

A&W REVENUE ROYALTIES INCOME FUND

(the “Fund”)

and

A & W FOOD SERVICES OF CANADA INC.

(“Food Services”)

and

A&W TRADE MARKS INC.

(the “Company”)

and

A&W TRADE MARKS LIMITED PARTNERSHIP

(the “Partnership”)

**AMENDED AND RESTATED
EXCHANGE AGREEMENT**

December 22, 2010

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AMENDED AND RESTATED EXCHANGE AGREEMENT

This Amended and Restated Exchange Agreement is made the 22nd day of December, 2010 between **A&W Revenue Royalties Income Fund** as represented by its Trustees, **John McLernon, Conrad Pinette and Carl Vanderspek** (the “**Fund**”), **A & W Food Services of Canada Inc.**, a Canadian corporation, (“**Food Services**”), **A&W Trade Marks Inc.**, a British Columbia company (the “**Company**”) and **A&W Trade Marks Limited Partnership**, a limited partnership formed under the laws of British Columbia (the “**Partnership**”), represented by its general partner, A&W Trade Marks Inc. and amends and restates the Amended and Restated Exchange Agreement dated the January 26, 2009 between the parties to this Agreement (the “**Original Exchange Agreement**”).

WHEREAS pursuant to a reorganization (the “**Reorganization**”) of the Fund and the Company approved by holders of Units of the Fund at the Annual General Meeting of the Fund held on May 4, 2010, the Company continued under the British Columbia *Business Corporations Act* and altered its share capital on December 22, 2010 by creating Non Voting Common Shares with Par Value;

AND WHEREAS as part of the Reorganization: (i) the unpaid principal amount of the 10.75% unsecured, subordinated notes (the “**A&W Notes**”) issued by the Company pursuant to the note indenture dated as of February 1, 2002 between the Company and Computershare Trust Company of Canada were exchanged for Non Voting Common Shares with Par Value; (ii) the issued and outstanding Class A Shares of the Company were exchanged for Non Voting Common Shares without Par Value; (iii) the issued and outstanding Class B Shares of the Company were exchanged for Non Voting Common Shares with Par Value; and (iv) the Non Voting Common Shares without Par Value issued and outstanding prior to the Reorganization were exchanged for Voting Common Shares;

AND WHEREAS as a result of the Reorganization, the authorized capital of the Company consists of an unlimited number of Voting Common Shares, an unlimited number of Non Voting Common Shares without Par Value, an unlimited number of Non Voting Common Shares with Par Value, an unlimited number of Class A Shares and an unlimited number of Class B Shares of which, immediately prior to the execution and delivery of this Agreement; (i) 14,722,926 Voting Common Shares are issued and outstanding and are owned, as to 10,754,373 shares, by the Fund, and as to 3,968,553 shares, by Food Services; (ii) 769,577 Non Voting Common Shares without Par Value are issued and outstanding all of which are owned by Food Services; (iii) 8,953,249 Non Voting Common Shares with Par Value are issued and are owned, as to 5,754,298 shares, by the Fund, and as to 3,198,951 shares, by Food Services; (iv) no Class A Shares are issued and outstanding; and (v) no Class B Shares are issued and outstanding;

AND WHEREAS the Original Exchange Agreement provides *inter alia* for the right of Food Services to exchange securities of the Company for securities of the Fund on the terms and subject to the conditions set forth therein;

AND WHEREAS the partnership agreement governing the Partnership provides for the annual issue of additional LP Units (defined below) to Food Services to reflect the contributions of Additional A&W Outlets to the Royalty Pool (“**Additional A&W Outlets**” and “**Royalty Pool**” as defined in such partnership agreement;

AND WHEREAS the parties wish to provide, *inter alia*, for the right of Food Services to exchange LP Units for securities of the Company, and amend the terms on which Food Services may exchange securities of the Company for securities of the Fund.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants herein contained and other good and valuable consideration receipt of which is hereby acknowledged by each of the parties hereto, the parties hereby amend and restate the Original Exchange Agreement agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions

- (1) In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“**Affiliate**” has the meaning ascribed thereto in National Instrument 45-106 (“Prospectus Distribution Exemptions”).

“**Agreed Amount**” has the meaning ascribed thereto in Section 2.3(3).

“**Agreement**” means this Exchange Agreement as the same may be amended from time to time and in effect.

“**Approval of the Fund**” means such approval of the Trustees or Unitholders as is required by the Declaration of Trust.

“**Associate**” has the meaning ascribed thereto in the Securities Act.

“**BCBCA**” means the *British Columbia Business Corporations Act*, as amended from time to time and in effect, including the regulations promulgated thereunder.

“**Board of Directors**” or “**Board**” mean the directors of the Company for the time being and “**Director**” means an individual who is a director of the Company for the time being.

“**Book Entry Certificate**” means a book entry only certificate representing Units in registered form issued to, and deposited with, CDS.

“**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in the city of Vancouver, British Columbia, for the transaction of banking business.

“**CDS Book-Entry Only System**” means the book-based system administered by CDS.

“**CDS**” means The Canadian Depository for Securities Limited, or its nominee.

“**Common Shares**” means the Non Voting Common Shares with Par Value, the Non Voting Common Shares without Par Value and the Voting Common Shares.

“**Company**” means **A&W Trade Marks Inc.**, a company governed by the BCBCA.

“**Company Exchange Right**” means the right of Food Services to exchange LP Units for Non Voting Common Shares without Par Value pursuant to this Agreement.

“**Company Exercise Notice**” means a notice in the form attached hereto as Schedule “B”.

“**Company Successor**” has the meaning ascribed thereto in Section 4.2.

“**Current Market Price**” of a Unit as at any date or for any period means the weighted average price at which the Units have traded on a Stock Exchange during the period of 20 consecutive trading days ending on the fifth trading day before such date or the end of such period (for the purposes of this calculation, (i) “Stock Exchange” means a stock exchange recognised by the Ontario Securities Commission for such purposes, and where the Units have traded on more than one Stock Exchange during the relevant period, “Stock Exchange” shall mean the Stock Exchange where the greatest volume of Units traded during the relevant period, and (ii) “weighted average price”, for any period, shall mean the amount obtained by dividing the aggregate sale price of all of the Units traded on the relevant Stock Exchange during such period divided by the total number of Units so traded), provided that if the Units are not listed on any Stock Exchange the Current Market Price of the Units is the value of the Units as determined in good faith by the Board of Directors whose determination shall be conclusive.

“**Declaration of Trust**” means the amended and restated declaration of trust dated December 22, 2010 by which the Fund is governed as the same may be amended and supplemental from time to time and in effect.

“**Distribution Date**” has the meaning ascribed thereto in the Declaration of Trust.

“**Exchange Date**” means the date specified in a Company Exchange Notice or a Fund Exchange Notice, as the case may be.

“**Exchange Ratio**” means in respect of an exchange of an LP Unit, two Non Voting Common Shares without Par Value for one LP Unit, and in respect of an exchange of Common Shares, two Common Shares for one Limited Voting Unit, unless adjusted in accordance with the provisions of this Agreement.

“**Exchangeable Securities**” means the Non Voting Common Shares with Par Value, the Non Voting Common Shares without Par Value, the Voting Common Shares and the LP Units.

“**Exchangeable Unit**” means a unit consisting of two Common Shares, which may be Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares, as determined by Food Services in respect of any exchange of Common Shares for a Limited Voting Unit, and as set forth in the Exchange Notice in respect of such exchange, provided that immediately after giving effect to such exchange the aggregate number of Voting Common Shares held by Food Services and its Affiliates does not exceed the aggregate number of Non Voting Common Shares with Par Value and Non Voting Common Shares without Par Value held by Food Services and its Affiliates.

