

A&W TRADE MARKS INC.

as General Partner

- and -

A & W FOOD SERVICES OF CANADA INC.

as Limited Partner

A&W TRADE MARKS LIMITED PARTNERSHIP

**AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP**

December 22, 2010

**AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
A&W TRADE MARKS LIMITED PARTNERSHIP**

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AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
A&W TRADE MARKS LIMITED PARTNERSHIP

THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is dated for reference December 22, 2010 and is made by and between **A&W TRADE MARKS INC.**, as general partner, and **A & W FOOD SERVICES OF CANADA INC.**, as limited partner and amends and restates as of the date hereof the Amended and Restated Limited Partnership Agreement made as of January 23, 2009 between A & W Food Services of Canada Inc. and A&W Trade Marks Inc., as heretofore amended and supplemented and in effect (the “**Original Partnership Agreement**”).

WHEREAS A&W Trade Marks Limited Partnership was formed on December 15, 2008 under the name “Future Restaurant Concepts Development Limited Partnership” with A & W of Canada Inc. as the general partner and A&W Food Services of Canada Inc. as the limited partner;

AND WHEREAS on January 20, 2009 A&W of Canada Inc. resigned as general partner of the Partnership (defined below) and transferred all of its interest in the Partnership to A&W Trade Marks Inc. (“**TMI**”), who became the general partner of the Partnership;

AND WHEREAS the Partners (defined below) changed the name of the Partnership from “Future Restaurant Concepts Development Limited Partnership” to “A&W Trade Marks Limited Partnership”;

AND WHEREAS pursuant to a reorganization (the “**Reorganization**”) of the Fund and TMI approved by holders of Units of the Fund at the Annual General Meeting of the Fund held on May 4, 2010, TMI continued under the British Columbia *Business Corporation Act* and altered its authorized 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 TMI pursuant to the note indenture dated as of February 1, 2002 between TMI 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 TMI were exchanged for Non Voting Common Shares without Par Value; (iii) the issued and outstanding Class B Shares of TMI 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;

WITNESS THAT, in consideration of the covenants contained in this Agreement, the parties agree to amend and restate the Original Partnership Agreement, which Original Partnership Agreement, as amended and restated, is referred to as the “**Partnership Agreement**” as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“**Act**” means the *Partnership Act* (British Columbia), as the same may from time to time be amended and in effect;

“**Actual System Sales**” for any period and for any A&W Outlets means the Gross Sales by such A&W Outlets for such period contained in a statement certified by the chief financial officer of Food Services that such statement has been prepared in accordance with Canadian generally accepted accounting principles, and in the case of the definition of “**Determined Amount**” accompanied by a report of the Auditor addressed to the Partnership and Food Services to the effect that such statement presents fairly, in all material respects, the Gross Sales by such A&W Outlets for such period in accordance with Canadian generally accepted accounting principles.

“**Acquisition Agreement**” means the agreement dated February 15, 2002 between Food Services, TMI and other persons by which the Food Services agreed to transfer and sell the A&W Marks to TMI as amended and in effect on the date hereof;

“**Additional A&W Outlets**” at any time means the A&W Outlets that have been added to the Royalty Pool and for which an Initial Determined Amount has been determined.

“**Adjustment Date**” means January 5 of each calendar year;

“**Affiliate**” means, with respect to any person, any other person controlling, controlled by, or under common control with such first person and “control” of any person or similar expressions means the power to direct the management of such person;

“**Annual Distribution**” for any Reporting Period and at any Determination Date means the amount distributed in cash by the Fund to the Unitholders in the Reporting Period ending immediately prior to such Determination Date;

“**Auditor**” means a firm of chartered accountants of nationally recognized standing in Canada appointed by the General Partner as auditor for the Partnership for the time being, whether or not the services of such firm of chartered accountants are regularly retained by the Limited Partner or any of its Affiliates;

“**Available Cash**” means, in respect of any period, the amount, if any, which the General Partner determines to be the amount by which:

- (a) the aggregate of:
 - (i) revenue earned by the Partnership during or in respect of such period; and
 - (ii) amounts set aside as Reserves at the commencement of such period;

exceeds:

- (b) the aggregate of:
 - (i) payments by the Partnership in respect of such period on account of principal, interest and other amounts in respect of any Financing;
 - (ii) expenditures of the Partnership in respect of such period (including operating expenses but, for greater certainty, not including distributions of cash to Partners); and
 - (iii) amounts set aside as Reserves at the end of such period;

all as calculated without duplication;

“**A&W Outlet**” means any restaurant owned and operated by Food Services or one of its Subsidiaries and any restaurant directly or indirectly licenced by Food Services or one of its Subsidiaries to use and display in its operation the trade mark “A&W” or any of the A& W Marks;

“**A&W Marks**” means the trade-marks and other intellectual property rights acquired by the Partnership from TMI pursuant to the Contribution Agreement dated on or about the date hereof among TMI, the Partnership and Food Services, and defined as the “A&W Marks” in such agreement and all other rights and licences set forth therein;

“**Board of Directors**” means the board of directors for the time being of the General Partner and “director” means any member of the Board of Directors;

“**Business Day**” means every day other than a Saturday, Sunday, or statutory holiday, when banks are not generally open in the City of Vancouver, British Columbia, for the transaction of banking business;

“**Certificate**” means the Certificate of Limited Partnership in respect of the Partnership filed pursuant to the Act on December 15, 2008 as amended by an Amended Certificate of Limited Partnership in respect of the Partnership filed pursuant to the Act, on January 21, 2009 and, where applicable, includes amendments thereto;

“**Charge**” means any interest in any property, assets or undertaking, or the income or profits therefrom, securing an obligation owed to, or a claim by, a person other than the owner (which for the purposes hereof will include a possessor under a title retention agreement and a lessee under a lease hereinbelow described) of such property, assets or undertaking, whether such interest is based on law, statute or contract, and including, but not limited to, any security interest, mortgage, pledge, lien, charge, transfer, assignment, encumbrance or analogous instrument in, of, or on any property, asset or undertaking, or the income or profits therefrom, securing such obligation or claim, as well as a title retention agreement and a lessor’s interest under a lease which in accordance with generally accepted accounting principles which are applicable to the Partnership would be capitalized on a balance sheet of the owner of such property, asset or undertaking;

“**Contribution Agreement**” means the agreement dated on or about the date hereof by which TMI, as General Partner, contributes the A&W Marks and other rights and licences to the Partnership, subject to the security interests granted to HSBC Bank Canada under the general security agreement and intellectual property security agreement dated March 23, 2004 between TMI and such bank and the Licence and Royalty Agreement;

“**Current Accounts**” means the accounts established pursuant to Section 5.3;

“**Current Market Price of a Unit**” means, as at any date or for any period, the weighted average price per Unit 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 each period.

“**Declaration of Trust**” means the Amended and Restated Declaration of Trust dated December 22, 2010 governing the Fund as amended and supplemented from time to time and in effect;

“**Designated Capital**”, at any time, means, in respect of each LP Unit or GP Unit, the amount of the Subscription Price that has been paid in cash or contributed in property to the Partnership in respect of such Partnership Unit at or prior to such time less the amount of cash or the agreed value of property which has been paid or distributed in respect of such Partnership Unit pursuant to Section 6.3 at or prior to such time;

“**Designated Capital Accounts**” means the accounts established pursuant to Section 5.1;

“**Determination Date**” means the first day of a Reporting Period;

“**Determined Amount**” means, in respect of a Reporting Period, the amount determined by the following formula:

$$92.5\% \times 3\% \times \frac{(\text{ASS-RSS})}{\text{UY}}$$

Where:

- (a) ASS is the Actual System Sales for the Additional A&W Outlets for such Reporting Period;
- (b) RSS is the Replacement System Sales as at the Determination Date of such Reporting Period; and
- (c) UY is the Unit Yield as at the Determination Date of such Reporting Period.

