

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”)

and

WESTERN CORPORATE ENTERPRISES INC., A&W OF CANADA INC., CLIMATE FOOD SERVICES INC., WEEO GWEAT ENTERPRISES INC., WAVIN’ IN THE BREEZE HOLDINGS INC., VALFLO ENTERPRISES INC., JEFFERSON MOONEY, PAUL HOLLANDS, AXEL REHKATSCH, GRAHAM COOKE (the “Related Parties”)

**AMENDED AND RESTATED
GOVERNANCE AGREEMENT**

December 22, 2010

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	2
Section 1.1 Definitions	2
Section 1.2 Interpretation Not Affected by Headings, etc.	9
Section 1.3 Accounting References	9
Section 1.4 Number, etc.....	9
Section 1.5 Statutory References	9
Section 1.6 Date for Any Action	9
Section 1.7 References to Acts Performed by the Fund	9
Section 1.8 Liability of Trustees and Unitholders	9
ARTICLE 2 GOVERNANCE MATTERS – THE COMPANY	10
Section 2.1 Scope and Purpose	10
Section 2.2 Covenants of the Fund and Food Services.....	10
Section 2.3 Acknowledgement by the Company, the Fund, Food Services and the Partnership	11
Section 2.4 Board of Directors and Committees of the Company.....	11
Section 2.5 Notice of Directors’ Meetings	12
Section 2.6 Voting	12
Section 2.7 Quorum	12
Section 2.8 Compensation	13
Section 2.9 Officers	13
Section 2.10 Indemnity/Insurance	13
Section 2.11 Appointment of Auditors.....	14
Section 2.12 Certain Duties and Waiver of Certain Fiduciary Duties	14
Section 2.13 Agreements with Senior Management.....	14
Section 2.14 Information to Related Parties	14
Section 2.15 Financial Statements.....	14
Section 2.16 Special Resolutions.....	14
ARTICLE 3 DISTRIBUTIONS	15
Section 3.1 Distribution Policy	15
ARTICLE 4 EXERCISE OF VOTING RIGHTS IN THE FUND	15
Section 4.1 Voting Rights.....	15
Section 4.2 Number of Votes.....	15
Section 4.3 Mailings to Unitholders	16
Section 4.4 Copies of Unitholder Information.....	16
Section 4.5 Other Materials	17
Section 4.6 List of Persons Entitled to Vote	17
Section 4.7 Distribution of Written Materials	17
Section 4.8 Termination of Voting Rights.....	17
Section 4.9 Disclosure of Interest in Exchangeable Securities.....	18
ARTICLE 5 CERTAIN RIGHTS OF THE FUND TO ACQUIRE EXCHANGEABLE SECURITIES AND OF FOOD SERVICES TO ACQUIRE TRUST UNITS	18
Section 5.1 Liquidation Call Right	18
Section 5.2 Automatic Exchange.....	19
Section 5.3 Automatic Exchange Right.....	20
Section 5.4 Notice of Insolvency Event.....	20

Section 5.5	Exchangeable Units and LP Units	21
Section 5.6	Automatic Exchange on Liquidation of the Fund.....	21
Section 5.7	Fund Take-over Bid Call Right	22
Section 5.8	Withholding Rights.....	23
Section 5.9	Transfer of Remaining Common Shares.....	23
ARTICLE 6 COVENANTS OF THE FUND, THE COMPANY AND THE PARTNERSHIP		24
Section 6.1	Reservation of Units	24
Section 6.2	Notification of Certain Events	24
Section 6.3	Listing of Units	24
Section 6.4	Tender Offers.....	25
Section 6.5	Ordinary Market Purchases	25
ARTICLE 7 ISSUE OF ADDITIONAL UNITS BY THE FUND AND COMMON SHARES BY THE COMPANY AND LP UNITS BY THE PARTNERSHIP		25
Section 7.1	Issue of Additional Trust Units by the Fund.....	25
Section 7.2	Issue of Additional Common Shares	26
Section 7.3	Issue of Additional LP Units	26
ARTICLE 8 RESTRICTIONS OF TRANSFERS AND PIGGY-BACK RIGHTS		26
Section 8.1	Certain Definitions.....	26
Section 8.2	Restrictions on Transfer and Exchangeable Securities	27
Section 8.3	Permitted Transfer	28
Section 8.4	Transfers to a Subsidiary	29
Section 8.5	Signatories Jointly and Severally Liable.....	29
Section 8.6	Transfer by the Fund.....	29
Section 8.7	Company to Enforce	29
Section 8.8	Transfer of Common Shares	29
Section 8.9	Sale of Shares - Piggy-back Provisions	30
Section 8.10	Change of Control of Food Services.....	31
ARTICLE 9 FUND SUCCESSORS		32
Section 9.1	Certain Requirements in Respect of Combination, etc.	32
Section 9.2	Vesting of Powers in Successor	33
ARTICLE 10 REPRESENTATIONS AND WARRANTIES		33
Section 10.1	General Representation and Warranties.....	33
Section 10.2	Specific Representations and Warranties of the Company	34
Section 10.3	Specific Representations and Warranties of the Fund	34
Section 10.4	Specific Representations and Warranties of the Related Parties	34
ARTICLE 11 ADDITIONAL COVENANTS		35
Section 11.1	Information	35
Section 11.2	Further Assurances	35
Section 11.3	Compliance	36
ARTICLE 12 GENERAL.....		36
Section 12.1	Term.....	36
Section 12.2	Changes in Capital of the Fund and the Company	36
Section 12.3	Dealing with Transfer Agents, Registrars, etc.	36
Section 12.4	Legend	36

Section 12.5	Severability	37
Section 12.6	Amendments, Modifications	37
Section 12.7	Ministerial Amendments	37
Section 12.8	Meeting to Consider Amendments	38
Section 12.9	Parties to this Agreement	38
Section 12.10	Enurement	38
Section 12.11	Notices to Parties	38
Section 12.12	Counterparts	39
Section 12.13	Governing Law	39
Section 12.14	Attornment	39
Section 12.15	Authorship	39
Section 12.16	Waiver	39
Section 12.17	Remedies	40
Section 12.18	Time of Essence	40

AMENDED AND RESTATED GOVERNANCE AGREEMENT

This Governance Agreement is made the 22nd day of December, 2010 between **A&W Revenue Royalties Income Fund** as represented by its Trustees, **John R. McLernon, Conrad A. 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**”), **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 **Western Corporate Enterprises Inc.**, a British Columbia company, **A&W of Canada Inc.**, a Canadian corporation, **Climate Food Services Inc.**, a British Columbia company, **Weeo Gweat Enterprises Inc.**, a British Columbia company, **Wavin’ In the Breeze Holdings Inc.**, a British Columbia company, **Valflo Enterprises Inc.**, a British Columbia company, **Jefferson Mooney, Paul Hollands, Axel Rehkatsch and Graham Cooke** (the “**Related Parties**”) amends and restates the Governance Agreement dated February 15, 2002 between **A&W Revenue Royalties Income Fund** as represented by its Trustees, **Don A. James, John R. McLernon and Conrad A. Pinette, A&W Food Services of Canada Inc, A&W Trade Marks Inc., and 598942 British Columbia Inc.**, a British Columbia company **A&W of Canada Inc.**, a Canadian corporation, **Climate Food Services Inc.**, a British Columbia company, **Weeo Gweat Enterprises Inc.**, a British Columbia company, **Wavin’ In the Breeze Holdings Inc.**, a British Columbia company, **Valflo Enterprises Inc.**, a British Columbia company, **Jefferson Mooney, Paul Hollands, Axel Rehkatsch, Graham Cooke, Stephen MacIntyre and Awsam Holdings Inc.**, as amended and restated by agreement dated January 26, 2009 between the parties to this Agreement (the “**Original Governance 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 outstanding which 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 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 enter into this Agreement to amend and restate the Original Governance Agreement to give effect to the Reorganization and to continue to provide *inter alia* for: (i) certain matters related to the conduct of the business and affairs of the Company and of the Partnership, (ii) certain restrictions on the transfer of the Exchangeable Securities, (iii) the granting by the Fund of Voting Rights to Food Services, (iv) the Automatic Exchange Right and the Automatic Exchange Right on Liquidation and the Liquidation Call Right, (v) the distribution policy of the Partnership and of the Company and (vi) certain other matters as provided for herein.

AND WHEREAS the Related Parties agreed to become a party to this Agreement for the limited purpose of agreeing to provide certain rights to the Company in the event of a Change of Control of Food Services and in respect of certain provisions of their respective employment agreements.

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 Governance Agreement (which agreement, as so amended and restated by this Agreement, is called the “Governance Agreement”) and 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:

“**Acquisition Agreement**” means the acquisition agreement dated February 15, 2002 between the Company and Food Services relating to the acquisition by the Company of the Trade Marks.

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

“**Agreement**” means this Governance Agreement as the same may be amended and supplemented 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.

“**Automatic Exchange Right**” means the benefit of the obligation of the Fund under Section 5.2 pursuant to which the Fund is required to purchase all or any part of the Exchangeable Units from Food Services in exchange for Limited Voting Units upon the occurrence and during the continuance of an Insolvency Event.

“**Automatic Exchange Right on Liquidation**” means the benefit of the obligation of the Fund to effect the immediate exchange of Exchangeable Units for Limited Voting Units under Section 5.6.

“**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.

“**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.

“**Buyer’s Notice**” has the meaning ascribed thereto in Section 8.10(2).

“**Call Right Exchange Date**” has the meaning ascribed thereto in Section 5.7(3).

“**Call Take-over Bid Right Purchase Date**” has the meaning ascribed thereto in Section 5.7(3).

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

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

“**CDS Book-Entry Only System**” means the book-based system administered by The Canadian Depository for Securities Limited.

“**Certificate of the Company**” means a certificate delivered to Food Services, which has been signed by the chairman, the president or a vice-president or the chief financial officer, and by the secretary, an assistant secretary, the treasurer or an assistant treasurer, of the Company, or by any two officers or directors of the Company duly authorized for the purpose either generally or specifically by a resolution of the Board of Directors.

“**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 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.

“**Change of Control**” has the meaning ascribed thereto in Section 8.1(a).

“**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 recognized 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 amended and supplemented from time to time and in effect.

“**Exchange Agreement**” means the amended and restated exchange agreement dated December 22, 2010 between the Fund, the Company, the Partnership and Food Services by which Food Services is entitled to exchange Common Shares for Limited Voting Units and to exchange LP Units for Non Voting Common Shares without Par Value, as amended and supplemented from time to time and in effect.

“**Exchange Right**” means (i) the right of Food Services to exchange Common Shares for Limited Voting Units (which may, at the election of Food Services be Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares, provided that immediately after giving effect to any 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), (ii) the right of Food Services to exchange one LP Unit for a unit consisting of two Non Voting Common Shares without Par Value pursuant to the Exchange Agreement, and (iii) the right of a holder of a Limited Voting Unit to exchange such Limited Voting Unit for a Unit pursuant to the Declaration of Trust.

“**Exchangeable Securities**” means the Common Shares and the LP Units.

“**Exchangeable Unit**” means two Common Shares of any class (which may, at the election of Food Services be Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares, provided that immediately after giving effect to any 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, with respect to an Exchangeable Unit or an LP Unit exchangeable into Units set out in Section 5.1, Section 5.2, Section 5.3 and Section 5.6, the Current Market Price of one Unit, provided that the Exchangeable Unit Consideration shall be fully paid and satisfied by the delivery of one Trust Unit of type designated plus an additional amount equal to the full amount of all cash distributions declared, payable and unpaid, on the Trust 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.