“**Exchangeable Unit Consideration**” means, (i) with respect to each Exchangeable Unit exchanged, the Current Market Price of one Unit, provided that the Exchangeable Unit Consideration in respect of each such Exchangeable Unit shall be fully paid and satisfied by the delivery of one Limited Voting Unit plus an additional amount equal to the full amount of all cash distributions declared, payable and unpaid, on a Limited Voting Unit to which the holder of such Exchangeable Unit is entitled pursuant to the dividend trading rules of any stock exchange on which the Units then trade or are listed for trading; and (ii) with respect to each LP Unit exchanged, the Current Market Price of one Unit, provided that the Exchangeable Unit

Consideration in respect of each LP Unit shall be fully-paid and satisfied by the delivery of two (2) Non Voting Common Shares without Par Value, plus an additional amount equal to the full amount of all dividends declared, payable and unpaid, on the Non Voting Common Shares without Par Value to which the holder of the LP Unit is entitled.

“Exchangeable Unit Price” means, for each Exchangeable Unit and each LP Unit, an amount equal to the aggregate of the Current Market Price of a Unit plus an additional amount equal to the full amount of all cash distributions declared, payable and unpaid, on a Limited Voting Unit to which the holder is entitled pursuant to the dividend trading rules of any stock exchange on which the Units then trade or are listed for trading.

“Food Services” means **A & W Food Services of Canada Inc.**, a corporation amalgamated under the laws of Canada and a holder of Exchangeable Securities.

“Fund” means **A&W Revenue Royalties Income Fund**, a trust governed by the Declaration of Trust.

“Fund Exchange Right” means the right of Food Services to exchange Exchangeable Units for Limited Voting Units pursuant to this Agreement.

“Fund Exercise Notice” means a notice in the form attached hereto as Schedule “A”.

“General Security Agreement” means the amended and restated general security agreement dated December 22, 2010 between Food Services and the Partnership, and providing for, *inter alia*, a first security interest, subject to certain exceptions, in favour of the Partnership over all of the present and after acquired property of Food Services to secure payment and performance of the obligations of Food Services under the Licence and Royalty Agreement as the General Security Agreement may be amended and supplemented from time to time and in effect.

“Governmental Authority” means the Government of Canada or a province or other political subdivision thereof and any court or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in Canada or any province or other political subdivision thereof, and any corporation or other entity owned or controlled, through share ownership or otherwise, by any of the foregoing.

“LP Unit” means LP Unit of the Partnership as provided for in the Partnership Agreement.

“Licence and Royalty Agreement” means the Amended and Restated Licence and Royalty Agreement dated December 22, 2010 between the Partnership and Food Services providing for, *inter alia*, the licence by the Partnership to Food Services of the use of the trade marks described therein, and the payment by Food Services to the Partnership of a royalty as specified therein for the use of such trade marks, and headed Amended and Restated Licence and Royalty Agreement, as the same may be amended and supplemented from time to time and in effect.

“Lien” means any encumbrance or title defect of whatever kind or nature, regardless of form, whether or not registered or registrable and whether or not consensual or arising by law (statutory or otherwise), including any mortgage, lien, charge, pledge or security interest, whether fixed or floating, or any assignment, lease, option, right of preemption, privilege, encumbrance, easement, servitude, right of way, restrictive covenant, right of use or any other right or claim of any kind or nature whatever which affects ownership or possession of, or title to, or any interest in, or the right to use or occupy such property or assets.

“**Limited Voting Units**” means the Trust Units of the Fund referred to in the Declaration of Trust as “Limited Voting Units”.

“**Material Adverse Effect**” means any effect or change that is or, as far as can be reasonably determined, is reasonably likely to be materially adverse to the results of operations, financial condition, assets, properties, or business of Food Services or the Partnership, as the case may be.

“**Non Voting Common Shares with Par Value**” means the Non Voting Common Shares with a par value of \$10 each in the capital of the Company, and any shares into which such shares may be converted, exchanged, subdivided, consolidated or otherwise changed from time to time and any shares of any successor corporation to the Company that such shares may become as a result of any amalgamation.

“**Non Voting Common Shares without Par Value**” means the Non Voting Common Shares without par value in the capital of the Company, and any shares into which such shares may be converted, exchanged, subdivided, consolidated or otherwise changed from time to time and any shares of any successor corporation to the Company that such shares may become as a result of any amalgamation.

“**Partnership**” means “**A&W Trade Marks Limited Partnership**”, a limited partnership formed under the laws of British Columbia.

“**Partnership Agreement**” means the agreement governing the Partnership, as the same may be amended or supplemented from time to time and in effect.

“**party**” means a party to this Agreement.

“**Person**” means any individual, partnership, firm, trust, body corporate, government, governmental body, agency or instrumentality, unincorporated body of persons or association.

“**Securities Act**” means the *Securities Act* (British Columbia) and the rules, regulations and policies made thereunder, as amended.

“**Subsidiary**” means, with respect to a specified body corporate, any body corporate of which more than 50% of the outstanding shares ordinarily entitled to elect a majority of the board of directors thereof (whether or not shares of any other class or classes shall or might be entitled to vote upon the happening of any event or contingency) are at the time owned directly or indirectly by such specified body corporate and shall include any body corporate, partnership, joint venture or other entity over which it exercises direction or control or which is in a like relation to a subsidiary.

“**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder.

“**Transfer Agent**” means Computershare Trust Company of Canada or such other Person as may from time to time be appointed by the Fund as the registrar and transfer agent for the Units.

“**Trust Units**” means the Units and the Limited Voting Units of the Fund, each representing an equal undivided beneficial interest in the Fund, as provided for in the Declaration of Trust.

“**Trustees**” means the persons appointed and acting as trustees of the Fund pursuant to the Declaration of Trust, or any successors thereof.

“**TSX**” means The Toronto Stock Exchange.

“**Unitholder**” means a holder from time to time of a Trust Unit and includes, while the Units are registered in the CDS Book-Entry Only System, the beneficial owner of the Unit and the registered holder of Units and Limited Voting Units.

“**Units**” means the Trust Units of the Fund referred to in the Declaration of Trust as “Units”.

“**Voting Common Shares**” means the Voting Common Shares without par value in the capital of the Company and any shares into which such shares may be converted, exchanged, subdivided, consolidated or otherwise changed from time to time and any shares of any successor corporation to the Company that such shares may become as a result of any amalgamation

- (2) Words importing the singular include the plural and vice versa and words importing any gender include all genders.
- (3) All dollar amounts herein are in Canadian dollars, unless otherwise stated.
- (4) The words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation.”

Section 1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into Articles, Sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof. Unless otherwise indicated, all references to an “Article” or “Section” followed by a number and/or a letter refer to the specified Article or Section of this Agreement. The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement (including the Schedules hereto) and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.

Section 1.3 Accounting References

All accounting terms not expressly defined herein shall be construed in accordance with Canadian generally accepted accounting principles, except where the context otherwise requires.

Section 1.4 Number, etc.

Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.

Section 1.5 Statutory References

Except as otherwise expressly provided in this Agreement, any references to a statute or regulation shall be construed as a reference to such statute or regulation as it may be amended, re-enacted or superseded from time to time.

Section 1.6 Date for any Action

In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

Section 1.7 References to Acts Performed by the Fund

For greater certainty, where any reference is made in this Agreement to an act to be or not to be performed by the Fund, such reference shall be construed and applied for all purposes as if it referred to an act to be or not to be performed by the Trustees on behalf of the Fund.

