

Micheline Nadeau Fairbank, Bar No. 226038  
**FENNEMORE CRAIG P.C.**  
 7800 Rancharrah Parkway  
 Reno, NV 89511  
 Tele: (775) 788-2200 / Fax: (775) 786-1177  
 Email: mfairbank@fennemorelaw.com

Daniel M. Reilly, CSB# 11468 (*pro hac vice*)  
 John M. McHugh, CSB# 55329 (*pro hac vice*)  
 Amy L. Jones, CSB# 11468 (*pro hac vice*)  
**FENNEMORE CRAIG P.C.**  
 3615 Delgany Street, Suite 1100  
 Denver, CO 80216  
 Tele: (303) 291-3200 / Fax: (303) 291-3201  
 Email: dreilly@fennemorelaw.com  
 jmchugh@fennemorelaw.com  
 ajones@fennemorelaw.com

Daniel Rapaport, Bar No. 67217  
 Kurt A. Franklin, Bar No. 172715  
 Thiele R. Dunaway, Bar No. 130953  
**FENNEMORE WENDEL**  
 1111 Broadway, 24th Floor  
 Oakland, CA 94607  
 Tel: (510) 834-6600 / Fax: (510) 834-1928  
 Email: drapaport@fennemorelaw.com  
 kfranklin@fennemorelaw.com  
 rdunaway@fennemorelaw.com

Attorneys for Defendants  
 KENNETH W. MATTSON; KS MATTSON  
 PARTNERS, LP; SPECIALTY PROPERTIES  
 PARTNERS, LP

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

**RICHARD ALLEN CLARIDGE**,  
 individual and trustee of the Joint Revocable  
 Trust of Richard Allen Claridge Jr. & Capri  
 Lynn Winsor;  
**CAPRI LYNN WINSER**; individual and  
 trustee of the Joint Revocable Trust of  
 Richard Allen Claridge Jr. & Capri Lynn  
 Winsor;  
**TODD MICHERO**, an individual;  
**LORI MICHERO**, an individual;  
**SCOTT A. WALKER**, individual and  
 trustee of The Walker Family Living Trust;  
 and **ELIZABETH L. WALKER**, individual  
 and trustee of The Walker Family Living

Case No. 4:24-cv-04093-JST

**MATTSON DEFENDANTS' MOTION TO  
 DISMISS FOR FAILURE TO STATE A  
 CLAIM**  
 (Fed. R. Civ. P. 12(6))

Date: January 16, 2025  
 Time: 2:00 p.m.  
 Courtroom: Courtroom 6 – 2<sup>nd</sup> Floor  
 1301 Clay Street  
 Oakland, California

1 Trust, on behalf of themselves and all others  
2 similarly situated,

3 Plaintiffs,

4 v.

5 **TIMOTHY J. LEFEVER**, an individual;  
6 **KENNETH W. MATTSON**, an individual;  
7 **KS MATTSON PARTNERS, LP**, a limited  
8 partnership;  
9 **SPECIALTY PROPERTIES PARTNERS,**  
10 **LP**, a limited partnership,

11 Defendants.  
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Judge: Hon. Jon S. Tigar

Motion filed: November 12, 2024

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**Notice of Motion and Motion to Dismiss****TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

NOTICE IS HEREBY GIVEN that on January 16, 2025, at 2 p.m. in Courtroom 6 of the above-identified Court, located at 1301 Clay Street, Oakland, California, defendants KENNETH W. MATTSON (“**Mattson**”), KS MATTSON PARTNERS, LP (“**KS Mattson**”) and SPECIALTY PROPERTIES PARTNERS, LP (collectively the “**Mattson Defendants**”) will and hereby do respectfully move to dismiss the Complaint filed against Mattson and KS Mattson by Plaintiff RICHARD ALLEN CLARIDGE, CAPRI LYNN WINSER, TODD MICHERO, SCOTT A. WALKER, AND ELIZABETH L. WALKER (“**Plaintiffs**”). This Motion is made pursuant to Fed. Rul. Civ. P. 12(b)(6).

Dated: November 12, 2024

FENNEMORE WENDEL

s/ John M. McHugh

Daniel Rapaport  
Kurt A. Franklin  
Thiele R. Dunaway

FENNEMORE CRAIG, P.C.

Micheline N. Fairbank  
Daniel M. Reilly, pro hoc vice  
John M. McHugh, pro hoc vice  
Amy L. Jones, pro hoc vice

Attorneys for Defendants  
KENNETH W. MATTSON; KS  
MATTSON PARTNERS, LP;  
SPECIALTY PROPERTIES PARTNERS, LP

**Memorandum of Points and Authority**

**INTRODUCTION**

Each of Plaintiffs' ten claims for relief against the Mattson Defendants fails for a multitude of reasons. *First* and foremost, Plaintiffs lack standing. Although Plaintiffs contend they represent a class of "[a]ll persons who made one or more investments" over an at-least 24-year period in over 110 different LPs or LLCs, Plaintiffs failed to plead that they made investments in, let alone suffered any injury from, approximately 90 of those investment entities. Similarly, because Plaintiffs do not allege they were 65 years-old and residents of California at the time the financial abuse occurred, Plaintiffs do not have any standing to bring any of their identified California statutory claims.

*Second*, Plaintiffs failed to join necessary parties. Plaintiffs' ninth claim for relief seeks the appointment of a receiver and provision of an accounting. Any such exercise cannot be completed without the partnerships being named parties because it is the partnership (and not the partners) that own the partnership assets. And although these third party partnerships are necessary parties, they cannot be joined because most of them are in bankruptcy and any of them would destroy complete diversity.

*Third*, Plaintiffs fail to state any claim for relief against the Mattson Defendants under Rules 9(b) and 12(b)(6). Plaintiffs engage in improper group pleading by failing to identify which Defendant made which alleged misrepresentation or committed the purported wrongful act. Since each claim for relief is asserted against all Defendants (with the exception of aiding and abetting fraud) without identifying what role the Mattson Defendants played in the specifically alleged harm, the Mattson Defendants have insufficient notice of the grounds on which the claims are being brought against them. Plaintiffs also fail to satisfy the heightened pleading requirement under Rule 9(b) because they do not provide any details regarding who made the alleged misrepresentations, or when, where or how they were made. Moreover, the Complaint fatally fails to allege crucial elements for each claim for relief under 12(b)(6). Accordingly, the Mattson Defendants submit this

1 Motion to Dismiss for Failure to State a Claim.<sup>1</sup>

2 **STANDARD OF REVIEW**

3 **I. FEDERAL RULE OF CIVIL PROCEDURE 9(b)**

4 A complaint alleging fraud must satisfy the particularity requirement of Fed.R.Civ.P. 9(b).  
 5 Allegations of fraud must be pled with specificity so that each defendant is “notified of the  
 6 circumstances surrounding the fraudulent conduct with which it individually has been charged.”  
 7 *McFarland v. Memorex Corp.* (N.D. Cal. 1980) 493 F.Supp. 631, 639. To satisfy that higher  
 8 burden, “[a]llegations of fraud must be accompanied by ‘the who, what, when, where, and how’ of  
 9 the misconduct charged.” *Ovation Toys Co., Ltd. v. Only Hearts Club* (9th Cir. 2017) 675 Fed.  
 10 Appx. 721, 724.

11 **II. FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

12 To survive a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to  
 13 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly* (2007) 550 U.S. 544, 570 . A claim  
 14 is facially plausible when a plaintiff pleads “factual content that allows the court to draw the  
 15 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*  
 16 (2009) 556 U.S. 662, 678 [129 S.Ct. 1937, 1949, 173 L.Ed.2d 868] . A dismissal under Rule  
 17 12(b)(6) “may be based on either the lack of a cognizable legal theory or on the absence of sufficient  
 18 facts alleged under a cognizable legal theory.” *United Energy Trading, LLC v. Pacific Gas &*  
 19 *Electric Co.* (N.D. Cal. 2015) 146 F.Supp.3d 1122, 1133 (internal quotations omitted). While a  
 20 court is required to accept factual allegations in the complaint as true and construe the pleadings in  
 21 the light most favorable to the nonmoving party, it is not required to accept as true “allegations that  
 22 are merely conclusory, unwarranted deductions of fact, or unreasonable inferences[.]” *In re Gilead*  
 23 *Sciences Securities Litigation* (9th Cir. 2008) 536 F.3d 1049, 1055.

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 28 <sup>1</sup> The vast majority, if not all, of Plaintiffs’ claims are subject to arbitration provisions contained  
 in the parties’ operating agreements. If any of Plaintiffs’ claims survive this Motion, the Mattson  
 Defendants reserve the right to move to compel arbitration.

## DISCUSSION

### **I. DISMISSAL IS REQUIRED BECAUSE PLAINTIFFS HAVE FAILED TO JOIN INDISPENSABLE PARTIES.**

#### **A. The Absent Entity Parties are necessary to the action.**

1. *The Absent Entities are necessary parties to Plaintiffs' claims for a receivership and constructive trust.*

“[A]ll persons interested in the object of a suit, and whose rights will be directly affected by the decree, must be made parties to the suit.” *McArthur v. Scott*, 113 U.S. 340, 391–92 (1885). A party is necessary if that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may: (i) as a practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.” Fed. R. Civ. P. 19(a)(1)(B).

Plaintiffs’ Ninth Claim for Relief seeks the appointment of a receiver and provision of an accounting. ECF 73 ¶¶ 243-244. Specifically, Plaintiffs seek the “appointment of a receiver to take charge of and maintain the[] properties and assets, and to provide an accounting . . . .” *Id.* ¶ 244. As detailed in the Amended Complaint, Plaintiffs’ allegations are that they are limited partners or members in the following non-party entities: Golden Tree LP, Treehouse Investments LP; Windtree LP; Folsom Village Partners; Valley Oak Investments LP; Perris Freeway Plaza LP; Buckeye Tree LP; Beach Pine LP; River Tree Partners LP; Butcher Road Partners; Firetree 1 LP; Watertree 1 LP; Ringmasters Square, LLC; Fulton Square; Comstock Building Partners, LLC; and Greenhaven Partners. (“Absent Entities”). *See* ECF 73 ¶¶ 139-143, 150-154, 163-170.

Plaintiffs cannot be afforded the relief they seek under their Ninth Claim for Relief without the Absent Entities because, under California law, the Absent Entities—and not the Plaintiffs—are the owners of the property Plaintiffs would like the receiver to take “charge of and maintain.” *Everest Investors 8 v. McNeil Partners* (2003) 114 Cal.App.4th 411, 424 [8 Cal.Rptr.3d 31, 40] (describing a partnership “is an entity separate and apart from the partners of which it is comprised, and it is the partnership entity which owns its assets, not the partners”) (citing *Evans v. Galardi* (1976) 16 Cal.3d 300, 307 [128 Cal.Rptr. 25, 546 P.2d 313]). In fact, more generally, where

ownership is in dispute—such as where a party seeks damages from its interest in a partnership—any party with ownership interest, including the Absent Entities, are necessary parties. *Id.*; *see also Gonzalez v. Anderson* (D. Mont. 1984) 575 F.Supp. 1498, 1500 (“In a suit to establish title to property, all co-owners are indispensable parties.”). It is difficult to see how Plaintiffs can seek an accounting of the partnership assets without the partnerships being party to this litigation. Any order by the Court setting forth the partnership assets of the Absent Entities cannot bind the Absent Entities where they are not parties and could violate the bankruptcy stay.

Similarly, Plaintiffs’ Fourth Claim for Relief seeks to impose a “constructive trust for the benefit of the investors” and requests the Court to “order the distribution of the ownership interests” to Plaintiffs and to “enjoin Defendants from selling and/or transferring ownership interests in these entities to any other person or entity.” ECF 73 ¶ 209. Plaintiffs cannot seek this relief without the Absent Entities because, for the reasons explained above, the partnerships possess an enforceable interest in the subject matter of the dispute. *Wright v. Incline Village General Imp. Dist.* (D. Nev. 2009) 597 F.Supp.2d 1191, 1206; *see also Iconlab Inc. v. Bausch Health Companies Inc.* (C.D. Cal., May 15, 2019, No. 816CV01321JLSKES) 2019 WL 12521292, at \*4, *aff’d* (9th Cir. 2020) 828 Fed.Appx. 363 (declaration action seeking determination of ownership required joinder of all parties with interest in property).

2. *The Absent Entities are necessary parties for all of Plaintiffs’ derivative claims.*

“It is well established that an entity on whose behalf a derivative claim is asserted is a necessary defendant in the derivative action.” *Buckley v. Control Data Corp.* (8th Cir. 1991) 923 F.2d 96, 98 (citing 3B *Moore’s Fed. Prac.*, ¶ 23.1.21[1] at 23.1-100 (1987) (the corporation, in a derivative suit, “must be made a defendant, since it is indispensable”). “Under California law, the principles governing derivative actions in the context of corporations apply to limited liability company and limited partnerships.” *JAE Properties, Inc. v. AMTAX Holdings 2001-XX, LLC* (S.D. Cal., Feb. 9, 2024, No. 3:19-CV-02075-JAH-DDL) 2024 WL 538570, at \*6 (cleaned up, quoting *Schrage v. Schrage* (2021) 69 Cal.App.5th 126, 150 [284 Cal.Rptr.3d 279, 299]). And, “[i]t is well settled that the only direct lawsuit against general partners that a limited partner can bring in an

individual, non-representative capacity consists of an action for an accounting.” *Lenz v. Associated Inns and Restaurants Co. of America* (S.D.N.Y. 1993) 833 F.Supp. 362, 379 (collecting cases).

Here, Plaintiffs assert two derivative claims: breach of fiduciary duty and conversion. ECF 73 ¶¶ 195-204. The former asserts claims based on “Defendants’ failure to fulfill their duties as General Partners, and otherwise, with respect to responsible management and care of investor funds.” ECF 73 ¶ 197 (emphasis added). Where, as here, a limited partner brings a claim for breach of fiduciary duty for harm to the partnership, the action is derivative. *Wallner v. Parry Professional Bldg., Ltd.* (1994) 22 Cal.App.4th 1446, 1449 [27 Cal.Rptr.2d 834]; *Mieuli v. DeBartolo* (N.D. Cal., May 7, 2001, No. C-00-3225 JCS) 2001 WL 777091, at \*10-11 (claim for breach of fiduciary duty against general partner is a derivative claim). Similarly, Plaintiffs’ claim for conversion is derivative because it seeks a remedy based on “diverting, spending ... and otherwise misusing” money invested into the partnership. ECF 73 ¶¶ 200, 202. Money invested into the partnership is a partnership asset – not the assets of the partners. *Everest Inv.* 8, 114 Cal.App.4th at 424.

3. *Joinder is not feasible under Rule 19(b) because adding the partnerships to this suit would destroy diversity jurisdiction.*

Rule 19(a)(1)(B) sets forth three circumstances in which joinder is not feasible: (1) when venue is improper; (2) when the necessary absent party is not subject to personal jurisdiction; and (3) when joinder would destroy subject matter jurisdiction. Fed. R. Civ. P. 19(a). Here, each of the Absent Entity Parties is an limited partnership or limited liability company. As such, each is the citizen of the state in which each of its partners or members is located. *Lindley Countours, LLC*, 414 F3d. App’x 64. Any of these entities, if joined, would destroy any alleged complete diversity since they are residents of each state in which a partner or member resides. Therefore, joinder of these parties is not feasible.

**B. Given the conflict of interest facially asserted in the complaint, equity and good conscience require dismissal rather than proceeding without the Absent Entities.**

If a required party under Rule 19(a) cannot be joined as a party, the court must look to the factors outlined in Rule 19(b) to determine whether, “in equity and good conscience, the action should proceed among the existing parties or should be dismissed.” Fed.R.Civ.P. 19(b). Rule 19(b)



1 provides four factors that we must consider in making this determination: (1) the extent to which a  
 2 judgment rendered in the person's absence might prejudice that person or the existing parties; (2)  
 3 the extent to which any prejudice could be lessened or avoided by shaping the judgment or the  
 4 relief; (3) whether a judgment rendered in the person's absence would be adequate; and (4) whether  
 5 the plaintiff would have an adequate remedy if the action were dismissed. *Id.*

6 Here, equity and good conscience require the participation of the Absent Entities in this  
 7 matter (which can be achieved in state court), because of the Absent Entities, as owners of the  
 8 partnership assets, would be bound by any judgment of this Court. This is problematic because the  
 9 Absent Entities' interests are not currently represented in this matter seeking distribution of their  
 10 property. In fact, it would be a violation of the bankruptcy stay if many of the Absent Entities were  
 11 forced defend their positions.

12 Further, the non-named Plaintiffs would be prejudiced by this action proceeding without  
 13 the Absent Entities because the Absent Entities are the only persons capable of representing all the  
 14 investors' combined interest and not just the named Plaintiffs. For example, Plaintiffs look to  
 15 litigation between some of the Defendants as a basis to claim there is a dispute concerning who  
 16 owns partnership interests in various entities. *E.g.*, ECF No. 73 ¶¶ 96-100. The details of that  
 17 dispute raise a significant conflict of interest. Specifically, Plaintiffs allege that Mattson, KS  
 18 Mattson, and LeFever Mattson sold more than 100% total interest in value of Divi Divi Tree, LP  
 19 to investors. ECF No. 73 ¶ 103. Four of the seven named Plaintiffs allege that they hold ownership  
 20 interest in Divi Divi even though they are not listed as "investors of record." ECF No. 73 ¶¶ 150,  
 21 154-156 (Michero Plaintiffs); 166, 170-171 (Walker Plaintiffs). There is a clear conflict between  
 22 those named Plaintiffs and the "investors of record"—the former of which want to have their  
 23 investment in Divi Divi validated while the latter would want to protect their ownership stake in  
 24 Divi Divi against the named Plaintiffs. This is particularly true in light of the allegation that "more  
 25 than 100%" of the interests were sold. ECF No. 73 ¶ 103. Since the interests of investors and  
 26 claimed investors diverge, none of the claimed members of any Absent Entity can adequately  
 27 represent the interest of all such members. The only parties in a position to do so would be the  
 28 Absent Entities whose only interest would be to ensure that all valid investors would be recognized.



Equity and good conscience, therefore, require the Absent Entities' participation. Plaintiffs will have an adequate remedy available to them in state court after the bankruptcy proceeding commences where the Absent Entities can be joined.

## **II. PLAINTIFFS LACK STANDING TO BRING ASSERTED CLAIMS.<sup>2</sup>**

To demonstrate standing "named plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent." *Lewis v. Casey* (1996) 518 U.S. 343, 347 [116 S.Ct. 2174, 2178, 135 L.Ed.2d 606] (cleaned up). "Moreover, a least one named plaintiff must have standing with respect to each claim the class representatives seek to bring." *In re Ditropan XL Antitrust Litigation* (N.D. Cal. 2007) 529 F.Supp.2d 1098, 1107 "If none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *NEI Contracting and Engineering, Inc. v. Hanson Aggregates Pacific Southwest, Inc.* (9th Cir. 2019) 926 F.3d 528, 532 (cleaned up, quoting *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)). Standing has three requirements: an (1) injury in fact that is (2) fairly traceable to the challenged conduct of the defendant and (3) that is likely to be redressed by a favorable judicial decision. *Id.* (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) *as revised* (May 24, 2016)).

### **A. Plaintiffs lack standing to pursue claims under Cal Welf., Inst. Code § 15610.30.**

To have standing to bring a claim under the California Financial Elder Abuse statute, a plaintiff must have both been a resident of California and 65 or older when the alleged financial abuse occurred. Cal. Wel. & Inst. Code § 15610.27; *Moran v. Bromma*, 675 F. App'x 641, 646 (9th Cir. 2017). Originally, the Walker Plaintiffs alleged that they were residents of Colorado "at all relevant times," (ECF 1 ¶ 12), but changed that allegation to allege they resided in California until June 2020, (ECF 73 ¶ 15). While they do not allege when they turned 65, they allege that they are "currently" 69 and 68 years old. ECF 73 ¶ 15. Thus, Mrs. Walker does not have standing to bring

<sup>2</sup> As set forth in detail below, Plaintiffs have failed to state a cognizable claim in their Complaint. To the extent that the Court finds that any claims have been stated, the Mattson Defendants will address the issues of class certification at that time.

any claim under the Elder Abuse statute because she could not have been 65 before June 2020. Mr. Walker, similarly, could not have been 65 before June 2020 because he was 68 on July 8, 2024, (ECF 1 ¶ 12), meaning the absolute earliest he could have turned 65 was July 9, 2024 which is after he left California. But even focusing only on the allegations of the Amended Complaint, the earliest Mr. Walker could have turned 65 is October 18, 2019. ECF 73 ¶ 15. Therefore, Plaintiffs must allege Mr. Walker suffered financial abuse between October 18, 2019 and June 2020. They fail to do so. The Amended Complaint does not allege a single investment made by Mr. Walker during that time period, or for that matter, any conduct by the Mattson Defendants directed at Mr. Walker during that time. Indeed, there are no allegations of conduct between “July 2018” (when Mr. Walker was no older than 64) and July 16, 2020 (a month after the Walkers had left California). ECF 73 ¶¶ 159-176. As none of the named Plaintiffs were sixty-five-year-old residents of the state of California, none of them have standing to represent a class under section 15610.30.

**B. Plaintiffs lack standing to pursue claims for investments in which they did not participate.**

Plaintiffs’ Amended Complaint must “include named plaintiffs who have standing to represent the various potential subclasses of plaintiff who may be determined ... to have distinct interest or claims.” *In re Global Cross Sec. Litig.*, 313 F.Supp.2d 189, 205 (S.D.N.Y. 2003) (emphasis added). With respect to class actions concerning investments, this means that a named plaintiff must be included for each type of investment at issue. *See In re Salomon Analyst Level 3 Litig.*, 350 F.Supp.2d 477, 496-497 (S.D.N.Y. 2004) (claims related to an account in which no named plaintiff held an interest and claims related to types of securities in which no named plaintiff had invested dismissed for lack of standing); *Ramos v. Patrician Equities Corp.*, 765 F.Supp. 1196, 1199 (S.D.N.Y. 1991) (no standing to bring claims related to activity unassociated with “the partnerships in which plaintiffs invested”).

Here, Plaintiffs have failed to show standing to bring claims related to investments that no named Plaintiff has invested in. Plaintiffs purport to represent a class of “[a]ll persons who made one or more investments” over an at-least 24-year period in over 110 different LPs or LLCs. ECF 73 at 178 (definition of class), Ex. A (listing of over 110 “Timothy LeFever and Kenneth Mattson

Business Entities”). However, Plaintiffs only identify approximately 17 limited partnerships or LLCs in which Plaintiffs have purchased an interest in. ECF 73 ¶¶ 187-254

At a minimum, the named Plaintiffs cannot meet the first two elements of standing with respect to the entities in which they did not invest. None of the named Plaintiffs suffered any injury in fact from investments or representations concerning investments into these 80+ additional entities. Nor were the named Plaintiffs harmed by any alleged failure to make distributions by any of the additional LPs or LLCs. Similarly, to the extent that the named Plaintiffs have been harmed, it cannot be fairly traceable to Defendants’ conduct with respect to these additional entities. *E.g.*, *In re Salomon Analyst Level 3 Litig.*, 350 F.Supp.2d 477, 497 (S.D.N.Y. 2004); *Ramos v. Patrician Equities Corp.*, 765 F.Supp. 1196, 1199 (S.D.N.Y. 1991) (plaintiffs had no standing to bring claims related to partnerships they did not invest in). The Court, should, therefore, dismiss any claim to the extent it seeks relief related to any purported investment in any entity in which none of the named Plaintiffs invested.

### **III. DISMISSAL IS REQUIRED BECAUSE PLAINTIFFS FAIL TO STATE A CLAIM.**

#### **A. Plaintiffs have failed to adequately allege a claim for fraud.**

In order to assert a claim for fraud, the Plaintiffs must assert: “(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or ‘scienter’); (3) intent to defraud, i.e. to induce reliance; (4) justifiable reliance; and (5) resulting damage.” *Elgindy v. AGA Service Company* (N.D. Cal., Mar. 29, 2021, No. 20-CV-06304-JST) 2021 WL 1176535, at \*14. “Mere conclusory allegations of the statement's falseness are insufficient” to satisfy Rule 9(b)’s particularity requirement. *T&M Solar and Air Conditioning, Inc. v. Lennox International Inc.* (N.D. Cal., June 11, 2015, No. 14-CV-05318-JSC) 2015 WL 3638555, at \*2; Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”). To “qualify as a misrepresentation, the complaint must allege facts sufficient to plausibly establish that the statement was false when made.” *T&M Solar and Air Conditioning, Inc. v. Lennox International Inc.* (N.D. Cal., June 11, 2015, No. 14-CV-05318-JSC) 2015 WL 3638555, at \*2.

Here, Plaintiffs’ allegations in their Complaint are insufficient under the heightened pleading requirements. In their Complaint, Plaintiffs made conclusory allegations concerning misrepresentations made to them about the investments. ECF 37, ¶¶ 3, 40, 188. These assertions are insufficient to satisfy Rule 9(b) because Plaintiffs fail to allege who made these representations, when they were made, where they were made, and how they were intentional misrepresentations. *See generally* ECF 73. The Mattson Defendants are thus left to speculate who made these representations and when and how they were made. *Harrison v. iFit Health & Fitness* (N.D. Cal., May 13, 2022, No. 21-CV-10079-PJH) 2022 WL 1525300, at \*5 (dismissing claim where plaintiff alleged false statements but failed to allege who said it, when, and where). Without differentiating which Defendant made what specific misrepresentation, the Mattson Defendants cannot understand which allegations are made specifically against them and Plaintiffs’ claim for fraud cannot survive a motion to dismiss. *Swartz v. KPMG LLP* (9th Cir. 2007) 476 F.3d 756, 764-65 (“Rule 9(b) does not allow a complaint to merely lump multiple defendants together but requires plaintiffs to differentiate their allegations when suing more than one defendant and inform each defendant separately of the allegations surrounding his alleged participation in the fraud.”) (cleaned up).

The Complaint also fails to properly allege the first element of fraud because there is no allegation that these statements were knowingly false when they were made. *Shuster v. Symmetricon, Inc.* (N.D. Cal., Feb. 25, 1997, No. 94-20024 RMW) 1997 WL 269490, at \*5 (granting motion to dismiss where plaintiff “failed to allege why any statement was false at the time it was made which is also necessary to state a claim”); *T&M Solar and Air Conditioning, Inc. v. Lennox International Inc.* (N.D. Cal., June 11, 2015, No. 14-CV-05318-JSC) 2015 WL 3638555, at \*2 (“Mere conclusory allegations of the statement’s falseness are insufficient.”).

The second and third elements of fraud are similarly improperly pled because there is no averment of scienter. The only allegation that the Mattson Defendants had knowledge of the alleged falsity or the intent to defraud is that: “Defendants intended to deceive Plaintiffs by misrepresenting and/or concealing these facts, and actively continued to fraudulently conceal these facts from Plaintiffs and the Class and the Elder Subclass, throughout the Class Period.” ECF 73, ¶ 191. This conclusory statement is not sufficient to allege scienter. *Kenney v. Deloitte, Haskins & Sells*, No.

1 C 91-0590 BAC, 1992 WL 551108, at \*7 (N.D. Cal. Sept. 2, 1992) (rejecting boilerplate language  
2 related to scienter and describing that, while Rule 9(b) does not require particularity in pleading  
3 mental state, the complaint “still must afford a basis for believing that plaintiffs could prove  
4 scienter.”).

