Unitholders will be notified of the full details of any amendment to this Agreement within a reasonable time period following the effective date of any such amendment.

5.7 **Power of Attorney.** To the extent permitted by applicable law, each Unitholder irrevocably nominates, constitutes and appoints the General Partner (and Persons appointed to replace the General Partner pursuant to Sections 5.19 and 5.20 hereof), to act, with full power of substitution, as its true and lawful attorney and agent, with full power and authority, in its name, place and stead and for its use and benefit to execute (under seal or otherwise) and do the following, namely:

- (a) Execute, swear to, acknowledge, deliver and file as and where required and when required any and all of the following:
  - (i) this Agreement and all declarations and declarations of change required under the Act and all other instruments necessary to form, qualify or continue and keep in good standing the Partnership as a limited partnership;
  - (ii) all instruments, declarations and certificates necessary to reflect any amendment to this Agreement made pursuant to the provisions hereof;
  - (iii) all conveyances, agreements and other instruments necessary or desirable to reflect the dissolution and termination of the Partnership pursuant to the provisions hereof including cancellation of any certificates or declarations and including any elections under the Tax Act (including without limitation pursuant to subsection 98(3) of the Tax Act), and any analogous provincial or territorial legislation; and
  - (iv) any election, determination, designation, objection, notice of objection, return, information return or similar document or instrument as may be required or desirable for the Partnership at any time under the Tax Act or

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under any other taxation legislation or laws of like import of Canada or of any province, territory or jurisdiction which relates to the affairs of the Partnership or the interest of any Person in the Partnership;

- (b) Execute and file with any governmental body or instrumentality thereof of the Government of Canada or a province any documents necessary to be filed in connection with the business, property, assets and undertaking of the Partnership;
- (c) Execute and deliver transfer forms and such other documents on behalf of and in the name of the Unitholders and as may be necessary to effect the Transfer of Units in accordance with this Agreement; and
- (d) Execute and deliver all such other documents, income tax election forms, information returns or instruments on behalf of and in the name of the Partnership and for the Unitholders or any Unitholder as may be deemed necessary or desirable by the General Partner to carry out fully the provisions of a Unitholder's Subscription Agreement for the purchase of Units or this Agreement in accordance with its terms.

In addition to the foregoing, and to additionally evidence the same, each Unitholder agrees to deliver to the General Partner, which may be by execution of such Unitholder's Subscription Agreement for the purchase of Units or the transfer form for the acquisition of Units, a power of attorney substantially in the form noted above. The power of attorney granted herein is irrevocable, including without limitation during the existence of the Partnership and in connection with the dissolution or winding up thereof, is a power coupled with an interest, shall survive the death, disability, dissolution, winding up or other legal incapacity of a Unitholder and shall survive the assignment, to the extent of the obligations of a Unitholder hereunder or under such Unitholder's Subscription Agreement, for the purchase of Units by a Unitholder of the whole or any part of the interest of a Unitholder in the Partnership and extends to and is binding upon the heirs, executors, administrators, legal and personal representatives, transferees, successors and assigns of the Unitholder, and may be exercised by the General Partner for and on behalf of each Unitholder by reference to all Unitholders executing any instrument with a single signature as attorney and agent for each and all of them. Each Unitholder agrees to be bound by any representations and actions made or taken by the General Partner pursuant to such power of attorney in accordance with the terms thereof and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.

In accordance with the *Power of Attorney Act* (Ontario), the *Powers of Attorney Act* (Alberta), the *Powers of Attorney Act, 1996* (Saskatchewan), the *Powers of Attorney Act* (Manitoba), the *Substitute Decisions Act, 1992* (Ontario), the *Property Act* (New Brunswick), the *Powers of Attorney Act* (Prince Edward Island), the *Powers of Attorney Act* (Nova Scotia), the *Enduring Powers of Attorney Act* (Newfoundland), and the *Enduring Power of Attorney Act* (Yukon) and any similar legislation governing a power of attorney, each Unitholder declares that these powers of attorney may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on the Unitholder's part.

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The power of attorney granted in this section is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Unitholder's incapacity to manage property, or any similar power of attorney under equivalent legislation in any other jurisdiction (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Unitholder previously and will not be terminated by the execution by the Unitholder in the future of a CPOA, and the Unitholder hereby agrees not to take any action in future which results in the termination of this power of attorney.

The General Partner may require, in connection with the subscription for, or any transfer of, Units, that the Subscription Agreement or Unit Transfer, if any, be accompanied by the explanatory notes set out in the *Powers of Attorney Act* (Alberta) and the *Enduring Power of Attorney Act* (Yukon) and a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.

This power of attorney will continue in respect of the General Partner so long as it is the general partner of the Partnership, and will immediately terminate thereafter, without any further act or formality, but will continue in respect of a New General Partner as if the New General Partner were the original attorney.

A purchaser or transferee of a Unit will, upon becoming a Unitholder, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement as a Unitholder and will be conclusively deemed to have provided the General Partner with the power of attorney described in this Section 5.7.

- 5.8 **Informing Creditors.** The General Partner shall inform each creditor of the Partnership, prior to conducting any transaction with such creditor, that the Partnership is a limited partnership within the meaning of the Act. The General Partner shall use its reasonable best efforts to ensure that all written contracts and other written instruments creating an obligation upon the Partnership contain or are accompanied by an acknowledgment that neither the Unitholders nor their assignees will have any personal liability thereunder.
- 5.9 **Duties of General Partner.** The General Partner shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Partnership and shall exercise the care, diligence and skill of a reasonably prudent general partner in similar circumstances in managing the business, affairs and assets of the Partnership. The General Partner shall be entitled to retain advisors, experts or consultants to assist it in the exercise of its powers and the performance of its duties hereunder. The General Partner further covenants that it shall maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interest of the Partnership or a Unitholder, except to the extent that the disclosure is required by law or is in the best interests of the Partnership, and it shall utilize any such information and data only for the business of the Partnership.
- 5.10 **Income Tax Claims and Deductions.** In respect of any fiscal year of the Partnership, the General Partner may claim the maximum capital cost allowance in respect of depreciable property of the Partnership, the maximum amount of other deductions and the maximum reserves, each as permitted under the Tax Act, provided that the General



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Partner may claim less than the maximum in any Fiscal Period if it so determines in its sole and uncontrolled discretion.

- 5.11 **Enforcement of Rights and Discharge of Duties by General Partner.** In the event the General Partner admits, refuses or unduly delays in taking, or refrains from taking, any action or enforcing any right which the Unitholders believe, acting reasonably, are in the best interests of the Partnership or required by applicable agreements or applicable law, the Voting Unitholders may, by Special Resolution, require the General Partner to take such action or enforce such right and nominate an independent third party to act in accordance with this section in the event the General Partner fails to do so. If the General Partner fails to act within ten (10) days following the date of the Special Resolution, then the Voting Unitholders may appoint the independent third party so nominated to take such action or enforce such right in the name and stead of the General Partner on behalf of the Partnership, and to the extent of such retainer the independent third party shall for all purposes be deemed to be and shall have the powers of the General Partner and the General Partner hereby irrevocably appoints such third party as its attorney for all such purposes as aforesaid. Nothing contained in this section shall be construed to enable any Unitholder to take part in the control of the management or business of the Partnership.
- 5.12 **Employment of an Affiliate.** The General Partner may employ or retain an Affiliate of the General Partner (which for greater certainty includes Go-To Holdings) on behalf of the Partnership to provide goods or services to the Partnership, provided that the cost of such goods or services are reasonable and competitive with the cost of similar goods or services provided by an independent third party.
- 5.13 **Transactions Involving Affiliates.** The validity of a transaction, agreement or payment involving the Partnership and an Affiliate of the General Partner is not affected by reason of the relationship between the General Partner and such Affiliate or by reason of the approval or lack thereof of the transaction, agreement or payment by the directors of the General Partner, all of whom may be officers or directors of or otherwise interested in or related to such Affiliate.
- The parties hereto acknowledge that: (i) the General Partner and Go-To Holdings may have the same directors, officers, direct or indirect shareholders, employees and affiliates; and (ii) that Go-To Holdings and the directors, officers, shareholders, employees and affiliates of each of Go-To Holdings and the General Partner are engaged in a wide range of investing and other business activities, which may include, direct and/or indirect, ownership and development of real property. Consequently, the directors, officers or employees of the General Partner will only devote as much time as is necessary (but not all of his or her full time) to supervise the management of the business and affairs of the Partnership.
- 5.14 **Safekeeping of Assets.** 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 any other Person to employ such funds or assets except for the exclusive benefit of the Partnership.
- 5.15 **Indemnity of General Partner.**

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- (a) To the fullest extent permitted by law, but subject to the General Partner or any Former General Partner's material compliance with this Agreement and their obligations hereunder, the General Partner, any Former General Partner, any Person who is or was an officer, director, employee, agent or trustee of the General Partner or any Former General Partner, but only in their capacity as such (collectively, an "Indemnitee") will be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses on a full indemnity basis), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as:

- (i) the General Partner, a Former General Partner; or
- (ii) an officer, director, employee, partner, agent or trustee of the General Partner, any Former General Partner, but only in their capacity as such; or
- (iii) a Person engaged by the General Partner or any Former General Partner for the purposes of facilitating the requirements of the Partnership's Business in the manner contemplated hereby;

provided, that

- (iv) in each case the Indemnitee acted honestly and in good faith with a view to the best interests of the Partnership and in compliance with the General Partner's or the Former General Partner's obligations under this Agreement;
  - (v) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, the Indemnitee had reasonable grounds for believing its conduct was lawful; and
  - (vi) no indemnification pursuant to this Section 5.15 will be available to an Indemnitee where the Indemnitee has been adjudged by a final decision of a court of competent jurisdiction in Ontario that is no longer appealable to have been grossly negligent in the performance of its obligations under this Agreement. The termination of any action, suit or proceeding by judgment, order, settlement or conviction will not create a presumption that the Indemnitee acted in a manner contrary to that specified above.
- (b) To the fullest extent permitted by law, expenses (including legal fees and expenses on a full indemnity basis) incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding will, from time to time, be advanced by the Partnership prior to the final disposition of any claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay that amount if it is determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 5.15.



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- (c) The indemnification provided by this Section 5.15 will be in addition to any other rights to which an Indemnitee may be entitled under any agreement, as a matter of law or otherwise, as to actions in the Indemnitee's capacity as:
  - (i) the General Partner or a Former General Partner, but only in their capacity as such;
  - (ii) an officer, director, employee, partner, agent or trustee of the General Partner or a Former General Partner or any of their respective affiliates, but only in their capacity as such; and/or
  - (iii) a Person serving at the request of the General Partner, any Former General Partner or any of their respective affiliates as a director, officer, employee, agent or trustee of another Person, but only in their capacity as such;

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

- (d) The Partnership may purchase and maintain (or reimburse the General Partner or its affiliates for the cost of) insurance, on behalf of those Persons (other than the General Partner itself) as the General Partner determines, against any liability that may be asserted against or expense that may be incurred by that Person in connection with the Partnership's activities, whether or not the Partnership would have the power to indemnify those Persons against those liabilities under the provisions of this Agreement.
- (e) The General Partner will hold the benefit of this indemnity in trust and as agent for the Indemnitees.
- (f) Any indemnification pursuant to this Section 5.15 will be made only out of the assets of the Partnership.

**5.16 Restrictions upon the General Partner.** The General Partner's power and authority does not extend to any power, action or authority enumerated in Sections 6.14 or 6.15 hereof, unless and until the requisite Ordinary Resolution or Special Resolution, as the case may be, is passed by the Voting Unitholders. The General Partner covenants that it shall not:

- (a) Cause the Partnership to guarantee the obligations or liabilities of, or make loans to, the General Partner or any Affiliate of the General Partner; or
- (b) Commingle the funds and assets of the Partnership with the funds or assets of any other Person, including those of the General Partner or any Affiliate of the General Partner.

**5.17 Payments.** The General Partner shall pay or cause to be paid out of the funds of the Partnership, whether on hand or borrowed, costs and expenses relating to the Partnership's business, as and when such costs or expenses become due and payable.

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- 5.18 **Resignation.** Subject to Section 5.19, the General Partner shall resign only upon one hundred and eighty (180) days' prior written notice to the Partnership.
- 5.19 **Insolvency of the General Partner.** The General Partner shall be deemed to resign as the General Partner of the Partnership in the event that an Insolvency Event occurs in respect of the General Partner, but such resignation shall not be effective and such General Partner shall not cease to be the general partner of the Partnership until the admission of a replacement general partner to the Partnership appointed as follows:
- (a) In the event that General Partner is not also to be removed in accordance with Section 5.20, then Go-To Holdings shall have the right to appoint a replacement general partner of the Partnership; or
  - (b) In the event that: (i) the General Partner is also to be removed in accordance with Section 5.20; or (ii) Go-To Holdings fails to appoint a replacement general partner of the Partnership after a period of ten (10) days following the deemed resignation of the General Partner in accordance with this Section 5.19, the Voting Unitholders shall, by Special Resolution, admit a replacement general partner to the Partnership.
- 5.20 **Removal of General Partner.** The General Partner may be removed immediately by the Unitholders as General Partner without its consent only if a court of competent jurisdiction determines ultimately that the General Partner has engaged in fraud, wilful misconduct or gross negligence in the operations of the Partnership and that such fraud, wilful misconduct or gross negligence has a material adverse effect on the value of the operations, business or properties of the Partnership.
- 5.21 **Replacement General Partner.** In the event that the Unitholders, pursuant to the provisions of Sections 5.19(b) and/or 5.20, or Go-To Holdings, pursuant to the provisions of Section 5.19(a), are entitled to appoint a replacement general partner (the "New General Partner") to assume all of the responsibilities and obligations under this Agreement of the removed or resigned General Partner (the "Former General Partner"), such appointment of the New General Partner may occur if, but only if:
- (a) All amounts owing by the Partnership to the Former General Partner (in its capacity as the General Partner and not as a Class B Unitholder) shall have been paid in full, provided that no amount owing to the Partnership by the Former General Partner or by the latter to the former shall be accelerated by virtue of the removal of the Former General Partner;
  - (b) The New General Partner causes to be delivered to the Former General Partner a release by the Partnership in favour of the Former General Partner of the responsibilities and obligations to be assumed by the New General Partner and the Partnership shall hold harmless the Former General Partner from all actions, claims, costs, demands, losses, damages and expenses (including all reasonable legal and other professional fees and disbursements) with respect to events which occur in relation to the Partnership after the appointment of the New General Partner;

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- (c) The New General Partner, prior to assuming its responsibilities as the General Partner of the Partnership under the terms of this Agreement, executes the documents presented by the Partnership to give effect to the assumption;
  - (d) The Former General Partner assigns its interest in the Partnership (in its capacity as the General Partner and not as a Class B Unitholder) to the New General Partner for an amount equal to the credit balance outstanding in the capital account of the Former General Partner (in its capacity as the General Partner and not as a Class B Unitholder) as at the effective date of removal; and
  - (e) The Former General Partner shall continue to be entitled to receive the distributions, if any, payable to the Former General Partner (in its capacity as the General Partner and not as a Class B Unitholder) pursuant to Section 4.2 for the period up to the date the Former General Partner is no longer a general partner of the Partnership.
- 5.22 **General Partner as a Unitholder.** Notwithstanding anything else contained in this Agreement, if a General Partner becomes a Former General Partner, and at the time such General Partner becomes a Former General Partner it is also a Unitholder, then such Former General Partner shall not be obligated to forfeit, surrender or assign any of its Units held in its capacity as a Unitholder.
- 5.23 **Indemnity by General Partner.** The General Partner hereby indemnifies and holds harmless the Partnership and each Unitholder from and against all costs, expenses, damages or liabilities suffered or incurred by the Partnership or any Unitholder by reason of any act of wilful misconduct, gross negligence or fraud by the General Partner.
- 5.24 **Decisions re Property.** The parties hereto acknowledge and agree that the management and administration of the day-to-day affairs of the Property and the general supervision of the development of the Property and the decision making process with respect to the Property will be performed by the Manager in accordance with the Management Agreement.
- 5.25 **Ratification of Contracts.** Each Unitholder acknowledges and agrees that all actions, contracts, resolutions, proceedings, appointments and other acts taken by the General Partner (and its directors and officers) for and on behalf of the Partnership, be and the same are hereby approved, ratified and confirmed, notwithstanding any irregularity attendant upon such acts or any lack of qualification or authorization of the parties thereto.
- 5.26 **Authority of General Partner to Make Tax Elections.** The General Partner shall be responsible for all tax matters and tax elections of the Partnership under the Tax Act and any other applicable taxation legislation and, without limiting the foregoing, the General Partner will be entitled to make or execute elections under the Tax Act and other applicable taxation legislation that relate to a fiscal year of the Partnership on behalf of all Persons who are Unitholders or who are the beneficial owners of Units during such fiscal year of the Partnership and will have the authority to act for the Partnership in connection herewith.

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## **ARTICLE 6**

### **MEETINGS**

- 6.1 **Meetings.** The General Partner may convene a meeting of the Voting Unitholders at any time upon the giving of notice as hereinafter provided. Where one or more Voting Unitholders representing not less than 10% of all of the Class A Units and Class C Units (a "**Requisitioning Partner**") gives to the General Partner notice signed by it requesting a meeting of the Partnership, the General Partner shall, within thirty (30) days following receipt of such notice, convene a meeting and, if the General Partner fails to do so, the Requisitioning Partner may convene such meeting by giving notice to the Voting Unitholders in accordance with this Agreement, signed by such Person as the Requisitioning Partner specifies. Every meeting, however convened, shall be conducted in accordance with this Agreement.
- 6.2 **Place of Meeting.** Every meeting shall be held either in the City of Toronto, Ontario or at such other place in Canada as may be approved by Ordinary Resolution. All meetings of the Voting Unitholders may be held by means of such telephonic, electronic or other communication facilities as permits all the Voting Unitholders participating in the meeting to communicate with each other simultaneously and instantaneously.
- 6.3 **Notice of Meeting.** Notice of any meeting shall be given to the Voting Unitholders (with a copy to all other Unitholders) in accordance with Section 10.6 not less than fourteen (14) days prior to such meeting, and shall state:
- (a) The time, date and place of such meeting; and
  - (b) In general terms, the nature of the business to be transacted at the meeting.
- 6.4 **Accidental Omissions.** Accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Unitholder of the Partnership shall not invalidate the proceedings at that meeting.
- 6.5 **Proxies.** Any Unitholder of the Partnership entitled to vote at a meeting may vote by proxy if a proxy has been received by the General Partner or the chairman of the meeting for verification prior to the meeting.
- 6.6 **Validity of Proxies.** A proxy shall be considered to be valid unless challenged at the time of or prior to its exercise, and the Person challenging shall have the burden of proving to the satisfaction of the chairman of the meeting that the proxy is invalid and any decision of the chairman concerning the validity of a proxy will be final.
- 6.7 **Form of Proxy.** Every proxy shall be substantially in the form which follows or such other form as may be approved by the General Partner or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised:

"I/we \_\_\_\_\_ of \_\_\_\_\_ in  
the Province of \_\_\_\_\_ being a Unitholder of Go-To Niagara Falls  
Eagle Valley LP, hereby appoint \_\_\_\_\_ of  
\_\_\_\_\_ in the Province of \_\_\_\_\_ as my  
proxy, with full power of substitution to vote for me and on my behalf at the



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meeting of Unitholders to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and every adjournment or adjournments thereof and on every poll that may take place in consequence thereof. As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_."

- 6.8 **Corporations which are Unitholders.** A Voting Unitholder which is a corporation may appoint an officer, director or other authorized Person as its representative to attend, vote and act on its behalf at a meeting of Voting Unitholders.
- 6.9 **Attendance of Others.** Go-To Holdings, and all officers and directors of the General Partner and any representatives of the Accountants shall be entitled to attend and receive notice of any meeting of Voting Unitholders. The General Partner has the right to authorize the presence of any Person at a meeting regardless of whether the Person is a Unitholder and, with the approval of the General Partner, such Person shall be entitled to address the meeting.
- 6.10 **Chairman.** The General Partner may nominate an individual (who need not be a Unitholder) to be chairman of a meeting and the Person nominated by the General Partner shall be chairman of such meeting unless the Voting Unitholders elect another chairman by Ordinary Resolution.
- 6.11 **Quorum.** Subject to this Agreement, a quorum at any meeting of Voting Unitholders shall consist of the General Partner and two (2) or more Voting Unitholders present in person who collectively hold, or represent by proxy, more than fifty percent (50%) of all outstanding Class A Units and Class C Units of the Partnership and who are entitled to vote on any resolution. If within half an hour after the time fixed for the holding of such meeting a quorum for the meeting is not present, the meeting shall be held at the same time and, if available, the same place, not less than ten (10) days or more than fourteen (14) days later (or if that date is not a Business Day the first Business Day after that date), and the General Partner shall give at least seven (7) days' notice in writing to all Unitholders of the date and place of the reconvening of the adjourned meeting. Such notice need not set forth the matters to be considered unless they are different from those for which the original meeting was called. The quorum at such reconvened adjourned meeting shall consist of two (2) or more Voting Unitholders present in person who collectively hold or represent by proxy not less than forty percent (40%) of all outstanding Class A Units and Class C Units of the Partnership and who are entitled to vote on any resolution.
- 6.12 **Voting.**
- (a) Every question submitted to a meeting shall be decided by a vote conducted in such fashion as the chairman of the meeting may decide, it being agreed that the number of votes which may be exercised by the holder of any particular Class A Unit or Class C Unit (or his proxy) shall be equal to one (1) vote for each Class A Unit held and one (1) vote for each Class C Unit held (or the applicable fraction for each fractional Unit held). The General Partner may convene a meeting to consider any issues which the Partnership is proposing to deal with so that the Voting Unitholders can determine the manner of voting on such issues;

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- (b) In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated. The chairman shall be entitled to vote in respect of any Class A Units or Class C Units held by him or for which he may be proxyholder. On any vote at a meeting of Voting Unitholders, a declaration of the chairman concerning the result of the vote shall be conclusive;
  - (c) For greater certainty, except as otherwise contemplated in this Agreement, the General Partner shall not be entitled to a vote in respect of its interests in the Partnership except to the extent that the General Partner is also a Voting Unitholder;
  - (d) Any Unitholder who is a party to a contract or proposed contract or who has a material interest in a contract, proposed contract or transaction (either directly or indirectly) which is the subject matter of a resolution shall not be entitled to any vote on such resolution; provided, however, that a Unitholder shall be deemed not to have a material interest in a contract, proposed contract or transaction if the interest arises merely from the ownership of Units where the Unitholder shall have or receive no extra or special benefit or advantage not shared on an equal basis by all other Unitholders; and
  - (e) Any business or matter which may be approved at a meeting of Voting Unitholders may, in lieu thereof, be approved by written ballot pursuant to a poll of the Voting Unitholders taken by mail. Notice of any such business or matter to be polled shall be given to all Voting Unitholders and such notice shall describe the business or matter to be voted upon in sufficient detail to enable a Voting Unitholder to make a reasoned judgment with respect thereto. Approval of any such business or matter shall require, in the case of a decision otherwise requiring approval by Ordinary Resolution, approval by more than one-half of the votes so cast by ballot and, in the case of a decision otherwise requiring approval by Special Resolution, approval by more than seventy-five and one-third percent (75<sup>1/3</sup>%) of the votes so cast by ballot. Ballots must be received by the General Partner within the time limit established by the notice for such receipt, which time limit shall in no case be less than 10 days from the date such notice is given to the Voting Unitholders.
- 6.13 **Resolutions Binding.** Any resolution passed in accordance with this Agreement shall be binding on all the Unitholders and their respective heirs, executors, administrators, successors and assigns, whether or not any such Unitholder was present in person or voted (or was not entitled to vote) against any resolution so passed.
- 6.14 **Powers Exercisable by Special Resolution.** The following powers shall only be exercisable by Special Resolution passed by the Voting Unitholders:
- (a) Amending this Agreement, except as otherwise provided herein;
  - (b) Waiving any default by the General Partner on such terms as the Voting Unitholders may determine;

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- (c) Continuing the Partnership in the event that the Partnership is terminated by operation of law;
- (d) Agreeing to any compromise or arrangement by the Partnership with any creditor, or class or classes of creditors;
- (e) Changing the fiscal year end of the Partnership;
- (f) Amending, modifying, altering or repealing any previously-passed Special Resolution;
- (g) Subject to the provisions of this Agreement, removing the General Partner and appointing a new General Partner;
- (h) Dissolving or terminating the Partnership;
- (i) From and after the Construction Commencement Date, authorizing the raising of additional capital by the sale of further Class A Units or Class C Units of the Partnership; and
- (j) Initiating an action against the General Partner as a result of a breach of its duties, and/or approving a settlement of an action against the General Partner as a result of a breach of its duties.

The parties acknowledge and agree that in the event that any of the foregoing Special Resolutions adversely affect the rights of the General Partner (other than removal or replacement of the General Partner pursuant to Sections 5.19(b) and 5.20) hereunder, the General Partner shall have the right to approve or disapprove the said Special Resolution, and the right of the General Partner shall be considered a veto in relation to the vote of the Voting Unitholders.

- 6.15 **Powers Exercisable by Ordinary Resolution.** Any matters to be determined by the Voting Unitholders other than as is otherwise expressly provided in this Agreement shall be determined by Ordinary Resolution, provided that, save and except as specified in this Agreement, nothing herein contained shall oblige the General Partner to seek any approval or to act or fail to act in accordance with the vote of the Voting Unitholders on any matter.
- 6.16 **Minutes.** The General Partner shall cause minutes to be kept of all proceedings and resolutions at every meeting, and copies of any resolutions of the Unitholders to be made and entered in books to be kept for that purpose, and any minutes, if signed by the chairman of the meeting, shall be deemed as conclusive evidence of the matters stated in them, and such meeting shall be deemed to have been duly convened and held and all resolutions and proceedings shown in them shall be deemed to have been duly passed and taken.
- 6.17 **Additional Rules and Procedures.** To the extent that the rules and procedures for the conduct of a meeting of the Unitholders are not prescribed in this Agreement, the rules and procedures shall be determined by the chairman of the meeting, provided the rules

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shall generally accord, to the extent applicable, to the rules governing the conduct of a meeting of the shareholders of a public company.

## **ARTICLE 7**

### **ADVISORY COMMITTEE**

- 7.1 **Establishment of Advisory Committee.** During the period of time when any one (1) Unitholder holds at least fifty percent of the aggregate Class A Units and Class C Units, the General Partner shall establish and maintain an advisory committee (the “**Advisory Committee**”) comprised of either four (4) or five (5) individuals as determined and selected by the General Partner in its sole discretion, which shall consist of two (2) individuals (in total) to represent the General Partner, a minimum of (1) and a maximum of two (2) individuals to represent the Unitholders and one (1) individual to represent the Manager. Subject to the above criteria, at such time that an Advisory Committee member resigns, the General Partner shall appoint a replacement.
- 7.2 **Term and Compensation.** There will be no set term for Advisory Committee members. The Advisory Committee members will not receive compensation for their participation in the Advisory Committee nor will the Partnership be required to reimburse the members for any travel costs and other expenses.
- 7.3 **Meetings and Mandate of Advisory Committee.** The Advisory Committee shall meet at such times and on such dates as the General Partner may select at its sole discretion. It is the General Partner’s current non-binding intention for meetings to initially occur on a semi-annual basis, however each Unitholder acknowledges and agrees that meetings may occur less frequently. The General Partner shall provide reasonable written notice to the Advisory Committee members of a meeting and all meetings may be in person or by telephone conference call. The Advisory Committee, at each meeting, may:
- (a) review and recommend development alternatives in connection with the Property, which shall include without limitation consideration of investor timelines, risk and overall profitability;
  - (b) review and recommend financing alternatives in connection with the Partnership;
  - (c) review and recommend the management of all risks in connection with the Partnership and the Property;
  - (d) review and make recommendations in connection with the Partnership entering into any contracts, agreements or arrangements with any Person who is not at arm’s length to the Partnership, if the terms are not consistent with then prevailing market rates; and
  - (e) review and recommend on Project development.
- 7.4 For greater clarity, it is intended that the Advisory Committee shall only serve as advisors to the General Partner and that neither the General Partner nor the Partnership shall be bound by any determinations, conclusions, decisions or resolutions of the Advisory Committee. The General Partner may, in its sole discretion, choose not to act on or in



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accordance with the advice, or any determination, conclusion, decision or resolution of the Advisory Committee.

- 7.5 The Partnership shall indemnify and hold harmless each member of the Advisory Committee from and against all losses, costs, expenses, liabilities and damages (including all reasonable legal and other professional fees and disbursements) incurred by such member in connection with any third party claims instituted or threatened against such member where the substance of such claim relates to such member's participation on the Advisory Committee, save and except if such member shall have acted fraudulently, illegally, with gross negligence or in bad faith

## ARTICLE 8 ACCOUNTING AND REPORTING

- 8.1 **Books and Records.** The General Partner shall keep or cause to be kept on behalf of the Partnership books and records reflecting the assets, liabilities, income and expenditures of the Partnership. Such books and records shall be kept available for inspection by any Unitholder or his duly authorized representative (at the expense of such Unitholder) during business hours at the head office of the General Partner in accordance with Section 1.6.
- 8.2 **Annual Financial Information.** The General Partner shall cause the Accountants to compile annual unaudited financial statements of the Partnership as at the end of each fiscal year of the Partnership. The General Partner, or its agent in that behalf, shall distribute a copy of such annual financial statements to each Unitholder as soon as reasonably possible after the end of each fiscal year and shall provide each Unitholder with annual income tax information for each fiscal year by March 31<sup>st</sup> of the following year to assist in declaring each such Unitholder's share of the Partnership income; provided, however, that each Unitholder shall be solely responsible for filing all income tax returns and reporting its share of the Partnership income or losses.
- 8.3 **Unaudited Quarterly Financial Statements and Reports.** The General Partner shall cause to be prepared unaudited quarterly internal financial statements of the Partnership in the format of internal management statements and narrative reports. The General Partner shall use reasonable efforts to cause to be distributed a copy of such unaudited quarterly internal financial statements to each Unitholder within sixty (60) days after the end of the period to which such statements relate.