Section 1.8 Liability of Trustee and Unitholders

The parties hereto acknowledge that the Trustees are entering into this Agreement solely in their capacity as Trustees or as agent, as the case may be, on behalf of the Fund and the obligations of the Fund hereunder shall not be personally binding upon the Trustees, or any of the Unitholders or any annuitant under a plan of which a Unitholder is a trustee or carrier (an “**annuitant**”) and that any recourse against the Fund, the Trustees, or any Unitholder or annuitant in any manner in respect of any indebtedness, obligation or liability of the Fund arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, if any, including without limitation claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Assets as defined in the Declaration of Trust, as amended from time to time.

Section 1.9 Withholding Rights

The Fund and the Company shall be entitled to deduct and withhold from any consideration otherwise payable under this Agreement to any holder of LP Units or Exchangeable Units such amounts as the Fund or the Company is required or permitted to deduct and withhold with respect to such payment under the Tax Act or any provision of provincial, state, local or foreign tax law, in each case as amended or superseded or would be permitted to withhold if an equal amount were remitted to the appropriate taxing authority. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the holder of the securities in respect of which such deduction and withholding was made, provided that such withheld amounts (or equivalent amounts, if applicable) are actually remitted to the appropriate taxing authority. To the extent that the amount so required or permitted or which would be permitted to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, the Fund and the Company are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to the Fund or the Company as the case may be, to enable it to comply with such deduction or withholding requirement and the Fund or the Company shall notify the holder thereof and remit to such holder any unapplied balance of the net proceeds of such sale.

ARTICLE 2 EXCHANGE RIGHT

Section 2.1 Grant of the Fund Exchange Right and the Company Exchange Right

(1) **Fund Exchange Right.** The Fund hereby grants to Food Services the right to require the Fund to purchase from Food Services all or any part of the Exchangeable Units held by Food Services, all in accordance with the provisions of this Agreement. The Fund hereby acknowledges receipt from Food Services of good and valuable consideration (and the adequacy thereof) for the grant of the Fund Exchange Right by the Fund to Food Services.

(2) **Company Exchange Right.** The Company hereby grants to Food Services the right to require the Company to purchase from Food Services all or any part of the LP Units held by Food Services, all in accordance with the provisions of this Agreement. The Company hereby acknowledges receipt from Food Services of good and valuable consideration (and the adequacy thereof) for the grant of the Company Exchange Right by the Company to Food Services.

Section 2.2 Purchase Price

(1) **Purchase Price – Fund Exchange Right.** The purchase price payable by the Fund for each Exchangeable Unit to be purchased by the Fund under the Fund Exchange Right shall be an amount per Exchangeable Unit equal to the Exchangeable Unit Price on the last Business Day prior to the day of closing of the purchase and sale of such Exchangeable Unit under the Fund Exchange Right. In connection with each exercise of the Fund Exchange Right, the Company shall provide the Fund an Officer's Certificate setting forth the calculation of the Exchangeable Unit Price for each Exchangeable Unit. The Exchangeable Unit Price for each such Exchangeable Unit so purchased may be satisfied only by the Fund delivering or causing to be delivered to Food Services, on the Exchange Date in respect of the exercise of such Fund Exchange Right, the Exchangeable Unit Consideration representing the total Exchangeable Unit Price. Upon payment by the Fund of such purchase price to Food Services, Food Services shall cease to have any right to be paid any amount by the Company in respect of accrued and unpaid dividends on the Common Shares included in such Exchangeable Units.

(2) **Purchase Price – Company Exchange Right.** The purchase price payable by the Company for each LP Unit to be purchased by the Company under the Company Exchange Right shall be an amount per LP Unit equal to the Exchangeable Unit Price on the last Business Day prior to the day of closing of the purchase and sale of such LP Unit under the Company Exchange Right. In connection with each exercise of the Company Exchange Right, the Company shall provide the Fund an Officer's Certificate setting forth the calculation of the Exchangeable Unit Price for each LP Unit. The Exchangeable Unit Price for each such LP Unit so purchased may be satisfied only by the Company delivering or causing to be delivered to Food Services, on the Exchange Date in respect of the exercise of such Company Exchange Right, the Exchangeable Unit Consideration representing the total Exchangeable Unit Price. Upon payment by the Company of such purchase price to Food Services, Food Services shall cease to have any right to be paid any amount by the Partnership in respect of such LP Units.

Section 2.3 Exercise Instructions and Tax Elections and Paid up Capital

(1) **Exercise Instructions – Fund Exchange Right.** Subject to the terms and conditions herein set forth and to the provisions of section 8.2(d) of the Governance Agreement, Food Services shall be entitled to exercise the Fund Exchange Right with respect to all or any part of the Exchangeable Units registered in the name of Food Services on the books of the Company. To cause the exercise of the Fund Exchange Right, Food Services shall deliver to the Fund, in person or by certified or registered mail, the certificates representing the Exchangeable Securities included in the Exchangeable Units which Food Services desires the Fund to purchase, duly endorsed in blank for transfer, and accompanied by such other documents and instruments as may be required to effect a transfer of such Exchangeable Securities under the BCBCA and the articles of the Company and such additional documents and instruments as the Company and the Fund may reasonably require together with (a) a duly completed form of Fund Exercise Notice in respect of the Exchangeable Units for which the Fund Exchange Right is exercised, stating (i) Food Services thereby exercises the Fund Exchange Right so as to require the Fund to purchase from Food Services the number of Exchangeable Units specified therein, (ii) that Food Services has good title to and owns all such Exchangeable Units to be acquired by the Fund free and clear of all Liens other than the security interest granted to the Partnership under the General Security Agreement, (iii) the names in which the certificates representing Limited Voting Units issuable in connection with the exercise of the

Fund Exchange Right are to be issued and (iv) the names and addresses of the persons to whom such new certificates should be delivered, and (b) payment (or evidence satisfactory to the Company and the Fund of payment) of the taxes (if any) payable as contemplated by Section 1.9 of this Agreement. If only a part of the Common Shares represented by any certificate or certificates delivered to the Fund are to be purchased by the Fund under the Fund Exchange Right, a new certificate for the balance of such shares shall be issued to Food Services at the expense of the Company.

(2) **Exercise Instructions – Company Exchange Right.** Subject to the terms and conditions herein set forth and to the provisions of section 8.2(d) of the Governance Agreement, Food Services shall be entitled to exercise the Company Exchange Right with respect to all or any part of the LP Units registered in the name of Food Services on the books of the Partnership. To cause the exercise of the Company Exchange Right, Food Services shall deliver to the Company, in person or by certified or registered mail, the certificates representing the LP Units which Food Services desires the Company to purchase, duly endorsed in blank for transfer, and accompanied by such other documents and instruments as may be required to effect a transfer of such LP Units under the terms of the Partnership Agreement and such additional documents and instruments as the Partnership and Company may reasonably require (including, the agreement by the Company to be bound by the Partnership Agreement and a Power of Attorney, all as contemplated by the Partnership Agreement, together with (a) a duly completed form of Company Exercise Notice in respect of the LP Units for which the Company Exchange Right is exercised, stating (i) Food Services thereby exercises the Company Exchange Right so as to require the Company to purchase from Food Services the number of LP Units specified therein, (ii) that Food Services has good title to and owns all such LP Units to be acquired by the Company free and clear of all Liens, other than the security interest granted to the Partnership pursuant to the General Security Agreement, (iii) the names in which the certificates representing Non Voting Common Shares without Par Value issuable in connection with the exercise of the Company Exchange Right are to be issued, and (iv) the names and addresses of the persons to whom such new certificates should be delivered, and (b) payment (or evidence satisfactory to the Company and the Partnership of payment) of the taxes (if any) payable as contemplated by Section 1.9 of this Agreement. If only a part of the LP Units represented by any certificate or certificates delivered to the Company are to be purchased by the Company under the Company Exchange Right, a new certificate for the balance of such LP Units shall be issued to Food Services at the expense of the Company.