“**Exchangeable Unit Price**” means, for each Trust 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 such Trust 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.

“**Food Services Agreements**” means the Acquisition Agreement, the General Security Agreement, the Licence and Royalty Agreement and the Tax Indemnity Agreement.

“**Food Services Nominees**” has the meaning ascribed thereto in Section 2.4(c).

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

“**Fund Meeting**” has the meaning ascribed thereto in Section 4.2(1).

“**Fund Nominees**” has the meaning ascribed thereto in Section 2.4(c).

“**Fund Successor**” has the meaning ascribed thereto in Section 9.1(a).

“**Fund Take-over Bid Call Right**” has the meaning ascribed thereto in Section 5.7(1).

“**Fund Take-over Bid Call Price**” has the meaning ascribed thereto in Section 5.7(2).

“**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 same may be amended and supplemented from time to time and in effect.

“**Governance Committee**” means the committee of the Board of Directors called the “Governance Committee”.

“**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.

“**GP Unit**” means a GP Unit of the Partnership as provided for in the Partnership Agreement.

“**Insolvency Event**” means (i) the institution by the Company or by the general partner of the Partnership on behalf of the Partnership of any proceeding to be adjudicated a bankrupt or insolvent or to be wound up, or the consent of the Company or the general partner of the Partnership on behalf of the Partnership to the institution of bankruptcy, insolvency or winding-up proceedings against it, or (ii) the filing of a petition, answer or consent seeking dissolution or winding-up under any bankruptcy, insolvency or analogous laws, including without limitation the *Companies Creditors’ Arrangement Act* (Canada) and the *Bankruptcy and Insolvency Act* (Canada), and the failure by the Company or the general partner of the Partnership on behalf of the Partnership to contest in good faith any such proceedings commenced in respect of the Company or the Partnership within 30 days of becoming aware thereof, or the consent by the Company or the general partner of the Partnership on behalf of the Partnership to the filing of any such petition or to the appointment of a receiver, or (iii) the making by the Company or the general partner of the Partnership on behalf of the Partnership of a general assignment for the

benefit of creditors, or the admission in writing by the Company or the general partner of the Partnership on behalf of the Partnership of its inability to pay its debts generally as they become due.

“**Licence and Royalty Agreement**” means the amended and restated licence and royalty agreement dated December 22, 2010 between the Partnership and Food Services and providing for, *inter alia*, the license by the Partnership to Food Services of the use of the Trade Marks, and the payment by Food Services to the Partnership of a royalty as specified therein for the use of the Trade Marks, as the same may be amended and supplemented from time to time and in effect.

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

“**Liquidation Call Purchase Price**” has the meaning ascribed thereto in Section 5.1(1).

“**Liquidation Call Right**” has the meaning ascribed thereto in Section 5.1(1).

“**Liquidation Date**” means the effective date of liquidation, dissolution, winding-up or distribution of assets by the Company or the Partnership.

“**Liquidation Event**” has the meaning ascribed thereto in Section 5.6(1).

“**Liquidation Event Effective Date**” has the meaning ascribed thereto in Section 5.6(2).

“**List**” has the meaning ascribed thereto in Section 4.6.

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

“**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.

“**Operative Documents**” means the Declaration of Trust, this Agreement, the Exchange Agreement, the Registration Rights Agreement, the Rights Agreement and the Food Services Agreements.

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

“**Partnership Agreement**” means the agreement of limited partnership 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.

“**Piggy-back Offer**” has the meaning set forth in Section 8.9(a).

“**Proposed Buyer**” has the meaning set forth in Section 8.9.

“**Purchase Offer**” has the meaning set forth in Section 8.9.

“**Registration Rights Agreement**” means the registration rights agreement dated February 15, 2002 between Food Services and the Fund whereby the Fund agrees to file a prospectus or otherwise assist Food Services with a public offering of Units as the same may be amended and supplemented from time to time and in effect.

“**Related Party**” means any of Western Corporate Enterprises Inc., A&W of Canada Inc., Climate Food Services Inc., Weeo Gweat Enterprises Inc., Wavin’ In the Breeze Holdings Inc., Valflo Enterprises Inc., Jefferson Mooney, Paul Hollands, Axel Rehkatsch and Graham Cooke and “**Related Parties**” means all of them.

“**Rights Agreement**” means the agreement dated February 15, 2002 between the Fund and Computershare Trust Company of Canada and therein called the Unitholders Rights Agreement.

“**ROFO Notice**” has the meaning ascribed thereto in Section 8.10(1).

“**Securities Act**” means the *Securities Act* (Ontario) and the rules, regulations and policies made thereunder.

“**Security Interest**” means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor or analogous party under a capital lease or similar transaction, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming the owner or conditional purchaser of assets to which a lien relates as debtor, under the *Personal Property Security Act* (British Columbia) or any comparable law), but not including the interest of a lessor under an operating lease.

“**Seller**” has the applicable meaning set forth in Section 8.10(1).

“**Senior Management**” means the following senior management of Food Services: Jefferson Mooney, Paul Hollands and Graham Cooke.

“**Subject Property**” has the meaning ascribed thereto in Section 8.10(1)(a).

“**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.

“**Take-over Bid Call Right Notice**” has the meaning ascribed thereto in Section 5.7(2)

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

“**Tax Indemnity Agreement**” means the agreement dated February 15, 2002 between Food Services and the Company by which Food Services agrees to indemnify the Company for income taxes payable under Part VI.1 of the Tax Act, as the same may be amended and supplemented from time to time and in effect.

“**Trade Marks**” means the trade marks licenced by the Company to Food Services pursuant to the Original Licence and Royalty Agreement (“Original Licence and Royalty Agreement” as defined in the Licence and Royalty Agreement).

“**Transfer**” of any property includes any sale, exchange, transfer, assignment, gift, pledge, encumbrance, hypothecation, alienation or other transaction, whether voluntary, involuntary or by operation of law, by which the registered or beneficial ownership of or other interest in, such property passes from one person to another, whether or not for value, and any change of control of the registered or beneficial owner of property or any person that controls, directly or indirectly in any manner whatsoever, such registered or beneficial owner (other than, in any such case, as a result of the transmission of securities from a deceased or incompetent person to a legal representative of such person for so long as such property continues to be held by such legal representative).

“**Trust Units**” means the Units and 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.

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

“**Units**” means the Trust Units 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.

“**Voting Rights**” means the voting rights granted by the Fund to holders of Exchangeable Securities pursuant to the Declaration of Trust.

- (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”.

(5) Any reference in this Agreement to the number of Trust Units which would be received on the exchange of Exchangeable Units for Trust Units, or if the Exchangeable Units were exchanged for Trust Units, or on the exercise of the Exchange Rights, at any time, is a reference to the number of Trust Units that would be issued by the Fund at such time if all LP Units issued and outstanding at such time were exchanged for Non Voting Shares without Par Value, and all Common Shares held by Food Services at such time had been exchanged for Limited Voting Units pursuant to the Exchange Right, and all Limited Voting Units so issued had been exchanged for Units pursuant to the Declaration of Trust.

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 Trustees 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.

ARTICLE 2 GOVERNANCE MATTERS – THE COMPANY

Section 2.1 Scope and Purpose

The purpose of this Article 2 is, among other things, to regulate the rights and obligations of the shareholders of the Company, as such, among themselves and between themselves and the other parties hereto; to regulate the election of directors of the Company, and such other matters as are contained herein.

Section 2.2 Covenants of the Fund and Food Services

The Fund and Food Services covenant and agree:

- (a) to vote or cause to be voted all securities of the Company and the Partnership (if entitled to vote in accordance with applicable law), as the case may be, held by each of them respectively, or provide consent where necessary, to accomplish, give effect to and fully implement the terms and conditions of this Agreement, including the election to the Board of Directors those individuals nominated in accordance with this Article 2; and (ii) not vote or cause to be voted any securities of the Company or the Partnership (if entitled to a vote in accordance with applicable law) held by each of them respectively, or refuse consent where such consent is necessary, or exercise rights hereunder or as a shareholder or a partner in any manner which would result in a breach by the Fund or Food Services of any of their obligations under this Agreement or any of the Operative Documents;
- (b) to be deemed to have consented to any transfer of Exchangeable Securities made in accordance with this Agreement or the Exchange Agreement and covenant and agree to waive any restriction on transfer contained in the articles of the Company or the Partnership Agreement in order to give effect to such transfers;
- (c) to execute any shareholders’ resolutions or partnership resolutions necessary or desirable to be passed under and pursuant to the articles of the Company or partner resolutions necessary or desirable to be passed under and pursuant to the Partnership Agreement with respect to any transfer of Exchangeable Securities made in accordance with this Agreement or the Exchange Agreement;
- (d) to do or cause the Company and the Partnership to do all deeds, acts and things as are necessary or desirable to permit the transfer of any Exchangeable Securities in accordance with this Agreement or the Exchange Agreement or the Partnership Agreement and to cause any Exchangeable Securities so transferred to be registered in the name of such transferee on the books and records of the Company or the Partnership;
- (e) that, in the event of any conflict between the provisions of this Agreement and the articles of the Company or the Partnership Agreement, the provisions of this Agreement shall

govern, and to vote or cause to be voted all Exchangeable Securities and securities of the Partnership registered in their names, or consent where required, so as to cause the articles of the Company or the Partnership Agreement to be amended to resolve any such conflict in favour of the provisions of this Agreement; and

- (f) not to vote or cause to be voted any Exchangeable Securities or securities of the Partnership so as to alter in any way the articles of the Company (including without limitation an alteration that would change the number of Directors fixed for the Company) or the Partnership Agreement in any manner contrary to the terms of this Agreement.

Section 2.3 Acknowledgement by the Company, the Fund, Food Services and the Partnership

Each of the Company, the Fund, Food Services and the Partnership acknowledges that it has actual notice of the terms of this Agreement, consents hereto and covenants and agrees with each other and with the other parties hereto that it will at all times during the term of this Agreement be governed by the terms and provisions hereof in carrying out its affairs and shall give or cause to be given such notices and execute or cause to be executed such documents and do or cause to be done such acts, matters and things as may from time to time be necessary or required to carry out the terms and intent hereof and conduct its affairs so that it is able to comply with and observe the terms and conditions of this Agreement and the other Operative Documents.