## ARTICLE 9 DISSOLUTION AND LIQUIDATION

- 9.1 **Dissolution and Termination.** The Partnership shall be dissolved on the earlier of the following dates:
- (a) If the General Partner should resign upon giving the required one hundred and eighty (180) days' prior written notice and the Unitholders shall have not appointed a New General Partner prior to the effective date of such resignation, the effective date of such resignation;

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- (b) The date which is 120 days following the bankruptcy, dissolution or winding-up of the General Partner, unless the General Partner is replaced within 120 days following such bankruptcy, dissolution or winding-up;
- (c) If determined by the General Partner, thirty (30) days after the date on which the Partnership no longer holds any interest in the Property, the balance of each Unitholder's capital account to be returned to such Unitholder has been returned and the Partnership has no outstanding debts or obligations;
- (d) The date on which a Special Resolution approving the dissolution and winding-up of the Partnership is passed and approved by the General Partner; or
- (e) The date on which the Partnership is dissolved by operation of law.

The General Partner may make a recommendation for approval by Special Resolution that the Partnership be dissolved upon such terms and conditions as the General Partner sees fit and, without limiting the generality of the foregoing, the recommendation of the General Partner may include those terms and conditions which shall govern the relationship among the Unitholders with respect to their respective interests subsequent to a dissolution of the Partnership.

- 9.2 **Administrator.** The General Partner shall serve as the administrator of the Partnership in the event that the Partnership is to be dissolved, unless such dissolution is as a result of provisions of Sections 9.1(a) or 9.1(b) or if the General Partner is unable or unwilling to so act. If the General Partner is disqualified or unable to act as administrator, then the Voting Unitholders by Ordinary Resolution shall appoint some other appropriate Person to act as the administrator of the Partnership. Each Voting Unitholder covenants and agrees to use reasonable efforts to do and perform (and cause to be done and performed) such further and other acts or things as may be necessary or desirable in order facilitate the dissolution of the Partnership on a tax efficient and beneficial basis accounting for the tax and other circumstances of each Unitholder.

- 9.3 **Liquidation of Assets.** As soon as practicable after the authorization of the dissolution of the Partnership, the administrator of the Partnership shall prepare or cause to be prepared an unaudited statement of financial position of the Partnership which shall be reported upon by the Accountants and a copy of which shall be forwarded to each Unitholder. The administrator of the Partnership shall proceed diligently to wind up the affairs of the Partnership and all assets of the Partnership shall be disposed of in an orderly fashion having regard to prevailing market conditions. In selling the Partnership's assets, the administrator shall take all reasonable steps to locate potential purchasers in order to accomplish the sale at the highest attainable price. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any losses. During the course of such liquidation, the administrator of the Partnership shall operate the undertakings of the Partnership and in so doing shall be vested with all the powers and authorities of the General Partner in relation to the business and affairs of the Partnership under the terms of this Agreement. The administrator of the Partnership shall be paid its reasonable fees and disbursements incurred in carrying out its duties as such.

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- 9.4 **Distribution.** After the payment of all liabilities owing to the creditors of the Partnership, the administrator shall set up such Reserves as it deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Said Reserves may be paid over by the administrator to a bank, to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the administrator may deem advisable, such Reserves shall be distributed to the Partners or their assigns as provided below. After provision has been made for: (i) the payment of all costs and expenses (including, without limitation, all legal and other professional fees and disbursements) involved in the sale of the Partnership assets and the winding up of the Partnership; and (ii) the repayment or other satisfaction of all debts and liabilities of the Partnership including, without limitation, all fees relating to the Administration Services Agreement, applicable taxes, and all amounts owing to the General Partner in respect of costs and expenses owing to it pursuant to this Agreement, the net assets of the Partnership and/or the proceeds arising therefrom shall be distributed in accordance with the provisions of Section 4.2.
- 9.5 **Distribution of Interest in Property.** Notwithstanding anything to the contrary in this Agreement, the Unitholders, upon the dissolution, winding-up or liquidation of the Partnership, shall only have the right and entitlement to the distributions of the proceeds arising from the sale or other disposition of the Property, but shall have no right or entitlement to a distribution of the Property, or any part thereof, in kind or in specie.
- 9.6 **Events Not Causing Dissolution.** Notwithstanding any rule of law or equity to the contrary, the Partnership shall not be dissolved except in accordance with the provisions of this Agreement. In particular, but without restricting the generality of the foregoing, the Partnership shall not be dissolved or terminated by the removal, actual or deemed resignation, death, incompetence, bankruptcy, insolvency, other disability or incapacity, dissolution, liquidation, winding-up or receivership, or the admission, resignation or withdrawal of, any Partner.

## ARTICLE 10 **GENERAL INFORMATION**

- 10.1 **Confidentiality.** Each Unitholder covenants and agrees to hold in confidence and keep confidential, and to use only for the purposes of the Partnership, any and all financial and other information and data which it may obtain or receive from, or on behalf of, the Partnership or the General Partner, including, without limitation, any information relating to the Property, except to the extent that the disclosure of such confidential information is to such Unitholder's legal, financial and tax advisors or is required by law.
- 10.2 **Initial Limited Partnership Agreement and Initial Unit.** This Agreement hereby amends and restates the initial limited partnership agreement (the "**Initial LP Agreement**") entered into between the General Partner and Go-To Holdings in connection with the Partnership dated March 6, 2017. Pursuant to the Initial LP Agreement, Go-To Holdings was issued 1 Unit (the "**Initial Unit**") at a subscription price of \$10.00 per Unit. Effective as of the issuance of Units to Unitholders on or after the date hereof, the Partnership hereby purchases the Initial Unit from Go-To Holdings, and Go-To Holdings hereby sells the Initial Unit to the Partnership for cancellation for a



purchase price of CDN \$10.00 and, upon the completion of such purchase and sale, the Initial Unit is, without any further act or formality, hereby cancelled and no longer outstanding for any of the purpose. Nothing in this Section shall be interpreted so as to prevent Go-To Holdings from subscribing for, acquiring and holding Units as a Unitholder.

- 10.3 **Receipt by a Unitholder.** The receipt of any money, securities and other property from the Partnership by a Person in whose name any Unit is recorded, or if such Unit is recorded in the names of more than one Person, the receipt thereof by any one or more of such Persons, or by the duly authorized agent of any such Person in that regard, shall be a sufficient and proper discharge for that amount of money, securities and other property payable, issuable or deliverable in respect of such Unit.
- 10.4 **Interpretation.** For all purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:
- (a) The headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
  - (b) All accounting terms not otherwise defined herein have the meanings assigned to them and all computations made pursuant to this Agreement, except as expressly provided otherwise, shall be made in accordance with generally accepted accounting principles applied on a consistent basis;
  - (c) All references to currency herein are references to Canadian currency;
  - (d) Any reference to an entity shall include and shall be deemed to be a reference to any entity that is a successor to or assign of such entity; and
  - (e) Words importing gender include the masculine, feminine and neuter genders, words in the singular include the plural and vice versa.
- 10.5 **Competing Interests.** Each Unitholder and the shareholders, officers, directors and employees of the General Partner and its Affiliates shall be entitled, without the consent of the other parties, to carry on any business of the same nature as, or competing with that of, the Partnership, and is not liable to account to the other Unitholders or the Partnership therefor. It is further acknowledged and agreed that the directors, officers and employees of the General Partner will not act exclusively for the Partnership, and, consequently, the directors, officers and employees of the General Partner will only devote as much time as is necessary (but not all of his or her full time) to supervise the management of the business and affairs of the Partnership.

The Unitholders acknowledge and agree that the shareholders, directors and officers of the General Partner are not in any way limited or affected in their ability to carry on other business ventures for their own account or the account of others, and may be engaged in in a wide range of transactions, investments and other business activities, which may include, direct and/or indirect, acquisition, ownership and operation of businesses which compete with the Partnership. The Unitholders acknowledge and waive any rights to

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which they might otherwise be entitled as partners of the Partnership to invest in any other property or venture of the shareholders, directors and officers of the General Partner, or to profit therefrom or to any interest therein. The Unitholders acknowledge and agree that:

- (a) if an investment opportunity does not arise solely from a director's or officer's activities on behalf of the General Partner, the directors and officers of the General Partner have no obligation to offer the investment opportunity to the Partnership; and
- (b) the General Partner has the discretion to determine whether the Partnership will avail itself of the investment opportunity and, if it does not, any of the directors and officers of the General Partner shall be able to decide amongst themselves whether to pursue the opportunity for their respective accounts.

- 10.6 **Notices.** Except as otherwise provided in this Agreement, any notice or other communication to the General Partner or the Unitholders under this Agreement (including without limitation, the notices contemplated under Section 6.3) shall be sufficiently given if in writing and served personally on such party or, in the case of corporate entities, on any officer of the General Partner or the Unitholders, or if sent by facsimile or other electronic means of communication (such as e-mail), or by letter, postage prepaid unless at the time of mailing or within four (4) days thereafter there shall be a strike, interruption or lockout in the Canadian postal service, in which case the notice shall be given by personal delivery, facsimile or other electronic means of communication. Notices shall be addressed to:

If to the Partnership, the General Partner or Go-To Holdings:	Suite 301-1267 Cornwall Road Oakville, Ontario L6J 7T5 Attention: Oscar Furtado Email: oscarfurtado@gotodevelopments.com
If to any other Unitholder:	The contact information of such Unitholder as then listed in the books and records of the Partnership

Notice shall be considered to have been given, if delivered, on the date of delivery, or if sent by facsimile, electronic means of communication or by letter, on the next Business Day following the day of sending of the facsimile or electronic means of communication, or if sent by letter on the third (3<sup>rd</sup>) Business Day following the date of mailing the letter. The General Partner and Unitholders shall advise the General Partner and Registrar and Transfer Agent of any change in their address for notice.

- 10.7 **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original. This Agreement may also be adopted in any subscription, assignment form or similar instrument signed by a Unitholder and which includes an agreement to become a Unitholder of the Partnership, with the same effect as if such Unitholder had executed a counterpart of this Agreement. All counterparts and adopting instruments shall be construed together and shall constitute one

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and the same instrument. Facsimile or other electronic copies of signatures shall for all purposes be treated as original signatures.

- 10.8 **Severability**. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.
- 10.9 **Set Off**. The General Partner may set-off and deduct from any amounts otherwise payable by the Partnership to a Unitholder hereunder, any amount owing by a Unitholder to the Partnership.
- 10.10 **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.
- 10.11 **Binding Effect**. Subject to the restrictions on 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 and successors and assigns.
- 10.12 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto does hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
- 10.13 **Time of the Essence**. Time shall be of the essence of this Agreement and every part hereof.
- 10.14 **Independent Legal Advice**. Each Unitholder acknowledges that it has been advised to receive independent legal advice in connection with its execution and delivery of its Subscription Agreement and this Agreement, such Unitholder has had ample opportunity to receive such independent legal advice and has either done so or chosen not to obtain such advice of its own volition.

*[The next page is the signature page.]*



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

**GO-TO NIAGARA FALLS EAGLE VALLEY  
INC.**

Per: \_\_\_\_\_



Name: Oscar Furtado

Title: President

I have the authority to bind the corporation

**GO-TO DEVELOPMENTS HOLDINGS INC.**

Per: \_\_\_\_\_



Name: Oscar Furtado

Title: President

We have the authority to bind the corporation

**GO-TO NIAGARA FALLS EAGLE VALLEY  
INC.**

(on behalf of, and as the authorized attorney for, each  
limited partner of the Partnership)

Per: \_\_\_\_\_



Name: Oscar Furtado


Title: President

I have the authority to bind the corporation

**Limited Partnership Agreement****Go-To Niagara Falls Eagle Valley Inc.****Explanation of % used in Section 4.3 of the Limited Partnership Agreement:**

- Section 4.3 is to ensure that prior to any distributions of Profit under Section 4.2 (h) the investors are paid out in a situation whereby security deposits are held back on completion of the project.
- Assume a nominal profit of \$1,000,000. The builder's share would be  $37.5\% = \$375,000$ .
- The General Partnership is left with \$625,000.
- The investors are to be paid under Section 4.2 (h) (ii) (A) 16.22%.
- $16.22\% \text{ of } \$625,000 = \$101,375$ .
- $\$101,375 \text{ of } \$1,000,000 = 10.375\% \text{ of the Profit}$ .

This is Exhibit “23” referred to  
in the Affidavit of Stephanie Collins  
sworn before me, this  
6<sup>th</sup> day of December, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS  
**Michelle Spain, a Commissioner, etc.,  
Province of Ontario, for the Government of Ontario,  
Ontario Securities Commission.  
Expires March 22, 2024.**

**LIMITED PARTNERSHIP AGREEMENT**

**THIS AGREEMENT** made with effect as of the 4<sup>th</sup> day of April, 2019.

**BETWEEN:**

**GO-TO SPADINA ADELAIDE SQUARE INC.,**

a corporation incorporated under the laws of the Province of Ontario  
(together with any other Person admitted as a general partner of Go-To Spadina Adelaide Square LP, the “**General Partner**”)

– and –

**GO-TO DEVELOPMENTS HOLDINGS INC.,**

a corporation incorporated under the laws of the Province of Ontario  
(“**Go-To Holdings**”)

– and –

**EACH PARTY WHO FROM TIME TO TIME EXECUTES  
THIS AGREEMENT AND THEREBY AGREES TO BE BOUND  
AS A LIMITED PARTNER, OR ANY SUCCESSOR THEREOF**

**WHEREAS:**

A. Go-To Spadina Adelaide Square LP (the “**Partnership**”) wishes to issue a minimum of 336 Class A Units at a subscription price of \$50,000 per Class A Unit, being an aggregate subscription price for Class A Units of no less than \$16,800,000, a minimum of 203 Class B Units at a subscription price of \$50,000 per Class B Unit, being an aggregate subscription price for Class B Units of no less than \$10,150,000, and a minimum of 6 Class C Units at a subscription price of \$50,000 per Class C Unit, being an aggregate subscription price for Class C Units of no less than \$300,000, in each case to such subscribers that execute and deliver a Subscription Agreement;

B. The Partnership was formed for the purpose of acquiring and developing real property and intends to acquire and develop the Property; and

C. The parties wish to enter into this limited partnership agreement for the purposes of recording the relationship among them and their respective rights and duties in relation to the Partnership;

**NOW THEREFORE** in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, the parties hereto agree as follows:

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## ARTICLE 1 THE PARTNERSHIP

- 1.1 **Definitions.** Wherever used in this Agreement, the following terms will have the following meanings, respectively, unless the context indicates otherwise:
- (a) “**Act**” means the *Limited Partnerships Act* (Ontario);
  - (b) “**Accountants**” means the accountants appointed by the General Partner to act as accountants for the Partnership from time to time;
  - (c) “**Administrative Services Agreement**” means the services agreement dated on or around the date hereof by and between Go-To Holdings and the Partnership with respect to provision of certain administrative services in connection with the Property and pursuant to which the Partnership shall pay a monthly accounting and administration fee to Go-To Holdings;
  - (d) “**Affiliates**” has the meaning ascribed thereto in the *Securities Act* (Ontario);
  - (e) “**Agreement**” means this agreement, as it may be amended, restated or revised from time to time;
  - (f) “**Arm’s Length**” has the meaning attributed to such term in the Tax Act;
  - (g) “**Business Day**” means any day, other than a Saturday or Sunday or a day on which chartered banks in the City of Toronto, Ontario are not open for business during normal banking hours;
  - (h) “**Capital Contribution**” means the amount of money paid in cash in exchange for Units and any additional capital contributions made in cash by the Unitholders pursuant to ARTICLE 3;
  - (i) “**Class A Return**” means in respect of a Class A Unitholder, the annual, cumulative, non-compounding, priority return, calculated on the Capital Contribution of such Class A Unitholder, for the period of time commencing on the date such Capital Contribution (or portion thereof) was made and ending on the day that such Class A Unitholder’s Capital Contribution is repaid in full at a rate per annum of the Class A Return Rate of such Class A Unitholder;
  - (j) “**Class A Return Rate**” means, in respect of a particular Class A Unitholder, the percentage listed in the table set forth in Schedule “A” adjacent to the name of such Class A Unitholder under the heading ‘Class A Return Rate’, it being acknowledged and agreed that Schedule “A” may be updated by the General Partner from time to time to reflect changes in the ownership of Class A Units and the issuance by the Partnership of further and additional Class A Units;
  - (k) “**Class B Return**” means in respect of a Class B Unitholder, the annual, cumulative, non-compounding, priority return, calculated on the Capital Contribution of such Class B Unitholder, for the period of time commencing on the

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date such Capital Contribution (or portion thereof) was made and ending on the day that such Class B Unitholder's Capital Contribution is repaid in full at a rate per annum of the Class B Return Rate of such Class B Unitholder;

- (l) **"Class B Return Rate"** means, in respect of a particular Class B Unitholder, the percentage listed in the table set forth in Schedule "B" adjacent to the name of such Class B Unitholder under the heading 'Class B Return Rate', it being acknowledged and agreed that Schedule "B" may be updated by the General Partner from time to time to reflect changes in the ownership of Class B Units and the issuance by the Partnership of further and additional Class B Units;
- (m) **"Class A Units"** means class A units of the Partnership;
- (n) **"Class B Units"** means class B units of the Partnership;
- (o) **"Class C Units"** means class C units of the Partnership;
- (p) **"Class A Unitholders"** means the holders of Class A Units from time to time;
- (q) **"Class B Unitholders"** means the holders of Class B Units from time to time;
- (r) **"Class C Unitholders"** means the holders of Class C Units from time to time;
- (s) **"Excluded Person"** means a Person:
  - (i) an interest in which is a "tax shelter investment" or whose interest in the Partnership if acquired by such Person, would be a "tax shelter investment" within the meaning of the Tax Act;
  - (ii) that is a "financial institution" for purposes of the Tax Act unless the issuance of Units to such Person would not cause the Partnership to be a "financial institution" for purposes of the Tax Act; or
  - (iii) who has financed or will finance the acquisition of Units for which recourse is limited for purposes of the Tax Act;
- (t) **"Former General Partner"** has the meaning attributed to such term in Section 5.21;
- (u) **"Income for Tax Purposes"** and **"Loss for Tax Purposes"** means, in respect of any fiscal year of the Partnership, the amount of income, or loss, of the Partnership as determined by the General Partner in accordance with this Agreement and the provisions of the Tax Act;
- (v) **"Interest Rate"** means a rate of interest equal to the greater of: (i) the Prime Rate plus five percent (5%) per annum; and (ii) 15% per annum, in each case calculated and compounded monthly;
- (w) **"Initial Capital Contribution"** means, in respect of a Unitholder, the Capital Contribution made by such Unitholder contemporaneous with the first issuance of



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Units to such Unitholder pursuant to a Subscription Agreement and as recorded in the Register. For greater certainty only, as at the date hereof, the Class A Unitholders contributed \$17,800,000 of the aggregate Initial Capital Contributions, the Class B Unitholders contributed \$5,450,000 of the aggregate Initial Capital Contributions and the Class C Unitholders contributed \$0 of the aggregate Initial Capital Contributions;

- (x) **“Insolvency Event”** means with respect to a Unitholder or the General Partner, as the case may be: (i) the adjudication by a court of competent jurisdiction as bankrupt or insolvent; (ii) an encumbrancer takes possession of all or any material part of the General Partner’s property or the Unitholder’s Units, as the case may be; (iii) if a distress or execution or any similar process is levied or enforced upon or against all or any material part of the General Partner’s property or the Unitholder’s Units, as the case may be; (iv) the voluntary taking of any formal proceeding for the rearrangement of its financial affairs by arrangement or compromise with its creditors; (v) involuntary formal proceedings being taken against it for the rearrangement of its financial affairs by arrangement or compromise with its creditors;
- (y) **“Net Income”** means for any fiscal period, the net income of the Partnership during the period determined in accordance with generally accepted accounting principles;
- (z) **“Net Loss”** means for any fiscal period, the net loss of the Partnership during the period determined in accordance with generally accepted accounting principles;
- (aa) **“New General Partner”** has the meaning attributed to such term in Section in Section 5.21;
- (bb) **“Person”** means and includes any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, limited liability company, unincorporated association or organization, governmental entity, syndicate or other entity, whether or not having legal status;
- (cc) **“Prime Rate”** means, at any time, the annual rate of interest which the bank with whom the Partnership holds its main operating accounts establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge at such time for demand loans in Canadian dollars made to its customers in Canada and which it refers to as its “prime rate of interest”;
- (dd) **“Pro-Rata Basis”** means: (i) in relation to any particular Class A Unitholder, a fraction which has as its numerator the number of Class A Units held by such Class A Unitholder and which has as its denominator the total number of Class A Units which are issued and outstanding at the time; (ii) in relation to any particular Class B Unitholder, a fraction which has as its numerator the number of Class B Units held by such Class B Unitholder and which has as its denominator the total number of Class B Units which are issued and outstanding at the time; (iii) in relation to any particular Class C Unitholder, a fraction which has as its numerator the number of Class C Units held by such Class C Unitholder and which has as its denominator

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the total number of Class C Units which are issued and outstanding at the time; and (iv) in relation to any particular Unitholder, a fraction which has as its numerator the number of Class A Units, Class B Units and/or Class C Units, as the case may be, held by such Unitholder and which has as its denominator the total number of Class A Units, Class B Units and Class C Units which are issued and outstanding at the time;

- (ee) **“Property”** means the properties listed and described in Schedule “C” hereto;
- (ff) **“Register”** means a record of limited partners of the Partnership, from time to time, a record of the transfer of Units by a limited partner of the Partnership, from time to time, and a record of the Initial Capital Contributions and additional Capital Contributions of limited partners of the Partnership, from time to time;
- (gg) **“Registrar and Transfer Agent”** means the General Partner or an agent appointed by the General Partner to keep the Register;
- (hh) **“Reserves”** means amounts from time to time transferred or credited, in the discretion of the General Partner, to a reserve or contingent account on the books and records of the Partnership for operating expenses or contingent or unforeseen liabilities and obligations;
- (ii) **“Resolution”** means a resolution approved by more than fifty percent (50%) of the Class A Unitholders, more than fifty percent (50%) of the Class B Unitholders and more than fifty percent (50%) of the Class C Unitholders who are entitled to vote, in person or by proxy at a duly convened meeting of the Unitholders, or at any adjournment thereof, called in accordance with this Agreement or a written resolution in one or more counterparts, signed by Unitholders holding in the aggregate more than fifty percent (50%) of the Class A Unitholders, more than fifty percent (50%) of the Class B Unitholders and more than fifty percent (50%) of the Class C Unitholders who are entitled to vote on such resolution;
- (jj) **“Securities Laws”** means, collectively, the applicable securities laws of any jurisdiction and the respective regulations, rules, blanket orders and blanket rulings made under those securities laws together with applicable published policies, policy statements and notices, and shall include all discretionary orders or rulings, if any, of Canadian securities commissions or other securities commissions in any applicable jurisdiction granted in connection with the transactions contemplated by this Agreement;
- (kk) **“Site Plan Approval”** means the site plan approval in respect of the Property by the relevant municipal authority to permit the development of residential, commercial and/or multi-use uses which, with any conditions imposed, in the Partnership’s absolute discretion is acceptable to it and such site plan approval being in full force and effect, with all appeal periods having expired without appeal, or all appeals having been determined to the satisfaction of the Partnership without any further right of appeal;

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- (ll) “**Specified Transfer**” means a Transfer of legal and/or beneficial ownership of Units to the executors and estate administrators of a Unitholder upon the death, insolvency or bankruptcy of a Unitholder;
  - (mm) “**Subscription Agreement**” means the form of subscription agreement, in such form and substance as required by the General Partner, to be executed and delivered by a subscriber to the General Partner for the subscription of Class A Units, Class B Units and/or Class C Units, as the case may be;
  - (nn) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time;
  - (oo) “**Third Party Offer**” means a *bona fide* offer received by the General Partner from a Person who deals at Arm’s Length with the General Partner and the Partnership for the purchase of the Property;
  - (pp) “**Transfer**” means and includes any sale, exchange, transfer, assignment, gift, pledge, encumbrance, hypothecation, alienation, transmission or other transaction, whether voluntary, involuntary or by operation of law, by which the beneficial ownership of, or a security interest or other interest in, the security or any part thereof passes from one Person to another, or to the same Person in a different capacity or to a successor of such Person such as by amalgamation (except an amalgamation with an affiliate), whether or not for value, and any option, agreement or other commitment in respect of any of the foregoing, and “transferred”, “transferor” and “transferee” and similar expressions have corresponding meanings;
  - (qq) “**Unit**” means an undivided ownership interest in the Partnership entitling the holder of record thereof to the rights provided in this Agreement represented by a Class A Unit, Class B Unit or Class C Unit, as the case may be;
  - (rr) “**Unitholder**” means the holder of a Unit and “**Unitholders**” has a corresponding meaning; and
  - (ss) “**Unit Certificate**” means the form of certificate issued by the General Partner, evidencing the type and number of Units owned by a Unitholder.
- 1.2 **Agreement.** This Agreement contains the entire agreement between the General Partner and the Unitholders as to the formation, organization and management of the Partnership. The General Partner and each Unitholder may hereinafter be referred to individually as a “**Partner**”, and collectively as the “**Partners**”.
- 1.3 **Formation of Partnership.** The General Partner hereby warrants and represents that the Partnership became a limited partnership under the laws of the Province of Ontario on October 16, 2018 under the name “Go-To Spadina Adelaide Square LP”, the date the General Partner filed the original declaration under the Act. The Partnership shall continue as a limited partnership until terminated in accordance with the provisions of this Agreement.



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- 1.4 **Limited Liability.** Subject to the Act (and any other similar legislation applicable in any other jurisdiction) and any specific assumption of liability, the liability of each Unitholder for the debts, liabilities and obligations of the Partnership is limited to the amount of capital that such Unitholder has contributed or agrees to contribute to the Partnership, as provided in the Act. A Unitholder shall have no further personal liability for any debts, liabilities and obligations of the Partnership.
- 1.5 **Name.** The Partnership shall carry on business under the name “**Go-To Spadina Adelaide Square LP**” or such other name or names as the General Partner may determine from time to time, provided that the General Partner files a declaration under the Act as required, giving effect thereto. The General Partner shall promptly advise the Unitholders of any such change.
- 1.6 **Head Office and Mailing Address.** The head office and mailing address of the Partnership shall be located at Suite 301-1267 Cornwall Road, Oakville, Ontario L6J 7T5 and may be changed from time to time by the General Partner giving written notice to that effect to all the Unitholders.
- 1.7 **Registrar and Transfer Agent.**
  - (a) The General Partner shall act as the Registrar and Transfer Agent of the Partnership and shall maintain such books and records as are necessary to record the names and addresses of the Unitholders, the type and number of Units held by each Unitholder and particulars of Transfers of Units. The General Partner shall cause the Registrar and Transfer Agent to perform all other duties usually performed by a registrar and transfer agent of certificates of shares in a corporation, except as the same may be modified by reason of the nature of such Units;
  - (b) For so long as the General Partner shall be Registrar and Transfer Agent, the Register shall be kept by the General Partner at the address referred to in Section 1.6 hereof or at the offices of the solicitors for the General Partner; and
  - (c) The General Partner shall promptly advise the Unitholders in writing of any change in the Registrar and Transfer Agent or the location of the Register.
- 1.8 **Inspection of Records.** Upon five (5) Business Days’ notice in writing from any Unitholder to the General Partner, the General Partner shall cause the Registrar and Transfer Agent to make the records relating to the Partnership available for inspection by the Unitholder, or its agent duly authorized in writing, during normal business hours, at the expense of the Unitholder requesting such inspection. A copy of the Register shall be provided to any Unitholder on forty-eight (48) hours’ notice in writing to the Registrar and Transfer Agent, at the expense of the Unitholder requesting same.
- 1.9 **Filing of Declarations.** As soon as practicable following the execution hereof, the General Partner shall cause to be executed and filed such declarations, instruments and documents as may be required under the laws of the Province of Ontario, in connection with the Partnership, and shall keep the Register in accordance with applicable legislation. The General Partner and each Unitholder shall execute and deliver as promptly as possible any documents that may be necessary or desirable to accomplish the purposes of this

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Agreement or to give effect to the formation and continuance 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.

- 1.10 **Year End.** The fiscal year end of the Partnership shall be December 31 in each year or such other date as the Unitholders may determine by Resolution.
- 1.11 **Business of the Partnership.** The Partnership has been formed for the purpose of purchasing, holding an interest in, conducting pre-development planning with respect to, development and construction of the Property, and the sale or other disposition of the Property (or part thereof). The Partnership shall have the power to do any and every act and thing necessary, proper, convenient or incidental to the accomplishment of such purposes. Unless approved by the Unitholders in accordance with the terms of this Agreement, the Partnership shall not carry on any other business.
- 1.12 **Status of Each Unitholder.** Each Unitholder represents, warrants and covenants to each other Unitholder and to the General Partner that it:
- (a) It is not, and will not become, an Excluded Person or otherwise change its status as represented herein;
  - (b) If an individual, he/she is of the age of majority and has the legal capacity and competence to enter into and be bound by this Agreement and to take all actions required pursuant hereto and the performance of his/her obligations herein do not and will not conflict with or give rise to a breach of any other agreement by which he/she is bound; and
  - (c) If a corporation, partnership, unincorporated association or other entity, it has the legal capacity or competence to enter into and be bound by this Agreement and to take all actions required pursuant hereto, and further that all necessary approvals of directors, shareholders, partners, members or others have been given to accomplish the foregoing, and the performance of its obligations herein do not and will not conflict with or give rise to a breach of its constating document(s) or agreement(s), articles of incorporation, by-laws, or any other agreement by which it is bound;
- and each Unitholder covenants and agrees that: (i) each of the foregoing representations and warranties shall be true and accurate at all times; (ii) it shall promptly provide such evidence of the accuracy of the foregoing representations and warranties to the General Partner upon the reasonable request of the General Partner; and (iii) it will not Transfer or purport to Transfer any of its Units to any Person that is unable to make the representations and warranties contained in this Section 1.12.
- 1.13 **Mandatory Transfer of Units.** If at any time, any Unitholder is or becomes an Excluded Person, such Unitholder covenants, agrees and undertakes that it will immediately notify the General Partner that it is an Excluded Person. Upon the General Partner becoming aware of, or determining that, a Unitholder has become an Excluded Person since becoming a Unitholder, or if the Unitholder fails to provide evidence satisfactory to the General



Partner that it is not an Excluded Person, the General Partner will require the Unitholder to dispose of all its Units to a Person that is not an Excluded Person, failing which the General Partner, subject to compliance with applicable Securities Laws, will be entitled to sell the Units to the remaining Unitholders on a Pro-Rata Basis or to acquire the Units on behalf of the Partnership.

