



**FNA FERTILIZER LIMITED PARTNERSHIP  
LIMITED PARTNERSHIP AGREEMENT**

**FNA FERTILIZER GP INC.**

**- and -**

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

**[January 1, 2013]**

**Aird & Berlis LLP  
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**THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT** is made effective as of the [1<sup>st</sup> day of January, 2013],

**BETWEEN:**

**FNA FERTILIZER GP INC.**, a corporation incorporated under the laws of Canada

(the “**General Partner**”)

- and -

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

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

**WHEREAS** the General Partner and the Initial Limited Partner have agreed to form a limited partnership in order to investigate the feasibility of building and operating a nitrogen fertilizer plant and to establish an entity to collectively represent the interests of farmers in such endeavour and matters incidental or ancillary thereto;

**AND WHEREAS** the General Partner and the Initial Limited Partner entered into a limited partnership agreement, dated as of the 17<sup>th</sup> day of September 2012 (the “**Limited Partnership Agreement**”) , for the purposes of recording the relationship among the Partners and their respective rights and duties in the Limited Partnership;

**AND WHEREAS**, as of the date hereof, the Initial Limited Partner Seed Capital Unit has been redeemed in accordance with Section 7.1(a) of this Agreement;

**AND WHEREAS**, since the date of the Limited Partnership Agreement and from time to time various Limited Partners have become a party to the Limited Partnership Agreement;

**AND WHEREAS** the General Partner wishes to amend the Limited Partnership Agreement, in accordance with Section 3.8(b) thereof, by entering into this amended and restated limited partnership agreement to amend and replace, in its entirety, the Limited Partnership Agreement to provide for two series of Seed Capital Units;

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

## **ARTICLE 1 INTERPRETATION**

## 1.1 Definitions

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

- (a) **“Accountant”** means such accountant as may be appointed for the Partnership by the General Partner from time to time in accordance with the terms of this Agreement;
- (b) **“Act”** means the *Limited Partnerships Act* (Ontario);
- (c) **“Affiliate”** has the meaning given it in the *Securities Act* (Ontario);
- (d) **“AgraCity”** means AgraCity Crop and Nutrition Ltd.;
- (e) **“Agreement”** means this limited partnership agreement and all schedules attached to this limited partnership agreement, in each case as they may be amended or supplemented from time to time, and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement;
- (f) **“Business Day”** means any day, other than a Saturday, Sunday, any statutory or civic holiday in the Provinces of Ontario or Saskatchewan or any day in which commercial banks are not open for business in Toronto, Ontario and Saskatoon, Saskatchewan;
- (g) **“Confidential Information”** means:
  - (i) information or materials relating to the Partnership or the business of the Partnership that are not generally known to the public;
  - (ii) information or materials, the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership; and
  - (iii) any other information or materials which the General Partner or the Partnership is required by law or agreement to keep confidential;
- (h) **“Contributed Capital”** means, at any time, with reference to a Limited Partner, the amount of cash or other property contributed by such Limited Partner to the capital of the Partnership from time to time;
- (i) **“Declaration”** means the declaration of limited partnership and any amended declaration filed and recorded in respect of the Partnership pursuant to the Act;
- (j) **“Dispute”** has the meaning given it in Section 11.10;
- (k) **“Distributable Cash”** means, at any time, the amount, if any, by which the aggregate of all amounts received by the Partnership from all sources exceeds the

sum of: (i) the aggregate of all costs, charges and expenses, whether on account of capital or income, paid or prepaid during such period by or on behalf of the Partnership; and (ii) any amount deemed by the General Partner, acting reasonably and in good faith, to be necessary at that time as a reserve for the items described in clause (i);

- (l) **“Extraordinary Resolution”** means: (i) a resolution passed by not less than 75% of the votes cast at a duly constituted meeting of Limited Partners or any adjournment thereof in respect of which each holder of Seed Capital Units is entitled to one vote for each Seed Capital Unit held; or (ii) a written resolution in one or more counterparts signed by Limited Partners holding in the aggregate not less than 75% of the total votes that could be cast at such a meeting;
- (m) **“Fiscal Year”** means the 12 month period ending December 31 in each year (except the first fiscal year of the Partnership, for which **“Fiscal Year”** means the period from the date hereof to December 31, 2012) or such other 12 month period as may be determined by the Limited Partners in accordance with this Agreement;
- (n) **“FNA”** means Farms and Families of North America Incorporated, a membership organization.
- (o) **“General Partner”** means FNA Fertilizer GP Inc., the general partner of the Partnership, or any successor general partner of the Partnership;
- (p) **“Indemnified Parties”** has the meaning given it in Section 3.12;
- (q) **“Initial Limited Partner”** means Peter Czegledy, of the City of Toronto, Province of Ontario;
- (r) **“Initial Limited Partner Seed Capital Unit”** means the interest in the Partnership issued to the Initial Limited Partner on the formation of the Partnership;
- (s) **“Limited Partner”** means the Initial Limited Partner, any person who from time to time is admitted to the Partnership as a limited partner or who is admitted to the Partnership as a successor to any Limited Partner, and who is registered as a limited partner on the books and records of the Partnership;
- (t) **“Non-Qualified Partner”** means a Limited Partner who is:
  - (i) a “non-resident”, “tax shelter”, “tax shelter investment”, or any entity an investment in which would be a “tax shelter investment” within the meaning of the Tax Act;
  - (ii) a partnership which is not a “Canadian partnership” within the meaning of the Tax Act; or

- (iii) a partnership which does not prohibit investments by the Persons named in subsection (i) or (ii) above;
- (u) **“Ordinary Resolution”** means: (i) a resolution passed by not less than a majority of the votes cast at a duly constituted meeting of Limited Partners or any adjournment thereof in respect of which each holder of Seed Capital Units is entitled to one vote for each Seed Capital Unit held; or (ii) a written resolution in one or more counterparts signed by Limited Partners holding in the aggregate not less than a majority of the total votes that could be cast at such a meeting;
- (v) **“Partners”** means the General Partner and the Limited Partners and **“Partner”** means any one of them;
- (w) **“Partnership”** means FNA Fertilizer Limited Partnership, the limited partnership governed by this Agreement;
- (x) **“person”** includes any natural person, corporation, partnership, limited partnership, limited liability company, firm, joint venture, co-venture, association, bank, trust company, government, political subdivision, governmental agency, board, commission or authority, trust or any other legal entity;
- (y) **“Power of Attorney”** has the meaning given it in subsection 3.9(a);
- (z) **“Project”** means the nitrogen fertilizer plant project that is anticipated to be owned by an entity in which the Partnership intends to hold, directly or indirectly, an ownership interest, the amount of which currently undetermined on the date hereof;
- (aa) **“Register”** means the register of Limited Partners maintained by the General Partner pursuant to the Act and the terms hereof;
- (bb) **“Sale Price”** means \$600 credited to a Limited Partner’s account with FNA;
- (cc) **“Seed Capital Unit”** means either of (i) a Series 1 Seed Capital Unit or (ii) a Series 2 Seed Capital Unit, but shall exclude the Initial Limited Partner Unit;
- (dd) **“Series 1 Seed Capital Unit”** means an undivided interest in the Partnership issued by the Partnership prior to January 1, 2013, which shall require, *inter alia*, receipt of the applicable completed and executed subscription form from the subscriber by 5:00 p.m. (central time) on December 31, 2012, but shall exclude the Initial Limited Partner Seed Capital Unit;
- (ee) **“Series 2 Seed Capital Unit”** means an undivided interest in the Partnership issued by the Partnership on or after January 1, 2013, which shall require, *inter alia*, receipt of the applicable completed and executed subscription form from the subscriber after 5:00 p.m. (central time) on December 31, 2012;



- (ff) **“Sharing Ratio”** means, with respect to any Limited Partner, the ratio of the number of Seed Capital Units held by such Limited Partner to the total number of Seed Capital Units then outstanding;
- (gg) **“Tax Act”** means the *Income Tax Act* (Canada);
- (hh) **“Taxable Income”** or **“Tax Loss”** means, in respect of any Fiscal Year, the amount of income or loss (including capital gains and capital losses) of the Partnership, respectively, for such Fiscal Year as determined by the General Partner in accordance with this Agreement, the Tax Act and any applicable provincial income tax legislation; and
- (ii) **“Winding-Up Event”** has the meaning given it in Section 10.1.

## 1.2 Headings

The division of this Agreement into articles, sections and subsections and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction or interpretation hereof. Unless otherwise indicated, any reference in this Agreement to an article, section or subsection refers to the specified article, section or subsection of this Agreement.