5 As for the fourth element, the only allegation related to reliance is that “investors were made  
6 to rely on LeFever Mattson’s representations as to the value of the properties[.]” ECF 73, ¶ 41.  
7 There is nothing in the Complaint, however, that explains why the investors could not investigate  
8 or determine the value of the properties themselves. *Yazdanpanah v. Sacramento Valley Mortg.*  
9 *Group* (N.D. Cal., Dec. 1, 2009, No. C 09-02024 SBA) 2009 WL 4573381, at \*3 (“When a plaintiff  
10 could have ascertained the truth through the exercise of reasonable diligence,” he cannot establish  
11 reasonable reliance, a prerequisite to an actionable fraud claim.”) (cleaned up).

12 Because Plaintiffs’ bare bones allegations of fraud do not meet the standard of Rule 9(b),  
13 Plaintiffs’ claim for fraud should be dismissed for failure to state a claim.

14 **B. Plaintiffs have failed to adequately allege a claim for breach of fiduciary duty.**

15 The elements for a cause of action for breach of fiduciary duty are: (1) the existence of a  
16 fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.  
17 *MH Pillars Ltd. v. Realini* (N.D. Cal., Mar. 8, 2017, No. 15-CV-1383-PJH) 2017 WL 916414, at  
18 \*4. There must be an adequate showing of each of these elements in order to plead a cause of action  
19 for breach of fiduciary duty. *Id.* “Under California law, a fiduciary relationship arises in one of two  
20 ways. A party may be subject to fiduciary obligations if that party knowingly undertakes to act on  
21 behalf and for the benefit of another, or enters into a relationship which imposes that undertaking  
22 as a matter of law.” *PQ Labs, Inc. v. Yang Qi* (N.D. Cal., June 7, 2012, No. C 12-0450 CW) 2012  
23 WL 2061527, at \*6 (cleaned up).

24 Plaintiffs’ only allegation that the Mattson Defendants owed a fiduciary duty and breached  
25 their fiduciary duty is entirely conclusory. ECF 73, ¶¶ 196-197. Plaintiffs contend that Defendants  
26 owed a fiduciary duty based on “the relationship of trust reposed in Defendants and Defendants’  
27 superior knowledge of the investments at issue.” *Id.*, ¶ 196. There are no facts alleged in the  
28 Complaint that suggest the Mattson Defendants knowingly undertook to act on behalf of Plaintiffs.

1 *Id.* Nor are there any facts that allege the existence of a relationship between the Mattson  
 2 Defendants and Plaintiffs that would impose a fiduciary relationship as a matter of law. *Id.* The  
 3 only relationship identified between Plaintiffs and Mr. Mattson is that he was the former CEO of  
 4 LeFever Mattson and was a signatory on behalf of LeFever Mattson. ECF 73, ¶¶ 116, 138, 139,  
 5 140, 154, 169. KS Mattson is identified as a signatory and limited partner. ECF 73, ¶¶ 138, 140.  
 6 *World Surveillance Group Inc. v. La Jolla Cove Investors, Inc.* (N.D. Cal. 2014) 66 F.Supp.3d  
 7 1233, 1235 (“The obligation to put the interests of the other party first is why a fiduciary  
 8 relationship generally does not arise out of ordinary arms-length business dealings.”). Limited  
 9 partners do not have a fiduciary duty. *Mission West Properties, L.P. v. Republic Properties Corp.*  
 10 (2011) 197 Cal.App.4th 707, 716 [129 Cal.Rptr.3d 14, 21] (“Under section 15903.05, subdivision  
 11 (a), a *limited* partner ‘does not have any fiduciary duty to the limited partnership or to any other  
 12 partner solely by reason of being a limited partner.’”).

13 **C. Plaintiffs have failed to adequately allege a claim for conversion.**

14 In order to properly state a claim for conversion, the Complaint must sufficiently allege  
 15 three elements: (1) ownership or right to possession of property; (2) wrongful disposition of the  
 16 property right of another; and (3) damages. *Don King Productions/Kingvision v. Lovato* (N.D. Cal.  
 17 1995) 911 F.Supp. 419, 423. Plaintiffs’ claim for conversion fails for several reasons.

18 *First*, “[m]oney cannot be the subject of a cause of action for conversion unless there is a  
 19 specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to  
 20 another and fails to make the payment. A generalized claim for money is not actionable as  
 21 conversion.” *Saroya v. University of the Pacific* (N.D. Cal. 2020) 503 F.Supp.3d 986, 999 (quoting  
 22 *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP*, 150 Cal. App. 4th  
 23 384, 395, 58 Cal.Rptr.3d 516 (2007)) (cleaned up). Here, the Complaint merely lists the amount of  
 24 money Plaintiffs invested in each investment. *See e.g.* ECF 73, ¶¶ 138-140. In some places, it  
 25 appears Plaintiffs are not certain how much was invested. *See e.g.* ECF 73 ¶ 171. And the Complaint  
 26 admits that some amount of these investments were returned. *See e.g.* ECF 73, ¶¶ 152, 156.  
 27 Critically, the Complaint does not, however, identify the amounts that have been converted. *See*  
 28 *generally* ECF 73. Plaintiffs simply cannot state a claim for conversion without identifying the



1 funds that were misused. *United Studio of Self Defense, Inc. v. Rinehart* (C.D. Cal., Sept. 9, 2019,  
 2 No. SACV181048DOCDFMX) 2019 WL 6973520, at \*4 (finding insufficient allegation that stated  
 3 that stated the total sums deposited into account but “not the specific funds actually misused”);  
 4 *PCO Inc.*, 150 Cal. App. 4th at 396 (dismissing a conversion claim when only an estimate of the  
 5 funds converted could be provided); *Saroya v. University of the Pacific* (N.D. Cal. 2020) 503  
 6 F.Supp.3d 986 (finding plaintiffs failed to state a claim for conversion where complaint only  
 7 identified an unspecified “prorated portion” of tuition and fees for educational services not  
 8 provided).

9 *Second*, Plaintiffs fail to allege that they were entitled to immediate possession at the time  
 10 of the alleged conversion. *United Energy Trading, LLC v. Pac. Gas & Elec. Co.*, *supra*, 177 F.  
 11 Supp. 3d at 1194; *Qayumi v. Talent Net, Inc.*, No. 21-CV-00323-JD, 2023 WL 218961, at \*1 (N.D.  
 12 Cal. Jan. 17, 2023); *HMBY, LP v. City of Soledad*, No. C12-00107, 2012 WL 1657124, at \*8 (N.D.  
 13 Cal. May 10, 2012) (“the court cannot conclude that [plaintiffs] have stated a claim for conversion”  
 14 where “plaintiffs have not alleged that they were entitled to immediate possession of the prepaid  
 15 sewer impact fees at the time of conversion”).

16 *Third*, Plaintiffs’ claim fails on the basis that, where a defendant originally has lawful  
 17 possession of property, the plaintiffs must allege they demanded return of the property and the  
 18 defendant refused. *Jianhong Zhai v. Ning Liu*, No. CV1607242ABJEMX, 2017 WL 7201871, at  
 19 \*3 (C.D. Cal. May 4, 2017); *see e.g. Minsky v. L.A.*, 11 Cal. 3d 113, 119 n.7, 113 Cal.Rptr. 102,  
 20 107, 520 P.2d 726, 731 (1974) (stating that “demand” is a general substantive requirement in order  
 21 to state a claim for conversion against a defendant who was originally in lawful possession of  
 22 property). Here, Plaintiffs concede that they originally gave Defendants money for various  
 23 investments. *See e.g.* ECF 73, ¶¶ 138-140; 150-156; 163-167. But Plaintiffs do not allege that they  
 24 demanded a return of the money they invested. *See generally id.* Instead, Plaintiffs merely allege  
 25 that LeFever Mattson, Inc. staff informed the Claridge Plaintiffs that their name was not in the  
 26 LeFever Mattson database and that the Michero Plaintiffs “inquire[d]” about their investment. *Id.*,  
 27 ¶¶ 147, 157. Only the Walker Plaintiffs allege that they have asked to withdraw funds, however,  
 28 they do not allege that any Defendant has refused to return the investment. *Id.*, ¶ 125. For these

1 reasons, Plaintiffs fail to state a claim for conversion.

2 **D. Plaintiffs have failed to allege an entitlement to equitable relief.**

3 Plaintiffs have alleged four equitable claims: Constructive Trust; Unjust Enrichment; Unfair  
4 Competition; and Appointment of a Receiver. ECF No. 73 ¶¶ 206-209, 228-244. A party seeking  
5 equitable relief from a federal court must allege that it “lacks an adequate legal remedy.” *Sonner v.*  
6 *Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020); *see also O’Shea v. Littleton*, 414 U.S.  
7 488, 502 (1974) (holding that a complaint seeking equitable relief failed because it did not plead  
8 “the basic requisites of the issuance of equitable relief” including “the inadequacy of remedies at  
9 law”). Such allegations must include facts to show the lack of legal remedy. *E.g.*, *Nacarino v.*  
10 *Chobani, LLC*, 2021 WL 3487117, at \*12 (N.D. Cal. Aug. 9, 2021); *Hanscom v. Reynolds*  
11 *Consumer Prods. LLC*, 2022 WL 591466, \*3 (N.D. Cal. Jan. 21, 2022) (“Plaintiff must plead facts  
12 establishing that the legal remedies ... are inadequate or incomplete.”) (cleaned up); *Roffman v.*  
13 *Rebbl, Inc.*, 653 F.Supp.3d 723, 731 (N.D. Cal. 2023) (“allegations do not establish that the  
14 damages she seeks are necessarily inadequate or incomplete”) (cleaned up); *Amans v. Tesla, Inc.*  
15 (N.D. Cal., July 26, 2022, No. 21-CV-03577-VC) 2022 WL 2952474, at \*1 (plaintiffs must “offer  
16 some explanation as to why their legal remedies are inadequate”). The requirement for sufficient  
17 allegations of an inadequate legal remedy is particularly acute where the equitable claims and legal  
18 claims are “rooted in the same allegations.” *Mish v. TForce Freight Inc.*, 2021 WL 4592124, at \*7  
19 (N.D. Cal. Oct. 6, 2021).

20 Plaintiffs do not allege any facts from which this Court could conclude they lack “an  
21 adequate legal remedy[.]” *Sonner*, 971 F.3d at 844; *see also id.* (“*Sonner* fails to explain how the  
22 same amount of money for the exact same harm is inadequate or incomplete, and nothing in the  
23 record supports that conclusion.”). Instead, Plaintiffs only include conclusory allegations. ECF No.  
24 73 ¶¶ 237 (“Plaintiffs have an inadequate remedy at law ....”), 241 (“Other legal remedies available  
25 to Plaintiffs, the Class, and the Elder Subclass are not adequate ....”). As an initial matter, Plaintiffs  
26 do not include any such allegation with respect to their Constructive Trust or Unjust Enrichment  
27 claims at all. But even if they did, it is well settled that conclusory allegations are insufficient to  
28 withstand a motion to dismiss. *Ove v. Gwinn*, 264 F.3d 817, 821 (9th Cir. 2001); *Ashcroft v. Iqbal*,



1 556 U.S. 662, 681 (2009).

2 1. *The Complaint Failed to State a Constructive Trust Claim Against the*  
 3 *Mattson Defendants.*

4 As a constructive trust is a remedy, it is not a claim for relief in itself. *Malfatti v. Mortg.*  
 5 *Elec. Registrations Sys., Inc.*, No. C 11-03142 WHA, 2011 WL 5975055, at \*3 (N.D. Cal. Nov. 29,  
 6 2011). The cause of action is not based on the establishment of a trust, but consists of the fraud,  
 7 breach of fiduciary duty, or other act that entitles the plaintiff to some relief. *BGJ Assocs., LLC v.*  
 8 *Superior Ct.*, 75 Cal. App. 4th 952, 967, 89 Cal. Rptr. 2d 693, 703 (1999). “A constructive trust  
 9 may only be imposed where the following three conditions are satisfied: (1) the existence of a res  
 10 (property or some interest in property); (2) the right of a complaining party to that res; and (3) some  
 11 wrongful acquisition or detention of the res by another party who is not entitled to it.” *Ismart Int'l*  
 12 *Ltd. v. I-Docsecure, LLC*, No. C-04-03114 RMW, 2005 WL 588607, at \*7 (N.D. Cal. Feb. 14,  
 13 2005) (citing *Communist Party v. 522 Valencia, Inc.*, 35 Cal.App.4th 980, 990, 41 Cal.Rptr.2d 618  
 14 (1995)). Crucially, a constructive trust is unavailable where no other substantive liability exists.  
 15 *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, 1023 (2000) (describing a  
 16 constructive trust is “dependent upon a substantive basis for liability” and “ha[s] no separate  
 17 viability” where the other causes of action are dismissed).

18 Plaintiffs have asserted that Defendants held the investments in the limited partnership  
 19 entities and the properties related to them in a constructive trust for Plaintiffs. ECF 37, ¶¶ 206-209.  
 20 However, the remedy of a constructive trust is unavailable because Plaintiffs’ claims for breach of  
 21 fiduciary duty and fraud cannot survive a motion to dismiss. *Hill v. US Bank, N.A.*, 2012 U.S. Dist.  
 22 LEXIS 196353, \*22-23 (C.D. Cal. Nov. 26, 2012) (“Because we conclude that Plaintiffs fail to  
 23 state any claim against any Defendants, Plaintiffs have no basis to seek a constructive trust.”); *Glue-*  
 24 *Fold, Inc.*, 82 Cal. App. 4th 1018, 1023 (2000). Further, Plaintiffs fail to plead the existence of a  
 25 specific res in the possession of the Mattson Defendants. *Great-West Life & Annuity Insurance Co.*  
 26 *v. Knudson*, 534 U.S. 204, 213 (2002) (constructive trust requires “money or property identified as  
 27 belonging in good conscience to the plaintiff [which can] clearly be traced to particular funds or  
 28 property in the defendant's possession.”). Rather, it appears Plaintiffs believe that Le Fever

1 Mattson, Inc. is in possession of their res. *See e.g.* ECF 73, ¶¶ 147, 157.

2 2. *Plaintiffs fail to allege adequate facts to support an unjust enrichment claim.*

3 The Amended Complaint is bereft of the factual allegations necessary to support a claim for  
 4 unjust enrichment. First, Plaintiffs have conceded that the investments were made pursuant to a  
 5 contract. *E.g.*, ECF No. 73 ¶ 46 (citing to “the partnership contracts” for Defendants’ claimed  
 6 obligations). Such a contract precludes an unjust enrichment claim. *Copart, Inc. v. Sparta*  
 7 *Consulting, Inc.* (E.D. Cal., June 9, 2015, No. 214-CV-00046-KJM-CKD) 2015 WL 3622618, at  
 8 \*14; *see also Russell*, 680 F.Supp.3d at 1133 (describing restitution is only available where the  
 9 enrichment obtained lacks any adequate legal basis). Second, although Plaintiffs are entitled to  
 10 plead in the alternative, Fed. R. Civ. P. 8(d)(2), they are still required to plead alternative facts to  
 11 support their alternative claims. *E.g.*, *Milo & Gabby, LLC v. Amazon.com, Inc.*, 12 F.Supp.3d 1341,  
 12 1353 (W.D. Wash. 2014) (citing *Garcia v. M-F Athletic Cov.*, 2012 WL 531008, at \*2 (E.D. Cal.  
 13 Feb. 17, 2012)). Instead, Plaintiffs fatally “incorporate by reference the allegations of all the  
 14 Paragraphs of the Complaint” into their claim for unjust enrichment, including those paragraphs  
 15 alleging the existence of the contracts. ECF No. 73 ¶ 227. Because Plaintiffs fail to support their  
 16 unjust enrichment claim with adequate allegations, the claim should be dismissed.

17 3. *The Unfair Competition Law does not apply to Plaintiffs’ allegations.*

18 A claim under the UCL “is invalid” where “it fails to state a connection to the protection of  
 19 the general public.” *In re Webkinz Antitrust Litig.*, 695 F.Supp.2d 987, 999 (N.D. Cal. 2010); *see*  
 20 Cal. Bus. & Prof. Code § 17500 (requiring connection to the public for unfair competition). Thus,  
 21 a “UCL action based on a contract is not appropriate where the general public is not harmed by the  
 22 defendant’s alleged unlawful practices.” *Rosenbluth Intern’l, Inc. v. Superior Ct.*, 101 Cal.App.4th  
 23 1073, 1077, 124 Cal.Rptr.2d 844 (2002). Plaintiffs have alleged their claims arise from contract –  
 24 specifically the agreements for each partnership or LLC. *E.g.*, ECF No. 73 ¶ 46 (claiming  
 25 investment funds for each LP were required to be separated “by the partnership contracts”).  
 26 Plaintiffs, however, provide no factual allegations that could form the basis for a claim that the  
 27 general public was harmed by the alleged conduct of Defendants. Therefore, dismissal of Plaintiffs’  
 28 claim under the California Unfair Competition Law is warranted.

4. *Plaintiffs have failed to allege facts sufficient to appoint a receiver.*

“[F]ederal law governs the issue of whether to appoint a receiver in a diversity action.” *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 843 (9th Cir. 2009). “Under federal law, appointing a receiver is an extraordinary equitable remedy which should be applied with caution.” *Id.* (cleaned up, citation omitted). The Ninth Circuit has identified a number of factors for courts to consider in determining whether to appoint a receiver. *Id.* at 844. Plaintiffs do not allege any facts to support a determination under those factors that a receiver should be appointed.

**E. Plaintiffs have failed to state a claim for negligent misrepresentation.**

1. *Plaintiffs’ claim for negligent misrepresentation fails because Plaintiffs’ allegations are premised on Defendants’ promise as to future events.*

In order to successfully plead a claim for negligent misrepresentation, a plaintiff must assert: (1) a misrepresentation of a past or existing material fact; (2) without reasonable grounds for believing it to be true; (3) with intent to induce another's reliance on the fact misrepresented; (4) ignorance of the truth and justifiable reliance thereon by the party to whom the misrepresentation was directed; and (5) damages. *Phillips 66 Co. v. New Raja Enterprises*, No. 15-CV-04762-WHO, 2016 WL 2851628, at \*2 (N.D. Cal. May 16, 2016) (citing *Fox v. Pollack*, 181 Cal. App. 3d 954, 962 (Ct. App. 1986)) (internal quotation marks omitted). Critically, a claim for negligent misrepresentation must be based on a misrepresentation of past or existing material facts and not on a promise or prediction as to future events. *Id.*; see e.g. *Naidong Chen v. Fleetcor Techs., Inc.*, No. 16-CV-00135-LHK, 2017 WL 1092342, at \*13 (N.D. Cal. Mar. 23, 2017) (statements are nonactionable as to future events); *Tarmann v. State Farm Mut. Auto. Ins. Co.*, 2 Cal.App.4th 153, 156 (1991) (holding that the insurer's representation that it “would pay Plaintiff for all such repairs . . . immediately upon completion of those repairs” was not actionable because it was a promise of future performance).

Plaintiffs’ claim for negligent misrepresentation is clearly based on the promise to perform some future events and do not involve a past or existing material fact. Specifically, Plaintiffs claim that “Defendants each made false statements of fact . . . (1) that money invested with LeFever Mattson, KS Mattson Partners, Mattson, or LeFever, or any of the affiliated LPs and LLCs, would

1 be applied to the acquisition of a specific real property owned by the partnership; . . . (3) that the  
 2 partnership would maintain a separate bank account in the name of the partnership into which the  
 3 proceeds would be deposited; and (4) that payments to investors would come from the partnership's  
 4 proceeds through the management and sale of those properties, consistent with their purported  
 5 partnership interest. ECF 73 at ¶ 247. Because these alleged misrepresentations are based of  
 6 Defendants' promise to perform a certain way in the future, they cannot support a claims for  
 7 negligent misrepresentation. *Wittenbrink v. Continental Casualty Co.* (N.D. Cal., Mar. 21, 2005,  
 8 No. C 04-5425 MJJ) 2005 WL 8162984, at \*4 (granting motion to dismiss claim for negligent  
 9 misrepresentation where allegations related to the defendant's promise to perform at some future  
 10 time).

11 2. *Plaintiffs' claim for negligent misrepresentation fails because Plaintiffs*  
 12 *could not justifiably rely on Defendants' alleged misrepresentation when the*  
 13 *Partnership Agreements contained contrary terms and an integration*  
 14 *clause.*

15 A party who executes a contract is charged with knowledge of the agreement's contents, and  
 16 cannot later complain that his assent to those contents is invalid. *Rosenthal v. Great Western Fin.*  
 17 *Secs. Corp.*, 14 Cal. 4th 394, 423 (1996). Because Plaintiffs signed the Partnership Agreements,  
 18 they are charged with constructive knowledge of its terms and could not have justifiably relied on  
 19 any supposed terms that were not included in the agreement. *Vidor v. American Intern. Group* (N.D.  
 20 Cal., July 13, 2011, No. C 11-315 SI) 2011 WL 2746848, at \*3, *aff'd sub nom. Vidor v. American*  
 21 *Intern. Group, Inc.* (9th Cir. 2012) 491 Fed.Appx. 828 (dismissing negligent misrepresentation  
 22 claim where the plaintiff's reliance was not justified where the information in the investment  
 23 prospective could be imputed onto him). Additionally, the Partnership Agreements between  
 24 Plaintiffs and Defendants specifically provide "this Agreement . . . shall provide for the governance  
 25 of the Partnership, the conduct of its business, and specify the Partners' relative rights and  
 26 obligations with respect to the Partnership and their respective interests therein . . . ." *See e.g.* Exs.  
 27 1 § 11.1; 2 § 11.1; 3 § 11.1; 4 § 11.1 (merger and integration clause).

28 Plaintiffs do not allege that the alleged misrepresentations were contained in the partnership  
 agreements. *See generally* ECF 73. Nor could they since the actual partnership agreements

contradict the alleged misrepresentations.<sup>3</sup> For instance, nowhere in the partnership agreements does it set out that the “percentage of the purported partnership an investor received for a particular investment was based on the value of the property.” Exs. 1 § 3.1; 2 § 3.1; 3 § 3.1; 4 § 3.1.. Instead, Exhibit. A to the Partnership Agreements details the partners’ various interests. *Id.* Similarly, nowhere in the partnership agreements does it set out that the partnership can only hold the existing property. *See e.g.* Exs. 1 § 2.5; 2 § 2.5; 3 § 2.5; 4 § 2.5. Because Plaintiffs could not have justifiably relied on the alleged misrepresentations where they directly contradicted the controlling Partnership Agreements, Plaintiffs’ claim for negligent misrepresentation must fail.

**F. Plaintiffs improperly rely on group pleading.**

Rule 8 requires a complaint to contain a short and plain statement of the claim sufficient to put a defendant on notice of the claims against it. Fed. R. Civ. P. 8(a)(2). “Conclusory allegations that an indistinguishable group of defendants essentially engaged in identical misconduct . . . are insufficient to show that plaintiff is entitled to relief from any *individual* defendant.” *EcoHub, LLC v. Recology Inc.* (N.D. Cal., Oct. 11, 2023, No. 22-CV-09181-TSH) 2023 WL 6725632, at \*6 (cleaned up); *see also In re iPhone Application Litig.* (N.D. Cal., Sept. 20, 2011, No. 11-MD-02250-LHK) 2011 WL 4403963, at \*8 (“Plaintiffs’ failure to allege what role each Defendant played in the alleged harm makes it exceedingly difficult, if not impossible, for individual Defendants to respond to Plaintiffs’ allegations.”)

The Complaint make no effort to distinguish which Defendant committed which alleged improper act. Instead, Plaintiffs allege generically that “Defendants” committed various wrongs. *See e.g.* ECF 73, ¶ 40 (“Defendants made several misrepresentations to investors in soliciting their investments in the LPs and LLCs.”); *id.*, ¶ 46 (“Unbeknownst to investors, after initiating the Investment Scheme, Defendants began commingling funds that were intended for specific

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<sup>3</sup> This Court can rely on the Partnership Agreements when they are cited to in the Amended Complaint. *Kniewel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (holding the court may consider documents not attached to the complaint, under the “incorporation by reference” doctrine, where the plaintiff’s claims depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document).

investments across all the investments that LeFever and Mattson controlled through their various legal entities); *id.* ¶ 188 (“Defendants misrepresented and intentionally concealed and failed to disclose material facts to Plaintiffs in connection with their investments.”). Because Plaintiffs have not provided a short and plain statement sufficient to put the Mattson Defendants on notice of what tortious acts they committed (let alone the who, what, where, and how misrepresentations were made *see e.g.* ECF 37, ¶¶ 3, 40, 188), all claims against the Mattson Defendants should be dismissed. *Gauvin v. Trombatore* (N.D. Cal. 1988) 682 F.Supp. 1067, 1071.<sup>4</sup>

### CONCLUSION

Based on the foregoing, Plaintiffs’ Complaint should be dismissed without prejudice based upon lack of standing, failure to join indispensable parties, and failure to state a claim.

Dated: November 12, 2024

FENNEMORE CRAIG, P.C.

*s/John M. McHugh*

John M. McHugh

Attorneys for the Defendants

KENNETH W. MATTSON; KS MATTSON PARTNERS, LP; and SPECIALTY PROPERTIES PARTNERS, LP

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<sup>4</sup> The First Amended Complaint replaced allegations against “Defendants” by listing out each Defendant individually. But this still constitutes improper group pleading. *Bouyer v. Countrywide Bank, FSB*, No. C 08-5583 PJH, 2009 WL 8652921, at \*5 (N.D. Cal. June 25, 2009) (describing that for fraud claims involving multiple defendants, the plaintiff must “identify the role of each defendant in the alleged fraudulent scheme).

**CERTIFICATE OF SERVICE**

**Claridge v. Mattson, et al.**

**United States District Court, Northern District of California Case No. 4:24-cv-04093-JST**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Denver, State of Colorado. My business address is 1700 Lincoln Street, Suite 2400, Denver, Colorado 80203.

On November 12, 2024, I served true copies of the following document(s) described as:

**MATTSON DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM**

**SEE ATTACHED SERVICE LIST**

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants who are not registered CM/ECF users will be served by mail or other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

/s/ John M. McHugh

John M. McHugh

**SERVICE LIST**  
**Claridge v. Mattson, et al.**

**United States District Court, Northern District of California Case No. 4:24-cv-04093-JST**

**COTCHETT, PITRE &**

**McCARTHY, LLP**

BLAIR V. KITTLE

JOSEPH W. COTCHETT

VASTI S. MONTIEL

**CASEY GERRY SCHENK**

**FRANCAVILLA**

**BLATT & PENFIELD LLP**

GAYLE M. BLATT

DAVID S. CASEY, JR. FREDERICK

SCHENK JEREMY K. ROBINSON P.

CAMILLE GUERRA MICHAEL J.

BENKE

**LIEFF, CABRASER, HEIMANN &**

**BERNSTEIN, LLP**

ELIZABETH J. CABRASER

RICHARD M. HEIMANN

KATHERINE LUBIN BENSON

MICHAEL K. SHEEN

*Attorneys for Plaintiffs and the*

*Proposed Class and Subclass*



# **EXHIBIT 1**

**LIMITED PARTNERSHIP AGREEMENT  
OF PONDEROSA PINES, LP  
A CALIFORNIA LIMITED PARTNERSHIP**

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This Limited Partnership Agreement (this “*Agreement*”) of Ponderosa Pines, LP, a California limited partnership (the “*Partnership*”), is entered into effective as of March 11, 2015 (the “*Effective Date*”), by LeFever Mattson, a California corporation (the “*General Partner*”) and the other individuals and/or entities who are or become signatories hereto (referred to individually as a “*Limited Partner*” and collectively with the General Partner as the “*Partners*”).