1.14 **Status of the General Partner.** The General Partner represents, warrants and covenants to each Unitholder that the General Partner:

- (a) Is, and shall continue to be, a corporation incorporated and subsisting in good standing under the laws of the Province of Ontario; and
- (b) Has the capacity and corporate authority to act as the General Partner of the Partnership and to perform its obligations under this Agreement and that the performance of such obligations do not and will not conflict with or give rise to a breach of its articles of incorporation, by-laws, or any other agreement by which it is bound.

1.15 **Compliance with Laws.** The Unitholders shall comply with the provisions of the Act and any other applicable legislation in force from time to time and shall not take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership. Without limiting the generality of the foregoing, each Unitholder shall, on request by the General Partner, immediately execute all certificates, declarations, instruments and documents, including declarations to be filed under the Act, that are necessary to comply with any law or regulation of any jurisdiction in Canada in regard to the formation, continuance, operation or dissolution of the Partnership.

1.16 **Limitation on Authority of Unitholder.** No Unitholder shall (save and except for the General Partner where the General Partner is also a Unitholder):

- (a) Take part in the control or management of the business of the Partnership provided that each Unitholder shall have the right from time to time to examine into the state and progress of the business and affairs of the Partnership;
- (b) Execute any document which binds or purports to bind the Partnership, the General Partner or any Unitholder as such;
- (c) Hold itself out as having the power or authority to bind or sign on behalf of the Partnership, the General Partner or any Unitholder;
- (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 property or other assets of the Partnership, whether real, personal or mixed and whether tangible or intangible, or, except as permitted herein, register or permit any lien or mortgage in respect of the Units of such Unitholder to be filed or registered or remain undischarged against such Units.

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- 1.17 **Title.** The General Partner, or its nominee, from time to time, shall at all times hold the rights, assets and agreements in relation to the business of the Partnership in the name of the General Partner, but on behalf of the Partnership, unless otherwise directed by the Partnership.
- 1.18 **Title to Partnership Assets.** Title to the property and assets of the Partnership, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner individually shall have any ownership interest in the assets of the Partnership or any portion thereof. Title to any or all of the Partnership's property and assets shall be held in the name of the General Partner or as the General Partner may determine from time to time. The General Partner declares, represents, and warrants to each of the Unitholders as a continuing declaration, representation and warranty, that any property and assets of the Partnership of which legal title is held in the name of the General Partner shall be held by the General Partner as agent and nominee for the beneficial entitlement and interest of the Partnership for the use and benefit of the Partnership in accordance with the provisions of this Agreement.
- 1.19 **Commingling of Funds.** The funds and assets of the Partnership shall not be commingled with the funds or assets of any other Person, including those of the General Partner.
- 1.20 **Survival of Representations and Warranties.** Each of the parties agrees that the representations and warranties made by it in this Agreement, as applicable, are true and correct on the date hereof and that they shall survive the execution of this Agreement, indefinitely, notwithstanding such execution or any investigations made by or on behalf of any of the other Partners and each Partner covenants and agrees to ensure that each such representation and warranty it has made remains true and correct so long as such Partner remains a Partner.

## ARTICLE 2 UNITS

- 2.1 **Number and Classes of Units.** The interest of the Unitholders in the Partnership shall be divided into Units, represented by an unlimited number of Class A Units, an unlimited number of Class B Units and an unlimited number of Class C Units. Except as may otherwise be specifically contemplated in this Agreement, no Unit shall have any preference or right in any circumstances over any other Unit.
- 2.2 **Unit Attributes.**
- (a) Each Class A Unit shall have the following rights and obligations:
    - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
    - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
    - (iii) The right to receive distributions in accordance with the terms hereof.

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- (b) Each Class B Unit shall have the following rights and obligations:
    - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
    - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
    - (iii) The right to receive distributions in accordance with the terms hereof.
  - (c) Each Class C Unit shall have the following rights and obligations:
    - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
    - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
    - (iii) The right to receive distributions in accordance with the terms hereof.
- 2.3 **Securities Transfer Act.** It is acknowledged that the Units shall be considered a “security” for the purposes of the *Securities Transfer Act, 2006* (Ontario) and any other applicable securities transfer laws.
- 2.4 **Unit Certificates.** Certificates may be issued to evidence the Units and a Unit Certificate for each class of Units shall be in such form as is from time to time approved by the General Partner and shall be signed by the General Partner. It is acknowledged and agreed that the General Partner shall not be required to issue a Unit Certificate to a Unitholder, and a Unitholder shall not be entitled to receive a Unit Certificate, until such time that a Unitholder makes a written request for a Unit Certificate to be issued. All Unit Certificates issued or to be issued by the General Partner will be endorsed with a memorandum as follows:
- “This certificate is a “security” for the purposes of the *Securities Transfer Act, 2006* (Ontario) and is subject to a Limited Partnership Agreement and the units represented by this certificate cannot be sold, transferred, assigned or otherwise disposed of or mortgaged, pledged, hypothecated, charged or otherwise encumbered except pursuant to the terms of the said Limited Partnership Agreement.”
- 2.5 **Lost Unit Certificates.** Where a Unitholder claims that the Unit Certificate for its Unit has been defaced, lost, apparently destroyed or wrongly taken, the General Partner shall cause a new Unit Certificate to be issued to such Unitholder, provided that the Unitholder files with the Registrar and Transfer Agent an indemnity bond in the form and in an amount satisfactory to the General Partner to protect the Registrar and Transfer Agent and the Partnership from any loss, cost or damage that they may incur or suffer by complying with the request to issue a new Unit Certificate and provided further that the Unitholder satisfies all other reasonable requirements imposed by the Registrar and Transfer Agent, including delivery of a form of proof of loss.

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## 2.6 **Transfer and Encumbering of Units.**

- (a) A Unitholder shall not, without the prior written consent of the General Partner (which consent may be unreasonably withheld), Transfer (other than a Specified Transfer) any of such Unitholder's Units or interest in the Partnership;
- (b) (A) No Transfer of a fraction of a Unit will be permitted unless it is transferred as part of the Transfer of all, but not less than all, of the Units held by such transferring Unitholder; and (B) Units may not be Transferred by a Unitholder, or its agent duly authorized in writing, unless and until the following conditions are satisfied:
  - (i) to the extent required, the consent of the General Partner shall have been obtained in accordance with Section 2.6(a);
  - (ii) the transferee has delivered to the Registrar and Transfer Agent an executed transfer document in respect of the Units being transferred (a "**Unit Transfer**") in such form and substance as required by the General Partner;
  - (iii) the transferee has agreed in writing, in such form and substance as required by the General Partner, to be bound by the terms of this Agreement and to assume the obligations of the transferor that pertain to the Units being transferred to it;
  - (iv) the provisions of all applicable Securities Laws have been complied with;
  - (v) the transferor or transferee pays such costs, expenses, disbursements and transfer fees as determined by the General Partner from time to time, and such reasonable legal and other professional fees and disbursements, as are reasonably incurred by the Partnership by reason of the Transfer;
  - (vi) the transferor surrenders or causes to be surrendered to the General Partner or the Registrar and Transfer Agent the Unit Certificate(s) issued pursuant to this Agreement for the Units being Transferred duly endorsed for Transfer by the transferor;
  - (vii) the transferee has delivered to the General Partner an executed declaration whereby such transferee makes the representations, warranties and covenants set forth in Section 1.12 of this Agreement and grants the power of attorney contained in Section 5.7; and
  - (viii) such other requirements as may be required by law or may reasonably be required by the General Partner and/or the Registrar and Transfer Agent are satisfied;

provided that a transferee of a Unit will not become a Unitholder in respect of that Unit until it is recorded in the Register and all filings and recordings required by law to validly effect a Transfer have been duly made as referred to hereunder; and



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(c) When a transferee is entitled to become a Unitholder pursuant to the provisions hereof, the General Partner shall be authorized to admit such transferee to the Partnership as a Unitholder and the Unitholders hereby consent to the admission of, and will admit, the transferee to the Partnership as a Unitholder without further act of the Unitholders. The General Partner or the Registrar and Transfer Agent will:

- (i) record at the registered office of the Partnership any such assignment and Transfer;
- (ii) make such filings and cause to be made such recordings as are required by law;
- (iii) forward a notice of the Transfer to the transferee; and
- (iv) subject to Section 2.4, issue a Unit Certificate to the transferee in respect of the Units Transferred to it.

2.7 **Parties Not Bound to See to Trust or Equity.** Except where specific provision has been made therefor in this Agreement, the Registrar and Transfer Agent shall not, nor shall the General Partner or the Unitholders, be bound to see to the execution of any trust, express, implied or constructive, or any mortgage, pledge or equity to which any Unit or any interest therein is subject, or to ascertain or inquire whether any Transfer of any such Unit or interest therein by any Unitholder or its representatives is authorized by such trust, mortgage, pledge or equity, or to recognize any Person having any interest therein except for the entity recorded as such Unitholder in the Register maintained by the Registrar and Transfer Agent.

2.8 **Liability on Transfer.** When a Transfer of any Unit is completed and the transferee is registered as a Unitholder, the transferor of that Unit will be thereupon be relieved of all obligations and liabilities relating to such Unit, including the obligations and liabilities under this Agreement to the extent permitted by law and the transferee will assume all such obligations and liabilities; provided, however, that no Transfer of Units shall relieve the transferor from any obligations to the Partnership arising or incurred prior to the Transfer becoming effective.

2.9 **Successors in Interest of Partners.** The Partnership shall continue notwithstanding the admission of any new General Partner or Unitholder or the withdrawal, death, insolvency, bankruptcy or other disability or incapacity of the General Partner or any Unitholder. The Partnership shall be dissolved only in the manner provided for in ARTICLE 8 hereof.

2.10 **Entitlement upon Death, Insolvency or Bankruptcy.** Where a Person becomes entitled to a Unit as a result of a Specified Transfer, in addition to the requirements of Section 2.6(b), that Person will not be recorded as or become a Unitholder until it produces evidence satisfactory to the General Partner of such entitlement and 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.



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- 2.11 **Option to Purchase.** Upon the occurrence of an Insolvency Event in respect of a Unitholder (the “**Insolvent Unitholder**”), the Insolvent Unitholder shall immediately provide the General Partner with written notice setting out the details of the Insolvency Event (who shall promptly provide a copy of such written notice to each of the other Unitholders). Each of the other Unitholders (the “**Interested Unitholder**”) shall, as of and from the date of such Insolvency Event (the “**Date of Default**”), have an option to purchase all, but not less than all, of the Insolvent Unitholder’s Units (the “**Default Units**”), which option will be exercisable by the delivery of written notice (the “**Purchase Notice**”) to the Insolvent Unitholder on or before the 40<sup>th</sup> Business Day following the Date of Default, which notice shall contain the price that each such Interested Unitholder is willing to pay for the Default Units. If more than one Interested Unitholder elects to exercise the option herein granted, the Interested Unitholder that stated the highest purchase price for the Default Units in its Purchase Notice (the “**Purchasing Unitholder**” in this section) shall purchase the Default Units at the purchase price stated in its Purchase Notice.

In the event that no Interested Unitholder delivers a Purchase Notice within the applicable time period, the General Partner may, at its sole discretion, cause the Partnership to purchase the Default Units from the Insolvent Unitholder for cancellation at a purchase price equal to fifty percent (50%) of the fair market value of the Default Units, as determined by the Partnership’s Accountants with no right to appeal by the Insolvent Unitholder or any other Unitholder.

The purchase price for the Default Units shall be paid as follows:

- (a) 25% of the purchase price payable by the Purchasing Unitholder or the General Partner, as the case may be, will be paid on the date that is 90 days following the Date of Default; and
- (b) The balance of the purchase price payable by the Purchasing Unitholder or the General Partner, as the case may be, shall not accrue interest and will be paid in three equal consecutive annual payments, with the first such payment due and payable on the date that is one (1) year following the Date of Default and the last such payment due and payable on the date that is three (3) years following the Date of Default.

Any costs and expenses incurred by the General Partner or the Partnership in connection with the purchase and sale of the Default Units shall be deducted from the purchase price paid to the Insolvent Unitholder for the Default Units and shall be paid by the Purchasing Unitholder or the General Partner, as the case may be, on behalf of the Insolvent Unitholder to the General Partner or the Partnership, as the case may be.

### **ARTICLE 3** **CAPITAL CONTRIBUTIONS**

- 3.1 **Capital Contributions.** The initial capital of the Partnership shall be the aggregate of the Initial Capital Contributions of all the Unitholders, contributed in accordance with the Subscription Agreement executed and delivered by each Unitholder. The Initial Capital Contributions and other Capital Contributions of the Unitholders shall be as set forth in the

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Register. The Register shall, subject to manifest error, be updated by the General Partner from time to time as necessary to reflect such adjustments or new Unitholders, at which point the updated Register will become binding and supersede the predecessor Register. The inadvertent failure by the General Partner to amend the Register in accordance with the terms of this Agreement shall not affect the status of any Unitholder or such Unitholder's rights or obligations hereunder.

- 3.2 **Additional Capital Contribution.** It is expressly provided that, except to the extent contemplated in a Subscription Agreement, there shall be no requirement of any of the Unitholders to contribute further capital.

#### **ARTICLE 4** **DISTRIBUTIONS AND ALLOCATIONS**

4.1 **Distributions.**

The General Partner may, from time to time, in its sole discretion, cause the Partnership to make distributions, of cash or other property to the Partners from funds or property that are not otherwise reasonably necessary for the conduct of the Partnership's business, including without limitation, the payment of operating costs and expenses of the Partnership (including, without limitation, the fees payable pursuant to the Administrative Services Agreement). In addition, the General Partner may, from time to time, in its sole discretion, retain or establish one or more Reserves in such amounts that it considers prudent with respect to contingent or unforeseen liabilities and obligations. Subject to this Section, whenever the Partnership is to make a distribution to its Partners under this Section 4.1 the Partnership shall make such distributions in the following order and priority:

- (a) *first*, to pay the General Partner 0.0001% of Net Income as a distribution;
- (b) *second*, to repay to each Unitholder, on a Pro-Rata Basis, any outstanding Capital Contributions made by such Unitholder to the Partnership, as the case may be;
- (c) *third*, to pay the balance thereof (the "**Balance**"), on a contemporaneous basis as among (i) and (ii) below, as follows:
  - (i) as to 44% of the Balance, as follows:
    - (A) *first*, to pay the Class A Return of each Class A Unitholder, as a distribution, on a Pro-Rata Basis among all Class A Unitholders entitled to receive a Class A Return, to the extent not previously paid to them; and
    - (B) *second*, to pay the balance thereof, as a distribution, to such Class A Unitholder(s) as selected jointly by Hans Jain and Oscar Furtado in writing to the General Partner (which selection, once made, may not be changed);
  - (ii) as to 44% of the Balance, as follows:

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- (A) *first*, to pay the Class B Return of each Class B Unitholder, as a distribution, on a Pro-Rata Basis among all Class B Unitholders entitled to receive a Class B Return, to the extent not previously paid to them; and
- (B) *second*, to pay the balance thereof as a distribution, to such Class B Unitholder(s) as selected by Oscar Furtado in writing to the General Partner (which selection, once made, may not be changed); and
- (iii) as to 12% of the Balance, as a distribution, on a Pro-Rata Basis among all Class C Unitholders.

For greater certainty, except as specifically contemplated otherwise, none of the payments in the list set out in Section 4.1 shall be made until such time as the immediately preceding payment in such list has been paid in full.

Distributions under this Section 4.1 to the Unitholders are to be made at such time or times and in such manner as the General Partner may determine as being in the best interests of the Partnership. Notwithstanding anything to the contrary herein:

- i. the General Partner has full and absolute discretion to delay the payment of distributions and/or the return of Capital Contributions to the Unitholders; and
- ii. it is acknowledged and agreed by the Partners that distributions and/or the return of Capital Contributions to the Unitholders may not occur until the completion of a future sale of the Property.

4.2 **Allocation of Income and Loss for Tax Purposes.** For each fiscal year of the Partnership, the Income for Tax Purposes or Loss for Tax Purposes in accordance with the Tax Act and any other applicable taxing statute from each source for that fiscal year shall be allocated amongst the Partners as follows:

- (a) Income for Tax Purposes or Loss for Tax Purposes will be allocated as among the Partners, pro rata among them in proportion to the aggregate distributions (which, for greater certainty, shall not include the repayment of Capital Contributions contemplated in Section 4.1(b)) made to each of them; and
- (b) All other items of income, gain, loss, deduction, recapture and credit of the Partnership which are allocable for purposes of the Tax Act and any other applicable taxing statute shall be allocated among the Unitholders on a Pro-Rata Basis.

4.3 **Allocation of Income and Loss for Accounting Purposes.** The Net Income or Net Loss of the Partnership for accounting purposes for a given fiscal year of the Partnership shall be allocated among the Partners in the same proportion as Income for Tax Purposes or Loss for Tax Purposes is allocated for such fiscal year of the Partnership.

4.4 **Effect of Assignment.** If, during any fiscal year of the Partnership, a Unitholder Transfers a Unit, the allocation to such transferor Unitholder and transferee Unitholder of Net

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Income, Net Loss, Income for Tax Purposes or Loss for Tax Purposes of the Partnership, as applicable, for such fiscal year of the Partnership, shall be made in a manner that is fair and equitable in the circumstances, as determined by the General Partner, acting reasonably, in consultation with the Accountants.

- 4.5 **Adjustments.** If the Accountants determine the proportionate share of a Partner, in the distribution or allocation of Net Income, Net Loss, Income for Tax Purposes or Loss for Tax Purposes, differs from such Partner's share as determined by the General Partner, then the determination of the Accountants shall, absent manifest error, be deemed to be correct and binding upon the Partnership and the applicable Partner. The General Partner will cause the necessary adjustments to be made in respect of such Unitholder as the case may be.
- 4.6 **Repayments.** If, as determined by the Accountants, it appears that any Partner has received an amount under Section 4.1 that is less than the Partner's entitlement hereunder, the Partnership will reimburse the Partner to the extent of such deficiency within thirty (30) days following the date of notice from the General Partner to the Partner of any such determination by the Accountants. If, as determined by the Accountants, it appears that any Partner has received an amount under Section 4.1 that is in excess of the Partner's entitlement hereunder, the Partner will reimburse the Partnership to the extent of the excess within thirty (30) days following the date of notice from the General Partner to the Partner of any such determination by the Accountants. If such excess is not reimbursed by the Partner within such thirty (30) day time period, such excess shall thereafter bear interest in favour of the Partnership at a rate equal to five percent (5%) per annum, calculated and compounded monthly, and the General Partner may set-off and deduct from any amounts otherwise payable to such Partner hereunder, the amount of any such adjustment and accrued and unpaid interest owing by such Partner to the Partnership.
- 4.7 **Separate Capital Accounts.** A separate capital account for accounting purposes shall be established by the General Partner for each Unitholder.
- 4.8 **No Interest Payable.** No Unitholder shall be entitled to receive interest on the amount of its Capital Contribution or any balance in its capital account from the Partnership. No Unitholder shall be liable to pay interest to the Partnership on any negative balance in its capital account.
- 4.9 **Return of Capital.** A Unitholder is only entitled to call for a return of its Capital Contribution upon the dissolution, winding-up or liquidation of the Partnership as provided for in ARTICLE 8 hereof.
- 4.10 **Withholding Taxes.** The General Partner shall deduct or withhold from distributions payable to any Unitholder all amounts required by applicable laws to be withheld from such distribution. To the extent that amounts are so deducted or withheld, such amounts shall be treated for all purposes hereof as having been paid to the holder of such Units in respect of which such deduction and withholding was made. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a Unitholder exceeds the cash portion of the distribution otherwise payable to the holder, the General Partner is hereby authorized to set-off against any amounts owed to, or other non-cash distribution being made to, the Unitholder as is necessary to provide sufficient funds to the



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Partnership to enable the Partnership to comply with such deduction or withholding requirement. The General Partner may make such other arrangements as it, in its sole discretion, considers appropriate, including seeking funding of the withholding from the Unitholder or selling the Unitholder's Units to the remaining Unitholders on a Pro-Rata Basis or acquiring the Unitholder's Units on behalf of the Partnership, to satisfy the Partnership's deduction, withholding and remittance obligations.

## **ARTICLE 5**

### **THE GENERAL PARTNER**

- 5.1 **General Partner and Duties of the General Partner.** Subject to any delegation of its powers properly authorized hereunder and to those matters requiring a Resolution, the General Partner will control and have full and exclusive power, authority and responsibility for the business of the Partnership and will do or cause to be done in a prudent and reasonable manner any and all acts necessary, appropriate or incidental to the business of the Partnership. The General Partner shall have unlimited liability for the debts, liabilities and obligations of the Partnership. The General Partner represents and warrants that it has entered into, or covenants that it will enter into, as the case may be, the agreements reasonably necessary to the undertaking of business on behalf of the Partnership, including all agreements to purchase the interest of the Partnership in the Property and assume the obligations therefor. Without limiting the generality of the foregoing, the General Partner shall diligently enforce the obligations and commitments contained in the aforementioned agreements on behalf of the Partnership without further authorization from any Unitholder.
- 5.2 **Authority of the General Partner.** 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.
- 5.3 **Specific Powers.** Subject, in all cases, to the provisions of this Agreement specifying the requirement for Unitholder approval, without limiting the generality of Section 5.1 or any other specific power in this section or elsewhere in this Agreement and subject to compliance with agreements made on behalf of the Partnership, the General Partner is authorized, at the appropriate time, on behalf of and without further authority from the Unitholders:
- (a) To retain or act as the Registrar and Transfer Agent;
  - (b) To engage such professional advisers as the General Partner considers advisable in order to perform or assist it in the performance of its duties hereunder;
  - (c) To open and operate in the name of the Partnership a separate bank account in order to deposit and distribute funds with respect to the Partnership;
  - (d) To execute, deliver and carry out all agreements and other instruments or documents which require execution by or on behalf of the Partnership;
  - (e) To establish such Reserves as the General Partner considers necessary, in each case in accordance with usual and prudent commercial practices;



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- (f) To pay all taxes, fees and other expenses relating to the orderly maintenance and management of the Partnership and the assets owned by the Partnership, including, without limitation, payment of the fees payable pursuant to the Administrative Services Agreement;
- (g) In relation to the purchase, ownership, financing, management, development, sale or other disposition of the Property (or part thereof), to enter into and perform its or the Partnership's obligations under any agreements contemplated therein, and any other agreement of purchase and sale, joint venture agreement, co-ownership agreement or management agreement that, in the opinion of the General Partner is required in connection with the ownership and development of the Property;
- (h) To make all payments relating to the purchase and development of the Property including, without limitation, all of its costs and expenses incurred in connection with the purchase, and development of the Property including, without limitation, all legal and other professional fees and disbursements, mortgage-related fees and expenses, mutation taxes, due diligence costs and Arm's Length broker commissions;
- (i) To commence or defend on behalf of the Partnership any and all actions and other proceedings pertaining to the Partnership or the Property;
- (j) To determine the amount and type of insurance coverage, if any, to be maintained in order to protect the Partnership from all usual perils of the type covered in respect of comparable assets and businesses and in order to comply with the requirements of the lenders of funds to the Partnership;
- (k) To determine the amount, if any, to be claimed by the Partnership in any year for income tax purposes in respect of capital cost allowance and amortization or deduction of other costs of services incurred by the Partnership;
- (l) To invest funds not immediately required for the business of the Partnership in interest-bearing accounts, term deposits, money market mutual funds, guaranteed investment certificates of banks or trust companies or in other similar money market securities of banks or trust companies;
- (m) To make distributions to Unitholders in accordance with the provisions of this Agreement;
- (n) To provide or arrange for the provision of such financial and other reporting functions as may be required by the provisions hereof or applicable regulatory authorities;
- (o) To make such determinations, attend meetings, vote, pass such resolutions and exercise all rights of and on behalf of the Partnership, as the General Partner may deem necessary or desirable for the Partnership; and
- (p) To execute any and all deeds, documents, income tax election forms, information returns and instruments and to do all acts as may be necessary or desirable to carry

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out the intent and purpose of this Agreement, including, without limitation, retaining qualified agents to carry out any of the foregoing.

Notwithstanding the foregoing, it is acknowledged and agreed that from and after the date hereof until the Unitholders by Special Resolution approve otherwise, the powers of the General Partner as set out generally in Section 5.1 or as specified in this Section 5.3 shall, in respect of the development and construction of the Property, be limited to the Partnership obtaining Site Plan Approval and all matters that are necessary, related or incidental to the Partnership obtaining Site Plan Approval, all as determined by the General Partner in its sole discretion, acting reasonably.

- 5.4 **Reimbursement of the General Partner.** The General Partner is entitled to reimbursement by the Partnership for all reasonable third-party costs and expenses that are incurred by the General Partner on behalf of the Partnership in the ordinary course of business, and all reasonable other costs and expenses incidental to acting as General Partner to the Partnership, provided the General Partner is not in default of its duties hereunder in connection with such costs and expenses.
- 5.5 **Borrowing.** The General Partner may borrow funds in the name of and on the security of the assets of the Partnership for the purposes of financing and refinancing the business and operations of the Partnership, but not for any other purpose.
- 5.6 **Amendment of Agreement.** Unless otherwise provided for herein, this Agreement may be amended on the initiative of the General Partner with the consent of the Unitholders given by Resolution, except that any amendment affecting the rights of the General Partner shall be ineffective unless consented to in writing by the General Partner. Notwithstanding the foregoing, the General Partner may, without prior notice to or consent from any Unitholder, amend any provision of this Agreement from time to time:
- (a) For the purpose of adding to this Agreement any further covenant, restriction or provision which in the opinion of the General Partner is necessary for the protection of the Unitholders and/or for the efficient and orderly management of the Partnership or its business;
  - (b) To cure any ambiguity or to correct or supplement any provisions contained herein which, in the opinion of the General Partner, may be defective or inconsistent with any other provisions contained herein provided that such cure, correction or supplemental provision does not and will not, in the opinion of the General Partner, adversely affect the interests of the Unitholders; and
  - (c) To make such other provisions in regard to matters or questions arising under this Agreement which in the opinion of the General Partner do not and will not adversely affect the interest of the Unitholders.

Unitholders will be notified of the full details of any amendment to this Agreement within a reasonable time period following the effective date of any such amendment.

- 5.7 **Power of Attorney.** To the extent permitted by applicable law, each Unitholder irrevocably nominates, constitutes and appoints the General Partner (and Persons

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appointed to replace the General Partner pursuant to Sections 5.19 and 5.20 hereof), to act, with full power of substitution, as its true and lawful attorney and agent, with full power and authority, in its name, place and stead and for its use and benefit to execute (under seal or otherwise) and do the following, namely:

- (a) Execute, swear to, acknowledge, deliver and file as and where required and when required any and all of the following:
  - (i) this Agreement and all declarations and declarations of change required under the Act and all other instruments necessary to form, qualify or continue and keep in good standing the Partnership as a limited partnership;
  - (ii) all instruments, declarations and certificates necessary to reflect any amendment to this Agreement made pursuant to the provisions hereof;
  - (iii) all conveyances, agreements and other instruments necessary or desirable to reflect the dissolution and termination of the Partnership pursuant to the provisions hereof including cancellation of any certificates or declarations and including any elections under the Tax Act (including without limitation pursuant to subsection 98(3) of the Tax Act), and any analogous provincial or territorial legislation; and
  - (iv) any election, determination, designation, objection, notice of objection, return, information return or similar document or instrument as may be required or desirable for the Partnership at any time under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province, territory or jurisdiction which relates to the affairs of the Partnership or the interest of any Person in the Partnership;
- (b) Execute and file with any governmental body or instrumentality thereof of the Government of Canada or a province any documents necessary to be filed in connection with the business, property, assets and undertaking of the Partnership;
- (c) Execute and deliver transfer forms and such other documents on behalf of and in the name of the Unitholders and as may be necessary to effect the Transfer of Units in accordance with this Agreement; and
- (d) Execute and deliver all such other documents, income tax election forms, information returns or instruments on behalf of and in the name of the Partnership and for the Unitholders or any Unitholder as may be deemed necessary or desirable by the General Partner to carry out fully the provisions of a Unitholder's Subscription Agreement for the purchase of Units or this Agreement in accordance with its terms.

In addition to the foregoing, and to additionally evidence the same, each Unitholder agrees to deliver to the General Partner, which may be by execution of such Unitholder's Subscription Agreement for the purchase of Units or the transfer form for the acquisition of Units, a power of attorney substantially in the form noted above. The power of attorney granted herein is irrevocable, including without limitation during the existence of the



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Partnership and in connection with the dissolution or winding up thereof, is a power coupled with an interest, shall survive the death, disability, dissolution, winding up or other legal incapacity of a Unitholder and shall survive the assignment, to the extent of the obligations of a Unitholder hereunder or under such Unitholder's Subscription Agreement, for the purchase of Units by a Unitholder of the whole or any part of the interest of a Unitholder in the Partnership and extends to and is binding upon the heirs, executors, administrators, legal and personal representatives, transferees, successors and assigns of the Unitholder, and may be exercised by the General Partner for and on behalf of each Unitholder by reference to all Unitholders executing any instrument with a single signature as attorney and agent for each and all of them. Each Unitholder agrees to be bound by any representations and actions made or taken by the General Partner pursuant to such power of attorney in accordance with the terms thereof and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.

In accordance with the *Power of Attorney Act* (Ontario), the *Powers of Attorney Act* (Alberta), the *Powers of Attorney Act, 1996* (Saskatchewan), the *Powers of Attorney Act* (Manitoba), the *Substitute Decisions Act, 1992* (Ontario), the *Property Act* (New Brunswick), the *Powers of Attorney Act* (Prince Edward Island), the *Powers of Attorney Act* (Nova Scotia), the *Enduring Powers of Attorney Act* (Newfoundland), and the *Enduring Power of Attorney Act* (Yukon) and any similar legislation governing a power of attorney, each Unitholder declares that these powers of attorney may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on the Unitholder's part.

The power of attorney granted in this section is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Unitholder's incapacity to manage property, or any similar power of attorney under equivalent legislation in any other jurisdiction (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Unitholder previously and will not be terminated by the execution by the Unitholder in the future of a CPOA, and the Unitholder hereby agrees not to take any action in future which results in the termination of this power of attorney.

The General Partner may require, in connection with the subscription for, or any transfer of, Units, that the Subscription Agreement or Unit Transfer, if any, be accompanied by the explanatory notes set out in the *Powers of Attorney Act* (Alberta) and the *Enduring Power of Attorney Act* (Yukon) and a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.

This power of attorney will continue in respect of the General Partner so long as it is the general partner of the Partnership, and will immediately terminate thereafter, without any further act or formality, but will continue in respect of a New General Partner as if the New General Partner were the original attorney.