## 1.3 Interpretation

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

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

## **1.4 Currency**

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

## **1.5 Calculation of Time**

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

## **1.6 Decisions of General Partner**

All decisions, determinations, judgments, elections and actions (including any exercise of any discretion) which may be made, and all consents which may be given, by the General Partner hereunder may be made or given by it in its sole and absolute discretion unless otherwise specifically provided herein.

## **1.7 Schedules**

The following is the schedule annexed hereto which is incorporated by reference and deemed to be a part of this Agreement:

Schedule "A" - Arbitration Provisions

## **ARTICLE 2 THE PARTNERSHIP**

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

The parties agree that the Partnership shall become a limited partnership as of the date hereof and shall continue until the date on which the Partnership is dissolved in accordance with this Agreement and the Act. The rights and obligations of the Limited Partners shall be as provided in the Act except as otherwise expressly provided in this Agreement.

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

The Partnership shall carry on business under the name "FNA Fertilizer Limited Partnership" or such other name or names as the General Partner may determine from time to time provided that the General Partner provides notice to the Limited Partners of such change in writing within 15 days thereof.

### **2.3 Maintaining Status of the Partnership**

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

#### **2.4 Purposes of the Partnership**

The Partnership has been formed to carry on the business of examining the financial and operational feasibility of, aggregating representative interest in and commitment to, and providing a collective means to invest in an independent entity that will own, the Project, and to engage in such other activities as are reasonably incidental, as determined by the General Partner, to the foregoing. The Partnership shall not carry on any other business unless approval therefor is given by Special Resolution.

#### **2.5 Head Office and Mailing Addresses**

The Partnership shall maintain its head office and mailing address and the General Partner shall maintain its registered office and mailing address at 318-111 Research Drive, Saskatoon, Saskatchewan, S7N 3R2. The General Partner may change the head office or any mailing address of the Partnership and the registered office or any mailing address of the General Partner from time to time, provided that the General Partner shall notify the Limited Partners of such change in writing within 15 days thereof.

#### **2.6 Term**

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

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

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

- (a) is and shall continue to be a corporation duly incorporated and existing under the laws of Canada or such other jurisdiction under which the General Partner may continue or under which a successor to the General Partner may be incorporated or may continue;

- (b) has and shall continue to have the appropriate capacity and corporate authority to act as the General Partner and to perform its obligations under this Agreement and that such obligations do not and shall not conflict with or constitute a default under its articles or any agreement by which it is bound;
- (c) is not and shall continue to not be a “non-resident” of Canada within the meaning of the Tax Act or a person, an interest in which would be a “tax shelter investment” as defined in the Tax Act; and
- (d) will make commercially reasonable efforts to ensure that an acknowledgement substantially in the form set out below is inserted in any agreement to which the Partnership is a party or to which it is or may be bound:

“The parties hereto acknowledge that FNA Fertilizer Limited Partnership (the “**Partnership**”) is a limited partnership formed under the laws of the Province of Ontario. The parties hereto acknowledge that the obligations of the Partnership shall not be personally binding upon, nor shall resort be had to, the property of any of its limited partners, their heirs, executors, administrators and other legal representatives, successors and assigns, and that resort shall only be had to the property of the Partnership, or the property of its general partner.”

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

## **2.8 Status of Limited Partners**

Each Limited Partner (except, for purposes of subsection 2.8(a), the Initial Limited Partner) represents and warrants to each other Limited Partner and to the General Partner that he or it:

- (a) is a member of FNA;
- (b) is not a Non-Qualified Partner;
- (c) has not borrowed on a line of credit, demand loan or otherwise incurred any debt to purchase any Seed Capital Units, where such debt would constitute a “limited-recourse amount” within the meaning of the Tax Act;
- (d) if an individual, has attained the age of majority and has the legal capacity and competence to enter into and be bound by this Agreement and all other agreements contemplated hereby and to take all actions required pursuant hereto and thereto; and
- (e) if a corporation, body corporate, partnership, trust, unincorporated association or other legal entity, has the legal capacity and competence to enter into and be bound by this Agreement and all other agreements contemplated hereby and to take all actions required pursuant hereto and thereto, it further certifies that all

necessary approvals of directors, shareholders, partners, trustees, members or otherwise have been given in connection herewith and therewith.

## **2.9 Covenant of Limited Partners**

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

## **2.10 Limited Partner Becoming Non-Qualified Partner**

All of the Seed Capital Units of a Limited Partner who becomes a Non-Qualified Partner shall be deemed to have been purchased for cancellation by the Partnership immediately prior to the time at which the Limited Partner became a Non-Qualified Partner. On any such purchase by the General Partner, the price shall be the Sale Price. The Sale Price shall be credited to the applicable Limited Partner's FNA and/or AgraCity account no later than 220 days after the date on which Seed Capital Units were purchased for cancellation. Notwithstanding the foregoing, the Partners acknowledge and agree that the General Partner may allocate Taxable Income or Tax Loss for the purposes of the Tax Act and any applicable provincial taxing authority to such Non-Qualified Partner in any manner which the General Partner deems advisable or appropriate.

## **2.11 Partner Becoming Financial Institution**

A Limited Partner who is or becomes a "financial institution" within the meaning of the Tax Act may be required to sell its Seed Capital Units and must notify the General Partner in writing of its intention to become a financial institution. The General Partner may require those Limited Partners who are or become financial institutions to transfer all or portion of their Seed Capital Units. If a financial institution Limited Partner fails to transfer its Seed Capital Units to a person who qualifies to hold Seed Capital Units under the terms of this Agreement within 15 days of receipt of notice to such Limited Partner to so transfer its Seed Capital Units, the General Partner shall be entitled to sell such Seed Capital Units on behalf of such Limited Partner on such terms and conditions as it deems reasonable and may itself become the purchaser of such Seed Capital Units. On any such sale by the General Partner, the price shall be the Sale Price. The Sale Price shall be credited to the applicable Limited Partner's FNA and/or AgraCity account no later than 220 days after the date on which the Seed Capital Units were sold. Notwithstanding the foregoing, the Partners acknowledge and agree that the General Partner may allocate Taxable Income or Tax Loss for the purposes of the Tax Act and any applicable provincial taxing authority to such financial institution Limited Partner in the year in which the financial institution Limited Partner ceases to be a Limited Partner in any manner which the General Partner deems advisable or appropriate.

## **2.12 Right of Rescission**

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

### **2.13 Compliance with Laws**

- (a) Each Limited Partner shall, on request by the General Partner, immediately execute all certificates, declarations, instruments and documents 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 and in regard to the maintenance of the limited liability of the Limited Partners.
- (b) Each Limited Partner consents to the collection, use and disclosure of his personal information by the General Partner (i) for the purpose of keeping all Registers, records and other documentation, (ii) for the purpose of making all filings in respect to the Partnership, (iii) in order to comply with all applicable laws and regulations, including but not limited to the Tax Act and applicable securities legislation, (iv) in order to comply with this Agreement and the subscription agreement entered into by the Limited Partner, and (v) as otherwise set out in the privacy policy of the Partnership, as amended from time to time, available at [www.projectn.ca/privacy-policy](http://www.projectn.ca/privacy-policy).

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

With the exception of the General Partner, which may also be a Limited Partner, no Limited Partner shall:

- (a) take part in the control or management of the business of the Partnership or transact any business for the Partnership;
- (b) execute any document or take any action pursuant to which it purports to bind the Partnership, the General Partner or any other Limited Partner as such;
- (c) hold itself out as having the power or authority to bind the Partnership, the General Partner or any other Limited Partner as such;
- (d) have any authority to undertake any obligation or responsibility on behalf of the Partnership (except that the General Partner may act on behalf of the Partnership notwithstanding that it may also be a Limited Partner); or
- (e) bring any action for partition or sale in connection with any assets of the Partnership, whether real or personal, or register or permit any lien against or charge in respect of the Seed Capital Units of such Limited Partner to be filed or registered or remain undischarged against any assets of the Partnership in respect of such Limited Partner’s interest in the Partnership, other than as specifically provided for in this Agreement.

Limited Partners shall comply with the provisions of the Act and shall not take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership, or make the Limited Partner a Non-Qualified Partner.

