



**A&W TRADE MARKS INC.**

**(the "Corporation")**

**A. TERMS OF REFERENCE FOR THE BOARD OF DIRECTORS**

**1. Purpose**

- (a) The Board of the Corporation acknowledges that the Corporation holds the A&W Marks which it has licensed to A&W Food Services of Canada Inc. ("Food Services") in exchange for a royalty based upon gross sales reported to Food Services by A&W Restaurants (the "Royalty"). The Corporation does not carry on any active business, other than the exploitation of the A&W Marks, collection of the Royalty and its distribution to A&W Revenue Royalties Income Fund (the "Fund"). The Fund is a limited purpose trust created to hold securities of the Corporation. The results of operations of the Fund and the Corporation are entirely dependent on the activities of Food Services and the A&W restaurants franchised and operated by Food Services. Consequently, the role of the Board of Directors is primarily to monitor the activities of Food Services. The Fund and the Corporation do not have independent active management over which the Trustees of the Fund and the Board, respectively, have supervisory functions.
- (b) The primary responsibility of the Board is to foster the long-term success of the business of the Corporation consistent with the Board's fiduciary responsibilities to the unitholders of the Fund to maximize unitholder returns.
- (c) It is the overall responsibility of the Board that the Corporation meets its obligations on an ongoing basis and operates in a reliable and safe manner. In performing its functions, the Board also considers the legitimate interests that other stakeholders such as employees, suppliers, customers and communities may have in the Corporation. In supervising the conduct of the business, the Board through the CEO shall set the standards of conduct for the Corporation.

**2. Organization and Procedures**

- (a) The Board is to be composed of a majority of individuals who are "independent" within the meaning of Multilateral Instrument 52-110, as amended and referenced in Tab 11 of the Directors' Information Manual. A director is independent if he or she has no direct or indirect material relationship with the Corporation. A "material relationship" is a relationship, which, in the view of the Board, could be reasonably expected to interfere with the exercise of the director's independent judgment.
- (b) The Board operates by delegating certain of its authorities, including spending authorizations, to management and by reserving certain powers to itself. The capital and maintenance authority levels are outlined in Administrative Guidelines for the Board.
- (c) The Board retains the responsibility for managing its own affairs including:
  - (i) selecting its Chair;
  - (ii) if the Chair is not independent, develop a procedure to provide leadership for its independent directors;
  - (iii) nominating candidates for election to the Board, after considering the recommendations of the Governance Committee:

- (iv) constituting committees of the Board;
  - (v) determining director compensation; and
  - (vi) holding regularly scheduled meetings at which members of management are not in attendance.
- (d) Subject to the Articles of the Corporation and the *Canada Business Corporations Act*, the Board may constitute, seek the advice of and delegate powers, duties and responsibilities to committees of the Board.

### 3. Duties and Responsibilities

- (a) The Board has the responsibility: (i) to appoint and replace its executive officers, including the CEO; (ii) to monitor its executives' performances; and (iii) to satisfy itself as to the integrity of the CEO and other executive officers in order to create a culture of integrity throughout the organization.
- (b) The Board shall ensure that all new directors receive a comprehensive orientation to ensure all directors fully understand the role of the Board and its Committees.
- (c) The Board has the responsibility:
  - (i) to monitor the progress of the Corporation towards its goals, consistent with its fiduciary responsibilities to unitholders of the Fund to maximize unitholder returns;
  - (ii) for approving dividends by the Corporation to its shareholders;
  - (iii) for approving financing by the Corporation;
  - (iv) for directing Food Services' management to ensure systems are in place for the implementation and integrity of the internal control and management information systems of the Corporation; and
  - (vi) for directing Food Services' management to ensure appropriate disclosure controls and procedures are in place to enable information to be recorded, processed, summarized and reported within the time periods required by law.
- (d) The Board has the responsibility to adopt a strategic planning process and approve, on at least an annual basis, a strategic plan which is consistent with its fiduciary responsibilities to unitholders of the Fund to maximize unitholder returns.;
- (e) Policies and Procedures. The Board has the responsibility:
  - (i) to approve and monitor compliance with all significant policies and procedures by which the Corporation is operated; and
  - (ii) to direct Food Services' management to implement systems which are designed to ensure that the Corporation operates at all times within applicable laws and regulations and to the highest ethical and moral standards.
- (f) Compliance Reporting and Corporate Communications. The Board has the responsibility:
  - (i) to ensure that the financial performance of the Corporation is adequately reported to its security holders and regulators on a timely and regular basis;
  - (ii) to ensure that the financial results are reported fairly and in accordance with generally accepted accounting principles;