A purchaser or transferee of a Unit will, upon becoming a Unitholder, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement

as a Unitholder and will be conclusively deemed to have provided the General Partner with the power of attorney described in this Section 5.7.

- 5.8 **Informing Creditors.** The General Partner shall inform each creditor of the Partnership, prior to conducting any transaction with such creditor, that the Partnership is a limited partnership within the meaning of the Act. The General Partner shall use its reasonable best efforts to ensure that all written contracts and other written instruments creating an obligation upon the Partnership contain or are accompanied by an acknowledgment that neither the Unitholders nor their assignees will have any personal liability thereunder.
- 5.9 **Duties of General Partner.** The General Partner shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Partnership and shall exercise the care, diligence and skill of a reasonably prudent general partner in similar circumstances in managing the business, affairs and assets of the Partnership. The General Partner shall be entitled to retain advisors, experts or consultants to assist it in the exercise of its powers and the performance of its duties hereunder. The General Partner further covenants that it shall maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interest of the Partnership or a Unitholder, except to the extent that the disclosure is required by law or is in the best interests of the Partnership, and it shall utilize any such information and data only for the business of the Partnership.
- 5.10 **Income Tax Claims and Deductions.** In respect of any fiscal year of the Partnership, the General Partner may claim the maximum capital cost allowance in respect of depreciable property of the Partnership, the maximum amount of other deductions and the maximum reserves, each as permitted under the Tax Act, provided that the General Partner may claim less than the maximum in any Fiscal Period if it so determines in its sole and uncontrolled discretion.
- 5.11 **Enforcement of Rights and Discharge of Duties by General Partner.** In the event the General Partner admits, refuses or unduly delays in taking, or refrains from taking, any action or enforcing any right which the Unitholders believe, acting reasonably, are in the best interests of the Partnership or required by applicable agreements or applicable law, the Unitholders may, by Resolution, require the General Partner to take such action or enforce such right and nominate an independent third party to act in accordance with this section in the event the General Partner fails to do so. If the General Partner fails to act within ten (10) days following the date of the Resolution, then the Unitholders may appoint the independent third party so nominated to take such action or enforce such right in the name and stead of the General Partner on behalf of the Partnership, and to the extent of such retainer the independent third party shall for all purposes be deemed to be and shall have the powers of the General Partner and the General Partner hereby irrevocably appoints such third party as its attorney for all such purposes as aforesaid. Nothing contained in this section shall be construed to enable any Unitholder to take part in the control of the management or business of the Partnership.
- 5.12 **Employment of an Affiliate.** The General Partner may employ or retain an Affiliate of the General Partner (which for greater certainty includes Go-To Holdings) on behalf of the Partnership to provide goods or services to the Partnership, provided that the cost of such



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

- 5.13 **Transactions Involving Affiliates.** The validity of a transaction, agreement or payment involving the Partnership and an Affiliate of the General Partner is not affected by reason of the relationship between the General Partner and such Affiliate or by reason of the approval or lack thereof of the transaction, agreement or payment by the directors of the General Partner, all of whom may be officers or directors of or otherwise interested in or related to such Affiliate.

The parties hereto acknowledge that: (i) the General Partner and Go-To Holdings may have the same directors, officers, direct or indirect shareholders, employees and affiliates; and (ii) that Go-To Holdings and the directors, officers, shareholders, employees and affiliates of each of Go-To Holdings and the General Partner are engaged in a wide range of investing and other business activities, which may include, direct and/or indirect, ownership and development of real property. Consequently, the directors, officers or employees of the General Partner will only devote as much time as is necessary (but not all of his or her full time) to supervise the management of the business and affairs of the Partnership.

- 5.14 **Safekeeping of Assets.** 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 any other Person to employ such funds or assets except for the exclusive benefit of the Partnership.

- 5.15 **Indemnity of General Partner.**

- (a) To the fullest extent permitted by law, but subject to the General Partner or any Former General Partner's material compliance with this Agreement and their obligations hereunder, the General Partner, any Former General Partner, any Person who is or was an officer, director, employee, agent or trustee of the General Partner or any Former General Partner, but only in their capacity as such (collectively, an "**Indemnitee**") will be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses on a full indemnity basis), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as:

- (i) the General Partner, a Former General Partner; or
- (ii) an officer, director, employee, partner, agent or trustee of the General Partner, any Former General Partner, but only in their capacity as such; or
- (iii) a Person engaged by the General Partner or any Former General Partner for the purposes of facilitating the requirements of the Partnership's Business in the manner contemplated hereby;

provided, that

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- (iv) in each case the Indemnitee acted honestly and in good faith with a view to the best interests of the Partnership and in compliance with the General Partner's or the Former General Partner's obligations under this Agreement;
  - (v) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, the Indemnitee had reasonable grounds for believing its conduct was lawful; and
  - (vi) no indemnification pursuant to this Section 5.15 will be available to an Indemnitee where the Indemnitee has been adjudged by a final decision of a court of competent jurisdiction in Ontario that is no longer appealable to have been grossly negligent in the performance of its obligations under this Agreement. The termination of any action, suit or proceeding by judgment, order, settlement or conviction will not create a presumption that the Indemnitee acted in a manner contrary to that specified above.
- (b) To the fullest extent permitted by law, expenses (including legal fees and expenses on a full indemnity basis) incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding will, from time to time, be advanced by the Partnership prior to the final disposition of any claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay that amount if it is determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 5.15.
- (c) The indemnification provided by this Section 5.15 will be in addition to any other rights to which an Indemnitee may be entitled under any agreement, as a matter of law or otherwise, as to actions in the Indemnitee's capacity as:
- (i) the General Partner or a Former General Partner, but only in their capacity as such;
  - (ii) an officer, director, employee, partner, agent or trustee of the General Partner or a Former General Partner or any of their respective affiliates, but only in their capacity as such; and/or
  - (iii) a Person serving at the request of the General Partner, any Former General Partner or any of their respective affiliates as a director, officer, employee, agent or trustee of another Person, but only in their capacity as such;
- and will continue as to an Indemnitee who has ceased to serve in that capacity.
- (d) The Partnership may purchase and maintain (or reimburse the General Partner or its affiliates for the cost of) insurance, on behalf of those Persons (other than the General Partner itself) as the General Partner determines, against any liability that may be asserted against or expense that may be incurred by that Person in connection with the Partnership's activities, whether or not the Partnership would have the power to indemnify those Persons against those liabilities under the provisions of this Agreement.

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- (e) The General Partner will hold the benefit of this indemnity in trust and as agent for the Indemnitees.
  - (f) Any indemnification pursuant to this Section 5.15 will be made only out of the assets of the Partnership.
- 5.16 **Restrictions upon the General Partner.** The General Partner's power and authority does not extend to any power, action or authority enumerated in Sections 6.14 hereof, unless and until the requisite Resolution is passed by the Unitholders. The General Partner covenants that it shall not:
- (a) Cause the Partnership to guarantee the obligations or liabilities of, or make loans to, the General Partner or any Affiliate of the General Partner; or
  - (b) Commingle the funds and assets of the Partnership with the funds or assets of any other Person, including those of the General Partner or any Affiliate of the General Partner.
- 5.17 **Payments.** The General Partner shall pay or cause to be paid out of the funds of the Partnership, whether on hand or borrowed, costs and expenses relating to the Partnership's business, as and when such costs or expenses become due and payable.
- 5.18 **Resignation.** Subject to Section 5.19, the General Partner shall resign only upon one hundred and eighty (180) days' prior written notice to the Partnership.
- 5.19 **Insolvency of the General Partner.** The General Partner shall be deemed to resign as the General Partner of the Partnership in the event that an Insolvency Event occurs in respect of the General Partner, but such resignation shall not be effective and such General Partner shall not cease to be the general partner of the Partnership until the admission of a replacement general partner to the Partnership appointed as follows:
- (a) In the event that General Partner is not also to be removed in accordance with Section 5.20, then Go-To Holdings shall have the right to appoint a replacement general partner of the Partnership; or
  - (b) In the event that: (i) the General Partner is also to be removed in accordance with Section 5.20; or (ii) Go-To Holdings fails to appoint a replacement general partner of the Partnership after a period of ten (10) days following the deemed resignation of the General Partner in accordance with this Section 5.19, the Unitholders shall, by Resolution, admit a replacement general partner to the Partnership.
- 5.20 **Removal of General Partner.** The General Partner may be removed immediately by the Unitholders as General Partner without its consent only if a final non-appealable court of competent jurisdiction determines ultimately that the General Partner has engaged in fraud, wilful misconduct or gross negligence in the operations of the Partnership and that such fraud, wilful misconduct or gross negligence has a material adverse effect on the value of the operations, business or properties of the Partnership. For greater certainty, the General Partner may not be removed as General Partner at any time (by a vote of the Unitholders

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or by any other means), save and except for pursuant to Sections 5.19 or 5.20, or as a result of the General Partner's resignation in accordance with Section 5.18.

- 5.21 **Replacement General Partner.** In the event that the Unitholders, pursuant to the provisions of Sections 5.19(b) and/or 5.20, or Go-To Holdings, pursuant to the provisions of Section 5.19(a), are entitled to appoint a replacement general partner (the "**New General Partner**") to assume all of the responsibilities and obligations under this Agreement of the removed or resigned General Partner (the "**Former General Partner**"), such appointment of the New General Partner may occur if, but only if:
- (a) All amounts owing by the Partnership to the Former General Partner (in its capacity as the General Partner and not as a Unitholder) shall have been paid in full, provided that no amount owing to the Partnership by the Former General Partner or by the latter to the former shall be accelerated by virtue of the removal of the Former General Partner;
  - (b) The New General Partner causes to be delivered to the Former General Partner a release by the Partnership in favour of the Former General Partner of the responsibilities and obligations to be assumed by the New General Partner and the Partnership shall hold harmless the Former General Partner from all actions, claims, costs, demands, losses, damages and expenses (including all reasonable legal and other professional fees and disbursements) with respect to events which occur in relation to the Partnership after the appointment of the New General Partner;
  - (c) The New General Partner, prior to assuming its responsibilities as the General Partner of the Partnership under the terms of this Agreement, executes the documents presented by the Partnership to give effect to the assumption;
  - (d) The Former General Partner assigns its interest in the Partnership (in its capacity as the General Partner and not as a Unitholder) to the New General Partner for an amount equal to the credit balance outstanding in the capital account of the Former General Partner (in its capacity as the General Partner and not as a Unitholder) as at the effective date of removal; and
  - (e) The Former General Partner shall continue to be entitled to receive the distributions, if any, payable to the Former General Partner (in its capacity as the General Partner and not as a Unitholder) pursuant to Section 4.1 for the period up to the date the Former General Partner is no longer a general partner of the Partnership.
- 5.22 **General Partner as a Unitholder.** Notwithstanding anything else contained in this Agreement, if a General Partner becomes a Former General Partner, and at the time such General Partner becomes a Former General Partner it is also a Unitholder, then such Former General Partner shall not be obligated to forfeit, surrender or assign any of its Units held in its capacity as a Unitholder.
- 5.23 **Indemnity by General Partner.** The General Partner hereby indemnifies and holds harmless the Partnership and each Unitholder from and against all costs, expenses,



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damages or liabilities suffered or incurred by the Partnership or any Unitholder by reason of any act of wilful misconduct, gross negligence or fraud by the General Partner.

- 5.24 **Decisions re Property.** The parties hereto acknowledge and agree that the management and administration of the day-to-day affairs of the Property and the general supervision of the development of the Property and the decision making process with respect to the Property will be performed by the General Partner or such manager selected by the General Partner from time to time for such purpose.
- 5.25 **Ratification of Contracts.** Each Unitholder acknowledges and agrees that all actions, contracts, resolutions, proceedings, appointments and other acts taken by the General Partner (and its directors and officers) for and on behalf of the Partnership, be and the same are hereby approved, ratified and confirmed, notwithstanding any irregularity attendant upon such acts or any lack of qualification or authorization of the parties thereto.
- 5.26 **Authority of General Partner to Make Tax Elections.** The General Partner shall be responsible for all tax matters and tax elections of the Partnership under the Tax Act and any other applicable taxation legislation and, without limiting the foregoing, the General Partner will be entitled to make or execute elections under the Tax Act and other applicable taxation legislation that relate to a fiscal year of the Partnership on behalf of all Persons who are Unitholders or who are the beneficial owners of Units during such fiscal year of the Partnership and will have the authority to act for the Partnership in connection herewith.

## **ARTICLE 6** **MEETINGS**

- 6.1 **Meetings.** The General Partner may convene a meeting of the Unitholders at any time upon the giving of notice as hereinafter provided.
- 6.2 **Place of Meeting.** Every meeting shall be held either in the City of Toronto, Ontario or at such other place in Canada as may be approved by Resolution. All meetings of the Unitholders may be held by means of such telephonic, electronic or other communication facilities as permits all the Unitholders participating in the meeting to communicate with each other simultaneously and instantaneously.
- 6.3 **Notice of Meeting.** Notice of any meeting shall be given to the Unitholders (with a copy to all other Unitholders) in accordance with Section 10.7 not less than fourteen (14) days prior to such meeting, and shall state:
- (a) The time, date and place of such meeting; and
  - (b) In general terms, the nature of the business to be transacted at the meeting.
- 6.4 **Accidental Omissions.** Accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Unitholder of the Partnership shall not invalidate the proceedings at that meeting.



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- 6.5 **Proxies.** Any Unitholder of the Partnership entitled to vote at a meeting may vote by proxy if a proxy has been received by the General Partner or the chairman of the meeting for verification prior to the meeting.
- 6.6 **Validity of Proxies.** A proxy shall be considered to be valid unless challenged at the time of or prior to its exercise, and the Person challenging shall have the burden of proving to the satisfaction of the chairman of the meeting that the proxy is invalid and any decision of the chairman concerning the validity of a proxy will be final.
- 6.7 **Form of Proxy.** Every proxy shall be substantially in the form which follows or such other form as may be approved by the General Partner or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised:

"I/we \_\_\_\_\_ of \_\_\_\_\_ in the Province of \_\_\_\_\_ being a Unitholder of Go-To Spadina Adelaide Square LP, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ in the Province of \_\_\_\_\_ as my proxy, with full power of substitution to vote for me and on my behalf at the meeting of Unitholders to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and every adjournment or adjournments thereof and on every poll that may take place in consequence thereof. As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_."

- 6.8 **Corporations which are Unitholders.** A Unitholder which is a corporation may appoint an officer, director or other authorized Person as its representative to attend, vote and act on its behalf at a meeting of Unitholders.
- 6.9 **Attendance of Others.** Go-To Holdings, and all officers and directors of the General Partner and any representatives of the Accountants shall be entitled to attend and receive notice of any meeting of Unitholders. The General Partner has the right to authorize the presence of any Person at a meeting regardless of whether the Person is a Unitholder and, with the approval of the General Partner, such Person shall be entitled to address the meeting.
- 6.10 **Chairman.** The General Partner may nominate an individual (who need not be a Unitholder) to be chairman of a meeting and the Person nominated by the General Partner shall be chairman of such meeting unless the Unitholders elect another chairman by Resolution.
- 6.11 **Quorum.** Subject to this Agreement, a quorum at any meeting of Unitholders shall consist of the General Partner and two (2) or more Unitholders present in person who collectively hold, or represent by proxy, more than fifty percent (50%) of all outstanding Class A Units, more than fifty percent (50%) of all outstanding Class B Units and more than fifty percent (50%) of all outstanding Class C Units and who are entitled to vote on any resolution. If within half an hour after the time fixed for the holding of such meeting a quorum for the meeting is not present, the meeting shall be held at the same time and, if available, the same place, not less than ten (10) days or more than fourteen (14) days later (or if that date is not a Business Day the first Business Day after that date), and the General Partner shall give at least seven (7) days' notice in writing to all Unitholders of the date and place of the

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reconvening of the adjourned meeting. Such notice need not set forth the matters to be considered unless they are different from those for which the original meeting was called.

6.12 **Voting.**

- (a) Every question submitted to a meeting shall be decided by a vote conducted in such fashion as the chairman of the meeting may decide, it being agreed that the number of votes which may be exercised by the holder of any particular Class A Unit, Class B Unit or Class C Unit (or its/his proxy) shall be equal to one (1) vote for each such Class A Unit held, one (1) vote for each such Class B Unit held and one (1) vote for each such Class C Unit held (or the applicable fraction for each fractional Unit held). The General Partner may convene a meeting to consider any issues which the Partnership is proposing to deal with so that the Unitholders can determine the manner of voting on such issues;
- (b) In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated. The chairman shall be entitled to vote in respect of any Class A Units, Class B Units or Class C Units held by him/her or for which he/she may be proxyholder. On any vote at a meeting of Unitholders, a declaration of the chairman concerning the result of the vote shall be conclusive;
- (c) For greater certainty, except as otherwise contemplated in this Agreement, the General Partner shall not be entitled to a vote in respect of its interests in the Partnership except to the extent that the General Partner is also a Unitholder; and
- (d) Any Unitholder who is a party to a contract or proposed contract or who has a material interest in a contract, proposed contract or transaction (either directly or indirectly) which is the subject matter of a resolution shall not be entitled to any vote on such resolution; provided, however, that a Unitholder shall be deemed not to have a material interest in a contract, proposed contract or transaction if the interest arises merely from the ownership of Units where the Unitholder shall have or receive no extra or special benefit or advantage not shared on an equal basis by all other Unitholders;

6.13 **Resolutions Binding.** Any resolution passed in accordance with this Agreement shall be binding on all the Unitholders and their respective heirs, executors, administrators, successors and assigns, whether or not any such Unitholder was present in person or voted (or was not entitled to vote) against any resolution so passed.

6.14 **Powers Exercisable by Resolution.** The following powers shall only be exercisable by Resolution passed by the Unitholders:

- (a) Amending this Agreement, except as otherwise provided herein;
- (b) Waiving any default by the General Partner on such terms as the Unitholders may determine;
- (c) Continuing the Partnership in the event that the Partnership is terminated by operation of law;

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- (d) Agreeing to any compromise or arrangement by the Partnership with any creditor, or class or classes of creditors;
- (e) Changing the fiscal year end of the Partnership;
- (f) Amending, modifying, altering or repealing any previously-passed Resolution;
- (g) Subject to the provisions of this Agreement, removing the General Partner and appointing a new General Partner;
- (h) Dissolving or terminating the Partnership;
- (i) Raising of any additional capital whether by the sale of further Units or otherwise, but only to the extent that the subscription price for such Units are less than \$50,000 per Unit;
- (j) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Partnership at any time prior to the Partnership obtaining Site Plan Approval; and
- (k) Initiating an action against the General Partner as a result of a breach of its duties, and/or approving a settlement of an action against the General Partner as a result of a breach of its duties.

The parties acknowledge and agree that in the event that any Resolution adversely affect the rights of the General Partner (other than removal or replacement of the General Partner pursuant to Sections 5.19(b) and 5.20) hereunder, the General Partner shall have the right to approve or disapprove the said Resolution, and the right of the General Partner shall be considered a veto in relation to the vote of the Unitholders.

- 6.15 **Minutes.** The General Partner shall cause minutes to be kept of all proceedings and resolutions at every meeting, and copies of any resolutions of the Unitholders to be made and entered in books to be kept for that purpose, and any minutes, if signed by the chairman of the meeting, shall be deemed as conclusive evidence of the matters stated in them, and such meeting shall be deemed to have been duly convened and held and all resolutions and proceedings shown in them shall be deemed to have been duly passed and taken.
- 6.16 **Additional Rules and Procedures.** To the extent that the rules and procedures for the conduct of a meeting of the Unitholders are not prescribed in this Agreement, the rules and procedures shall be determined by the chairman of the meeting, provided the rules shall generally accord, to the extent applicable, to the rules governing the conduct of a meeting of the shareholders of a public company.

## ARTICLE 7

### **ACCOUNTING AND REPORTING**

- 7.1 **Annual Financial Information.** The General Partner shall cause the Accountants to prepare annual audited financial statements of the Partnership as at the end of each fiscal year of the Partnership. The General Partner, or its agent in that behalf, shall distribute a

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copy of such audited annual financial statements to each Unitholder as soon as reasonably possible after the end of each fiscal year and shall provide each Unitholder with annual income tax information for each fiscal year by March 31<sup>st</sup> of the following year to assist in declaring each such Unitholder's share of the Partnership income; provided, however, that each Unitholder shall be solely responsible for filing all income tax returns and reporting its share of the Partnership income or losses.

- 7.2 **Unaudited Quarterly Financial Statements and Reports.** The General Partner shall cause to be prepared unaudited quarterly internal financial statements of the Partnership in the format of internal management statements and narrative reports. The General Partner shall use reasonable efforts to cause to be distributed a copy of such unaudited quarterly internal financial statements to each Unitholder within sixty (60) days after the end of the period to which such statements relate.

## **ARTICLE 8**

### **DISSOLUTION AND LIQUIDATION**

- 8.1 **Dissolution and Termination.** The Partnership shall be dissolved on the earlier of the following dates:

- (a) If the General Partner should resign upon giving the required one hundred and eighty (180) days' prior written notice and the Unitholders shall have not appointed a New General Partner prior to the effective date of such resignation, the effective date of such resignation;
- (b) The date which is 120 days following the bankruptcy, dissolution or winding-up of the General Partner, unless the General Partner is replaced within 120 days following such bankruptcy, dissolution or winding-up;
- (c) If determined by the General Partner, thirty (30) days after the date on which the Partnership no longer holds any interest in the Property, the balance of each Unitholder's capital account to be returned to such Unitholder has been returned and the Partnership has no outstanding debts or obligations;
- (d) The date on which a Resolution approving the dissolution and winding-up of the Partnership is passed and approved by the General Partner; or
- (e) The date on which the Partnership is dissolved by operation of law.

The General Partner may make a recommendation for approval by Resolution that the Partnership be dissolved upon such terms and conditions as the General Partner sees fit and, without limiting the generality of the foregoing, the recommendation of the General Partner may include those terms and conditions which shall govern the relationship among the Unitholders with respect to their respective interests subsequent to a dissolution of the Partnership.

- 8.2 **Administrator.** The General Partner shall serve as the administrator of the Partnership in the event that the Partnership is to be dissolved, unless such dissolution is as a result of provisions of Sections 8.1(a) or 8.1(b) or if the General Partner is unable or unwilling to so



act. If the General Partner is disqualified or unable to act as administrator, then the Unitholders by Resolution shall appoint some other appropriate Person to act as the administrator of the Partnership. Each Unitholder covenants and agrees to use reasonable efforts to do and perform (and cause to be done and performed) such further and other acts or things as may be necessary or desirable in order facilitate the dissolution of the Partnership on a tax efficient and beneficial basis accounting for the tax and other circumstances of each Unitholder.

- 8.3 **Liquidation of Assets.** As soon as practicable after the authorization of the dissolution of the Partnership, the administrator of the Partnership shall prepare or cause to be prepared an unaudited statement of financial position of the Partnership which shall be reported upon by the Accountants and a copy of which shall be forwarded to each Unitholder. The administrator of the Partnership shall proceed diligently to wind up the affairs of the Partnership and all assets of the Partnership shall be disposed of in an orderly fashion having regard to prevailing market conditions. In selling the Partnership's assets, the administrator shall take all reasonable steps to locate potential purchasers in order to accomplish the sale at the highest attainable price. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any losses. During the course of such liquidation, the administrator of the Partnership shall operate the undertakings of the Partnership and in so doing shall be vested with all the powers and authorities of the General Partner in relation to the business and affairs of the Partnership under the terms of this Agreement. The administrator of the Partnership shall be paid its reasonable fees and disbursements incurred in carrying out its duties as such.
- 8.4 **Distribution.** After the payment of all liabilities owing to the creditors of the Partnership, the administrator shall set up such Reserves as it deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Said Reserves may be paid over by the administrator to a bank, to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the administrator may deem advisable, such Reserves shall be distributed to the Partners or their assigns as provided below. After provision has been made for: (i) the payment of all costs and expenses (including, without limitation, all legal and other professional fees and disbursements) involved in the sale of the Partnership assets and the winding up of the Partnership; and (ii) the repayment or other satisfaction of all debts and liabilities of the Partnership including, without limitation, all fees relating to the Administration Services Agreement, applicable taxes, and all amounts owing to the General Partner in respect of costs and expenses owing to it pursuant to this Agreement, the net assets of the Partnership and/or the proceeds arising therefrom shall be distributed in accordance with the provisions of Section 4.1.
- 8.5 **Distribution of Interest in Property.** Notwithstanding anything to the contrary in this Agreement, the Unitholders, upon the dissolution, winding-up or liquidation of the Partnership, shall only have the right and entitlement to the distributions of the proceeds arising from the sale or other disposition of the Property, but shall have no right or entitlement to a distribution of the Property, or any part thereof, in kind or in specie.
- 8.6 **Events Not Causing Dissolution.** Notwithstanding any rule of law or equity to the contrary, the Partnership shall not be dissolved except in accordance with the provisions of

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this Agreement. In particular, but without restricting the generality of the foregoing, the Partnership shall not be dissolved or terminated by the removal, actual or deemed resignation, death, incompetence, bankruptcy, insolvency, other disability or incapacity, dissolution, liquidation, winding-up or receivership, or the admission, resignation or withdrawal of, any Partner.

## ARTICLE 9 SALE OF PROPERTY

- 9.1 **Right to First Offer.** If, at any time following the Partnership obtaining Site Plan Approval, the General Partner receives a Third Party Offer for the purchase of the Property which the General Partner wishes to accept, then each Unitholder will have an opportunity to submit an offer to purchase the Property and the following terms and conditions will apply:
- (a) The General Partner will give written notice to each Unitholder within five (5) Business Days of its receipt of the Third Party Offer referring to this ARTICLE 9, accompanied by a true copy of the Third Party Offer;
  - (b) Each Unitholder will be entitled to give written notice to the General Partner on or before the date that is fifteen (15) Business Days following receipt of the General Partner's notice (the "**Final Acceptance Date**") setting forth the details of such Unitholder's offer to purchase the Property (each, a "**Unitholder's Purchase Offer**"), which Unitholder's Purchase Offer shall only be considered by the General Partner if: (i) it is a cash only offer; (ii) the aggregate purchase price is in excess of the aggregate purchase price specified in the Third Party Offer; (iii) the Property is to be sold on an 'as is, where is' basis; and (iv) the Closing Date will be no more than forty (40) days following the Final Acceptance Date;
  - (c) The General Partner shall, within five (5) Business Days of the Final Acceptance Date review each Unitholder's Purchase Offer received and shall, in its sole and absolute discretion, select a Unitholder's Purchase Offer or the Third Party Offer for the purpose of proceeding to sell the Property. The General Partner shall provide written notice to each Unitholder within three (3) Business Days following the completion of its selection notifying the Unitholders of the selection and accompanied by a true copy of the selected Unitholder's Purchase Offer, if applicable;
  - (d) The Property will be sold in accordance with the Third Party Offer or applicable Unitholder's Purchase Offer, as the case may be; and
  - (e) If the sale of the Property is not completed within 180 days following the Final Acceptance Date, then the Partnership shall not thereafter sell the Property without again complying with this Section 9.1.

## **ARTICLE 10**

### **GENERAL**

- 10.1 **Guarantee Fee.** In the event that a Unitholder or any person related to a Unitholder or the General Partner or a direct or indirect shareholder, director or officer of any of the foregoing, is required to act, and acts, as a guarantor of any loans made to the Partnership, such guarantor shall have the right to charge, and the Partnership shall pay, a guarantee fee at a reasonable market rate as determined by the General Partner, which guarantee fee shall be subject to a standalone guarantee fee agreement to be entered into between the Partnership and such guarantor.
- 10.2 **Confidentiality.** Each Unitholder covenants and agrees to hold in confidence and keep confidential, and to use only for the purposes of the Partnership, any and all financial and other information and data which it may obtain or receive from, or on behalf of, the Partnership or the General Partner, including, without limitation, any information relating to the Property, except to the extent that the disclosure of such confidential information is to such Unitholder's legal, financial and tax advisors or is required by law.
- 10.3 **Initial Limited Partnership Agreement and Initial Unit.** This Agreement hereby amends and restates the initial limited partnership agreement (the "**Initial LP Agreement**") entered into between the General Partner and Go-To Holdings in connection with the Partnership dated October 16, 2018. Pursuant to the Initial LP Agreement, Go-To Holdings was issued 1 unit (the "**Initial Unit**") at a subscription price of \$10.00 per unit. Effective as of the issuance of Units to Unitholders on or after the date hereof, the Partnership hereby purchases the Initial Unit from Go-To Holdings, and Go-To Holdings hereby sells the Initial Unit to the Partnership for cancellation for a purchase price of CDN \$10.00 and, upon the completion of such purchase and sale, the Initial Unit is, without any further act or formality, hereby cancelled and no longer outstanding for any of the purpose. Nothing in this Section shall be interpreted so as to prevent Go-To Holdings from subscribing for, acquiring and holding Units as a Unitholder.
- 10.4 **Receipt by a Unitholder.** The receipt of any money, securities and other property from the Partnership by a Person in whose name any Unit is recorded, or if such Unit is recorded in the names of more than one Person, the receipt thereof by any one or more of such Persons, or by the duly authorized agent of any such Person in that regard, shall be a sufficient and proper discharge for that amount of money, securities and other property payable, issuable or deliverable in respect of such Unit.
- 10.5 **Interpretation.** For all purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:
- (a) The headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
  - (b) All accounting terms not otherwise defined herein have the meanings assigned to them and all computations made pursuant to this Agreement, except as expressly provided otherwise, shall be made in accordance with generally accepted accounting principles applied on a consistent basis;



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- (c) All references to currency herein are references to Canadian currency;
- (d) Any reference to an entity shall include and shall be deemed to be a reference to any entity that is a successor to or assign of such entity; and
- (e) Words importing gender include the masculine, feminine and neuter genders, words in the singular include the plural and vice versa.

10.6 **Competing Interests.** Each Unitholder and the shareholders, officers, directors and employees of the General Partner and its Affiliates shall be entitled, without the consent of the other parties, to carry on any business of the same nature as, or competing with that of, the Partnership, and is not liable to account to the other Unitholders or the Partnership therefor. It is further acknowledged and agreed that the directors, officers and employees of the General Partner will not act exclusively for the Partnership, and, consequently, the directors, officers and employees of the General Partner will only devote as much time as is necessary (but not all of his or her full time) to supervise the management of the business and affairs of the Partnership.