## **2.15 No Fiduciary**

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

## **2.16 Confidentiality**

- (a) The General Partner has the right to keep confidential from the Limited Partners (and their respective agents and representatives), for such period of time as the General Partner deems reasonable, any Confidential Information.
- (b) Each Limited Partner shall keep confidential and not disclose any information and materials regarding the Partnership in such Limited Partner’s possession (whether or not such information or materials have been designated by the General Partner as Confidential Information) except to the extent:
  - (i) disclosure of such information or materials is required by law;
  - (ii) the information or materials were previously known to such Limited Partner; and
  - (iii) the information or materials become publicly known except through the actions or omissions of such Limited Partner.
- (c) In the event any Limited Partner is required by law to disclose any Confidential Information, such Limited Partner shall promptly notify the General Partner in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with the General Partner to preserve the confidentiality of such information consistent with applicable law.

## **ARTICLE 3 MANAGEMENT OF THE PARTNERSHIP**

### **3.1 Powers of the General Partner**

Subject to any limitation set out elsewhere in this Agreement and to the limitations provided for in the Act, the General Partner has full power and exclusive authority for and on behalf of the Partnership to manage, conduct, control, administer and operate the business and affairs of the Partnership and shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business of the Partnership described in this Agreement and for the protection and benefit of the Partnership. The General Partner shall be entitled to retain advisors, experts or consultants to assist in the exercise of its powers and the performance of its duties hereunder.

### **3.2 Specific Powers of the General Partner**

Without limiting the generality of Section 3.1, the General Partner has the power and authority for and on behalf of the Partnership to:

- (a) take such measures necessary or appropriate for the business of the Partnership or ancillary thereto;
- (b) acquire, own, manage, administer, convert, develop, operate, sell, exchange, sell or otherwise transfer, dispose of or otherwise deal with any and all property of the Partnership or any part thereof as may be necessary, convenient or beneficial for the Partnership and in general to engage in any and all phases of the business of the Partnership;
- (c) hold the property of the Partnership in its name as the Partnership's agent or nominee, whether disclosed or undisclosed;
- (d) borrow money and issue evidences of indebtedness, to refinance the indebtedness, and to secure the same by mortgages, deeds of trust, securities interests, pledges or other liens on all or any part of the property of the Partnership, to enter into contracts of guaranty or suretyship, and to confess and/or authorize confession of judgment in connection with the foregoing or otherwise;
- (e) secure, maintain and pay for insurance against liability or other loss with respect to the activities of the Partnership or any property of the Partnership;
- (f) admit any person as a Limited Partner subject to the provisions hereof;
- (g) employ or retain the persons as may be necessary or appropriate for the conduct of the Partnership's business, including permanent, temporary or part-time employees and attorneys, accountants and other support personnel for the Partnership, agents, consultants and contractors;
- (h) engage such counsel, accountants, auditors and such professional or other consultants as the General Partner considers advisable in order to perform its duties hereunder;



- (i) open and operate one or more bank accounts, with full and exclusive signing authority on behalf of the Partnership, in order to deposit, disburse and distribute funds of the Partnership;
- (j) incur expenses and enter into, perform and carry out contracts or commitments of any kind, assume obligations and execute, deliver, acknowledge and file documents in furtherance of the purposes and business of the Partnership;
- (k) pay all taxes, fees and other expenses relating to orderly maintenance and management of the business of the Partnership, including any expenses related to the raising of capital by the Partnership, from time to time;
- (l) act on behalf of the Partnership with respect to any and all actions or other proceedings brought by or against the Partnership and pay, collect, compromise, arbitrate or otherwise adjust, contest or settle any and all claims or demands of or against the Partnership;
- (m) prepare and file all tax returns, information returns, elections, determinations and designations under the Tax Act or any other taxation or other legislation of like import of Canada or any of the provinces or other jurisdictions as are necessary or advisable on behalf of both the Partnership and the Limited Partners in respect of the affairs of the Partnership;
- (n) execute and file with any governmental body any documents necessary and appropriate to be filed in connection with the business of the Partnership or in connection with this Agreement;
- (o) execute any and all deeds, documents and instruments and to do all other acts as may be necessary or desirable to carry out the intent and purpose of this Agreement, including retaining any independent contractors to carry out the foregoing;
- (p) grant security, encumbrances or restrictions on behalf of the Partnership;
- (q) raise capital on behalf of the Partnership by offering Seed Capital Units or other units of interest;
- (r) subdivide or consolidate the Seed Capital Units from time to time, in such manner as it deems appropriate, including making any necessary adjustments in this Agreement that it determines to be necessary or appropriate to effect the same;
- (s) purchase Seed Capital Units for cancellation;
- (t) apply the proceeds of issuances of Seed Capital Units in the manner described in this Agreement;
- (u) distribute the assets of the Partnership in accordance with the provisions of this Agreement; and

- (v) engage in any kind of activity and to enter into and perform obligations of any kind necessary to or in connection with, or incidental to, the accomplishment of the purposes and business of the Partnership, so long as the activities and obligations may be lawfully engaged in or performed by a limited partnership under the Act.

### **3.3 Authority of the General Partner**

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

### **3.4 Covenants of the General Partner**

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

- (a) act with the utmost fairness and good faith towards the Limited Partners in the business of the Partnership;
- (b) exercise its powers and authorities hereunder and manage and operate the Partnership and the undertaking, properties and assets thereof in a reasonable and prudent manner;
- (c) not carry on any business or activity other than in connection with and in furtherance of its role as General Partner as set forth herein and in the Act;
- (d) not borrow from the Partnership nor permit any party not dealing at arm's length with the General Partner to borrow from the Partnership, in each case, unless approval therefor is given by Ordinary Resolution;
- (e) not commingle the funds of the Partnership with the funds of the General Partner or any other person;
- (f) use its best efforts to maintain its status as an existing corporation;
- (g) not become a "non-resident" of Canada within the meaning of the Tax Act;
- (h) notify the Limited Partners in writing forthwith upon becoming aware of any steps or proceedings relating to the bankruptcy, assignment for the benefit of creditors generally, dissolution, liquidation, winding-up or appointment of a receiver, manager or receiver and manager of the General Partner or of any controlling shareholder of the General Partner; and
- (i) file on behalf of the Partnership the partnership information return (or any other filing requirements under the Tax Act) required to be filed under the Tax Act or the regulations to the Tax Act in prescribed form and within the prescribed time.

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

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

### **3.6 Fees and Reimbursement for Costs and Expenses**

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

### **3.7 Insurance**

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

### **3.8 Amendment of Agreement**

- (a) Without the unanimous consent of all Limited Partners and the General Partner, no amendment shall be made to this Agreement which would have the effect of:
  - (i) allowing any Limited Partner (who is not also the General Partner) to exercise control over the business of the Partnership;
  - (ii) changing the Partnership from a limited partnership to a general partnership;
  - (iii) amending this subsection 3.8(a).
- (b) Subject to subsection 3.8(a), the General Partner may, without prior notice to, or consent from, any Limited Partner, amend any provision of this Agreement from time to time:
  - (i) for the purpose of creating and/or issuing any other interests in the Partnership of a different class or series than the Seed Capital Units;
  - (ii) for the purpose of converting or exchanging the Seed Capital Units into other interests in the Partnership;
  - (iii) for the purpose of adding to this Agreement any further or different covenants, restrictions, deletions or provisions that, in the discretionary opinion of the General Partner, are (A) necessary or desirable for the

protection, or are otherwise in the best interests, of the Limited Partners, or (B) to further the viability of the Project;

- (iv) to cure an ambiguity or error or to correct or supplement any provision contained herein that, in the opinion of the General Partner, may be defective, conflict with or inconsistent with any other provision contained herein, and with respect to which, in the opinion of the General Partner, the cure, correction or supplemental provision does not and will not substantially adversely affect the interests of the Limited Partners;
  - (v) to make such amendments as the General Partner deems necessary or advisable as a result of changes in the laws from time to time which may affect the Partnership or the Limited Partners, or for the purpose of ensuring continuing compliance with applicable laws, regulations, requirements, or policies of any governmental authority having jurisdiction over the Partnership or the distribution of Seed Capital Units; and/or
  - (vi) to make such other amendments that, in the opinion of the General Partner, are in the best interest of the Partnership.
- (c) The Limited Partners acknowledge that it is anticipated that this Agreement will be amended and/or restated, in whole in part, in the event that (i) the Project is determined to be feasible, (ii) further investment is required, (iii) other parties become involved in the Project, (iv) financing is obtained, and/or (v) the financial, tax, operational, structural or other elements of the Project become clearer and more defined, and that such amendments and restatement shall be wholly within the sole discretion of the General Partner.
- (d) The Limited Partners will be notified of the full details of any amendment to this Agreement within 60 days following the effective date of the proposed amendment.