(3) **Section 85(1) Election on Exercise of Company Exchange Right**

Food Services and the Company covenant and to jointly make and file an election under subsection 85(1) of the Tax Act in the prescribed form and within the time required by section 85 of the Tax Act, in respect of the transfer of the LP Units to the Company and the issue of the Non Voting Common Shares without Par Value to Food Services upon completion of a Company Exchange Right to elect therein that the agreed amount (the “**Agreed Amount**”), which will be deemed to be Food Services proceeds of disposition and the Partnership’s cost of the LP Units, shall be equal to the adjusted cost base of the LP Units to Food Services immediately prior to the completion of such Company Exchange Right.

(4) **Paid Up Capital of the Company.**

The Company covenants and agrees to issue to Food Services the Non Voting Common Shares without Par Value at an aggregate issue price equal to the Agreed Amount specified in the joint election under subsection 85(1) of the Tax Act referred to in Section 2.3(3), which amount will be wholly allocated to and added to the paid-up capital of the Non Voting Common Shares without Par Value.

Section 2.4 Delivery of Non Voting Common Shares without Par Value on exercise of Company Exchange Right

On the Exchange Date in respect of the exercise of a Company Exchange Right and upon receipt by the Company of the certificates representing the LP Units which Food Services desires the Company to purchase under the Company Exchange Right, together with such documents and instruments of transfer and a duly completed form of Company Exercise Notice (and payment of taxes, if any payable as contemplated by Section 1.9 or evidence thereof), duly endorsed for transfer to the Company, the Company shall promptly thereafter deliver or cause to be delivered to Food Services in respect of such LP Units (or to such other Persons, if any, designated by Food Services) two (2) Non Voting Common Shares without Par Value for each LP Unit that is to be exchanged under such Company Exchange Right. Upon the Exchange Date in respect of any Company Exchange Right, the closing of the transaction of purchase and sale contemplated by the Company Exchange Right shall be deemed to have occurred, and Food Services shall be deemed to have transferred to the Company all of Food Services' right, title and interest in and to such LP Units for which the Company Exchange Right has been exercised and shall cease to be a holder of such LP Units and shall not be entitled to exercise any of the rights of a holder in respect thereof, other than the right to receive Non Voting Common Shares without Par Value in respect of such Company Exchange Right, unless such Non Voting Common Shares without Par Value are not delivered by the Company to Food Services (or to such other Persons, if any, designated by Food Services) within three Business Days of the date of the giving of such Company Exchange Notice by Food Services and the rights of Food Services as a holder of the LP Units shall remain unaffected until such Exchangeable Unit Consideration is delivered by the Company. Concurrently with Food Services ceasing to be a holder of such LP Units, Food Services shall be considered and deemed for all purposes to be the holder of the Non Voting Common Shares without Par Value delivered or to be delivered to it pursuant to the Company Exchange Right.

Section 2.5 Delivery of Limited Voting Units; Effect of Exercise

On the Fund Exchange Date and upon receipt by the Fund of the certificates representing the Common Shares included in the Exchangeable Units which Food Services desires the Fund to purchase under the Fund Exchange Right, together with such documents and instruments of transfer and a duly completed form of Fund Exercise Notice (and payment of taxes, if any payable as contemplated by Section 1.9 or evidence thereof), duly endorsed for transfer to the Fund, the Fund shall notify the Company of its receipt of the same, and the Fund shall promptly thereafter deliver or cause to be delivered to Food Services in respect of such Exchangeable Units (or to such other Persons, if any, designated by Food Services) the Exchangeable Unit Consideration deliverable in connection with the exercise of the Fund Exchange Right. Upon the Exchange Date in respect of any Fund Exchange Right, the closing of the transaction of purchase and sale contemplated by the Fund Exchange Right shall be deemed to have occurred, and Food Services shall be deemed to have transferred to the Fund all of Food Services' right, title and interest in and to such Common Shares and comprising the Exchangeable Units for which the Fund Exchange Right has been exercised and shall cease to be a holder of such Exchangeable Units and shall not be entitled to exercise any of the rights of a holder in respect thereof, other than the right to receive the total purchase price therefor, unless such Exchangeable Unit Consideration is not delivered by the Fund to Food Services (or to such other person, if any, designated by Food Services) within three Business Days of the date of the giving of such Fund Exercise Notice by Food Services and the rights of Food Services as a holder of the Common Shares comprising the Exchangeable Units shall remain unaffected until such Exchangeable Unit Consideration is delivered by the Fund. Concurrently with Food Services ceasing to be a holder of such Common Shares comprising the Exchangeable Units, Food Services shall be considered and deemed for all purposes to be the holder of the Limited Voting Units delivered or to be delivered to it pursuant to the Fund Exchange Right.

Section 2.6 Qualification of Units

The Fund covenants that if any Trust Units (or any other securities into which such Trust Units may be reclassified or changed as contemplated by Section 3.6) to be issued and delivered hereunder pursuant to the Fund Exchange Right require registration or qualification with or approval of or the filing of any document, including any prospectus or similar document, or the taking of any proceeding with or the obtaining of any order, ruling or consent from any governmental or regulatory authority under any Canadian federal, provincial or territorial or law or regulation or pursuant to the rules and regulations of any regulatory authority or the fulfilment of any other Canadian or federal or provincial or territorial legal requirement (collectively the “**Applicable Laws**”) before such Trust Units (or any other securities into which such Trust Units may be reclassified or changed as contemplated by Section 3.6) may be issued and delivered by the Fund to the initial holder thereof, the Fund will use its reasonable best efforts and in good faith expeditiously take all such actions and do all such things as are necessary or desirable and within its power to be a reporting issuer under the Applicable Laws. The Fund will use its reasonable best efforts and in good faith expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause all Units to be delivered pursuant to the Fund Exchange Right or the Governance Agreement to be listed, quoted or posted for trading on all stock exchanges and quotation systems on which outstanding Units are listed, quoted or posted for trading at such time.

Section 2.7 Units

The Fund hereby represents, warrants and covenants that the Limited Voting Units issuable to Food Services as described herein will be duly authorized and validly issued by the Fund, fully paid and non-assessable and shall be free and clear of any Liens.

ARTICLE 3 COVENANTS OF THE FUND, THE COMPANY AND THE PARTNERSHIP

Section 3.1 Covenants Regarding Exchangeable Securities

So long as any Exchangeable Securities not owned by the Fund or its Affiliates are outstanding each of the Fund and the Company will:

- (a) take all such actions and do all such things as shall be necessary or advisable to perform and comply with and to ensure performance and compliance by the Fund and the Company with all provisions of this Agreement applicable to the Fund and the Company, respectively, in accordance with the terms thereof including taking all such actions and doing all such things as shall be necessary or advisable to enforce to the fullest extent possible for the direct benefit of Food Services all rights and benefits in favour of Food Services under or pursuant thereto; and
- (b) not exercise its vote as a shareholder of the Company to initiate the voluntary liquidation, dissolution or winding up of the Company or any other distribution of the assets of the Company among its shareholders for the purpose of winding up its affairs, nor take any action or omit to take any action that is designed to result in the liquidation, dissolution or winding up of the Company or any other distribution of the assets of the Company among its shareholders for the purpose of winding up its affairs, without the prior approval of the holders of the Exchangeable Securities given in accordance with the Exchangeable Share Provisions.