“**Exchange Agreement**” means the amended and restated exchange agreement dated December 22, 2010 among the Fund, Food Services, TMI and the Partnership as amended and supplemented from time to time and in effect;

“**Financing**” means the Loan and any other credit facility granted or extended to, or investment by way of debt (or the purchase of debt) in, the Partnership whereby or pursuant to which money, credit or other financial accommodation has been or may be provided, made available or extended to the Partnership by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation, and includes any and all trust deeds, indentures, mortgages, bonds or debentures (whether issued and delivered as security or sold to a purchaser), security agreements and other deeds, instruments or documents in respect thereof;

“**Fiscal Year**” means the fiscal year of the Partnership as determined pursuant to Section 2.6;

“**Food Services**” means A & W FOOD SERVICES OF CANADA INC., a corporation governed by the *Canada Business Corporations Act*;

“**Forecast System Sales**” in respect of any Proposed Additional A&W Outlets for any Reporting Period means the amount of the System Sales by such Proposed Additional A&W Outlets for such Reporting Period as forecast by Food Services on the basis of assumptions approved by the General Partner acting reasonably accompanied by a review engagement report from the Auditors to the effect that they have reviewed the determination of Forecast System Sales as forecast by Food Services in respect of such Proposed Additional A&W Outlets and that nothing has come to

their attention that causes them to believe that such determination is not, in all material respects, in accordance with this Agreement;

“**Fund**” means A&W REVENUE ROYALTIES INCOME FUND, an unincorporated open-ended limited purpose trust created under the laws of British Columbia and governed by the Declaration of Trust;

“**General Partner**” means TMI in its capacity as a general partner of the Partnership, any Related Party to whom TMI assigns any GP Units, and any other person who is admitted to the Partnership as a general partner in replacement of TMI pursuant to the provisions hereof (whereupon the reference to TMI in this definition will be read as references to such person);

“**Governance Agreement**” means the amended and restated governance agreement dated December 22, 2010 among the Fund, Food Services, the Partnership, TMI and the other parties thereto providing for, among other things, the governance of TMI as amended and supplemented from time to time and in effect;

“**GP Units**” means ordinary general partner units of the Partnership;

“**Gross Sales**” has the meaning attributed to such term in the Licence and Royalty Agreement.

“**Initial A&W Outlet Period**” has the meaning attributed to such term in the Licence and Royalty Agreement;

“**Initial Determined Amount**” means, in respect of a Reporting Period, the amount determined at the Determination Date for such Reporting Period by the following formula:

$$92.5\% \times 3\% \times \frac{(\text{FSS-RSS})}{\text{UY}}$$

Where:

- (a) FSS is the Forecast System Sales for the Proposed Additional A&W Outlets for such Reporting Period;
- (b) RSS is the Replacement System Sales as at the Determination Date of such Reporting Period; and
- (c) UY is the Unit Yield as at the Determination Date of such Reporting Period.

“**ITA**” means the *Income Tax Act* (Canada), including the regulations thereunder as amended from time to time and in effect;

“**Licence and Royalty Agreement**” means the amended and restated licence and royalty agreement dated December 22, 2010 between Food Services and the Partnership, as amended and supplemented from time to time and in effect;

“**Limited Partner**”, at any time, means a person who is shown on the Register as a limited partner of the Partnership at such time;

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

“**LP Units**” means limited partner units of the Partnership.

“**Loan**” means all loans made to TMI by a financial institution carrying on business in Canada and all renewals and replacements thereof;

“**Make-whole Carryover Account**” has the meaning attributed to such term in the Licence and Royalty Agreement;

“**Net Income**” or “**Net Loss**”, in respect of any period, means, respectively, the net income or net loss (including the amount of the gain or loss of the Partnership from the disposition of any of the property, assets and undertaking of the Partnership) of the Partnership in respect of such period determined in accordance with generally accepted accounting principles (except that depreciation and amortization will be disregarded in the determination thereof);

“**Non Voting Common Shares**” means the Non Voting Common Shares without par value in the capital of TMI 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 TMI that such shares may become as a result of any amalgamation;

“**Partners**” means the General Partner and the Limited Partners and “**Partner**” means any one of the Partners;

“**Partnership**” means the limited partnership originally formed under the name “Future Restaurant Concepts Limited Partnership” formed by the filing of the Certificate pursuant to the Act and subsisting pursuant to the laws of the Province of British Columbia;

“**Partnership Units**” means, collectively, GP Units and LP Units;

“**person**” means an individual, body corporate with or without share capital, partnership, joint venture, unincorporated association, syndicate, sole proprietorship, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission or department and the heirs, beneficiaries, executors, legal representatives or administrators of an individual;

“**Prime Rate**” means the floating rate of interest established by such Canadian chartered bank as may be designated by the General Partner from time to time as a reference rate for determining rates of interest for Canadian dollar loans made in Canada by such bank and payable on demand (commonly known as its “prime rate”);

“**Proposed Additional A&W Outlet**” means, at any time, an A&W Outlet that is not included in the Royalty Pool at such time and that has been open for business for at least 60 consecutive days prior to such time.

“**Register**” means a register maintained by the General Partner to record the names and addresses of each limited partner and general partner of the Partnership, the number of LP Units held by each limited partner of the Partnership, the number of GP Units held by the General Partner and particulars of the registration and assignment of LP Units and GP Units;

“**Related Party**” means Food Services or any of its Affiliates;

“**Replacement System Sales**” at any Determination Date means the lesser of:

- (a) the balance of the Make-whole Carryover Account on such Determination Date; and
- (b) the Forecast System Sales of the Proposed Additional A&W Outlets for which an Initial Determined Amount is being calculated on such Determination Date;

“**Reporting Period**” means commencing on the first day of the 45th week of each Fiscal Year and ending at the end of the 44th week of the immediately following Fiscal Year;

“**Reserves**” means reasonable reserves which the General Partner determines are necessary or desirable to withhold from any distribution to Partners having regard to the current and anticipated cash requirements of the Partnership, including for operating expenses, payments in respect of any Financing or other commitments and obligations, and reserves to ensure compliance with the agreements to which the Partnership is subject (including any Financing and including the payment obligation set out in Section 6.6(b) hereof);

“**Restaurants**” includes restaurants, kiosks, drive-through outlets and other facilities selling food and beverage products, intended for point-of-sale or take-out consumption, including catered food and beverage products;

“**Royalty**” means the royalty and other amounts payable by Food Services under the Licence and Royalty Agreement;

“**Royalty Pool**” means the “**Royalty Pool**” established under, and defined as such in, the Licence and Royalty Agreement;

“**Special Resolution**” means a resolution of the Board of Directors that is:

- (a) consented to by each of the General Partner and the Limited Partner; or
- (b) unless otherwise specified herein, if either the General Partner or the Limited Partner do not consent, approved by a Unitholders Ordinary Resolution;

“**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**” means the Stock Exchange where the greatest volume of Units traded during the relevant period;

“**Subsidiary**” means a corporation which is directly or indirectly controlled by Food Services, where “control” has the meaning attributed to such term in the *Canada Business Corporations Act*;

“**Subscription Price**”, in respect of a LP Unit or a GP Unit, means the amount of cash to be paid or the agreed value of property to be contributed to the Partnership in respect of such unit;

“**System Sales**” has the meaning attributed to such term in the Licence and Royalty Agreement;

“**Taxable Income**” or “**Tax Loss**”, in respect of any fiscal period, means, respectively, the amount of income or loss of the Partnership for such period as determined by the General Partner in accordance with the provisions of the ITA (including the amount of the taxable capital gain or

allowable capital loss from the disposition of each capital property of the Partnership as determined by the General Partner in accordance with the provisions of the ITA);

“**TMI**” means A&W TRADE MARKS INC., a corporation governed by the *British Columbia Business Corporations Act*;

“**Unit**” means a unit of the Fund;

“**Unit Certificate**” means:

- (a) a certificate substantially in the form set out in SCHEDULE "C" hereto evidencing ownership by a person of one or more LP Units; or
- (b) a certificate substantially in the form set out in SCHEDULE "D" hereto evidencing ownership by the General Partner of one or more GP Units;

“**Unitholders’ Ordinary Resolution**” means a resolution passed by a majority of more than 50% of the votes cast, either in person or by proxy at a meeting of holders of Units, called for the purpose of approving such resolution, or approved in writing by the holders of more than 50% of the Units, on a fully diluted basis, entitled to be voted on such resolution;

“**Unitholders’ Special Resolution**” means a resolution passed by a majority of more than $66\frac{2}{3}\%$ of the votes cast, either in person or by proxy at a meeting of holders of Units, called for the purpose of approving such resolution, or approved in writing by the holders of more than $66\frac{2}{3}\%$ of the Units, on a fully diluted basis, entitled to be voted on such resolution

“**Unit Yield**” at any Determination Date means the Annual Distribution for the Reporting Period ending immediately prior to such Determination Date divided by the Current Market Price of the Units on such Determination Date, If, in any period for which the Unit Yield is to be determined, the rate of income taxes paid by the Fund or TMI is changed (including by the imposition of such taxes) then appropriate adjustments will be made to the Unit Yield to reflect the amounts of such income taxes and the period or periods for which such income taxes are to be paid.

