

**A & W FOOD SERVICES OF CANADA INC./
SERVICES ALIMENTAIRES A & W DU CANADA INC.**

(“Food Services”)

and

A&W TRADE MARKS LIMITED PARTNERSHIP

(the “Partnership”)

**AMENDED AND RESTATED
GENERAL SECURITY AGREEMENT**

December 22, 2010

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**AMENDED AND RESTATED
GENERAL SECURITY AGREEMENT**

THIS AGREEMENT is made as of December 22, 2010.

BETWEEN:

**A & W FOOD SERVICES OF CANADA INC. / SERVICES
ALIMENTAIRES A & W DU CANADA INC.**, a corporation
amalgamated under the laws of Canada

("Food Services")

AND:

A&W TRADE MARKS LIMITED PARTNERSHIP, a limited
partnership formed under the laws of British Columbia

(the "Partnership")

WHEREAS:

A. A&W Trade Marks Inc. ("TMI") and Food Services entered into a licence and royalty agreement (the "Original Licence and Royalty Agreement") made as of February 15, 2002, pursuant to which TMI granted to Food Services the exclusive right to use certain trade marks owned by TMI in Canada for a period of 99 years from December 31, 2001, in consideration for the payment of a royalty, all on the terms and conditions more specifically set out in the Original Licence and Royalty Agreement;

B. Food Services granted a general security agreement dated February 15, 2002 in favour of TMI (the "Original GSA") as security for the obligations of Food Services to TMI pursuant to the Original Licence and Royalty Agreement, including without limitation the obligation of Food Services to pay the Royalty to TMI;

C. Pursuant to an assignment of security agreement dated March 23, 2004 entered into between TMI and HSBC Bank Canada ("HSBC"), TMI granted to HSBC a security interest in all of TMI's interest in the Original GSA;

D. Pursuant to an assignment of security agreement dated January 25, 2009 entered into between TMI and the Partnership, as acknowledged and consented to by Food Services, TMI assigned all of its right, title and interest in the Original GSA to the Partnership, subject to the security interest of HSBC; and

E. Food Services and the Partnership desire to amend and restate the Original GSA upon the terms set forth herein.

NOW THEREFORE in consideration of the sum of \$10 now paid by the Partnership to Food Services and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by Food Services), the parties hereto covenant and agree as follows:

1. Defined Terms

In this Agreement, the following terms have the following meanings:

- (a) “**A&W Trade Marks**” means the trade marks licenced to Food Services pursuant to the Licence and Royalty Agreement;
- (b) “**Accounts**” has the meaning set out in Section 2(b);
- (c) “**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;
- (d) “**Capital Lease Obligations**” means all obligations to pay rent or other amounts under a lease of (or other agreement conveying the right to use) property, to the extent such obligations are required to be classified and accounted for as capital lease obligations or finance lease obligations on a balance sheet in accordance with GAAP;
- (e) “**Collateral**” means all of the assets and undertaking of Food Services, including all property described in Sections 2 and 4 of this Agreement;
- (f) “**Declaration of Trust**” means the amended and restated declaration of trust dated December 22, 2010 by which the Fund is governed, as amended and supplemented from time to time and in effect;
- (g) “**Environmental Laws**” means all applicable Laws, Governmental Approvals and guidelines or requirements of any Governmental Authority (whether or not having the force of Law, and including consent decrees as to which Food Services is a party or otherwise subject, and administrative orders which may affect Food Services) relating to public or occupational health and safety, protection of the environment, or the release of Hazardous Materials.
- (h) “**Event of Default**” has the meaning set out in Section 11;
- (i) “**Exchange Agreement**” means the amended and restated exchange agreement dated December 22, 2010 between the Fund, Food Services, TMI and the Partnership, as amended and supplemented from time to time and in effect;
- (j) “**Exchangeable Securities**” means:
 - (i) all LP Units of the Partnership held by Food Services;
 - (ii) all Voting Common Shares without par value in the capital of TMI held by Food Services;
 - (iii) all Non Voting Common Shares without par value in the capital of TMI held by Food Services; and
 - (iv) all Non Voting Common Shares with a par value of \$10 each in the capital of TMI held by Food Services;
- (k) “**Financial Year**” means a financial year of Food Services comprising a 52 or 53 week period ending on the Sunday nearest December 31 in each calendar year, and with the next following financial year beginning on the following Monday;

- (l) “**Franchise Agreements**” means, collectively, the agreements granting franchise rights in or to the business of Food Services now in effect or hereafter entered into between Food Services and a Franchisee;
- (m) “**Franchisee**” means the holder of any franchise or franchise rights now existing or hereafter granted or sold by Food Services to any person;
- (n) “**Fund**” means A&W REVENUE ROYALTIES INCOME FUND, a trust governed by the Declaration of Trust;
- (o) “**GAAP**” means, in relation to any person at any time, those accounting principles which are recognized as being generally accepted in Canada as set out in the handbook published by the Canadian Institute of Chartered Accountants, applied on a consolidated basis and consistent with the most recent audited financial statements of such person;
- (p) “**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;
- (q) “**Governmental Approval**” means any permit, licence, approval, consent, order, right, certificate, judgment, writ, injunction, award, determination, direction, decree, authorization, franchise, privilege, grant, waiver, exemption and other similar concession or by-law, rule or regulation, whether or not having the force of Law, of, by or from any Governmental Authority;
- (r) “**Governance Agreement**” means the amended and restated governance agreement dated December 22, 2010 among the Fund, Food Services, the Partnership, TMI and the Related Parties (as defined therein), as amended and supplemented from time to time and in effect;
- (s) “**Hazardous Materials**” means:
 - (i) any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, contaminates, materials or pollutants which:
 - (A) pose a hazard to any real property, or to persons on or about any real property; or
 - (B) cause any real property to be in violation of any Law;
 - (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of limits prescribed by Law, or radon gas;
 - (iii) any chemical, material or substance defined as or included in the definition of “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous waste”, “toxic substances”, “waste” or words of similar import under any Law, including the *Canadian Environmental Protection Act* (Canada),

Fisheries Act (Canada), Transportation of Dangerous Goods Act (Canada), Canada Water Act (Canada) and any applicable provincial legislation; and

- (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the occupants of any real property or any other person coming upon any real property or adjacent or surrounding property;

and references to a “release” of Hazardous Materials include spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dumping or other form of release, or permitting any of the foregoing to occur;

- (t) **“Indebtedness”** of a person means:
 - (i) all indebtedness for and in respect of borrowed money, including without limitation:
 - (A) contingent reimbursement obligations in respect of borrowed money by way of bankers acceptances, letters of credit or guarantee or otherwise; and
 - (B) obligations with respect to any interest rate or foreign exchange risk management agreement or product, including interest rate or currency exchange or swap agreements, futures contracts, forward exchange, purchase or sale agreements and any other agreements to fix or hedge interest rates or foreign exchange rates;
 - (ii) all indebtedness for the deferred purchase price of property or services other than trade indebtedness accounted for as accounts payable and incurred in the ordinary course of business;
 - (iii) all indebtedness created or arising under any conditional sale or other title retention agreement or any security agreement with respect to property acquired (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);
 - (iv) all indebtedness arising under any lease of property, real or personal, moveable or immovable (whether or not such lease is intended as security) in respect of which the present value of the minimum rental commitment would, in accordance with GAAP, be capitalized on a balance sheet of a lessee;
 - (v) the amount for which any shares of stock or other equity interests of such person are required to be redeemed or repurchased by such person at the option of the holder thereof, whether upon the happening of any event or contingency or otherwise;
 - (vi) all obligations represented by notes, drafts accepted, bonds, debentures or similar instruments that represent extensions of credit or would be accounted for as indebtedness in respect of borrowed money in accordance with GAAP;
 - (vii) all obligations for borrowed money secured by any lien on any property owned by a person, whether or not such person has assured or become liable for the payment of such obligations; and