### **3.9 Power of Attorney**

- (a) Each Limited Partner hereby irrevocably nominates, constitutes and appoints the General Partner, and any successor to the General Partner under the terms of this Agreement, as its true and lawful attorney and agent (the “**Power of Attorney**”), with full power and authority in its name, place and stead to execute, ratify, confirm, acknowledge, deliver, file and record in the appropriate public offices in any jurisdiction where the General Partner considers appropriate any and all of:
- (i) this Agreement and any amendment, change or modification thereto from time to time made in accordance with its terms, and all declarations and other instruments or documents necessary or appropriate to qualify, or to continue and keep in good standing the Partnership as a limited partnership in the Province of Ontario and elsewhere;

- (ii) all documents on behalf of the Limited Partner and in its name as may be necessary to give effect to the sale or assignment of any unit in the capital of the Partnership or to give effect to the admission of additional or substituted limited partners or a permitted transferee of any unit in the capital of the Partnership as a new limited partner of the Partnership;
- (iii) all conveyances and other instruments or documents required in connection with the dissolution and liquidation of the Partnership, including cancellation of any declaration or certificate and the distribution of assets of the Partnership;
- (iv) all other instruments and documents on your behalf and in your name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out the terms of this Agreement and/or to give effect to the business and affairs of the Partnership;
- (v) all elections, determinations, designations, forms or other documents or instruments under the Tax Act or any other taxation or other legislation or laws of like import in respect of the affairs of the Partnership or of the interests of the Limited Partners in the Partnership, including, without limitation, elections, determinations, designations, forms or other documents or instruments associated with the acquisition, financing or disposition of any property owned by the Partnership; and
  - (i) execute and file with any government body any documents necessary and appropriate to be filed in connection with the business, property, assets and undertaking of the Partnership or in connection with this Agreement.
- (b) The Power of Attorney is given for valuable consideration received by each Limited Partner from the General Partner, is hereby declared by each Limited Partner to be an irrevocable power coupled with an interest, shall survive the death, disability, or bankruptcy of such Limited Partner and shall extend to and bind the heirs, executors, administrators, successors and assigns of such Limited Partner.
- (c) The Power of Attorney may be exercised by the General Partner on behalf of all of the Limited Partners in executing such instrument with a single signature as attorney and agent for all of them. Each Limited Partner agrees to be bound by any representation or action made or taken by the General Partner pursuant to the Power of Attorney and, if requested, agrees to ratify and confirm any such representation or action, including the execution of any documents necessary to effect such ratification and confirmation, 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 the Power of Attorney. If a court of competent jurisdiction (or an arbitrator in circumstances where the General Partner has agreed to be bound by such arbitrator's decision) determines that the Power of Attorney has been terminated, been duly revoked or has become invalid, any

exercise of the Power of Attorney by the General Partner following such termination, revocation or invalidity shall be valid and binding as between each Limited Partner or the estate of each Limited Partner and any person, including the General Partner, who acted in good faith and without knowledge of the termination, revocation or invalidity.

- (d) Each Limited Partner hereby releases the General Partner from all liability of any kind that may arise in consequence of any act or omission of the General Partner pursuant to the Power of Attorney, so long as the General Partner exercises its authority thereunder in good faith.
- (e) The Power of Attorney becomes effective on the date hereof and shall continue in respect of the General Partner so long as it is the general partner of the Partnership, and shall terminate thereafter, but shall continue in respect of a new general partner as if the new general partner were the original attorney. The Power of Attorney is in addition to any other power of attorney granted by the Limited Partner in connection with its Partnership Interest. The Power of Attorney shall survive the granting of any subsequent power of attorney by the Limited Partner.

### **3.10 Transactions Involving Affiliates**

- (a) 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 the 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 the Affiliate. The General Partner is expressly permitted to borrow money for the account of the Partnership from an Affiliate of the General Partner provided such transaction is on reasonable commercial terms.
- (b) The General Partner may employ or retain an Affiliate of the General Partner on behalf of the Partnership to provide goods or services to the Partnership, provided that the cost of such goods or services is reasonable.

### **3.11 Safekeeping of Assets; Title to Property**

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

### **3.12 Indemnity of the General Partner**

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

### **3.13 Payments**

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

### **3.14 Liability of the General Partner**

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

## **ARTICLE 4 RESIGNATION OF THE GENERAL PARTNER**

### **4.1 Resignation of the General Partner**

The General Partner shall not sell, assign or otherwise dispose of its rights and obligations under this Agreement (other than to an Affiliate as hereinafter provided). The General Partner may resign as general partner of the Partnership on not less than 90 days' written notice thereof to the Limited Partners and such resignation shall become effective upon the earlier of the appointment of a successor general partner expressed by the Limited Partners by Ordinary Resolution and the expiration of the 90 day notice period. At the time of giving notice of resignation, the General Partner shall give notice of a meeting in accordance with the provisions of Section 9.3, to consider the appointment of a successor general partner of the Partnership.

#### **4.2 Deemed Resignation of the General Partner**

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

- (a) the bankruptcy, the involuntary dissolution, liquidation or winding-up of the General Partner (or the commencement of any act or proceeding in connection therewith which is not contested in good faith by the General Partner);
- (b) the insolvency of the General Partner;
- (c) the appointment of a trustee, receiver or receiver and manager of the affairs or properties of the General Partner; or
- (d) if a mortgagee or other encumbrancer shall take possession of the property or assets of the General Partner or a substantial part thereof, or if a writ of execution, attachment or similar process is issued or levied against all or substantially all of the property or assets of the General Partner (and such writ of execution, attachment or similar process is not released, satisfied, discharged, vacated or stayed within 60 days after its entry, commencement or levy, as the case may be).

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

#### **4.3 Effective Date of Deemed Resignation of the General Partner**

In the event of the deemed resignation of the General Partner as the general partner of the Partnership by virtue of the provisions of Section 4.2, the General Partner shall be deemed to have resigned and shall cease to be the general partner of the Partnership upon the earlier of the appointment of a successor general partner of the Partnership by the Limited Partners expressed by Ordinary Resolution and the expiration of 90 days from the date of the giving of the notice of an occurrence of an event referred to in Section 4.2. At the time of giving notice of an occurrence of an event referred to in Section 4.2, the General Partner shall give notice of a meeting in accordance with the provisions of Section 9.3 to consider the appointment of a successor general partner of the Partnership.

#### **4.4 Assignment by the General Partner**



The General Partner may assign its rights and obligations under this Agreement to an Affiliate upon 90 days' prior written notice to the Limited Partners, provided that the Affiliate complies with all requirements hereof relating to the General Partner.

#### **4.5 Removal of General Partner**

The Limited Partners may remove the General Partner by Extraordinary Resolution. Notwithstanding any other provision of this Agreement (including the immediately preceding sentence), the General Partner may only be removed or replaced by the Limited Partners pursuant to this provision if the General Partner is guilty of fraud, wilful misconduct or gross negligence.

#### **4.6 Transfer of Management to Successor General Partner**

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

#### **4.7 Release of the General Partner**

Upon the removal or resignation of the general partner of the Partnership, the Partnership shall release and hold harmless such removed or resigned General Partner from all actions, claims, costs, demands, losses, damages and expenses with respect to events that occur in relation to the Partnership after the effective date of such removal or resignation other than those caused by or deriving from any gross negligence or fraudulent act or omission or wilful misconduct of the General Partner; provided, however, that any such holding harmless shall be made from the assets of the Partnership and no Limited Partner shall be personally liable to the former General Partner.

#### **4.8 Powers, Duties and Obligations of Successor General Partner**

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

### **ARTICLE 5 OBLIGATIONS OF THE PARTNERS**

#### **5.1 Unlimited Liability of the General Partner**

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

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

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

## **5.3 Indemnity of the Limited Partners**

Notwithstanding Section 3.14, the General Partner will indemnify and save harmless each Limited Partner and every former Limited Partner from any costs, damages, liabilities or expenses incurred by a Limited Partner as a result of the liability of the Limited Partner not being limited in the manner herein described, except where caused by the act or omission of such Limited Partner.