“**Voting Common Shares**” means the Voting Common Shares without par value in the capital of TMI 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 TMI that such shares may become as a result of any amalgamation; and

“**weighted average price**” means, for any period, 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.

1.2 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires:

- (1) “this Agreement” means this amended and restated agreement of limited partnership as it may from time to time be amended and in effect, and includes the Schedules attached hereto;

- (2) any reference in this Agreement to a designated "Article", "Section" or other portion, is a reference to the designated Article, Section or other portion of this Agreement;
- (3) the terms "herein", "hereof", "hereunder" and other similar expressions refer to this Agreement as a whole and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplementary or ancillary hereto;
- (4) the headings are for convenience or reference only and will not affect the construction or interpretation hereof;
- (5) words importing the singular will include the plural, and vice versa, and words importing the use of any gender will include all genders and, where applicable, a corporation, the word "or" is not exclusive and the word "including" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;
- (6) any references to a statute or regulation includes and is a reference to such statute or regulation in effect on the date of this Agreement as it may be amended, re-enacted, or superseded from time to time;
- (7) all accounting terms not otherwise defined herein have the meanings assigned to them, and all calculations to be made hereunder are to be made, in accordance with generally accepted accounting principles which are applicable to the Partnership;
- (8) all dollar amounts are stated and are to be paid in lawful currency of Canada;
- (9) persons are not dealing at "arm's length" with one another if they would not be dealing at "arm's length" with one another for purposes of the ITA in effect on the date of this agreement; and
- (10) where the time for doing an act falls or expires on a day which is not a Business Day, the time for doing such act is extended to the first day which is a Business Day.

1.3 Governing Law

This Agreement and all matters arising hereunder will be governed by and construed in accordance with the laws of the Province of British Columbia and, except as otherwise provided herein, all disputes and claims, whether for specific performance, injunction, declaration or otherwise howsoever arising, both at law and in equity, out of or in any way connected with this Agreement, will be referred to the courts of the Province of British Columbia and, by execution and delivery of this Agreement, each party hereto irrevocably submits to such jurisdiction.

1.4 Incorporation of Schedules

The following Schedules are attached to this Agreement and form an integral part of this Agreement:

SCHEDULE "A"	Form of Subscription
SCHEDULE "B"	Form of Power of Attorney
SCHEDULE "C"	Form of LP Unit Certificate
SCHEDULE "D"	Form of GP Unit Certificate
SCHEDULE "E"	Form of Assignment

ARTICLE 2 GENERAL

2.1 Amendment and Restatement

Effective the date of this Agreement, the terms, conditions and provisions of this Agreement amend, restate and supersede in their entirety the terms, conditions and provisions of the Amended and Restated Limited Partnership Agreement made as of January 23, 2009, as amended, governing the Partnership as in effect on the date hereof and this Agreement will govern the Partnership.

2.2 Formation

The Partnership was formed on December 15, 2008 by filing a certificate of limited partnership pursuant to the Act.

2.3 Name

The Partnership will carry on business under the name “**A&W Trade Marks Limited Partnership**” or such other name or names as the General Partner may determine from time to time.

2.4 Business

The business purpose of the Partnership is the ownership of the A&W Marks, the taking of actions consistent with the Licence and Royalty Agreement to exploit, to the fullest extent possible, the use of the A&W Marks by Food Services and the collection of the Royalty payable to the Partnership under the Licence and Royalty Agreement.

2.5 Registered Office and Principal Place of Business

The registered office of the Partnership will be located at 700 West Georgia Street, Vancouver, British Columbia V7Y 1B3 or any other address in Vancouver, British Columbia as the General Partner may designate in writing from time to time to the other Partners. The principal place of business of the Partnership will be in Vancouver, British Columbia unless and until changed in the sole discretion of the General Partner. The General Partner will notify all other Partners of any change of the principal place of business of the Partnership within 30 days after the effective date thereof.

2.6 Fiscal Year

The first fiscal year of the Partnership shall commence on the date of formation of the Partnership and end on the date on which the A&W Marks are transferred to the Partnership pursuant to the Contribution Agreement. Each subsequent fiscal year of the Partnership shall end on January 25 of each calendar year. The admission or retirement of any Partner will not result in the alteration or termination of the fiscal period, notwithstanding that adjustments may be made to, or affect, the Designated Capital Account or Current Account of any Partner in respect of any such admission or retirement, subject to the provisions of the ITA.

2.7 Filing of Amendments to Certificate

The General Partner will execute and file an amendment to the Certificate from time to time when required under the Act (including to reflect any return of Designated Capital of any Limited Partner provided for herein), and any other certificate, document or instrument required under the laws of the

Province of British Columbia. The General Partner and each Limited Partner at the request of the General Partner, will execute and deliver as promptly as possible any document that may be necessary or desirable to comply with any law or regulation of the Province of British Columbia or any other jurisdiction for the continuation, good standing and business of the Partnership. The General Partner will take all necessary action on the basis of information available to them in order to maintain the status of the Partnership as a limited partnership.

2.8 Term

The Partnership will continue until it is dissolved in accordance with the provisions of Article 10.

ARTICLE 3 RELATIONSHIP BETWEEN PARTNERS

3.1 Status of General Partner

The General Partner represents and warrants to and covenants with each other Partner that the General Partner:

- (1) is and will continue to be a corporation incorporated and existing under the laws of the Province of British Columbia and is and will be a valid and subsisting corporation under the laws of, and qualified to carry on business in, the Province of British Columbia and such other jurisdictions in which such qualification may be necessary;
- (2) has and will continue to have the corporate capacity to act as the General Partner and to perform its obligations under this Agreement and that such obligations do not and will not conflict with or constitute a default under its constating documents; and
- (3) is and will be resident in Canada within the meaning of the ITA and is not and will not be a “non-Canadian” within the meaning of the *Investment Canada Act*.

3.2 Status of Each Limited Partner

Each Limited Partner represents and warrants to and covenants with each other Partner that such Limited Partner:

- (1) has and will continue to have the capacity and competency to enter into and be bound by this Agreement and will, at the request of the General Partner, provide such evidence of compliance with such representation, warranty and covenant as the General Partner may request; and
- (2) is and will be resident in Canada within the meaning of the ITA and is not and will not be a “non-Canadian” within the meaning of the *Investment Canada Act*.

3.3 Limitations on Authority of Limited Partners

No Limited Partner will or will be entitled to:

- (1) take part in the administration, operation, management or control of the business of the Partnership;

- (2) transact any business on behalf of the Partnership or make any commitment on behalf of, or otherwise obligate or bind, the Partnership;
- (3) execute any document which binds or purports to bind the Partnership or any other Partner;
- (4) purport to have the power or authority to bind the Partnership or any other Partner;
- (5) have any authority to undertake any obligation or responsibility on behalf of the Partnership;
- (6) bring any action for partition or sale or otherwise in connection with any interest in any of the property and assets of the Partnership, whether real or personal, or file or register or permit to be filed or registered or remain undischarged, against any of the property and assets of the Partnership, any Charge in respect of the interest of such Partner in the Partnership; or
- (7) compel a partition, judicial or otherwise, of any of the property and assets of the Partnership distributed to the Partners in kind.