The Unitholders acknowledge and agree that the shareholders, directors and officers of the General Partner are not in any way limited or affected in their ability to carry on other business ventures for their own account or the account of others, and may be engaged in in a wide range of transactions, investments and other business activities, which may include, direct and/or indirect, acquisition, ownership and operation of businesses which compete with the Partnership. The Unitholders acknowledge and waive any rights to which they might otherwise be entitled as partners of the Partnership to invest in any other property or venture of the shareholders, directors and officers of the General Partner, or to profit therefrom or to any interest therein. The Unitholders acknowledge and agree that:

- (a) if an investment opportunity does not arise solely from a director's or officer's activities on behalf of the General Partner, the directors and officers of the General Partner have no obligation to offer the investment opportunity to the Partnership; and
- (b) the General Partner has the discretion to determine whether the Partnership will avail itself of the investment opportunity and, if it does not, any of the directors and officers of the General Partner shall be able to decide amongst themselves whether to pursue the opportunity for their respective accounts.

10.7 **Notices.** Except as otherwise provided in this Agreement, any notice or other communication to the General Partner or the Unitholders under this Agreement (including without limitation, the notices contemplated under Section 6.3) shall be sufficiently given if in writing and served personally on such party or, in the case of corporate entities, on any officer of the General Partner or the Unitholders, or if sent by facsimile or other electronic means of communication (such as e-mail), or by letter, postage prepaid unless at the time of mailing or within four (4) days thereafter there shall be a strike, interruption or lockout in the Canadian postal service, in which case the notice shall be given by personal delivery, facsimile or other electronic means of communication. Notices shall be addressed to:



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If to the Partnership, the General Partner or Go-To Holdings:	Suite 301-1267 Cornwall Road Oakville, Ontario L6J 7T5 Attention: Oscar Furtado Email: oscarfurtado@gotodevelopments.com
If to any other Unitholder:	The contact information of such Unitholder as then listed in the books and records of the Partnership

Notice shall be considered to have been given, if delivered, on the date of delivery, or if sent by facsimile, electronic means of communication or by letter, on the next Business Day following the day of sending of the facsimile or electronic means of communication, or if sent by letter on the third (3<sup>rd</sup>) Business Day following the date of mailing the letter. The General Partner and Unitholders shall advise the General Partner and Registrar and Transfer Agent of any change in their address for notice.

- 10.8 **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original. This Agreement may also be adopted in any subscription, assignment form or similar instrument signed by a Unitholder and which includes an agreement to become a Unitholder of the Partnership, with the same effect as if such Unitholder had executed a counterpart of this Agreement. All counterparts and adopting instruments shall be construed together and shall constitute one and the same instrument. Facsimile or other electronic copies of signatures shall for all purposes be treated as original signatures.
- 10.9 **Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.
- 10.10 **Set Off.** The General Partner may set-off and deduct from any amounts otherwise payable by the Partnership to a Unitholder hereunder, any amount owing by a Unitholder to the Partnership.
- 10.11 **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.
- 10.12 **Binding Effect.** Subject to the restrictions on 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 and successors and assigns.
- 10.13 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto does hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
- 10.14 **Time of the Essence.** Time shall be of the essence of this Agreement and every part hereof.

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- 10.15 **Independent Legal Advice.** Each Unitholder acknowledges that it has been advised to receive independent legal advice in connection with its execution and delivery of its Subscription Agreement and this Agreement, such Unitholder has had ample opportunity to receive such independent legal advice and has either done so or chosen not to obtain such advice of its own volition.

*[The next page is the signature page.]*

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

**GO-TO SPADINA ADELAIDE SQUARE  
INC.**

Per: 

Name: Oscar Furtado

Title: President

I have the authority to bind the corporation

**GO-TO DEVELOPMENTS HOLDINGS INC.**

Per: 

Name: Oscar Furtado

Title: President

We have the authority to bind the corporation

**GO-TO SPADINA ADELAIDE SQUARE  
INC.**

(on behalf of, and as the authorized attorney for, each  
limited partner of the Partnership)

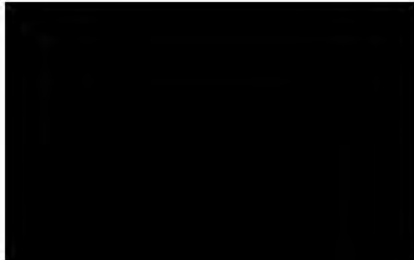
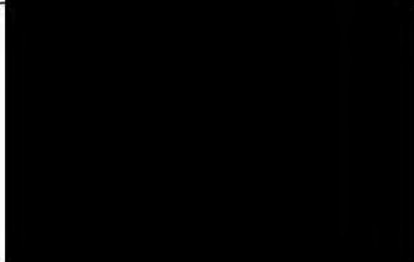

Per: 

Name: Oscar Furtado

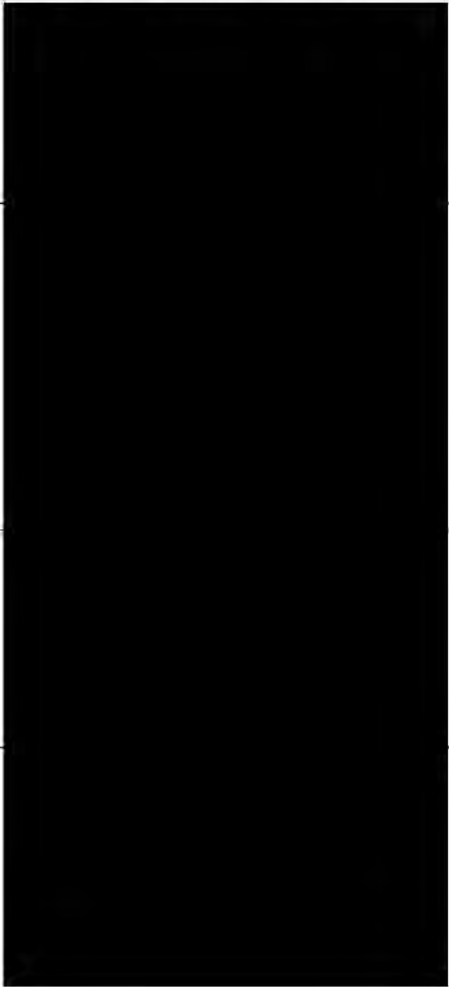
Title: President

I have the authority to bind the corporation

**SCHEDULE “A”  
CLASS A DISTRIBUTIONS**

<b>Class A Unitholder</b>	<b>Class A Return Rate</b>	<b>Target Annualized Return to Class A Unitholder as the basis for calculating the Class A Return Rate (for informational purposes only)</b>
	14%	14%, in respect of its subscription for 20 Class A units for an aggregate subscription price of \$1,000,000
	15%	15%, in respect of her subscription for 6 Class A units for an aggregate subscription price of \$300,000
	18%	18%, in respect of its subscription for 5 Class A units for an aggregate subscription price of \$250,000
Anthony Marek  *September 26 <sup>th</sup> , 2019 Subscription Agreement	20%	20%, in respect of his subscription for 240 Class A units for an aggregate subscription price of \$12,000,000
Under Article 4 of the Limited Partnership Agreement, after distributions are made under: <ul style="list-style-type: none"> <li>• Section 4.1 (c) (i) (A)</li> <li>• Section 4.1 (c) (ii) (A)</li> <li>• Section 4.1 (c) (iii),</li> </ul> 10% of the Balance, as a distribution, will be made to Anthony Marek.		



<b>Class A Unitholder</b>	<b>Class A Return Rate</b>	<b>Target Annualized Return to Class A Unitholder as the basis for calculating the Class A Return Rate (for informational purposes only)</b>
<b>Anthony Marek</b>  *June 12 <sup>th</sup> , 2020 Subscription Agreement	20%	20%, in respect of his subscription for 20 Class A units for an aggregate subscription price of \$1,000,000
Under Article 4 of the Limited Partnership Agreement, after distributions are made under: <ul style="list-style-type: none"> <li>• Section 4.1 (c) (i) (A)</li> <li>• Section 4.1 (c) (ii) (A)</li> <li>• Section 4.1 (c) (iii),</li> </ul> .833% of the Balance, as a distribution, will be made to Anthony Marek.		
	15%	15%, in respect of his subscription for 20 Class A units for an aggregate subscription price of \$1,000,000
	15%	15%, in respect of his subscription for 20 Class A units for an aggregate subscription price of \$1,000,000
	15%	15%, in respect of her subscription for 2 Class A units for an aggregate subscription price of \$100,000
	0%	0%, in respect of its subscription for 40 Class A units for an aggregate subscription price of \$2,000,000

- 2 -


Go-To Spadina Adelaide Square Inc. (Oscar Furtado)	TBD	TBD%, in respect of its subscription for 1 Class A unit for an aggregate subscription price of \$50,000
AKM Holdings Corp. (Katarzyna Pikula)	TBD	TBD%, in respect of its subscription for 1 Class A unit for an aggregate subscription price of \$50,000

- 3 -

**SCHEDULE "B"**  
**CLASS B DISTRIBUTIONS**

<b>Class B Unitholder</b>	<b>Class B Return Rate</b>	<b>Target Annualized Return to Class B Unitholder as the basis for calculating the Class B Return Rate (for informational purposes only)</b>
	33%	33%, in respect of his subscription for 50 Class B units for an aggregate subscription price of \$2,500,000
	30%	30%, in respect of their subscription for 4 Class B units for an aggregate subscription price of \$200,000
	30%	30%, in respect of its subscription for 4 Class B units for an aggregate subscription price of \$200,000
	30%	30%, in respect of her subscription for 2 Class B units for an aggregate subscription price of \$100,000
	30%	30%, in respect of her subscription for 9 Class B units for an aggregate subscription price of \$450,000
	30%	30%, in respect of its subscription for 6 Class B units for an aggregate subscription price of \$300,000
	30%	30%, in respect of her subscription for 10 Class B units for an aggregate subscription price of \$500,000
	25%	25%, in respect of her subscription for 2 Class B units for an aggregate subscription price of \$100,000
	25%	25%, in respect of her subscription for 4 Class B units for an aggregate subscription price of \$200,000
	25%	25%, in respect of his subscription for 2 Class B units for an aggregate subscription price of \$100,000

- 4 -

<b>Class B Unitholder</b>	<b>Class B Return Rate</b>	<b>Target Annualized Return to Class B Unitholder as the basis for calculating the Class B Return Rate (for informational purposes only)</b>
	25%	25%, in respect of her subscription for 2 Class B units for an aggregate subscription price of \$100,000
	25%	25%, in respect of her subscription for 8 Class B units for an aggregate subscription price of \$400,000
	25%	25%, in respect of his subscription for 6 Class B units for an aggregate subscription price of \$300,000
Go-To Spadina Adelaide Square Inc. (Oscar Furtado)	TBD	TBD%, in respect of its subscription for 1 Class B unit for an aggregate subscription price of \$50,000
AKM Holdings Corp. (Katarzyna Pikula)	TBD	TBD%, in respect of its subscription for 1 Class B unit for an aggregate subscription price of \$50,000



**SCHEDULE "C"**  
**PROPERTY**

Firstly:

355 Adelaide Street West, Toronto, Ontario  
LT 3-4, 25 PL D160 TORONTO; PT LT 5, 24, 26 PL D160 TORONTO AS IN CT70633, PT 1  
64R16307, CT70642; CITY OF TORONTO, being PIN 21412-0150 (LT)

and Secondly:

46 Charlotte Street, Toronto, Ontario  
LT 1-2 PL D160 TORONTO; CITY OF TORONTO, being PIN 21412-0151 (LT)

40852.0001/11801150\_9

This is Exhibit “96” referred to  
in the Affidavit of Stephanie Collins  
sworn before me, this  
6<sup>th</sup> day of December, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,  
Province of Ontario, for the Government of Ontario,  
Ontario Securities Commission.  
Expires March 22, 2024.**



Thursday, June 17, 2021



I'm mailing you this package as I do not have an email address on file for you. Attached are recent email updates that were sent to all Go-To Spadina Adelaide Square LP investors. Please keep them for your records and information.

I'll continue to mail you any project updates.

Warm regards,

A handwritten signature in cursive script, appearing to read 'Alina McLaughlin'.

**Alina McLaughlin**  
Manager, Support Services

**ALINA MCLAUGHLIN**  
Manager, Support Services

[AlinaMcLaughlin@GoToDevelopments.com](mailto:AlinaMcLaughlin@GoToDevelopments.com)

(647) 282-2492

301- 1267 Cornwall Rd  
Oakville ON L6J 7T5

[Info@GoToDevelopments.com](mailto:Info@GoToDevelopments.com)

[GoToDevelopments.com](http://GoToDevelopments.com)



6/17/2021

Go-To Developments Mail - Update - December 31, 2020 PWC Audited Financial Statements



## Update - December 31, 2020 PWC Audited Financial Statements

**Oscar Furtado**

&lt;oscarfurtado@gotodevelopments.com&gt;

Bcc:

Fri, May 28, 2021 at 4:32 PM

Dear Investor,

PricewaterhouseCoopers - our auditors (PWC) is performing the fieldwork to complete the audit for the December 31, 2020, Audited Financial Statements. The statements will be issued in final form after the refinancing of our existing 1st position loan is completed. Go-To is currently in the process of renegotiating the financing of the loan. PWC will be reporting the terms of the loan in a subsequent event note to be attached to the audited financial statements which is standard.

The audit is going well, as no audit issues have been identified as of today. PWC will provide an update to Go-To at the end of next week to confirm that the audit is substantially complete, pending administrative items. We don't expect any issues with the audited financial statements; however, if any issues do arise, we will provide you with an update from PWC.

Best regards,

--

**Oscar Furtado, CPA, CA**  
President & CEO1267 Cornwall Road, Suite 301  
Oakville, Ontario, L6J 7T5Office: 905-849-6624  
Cell: 416-230-2477  
GoToDevelopments.com



6/17/2021

Go-To Developments Mail - Update - December 31, 2020 PWC Audited Financial Statements

**Oscar Furtado**

&lt;oscarfurtado@gotodevelopments.com&gt;

Bcc:

Fri, Jun 4, 2021 at 4:49 PM

Hi Everyone,

As a follow-up to last weeks email, see note below from our external auditors and the draft audited financial statements for Dec 31, 2020.

Best Regards,

Oscar

*Hi Oscar and Shoaib,*

*We have reviewed the attached draft FS and have substantially completed the audit testing. Similar to 2019 year end, we identified immaterial amounts relating to marketing and admin costs capitalized under land inventory which should have been expensed. We don't expect any additional significant audit adjustment. Some of the administrative items and standard completion steps are pending and will be completed next week.*

*Let me know if you have any questions.*


*Thanks,*

*Ali*

**Ali A. Abbas CPA, CA**

*PwC | Director*

*Private Company Services, Business Adviser*

 **Spadina FS - Dec 2020.pdf**  
268K

<https://mail.google.com/mail/u/0?ik=1cae86eeb1&view=pt&search=all&permthid=thread-f%3A1701035646430042535&simpl=msg-f%3A17010356464...> 2/2

# **Go-To Spadina Adelaide Square LP**

Financial Statements  
December 31, 2020



**Go-To Spadina Adelaide Square LP****Balance Sheet**

As at December 31, 2020

	December 31, 2020 \$	December 31, 2019 \$
<b>Assets</b>		
<b>Cash</b>	102,303	208,435
<b>Sundry receivables</b>	102,263	89,460
<b>Land inventory and development costs</b> (notes 3 and 5)	100,039,264	90,383,440
	<u>100,243,830</u>	<u>90,681,335</u>
<b>Liabilities</b>		
<b>Accounts payable and accrued liabilities</b> (notes 5 and 6)	5,458,128	1,980,631
<b>Loans payable</b> (note 4)	70,485,702	65,500,704
	75,943,830	67,481,335
<b>Partners' capital</b>	24,300,000	23,200,000
	<u>100,243,830</u>	<u>90,681,335</u>

The accompanying notes are an integral part of these financial statements.

**Go-To Spadina Adelaide Square LP****Statement of Partners' Capital**

For the year ended December 31, 2020

				December 31, 2020
	Units – End of year	Balance – Beginning of year \$	Contributions during the year \$	Balance – End of year \$
Limited Partners – Class A and Class B	482	23,100,000	1,000,000	24,100,000
General Partner – Class A and Class B	4	100,000	100,000	200,000
	486	23,200,000	1,100,000	24,300,000

				December 31, 2019
	Units – End of year	Balance – Beginning of year \$	Contributions during the year \$	Balance – End of year \$
Limited Partners – Class A and Class B	462	-	23,100,000	23,100,000
General Partner – Class A and Class B	2	-	100,000	100,000
	464	-	23,200,000	23,200,000

The accompanying notes are an integral part of these financial statements.



**Go-To Spadina Adelaide Square LP****Statement Cash Flow**

For the year ended December 31, 2020

	December 31, 2020 \$	December 31, 2019 \$
<b>Cash provided by (used in)</b>		
<b>Operating activities</b>		
Changes in working capital		
Sundry receivables	(12,803)	(63,412)
Accounts payable and accrued liabilities	3,477,497	1,946,024
Land inventory and development costs	(4,615,826)	(90,374,893)
	<u>(1,151,132)</u>	<u>(88,492,281)</u>
<b>Financing activities</b>		
Proceeds from loans, net of interest reserve (note 4)	20,000	74,300,704
Repayment of loans (note 4)	(75,000)	(8,800,000)
Partners' contributions	1,100,000	23,200,000
	<u>1,025,000</u>	<u>88,700,704</u>
<b>Change in cash during the year</b>	(106,132)	208,423
<b>Cash – Beginning of year</b>	208,435	12
<b>Cash – End of year</b>	<u>102,303</u>	<u>208,435</u>
<b>Non-cash transactions</b>		
Amortization of Interest reserve capitalized to land inventory and development costs	3,839,998	-
Interest accrued on loans payable capitalized to land inventory and development costs	1,200,000	-

The accompanying notes are an integral part of these financial statements.

## Go-To Spadina Adelaide Square LP

### Notes to Financial Statements

December 31, 2020

#### 1 Basis of presentation and liquidity

Go-To Spadina Adelaide Square LP (the Partnership) was established on October 19, 2018. The primary business activities of the Partnership consist of acquisition and development of real property and sale of condominium and commercial (retail, office and hotel) units.

Under the terms of the limited partnership agreement, Class A, Class B and Class C unitholders have voting rights. All the unitholders are entitled to annual, cumulative, non-compounding, priority return, calculated on capital contribution of such unitholders in the form of distribution calculated at rate specified in each unitholder's subscription agreement as directed by the General Partner. The Partners' capital balance arising from the profits realized by the Partnership after the capital repayment and General Partner distribution of 0.0001% is allocated for accounting and tax purposes as follows: (i) 44.0 % to Class A unitholders, allocated in accordance with pre-determined returns to individual unitholders as per subscription agreements; (ii) 44% to Class B unitholders, allocated in accordance with pre-determined returns to individual unitholders as per subscription agreements; and (iii) 12% to Class C unitholders on a pro rata basis.

The project development plans have entered into the second round of the submission being presented to Government authorities to seek approval. The timing of final approval is uncertain. Management believes that working capital requirements along with ability to meet existing loan obligations can be met through refinancing and issuance of new Partnership units.

The following units were issued by the Partnership during the fiscal year ended December 31, 2020:

		Year ended December 31, 2020
	Units	Amounts \$
Limited Partners - Class A	21	1,050,000
Limited Partners - Class B	1	50,000

These financial statements reflect the assets and liabilities of the Partnership and do not include other assets, liabilities, revenues and expenses of the partners or the liability of the partners for taxes on earnings of the Partnership.

The Partnership has presented a non-classified balance sheet, and its assets and liabilities have been presented in the order of liquidity as the operating cycle of the Partnership revolves around the



development of land and construction of condominium units, the timing of which is uncertain. As a result, the presentation based on liquidity is considered by management to provide information that is more reliable and relevant to the users of the financial statements. With the exception of land inventory and development costs (note 3) and certain loans payable (note 4), all assets and liabilities are current in nature and are expected to be settled in less than 12 months.

## **2 Summary of significant accounting policies**

The financial statements of the Partnership are prepared in accordance with Canadian accounting standards for private enterprises (ASPE). Outlined below is a summary of significant accounting policies.

### **Revenue recognition**

Revenue from condominium unit sales is recognized using the completed contract method, whereby the purchaser has occupied the residential unit, the risk and rewards of ownership have been transferred and collectibility of the proceeds is reasonably assured, which is typically at the interim closing date.

Revenue from commercial unit sales is recorded on closing when all the material conditions of the purchase and sale agreement have been fulfilled and title has passed to the purchaser.

### **Land inventory**

Costs capitalized to land inventory include development costs, mortgage interest, realty taxes, financing costs, interest on loan, administrative and general expenses incurred in connection with the acquisition and development of the land less incidental income earned. Land inventory is carried at the lower of carrying cost and net realizable value. The net realizable value is determined to be the estimated selling price less cost to sell.

### **Use of estimates**

The preparation of financial statements in accordance with ASPE requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Areas where actual results could materially differ from those estimates include the valuation of land inventory and the development costs incurred to date. These estimates are reviewed periodically and as adjustments become necessary, they are reported in earnings in the year in which they become known.

### **Impact of COVID-19 pandemic**

In March 2020, the World Health Organization declared the outbreak of the novel coronavirus (COVID-19) a global pandemic. The pandemic created significant uncertainty in the overall economy including the real estate markets. The Partnership's land development and condominium construction (collectively referred to as site operations) were permitted to continue under Ontario's itemization of essential services.

At this stage, the impact on the Partnership's business and results have not been significant and based on the Partnership's experience to date, it expects this to remain the case. The Partnership will continue to follow government policies and advice and, in parallel, it will do its utmost to continue its operations in the best and safest way possible without jeopardizing the health of its people. A further

outbreak of COVID-19 has prompted Ontario to continue imposing certain restrictions under lockdown measures. Site operations activities can continue; however, there can be no assurances that the Partnership's continuing ability to undertake site operations activities will not be impacted by the pandemic. The Partnership will continue to monitor the ongoing or potential impacts of the COVID-19 pandemic on financial results. Uncertainty about assumptions and estimates related to assets and/or liabilities could result in a material adjustment to the carrying value of the asset or liability affected.

### Financial instruments

The Partnership initially measures its financial assets and financial liabilities at fair value, except for certain non-arm's length transactions, which are measured at either the exchange amount or carrying amount depending on the nature of the transaction.

The Partnership subsequently measures cash, sundry receivables, accounts payable and accrued liabilities and loans payable at amortized cost. Amortization is recorded on a straight-line basis.

Financial assets measured at amortized cost are tested for impairment when there are indicators of possible impairment. When events occurring after the impairment confirm a reversal is necessary, the reversal is recognized in earnings up to the amount of the previously recognized impairment.

### 3 Land inventory and development costs

The Partnership acquired two properties (355 Adelaide Street West and 46 Charlotte Street) to develop as a high density development site of approximately 0.31 acres in the City of Toronto.

	December 31, 2020 \$	December 31, 2019 \$
Balance – Beginning of year	90,383,440	8,547
Acquisition of property including closing costs	-	79,744,675
Additions during the year		
Site servicing, taxes and development costs	2,542,277	20,485
Legal, administrative and accounting	378,622	666,868
Finance and guarantee fees	7,945,152	10,903,160
Rental income	(1,210,227)	(960,295)
Balance – End of year	100,039,264	90,383,440

### 4 Loans payable

The loans payable as at December 31, 2020 comprise the following:

	December 31, 2020 \$	December 31, 2019 \$
a) A demand loan bearing interest at greater of (i) 7.55% per annum or (ii) TD Bank prime rate plus 3.60%, calculated daily, compounded and payable monthly, not in advance, from April 1, 2021. The loan is secured as a first charge against the land held by the Partnership.	48,262,500	48,262,500
Less: Interest reserve	(759,298)	(3,039,500)



b) A demand loan bearing interest at 15% per annum, calculated and payable interest only monthly. The loan is secured as a second charge against the land held by the Partnership and matures on April 4, 2021. On April 1, 2021, this loan was paid out in full (note 8)	13,712,500	13,712,500
Less: Interest reserve	-	(1,559,796)
c) A demand loan for \$75,000 payable to a company owned by the beneficial owners of the General Partner. The loan bears interest at 12% and is due on demand. Interest is due on the payment of the principal balance. This loan was subsequently paid in full on March 4, 2021.	20,000	75,000
d) A loan is payable on demand and the Partnership may prepay all or any part of the principal amount outstanding herein at any time to the lender. A lump sum monthly interest of \$50,000 until 1 January 2020 after which monthly interest becomes \$100,000 until 4 April 2023. Interest accrued of \$1,200,000 is included in the balance.	9,250,000	8,050,000
	<u>70,465,702</u>	<u>65,500,704</u>

The above loans listed under item (a) and (b) are also secured by a general security agreement and corporate and personal guarantees of the ultimate owners of certain Class A and Class B unitholders.

## 5 Related party transactions and balances

The Partnership has entered into a management agreement with the following related parties:

- Go-To Developments Holdings Inc., ultimate parent of the General Partner, has been engaged by the Partnership to provide administrative service at the rate of \$7,500 per month during the duration of the project. During the year ended December 31, 2020, \$ 90,000 (2019 – \$66,500) was paid and is included in land inventory.

The Partnership has entered into property management agreement with the following related party:

- A corporation owned by Hans Jain (Manager); ultimate beneficial owner of the Class A unit has been engaged by the Partnership to manage the property. The Manager is entitled to an annual property management fee at the rate of \$7,500 per month. During the year ended December 31, 2020, \$Nil (2019 – \$52,500) in property management fees was accrued. This agreement was terminated from July 1, 2019

The Partnership has entered into guarantee agreements with the following related parties:

- Oscar Furtado (Guarantor), ultimate beneficial owner of the General Partner has been engaged by the Partnership to guarantee the repayment of the indebtedness amounts outstanding. The Guarantor is entitled to an annual guarantee fee equal to 1% of the total principle amount guaranteed by the Guarantor. During the year ended December 31, 2020, \$Nil (2019 – \$149,419) in guarantee fees was paid and \$ 619,748 (2019 - \$307,328) included in accounts payable.
- Hans Jain (Guarantor), ultimate beneficial owner of the Class A unit has been engaged by the Partnership to guarantee the repayment of the indebtedness amounts outstanding. The Guarantor is entitled to an annual guarantee fee equal to 1% of the total principle amount guaranteed by the Guarantor. During the year ended December 31, 2020, \$nil (2019 – \$nil) in guarantee fees was paid and \$ 619,748 (2019 – \$456,747) included in accounts payable.

The Partnership has entered into a project management agreement with the following related parties:

- Go-To Developments Holdings Inc., ultimate parent of the General Partner, has been engaged by the Partnership to provide development management services at the lump sum rate of \$750,000 for the project and will be entitled for payment on the first submission of the site plan application to the Government authorities. During the year ended December 31, 2020, no development management fee was paid and \$750,000 (2019 – \$Nil) was accrued and is included in land inventory.
- AKM Holdings Corp., ultimate beneficial owner of the Class A and B unit, has been engaged by the Partnership to provide development management services at the lump sum rate of \$750,000 for the project and will be entitled for payment on the first submission of the site plan application to the Government authorities. During the year ended December 31, 2020, no development management fee was paid and \$750,000 (2019 – \$Nil) was accrued and is included in land inventory.

As at 31 December 2020, the partnership owed \$3,956 (2019 - \$Nil) relating to reimbursement of expenses to the ultimate owner of a class A and B unit which is included in accounts payable and accrued liabilities.

Related party transactions are in the normal course of business and are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

## 6 Government remittances

Government remittances consist of amounts (such as property taxes and sales taxes) required to be paid to government authorities and are recognized when the amounts come due. In respect to government remittances, \$ 76,100 (2019– \$20,816) is included in accounts payable and accrued liabilities.

## 7 Risk management

### Credit risk

The Partnership's business focuses on real estate development activities. Credit risk arises from the possibility that purchasers of housing may not fulfill their contractual obligations. The Partnership mitigates this risk by obtaining security deposits and ensuring adequate security is obtained to support any outstanding amounts.

### Liquidity risk

Liquidity risk is the risk the Partnership will encounter difficulty in raising funds to meet its obligations associated with financial liabilities. The Partnership ensure sufficient liquidity is maintained by regular monitoring of cash flow requirements. The Partnership may seek to refinance its current debt facilities and raise additional capital from new investors for the build out of the property.



**Interest rate risk**

Interest rate risk arises from the possibility that the value of, or cash flows related to, a financial instrument will fluctuate as a result of changes in market interest rates. The Partnership is exposed to financial risk relating to loans payable that are subject to variable interest rates. Fluctuations in interest rates will impact the cost of financing. The Partnership does not currently hold any financial instruments that mitigate this risk.

**8 Subsequent events**

- a) On April 1, 2021, a demand loan from an ultimate beneficial owner of the Class A unit for \$18,489,000, bearing interest rate of 15% per annum, calculated monthly was secured by the Partnership. The loan matures on September 30, 2022, and the full principal balance along with total interest is due on maturity. The loan is secured as second charge against the land held by the Partnership and personnel guarantee of the ultimate owner of a class A and B unit.
- b) Note to be inserted on completion of refinancing of demand loan identified

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N :**

**ONTARIO SECURITIES COMMISSION**

**Applicant**

**– and –**

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

**Respondents**

**APPLICATION UNDER**

**Sections 126 and 129 of the *Securities Act*, R.S.O. 1990 c. s.5, as amended**

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**FACTUM OF THE ONTARIO SECURITIES COMMISSION**

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December 6, 2021

**ONTARIO SECURITIES COMMISSION**  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8

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## PART I – OVERVIEW

1. In this case, it appears that Oscar Furtado (**Furtado**), the founder and directing mind of the respondent entities (collectively **Go-To**), arranged and received a kickback of at least \$6 million on the acquisition of two properties, which were funded, in part, with investor funds. Furtado then spent those millions on himself and to keep the Go-To businesses afloat.
2. By his actions, Furtado has demonstrated that he lacks the necessary integrity to continue to control projects involving investor funds. Accordingly, the Ontario Securities Commission (**Commission**) seeks the appointment of KSV Restructuring Inc. as receiver and manager (**Receiver**) over Go-To and the continuation of freeze directions it issued relating to Furtado.
3. Between 2016 and 2020, Furtado raised almost \$80 million from Ontario investors for nine Go-To real estate projects by selling limited partnership (**LP**) units. The projects are not complete, and investors' funds remain outstanding.
4. An investigation by Enforcement Staff of the Commission (**Staff**) has found evidence that:
  - (a) beginning in February 2019, Furtado raised capital from investors to acquire and develop two properties in downtown Toronto by selling LP units in Go-To Spadina Adelaide Square LP (**Adelaide LP**);
  - (b) investors were not told that Furtado's holding company (**Furtado Holdings**) was to and did receive shares and payments of over \$6.3 million from Adelaide Square Developments Inc. (**ASD**) after the Adelaide LP paid ASD \$20.95 million for the assignment of the rights to purchase these properties;

- (c) Furtado used monies from ASD on personal expenses, investments, and in the operation of the Go-To businesses, including to make payments due to investors;
- (d) Furtado's key contact for ASD was Alfredo Malanca (**Malanca**). Furtado's relationship with Malanca pre-dates the Adelaide LP project. Malanca's spouse's company received the same quantum of shares and payments from ASD that Furtado Holdings did, on the same dates. Further, Malanca continues to be involved with and, indirectly, earn fees from the Adelaide LP project. Also, Furtado has given Malanca a Go-To email account under a different last name; and
- (e) Furtado pledged the assets of two other Go-To LPs to secure obligations of the Adelaide LP during its property acquisitions, in breach of the applicable LP agreements. Furtado did not disclose these uses of assets to investors for over a year, and only did so after he was questioned by Staff about it.