- (viii) any indebtedness of the kinds referred to in paragraphs (i) through (vii) above of another person which is directly or indirectly guaranteed, or in respect of which it has been agreed (contingently or otherwise) with the creditor to purchase or otherwise acquire or assume or otherwise assure such creditor against loss by means of an indemnity, security or bond;
- (u) “**Inventory**” has the meaning set out in Section 2(a);
- (v) “**Lands**” means any lands owned or controlled by Food Services or any lands used in connection with the business of Food Services;
- (w) “**Law**” means any law (including common law and equity), constitution, statute, order, treaty, regulation or rule of any Governmental Authority;
- (x) “**Leases**” means, collectively, all leases, agreements to lease, offers to lease, licences, rights of use or occupancy and tenancies now in effect or hereafter entered into by or on behalf of Food Services (whether as tenant or landlord, lessee or lessor) in respect of or in connection with any portion of the Lands;
- (y) “**Licence and Royalty Agreement**” means the amended and restated licence and royalty agreement dated December 22, 2010 between Food Services and the Partnership, as amended and supplemented from time to time and in effect;
- (z) “**Lien**” means, with respect to a person:
 - (i) any mortgage, lien, pledge, hypothecation, adverse claim, security interest or other encumbrance or charge, any right of set-off (arising other than by operation of Law);
 - (ii) any interest or title of any vendor, lessor, lender or other secured party under any conditional sale or other title retention agreement or capital lease;
 - (iii) any deposit of money with any agreement whereby such monies may be withdrawn only upon fulfilment of any condition or obligation to any creditor;
 - (iv) any arrangement with any creditor to have its claims satisfied prior to other creditors or with or from the proceeds of any property, asset or revenue of any kind now owned or later acquired;
 - (v) the signing or filing of a financing statement by a duly authorized person which names such person as debtor; or
 - (vi) the signing of any security agreement authorizing any other person as the secured party to file any security agreement;
- (aa) “**Material Adverse Effect**” means:
 - (i) a material adverse effect on the property or assets of Food Services and its subsidiaries, or the business conducted by Food Services and its subsidiaries, taken as a whole;
 - (ii) a material adverse effect on the condition or prospects, financial or otherwise, of Food Services and its subsidiaries, taken as a whole;

- (iii) a material adverse effect on the ability of Food Services to perform the Obligations, taken as a whole; or
 - (iv) a material adverse effect on the priority, effectiveness or enforceability of the Security Interest;
- (bb) “**Obligations**” means all obligations and liabilities of Food Services to the Partnership:
- (i) under the Licence and Royalty Agreement, including without limitation the payment of the Royalty; and
 - (ii) under this Agreement;
- (cc) “**Original GSA**” has the meaning set out in Recital B;
- (dd) “**Original Licence and Royalty Agreement**” has the meaning set out in Recital A;
- (ee) “**Permitted Liens**” means:
- (i) carriers’, warehousemen’s, builders’ and mechanics’ and other like Liens arising in the ordinary course of business by operation of law and other Liens resulting from judgments or awards the time for the appeal or petition for re-hearing of which shall not have expired or in respect of which Food Services shall in good faith be prosecuting an appeal or proceeding for review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been obtained;
 - (ii) Liens or trusts for taxes, assessments and other governmental charges either not yet due and payable or in respect of which enforcement proceedings shall have been effectively stayed;
 - (iii) pledges or deposits made under workers’ compensation laws or similar legislation or good faith deposits or bonds or similar instruments to secure the performance of bids, tenders, leases, contracts (other than for the payment of Indebtedness) or expropriation proceedings, or deposits to secure surety and appeal bonds or deposits as security for contested taxes or export or import duties, levies, charges or surcharges;
 - (iv) the right reserved to or vested in any Governmental Authority by the terms of any lease, franchise, tenure, contract, grant or permit, or by any statutory provisions, to terminate any such lease, licence, franchise, tenure, contract, grant or permit (provided that such right is not then being exercised), or to require annual or other periodic payments or the performance of obligations or imposition of conditions, as a condition of the continuance thereof;
 - (v) security given to a public utility or to any Governmental Authority when required by such public utility or Governmental Authority in connection with operations in the ordinary course of business of any of the Group Entities;
 - (vi) the reservations, limitations, provisos and conditions, if any, expressed in any grants from the Crown in the right of Canada or in the right of any Province or Territory thereof;

- (vii) minor survey exceptions, minor encumbrances, leases, rights or options to repurchase, restrictions, easements or reservations of or rights of others for rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, title defects or irregularities or zoning or other restrictions as to the use of real properties or Liens incidental to the conduct of business or the ownership of properties which were not incurred in connection with the incurrence of Indebtedness or other extensions of credit and which do not in the aggregate materially detract from the value of such properties or materially impair their use in the operation of the business of Food Services;
- (viii) Purchase Money Mortgages;
- (ix) Liens charging the Exchangeable Securities (and proceeds therefrom) permitted under the Governance Agreement, as referred to in Section 10(b)(iii) hereof;
- (x) any Lien renewing, extending or refunding any Lien permitted by paragraphs (i) through (ix); provided that
 - (A) the principal amount of Indebtedness secured by such Lien immediately prior to such extension, renewal or refunding is not increased or the maturity thereof reduced;
 - (B) such Lien is not extended to any other property; and
 - (C) immediately after such extension, renewal or refunding no Event of Default would exist; and
- (xi) any other Liens which by their terms rank subsequent in priority to the Security Interest;
- (ff) “**person**” means any individual, partnership, firm, trust, body corporate, government, governmental body, agency or instrumentality, unincorporated body of persons or association;
- (gg) “**Permitted Indebtedness**” means Indebtedness of Food Services permitted pursuant to Section 10(b)(ii) hereof.
- (hh) “**PPSA**” means the *Personal Property Security Act* (British Columbia), as from time to time amended;
- (ii) “**Prospectus**” means the final prospectus for the initial public offering of Units of the Fund;
- (jj) “**Purchase Money Mortgages**” means:
 - (i) a Lien existing upon assets at the time of their acquisition by Food Services, or at the time of acquisition by Food Services of any business entity then owning such assets, whether or not such existing Lien was given to secure the purchase price of the assets which are subject to such Lien, provided that no additional property of Food Services or any of its Subsidiaries is encumbered thereby; and
 - (ii) a Lien created by Food Services to secure all or any part of the unpaid purchase price, or to secure Indebtedness incurred solely for the purpose of financing all or

any part of the purchase price or cost of construction, of property or any improvement to property acquired or constructed by Food Services, provided such security relates exclusively to such property and the Indebtedness so secured is not in excess of the cost of the property or improvement so acquired or constructed, and is created within 120 days after the acquisition or completion of construction of such property,

and further provided in each case that the creditor has no recourse, unless subordinated to the Obligations on terms and conditions satisfactory to the Partnership acting reasonably, against the general corporate covenant of Food Services or any of its Subsidiaries;

- (kk) “**Receiver**” has the meaning set out in Section 13(a);
- (ll) “**Root Beer**” means A & W ROOT BEER BEVERAGES OF CANADA INC. and its successors;
- (mm) “**Royalty**” means the royalty payable to the Partnership pursuant to the Licence and Royalty Agreement;
- (nn) “**Security Interest**” means each security interest, mortgage, charge, assignment or transfer in or of Collateral granted or created by Food Services under this Agreement;
- (oo) “**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 of 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 directly or indirectly or which is in a like relation to a subsidiary; and
- (pp) “**Units**” means the units of the Fund referred to in the Declaration of Trust as “Units”.

Except as otherwise defined herein or unless the context otherwise requires, other words and expressions used herein shall have the respective meanings ascribed to them in the PPSA.