Section 3.2 Covenants Regarding LP Units

So long as any LP Units not owned by the Company are outstanding or Food Services is entitled to be issued additional LP Units under the Partnership Agreement (whether or not the conditions for the issue of such additional LP Units have arisen or been satisfied), each of the Partnership and the Company will:

- (a) take all such actions and do all such things as shall be necessary or advisable to perform and comply with and to ensure performance and compliance by the Partnership and the Company with all provisions of this Agreement applicable to the Partnership and the Company, respectively, in accordance with the terms thereof including taking all such actions and doing all such things as shall be necessary or advisable to enforce to the fullest extent possible for the direct benefit of Food Services all rights and benefits in favour of Food Services under or pursuant thereto; and
- (b) not exercise its vote as a partner of the Partnership to initiate the voluntary liquidation, dissolution or winding up of the Partnership or any other distribution of the assets of the Partnership among its partners for the purpose of winding up its affairs, nor take any action or omit to take any action that is designed to result in the liquidation, dissolution or winding up of the Partnership or any other distribution of the assets of the Partnership among its partners for the purpose of winding up its affairs, without the prior approval of Food Services.

Section 3.3 No Amendment or Waiver

None of the Company, the Partnership nor the Fund shall propose, agree to or otherwise give effect to any amendment to, waiver of or forgiveness of its rights or obligations under this Agreement without the approval of the holders of the Exchangeable Securities, other than such amendments, waivers and/or forgiveness as may be made pursuant to Section 6.6.

Section 3.4 Reservation of Trust Units

The Fund hereby represents, warrants and covenants in favour of Food Services that the Fund has reserved for issuance and will, at all times while any Exchangeable Securities (other than Exchangeable Securities held by the Fund or its Affiliates) are outstanding, keep available, free from pre-emptive and other rights, out of its authorized and unissued Trust Units such number of Limited Voting Units and Units (or other securities into which Limited Voting Units and Units may be reclassified or changed): (i) as is equal to the number of Units or Limited Voting Units issuable upon the exercise of the Fund Exchange Right and the Company Exchange Right; and (ii) as are now and may hereafter be required to enable and permit the Fund to meet its obligations under this Agreement and the Declaration of Trust and under any other security or commitment pursuant to which the Fund may now or hereafter be required to issue Limited Voting Units and Units.

Section 3.5 Reservation of Non Voting Common Shares without Par Value

The Company hereby represents, warrants and covenants in favour of Food Services that the Company has reserved for issuance and will, at all times while Food Services is entitled to be issued additional LP Units under the Partnership Agreement (whether or not the conditions for the issue of such additional LP Units have arisen or been satisfied) keep available, free from pre-emptive and other rights, out of its authorized and unissued Non Voting Common Shares without Par Value: (i) as is equal to two (2) times the number of LP Units issued and outstanding from time to time; and (ii) as are now and may

hereafter be required to enable and permit the Company to meet its obligations under this and under any other security or commitment pursuant to which the Company may now or hereafter be required to issue Non Voting Common Shares without Par Value.

Section 3.6 Economic Equivalence - Units

So long as any Exchangeable Securities not owned by the Fund or its Affiliates are outstanding or Food Services is entitled to be issued additional LP Units under the Partnership Agreement (whether or not the conditions for the issue of such additional LP Units have arisen or been satisfied):

- (a) the Fund will not, without prior approval of Food Services:
 - (i) issue or distribute Trust Units (or securities convertible into or exchangeable for or carrying rights to acquire Trust Units) to the holders of all or substantially all of the then outstanding Trust Units by way of distribution, other than an issue of Trust Units (or securities exchangeable for or convertible into or carrying rights to acquire Trust Units) to holders of Trust Units pursuant to Section 5.7 of the Declaration of Trust; or
 - (ii) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding Trust Units entitling them to subscribe for or to purchase Trust Units (or securities exchangeable for or convertible into or carrying rights to acquire Units); or
 - (iii) issue or distribute to the holders of all or substantially all of the then outstanding Trust Units:
 - (A) shares or securities of the Company of any class (or securities convertible into or exchangeable for or carrying rights to acquire securities of the Company) other than pursuant to Section 6.5 of the Declaration of Trust;
 - (B) rights, options or warrants other than those referred to in Section 3.6(a)(ii) above;
 - (C) evidences of indebtedness of the Fund other than pursuant to Section 6.5 of the Declaration of Trust; or
 - (D) assets of the Fund other than pursuant to Section 6.5 of the Declaration of Trust;

unless the economic equivalent on a per Trust Unit basis of such rights, options, warrants, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the Exchangeable Units.

- (b) The Fund will not, without the prior approval of Food Services:
 - (i) subdivide, redivide or change the then outstanding Trust Units into a greater number of Trust Units; or

- (ii) reduce, combine, consolidate or change the then outstanding Trust Units into a lesser number of Trust Units; or
- (iii) reclassify or otherwise change the Trust Units or effect an amalgamation, merger, reorganization or other transaction affecting the Trust Units;

unless the same or an economically equivalent change shall simultaneously be made to, or in the rights of the holders of, the Exchangeable Units.

- (c) The Fund will ensure that the record date for any event referred to in Section (a) or (b) above, or if no record date is applicable for such event, the effective date for any such event, is not less than five Business Days after the date on which such event is declared or announced by the Fund (with contemporaneous notification thereof by the Fund to Food Services).
- (d) The Board of Directors shall determine, in good faith, economic equivalence for the purposes of any event referred to in Section 3.6(a) or (b) above and each such determination shall be conclusive and binding on the Company, the Fund and Food Services. In making each such determination, the following factors shall, without excluding other factors determined by the Board of Directors to be relevant, be considered by the Board of Directors:
 - (i) in the case of any distribution payable in Trust Units, the number of such units issued in proportion to the number of Trust Units previously outstanding;
 - (ii) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase Trust Units (or securities exchangeable for or convertible into or carrying rights to acquire Trust Units), the relationship between the exercise price of each such right, option or warrant and the Current Market Price;
 - (iii) in the case of the issuance or distribution of any other form of property (including any shares or securities of the Company of any class, any rights, options or warrants other than those referred to in Section 3.6(a)(ii) above, any evidences of indebtedness of the Fund or any assets of the Fund), other than the relationship between the fair market value (as determined by the Board of Directors in the manner above contemplated) of such property to be issued or distributed with respect to each outstanding Trust Unit and the Current Market Price;
 - (iv) in the case of any subdivision, redivision or change of the then outstanding Trust Units into a greater number of Trust Units or the reduction, combination, consolidation or change of the then outstanding Trust Units into a lesser number of Trust Units or any amalgamation, merger, reorganization or other transaction affecting Trust Units, the effect thereof upon the then outstanding Trust Units; and
 - (v) in all such cases, the general taxation consequences of the relevant event to holders of Exchangeable Units to the extent that such consequences may differ from the taxation consequences to holders of Trust Units (except for any differing consequences arising as a result of differing marginal taxation rates and

without regard to the individual circumstances of holders of Exchangeable Units).

- (e) The Company and Fund agree that, to the extent required, upon due notice from Food Services, the Company and the Fund will take or cause to be taken all such reasonable steps so that appropriate dividends are paid or other distributions are made by the Company and the Fund, or subdivisions, redivisions or changes are made to the Exchangeable Units, in order to implement the required economic equivalent with respect to the Trust Units and Exchangeable Units as provided for in this Section 3.6.

Section 3.7 Economic Equivalence – Common Shares

So long as Food Services is entitled to be issued additional LP Units under the Partnership Agreement (whether or not the conditions for the issue of such additional LP Units have arisen or been satisfied):

- (a) the Company will not, without prior approval of Food Services:
 - (i) issue or distribute Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares (or securities convertible into or exchangeable for or carrying rights to acquire Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares) to the holders of all or substantially all of the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares by way of distribution; or
 - (ii) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares entitling them to subscribe for or to purchase Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares); or
 - (iii) issue or distribute to the holders of all or substantially all of the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares:
 - (A) shares or securities of the Company of any class (or securities convertible into or exchangeable for or carrying rights to acquire securities of the Company);
 - (B) rights, options or warrants other than those referred to in Section 3.6(a)(ii) above;
 - (C) evidences of indebtedness of the Company; or
 - (D) assets of the Company;

unless the economic equivalent on a per LP Unit basis of such rights, options, warrants, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the LP Units or an appropriate change is made in the number of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares to be issued in exchange for an LP Unit.