## **5.4 Indemnity of the Partnership**

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

# **ARTICLE 6 SEED CAPITAL UNITS**

## **6.1 Seed Capital Units**

The interests of the Limited Partners in the Partnership shall be divided into and represented by the Seed Capital Units in such series and numbers as may be issued from time to time. Each Seed Capital Unit represents an undivided interest in the Partnership and all of which together shall represent the interests of the Limited Partners in the Partnership. The number of Seed Capital Units which may be issued by the Partnership is unlimited. Fractional Seed Capital Units may be issued. Except as otherwise specifically provided for under this Agreement, each Seed Capital Unit shall have equal voting, distribution and liquidation rights and shall have no preference, conversion, exchange, pre-emptive or redemption rights. Each Seed Capital Unit will be issued for a subscription price as determined by the General Partner.

## **6.2 Subscriptions for Seed Capital Units**

- (a) A person may subscribe for Seed Capital Units by delivering to the General Partner such form of subscription agreement as may be approved by the General Partner from time to time, which shall be completed and executed in a manner

acceptable to the General Partner, and such other instruments as the General Partner may request.

- (b) The General Partner shall be authorized, subject to the terms and provisions of this Agreement, to admit accepted subscribers for Seed Capital Units as Limited Partners. The General Partner shall have the right, in its discretion, to refuse to accept any subscription for Seed Capital Units. If, for any reason, a subscription for Seed Capital Units is not accepted or such subscription is accepted but the subscriber is not entered as a Limited Partner, the General Partner shall cause the Partnership to refund to the subscriber the subscription price for such Seed Capital Units paid by such subscriber, without interest thereon or deduction therefrom. Upon the acceptance of such subscription by the General Partner, the General Partner will amend any required filings (including, if required, the Declaration) and amend the Register and show the name of the subscriber as a Limited Partner and the series and number of Seed Capital Units held by such subscriber as a Limited Partner and make such filings and recordings as are required by law, and such subscriber shall thereupon become a Limited Partner.
- (c) Upon the acceptance by the General Partner of a subscription for Seed Capital Units and payment of the subscription price for such Seed Capital Units, all Partners will be deemed to consent to the admission of the subscriber as a Limited Partner and the General Partner shall cause the subscriber to be entered on the Register as a Limited Partner. No certificates representing the Seed Capital Units will be issued but the General Partner may provide a confirmation to an accepted subscriber confirming that such subscriber have become a Limited Partner. The rights and obligations of a subscriber for, or a permitted transferee of, Seed Capital Units, as a Limited Partner under this Agreement, commence and are enforceable by and upon, the Limited Partner, from the date on which the Register has been amended.
- (d) The receipt of any money, securities or other property from the Partnership by a person in whose name any Seed Capital Units are recorded (or in the case of a Seed Capital Unit recorded in the name of one or more persons, the receipt thereof by any one 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 Seed Capital Units.

### **6.3 Records**

The General Partner shall:

- (a) maintain a registered office for the Partnership;
- (b) maintain the Register in order to record the names and addresses of the Limited Partners, the series and number of Seed Capital Units held by each Limited

Partner, each Limited Partner's Contributed Capital and particulars of registrations and assignments of Seed Capital Units;

- (c) maintain such other records as may be required by law and to permit such persons as are authorized by either this Agreement or by law to inspect such records where required; and
- (d) keep:
  - (i) a list of the full name and last known address of each Limited Partner, set forth in alphabetical order and indicating the series and number of Seed Capital Units held by each;
  - (ii) the name and address of the General Partner;
  - (iii) a copy of all Declarations; and
  - (iv) a copy of this Agreement.

The General Partner shall be authorized to make such reasonable rules and regulations as, from time to time, it may consider necessary or desirable in connection with the establishment of record dates and the documentation required to record assignments of Seed Capital Units and other matters.

#### **6.4 Transfer of Seed Capital Units Generally**

A Seed Capital Unit may not be assigned, transferred, conveyed, gifted or otherwise disposed of by a Limited Partner.

Notwithstanding the foregoing, the General Partner may, as determined in its sole discretion and on such grounds as it chooses, permit such assignment, transfer, conveyance, gift or disposal of a Seed Capital Unit, if it feels that appropriate reasons exist warranting such action, and provided that the following conditions are satisfied:

- (a) the transferee is a FNA member, the Limited Partnership or the General Partner;
- (b) the General Partner has consented in writing to the transfer from the transferor to the transferee, which consent may be unreasonably withheld;
- (c) the transferor has delivered to the General Partner an executed transfer of the Seed Capital Units in such form as is acceptable to the General Partner;
- (d) the transferee has agreed in writing to be bound by the terms of this Agreement, to make the representations set out in Section 2.8 and to assume the obligations of the Limited Partner under this Agreement in respect of the Seed Capital Unit(s) being transferred to it;

- (e) the transferee pays such costs, expenses and disbursements, including legal fees, as are reasonably incurred by the Partnership by reason of the transfer; and
- (f) such other requirements as may be required by law or may be required by the General Partner,

provided that a permitted transferee of a Seed Capital Unit will not become a Limited Partner in respect of that Seed Capital Unit until all filings and recordings required by law to validly effect a transfer have been duly made as referred to herein.

No Limited Partner shall question or seek to appeal the discretionary determinations of the General Partner under this Section 6.4.

### **6.5 Admittance of Permitted Transferee**

When a permitted transferee is entitled to become a Limited Partner pursuant to the provisions hereof, the General Partner shall be authorized to admit such person to the Partnership as a Limited Partner and the Limited Partners hereby consent to the admission of, and will admit, the permitted transferee to the Partnership as a Limited Partner, without any further act of the Limited Partners. The General Partner will record such assignment and transfer at the registered office of the Partnership, amend the Register showing the name of the permitted transferee as a substituted Limited Partner and make such filings and cause to be made such recordings as are required by law.

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

Except as otherwise expressly provided in this Agreement, neither the General Partner or the Limited Partners shall be bound to see to the execution of any trust, express, implied or constructive, or any charge, pledge or equity to which any Seed Capital Unit or any interest therein is subject, or to ascertain or inquire whether any sale or transfer or any such Seed Capital Unit or interest therein by any Limited Partner or its personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person having any interest therein except for the person or persons recorded as such Limited Partner.

### **6.7 Pledge of a Seed Capital Unit**

No Limited Partner may pledge, charge, mortgage, hypothecate or otherwise encumber a Seed Capital Unit held by it without the prior written consent of the General Partner.

### **6.8 Liability on Transfer**

When an assignment and transfer of any Seed Capital Unit is completed and the permitted transferee is registered as a Limited Partner, the transferor of the Seed Capital Unit will thereupon be relieved of all obligations and liabilities relating to its Seed Capital Unit, including the obligations and liabilities under this Agreement to the extent permitted by law, and the permitted transferee will assume all such obligations and liabilities; provided, however, that no transfer shall relieve the transferor from any obligations to the Partnership incurred prior to the transfer becoming effective.

## **6.9 Successors in Interest of Partners**

The Partnership shall continue notwithstanding the admission of any new General Partner or Limited Partner or the withdrawal, death, insolvency, bankruptcy or other disability or incapacity of the General Partner or any Limited Partner or the assignment, transfer or transmission of any Seed Capital Unit. The Partnership shall be dissolved only in the manner provided for in Article 11.

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

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

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

## **ARTICLE 7 CONTRIBUTIONS, DISTRIBUTIONS AND ALLOCATIONS**

### **7.1 Contributed Capital**

- (a) Upon the execution of the Limited Partnership Agreement, the Initial Limited Partner made a capital contribution of \$1 to the Partnership and was issued the Initial Limited Partner Seed Capital Unit. Forthwith following the initial subscription for Seed Capital Unit(s) by a Limited Partner (other than the Initial Limited Partner), the Initial Limited Partner Seed Capital Unit was automatically redeemed upon payment by the Partnership to the Initial Limited Partner of \$1 therefor. On such redemption, the Initial Limited Partner had and shall have no further liability or obligation of any kind relating to the Partnership, the General Partner or any Limited Partner, and such persons shall indemnify, defend and hold harmless the Initial Limited Partner in respect thereto for all associated costs, expenses and damages of any kind whatsoever.
- (b) Each accepted subscriber for Seed Capital Units will be issued Seed Capital Units on the basis set out in the subscription agreement it has entered into with the Partnership.

### **7.2 Distributions**

Other than in connection with distributions made in connection with Section 10.2:

- (a) Distributable Cash shall be distributed to Partners at such time or times and in respect of such period or periods as shall be determined by the General Partner.
- (b) If the General Partner determines to distribute any Distributable Cash, such Distributable Cash will be distributed as to 0.01% to the General Partner (up to a maximum of \$100 in each Fiscal Year) and as to 99.99% to Limited Partners, pro rata in accordance with each Limited Partner's Sharing Ratio as at the date of such distribution.