2. Security Interest

As general and continuing security for the payment and performance of the Obligations, Food Services hereby mortgages, charges, assigns and transfers to the Partnership, and grants in favour of the Partnership, a security interest in all Food Services’ right, title and interest in and to all presently owned or held and hereafter acquired or held personal property, assets and undertakings of Food Services (including such as may be returned to or repossessed by Food Services), of whatsoever nature or kind and wheresoever situate and all proceeds thereof, substitutions therefor and accretions thereto including, without limiting the generality of the foregoing:

- (a) **Inventory** - all goods and chattels now or hereafter forming the inventory of Food Services, of whatsoever kind and wheresoever located and including, without limiting the generality of the foregoing, all goods, merchandise, raw materials, work in progress, finished goods and chattels held (whether such goods are in the possession of Food Services or of a bailee or other person for sale, lease, storage, transit, processing, use or otherwise and whether consisting of whole goods, spare parts, components, supplies, materials or returned or repossessed goods) for sale, lease or resale, or furnished or to be furnished under contracts for service or used or consumed in the business of Food

Services, goods used in or procured for packing or packaging, and all documents of title relating thereto (collectively, the "Inventory");

- (b) **Accounts** - all debts, accounts, choses in action, claims, demands and moneys now due or owing or accruing due or which may hereafter become due or owing to Food Services, including, without limiting the generality of the foregoing, claims against the Crown in right of Canada or of any Province, moneys which may become payable under any policy of insurance in respect of any loss of Inventory by fire or other cause which has been or may be incurred by Food Services and under any policy of insurance insuring against non-payment of accounts receivable of Food Services (collectively, the "Book Debts"), together with all chattel paper, instruments, documents of title, money, contracts, securities, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by Food Services in respect of or as security for the Book Debts hereby assigned or intended so to be or any part thereof and the full benefit and advantage thereof, and all rights of action, claim or demand which Food Services now has or may at any time hereafter have against any person or persons, firm or corporation in respect thereof; and all of Food Services' deeds, documents, writings, papers, books of account and other books relating to or being records of debts, chattel paper or documents of title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable (collectively, "Accounts");
- (c) **Intangibles** - all contractual rights and insurance claims, patents, trademarks, trade names, goodwill, copyrights and other industrial property of Food Services, all other choses in action of Food Services of every kind which now are, or which may at any time hereafter be, due or owing to or owned by Food Services and all other intangible property of Food Services;
- (d) **Equipment** - all equipment, including, without limiting the generality of the foregoing, machinery, tools, fixtures, furniture, furnishings, chattels, motor vehicles, vessels, livestock and other tangible personal property that is not Inventory, and all parts, components, attachments, accessories, accessions, replacements, substitutions, additions and improvements to any of the foregoing;
- (e) **Books, Records, Etc.** - all books, papers, books of account, invoices, documents, electronically stored data, the medium of storage and programs with respect to access thereto and other records in any form evidencing or relating to any of the Collateral, all codes, passwords and security devices in respect thereof and all contracts and other rights and benefits in respect thereof; and
- (f) **Proceeds** - all of the property of Food Services in any form derived directly or indirectly from any use or dealing with Collateral, including, without limiting the generality of the foregoing, accounts receivable, bills of exchange, insurance proceeds, chattel paper, intangibles, motor vehicles, and all other after-acquired property constituting proceeds or that indemnifies or compensates for Collateral destroyed or damaged.

3. Specific Assignment of Franchise Agreements

As further general and collateral security for the payment and performance of the Obligations, Food Services hereby grants to the Partnership a continuing and specific security interest in, and hereby grants, assigns, transfers and sets over unto the Partnership all of its right, title and interest in and to the Franchise Agreements and all benefits and advantages to be derived therefrom and the benefit of any and all representations, warranties, conditions, terms and covenants on the part of all other parties to the

Franchise Agreements therein or implied or expressed by law in relation thereto with full power and authority to enforce performance of such terms or covenants, or to demand, sue for and collect damages in connection with any misrepresentation, breach of warranty or breach of covenant either in the name of and as agent for Food Services, or in the name of the Partnership, to have and to hold unto the Partnership until all monies owing under and all obligations of Food Services in respect of the Obligations have been fully paid and fulfilled.

4. Floating Charge

As further general and continuing security for the payment and performance of the Obligations, Food Services hereby grants, mortgages, assigns and transfers to the Partnership, as and by way of a floating charge:

- (a) **Real Property** - all real and immoveable property, including without limiting the generality of the foregoing, both freehold and leasehold, now or hereafter owned or acquired by Food Services, together with all buildings, erections, improvements and fixtures situate thereon or used in connection therewith, including any lease, verbal or written, or any agreement therefor (collectively, "Real Property"), provided, however, that the last day of any term of any such lease, verbal or written, or any agreement therefor now held or hereafter held by Food Services, is excepted out of the Real Property charged by this Agreement, but should the security constituted by this Agreement become enforceable Food Services shall thereafter stand possessed of any such reversion upon trust to assign and dispose thereof as the Partnership may direct; and
- (b) **Other Property** - the undertaking and all other property and assets of Food Services for the time being of whatsoever nature and kind, both present and future, including without limiting the generality of the foregoing, uncalled capital, monies, rights, franchises, negotiable and non-negotiable instruments, judgments and securities, other than that which is at any time and all times validly subject to any other Security Interest created hereunder.

The floating charge hereby created will become a fixed charge on the property, assets, effects and undertaking of Food Services charged thereby upon the earlier of (a) an Event of Default and the Partnership giving written notice to Food Services that such floating charge has become a fixed charge on the property, assets, effects and undertaking of Food Services charged thereby, and (b) the occurrence of any other event which by operation of law would result in such floating charge becoming a fixed charge on the property, assets, effects and undertaking of Food Services charged thereby.

5. Exceptions

The following are excluded from the Security Interests hereby created:

- (a) any contract, licence or lease of Food Services, the charging or assignment of which requires the consent or approval of any other party unless and until such consent or approval has been obtained, but should the security constituted by this Agreement become enforceable Food Services shall thereafter stand possessed of any such contract, licence or lease upon trust to deal with the same as the Partnership may direct; and
- (b) any consumer goods of Food Services.

6. Attachment

Food Services acknowledges that the Security Interests hereby created attach upon the execution of this Agreement (or in the case of any after-acquired property, upon the date of acquisition by Food Services of any interest therein), that value has been given, and that Food Services has, or in the case of after-acquired property will have, rights in the Collateral.

7. Securities

If Collateral at any time includes securities, Food Services authorizes the Partnership to transfer the same or any part thereof into its own name or that of its nominee so that the Partnership or its nominee may appear on record as the sole owner thereof, provided that, unless an Event of Default has occurred and is continuing, the Partnership shall deliver promptly to Food Services all notices or other communications received by it or its nominee as such registered owner and, upon demand and receipt of payment of any necessary expenses thereof, shall issue to Food Services or its order a proxy to vote and take all action with respect to such securities not inconsistent with any of the covenants of Food Services herein or in the Licence and Royalty Agreement. During the continuance of an Event of Default, Food Services waives all rights to receive any notices or communications received by the Partnership or its nominee as such registered owner and agrees that no proxy issued by the Partnership to Food Services or its order shall thereafter be effective.