- (b) The Company will not, without the prior approval of Food Services:
- (i) subdivide, redivide or change the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares into a greater number of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares; or
 - (ii) reduce, combine, consolidate or change the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares into a lesser number of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares; or
 - (iii) reclassify or otherwise change the Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares or effect an amalgamation, merger, reorganization or other transaction affecting the Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares;

unless the same or an economically equivalent change shall simultaneously be made to, or in the rights of the holders of, the LP Units.

- (c) The Company will ensure that the record date for any event referred to in Section (a) or (b) above, or if no record date is applicable for such event, the effective date for any such event, is not less than five Business Days after the date on which such event is declared or announced by the Company (with contemporaneous notification thereof by the Company to Food Services).
- (d) The Board of Directors shall determine, in good faith, economic equivalence for the purposes of any event referred to in Section 3.6(a) above and each such determination shall be conclusive and binding on the Partnership, the Company, the Fund and Food Services. In making each such determination, the following factors shall, without excluding other factors determined by the Board of Directors to be relevant, be considered by the Board of Directors:
- (i) in the case of any distribution payable in Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares, the number of such units issued in proportion to the number of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares previously outstanding;
 - (ii) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares (or

securities exchangeable for or convertible into or carrying rights to acquire Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares), the relationship between the exercise price of each such right, option or warrant and the right of Food Services to exchange LP Units for Non Voting Common Shares without Par Value;

- (iii) in the case of the issuance or distribution of any other form of property (including any shares or securities of the Company of any class, any rights, options or warrants other than those referred to in Section 3.6(a)(ii) above, any evidences of indebtedness of the Company or any assets of the Company), other than the relationship between the fair market value (as determined by the Board of Directors in the manner above contemplated) of such property to be issued or distributed with respect to each outstanding Non Voting Common Share with Par Value, Non Voting Common Share without Par Value or Voting Common Share and the right of Food Services to exchange LP Units for Non Voting Common Shares without Par Value;
 - (iv) in the case of any subdivision, redivision or change of the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares into a greater number of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares or the reduction, combination, consolidation or change of the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares into a lesser number of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares or any amalgamation, merger, reorganization or other transaction affecting Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares, the effect thereof upon the then outstanding Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value and Voting Common Shares; and
 - (v) in all such cases, the general taxation consequences of the relevant event to holders of Exchangeable Securities or Food Services to the extent that such consequences may differ from the taxation consequences to holders of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares (except for any differing consequences arising as a result of differing marginal taxation rates and without regard to the individual circumstances of holders of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares).
- (e) The Partnership, the Company and Fund agree that, to the extent required, upon due notice from Food Services, the Partnership and the Company will take or cause to be taken all such reasonable steps so that appropriate dividends are paid or other distributions are made by the Partnership and the Company, or subdivisions, redivisions or changes are made to the Exchangeable Securities as provided for in this Section 3.7.

Section 3.8 Delivery of Units to Food Services

Upon notice from Food Services of any event that requires the Fund to cause to be delivered Units upon any transfer of Limited Voting Units as contemplated by Section 13.13 of the Declaration of Trust, the Fund shall forthwith allot, issue and deliver or cause to be delivered to CDS a Book Entry Certificate for the benefit of the purchaser or transferee of such Limited Voting Units as directed by Food Services of the requisite number of Units to be received by, and issued to or to the order of, such purchaser or transferee. All such Units shall be duly authorized and validly issued as fully paid.

ARTICLE 4 FUND AND COMPANY SUCCESSORS

Section 4.1 Certain Requirements of the Fund in Respect of Combination, etc.

As long as any outstanding Exchangeable Securities are owned by any Person other than the Fund or any of its Affiliates or Food Services is entitled to be issued additional LP Units under the Partnership Agreement (whether or not the conditions for the issue of such additional LP Units have arisen or been satisfied), the Fund shall not consummate any transaction (whether by way of reconstruction, reorganization, consolidation, arrangement, merger, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other Person or, in the case of a merger, of the continuing corporation resulting therefrom, but may do so if:

- (a) such other Person or continuing corporation (the “**Fund Successor**”) by operation of law, becomes, without more, bound by the terms and provisions of this Agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, an agreement supplemental hereto and such other instruments (if any) as are reasonably necessary or advisable to evidence the assumption by the Fund Successor of liability for all moneys payable and property deliverable hereunder and the covenant of such Fund Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of Fund under this Agreement; and
- (b) such transaction shall be upon such terms and conditions as substantially to preserve and not to impair in any material respect any of the rights, duties, powers and authorities of the other parties hereunder or the holders of the Exchangeable Securities and the holders of the LP Units.

Section 4.2 Certain Requirements of the Company in Respect of Combination, etc.

So long as Food Services holds LP Units or is entitled to be issued additional LP Units under the Partnership Agreement (whether or not the conditions for the issue of such additional LP Units have arisen or been satisfied), the Company shall not consummate any transaction (whether by way of reconstruction, reorganization, consolidation, arrangement, merger, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other Person or, in the case of a merger, of the continuing corporation resulting therefrom, but may do so if:

- (a) such other Person or continuing corporation (the “**Company Successor**”) by operation of law, becomes, without more, bound by the terms and provisions of this Agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, an agreement supplemental hereto and such other instruments (if any) as are

reasonably necessary or advisable to evidence the assumption by the Company Successor of liability for all moneys payable and property deliverable hereunder and the covenant of such Company Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of the Company under this Agreement; and

- (b) such transaction shall be upon such terms and conditions as substantially to preserve and not to impair in any material respect any of the rights, duties, powers and authorities of the other parties hereunder or Food Services.

Section 4.3 Vesting of Powers in Successor

Whenever the conditions of Section 4.1 or Section 4.2 have been duly observed and performed, the parties, if required by Section 4.1 or Section 4.2, shall execute and deliver the supplemental agreement provided for in Section 4.1(a) or Section 4.2(a), as the case may be, and thereupon the Fund Successor or Company Successor, as the case may be shall possess and from time to time may exercise each and every right and power of the Fund or the Company, as the case may be, under this Agreement in the name of the Fund or the Company, as the case may be, or otherwise and any act or proceeding by any provision of this Agreement required to be done or performed by the Trustees of the Fund or the Company, as the case may be, may be done and performed with like force and effect by the trustees, directors or officers, as the case may be, of such Fund Successor or Company Successor, as the case may be.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Section 5.1 General Representation and Warranties

Each party to this Agreement represents and warrants as follows and acknowledges that each other party is relying upon such representations and warranties in connection with the transactions contemplated hereby:

- (a) it is validly subsisting under the laws of its jurisdiction of incorporation or formation and is duly registered to carry on business in each jurisdiction where the failure to be so registered could reasonably be expected to have a material adverse effect on its business, properties or condition (financial or otherwise) or its ability to consummate the transactions contemplated hereby;
- (b) it has all requisite power and authority to conduct its business as is presently being conducted and to execute, deliver and perform this Agreement;
- (c) the execution, delivery and performance by it of this Agreement have been duly authorized by all necessary corporate or other action and do not require the consent or approval of any other Person;
- (d) this Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms, except as such enforceability may be affected by bankruptcy, insolvency, arrangement, moratorium or other laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies may be limited by equitable principles of general applicability;