## RECITALS

WHEREAS, Ponderosa Pines, LP, a California limited partnership (the “*Partnership*”), was formed pursuant to the California Revised Limited Partnership Act, as set forth in Sections 15611 *et seq.*, of the California Corporations Code upon the filing of the Certificate of Limited Partnership of the Company with the Secretary of State of California (the “*Secretary of State*”) on March 11, 2015, file number 201507200016;

WHEREAS, the Partners desire to enter into this Agreement to provide for the governance of the Partnership, the conduct of its business, and to specify their relative rights and obligations effective as of the conversion;

NOW THEREFORE, in consideration of the foregoing, the Partners hereby agree as follows:

## ARTICLE I

### DEFINITIONS

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in the Act.

#### 1.1 Act

“*Act*” means the California Revised Limited Partnership Act, as set forth in Sections 15611, *et seq.*, of the California Corporations Code, including amendments from time to time.

#### 1.2 Assignee

“*Assignee*” means a Person who has acquired a Partner’s Economic Interest in the Partnership, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Partner.

#### 1.3 Assigning Partner

“*Assigning Partner*” means a Partner who by means of a Transfer has transferred an Economic Interest in the Partnership to an Assignee.



#### 1.4 Capital Account

“*Capital Account*” means, as to any Partner, a separate account maintained and adjusted in accordance with Article Three, Section 3.5.

#### 1.5 Capital Contribution

“*Capital Contribution*” means, with respect to any Partner, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Partnership (net of liabilities secured by such contributed property that the Partnership is considered to assume or take “subject to” under IRC Section 752) in consideration of a Percentage Interest held by such Partner. A Capital Contribution shall not be deemed a loan.

#### 1.6 Capital Event

“*Capital Event*” means a sale or disposition of any of the Partnership’s capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Partnership property, the receipt of proceeds from a refinancing of Partnership property, or a similar event with respect to Partnership property or assets.

#### 1.7 Code or IRC

“*Code*” or “*IRC*” means the Internal Revenue Code of 1986, as amended, and any successor provision.

#### 1.8 Economic Interest

“*Economic Interest*” means a Person’s right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Partnership, but does not include any other rights of a Partner, including the right to vote or to participate in management.

#### 1.9 Encumber

“*Encumber*” means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

#### 1.10 Encumbrance

“*Encumbrance*” means, with respect to any Partnership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

#### 1.11 Gross Asset Value

“*Gross Asset Value*” means, with respect to any item of property of the Partnership, the item’s adjusted basis for federal income tax purposes, except as follows:

1.11.1 The Gross Asset Value of any item of property contributed by a Partner to the Partnership shall be the fair market value of such property, as mutually agreed by the contributing Partner and the Partnership; and

1.11.2 The Gross Asset Value of any item of Partnership property distributed to any Partner shall be the fair market value of such item of property on the date of distribution.

#### 1.12 Initial Partner

*“Initial Partner”* or *“Initial Partners”* means those Persons whose names are set forth in Exhibit A, attached. A reference to an *“Initial Partner”* means any of the Initial Partners.

#### 1.13 Involuntary Transfer

*“Involuntary Transfer”* means, with respect to any Partnership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

#### 1.14 Losses

*“Losses.”* See *“Profits and Losses.”*

#### 1.15 Majority of Partners

*“Majority of Partners”* means a Partner or Partners whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Partners.

#### 1.16 Notice

*“Notice”* means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express or United Parcel Service for overnight delivery, charges prepaid or charged to the sender’s account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

#### 1.17 Partner

*“Partner”* means an Initial Partner or a Person who otherwise acquires a Partnership Interest, as permitted under this Agreement, and who remains a Partner.

#### 1.18 Partnership

*“Partnership”* means PONDEROSA PINES, LP, a California limited partnership.

#### 1.19 Partnership Interest

*“Partnership Interest”* means a Partner’s entire interest in the Partnership, including the Partner’s Economic Interest, Percentage Interest, Voting Interest and all other interests of a Partner in the Partnership.

#### 1.20 Percentage Interest

*“Percentage Interest”* means a fraction, the numerator of which is the total of a Partner’s Capital Account and the denominator of which is the total of all Capital Accounts of all Partners.

#### 1.21 Person

*“Person”* means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

#### 1.22 Profits and Losses

*“Profits and Losses”* means, for each fiscal year or other period specified in this Agreement, an amount equal to the Partnership’s taxable income or loss for such year or period, determined in accordance with IRC Section 703(a).

#### 1.23 Property

*“Property”* means the real property currently or hereafter owned by the Partnership, which as of the Effective Date includes but is not limited to an apartment complex located at 7456 Foothills Blvd. Roseville, CA known as Woodcreek Plaza.

#### 1.24 Proxy

*“Proxy”* has the meaning set forth in the first paragraph of California Corporations Code Section 15611(aa). A Proxy may not be transmitted orally.

#### 1.25 Regulations

*“Regulations”* or *“Reg”* means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

#### 1.26 Successor in Interest

*“Successor in Interest”* means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.27 Transfer

“*Transfer*” means, with respect to a Partnership Interest, or any element of a Partnership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of all or any portion of a Partnership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.28 Vote

“*Vote*” means a written consent or approval, a ballot cast at a Meeting, or a voice vote.

1.29 Voting Interest

“*Voting Interest*” means, with respect to a Partner, the right to Vote or participate in management and any right to information concerning the business and affairs of the Partnership provided under the Act, except as limited by the provisions of this Agreement. A Partner’s Voting Interest shall be directly proportional to that Partner’s Percentage Interest.

## ARTICLE II

### CERTIFICATE OF LIMITED PARTNERSHIP

2.1 Filing with Secretary of State

The Certificate was filed with the California Secretary of State on March 11, 2015, file number 201507200016.

2.2 Partnership Name

The name of the Partnership shall be PONDEROSA PINES, LP.

2.3 Principal Office

The principal executive office of the Partnership shall be 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621, or such other place or places as may be determined by the General Partner from time to time.

2.4 Agent for Service

The initial agent for service of process on the Partnership shall be Tim LeFever, at 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621. A Majority of Partners may from time to time change the Partnership’s agent for service of process.

2.5 Partnership Purpose

The Partnership has been formed for the purposes of engaging in the business of real estate investment, and any other act or activity incidental to the foregoing. In furtherance of the foregoing, the Partnership has acquired an interest in the Property.

## 2.6 Partnership Taxation

The Partners intend the Partnership to be a limited partnership under the Act, classified as a partnership for federal and, to the maximum extent possible, state income taxes. Neither a General Partner nor any Partner shall take any action inconsistent with the express intent of the parties to this Agreement.

## 2.7 Term

The term of existence of the Partnership commenced on the effective date of filing of Certificate with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law.

## 2.8 General Partners

The General Partner and the management of the Partnership is set forth in Article Five of this Agreement.

# ARTICLE III

## CAPITALIZATION

### 3.1 Partner Contribution

Each Partner has contributed to the capital of the Partnership as the Partner's Capital Contribution the money and property specified in Exhibit A attached hereto. Each Partner's Percentage Interest in the Partnership is listed on Exhibit A attached hereto.

At the discretion of the General Partner, an Initial Partner may substitute an interest-bearing note for his or her Capital Contribution. Such note shall be due immediately upon the call of the General Partner.

The Fair Market Value of each item of contributed property as agreed between the Partnership and the Partner contributing such property is set forth in Exhibit A attached hereto.

### 3.2 Failure to Make Contribution

If a Partner fails to make a required Capital Contribution within the later of 30 days after the contribution date agreed upon by all the Partners, that Partner's entire Partnership Interest shall terminate and that Partner shall indemnify and hold the Partnership and the other Partners harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make such Capital Contribution.

### 3.3 Additional Capital Contributions

Two types of Additional Capital Contributions may be needed to enable the Partnership to conduct its business: (1) Discretionary Additional Capital Contributions and (2) Mandatory Additional Capital Contributions.

### 3.3.1 Discretionary Additional Capital Contributions

A Majority of the Partners may determine from time to time that Capital Contributions in addition to the Partners' initial Capital Contributions would allow the Partnership to enhance and improve its investment objectives. Upon such determination by a Majority of the Partners, the President shall give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due. The Notice shall set forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

### 3.3.2 Mandatory Additional Capital Contributions

The President may reasonably determine that the Partnership's capital is or is presently likely to become insufficient for the conduct of its business as now conducted or as proposed by the General Partner to be conducted and that Capital Contributions in addition to the Partners' initial Capital Contributions are necessary to enable the Partnership to so conduct its business. On making such a determination, the President may give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due, setting forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Purposes for which additional Capital Contributions may called include, but are not limited to: the improvement, repair, maintenance, operation and management of existing Partnership assets and the acquisition, improvement and development of new assets. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

### 3.3.3 Alternative to Additional Capital Contributions

In addition or as an alternative to making an additional capital call to the Partners, or if all of the additional capital called for in any notice referred to above is not raised through additional contributions by all or some of the Partners, the President shall have the right to obtain such additional capital by the sale of additional Partnership Interests to existing Partners and/or persons other than the existing Partners, on the same or more favorable terms and conditions offered to the Partners as set forth herein. Capital raised in connection with the offer and sale of additional Partnership Interests shall be used in furtherance of the Partnership's purpose and for general working capital purposes. In the event that additional Partner interests are sold in order to raise additional capital, Schedule A and the Percentage Interests of all Partners shall be adjusted accordingly, with the Percentage Interests of all Partners who do not participate in connection with such sale being adjusted downward. No additional consent shall be required, and no right of first offer or right of first refusal need be offered, in connection with any such offer and sale of additional Partnership Interests. Any purchaser of additional Partnership Interests shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.



### 3.3.4 No Voluntary Additional Capital Contributions

No Partner may voluntarily make any additional Capital Contribution without the written consent of the Majority of Partners.

### 3.4 Remedies When Partner Fails To Make Additional Capital Contributions

If a Partner fails to make an additional Capital Contribution required under Section 3 within 30 days after it is required to be made (a “*Defaulting Partner*”) the President shall within five days after said failure notify each other Partner (a “*Nondefaulting Partner*”) in writing of the total amount of Defaulting Partner Capital Contributions not made (the “*Additional Capital Shortfall*”), and shall specify a number of days within which each Nondefaulting Partner may make an additional Capital Contribution, which shall not be less than an amount bearing the same ratio to the amount of Additional Capital Shortfall as the Nondefaulting Partner’s Capital Account balance bears to the total Capital Accounts of all Nondefaulting Partners. If the total amount of Additional Capital Shortfall is not so contributed, the President may (i) use any reasonable method to provide Partners the opportunity to make additional Capital Contributions, until the Additional Capital Shortfall is as fully contributed as possible, and (ii) attempt to raise additional capital through the means set forth in Section 3.3.3 above. Following the Nondefaulting Partners’ and any new Partners’ making of such additional Capital Contributions, each Partner’s Percentage Interest shall be adjusted to reflect the ratio that the Partner’s Capital Account bears to the total Capital Accounts of all of the Partners.

### 3.5 Capital Accounts

An individual Capital Account shall be maintained for each Partner consisting of that Partner’s Capital Contribution (1) increased by that Partner’s share of Profits, (2) decreased by that Partner’s share of Losses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

### 3.6 Withdrawal or Distribution of Capital Contribution

A Partner shall not be entitled to withdraw any part of the Partner’s Capital Contribution or to receive any distributions, whether of money or property from the Partnership except as provided in this Agreement.

### 3.7 No Interest on Contribution

No interest shall be paid on funds or property contributed to the capital of the Partnership or on the balance of a Partner’s Capital Account.

### 3.8 Priority Over Other Partners

No Partner shall have priority over any other Partner, with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.



## ARTICLE IV

### ALLOCATIONS AND DISTRIBUTIONS

#### 4.1 Profits and Losses

The Profits and Losses of the Partnership and all items of Partnership income, gain, loss, deduction, or credit shall be allocated for Partnership book purposes and for tax purposes, to a Partner in accordance with the Partner's Percentage Interest.

#### 4.2 Qualified Income Offset

If any Partner unexpectedly receives any adjustment, allocation, or distribution described in Reg. Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership gross income and gain shall be specially allocated to that Partner in an amount and manner sufficient to eliminate any deficit balance in the Partner's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg. Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

#### 4.3 Allocations Respecting Asset Distributions

Any unrealized appreciation or unrealized depreciation in the values of Partnership property distributed in kind to all the Partners shall be deemed to be Profits or Losses realized by the Partnership immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Partners' Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Partners to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "*unrealized appreciation*" or "*unrealized depreciation*" shall mean the difference between the Fair Market Value of such property and the Partnership's basis for such property.

#### 4.4 Allocations Between Assignor and Assignee

In the case of a Transfer of an Economic Interest during any fiscal year, the Assigning Partner and Assignee shall each be allocated the Economic Interest's share of Profits or Losses based on the number of days each held the Economic Interest during that fiscal year.

#### 4.5 Distributions

All cash resulting from the normal business operations of the Partnership and from a Capital Event shall be distributed among the Partners in proportion to their Percentage Interests at such times as the Partners may agree.

#### 4.6 Non-Cash Proceeds

If the proceeds from a sale or other disposition of a Partnership asset consists of property other than cash, the value of such property shall be as determined by the General Partner. Such non-cash proceeds shall then be allocated among all the Partners in proportion to their Percentage Interests. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to each Partner in accordance with Section 4.5.

#### 4.7 Liquidating Proceeds

Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Partnership, or when any Partner's interest is liquidated, all items of income and loss first shall be allocated to the Partners' Capital Accounts under this Article Four, and other credits and deductions to the Partners' Capital Accounts shall be made before the final distribution is made. The final distribution to the Partners shall be made to the Partners to the extent of and in proportion to their positive Capital Account balances.

### ARTICLE V

#### MANAGEMENT

##### 5.1 General Partner

The business of the Partnership shall be managed by the General Partner. Any entity or individual appointed to the position of General Partner shall serve as General Partner until the earlier of its resignation or its removal for cause by a Majority of Partners at a meeting called expressly for that purpose. A new General Partner shall be appointed by a Majority of Partners on the occurrence of any of the foregoing events. The General Partner alone shall have all decision making authority with respect to the Partnership, including but not limited to any action or decision in connection with any financing or refinancing of the Property. The only limit with respect to the power and authority of the General Partner are those actions that require the authorization or consent of the Partners hereunder, including the following which shall require the consent or approval of Majority of the Partners:

- (a) Any act that would make it impossible to carry on the ordinary business of the Partnership;
- (b) Any confession of a judgment against the Partnership;
- (c) The dissolution of the Partnership;
- (d) The disposition of all or substantially all of the Partnership's assets;

- (e) A change in the nature of the principal business of the Partnership;
- (f) The filing of a petition in bankruptcy or the entering into of an arrangement among creditors;
- (g) The entering into, on behalf of the Partnership, of any transaction constituting a “reorganization” within the meaning of California Corporations Code § 17600;
- (h) Any other action set forth herein that requires the prior consent or approval of the Partners

## 5.2 President

The Partnership shall have a President as chosen by the General Partner.

### 5.2.1 Term

The President shall serve until the earlier of (1) the President’s resignation, retirement, death, or disability or (2) the President’s removal by the General Partner with or without cause, or for cause by a Majority of Partners at a meeting called expressly for that purpose.

### 5.2.2 Authority and Duties

The President shall serve at the pleasure of the General Partner, and shall have all powers expressly delegated to it by the General Partner, including the day-to-day supervision of the business and affairs of the Partnership. The President shall preside at all meetings of Partners and of the General Partner.

### 5.2.3 Election of President

The General Partner hereby elects Kenneth W. Mattson as President of the Partnership.

### 5.2.4 Officers, Compensation

The General Partner may provide for additional officers of the Partnership, may alter the powers and duties of the President, and shall establish the powers and duties of all other officers and the compensation of all Partnership officers.

## 5.3 Authority to Contract

The authority to contract on behalf of the Partnership is vested in (a) the General Partner, and (b) the President, who may each act separately to the extent of the authority provided to them in Sections 5.1 and 5.2, above. The General Partner and President are each individually authorized to enter into maintenance, repair, construction, marketing, administration and professional service contracts (including contracts for accounting and legal services) on behalf of the Partnership relating to the management and operation of the Partnership and its assets. The General Partner and the President shall also each individually have the authority to pay all amounts owed by the Partnership under such contracts as well as amounts owed to other vendors

and service providers in connection with Partnership operations. Amounts so paid shall be paid from Partnership accounts or if paid directly by the General Partner or President, reimbursed to the General Partner or the President by the Partnership immediately upon written request from the General Partner or the President that is accompanied with receipts and/or other evidence of payment. As of the effective date of this Agreement, Partners acknowledge that General Partner and/or President have entered into an apartment property management agreement for day-to-day management of the Property with LeFever Mattson Property Management in the form attached hereto as Exhibit B.

No Partner who is not also the General Partner and/or the President shall have the authority to bind the Partnership or execute any instrument on behalf of the Partnership. Each Partner shall indemnify, defend, and save harmless the General Partner, the President and each other Partner and the Partnership from and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by any Partner in contravention of this Section.

#### 5.4 Procedure for Action by Partners

The Partners are not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement among a Majority of Partners, provided that all Partners are consulted (although all Partners need not be present during a particular consultation), or by a written consent signed by a Majority of Partners. In the event that Partners wish to hold a formal meeting (a "*Meeting*") for any reason, the following procedures shall apply:

##### 5.4.1 Calling and Notice of Meetings

Any two Partners may call a Meeting of the Partners by giving Notice of the time and place of the Meeting at least 48 hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Partnership.

##### 5.4.2 Quorum

A majority of Partners shall constitute a quorum for the transaction of business at any Meeting of the Partners.

##### 5.4.3 Waiver of Notice

The transactions of the Partners at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Partner not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

##### 5.4.4 Majority Consent Required if No Meeting

Any action required or permitted to be taken by the Partners under this Agreement may be taken without a Meeting if a Majority of the Partners individually or collectively consent in writing to such action.

#### 5.4.5 Teleconference

Partners may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Partners participating in the Meeting can hear one another.

#### 5.4.6 Records of Meetings

The Partners shall keep or cause to be kept with the books and records of the Partnership full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

#### 5.5 Compensation

The General Partner and the President shall not be entitled to compensation for their services absent written consent by the Partners.

#### 5.6 Personal Liability

No General Partner or Partner or Officer shall be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Partnership except as otherwise provided in the Act or in this Agreement.

#### 5.7 No Active Participation

No Partner shall participate in the Partnership's business for more than 500 hours during the Partnership's taxable year without written consent from a Majority of Partners.

#### 5.8 Title to Assets

All assets of the Partnership, whether real or personal, shall be held in the name of the Partnership.

#### 5.9 Banking

All funds of the Partnership shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Partnership, at such locations as shall be determined by the General Partner. Withdrawal from such accounts shall require the signature of the General Partner or the President and another officer of the Partnership, or such Person or persons as a Majority of Partners may designate.

#### 5.10 Indemnification; Insurance

The Partnership shall indemnify the General Partner and any employees and agents of the General Partner (collectively, the "Indemnified Parties") from any liability or damage; shall defend, save harmless, and pay all judgments against the Indemnified Parties incurred by reason of any act or omission or alleged act or omission in connection with the business of the Partnership (including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred); and shall indemnify the Indemnified Parties for such liabilities under Federal and State Securities Laws (including the Securities Act of 1933) as the law permits. All judgments against the Partnership or the Indemnified Parties, wherein the Indemnified Parties are entitled to indemnification, must first be satisfied from Partnership assets before the Indemnified Parties are responsible for these obligations. Any Partner guarantying a loan on the Property in accordance with the provisions of Section 7.4 shall be deemed an Indemnified Party under this Section 5.10 and shall be entitled to indemnification by the Partnership from any liability or damage incurred in connection with or arising from such guaranty.

The Partnership shall have the authority to purchase and maintain directors and officers liability insurance, and to the extent commercially reasonable (as determined by the General Partner), purchase and maintain insurance on behalf of any Person who is or was an agent of the Partnership against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Partnership would have the power to indemnify such Person against such liability under the provisions of this Section 5.10 or under applicable law.

## ARTICLE VI

### ACCOUNTS AND RECORDS

#### 6.1 Accounts

Complete books of account of the Partnership's business, in which each Partnership transaction shall be fully and accurately entered, shall be kept at the Partnership's principal executive office and shall be open to inspection and copying by each Partner or the Partner's authorized representatives on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Partner.

#### 6.2 Accounting

Financial books and records of the Partnership shall be kept on the cash method of accounting, which shall be the method of accounting followed by the Partnership for federal income tax purposes. A balance sheet and income statement of the Partnership shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Partnership's business and for carrying out the provisions of this Agreement. The fiscal year of the Partnership shall be January 1 through December 31.

#### 6.3 Records



At all times during the term of existence of the Partnership, and beyond that term if a Majority of the Partners deem it necessary, the Partners shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

6.3.1 Partner List

A current list of the full name and last known business or residence address of each Partner, together with the Capital Contribution and the share in Profits and Losses of each Partner;

6.3.2 Copy of Certificate

A copy of the Certificate, as amended;

6.3.3 Tax Returns

Copies of the Partnership's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

6.3.4 Limited Partnership Agreement

Executed counterparts of this Agreement, as amended;

6.3.5 Powers of Attorney

Any powers of attorney under which the Certificate or any amendments thereto were executed;

6.3.6 Financial Statements

Financial statements of the Partnership for the six most recent fiscal years; and

6.3.7 Books and Records of Internal Affairs

The Books and Records of the Partnership as they relate to the Partnership's internal affairs for the current and past four fiscal years.

If a Majority of Partners deem that any of the foregoing items shall be kept beyond the term of existence of the Partnership, the repository of said items shall be as designated by a Majority of Partners.

6.4 Income Tax Returns

Within 90 days after the end of each taxable year of the Partnership the Partnership shall send to each of the Partners all information necessary for the Partners to complete their federal and state income tax or information returns, and a copy of the Partnership's federal, state, and local income tax or information returns for such year.



## **ARTICLE VII**

### **PARTNERS AND VOTING**

#### **7.1 Partners and Voting Rights**

There shall be only one class of membership and no Partner shall have any rights or preferences in addition to or different from those possessed by any other Partner. Each Partner shall Vote in proportion to the Partner's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. Any action that may or that must be taken by the Partners shall be by a Majority of Partners, except as otherwise expressly provided herein.

#### **7.2 Record Dates**

The record date for determining the Partners entitled to Notice of any Meeting, to vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by a Majority of Partners, provided that such record date shall not be more than 60, nor less than 10 days prior to the date of the Meeting, nor more than 60 days prior to any other action.

In the absence of any action setting a record date the record date shall be determined in accordance with California Corporations Code Section 15637(l).

#### **7.3 Proxies**

At all Meetings of Partners, a Partner may Vote in person or by Proxy. Such proxy shall be filed with any Partner before or at the time of the Meeting, and may be filed by facsimile transmission to a Partner at the principal executive office of the Partnership or such other address as may be given by a Majority of Partners to the Partners for such purposes.

#### **7.4 Partner Participation in connection with Refinance of Property**

Current or future financing on the Property may require a payoff and refinance. If such a refinance requires guarantors in addition to the General Partner, all Partners acknowledge and agree to provide such financial information as may be reasonably requested by any proposed lender, and to execute such documents, including but not limited to guarantees, to affect such refinance.

## **ARTICLE VIII**

### **TRANSFERS OF PARTNERSHIP INTERESTS**

#### **8.1 Withdrawal of Partner**

A Partner may withdraw from the Partnership at any time by giving Notice of Withdrawal to all other Partners at least 180 calendar days before the effective date of

withdrawal; provided that upon the occurrence of a sale of all or substantially all of the Partnership's assets, a Partner may withdraw by giving Notice of Withdrawal to all other Partners prior to such sale. Withdrawal shall not release a Partner from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal. A withdrawing Partner shall divest the Partner's entire Partnership Interest before the effective date of withdrawal in accordance with the transfer restrictions and option rights set forth in this Section 8. In the event of any withdrawal made in connection with the sale of all or substantially all of the Partnership's assets, the Partnership shall redeem that portion of the Partner's Partnership Interest specified in the Notice of Withdrawal. The redemption price for the Partner's Partnership Interest specified in the Notice of Withdrawal shall equal the net asset value of the Partnership Interest being redeemed. For purposes hereof, net asset value shall equal the Partnership's total assets minus its total liabilities multiplied by the Partnership Interest being redeemed. Net asset value shall be determined by the General Partner, in its reasonable discretion. If more than one Partner elects to withdraw all or any portion of their Partnership Interests in connection with the sale of all or substantially all of the Partnership's assets, and the sale proceeds therefrom are insufficient to redeem all of the Partnership Interests presented for redemption, Partnership Interests shall be redeemed on a pro rata basis.

## 8.2 Restrictions on Transfer

Except as expressly provided in this Agreement, a Partner shall not Transfer any part of the Partner's Partnership Interest in the Partnership, whether now owned or hereafter acquired, unless (1) the General Partner approves the transferee's admission (the "*Transferee*") to the Partnership as a Partner prior to such Transfer and (2) the Partnership Interest to be transferred, when added to the total of all other Partnership Interests transferred in the preceding 12 months, will not cause the termination of the Partnership under the Code. It shall be a further condition to any Transfer that the General Partner, Transferee and transferring Partner execute an agreement, including a consent to transfer, which agreement shall provide, among other things, that: (a) the transferring Partner shall indemnify General Partner and the Partnership for any and all claims, causes of action, damages, costs, injuries and liabilities existing with respect to such Partnership Interest prior to the Transfer or resulting from the Transfer of such Partner's Partnership Interest in the Partnership; (b) both Transferee and transferring Partner provide such representations and warranties in favor of General Partner and the Partnership as General Partner deems reasonable, including but not limited to representations as to due authorization, compliance with all laws, no litigation, no bankruptcy, etc.; (c) both Transferee and transferring Partner acknowledge that they are not relying on the Partnership, General Partner or other Partners for real estate advice or tax advice or to assure compliance with securities laws; (d) Transferee executes a counterpart to and agrees to be bound by all of the provisions of this Agreement; (e) Transferee acknowledges that the Partnership Interests (A) are being acquired for investment purposes only and not for resale, transfer or distribution, and (B) may not be further offered for sale, sold, or transferred other than pursuant to an effective registration under applicable state and federal securities laws, and/or in transactions otherwise in compliance with, or pursuant to an available exemption from registration under such laws, and upon evidence satisfactory to the Partnership of compliance with such laws, as to which Partnership may rely upon an opinion of counsel satisfactory to the Partnership.

No Partner may Encumber or permit or suffer any Encumbrance of all or any part of the Partner's Partnership Interest in the Partnership unless such Encumbrance has been approved in writing by all the other Partners. Any Transfer or Encumbrance of a Partnership Interest without such approval shall be void.