8. Representations and Warranties

Food Services hereby represents and warrants to the Partnership as follows:

- (a) **Organization and Qualification.** Food Services and each of its Subsidiaries is validly subsisting under the laws of its jurisdiction of incorporation, 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.
- (b) **Corporate Power.** Food Services and each of its Subsidiaries has all requisite power and authority to conduct its business as is presently being conducted and, in the case of Food Services, to execute, deliver and perform this Agreement and the Licence and Royalty Agreement.
- (c) **Authorization.** The execution, delivery and performance by Food Services of this Agreement and the Licence and Royalty Agreement have been duly authorized by all necessary corporate action or other action and do not require the consent or approval of any other person;
- (d) **Execution and Binding Obligation.** This Agreement and the Licence and Royalty Agreement have been duly executed and delivered by Food Services and constitute its legal, valid and binding obligations, enforceable against it in accordance with their respective 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) **Conflict with Other Instruments.** The execution and delivery by Food Services of this Agreement and the Licence and Royalty Agreement and the performance by Food Services of its obligations hereunder and thereunder 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;
 - (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) **No Liens or Acceleration.** The execution and delivery by Food Services of this Agreement and the Licence and Royalty Agreement and the performance by Food Services of its obligations hereunder and thereunder do not and will not result in, or require or permit:
- (i) the imposition of any Lien on or with respect to the Collateral; or
 - (ii) the acceleration of the maturity of any Indebtedness of Food Services or any of its Subsidiaries under any contractual provision binding on or affecting it;
- (g) **Title to Assets.** Food Services has, or respecting Collateral acquired after the date hereof will have, good and marketable title to the Collateral free and clear from any Liens ranking in priority to the Security Interests, other than Permitted Liens and Liens consented to in writing by the Partnership;

9. Positive Covenants

Until the Obligations have been paid and satisfied in full and this Agreement has been terminated, Food Services covenants with the Partnership that, unless the Partnership otherwise consents:

- (a) **Delivery of Financial Statements.** Food Services will deliver to the Partnership:
- (i) as soon as available and in any event within 60 days after the end of each quarterly accounting period of Food Services, an unaudited consolidated balance sheet, cash flow statement and a statement of earnings of Food Services, as of the end of such quarterly accounting period, prepared in accordance with GAAP; and
 - (ii) as soon as available and in any event within 90 days after the end of each Financial Year, a copy of the audited annual consolidated financial statements of Food Services for the respective Financial Year prepared in accordance with GAAP.
- (b) **Notification.** Food Services will notify the Partnership promptly in writing of:
- (i) any Event of Default or the occurrence, to the knowledge of Food Services, of any event which with notice or lapse of time would constitute an Event of Default;
 - (ii) any occurrence, including without limitation any third party claim or liability, any actual or probable litigation, action, claim or process, or any action by any Governmental Authority, of which Food Services becomes aware which has or would reasonably be expected to have a Material Adverse Effect;

- (iii) any change in the information contained herein relating to Food Services, its address, its business, its name or Collateral, including any change in the location of any Collateral;
 - (iv) the details of any material acquisition of, loss or damage to Collateral;
 - (v) any default by any account debtor in payment or other performance of his obligations to Food Services with respect to any Account, where such default has a Material Adverse Effect; and
 - (vi) the return to or repossession by Food Services of the Collateral where such return or repossession of the Collateral has a Material Adverse Effect.
- (c) **Maintain Security Interests.** Food Services will do, observe and perform all of its obligations and all matters and things necessary or expedient to be done, observed or performed by virtue of any law, rule or regulation, for the purpose of creating, perfecting, maintaining and keeping maintained this Agreement as a valid and effective mortgage, pledge, charge and security interest on and in the Collateral and performing the obligations of Food Services herein contained; record, file, enter or register this Agreement, all modifications hereto and all other documents of further assurance in respect hereof without delay wherever in the reasonable opinion of the Partnership it would be of material advantage in preserving, protecting or perfecting the security of this Agreement; renew such recordings, filings, entries or registrations from time to time as and when required; and otherwise fully and effectually maintain and keep maintained the mortgage, pledge, charge and security interest hereby created upon any of the Collateral valid and effective at all times until all Obligations of Food Services are fully performed.
- (d) **Defend Title to Collateral.** Food Services will defend the title to the Collateral for the benefit of the Partnership against the claims and demands of all persons.
- (e) **Payment of Taxes.** Food Services will punctually pay and discharge, before the imposition of any fine, interest or penalty for the late payment thereof, all assessments, levies, rates and taxes and every other obligation incurred by, or imposed upon, Food Services or the Collateral, or any part thereof, by virtue of any Law, or any agreement, contract, franchise, lease, permit or otherwise, the failure to pay or discharge of which could result in any Lien or charge or any right of distress, forfeiture, sale or termination or any other remedy being enforced against Food Services or the Collateral, or any part thereof, and furnish to the Partnership when required evidence establishing such payments; provided that Food Services may with the prior written consent of the Partnership refrain from paying and discharging any such assessment, levy, rate, tax or other obligation if Food Services diligently and in good faith contests its liability therefor and, if the Partnership so requires, gives security to the Partnership in such form, substance and amount as the Partnership in its sole discretion may require.
- (f) **Maintenance of Corporate Existence.** Food Services will do all things necessary to maintain its corporate existence and qualification to do business in all jurisdictions in which Collateral is located or its business is carried on.
- (g) **Compliance with Laws.** Food Services will comply with all Laws, non-compliance with which could have a Material Adverse Effect.
- (h) **Payment of Costs and Expenses.** Food Services will pay to the Partnership and indemnify it for all reasonable costs and expenses, including reasonable legal fees and

disbursements as between solicitor and own client, which may be incurred by the Partnership in:

- (i) inspecting Collateral;
- (ii) negotiating, preparing, perfecting and registering this Agreement and other documents, whether or not relating to this Agreement;
- (iii) investigating title to Collateral and the status thereof;
- (iv) taking, recovering, keeping possession of, insuring and repairing the Collateral or otherwise protecting the Collateral;
- (v) all other actions and proceedings, judicial or otherwise, taken in connection with the preservation of the Collateral or this Agreement (including, without limitation, an application to court to maintain the registration of any financing statement registered by the Partnership in respect of Food Services) and the enforcement of this Agreement; and
- (vi) discharging any registrations against Food Services,

provided in each case that the Partnership acts in a commercially reasonable manner in initiating any such action or proceedings, and all such costs and expenses shall bear interest at the rate applicable to unpaid Obligations pursuant to the Licence and Royalty Agreement.

- (i) **Preservation of Collateral.** Food Services will care for, protect, preserve and keep in good order, condition and repair the Collateral and not permit its value to be impaired, and will prevent Collateral, other than Inventory sold, leased, or otherwise disposed of as permitted herein, from being or becoming an accession to other property not covered by this Agreement.
- (j) **Maintenance of Insurance.** Food Services will insure and keep insured its property which is of an insurable nature against such risks, in such amount and in such manner as is customary and prudent in the case of corporations, similarly situated and operating generally similar property, and with such reputable insurance companies or associations as it may select and as are satisfactory to the Partnership.
- (k) **Maintain Records.** Food Services will keep and maintain:
 - (i) proper books of record and account, in which full and correct entries will be made of all financial transactions and its assets and business in accordance with GAAP; and
 - (ii) satisfactory and complete records of the Collateral.
- (l) **Inspection of Properties and Books.** Food Services will permit the Partnership and its representatives, at all reasonable times, to have access to all its property, assets and undertakings and to all its books of account and records for the purpose of inspection, including without limitation the inspection of Collateral wherever located and the making of enquiries and tests concerning Collateral, and will render all assistance necessary for such inspection and, in the event that use of a computer system is required to access such information, allow the Partnership the use of Food Services' computer system for such

purposes and provide assistance in that regard, and, if for any reason such information cannot be accessed and retrieved at Food Services' premises, permit the Partnership to remove the medium in which such information is or may be stored from Food Services' premises to any other place which has a computer system that will give the Partnership the opportunity to retrieve, record and copy such information and to reproduce and retain a copy of any such information in any format whatsoever.