- (e) the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder do not require any authorization under any applicable law and are not inconsistent with and do not contravene any provision of or constitute a default under:
 - (i) its constating documents or by-laws, as applicable;
 - (ii) any judgment, injunction, decree or order applicable to it or any of its properties;
 - (iii) any applicable law or authorization applicable to it or any of its properties; or
 - (iv) any indenture, mortgage, contract or other instrument to which it is a party or by which it or its property may be bound or affected;
- (f) neither the execution and delivery by it of this Agreement nor the performance by it of its obligations hereunder will subject any of its property or assets to any Security Interest (“**Security Interest**” as defined in the Governance Agreement);
- (g) it is a resident of Canada for the purposes of the Tax Act and is not a non-Canadian for the purposes of the *Investment Canada Act*; and
- (h) except as disclosed in writing by Food Services prior to the date hereof, there is no action, suit, investigation or proceeding pending (or, to its knowledge, threatened in writing) against it before any Governmental Authority which, individually or in the aggregate, if determined adversely to its interests, could reasonably be expected to adversely affect the consummation of the transactions contemplated hereby or the performance by it of its obligations hereunder or would have a Material Adverse Effect, nor is it in default with respect to any order of any Governmental Authority which default could reasonably be expected to adversely affect the consummation of the transactions contemplated hereby to which it is a party or the performance by it of its obligations hereunder or thereunder.

Section 5.2 Survival

The representations and warranties of the parties contained in this Agreement or any document or certificate given pursuant hereto shall survive the execution and delivery of this Agreement and shall continue in full force and effect indefinitely.

Section 5.3 Further Assurances

Each party shall:

- (i) do and execute all such things and documents as may be necessary or advisable in connection with the implementation of the transactions contemplated by this Agreement;
- (ii) use reasonable efforts to take all such actions as may be necessary or desirable in order to obtain any authorizations which may be required in connection with the consummation of the transactions contemplated by this Agreement; and

- (iii) with reasonable promptness notify each of the other parties hereto and their counsel of the occurrence of any fact or event which may reasonably be expected to hinder or prevent the consummation of the transactions contemplated hereby.

ARTICLE 6 GENERAL

Section 6.1 Term

This Agreement shall come into force and be effective as of the date hereof and shall terminate and be of no further force and effect at such time as (i) no Exchangeable Securities (or any right to acquire securities or rights convertible into or exchangeable for, or carrying rights to acquire, Exchangeable Securities) are held by any Person other than the Fund and any of its Affiliates and (ii) Food Services is not entitled to be issued additional LP Units under the Partnership Agreement (whether or not the conditions for the issue of such additional LP Units have arisen or been satisfied).

Section 6.2 Changes in Capital of the Fund, the Company and the Partnership

At all times after the occurrence of any event contemplated pursuant to Section 3.6 or Section 3.7 or otherwise, as a result of which the Trust Units or any of the Exchangeable Securities are in any way changed, this Agreement shall forthwith be amended and modified as necessary in order that it shall apply with full force and effect, *mutatis mutandis*, to all new securities into which Trust Units or the Exchangeable Securities are so changed, and the parties hereto shall execute and deliver an agreement in writing giving effect to and evidencing such necessary amendments and modifications.

Section 6.3 Dealing with Transfer Agents, Registrars, etc.

The Fund covenants that it will supply the Transfer Agent with duly executed Unit certificates if, at any time the Fund terminates the registration of Units through the CDS Book-Entry Only System, and issues certificates for Units in fully registered form.

Section 6.4 Severability

If any term or other provision of this agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 6.5 Amendments, Modifications

- (1) Subject to Section 6.1, Section 6.2 and Section 6.6, this Agreement may not be amended or modified except by agreement in writing executed by the Company, the Partnership, the Fund and Food Services.
- (2) No amendment or modification or waiver of any of the provisions of this Agreement otherwise permitted hereunder shall be effective unless made in writing and signed by all of the parties hereto.

Section 6.6 Ministerial Amendments

Notwithstanding the provisions of Section 6.5, the parties to this Agreement (other than Food Services) may in writing at any time and from time to time, without the approval of Food Services, amend or modify this Agreement for the purposes of:

- (a) adding to the covenants of any or all parties provided that the Board of Directors and the Trustees shall be of the good faith opinion, after consultation with counsel, that such additions will not be prejudicial to the rights or interests of Food Services as holder of the Exchangeable Securities or in respect of its rights to LP Units;
- (b) making such amendments or modifications not inconsistent with this Agreement as may be necessary or desirable with respect to matters or questions which, in the good faith opinion of the Board of Directors and the Trustees, it may be expedient to make, provided that the Board of Directors and Trustees shall be of the good faith opinion, after consultation of counsel, that such amendments or modifications will not be prejudicial to the rights or interests of Food Services as holder of the Exchangeable Securities or in respect of its rights to LP Units; or
- (c) making such changes or corrections which, on the advice of counsel to the Company and the Fund, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error, provided that the Boards of Directors and the Trustees shall be of the good faith opinion, after consultation with counsel, that such changes or corrections will not be prejudicial to the rights or interests of Food Services as holder of the Exchangeable Securities or in respect of its rights to LP Units.

Section 6.7 Parties to this Agreement

If Food Services, being permitted to do so, assigns any of its rights and benefits under this Agreement to any Person or Persons and transfers any Exchangeable Securities, Exchangeable Units or LP Units, or assigns any of its rights and benefits under the Partnership Agreement to any Person or Persons, such Person or Persons shall execute and deliver a counterpart copy of this Agreement in form and substance satisfactory to the other parties hereto agreeing to be bound by the terms and conditions of this Agreement and any reference to "Food Services" or to a holder of Exchangeable Securities, Exchangeable Units or LP Units (other than the Fund or its Affiliates) in this Agreement shall be deemed to be a reference to such Person or Persons.

Section 6.8 Enurement

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

Section 6.9 Notices to Parties

- (1) All notices and other communications between the parties to this Agreement shall be in writing and shall be deemed to have been given if delivered personally or by confirmed telecopy to the parties at the following addresses (or at such other address for any such party as shall be specified in like notice):

A&W Revenue Royalties Income Fund

c/o Conrad A. Pinette, Trustee
1430, 1100 Melville Street
Vancouver, British Columbia
V6E 4A6

Telecopier No.: (604) 684-4595

A & W Food Services of Canada Inc.

#300 – 171 West Esplanade
North Vancouver, British Columbia
V7M 3K9

Attention: The President
Telecopier No.: (604) 983-7206

A&W Trade Marks Inc. and/or A&W Trade Marks Limited Partnership

c/o Conrad A. Pinette, Trustee
1430, 1100 Melville Street
Vancouver, British Columbia
V6E 4A6

Telecopier No.: (604) 684-4595

- (2) Any notice or other communication given personally shall be deemed to have been given and received upon delivery thereof and if given by telecopy shall be deemed to have been given and received on the date of confirmed receipt thereof unless such day is not a Business Day, in which case it shall be deemed to have been given and received upon the immediately following Business Day.

Section 6.10 Counterparts

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

Section 6.11 Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

Section 6.12 Attornment

Each of the parties hereto agrees that any action or proceeding arising out of or relating to this Agreement may be instituted in the courts of British Columbia, waives any objection which it may have now or hereafter to the venue of any such action or proceeding, irrevocably submits to the jurisdiction of the said courts in any such action or proceeding, agrees to be bound by any judgment of the said courts and not to seek, and hereby waives, any review of the merits of any such judgment by the courts of any other jurisdiction.

Section 6.13 Authorship

The parties hereto agree that the terms and language of this Agreement and all agreements contemplated hereby were the result of negotiations between the parties and, as a result, there shall be no presumption that any ambiguity in this Agreement shall be resolved against any party.