- (iii) to ensure that the Corporation has appropriate disclosure controls and procedures to provide reasonable assurance that all relevant information is gathered and reported to senior management on a timely basis so that appropriate decisions can be made regarding public disclosures and that enable such information to be recorded, processed, summarized and reported within the time periods required by law;
  - (iv) to ensure that management regularly evaluates the design of the Corporation's internal controls over financial reporting and that those controls provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP;
  - (v) to assist Food Services and the Fund to enable effective communication effectively with their security holders and the public generally.
- (g) General Legal Obligations of the Board of Directors. With respect to the general legal obligations of the Board:
- (i) The Board is responsible for directing management to ensure that legal requirements have been met, and that documents and records have been properly prepared, approved and maintained.
  - (ii) The *Canada Business Corporations Act* identifies the following as legal requirements for the Board and individual directors:
    - (A) to act honestly and in good faith with a view to the best interests of the Corporation; and
    - (B) to exercise the care, diligence and skill of a reasonably prudent person; and
    - (C) in particular, it should be noted that the following matters must be considered by the Board as a whole:
      - (1) to submit to the security holders any question or matter requiring the approval of the security holders ;
      - (2) to fill a vacancy among the directors or in the office of the auditor;
      - (3) to issue securities except in the manner and on the terms authorized by the directors;
      - (4) to declare dividends;
      - (5) to purchase, redeem or otherwise acquire shares issued by the Corporation;
      - (6) to pay a commission to any person in consideration of that person purchasing or agreeing to purchase shares of the Corporation or procuring or agreeing to procure purchasers for any such shares;
      - (7) to approve a management proxy circular;
      - (8) to approve a take-over bid circular or directors' circular;
      - (9) to approve any financial statements; and
      - (10) to adopt, amend or repeal Articles of the Corporation.

## **B. TERMS OF REFERENCE FOR A DIRECTOR**

### **1. Goals and Objectives**

As a member of the Board of the Corporation, each director shall:

- (a) fulfil the legal requirements and obligations of a director which includes a comprehensive understanding of the statutory and fiduciary roles;
- (b) represent the interests of all security holders in the governance of the Corporation ensuring that the best interests of the Corporation are paramount; and

- (c) participate in the review and approval of Corporation policies and strategy and in monitoring their implementation.

## **2. Duties and Responsibilities**

- (a) Board Activity. As a member of the Board, each director shall:
  - (i) exercise good judgment and act with integrity;
  - (ii) use his abilities, experience and influence constructively;
  - (iii) respect confidentiality;
  - (iv) identify potential conflict areas - real or perceived - and ensure they are appropriately identified and reviewed;
  - (v) assist in maximization of the distribution of available cash to security holders while maintaining security holders values.
- (b) Preparation and Attendance. To enhance the effectiveness of the Board and committee meetings, each director shall:
  - (i) prepare for Board and committee meetings by reading reports and background materials prepared for each meeting;
  - (ii) maintain an excellent Board and committee meeting attendance record<sup>1</sup>; and
  - (iii) have acquired adequate information necessary for decision making.
- (c) Communication. Communication is fundamental to the Board effectiveness and therefore each Board member shall:
  - (i) participate fully and frankly in the deliberations and discussions of the Board;
  - (ii) encourage free and open discussion of the affairs of the Corporation by the Board and its members;
  - (iii) ask probing questions, in an appropriate manner and at proper times
- (d) Independence. Recognizing that the cohesiveness of the Board is an important element in its effectiveness, each director shall:
  - (i) be a positive force with a demonstrated interest in the long-term success of the Corporation; and
  - (ii) speak and act independently.
- (e) Committee Work. In order to assist the Board committees in being effective and productive, each director shall:
  - (i) participate on committees and become knowledgeable with the purpose and goals of the committee; and
  - (ii) understand the process of committee work, and the role of management and staff supporting the committee.

- (g) Business, Corporation and Industry Knowledge. Recognizing that decisions can only be made by well informed Board members. each director shall:
- (i) become generally knowledgeable of the Corporation's products, and industry;
  - (ii) develop an understanding of the unique role of the Corporation within its various communities;
  - (iii) maintain an understanding of the regulatory, legislative, business, social and political environments within which the Corporation operates;
  - (iv) be an effective ambassador and representative of the Corporation.