- (m) **Delivery of Other Information.** Food Services will deliver to the Partnership from time to time, promptly upon receipt of a reasonable commercial request from the Partnership therefor:
 - (i) any documents of title, instruments, securities and chattel paper constituting, representing or relating to Collateral;
 - (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to Collateral for the purpose of inspecting or auditing the same;
 - (iii) all policies and certificates of insurance relating to Collateral; and
 - (iv) such other information concerning Collateral, Food Services and the business, affairs and operations, financial or otherwise, of Food Services as the Partnership may reasonably require from time to time.
- (n) **Performance of Material Contracts.** Food Services will comply with all material obligations under the Franchise Agreements and the Leases to be performed by Food Services (after allowing for all applicable grace periods in such contracts), and take all appropriate steps to enforce or secure the performance, within a reasonable time, of each and every material obligation, covenant, condition and agreement contained in such contracts by the other parties thereto to be performed (including, without limitation, the prompt billing and collecting of receivables), where the failure to comply, enforce or secure would have a Material Adverse Effect.
- (o) **Franchise Agreements.** Food Services will enter only into those Franchise Agreement which are, in all material respects, but subject to any such changes as may be required in the best interests of Food Services, similar to the standard Franchise Agreement adopted by Food Services for use at such time, and which contain provisions to permit the assignment of all benefits and obligations thereunder by Food Services without the consent of the Franchisee.
- (p) **Leases.** Food Services will use reasonable commercial best efforts to enter only into those Leases which contain provisions to permit the assignment of all benefit and obligation thereunder by Food Services without the consent of the landlord thereunder.
- (q) **Environmental Matters.**
 - (i) Food Services will comply with all Environmental Laws and will permit the Partnership to conduct reasonable investigations and appraisals of all or any of Food Services' records, businesses and assets at any time and from time to time to ensure such compliance.
 - (ii) Food Services will notify the Partnership in writing with particulars of any claims against Food Services or any person lawfully occupying the Lands relating to

Hazardous Materials or Environmental Laws or of any occurrence or condition at the Lands or any adjacent property which could likely contaminate the Lands or likely subject Food Services or the Lands to any claims under Environmental Laws or have a Material Adverse Effect, in each case, upon Food Services receiving notice of the same, and shall as soon as reasonably practicable provide the Partnership with copies of all material communications received by it concerning any such claims or effects.

- (iii) Food Services shall, when required by any applicable Governmental Authority or Environmental Law, in compliance with all applicable Laws, remediate in accordance with applicable legal standards any contamination of the Lands and any adjacent properties resulting from such contamination of the Lands. Food Services shall notify the Partnership of any proposed environmental remedial work on the Lands prior to undertaking such work and shall provide the Partnership with any information the Partnership reasonably requests with respect to any such remedial work. All environmental remedial work conducted by Food Services will be conducted in such a manner as to minimize any impairment to the Lands.
- (iv) If Food Services fails to perform any obligation under this paragraph (q), the Partnership shall have the right, but not the obligation, after providing written notice to Food Services, to perform such obligation on behalf of Food Services and Food Services shall provide the Partnership and its consultants and representatives with access to the Lands for such purpose. Food Services shall, on demand, pay to the Partnership all sums reasonably expended by the Partnership in the performance of such obligations.
- (v) Food Services shall protect, indemnify and hold harmless the Partnership, its directors, officers, shareholders, employees, agents and representatives from and against all claims, liabilities, damages, losses, fines, penalties, orders, actions, judgements, awards, costs and reasonable expenses (including, without limitation, the full amount of reasonable legal fees and expenses, all consultants' fees and expenses, the cost of removal, treatment, storage and disposal of Hazardous Materials and remediation of the Lands and adjacent properties, the cost of defending or counterclaiming or claiming over against third parties in respect of any action or matter and any cost, liability or damage arising out of the settlement of any action entered into by the Partnership with the consent of Food Services) which are reasonably suffered or incurred and which arise out of or relate in any way directly or indirectly to:
 - (A) any breach of this paragraph (q) or any failure by Food Services to perform any obligation specified hereunder;
 - (B) any material and unremediated violation of Environmental Laws by Food Services at the Lands; or
 - (C) any use, handling, production, generation, manufacture, transportation, storage, handling, disposal or release of any Hazardous Materials by Food Services on, under, about or from the Lands.

Food Services agrees that the foregoing indemnity obligations shall survive the exercise of the Partnership's rights hereunder, the release of this Agreement and the payment and satisfaction of the Obligations and shall continue in full force

and effect for a period of five years following the payment and satisfaction of all of the Obligations.

- (vi) Food Services waives the right to assert any statute of limitations as a bar to the enforcement of this paragraph (q) or to any action brought to enforce this paragraph (q). This paragraph (q) shall not affect, impair or waive any rights or remedies of the Partnership or any obligations of Food Services under Environmental Laws.
- (r) **Further Assurances.** Food Services will, forthwith at any time and from time to time at the request of the Partnership and at the cost of Food Services, execute and deliver to the Partnership all deeds and documents and do all acts and things which the Partnership may reasonably require for the purpose of granting a mortgage, pledge and charge against, and security interest in, and assuring, confirming, mortgaging, pledging, transferring to the Partnership, the Collateral and carrying into effect the purposes of this Agreement.

10. Negative Covenants

Until the Obligations have been paid and satisfied in full and this Agreement has been terminated, Food Services covenants with the Partnership that, unless the Partnership otherwise consents:

- (a) **Restriction on Liens.** Food Services will not grant, create, assume or permit to exist any Lien upon any of the properties or assets of Food Services, other than the Security Interest and Permitted Liens.
- (b) **Restriction on Indebtedness.** Food Services will not assume, create, incur, permit to exist or otherwise become liable upon any Indebtedness other than:
 - (i) the Obligations;
 - (ii) Indebtedness by way of an operating line of credit in an aggregate principal amount outstanding at any time of not more than \$5,000,000;
 - (iii) Indebtedness:
 - (A) that is secured, as permitted by the Governance Agreement, solely by the Exchangeable Securities, and proceeds therefrom, where the recourse of the lender thereunder is limited to the Exchangeable Securities, and proceeds therefrom; and
 - (B) the amount of such Indebtedness does not exceed, at any time, 50% of the Current Market Price (as defined in the Governance Agreement) of the Units of the Fund for which the Exchangeable Securities securing such Indebtedness could be exchanged, pursuant to the Exchange Agreement;
 - (iv) Indebtedness comprising trade payables or the endorsement for deposit with a financial institution of negotiable instruments incurred or created in and for the purpose of the ordinary course of business; and
 - (v) Indebtedness which has the benefit of a Permitted Lien securing the payment thereof (but only to the extent of such Permitted Lien).