Section 6.14 Waiver

The failure of any party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of the provision or limit the party's rights thereafter to enforce any provision or exercise any right, power or remedy. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision, nor shall any such waiver constitute a continuing waiver unless otherwise expressly stated.

Section 6.15 Remedies

Each party acknowledges that its failure to observe or perform its covenants and agreements herein contained will result in damages to another party which could not be adequately compensated for by a monetary award and accordingly each party hereto agrees that in addition to all other remedies available to a party at law or in equity in the event another party fails to observe or perform its covenants herein, a party will be entitled as a matter of right to apply to a court of competent jurisdiction for such relief by way of restraining order, injunction, decree of specific performance or otherwise, as may be appropriate to ensure compliance by each party with this Agreement.

Section 6.16 Time of Essence

Time shall be of the essence in respect of this Agreement.

The remainder of this page is intentionally blank

Signatures appear on the following pages

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

A&W REVENUE ROYALTIES INCOME FUND by
its Trustees

For and on behalf of the Trustees

By: “John R. McLernon”
Trustee

A&W TRADE MARKS INC.

By: “John R. McLernon”
Authorized Signing Officer

A&W TRADE MARKS LIMITED PARTNERSHIP,
by its General Partner, A&W Trade Marks Inc.

By: “John R. McLernon”
Authorized Signing Officer

A & W FOOD SERVICES OF CANADA INC.

By: “Paul Hollands”
Authorized Signing Officer

SCHEDULE A

FUND EXERCISE NOTICE

To A&W Revenue Royalties Income Fund (the "Fund") and A&W Trade Marks Inc. (the "Company")

This notice is given pursuant to Article 2 of the amended and restated exchange agreement (the "Exchange Agreement") dated December 22, 2010 between the Fund, the Company, the Partnership and A & W Food Services of Canada Inc. ("Food Services") and all capitalized words and expressions used in this notice that are defined in the Exchange Agreement have the meanings ascribed to such words and expressions in the Exchange Agreement.

The undersigned hereby notifies the Fund that the undersigned desires to have exchanged, in accordance with Article 2 of the Exchange Agreement:

_____ Non Voting Common Shares with Par Value, _____ Non Voting Common Shares without Par Value and _____ Voting Common Shares (the "Exchanged Units") for _____ Limited Voting Units

The undersigned hereby notifies the Fund that the Exchange Date shall be _____.

NOTE: (1) The Exchange Date must be a Business Day and must not be less than 3 Business Days nor more than 15 Business Days after the date upon which this Fund Exercise Notice is received by the Fund and the Company. If no such Business Day is specified above, the Fund Exchange Date shall be deemed to be the third Business Day after the date on which this Fund Exercise Notice is received by the Fund.

The undersigned represents and warrants to the Fund and to the Company that, immediately after giving effect to the exchange of the Exchanged Units for Limited Voting Units as contemplated by this Fund Exchange Notice, the aggregate number of Voting Common Shares held by the undersigned and its Affiliates will not exceed the aggregate number of Non Voting Common Shares with Par Value and Non Voting Common Shares without Par Value held by the undersigned and its Affiliates.

This notice is and shall be deemed to be a revocable offer by the undersigned to sell the Exchanged Units to the Fund in accordance with the Fund Exchange Right for the Exchangeable Unit Consideration and on the other terms and conditions set out in the Exchange Agreement. This Fund Exercise Notice, and this offer to sell the Exchanged Units to the Fund, may be revoked and withdrawn by the undersigned only by notice in writing given to the Fund at any time before the close of business on the Business Day immediately preceding the Exchange Date.

The undersigned hereby represents and warrants to the Fund that the undersigned:

- Is
(select one)
 is not

a resident in Canada for purposes of the *Income Tax Act* (Canada). **The undersigned acknowledges that in the absence of an indication that the undersigned is a resident in Canada, withholding on account**

of Canadian tax may be made from amounts payable to the undersigned on the purchase of the Exchanged Units.

The undersigned hereby represents and warrants to the Fund that the undersigned has good title to, and owns, the share(s) represented by this certificate to be acquired by the Fund, as the case may be, free and clear of all Liens (as defined in the Exchange Agreement) other than the security interest granted to the Company by the General Security Agreement (as defined in the Exchange Agreement).

_____ (Date) _____ (Signature of Shareholder) _____ (Guarantee of Signature)

Please check box if the securities and any cheque(s) resulting from the exchange of the Exchanged Units are to be held for pick-up by undersigned from the Transfer Agent, failing which the securities and any cheque(s) will be mailed to the last address of the undersigned as it appears on the register of the Company.

NOTE: This Fund Exercise Notice must be completed and this Fund Exercise Notice together with the certificates for the Non Voting Common Shares with Par Value, the Non Voting Common Shares without Par Value and the Voting Common Shares for which this Fund Exercise Notice is delivered, together with such additional documents as the Transfer Agent may require, must be deposited with the Fund or the Transfer Agent. The securities and any cheque(s) resulting from the exchange of the Exchanged Units will be issued and registered in, and made payable to, respectively, the name of the undersigned as it appears on the register of the Company and the securities and any cheque(s) resulting from such purchase will be delivered to the undersigned as indicated above, unless the form appearing immediately below is duly completed.

Date: _____

Name of Person in Whose Name Securities or Cheque(s) Are to be Registered, Issued or Delivered (please print): _____

Street Address or P.O. Box: _____

Signature of Shareholder: _____

City, Province and Postal Code: _____

Signature Guaranteed by: _____

NOTE: If this Fund Exercise Notice is for less than all of the shares represented by the certificates accompanying this Fund Exercise Notice, certificates representing the remaining securities of the Company represented by such certificates will be issued and registered in the name of the undersigned above as it appears on the register of the Company, unless the foregoing is duly completed in respect of such share(s).

SCHEDULE B

COMPANY EXERCISE NOTICE

To A&W Trade Marks Inc. (the “Company”) and A&W Trade Marks Limited Partnership (the “Partnership”)

This notice is given pursuant to Article 2 of the amended and restated exchange agreement (the “Exchange Agreement”) dated December 22, 2010 between the Fund, the Company, the Partnership and A & W Food Services of Canada Inc. (“Food Services”) and all capitalized words and expressions used in this notice that are defined in the Exchange Agreement have the meanings ascribed to such words and expressions in the Exchange Agreement.

The undersigned hereby notifies the Company that the undersigned desires to have exchanged, in accordance with Article 2 of the Exchange Agreement:

_____ LP Units (the “**Exchanged LP Units**”) for _____ Non Voting Common Shares without Par Value.

The undersigned hereby notifies the Company that the Exchange Date shall be _____.

NOTE: The Exchange Date must be a Business Day and must not be less than 3 Business Days nor more than 15 Business Days after the date upon which this Company Exercise Notice is received by the Company. If no such Business Day is specified above, the Exchange Date shall be deemed to be the third Business Day after the date on which this Company Exercise Notice is received by the Fund.

This notice is and shall be deemed to be a revocable offer by the undersigned to sell the Exchanged LP Units to the Company in accordance with the Company Exchange Right for Non Voting Common Shares without Par Value and on the other terms and conditions set out in the Exchange Agreement. This Company Exercise Notice, and this offer to sell the Exchanged LP Units to the Company, may be revoked and withdrawn by the undersigned only by notice in writing given to the Company at any time before the close of business on the Business Day immediately preceding the Exchange Date.

The undersigned hereby represents and warrants to the Company that the undersigned:

Is

(select one)

is not

a resident in Canada for purposes of the *Income Tax Act* (Canada). **The undersigned acknowledges that in the absence of an indication that the undersigned is a resident in Canada, withholding on account of Canadian tax may be made from amounts payable to the undersigned on the purchase of the Exchanged LP Units.**