5. During the investigation, Furtado gave varying and misleading evidence about his dealings with ASD. For example, Furtado initially stated he could "not recall" why Furtado Holdings received the payments in issue. Subsequently, Furtado said he received ASD shares unexpectedly, "as a thank you", some ten days after the Adelaide LP's property acquisitions, and that a \$6 million payment to Furtado Holdings six months later was a dividend on those shares.

6. The evidence raises serious concerns that Furtado has committed fraud and misled Staff of the Commission in breach of the *Securities Act* (the **Act**). The Commission accordingly seeks the appointment of the Receiver in the interests of all stakeholders in the Go-To businesses, and for the sake of the administration of Ontario securities law. Likewise, it seeks the continuation of the freeze directions to maintain assets Furtado obtained from the misconduct.

## **PART II – FACTS**

### **The Respondents, the Go-To Business, and Investors**

7. Furtado is the founder and directing mind of all the other respondents. He is a Chartered Accountant and an Ontario resident. Each of the Go-To respondents are Ontario entities.

Affidavit of Stephanie Collins sworn December 6, 2021 (**Collins Affidavit**), paras. 4, 14-16, Application Record (**Record**) Tab 2.

8. Between 2016 and 2020, Furtado and Go-To Developments Holdings Inc. (**GTDH**) raised almost \$80 million from approximately 85 Ontario investors for nine projects, by selling LP units. For most LPs, investors were promised semi-annual payments on their investments. Investors in the Adelaide LP were not promised semi-annual payments.

Collins Affidavit paras. 6, 18, Appendix (**App.**) B and, e.g., Exhibits (**Ex.**) 9 (p. 122) and 12 (p. 180), Record Tab 2.

9. For each project, Furtado and GTDH set up an LP and a wholly-owned subsidiary of GTDH to act as the general partner (**GP**) (one project has two LPs and GPs). Together, the Go-To LPs own multiple properties in Ontario. The Go-To projects contemplate the development of land and/or of a variety of buildings. No project has begun construction, although Furtado has indicated to Staff that one project (the Eagle Valley project) has begun site servicing.

Collins Affidavit paras. 14, 16-17 and App. A. See also: LP Agreements, Exs. 15-24, Record Tab 2.

### **Other Key Persons – Malanca et al.**

10. The events in issue involve persons beyond the respondents. Malanca (aka Alfredo Palmeri) is a central figure. Among other things:

(a) Furtado negotiated the Adelaide LP's property acquisitions with Malanca, as a representative of ASD, and discussed funding strategies with him;



- (b) AKM Holdings Corp. (**AKM**), which is Malanca’s spouse’s company, received the same quantum of payments and shares from ASD as Furtado Holdings;
- (c) Furtado first met Malanca before he established GTDH. Malanca was Furtado’s “go-to brokerage person” to arrange debt financing for the Go-To projects;
- (d) Malanca also goes by the name Palmeri and Furtado has given him a Go-To email address under that name;<sup>1</sup> and
- (e) Furtado’s evidence is that Malanca continues to assist with the development application process for the Adelaide LP project. In July 2020, Furtado caused the Adelaide LP to enter into an agreement giving ‘consultant’ roles to GTDH and AKM, under which they are to be paid at least \$750,000 each. Draft 2020 financial statements for the Adelaide LP show a \$1.5 million accrual for those fees.

Collins Affidavit paras. 7-8, 24, 44, 59, 78-80, Record Tab 2.

11. The events in issue also involve, among others:<sup>2</sup>

Katarzyna (Kasia) Pikula ( <b>Pikula</b> )	Malanca’s spouse. The director of AKM and Goldmount Capital Inc., a mortgage brokerage.
AKM	A holding company. A shareholder of ASD. Pikula is the director.
Goldmount Financial Group Corp. ( <b>Goldmount</b> )	Malanca is the director.
Angelo Pucci ( <b>Pucci</b> )	The sole registered director, and a shareholder of ASD.  Furtado claims to have met him 3 times, with Malanca present. When Staff tried to contact Pucci, his son and former landlord advised that he has dementia (one said his symptoms began in 2019).
Anthony Marek ( <b>Marek</b> )	A repeat investor in the Adelaide LP. Marek had never dealt with Furtado or Go-To before his first investment in the Adelaide LP.

<sup>1</sup> For Furtado and an investor’s evidence on why Malanca also goes by Palmeri, see para. 36 below.

<sup>2</sup> Schedule “D” contains annotated copies of this chart and the chronology below, with cites to the Collins Affidavit.

### **Chronology of Key Events**

May 2016-June 2020	<p>Furtado raises ~\$80M from investors for 9 Go-To projects, including:</p> <ul style="list-style-type: none"> <li>- \$4.25M for Eagle Valley LP between Apr. 2017-May 2019</li> <li>- \$10.6M for Elfrida LP between Sept. 2017-Feb. 2019</li> <li>- \$42M for Adelaide LP between Feb. 2019-June 2020</li> </ul>
February 2018 and following	<p>Malanca is engaged in:</p> <ul style="list-style-type: none"> <li>- securing purchase rights for 355 Adelaide Street W. and 46 Charlotte Street in downtown Toronto (together, the <b>Properties</b>) via agreements with the then-current owners;</li> <li>- due diligence on the Properties, and promotional efforts for the proposed project, called “Adelaide Square”.</li> </ul>
July 30, 2018	ASD incorporated.
In or before October 2018	Malanca, as a representative of ASD, asks Furtado if he is interested in acquiring the Properties.
December 2018	Adelaide LP makes an offer to buy the Properties from ASD for \$74.25M, which is accepted. This particular agreement does not close; the transaction is restructured in late March 2019.
February 15 – April 2, 2019	Furtado raises ~\$25M from investors for the Adelaide LP in this period, which includes a \$16.8M investment by Marek.
March 26, 2019 to April 3, 2019	<p>Adelaide LP and ASD enter into 4 agreements for the acquisition of the Properties (the <b>Acquisition Agreements</b>):</p> <ul style="list-style-type: none"> <li>- assignment of purchase and sale agreement for 355 Adelaide;</li> <li>- assignment of purchase and sale agreement for 46 Charlotte;</li> <li>- <b>Assignment Fee</b> agreement, under which the Adelaide LP owes ASD a fee of \$20.95M; and</li> <li>- Memo of Understanding (<b>MOU</b>) with others, including FAAN Mortgage Administrators Inc. (the Court-appointed trustee re: a mortgage on 46 Charlotte). MOU requires further payments on Charlotte after closing (the <b>Density Bonus</b>).</li> </ul>
April 3, 2019	In the MOU, Furtado pledges assets of Elfrida LP to secure Adelaide LP obligations. A charge is registered on the Elfrida LP’s properties. <sup>3</sup>
	Furtado directs Go-To counsel to pay funds in trust (mortgage and investor funds) for the acquisition of the Properties, including to pay the \$20.95M Assignment Fee to ASD.
April 4, 2019	Furtado pledges assets of Eagle Valley LP to secure Adelaide LP obligations to one of its mortgage lenders, Scarecrow Capital Inc. <sup>4</sup>

<sup>3</sup> This charge was removed from title of the Elfrida properties on November 9, 2021.

<sup>4</sup> This charge was removed from title of the Eagle Valley property on April 1, 2021.

	Date of a demand loan agreement for a \$19.8M loan from ASD to Adelaide LP (the <b>Demand Loan</b> ). Loan proceeds are paid by ASD to Marek and Goldmount, as below.
April 5, 2019	Transfer of Properties to Adelaide LP recorded.
	Marek paid \$19.5M by ASD from the Assignment Fee (for redemption of \$16.8M of Adelaide LP units plus a \$2.7M flat fee return).
April 12, 2019	ASD articles amended to change share structure.
April 15, 2019	Furtado Holdings and AKM each receive: <ul style="list-style-type: none"> <li>- 11 shares of ASD; and</li> <li>- \$388,087.33 cheques (<b>\$388K Payment</b>) of this date, paid out of the Assignment Fee.</li> </ul>
	Goldmount paid \$300,000 by ASD from the Assignment Fee. Per Furtado: this payment was a referral fee as Malanca introduced Marek to the Adelaide LP and the LP thus owed the \$300,000 to ASD.
Summer 2019	Per Furtado: Malanca advised, at a lunch with Pucci, that ASD intended to pay Furtado a \$6M dividend “ <i>when they had the funds to pay</i> ”.
By August 2019	Furtado begins seeking further investments for Adelaide LP.
August/September 2019	Furtado meets with Marek to seek further investment for Adelaide LP
September 19-30, 2019	Furtado raises \$13.25M for the Adelaide LP from 4 investors, which includes \$12M invested by companies belonging to Marek.
October 1, 2019	Adelaide LP pays ASD \$12M on the Demand Loan. No payment had been due or demanded.
	ASD pays a \$6M dividend to Furtado Holdings ( <b>\$6M Dividend</b> ).
	ASD pays a \$6M dividend to AKM.
July 31, 2020	Adelaide LP enters into a Project Management Agreement with GTDH and AKM as consultants; the ‘manager’ thereunder remains TBD.
September 24, 2020	First examination of Furtado by Staff.
November 5, 2020	Second examination of Furtado by Staff.
November 9 and December 18, 2020	Progress reports sent to Eagle Valley LP and Elfrida LP investors advising them of the pledges of LP assets that occurred in April 2019.
June 29, 2021	Demand Loan agreement registered on title to the Properties (more than two years after the date of the loan agreement).
July 7, 2021	Third examination of Furtado by Staff.

## **Furtado's Misappropriation of Funds and Broken Obligations to Investors**

### ***Investments in Go-To LPs Generally***

12. For each Go-To LP, investors were told that funds were being raised to acquire properties and pay soft costs, such as taxes, due diligence and development costs. The terms for the investments were set out in a subscription agreement and an LP agreement.

Collins Affidavit paras. 6, 19-20 and, e.g., Exs. 9 (p. 123) and 12 (p. 181), Record Tab 2.

13. Each LP agreement permits the GP and its affiliates to earn certain fees, receive reimbursement for reasonable expenses, and to provide services to the LP at a reasonable and competitive cost.

Exs. 15-24, Record Tab 2. See, e.g., Adelaide LP agreement, Ex. 23 at ss. 4.1, 5.3(f), 5.4, 5.12, 10.1 (pp. 586-591, 594-595, 606).

14. Consistent with typical partnership principles, each LP agreement requires, among other things, the GP to act prudently, reasonably, honestly, in good faith, and in the best interests of the LP. Furtado is the principal of all the GPs.

Exs. 15-24, Record Tab 2. See, e.g., Adelaide LP agreement, Ex. 23 at ss. 5.1, 5.9 (pp. 589, 594).

### ***Adelaide LP – Misappropriation of Partnership Funds***

15. The business of the Adelaide LP, as per its LP agreement, is “purchasing, holding an interest in, conducting pre-development planning with respect to, development and construction of” the Properties, up to obtaining site plan approval for the proposed project.

Adelaide LP agreement, Ex. 23 at ss. 1.11, 5.3 (pp. 579, 591), Record Tab 2.



16. The Adelaide LP agreement provides that investors would be paid returns pro-rata, after all investors received a return of their capital. It also provides no investor could require return of any capital contributions back until the dissolution, winding up or liquidation of the partnership.

Adelaide LP agreement, Ex. 23 at ss. 4.1, 4.9 (pp. 586-588), Record Tab 2.

*Furtado Planned to Profit from the Adelaide LP's Acquisition of the Properties*

17. Notwithstanding the representations, obligations, and fiduciary duties to investors, Furtado planned (with Malanca) to personally profit from the Adelaide LP's acquisition of the Properties.

To carry out that plan, Furtado:

- (a) obligated and caused the Adelaide LP to pay ASD the \$20.95 million Assignment Fee as part of the acquisitions, in addition to the purchase prices owed to the owners of the Properties (which totaled \$53.3 million, plus the Density Bonus on 46 Charlotte);
- (b) caused the Adelaide LP to take the Demand Loan from ASD to redeem Marek's investment, and pay his return and the \$300,000 'referral' fee to Goldmount. The redemption of one investor's units, with return, was contrary to the LP agreement;
- (c) caused Furtado Holdings to subscribe for ASD shares;
- (d) raised further investor funds for the Adelaide LP of \$13.25 million; and
- (e) made an early \$12 million payment on the Demand Loan to ASD and, the same day, received the \$6M Dividend. AKM also received a \$6 million dividend that day.

18. Furtado denies that he planned to profit on the purchase of the Properties by the Adelaide LP. He asserts that ASD decided (mere days after closing) to give Furtado Holdings shares, and subsequently paid a \$6 million dividend, essentially as "a thank you". Furtado's evidence

included: “...they said that they wanted to thank me for the value of the deal, they made a lot of money on the deal, and they wanted to give me some shares in the company. ... They then said to me, as part of the dividend, they were going to give me a dividend of \$6 million, but it was very straightforward. It was more of a thank you than anything else.” Such an assertion is incredible on its own. Additional context only underscores that Furtado planned to profit from the acquisition of the Properties, including:

- (a) emails between Furtado and Malanca pre-dating the closing of the Properties referring to a “lift” or “lift payment” and enclosing calculations showing proposed payments to, among others, Malanca and Furtado;
- (b) Furtado Holdings and AKM ultimately receiving the same number of shares, and quantum of payments, from ASD on the same days; and
- (c) Furtado’s attempts to mislead Staff about the payments Furtado Holdings received from ASD and his dealings with ASD (see paras. 33-36 below).

Collins Affidavit paras. 44, 59-60, 70, 76 and Exs. 84-87 (pp. 1288-1303) and 89 (pp. 1369-1370 at qq. 340-343), Record Tab 2.

19. In July 2021, Staff questioned Furtado about four email exchanges referring to “lift” or “lift payment”, and his evidence included:

- (a) “lift” was a term that could imply many things. In relation to the Properties, Malanca used the term ‘lift’ in conversations with Furtado to refer to “*the profitability that he was making on – that [ASD] was making*”;
- (b) Malanca posed a variety of scenarios to get adequate funding to close the acquisitions of the Properties. The emails reflect some of those potential scenarios, but not the

transactions that in fact occurred. Furtado asserted that, initially, it was not anticipated that the Adelaide LP would raise equity from investors; and

- (c) although the emails show Furtado sending calculations to Malanca, Furtado claimed he was essentially a scribe (in that Malanca would call him and ask him to enter numbers into spreadsheets to see how a potential funding scenario would work).

Collins Affidavit paras. 76-77 and Exs. 88 (e.g., pp. 1325-1335 at qq. 357-363, 368, 372-375) and 89 (pp. 1360-1364 at qq. 327-335), Record Tab 2.

20. Most telling was Furtado's evidence in response to this attachment to a March 13, 2019 email he sent to Malanca:

<b>Alfredo Lift</b>			
355 Adelaide	36,000,000		
46 Charlotte	23,650,000		
Less: VTB	8,050,000		
Net Cash Required	<b>51,600,000</b>	14,600,000	
Land Transfer tax	2,064,000		
Planner	15,000		
Appraisals	12,500		
Environmentals	40,000		
Legal Fees	450,000		
Cost to close	<b>2,581,500</b>	2,581,500	
VTB		3,712,500	
A/Scotty/Michael		1,150,000	
		<b>7,156,000</b>	<b>7,156,000</b>
Less Retained by Alfredo		4,000,000	
Net		3,156,000	
Alfredo / Hans / Oscar		1,052,000	
		Roco	1,000,000
		hans	1,052,000
		Alfredo	2,552,000
		Oscar	2,552,000
			<b>7,156,000</b>

21. Furtado admitted that the above scenario, sent about three weeks before the Adelaide LP acquired the Properties, was one in which he would have received a profit share from the acquisitions. Furtado claimed, however, that such scenario:

- (a) contemplated that he and others would 'find a way' to fund the acquisitions themselves;

(b) would not have involved any investors in the Adelaide LP; and

(c) would have meant the funds already raised from investors for the Adelaide LP would have been returned.

Ex. 88 (pp. 1340-1348 at qq. 383-384, 392-401), Record Tab 2.

22. When that email was sent, Furtado had already raised about \$5 million from investors. Furtado had not invested any money in the Adelaide LP by the time the properties were acquired.

Collins Affidavit App. C.

*Funds to Make the Demand Loan Payment – September 2019 Investments*

23. Most of the funds used to make the \$12 million payment on the Demand Loan on October 1, 2019, came from investments from Marek in September 2019.

Collins Affidavit para. 56 and App. C, Record Tab 2.

24. Marek first invested in the Adelaide LP in March 2019. His investment of \$16.8 million was redeemed and paid together with a flat fee return of \$2.7 million on April 5, 2019. Marek's March 2019 investment was his first dealing with Furtado and Go-To. He had learned of the Adelaide LP project from a lawyer who first introduced him to Malanca, then Furtado.

Collins Affidavit paras. 39-42 and App. C, Record Tab 2.

25. Marek and Furtado were each examined by Staff about Marek's second investment in the Adelaide LP of \$12 million in September 2019 (which was made through two of Marek's companies). Their evidence conflicts in certain respects. In summary:

(a) Marek said Furtado approached him in August 2019 seeking further investment.

Furtado suggested Marek sought him out;



- (b) Furtado and Marek agree that they met to discuss a further investment by Marek, and that Furtado provided Marek with a brochure in August or September 2019; and
- (c) They agree that Furtado did not expressly tell Marek how any further investment would be spent. Marek’s evidence, however, was that Furtado provided him details about the progress of and next steps for the Adelaide LP project, and that he understood that money was needed to advance the project.

Collins Affidavit paras. 50-52, Record Tab 2.

26. Marek and Furtado were each examined about this page of the brochure that Furtado gave Marek in August or September 2019:

10

ADELAIDE  
SQUARE

PROJECT OVERVIEW

Land Acquisition

- The Partnership closed the acquisition of the Project property in April 2019.
- Go-To Developments and its partners in the Project (see Section III) have collectively invested approximately \$19.8 million of the total \$27 million equity required.

Partnership Sources & Uses of Capital (\$ millions)

Sources	Uses
Equity – third-party investors \$ 7.5	Acquisition of land \$ 74.3
Equity – Atria Development 3.0	Interest reserves & other fees 9.9
Equity – Adelaide Square Developments 16.8	Land transfer tax 3.0
1 <sup>st</sup> Mortgage 48.3	Cost to Achieve ZBA & SPA 2.0
2 <sup>nd</sup> Mortgage 13.7	
<b>\$ 89.2</b>	<b>\$ 89.2</b>

27. Furtado asserted that the above page was meant to reflect the circumstances as of the day the Adelaide LP acquired the Properties. He claimed the line “*Equity – Adelaide Square Developments – 16.8*” reflected that ASD was holding Marek’s initial \$16.8 million investment as of that date and would be the entity paying Marek back. Furtado admitted ASD was never an

equity investor in the Adelaide LP. Furtado claimed he reviewed this page with Marek and made clear to him that the 16.8 listed next to Adelaide Square Developments was Marek's own money.

Collins Affidavit paras. 53-54 and Exs. 56 and 59, Record Tab 2.

28. Marek's evidence was that Furtado told him no such thing. He said that, at the time of making his \$12 million investment in September 2019, he did not know that:

- (a) ASD had provided the funding that paid back his earlier investment;
- (b) the Adelaide LP received a loan from ASD to repay his earlier investment; and
- (c) his further investment of \$12 million would be used to repay part of the ASD loan.

Collins Affidavit para. 55 and Ex. 60, Record Tab 2.

29. Furtado admitted that he knew ASD was going to pay him a \$6 million dividend once it had the money to do so. In fact, ASD did pay Furtado the \$6M Dividend the same day Furtado caused the Adelaide LP to make a \$12 million loan payment to ASD.

Collins Affidavit paras. 58-60, 73, Record Tab 2.

30. Furtado also admitted that no payment had been due or demanded when he caused the Adelaide LP to pay \$12 million on the Demand Loan to ASD. He claimed the Adelaide LP wanted to pay down debt. However, the Demand Loan has fixed 'interest' payments that vary over time but not from any reduction of the principal. Furtado's own summary of the loan's status (provided via counsel) shows that the \$12 million payment had no effect on the monthly payments owed.

Collins Affidavit para. 57 and Exs. 36 (p. 902), 46 (p. 1005 under "Interest"), 62 (p. 1124), and 63, Record Tab 2.

***Eagle Valley and Elfrida LPs – Improper Use of Partnership Assets***

31. In April 2019, Furtado used assets of both the Eagle Valley LP and the Elfrida LP to secure obligations of the Adelaide LP. The LP agreements prohibited this, as they each provide:

5.16 Restrictions upon the General Partner. ... The General Partner covenants that it shall not:

- (a) Cause the Partnership to guarantee the obligations or liabilities of, or make loans to, the General Partner or any Affiliate of the General Partner; or
- (b) Commingle the funds and assets of the Partnership with the funds or assets of any other Person, including those of the General Partner or any Affiliate of the General Partner.

Collins Affidavit paras. 81-84 and Exs. 15 (p. 246) and 19 (p. 432), Record Tab 2.

32. Furtado asserted that cross-collateralization of assets was typical in the industry and that he disclosed such uses to investors. However:

- (a) Furtado only told investors about the cross-collateralizations after Staff asked him about them, which was more than 1.5 years after they occurred;
- (b) in progress reports to investors, Furtado stated that the cross-collateralization “strategy” benefited the projects. For example, in a December 18, 2020 progress report to Elfrida investors, Furtado said there was a charge against his residence to Elfrida’s benefit. However, Furtado did not tell investors in that report that:

- 1. the charge against his house was registered that very day (i.e., December 18, 2020); and
- 2. he was charging the Elfrida LP a 5% fee (on a \$10.35 million charge) for having provided that security; and

(c) Furtado obtained no payment for either the Elfrida LP or the Eagle Valley LP in exchange for the use of their assets to the Adelaide LP's benefit.

Collins Affidavit paras. 85-86 and Exs. 101 (p. 1574) and 102 (p. 1577), Record Tab 2.

### **Furtado's Attempts to Mislead Staff and Conduct During the Investigation**

33. During the investigation, Furtado gave misleading evidence under oath and attempted to conceal information from Staff, particularly relating to his dealings with ASD and the involvement of Malanca. A table comparing Furtado's evidence on these topics is attached as **Schedule "C"**.

34. In summary, Furtado's evidence about his dealings with ASD was that:

(a) at the first examination, he did not recall why Furtado Holdings received payment of the \$388K Payment or the \$6M Dividend;<sup>5</sup>

(b) at the second examination:

1. Furtado Holdings received the \$388K Payment from ASD for having "assumed the risk"<sup>6</sup> of a non-refundable deposit on 355 Adelaide that had been paid with Adelaide LP funds, pursuant to an oral agreement he made with Pucci;
2. Furtado Holdings received the \$6M Dividend on shares of ASD, which ASD decided to give to Furtado as "a thank you" after the acquisitions closed. The conversation about that gift of shares was with Pucci; and
3. his usual contact at ASD was Pucci; and

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<sup>5</sup> Furtado's claim not to recall the reason for the \$6M Dividend payment is particularly notable given that Furtado Holdings had about \$2,000 in its account when it received the \$6M Dividend: Ex. 65 (p. 1133).

<sup>6</sup> At the third examination, Furtado stated this meant that if the Adelaide LP transactions had not closed and the deposit (of \$800,000) was lost, Furtado Holdings would have reimbursed the Adelaide LP. When asked what assets Furtado Holdings had at the relevant time, Furtado said he could not recall and, via counsel, he refused to answer by way of undertaking: Exs. 81 and 82 (p. 1282 re: Q183).



(c) at the third examination,

1. he had written agreements in respect of the \$388K Payment, one of which was with ASD and had been negotiated with Malanca;<sup>7</sup>
2. Malanca told Furtado that ASD intended to pay the \$6M Dividend when it had the funds to do so; and
3. he had limited exposure to Pucci, only recalled meeting him 3 times and that Malanca was present each time.

Collins Affidavit paras. 65-70, 73, Record Tab 2. See also Sch. C.

35. Between the second and third examination, Staff required production of documents from Furtado including: (a) those relating to the payments and shares Furtado Holdings received from ASD; and (b) correspondence with ASD or its representatives in relation to the purchase and sale of the Properties. In his response, provided via counsel, Furtado:

- (a) provided redacted copies of ASD shareholding documents and the Redirection that showed ASD's disbursements from the Assignment Fee. The redactions removed references to anyone other than Furtado and Pucci, the effect of which was to conceal all connections to, among others, Malanca (i.e., AKM, Goldmount, and Pikula); and
- (b) claimed there was "no correspondence" with ASD or its representatives, other than emails or texts arranging meetings which had been discarded. The lift emails discussed

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<sup>7</sup> While the Memoranda of Agreement Furtado produced to Staff assert that the \$388K Payment was made because Furtado Holdings 'assumed the risk' of a non-refundable deposit paid towards 355 Adelaide: (i) AKM received the same amount on the same day; and (ii) both AKM and Furtado Holdings received tax slips indicating those payments were dividend income: Collins Affidavit Exs. 77, 78 and paras. 44, 59.

above (which Staff obtained from Malanca) show that Furtado emailed with Malanca beyond just arranging meetings.

Collins Affidavit paras. 71-72 and Exs. 76 (p. 1227) and 79, Record Tab 2.

36. Lastly, at the third examination, Furtado admitted he provided Malanca a Go-To email address under the name ‘Palmeri’. However, he claimed he did not know why Malanca went by Palmeri, other than it is Malanca’s mother’s maiden name. In contrast, Marek told Staff that he discovered that Malanca had criminal convictions<sup>8</sup> via a Google search sometime before June 2020, and confronted Furtado. Marek said Furtado confirmed Malanca’s criminal history, and that Malanca and Palmeri are one and the same.

Collins Affidavit paras. 78-79, Record Tab 2.

#### **Furtado’s Use of the \$6 Million Dividend**

37. Furtado Holdings received the \$6M Dividend on October 1, 2019. It used the bulk of the \$6M Dividend by August 2020 to:

- (a) transfer approximately \$2.25 million to Furtado’s personal bank account (**Furtado Bank Account**); and
- (b) loan or otherwise transfer approximately \$3.265 million to various Go-To entities.

Collins Affidavit para. 61 and App. D, Record Tab 2.

38. From the Furtado Bank Account, approximately \$2.026 million was transferred to Furtado’s RBC Direct Investing account (**RBC Direct Account**) in close proximity to transfers received from Furtado Holdings. The first transfer was made in January 2020. At the end of

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<sup>8</sup> Per the decision of the Court of Appeal for Ontario, Malanca was convicted, in 2005, of conspiracy to import and importing cocaine and subsequently sentenced to 19 years imprisonment: Ex. 93 (pp. 1435-1436, 1450).

December 2019, the RBC Direct Account had assets valued at approximately USD 300,000. By October 2021, it had assets valued at CAD 1,240,041.27 and USD 463,056.44.

Collins Affidavit paras. 62-63, Record Tab 2.

39. The \$3.265 million sent by Furtado Holdings to Go-To entities included transfers to every Go-To GP, to GTDH and to Go-To Developments Acquisitions Inc. Generally speaking, it appears that transfers to the GPs were spent on operating costs and payments due to LP investors.

Collins Affidavit para. 64 and App. D, Record Tab 2.

### **Freeze Directions Issued by the Commission**

40. On December 6, 2021, the Commission issued two freeze directions (the **Directions**) under s. 126(1) of the Act. The Directions require:

- (a) Furtado to maintain and refrain from imperiling assets derived from investor funds; and
- (b) RBC Direct Investing to maintain the assets in the RBC Direct Account.

Directions, Record Tab 4.

### **PART III – THE ISSUES**

41. The issues on this Application are:

- (a) whether to appoint the Receiver, pursuant to section 129 of the Act; and
- (b) whether to continue the Directions, pursuant to section 126 of the Act.

## PART IV – LAW AND ARGUMENT

### **Grounds to Appoint a Receiver**

42. The Court may, on application by the Commission, appoint a receiver and manager of the property of any person or company where: (i) it is in the best interest of the creditors, security holders, or subscribers of such person or company; or (ii) it is appropriate for the due administration of securities law. Satisfaction of either one of the grounds is sufficient for the appointment of a receiver. Both grounds are met in this case.

Act ss. 129(1)-(2), Sch. B.

43. The Court can appoint a receiver, initially, on an *ex parte* basis for up to fifteen days. An initial *ex parte* order may be continued by the Court on motion by the Commission.

Act s. 129(3), Sch. B.

### **Appointing the Receiver is the Best Interests of the Go-To Respondents' Stakeholders**

44. The first ground upon which the Court may appoint a receiver is where the appointment is in the best interests of stakeholders of the entities in issue. In *Sextant*, Justice Morawetz (as he then was) emphasized that the “best interests” analysis is broader than a solvency test. Instead, the Court should consider “all the circumstances and whether, in the context of those circumstances, it is in the best interest of creditors that a receiver be appointed. The criteria should also take into account the interests of all stakeholders.”

*Ontario Securities Commission v Sextant Strategic Opportunities Hedge Fund L.P.*, [2009 CanLII 38503 \(ON SC\)](#) (*Sextant*) at para. 54.