Notwithstanding any other provision of this Agreement to the contrary, (a) a Partner who is a natural person may transfer all or any portion of his or her Partnership Interest to any revocable trust created for the benefit of the Partner, or any combination between or among the Partner, the Partner's spouse, and the Partner's issue, provided that the Partner retains a beneficial interest in the trust and all of the Voting Interest included in such Partnership Interest, and (b) the General Partner may purchase a Partnership Interest for its own account or for the account of any other Partner(s) at a price and terms agreed to by the General Partner and the selling Partner, and such purchase and sale shall be exempt. Sales and transfers pursuant to the preceding sentence shall not be deemed Transfers hereunder, shall be exempt from all restrictions on transfer set forth in this Section 8.2 and the right of first refusal set forth in Section 8.3, and shall not constitute a Trigger Event under Section 8.4. Notwithstanding the foregoing, a transfer of a Partner's entire beneficial interest in a trust or failure to retain a Voting Interest shall be deemed a Transfer of a Partnership Interest.

Any Transferee of a Partner's Partnership Interest shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

### 8.3 Right of First Refusal

If a Partner wishes to transfer any or all of the Partner's Partnership Interest in the Partnership pursuant to a Bona Fide Offer (as defined below), the Partner shall give Notice to the General Partner at least 30 days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The General Partner shall have the option to purchase the Partnership Interest proposed to be transferred, for its own account or for the account of any other Partner(s), at the price and on the terms provided in this Agreement, at any time on or before the date that is thirty (30) days after General Partner's receipt of the Notice for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8.. If the price for the Partnership Interest is other than cash, the fair value in dollars of the price shall be as established in good faith by the Partnership. For purposes of this Agreement, "*Bona Fide Offer*" means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing, and able to consummate the purchase. Transfers to a non-minor child, grandchild, spouse, or parent of a Partner (an "*Immediate Family Partner*") shall not be subject to the right of first offer set forth in this Section 8.3, but shall remain subject to the balance of the provisions of this Article 8.

If the General Partner does not exercise its rights to purchase all of the Partnership Interest, the offering Partner may, within 45 days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Partnership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeror under this section shall become an Assignee, and shall be entitled to receive only the share of Profits or

other compensation by way of income and the return of Capital Contribution to which the assigning Partner would have been entitled.

#### 8.4 Triggering Events

On the happening of any of the following events ("*Triggering Events*") with respect to a Partner, the General Partner, for its own account or for the account of any other Partner(s), shall have the option to purchase all or any portion of the Partnership Interest in the Partnership of such Partner (a "*Selling Partner*") at the price and on the terms provided in Section 8.8 of this Agreement:

8.4.1 the death or incapacity of a Partner;

8.4.2 the bankruptcy of a Partner;

8.4.3 the winding up and dissolution of a corporate Partner, or merger or other corporate reorganization of a corporate Partner as a result of which the corporate Partner does not survive as an entity;

8.4.4 the withdrawal of a Partner; or

8.4.5 except for the events stated in Section 8.5, the occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.

Each Partner agrees to promptly give Notice of a Triggering Event to all other Partners.

#### 8.5 Marital Dissolution or Death of Spouse

Notwithstanding any other provisions of this Agreement:

8.5.1 If, in connection with the divorce or dissolution of the marriage of a Partner, any court issues a decree or order that transfers, confirms, or awards a Partnership Interest, or any portion thereof, to that Partner's spouse (an "*Award*"), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Partner shall have the right to purchase from his or her former spouse the Partnership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Partnership Interest or portion thereof to that Partner at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the Award (the "*Award Transfer Date*"), the Partnership and the other Partners shall have the option to purchase from the former spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Award Transfer Date, or (2) the date of actual notice of the Award.

8.5.2 If, by reason of the death of a spouse of a Partner, any portion of a Partnership Interest is transferred to a Transferee other than (1) that Partner or (2) a trust created for the benefit of that Partner (or for the benefit of that Partner and any combination between or among the Partner and the Partner's issue) in which the Partner is the sole Trustee and the Partner, as Trustee or individually possesses all of the Voting Interest included in that

Partnership Interest, then the Partner shall have the right to purchase the Partnership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee of such deceased spouse, and the estate, successor, or Transferee shall sell the Partnership Interest or portion thereof at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the date of death (the “*Estate Transfer Date*”), the Partnership and the other Partners shall have the option to purchase from the estate or other successor of the deceased spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Estate Transfer Date, or (2) the date of actual notice of the death.

#### 8.6 Option Periods

On the receipt of Notice by a Partners as contemplated by Section 8.1, and on receipt of actual notice of any Triggering Event (the date of such receipt is hereinafter referred to as the “*Option Date*”), the General Partner shall promptly give notice of the occurrence of such a Triggering Event to each Partner, and the Partnership shall have the option, for a period ending 30 calendar days following the determination of the purchase price as provided in Section 8.8, to purchase the Partnership Interest in the Partnership to which the option relates, at the price and on the terms provided in Section 8.8, and the other Partners, pro rata in accordance with their prior Partnership Interests in the Partnership, shall then have the option, for a period of 30 days thereafter, to purchase the Partnership Interest in the Partnership not purchased by the Partnership, on the same terms and conditions as apply to the Partnership. If all other Partners do not elect to purchase the entire remaining Partnership Interest in the Partnership, then the Partners electing to purchase shall have the right, pro rata in accordance with their prior Partnership Interest in the Partnership, to purchase the additional Partnership Interest in the Partnership available for purchase. The Transferee of the Partnership Interest in the Partnership that is not purchased shall hold such Partnership Interest in the Partnership subject to all of the provisions of this Agreement.

#### 8.7 Nonparticipation of Interested Partner

No Partner shall participate in any Vote or decision in any matter pertaining to the disposition of that Partner’s Partnership Interest in the Partnership under this Agreement.

#### 8.8 Option Purchase Price

The purchase price of the Partnership Interest that is the subject of an option under this Agreement shall be the Fair Market Value of such Partnership Interest as determined under this Section 8.8. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree on the Fair Market Value. If the parties are unable to so agree within 30 days of the Option Date, the selling party shall appoint, within 40 days of the Option Date, one appraiser, and the purchasing party shall appoint within 40 days of the Option Date, one appraiser. The two appraisers shall within a period of five additional days, agree on and appoint an additional appraiser. The three appraisers shall, within 60 days after the appointment of the third appraiser, determine the Fair Market Value of the Partnership Interest in writing and submit their report to all the parties. The Fair Market Value shall be determined by disregarding the appraiser’s valuation that diverges the greatest from each of the other two appraisers’ valuations, and the



arithmetic mean of the remaining two appraisers' valuations shall be the Fair Market Value. Each purchasing party shall pay for the services of the appraiser selected by it, plus one-half of the fee charged by the third appraiser. The option purchase price as so determined shall be payable in cash.

#### 8.9 Substituted Partner

Except as expressly permitted under Section 8.2, a prospective Transferee (other than an existing Partner) of a Partnership Interest may be admitted as a Partner with respect to such Partnership Interest (a "*Substituted Partner*") only (1) on the approval of the General Partner of the prospective Transferee's admission as a Partner, and (2) on such prospective Transferee's executing a counterpart of this Agreement as a party hereto. Any prospective Transferee of a Partnership Interest shall be deemed an Assignee, and, therefore, the owner of only an Economic Interest until such prospective Transferee has been admitted as a Substituted Partner.

#### 8.10 Duties of a Substituted Partner

Any Person admitted to the Partnership as a Substituted Partner shall be subject to all provisions of this Agreement.

#### 8.11 Securities Laws

The initial sale of Partnership Interests in the Partnership to the initial Partners has not been qualified or registered under the securities laws of any state, or registered under the Securities Act of 1933, as amended, in reliance upon exemptions from the registration provisions of those laws. No attempt has been made to qualify the offering and sale of Partnership Interests to Partners under the California Corporate Securities Law of 1968, as amended, also in reliance upon an exemption from the requirement that a permit for issuance of securities be procured. Notwithstanding any other provision of this Agreement, Partnership Interests may not be Transferred or Encumbered unless registered or qualified under applicable state and federal securities law or unless, in the opinion of legal counsel satisfactory to the Partnership, such qualification or registration is not required. The Partner who desires to transfer a Partnership Interest shall be responsible for all legal fees incurred in connection with said opinion.

### ARTICLE IX

#### DISSOLUTION AND WINDING UP

##### 9.1 Events of Dissolution

The Partnership shall be dissolved on the first to occur of the following events:

9.1.1 The written agreement of a Majority of Partners to dissolve the Partnership.

9.1.2 The sale or other disposition of substantially all of the Partnership assets.

9.1.3 Entry of a decree of judicial dissolution pursuant to Section 15682 of the Act.

## 9.2 Winding Up

On the dissolution of the Partnership, the Partnership shall engage in no further business other than that necessary to wind up the business and affairs of the Partnership. The Partners who have not wrongfully dissolved the Partnership shall wind up the affairs of the Partnership. The Persons winding up the affairs of the Partnership shall give written Notice of the commencement of winding up by mail to all known creditors and claimants against the Partnership whose addresses appear in the records of the Partnership. After paying or adequately providing for the payment of all known debts of the Partnership (except debts owing to Partners) the remaining assets of the Partnership shall be distributed or applied in the following order of priority:

9.2.1 To pay the expenses of liquidation.

9.2.2 To repay outstanding loans to Partners. If there are insufficient funds to pay such loans in full, each Partner shall be repaid in the ratio that the Partner's respective loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Partners, including all interest accrued and unpaid on those loans. Such repayment shall first be credited to unpaid principal and the remainder shall be credited to accrued and unpaid interest.

9.2.3 Among the Partners in accordance with the provisions of Article Four, Section 4.7.

## 9.3 Deficits

Each Partner shall look solely to the assets of the Partnership for the return of the Partner's investment, and if the Partnership property remaining after the payment or discharge of the debts and liabilities of the Partnership is insufficient to return the investment of any Partner, such Partner shall have no recourse against any other Partners for indemnification, contribution, or reimbursement.

# ARTICLE X

## ARBITRATION

Any action to enforce or interpret this Agreement or to resolve disputes between the Partners or by or against any Partner shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive dispute resolution process in the State of California. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at San Francisco, California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the

arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

#### **11.1 General Provisions**

This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Agreement replaces and supersedes all prior written and oral agreements by and among the Partners or any of them.

#### **11.2 Counterpart Executions**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **11.3 Governing Law; Severability**

This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

#### **11.4 Benefit**

This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

#### **11.5 Number and Gender**

Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

#### **11.6 Further Assurances**

The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties, including but not limited to taking



any and all actions reasonably required to comply with any mortgage or encumbrance with respect to the Property.

#### 11.7 Partner's Other Business

Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Partners or General Partner in the carrying on of their own respective businesses or activities.

#### 11.8 Agent

Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Partner, in the Partner's capacity as such, the agent of any other Partner.

#### 11.9 Authority to Contract

Each Partner represents and warrants to the other Partners that the Partner has the capacity and authority to enter into this Agreement.

#### 11.10 Titles and Headings

The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

#### 11.11 Amendment

Except as otherwise provided herein, all amendments to this Agreement will be in writing and approved and executed by a Majority of the Partners. Notwithstanding the foregoing, this Agreement may be amended by the signature of the General Partner as necessary to reflect the sale of limited partnership interests and the admission of additional Partners.

#### 11.12 Time is of the Essence

Time is of the essence of every provision of this Agreement that specifies a time for performance.

#### 11.13 No Third Party Beneficiary Intended

This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person shall have or acquire any right by virtue of this Agreement.

#### 11.14 Sale of the Property.

Should the Partners authorize and approve the sale of any real property or any interest therein owned by the Partnership, or should the Partners authorize and approve the purchase of

any additional real property or interest therein on behalf of the Partnership, LeFever Mattson shall have exclusive authorization and right to make such sale or purchase of real property interests and shall be compensated at least three percent (3%) of the sale or purchase price for its services, or such greater amount as may be agreed.

#### 11.15 Financing of the Property.

Upon the refinancing of any real property or any interest therein owned by the Partnership, as well as upon obtaining financing for any purchase of additional real property or any interest therein on behalf of the Partnership, LeFever Mattson shall be compensated in an amount equal to not less than one-half percent (0.5%) of the loan amount for its services in effectuating such financing.

#### 11.16 Limited Partnership

The Partners intend the Partnership to be a limited partnership under the Act. No partner shall take any action inconsistent with the express intent of the parties to this Agreement.

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## **EXHIBIT 2**

**LIMITED PARTNERSHIP AGREEMENT  
OF RIVER TREE PARTNERS, LP  
A CALIFORNIA LIMITED PARTNERSHIP**

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**LIMITED PARTNERSHIP AGREEMENT OF  
RIVER TREE PARTNERS, LP**

This Limited Partnership Agreement (this "*Agreement*") of River Tree Partners, LP, a California limited partnership (the "*Partnership*"), is entered into effective as of August 10, 2016 (the "*Effective Date*"), by LeFever Mattson, a California corporation (the "*General Partner*") and the other individuals and/or entities who are or become signatories hereto (referred to individually as a "*Limited Partner*" and collectively with the General Partner as the "*Partners*").

**RECITALS**

WHEREAS, the partnership was formed pursuant to California Uniform Limited Partnership Act of 2008, as set forth in Sections 15900 et seq., of the California Corporations Code upon the filing of the Certificate of Limited Partnership with the Secretary of State of California (the "*Secretary of State*") on August 3, 2016.

WHEREAS, the Partners desire to enter into this Agreement, which as of the Effective Date, shall provide for the governance of the Partnership, the conduct of its business, and specify the Partners' relative rights and obligations with respect to the Partnership and their respective interests therein, all effective as of the Effective Date.

NOW THEREFORE, in consideration of the foregoing, the Partners hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in the Act.

1.1 Act

"*Act*" means the California Uniform Limited Partnership Act of 2008, as set forth in Sections 15900, et seq., of the California Corporations Code, including amendments from time to time.

1.2 Assignee

"*Assignee*" means a Person who has acquired a Partner's Economic Interest in the Partnership, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Partner.

1.3 Assigning Partner

*"Assigning Partner"* means a Partner who by means of a Transfer has transferred an Economic Interest in the Partnership to an Assignee.

#### 1.4 Capital Account

*"Capital Account"* means, as to any Partner, a separate account maintained and adjusted in accordance with Article Three, Section 3.5.

#### 1.5 Capital Contribution

*"Capital Contribution"* means, with respect to any Partner, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Partnership (net of liabilities secured by such contributed property that the Partnership is considered to assume or take "subject to" under IRC Section 752) in consideration of a Percentage Interest held by such Partner. A Capital Contribution shall not be deemed a loan.

#### 1.6 Capital Event

*"Capital Event"* means a sale or disposition of any of the Partnership's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Partnership property, the receipt of proceeds from a refinancing of Partnership property, or a similar event with respect to Partnership property or assets.

#### 1.7 Cause

*"Cause"* means (i) insubordination, (ii) breach of this Agreement, (iii) any act or omission which is injurious to the Partnership or an affiliate or subsidiary of the Partnership, or the business or reputation of the Partnership or an affiliate or subsidiary of the Partnership, (iv) dishonesty, fraud, malfeasance, gross negligence or misconduct, (v) failure to satisfactorily perform his or her duties under this Agreement or any other agreement with the Partnership or an affiliate or subsidiary of the Partnership, (vi) failure to follow the direction of the Partnership or any individual to whom such individual reports, or to follow the policies, procedures, and rules of the Partnership, (vii) conviction of, or entry of a plea of guilty or no contest to, a felony or crime involving moral turpitude, or (viii) any other circumstances that would be recognized as cause at law.

#### 1.8 Code or IRC

*"Code"* or *"IRC"* means the Internal Revenue Code of 1986, as amended, and any successor provision.

#### 1.9 Economic Interest

*"Economic Interest"* means a Person's right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Partnership, but does not include any other rights of a Partner, including the right to vote or to participate in management.

1.10 Encumber

“*Encumber*” means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.11 Encumbrance

“*Encumbrance*” means, with respect to any Partnership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.12 Gross Asset Value

“*Gross Asset Value*” means, with respect to any item of property of the Partnership, the item’s adjusted basis for federal income tax purposes, except as follows:

1.12.1 The Gross Asset Value of any item of property contributed by a Partner to the Partnership shall be the fair market value of such property, as mutually agreed by the contributing Partner and the Partnership; and

1.12.2 The Gross Asset Value of any item of Partnership property distributed to any Partner shall be the fair market value of such item of property on the date of distribution.

1.13 Initial Partner

“*Initial Partner*” or “Initial Partners” means those Persons whose names are set forth in Exhibit A, attached. A reference to an “Initial Partner” means any of the Initial Partners.

1.14 Involuntary Transfer

“*Involuntary Transfer*” means, with respect to any Partnership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.15 Losses

“*Losses*.” See “Profits and Losses.”

1.16 Majority of Partners

“*Majority of Partners*” means a Partner or Partners whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Partners.

1.17 Notice

“*Notice*” means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage

and fees prepaid, in the United States mails; when delivered to Federal Express or United Parcel Service for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

1.18 Partner

*"Partner"* means an Initial Partner or a Person who otherwise acquires a Partnership Interest, as permitted under this Agreement, and who remains a Partner.

1.19 Partnership

*"Partnership"* means River Tree Partners, LP, a California limited partnership.

1.20 Partnership Interest

*"Partnership Interest"* means a Partner's entire interest in the Partnership, including the Partner's Economic Interest, Percentage Interest, Voting Interest and all other interests of a Partner in the Partnership.

1.21 Percentage Interest

*"Percentage Interest"* means a fraction, the numerator of which is the total of a Partner's Capital Account and the denominator of which is the total of all Capital Accounts of all Partners.

1.22 Person

*"Person"* means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.23 Profits and Losses

*"Profits and Losses"* means, for each fiscal year or other period specified in this Agreement, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with IRC Section 703(a).

1.24 Property

*"Property"* means the real property and investments listed on Exhibit C attached hereto, as the same may be modified and updated from time to time.

1.25 Proxy

“*Proxy*” has the meaning set forth in the first paragraph of California Corporations Code Section 15901(ab). A Proxy may not be transmitted orally.

1.26 Regulations

“*Regulations*” or “*Reg*” means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.27 Successor in Interest

“*Successor in Interest*” means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.28 Super Majority of Partners

“*Super Majority of Partners*” means a Partner or Partners whose Percentage Interests represent 75 percent or more of the Percentage Interests of all the Partners.

1.29 Transfer

“*Transfer*” means, with respect to a Partnership Interest, or any element of a Partnership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of all or any portion of a Partnership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.30 Vote

“*Vote*” means a written consent or approval, a ballot cast at a Meeting, or a voice vote.

1.31 Voting Interest

“*Voting Interest*” means, with respect to a Partner, the right to Vote or participate in management and any right to information concerning the business and affairs of the Partnership provided under the Act, except as limited by the provisions of this Agreement. A Partner’s Voting Interest shall be directly proportional to that Partner’s Percentage Interest.

## ARTICLE II

### CERTIFICATE OF LIMITED PARTNERSHIP

#### 2.1 Filing with Secretary of State

The Certificate was filed with the California Secretary of State on August 3, 2016 file number \_\_\_\_\_.

#### 2.2 Partnership Name

The name of the Partnership shall be River Tree Partners, LP.

#### 2.3 Principal Office

The principal executive office of the Partnership shall be 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621, or such other place or places as may be determined by the General Partner, in its sole and absolute discretion, from time to time.

#### 2.4 Agent for Service

The initial agent for service of process on the Partnership shall be Tim LeFever, at 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621. A Majority of Partners may from time to time change the Partnership's agent for service of process.

#### 2.5 Partnership Purpose

The Partnership has been formed for the purposes of engaging in the business of investment in real estate and other assets selected by the General Partner from time to time, any and all other acts or activities incidental to the foregoing, and any other lawful purpose. In furtherance of the foregoing, the Partnership intends to acquire interests in at least two separate properties pursuant to the terms and conditions of Purchase and Sale Agreements and attached hereto as Exhibit D-1 and Exhibit D-2, which will each be assigned by LeFever Mattson to the Partnership pursuant to Assignment and Assumption of Purchase Agreements, the form of which is attached hereto as Exhibit E. It is anticipated that the Partnership will acquire the properties together with Country Oaks I, LP, a California limited partnership, and that the Partnership will to hold title to such properties with Country Oaks I, LP, a California limited partnership, as tenants in common.

#### 2.6 Partnership Taxation

The Partners intend the Partnership to be a limited partnership under the Act, classified as a partnership for federal and, to the maximum extent possible, state income taxes. Neither a General Partner nor any Partner shall take any action inconsistent with the express intent of the parties to this Agreement.

#### 2.7 Term

The term of existence of the Partnership commenced on the effective date of filing of Certificate with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law.

## 2.8 General Partners

The General Partner and the management of the Partnership is set forth in Article Five of this Agreement.

# ARTICLE III

## CAPITALIZATION

### 3.1 Partner Contribution

Each Partner has contributed to the capital of the Partnership as the Partner's Capital Contribution the money and property specified in Exhibit A attached hereto. Each Partner's Percentage Interest in the Partnership is listed on Exhibit A attached hereto.

At the discretion of the General Partner, an Initial Partner may substitute an interest-bearing note for his or her Capital Contribution. Such note shall be due immediately upon the call of the General Partner.

The Fair Market Value of each item of contributed property as agreed between the Partnership and the Partner contributing such property is set forth in Exhibit A attached hereto.

### 3.2 Failure to Make Contribution

If a Partner fails to make a required Capital Contribution within the later of 30 days after the contribution date agreed upon by all the Partners, that Partner's entire Partnership Interest shall terminate and that Partner shall indemnify and hold the Partnership and the other Partners harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make such Capital Contribution.

### 3.3 Additional Capital Contributions

Two types of Additional Capital Contributions may be needed to enable the Partnership to conduct its business: (1) Discretionary Additional Capital Contributions and (2) Mandatory Additional Capital Contributions.

#### 3.3.1 Discretionary Additional Capital Contributions

A Majority of the Partners may, with the General Partner's consent, determine from time to time that Capital Contributions in addition to the Partners' initial Capital Contributions would allow the Partnership to enhance and improve its investment objectives (a "*Discretionary Additional Capital Contribution*"). Upon such determination by a Majority of the Partners that is agreed to by the General Partner, the President shall give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due. The Notice shall



set forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Each Partner shall be required to make a an additional Capital Contribution in an amount that bears the same proportion to the total Discretionary Additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

### 3.3.2 Mandatory Additional Capital Contributions

The President may reasonably determine that the Partnership's capital is or is presently likely to become insufficient for the conduct of its business as now conducted or as proposed by the General Partner to be conducted and that Capital Contributions in addition to the Partners' initial Capital Contributions are necessary to enable the Partnership to so conduct its business (a "*Mandatory Additional Capital Contribution*"). On making such a determination, the President may give notice to all Partners in writing at least 90 days before the date on which such Mandatory Additional Capital Contribution is due, setting forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Purposes for which Mandatory Additional Capital Contribution may called include, but are not limited to: the improvement, repair, maintenance, operation and management of existing Partnership assets and the acquisition, improvement and development of new assets. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total Mandatory Additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

### 3.3.3 Alternative to Additional Capital Contributions

In addition or as an alternative to making an additional capital call to the Partners, or if all of the additional capital called for in any notice referred to above is not raised through additional contributions by all or some of the Partners, the President shall have the right to obtain such additional capital by the sale of additional Partnership Interests to existing Partners and/or persons other than the existing Partners, on the same or more favorable terms and conditions offered to the Partners as set forth herein. Capital raised in connection with the offer and sale of additional Partnership Interests shall be used in furtherance of the Partnership's purpose and for general working capital purposes. In the event that additional Partner interests are sold in order to raise additional capital, Exhibit A and the Percentage Interests of all Partners shall be adjusted accordingly, with the Percentage Interests of all Partners who do not participate in connection with such sale being adjusted downward. No additional consent shall be required, and no right of first offer or right of first refusal need be offered, in connection with any such offer and sale of additional Partnership Interests. Any purchaser of additional Partnership Interests shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

### 3.3.4 No Voluntary Additional Capital Contributions

No Partner may voluntarily make any additional Capital Contribution without the written consent of a Majority of Partners and the General Partner.

## 3.4 Remedies When Partner Fails To Make Additional Capital Contributions

If a Partner fails to make an additional Capital Contribution required under Section 3 within 30 days after it is required to be made (a “*Defaulting Partner*”) the President shall within five days after said failure notify each other Partner (a “*Nondefaulting Partner*”) in writing of the total amount of Defaulting Partner Capital Contributions not made (the “*Additional Capital Shortfall*”), and shall specify a number of days within which each Nondefaulting Partner may make an additional Capital Contribution, which shall not be less than an amount bearing the same ratio to the amount of Additional Capital Shortfall as the Nondefaulting Partner’s Capital Account balance bears to the total Capital Accounts of all Nondefaulting Partners. If the total amount of Additional Capital Shortfall is not so contributed, the President may (i) use any reasonable method to provide Partners the opportunity to make additional Capital Contributions, until the Additional Capital Shortfall is as fully contributed as possible, and (ii) attempt to raise additional capital through the means set forth in Section 3.3.3 above. Following the Nondefaulting Partners’ and any new Partners’ making of such additional Capital Contributions, each Partner’s Percentage Interest shall be adjusted to reflect the ratio that the Partner’s Capital Account bears to the total Capital Accounts of all of the Partners.

### 3.5 Capital Accounts

An individual Capital Account shall be maintained for each Partner consisting of that Partner’s Capital Contribution (1) increased by that Partner’s share of Profits, (2) decreased by that Partner’s share of Losses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

### 3.6 Withdrawal or Distribution of Capital Contribution

A Partner shall not be entitled to withdraw any part of the Partner’s Capital Contribution or to receive any distributions, whether of money or property from the Partnership except as provided in this Agreement.

### 3.7 No Interest on Contribution

No interest shall be paid on funds or property contributed to the capital of the Partnership or on the balance of a Partner’s Capital Account.

### 3.8 Priority Over Other Partners

No Partner shall have priority over any other Partner, with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

## ARTICLE IV

### ALLOCATIONS AND DISTRIBUTIONS

#### 4.1 Profits and Losses

The Profits and Losses of the Partnership and all items of Partnership income, gain, loss, deduction, or credit shall be allocated for Partnership book purposes and for tax purposes, to a Partner in accordance with the Partner's Percentage Interest.

#### 4.2 Qualified Income Offset

If any Partner unexpectedly receives any adjustment, allocation, or distribution described in Reg. Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership gross income and gain shall be specially allocated to that Partner in an amount and manner sufficient to eliminate any deficit balance in the Partner's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg. Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

#### 4.3 Allocations Respecting Asset Distributions

Any unrealized appreciation or unrealized depreciation in the values of Partnership property distributed in kind to all the Partners shall be deemed to be Profits or Losses realized by the Partnership immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Partners' Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Partners to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "*unrealized appreciation*" or "*unrealized depreciation*" shall mean the difference between the Fair Market Value of such property and the Partnership's basis for such property.

#### 4.4 Allocations Between Assignor and Assignee

In the case of a Transfer of an Economic Interest during any fiscal year, the Assigning Partner and Assignee shall each be allocated the Economic Interest's share of Profits or Losses based on the number of days each held the Economic Interest during that fiscal year.

#### 4.5 Distributions

All cash resulting from the normal business operations of the Partnership and from a Capital Event shall be distributed among the Partners in proportion to their Percentage Interests, as and when determined by the General Partner.