Section 2.4 Board of Directors and Committees of the Company

Unless otherwise agreed to by the Fund with the Approval of the Fund and by Food Services:

- (a) the number of directors of the Company shall be a minimum of three and a maximum of ten and, until otherwise determined by the agreement of the Fund and Food Services, the number of directors of the Company shall be five;
- (b) at all times, a majority of the directors of the Company shall be individuals who are not:
 - (i) officers or employees of the Company or any Affiliate or Subsidiary thereof; or
 - (ii) individuals who beneficially own, directly or indirectly, or who exercise control or direction over, Trust Units representing more than 10% of the outstanding Trust Units on a fully diluted basis or shares of Food Services representing more than 10% of the outstanding shares of Food Services on a fully diluted basis; or
 - (iii) directors or officers of any such Persons or any Affiliate or Subsidiary thereof none of whom shall, subject to the foregoing, be otherwise disqualified from acting as a director of the Company by reason of the holding of securities of the Fund or the Company. For purposes of the foregoing, any of the foregoing individuals who beneficially own or exercise control or direction over Exchangeable Securities shall at any time be considered to beneficially own or exercise control or direction over the number of Trust Units which would be received on the exchange of the Exchangeable Securities for Trust Units in respect of the Exchangeable Securities beneficially owned by them or over which they exercise control or direction at such time;
- (c) each of the Fund and Food Services agree to vote or cause to be voted any and all Common Shares held by or on behalf of each of them to consent to resolutions of shareholders of the Company, and otherwise to take all such actions and proceedings as may reasonably be required to cause the Board of Directors to be comprised at all times of five Directors. Subject to Section 2.4(f), three of such Directors shall be nominees of

the Fund (the “**Fund Nominees**”) and two of such Directors shall be nominees of Food Services (the “**Food Services Nominees**”);

- (d) each of the Fund and Food Services agree to instruct the Fund Nominees and Food Services Nominees, respectively, to consent to such resolutions of the Board of Directors, and otherwise take all such actions and proceedings as may reasonably be required to cause the Governance Committee to be comprised at all times solely of the Fund Nominees;
- (e) if for any reason a Director ceases to be a Director, including without limitation any resignation of a Director or any incapacity or inability on the part of any Director to serve as a Director or removal for cause of any Director, the Fund and Food Services shall forthwith vote in favour of the requisite resolution or instruct their respective nominees as Directors to vote to appoint as a Director in place of such former Director, an individual designated in writing by the party whose nominee has so ceased to be a Director; and
- (f) the obligations of the Fund pursuant to this Article 2 concerning the Directors and Food Services Nominees shall immediately terminate upon Food Services and the Related Parties ceasing to hold, or ceasing to be entitled to hold on exercise of the Exchange Rights, directly or indirectly, at least 10% of the total of the issued and outstanding Common Shares or Units.

Upon the termination of the obligations of the Fund under Section 2.4(c) and Section 2.4(d), the Fund may immediately vote or cause to be voted the Common Shares or otherwise act to remove the Food Services Nominees as Directors, to replace such Directors with individuals who are Fund Nominees and to otherwise elect, remove and replace Directors as provided for in the BCBCA.

Section 2.5 Notice of Directors’ Meetings

At least 48 hours notice of any meeting of the Board shall be given to the Directors by the Company or a Director by written notice sent by personal delivery, mail, fax or email to each Director at the address provided to the Company or by telephone or by any other means of communication in common usage, unless all of the Directors shall consent to any shorter period of notice. Such notice shall state the time when and the place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed.

Section 2.6 Voting

Except as otherwise required by this Agreement, all questions arising at any meeting of the Board of Directors or otherwise required to be determined or approved by the Board of Directors shall be decided by a majority of the Directors present and entitled to vote on the resolution at a meeting or by written resolution signed by all Directors. Any proposed resolution not approved in accordance with the foregoing shall be deemed to have been defeated. Each Director shall be entitled to a single vote and the chairman of any meeting of the Board of Directors shall not be entitled to a second or casting vote in the event of a tie.

Section 2.7 Quorum

At any meeting of the Board, a quorum shall consist of two Directors present in person or by conference telephone, one of whom is a Food Services Nominee and one of whom is a Fund Nominee

(unless the termination event described in Section 2.4(f) shall have occurred in which event, the presence of the Food Services Nominee shall not be required). If a quorum of the Board shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting shall be adjourned to the same time on the next day (whether or not a Business Day) at the same time and place and notice shall be given to the Directors with respect to such adjourned meeting. At the adjourned meeting the Directors present in person or by conference telephone shall form a quorum and may transact the business for which the meeting was originally convened notwithstanding that a Food Services Nominee (if the termination event described in Section 2.4(f) has not yet occurred) or a Fund Nominee is not present in person or by conference telephone at such meeting. Any business may be brought before or dealt with at an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. No business shall be transacted at any meeting unless the required quorum is present at the commencement of the meeting. If a quorum is present when a meeting of the Board of Directors is called to order, then a quorum shall be deemed to be constituted throughout the continuance of the meeting.

Section 2.8 Compensation

Except as otherwise provided herein, without the Approval of the Fund, the Directors shall not be entitled to receive any compensation or reimbursement of costs or expenses from the Company for acting as a Director or attending at meetings of the Directors or any committee of Directors. The Company shall: pay each Director and each Trustee such compensation as may be determined by the Directors and the Trustees from time to time, (iii) pay to each Director and Trustee his or her reasonable costs and expenses of attendance at Directors' meetings and committee meetings of the Board of Directors or Trustees; (iv) acquire a policy of directors' and officers' liability insurance for the benefit of the Directors and officers of the Company and Trustees against the risks, to the limits, subject to the deductions, and otherwise on the terms approved the Governance Committee; and (v) indemnify and save harmless the Directors for all costs, damages and expenses that they or any of them may incur as a Director pursuant to the indemnity agreements entered into pursuant to Section 2.10.

Section 2.9 Officers

The Directors may from time to time appoint such officers as they shall deem necessary and remove any such officers (subject to and in accordance with the terms and conditions of applicable employment contracts). All officers of the Company and the Partnership shall have such authority to perform such functions and duties as are from time to time consistent with such officer's employment agreement, if any, position and such other duties and responsibilities not inconsistent with such employment agreement and position as may be determined by the Board of Directors from time to time.

Section 2.10 Indemnity/Insurance

(1) To the fullest extent permitted by law, the Company shall indemnify all Directors, officers, former directors and former officers of the Company, all Trustees and former trustees of the Fund and all persons who act or acted at the Company's request as a director or officer of a body corporate of which the Company is or was a shareholder or creditor, and his or her heirs and legal personal representatives, against all costs, charges and expenses, including any amount paid to settle any action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the relevant person is made a party by reason of being or having been a director or officer of the Company or such body corporate or a Trustee of the Fund if (i) he or she acted honestly and in good faith with a view to the best interests of the Company, such body corporate or the Fund, as the case may be, and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful. The intention

of this provision is that all persons referred to above shall have all benefits provided under the indemnification provisions of the BCBCA to the fullest extent permitted by law.

(2) The Company shall use all reasonable efforts to obtain and maintain a reasonable amount of directors' and officers' liability insurance for the directors and officers of the Company and its subsidiaries on reasonable terms that are customary for the type of business carried on by the Company and the Partnership. This policy of insurance may also apply to the Trustees and may provide customary reimbursement coverage to the Fund to the extent that the Trustees shall be entitled to indemnification by the Fund pursuant to the Declaration of Trust. The aggregate limit of liability coverage may be shared among the Partnership, the Company, the Fund and their respective directors and officers, and Trustees.

Section 2.11 Appointment of Auditors

The Fund and Food Services, in their capacity as shareholders of the Company, will vote their respective Common Shares to appoint as auditors for the Fund and the Company, that firm of independent chartered accountants as are recommended from time to time by the Board of Directors.

Section 2.12 Certain Duties and Waiver of Certain Fiduciary Duties

Food Services, in its capacity as a holder of Common Shares, acknowledges and agrees that the primary duty of the Directors nominated by the Fund is to protect the best interests of the Fund without regard to the interests of Food Services, and by being or becoming a party to this Agreement, hereby irrevocably waives any claim it may have for a breach of the fiduciary duty of such Directors if such Directors act in any manner so intended.

Section 2.13 Agreements with Senior Management

Food Services agrees with the Company not to amend the provisions of sections 9, 10, 11 and 12 of each of the employment agreements dated September 12, 1995 and entered into by each Person who is Senior Management of Food Services, and to enforce these provisions to the extent required by the Company by written notice to Food Services. Each Person who is Senior Management acknowledges the provisions of this Section 2.13 and agrees that the Company is entitled to require Food Services to enforce such provisions.

Section 2.14 Information to Related Parties

Food Services will not provide, directly or indirectly, any operating and financial information regarding Food Services that is not generally disclosed to the public, other than its annual financial statements, to any Related Party who is a director, officer or employee of Food Services or any Subsidiary of Food Services after such Related Party ceases to be a director, officer or employee of Food Services or any Subsidiary of Food Services.

Section 2.15 Financial Statements

If requested by the Fund or the Company, the financial statements of the Partnership will be consolidated with the financial statements of the Company.

Section 2.16 Special Resolutions

So long as Food Services and the Related Parties hold, or are entitled to hold on exercise of the Exchange Rights, directly or indirectly, at least 10% of the total of the issued and outstanding Common

Shares or Units, the Fund will not vote in favour of, or take any other action as a shareholder of the Company to approve any action which, under the BCBCA is permitted to be taken, or requires the approval of shareholders of the Company by, a special resolution (“special resolution” as defined in the BCBCA) without the approval of Food Services.

ARTICLE 3 DISTRIBUTIONS

Section 3.1 Distribution Policy

The Board of Directors will, in its capacity as the board of directors of the general partner of the Partnership, cause the Partnership, and will cause the Company, to distribute all of their respective available cash, subject to the Partnership and/or Company retaining such reasonable working capital reserves as may be considered appropriate by the Board of Directors and subject to applicable law, after (i) satisfaction of its debt service obligations, if any; (ii) satisfaction of its interest obligations (including interest accrued or payable in respect of its financing and other debt obligations) and other expense obligations; and (iii) provisions for administrative expenses of the Company, the Partnership and the Fund:

- (a) in respect of the Partnership, by way of distributions on the LP Units and GP Units; and
- (b) in respect of the Company by way of dividends on its Common Shares.

ARTICLE 4 EXERCISE OF VOTING RIGHTS IN THE FUND

Section 4.1 Voting Rights

In accordance with the Declaration of Trust, Food Services, as a holder of Exchangeable Securities, shall be entitled to vote including the right to vote in person or by proxy (including resolutions in writing), on any matters, questions, proposals or propositions whatsoever that may properly come before the Unitholders of the Fund at a Fund Meeting except that, as provided by subsection 12.6(a) of the Declaration of Trust, the holders of Exchangeable Securities, as such, other than the Fund and its Affiliates, shall not be entitled to cast more than 40% of the votes cast upon a resolution for the appointment or removal of a Trustee. The Voting Rights shall be and remain vested in and exercised by Food Services subject to the terms of this Agreement. Food Services shall exercise in accordance with this Article 4 the Voting Rights held by Food Services on the record date established by the Fund or by applicable law for such Fund Meeting.

Section 4.2 Number of Votes

(1) With respect to all meetings of Unitholders of the Fund at which Food Services is entitled to vote (each, a “**Fund Meeting**”), Food Services shall be entitled to cast and exercise the votes comprised in the Voting Rights for each Exchangeable Security owned of record by Food Services on the record date established by the Fund or by applicable law for such Fund Meeting, in respect of each matter, question, proposal or proposition to be voted on at such Fund Meeting, except that, as provided by subsection 12.6(a) of the Declaration of Trust, the holders of Exchangeable Securities, as such, other than the Fund and its Affiliates, shall not be entitled to cast more than 40% of the votes cast upon a resolution for the appointment or removal of a Trustee as if Food Services were the holder of the number of Units which would be received on the exchange of the Exchangeable Securities for Units.

(2) The total Voting Rights on a poll at a Fund Meeting shall consist of a number of votes attached to the number of Units which Food Services would receive if the exchange of all of its Exchangeable Securities had occurred as of the record dates for such votes, and Food Services shall be treated in all respects as a Unitholder for the purposes of any such vote except that, as provided by subsection 12.6(a) of the Declaration of Trust, the holders of Exchangeable Securities, as such, other than the Fund and its Affiliates, shall not be entitled to cast more than 40% of the votes cast upon a resolution for the appointment or removal of a Trustee. If Food Services chooses to attend a Fund Meeting in person, Food Services will be entitled to one vote on a show of hands.