Any act taken by an officer or employee of the Limited Partner in respect of the matters referred to in subsections (1), (2), (3) or (4) above by such officer or employee of the Limited Partner, but not in his or her capacity as such, will not be considered to be a contravention of any such sub section.

3.4 Unlimited Liability of General Partner

The General Partner will have unlimited liability for the indebtedness, liabilities and obligations of the Partnership.

3.5 Limited Liability of Limited Partners

Subject to the provisions of the Act, the liability of a Limited Partner for the indebtedness, liabilities and obligations of the Partnership will be limited to the Subscription Price required pursuant to the provisions hereof paid or contributed in respect of the LP Units held by such Partner and a Limited Partner will not be liable for any further claims, assessments or contributions to the Partnership. The Partnership will operate in a manner as to ensure to the greatest extent possible the limited liability of the Limited Partners.

3.6 Indemnity of Limited Partners

The General Partner will indemnify and hold harmless each Limited Partner from any costs, damages, liabilities or expenses suffered or incurred by such Limited Partner because the liability of such Limited Partner is not limited in the manner provided in Section 3.5 unless the liability of such Limited Partner is not so limited as a result of, or arising out of, any act or omission of such Limited Partner.

3.7 Exercise of Powers and Discharge of Duties

The General Partner will exercise its powers and discharge its duties under this Agreement honestly, in good faith and in the best interests of the Partnership and in connection therewith will exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

3.8 Limitation of Liability of General Partner

Subject to Section 3.7, the General Partner will not be liable to a Limited Partner for any act, omission or error in judgement taken or made hereunder by the General Partner honestly and in good faith in the conduct of the business of the Partnership. The General Partner may rely and act upon and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other document or instrument believed by it to be genuine and to have been signed or presented by the proper party. The General Partner may rely and act upon any statement, report or opinion prepared by, or any advice received from, the legal counsel, accountants, investment bankers, experts or other professional advisors of it or the Partnership and, provided it exercised reasonable care in selecting such advisors, the General Partner will not be responsible or held liable for any loss or damage resulting from so relying or acting if it reasonably believed the advice to be within the area of professional competence of the person from whom it was received and it acted honestly and in good faith in relying thereon.

3.9 Indemnity of General Partner

The Partnership will indemnify and hold harmless the General Partner and its directors, officers, shareholders, employees and agents, from any costs, damages, liabilities or resulting from or arising out of any act or omission or error of judgement of the General Partner or any of its directors, officers, shareholders, employees and agents, on behalf of the Partnership or in furtherance of the business of the Partnership, unless, in the case of any such person, such costs, damages, liabilities or expenses result from or arise out of any act or omission or error of judgement as a result of which, in the case of the General Partner such person is adjudged to have been guilty of gross negligence or wilful misconduct or to have failed to act honestly and in good faith or to have breached a fiduciary duty to the Limited Partners or, in the case of any of its directors, officers, shareholders, employees and agents, such person has failed to act honestly, in good faith and in the best interests of the Partnership. This indemnity is in addition to and not a limitation of any other obligation of the Partnership to the General Partner including the obligation of the Partnership to reimburse or repay the General Partner on account of costs, outlays, disbursements and expenditures incurred by or on behalf of the General Partner but this indemnity will not be in derogation of the provisions of Section 3.7.

3.10 Other Activities of Limited Partners

A Limited Partner may engage in, or hold an interest in, any other business, venture, investment or activity whether or not similar to or competitive with the business of the Partnership, subject, in the case of Food Services, to the restrictions on the activities of Food Services set out in the Licence and Royalty Agreement.

3.11 Other Activities of General Partner

The General Partner will not be required to devote its efforts or that of any of its officers or employees exclusively to or for the benefit of the Partnership.

ARTICLE 4 PARTNERSHIP UNITS

4.1 Number of Units in Partnership

The interests in the Partnership of the General Partner are divided into and represented by GP Units and LP Units. Following the transfer of the A&W Marks to the Partnership pursuant to the Contribution

Agreement, there were 999 GP Units and one LP Unit issued and outstanding. Except pursuant to the Exchange Agreement, the Governance Agreement, and the provisions of Section 6.6, no Partnership Units in addition to those referred to in this Section 4.1 will be issued without the consent of all Partners.

4.2 Entitlement to Allocations and Distributions

The General Partner and each Limited Partner will have the right to allocations of Net Income, Net Loss, Taxable Income and Tax Loss and distributions from the Partnership in respect of each GP Unit or LP Unit held by such Partner as is set forth in this Agreement.

4.3 Unit Certificates

A Partner is entitled, without charge, to a Unit Certificate or Unit Certificates evidencing the Partnership Units held by such Partner.

4.4 Subscription Form

A person may subscribe for Partnership Units by delivering to the General Partner or to such other person or persons at such address as the General Partner may prescribe a subscription in the form set out in Schedule "A" hereto or such other form as may be prescribed or accepted by the General Partner (either in respect of such person or otherwise), in each case completed and executed in a manner acceptable to the General Partner, and such other instruments and documents as the General Partner may require in connection with such subscription; provided that no subscription may be accepted that does not include a representation, warranty and covenant of the subscriber to the effect set out in Section 3.2, provided that no Subscription Form is required in respect of the LP Units to be issued to the Limited Partner pursuant to Section 6.6.

4.5 Subscription for Partnership Units

No subscription may be made or will be accepted for a fraction of a Partnership Unit. Except as required to comply with the terms of the Exchange Agreement and the Governance Agreement or Section 6.6, the General Partner will not accept any subscription for Partnership Units without the consent of all Partners. If, for any reason, a subscription for Partnership Units is not accepted or such subscription is accepted but the subscriber is not entered on the Register as a limited partner of the Partnership, the General Partner will cause the Partnership to refund to the subscriber the Subscription Price paid by such subscriber for such Partnership Units. The General Partner will be deemed to have accepted a subscription for Partnership Units when a Unit Certificate in the name of such subscriber representing the number and class of Partnership Units for which such subscriber has subscribed is delivered to such subscriber. Upon the acceptance of such subscription, or upon the issuance of LP Units pursuant to Section 6.6, the General Partner will amend the Register to show the name of such subscriber as a partner of the Partnership and the number and class of Partnership Units held by such subscriber as a result of such subscription.

4.6 Delivery of Unit Certificate

Upon entering a subscriber for Partnership Units on the Register, the General Partner will deliver to such subscriber a Unit Certificate specifying the number and class of Partnership Units subscribed for.

4.7 Register and Other Records

The General Partner will:

- (1) maintain a registered office for the Partnership;
- (2) maintain the Register;
- (3) maintain such other records in respect of the Partnership as may be required by law;
- (4) make on behalf of the Partnership all recordings or filings with any governmental authority that are required to be made by the Partnership; and
- (5) keep:
 - (a) a copy of the Certificate; and
 - (b) a copy of this Agreement.

The General Partner will be authorized to make such rules and regulations as the General Partner may from time to time consider necessary or desirable in connection with the foregoing, including the form and content of the Register, the times when the Register may be closed, the establishment of record dates and the documentation required to record assignments of Partnership Units and other matters.

4.8 Assignment of Partnership Units

Except as expressly permitted or required pursuant to Section 6.8 or Section 7.11 hereof, the Exchange Agreement or the Governance Agreement, a Partnership Unit may not be assigned to any person (in this Section 4.8 called an “**Assignee**”), and no Assignee will be entitled to be admitted to the Partnership as a Partner in respect of any Partnership Unit pursuant to an assignment thereof:

- (1) except with the written consent of the General Partner (which consent the General Partner will be entitled to withhold in its sole discretion); and
- (2) unless:
 - (a) the Assignee has delivered to the General Partner an assignment in respect of such Partnership Unit in the form attached hereto as Schedule “E”, completed and executed in a manner acceptable to the General Partner, the Unit Certificate representing such Partnership Unit and such other instruments and documents as the General Partner may request in connection with such assignment; and
 - (b) the provisions of this Section 4.8 have been complied with in respect of such assignment.