#### 4.6 Non-Cash Proceeds

If the proceeds from a sale or other disposition of a Partnership asset consists of property other than cash, the value of such property shall be as determined by the General Partner. Such

non-cash proceeds shall then be allocated among all the Partners in proportion to their Percentage Interests. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to each Partner in accordance with Section 4.5.

#### 4.7 Liquidating Proceeds

Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Partnership, or when any Partner's interest is liquidated, all items of income and loss first shall be allocated to the Partners' Capital Accounts under this Article Four, and other credits and deductions to the Partners' Capital Accounts shall be made before the final distribution is made. The final distribution to the Partners shall be made to the Partners to the extent of and in proportion to their positive Capital Account balances.

### ARTICLE V

#### MANAGEMENT

##### 5.1 General Partner

The business of the Partnership shall be managed by the General Partner. The General Partner shall oversee and govern the direction, management and control of the business and assets of the Partnership to the best of the General Partner's ability. The General Partner shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Partnership, including, without limitation, the power to exercise on behalf and in the name of the Partnership all of the powers described in the Act. The General Partner may appoint one (1) or more officers and, subject to the terms and conditions of this Agreement, may delegate to those officers the authority to manage the day-to-day operations of the Partnership. The General Partner shall serve as General Partner until the earlier of its resignation or its removal for Cause by a Super Majority of Partners at a meeting called expressly for that purpose. A new General Partner shall be appointed by a Majority of Partners on the occurrence of any of the foregoing events.

Notwithstanding any other provisions of this Agreement, the General Partner shall have authority hereunder to cause the Partnership to engage in the following transactions without the approval of the Partners:

(a) The sale, exchange or other disposition of all, or substantially all, of the Partnership's assets occurring as part of a single transaction or plan, or in multiple transactions, in the ordinary course of business or in the orderly liquidation and winding up of the business of the Partnership upon its duly authorized dissolution;

(b) The purchase or sale of real property and/or other assets now belonging to or hereafter acquired by the Partnership;

(c) Any and all investments to be made by the Partnership;

(d) The lending or borrowing of money; provided that any such borrowing is on a non-recourse basis to the Limited Partners and secured by the land or other assets owned by

the Partnership and is deemed necessary or prudent by the General Partner in order to enhance investment returns or to finance pre-construction, construction, development or capital improvements in furtherance of the Partnership's purpose;

(e) The entry into any contract, arrangement or commitment in furtherance of the business and purpose of the Partnership;

(f) The formation of any subsidiary or affiliate for any reason related to the Partnership's business or purpose;

(g) The entry into and performance under any co-tenancy agreement between the Partnership and any co-owner of property; and

(h) The creation of any mortgage, lien, charge, encumbrance, or other security interest of any nature in respect of all or any portion of the Partnership's real property; and

(i) Any other act, transaction or agreement necessary or incidental to any of the foregoing.

## 5.2 President

The Partnership shall have a President as chosen by the General Partner.

### 5.2.1 Term

The President shall serve until the earlier of (1) the President's resignation, retirement, death, or disability, (2) the President's removal by the General Partner (which may be with or without Cause), or (3) for Cause by a vote of a Majority of Partners at a meeting called expressly for that purpose.

### 5.2.2 Authority and Duties

The President shall serve at the pleasure of the General Partner, and shall have all powers expressly delegated to it by the General Partner, including the day-to-day supervision of the business and affairs of the Partnership. The President shall preside at all meetings of Partners and of the General Partner.

### 5.2.3 Election of President

The General Partner hereby elects Kenneth W. Mattson as President of the Partnership.

### 5.2.4 Officers, Compensation

The General Partner may provide for additional officers of the Partnership, may alter the powers and duties of the President, and shall establish the powers and duties of all other officers and the compensation of all Partnership officers.

## 5.3 Authority to Contract



The authority to contract on behalf of the Partnership is vested in (a) the General Partner, and (b) the President, who may each act separately to the extent of the authority provided to them in Sections 5.1 and 5.2, above. The General Partner and President are each individually authorized to enter into maintenance, repair, construction, marketing, administration and professional service contracts (including contracts for accounting and legal services) on behalf of the Partnership relating to the management and operation of the Partnership and its assets. The General Partner and the President shall also each individually have the authority to pay all amounts owed by the Partnership under such contracts as well as amounts owed to other vendors and service providers in connection with Partnership operations. Amounts so paid shall be paid from Partnership accounts or if paid directly by the General Partner or President, reimbursed to the General Partner or the President by the Partnership immediately upon written request from the General Partner or the President that is accompanied with receipts and/or other evidence of payment. As of the effective date of this Agreement, Partners acknowledge and agree that General Partner and/or President shall enter into a management agreement with Home Tax Service of America, Inc., dba LeFever Mattson Property Management (the "*Property Manager*") in a form similar to the draft attached hereto as Exhibit B, and modified from time to time, pursuant to which the Property Manager shall be retained to manage the Property and the Partnership's business related to the Property, in addition to related tasks that may be requested by the President and other officers of the Partnership from time to time.

No Partner who is not also the General Partner and/or the President shall have the authority to bind the Partnership or execute any instrument on behalf of the Partnership. Each Partner shall indemnify, defend, and save harmless the General Partner, the President and each other Partner and the Partnership from and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by any Partner in contravention of this Section.

#### 5.4 Procedure for Action by Partners

The Partners are not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement among a Majority of Partners, provided that all Partners are consulted (although all Partners need not be present during a particular consultation), or by a written consent signed by a Majority of Partners. In the event that Partners wish to hold a formal meeting (a "*Meeting*") for any reason, the following procedures shall apply:

##### 5.4.1 Calling and Notice of Meetings

Any two Partners may call a Meeting of the Partners by giving Notice of the time and place of the Meeting to the General Partner and all other Partners at least 48 hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Partnership.

##### 5.4.2 Quorum

A Majority of Partners shall constitute a quorum for the transaction of business at any Meeting of the Partners.

#### 5.4.3 Waiver of Notice

The transactions of the Partners at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Partner not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

#### 5.4.4 Consent Required if No Meeting

Any action required or permitted to be taken by the Partners under this Agreement may be taken without a Meeting if the requisite consent or approval of the Partners (as set forth in this Agreement or required by law) is obtained in writing, individually or collectively, for such action.

#### 5.4.5 Teleconference

Partners may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Partners participating in the Meeting can hear one another.

#### 5.4.6 Records of Meetings

The Partners shall keep or cause to be kept with the books and records of the Partnership full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

#### 5.5 Compensation

The General Partner and the President shall be entitled to reasonable compensation for their services to the Partnership. Such compensation may include, but is not limited to, the lease of Partnership owned office space to the General Partner and/or any of its affiliates at below market rate rent and according to other favorable terms.

#### 5.6 Personal Liability

No General Partner or Partner or Officer shall be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Partnership except as otherwise provided in the Act or in this Agreement.

#### 5.7 No Active Participation

No Partner shall participate in the Partnership's business for more than 500 hours during the Partnership's taxable year without written consent from a Majority of Partners.

#### 5.8 Title to Assets

All assets of the Partnership, whether real or personal, shall be held in the name of the Partnership.

#### 5.9 Banking

All funds of the Partnership shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Partnership, at such locations as shall be determined by the General Partner. Withdrawal from such accounts shall require the signature of the General Partner, or the President and another officer of the Partnership authorized in writing by the General Partner to effect such withdrawal.

#### 5.10 Indemnification; Insurance

The Partnership shall indemnify the General Partner and any employees and agents of the General Partner (collectively, the "Indemnified Parties") from any liability or damage; shall defend, save harmless, and pay all judgments against the Indemnified Parties incurred by reason of any act or omission or alleged act or omission in connection with the business of the Partnership (including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred); and shall indemnify the Indemnified Parties for such liabilities under Federal and State Securities Laws (including the Securities Act of 1933) as the law permits. All judgments against the Partnership or the Indemnified Parties, wherein the Indemnified Parties are entitled to indemnification, must first be satisfied from Partnership assets before the Indemnified Parties are responsible for these obligations. Any Partner guarantying a loan on the Property in accordance with the provisions of Section 7.4 shall be deemed an Indemnified Party under this Section 5.10 and shall be entitled to indemnification by the Partnership from any liability or damage incurred in connection with or arising from such guaranty.

The Partnership shall have the authority to purchase and maintain directors and officers liability insurance, and to the extent commercially reasonable (as determined by the General Partner), purchase and maintain insurance on behalf of any Person who is or was an agent of the Partnership against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Partnership would have the power to indemnify such Person against such liability under the provisions of this Section 5.10 or under applicable law.

## ARTICLE VI

### ACCOUNTS AND RECORDS

#### 6.1 Accounts

Complete books of account of the Partnership's business, in which each Partnership transaction shall be fully and accurately entered, shall be kept at the Partnership's principal executive office and shall be open to inspection and copying by each Partner or the Partner's authorized representatives on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Partner.



## 6.2 Accounting

Financial books and records of the Partnership shall be kept on the cash method of accounting, which shall be the method of accounting followed by the Partnership for federal income tax purposes. A balance sheet and income statement of the Partnership shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Partnership's business and for carrying out the provisions of this Agreement. The fiscal year of the Partnership shall be January 1 through December 31.

## 6.3 Records

At all times during the term of existence of the Partnership, and beyond that term if a Majority of the Partners deem it necessary, the Partners shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

### 6.3.1 Partner List

A current list of the full name and last known business or residence address of each Partner, together with the Capital Contribution and the share in Profits and Losses of each Partner;

### 6.3.2 Copy of Certificate

A copy of the Certificate, as amended;

### 6.3.3 Tax Returns

Copies of the Partnership's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

### 6.3.4 Limited Partnership Agreement

Executed counterparts of this Agreement, as amended;

### 6.3.5 Powers of Attorney

Any powers of attorney under which the Certificate or any amendments thereto were executed;

### 6.3.6 Financial Statements

Financial statements of the Partnership for the six most recent fiscal years; and

### 6.3.7 Books and Records of Internal Affairs

The Books and Records of the Partnership as they relate to the Partnership's internal affairs for the current and past four fiscal years.

If a Majority of Partners deem that any of the foregoing items shall be kept beyond the term of existence of the Partnership, the repository of said items shall be as designated by a Majority of Partners.

#### 6.4 Income Tax Returns

Within 90 days after the end of each taxable year of the Partnership the Partnership shall send to each of the Partners all information necessary for the Partners to complete their federal and state income tax or information returns, and a copy of the Partnership's federal, state, and local income tax or information returns for such year.

### ARTICLE VII

#### PARTNERS AND VOTING

##### 7.1 Partners and Voting Rights

There shall be only one class of partnership interest and except as otherwise expressly set forth herein, no Partner shall have any rights or preferences in addition to or different from those possessed by any other Partner. Each Partner shall Vote in proportion to the Partner's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. Any action that may or that must be taken by the Partners shall be by a Majority of Partners, except as otherwise expressly provided herein.

##### 7.2 Record Dates

The record date for determining the Partners entitled to Notice of any Meeting, to Vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by a Majority of Partners, provided that such record date shall not be more than 60, nor less than 10 days prior to the date of the Meeting, nor more than 60 days prior to any other action.

In the absence of any action setting a record date the record date shall be determined in accordance with California Corporations Code Section 15637(l).

##### 7.3 Proxies

At all Meetings of Partners, a Partner may Vote in person or by Proxy. Such proxy shall be filed with any Partner before or at the time of the Meeting, and may be filed by facsimile transmission to a Partner at the principal executive office of the Partnership or such other address as may be given by a Majority of Partners to the Partners for such purposes.

##### 7.4 Partner Participation in Connection with Refinance of Property

Current or future financing on property now held or subsequently acquired by the Partnership may require a payoff and refinance. If such a refinance requires guarantors in addition to the General Partner, all Partners acknowledge and agree to provide such financial

information as may be reasonably requested by any proposed lender, and to execute such documents, including but not limited to guarantees, to affect such refinance.

## ARTICLE VIII

### TRANSFERS OF PARTNERSHIP INTERESTS

#### 8.1 Withdrawal of Partner

A Partner may withdraw from the Partnership at any time by giving Notice of Withdrawal to all other Partners at least 180 calendar days before the effective date of withdrawal; provided that upon the occurrence of a sale of all or substantially all of the Partnership's assets, a Partner may withdraw by giving Notice of Withdrawal to all other Partners prior to such sale. Withdrawal shall not release a Partner from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal. A withdrawing Partner shall divest the Partner's entire Partnership Interest before the effective date of withdrawal in accordance with the transfer restrictions and option rights set forth in this Section 8. In the event of any withdrawal made in connection with the sale of all or substantially all of the Partnership's assets, the Partnership shall redeem that portion of the Partner's Partnership Interest specified in the Notice of Withdrawal. The redemption price for the Partner's Partnership Interest specified in the Notice of Withdrawal shall equal the net asset value of the Partnership Interest being redeemed. For purposes hereof, net asset value shall equal the Partnership's total assets minus its total liabilities multiplied by the Partnership Interest being redeemed. Net asset value shall be determined by the General Partner, in its reasonable discretion. If more than one Partner elects to withdraw all or any portion of their Partnership Interests in connection with the sale of all or substantially all of the Partnership's assets, and the sale proceeds therefrom are insufficient to redeem all of the Partnership Interests presented for redemption, Partnership Interests shall be redeemed on a pro rata basis.

#### 8.2 Restrictions on Transfer

Except as expressly provided in this Agreement, a Partner shall not Transfer any part of the Partner's Partnership Interest in the Partnership, whether now owned or hereafter acquired, unless (1) the General Partner approves the transferee's admission (the "*Transferee*") to the Partnership as a Partner prior to such Transfer and (2) the Partnership Interest to be transferred, when added to the total of all other Partnership Interests transferred in the preceding 12 months, will not cause the termination of the Partnership under the Code. It shall be a further condition to any Transfer that the General Partner, Transferee and transferring Partner execute an agreement, including a consent to transfer, which agreement shall provide, among other things, that: (a) the transferring Partner shall indemnify General Partner and the Partnership for any and all claims, causes of action, damages, costs, injuries and liabilities existing with respect to such Partnership Interest prior to the Transfer or resulting from the Transfer of such Partner's Partnership Interest in the Partnership; (b) both Transferee and transferring Partner provide such representations and warranties in favor of General Partner and the Partnership as General Partner deems reasonable, including but not limited to representations as to due authorization,

compliance with all laws, no litigation, no bankruptcy, etc.; (c) both Transferee and transferring Partner acknowledge that they are not relying on the Partnership, General Partner or other Partners for real estate advice or tax advice or to assure compliance with securities laws; (d) Transferee executes a counterpart to and agrees to be bound by all of the provisions of this Agreement; (e) Transferee acknowledges that the Partnership Interests (A) are being acquired for investment purposes only and not for resale, transfer or distribution, and (B) may not be further offered for sale, sold, or transferred other than pursuant to an effective registration under applicable state and federal securities laws, and/or in transactions otherwise in compliance with, or pursuant to an available exemption from registration under such laws, and upon evidence satisfactory to the Partnership of compliance with such laws, as to which Partnership may rely upon an opinion of counsel satisfactory to the Partnership.

No Partner may Encumber or permit or suffer any Encumbrance of all or any part of the Partner's Partnership Interest in the Partnership unless such Encumbrance has been approved in writing by all the other Partners. Any Transfer or Encumbrance of a Partnership Interest without such approval shall be void.

Notwithstanding any other provision of this Agreement to the contrary, (a) a Partner who is a natural person may transfer all or any portion of his or her Partnership Interest to any revocable trust created for the benefit of the Partner, or any combination between or among the Partner, the Partner's spouse, and the Partner's issue, provided that the Partner retains a beneficial interest in the trust and all of the Voting Interest included in such Partnership Interest, and (b) the General Partner may purchase a Partnership Interest for its own account or for the account of any other Partner(s), and may sell any portion of its interest, at a price and terms agreed to by the General Partner and the selling Partner, and such purchase and sale shall be exempt. Sales and transfers pursuant to the preceding sentence shall not be deemed Transfers hereunder, shall be exempt from all restrictions on transfer set forth in this Section 8.2 and the right of first refusal set forth in Section 8.3, and shall not constitute a Trigger Event under Section 8.4. Notwithstanding the foregoing, a transfer of a Partner's entire beneficial interest in a trust or failure to retain a Voting Interest shall be deemed a Transfer of a Partnership Interest.

Any Transferee of a Partner's Partnership Interest shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

### 8.3 Right of First Refusal

If a Partner wishes to transfer any or all of the Partner's Partnership Interest in the Partnership pursuant to a Bona Fide Offer (as defined below), the Partner shall give Notice to the General Partner at least 30 days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The General Partner shall have the option to purchase the Partnership Interest proposed to be transferred, for its own account or for the account of any other Partner(s), at the price and on the terms provided in this Agreement, at any time on or before the date that is thirty (30) days after General Partner's receipt of the Notice for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8. If the price for the Partnership Interest is other than cash, the fair value

in dollars of the price shall be as established in good faith by the Partnership. For purposes of this Agreement, “*Bona Fide Offer*” means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing, and able to consummate the purchase.

If the General Partner does not exercise its rights to purchase all of the Partnership Interest, the offering Partner may, within 45 days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Partnership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeror under this section shall become an Assignee, and shall be entitled to receive only the share of Profits or other compensation by way of income and the return of Capital Contribution to which the assigning Partner would have been entitled.

#### 8.4 Triggering Events

On the happening of any of the following events (“*Triggering Events*”) with respect to a Partner, the General Partner, for its own account or for the account of any other Partner(s), shall have the option to purchase all or any portion of the Partnership Interest in the Partnership of such Partner (a “*Selling Partner*”) at the price and on the terms provided in Section 8.8 of this Agreement:

8.4.1 the death or incapacity of a Partner;

8.4.2 the bankruptcy of a Partner;

8.4.3 the winding up and dissolution of a corporate Partner, or merger or other corporate reorganization of a corporate Partner as a result of which the corporate Partner does not survive as an entity;

8.4.4 the withdrawal of a Partner; or

8.4.5 except for the events stated in Section 8.5, the occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.

Each Partner agrees to promptly give Notice of a Triggering Event to all other Partners.

#### 8.5 Marital Dissolution or Death of Spouse

Notwithstanding any other provisions of this Agreement:

8.5.1 If, in connection with the divorce or dissolution of the marriage of a Partner, any court issues a decree or order that transfers, confirms, or awards a Partnership Interest, or any portion thereof, to that Partner’s spouse (an “*Award*”), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Partner shall have the right to purchase from his or her former spouse the Partnership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Partnership Interest or portion thereof to that Partner at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the Award (the “*Award*”



*Transfer Date*”), the General Partner shall have the first option to purchase, followed by the Partnership and the other Partners, from the former spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Award Transfer Date, or (2) the date of actual notice of the Award.

8.5.2 If, by reason of the death of a spouse of a Partner, any portion of a Partnership Interest is transferred to a Transferee other than (1) that Partner or (2) a trust created for the benefit of that Partner (or for the benefit of that Partner and any combination between or among the Partner and the Partner’s issue) in which the Partner is the sole Trustee and the Partner, as Trustee or individually possesses all of the Voting Interest included in that Partnership Interest, then the Partner shall have the right to purchase the Partnership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee of such deceased spouse, and the estate, successor, or Transferee shall sell the Partnership Interest or portion thereof at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the date of death (the “*Estate Transfer Date*”), the General Partner shall have the first option to purchase, followed by the Partnership and the other Partners, from the estate or other successor of the deceased spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Estate Transfer Date, or (2) the date of actual notice of the death.

#### 8.6 Option Periods

On the receipt of Notice by a Partners as contemplated by Section 8.1, and on receipt of actual notice of any Triggering Event (the date of such receipt is hereinafter referred to as the “*Option Date*”), the General Partner shall promptly give notice of the occurrence of such a Triggering Event to each Partner, and the General Partner and the Partnership shall have the option, for a period ending 30 calendar days following the determination of the purchase price as provided in Section 8.8, to purchase the Partnership Interest in the Partnership to which the option relates, at the price and on the terms provided in Section 8.8, and the other Partners, pro rata in accordance with their prior Partnership Interests in the Partnership, shall then have the option, for a period of 30 days thereafter, to purchase the Partnership Interest in the Partnership not purchased by the Partnership, on the same terms and conditions as apply to the Partnership. If all other Partners do not elect to purchase the entire remaining Partnership Interest in the Partnership, then the Partners electing to purchase shall have the right, pro rata in accordance with their prior Partnership Interest in the Partnership, to purchase the additional Partnership Interest in the Partnership available for purchase. The Transferee of the Partnership Interest in the Partnership that is not purchased shall hold such Partnership Interest in the Partnership subject to all of the provisions of this Agreement.

#### 8.7 Nonparticipation of Interested Partner

No Partner shall participate in any Vote or decision in any matter pertaining to the disposition of that Partner’s Partnership Interest in the Partnership under this Agreement.

#### 8.8 Option Purchase Price

The purchase price of the Partnership Interest that is the subject of an option under this Agreement shall be the Fair Market Value of such Partnership Interest as determined under this Section 8.8. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree on the Fair Market Value. If the parties are unable to so agree within 30 days of the Option Date, the selling party shall appoint, within 40 days of the Option Date, one appraiser, and the purchasing party shall appoint within 40 days of the Option Date, one appraiser. The two appraisers shall within a period of five additional days, agree on and appoint an additional appraiser. The three appraisers shall, within 60 days after the appointment of the third appraiser, determine the Fair Market Value of the Partnership Interest in writing and submit their report to all the parties. The Fair Market Value shall be determined by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations, and the arithmetic mean of the remaining two appraisers' valuations shall be the Fair Market Value. Each purchasing party shall pay for the services of the appraiser selected by it, plus one-half of the fee charged by the third appraiser. The option purchase price as so determined shall be payable in cash.

#### 8.9 Substituted Partner

Except as expressly permitted under Section 8.2, a prospective Transferee (other than an existing Partner) of a Partnership Interest may be admitted as a Partner with respect to such Partnership Interest (a "*Substituted Partner*") only (1) on the approval of the General Partner of the prospective Transferee's admission as a Partner, and (2) on such prospective Transferee's executing a counterpart of this Agreement as a party hereto. Any prospective Transferee of a Partnership Interest shall be deemed an Assignee, and, therefore, the owner of only an Economic Interest until such prospective Transferee has been admitted as a Substituted Partner.

#### 8.10 Duties of a Substituted Partner

Any Person admitted to the Partnership as a Substituted Partner shall be subject to all provisions of this Agreement.

#### 8.11 Securities Laws

The initial sale of Partnership Interests in the Partnership to the Initial Partners has not been qualified or registered under the securities laws of any state, or registered under the Securities Act of 1933, as amended, in reliance upon exemptions from the registration provisions of those laws. No attempt has been made to qualify the offering and sale of Partnership Interests to Partners under the California Corporate Securities Law of 1968, as amended, also in reliance upon an exemption from the requirement that a permit for issuance of securities be procured. Notwithstanding any other provision of this Agreement, Partnership Interests may not be Transferred or Encumbered unless registered or qualified under applicable state and federal securities law or unless, in the opinion of legal counsel satisfactory to the Partnership, such qualification or registration is not required. The Partner who desires to transfer a Partnership Interest shall be responsible for all legal fees incurred in connection with said opinion.

## ARTICLE IX

### DISSOLUTION AND WINDING UP

#### 9.1 Events of Dissolution

The Partnership shall be dissolved on the first to occur of the following events:

9.1.1 The written agreement of the General Partner and a Majority of Partners to dissolve the Partnership.

9.1.2 The sale or other disposition of substantially all of the Partnership assets.

9.1.3 Entry of a decree of judicial dissolution pursuant to Section 15908 of the Act.

#### 9.2 Winding Up

On the dissolution of the Partnership, the Partnership shall engage in no further business other than that necessary to wind up the business and affairs of the Partnership. The Partners who have not wrongfully dissolved the Partnership shall wind up the affairs of the Partnership. The General Partner shall give written Notice of the commencement of winding up by mail to all known creditors and claimants against the Partnership whose addresses appear in the records of the Partnership. After paying or adequately providing for the payment of all known debts of the Partnership (except debts owing to Partners) the remaining assets of the Partnership shall be distributed or applied in the following order of priority:

9.2.1 To pay the expenses of liquidation.

9.2.2 To repay outstanding loans to Partners. If there are insufficient funds to pay such loans in full, each Partner shall be repaid in the ratio that the Partner's respective loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Partners, including all interest accrued and unpaid on those loans. Such repayment shall first be credited to unpaid principal and the remainder shall be credited to accrued and unpaid interest.

9.2.3 Among the Partners in accordance with the provisions of Article Four, Section 4.7.

#### 9.3 Deficits

Each Partner shall look solely to the assets of the Partnership for the return of the Partner's investment, and if the Partnership property remaining after the payment or discharge of the debts and liabilities of the Partnership is insufficient to return the investment of any Partner, such Partner shall have no recourse against any other Partners for indemnification, contribution, or reimbursement.



## **ARTICLE X**

### **ARBITRATION**

Any action to enforce or interpret this Agreement or to resolve disputes between the Partners or by or against any Partner shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive dispute resolution process in the State of California. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at San Francisco, California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

#### **11.1 General Provisions**

This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Agreement replaces and supersedes all prior written and oral agreements by and among the Partners or any of them.

#### **11.2 Counterpart Executions**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **11.3 Governing Law; Severability**

This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

#### **11.4 Benefit**

This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

#### 11.5 Number and Gender

Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

#### 11.6 Further Assurances

The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties, including but not limited to taking any and all actions reasonably required to comply with any mortgage or encumbrance with respect to the Property.

#### 11.7 Partner's Other Business

Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Partners or General Partner in the carrying on of their own respective businesses or activities.

#### 11.8 Agent

Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Partner, in the Partner's capacity as such, the agent of any other Partner.

#### 11.9 Authority to Contract

Each Partner represents and warrants to the other Partners that the Partner has the capacity and authority to enter into this Agreement.

#### 11.10 Titles and Headings

The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

#### 11.11 Amendment

Except as otherwise provided herein, all amendments to this Agreement will be in writing and approved and executed by the General Partner and a Majority of the Partners; provided that any amendment that would materially and adversely affect the rights of any Partner(s) disproportionately as compared to any other Partner shall require the prior consent of such Partner(s). Notwithstanding the foregoing, this Agreement may be amended by the signature of the General Partner as necessary to reflect the sale of limited partnership interests and the admission of additional Partners.

11.12 Time is of the Essence

Time is of the essence of every provision of this Agreement that specifies a time for performance.

11.13 No Third Party Beneficiary Intended

This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person shall have or acquire any right by virtue of this Agreement.

11.14 Sale of the Property.

Upon the sale of any real property or any interest therein owned by the Partnership, or the purchase of any additional real property or interest therein by the Partnership, LeFever Mattson shall have exclusive authorization and right to make such sale or purchase of real property interests on behalf of the Partnership and shall be compensated at least three percent (3%) of the sale or purchase price for its services, or such greater amount as may be agreed.

11.15 Financing of the Property.

Upon the refinancing of any real property or any interest therein owned by the Partnership, as well as upon obtaining financing for any purchase of additional real property or any interest therein on behalf of the Partnership, LeFever Mattson shall be compensated in an amount equal to not less than one-half percent (0.5%) of the loan amount for its services in effectuating such financing.

11.16 Limited Partnership

The Partners intend the Partnership to be a limited partnership under the Act. No member shall take any action inconsistent with the express intent of the parties to this Agreement.