Section 4.3 Mailings to Unitholders

(1) With respect to each Fund Meeting, the Fund will use its reasonable efforts promptly to mail or cause to be mailed to Food Services, such mailing or communication to commence wherever practicable on the same day as the mailing or notice (or other communication) with respect thereto is commenced by the Fund to its Unitholders:

- (a) a copy of such notice, together with any related materials, including, without limitation, any circular or information statement or listing particulars, to be provided to Unitholders of the Fund;
- (b) a statement that Food Services is entitled to exercise the Voting Rights with respect to such Fund Meeting or, to attend such Fund Meeting and to exercise personally the Voting Rights thereat;
- (c) a statement as to the manner in which to give a proxy to a designated agent or other representative of the Fund to exercise such Voting Rights;
- (d) a statement that if no such instructions are received from Food Services, the Voting Rights to which Food Services is entitled will not be exercised; and
- (e) a statement of the time and date by which such instructions must be received by the Fund in order to be binding upon it, which in the case of a Fund Meeting shall not be earlier than the close of business on the second Business Day prior to such meeting, and of the method for revoking or amending such instructions.

(2) For the purpose of determining the Voting Rights to which Food Services is entitled in respect of any Fund Meeting, the number of Exchangeable Securities owned of record by Food Services shall be determined at the close of business on the record date established by the Fund or by applicable law for purposes of determining securityholders entitled to vote at such Fund Meeting.

Section 4.4 Copies of Unitholder Information

The Fund will deliver to Food Services copies of all proxy materials (including notices of Fund Meetings but excluding proxies to vote Trust Units), information statements, reports (including, without limitation, all interim and annual financial statements) and other written communications that, in each case, are to be distributed by the Fund from time to time to holders of Trust Units at the same time as such materials are first sent to holders of Trust Units. The Fund will also make available for inspection by Food Services, at the Fund's principal office in Vancouver, British Columbia, all proxy materials, information statements, reports and other written communications that are: (i) made available by the Fund generally to Unitholders; or (ii) specifically directed to a holder of Exchangeable Securities by the Fund.

Section 4.5 Other Materials

As soon as reasonably practicable after receipt by the Fund or Unitholders (if such receipt is known by the Fund) of any material sent or given by or on behalf of a third party to Unitholders generally, including without limitation, dissident proxy and information circulars (and related information and material) and take-over bid and securities exchange take-over bid circulars (and related information and material), provided such material has not been sent to Food Services as a holder of Exchangeable Securities by or on behalf of such third party, the Fund shall use its reasonable efforts to obtain and deliver to Food Services copies thereof (unless the same has been provided directly to Food Services by such third party) as soon as possible thereafter. The Fund will also make available for inspection by Food Services at the Fund's principal office in Vancouver, British Columbia copies of all such materials.

Section 4.6 List of Persons Entitled to Vote

The Company shall: (i) prior to each annual, general and extraordinary Fund Meeting; and (ii) forthwith upon each request made at any time by the Fund in writing, prepare or cause to be prepared a list (a "List") of the names and addresses of the holder or holders of Exchangeable Securities arranged in alphabetical order and showing the number of Exchangeable Securities held of record by each such holder, in each case at the close of business on the date specified by the Fund in such request or, in the case of a List prepared in connection with a Fund Meeting, at the close of business on the record date established by the Fund or pursuant to applicable law for determining the Unitholders entitled to receive notice of and/or to vote at such Fund Meeting. Each such List shall be delivered to the Fund promptly after receipt by the Company of such request or the record date for such meeting and in any event within sufficient time as to permit the Fund to perform its obligations under this Agreement. The Fund agrees to give the Company notice of the calling of any Fund Meeting, together with the record date therefor, sufficiently prior to the date of the calling of such meeting so as to enable the Company to perform its obligations under this Section 4.6.

Section 4.7 Distribution of Written Materials

Any written materials distributed by the Fund pursuant to this Agreement shall be sent by mail (or otherwise communicated in the same manner as the Fund utilizes in communications to Unitholders subject to applicable law and provided such manner of communications is reasonably available to the Fund) to each holder of the Exchangeable Securities at its address as shown on the books of the Company or the Partnership, as the case may be. The Company shall provide or cause to be provided to the Fund for purposes of communication, on a timely basis and without charge or other expense: (i) a current List; and (ii) upon the request of the Fund, mailing labels to enable the Fund to carry out its duties under this Agreement.

Section 4.8 Termination of Voting Rights

The rights of Food Services with respect to the Voting Rights exercisable in respect of any of the Exchangeable Securities held by it, shall be deemed to be surrendered by Food Services to the Fund in respect of such Exchangeable Security and the Voting Rights represented thereby shall cease immediately upon (i) the delivery by Food Services to the Fund of the certificates representing such Exchangeable Securities in connection with the occurrence of the Liquidation Call Right, the Automatic Exchange Right, the Automatic Exchange Right on Liquidation, the Fund Take-over Bid Call Right or the Exchange Right as specified in Article 5, or (ii) the exchange of such Exchangeable Securities for Limited Voting Units pursuant to the Exchange Agreement, unless, in each case, the Fund shall not have delivered the requisite Limited Voting Units issuable in exchange therefor to Food Services.

Section 4.9 Disclosure of Interest in Exchangeable Securities

The Fund and/or the Company shall be entitled to require Food Services or any person who the Fund and/or the Company know, or have reasonable cause to believe, hold any interest whatsoever in an Exchangeable Security to confirm that fact or to give such details as to who has an interest in such Exchangeable Security as would be required (if the Exchangeable Security were a class of “equity securities” of the Company under section 92 of the Securities Act) under any laws or regulations, or pursuant to the rules or regulations of any regulatory authority of Canada if the Exchangeable Securities for which such LP Units are exchangeable were exchanged for Limited Voting Units. If Food Services does not provide the information required to be provided by it pursuant to this Section 4.9, the Trustees may take any action permitted under the Declaration of Trust or any laws or regulations, or pursuant to the rules or regulations of any regulatory authority of Canada with respect to the Voting Rights relating to the Exchangeable Securities held by Food Services including suspending those Voting Rights.

ARTICLE 5

CERTAIN RIGHTS OF THE FUND TO ACQUIRE EXCHANGEABLE SECURITIES AND OF FOOD SERVICES TO ACQUIRE TRUST UNITS

Section 5.1 Liquidation Call Right

(1) The Fund shall have the overriding right (the “**Liquidation Call Right**”) (but not the obligation), in the event of and notwithstanding the proposed liquidation, dissolution or winding-up of the Company or the Partnership or any other distribution of the assets of the Company among its shareholders for the purpose of winding up its affairs or any other distribution of the assets of the Partnership among its partners for the purpose of winding up its affairs pursuant to Article 10 of the Partnership Agreement, to purchase from Food Services all but not less than all of the Exchangeable Securities held by Food Services on the Liquidation Date, (and on payment by the Fund of an amount per such Exchangeable Unit or LP Unit (the “**Liquidation Call Purchase Price**”) equal to the Exchangeable Unit Price of all but not less than all of the Exchangeable Securities held by Food Services on the last Business Day prior to the Liquidation Date. The Exchangeable Unit Price for each Exchangeable Unit and each LP Unit so purchased shall only be satisfied by the Fund delivering or causing to be delivered to Food Services on the Liquidation Date the Exchangeable Unit Consideration representing the total Exchangeable Unit Price. The Trust Units issued to Food Services as part of the Exchangeable Unit Consideration pursuant to this Section 5.1 shall be Limited Voting Units. In connection with the exchange of the Exchangeable Units and LP Units into Limited Voting Units pursuant to the Liquidation Call Right, the Fund shall provide Food Services a Certificate of the Company setting forth the calculation of the Exchangeable Unit Price for each Exchangeable Unit or LP Unit exchanged. In the event of the exercise of the Liquidation Call Right by the Fund, Food Services shall be obligated to sell all the Exchangeable Securities held by it to the Fund on the Liquidation Date on payment by the Fund to Food Services of the Liquidation Call Purchase Price for each Exchangeable Unit and LP Unit.

(2) To exercise the Liquidation Call Right, the Fund must notify the Company of the Fund’s intention to exercise such right at least 14 days before the Liquidation Date in the case of a voluntary liquidation, dissolution or winding-up of the Company or the Partnership or any other voluntary distribution of the assets of the Company among its shareholders or of the Partnership among its partners for the purpose of winding up its affairs, and at least two Business Days before the Liquidation Date in the case of an involuntary liquidation, dissolution or winding-up of the Company or the Partnership or any other involuntary distribution of the assets of the Company among its shareholders or the assets of the Partnership among its partners for the purpose of winding up its affairs. The Company will notify Food Services as to whether or not the Fund has exercised the Liquidation Call Right forthwith after the earlier of: (i) receipt of notice by the Company from the Fund of its intention to exercise such right; and (ii) the

expiry of the period during which the same may be exercised by the Fund. If the Fund exercises the Liquidation Call Right, then on the Liquidation Date, the Fund will purchase and Food Services will sell all of the Exchangeable Securities then held by it for a price for each Exchangeable Unit and LP Unit as set out above equal to the Liquidation Call Purchase Price.

(3) For the purposes of completing the purchase of the Exchangeable Securities pursuant to the Liquidation Call Right, the Fund shall cause to be delivered to CDS on or before the Liquidation Date, for the benefit of Food Services, a CDS Book Entry Certificate representing the aggregate number of Limited Voting Units deliverable by the Fund in payment of the total Liquidation Call Purchase Price, less any amounts withheld pursuant to Section 5.8. Provided that the Fund has complied with the immediately preceding sentence, on and after the Liquidation Date, the rights of Food Services as a holder of Exchangeable Securities will be limited to receiving, without interest, Food Services' proportionate part of the total Liquidation Call Purchase Price payable by the Fund upon presentation and surrender by Food Services of certificates representing the Exchangeable Securities held by Food Services and Food Services shall on and after the Liquidation Date be considered and deemed for all purposes to be the holder of the Limited Voting Units to which it is entitled. Upon surrender to the Fund of a certificate or certificates representing the Exchangeable Securities held by Food Services, together with such other documents and instruments as may be required to effect a transfer of such securities under the laws applicable to the Fund and the Company and the articles of the Company and the Declaration of Trust and the Partnership Agreement and such additional documents and instruments as the Fund may reasonably require, Food Services shall be entitled to receive in exchange therefor, and the Fund shall deposit or cause to be deposited with CDS a CDS Book-Entry Certificate for the benefit of Food Services representing the Limited Voting Units to which Food Services is entitled less any amounts withheld pursuant to Section 5.8, provided that if at such time the Fund has previously terminated the registration of the Units through the CDS Book-Entry Only System, certificates for Limited Voting Units in respect of such Exchangeable Units and LP Units in fully registered form will be issued to Food Services or its nominees. If the Fund does not exercise the Liquidation Call Right in the manner described above on the Liquidation Date, Food Services, as the holder of the Exchangeable Securities, will be entitled to receive in exchange therefor the amount otherwise payable by the Company in connection with the liquidation, dissolution or winding-up of the Company pursuant its articles and otherwise payable by the Partnership in connection with the liquidation, dissolution or winding-up of the Partnership pursuant to Article 10 of the Partnership Agreement.