When, pursuant to the provisions hereof, any Partnership Units are assigned, the General Partner will immediately thereafter, and in all cases prior to the end of the Fiscal Year, record such assignment by amending the Register to show the name of the Assignee as a partner of the Partnership in respect of such Partnership Units and deliver to the Assignee a Unit Certificate in the name of the Assignee specifying the number and class of Partnership Units assigned will be authorized to admit the Assignee to the Partnership as a partner and the Partners hereby consent to the admission of the Assignee to the Partnership as a partner without any further consent or authorization of any Partner. No assignment of a

Partnership Unit will be effective until such assignment is recorded on the Register. No assignment of a fraction of a Partnership Unit may be made or will be recognized or recorded on the Register. Upon any assignment of Partnership Units becoming effective, the Assignee will be subject to the obligations and entitled to the rights of a Partner under this Agreement, including any obligation to make contributions required to be made in respect of such Partnership Units. Except with the prior written consent of the General Partner (which consent the General Partner will be entitled to withhold in its sole discretion), the assignment of any Partnership Units will not release the assignor thereof or any other person from any obligations under this Partnership Agreement, including any obligation to make contributions required to be made in respect of such Partnership Units.

4.9 Death, Mental Incompetence, Bankruptcy or Insolvency; Renunciation of Interest

Where a person becomes entitled to a Partnership Unit on the death, mental incompetence, bankruptcy or insolvency of a Partner, or otherwise by operation of law, such entitlement will not be recognized or entered in the Register and such person will not become a Partner except with the written consent of the General Partner (which consent the General Partner will be entitled to withhold in its sole discretion). The only right of such person will be to receive the allocations and distributions (including any return of such Partner's contribution to the capital of the Partnership) to which such Partner would otherwise be entitled hereunder in respect of such Partnership Unit and such person will not be entitled to receive interest on such Partner's contribution to the capital of the Partnership or share of the other property and assets of the Partnership. Notwithstanding the renunciation by a Partner of any interest in the profits or other compensation by way of income from the business of the Partnership, such Partner will only be entitled to a return of such Partner's contribution to the capital of the Partnership at the times and in the amounts provided for in this Agreement and such Partner will not be entitled to receive interest on the amount of such Partner's contribution to the capital of the Partnership or share of the other property and assets of the Partnership.

4.10 Parties Not Bound to See to Trust, Charge or Equity

The General Partner will not be bound to see to the execution of any trust (whether express, implied or constructive), Charge or equity to which any Partnership Unit or any interest therein is subject, nor to ascertain or inquire whether any sale or assignment of any Partnership Unit or any interest therein by any Partner is authorized by such trust, Charge or equity, nor to recognize any person as having an interest in any Partnership Unit except for the person in whose name such Partnership Unit is recorded on the Register as the holder of such Partnership Unit. The receipt by the person in whose name any Partnership Unit is recorded on the Register will be a sufficient discharge for all monies, securities and other property payable, issuable or deliverable in respect of such Partnership Unit and from all liability therefor. Each of the Partnership and the General Partner are entitled to treat the person in whose name any Unit Certificate is registered as the absolute owner thereof.

ARTICLE 5 CAPITAL CONTRIBUTIONS AND ACCOUNTS

5.1 Capital Accounts

The General Partner will establish an account (a "**Designated Capital Account**") on the books of the Partnership for each Partner showing the aggregate Designated Capital that is attributable to the Partnership Units held by such Partner on a class-by-class basis.

5.2 Contributions – GP Units

Pursuant to the Contribution Agreement, the General Partner has transferred to the Partnership the A&W Marks, subject to the Licence and Royalty Agreement, the security for the Loan and the payment of the balance of the Purchase Price (“**Purchase Price**” as defined in the Acquisition Agreement payable to TMI pursuant to the terms of the Acquisition Agreement, and in respect of such contribution, the Partners have agreed to prepare and file an election under Section 97(2) of the ITA as provided for in the Contribution Agreement).

5.3 Current Accounts

The General Partner will establish an account (a “**Current Account**”) on the books of the Partnership for each of the General Partner and the Limited Partners (and, in the case of the Limited Partners, in respect of each Limited Partner) to which Net Income will be credited and to which Net Loss and all distributions to Partners will be charged.

5.4 No Right to Withdraw Amounts

No Partner will have any right to withdraw any amount or receive any distribution from the Partnership except as expressly provided for in this Agreement and no distribution to any Partner will be deemed a return or withdrawal of amounts contributed to the capital of the Partnership except as expressly provided in this Agreement, but if any court of competent jurisdiction at any time determines that notwithstanding the provisions of this Agreement a Limited Partner is obligated to pay any amount distributed to such Limited Partner to or for the account of the Partnership or to any creditor of the Partnership such obligation will be the obligation of such Limited Partner.

5.5 No Interest Payable on Capital or Current Accounts

No Partner will have the right to receive interest on any capital or any credit balance in the Designated Capital Account or Current Account of such Partner. No Partner will be liable to pay interest to the Partnership on any capital or Designated Capital returned to such Partner or on any authorized negative balance in the Designated Capital Account or Current Account of such Partner.

5.6 Negative Balance in Capital or Current Accounts

Except as expressly provided for in this Agreement, the interest of a Partner in the Partnership will not terminate by reason of the return of amounts contributed to the capital of the Partnership or a negative balance in the Designated Capital Account or Current Account of such Partner.

ARTICLE 6 ALLOCATIONS AND DISTRIBUTIONS

6.1 Allocation of Net Income and Net Loss

Net Income or Net Loss and Taxable Income or Tax Loss for a particular Fiscal Year will be allocated to the General Partner and the Limited Partner as holders of GP Units and LP Units in proportion to the Available Cash of the Partnership distributed or loaned to such holders in respect of the Fiscal Year in accordance with Section 6.2

The amount of Net Income or Taxable Income allocated to a Partner may exceed or be less than the amount of cash distributed by the Partnership to that Partner. In any Fiscal Year in which no cash is

distributed to the Partners, Net Income, Taxable Income, Net Loss and Tax Loss, as the case may be, will be allocated to Partners in proportion to the number of Partnership Units held by each Partner.

6.2 Distributions of Available Cash

In respect of each month, the General Partner may distribute all Available Cash determined by the General Partner to be available for distribution in respect of that month to the Partners listed on the record on a date so determined by the directors of the General Partner in respect of the distribution to be made for such month (such date may be included in the directors resolutions of the General Partner approving any such distribution or in any other resolution), to the holders of GP Units and LP Units pro rata in accordance with the aggregate number of Partnership Units of each class issued and outstanding.

The General Partner may, in addition to the distributions to be made pursuant to the preceding paragraph, distribute Available Cash at any other time. Notwithstanding the foregoing, the General Partner will not make any such distribution if and to the extent such distribution would be contrary to any provision of any agreement to which the Partnership is a party or by which the Partnership is bound (including any Financing) or to any applicable law.

The General Partner will have the right, in lieu of receiving the distributions described above at the times indicated above, to require the Partnership to loan to the General Partner those amounts which would otherwise have been distributed to it at such times, and to have the distributions described above made to it on the first business day after the end of the Fiscal Year in which such distributions would otherwise have been made. The loans made to the General Partner in a Fiscal Year will not bear interest and will be due and payable in full on the day which is one year after the day on which such loans are made. With respect to amounts distributed to the General Partner at any time after the making of a loan to the General Partner pursuant to this Section 6.2, the General Partner shall be deemed to have irrevocably directed that the amount of any such distribution first be applied to repay loans previously advanced.