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# **EXHIBIT 3**

**LIMITED PARTNERSHIP AGREEMENT  
OF TREEHOUSE INVESTMENTS, LP  
A CALIFORNIA LIMITED PARTNERSHIP**

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This Limited Partnership Agreement (this “*Agreement*”) of Treehouse Investments, LP, a California limited partnership (the “*Partnership*”), is entered into effective as of October 20, 2014, by K S Mattson Partners, LP, a California Limited Partnership (the “*General Partner*”) and the other individuals and/or entities who are or become signatories hereto (referred to individually as a “*Limited Partner*” and collectively with the General Partner as the “*Partners*”).

## **RECITALS**

WHEREAS, Treehouse Investments, LP, a California limited partnership (the “*Partnership*”), was formed pursuant to the California Revised Limited Partnership Act, as set forth in Sections 15611 et seq., of the California Corporations Code upon the filing of the Certificate of Limited Partnership of the Company with the Secretary of State of California (the “*Secretary of State*”) on October 20, 2014, file number 201429500010;

WHEREAS, the Partners desire to enter into this Agreement to provide for the governance of the Partnership, the conduct of its business, and to specify their relative rights and obligations effective as of the conversion;

NOW THEREFORE, in consideration of the foregoing, the Partners hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in the Act.

#### **1.1 Act**

“*Act*” means the California Revised Limited Partnership Act, as set forth in Sections 15611, et seq., of the California Corporations Code, including amendments from time to time.

#### **1.2 Assignee**

“*Assignee*” means a Person who has acquired a Partner’s Economic Interest in the Partnership, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Partner.

#### **1.3 Assigning Partner**

“*Assigning Partner*” means a Partner who by means of a Transfer has transferred an Economic Interest in the Partnership to an Assignee.

#### **1.4 Capital Account**

“*Capital Account*” means, as to any Partner, a separate account maintained and adjusted in accordance with Article Three, Section 3.5.

### **1.5 Capital Contribution**

“*Capital Contribution*” means, with respect to any Partner, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Partnership (net of liabilities secured by such contributed property that the Partnership is considered to assume or take “subject to” under IRC Section 752) in consideration of a Percentage Interest held by such Partner. A Capital Contribution shall not be deemed a loan.

### **1.6 Capital Event**

“*Capital Event*” means a sale or disposition of any of the Partnership’s capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Partnership property, the receipt of proceeds from a refinancing of Partnership property, or a similar event with respect to Partnership property or assets.

### **1.7 Code or IRC**

“*Code*” or “*IRC*” means the Internal Revenue Code of 1986, as amended, and any successor provision.

### **1.8 Economic Interest**

“*Economic Interest*” means a Person’s right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Partnership, but does not include any other rights of a Partner, including the right to vote or to participate in management.

### **1.9 Encumber**

“*Encumber*” means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

### **1.10 Encumbrance**

“*Encumbrance*” means, with respect to any Partnership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

### **1.11 Gross Asset Value**

“*Gross Asset Value*” means, with respect to any item of property of the Partnership, the item’s adjusted basis for federal income tax purposes, except as follows:

1.11.1 The Gross Asset Value of any item of property contributed by a Partner to the Partnership shall be the fair market value of such property, as mutually agreed by the contributing Partner and the Partnership; and

1.11.2 The Gross Asset Value of any item of Partnership property distributed to any Partner shall be the fair market value of such item of property on the date of distribution.

### **1.12 Initial Partner**

“*Initial Partner*” or “Initial Partners” means those Persons whose names are set forth in Exhibit A, attached. A reference to an “Initial Partner” means any of the Initial Partners.

### **1.13 Involuntary Transfer**

“*Involuntary Transfer*” means, with respect to any Partnership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

### **1.14 Losses**

“*Losses.*” See “Profits and Losses.”

### **1.15 Majority of Partners**

“*Majority of Partners*” means a Partner or Partners whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Partners.

### **1.16 Partner**

“*Partner*” means an Initial Partner or a Person who otherwise acquires a Partnership Interest, as permitted under this Agreement, and who remains a Partner.

### **1.17 Partnership**

“*Partnership*” means TREEHOUSE INVESTMENTS, LP, a California limited partnership.

### **1.18 Partnership Interest**

“*Partnership Interest*” means a Partner’s entire interest in the Partnership, including the Partner’s Economic Interest, Percentage Interest, Voting Interest and all other interests of a Partner in the Partnership.

### **1.19 Notice**

“*Notice*” means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express or United Parcel Service for overnight delivery, charges prepaid or charged to the sender’s account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home

or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

### **1.20 Percentage Interest**

*“Percentage Interest”* means a fraction, the numerator of which is the total of a Partner’s Capital Account and the denominator of which is the total of all Capital Accounts of all Partners.

### **1.21 Person**

*“Person”* means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

### **1.22 Profits and Losses**

*“Profits and Losses”* means, for each fiscal year or other period specified in this Agreement, an amount equal to the Partnership’s taxable income or loss for such year or period, determined in accordance with IRC Section 703(a).

### **1.23 Property**

*“Property”* means the real property consisting of an apartment complex located at 103-105 Commerce Court, Cordelia, California, as more particularly described on the attached Exhibit B.

### **1.24 Proxy**

*“Proxy”* has the meaning set forth in the first paragraph of California Corporations Code Section 15611(aa). A Proxy may not be transmitted orally.

### **1.25 Regulations**

*“Regulations”* or *“Reg”* means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

### **1.26 Successor in Interest**

*“Successor in Interest”* means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

### **1.27 Transfer**

*“Transfer”* means, with respect to a Partnership Interest, or any element of a Partnership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of all or any portion of a Partnership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

### **1.28 Vote**

“Vote” means a written consent or approval, a ballot cast at a Meeting, or a voice vote.

### **1.29 Voting Interest**

“*Voting Interest*” means, with respect to a Partner, the right to Vote or participate in management and any right to information concerning the business and affairs of the Partnership provided under the Act, except as limited by the provisions of this Agreement. A Partner’s Voting Interest shall be directly proportional to that Partner’s Percentage Interest.

## **ARTICLE II**

### **CERTIFICATE OF LIMITED PARTNERSHIP**

#### **2.1 Filing with Secretary of State**

The Certificate of Limited Partnership was filed with the California Secretary of State on October 20, 2014.

#### **2.2 Partnership Name**

The name of the Partnership shall be TREEHOUSE INVESTMENTS, LP.

#### **2.3 Principal Office**

The principal executive office of the Partnership shall be 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621, or such other place or places as may be determined by the General Partner from time to time.

#### **2.4 Agent for Service**

The initial agent for service of process on the Partnership shall be Tim LeFever, at 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621. A Majority of Partners may from time to time change the Partnership’s agent for service of process.

#### **2.5 Partnership Purpose**

The Partnership has been formed for the purposes of engaging in the business of real estate investment, and any other act or activity incidental to the foregoing. In furtherance of the foregoing, the Partnership has acquired the Property to own, operate and manage.

#### **2.6 Partnership Taxation**

The Partners intend the Partnership to be a limited partnership under the Act, classified as a partnership for federal and, to the maximum extent possible, state income taxes. Neither a General Partner nor any Partner shall take any action inconsistent with the express intent of the parties to this Agreement.

## **2.7 Term**

The term of existence of the Partnership commenced on the effective date of filing of the Certificate of Limited Partnership with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law.

## **2.8 General Partners**

The General Partner and the management of the Partnership is set forth in Article Five of this Agreement.

# **ARTICLE III**

## **CAPITALIZATION**

### **3.1 Partner Contribution**

Each Partner has contributed to the capital of the Partnership as the Partner's Capital Contribution the money and property specified in Exhibit A attached hereto. Each Partner's Percentage Interest in the Partnership is listed on Exhibit A attached hereto.

At the discretion of the General Partner, an Initial Partner may substitute an interest-bearing note for his or her Capital Contribution. Such note shall be due immediately upon the call of the General Partner.

The Fair Market Value of each item of contributed property as agreed between the Partnership and the Partner contributing such property is set forth in Exhibit A attached hereto.

### **3.2 Failure to Make Contribution**

If a Partner fails to make a required Capital Contribution within the later of 30 days after the contribution date agreed upon by all the Partners, that Partner's entire Partnership Interest shall terminate and that Partner shall indemnify and hold the Partnership and the other Partners harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make such Capital Contribution.

### **3.3 Additional Capital Contributions**

Two types of Additional Capital Contributions may be needed to enable the Partnership to conduct its business: (1) Discretionary Additional Capital Contributions and (2) Mandatory Additional Capital Contributions.

#### **3.3.1 Discretionary Additional Capital Contributions**

A Majority of the Partners may determine from time to time that Capital Contributions in addition to the Partners' initial Capital Contributions would allow the Partnership to enhance and improve its investment objectives. Upon such determination by a Majority of the Partners, the President shall give notice to all Partners in writing at least 90 days before the date on which such



additional Capital Contribution is due. The Notice shall set forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

### 3.3.2 Mandatory Additional Capital Contributions

The President may reasonably determine that the Partnership's capital is or is presently likely to become insufficient for the conduct of its business as now conducted or as proposed by the General Partner to be conducted and that Capital Contributions in addition to the Partners' initial Capital Contributions are necessary to enable the Partnership to so conduct its business. On making such a determination, the President may give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due, setting forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Purposes for which additional Capital Contributions may called include, but are not limited to: the improvement, repair, maintenance, operation and management of existing Partnership assets and the acquisition, improvement and development of new assets. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

### 3.3.3 Alternative to Additional Capital Contributions

In addition or as an alternative to making an additional capital call to the Partners, or if all of the additional capital called for in any notice referred to above is not raised through additional contributions by all or some of the Partners, the President shall have the right to obtain such additional capital by the sale of additional Partnership Interests to existing Partners and/or persons other than the existing Partners, on the same or more favorable terms and conditions offered to the Partners as set forth herein. Capital raised in connection with the offer and sale of additional Partnership Interests shall be used in furtherance of the Partnership's purpose and for general working capital purposes. In the event that additional Partner interests are sold in order to raise additional capital, Schedule A and the Percentage Interests of all Partners shall be adjusted accordingly, with the Percentage Interests of all Partners who do not participate in connection with such sale being adjusted downward. No additional consent shall be required, and no right of first offer or right of first refusal need be offered, in connection with any such offer and sale of additional Partnership Interests. Any purchaser of additional Partnership Interests shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

### 3.3.4 No Voluntary Additional Capital Contributions

No Partner may voluntarily make any additional Capital Contribution without the written consent of the Majority of Partners.

## **3.4 Remedies When Partner Fails To Make Additional Capital Contributions**

If a Partner fails to make an additional Capital Contribution required under Section 3 within 30 days after it is required to be made (a “*Defaulting Partner*”) the President shall within five days after said failure notify each other Partner (a “*Nondefaulting Partner*”) in writing of the total amount of Defaulting Partner Capital Contributions not made (the “*Additional Capital Shortfall*”), and shall specify a number of days within which each Nondefaulting Partner may make an additional Capital Contribution, which shall not be less than an amount bearing the same ratio to the amount of Additional Capital Shortfall as the Nondefaulting Partner’s Capital Account balance bears to the total Capital Accounts of all Nondefaulting Partners. If the total amount of Additional Capital Shortfall is not so contributed, the President may (i) use any reasonable method to provide Partners the opportunity to make additional Capital Contributions, until the Additional Capital Shortfall is as fully contributed as possible, and (ii) attempt to raise additional capital through the means set forth in Section 3.3.3 above. Following the Nondefaulting Partners’ and any new Partners’ making of such additional Capital Contributions, each Partner’s Percentage Interest shall be adjusted to reflect the ratio that the Partner’s Capital Account bears to the total Capital Accounts of all of the Partners.

### **3.5 Capital Accounts**

An individual Capital Account shall be maintained for each Partner consisting of that Partner’s Capital Contribution (1) increased by that Partner’s share of Profits, (2) decreased by that Partner’s share of Losses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

### **3.6 Withdrawal or Distribution of Capital Contribution**

A Partner shall not be entitled to withdraw any part of the Partner’s Capital Contribution or to receive any distributions, whether of money or property from the Partnership except as provided in this Agreement.

### **3.7 No Interest on Contribution**

No interest shall be paid on funds or property contributed to the capital of the Partnership or on the balance of a Partner’s Capital Account.

### **3.8 Priority Over Other Partners**

No Partner shall have priority over any other Partner, with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

## **ARTICLE IV**

### **ALLOCATIONS AND DISTRIBUTIONS**

#### **4.1 Profits and Losses**

The Profits and Losses of the Partnership and all items of Partnership income, gain, loss, deduction, or credit shall be allocated for Partnership book purposes and for tax purposes, to a Partner in accordance with the Partner's Percentage Interest.

#### **4.2 Qualified Income Offset**

If any Partner unexpectedly receives any adjustment, allocation, or distribution described in Reg. Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership gross income and gain shall be specially allocated to that Partner in an amount and manner sufficient to eliminate any deficit balance in the Partner's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg. Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

#### **4.3 Allocations Respecting Asset Distributions**

Any unrealized appreciation or unrealized depreciation in the values of Partnership property distributed in kind to all the Partners shall be deemed to be Profits or Losses realized by the Partnership immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Partners' Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Partners to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "*unrealized appreciation*" or "*unrealized depreciation*" shall mean the difference between the Fair Market Value of such property and the Partnership's basis for such property.

#### **4.4 Allocations Between Assignor and Assignee**

In the case of a Transfer of an Economic Interest during any fiscal year, the Assigning Partner and Assignee shall each be allocated the Economic Interest's share of Profits or Losses based on the number of days each held the Economic Interest during that fiscal year.

#### **4.5 Distributions**

All cash resulting from the normal business operations of the Partnership and from a Capital Event shall be distributed among the Partners in proportion to their Percentage Interests at such times as the Partners may agree.

#### **4.6 Non-Cash Proceeds**

If the proceeds from a sale or other disposition of a Partnership asset consists of property other than cash, the value of such property shall be as determined by the General Partner. Such

non-cash proceeds shall then be allocated among all the Partners in proportion to their Percentage Interests. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to each Partner in accordance with Section 4.5.

#### **4.7 Liquidating Proceeds**

Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Partnership, or when any Partner's interest is liquidated, all items of income and loss first shall be allocated to the Partners' Capital Accounts under this Article Four, and other credits and deductions to the Partners' Capital Accounts shall be made before the final distribution is made. The final distribution to the Partners shall be made to the Partners to the extent of and in proportion to their positive Capital Account balances.

### **ARTICLE V**

#### **MANAGEMENT**

##### **5.1 General Partner**

The business of the Partnership shall be managed by the General Partner. Any entity or individual appointed to the position of General Partner shall serve as General Partner until the earlier of its resignation or its removal for cause by a Majority of Partners at a meeting called expressly for that purpose. A new General Partner shall be appointed by a Majority of Partners on the occurrence of any of the foregoing events. The General Partner shall have all decision making authority with respect to the ownership of an interest in the Property, including but not limited to any refinance of the Property, except with respect to actions that otherwise require the authorization or consent of the Partners hereunder.

##### **5.2 President**

The Partnership shall have a President as chosen by the General Partner.

###### **5.2.1 Term**

The President shall serve until the earlier of (1) the President's resignation, retirement, death, or disability or (2) the President's removal for cause by a Majority of Partners at a meeting called expressly for that purpose. A new President shall be appointed by the General Partner on the occurrence of any of the foregoing events.

###### **5.2.2 Authority and Duties**

The President shall have general supervision of the business and affairs of the Partnership, shall preside at all meetings of Partners and of the General Partner, and shall have such other powers and duties usually vested in a chief executive officer and such other powers and duties as may be prescribed in this Agreement or by the Partners.

Notwithstanding the foregoing, the President shall not take any of the following actions on behalf of the Partnership unless a Majority of Partners has consented to the taking of such action.

- (a) Any act that would make it impossible to carry on the ordinary business of the Partnership;
- (b) Any confession of a judgment against the Partnership;
- (c) The dissolution of the Partnership;
- (d) The disposition of all or a substantial part of the Partnership's assets not in the ordinary course of business;
- (e) The incurring of any debt not in the ordinary course of business;
- (f) A change in the nature of the principal business of the Partnership;
- (g) The filing of a petition in bankruptcy or the entering into of an arrangement among creditors; and
- (h) The entering into, on behalf of the Partnership, of any transaction constituting a "reorganization" within the meaning of California Corporations Code § 17600.

#### 5.2.3 Election of President

The General Partner hereby elects Kenneth W. Mattson as President of the Partnership.

#### 5.2.4 Officers, Compensation

The General Partner may provide for additional officers of the Partnership, may alter the powers and duties of the President, and shall establish the powers and duties of all other officers and the compensation of all Partnership officers.

### **5.3 Authority to Contract**

The authority to contract on behalf of the Partnership is vested in the General Partner and the President. The General Partner and President are each authorized to enter into maintenance, repair, construction, marketing, administration and professional service contracts (including contracts for accounting and legal services) on behalf of the Partnership relating to the management and operation of the Partnership and its assets. The General Partner and the President shall also have the authority to pay all amounts owed by the Partnership under such contracts as well as amounts owed to other vendors and service providers in connection with Partnership operations. Amounts so paid shall be paid from Partnership accounts or if paid directly by the General Partner or President, reimbursed to the General Partner or the President by the Partnership immediately upon written request from the General Partner or the President that is accompanied with receipts and/or other evidence of payment. As of the effective date of this Agreement, Partners acknowledge that General Partner and/or President have entered into an apartment property management agreement for day-to-day management of the Property with LeFever Mattson Property Management in the form attached hereto as Exhibit C.

No Partner who is not also the General Partner and/or the President shall have the authority to bind the Partnership or execute any instrument on behalf of the Partnership. Each Partner shall indemnify, defend, and save harmless the General Partner, the President and each other Partner and the Partnership from and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by any Partner in contravention of this Section.

#### **5.4 Procedure for Action by Partners**

The Partners are not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement among a Majority of Partners, provided that all Partners are consulted (although all Partners need not be present during a particular consultation), or by a written consent signed by a Majority of Partners. In the event that Partners wish to hold a formal meeting (a “*Meeting*”) for any reason, the following procedures shall apply:

##### **5.4.1 Calling and Notice of Meetings**

Any two Partners may call a Meeting of the Partners by giving Notice of the time and place of the Meeting at least 48 hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Partnership.

##### **5.4.2 Quorum**

A majority of Partners shall constitute a quorum for the transaction of business at any Meeting of the Partners.

##### **5.4.3 Waiver of Notice**

The transactions of the Partners at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Partner not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

#### 5.4.4 Majority Consent Required if No Meeting

Any action required or permitted to be taken by the Partners under this Agreement may be taken without a Meeting if a Majority of the Partners individually or collectively consent in writing to such action.

#### 5.4.5 Teleconference

Partners may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Partners participating in the Meeting can hear one another.

#### 5.4.6 Records of Meetings

The Partners shall keep or cause to be kept with the books and records of the Partnership full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

### **5.5 Compensation**

The General Partner and the President shall not be entitled to compensation for their services absent written consent by the Partners.

### **5.6 Personal Liability**

No General Partner or Partner or Officer shall be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Partnership except as otherwise provided in the Act or in this Agreement.

### **5.7 No Active Participation**

No Partner shall participate in the Partnership's business for more than 500 hours during the Partnership's taxable year without written consent from a Majority of Partners.

### **5.8 Title to Assets**

All assets of the Partnership, whether real or personal, shall be held in the name of the Partnership.

### **5.9 Banking**

All funds of the Partnership shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Partnership, at such locations as shall be determined by the General Partner. Withdrawal from such accounts shall require the signature of the General Partner or the President and another officer of the Partnership, or such Person or persons as a Majority of Partners may designate.



### **5.10 Indemnification; Insurance**

The Partnership shall indemnify the General Partner and any employees and agents of the General Partner (collectively, the "Indemnified Parties") from any liability or damage; shall defend, save harmless, and pay all judgments against the Indemnified Parties incurred by reason of any act or omission or alleged act or omission in connection with the business of the Partnership (including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred); and shall indemnify the Indemnified Parties for such liabilities under Federal and State Securities Laws (including the Securities Act of 1933) as the law permits. All judgments against the Partnership or the Indemnified Parties, wherein the Indemnified Parties are entitled to indemnification, must first be satisfied from Partnership assets before the Indemnified Parties are responsible for these obligations. Any Partner guarantying a loan on the Property in accordance with the provisions of Section 7.4 shall be deemed an Indemnified Party under this Section 0 and shall be entitled to indemnification by the Partnership from any liability or damage incurred in connection with or arising from such guaranty.

The Partnership shall have the authority to purchase and maintain directors and officers liability insurance, and to the extent commercially reasonable (as determined by the General Partner), purchase and maintain insurance on behalf of any Person who is or was an agent of the Partnership against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Partnership would have the power to indemnify such Person against such liability under the provisions of this Section 0 or under applicable law.

## **ARTICLE VI**

### **ACCOUNTS AND RECORDS**

#### **6.1 Accounts**

Complete books of account of the Partnership's business, in which each Partnership transaction shall be fully and accurately entered, shall be kept at the Partnership's principal executive office and shall be open to inspection and copying by each Partner or the Partner's authorized representatives on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Partner.

#### **6.2 Accounting**

Financial books and records of the Partnership shall be kept on the cash method of accounting, which shall be the method of accounting followed by the Partnership for federal income tax purposes. A balance sheet and income statement of the Partnership shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Partnership's business and for carrying out the provisions of this Agreement. The fiscal year of the Partnership shall be January 1 through December 31.

### **6.3 Records**

At all times during the term of existence of the Partnership, and beyond that term if a Majority of the Partners deem it necessary, the Partners shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

#### **6.3.1 Partner List**

A current list of the full name and last known business or residence address of each Partner, together with the Capital Contribution and the share in Profits and Losses of each Partner;

#### **6.3.2 Copy of Certificate**

A copy of the Certificate of Limited Partnership - Conversion, as amended;

#### **6.3.3 Tax Returns**

Copies of the Partnership's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

#### **6.3.4 Limited Partnership Agreement**

Executed counterparts of this Agreement, as amended;

#### **6.3.5 Powers of Attorney**

Any powers of attorney under which the Certificate of Limited Partnership or any amendments thereto were executed;

#### **6.3.6 Financial Statements**

Financial statements of the Partnership for the six most recent fiscal years; and

#### **6.3.7 Books and Records of Internal Affairs**

The Books and Records of the Partnership as they relate to the Partnership's internal affairs for the current and past four fiscal years.

If a Majority of Partners deem that any of the foregoing items shall be kept beyond the term of existence of the Partnership, the repository of said items shall be as designated by a Majority of Partners.

### **6.4 Income Tax Returns**

Within 90 days after the end of each taxable year of the Partnership the Partnership shall send to each of the Partners all information necessary for the Partners to complete their federal and state income tax or information returns, and a copy of the Partnership's federal, state, and local income tax or information returns for such year.

## ARTICLE VII

### PARTNERS AND VOTING

#### 7.1 Partners and Voting Rights

There shall be only one class of membership and no Partner shall have any rights or preferences in addition to or different from those possessed by any other Partner. Each Partner shall Vote in proportion to the Partner's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. Any action that may or that must be taken by the Partners shall be by a Majority of Partners, except that the following actions shall all require the unanimous Vote of the Partners:

##### 7.1.1 Amendment of Certificate

Any amendment of the Certificate of Limited Partnership or this Agreement; or

##### 7.1.2 Compromise of Obligation of Capital Contribution

Compromise of the obligation of a Partner to make a Capital Contribution.

#### 7.2 Record Dates

The record date for determining the Partners entitled to Notice of any Meeting, to vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by a Majority of Partners, provided that such record date shall not be more than 60, nor less than 10 days prior to the date of the Meeting, nor more than 60 days prior to any other action.

In the absence of any action setting a record date the record date shall be determined in accordance with California Corporations Code Section 15637(l).

#### 7.3 Proxies

At all Meetings of Partners, a Partner may Vote in person or by Proxy. Such proxy shall be filed with any Partner before or at the time of the Meeting, and may be filed by facsimile transmission to a Partner at the principal executive office of the Partnership or such other address as may be given by a Majority of Partners to the Partners for such purposes.

#### 7.4 Partner Participation in connection with Refinance of Property

Current or future financing on the Property may require a payoff and refinance. If such a refinance requires guarantors in addition to the General Partner, all Partners acknowledge and agree to provide such financial information as may be reasonably requested by any proposed lender, and to execute such documents, including but not limited to guarantees, to affect such refinance.

## ARTICLE VIII

### TRANSFERS OF PARTNERSHIP INTERESTS

#### 8.1 Withdrawal of Partner

A Partner may withdraw from the Partnership at any time by giving Notice of Withdrawal to all other Partners at least 180 calendar days before the effective date of withdrawal; provided that upon the occurrence of a sale of all or substantially all of the Partnership's assets, a Partner may withdraw by giving Notice of Withdrawal to all other Partners prior to such sale. Withdrawal shall not release a Partner from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal. A withdrawing Partner shall divest the Partner's entire Partnership Interest before the effective date of withdrawal in accordance with the transfer restrictions and option rights set forth in this Section 8. In the event of any withdrawal made in connection with the sale of all or substantially all of the Partnership's assets, the Partnership shall redeem that portion of the Partner's Partnership Interest specified in the Notice of Withdrawal. The redemption price for the Partner's Partnership Interest specified in the Notice of Withdrawal shall equal the net asset value of the Partnership Interest being redeemed. For purposes hereof, net asset value shall equal the Partnership's total assets minus its total liabilities multiplied by the Partnership Interest being redeemed. Net asset value shall be determined by the General Partner, in its reasonable discretion. If more than one Partner elects to withdraw all or any portion of their Partnership Interests in connection with the sale of all or substantially all of the Partnership's assets, and the sale proceeds therefrom are insufficient to redeem all of the Partnership Interests presented for redemption, Partnership Interests shall be redeemed on a pro rata basis.

#### 8.2 Restrictions on Transfer

Except as expressly provided in this Agreement, a Partner shall not Transfer any part of the Partner's Partnership Interest in the Partnership, whether now owned or hereafter acquired, unless (1) the General Partner approves the transferee's admission (the "*Transferee*") to the Partnership as a Partner prior to such Transfer and (2) the Partnership Interest to be transferred, when added to the total of all other Partnership Interests transferred in the preceding 12 months, will not cause the termination of the Partnership under the Code. It shall be a further condition to any Transfer that the General Partner, Transferee and transferring Partner execute an agreement, including a consent to transfer, which agreement shall provide, among other things, that: (a) the transferring Partner shall indemnify General Partner and the Partnership for any and all claims, causes of action, damages, costs, injuries and liabilities existing with respect to such Partnership Interest prior to the Transfer or resulting from the Transfer of such Partner's Partnership Interest in the Partnership; (b) both Transferee and transferring Partner provide such representations and warranties in favor of General Partner and the Partnership as General Partner deems reasonable, including but not limited to representations as to due authorization, compliance with all laws, no litigation, no bankruptcy, etc.; (c) both Transferee and transferring Partner acknowledge that they are not relying on the Partnership, General Partner or other Partners for real estate advice or tax advice or to assure compliance with securities laws; (d) Transferee executes a counterpart to and agrees to be bound by all of the provisions of this Agreement; (e) Transferee acknowledges that the Partnership Interests (A) are being acquired for investment purposes only and not for resale, transfer or distribution, and (B) may not be further offered for sale, sold, or transferred other than

pursuant to an effective registration under applicable state and federal securities laws, and/or in transactions otherwise in compliance with, or pursuant to an available exemption from registration under such laws, and upon evidence satisfactory to the Partnership of compliance with such laws, as to which Partnership may rely upon an opinion of counsel satisfactory to the Partnership.