Section 5.2 Automatic Exchange

The Fund hereby grants to Food Services, (i) the Automatic Exchange Right, and (ii) the Automatic Exchange Right on Liquidation, all in accordance with the provisions of this Agreement. The Automatic Exchange Right shall represent an agreement on the terms set out herein between the Fund and Food Services that, upon the occurrence of an Insolvency Event, Food Services shall be deemed to have exercised a right to exchange all of the outstanding Exchangeable Securities in connection with the liquidation, dissolution, or winding-up of the Company pursuant to its articles or in connection with the liquidation, dissolution or winding-up of the Partnership pursuant to Article 10 of the Partnership Agreement, held by Food Services for Limited Voting Units and the Fund shall be deemed to have exercised a right to require Food Services to exchange such Exchangeable Securities for Limited Voting Units and the Fund will purchase from Food Services all of the outstanding Exchangeable Securities held by Food Services. The Automatic Exchange Right on Liquidation shall represent an agreement on the terms set out herein between the Fund and Food Services that the Fund will purchase from Food Services all of the outstanding Exchangeable Securities held by Food Services on the fifth Business Day prior to the Liquidation Event Effective Date (defined below), provided that if the Automatic Exchange Right occurs and the closing of the transaction of purchase and sale contemplated by the Automatic Exchange

Rights has occurred, neither the Fund nor Food Services will be entitled to any rights under the Automatic Exchange Right on Liquidation.

Section 5.3 Automatic Exchange Right

(1) The purchase price payable by the Fund for the Exchangeable Securities, which, in the case of the Common Shares will be purchased in Exchangeable Units, to be purchased by the Fund under the Automatic Exchange Right shall be an amount for each Exchangeable Unit and each LP Unit equal to the Exchangeable Unit Price of the number of such Exchangeable Units and LP Units held by Food Services as at the date of such Insolvency Event. The Exchangeable Unit Price for each such Exchangeable Unit and LP Unit so purchased shall only be satisfied by the Fund delivering or causing to be delivered to Food Services on the date of such Insolvency Event the Exchangeable Unit Consideration representing the total Exchangeable Unit Price. The Trust Units issued to Food Services as part of the Exchangeable Unit Consideration pursuant to this Section 5.3 shall be Limited Voting Units. In connection with the exchange of the Exchangeable Securities into Limited Voting Units pursuant to the Automatic Exchange Right, the Fund shall provide Food Services a Certificate of the Company setting forth the calculation of the Exchangeable Unit Price for each Exchangeable Unit and each LP Unit. The purchase price for each Exchangeable Unit and each such LP Unit so purchased may be satisfied only by the Fund issuing and delivering or causing to be delivered to CDS, a CDS Book Entry Certificate for the benefit of Food Services in respect of the number of Limited Voting Units equal to the Exchangeable Unit Price for each such Exchangeable Unit and LP Unit held by Food Services, unless at such time the Fund has previously terminated the registration of the Units through the CDS Book Entry Only System, in which case certificates for the Limited Voting Units in fully registered form will be issued to Food Services or its nominee.

(2) Immediately upon the occurrence of an Insolvency Event, the closing of the transaction of purchase and sale contemplated by the Automatic 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 all Exchangeable Securities held by Food Services free and clear of any lien, claim or encumbrance, and Food Services shall cease to be a holder of such Exchangeable Securities, and the Fund shall issue to Food Services the Limited Voting Units issuable upon the automatic exchange of Exchangeable Securities for Limited Voting Units less any amounts withheld pursuant to Section 5.8. Concurrently with Food Services ceasing to be a holder of Exchangeable Securities, Food Services shall become the holder of the Limited Voting Units issued pursuant to the exchange of Food Services' Exchangeable Securities for Limited Voting Units and the certificates held by Food Services previously representing the Exchangeable Securities exchanged by Food Services with the Fund pursuant to such exchange shall thereafter be deemed to represent Limited Voting Units issued to Food Services by the Fund pursuant to such exchange. Upon the request of Food Services and the surrender by Food Services of certificates representing such Exchangeable Securities, duly endorsed in blank and accompanied by such instruments of transfer as the Fund and the Company may reasonably require, the Fund shall deposit or cause to be deposited with CDS a CDS Book-Entry Certificate for the benefit of Food Services in respect of the Limited Voting Units issuable pursuant to the Automatic Exchange Right, unless at such time the Fund has previously terminated the registration of Limited Voting Units through the CDS Book-Entry Only System, in which case certificates for the Limited Voting Units in fully registered form will be issued to Food Services or its nominee.

Section 5.4 Notice of Insolvency Event

As soon as practicable following the occurrence of an Insolvency Event or any event that with the giving of notice or the passage of time or both would be an Insolvency Event, the Company shall give written notice thereof to Food Services. As soon as practicable following the receipt of notice from the

Company of the occurrence of an Insolvency Event, or upon the Fund becoming aware of an Insolvency Event, the Fund will mail to each holder, at the expense of the Company, a notice of such Insolvency Event which notice shall contain a brief statement of the rights of the holders of Exchangeable Securities with respect to the Automatic Exchange Right.

Section 5.5 Exchangeable Units and LP Units

(1) The Fund hereby represents, warrants and covenants that the Trust Units issuable as described pursuant to Article 5 will be duly authorized and validly issued as fully paid and shall be free and clear of any lien, claim or encumbrance.

(2) The Company hereby represents, warrants and covenants that the Exchangeable Securities otherwise exchangeable into Limited Voting Units pursuant to Article 5 and transferred to the Fund as described pursuant to Article 5 will be duly authorized and validly issued by the Company or the Partnership, as the case may be, as fully paid and shall be free and clear of any lien, claim or encumbrance.

Section 5.6 Automatic Exchange on Liquidation of the Fund

(1) The Fund will give the Company and Food Services written notice of each of the following events at the time set forth below:

- (a) in the event of any determination by the Trustees to institute voluntary liquidation, dissolution or winding-up proceedings with respect to the Fund or to effect any other distribution of assets of the Fund among its Unitholders for the purpose of winding up its affairs, at least 14 days prior to the proposed effective date of such liquidation, dissolution, winding-up or other distribution; and
- (b) as soon as practicable following the earlier of: (i) receipt by the Fund of notice of, and (ii) the Fund otherwise becoming aware of, any instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding-up of the Fund or to effect any other distribution of assets of the Fund among its Unitholders for the purpose of winding up its affairs, in each case where the Fund has failed to contest in good faith any such proceeding commenced in respect of the Fund within 30 days of becoming aware thereof and such notice shall include a brief description of the exchange of Exchangeable Securities for Limited Voting Units provided for in Section 5.6(2) (together, Section 5.6(1)(a) and (b) are a “**Liquidation Event**”).

(2) In order that Food Services will be able to participate on a pro rata basis with the holders of Units in the distribution of assets of the Fund in connection with a Liquidation Event, on the fifth Business Day prior to the effective date (the “**Liquidation Event Effective Date**”) of a Liquidation Event, Food Services shall be deemed to have exercised a right to exchange all of the outstanding Exchangeable Securities held by Food Services for Limited Voting Units and the Fund shall be deemed to have exercised a right to require Food Services to exchange such Exchangeable Securities for Limited Voting Units and all of the then outstanding Exchangeable Securities held by Food Services shall be exchanged for Limited Voting Units. To effect such exchange, the Fund shall purchase on the fifth Business Day prior to the Liquidation Event Effective Date each Exchangeable Unit and LP Unit held by Food Services, and Food Services shall sell such Exchangeable Units and LP Units held by it at such time, free and clear of any lien, claim or encumbrance, for a purchase price per such unit equal to the Exchangeable Unit Price of the number of Exchangeable Units and LP Units as at the date of such Liquidation Event Effective Date. The Exchangeable Unit Price for each Exchangeable Unit and LP Unit so purchased shall

only be satisfied by the Fund delivering or causing to be delivered to Food Services, on the fifth Business Day preceding the Liquidation Event Effective Date the Exchangeable Unit Consideration representing the total Exchangeable Unit Price. In connection with the exchange of the Exchangeable Securities into Limited Voting Units pursuant to the Automatic Exchange Right on Liquidation, the Fund shall provide Food Services a Certificate of the Company setting forth the calculation of the Exchangeable Unit Price for each Exchangeable Unit and LP Unit.

(3) On the fifth Business Day prior to the Liquidation Event Effective Date, the closing of the transaction of purchase and sale contemplated by the exchange of Exchangeable Securities for Limited Voting Units pursuant to the Automatic Exchange Right on Liquidation 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 all Exchangeable Securities held by it free and clear of any lien, claim or encumbrance and Food Services shall cease to be a holder of such Exchangeable Securities, and the Fund shall issue to Food Services the Limited Voting Units issuable upon the exchange of Exchangeable Securities for Limited Voting Units less any amounts withheld pursuant to Section 5.8. Concurrently with Food Services ceasing to be a holder of Exchangeable Securities, Food Services shall become the holder of the Limited Voting Units issued pursuant to the exchange of such Exchangeable Securities for Limited Voting Units and the certificates held by Food Services previously representing the Exchangeable Securities exchanged by Food Services with the Fund pursuant to such exchange shall thereafter be deemed to represent Limited Voting Units issued to Food Services by the Fund pursuant to such exchange. Upon the surrender by Food Services to the Fund of the certificate or certificates representing the Exchangeable Securities held by Food Services, duly endorsed in blank and accompanied by such instruments of transfer as the Company and the Fund may reasonably require, the Fund shall deposit or cause to be deposited with CDS a CDS Book-Entry Certificate for the benefit of Food Services in respect of the Limited Voting Units issuable as a result of the Liquidation Event, unless at such time the Fund has previously terminated the registration of the Limited Voting Units through the CDS Book-Entry Only System, in which case certificates for the Limited Voting Units in fully registered form will be issued to Food Services or its nominee.

Section 5.7 Fund Take-over Bid Call Right

(1) The Fund shall have the overriding right (the "**Fund Take-over Bid Call Right**") (but not the obligation), in the event that a take-over bid is made for all of the issued and outstanding Trust Units, including the rights to the Limited Voting Units to be issued upon exercise of the Exchange Rights and not less than 90% of the Trust Units on a fully diluted basis (other than Trust Units held on the date of the take-over bid by, or on behalf of, the offeror or Associates or Affiliates of the offeror or persons acting in concert ("acting in concert" as defined in the Securities Act at the date of this Agreement)) are taken up and paid for by the offeror under the take-over bid, or of upon the merger of the Fund with another entity, to require Food Services to sell all of the Exchangeable Securities held by Food Services to the Fund.

(2) To exercise the Fund Take-over Bid Call Right, the Fund must notify Food Services, at least 60 days after the termination of the take-over bid or the completion of the merger of the Fund with another entity giving rise to the exercise by the Fund of the Fund Take-over Bid Call Right of the Fund's intention to exercise (the "**Take-over Bid Call Right Notice**") the Fund Take-over Bid Call Right, on payment by the Fund in accordance with subsection (3) below to Food Services of an aggregate amount for all Exchangeable Securities then held by Food Services (the "**Fund Take-over Bid Call Price**") equal to the price paid per Trust Unit pursuant to such take-over bid or the value of the consideration per Trust Units received by holders of Trust Units as a result of such merger multiplied by the number of Trust Units which Food Services would be entitled to receive if Food Services had exercised all of its Exchange Rights, including the exchange of the LP Units, if any held by Food Services into Non Voting Common Shares without Par Value and the exchange of such shares for Units, on the date of such purchase by the

Fund. In the event of the exercise of the Fund Take-over Bid Call Right by the Fund, Food Services shall be obligated to sell all Exchangeable Securities then held by Food Services to the Fund on payment by the Fund to Food Services of the Fund Take-over Bid Call Price. In connection with the purchase of the Exchangeable Securities pursuant to the exercise of the Fund Take-over Bid Call Right, the Fund shall provide Food Services a Certificate of the Company setting forth the calculation of the Fund Take-over Bid Call Price.