6.3 General Partner's Discretion to Return Designated Capital

Subject to Section 10.5, the General Partner may, in its discretion at any time, make distributions to the Partners in such amounts as the General Partner may determine, as a return of Designated Capital (and, to the extent of the balance thereof, as a return of amounts contributed to the capital of the Partnership) pro rata in proportion to the number of Partnership Units held; provided that the General Partner may not make any such distribution if and to the extent:

- (a) any Partner's share thereof would exceed the Designated Capital of the Partnership Units held by such Partner; or
- (b) such distribution would be contrary to any provision of any agreement to which the Partnership is a party or by which the Partnership is bound (including any Financing) or to any applicable law.

6.4 Determination of Taxable Income and Tax Loss

For the purpose of determining Taxable Income or Tax Loss in respect of any fiscal period, the General Partner will claim capital cost allowances in respect of the property of the Partnership and other discretionary deductions and reserves in the maximum amounts permitted by the ITA.

6.5 Repayment of Excess Distribution

If, as determined by the General Partner, any person has received a distribution which exceeds the entitlement of such person, such person will forthwith repay to the Partnership the amount thereof upon receipt of notice to such effect from the General Partner and, if such amount is not then repaid, the General Partner may deduct such amount from any subsequent distribution to such person. Any amount repaid or to be repaid pursuant to this Section 6.5 will not be included in the amount of the distributions to such person for purposes of applying Section 6.1.

6.6 Entitlement of the Limited Partner in respect of A&W Outlets

In consideration of the addition of Proposed Additional A&W Outlets to the Royalty Pool, the economic interest of the Limited Partner in the Partnership will be adjusted as follows:

- (a) On each Adjustment Date, the interest of Food Services as Limited Partner will be adjusted and the Partnership will issue to Food Services as Limited Partner a number of LP Units representing 80% of the Initial Determined Amount in respect of all Proposed Additional A&W Outlets to be included in the Royalty Pool on such Adjustment Date. The number of LP Units to be so issued will be determined by dividing 80% of the Initial Determined Amount by the Current Market Price of a Unit as of the Determination Date immediately preceding such Adjustment Date.
- (b) On the Adjustment Date immediately following an Adjustment Date on which LP Units are issued under Section 6.6(a) (such Adjustment Date on which LP Units are issued under Section 6.6(a) is herein called the “**Applicable Adjustment Date**”): (i) if the Determined Amount exceeds 80% of the Initial Determined Amount in respect of such Applicable Adjustment Date, the Partnership will issue to Food Services as Limited Partner a number of LP Units representing the amount of such excess (determined by dividing the Determined Amount by the Current Market Price of a Unit as at the Determination Date immediately preceding such Applicable Adjustment Date, and subtracting the number of LP Units issued in respect of 80% of such Initial Determined Amount) (such number of such LP Units to be so issued to Food Services as Limited Partner are herein called the “**Excess LP Units**”); and (ii) the Partnership will distribute to Food Services, as Limited Partner, an amount equal to the amount that would have been distributed by the Partnership on the Excess LP Units had the Excess LP Units been issued to, and held by Food Services as Limited Partner during the period from the Adjustment Date on which LP Units are issued under Section 6.6(a) to the Adjustment Date immediately following such first mentioned Adjustment Date.
- (c) Notwithstanding any other provision of this Agreement, Food Services may, at its option, request that the Partnership issue any Excess LP Units issuable to Food Services pursuant to Section 6.6(b) as soon as the amount of such Excess LP Units has been determined by the Partnership and the provisions of Section 6.7 can be completed.

6.7 Delivery of LP Units

If any LP Units are to be issued and delivered to Food Services as Limited Partner on or in connection with any Adjustment Date, the General Partner will execute and deliver, or cause to be executed and delivered to Food Services as Limited Partner, with effect on the date of issuance:

- (a) Unit Certificates representing the number of LP Units to be issued and delivered by the Partnership to the Food Services as Limited Partner on or in connection with such Adjustment Date duly executed by the General Partner;
- (b) confirmation from the General Partner that the LP Units issued and delivered to Food Services on or in connection with such Adjustment Date may be exchanged for Non Voting Common Shares pursuant to the Exchange Agreement on the basis of a unit consisting of two (2) Non Voting Common Shares for each LP Unit, subject to adjustment as provided for in the Exchange Agreement;
- (c) confirmation of TMI that the LP Units so issued and delivered on or in connection with such Adjustment Date may be exchanged by Food Services pursuant to the Exchange Agreement for Non Voting Common Shares pursuant to the Exchange Agreement on the basis of a unit consisting of two (2) Non Voting Common Shares for each LP Unit, subject to adjustment as provided for in the Exchange Agreement, and that the Non Voting Common Shares for which the LP Units may be exchanged pursuant to the Exchange Agreement may be exchanged for Limited Voting Units on the basis of one Limited Voting Unit for a unit consisting of two (2) Non Voting Common Shares, subject to adjustment as provided for in the Exchange Agreement;
- (d) confirmation of the Fund that the Non Voting Common Shares referred to in Section 6.7(c) may be exchanged for Limited Voting Units pursuant to the Exchange Agreement on the basis of one Limited Voting Unit for a unit consisting of two (2) Non Voting Common Shares, subject to adjustment as provided for in the Exchange Agreement; and
- (e) an opinion of legal counsel to the Fund, TMI and the Partnership, (who may be the same legal counsel) to the following effect, subject to such assumptions and qualifications thereto that are acceptable to Food Services as Limited Partner acting reasonably:
 - (i) the Partnership has been duly formed and is a valid and subsisting limited partnership under the laws of British Columbia, TMI is a corporation duly continued and validly subsisting as a corporation under the *British Columbia Business Corporations Act* and the Fund has been properly created and organized as a trust under the laws of British Columbia, each having the individuals specified in such opinion as its trustees; and the Trustees of the Fund have the power and capacity on its behalf to issue and sell Units as described in the Declaration of Trust;
 - (ii) the Fund is authorized to issue an unlimited number of Units, of which a number as specified in such opinion are issued and outstanding as at the date of the opinion;
 - (iii) all necessary steps and proceedings have been taken by the Partnership to duly and validly authorize the issuance of and to issue the LP Units;
 - (iv) all necessary corporate steps and proceedings have been taken by TMI to duly and validly authorize the issuance of the Non Voting Common Shares to be issued to Food Services as Limited Partner upon the

exchange of the LP Units for such Non Voting Common Shares, and when issued and delivered pursuant the Exchange Agreement, such Non Voting Common Shares will be issued as fully paid and non-assessable shares in the capital of TMI;

- (v) the forms of the certificate representing the LP Units delivered to the General Partner have been duly approved, executed and delivered by the General Partner, and comply with all applicable legal requirements;
- (vi) the issue and delivery by the General Partner on behalf of the Partnership of the LP Units in accordance with the terms of this Agreement does not conflict with or will not conflict with, or effects or will effect a breach of any of the terms, conditions or provisions of, or constitutes or will constitute a default under: (i) the constating documents of Partnership or the General Partner, (ii) any resolutions of the partners of Partnership or of the directors of the General Partner of which such legal counsel has actual knowledge, (iii) any agreement, contract or other instrument of which such legal counsel has actual knowledge to which either the Fund or the Partnership is a party or by which either the Fund or the Partnership is bound, or (iv) any law of the Province of British Columbia or of Canada applicable therein;
- (vii) the issue and delivery by TMI of the Non Voting Common Shares in exchange for the LP Units in accordance with the terms of the Exchange Agreement does not conflict with or will not conflict with, or effects or will effect a breach of any of the terms, conditions or provisions of, or constitutes or will constitute a default under: (i) the constating documents of TMI, (ii) any resolutions of the directors of TMI of which such legal counsel has actual knowledge, (iii) any agreement, contract or other instrument of which such legal counsel has actual knowledge to which TMI is a party or by which TMI is bound, or (iv) any law of the Province of British Columbia or of Canada applicable therein;
- (viii) the issue and delivery by the Fund of the Limited Voting Units in exchange for the Non Voting Common Shares in accordance with the terms of the Exchange Agreement does not conflict with or will not conflict with, or effects or will effect a breach of any of the terms, conditions or provisions of, or constitutes or will constitute a default under: (i) the constating documents of the Fund, (ii) any resolutions of the trustees of the Fund of which such legal counsel has actual knowledge, (iii) any agreement, contract or other instrument of which such legal counsel has actual knowledge to which the Fund is a party or by which the Fund is bound, or (iv) any law of the Province of British Columbia or of Canada applicable therein;
- (ix) all approvals, permits, consents, orders and authorizations under applicable securities laws of the provinces of British Columbia, Alberta and Ontario (the “**Qualifying Jurisdictions**”) have been obtained, all necessary documents have been filed and all other legal requirements have been fulfilled to permit the issuance, distribution and sale of (i) the LP Units issued and delivered to Food Services, (ii) the Non Voting