### **7.3 Allocation of Net Income and Net Loss**

The net income or net loss of the Partnership, respectively, in respect of any Fiscal Year shall be determined by the General Partner in accordance with Canadian generally accepted accounting principles applied on a consistent basis from year to year to the extent possible, and shall be allocated in the same manner as Taxable Income and Tax Loss is allocated in Section 7.4.

### **7.4 Allocation of Taxable Income and Tax Loss**

- (a) To the extent that Distributable Cash was paid or made payable to a person who was a Limited Partner in a Fiscal Year pursuant to Section 7.2 who is not a Limited Partner at the end of such Fiscal Year, Taxable Income for such Fiscal Year in an amount equal to the amount of Distributable Cash paid or made payable to such Limited Partner in such Fiscal Year shall be allocated to such former Limited Partner.
- (b) To the extent that Distributable Cash was paid or made payable to the General Partner and/or the Limited Partners in a Fiscal Year pursuant to Section 7.2, Taxable Income for such Fiscal Year shall be allocated to each such person in an amount up to the amount of the Distributable Cash paid or made payable to such person in such Fiscal Year. To the extent that Taxable Income in a Fiscal Year is less than the aggregate amount of Distributable Cash paid or made payable in such Fiscal Year pursuant to Section 7.2 each Partner shall be allocated the same proportion of Taxable Income as the proportion of Distributable Cash paid or made payable to such Partner in such Fiscal Year.
- (c) Taxable Income for any Fiscal Year (other than Taxable Income allocated in accordance with subsections 7.4(a) or 7.4(b)) shall be allocated: (i) as to 99.99%, to the Limited Partners pro rata in accordance with each Limited Partner's Sharing Ratio as at the end of such Fiscal Year; and as to 0.01%, to the General Partner.
- (d) Tax Loss for any Fiscal Year shall be allocated entirely to the Limited Partners pro rata in accordance with each Limited Partner's Sharing Ratio as at the end of the Fiscal Year.
- (e) Notwithstanding any other provision of this Agreement, the General Partner may allocate Taxable Income or Tax Loss to Partners in a Fiscal Year in such a manner as is reasonable, in the sole opinion of the General Partner, so as to account for:

- (i) Seed Capital Units which are transferred or redeemed during the Fiscal Year;
- (ii) the timing of receipt of income or loss or the realization of any gain or loss by the Partnership during any Fiscal Year;
- (iii) any distributions made in any Fiscal Year; and
- (iv) any allocations of Taxable Income or Tax Loss in any previous Fiscal Year.

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

### **7.5 No Interest Payable**

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

### **7.6 Repayment of Excess Distribution**

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

### **7.7 Limitations Prescribed by Statute**

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

### **7.8 Return of Contributed Capital**

A Limited Partner shall not be entitled to demand a withdrawal or receive a return of its Contributed Capital, and shall only be entitled to compensation upon the winding-up and dissolution of the Partnership as provided in Article 10.

## **ARTICLE 8 ACCOUNTING AND REPORTING**

### **8.1 Books and Records**

The General Partner will keep or cause to be kept on behalf of the Partnership books and records reflecting the assets, liabilities, income and expenditures of the Partnership and the Register



listing all Limited Partners and the Seed Capital Units. Such books, records and Register will be kept available for inspection (to the extent permitted by applicable law) by any Limited Partner or its duly authorized representative (at the expense of such Limited Partner) during business hours at the offices of the General Partner.

## **8.2 Financial and Income Tax Information**

The General Partner shall be responsible for the preparation of annual unaudited financial statements of the Partnership as at the end of each Fiscal Year of the Partnership. The General Partner shall distribute a copy of such annual unaudited financial statements to each Limited Partner within 120 days after the end of each Fiscal Year. The General Partner shall provide each Limited Partner with annual income tax information for each Fiscal Year by March 31 of the following year to assist in declaring his or its share of Taxable Income or Tax Loss; provided, however, that each Limited Partner shall be solely responsible for filing all income tax returns and reporting its share of Taxable Income or Tax Loss.

## **8.3 Other Information**

The General Partner shall provide to the Limited Partners such additional financial and other information as may be required from time to time under applicable legislation or as the General Partner may from time to time deem appropriate.

# **ARTICLE 9 MEETINGS**

## **9.1 Meetings**

Meetings of the Limited Partners may be called at any time by the General Partner and shall be called by the General Partner upon the written request of one or more Limited Partners holding in the aggregate not less than 80% of the Seed Capital Units. Where a meeting is called by Limited Partners as aforesaid, the General Partner will, within 30 days of such written request, convene the meeting, failing which the requisitioning Limited Partners may convene such meeting by giving notice to the Limited Partners in accordance with this Agreement signed by such person as the requisitioning Limited Partners specify. Every meeting, however convened, will be conducted in accordance with this Agreement.

## **9.2 Place of Meeting**

Every meeting will be held in City of Saskatoon, in the Province of Saskatchewan or where the General Partner reasonably determines otherwise.

## **9.3 Notice of Meeting**

Notice of any meeting of Limited Partners shall be given to each Limited Partner at such Limited Partner's address shown in the Register and to the General Partner provided that a meeting of Limited Partners may be held without notice if all Limited Partners and the General Partner are present or if all those to whom notice of such meeting should have been sent and who are absent waive notice before or after the meeting. Notice of any meeting will be given by the General

Partner to each Limited Partner by prepaid registered mail or by personal delivery, not less than 10 days and not more than 50 days prior to such meeting, and shall state:

- (a) the time, date and place of such meeting; and
- (b) in reasonable detail, the nature of all business to be transacted at the meeting.

It shall not be necessary to send to each Limited Partner a copy of any document to be ratified, confirmed or approved if such document is made available for inspection through the General Partner. Notice for adjourned meetings shall be given not less than 5 days in advance and shall otherwise comply with the provisions for notice contained in this Section 9.3 except that it need not specify the nature of the business to be transacted.

#### **9.4 Record Date**

For the purpose of determining the Limited Partners who are entitled to vote at any meeting of Limited Partners or any adjournment thereof, the General Partner may from time to time cause the transfer books to be closed for such period, not exceeding 50 days, as the General Partner may determine; or, without causing the transfer books to be closed, the General Partner may fix a date not more than 50 days prior to the date of any meeting of Limited Partners as a record date for the determination of Limited Partners entitled to vote at such meeting or any adjournment thereof and any Limited Partner who was a Limited Partner at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof even though he or it has since that date disposed of its Seed Capital Units, and no Limited Partner becoming such after that date shall be a Limited Partner of record for purposes of such action.

#### **9.5 Accidental Omissions**

Accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Limited Partner will not invalidate the proceedings at the meeting.

#### **9.6 Proxies**

Any Limited Partner entitled to vote at a meeting may vote by proxy if a valid proxy has been received by the General Partner or the chairman of the meeting for verification prior to the meeting.

#### **9.7 Validity of Proxies**

A proxy purporting to be executed by or on behalf of a Limited Partner will be considered to be valid unless challenged at the time of or prior to its exercise, and the person challenging will 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.

#### **9.8 Form of Proxy**

Every proxy will 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, <\*>, of <\*>, in the Province of <\*>, being a Limited Partner of Farmers’ Limited Partnership, 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 Limited Partners to be held on the <\*> day of <\*>, 20<\*> and every adjournment thereof and every poll that may take place in consequence thereof. As witness my hand this <\*> day of <\*>, 20<\*>.”

### **9.9 Notice of Revocation of Proxy**

A vote cast in accordance with the terms of a proxy shall be valid notwithstanding the previous death or mental incapacity of the Limited Partner or revocation of the proxy or transfer of the Seed Capital Unit in respect of which the proxy was given, provided that no notice in writing of such death, mental incapacity, revocation or transfer shall have been received by the General Partner prior to the commencement of the meeting in respect of which such proxy has been given.

### **9.10 Non-Individual Limited Partners**

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

### **9.11 Attendance of Others**

Representatives of the General Partner and of the Accountant will be entitled to attend and receive notice of any meeting of Limited Partners. The General Partner has the right to authorize the presence of any person at a meeting regardless of whether the person is a Limited Partner. With the approval of the General Partner, that person is entitled to address the meeting.