(3) For the purposes of completing the purchase of the Exchangeable Securities held by Food Services pursuant to the Fund Take-over Bid Call Right, the Fund shall cause to be delivered on or before the date provided for in the Take-over Bid Call Right Notice (the “**Call Take-over Bid Right Purchase Date**”) (which may not be a date that is later than seven Business Days from the date the Take-over Bid Call Right Notice is given, a certified cheque or bank draft drawn upon a Canadian chartered bank in the amount of the Fund Take-over Bid Call Price, less any amounts withheld pursuant to Section 5.8. Provided that the Fund has complied with the immediately preceding sentence, on and after the Call Take-over Bid Right Purchase Date, the rights of Food Services will be limited to receiving, without interest, the total Fund Take-over Bid Call Price payable by the Fund upon presentation and surrender by Food Services of certificates representing the Exchangeable Securities held by Food Services.

Section 5.8 Withholding Rights

The Fund, the Company and the Partnership shall be entitled to deduct and withhold from any consideration otherwise payable under this Agreement to Food Services such amounts as the Fund, the Company or the Partnership 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 succeeded 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 Food Services, the Fund, the Company or the Partnership are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to the Fund, the Company or the Partnership as the case may be, to enable it to comply with such deduction or withholding requirement and the Fund, the Company or the Partnership, as the case may be, shall notify Food Services thereof and remit to Food Services any unapplied balance of the net proceeds of such sale.

Section 5.9 Transfer of Remaining Common Shares

If after all Common Shares held by Food Services and to which Food Services may become entitled as a result of the exchange of the LP Units held by or to be issued to Food Services under the Licence and Royalty Agreement for Non Voting Common Shares without Par Value are transferred to the Fund pursuant to any provision of this Agreement or the Exchange Agreement, then Food Services will transfer all remaining Common Shares held by Food Services at such time to the Fund for no additional consideration.

ARTICLE 6
COVENANTS OF THE FUND, THE COMPANY AND THE PARTNERSHIP

Section 6.1 Reservation of Units

The Fund hereby represents, warrants and covenants in favour of the Company and the Partnership 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 Units may be reclassified or changed) as are now and may hereafter be required to enable and permit the Fund to meet its obligations under this Agreement and under any other security or commitment pursuant to which the Fund may now or hereafter be required to issue Limited Voting Units or Units, to enable and permit the Fund to meet its obligations under the Exchange Agreement and each of the Liquidation Call Right, the Automatic Exchange Right, the Automatic Exchange Right on Liquidation or the Fund Take-over Bid Call Right and to enable and permit the Company to meet its obligations hereunder.

Section 6.2 Notification of Certain Events

In order to assist the Fund to comply with its obligations hereunder, the Company and the Partnership will notify the Fund and each holder of Exchangeable Securities of each of the following events at the time set forth below:

- (a) in the event of any determination by the Board of Directors of the Company to institute voluntary liquidation, dissolution or winding-up proceedings with respect to the Company or the Partnership or to effect any other distribution of the assets of the Company among its shareholders for the purpose of winding up its affairs, or to effect any other distribution of the assets of the Partnership among its partners for the purpose of winding up its affairs at least 14 days prior to the proposed effective date of such liquidation, dissolution, winding-up or other distribution;
- (b) promptly, upon the earlier of receipt by the Company or the Partnership of notice of and the Company or the Partnership otherwise becoming aware of any threatened or instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding-up of the Company or the Partnership or to effect any other distribution of the assets of the Company among its shareholders for the purpose of winding up its affairs or to effect any other distribution of the assets of the Partnership among its partners for the purpose of winding up its affairs.

Section 6.3 Listing of Units

The Fund will in good faith expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause all Units (or any other securities into which such Units may be reclassified or changed as contemplated by Section 3.4 of the Exchange Agreement) to be delivered hereunder to be listed, quoted or posted for trading on all stock exchanges and quotation systems on which outstanding Units (or such other securities) have been listed by the Fund and remain listed and are quoted or posted for trading at such time.

Section 6.4 Tender Offers

In the event that a tender offer, share exchange offer, issuer bid, take-over bid or similar transaction with respect to Units (a “**Tender Offer**”) is proposed by the Fund or is proposed to the Fund or its Unitholders and is recommended by the Trustees, or is otherwise effected or to be effected with the consent or approval of the Trustees, the Fund will use its reasonable efforts expeditiously and in good faith to take all such actions and do all such things as are reasonably necessary or desirable to enable and permit holders of Exchangeable Securities (other than the Fund and its Affiliates) to participate in such Tender Offer to the same extent and on an economically equivalent basis as the holders of Units, without discrimination. Without limiting the generality of the foregoing, the Fund will expeditiously and in good faith take all such actions and do all such things as are reasonably necessary or desirable to ensure that holders of Exchangeable Securities may participate in each such Tender Offer without being required to exchange of LP Units for Non Voting Common Shares Without Par Value, the exchange of Exchangeable Securities for Limited Voting Units and the exchange of Limited Voting Units for Units (or, if so required, to ensure that any such exchange, shall be effective only upon, and shall be conditional upon, the closing of such Tender Offer and only to the extent necessary to tender or deposit to the Tender Offer).

Section 6.5 Ordinary Market Purchases

For certainty, nothing contained in this Agreement shall limit the ability of the Fund (or any of its Subsidiaries including, without limitation, the Company or the Partnership) or Food Services or any of its Affiliates to make ordinary market purchases of Units in accordance with applicable laws and regulatory or stock exchange requirements.

ARTICLE 7 ISSUE OF ADDITIONAL UNITS BY THE FUND AND COMMON SHARES BY THE COMPANY AND LP UNITS BY THE PARTNERSHIP

Section 7.1 Issue of Additional Trust Units by the Fund

The Fund shall not issue, at any time or from time to time, any additional Trust Units if the proceeds of such issue are to be used to finance or refinance, directly or indirectly, or to provide funds to the Company, directly or indirectly and whether through the acquisition of additional Common Shares or otherwise, for the purpose of enabling the Fund or the Company to finance or refinance, directly and indirectly, the election by the Fund to require Food Services as Limited Partner to surrender all or some of the LP Units issued to Food Services on any Adjustment Date (“Adjustment Date” as defined in the Partnership Agreement) unless the Fund first offers such Trust Units to Food Services by written notice given to Food Services of the Fund’s intention to issue such additional Trust Units and the number thereof to so be issued, the proceeds to the Fund and the Company expected from such issue, the commission to be paid upon such issue and a summary of the terms of such issue. Food Services shall have the right to purchase the Trust Units so offered for the price (less such commissions) and on the terms set forth in such written notice and shall have 48 hours (excluding any time that is not on a Business Day) after the date such notice is given in which to take up and pay for all or any of the Trust Units so offered and after the end of such 48 hour period the Trust Units not so taken up may be issued to such Persons as the Trustees may be directed by the Board of Directors as the Board of Directors in their discretion, determine, for proceeds to the Fund and the Company (less such commissions), that is not lower, and on terms that are not materially less favourable to the Fund and the Company, than the price (less such commissions) at which and terms upon which such Trust Units were first offered to Food Services in the written notice given by the Company to Food Services under this Section 7.1.

Section 7.2 Issue of Additional Common Shares

(1) The Company shall not issue, at any time or from time to time, any additional Common Shares from treasury (except to Food Services under the Exchange Agreement), unless the Company shall first offer such shares to the Fund and Food Services by notice given to them of the Company's intention to issue additional shares and/or additional shares and the number and/or amount thereof to be so issued, and the price to be paid per share. Each of the Fund and Food Services shall have the right to purchase the shares so offered *pro rata* based upon the number of Common Shares held by each of them at the date notice is given of such offer. Each of the Fund and Food Services shall have 10 days after the date such notice is given in which to take up and pay for all or any of the shares so offered and after the end of such 10 day period, the shares not so taken up may be issued to such persons as the Board of Directors in their discretion determine (including to the Fund or Food Services) at the price and on the terms that such were offered to the Fund and Food Services, provided that such persons agree to be bound by this Agreement and to become parties hereto.

(2) Notwithstanding the provisions of Section 7.2(1), Food Services shall not, through the exercise of the right to purchase Common Shares pursuant to Section 7.2(1), be entitled to acquire any Voting Common Shares if, after giving effect to the issue of any of such Voting Common Shares to Food Services under Section 7.2(1), Food Services would hold more than 50% of the issued and outstanding Voting Common Shares.

Section 7.3 Issue of Additional LP Units

(1) The Partnership shall not issue, at any time or from time to time, any additional LP Units or GP Units (except to Food Services under the Partnership Agreement), unless the Partnership shall first offer such LP Units and GP Units to the Fund and Food Services by notice given to it of the Partnership's intention to issue additional LP Units and GP Units and the number and/or amount thereof to be so issued, and the price to be paid per LP Units and GP Units. The Fund and Food Services shall have the right to purchase the LP Units and GP Units so offered *pro rata* based upon the number of Common Shares held by each of them at the date notice is given of such offer. Each of the Fund and Food Services shall have 10 days after the date such notice is given in which to take up and pay for all or any of the LP Units and GP Units so offered and after the end of such 10 day period, the LP Units and GP Units not so taken up may be issued to such persons as the Board of Directors in their discretion determine (including to the Fund or Food Services) at the price and on the terms that such LP Units and GP Units were offered to the Fund and Food Services, provided that such persons agree to be bound by this Agreement and to become parties hereto.

ARTICLE 8 RESTRICTIONS OF TRANSFERS AND PIGGY-BACK RIGHTS

Section 8.1 Certain Definitions

For the purposes of this Article 8:

- (a) **“Change of Control”** means: (i) the direct or indirect acquisition by any person or persons acting jointly or in concert of beneficial ownership (**“acting jointly or in concert”** and **“beneficial ownership”** within the meaning of the Securities Act as of January 1, 2002) of fifty percent (50%) or more of the combined voting power of Food Services' then outstanding voting shares; (ii) the individuals who are members of the board of directors of Food Services on the date of this Agreement cease to constitute at least fifty percent (50%) of the board of directors of Food Services other than resulting

from the replacement of a director who resigns upon retirement; or (iii) the approval by shareholders of Food Services of (a) an amalgamation involving Food Services; or (b) a complete liquidation or dissolution of Food Services or the sale or other disposition of all or substantially all of the assets of Food Services if immediately after the completion of a transaction referred to in (a) or (b) the Related Parties, do not own directly or indirectly, more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation resulting from such amalgamation of the corporation that then owns the assets and undertaking previously owned by Food Services. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur solely because fifty percent (50%) or more of the combined voting power of Food Services' then outstanding securities is acquired by: (i) a trustee or other fiduciary holding securities for the benefit of a Related Party or the estate of a deceased Related Party; or (ii) any corporation which, immediately prior to such acquisition, is owned directly or indirectly by the Related Parties in the same proportion as their ownership of the shares of Food Services immediately prior to such acquisition, provided that such corporation becomes a party to this Agreement as a Related Party;

- (b) “**Offer**” means a bona fide offer or proposal to purchase Exchangeable Securities in writing from a Person that is not a Related Party or an Associate or an Affiliate of Food Services and that:
 - (i) is for cash consideration payable in full on completion;
 - (ii) contains the essential financial terms of such purchase;
 - (iii) may be subject to conditions precedent; and
 - (iv) need not be in a form that is enforceable;
- (c) “**other party**” for the purposes of Section 8.9 means the Fund if Food Services is the Seller, and means Food Services if the Fund is the Seller; and
- (d) “**Fair Value**” means, in respect of any Common Shares and at any time, the amount determined as the market value such Common Shares by a firm of recognized investment dealers of national standing in Canada chosen, by a Proposed Buyer and Food Services (and in the case of disagreement, the choice of the Proposed Buyer shall prevail).