Common Shares which may be acquired upon the exchange of the LP Units for Non Voting Common Shares pursuant to the Exchange Agreement, and (iii) the Limited Voting Units which may be acquired upon the exchange of Non Voting Common Shares for Limited Voting Units pursuant to the Exchange Agreement;

- (x) the issue and delivery to Food Services of Limited Voting Units upon the exchange of the requisite number of Non Voting Common Shares pursuant to the Exchange Agreement has been duly and validly authorized by the trustees of the Fund on behalf of the Fund and upon the issue and delivery of such Limited Voting Units in exchange for such Non Voting Common Shares, such Limited Voting Units will be duly and validly issued by the trustees of the Fund and under laws in effect on the date of this Agreement; the issue and delivery of such Limited Voting Units will not be subject to the registration and prospectus requirements under the applicable securities laws of each of the Qualifying Jurisdictions and under laws in effect on the date of this Agreement, no other documents are required to be filed, proceedings taken or approvals, permits, consents or authorizations of regulatory authorities required to be obtained by the Fund or Food Services under the securities laws of the Qualifying Jurisdictions and under laws in effect on the date of this Agreement
 - (1) to permit issue and delivery of the Limited Voting Units, provided that: (x) notice is accepted by the securities regulators in the Qualifying Jurisdictions pursuant to section 2.42(2) of National Instrument 45-106 – *Prospectus and Registration Exemptions*, as adopted by the British Columbia Securities Commission; and (y) no order, ruling or decision is in effect that has the effect of restricting any trades in Limited Voting Units or that affects any person who engages in such a trade; and
 - (2) to permit the trading in the Qualifying Jurisdictions by the holders of such Limited Voting Units (so long as such Limited Voting Units are exchanged for Units and such Units are delivered in completion of such trade, in accordance with the provisions of the Declaration of Trust), provided that: (x) the Fund is a reporting issuer in the Qualifying Jurisdictions at the time of the trade; (y) no order, ruling or decision is in effect that has the effect of restricting any trades in Units or that affects any person who engages in such a trade; and (z) the trade is not a control distribution (as such term is defined in Appendix A to National Instrument 45-102 *Resale of Securities* as adopted by the British Columbia Securities Commission, and Paragraph 1(1)(c) of the *Securities Act* (British Columbia).
- (xi) the Units for which the Limited Voting Units referred to in Section 6.7(e)(x) may be exchanged pursuant to the Declaration of Trust have been listed on the Stock Exchange.

6.8 Exchange of LP Units

The General Partner may, at its option by written notice to Food Services given at least seven (7) days before an Adjustment Date on which LP Units are to be issued pursuant to Section 6.6 hereof, elect to require Food Services as Limited Partner to surrender to the Partnership some or all of the LP Units to be issued to Food Services as Limited Partner on or in connection with such Adjustment Date as may be specified by the General Partner in such written notice for a payment in cash to the Limited Partner, and may make such arrangement with the Fund for the funding of the amount of cash required to make such payment. Such exchanges will be effected in accordance with the following procedure:

- (a) at least seven (7) days before an Adjustment Date on which or in connection with LP Units are to be issued pursuant to Section 6.6 hereof, the General Partner may deliver to each of the Fund and Food Services a written notice specifying the number of LP Units to be issued on or in connection with such Adjustment Date that the General Partner wishes Food Services to surrender to the Partnership in exchange for cash, specifying the total number of LP Units to be so surrendered. On or in connection with the Adjustment Date in respect of which such notice is given, the General Partner will deliver a certified cheque or bank draft made payable to Food Services in an amount equal to the Current Market Price of a Unit on such Adjustment Date multiplied by the total number of LP Units to be surrendered by Food Services on such Adjustment Date.
- (b) Food Services will deliver to the General Partner the LP Unit Certificates representing the LP Units issued on or in connection with such Adjustment Date and to be surrendered to the Partnership for cash, together with an executed assignment of such LP Units to the Partnership in the form attached as Schedule "E".
- (c) The General Partner will complete the procedure by:
 - (i) cancelling the number of LP Units to be surrendered by Food Services to the Partnership pursuant to clause (b) above; and
 - (ii) delivering to Food Services the certified cheque or bank draft delivered to the General Partner by the Fund pursuant to clause (a) above.

6.9 Covenants of Partnership

The Partnership covenants with Food Services that:

- (a) it will cause the LP Units and the certificates representing the LP Units from time to time to be issued to Food Services pursuant to the provisions hereof to be duly issued and delivered in accordance with the terms hereof;
- (b) all LP Units which shall be issued to Food Services pursuant to the provisions hereof shall be fully paid and non-assessable;
- (c) it will maintain its existence as a limited partnership;

- (d) it will not close its transfer registers or take any other action which might deprive Food Services of the opportunity of becoming a holder of LP Units as contemplated by the provisions hereof; and
- (e) it will well and truly perform and carry out all of the acts or things to be done by it as provided in this Agreement.

ARTICLE 7 MANAGEMENT OF THE PARTNERSHIP

7.1 Authority of General Partner

The General Partner is authorized to carry on the business of the Partnership, with full power and authority to administer, manage, control and operate the business of the Partnership as set forth herein. The General Partner will have all power and authority to do any act, take any proceeding, make any decision and execute and deliver any agreement, instrument, deed or other document necessary for or incidental to carrying out the business of the Partnership for and on behalf of and in the name of the Partnership and no person dealing with the Partnership will be required to inquire into the authority of the General Partner to do any act, take any proceeding, make any decision or execute and deliver any agreement, instrument, deed or other document for and on behalf of and in the name of the Partnership.

7.2 Powers of the General Partner

The General Partner will have full power and authority for and on behalf of and in the name of the Partnership to carry out any and all of the business purposes of the Partnership set forth in Section 2.4 and to perform all acts and enter into and perform all contracts, undertakings and other obligations which it may deem necessary, advisable or incidental thereto, including without limiting the generality of the foregoing, the full power and authority:

- (1) to acquire assets and property, both real and personal, of any description;
- (2) to incur, assume or become liable under or in respect of any Financing from time to time, and without limit as to the amount, cost or terms of payment thereof (including payments which may be calculated by reference to cash flow, income, revenue or like amounts) upon the credit of the Partnership and to incur and to assume and covenant to pay indebtedness, liabilities and obligations of all kinds, to guarantee obligations of, co-covenant with and join in the covenants of, others, whether in respect of the indebtedness, liabilities or obligations of the Partnership or of others, and to raise or secure the repayment thereof, in such manner, upon such terms and conditions, and in all respects as the General Partner thinks fit, and in particular may, without limiting the generality of the foregoing (a) draw, make, accept, endorse, execute, negotiate, issue and deliver bills of exchange, promissory notes, cheques, drafts, orders for payment or delivery of money, receipts, directions, evidences of indebtedness, other negotiable and non-negotiable instruments and bonds, debentures, debenture stock and other debt obligations either outright or as security for any indebtedness, liabilities or obligations of the Partnership or of any other person, (b) grant, create, incur or assume any security interest, mortgage, pledge, lien, charge, whether by way of specific or floating charge, or give other security on the undertaking and on the whole or any part of the property and assets of the Partnership (both present and future) and (c) execute and deliver all agreements, instruments, deeds and other documents relative to the foregoing;