### **9.12 Chairman**

The General Partner may nominate an individual (who need not be a Limited Partner) to be chairman of a meeting of Limited Partners and the person nominated by the General Partner will be chairman of such meeting. If the General Partner fails to make such a nomination, the Limited Partners may elect a chairman by Ordinary Resolution.

### **9.13 Additional Rules and Procedures**

To the extent that the rules and procedures for the conduct of a meeting of the Limited Partners are not prescribed in this Agreement, the rules and procedures will be determined by the chairman of the meeting.

### **9.14 Minutes**

The General Partner shall cause minutes of all Ordinary Resolutions and Special Resolutions and proceedings of every meeting of Limited Partners to be made and recorded. Minutes when signed by the chairman of the meeting, shall be prima facie evidence of the matters therein stated. Until the contrary is proved, every meeting in respect of which minutes have been made shall be taken to have been duly held and convened and all Ordinary Resolutions and Special Resolutions passed or proceedings taken as referred to in the minutes shall be deemed to have been duly passed and taken in accordance with this Agreement.

### **9.15 Quorum**

A quorum at any meeting of Limited Partners will consist of two or more persons present in person who collectively hold or represent by proxy not less than 60% of the outstanding Seed Capital Units. 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:

- (a) if called by or on the requisition of the Limited Partners, will be terminated; and
- (b) if called by the General Partner, will be held at the same day and time in the following week, and the same place. At such reconvened meeting the quorum for the meeting will consist of such Limited Partners present in person or represented by proxy, notwithstanding that they may not hold or represent by proxy 60% of the outstanding Seed Capital Units.

### **9.16 Voting**

Each Limited Partner shall be entitled to one vote for each Seed Capital Unit held. Every question submitted to a meeting:

- (a) which requires a Special Resolution under this Agreement will be decided by a poll; and
- (b) which does not require a Special Resolution will, other than as otherwise provided in this Agreement, be decided by an Ordinary Resolution on a show of hands unless a poll is demanded by a Limited Partner, in which case a poll will be taken.

In the case of an equality of votes, the chairman will not have a casting vote and the resolution will be deemed to be defeated. The chairman of the meeting will be entitled to vote in respect of any Seed Capital Units held by it or for which it may be proxyholder. On any vote at a meeting of Limited Partners, a declaration of the chairman of the meeting concerning the result of the vote will be conclusive.

### **9.17 Poll**

A poll requested or required concerning the election of the chairman of a meeting or an adjournment of a meeting will be taken immediately on request. A poll requested or required concerning any other matter will be taken at the meeting or an adjournment of the meeting in such manner as the chairman of a meeting directs.

### **9.18 Written Resolutions; Resolution Binding**

Any Ordinary Resolution or Special Resolution consented to in writing at any time during the Partnership's existence by the signature of Limited Partners required to constitute an Ordinary Resolution or Special Resolution is as valid and effective as if passed at a meeting of Limited Partners duly called, constituted and held for that purpose. Any resolution passed in accordance with this Agreement will be binding on all the Limited Partners and their respective heirs, executors, administrators, successors and assigns, whether or not any such Limited Partner was present in person or voted against any resolution so passed.

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

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

- (a) the removal of a general partner as provided in Section 4.5;
- (b) approving a settlement of an action against the General Partner as a result of a breach of its duties;
- (c) amending, modifying, altering or repealing any Special Resolution previously passed by the Limited Partners; and
- (d) subject to Section 3.8, consenting to any amendment to this Agreement.

### **9.20 Powers Exercisable by Ordinary Resolution**

Any other matters to be determined by the Limited Partners other than as is otherwise expressly provided for in this Agreement shall be determined by Ordinary Resolution.

## **ARTICLE 10 WINDING-UP AND LIQUIDATION**

### **10.1 Winding-Up of Partnership**

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

- (a) the dissolution of the Partnership by operation of law;
- (b) 90 days following the date of a notice pursuant to Section 4.1 if the Limited Partners have not appointed a successor general partner by Ordinary Resolution prior to the expiration of such 90 day period;
- (c) 90 days following the date of a notice pursuant to Section 4.3 if the Limited Partners have not appointed a new General Partner by Ordinary Resolution prior to the expiration of such 90 day period; and

- (d) upon the determination of the General Partner to wind-up and dissolve the Partnership:
  - (i) due to the Project no longer being feasible or not proceeding or completing (as determined by the General Partner, in its sole discretion); or
  - (ii) for any reason other than as set out in Section 10.1(d)(i).

## **10.2 Distribution upon Winding-Up**

- (a) Subject to Section 10.2(b), Upon the occurrence of the Winding-Up Event, the assets of the Partnership shall be liquidated and the proceeds distributed as follows and in the following order of priority:
  - (i) to pay all expenses incurred in the winding-up of the Partnership;
  - (ii) to pay all of the liabilities of the Partnership in the manner required by law;
  - (iii) to establish such reserves as the General Partner considers necessary for any contingent liabilities;
  - (iv) to distribute any balance then remaining in the manner provided in Section 7.2,
- (b) Notwithstanding Section 10.2(a), if the Winding-Up Event is prompted by the determination set out in Section 10.1(d)(i), the assets of the Partnership shall be liquidated and the proceeds distributed as follows and in the following order of priority:
  - (i) to pay all expenses incurred in the winding-up of the Partnership;
  - (ii) to pay all of the liabilities of the Partnership in the manner required by law;
  - (iii) to establish such reserves as the General Partner considers necessary for any contingent liabilities;
  - (iv) to assist in satisfying the election of each Limited Partner holding Series 1 Seed Capital Units, which shall be requested by the General Partner providing notice to the Limited Partners, to receive compensation for each Series 1 Seed Capital Unit held by him or it of one of the following:
    - (A) a \$600 credit to such Limited Partner's FNA and/or AgraCity account; or

- (B) a free one year extension to such Limited Partner's then current FNA membership; and
- (v) distribute or use any balance then remaining in such manner as the General Partner sees fit.

For clarity, the General Partner, on behalf of the Partnership, shall have no obligation to provide any compensation or refund to the holders of the Seed Capital Units, beyond facilitating the election provided for in Section 10.2(b)(iv) of this Agreement in respect of the Series 1 Seed Capital Units. Notwithstanding the foregoing, the General Partner, on behalf of the Partnership, shall maintain the discretionary right provided for in Section 10.2(b)(v). Series 2 Seed Capital Units carry no right of compensation whatsoever.

Thereafter, provided the Partnership has no liabilities for which a reserve has not been established in accordance with subsection 10.2(a)(iii), the General Partner shall dissolve the Partnership in accordance with the Act. Notwithstanding any other provision herein, the General Partner shall not dissolve the Partnership in the event that to do so would or would reasonably be expected to expose the Limited Partners to liability for any liability of the Partnership.

### **10.3 Events Not Causing Dissolution**

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

## **ARTICLE 11 MISCELLANEOUS**

### **11.1 Notices**

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

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

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

- (d) if to the General Partner:  
318-111 Research Drive

Saskatoon, Saskatchewan  
S7N 3R2

Telecopier No.: (306) 651-0444  
Email: projectn@fna.ca

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

Notices delivered personally shall be deemed given and received upon delivery, those sent by first-class prepaid mail, on the 4th Business Day after posting, and those sent by facsimile transmission or by email, on the day of transmission; provided that during any period of mail disruption, Notices shall be delivered or sent by facsimile transmission or by email. If any such day is not a Business Day or if a Notice is received after ordinary office hours (time of place of receipt), such Notice shall be deemed to have been sent and received on the next Business Day. Any Limited Partner may change its address by giving notice of the change to the General Partner pursuant to this Section 11.1 and the General Partner may change its address by giving notice of it to the Limited Partners. Notices delivered by email shall be valid and effective provided that the sender can reasonably be identified and shall not require an electronic signature or any electronic information that a person creates or adopts in order to sign a document and that is in, attached to or associated with the document.

## **11.2 Further Acts**

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

## **11.3 Binding Effect**

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

## **11.4 Severability**

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



Agreement or part thereof which is held invalid, illegal or unenforceable shall be replaced by a provision or part that meets, as closely as possible, the intent of the provision or part which is held invalid, illegal or unenforceable.

### **11.5 Entire Agreement**

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

### **11.6 Waiver of Partition**

The Limited Partners waive any right of partition or any right to take any other action which otherwise might be available to them for the purpose of severing their relationship with the Partnership or their interest in the assets held by the Partnership from the interest of the other Limited Partners.

### **11.7 Counterparts**

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

### **11.8 Time**

Time shall be of the essence hereof.