- (c) **Restriction on Guarantees.** Food Services will not enter into any guarantee of, or an indemnity or suretyship arrangement relating to, or any other transaction intended to assure the repayment or satisfaction of, any Indebtedness or other liabilities or obligations of any other person or otherwise become liable in respect of the obligations of another person except wholly owned subsidiaries of Food Services, other than indemnities and guarantees contained in any operating lease of land for a restaurant location entered into by Food Services or any Franchisee in the ordinary course of business (but excluding any agreement relating to Indebtedness for borrowed money).
- (d) **Restriction on Reorganizations.** Food Services will not, directly or indirectly, consolidate, amalgamate or merge with, or sell, lease or otherwise dispose of all or substantially all of its assets (whether now owned or hereafter acquired) whether in one transaction or a series of transactions, or alter its capital structure, or enter into any arrangement or reorganization having a similar effect.
- (e) **Restriction on Dispositions.** Food Services will not, directly or indirectly, sell, lease, assign, transfer, abandon, convey or otherwise dispose of (any such action being herein called a "Disposition") any of its assets (including any capital stock of any Subsidiary or other corporation, any accounts receivable or Indebtedness owed to Food Services and any leasehold interest), except for Dispositions to wholly owned Subsidiaries of Food Services and other Dispositions on arms' length terms and for fair market value as follows:
 - (i) Food Services may, in the ordinary course of business, sell any Inventory or other assets that are customarily sold by Food Services as part of the normal operation of its business;
 - (ii) Food Services may, in the ordinary course of business, sell equipment, fixtures, materials or supplies that are no longer required in the business of Food Services or that are worn-out or obsolete;
 - (iii) Food Services may, in the ordinary course of business, sell restaurants that are owned and operated by Food Services, provided that such sale is completed concurrently with the granting by Food Services of a new franchise for such restaurant;
 - (iv) Food Services may sell all or any portion of its existing investment in Root Beer;
or
 - (v) Food Services may dispose of Exchangeable Securities upon the exchange of such Exchangeable Securities for other Exchangeable Securities or Units pursuant to the Exchange Agreement and dispose of the Units acquired in any such exchange.
- (f) **Restriction on Distributions.** Food Services will not pay any dividends or redeem or repurchase any of its shares or otherwise make any distribution to any of its shareholders, unless at the time of such distribution there are no outstanding payments of the Royalty then due and owing by Food Services under the Licence and Royalty Agreement.
- (g) **Restriction on Investments.** Food Services will not make any investment (in cash or by delivery of other property) directly or indirectly in the business or property of another person, except:

- (i) routine purchases of property to be used or consumed in the ordinary course of business;
- (ii) loans or advances made to relocating employees, which loans or advances are in aggregate at all times not in excess of Cdn. \$300,000;
- (iii) existing investments in Root Beer; and
- (iv) investments in wholly-owned subsidiaries of Food Services existing as of the date of this Agreement, or wholly-owned subsidiaries incorporated or acquired by Food Services subsequent to the date of this Agreement that carry on the same business as Food Services, provided that, in the case of any such investment:
 - (A) such wholly-owned Subsidiary has granted to the Partnership a security interest in all of its present and after acquired property ranking in priority to any other security interest (other than Permitted Liens) in such property, and otherwise on the same terms as the Security Interest granted to the Partnership by Food Services hereunder; and
 - (B) Food Services shall not sell or otherwise dispose of the shares or any other interest in such wholly-owned Subsidiary except to another wholly-owned Subsidiary of Food Services which has in turn provided to the Partnership the security interest described in paragraph (A) above.
- (h) **No Removal of Collateral.** Food Services will not remove any of the Collateral from the locations at which it is presently situate other than in the ordinary day-to-day course of business of Food Services.
- (i) **No Amendment of Material Contracts.** Food Services will not amend, supplement, modify, extend, renew or replace any Franchise Agreement or Lease which would:
 - (i) prevent or restrict or effect the validity or enforceability of any existing or future assignment thereof or grant a charge thereon to the Partnership; or
 - (ii) have a Material Adverse Effect,

provided that the Franchise Agreements may be amended as long as those provisions which are amended are consistent with the applicable provisions of the standard Franchise Agreement which has been adopted for use by Food Services as at the date of such amendment.

11. Events of Default

Obligations not payable on demand shall, at the option of the Partnership, become immediately payable upon the occurrence and during the continuance of one or more of the following events of default (collectively, "Events of Default"):

- (a) **Failure to Pay Royalty.** Food Services fails to make any payment of the Royalty when due pursuant to the Licence and Royalty Agreement, and such failure remains unremedied for a period of ten days after notice thereof is given by the Partnership to Food Services;

- (b) **Failure to Observe Other Covenants.** Food Services fails to perform or observe any other term, covenant or agreement contained in the Licence and Royalty Agreement or this Agreement and such failure shall remain unremedied for 30 days after notice thereof is given by the Partnership to Food Services, or if such failure is not reasonably capable of being remedied within 30 days, Food Services has not commenced all reasonable steps to remedy the default within the 30 days and has not diligently pursued such steps until remedy of such failure has been achieved;
- (c) **Incorrect Representation or Warranty.** Any representation or warranty made by Food Services in this Agreement or in the Licence and Royalty Agreement proves to be false or incorrect in any material respect when made or deemed to have been made and, except with respect to any such failure which constitutes an Event of Default under any other subsection of this Section 11, such failure shall remain unremedied for a period of 30 days after notice thereof is given by the Partnership to Food Services;
- (d) **Cross-Acceleration.** There shall occur any acceleration or non-payment at maturity of:
 - (i) any Indebtedness of Food Services; or
 - (ii) any Indebtedness of any Subsidiary of Food Services which has a Material Adverse Effect;
- (e) **Dissolution Proceedings.** Proceedings are commenced for the dissolution, liquidation or winding-up of Food Services, other than a dissolution, liquidation or winding-up required in connection with an arrangement or reorganization of Food Services permitted under this Agreement, unless such proceedings are being actively and diligently contested in good faith by Food Services and such proceedings are stayed within 30 days of being commenced;
- (f) **Bankruptcy or Insolvency.** Food Services is adjudged or declared bankrupt or becomes insolvent or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or petitions or applies to any tribunal for the appointment of a receiver or trustee for it or for any substantial part of its property, or commences any proceedings relating to it under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any substantial part of its property;
- (g) **Appointment of Receiver.** A receiver, receiver and manager, receiver-manager, custodian, liquidator or trustee (or any person with like powers) shall be appointed for all or any substantial part of the property of Food Services, provided that such appointment shall not constitute an Event of Default if and for so long as:
 - (i) Food Services obtains within two Business Days of such appointment an order of a court of competent jurisdiction staying such appointment and such order (or a replacement thereof to similar effect) remains in full force and effect; or
 - (ii) Food Services forthwith bona fide disputes and continues to dispute such appointment and provides or causes to be provided such security to the Partnership as the Partnership may reasonably require, and such appointment is stayed or vacated within 30 days;

- (h) **Issuance of Execution** A writ, execution or attachment or similar process is issued or levied against all or a substantial portion of the property of Food Services in connection with any judgment against Food Services in any amount which materially affects the assets of Food Services, unless being actively and diligently contested by Food Services in good faith and Food Services has provided such security to the Partnership as the Partnership may reasonably require and such writ, execution, attachment or similar process is released, bonded, satisfied, discharged, vacated or stayed within 60 days after its entry, commencement or levy;
- (i) **Action by Encumbrancer** An encumbrancer or lienor takes possession of any substantial part of the properties or assets of Food Services, unless Food Services disputes and continues to dispute such possession in good faith and provides such security to the Partnership as the Partnership may reasonably require for the payment of such encumbrance or lien;
- (j) **Expropriation** An order is made or legislation enacted by any competent body having authority for the expropriation, confiscation, forfeiture, escheating, other taking or compulsory divestiture, whether or not with compensation, of all or a significant portion of the consolidated assets of Food Services and such order or legislation remains in effect and has not been stayed by a court of competent jurisdiction for a period of more than 30 days from the date of pronouncement of the order or enactment of the legislation, as the case may be;
- (k) **Unenforceable Obligation** Any material obligation or other provision of Food Services in this Agreement or in the Licence and Royalty Agreement terminates or ceases to be or is declared by a court of competent jurisdiction not to be a legally binding or enforceable obligation of Food Services;
- (l) **Ceasing to Carry on Business.** Food Services shall cease to carry on business; and
- (m) **Cross-Default under Approved Partnership Credit Facilities.** There shall occur an event of default pursuant to and in accordance with any credit facility of the Partnership, the existence, terms and conditions of which credit facility have been approved in writing by Food Services,

and the Partnership shall have all rights and remedies under applicable law as well as any other rights and remedies provided by this Agreement.