No Partner may Encumber or permit or suffer any Encumbrance of all or any part of the Partner's Partnership Interest in the Partnership unless such Encumbrance has been approved in writing by all the other Partners. Any Transfer or Encumbrance of a Partnership Interest without such approval shall be void.

Notwithstanding any other provision of this Agreement to the contrary, a Partner who is a natural person may transfer all or any portion of his or her Partnership Interest to any revocable trust created for the benefit of the Partner, or any combination between or among the Partner, the Partner's spouse, and the Partner's issue, provided that the Partner retains a beneficial interest in the trust and all of the Voting Interest included in such Partnership Interest. A transfer of a Partner's entire beneficial interest in such trust or failure to retain such Voting Interest shall be deemed a Transfer of a Partnership Interest. Notwithstanding the foregoing, the Transferee of such Partner's Partnership Interest shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

### **8.3 Right of First Refusal**

If a Partner wishes to transfer any or all of the Partner's Partnership Interest in the Partnership pursuant to a Bona Fide Offer (as defined below), the Partner shall give Notice to the General Partner at least 30 days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The General Partner, on behalf of the Partnership, shall have the option to purchase the Partnership Interest proposed to be transferred at the price and on the terms provided in this Agreement, at any time on or before the date that is thirty (30) days after General Partner's receipt of the Notice for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8. If the price for the Partnership Interest is other than cash, the fair value in dollars of the price shall be as established in good faith by the Partnership. For purposes of this Agreement, "*Bona Fide Offer*" means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing, and able to consummate the purchase. Transfers to a non-minor child, grandchild, spouse, or parent of a Partner (an "*Immediate Family Partner*") shall not be subject to the right of first offer set forth in this Section 8.3, but shall remain subject to the balance of the provisions of this Article 8.

If the Partnership does not exercise its rights to purchase all of the Partnership Interest, the offering Partner may, within 45 days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Partnership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeror under this section shall become an Assignee, and shall be entitled to receive only the share of Profits or other compensation by way of income and the return of Capital Contribution to which the assigning Partner would have been entitled.

#### **8.4 Triggering Events**

On the happening of any of the following events (“*Triggering Events*”) with respect to a Partner, the Partnership shall have the option to purchase all or any portion of the Partnership Interest in the Partnership of such Partner (a “*Selling Partner*”) at the price and on the terms provided in Section 8.8 of this Agreement:

8.4.1 the death or incapacity of a Partner;

8.4.2 the bankruptcy of a Partner;

8.4.3 the winding up and dissolution of a corporate Partner, or merger or other corporate reorganization of a corporate Partner as a result of which the corporate Partner does not survive as an entity;

8.4.4 the withdrawal of a Partner; or

8.4.5 except for the events stated in Section 8.5, the occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.

Each Partner agrees to promptly give Notice of a Triggering Event to all other Partners.

#### **8.5 Marital Dissolution or Death of Spouse**

Notwithstanding any other provisions of this Agreement:

8.5.1 If, in connection with the divorce or dissolution of the marriage of a Partner, any court issues a decree or order that transfers, confirms, or awards a Partnership Interest, or any portion thereof, to that Partner’s spouse (an “*Award*”), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Partner shall have the right to purchase from his or her former spouse the Partnership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Partnership Interest or portion thereof to that Partner at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the Award (the “*Award Transfer Date*”), the Partnership and the other Partners shall have the option to purchase from the former spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Award Transfer Date, or (2) the date of actual notice of the Award.

8.5.2 If, by reason of the death of a spouse of a Partner, any portion of a Partnership Interest is transferred to a Transferee other than (1) that Partner or (2) a trust created for the benefit of that Partner (or for the benefit of that Partner and any combination between or among the Partner and the Partner’s issue) in which the Partner is the sole Trustee and the Partner, as Trustee or individually possesses all of the Voting Interest included in that Partnership Interest, then the Partner shall have the right to purchase the Partnership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee of such deceased spouse, and the estate, successor, or Transferee shall sell the Partnership Interest or portion thereof at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the

purchase within 180 days after the date of death (the “*Estate Transfer Date*”), the Partnership and the other Partners shall have the option to purchase from the estate or other successor of the deceased spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Estate Transfer Date, or (2) the date of actual notice of the death.

## **8.6 Option Periods**

On the receipt of Notice by a Partner as contemplated by Section 8.1, and on receipt of actual notice of any Triggering Event (the date of such receipt is hereinafter referred to as the “*Option Date*”), the General Partner shall promptly give notice of the occurrence of such a Triggering Event to each Partner, and the Partnership shall have the option, for a period ending 30 calendar days following the determination of the purchase price as provided in Section 8.8, to purchase the Partnership Interest in the Partnership to which the option relates, at the price and on the terms provided in Section 8.8, and the other Partners, pro rata in accordance with their prior Partnership Interests in the Partnership, shall then have the option, for a period of 30 days thereafter, to purchase the Partnership Interest in the Partnership not purchased by the Partnership, on the same terms and conditions as apply to the Partnership. If all other Partners do not elect to purchase the entire remaining Partnership Interest in the Partnership, then the Partners electing to purchase shall have the right, pro rata in accordance with their prior Partnership Interest in the Partnership, to purchase the additional Partnership Interest in the Partnership available for purchase. The Transferee of the Partnership Interest in the Partnership that is not purchased shall hold such Partnership Interest in the Partnership subject to all of the provisions of this Agreement.

## **8.7 Nonparticipation of Interested Partner**

No Partner shall participate in any Vote or decision in any matter pertaining to the disposition of that Partner’s Partnership Interest in the Partnership under this Agreement.

## **8.8 Option Purchase Price**

The purchase price of the Partnership Interest that is the subject of an option under this Agreement shall be the Fair Market Value of such Partnership Interest as determined under this Section 8.8. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree on the Fair Market Value. If the parties are unable to so agree within 30 days of the Option Date, the selling party shall appoint, within 40 days of the Option Date, one appraiser, and the purchasing party shall appoint within 40 days of the Option Date, one appraiser. The two appraisers shall within a period of five additional days, agree on and appoint an additional appraiser. The three appraisers shall, within 60 days after the appointment of the third appraiser, determine the Fair Market Value of the Partnership Interest in writing and submit their report to all the parties. The Fair Market Value shall be determined by disregarding the appraiser’s valuation that diverges the greatest from each of the other two appraisers’ valuations, and the arithmetic mean of the remaining two appraisers’ valuations shall be the Fair Market Value. Each purchasing party shall pay for the services of the appraiser selected by it, plus one-half of the fee charged by the third appraiser. The option purchase price as so determined shall be payable in cash.



### **8.9 Substituted Partner**

Except as expressly permitted under Section 8.2, a prospective Transferee (other than an existing Partner) of a Partnership Interest may be admitted as a Partner with respect to such Partnership Interest (a “*Substituted Partner*”) only (1) on the approval of the General Partner of the prospective Transferee’s admission as a Partner, and (2) on such prospective Transferee’s executing a counterpart of this Agreement as a party hereto. Any prospective Transferee of a Partnership Interest shall be deemed an Assignee, and, therefore, the owner of only an Economic Interest until such prospective Transferee has been admitted as a Substituted Partner.

### **8.10 Duties of a Substituted Partner**

Any Person admitted to the Partnership as a Substituted Partner shall be subject to all provisions of this Agreement.

### **8.11 Securities Laws**

The initial sale of Partnership Interests in the Partnership to the initial Partners has not been qualified or registered under the securities laws of any state, or registered under the Securities Act of 1933, as amended, in reliance upon exemptions from the registration provisions of those laws. No attempt has been made to qualify the offering and sale of Partnership Interests to Partners under the California Corporate Securities Law of 1968, as amended, also in reliance upon an exemption from the requirement that a permit for issuance of securities be procured. Notwithstanding any other provision of this Agreement, Partnership Interests may not be Transferred or Encumbered unless registered or qualified under applicable state and federal securities law or unless, in the opinion of legal counsel satisfactory to the Partnership, such qualification or registration is not required. The Partner who desires to transfer a Partnership Interest shall be responsible for all legal fees incurred in connection with said opinion.

## **ARTICLE IX**

### **DISSOLUTION AND WINDING UP**

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

The Partnership shall be dissolved on the first to occur of the following events:

9.1.1 The written agreement of a Majority of Partners to dissolve the Partnership.

9.1.2 The sale or other disposition of substantially all of the Partnership assets.

9.1.3 Entry of a decree of judicial dissolution pursuant to Section 15682 of the Act.

#### **9.2 Winding Up**

On the dissolution of the Partnership, the Partnership shall engage in no further business other than that necessary to wind up the business and affairs of the Partnership. The Partners who

have not wrongfully dissolved the Partnership shall wind up the affairs of the Partnership. The Persons winding up the affairs of the Partnership shall give written Notice of the commencement of winding up by mail to all known creditors and claimants against the Partnership whose addresses appear in the records of the Partnership. After paying or adequately providing for the payment of all known debts of the Partnership (except debts owing to Partners) the remaining assets of the Partnership shall be distributed or applied in the following order of priority:

9.2.1 To pay the expenses of liquidation.

9.2.2 To repay outstanding loans to Partners. If there are insufficient funds to pay such loans in full, each Partner shall be repaid in the ratio that the Partner's respective loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Partners, including all interest accrued and unpaid on those loans. Such repayment shall first be credited to unpaid principal and the remainder shall be credited to accrued and unpaid interest.

9.2.3 Among the Partners in accordance with the provisions of Article Four, Section 4.7.

### **9.3 Deficits**

Each Partner shall look solely to the assets of the Partnership for the return of the Partner's investment, and if the Partnership property remaining after the payment or discharge of the debts and liabilities of the Partnership is insufficient to return the investment of any Partner, such Partner shall have no recourse against any other Partners for indemnification, contribution, or reimbursement.

## **ARTICLE X**

### **ARBITRATION**

Any action to enforce or interpret this Agreement or to resolve disputes between the Partners or by or against any Partner shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive dispute resolution process in the State of California. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at San Francisco, California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

#### **11.1 General Provisions**

This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Agreement replaces and supersedes all prior written and oral agreements by and among the Partners or any of them.

#### **11.2 Counterpart Executions**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **11.3 Governing Law; Severability**

This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

#### **11.4 Benefit**

This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

#### **11.5 Number and Gender**

Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

#### **11.6 Further Assurances**

The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties, including but not limited to taking any and all actions reasonably required to comply with any mortgage or encumbrance with respect to the Property.

#### **11.7 Partner's Other Business**

Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Partners or General Partner in the carrying on of their own respective businesses or activities.

#### **11.8 Agent**

Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Partner, in the Partner's capacity as such, the agent of any other Partner.

#### **11.9 Authority to Contract**

Each Partner represents and warrants to the other Partners that the Partner has the capacity and authority to enter into this Agreement.

#### **11.10 Titles and Headings**

The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

#### **11.11 Amendment and Waiver**

This Agreement may be altered, amended, or repealed only by a writing signed by all of the Partners.

#### **11.12 Time is of the Essence**

Time is of the essence of every provision of this Agreement that specifies a time for performance.

#### **11.13 No Third Party Beneficiary Intended**

This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person shall have or acquire any right by virtue of this Agreement.

#### **11.14 Sale of the Property.**

Should the Partners authorize and approve the sale of any real property or any interest therein owned by the Partnership, the LeFever Mattson shall be granted the exclusive authorization and right to sell such property or interest therein, and shall be compensated at least three percent (3%) of the sale price for its services.

**11.15 Refinance of the Property.**

Upon the refinance of the Property or any real property or any interest therein owned by the Partnership, LeFever Mattson shall be compensated in an amount not less than one-half percent (0.5%) of the loan amount for its services in effectuating such refinance.

**11.16 Limited Partnership**

The Partners intend the Partnership to be a limited partnership under the Act. No member shall take any action inconsistent with the express intent of the parties to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

K S MATTSON PARTNERS, LP,  
A California Limited Partnership

By: \_\_\_\_\_  
Kenneth W. Mattson, \_\_\_\_\_

LIMITED PARTNERS:

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

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

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

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

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

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

**EXHIBIT A**

**Treehouse Investments, LP Partners**

<b><u>Investor Name</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Percentage Interests</u></b>
-----------------------------	------------------------------------	------------------------------------

total capital contributions

total capital contributions required

shortage/overage



**EXHIBIT B**

Property

**EXHIBIT C**

Form of Property Management Agreement

# **EXHIBIT 4**

**LIMITED PARTNERSHIP AGREEMENT  
OF WINDTREE, LP  
A CALIFORNIA LIMITED PARTNERSHIP**

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This Limited Partnership Agreement (this “*Agreement*”) of Windtree, LP, a California limited partnership (the “*Partnership*”), is entered into effective as of March 1, 2018 (the “*Effective Date*”), by LeFever Mattson, a California corporation (the “*General Partner*”) and the other individuals and/or entities who are or become signatories hereto (referred to individually as a “*Limited Partner*” and collectively with the General Partner as the “*Partners*”).

## RECITALS

WHEREAS, the partnership was formed pursuant to California Uniform Limited Partnership Act of 2008, as set forth in Sections 15900 *et seq.* of the California Corporations Code upon the filing of the Certificate of Limited Partnership with the Secretary of State of California (the “*Secretary of State*”) on February 23, 2018;

WHEREAS, the Partners desire to enter into this Agreement, which as of the Effective Date, shall provide for the governance of the Partnership, the conduct of its business, and specify the Partners' relative rights and obligations with respect to the Partnership and their respective interests therein, all effective as of the Effective Date.

NOW THEREFORE, in consideration of the foregoing, the Partners hereby agree as follows:

## ARTICLE I

### DEFINITIONS

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in the Act.

#### 1.1 Act

“*Act*” means the California Uniform Limited Partnership Act of 2008, as set forth in Sections 15900, *et seq.*, of the California Corporations Code, including amendments from time to time.

#### 1.2 Assignee

“*Assignee*” means a Person who has acquired a Partner’s Economic Interest in the Partnership, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Partner.

#### 1.3 Assigning Partner

“*Assigning Partner*” means a Partner who by means of a Transfer has transferred an Economic Interest in the Partnership to an Assignee.

#### 1.4 Capital Account

“*Capital Account*” means, as to any Partner, a separate account maintained and adjusted in accordance with Article Three, Section 3.5.

#### 1.5 Capital Contribution

“*Capital Contribution*” means, with respect to any Partner, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Partnership (net of liabilities secured by such contributed property that the Partnership is considered to assume or take “subject to” under IRC Section 752) in consideration of a Percentage Interest held by such Partner. A Capital Contribution shall not be deemed a loan.

#### 1.6 Capital Event

“*Capital Event*” means a sale or disposition of any of the Partnership’s capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Partnership property, the receipt of proceeds from a refinancing of Partnership property, or a similar event with respect to Partnership property or assets.

#### 1.7 Cause

“*Cause*” means (i) insubordination, (ii) breach of this Agreement, (iii) any act or omission which is injurious to the Partnership or an affiliate or subsidiary of the Partnership, or the business or reputation of the Partnership or an affiliate or subsidiary of the Partnership, as determined by the Partners in their sole and absolute discretion, (iv) dishonesty, fraud, malfeasance, gross negligence or misconduct, (v) failure to satisfactorily perform his or her duties under this Agreement or any other agreement with the Partnership or an affiliate or subsidiary of the Partnership, (vi) failure to follow the direction of the Partnership or any individual to whom such individual reports, or to follow the policies, procedures, and rules of the Partnership, (vii) conviction of, or entry of a plea of guilty or no contest to, a felony or crime involving moral turpitude, or (viii) any other circumstances that would be recognized as cause at law.

#### 1.8 Code or IRC

“*Code*” or “*IRC*” means the Internal Revenue Code of 1986, as amended, and any successor provision.

#### 1.9 Economic Interest

“*Economic Interest*” means a Person’s right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Partnership, but does not include any other rights of a Partner, including the right to vote or to participate in management.

1.10 Encumber

“*Encumber*” means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.11 Encumbrance

“*Encumbrance*” means, with respect to any Partnership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.12 Gross Asset Value

“*Gross Asset Value*” means, with respect to any item of property of the Partnership, the item’s adjusted basis for federal income tax purposes, except as follows:

1.12.1 The Gross Asset Value of any item of property contributed by a Partner to the Partnership shall be the fair market value of such property, as mutually agreed by the contributing Partner and the Partnership; and

1.12.2 The Gross Asset Value of any item of Partnership property distributed to any Partner shall be the fair market value of such item of property on the date of distribution.

1.13 Initial Partner

“*Initial Partner*” or “Initial Partners” means those Persons whose names are set forth in Exhibit A, attached. A reference to an “Initial Partner” means any of the Initial Partners.

1.14 Involuntary Transfer

“*Involuntary Transfer*” means, with respect to any Partnership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.15 Losses

“*Losses*.” See “Profits and Losses.”

1.16 Majority of Partners

“*Majority of Partners*” means a Partner or Partners whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Partners.

1.17 Notice

“*Notice*” means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage

and fees prepaid, in the United States mails; when delivered to Federal Express or United Parcel Service for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

#### 1.18 Partner

"*Partner*" means an Initial Partner or a Person who otherwise acquires a Partnership Interest, as permitted under this Agreement, and who remains a Partner.

#### 1.19 Partnership

"*Partnership*" means WINDTREE, LP, a California limited partnership.

#### 1.20 Partnership Interest

"*Partnership Interest*" means a Partner's entire interest in the Partnership, including the Partner's Economic Interest, Percentage Interest, Voting Interest and all other interests of a Partner in the Partnership.

#### 1.21 Percentage Interest

"*Percentage Interest*" means a fraction, the numerator of which is the total of a Partner's Capital Account and the denominator of which is the total of all Capital Accounts of all Partners.

#### 1.22 Person

"*Person*" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

#### 1.23 Profits and Losses

"*Profits and Losses*" means, for each fiscal year or other period specified in this Agreement, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with IRC Section 703(a).

#### 1.24 Property

"*Property*" means the real property currently or hereafter owned by the Partnership, which as of the Effective Date is the property known as Perris Freeway Plaza, located at 351 Wilkerson Avenue, Perris, CA.

1.25 Proxy

“*Proxy*” has the meaning set forth in the first paragraph of California Corporations Code Section 15901(ab). A Proxy may not be transmitted orally.

1.26 Regulations

“*Regulations*” or “*Reg*” means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.27 Successor in Interest

“*Successor in Interest*” means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.28 Super Majority of Partners

“*Super Majority of Partners*” means a Partner or Partners whose Percentage Interests represent 75 percent or more of the Percentage Interests of all the Partners.

1.29 Transfer

“*Transfer*” means, with respect to a Partnership Interest, or any element of a Partnership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of all or any portion of a Partnership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.30 Vote

“*Vote*” means a written consent or approval, a ballot cast at a Meeting, or a voice vote.

1.31 Voting Interest

“*Voting Interest*” means, with respect to a Partner, the right to Vote or participate in management and any right to information concerning the business and affairs of the Partnership provided under the Act, except as limited by the provisions of this Agreement. A Partner’s Voting Interest shall be directly proportional to that Partner’s Percentage Interest.

## ARTICLE II

### CERTIFICATE OF LIMITED PARTNERSHIP

2.1 Filing with Secretary of State

The Certificate was filed with the California Secretary of State on February 23, 2018, file number 201805400007.

## 2.2 Partnership Name

The name of the Partnership shall be WINDTREE, LP.

## 2.3 Principal Office

The principal executive office of the Partnership shall be 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621, or such other place or places as may be determined by the General Partner from time to time.

## 2.4 Agent for Service

The initial agent for service of process on the Partnership shall be Tim LeFever, at 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621. A Majority of Partners may from time to time change the Partnership's agent for service of process.

## 2.5 Partnership Purpose

The Partnership has been formed for the purposes of engaging in the business of real estate investment, and any other act or activity incidental to the foregoing. In furtherance of the foregoing, the Partnership has acquired an interest in the Property.

## 2.6 Partnership Taxation

The Partners intend the Partnership to be a limited partnership under the Act, classified as a partnership for federal and, to the maximum extent possible, state income taxes. Neither a General Partner nor any Partner shall take any action inconsistent with the express intent of the parties to this Agreement.

## 2.7 Term

The term of existence of the Partnership commenced on the effective date of filing of Certificate with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law.

## 2.8 General Partners

The General Partner and the management of the Partnership is set forth in Article Five of this Agreement.

# ARTICLE III

## CAPITALIZATION

### 3.1 Partner Contribution

Each Partner has contributed to the capital of the Partnership as the Partner's Capital Contribution the money and property specified in Exhibit A attached hereto. Each Partner's Percentage Interest in the Partnership is listed on Exhibit A attached hereto.

At the discretion of the General Partner, an Initial Partner may substitute an interest-bearing note for his or her Capital Contribution. Such note shall be due immediately upon the call of the General Partner.

The Fair Market Value of each item of contributed property as agreed between the Partnership and the Partner contributing such property is set forth in Exhibit A attached hereto.

### 3.2 Failure to Make Contribution

If a Partner fails to make a required Capital Contribution within the later of 30 days after the contribution date agreed upon by all the Partners, that Partner's entire Partnership Interest shall terminate and that Partner shall indemnify and hold the Partnership and the other Partners harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make such Capital Contribution.

### 3.3 Additional Capital Contributions

Two types of Additional Capital Contributions may be needed to enable the Partnership to conduct its business: (1) Discretionary Additional Capital Contributions and (2) Mandatory Additional Capital Contributions.

#### 3.3.1 Discretionary Additional Capital Contributions

A Majority of the Partners may, with the General Partner's consent, determine from time to time that Capital Contributions in addition to the Partners' initial Capital Contributions would allow the Partnership to enhance and improve its investment objectives. Upon such determination by a Majority of the Partners that is agreed to by the General Partner, the President shall give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due. The Notice shall set forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

#### 3.3.2 Mandatory Additional Capital Contributions

The President may reasonably determine that the Partnership's capital is or is presently likely to become insufficient for the conduct of its business as now conducted or as proposed by the General Partner to be conducted and that Capital Contributions in addition to the Partners' initial Capital Contributions are necessary to enable the Partnership to so conduct its business. On making such a determination, the President may give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due, setting forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the



date by which the Partners shall contribute. Purposes for which additional Capital Contributions may called include, but are not limited to: the improvement, repair, maintenance, operation and management of existing Partnership assets and the acquisition, improvement and development of new assets. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

### 3.3.3 Alternative to Additional Capital Contributions

In addition or as an alternative to making an additional capital call to the Partners, or if all of the additional capital called for in any notice referred to above is not raised through additional contributions by all or some of the Partners, the President shall have the right to obtain such additional capital by the sale of additional Partnership Interests to existing Partners and/or persons other than the existing Partners, on the same or more favorable terms and conditions offered to the Partners as set forth herein. Capital raised in connection with the offer and sale of additional Partnership Interests shall be used in furtherance of the Partnership's purpose and for general working capital purposes. In the event that additional Partner interests are sold in order to raise additional capital, Schedule A and the Percentage Interests of all Partners shall be adjusted accordingly, with the Percentage Interests of all Partners who do not participate in connection with such sale being adjusted downward. No additional consent shall be required, and no right of first offer or right of first refusal need be offered, in connection with any such offer and sale of additional Partnership Interests. Any purchaser of additional Partnership Interests shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

### 3.3.4 No Voluntary Additional Capital Contributions

No Partner may voluntarily make any additional Capital Contribution without the written consent of a Majority of Partners.

## 3.4 Remedies When Partner Fails To Make Additional Capital Contributions

If a Partner fails to make an additional Capital Contribution required under Section 3 within 30 days after it is required to be made (a "*Defaulting Partner*") the President shall within five days after said failure notify each other Partner (a "*Nondefaulting Partner*") in writing of the total amount of Defaulting Partner Capital Contributions not made (the "*Additional Capital Shortfall*"), and shall specify a number of days within which each Nondefaulting Partner may make an additional Capital Contribution, which shall not be less than an amount bearing the same ratio to the amount of Additional Capital Shortfall as the Nondefaulting Partner's Capital Account balance bears to the total Capital Accounts of all Nondefaulting Partners. If the total amount of Additional Capital Shortfall is not so contributed, the President may (i) use any reasonable method to provide Partners the opportunity to make additional Capital Contributions, until the Additional Capital Shortfall is as fully contributed as possible, and (ii) attempt to raise additional capital through the means set forth in Section 3.3.3 above. Following the Nondefaulting Partners' and any new Partners' making of such additional Capital Contributions, each Partner's Percentage Interest shall be adjusted to reflect the ratio that the Partner's Capital Account bears to the total Capital Accounts of all of the Partners.

### 3.5 Capital Accounts

An individual Capital Account shall be maintained for each Partner consisting of that Partner's Capital Contribution (1) increased by that Partner's share of Profits, (2) decreased by that Partner's share of Losses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

### 3.6 Withdrawal or Distribution of Capital Contribution

A Partner shall not be entitled to withdraw any part of the Partner's Capital Contribution or to receive any distributions, whether of money or property from the Partnership except as provided in this Agreement.

### 3.7 No Interest on Contribution

No interest shall be paid on funds or property contributed to the capital of the Partnership or on the balance of a Partner's Capital Account.

### 3.8 Priority Over Other Partners

No Partner shall have priority over any other Partner, with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

## ARTICLE IV

### ALLOCATIONS AND DISTRIBUTIONS

#### 4.1 Profits and Losses

The Profits and Losses of the Partnership and all items of Partnership income, gain, loss, deduction, or credit shall be allocated for Partnership book purposes and for tax purposes, to a Partner in accordance with the Partner's Percentage Interest.

#### 4.2 Qualified Income Offset

If any Partner unexpectedly receives any adjustment, allocation, or distribution described in Reg. Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership gross income and gain shall be specially allocated to that Partner in an amount and manner sufficient to eliminate any deficit balance in the Partner's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg. Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

#### 4.3 Allocations Respecting Asset Distributions

Any unrealized appreciation or unrealized depreciation in the values of Partnership property distributed in kind to all the Partners shall be deemed to be Profits or Losses realized by the Partnership immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Partners' Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Partners to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "*unrealized appreciation*" or "*unrealized depreciation*" shall mean the difference between the Fair Market Value of such property and the Partnership's basis for such property.

#### 4.4 Allocations Between Assignor and Assignee

In the case of a Transfer of an Economic Interest during any fiscal year, the Assigning Partner and Assignee shall each be allocated the Economic Interest's share of Profits or Losses based on the number of days each held the Economic Interest during that fiscal year.

#### 4.5 Distributions

All cash resulting from the normal business operations of the Partnership and from a Capital Event shall be distributed as and when determined by the General Partner, in its sole discretion. With respect to cash resulting from a Capital Event, the General Partner shall have the power and authority to cause the Partnership to reinvest such cash as determined by the General Partner and in accordance with this Agreement. If the General Partner determines that cash resulting from the normal business operations of the Partnership or from a Capital Event is to be distributed among the Partners, then such distribution shall be made among the Partners in proportion to their Percentage Interests.

#### 4.6 Non-Cash Proceeds

If the proceeds from a sale or other disposition of a Partnership asset consists of property other than cash, the value of such property shall be as determined by the General Partner. Such non-cash proceeds shall then be allocated among all the Partners in proportion to their Percentage Interests. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to each Partner in accordance with Section 4.5.