### **11.9 Governing Law**

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

### **11.10 Arbitration**

If any dispute or question (the “**Dispute**”) shall arise, during the term of this Agreement or at any time thereafter, between the General Partner and one or more Limited Partners concerning the interpretation of this Agreement or any part thereof, such parties shall attempt in good faith to resolve such Dispute. If such parties have not agreed to a settlement of the Dispute within 30 days from the date on which the Dispute first became known to both such parties, then such

parties agree that the Dispute shall be submitted to arbitration pursuant to the *Arbitrations Act, 1991* (Ontario). Such Dispute shall not be made the subject matter of an action in any court by either or any of such parties unless the dispute has first been submitted to arbitration and finally determined in accordance with the provisions of Schedule “A”. Any such action commenced thereafter shall only be for the purpose of enforcing the decision of the arbitrators and the costs incidental to the action. In any such action the decision of the arbitrator shall be conclusively deemed to determine the rights and liabilities as between the parties to the arbitration in respect of the Dispute.

#### **11.11 Language**

The parties hereto acknowledge and confirm that they have requested that this Agreement as well as all notices and other documents contemplated hereby be drawn up in the English language. *Les parties aux présentes reconnaissent et confirment qu’elles ont convenu que la présente convention ainsi que tous les avis et documents qui s’y rattachent soient rédigés dans la langue anglaise.*

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

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

**SIGNED, SEALED AND DELIVERED**

**FNA FERTILIZER GP INC.**

By: \_\_\_\_\_

Name: James Mann

Title: President

I have authority to bind the Corporation

**FNA FERTILIZER GP INC.**, on behalf of the  
Limited Partners of **FNA FERTILIZER  
LIMITED PARTNERSHIP**,

By: \_\_\_\_\_

Name: Jason Mann

Title: Vice-President

I have authority to bind the Corporation

**SCHEDULE “A”**  
**ARBITRATION PROVISIONS**

1. As used in this Schedule, the term “**Arbitrators**” means the Sole Arbitrator appointed pursuant to Section 3 of this Schedule or the Arbitration Board appointed pursuant to Section 4 of this Schedule, as the case may be.
2. Where any Dispute, which, pursuant to Section 11.10 of the Agreement, is to be settled by arbitration (the “**Matter**”), the provisions of this Schedule shall govern the arbitration of the Matter exclusively and shall constitute a submission for the purposes of the *Arbitrations Act, 1991* (Ontario).
3. Arbitration shall be commenced by either: (a) the General Partner; or (b) one or more Limited Partners (acting together in the case of more than one Limited Partner) (the “**Complainant**”) delivering a written complaint (the “**Complaint**”) to the other party or parties, as the case may be (the “**Respondent**”), describing the Matter and appointing an arbitrator. Within ten days of the receipt of the Complaint, the Respondent may, by notice to the Complainant, concur in the appointment of that arbitrator or may appoint an additional arbitrator, and failing the delivery of such notice by the Respondent, the Respondent shall be deemed to have concurred in the appointment of the arbitrator appointed by the Complainant and such arbitrator shall determine the Matter acting alone (the “**Sole Arbitrator**”).
4. If the Respondent appoints an additional arbitrator pursuant to Section 3 of this Schedule, then, within ten days of the appointment of such additional arbitrator, the arbitrators so appointed shall agree on the appointment of an additional arbitrator as chairperson (the “**Chairperson**”), and they shall forthwith notify the Complainant and the Respondent of such appointment, failing which the Chairperson may be appointed by a judge of the Ontario Superior Court of Justice on the application of either the Complainant or the Respondent. Upon such appointment of the Chairperson, the Chairperson and the other arbitrators previously appointed shall constitute an arbitration board (the “**Arbitration Board**”).
5. Any decision of the Arbitrator(s) made with respect to the Matter or with respect to any aspect of, or any matter related to, an arbitration hereunder (including, the procedures of the arbitration) shall be made by either the Sole Arbitrator or by the majority of the Arbitration Board (or in default of agreement by such majority, then by the Chairperson), as the case may be. All decisions of the Arbitrator(s) with respect to the Matter shall be rendered in writing and shall contain a brief recital of the facts upon which the decision is made and the reasons therefor.
6. The following shall apply to the arbitration of any Matter:
  - (a) within ten days of the appointment of the Arbitrator(s), the Complainant shall deliver to the Respondent and the Arbitrator(s) a written statement (the “**Claim**”)

concerning the Matter setting forth, with particularity, its position with respect to the Matter and the material facts upon which it intends to rely;

- (b) within ten days after the delivery of the Claim, the Respondent shall deliver to the Complainant and the Arbitrator(s) a written response (the “**Answer**”) to the Complainant setting forth, with particularity, its position on the Matter and the material facts upon which it intends to rely;
- (c) if the Respondent fails to deliver an Answer within the time limit referred to in (b) above, the Respondent shall be deemed to have admitted the Claim;
- (d) within ten days after the delivery of the Answer, the Complainant may deliver to the Respondent and the Arbitrator(s) a written reply (the “**Reply**”) to the Answer setting forth, with particularity, its response, if any, to the Answer;
- (e) within the time provided for the delivery of the Answer to the Claim, the Respondent may also deliver to the Complainant and the Arbitrators a counter-complaint (the “**Counter-Complaint**”) setting forth, with particularity, any additional Matter for the Arbitrator(s) to decide. Within ten days of the delivery of a Counter-Complaint, the Complainant shall deliver to the Respondent and the Arbitrator(s) an Answer to such Counter-Complaint. If the Complainant fails to deliver an answer to the Counter-Complaint within such 10 day period the Complainant will be deemed to have admitted the Counter-Complaint. Within ten days after the delivery of an Answer to the Counter-Complaint, the Respondent may deliver to the Complainant and the Arbitrator(s) a Reply to such Answer. Any Matter submitted to arbitration in accordance with this subsection (e) shall be governed by, and dealt with as if it were the subject of a Complaint in accordance with this Schedule, except that it shall be deemed a submission to the Arbitrator(s) already appointed, and shall be determined by the Arbitrator(s) accordingly;
- (f) the time limits set for the delivery of the documents referred to in subsections (a) to (e) inclusive of this Section 6 may be extended by the Arbitrator(s) for such period and for such reasons as he, she or they in their discretion may determine upon application made to him, her or them by either the Complainant or the Respondent, as the case may be, on notice to the other, either before the expiry of the time limit in issue or within two days thereafter and, in the event that the other wishes to oppose the application, it or they shall be given an opportunity to make submissions on the application;
- (g) upon completion of the foregoing steps in this Section 6 or upon the expiry of the time limit provided therefor if a step provided for in this Section is not taken by such time, either the Complainant or the Respondent may make application to the Arbitrator(s) to convene a preliminary hearing for determination of the following:
  - (i) appointing the time, date and place in Ontario for the hearing (the “**Hearing**”) of the Matter;

- (ii) arranging for the production of documents pertaining to the Matter as between the Complainant and the Respondent;
  - (iii) arranging for the delivery of and answers to written interrogatories pertaining to the Matter as between the Complainant and the Respondent; and
  - (iv) prescribing such additional rules and procedures considered by the Arbitrator(s) to be necessary or desirable for the conduct of the arbitration (including compulsion of witnesses and discovery under oath);
- (h) the Arbitrator(s) shall at the time and place appointed by the Arbitrator(s) pursuant to subsection (g) of this Section 6 or as he, she or they may subsequently direct, convene the Hearing and shall, after the Hearing, determine the Matter or Matters submitted to him, her or them and make his, her or their award.
7. Every claim or award of the Arbitrator(s) made pursuant hereto shall be final and binding upon the Complainant and the Respondent and there shall be no appeal therefrom. The Arbitrator(s) shall have jurisdiction to award the costs of the arbitration, including the fees of the Arbitrator(s), as between the Complainant and the Respondent, and to direct the payment of interest in respect of any award at such rates and from and to such dates as are determined by the Arbitrator(s) to be appropriate.
8. Each of the Arbitrators shall be paid their normal professional fees for their time and attendances in dealing with the Matter, which fees, unless otherwise directed by the Arbitrator(s) in accordance with Section 7 of this Schedule, shall be paid equally by the Complainant and the Respondent.
9. All notices and all other documents required or permitted by this Schedule to be given by the Complainant or the Respondent to each other shall be given in accordance with paragraph 11.1 of the Agreement. All notices and all other documents required or permitted by this Schedule to be given by the Complainant or the Respondent to the Arbitrator(s) shall be given in accordance with the Arbitrators' instructions.