12. Waiver by the Partnership

Any breach by Food Services of any of the provisions contained in this Agreement or any default by Food Services in the observance or performance of any covenant or condition required to be observed or performed by Food Services hereunder may only be waived by the Partnership in writing, provided that no such waiver by the Partnership shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

13. Enforcement

Upon the occurrence and during the continuance of any Event of Default, the Security Interests will immediately become enforceable. To enforce and realize on the Security Interests, the Partnership may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, may do any of the following:

- (a) appoint, by instrument, a receiver, receiver and manager or receiver-manager (a "Receiver") of Collateral, with or without bond, as the Partnership may determine, and from time to time in its absolute discretion remove such Receiver and appoint another in its stead. A Receiver so appointed, in addition to all powers conferred on it by law, and without limiting the generality of the foregoing, shall have the following powers:
 - (i) to take possession, custody and control of, collect and get in the Collateral or any part thereof, and for that purpose to take any proceedings in the name of Food Services or otherwise;
 - (ii) to carry on or concur in carrying on the business of Food Services, and for that purpose to raise money on the Collateral in priority to this Agreement or otherwise;
 - (iii) to sell or concur in selling or otherwise dispose of any of the Collateral, including by lease, option or by deferred payment; and
 - (iv) to make any arrangement or compromise in respect of the Collateral which the Receiver shall think expedient in the interest of the Partnership, including any deferral of payment for Collateral upon disposition;
- (b) to take possession of Collateral or enter upon any premises of Food Services and take possession of Collateral with power to exclude Food Services, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
- (c) to preserve, protect and maintain Collateral and make such replacements thereof and repairs and additions thereto as the Partnership may deem advisable;
- (d) to sell, lease or otherwise dispose of all or any part of Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Partnership may seem reasonable, provided that if any sale is on credit, Food Services will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the moneys therefor are actually received;
- (e) to exercise all of the rights and remedies of a secured party under the PPSA in respect of the Collateral;
- (f) to dispose of any of the Collateral in the condition which it was in at the date possession of it was taken, or after any commercially reasonable repair, processing or preparation thereof for disposition;
- (g) borrow money for the purpose of carrying on the business of Food Services or improving, maintaining, managing, operating, repairing, renewing, replacing or restoring the Collateral or otherwise in such amount and in such manner as will, in the opinion of the Receiver, be sufficient for obtaining upon the security of the Collateral or part thereof the amounts from time to time required, and in so doing the Receiver may issue certificates ("Receiver's Certificates") which may be payable at such time or times as the Receiver may think expedient and may bear interest as shall be stated therein and the amounts from time to time payable by virtue of such Receiver's Certificates shall form a security interest and charge upon the Collateral in priority to this Agreement;

- (h) make any arrangement or compromise which the Receiver considers expedient in the interests of the Partnership, assent on behalf of Food Services to any modification of this Agreement, change in priority or release in whole or in part the Collateral and exchange any part or parts of the Collateral for any other property upon such terms as the Receiver considers expedient, either with or without payment of money for equality of exchange or otherwise;
- (i) institute and prosecute all suits, proceedings and actions in the name of Food Services or otherwise, defend all suits, proceedings and actions against Food Services or the Receiver, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action which the Receiver considers necessary for the reasonable and proper protection of the Collateral; and
- (j) engage and retain accountants, agents, appraisers, assistants, lawyers and managers.

Any Receiver so appointed shall be deemed to be an agent of Food Services, and Food Services shall be solely responsible for the Receiver's acts or defaults and for the Receiver's remuneration and expenses, and the Partnership shall not be, in any way, responsible for any misconduct or negligence on the part of the Receiver. The rights and powers conferred under this Section are in supplement of and not in substitution for any other rights that the Partnership may have from time to time.

14. Proceeds of Enforcement

Subject to the claims, if any, of the creditors of Food Services ranking in priority to the Security Interests, all amounts realized from the disposition of Collateral pursuant to this Agreement will be applied as follows:

- (a) first, in payment of all costs, charges and expenses (including legal fees and disbursements as between solicitor and own client) incurred by the Partnership in connection with or incidental to the exercise by the Partnership of all or any of the powers granted to them pursuant to this Agreement, including the expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of Collateral and the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to it pursuant to this Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- (b) second, in or toward payment of the Obligations to the Partnership.

Subject to applicable law and the claims, if any, of other creditors of Food Services, any surplus will be paid to Food Services.

15. Persons Dealing with the Partnership or Receiver

Food Services agrees that no person dealing with the Partnership or its agents or the Receiver shall be required to enquire whether the mortgage, pledge, charge or security interest created by this Agreement have become enforceable, or whether the powers which the Partnership or the Receiver are purporting to exercise have become exercisable, or whether any amount remains owing in respect of the Obligations, or as to the necessity or expediency of the stipulations and conditions subject to which any sale or lease is to be made, or otherwise as to the propriety or regularity of any sale or lease or of any other dealing by the Partnership or the Receiver with the Collateral or any part thereof, or to see to the application of any amount paid to the Partnership, and Food Services hereby waives each and every claim it may have against any person dealing with the Partnership, its agents or the Receiver.

16. Surrender by Food Services

Following the occurrence of an Event of Default, Food Services will yield up possession of the Collateral to the Partnership or to any Receiver appointed by the Partnership or, at any time, to any court upon demand in writing, and agrees to put no obstacle in the way of, but to facilitate by all means, the actions of the Partnership hereunder, and not to interfere with the carrying out of the powers hereby granted to the Partnership and, if an Event of Default occurs, Food Services will and hereby does consent to the appointment of the Receiver with such powers as the Partnership is hereby vested with if so required by the Partnership. Food Services hereby binds itself in the event of such appointment to consent to any petition or application presented to the court by the Partnership in order to effect the intent of this Agreement, and Food Services shall not, after receiving due notice from the Partnership that it has taken possession of the Collateral, continue in possession thereof, unless with the express written consent and authority of the Partnership, and shall forthwith, by and through the directors and officers of Food Services, execute such documents and transfers as may be necessary to place the Partnership in legal possession of the Collateral. After receipt of such notice, all the rights, powers, privileges and functions of each of the directors and officers of Food Services shall cease and determine with respect to the Collateral unless specifically continued in writing by the Partnership or unless the same shall have been restored to Food Services.

17. Legal Proceedings

At any time after the occurrence of an Event of Default, the Partnership shall have the right to institute and prosecute all suits, proceedings and actions which the Partnership may consider necessary or advisable for the proper protection of the Collateral, and to defend all suits, proceedings and actions against Food Services, and to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted, and to appeal any suit, proceeding or action.

18. Arrangements

At any time after the occurrence of an Event of Default, the Partnership shall have the right to enter into any extension, reorganization, deposit, merger or consolidation agreement in any way relating to or affecting the Collateral, and in connection therewith may deposit, exchange or surrender control of the Collateral and accept other property upon such terms as the Partnership may consider appropriate, and either with or without payment or exchange of money or equality of exchange or otherwise.

19. Additional Powers

In addition to the rights and powers provided herein and under the PPSA, the Partnership and the Receiver, as the case may be, shall, upon and during the continuance of an Event of Default, have the following rights and powers upon the security constituted hereby becoming enforceable:

- (a) to demand, sue for and receive any Accounts with or without notice to Food Services, give effectual receipts and discharges therefor, compromise any which may seem bad or doubtful to the Partnership and give time for payment thereof with or without security;
- (b) to take control of any proceeds arising from Collateral;
- (c) to apply any money taken as Collateral to the satisfaction of the Obligations as the Partnership may deem appropriate; and
- (d) to hold as additional security any increase, profits or moneys resulting from Collateral, and apply any such increase, profits or money to the Obligations.

Food Services acknowledges that, to the extent the Partnership or the Receiver has a legal duty to use reasonable care in the custody and preservation of any Collateral in its possession, that duty shall not include, in the case of chattel paper, a security or an instrument, taking any steps to preserve rights against other persons.