### **C. ADMINISTRATIVE GUIDELINES FOR THE BOARD OF DIRECTORS**

1. The Board assumes the responsibility for the stewardship of the Corporation. While, in law, the Board is called upon to manage the business, this is done by proxy through the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO") who are charged with the day-to-day leadership and management of the Corporation.
2. The Board has the statutory authority and obligation to protect and enhance the assets of the Corporation in the interest of all partners. Directors are elected by the security holders to bring special expertise or a point of view to the Board's deliberations.
3. The capital and maintenance expenditure authority levels are outlined in the Authority Levels Policy adopted by the Board on May 16, 2002, as amended from time to time.
4. Terms of reference for the Board, committees and the CEO are annually reviewed by the Governance Committee of the Corporation and any changes are recommended to the Board for approval.
5. Every year the Board reviews and approves a long range strategic plan and one-year operating plan for the Corporation.
6. The Board has concluded that the appropriate size for the Board is five members, three of which are independent<sup>2</sup> and unrelated to Food Services. Two members of the Board are to be "related" to Food Services. All directors and Trustees of the Fund stand for election every year.
7. The Board does not believe that directors who retire from or otherwise change their current position responsibilities should necessarily retire from the Board. There should, however, be an opportunity for the Board, through the Governance Committee of the Corporation, to review the appropriateness of continued Board membership.
8. The Board currently supports the concept of the separation of the role of Chair from that of the CEO. The Board is able to function independently of management when necessary and the Chair's role is to effectively manage and provide leadership to the Board and to interface with the CEO.
9. The Board will evaluate the performance of the CEO at least annually. The evaluation will be based on criteria that include the performance of the business, the accomplishment of long-term strategic objectives and other non-quantitative objectives established at the beginning of each year.
10. The CEO has the special responsibility to manage and oversee the required interfaces between the Corporation and the public and to act as the principal spokesperson for the Corporation. This includes the responsibility for managing the equity and other financial market interfaces on behalf of the Corporation.

11. The Chair with the assistance of the CEO will establish the agenda for each Board Meeting. Each Board member is free to suggest the inclusion of items on the agenda.
12. The Board will meet at least four times per year and schedule meetings one year in advance. In addition, the Board will consider monthly resolutions in order to enable the Corporation to make monthly dividends to its shareholders.
13. Materials will be delivered at least three days in advance of meetings for items to be acted upon. Presentations on specific subjects at the Board meetings will only briefly summarize the material sent to directors so that discussion can be focused on issues relevant to the material.
14. The Board encourages the CEO to bring Food Services' employees into Board meetings who can provide additional insight into the items being discussed because of personal involvement in these areas.
17. The Board is responsible, in fact as well as in procedure, for selecting candidates for Board membership. The Board delegates the screening process to the Governance Committee of the Corporation.
18. The Governance Committee of the Corporation will annually assess the effectiveness of the Board and their respective committees.
19. Committees established by the Board analyze in depth policies and strategies, usually developed by management, which are consistent with their terms of reference. They examine proposals and where appropriate make recommendations to the full Board. Committees do not take action or make decisions on behalf of the Board unless specifically mandated to do so.
20. The current committee of the Board is the Governance Committee. From time to time the Board may create ad hoc committees to examine specific issues on behalf of the Board.
21. Committee members and Committee Chairs are appointed by the directors and the Board respectively, and where possible, consideration is given to having directors rotate their committee assignments.
22. Committees annually review their terms of reference and changes are recommended to the Board through the Governance Committee of the Corporation for approval.
23. Succession and management development plans will be reviewed by the Governance Committee and reported annually by the CEO to the Board.
24. The Board ensures new directors are appropriately introduced to the Corporation and its industry and that they receive the necessary ongoing industry training and development.
25. The Board meets during each meeting on an "in camera" basis without management present.
26. The Board and committees may engage separate independent counsel and/or advisors at the expense of the Corporation. An individual director may engage separate independent counsel and/or advisors at the expense of the Corporation in appropriate circumstances with the approval of the Chair.
27. Attached to these Administrative Guidelines is the Forward Agenda for the Board of Directors.

### Board Forward Agenda

<b>Meeting Timing</b>	<b>Feb</b>	<b>May</b>	<b>July</b>	<b>October</b>
<b>Agenda Items:</b>				
<b>A. Governance</b>				
CEO Performance Review	X			X
Board Performance Review	X			
Director Nominating Report	X			
Appoint Officers		X		
Appoint Board Committees		X		
Review Committee Terms of Reference				X
Review disclosure controls and procedures				X
<b>B. Financial</b>				
Quarterly Results	X	X	X	X
Year End Results	X			
<b>C. Plans and Strategies</b>				
Strategic Plan				X
Operating Plan				X
Succession Plan	X			
Trustee Remuneration		X		
<b>D. Operations</b>				
CEO Report	X	X	X	X
Review of Key Corporate Policies		X		

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<sup>1</sup> The target is 100% attendance. Anything less than 75%, without extenuating circumstances, would create considerable concern for the Board.

<sup>2</sup> A director is independent if he or she has no direct or indirect material relationship with the Corporation or any of its subsidiaries. A “material relationship” is a relationship which could, in the view of the Board, be reasonably expected to interfere with the exercise of a director’s independent judgment. The meaning of independence is contained in Multilateral Instrument 52-110 as amended.