45. Factors that courts have considered in deciding whether to appoint a receiver under the Act include:

(a) evidence of potential fraud or self-dealing;



- (b) potential regulatory breaches;
- (c) a lack of transparency and failure to disclose material facts;
- (d) the loss of confidence in management;
- (e) evidence that investor interests will not be served by maintaining the *status quo* and the respondent is not in a better position than a receiver to protect investor interests; and,
- (f) evidence that a significant investigation would be required to unravel various transactions and understand the true state of affairs of the respondent.

[Sextant](#) at paras. 15, 55, 56 and 58; *Ontario Securities Commission v Portus Alternative Asset Management Inc.*, [2006 CanLII 8882 \(ON SC\)](#) at para. 58.

46. In *Sextant*, for example, Justice Morawetz granted an order appointing a receiver on the basis of various concerns raised by the Commission, including: (i) significant regulatory non-compliance; (ii) evidence of potential fraud, misappropriation, and forgery; (iii) manipulation of the value of the funds and corresponding management fees; and (iv) precarious financial circumstances, including a capital shortfall for some of the funds.

[Sextant](#) at paras. 15, 57-59.

47. On the basis of these concerns, Justice Morawetz held that: (i) investors' interests would not be served by maintaining the *status quo*; (ii) investors were entitled to an independent review and verifiable reporting process on which they could rely; (iii) a receiver was necessary to ensure that investors' assets were managed in an orderly fashion; and (iv) anything less than the appointment of a receiver would not permit the overview or control of the financial affairs of the *Sextant* group.

[Sextant](#) at paras. 57-63.

48. The reasoning in *Sextant* is apt here. The investigation revealed evidence of undisclosed payments to Furtado, misappropriation, improper use and intermingling of partnership assets, and deception to conceal transactions from investors and from Staff of the Commission. The evidence demonstrates the need for independent management of assets acquired with investor monies and full, independent investigation as to the extent of wrongdoing and harm to investor interests.

### **Receivership Necessary for the Due Administration of Securities Law**

49. The goal of securities legislation is to protect the investing public and the integrity of capital markets. Assessment of whether the appointment of a receiver is appropriate for the “due administration of Ontario securities law” should therefore be animated by the purposes of the Act, which include protecting investors from unfair, improper or fraudulent practices and fostering fair and efficient capital markets.

*Pezim v British Columbia (Superintendent of Brokers)*, [\[1994\] 2 SCR 557](#) at 592-593; Act ss. 1.1 and 2.1(2), Sch. B.

50. In an application for a receiver, the Commission does not have to prove a breach of the Act. Rather, it is sufficient for the Commission to raise serious concerns with respect to possible breaches of the Act.

*Ontario Securities Commission v. Sbaraglia* (23 December 2010), Toronto, Court File No CV-10-883-00CL (unreported) at 26.

### ***Fraud***

51. Fraud is one of the most egregious securities law violations as it is both “an affront to the individual investors directly targeted” and “decreases confidence in the fairness and efficiency of the entire capital market system.”

*Al-Tar Energy Corp. (Re)*, [2010 ONSEC 11](#) at para. 214; Act s. 126.1(1)(b), Sch. B.

52. Fraud can be committed by deceit, falsehood or other fraudulent means, which the courts have interpreted to include the use of corporate funds for personal purposes, the unauthorized diversion of funds, the non-disclosure of important facts and the failure of a fiduciary to disclose conflicts of interest.

*R v Théroux*, [\[1993\] 2 SCR 5](#) at 15-17; *R v Zlatic*, [\[1993\] 2 SCR 29](#) at 44-45.

### ***Misleading Staff***

53. Every person is prohibited from making misleading or untrue statements to Staff of the Commission, and from omitting facts that are required to be stated so that a statement is not misleading or untrue. In *Wilder*, the Court of Appeal observed that “it is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring those involved in those markets...provide full and accurate information to the OSC.”

Act s. 122(1)(a), Sch. B; *Wilder v Ontario Securities Commission*, [2001 CanLII 24072 \(ON CA\)](#) at para 22.

### ***Furtado’s Misconduct***

54. As set out above, it appears that Furtado: (a) arranged to personally profit from the Adelaide LP’s purchase of the Properties, in a manner contrary to his representations and obligations to investors; (b) misused other partnership assets to secure the Adelaide LP’s acquisition of the Properties; and (c) gave false and/or misleading evidence to Staff about his dealings with ASD and Furtado Holdings’ receipt of shares and payments from ASD.

55. The gravity of the potential breaches of the Act indicated by the evidence raises significant concerns about Furtado’s ability or intention to operate in the capital markets in a manner compliant with securities law. The interests of investors, and all stakeholders, and the integrity of the capital

markets would be better served if Furtado was not to continue in a position of trust over the assets of the Go-To respondents, which were acquired with investor money.

56. The proposed receivership order will ensure that investors' interests are protected and that the Go-To business is properly administered by the Receiver in compliance with Ontario securities law and in the best interests of all stakeholders.

### **Continuation of the Directions**

57. Where the Commission issues a freeze direction, it must apply to the Court to seek its continuation. Per s. 126(5.1) of the Act, the Court may continue a freeze direction where satisfied that such order would be reasonable and expedient in the circumstances, having due regard to the public interest and either (a) the due administration of Ontario securities law; or (b) the regulation of capital markets in Ontario.

Act s. 126(5.1), Sch. B.

58. In *Future Solar*, Justice Pattillo set out the requirements for continuation of a freeze direction under s. 126(5.1) of the Act as follows:

- (a) there is a serious issue to be tried in respect of the respondents' breaches of the *Securities Act* or securities laws in another jurisdiction;
- (b) there is a basis to suspect, suggest or prove a connection between the frozen assets and the conduct at issue; and
- (c) the freeze directions are necessary for the due administration of securities laws or the regulation of capital markets, in Ontario or elsewhere.

*OSC v Future Solar Developments Inc.*, [2015 ONSC 2334](#) (*Future Solar*) at para. 31.



59. *Future Solar* was the Court’s first consideration of s. 126(5.1), which was added to the Act in 2014. Justice Pattillo explained the effects of the addition of s. 126(5.1), as follows:

- (a) the terms “reasonable” and “expedient” provide for a lesser standard than the requirement to establish a strong *prima facie* case or even a *prima facie* case;
- (b) s. 126(5.1) requires the Court to consider all the circumstances and, in so doing, the Court must have regard to the public interest; and
- (c) the Commission is not required to establish dissipation of assets. A freeze direction may be used to address inappropriate use of investor funds, dissipation of assets, and preservation of assets, or any other situation where a freeze direction is necessary to protect the investing public or capital markets.

[\*Future Solar\*](#) at paras 22 to 30.

60. The Court of Appeal recently commented, in *Qin*, that the narrow evidentiary focus applied in *Future Solar* was appropriate in the context of an application to continue a freeze direction.

*Qin v Ontario Securities Commission*, [2021 ONCA 165](#) at paras. 20-22, 24-26.

61. The evidence satisfies all three parts of the test as set out in *Future Solar*:

- (a) as discussed above, there is at least a serious issue to be tried as to potential breaches of the Act, including fraud, by Furtado and/or certain Go-To respondents;
- (b) the Directions freeze the RBC Direct Account and any other assets of Furtado derived from investor funds. The evidence of Furtado’s uses of the \$6M Dividend shows at least a basis to “suspect, suggest or prove” a connection between the assets frozen and the conduct in issue; and

- (c) continuation of the Directions is necessary for the due administration of securities law and/or the regulation of capital markets in Ontario. In particular, the Directions address inappropriate use of investor funds, dissipation of assets, and preservation of assets, any one of which meets the third element of the *Future Solar* test.

## **PART V – RELIEF SOUGHT**

62. The Commission requests orders appointing the Receiver and continuing the Directions, substantially in the form of the draft order in the Application Record.

Draft Order, Record Tab 5.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of December, 2021




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Erin Hoult  
Senior Litigation Counsel, Enforcement




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Braden Stapleton  
Litigation Counsel, Enforcement

Lawyers for the Ontario Securities  
Commission

### Schedule “A” – Cases and Authorities Cited

1. *Al-Tar Energy Corp. (Re)*, [2010 ONSEC 11](#).
2. *OSC v Future Solar Developments Inc.*, [2015 ONSC 2334](#).
3. *Ontario Securities Commission v Portus Alternative Asset Management Inc.*, [2006 CanLII 8882 \(ON SC\)](#), 146 ACWS (3d) 768.
4. *Ontario Securities Commission v Sbaraglia* (23 December 2010), Toronto, Court File No CV-10-883-00CL (unreported).
5. *Ontario Securities Commission v Sextant Strategic Opportunities Hedge Fund L.P.*, [2009 CanLII 38503 \(ON SC\)](#), 179 ACWS (3d) 345.
6. *Pezim v British Columbia (Superintendent of Brokers)*, [\[1994\] 2 SCR 557](#).
7. *Qin v Ontario Securities Commission*, [2021 ONCA 165](#).
8. *R v Théroux*, [\[1993\] 2 SCR 5](#).
9. *R v Zlatic*, [\[1993\] 2 SCR 29](#).
10. *Wilder v Ontario Securities Commission*, [2001 CanLII 24072 \(ON CA\)](#), 53 OR (3d) 519.

## Schedule “B” – Statutory Provisions

[Securities Act](#), RSO 1990, c. S.5

### Purposes of the Act

**1.1** The purposes of this Act are,

- (a) to provide protection to investors from unfair, improper or fraudulent practices;
- (b) to foster fair and efficient capital markets and confidence in capital markets; and
- (c) to contribute to the stability of the financial system and the reduction of systemic risk.

### Principles to consider

**2.1** In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

...

2. The primary means for achieving the purposes of this Act are,

- i. requirements for timely, accurate and efficient disclosure of information,
- ii. restrictions on fraudulent and unfair market practices and procedures, and
- iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

### Offences, general

**122** (1) Every person or company that,

- (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

...

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

### **Freeze direction**

**126** (1) If the Commission considers it expedient for the due administration of Ontario securities law or the regulation of the capital markets in Ontario or expedient to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction, the Commission may,

- (a) direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property;
- (b) direct a person or company to refrain from withdrawing any funds, securities or property from another person or company who has them on deposit, under control or for safekeeping; or
- (c) direct a person or company to maintain funds, securities or property, and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property.

...

### **Review by court**

(5) As soon as practicable, but not later than 10 days after a direction is issued under subsection (1), the Commission shall serve and file a notice of application in the Superior Court of Justice to continue the direction or for such other order as the court considers appropriate.

### **Grounds for continuance or other order**

(5.1) An order may be made under subsection (5) if the court is satisfied that the order would be reasonable and expedient in the circumstances, having due regard to the public interest and,

- (a) the due administration of Ontario securities law or the securities laws of another jurisdiction; or
- (b) the regulation of capital markets in Ontario or another jurisdiction.

### **Fraud and market manipulation**

**126.1** (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or
- (b) perpetrates a fraud on any person or company.



**Appointment of receiver, etc.**

**129** (1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company.

(2) No order shall be made under subsection (1) unless the court is satisfied that,

(a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or

(b) it is appropriate for the due administration of Ontario securities law.

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days.

Schedule “C” – Excerpts of Furtado’s Evidence re: Payments from and Dealings with ASD

Re: \$6M Dividend		
First Examination	Second Examination	Third Examination
<p>1 342 Q. So we are looking at the</p> <p>2 Furtado account holdings. Bank statement.</p> <p>3 Document 10223-00000911, and on October 1st,</p> <p>2019,</p> <p>4 there was a funds transfer from Schneider</p> <p>Ruggiero</p> <p>5 for \$6 million. Mr. Furtado, can you tell me</p> <p>what</p> <p>6 those funds are for?</p> <p>7 MR. MANN: Do you remember?</p> <p>8 THE WITNESS: I don't recall</p> <p>9 offhand.</p>	<p>24 391 Q. I see, okay. Thank you.</p> <p>25 So, we're still on question four and the next</p> <p>1 point, (c). So, \$6 million was transferred or</p> <p>2 deposited into the account on October 1, 2019 by</p> <p>3 Schneider Ruggiero, and can you explain to me why</p> <p>4 Furtado Holdings received those funds?</p> <p>5 A. It is similar to -- it is</p> <p>6 related to the Adelaide Square Development</p> <p>7 project. As I said in my previous answer, the</p> <p>8 management of Adelaide Square Developments</p> <p>9 Holdings decided -- approached me, which I was not</p> <p>10 aware they were going to do so, after the closing</p> <p>11 and said they wanted to give me some shares in the</p> <p>12 company in a minority interest.</p> <p>13 They then decided to declare a</p> <p>14 dividend of \$6 million with Furtado Holdings, but</p> <p>15 primarily for the significant contributions that</p> <p>16 kept the deal together in many aspects of</p> <p>17 negotiations or the deal would have been lost and</p> <p>18 they wouldn't have made the significant funds they</p> <p>19 made, so they issued me a dividend for that loss.</p> <p>...</p> <p>22 407 Q. So then after they get</p> <p>23 their money, which would include a gross amount of</p> <p>24 \$20 million that they have to maybe write off</p> <p>25 certain expenses to, after that happens, they pay</p> <p>1 you \$6 million?</p> <p>2 A. I don't know their</p> <p>3 finances, but I know I received a payment for</p> <p>4 \$6 million.</p> <p>5 408 Q. And on what basis did you</p> <p>6 become invested in their company? Like, how did</p> <p>7 that arise in the context of this transaction?</p> <p>8 A. Well, they saw the value</p> <p>9 that I brought to the transaction. The</p> <p>10 transaction was going to fail in many aspects,</p> <p>11 including the negotiations of the density clause</p> <p>12 with that administration. That was my idea that I</p> <p>13 put forth because they're going to walk away from</p>	<p>24 207 Q. That is fine. What was</p> <p>25 discussed at that summer 2019 restaurant meeting</p> <p>1 with Mr. Pucci and Mr. Malanca?</p> <p>2 A. There was discussion</p> <p>3 about -- and Alfredo had the lead in the</p> <p>4 discussion, discussion about wanting to -- the</p> <p>5 plan was to give me the 6 million out of their</p> <p>6 profit share from -- because they did quite well</p> <p>7 on the deal and they saw the potential of doing</p> <p>8 future deals with me at the table in the city of</p> <p>9 Toronto.</p> <p>10 208 Q. Okay. So I would like to</p> <p>11 know everything that you can recall about that</p> <p>12 discussion. How was it introduced? Who said</p> <p>13 what?</p> <p>14 A. Alfredo was the primary</p> <p>15 guy that did the majority of the talking with --</p> <p>16 he referred to Angelo Pucci as "we". And he did</p> <p>17 the majority of the talking. They wanted to</p> <p>18 acknowledge the value that I brought to the</p> <p>19 project to close the deal. And I was surprised</p> <p>20 with the amount because I knew I had shares in the</p> <p>21 company and I was a minority holder of one class</p> <p>22 of shares. So was just surprised that -- I was</p> <p>23 more thankful than anything else. There was</p> <p>24 nothing more discussed.</p> <p>25 ... [Furtado continues on to describe that</p> <p>Malanca/Pucci raised another potential project that</p> <p>went nowhere]</p>

	<p>14 the deal and say, we want more money from this 15 deal or we're not going to sell it to you, approve 16 the sale to you, so I came up with the whole 17 concept of the density clause and the terms in 18 there. So, everything I came up with, Adelaide 19 Square Developments management did not, I did. I 20 came up with the ideas to save the deal because I 21 wanted to save it and protect my investments and 22 close the deal.</p> <p>23 409 Q. Okay. So, what you're 24 saying is that they had an offer in place, then 25 the offer was in jeopardy of not closing, and you 1 came up with the density clause that resulted in 2 the deal being able to close. Is that what you're 3 saying?</p> <p>4 A. That is only one aspect. 5 That's only dealing with 46 Charlotte. And you've 6 received all the paperwork for Adelaide Square, 7 for 355 Adelaide Square also. There were various 8 amendments to the original agreement that they 9 tied up the property with, various amendments 10 including the additional \$800,000 deposit that was 11 required to save the deal. So, every time 12 negotiations were required and deals were 13 required, I pretty much came up with everything, 14 the whole strategy, to protect the deals.</p> <p>...</p> <p>3 412 Q. -- and I'm wondering can 4 you tell me about the conversation where they told 5 you that they were going to give you these shares? [counsel interjections omitted]</p> <p>16 THE WITNESS: The conversation 17 was very straightforward. They called me, I went 18 and met with them, and they said that they wanted 19 to thank me for the value of the deal, they made a 20 lot of money on the deal, and they wanted to give 21 me some shares in the company. And they decided 22 that they were going to give me 11 percent of the 23 shares and we did the paperwork for that. 24 They then said to me, as part 25 of the dividend, they were going to give me a 1 dividend of \$6 million, but it was very 2 straightforward. It was more of a thank you than 3 anything else.</p>	
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Re: \$388K Payment		
First Examination	Second Examination	Third Examination
<p>339 Q. Mr. Baik, can you now go 1 to April 2019. Okay. So I am going to show you a 2 deposit that was made April 16th, 2019, in the 3 amount of \$388,087.33. 4 Now, Mr. Baik, can you now 5 pull up document 3099 please. Mr. Baik is going 6 to bring up the supporting documentation for that 7 transaction. As you can see, that is the deposit 8 slip for \$388,087.33. 9 Now let's see the cheque, 10 please, Mr. Baik. Here is the cheque. It has 11 come from Concorde Law Professional Corporation. 12 It says at the bottom: 46 Charlotte Street, 13 Toronto. 14 Can you tell me what that 15 cheque represents? 16 MR. MANN: Do you recall? 17 THE WITNESS: I don't recall. 18 I don't recall offhand.</p>	<p>13 371 Q. Okay. On April 16, 2019, 14 the account received \$388,087.33 from Concorde Law 15 Professional Corporation. Can you tell me what 16 that was in relation to? 17 A. Right. Furtado Holdings 18 assumed the risk for a non-refundable deposit that 19 was put on during negotiations for the Adelaide 20 Square Development acquisitions. And as a return 21 on the deposit, because of the risk assumed, after 22 the closing of the deal Adelaide Square 23 Developments made that payment to Furtado 24 Holdings. 25 372 Q. Okay. Just so I 1 understand, did you say you got a return of the 2 deposit? 3 A. It's a return on the -- 4 sorry. It's an investment return on deposit. 5 MR. MANN: The \$388,000 is a 6 return on the deposit. It is a -- 7 BY MS. VAILLANCOURT: 8 373 Q. Is it like interest on 9 the deposit? Is that what you mean? Was it 10 because it was held in a trust account and there's 11 interest? I'm not following. 12 A. It was interest, yes. ... 4 374 Q. And how was it decided 5 that Spadina Adelaide would pay that return to 6 Furtado Holdings? 7 A. At the time the deposit 8 was required, Adelaide Square Developments did not 9 have the money. And as part of the negotiations 10 for the property, additional funds were requested 11 or the deal would be cancelled, so I offered the 12 deposit on the condition and assumed the risk that 13 it would be lost when the deal closed. And I 14 asked management at Adelaide Square Developments 15 to pay me a fee on the deposit if the deal closes 16 because I was assuming the risk. 17 375 Q. Okay. And is there some</p>	<p>7 156 Q. Okay. But your holding 8 company, Furtado Holdings, entered agreements 9 entitling it to be paid a \$400,000 fee less legal 10 expenses from Adelaide Square Developments for 11 providing the non-refundable deposit? 12 A. There have been two 13 agreements that have been sent to the Securities 14 Commission. The first one was to assume the risk 15 between Furtado Holdings and the LP. In case the 16 800,000 was lost, Furtado Holdings would have to 17 pay the 800,000 back to the LP. To assume that 18 risk, the LP had to enter into an agreement with 19 Adelaide Square that if that deposit was lost -- 20 sorry, if the deal goes through, the return would 21 be paid to Furtado Holdings for assuming that 22 risk. ... 4 161 Q. Were you present when 5 Mr. Pucci signed this document? 6 A. I wasn't. 7 162 Q. Okay. Who did you 8 negotiate this agreement with on behalf of 9 Adelaide Square Developments? 10 A. Alfredo Malanca would 11 have been my primary contact.</p>

	18 kind of a contract or other written document that 19 sets that out? 20 A. No. That's a verbal 21 discussion. 22 376 Q. Okay. And who did you 23 have that discussion with? 24 A. Angelo Pucci.	
--	---	--

Re: ASD Contacts	
Second Examination	Third Examination
16 396 Q. Okay. And so do you 17 know, with respect to that dividend that was paid 18 that you received in 2019, do you know if it was 19 something that all common shareholders got? 20 A. I'm not aware of who got 21 dividends of the shareholders. 22 397 Q. Okay. And who was your 23 usual contact at Adelaide Square Developments? Is 24 it Angelo Pucci? 25 A. Correct.  ... 14 418 Q. That conversation you 15 told us about where they decided to give you 16 shares, who was that conversation with at the 17 Adelaide company, Mr. Furtado? 18 A. I believe I answered that 19 question earlier. All the conversations were with 20 Angelo Pucci.	9 82 Q. Did you have direct 10 dealings with Mr. Pucci? 11 A. As I have mentioned in 12 the previous examinations, I have met him a few 13 times. There was limited exposure.  24 207 Q. That is fine. What was 25 discussed at that summer 2019 restaurant meeting with Mr. Pucci and Mr. Malanca? 2 A. There was discussion 3 about -- and Alfredo had the lead in the 4 discussion, discussion about wanting to -- the 5 plan was to give me the 6 million out of their 6 profit share from -- because they did quite well 7 on the deal and they saw the potential of doing 8 future deals with me at the table in the city of 9 Toronto. 10 208 Q. Okay. So I would like to 11 know everything that you can recall about that 12 discussion. How was it introduced? Who said 13 what? 14 A. Alfredo was the primary 15 guy that did the majority of the talking with -- 16 he referred to Angelo Pucci as "we". And he did 17 the majority of the talking. They wanted to 18 acknowledge the value that I brought to the 19 project to close the deal. And I was surprised 20 with the amount because I knew I had shares in the 21 company and I was a minority holder of one class 22 of shares. So was just surprised that -- I was 23 more thankful than anything else. There was



24 nothing more discussed.  
 25 They did -- as I recall, there  
 1 was -- they did bring up the fact that there was  
 2 another big property in downtown Toronto that they  
 3 had considered  
 ...  
 14 209 Q. Okay. So it was in the  
 15 summer of 2019 that they discussed that they were  
 16 going to pay you a dividend?  
 17 A. It was discussed they  
 18 were going to pay me the 6 million when they had  
 19 the funds, when they became (inaudible).  
 20 210 Q. When they became in  
 21 funds? Is that what you said?  
 22 A. When they had the funds  
 23 to pay.  
 24 211 Q. Okay. Why 6 million?  
 25 Was there any discussion of that? Where did the  
 1 number come from?  
 2 A. You have to ask them.  
 3 212 Q. Was that the last time  
 4 you saw Mr. Pucci in person, that summer 2019  
 5 meeting?  
 6 A. Correct.  
 7 213 Q. Okay. So you only recall  
 8 three times that you met Mr. Pucci in person?  
 9 That lunch before the deal closed, the meeting at  
 10 Louis' office in April 2019, and then a summer  
 11 2019 lunch. Is that correct? Sorry, I didn't  
 12 hear that.  
 13 A. Correct.

**Schedule “D” – Annotated Key Persons Chart and Chronology of Key Events**

<b>Person</b>	<b>Description</b>	<b>Reference to Collins Affidavit</b>
Katarzyna (Kasia) Pikula ( <b>Pikula</b> )	Malanca’s spouse. The director of AKM and Goldmount Capital Inc., a mortgage brokerage.	Para. 8 and Exs. 2-3
AKM	A holding company. A shareholder of ASD. Pikula is the director.	Para. 48 and Exs. 3 and 50
Goldmount Financial Group Corp. ( <b>Goldmount</b> )	Malanca is the director.	Para. 8 and Ex. 1
Angelo Pucci ( <b>Pucci</b> )	The sole registered director, and a shareholder of ASD.  Furtado claims to have met him 3 times, with Malanca present. When Staff tried to contact Pucci, his son and former landlord advised that he has dementia (one said his symptoms began in 2019).	Paras. 26-27, 73 and Exs. 27 and 80
Anthony Marek ( <b>Marek</b> )	A repeat investor in the Adelaide LP. Marek had never dealt with Furtado or Go-To before his first investment in the Adelaide LP.	Paras. 40 and 50

Date	Events	Reference to Collins Affidavit
May 2016-June 2020	Furtado raises ~\$80M from investors for 9 Go-To projects, including: <ul style="list-style-type: none"> <li>- \$4.25M for Eagle Valley LP between Apr. 2017-May 2019</li> <li>- \$10.6M for Elfrida LP between Sept. 2017-Feb. 2019</li> <li>- \$42M for Adelaide LP between Feb. 2019-June 2020</li> </ul>	Para. 18, App. B and C
February 2018 and following	Malanca is engaged in: <ul style="list-style-type: none"> <li>- securing purchase rights for 355 Adelaide Street W. and 46 Charlotte Street in downtown Toronto (together, the <b>Properties</b>) via agreements with the then-current owners;</li> <li>- due diligence on the Properties, and promotional efforts for the proposed project, called “Adelaide Square”.</li> </ul>	Paras. 22-23 and Ex. 25
July 30, 2018	ASD incorporated.	Ex. 27
In or before October 2018	Malanca, as a representative of ASD, asks Furtado if he is interested in acquiring the Properties.	Para. 24 and Ex. 26 (qq. 61-72)
December 2018	Adelaide LP makes an offer to buy the Properties from ASD for \$74.25M, which is accepted. This particular agreement does not close; the transaction is restructured in late March 2019.	Ex. 26 (qq. 83-85)
February 15 – April 2, 2019	Furtado raises ~\$25M from investors for the Adelaide LP in this period, which includes a \$16.8M investment by Marek.	Para. 30 and App. C

March 26, 2019 to April 3, 2019	<p>Adelaide LP and ASD enter into 4 agreements for the acquisition of the Properties (the <b>Acquisition Agreements</b>):</p> <ul style="list-style-type: none"> <li>- assignment of purchase and sale agreement for 355 Adelaide;</li> <li>- assignment of purchase and sale agreement for 46 Charlotte;</li> <li>- <b>Assignment Fee</b> agreement, under which the Adelaide LP owes ASD a fee of \$20.95M; and</li> <li>- Memo of Understanding (<b>MOU</b>) with others, including FAAN Mortgage Administrators Inc. (the Court-appointed trustee re: a mortgage on 46 Charlotte). MOU requires further payments on Charlotte after closing (the <b>Density Bonus</b>).</li> </ul>	Para. 33 and Exs. 31-34
April 3, 2019	In the MOU, Furtado pledges assets of Elfrida LP to secure Adelaide LP obligations. A charge is registered on the Elfrida LP's properties. <sup>9</sup>	Para. 82, Exs. 34 (p. 870) and 97
	Furtado directs Go-To counsel to pay funds in trust (mortgage and investor funds) for the acquisition of the Properties, including to pay the \$20.95M Assignment Fee to ASD.	Para. 35 and Ex. 35
April 4, 2019	Furtado pledges assets of Eagle Valley LP to secure Adelaide LP obligations to one of its mortgage lenders, Scarecrow Capital Inc. <sup>10</sup>	Para. 83 and Exs. 98-99
	Date of a demand loan agreement for a \$19.8M loan from ASD to Adelaide LP (the <b>Demand Loan</b> ). Loan proceeds are paid by ASD to Marek and Goldmount, as below.	Para. 45 and Exs. 45-46
April 5, 2019	Transfer of Properties to Adelaide LP recorded.	Para. 36 and Ex. 108 (pp. 1773, 1790)
	Marek paid \$19.5M by ASD from the Assignment Fee (for redemption of \$16.8M of Adelaide LP units plus a \$2.7M flat fee return).	Paras. 38-39, 40(c), 41-42, and Exs. 40 (p. 978), 41, 42
April 12, 2019	ASD articles amended to change share structure.	Para. 47 and Ex. 48

<sup>9</sup> This charge was removed from title of the Elfrida properties on November 9, 2021.

<sup>10</sup> This charge was removed from title of the Eagle Valley property on April 1, 2021.

April 15, 2019	Furtado Holdings and AKM each receive: <ul style="list-style-type: none"> <li>- 11 shares of ASD; and</li> <li>- \$388,087.33 cheques (<b>\$388K Payment</b>) of this date, paid out of the Assignment Fee.</li> </ul>	Paras. 38, 44, 48 and Exs. 37, 43-44, 49-50
	Goldmount paid \$300,000 by ASD from the Assignment Fee. Per Furtado: this payment was a referral fee as Malanca introduced Marek to the Adelaide LP and the LP thus owed the \$300,000 to ASD.	Paras. 38, 45 and Ex. 45 (pp. 1001-1003, qq. 272-281)
Summer 2019	Per Furtado: Malanca advised, at a lunch with Pucci, that ASD intended to pay Furtado a \$6M dividend “ <i>when they had the funds to pay</i> ”.	Para. 73 and Ex. 80 (pp. 1271-1273, qq. 202-210)
By August 2019	Furtado begins seeking further investments for Adelaide LP.	Para. 50 and Exs. 54-55
August/September 2019	Furtado meets with Marek to seek further investment for Adelaide LP	Para. 51 and Exs. 54 (pp 1052-1056, qq. 350-354) and 55 (pp. 1058-1063, qq. 171-173)
September 19-30, 2019	Furtado raises \$13.25M for the Adelaide LP from 4 investors, which includes \$12M invested by companies belonging to Marek.	App. C
October 1, 2019	Adelaide LP pays ASD \$12M on the Demand Loan. No payment had been due or demanded.	Paras. 56-57 and Exs. 46 (p. 1005 at “Interest”), 61-63
	ASD pays a \$6M dividend to Furtado Holdings ( <b>\$6M Dividend</b> ).	Paras. 58-59 and Exs. 64, 65, 68
	ASD pays a \$6M dividend to AKM.	Paras. 58-59 and Exs. 64, 66, 67
July 31, 2020	Adelaide LP enters into a Project Management Agreement with GTDH and AKM as consultants; the ‘manager’ thereunder remains TBD.	Para. 80 and Ex. 95



September 24, 2020	First examination of Furtado by Staff.	Para. 65
November 5, 2020	Second examination of Furtado by Staff.	Para. 65
November 9 and December 18, 2020	Progress reports sent to Eagle Valley LP and Elfrida LP investors advising them of the pledges of LP assets that occurred in April 2019.	Para. 86 and Exs. 101-102
June 29, 2021	Demand Loan agreement registered on title to the Properties (more than two years after the date of the loan agreement).	Para. 46 and Ex. 47
July 7, 2021	Third examination of Furtado by Staff.	Para. 65

ONTARIO SECURITIES COMMISSION  
Applicant

- AND -

GO-TO DEVELOPMENTS HOLDINGS  
INC., et al.  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**FACTUM OF THE ONTARIO  
SECURITIES COMMISSION**  
(Application under Sections 126 and 129 of  
the *Securities Act*)

**Ontario Securities Commission**  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

**Erin Hoult (LSO No. 54002C)**  
Tel.: (416) 593-8290  
Email: ehoult@osc.gov.on.ca

Lawyers for the Ontario Securities  
Commission

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N :**

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

– and –

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants – Moving Party)

**APPLICATION UNDER  
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990 c. s.5, as amended**

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**AFFIDAVIT OF PAUL BAIK  
(Sworn via Videoconference December 20, 2021)**

---

I, Paul Baik, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. This affidavit is sworn in relation to the motion by the Appellants for a stay of the Order of Justice Pattillo dated December 10, 2021 (the **Receivership Order**).