In the event that the Security Interests become enforceable, all moneys or any other form of payment received by Food Services in payment of any Account or any payment on or other proceeds of Collateral received by Food Services, whether before or after notice of any Security Interest created hereby is given to account debtors, shall be received and held by Food Services in trust for the Partnership and shall be turned over to the Partnership upon request.

20. Notice of Disposition

Food Services shall be entitled to notice of any intended disposition of Collateral, such notice to be given in accordance with the provisions of the PPSA, except that notice is not required to be given where:

- (a) Collateral is perishable;
- (b) the Partnership believes on reasonable grounds that Collateral will decline substantially in value if not disposed of immediately;
- (c) the cost of care and storage of Collateral is disproportionately large relative to its value;
- (d) a court so orders; or
- (e) after an Event of Default, every person entitled to receive notice consents to the disposition of the Collateral without notice.

21. Dealing with Security Interests

The Partnership may grant extensions of time and other indulgences, take and give up any of the Security Interests, or modify or abstain from perfecting or taking advantage of any of the Security Interests, accept compositions, grant releases and discharges thereof and otherwise deal with Food Services, debtors of Food Services, sureties and others and with any of the Security Interests as the Partnership may see fit without prejudice to the liability of Food Services or the right of the Partnership to hold and realize upon any of the Security Interests. The Partnership shall not be accountable to Food Services for the value of any of the Security Interests released except for any moneys actually received by the Partnership.

22. Destruction of Collateral

The loss, injury or destruction of Collateral shall not operate in any manner to release Food Services from its liability to the Partnership.

23. General

This Agreement shall be a continuing agreement in every respect for the payment of the Obligations and it shall remain in full force and effect until such time as Food Services is entitled to a release and discharge of this Agreement in accordance with Section 33. In the event any provisions of this Agreement shall be deemed invalid or void by any court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain in full force and effect. All rights and remedies of the Partnership set out in this Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or now or hereafter existing at law, in equity or by statute or pursuant to any other agreement between Food

Services and the Partnership that may be in effect from time to time. No delay or omission by the Partnership in exercising any right or remedy herein or with respect to the Obligations shall operate as a waiver thereof.

24. Non-Substitution

The Security Interests granted or created under this Agreement are in addition to and not in substitution for any other security now or hereafter held by the Partnership.

25. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

26. Jurisdiction

Food Services irrevocably agrees that any legal action or proceeding with respect to this Agreement may be brought in the courts of the Province of British Columbia or in such other court or courts as the Partnership may elect, acting reasonably, and, by execution and delivery of this Agreement, Food Services irrevocably submits to each such jurisdiction.

27. Notice

Notice may be given to either party in accordance with the Licence and Royalty Agreement.

28. Deficiency

If the amounts realized from the disposition of Collateral are not sufficient to pay the Obligations in full, Food Services will immediately pay to the Partnership the amount of any such deficiency.

29. Appointment of Attorney

Food Services hereby irrevocably appoints the Partnership and any of its managers or acting managers or the Receiver, as the case may be, with full power of substitution for the Partnership, at its option, wherever and whenever during the continuance of an Event of Default it may deem necessary or expedient, to be the true and lawful attorney of Food Services for and in the name of Food Services to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that Food Services is obliged to sign, endorse or execute and generally to use the name of Food Services and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Partnership or the Receiver, as the case may be, pursuant to this Agreement and to file such financing statements and other documents and do such acts, matters and things as the Partnership may deem appropriate to perfect and continue the Security Interests, to protect and preserve Collateral and to realize upon the Security Interests. The power of attorney hereby granted is coupled with an interest.

30. Set-Off

Without limiting any other right of the Partnership, whenever the security constituted hereby has become enforceable the Partnership may, in its sole discretion, set off against the Obligations any and all moneys then owed to Food Services by the Partnership in any capacity, whether or not due, and the Partnership shall be deemed to have exercised such right to set-off immediately at the time of making its decision to do so even though any charge therefor is made or entered on the records of the Partnership subsequent thereto.

31. No Merger

This Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security interest of any form held or which may hereafter be held by the Partnership from Food Services or from any other person whomsoever. The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the covenants contained in this Agreement.

32. Assignment

Neither party shall assign its interest in this Agreement or any part hereof without the prior written consent of the other party, except that:

- (a) the Partnership and Food Services (each, an “Assignor”) may each assign this Agreement and all benefit thereof as security for bona fide loans from one or more institutional lenders (each, a “Lender”), provided that any such Lender has agreed by written instrument, in form and substance satisfactory to the other party to this Agreement, acting reasonably (such instrument to be delivered to such other party prior to the assignment as security becoming effective or attaching) that:
 - (i) the rights and interest of the Lender are subject to the rights and interests of the other party under this Agreement;
 - (ii) prior to realizing on such security, the Lender will provide notice to such other party giving it a reasonable opportunity to cure the default given the nature of the default; and
 - (iii) should such security be realized upon with the result that the interest of the Assignor is vested in an assignee, acquirer or other successor in interest, including the Lender (the “Successor”), then the Lender will cause such Successor to be bound by all the provisions of this Agreement in all respects and to the same extent as the Assignor was bound, and provided further that the Assignor will continue to be bound by all the provisions of this Agreement as if such transfer of interest had not occurred and will perform any obligations hereunder to the extent that the Successor fails to do so; and
- (b) Food Services may assign this Agreement and all benefit thereof in conjunction with the sale or transfer of the whole (but not a part) of its business associated with the A&W Trade Marks, provided that:
 - (i) prior written notice of such assignment is given to the Partnership; and
 - (ii) Food Services has complied with its obligations under the Governance Agreement respecting the Partnership’s right of first offer at such time.

33. Satisfaction and Discharge

Any partial payment or satisfaction of the Obligations, or any ceasing by Food Services to be indebted to the Partnership, shall be deemed not to be a redemption or discharge of this Agreement. Food Services shall be entitled to a release and discharge of this Agreement upon full payment and satisfaction of all Obligations and upon written request by Food Services and payment to the Partnership of all reasonable discharge fees, costs, charges, expenses and legal fees and disbursements (as between solicitor and own client) incurred by the Partnership in connection with the Obligations and such release and discharge.

34. Liability of the Partnership

The Partnership shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Partnership shall manage Collateral upon entry as herein provided, nor shall the Partnership be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable. The Partnership shall not be bound to do, observe or perform or to see to the observance or performance by Food Services of any obligations or covenants imposed upon Food Services nor shall the Partnership, in the case of securities, instruments or chattel paper, be obliged to preserve rights against other persons, nor shall the Partnership be obliged to keep any of the Collateral identifiable. Food Services hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Partnership than herein stated.

35. Enurement

This Agreement shall enure to the benefit of the Partnership and its successors and permitted assigns, and shall be binding upon the successors and permitted assigns of Food Services.

36. Deed

This Agreement is intended by all parties hereto to be, and to be effective as, a deed.

37. Time of the Essence

Time is of the essence of the obligations of Food Services under this Agreement.

38. Copy of Financing Statement

Food Services hereby expressly waives the right to receive a copy of any financing statement that may be registered by the Partnership under the PPSA, or a copy of the statement confirming the registration of any financing statement, in connection with any Security Interests created under this Agreement, as amended from time to time. The Partnership may change any financing statement in its sole discretion at any time without the consent of Food Services.

39. Acknowledgement

Food Services hereby acknowledges receiving a copy of this Agreement.

[execution page follows]

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

THE CORPORATE SEAL OF)
A & W FOOD SERVICES OF CANADA)
INC.)

was affixed hereunder in the presence of:)

"Jefferson Mooney")
Authorized signatory)

"Paul Hollands")
Authorized signatory)

C/S

A&W TRADE MARKS LIMITED PARTNERSHIP,
by its General Partner, **A&W TRADE MARKS INC.**

Per: "John R. McLernon"
Authorized Signatory