Section 8.2 Restrictions on Transfer and Exchangeable Securities

Except as permitted or required by this Agreement, the Exchange Agreement, the Licence and Royalty Agreement or the Partnership Agreement, without prior written consent of the other party first being obtained:

- (a) the Company shall not issue any Company Securities;
- (b) the Partnership will not issue any GP Units or LP Units;
- (c) neither Food Services nor the Related Parties will enter into any agreement, which, if completed, would result in a Change of Control of Food Services;
- (d) Food Services will not Transfer any Exchangeable Securities except:

- (A) the transfer of LP Units to the Company in exchange for Non Voting Common Shares Without Par Value pursuant to the Exchange Agreement;
 - (B) to the Fund;
 - (C) in the event of a take-over bid for all of the Trust Units in which the offeror acquires 90% of all of the issued and outstanding Trust Units (including rights to the Trust Units to be issued upon exercise of the Exchange Rights), in which case Food Services will be obligated to sell its Exchangeable Securities to the successful offeror pursuant to the Declaration of Trust;
 - (D) in the event of an amalgamation, plan of arrangement or other business combination involving all of the shares of the Company;
 - (E) by the creation of a Security Interest, as security for bona fide indebtedness for or in respect of borrowed money of Food Services or a Subsidiary of Food Services, to a bank or other financial institution, provided that no grant of a Security Interest shall be made pursuant to this subsection until the holder of such Security Interest agrees in writing to be bound by and observe, and to bind any Person who may acquire such Exchangeable Securities in a realization proceeding to become a party to and to observe, the terms and provisions of this Agreement and that, upon any realization upon the Company's Securities, the Exchangeable Securities will be exchanged for Limited Voting Units, pursuant to the Exchange Agreement; or
 - (F) to a Subsidiary pursuant to Section 8.4;
- (e) the Fund will not Transfer any of the Common Shares or LP Units held by the Fund except: (i) in the event of an amalgamation, plan of arrangement or other business combination involving all of the shares of the Company; or (ii) by the creation of a Security Interest, as security for bona fide indebtedness for or in respect of borrowed money of the Fund or a Subsidiary of the Fund, to a bank or other financial institution, provided that no grant of a Security Interest shall be made pursuant to this subsection until the holder of such Security Interest agrees in writing to be bound by and observe, and to bind any Person who may acquire such Common Shares or LP Units in a realization proceeding to become a party to and to observe, the terms and provisions of this Agreement; and
- (f) neither the Fund nor Food Services will Transfer any Exchangeable Securities held by it unless the proposed transferee also agrees to purchase the Exchangeable Securities held by such other party at the Fair Value of such securities.

Section 8.3 Permitted Transfer

Notwithstanding the provisions of Section 8.2, but subject to Section 8.2(d), either the Fund or Food Services may offer to sell and Transfer all its right, title and interest in or to any of its Exchangeable Securities in accordance with the provisions of Section 8.4, Section 8.6, Section 8.9 or Section 8.10.

Section 8.4 Transfers to a Subsidiary

Notwithstanding the provisions of Section 8.2, but subject to Section 8.2(d)(i) and, provided that at the time of a Transfer permitted by this Section 8.4, the current assets of Food Services exceed its current liabilities by at least \$2 million, Food Services may at any time Transfer any of its Exchangeable Securities to a corporation that is a Subsidiary of Food Services and in which, all of the issued and outstanding shares, other than those held by Food Services, are held, directly or indirectly, by Persons who hold on the date hereof, directly or indirectly, shares of Food Services, provided that in the case of such Transfer to such a corporation that is not party to this Agreement (whether as an original signatory hereof or pursuant to an agreement entered into pursuant to this proviso), at or prior to the time of such transfer:

- (a) such corporation enters into an agreement in writing with the other parties herein in form satisfactory to them, acting reasonably, whereby such corporation will be party to and bound by the terms of this Agreement, and Food Services and such corporation continue to comply with Section 8.2(d)(i); and
- (b) the other parties hereto receive evidence satisfactory to them, acting reasonably, confirming that such corporation is a Subsidiary of Food Services and that its issued and outstanding shares, other than those held by Food Services, are held, directly or indirectly, by Persons who hold or held, directly or indirectly, shares of Foods Services, and that such agreement is a legal, valid and binding obligation of such corporation.

Section 8.5 Signatories Jointly and Severally Liable

Food Services will at all times be and remain jointly and severally liable with each corporation referred to in Section 8.4 who is party to this Agreement (whether as an original signatory hereof or pursuant to an agreement entered into pursuant to Section 8.4 for the observance and performance of the obligations under this Agreement), and Food Services will indemnify the other parties hereto against any loss, liability, damage, cost or expense incurred as a result of any failure by such corporation to comply with the provisions of this Agreement.

Section 8.6 Transfer by the Fund

Notwithstanding the provisions of Section 8.2, the Fund may Transfer any Exchangeable Security held by the Fund to any Unitholder pursuant to Section 6.5 of the Declaration of Trust and such Unitholder shall not be required to become a party to this Agreement.

Section 8.7 Company to Enforce

The Company will not accept for registration in its relevant books of record any transfers of any Company Security not made in accordance with the provisions of this Agreement and any transfer of any Company Security attempted to be made other than in accordance with the provisions of this Agreement shall be void and of no effect.

Section 8.8 Transfer of Common Shares

- (a) If less than all of the Common Shares held by the Fund are transferred to any person (other than a Unitholder), then such person and the Fund will, for all purposes of this Agreement, be considered to be and be treated as, one party and all of the rights of the

Fund and such person under this Agreement will be the joint rights of both the Fund and such person to be exercised in writing signed jointly by the Fund and such person.

- (b) If any of the Exchangeable Securities held by Food Services are transferred to any corporation referred to in Section 8.4, then such corporation and Food Services will, for all purposes of this Agreement, be considered to be, and be treated as, one party and all of the rights of Food Services and such corporation under this Agreement will be the joint rights of both Food Services and such corporation to be exercised in writing signed jointly by Food Services and such corporation.

Section 8.9 Sale of Shares - Piggy-back Provisions

If either the Fund or Food Services (the “**Seller**”) receives an Offer (a “**Purchase Offer**”) to purchase from the Seller all, but not less than all, of the Exchangeable Securities held by the Seller and such Purchase Offer is acceptable to the Seller, the Seller may accept the Purchase Offer and, after compliance with the following terms and conditions, sell the Exchangeable Securities held by such party to the person (the “**Proposed Buyer**”) making such Purchase Offer:

- (a) the Proposed Buyer shall have executed and delivered to the other party an Offer (a “**Piggy-back Offer**”) to purchase from the other party, all, but not less than all, of the Exchangeable Securities held by the other party at the time the Purchase Offer is made;
- (b) the terms and conditions of the Piggy-back Offer in respect of the Exchangeable Securities held by the other party shall be identical (on a per security basis) to the terms and conditions of the Purchase Offer in respect of the Exchangeable Securities held by the Seller and, without limiting the generality of the foregoing, the consideration for the Exchangeable Securities offered to the other party by the Proposed Buyer for the Exchangeable Securities to be purchased pursuant to the Piggy-back Offer shall be identical (on a per share basis) to that offered by the Proposed Buyer for the Exchangeable Securities to be purchased from the Seller pursuant to the Purchase Offer;
- (c) neither the Proposed Buyer nor any Affiliate of the Proposed Buyer or any Person acting jointly or in concert with the Proposed Buyer shall have entered into any collateral agreement, commitment or understanding with the Seller or any Affiliate of the Seller that has or would have the effect of providing to the Seller or any Affiliate of the Seller, consideration of greater value per Exchangeable Security or any additional or other consideration than the consideration per Exchangeable Security provided in the Purchase Offer;
- (d) if, within 30 days, of receipt by the other party of the Piggy-back Offer, the other party accepts the Piggy-back Offer, then the agreements constituted by the acceptance of the Purchase Offer and the Piggy-back Offer shall be closed contemporaneously in accordance with the respective terms and conditions thereof; and
- (e) if, within the applicable period set forth in Section 8.9(d) above, the other party does not accept the Piggy-back Offer, then the Seller may Transfer the Exchangeable Securities in accordance with the terms and conditions thereof. If the Seller fails to complete the transfer of such Exchangeable Securities within 180 days of delivery of the Piggy-back Offer, then the Seller shall not transfer Exchangeable Securities without first complying again with all applicable provisions of this Agreement including this Section 8.9.

Section 8.10 Change of Control of Food Services

(1) If either Food Services or any Related Party (in this Section 8.10 called the “**Seller**”) desires or proposes to enter into an agreement which, if completed, would result in a Change of Control of Food Services, Food Services or such Related Party, as the case may be, before entering into such an agreement will give the Fund and the Company notice in writing (such notice in this Section 8.10 called the “**ROFO Notice**”):

- (a) of the consideration to be paid for the shares of Food Services held directly and indirectly by the Related Parties or for the assets and undertaking of Food Services (in this Section 8.10 such shares or such assets and undertaking are referred to as the “**Subject Property**”), and all other material terms of a transaction by which the Seller desires or proposes to effect a Change of Control and which other terms will not be so unique, unusual or artificial that the Fund or the Company could not reasonably be expected to comply with the same; and
- (b) whether or not the Seller has received an Offer to purchase the Subject Property or proposes to sell the Subject Property to any particular Person and, if so, a copy of such offer and any other information regarding such Person as is known to the Seller or ascertainable by the Seller upon reasonable inquiry.

(2) The Company will have the right, at its election, exercisable at any time up to and including but not after the 30th day after the date on which it receives the ROFO Notice, to inform Food Services in writing that the Company desires to purchase the Subject Property for the price and on the other terms stated in the ROFO Notice by giving to the Seller notice in writing (in this Section 8.10(2) called the “**Buyer’s Notice**”) of such election, and if the Company delivers such election, the Seller and the Company will then attempt to negotiate the terms of an agreement for the purchase of the Subject Property on the terms set forth in the ROFO Notice.

(3) If, within 30 days after the receipt of the ROFO Notice, the Fund or the Company does not deliver the Buyer’s Notice to Food Services or, within 30 days after the Fund or the Company delivers the Buyer’s Notice to Food Services, the Fund or the Company does not enter into an agreement with Food Services or the Related Parties, as the case may be, for the purchase of the Subject Property then, subject to Section 8.10(4), Food Services or the Related Parties may enter into any agreement which, if completed, would result in a Change of Control of Food Services. If, however, Food Services or the Related Parties do not enter into such an agreement within 210 days after the date the ROFO Notice was given to the Fund or the Company by Food Services in respect of such transaction, or a transaction giving effect to a Change of Control permitted by the foregoing is not completed by first anniversary of the date upon which such ROFO Notice was first given, then neither Food Services nor the Related Parties may enter into an agreement which, if completed, would result in a Change of Control, unless all of the requirements of this Section 8.10 are again complied with, and Food Services and the Related Parties will continue to be bound by the provisions of this Section 8.10.