2. I am an Assistant Investigator in the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**). I am the assistant investigator assigned to Staff's investigation into, among others, Go-To Developments Holdings Inc. (**GTDH**) and its principal Oscar Furtado (**Furtado**) (the **Investigation**) and, as such, I have personal knowledge of the matters set out in this affidavit, except where I have been informed by others and I believe that information to be true.

3. During the Investigation, Torkin Manes acted as counsel for Furtado, GTDH and related entities. Among other things, during the Investigation, Torkin Manes asked to be provided with copies of all or part of the transcripts of the examination of Furtado and Staff advised that Staff would authorize the court reporter to release those transcripts to Furtado and his counsel, at Furtado's expense. By way of example, I attach as **Exhibit "A"** an email exchange between Torkin Manes and Staff between August 3 and 16, 2021 (without attachments).

4. I have not received a request from or on behalf of Furtado to provide authorization to the court reporter to release the transcripts of his examination to him, at his expense. I am advised by each of Stephanie Collins and Erin Hoult, the Senior Forensic Accountant and Senior Litigation Counsel, respectively, assigned to the Investigation, that they also have not received such a request.

5. I am further advised by Ms. Hoult that she exchanged emails with Darryl Mann of Torkin Manes on December 7 and 8, 2021. Copies of those email exchanges are attached as **Exhibit "B"**.

6. I make this affidavit in relation to the motion by the Appellants for a stay of the Receivership Order and for no other purpose.

SWORN before me remotely by Paul Baik stated as being located at the City of Toronto in the Province of Ontario, before me at the City of Vaughan in the Province of Ontario, on this 20<sup>th</sup> day of December, 2021, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for taking affidavits

Rita Pascuzzi, a Commissioner, etc.,  
City of Toronto, for the Government of Ontario,  
Ontario Securities Commission,  
Expires October 25, 2022.



PAUL BAIK



*This is Exhibit "A" referred to  
in the Affidavit of Paul Baik  
Sworn before me this 20th day  
of December, 2021*



.....  
*A Commissioner, etc.*

Rita Pascuzzi, a Commissioner, etc.,  
City of Toronto, for the Government of Ontario,  
Ontario Securities Commission,  
Expires October 25, 2022.

## Erin Hoult

---

**From:** Erin Hoult  
**Sent:** August 16, 2021 1:59 PM  
**To:** Darryl T. Mann; Paul Baik  
**Cc:** Stephanie Collins; Laura Beatty  
**Subject:** RE: GTDH - Oscar Furtado Under Advisements

Mr. Mann:

I believe you previously raised this question with my colleagues in relation to the earlier examination of Mr. Furtado and were advised of Staff's practice at that time, which practice remains as indicated in my email below.

If your client wishes to order the transcript, at his cost, please advise so that we may provide our authorization for same.

Regardless, we expect to receive and look forward to receiving your client's responses to the under advisements. Please advise as to when Mr. Furtado is to return from his travels, as you omitted the date from your correspondence below.

Regards,

**Erin Hoult** | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8  
416-593-8290 | [ehoult@osc.gov.on.ca](mailto:ehoult@osc.gov.on.ca)

---

**From:** Darryl T. Mann <dmann@torkinmanes.com>  
**Sent:** August 16, 2021 10:52 AM  
**To:** Erin Hoult <EHoult@osc.gov.on.ca>; Paul Baik <PBAIK@osc.gov.on.ca>  
**Cc:** Stephanie Collins <SCOLLINS@osc.gov.on.ca>; Laura Beatty <LBeatty@torkinmanes.com>  
**Subject:** RE: GTDH - Oscar Furtado Under Advisements

**ATTENTION:** This email originated from outside of the OSC. Use caution when clicking links or opening attachments.

Thank you for your email.

My client is not a party to any proceeding; he simply attended for an interview as part of an investigation at your instance. He should therefore not have to bear any cost of ordering a transcript. If it is your position that the List that Mr. Baik forwarded is accurate and sets out those Questions that were "Taken Under Advisement", you ought to provide us with the relevant pages from the Transcript that presumably reflect these matters.

Regards,

**Darryl T. Mann**

**Torkin Manes LLP**  
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

---

**From:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>  
**Sent:** Monday, August 16, 2021 10:15 AM  
**To:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>; Paul Baik <[PBAIK@osc.gov.on.ca](mailto:PBAIK@osc.gov.on.ca)>  
**Cc:** Stephanie Collins <[SCOLLINS@osc.gov.on.ca](mailto:SCOLLINS@osc.gov.on.ca)>; Laura Beatty <[LBeatty@torkinmanes.com](mailto:LBeatty@torkinmanes.com)>  
**Subject:** RE: GTDH - Oscar Furtado Under Advisements

**This is an external email.**

---

Mr. Mann:

We have your email below. Should your client wish to obtain a transcript of the July 7<sup>th</sup> exam, he may order one at his own cost from the court reporter's office with our authorization. Should you require the reporter's contact information, please let me know.

Regards,

**Erin Hoult** | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8  
416-593-8290 | [ehoult@osc.gov.on.ca](mailto:ehoult@osc.gov.on.ca)

---

**From:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>  
**Sent:** August 13, 2021 5:20 PM  
**To:** Paul Baik <[PBAIK@osc.gov.on.ca](mailto:PBAIK@osc.gov.on.ca)>  
**Cc:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>; Stephanie Collins <[SCOLLINS@osc.gov.on.ca](mailto:SCOLLINS@osc.gov.on.ca)>; Laura Beatty <[LBeatty@torkinmanes.com](mailto:LBeatty@torkinmanes.com)>  
**Subject:** RE: GTDH - Oscar Furtado Under Advisements  
**Importance:** High

**ATTENTION:** This email originated from outside of the OSC. Use caution when clicking links or opening attachments.

Receipt is acknowledged of your email of August 3<sup>rd</sup> attaching the List of Questions Taken Under Advisement that you claim are reflected in the transcript from Mr. Furtado's examination on July 7<sup>th</sup>.

Kindly provide me with a copy of the transcript, or at the very least the relevant pages from the transcript, so that I can confirm the accuracy of your List. Moreover and in any event, Mr. Furtado is out of the country and I will only be able to seek and obtain instructions in this respect within a week or two of him returning to the office.

It would therefore be most appreciated and beneficial for me to receive the portions of the transcripts for my review before Mr. Furtado returns to the office so that we can respond to your request in a meaningful and expeditious manner once I have instructions.

Thank you and regards,

**Darryl T. Mann**

Legal Services provided through D.T. Mann Professional Corporation  
Tel: 416-777-5407  
Fax: 1-888-587-5767

**Torkin Manes LLP**

Barristers & Solicitors

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---

**From:** Paul Baik <[PBAIK@osc.gov.on.ca](mailto:PBAIK@osc.gov.on.ca)>

**Sent:** Tuesday, August 3, 2021 10:11 AM

**To:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>

**Cc:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>; Stephanie Collins <[SCOLLINS@osc.gov.on.ca](mailto:SCOLLINS@osc.gov.on.ca)>

**Subject:** GTDH - Oscar Furtado Under Advisements

**This is an external email.**

---

Dear Counsel:

Please find attached a list of Staff requests taken under advisement at the examination of Oscar Furtado July 7, 2021.

We look forward to the written answers to these questions by August 17, 2021.

Regards,  
Paul Baik

**Paul Baik** | Ontario Securities Commission | Enforcement Branch | Assistant Investigator  
20 Queen Street West, 22nd Floor | Toronto ON M5H 3S8  
Phone: 416 204-8989 | Fax: 416 204-8956 | [pbaik@osc.gov.on.ca](mailto:pbaik@osc.gov.on.ca) | [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

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[Ontario Securities Commission](http://www.osc.gov.on.ca)

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[Ontario Securities Commission](#)



*This is Exhibit "B" referred to  
in the Affidavit of Paul Baik  
Sworn before me this 20th day  
of December, 2021*



.....  
*A Commissioner, etc.*

Rita Pascuzzi, a Commissioner, etc.,  
City of Toronto, for the Government of Ontario,  
Ontario Securities Commission,  
Expires October 25, 2022.

## Erin Hoult

---

**From:** Erin Hoult  
**Sent:** December 7, 2021 3:53 PM  
**To:** Darryl T. Mann  
**Cc:** Laura Beatty  
**Subject:** RE: OSC v. GTDH et al

Ok, I will speak to you at 4:30 per your request below.

Regards,

**Erin Hoult** (she/her) | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8  
416-593-8290 | [ehoult@osc.gov.on.ca](mailto:ehoult@osc.gov.on.ca)

---

**From:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>  
**Sent:** December 7, 2021 3:39 PM  
**To:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>  
**Cc:** Laura Beatty <[LBeatty@torkinmanes.com](mailto:LBeatty@torkinmanes.com)>  
**Subject:** RE: OSC v. GTDH et al

**ATTENTION:** This email originated from outside of the OSC. Use caution when clicking links or opening attachments.

I don't think that Steve ought to be on this call and suggest it be a call for you and me. I will invite you to a Teams Meeting for 4:30 pm.

Regards,

**Darryl T. Mann**  
Legal Services provided through D.T. Mann Professional Corporation  
Tel: 416-777-5407  
Fax: 1-888-587-5767

**Torkin Manes LLP**  
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

---

**From:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>  
**Sent:** December 7, 2021 3:24 PM  
**To:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>  
**Cc:** Laura Beatty <[LBeatty@torkinmanes.com](mailto:LBeatty@torkinmanes.com)>  
**Subject:** RE: OSC v. GTDH et al

**This is an external email.**

---

Thank you, please send a dial-in.

Regarding Aird & Berlis' mandate, please see para. 38 of the draft order.

**Erin Hoult** (she/her) | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8  
416-593-8290 | [ehoult@osc.gov.on.ca](mailto:ehoult@osc.gov.on.ca)

---

**From:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>  
**Sent:** December 7, 2021 3:11 PM  
**To:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>  
**Cc:** Laura Beatty <[LBeatty@torkinmanes.com](mailto:LBeatty@torkinmanes.com)>  
**Subject:** RE: OSC v. GTDH et al

**ATTENTION:** This email originated from outside of the OSC. Use caution when clicking links or opening attachments.

4:30 works for me. Is Steve on for the Commission? Please confirm his status. Thanks,

**Darryl T. Mann**  
Legal Services provided through D.T. Mann Professional Corporation  
Tel: 416-777-5407  
Fax: 1-888-587-5767

**Torkin Manes LLP**  
Barristers & Solicitors

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---

**From:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>  
**Sent:** December 7, 2021 3:09 PM  
**To:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>  
**Cc:** Laura Beatty <[LBeatty@torkinmanes.com](mailto:LBeatty@torkinmanes.com)>  
**Subject:** RE: OSC v. GTDH et al

**This is an external email.**

---

Without Prejudice

Darryl,

I would be pleased to have a without prejudice discussion about this matter, and can make myself available at 4:30 today. If that time works for you, I would appreciate if you would send a dial-in which I can circulate as I will ask counsel at Aird & Berlis to join.

Regards,  
Erin

**Erin Hoult** (she/her) | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8

**From:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>  
**Sent:** December 7, 2021 2:20 PM  
**To:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>  
**Cc:** Laura Beatty <[LBeatty@torkinmanes.com](mailto:LBeatty@torkinmanes.com)>  
**Subject:** RE: OSC v. GTDH et al

**ATTENTION:** This email originated from outside of the OSC. Use caution when clicking links or opening attachments.

Erin,

I have reviewed your material. Kindly advise whether you would like to have a without prejudice discussion concerning Thursday's Hearing. If so, I have some time for a call this afternoon.

Please let me know.

Thanks and regards,

**Darryl T. Mann**

Legal Services provided through D.T. Mann Professional Corporation  
Tel: 416-777-5407  
Fax: 1-888-587-5767

**Torkin Manes LLP**

Barristers & Solicitors

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**From:** Erin Hoult via Proofpoint <[SecureShareAdmin@proofpoint.com](mailto:SecureShareAdmin@proofpoint.com)>  
**Sent:** December 6, 2021 7:21 PM  
**To:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>  
**Subject:** OSC v. GTDH et al

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**2** FILE(S)  
SHARED

**377.4** MB  
TOTAL

**30** DAYS UNTIL  
EXPIRATION

Erin Hoult has invited you to a new Secure Share

Message from Erin Hoult:

Please find at the link in this email, for service on the Respondents, the: (1) Application Record; and (2) Factum; of the Ontario Securities Commission for the application in the matter Ontario Securities Commission v. Go-To Developments Holdings Inc. et al., returnable December 9, 2021 at 2 p.m. before the Ontario Superior Court of Justice - Commercial List.

If you have any issue accessing the materials, please contact me at [ehoult@osc.gov.on.ca](mailto:ehoult@osc.gov.on.ca).

Shared Files:

Application Record - OSC.zip

Factum.zip

[Go to Secure Share](#)

POWERED BY **proofpoint**

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[Ontario Securities Commission](#)

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[Ontario Securities Commission](#)

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## Erin Hault

---

**From:** Erin Hault  
**Sent:** December 8, 2021 10:09 AM  
**To:** Darryl T. Mann  
**Cc:** Steve Graff; Ian Aversa  
**Subject:** OSC v Go-To Developments Holdings Inc. et al.

Dear Mr. Mann,

Further to our discussion yesterday afternoon, our instructions are to proceed tomorrow with the application as planned.

I will provide you with the Zoom link for the hearing before Justice Pattillo when I receive it from the Court.

Regards,

**Erin Hault** (she/her) | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8  
416-593-8290 | [ehault@osc.gov.on.ca](mailto:ehault@osc.gov.on.ca)

ONTARIO SECURITIES COMMISSION  
Applicant (Respondent in Appeal)

- AND -

GO-TO DEVELOPMENTS HOLDINGS INC., *et al.*  
Respondents (Appellants – Moving Party)

	<p><b>COURT OF APPEAL FOR ONTARIO</b> Proceeding Commenced at Toronto</p> <hr/> <p><b>AFFIDAVIT OF PAUL BAIK</b> Sworn December 20, 2021</p> <hr/> <p><b>Ontario Securities Commission</b> 20 Queen Street West, 22<sup>nd</sup> Floor Toronto, ON M5H 3S8</p> <p><b>Erin Hault (LSO No. 54002C)</b> Tel.: (416) 593-8290 Email: <a href="mailto:ehault@osc.gov.on.ca">ehault@osc.gov.on.ca</a></p> <p><b>Braden Stapleton (LSO No. 82537F)</b> Tel.: (416) 595-8903 Email: <a href="mailto:bstapleton@osc.gov.on.ca">bstapleton@osc.gov.on.ca</a></p> <p>Lawyers for the Ontario Securities Commission</p>
--	---



**First Report to Court of  
KSV Restructuring Inc.  
as Receiver and Manager of  
Go-To Developments Holdings Inc. and those  
companies listed on Appendix “B”**

December 20, 2021

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COURT FILE NO. CV-21-00673521-CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N:****ONTARIO SECURITIES COMMISSION****APPLICANT****- AND -**

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP AND 2506039 ONTARIO LIMITED**

**RESPONDENTS**

**APPLICATION UNDER  
SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, C. S.5, AS AMENDED**

**FIRST REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER AND MANAGER**

**DECEMBER 20, 2021**

## **1.0 Introduction**

1. Pursuant to an application (the "Application") by the Ontario Securities Commission (the "OSC") under sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an order on December 10, 2021 (the "Receivership Order") appointing KSV Restructuring Inc. ("KSV") as the receiver and manager (the "Receiver") of the real property listed in Appendix "A" (the "Real Property") and all the other assets, undertakings and properties of the companies (the "Companies") listed in Appendix "B" (together with the Real Property, the "Property"). A copy of the Receivership Order is provided in Appendix "C" and a copy of the Endorsement of Mr. Justice Pattillo is provided in Appendix "D".

2. This report (the “Report”) is filed by KSV in its capacity as Receiver.
3. The principal purposes of the receivership proceedings are to allow the Receiver to take possession and control of the Property and to maximize recoveries for the Companies’ creditors and investors through the sale, refinancing, development or redevelopment of the Real Property.

### **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) provide background information about these proceedings; and
  - b) summarize the Receiver’s activities and its material findings since the date of its appointment.

### **1.2 Restrictions**

1. In preparing this Report, the Receiver has relied upon discussions with Oscar Furtado, the directing mind of the Companies, and Shoaib Ghani, the Companies’ Head of Accounting, the Companies’ unaudited financial information, discussions with various stakeholders in these proceedings, and the Application materials (collectively, the “Information”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence. As the Receivership Order was issued five (5) business days prior to the date of this Report, the findings in this Report are preliminary and subject to change.

## **2.0 Background**

1. The Companies are developers of residential real estate projects in Ontario. The Companies have nine projects under development (each a “Project”, and collectively the “Projects”). The Receiver understands that early-stage construction has commenced on one Project and that the other Projects are in the preliminary development stage.
2. Background information regarding the Companies and the reasons that the OSC sought the appointment of the Receiver are provided in the affidavit of Stephanie Collins (the “Collins Affidavit”), Senior Forensic Accountant in the Enforcement Branch of the OSC, sworn on December 6, 2021. A copy of the Collins Affidavit, together with all other Court materials filed to-date in these proceedings, is available on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/go-to>.

### 3.0 Receiver's Activities

1. The Receivership Order was distributed by email to the service list in this matter by Mr. Justice Pattillo shortly after 10:00 pm on Friday, December 10, 2021. At 6:36 am on Saturday, December 11, 2021, the Receiver sent an email to Mr. Furtado to request a meeting with him at the Companies' head office as soon as possible over the weekend. The Receiver also left a voice mail message for Mr. Furtado at approximately 9:30 am on the same day requesting a meeting as soon as possible.
2. Aird & Berlis LLP ("Aird & Berlis"), the Receiver's counsel, was contacted on December 11, 2021 by Miller Thomson LLP ("Miller Thomson"), which advised that it was in the process of being retained as counsel to the Companies. Aird & Berlis and the Receiver attended a call on December 12, 2021 with Miller Thomson to, *inter alia*, set a time for a meeting between Mr. Furtado and the Receiver. Following the call, Miller Thomson advised that Mr. Furtado was available to meet the Receiver at noon on Monday, December 13, 2021. The Receiver's representatives met with Mr. Furtado and Mr. Ghani during the afternoon of December 13, 2021 and all day on December 14, 2021.
3. A summary of the Receiver's material findings since the date of its appointment is provided below.

#### 3.1 Adelaide LP

1. Go-To Spadina Adelaide Square LP ("Adelaide LP") owns the Real Property located at 355 Adelaide Street West and 46 Charlotte Street in downtown Toronto (the "Adelaide Property"), which is the Companies' most significant Project from a value perspective (the "Adelaide Project").
2. The Application was heard on Thursday, December 9, 2021. On Friday, December 10, 2021, before a decision had been released concerning the Application, Adelaide LP and Go-To Spadina Adelaide Square Inc. executed an agreement of purchase and sale to sell the Adelaide Property (the "Offer"), with a proposed purchaser, whose name is being kept confidential for the purpose of this Report. The Offer is subject to the approval of the Adelaide LP investors, and, if obtained, the proposed purchaser has 120 days to perform due diligence. The Offer includes an insignificant deposit, which the real estate agent for the Adelaide Property (the "Agent") has advised is in the process of being funded.<sup>1</sup>
3. In discussions between the Receiver and the Agent, the Agent advised the Receiver that he presented the Adelaide Property opportunity to a small number of parties. The Agent also advised that he has a business relationship with the proposed purchaser and that he presented the opportunity to acquire the Adelaide Property to the proposed purchaser at a price suggested by Mr. Furtado.

---

<sup>1</sup> The Receiver has not yet determined if this offer should move forward and if so, the terms on which it should move forward.

4. Adelaide LP's trial balance reflects various non-arm's length payables, including amounts owing to Mr. Furtado (\$1.3 million) and Hans Jain<sup>2</sup> (\$2.6 million), as well as the balance of a demand loan owing to Adelaide Square Developments Inc. ("ASD") in the amount of \$10.4 million, which company and transaction is the subject of extensive discussion in the Collins Affidavit.
5. The Receiver has reviewed Adelaide LP's third quarter interim financial statements dated September 30, 2021 (the "September 30<sup>th</sup> Statements") (which were provided to at least one investor) and the Companies' audited financial statements for fiscal 2020 (together with the September 30<sup>th</sup> Statements, the "Financial Statements"). Note 4 of each of the Financial Statements describes the loan from ASD. Each of Mr. Furtado and Anthony Malanca, an individual with several connections to the Companies, is believed to own 11% of ASD. The loan from ASD is not identified as a related party transaction in the Financial Statements.
6. Anthony Marek has invested approximately \$13 million in Adelaide LP. He is its largest investor. Through Northridge Maroak Developments Inc. ("Northridge"), Mr. Marek is also a mortgagee of Adelaide LP. The September 30<sup>th</sup> Statements reflect the principal amount of the loan owing to Northridge as \$18,489,000. The loan matures on October 3, 2022.
7. On December 17, 2021, the Receiver and Aird & Berlis spoke with Mr. Marek's legal counsel. Mr. Marek's counsel advised of his client's concerns regarding, *inter alia*, a lack of financial disclosure by Mr. Furtado, the relationship between Mr. Furtado and ASD and various related party transactions. Mr. Marek's counsel expressed his client's view that Adelaide LP should not remain under the control of Mr. Furtado and advised that he believes that the receivership proceedings should continue.

### 3.2 Liquidity

1. The Companies have bank accounts at Royal Bank of Canada ("RBC"), The Toronto-Dominion Bank ("TD") and Meridian Credit Union ("Meridian"). As reflected in the schedule below, the Companies' cash balances are a small fraction of the Companies' accounts payable<sup>3</sup>. The Companies do not appear to have liquidity to advance their projects or to fund overhead costs.

(unaudited; \$)	Cash	Accounts Payable	Difference
Go-To Glendale Avenue Inc.	125,933	539,624	(413,690)
Go-To Major Mackenzie South Block Inc.	4,058	971,666	(967,608)
Go-To Niagara Falls Chippawa Inc.	541	271,776	(271,235)
Go-To Niagara Falls Eagle Valley Inc.	10,374	1,315,111	(1,304,737)
Go-To Spadina Adelaide Square Inc.	12,798	7,657,763	(7,644,965)
Go-To Stoney Creek Elfrida Inc.	19,514	335,885	(316,371)
Go-To St. Catharines Beard Inc.	111	47,018	(46,906)
Go-To Vaughan Islington Avenue Inc.	9,275	497,051	(487,776)
2506039 Ontario Limited	120,869	266,489	(145,620)
Total	303,474	11,902,383	(11,598,909)

<sup>2</sup> Mr. Jain is discussed in the Collins Affidavit and is believed to be a related party.

<sup>3</sup> The accounts payable are as of either September 30 or October 31, 2021. The cash balances are as of December 13, 2021, with the exception of the Meridian account which is as of October 31, 2021. The accounts payable and cash balances were provided to the Receiver by Mr. Ghani.

2. Note 1 to the September 30<sup>th</sup> Statements addresses Adelaide LP's plans to fund its business. It states, "[T]he project development plans have entered into the second round of the submission being presented to Government authorities to seek approval. The timing of final approval is uncertain. **Management believes that working capital requirements along with ability to meet existing loan obligations can be met through refinancing and issuance of new Partnership units.**" (Emphasis added.) This note confirms Adelaide LP's liquidity issue and the proposed solution – refinancing and the issuance of new partnership units.

### 3.3 Eagle Valley Project

1. On Wednesday December 15, 2021, the Receiver advised the project manager (the "EV Project Manager")<sup>4</sup> of the Eagle Valley Project of the inability of Go-To Niagara Falls Eagle Valley LP (the "Go-To Niagara LP") to fund the construction costs of the Eagle Valley Project due to its illiquidity. On Friday, December 17, 2021, the Receiver sent a letter to the EV Project Manager advising that work on the site should be suspended as there is no ability to pay for services and supplies at this time. The Receiver intends to work with the EV Project Manager to consider how to advance the Eagle Valley Project, including sourcing funding for it, if possible.
2. The Receiver understands that at the commencement date of the receivership, Mr. Furtado and the EV Project Manager were in the process of negotiating financing for the Eagle Valley Project. The Receiver understands that Mr. Furtado was also in the process of negotiating various other loans and/or refinancings for certain of the other Projects. The Receiver does not presently have sufficient information as to whether these transactions can be completed or the stage of each of the financing discussions.
3. A lien in the amount of \$431,940 was filed on December 10, 2021 against the Eagle Valley Project by HK United Construction Ltd. ("HK"). Liens have also been filed against the Eagle Valley Project by two other parties.

### 3.4 Vaughan Project

1. The Receiver spoke with the former project manager (the "Vaughan Project Manager") of the Project (the "Vaughan Islington Project") owned by Go-To Vaughan Islington Avenue LP ("Vaughan Islington LP"). The Vaughan Project Manager advised that it terminated its project management agreement in early 2021 with Vaughan Islington LP and Go-To Developments Holdings Inc. due to concerns regarding the contemplated development for that Project.

---

<sup>4</sup> The EV Project Manager is also the construction manager of the Eagle Valley Project. The EV Project Manager is also the project and construction manager on three additional Projects, and has various other financial interests in these Projects.

### 3.5 Glendale Project

1. Torkin Manes LLP (“Torkin Manes”) was counsel to Mr. Furtado and to the Companies prior to these proceedings and it continues to have roles for both. On December 15, 2021, the Receiver and Aird & Berlis discussed with Torkin Manes certain matters related to the receivership proceedings. These discussions included:
  - a) a potential refinancing of the mortgages on the Real Property of the Go-To Glendale Avenue LP Project (the “Glendale Project”) by a loan from a private lender. At this time, it is uncertain if the private lender is prepared to proceed with the refinancing. The Receiver advised Torkin Manes that it requires time to understand the terms of the refinancing and the status of the Glendale Project; and
  - b) the Glendale Project has approximately twenty (20) to twenty-five (25) condominium presales. Torkin Manes advised that all presales are to friends and family of Mr. Furtado. On the day prior to the issuance of the Receivership Order, seven (7) of the purchasers of the pre-sold units terminated their agreements of purchase and sale for units in the Glendale Project. The Receiver does not know the reason for the termination of these agreements.

### 3.6 Other Activities

1. In addition to the activities described above, the Receiver’s activities have included:
  - a) having Aird & Berlis register the Receivership Order on title to the Real Property;
  - b) commencing a review of the viability of each of the Projects, including working with certain of the Companies’ consultants for this purpose;
  - c) reviewing the status of the Companies’ refinancing efforts;
  - d) sending notices advising of the receivership to mortgagees registered on title, investors, unsecured creditors and Canada Revenue Agency;
  - e) speaking and corresponding with various mortgagees on the Real Property;
  - f) arranging with RBC, TD Bank and Meridian for the Companies’ bank accounts to be restricted to processing deposits only;
  - g) arranging for a third-party contractor to attend at each Project location for the purpose of understanding the state of each Project and the Real Property;
  - h) making arrangements with the third-party contractor and the EV Project Manager to address safety issues at certain of the Real Property;
  - i) reviewing the Companies’ insurance policies and confirming that insurance is in place;
  - j) arranging with Mr. Ghani to update the Companies’ accounting records;
  - k) corresponding with the property manager of the Adelaide Property;



- l) imaging the Companies' server, the computers and emails of its employees and the personal electronic devices of Mr. Furtado and Mr. Ghani;
- m) negotiating a privilege protocol with Miller Thomson concerning the imaged documentation; and
- n) preparing this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
GO-TO DEVELOPMENTS HOLDINGS INC. AND THOSE COMPANIES LISTED ON APPENDIX  
"B" AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

ONTARIO SECURITIES COMMISSION  
Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC. *et al.*  
Respondents

<p style="text-align: center;"><b>ONTARIO</b>  <b>SUPERIOR COURT OF JUSTICE</b>  <b>(COMMERCIAL LIST)</b></p> <p>Proceeding commenced at Toronto</p>	
<p style="text-align: center;"><b>FIRST REPORT OF THE RECEIVER</b></p>	
<p><b>Aird &amp; Berlis LLP</b>  Brookfield Place, 181 Bay St.  Suite 1800  Toronto, ON M5J 2T9</p> <p><b>Steven Graff (LSO No. 31871V)</b>  Tel.: (416) 865-7726  Email: <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a></p> <p><b>Ian Aversa (LSO No. 55449N)</b>  Tel.: (416) 865-3082  Email: <a href="mailto:iaversa@airdberlis.com">iaversa@airdberlis.com</a></p> <p><b>Tamie Dolny (LSO No. 77958U)</b>  Tel.: (647) 426-2306  Email: <a href="mailto:tdolny@airdberlis.com">tdolny@airdberlis.com</a></p> <p>Lawyers for KSV Restructuring Inc. in its capacity  as Receiver and Manager of Go-To Developments  Holdings Inc., et al.</p>	

ONTARIO SECURITIES COMMISSION  
Applicant (Respondent in Appeal)

- AND -

GO-TO DEVELOPMENTS HOLDINGS INC., *et al.*  
Respondents (Appellants – Moving Party)

**COURT OF APPEAL FOR ONTARIO**

Proceeding Commenced at Toronto

**RESPONDING MOTION RECORD**

**Ontario Securities Commission**

20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

**Erin Hout (LSO No. 54002C)**

Tel.: (416) 593-8290

Email: [ehout@osc.gov.on.ca](mailto:ehout@osc.gov.on.ca)

**Braden Stapleton (LSO No. 82537F)**

Tel.: (416) 595-8903

Email: [bstapleton@osc.gov.on.ca](mailto:bstapleton@osc.gov.on.ca)

Lawyers for the Ontario Securities  
Commission