#### 4.7 Liquidating Proceeds

Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Partnership, or when any Partner's interest is liquidated, all items of income and loss first shall be allocated to the Partners' Capital Accounts under this Article Four, and other credits and deductions to the Partners' Capital Accounts shall be made before the final distribution is made. The final distribution to the Partners shall be made to the Partners to the extent of and in proportion to their positive Capital Account balances.

## ARTICLE V

### MANAGEMENT

#### 5.1 General Partner

The business of the Partnership shall be managed by the General Partner. The General Partner shall oversee and govern the direction, management and control of the business and assets of the Partnership to the best of the General Partner's ability. The General Partner shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Partnership, including, without limitation, the power to exercise on behalf and in the name of the Partnership all of the powers described in the Act. The General Partner may appoint one (1) or more officers and, subject to the terms and conditions of this Agreement, may delegate to those officers the authority to manage the day-to-day operations of the Partnership. The General Partner shall serve as General Partner until the earlier of its resignation or its removal for Cause by a Super Majority of Partners at a meeting called expressly for that purpose. A new General Partner shall be appointed by a Majority of Partners on the occurrence of any of the foregoing events.

Notwithstanding any other provisions of this Agreement, the General Partner shall have authority hereunder to cause the Partnership to engage in the following transactions without the approval of the Partners:

- (a) The sale, exchange or other disposition of all, or substantially all, of the Partnership's assets occurring as part of a single transaction or plan, or in multiple transactions, in the ordinary course of business or in the orderly liquidation and winding up of the business of the Partnership upon its duly authorized dissolution;
- (b) The purchase or sale of real property and/or other assets now belonging to or hereafter acquired by the Partnership;
- (c) Any and all investments to be made by the Partnership;
- (d) The lending or borrowing of money; provided that any such borrowing is on a non-recourse basis to the Limited Partners and secured by the land or other assets owned by the Partnership and is deemed necessary or prudent by the General Partner in order to enhance investment returns or to finance pre-construction, construction, development or capital improvements in furtherance of the Partnership's purpose;
- (e) The entry into any contract, arrangement or commitment in furtherance of the business and purpose of the Partnership;
- (f) The formation of any subsidiary or affiliate for any reason related to the Partnership's business or purpose;
- (g) The entry into and performance under any co-tenancy agreement between the Partnership and any co-owner of property; and

(g) The creation of any mortgage, lien, charge, encumbrance, or other security interest of any nature in respect of all or any portion of the Partnership's real property.

## 5.2 President

The Partnership shall have a President as chosen by the General Partner.

### 5.2.1 Term

The President shall serve until the earlier of (1) the President's resignation, retirement, death, or disability or (2) the President's removal by the General Partner (which may be with or without Cause), or for Cause by a vote of a Majority of Partners at a meeting called expressly for that purpose.

### 5.2.2 Authority and Duties

The President shall serve at the pleasure of the General Partner, and shall have all powers expressly delegated to it by the General Partner, including the day-to-day supervision of the business and affairs of the Partnership. The President shall preside at all meetings of Partners and of the General Partner.

### 5.2.3 Election of President

The General Partner hereby elects Kenneth W. Mattson as President of the Partnership.

### 5.2.4 Officers, Compensation

The General Partner and the President shall be entitled to reasonable compensation for their services and reimbursement for expenses incurred on behalf of the Partnership, including but not limited to reimbursement for office space leased by the General Partner and/or the President at below market rates.

## 5.3 Authority to Contract

The authority to contract on behalf of the Partnership is vested in (a) the General Partner, and (b) the President, who may each act separately to the extent of the authority provided to them in Sections 5.1 and 5.2, above. The General Partner and President are each individually authorized to enter into maintenance, repair, construction, marketing, administration and professional service contracts (including contracts for accounting and legal services) on behalf of the Partnership relating to the management and operation of the Partnership and its assets. The General Partner and the President shall also each individually have the authority to pay all amounts owed by the Partnership under such contracts as well as amounts owed to other vendors and service providers in connection with Partnership operations. Amounts so paid shall be paid from Partnership accounts or if paid directly by the General Partner or President, reimbursed to the General Partner or the President by the Partnership immediately upon written request from the General Partner or the President that is accompanied with receipts and/or other evidence of payment. As of the effective date of this Agreement, Partners acknowledge that General Partner and/or President have entered into an apartment property management agreement for day-to-day

management of the Property with LeFever Mattson Property Management in the form attached hereto as Exhibit B.

No Partner who is not also the General Partner and/or the President shall have the authority to bind the Partnership or execute any instrument on behalf of the Partnership. Each Partner shall indemnify, defend, and save harmless the General Partner, the President and each other Partner and the Partnership from and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by any Partner in contravention of this Section.

#### 5.4 Procedure for Action by Partners

The Partners are not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement among a Majority of Partners, provided that all Partners are consulted (although all Partners need not be present during a particular consultation), or by a written consent signed by a Majority of Partners. In the event that Partners wish to hold a formal meeting (a “*Meeting*”) for any reason, the following procedures shall apply:

##### 5.4.1 Calling and Notice of Meetings

Any two Partners may call a Meeting of the Partners by giving Notice of the time and place of the Meeting at least 48 hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Partnership.

##### 5.4.2 Quorum

A Majority of Partners shall constitute a quorum for the transaction of business at any Meeting of the Partners.

##### 5.4.3 Waiver of Notice

The transactions of the Partners at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Partner not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

##### 5.4.4 Consent Required if No Meeting

Any action required or permitted to be taken by the Partners under this Agreement may be taken without a Meeting if the requisite consent or approval of the Partners (as set forth in this Agreement or required by law) is obtained in writing, individually or collectively, for such action.

##### 5.4.5 Teleconference

Partners may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Partners participating in the Meeting can hear one another.

#### 5.4.6 Records of Meetings

The Partners shall keep or cause to be kept with the books and records of the Partnership full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

#### 5.5 Compensation

The General Partner and the President shall be entitled to reasonable compensation for their services including but not limited to office space at below market rates.

#### 5.6 Personal Liability

No General Partner or Partner or Officer shall be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Partnership except as otherwise provided in the Act or in this Agreement.

#### 5.7 No Active Participation

No Partner shall participate in the Partnership's business for more than 500 hours during the Partnership's taxable year without written consent from a Majority of Partners.

#### 5.8 Title to Assets

All assets of the Partnership, whether real or personal, shall be held in the name of the Partnership.

#### 5.9 Banking

All funds of the Partnership shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Partnership, at such locations as shall be determined by the General Partner. Withdrawal from such accounts shall require the signature of the General Partner, or the President and another officer of the Partnership authorized in writing by the General Partner to effect such withdrawal.

#### 5.10 Indemnification; Insurance

The Partnership shall indemnify the General Partner and any employees and agents of the General Partner (collectively, the "Indemnified Parties") from any liability or damage; shall defend, save harmless, and pay all judgments against the Indemnified Parties incurred by reason of any act or omission or alleged act or omission in connection with the business of the Partnership (including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred); and shall indemnify the Indemnified Parties for such liabilities under Federal and State Securities Laws (including the



Securities Act of 1933) as the law permits. All judgments against the Partnership or the Indemnified Parties, wherein the Indemnified Parties are entitled to indemnification, must first be satisfied from Partnership assets before the Indemnified Parties are responsible for these obligations. Any Partner guarantying a loan on the Property in accordance with the provisions of Section 7.4 shall be deemed an Indemnified Party under this Section 5.10 and shall be entitled to indemnification by the Partnership from any liability or damage incurred in connection with or arising from such guaranty.

The Partnership shall have the authority to purchase and maintain directors and officers liability insurance, and to the extent commercially reasonable (as determined by the General Partner), purchase and maintain insurance on behalf of any Person who is or was an agent of the Partnership against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Partnership would have the power to indemnify such Person against such liability under the provisions of this Section 5.10 or under applicable law.

## **ARTICLE VI**

### **ACCOUNTS AND RECORDS**

#### **6.1 Accounts**

Complete books of account of the Partnership's business, in which each Partnership transaction shall be fully and accurately entered, shall be kept at the Partnership's principal executive office and shall be open to inspection and copying by each Partner or the Partner's authorized representatives on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Partner.

#### **6.2 Accounting**

Financial books and records of the Partnership shall be kept on the cash method of accounting, which shall be the method of accounting followed by the Partnership for federal income tax purposes. A balance sheet and income statement of the Partnership shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Partnership's business and for carrying out the provisions of this Agreement. The fiscal year of the Partnership shall be January 1 through December 31.

#### **6.3 Records**

At all times during the term of existence of the Partnership, and beyond that term if a Majority of the Partners deem it necessary, the Partners shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

##### **6.3.1 Partner List**

A current list of the full name and last known business or residence address of each Partner, together with the Capital Contribution and the share in Profits and Losses of each Partner;



6.3.2 Copy of Certificate

A copy of the Certificate, as amended;

6.3.3 Tax Returns

Copies of the Partnership's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

6.3.4 Limited Partnership Agreement

Executed counterparts of this Agreement, as amended;

6.3.5 Powers of Attorney

Any powers of attorney under which the Certificate or any amendments thereto were executed;

6.3.6 Financial Statements

Financial statements of the Partnership for the six most recent fiscal years; and

6.3.7 Books and Records of Internal Affairs

The Books and Records of the Partnership as they relate to the Partnership's internal affairs for the current and past four fiscal years.

If a Majority of Partners deem that any of the foregoing items shall be kept beyond the term of existence of the Partnership, the repository of said items shall be as designated by a Majority of Partners.

6.4 Income Tax Returns

Within 90 days after the end of each taxable year of the Partnership the Partnership shall send to each of the Partners all information necessary for the Partners to complete their federal and state income tax or information returns, and a copy of the Partnership's federal, state, and local income tax or information returns for such year.

## **ARTICLE VII**

### **PARTNERS AND VOTING**

7.1 Partners and Voting Rights

There shall be only one class of partnership interest and no Partner shall have any rights or preferences in addition to or different from those possessed by any other Partner. Each Partner shall Vote in proportion to the Partner's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. Any action that may or that must be taken by the Partners shall be by a Majority of Partners, except as otherwise expressly provided herein.



## 7.2 Record Dates

The record date for determining the Partners entitled to Notice of any Meeting, to vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by a Majority of Partners, provided that such record date shall not be more than 60, nor less than 10 days prior to the date of the Meeting, nor more than 60 days prior to any other action.

In the absence of any action setting a record date the record date shall be determined in accordance with California Corporations Code Section 15637(l).

## 7.3 Proxies

At all Meetings of Partners, a Partner may Vote in person or by Proxy. Such proxy shall be filed with any Partner before or at the time of the Meeting, and may be filed by facsimile transmission to a Partner at the principal executive office of the Partnership or such other address as may be given by a Majority of Partners to the Partners for such purposes.

## 7.4 Partner Participation in Connection with Refinance of Property

Current or future financing on the Property may require a payoff and refinance. If such a refinance requires guarantors in addition to the General Partner, all Partners acknowledge and agree to provide such financial information as may be reasonably requested by any proposed lender, and to execute such documents, including but not limited to guarantees, to affect such refinance.

# ARTICLE VIII

## TRANSFERS OF PARTNERSHIP INTERESTS

### 8.1 Withdrawal of Partner

A Partner may withdraw from the Partnership at any time by giving Notice of Withdrawal to all other Partners at least 180 calendar days before the effective date of withdrawal; provided that upon the occurrence of a sale of all or substantially all of the Partnership's assets, a Partner may withdraw by giving Notice of Withdrawal to all other Partners prior to such sale. Withdrawal shall not release a Partner from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal. A withdrawing Partner shall divest the Partner's entire Partnership Interest before the effective date of withdrawal in accordance with the transfer restrictions and option rights set forth in this Section 8. In the event of any withdrawal made in connection with the sale of all or substantially all of the Partnership's assets, the Partnership shall redeem that portion of the Partner's Partnership Interest specified in the Notice of Withdrawal. The redemption price for the Partner's Partnership Interest specified in the Notice of Withdrawal shall equal the net asset value of the Partnership Interest being redeemed. For purposes hereof, net asset value shall equal the Partnership's total assets minus its total liabilities multiplied by the Partnership Interest

being redeemed. Net asset value shall be determined by the General Partner, in its reasonable discretion. If more than one Partner elects to withdraw all or any portion of their Partnership Interests in connection with the sale of all or substantially all of the Partnership's assets, and the sale proceeds therefrom are insufficient to redeem all of the Partnership Interests presented for redemption, Partnership Interests shall be redeemed on a pro rata basis.

## 8.2 Restrictions on Transfer

Except as expressly provided in this Agreement, a Partner shall not Transfer any part of the Partner's Partnership Interest in the Partnership, whether now owned or hereafter acquired, unless (1) the General Partner approves the transferee's admission (the "*Transferee*") to the Partnership as a Partner prior to such Transfer and (2) the Partnership Interest to be transferred, when added to the total of all other Partnership Interests transferred in the preceding 12 months, will not cause the termination of the Partnership under the Code. It shall be a further condition to any Transfer that the General Partner, Transferee and transferring Partner execute an agreement, including a consent to transfer, which agreement shall provide, among other things, that: (a) the transferring Partner shall indemnify General Partner and the Partnership for any and all claims, causes of action, damages, costs, injuries and liabilities existing with respect to such Partnership Interest prior to the Transfer or resulting from the Transfer of such Partner's Partnership Interest in the Partnership; (b) both Transferee and transferring Partner provide such representations and warranties in favor of General Partner and the Partnership as General Partner deems reasonable, including but not limited to representations as to due authorization, compliance with all laws, no litigation, no bankruptcy, etc.; (c) both Transferee and transferring Partner acknowledge that they are not relying on the Partnership, General Partner or other Partners for real estate advice or tax advice or to assure compliance with securities laws; (d) Transferee executes a counterpart to and agrees to be bound by all of the provisions of this Agreement; (e) Transferee acknowledges that the Partnership Interests (A) are being acquired for investment purposes only and not for resale, transfer or distribution, and (B) may not be further offered for sale, sold, or transferred other than pursuant to an effective registration under applicable state and federal securities laws, and/or in transactions otherwise in compliance with, or pursuant to an available exemption from registration under such laws, and upon evidence satisfactory to the Partnership of compliance with such laws, as to which Partnership may rely upon an opinion of counsel satisfactory to the Partnership.

No Partner may Encumber or permit or suffer any Encumbrance of all or any part of the Partner's Partnership Interest in the Partnership unless such Encumbrance has been approved in writing by all the other Partners. Any Transfer or Encumbrance of a Partnership Interest without such approval shall be void.

Notwithstanding any other provision of this Agreement to the contrary, (a) a Partner who is a natural person may transfer all or any portion of his or her Partnership Interest to any revocable trust created for the benefit of the Partner, or any combination between or among the Partner, the Partner's spouse, and the Partner's issue, provided that the Partner retains a beneficial interest in the trust and all of the Voting Interest included in such Partnership Interest, and (b) the General Partner may purchase a Partnership Interest for its own account or for the account of any other Partner(s), and may sell any portion of its interest, at a price and terms agreed to by the General Partner and the selling Partner, and such purchase and sale shall be

exempt. Sales and transfers pursuant to the preceding sentence shall not be deemed Transfers hereunder, shall be exempt from all restrictions on transfer set forth in this Section 8.2 and the right of first refusal set forth in Section 8.3, and shall not constitute a Trigger Event under Section 8.4. Notwithstanding the foregoing, a transfer of a Partner's entire beneficial interest in a trust or failure to retain a Voting Interest shall be deemed a Transfer of a Partnership Interest.

Any Transferee of a Partner's Partnership Interest shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

### 8.3 Right of First Refusal

If a Partner wishes to transfer any or all of the Partner's Partnership Interest in the Partnership pursuant to a Bona Fide Offer (as defined below), the Partner shall give Notice to the General Partner at least 30 days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The General Partner shall have the option to purchase the Partnership Interest proposed to be transferred, for its own account or for the account of any other Partner(s), at the price and on the terms provided in this Agreement, at any time on or before the date that is thirty (30) days after General Partner's receipt of the Notice for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8. If the price for the Partnership Interest is other than cash, the fair value in dollars of the price shall be as established in good faith by the Partnership. For purposes of this Agreement, "*Bona Fide Offer*" means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing, and able to consummate the purchase.

If the General Partner does not exercise its rights to purchase all of the Partnership Interest, the offering Partner may, within 45 days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Partnership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeror under this section shall become an Assignee, and shall be entitled to receive only the share of Profits or other compensation by way of income and the return of Capital Contribution to which the assigning Partner would have been entitled.

### 8.4 Triggering Events

On the happening of any of the following events ("*Triggering Events*") with respect to a Partner, the General Partner, for its own account or for the account of any other Partner(s), shall have the option to purchase all or any portion of the Partnership Interest in the Partnership of such Partner (a "*Selling Partner*") at the price and on the terms provided in Section 8.8 of this Agreement:

8.4.1 the death or incapacity of a Partner;

8.4.2 the bankruptcy of a Partner;

8.4.3 the winding up and dissolution of a corporate Partner, or merger or other corporate reorganization of a corporate Partner as a result of which the corporate Partner does not survive as an entity;

8.4.4 the withdrawal of a Partner; or

8.4.5 except for the events stated in Section 8.5, the occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.

Each Partner agrees to promptly give Notice of a Triggering Event to all other Partners.

#### 8.5 Marital Dissolution or Death of Spouse

Notwithstanding any other provisions of this Agreement:

8.5.1 If, in connection with the divorce or dissolution of the marriage of a Partner, any court issues a decree or order that transfers, confirms, or awards a Partnership Interest, or any portion thereof, to that Partner's spouse (an "*Award*"), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Partner shall have the right to purchase from his or her former spouse the Partnership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Partnership Interest or portion thereof to that Partner at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the Award (the "*Award Transfer Date*"), the General Partner shall have the first option to purchase, followed by the Partnership and the other Partners, from the former spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Award Transfer Date, or (2) the date of actual notice of the Award.

8.5.2 If, by reason of the death of a spouse of a Partner, any portion of a Partnership Interest is transferred to a Transferee other than (1) that Partner or (2) a trust created for the benefit of that Partner (or for the benefit of that Partner and any combination between or among the Partner and the Partner's issue) in which the Partner is the sole Trustee and the Partner, as Trustee or individually possesses all of the Voting Interest included in that Partnership Interest, then the Partner shall have the right to purchase the Partnership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee of such deceased spouse, and the estate, successor, or Transferee shall sell the Partnership Interest or portion thereof at the price set forth in Section 8.8 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the date of death (the "*Estate Transfer Date*"), the General Partner shall have the first option to purchase, followed by the Partnership and the other Partners, from the estate or other successor of the deceased spouse the Partnership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Estate Transfer Date, or (2) the date of actual notice of the death.

## 8.6 Option Periods

On the receipt of Notice by a Partners as contemplated by Section 8.1, and on receipt of actual notice of any Triggering Event (the date of such receipt is hereinafter referred to as the “*Option Date*”), the General Partner shall promptly give notice of the occurrence of such a Triggering Event to each Partner, and the General Partner and the Partnership shall have the option, for a period ending 30 calendar days following the determination of the purchase price as provided in Section 8.8, to purchase the Partnership Interest in the Partnership to which the option relates, at the price and on the terms provided in Section 8.8, and the other Partners, pro rata in accordance with their prior Partnership Interests in the Partnership, shall then have the option, for a period of 30 days thereafter, to purchase the Partnership Interest in the Partnership not purchased by the Partnership, on the same terms and conditions as apply to the Partnership. If all other Partners do not elect to purchase the entire remaining Partnership Interest in the Partnership, then the Partners electing to purchase shall have the right, pro rata in accordance with their prior Partnership Interest in the Partnership, to purchase the additional Partnership Interest in the Partnership available for purchase. The Transferee of the Partnership Interest in the Partnership that is not purchased shall hold such Partnership Interest in the Partnership subject to all of the provisions of this Agreement.

## 8.7 Nonparticipation of Interested Partner

No Partner shall participate in any Vote or decision in any matter pertaining to the disposition of that Partner’s Partnership Interest in the Partnership under this Agreement.

## 8.8 Option Purchase Price

The purchase price of the Partnership Interest that is the subject of an option under this Agreement shall be the Fair Market Value of such Partnership Interest as determined under this Section 8.8. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree on the Fair Market Value. If the parties are unable to so agree within 30 days of the Option Date, the selling party shall appoint, within 40 days of the Option Date, one appraiser, and the purchasing party shall appoint within 40 days of the Option Date, one appraiser. The two appraisers shall within a period of five additional days, agree on and appoint an additional appraiser. The three appraisers shall, within 60 days after the appointment of the third appraiser, determine the Fair Market Value of the Partnership Interest in writing and submit their report to all the parties. The Fair Market Value shall be determined by disregarding the appraiser’s valuation that diverges the greatest from each of the other two appraisers’ valuations, and the arithmetic mean of the remaining two appraisers’ valuations shall be the Fair Market Value. Each purchasing party shall pay for the services of the appraiser selected by it, plus one-half of the fee charged by the third appraiser. The option purchase price as so determined shall be payable in cash.

## 8.9 Substituted Partner

Except as expressly permitted under Section 8.2, a prospective Transferee (other than an existing Partner) of a Partnership Interest may be admitted as a Partner with respect to such Partnership Interest (a “*Substituted Partner*”) only (1) on the approval of the General Partner of

the prospective Transferee's admission as a Partner, and (2) on such prospective Transferee's executing a counterpart of this Agreement as a party hereto. Any prospective Transferee of a Partnership Interest shall be deemed an Assignee, and, therefore, the owner of only an Economic Interest until such prospective Transferee has been admitted as a Substituted Partner.

#### 8.10 Duties of a Substituted Partner

Any Person admitted to the Partnership as a Substituted Partner shall be subject to all provisions of this Agreement.

#### 8.11 Securities Laws

The initial sale of Partnership Interests in the Partnership to the Initial Partners has not been qualified or registered under the securities laws of any state, or registered under the Securities Act of 1933, as amended, in reliance upon exemptions from the registration provisions of those laws. No attempt has been made to qualify the offering and sale of Partnership Interests to Partners under the California Corporate Securities Law of 1968, as amended, also in reliance upon an exemption from the requirement that a permit for issuance of securities be procured. Notwithstanding any other provision of this Agreement, Partnership Interests may not be Transferred or Encumbered unless registered or qualified under applicable state and federal securities law or unless, in the opinion of legal counsel satisfactory to the Partnership, such qualification or registration is not required. The Partner who desires to transfer a Partnership Interest shall be responsible for all legal fees incurred in connection with said opinion.

### ARTICLE IX

#### DISSOLUTION AND WINDING UP

##### 9.1 Events of Dissolution

The Partnership shall be dissolved on the first to occur of the following events:

9.1.1 The written agreement of the General Partner and a Majority of Partners to dissolve the Partnership.

9.1.2 Entry of a decree of judicial dissolution pursuant to Section 15908 of the Act.

##### 9.2 Winding Up

On the dissolution of the Partnership, the Partnership shall engage in no further business other than that necessary to wind up the business and affairs of the Partnership. The Partners who have not wrongfully dissolved the Partnership shall wind up the affairs of the Partnership. The General Partner shall give written Notice of the commencement of winding up by mail to all known creditors and claimants against the Partnership whose addresses appear in the records of the Partnership. After paying or adequately providing for the payment of all known debts of the Partnership (except debts owing to Partners) the remaining assets of the Partnership shall be distributed or applied in the following order of priority:



9.2.1 To pay the expenses of liquidation.

9.2.2 To repay outstanding loans to Partners. If there are insufficient funds to pay such loans in full, each Partner shall be repaid in the ratio that the Partner's respective loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Partners, including all interest accrued and unpaid on those loans. Such repayment shall first be credited to unpaid principal and the remainder shall be credited to accrued and unpaid interest.

9.2.3 Among the Partners in accordance with the provisions of Article Four, Section 4.7.

### 9.3 Deficits

Each Partner shall look solely to the assets of the Partnership for the return of the Partner's investment, and if the Partnership property remaining after the payment or discharge of the debts and liabilities of the Partnership is insufficient to return the investment of any Partner, such Partner shall have no recourse against any other Partners for indemnification, contribution, or reimbursement.

## ARTICLE X

### ARBITRATION

Any action to enforce or interpret this Agreement or to resolve disputes between the Partners or by or against any Partner shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive dispute resolution process in the State of California. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at San Francisco, California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

## ARTICLE XI

### GENERAL PROVISIONS

#### 11.1 General Provisions

This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Agreement replaces and supersedes all prior written and oral agreements by and among the Partners or any of them.

#### 11.2 Counterpart Executions

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### 11.3 Governing Law; Severability

This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

### 11.4 Benefit

This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

### 11.5 Number and Gender

Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

### 11.6 Further Assurances

The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties, including but not limited to taking any and all actions reasonably required to comply with any mortgage or encumbrance with respect to the Property.

### 11.7 Partner's Other Business

Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Partners or General Partner in the carrying on of their own respective businesses or activities.

### 11.8 Agent

Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Partner, in the Partner's capacity as such, the agent of any other Partner.

### 11.9 Authority to Contract

Each Partner represents and warrants to the other Partners that the Partner has the capacity and authority to enter into this Agreement.

#### 11.10 Titles and Headings

The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

#### 11.11 Amendment

Except as otherwise provided herein, all amendments to this Agreement will be in writing and approved and executed by a Majority of the Partners; provided that any amendment that would materially and adversely affect the rights of any Partner(s) disproportionately as compared to any other Partner shall require the prior consent of such Partner(s). Notwithstanding the foregoing, this Agreement may be amended by the signature of the General Partner as necessary to reflect the sale of limited partnership interests and the admission of additional Partners.

#### 11.12 Time is of the Essence

Time is of the essence of every provision of this Agreement that specifies a time for performance.

#### 11.13 No Third Party Beneficiary Intended

This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person shall have or acquire any right by virtue of this Agreement.

#### 11.14 Sale of the Property.

Upon the purchase or sale of any real property or any interest therein owned by the Partnership, or the purchase of any additional real property or interest therein by the Partnership, LeFever Mattson shall have exclusive authorization and right to make such sale or purchase of real property interests on behalf of the Partnership and shall be compensated at least three percent (3%) of the sale or purchase price for its services, or such greater amount as may be agreed.

#### 11.15 Financing of the Property.

Upon the financing or refinancing of any real property or any interest therein owned by the Partnership, as well as upon obtaining financing for any purchase of additional real property or any interest therein on behalf of the Partnership, LeFever Mattson shall be compensated in an amount equal to not less than one-half percent (0.5%) of the loan amount for its services in effectuating such financing.

#### 11.16 Limited Partnership

The Partners intend the Partnership to be a limited partnership under the Act. No member shall take any action inconsistent with the express intent of the parties to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

LEFEVER MATTSON,  
a California corporation

By: \_\_\_\_\_  
Tim LeFever, Vice President

LIMITED PARTNERS:

LEFEVER MATTSON,  
a California corporation

By: \_\_\_\_\_  
Tim LeFever, Vice President

[Name] Name]

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

Name] Name]

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

Name] Name]

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

Name] Name]

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

**EXHIBIT A**

**Windtree, LP Partners**

<b><u>Investor Name</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Percentage Interests</u></b>
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**EXHIBIT B**

Form of Property Management Agreement