(4) The Seller will not be permitted to enter into any agreement which, if completed, would result in a Change of Control, or complete any transaction that results in a Change of Control pursuant to Section 8.10(3) if:

- (a) the amount of consideration that would be received by the direct and indirect shareholders of Food Services upon completion of the transaction contemplated by such agreement or such transaction, after taking into account the amount of income taxes that would be payable under the Tax Act by Food Services and the Related Parties if the

consideration payable in respect of the transaction that results in such Change of Control were immediately distributed to, or paid to, the Related Parties, is less than the amount of such consideration set forth in the ROFO Notice;

- (b) the terms of the transaction as contained in such agreement, when considered as a whole in a commercially reasonable manner having regard to the nature of the transaction and the summary of the proposed transaction as contained in the ROFO Notice, are not materially more favourable to Food Services and/or the Related Parties, as the case may be, than the summary of the terms of the proposed transaction contained in the ROFO Notice;
- (c) Food Services has acted in good faith under Section 8.10(3); and
- (d) on or before the completion of the transaction as contained in such agreement, the purchaser or other party to such agreement does not enter into an agreement with the Company agreeing to assume the obligations of Food Services under the General Security Agreement, the Governance Agreement, and the Licence and Royalty Agreement and the Tax Indemnity Agreement.

(5) If Food Services has complied with its obligations under this Section 8.10, then the Company, acting in good faith, will, upon the request of Food Services, confirm to Food Services or to such other Person or Persons as may be designated by Food Services, that Food Services has complied with the provisions of this Section 8.10 and that the Fund has no rights with respect to the Change of Control contemplated by or resulting from the compliance by Food Services of its obligations under this Section 8.10.

ARTICLE 9 FUND SUCCESSORS

Section 9.1 Certain Requirements 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, 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 entity resulting therefrom, unless:

- (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 the Fund under this Agreement; and
- (b) such transaction shall be upon such terms and conditions as substantially preserve and not 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.

Section 9.2 Vesting of Powers in Successor

Whenever the conditions of Section 9.1 have been duly observed and performed, the parties, if required by Section 9.1, shall execute and deliver the supplemental agreement provided for in Section 9.1(a) and thereupon the Fund Successor shall possess and from time to time may exercise each and every right and power of the Fund under this Agreement in the name of the Fund or otherwise and any act or proceeding by any provision of this Agreement required to be done or performed by the Trustees 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.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

Section 10.1 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 and by the other Operative Documents:

- (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 and the other Operative Documents to which it is or is to be a party;
- (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, 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; except (in each case) such authorizations as are required pursuant to applicable laws regarding the issuance of securities;

- (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; and
- (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) there is no action, suit, investigation or proceeding pending (or, to its knowledge, threatened) 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 by the Operative Documents to which it is a party or the performance by it of its obligations hereunder or thereunder, 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 or by the Operative Documents to which it is a party or the performance by it of its obligations hereunder or thereunder.

Section 10.2 Specific Representations and Warranties of the Company

The Company represents and warrants as follows and acknowledges that the other parties hereto are relying on such representations and warranties in connection with the transactions contemplated hereby and by the other Operative Documents:

- (a) the Company is a “**private company**” as defined in the Securities Act; and
- (b) the Exchangeable Securities which have been issued have been issued as fully paid and non-assessable with the legend provided for in Section 12.4.

Section 10.3 Specific Representations and Warranties of the Fund

The Fund represents and warrants as follows and acknowledges that the other parties hereto are relying on such representations and warranties in connection with the transactions contemplated hereby and by the other Operative Documents:

- (a) the Fund is a limited purpose trust formed pursuant to the Declaration of Trust;
- (b) the Trust Units which have been issued have been issued as fully paid and non-assessable.

Section 10.4 Specific Representations and Warranties of the Related Parties

The Related Parties specified below represent and warrant as follows and acknowledge that the other parties hereto are relying on such representations and warranties in connection with the transactions contemplated hereby and by the other Operative Documents:

- (a) the Related Parties each represent and warrant (jointly and severally) that A&W of Canada Inc. is the sole registered and beneficial shareholder of Food Services;
- (b) Climate Food Services Inc., Jefferson Mooney, Axel Rehkatsch, Paul Hollands, Graham Cooke and Western Corporate Enterprises Inc. each represent and warrant (jointly and

severally) that they are the registered, and, to their respective knowledge, beneficial shareholders of A&W of Canada Inc.; and

- (c) Weeo Gweat Enterprises Inc., Valflo Enterprises Inc., Wavin' in the Breeze Holdings Inc., Jefferson Mooney and Graham Cooke represent and warrant (jointly and severally) that they are the registered, and, to their respective knowledge, beneficial shareholders of Climate Food Services Inc.

ARTICLE 11 ADDITIONAL COVENANTS

Section 11.1 Information

Each of the Company, the Partnership and Food Services acknowledges that the Fund will be a reporting issuer under applicable laws regarding securities and in that regard will have continuous and other disclosure obligations. Each of the Company, the Partnership and Food Services shall provide to the Fund on a timely basis all information related to its respective business and its operations, results of operations and condition (financial or otherwise) and events which may reasonably be expected to have a significant effect on the foregoing or on the value or price of the Units so as to enable the Fund to comply with such obligations, including financial statements as if the Company, the Partnership and Food Services were each a reporting issuer under applicable securities laws, including:

- (a) a report of any material change that occurs in the affairs of the Company, the Partnership and Food Services, respectively, in form and content that it would file with applicable regulatory authorities if it were a reporting issuer;
- (b) all financial statements that the Company, the Partnership and Food Services, respectively, would be required to file with applicable regulatory authorities if it were a reporting issuer under applicable securities laws; and
- (c) and all such other information as the Company, the Partnership and Food Services, respectively, would be required to provide or disclose if it were a reporting issuer under applicable securities laws.

Food Services will (i) file "insider trading reports"; and (ii) obtain undertakings from directors and senior officers to file "insider trading reports" in respect of trades in Trust Units in accordance with applicable securities laws.

Section 11.2 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 and the other Operative Documents; (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 the other Operative Documents 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 and by the other Operative Documents, provided that nothing contained in this Section 11.2 shall obligate a party to do or execute any such thing or document which would require it to assume any greater obligations or forego any benefit to which it may be entitled under the Operative Documents.

Section 11.3 Compliance

The Company and each holder of Exchangeable Securities who are insiders of the Fund pursuant to applicable laws regarding securities covenant and agree to file insider trading reports with respect to the ownership of and trading in securities of the Fund and the Company.

ARTICLE 12 GENERAL

Section 12.1 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 no Exchangeable Securities (or 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.

Notwithstanding the termination of this Agreement, Article 3 shall survive and continue in full force and effect without limitation of time as a declaration of the sole shareholder, and not to be waived, amended or terminated without the approval of a majority of the Unitholders of the Fund.

Section 12.2 Changes in Capital of the Fund and the Company

At all times after the occurrence of any event contemplated pursuant to Section 3.6 or Section 3.7 of the Exchange Agreement or otherwise, as a result of which either the Units or 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 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 12.3 Dealing with Transfer Agents, Registrars, etc.

The Fund covenants that it will supply its 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 Limited Voting Units in fully registered form for the purpose of completing the exercise from time to time of the Automatic Exchange Right and the Automatic Exchange Right on Liquidation.

Section 12.4 Legend

Certificates representing Exchangeable Securities issued to Food Services shall bear the following legend:

“The securities represented by this certificate are subject to the provisions of the Amended and Restated Governance Agreement dated December 22, 2010 which contains restrictions on the sale, transfer or other disposition of the securities represented by this certificate and provisions relating to the management of A&W TRADE MARKS INC. and are entitled to the benefits of the Amended and Restated Exchange Agreement dated December 22, 2010 which grants the right to exchange these and other securities for Limited Voting Units of A&W REVENUE ROYALTIES INCOME FUND.”

Section 12.5 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 12.6 Amendments, Modifications

(1) Subject to Section 12.1, Section 12.2 and Section 12.7, this Agreement may not be amended, supplemented or modified except by agreement in writing executed by the Company, and the Fund and approved by the holders of the Common Shares and the LP Units in accordance with the rights, restrictions, limitations and conditions attached to such shares or LP Units; provided that if any such amendment, modification or supplement that adversely affects the agreements of the Related Parties in this Agreement, such amendment, modification or supplement must also be approved by the Related Parties.

(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 12.7 Ministerial Amendments

Notwithstanding the provisions of Section 12.6, the parties to this Agreement may in writing at any time and from time to time, without the approval of the holders of the Exchangeable Securities or the Unitholders, 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 the holders of the Exchangeable Securities or the Unitholders;
- (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 of each of the Company and the Trustees, it may be expedient to make, provided that each such 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 the holders of the Exchangeable Securities or the Unitholders; 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 of the Company 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 the holders of the Exchangeable Securities or the Unitholders.

Section 12.8 Meeting to Consider Amendments

The Company, at the request of the Fund, shall call a meeting or meetings of the holders of the Exchangeable Securities for the purpose of considering any proposed amendment or modification requiring approval pursuant to Section 12.6. Alternatively, the holders of the Exchangeable Securities may approve any such proposed amendment or modification by written resolution. Any such meeting or meetings shall be called and held or written resolution obtained in accordance with the articles of the Company, the rights, restrictions, limitations and conditions attached to the Exchangeable Securities, the Partnership Agreement and all applicable laws.

Section 12.9 Parties to this Agreement

Subject to Section 8.8(b), if Food Services, being permitted to do so, Transfers any Exchangeable Securities, assigns any of its rights and benefits under this 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 other than a Transfer by the creation of a Security Interest as contemplated in Section 8.2(d)(ii)(E) and any reference in this Agreement to "Food Services", to a "holder of Exchangeable Securities" (other than the Fund and its Affiliate) in this Agreement shall be deemed to be a reference to such Person or Persons.

Section 12.10 Enurement

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

Section 12.11 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. OR ANY RELATED PARTY

#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 12.12 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 12.13 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 12.14 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 12.15 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 either party.

Section 12.16 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 12.17 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 12.18 Time of Essence

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

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

The remainder of this page is intentionally blank

Signatures appear on the following pages

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

WESTERN CORPORATE ENTERPRISES INC.

By: “David A. Mindell”
Authorized Signing Officer

A&W OF CANADA INC.

By: “Paul Hollands”
Authorized Signing Officer

CLIMATE FOOD SERVICES INC.

By: “Jefferson Mooney”
Authorized Signing Officer

WEEO GWEAT ENTERPRISES INC.

By: “Jefferson Mooney”
Authorized Signing Officer

WAVIN' IN THE BREEZE HOLDINGS INC.

By: “Paul Hollands”
Authorized Signing Officer

VALFLO ENTERPRISES INC.

By: “Axel Rehkatsch”
Authorized Signing Officer

“Jefferson Mooney”
JEFFERSON MOONEY

“Paul Hollands”
PAUL HOLLANDS

“Axel Rehkatsch”
AXEL REHKATSCH

“Graham Cooke”
GRAHAM COOKE