- (3) to provide guarantees, indemnities and other forms of assurance to third parties in respect of the indebtedness, liabilities or obligations of the Partnership or of any other person in the ordinary course of the business of the Partnership;
- (4) to incur and pay or cause or approve the payment of all costs, outlays, disbursements and expenditures of the Partnership;
- (5) to engage or cause to be engaged managers, lawyers, accountants, financial advisors and other consultants or such other persons as the General Partner may deem necessary or advisable;
- (6) to open, maintain and close on behalf of and in the name of the Partnership bank accounts and appoint signing officers from time to time and to make deposits and draw cheques and other orders for the payment of monies and to invest or cause to be invested funds of the Partnership not immediately required for the business of the Partnership;
- (7) to commence or defend or cause to be commenced or defended any legal proceeding in connection with the Partnership or its business, property or assets and to take all action in connection therewith, including consenting to a judgment against the Partnership, and to agree to any compromise or arrangement by the Partnership with any creditor or creditors or class or classes of creditors of the Partnership;
- (8) to file or cause to be filed returns required by any governmental authority and make or cause to be made remittances and other payments and claim refunds in connection therewith;
- (9) to make or cause to be made any election, designation or determination that may be made under the ITA or any other fiscal legislation of Canada or any province;
- (10) subject to compliance with Section 7.3, to sell, exchange or otherwise dispose of the property, assets and undertaking of the Partnership as an entirety or substantially as an entirety or any part thereof or interest therein;
- (11) to lease or licence all or any part of the property, assets or undertaking of the Partnership at such time, in such manner and on such terms as the General Partner considers appropriate;
- (12) to enter into any agreement (including, subject to Section 7.8, with the General Partner) for the management or operation of the business, property and assets of the Partnership or any part thereof;
- (13) to acquire and maintain or cause to be acquired and maintained such insurance coverage as the General Partner may deem necessary or advisable for protection of the Partnership against claims, liabilities and losses arising from the conduct of its business or the ownership or leasing of its property and assets and to administer all claims or proceedings covered by insurance maintained by the Partnership;
- (14) to employ, supervise, manage and terminate, or cause to be employed, supervised, managed and terminated, employees in the conduct of the business, affairs and undertaking of the Partnership and to incur and pay or cause to be paid all remuneration and other costs and expenses of the Partnership in connection with their employment;

- (15) to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all agreements, instruments, deeds and other documents to effect any and all of the foregoing; and
- (16) to do all other acts and things necessary, incidental or advisable in connection with or for the furtherance of the business of the Partnership.

All material contracts, undertakings and transactions involving the Partnership must be approved by the Board of Directors and;

- (a) in the case of contracts, undertakings and transactions with the Limited Partner or any Affiliate of the Limited Partner, must be approved by a majority of the Board of Directors who are not nominees of the Limited Partner or an Affiliate of the Limited Partner; and
- (b) in the case of contracts, undertakings and transactions involving the creation of debt obligations in excess of \$10,000.00 and in respect of which the Limited Partner has liability, must be approved by the Limited Partner.

7.3 Power of General Partner to Sell Undertaking

The General Partner shall not dissolve the Partnership or sell, exchange or otherwise dispose of all or substantially all of the property, assets and undertaking of the Partnership unless such sale, exchange or disposition is approved by a Unitholders Special Resolution (other than in conjunction with a bona fide internal reorganization of the Partnership's structure and business which has been approved by the General Partner).

7.4 Execution of Documents

Any and all powers of the General Partner may be exercised by the execution and delivery by the General Partner or an agent or employee of the Partnership designated by them for and on behalf of and in the name of the Partnership, and under seal or otherwise, of agreements, instruments, deeds or other documents in such forms as the General Partner, agent or employee may deem sufficient.

7.5 Reliance by Third Parties

Third parties dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth. The power of the General Partner to represent the Partnership in dealings with third parties is unrestricted insofar as third parties are concerned.

7.6 Delegation

The General Partner may, subject to Section 7.8, contract with the Limited Partner or any other person (including any Affiliate of the General Partner) to carry out any of the duties of the General Partner and may delegate to such person any power and authority of the General Partner hereunder, but no such contract or delegation will relieve the General Partner of any of its obligations hereunder, including its obligations in connection with the control of the business, affairs and undertaking of the Partnership.

7.7 Title to Property

The General Partner will hold the property of the Partnership in its name as nominee for the Partnership in accordance with the terms hereof and may from time to time execute one or more declarations of trust or beneficial ownership in favour of the Partnership in respect of all or any of such property thereby confirming that such property is held as “partnership property” and not as the separate property of the General Partner alone. All partnership property must be held and applied by the Partners exclusively for the purposes of the Partnership and in accordance with this Agreement and as provided by the Act. No Partner, as such, will have any interest in the property of the Partnership.

7.8 Transactions with Limited Partner and Affiliates

Subject to Section 7.2, the Partnership may, directly or indirectly, enter into contracts or undertakings with, and carry out transactions with the Limited Partner or any Affiliate of the Limited Partner (including contracts for the provision of supplies or services, including management, operating, consulting or financial services, to the Partnership), for the purchase, lease, licence or other acquisition of property or assets or any interest therein from, or the sale, transfer, assignment, lease, licence or other disposition of property or assets or any interest therein to, any such person, the provision of any financial accommodation to, or the obtaining of Financing from, any such person, and any other kind of contract, undertaking or transaction in connection with the business, property or assets of the Partnership), provided that such contract, undertaking or transaction:

- (1) does not result in the Partnership guaranteeing or becoming liable for, directly or indirectly, any of the separate indebtedness, liabilities or obligations of any such person;
- (2) does not involve the Partnership lending any funds of the Partnership to any such person (other than as contemplated by Section 6.2);
- (3) is not for the purchase or acquisition of any shares or other securities of any such person; and
- (4) is on terms, and at a cost or for a price or consideration to the Partnership, which are no less advantageous to the Partnership, taken as a whole, than would generally be obtainable by the Partnership from bona fide arm’s length parties;

7.9 Reimbursement of General Partner

The General Partner will be reimbursed by the Partnership for all out-of-pocket costs, outlays, disbursements and expenditures actually paid or incurred by them in the performance of its duties hereunder (including costs directly incurred for the benefit of the Partnership) with the approval of the General Partner, but the General Partner will not be entitled to any fee for the performance of such duties.

7.10 Commingling of Funds

The funds and other assets of the Partnership will not be commingled with the funds or other assets of the General Partner or any Affiliate of the General Partner.

7.11 Borrowing

- (a) If required by the lender under the Loan, each Partner will pledge its Partnership Units to such lender, and will guarantee the Partnership’s obligations to such

lender, provided that recourse under such guarantee (except in the case of the General Partner) is limited to the Partnership Units pledged by such Partner. It is acknowledged and agreed that a permitted pledgee of Partnership Units will not be required to assume or be bound by this Agreement, although persons acquiring Partnership Units on any realization under a pledge of Partnership Units will be required to assume and be bound by this Agreement. A permitted pledgee who requires that an assignment of Partnership Units be executed and delivered in respect of the Partnership Units pledged to it will therefore not be required to execute such assignment, but will be required to acknowledge the obligation of an assignee on realization to assume and be bound by this Agreement.

- (b) If required by the lender under the Loan, Food Services will agree with such lender not to incur any secured indebtedness which on an “Event of Insolvency” (as defined in the Licence and Royalty Agreement) would rank prior to Food Services’ obligation to pay all Royalty Payments (but not any Accelerated Payments) (all as defined in the Licence and Royalty Agreement) due and unpaid to the date of the Event of Insolvency but for the application of Section 12.4 or Section 12.6 of the Licence and Royalty Agreement, plus interest thereon, and the costs incurred by the Partnership in respect of collecting such Royalty Payments.

ARTICLE 8 SPECIAL RESOLUTIONS

8.1 Voting Rights

Except as expressly provided for in this Agreement, Partnership Units of any type or class will not be entitled to vote.

8.2 Powers Exercisable by Special Resolution

The following may be effected through the enactment of a Special Resolution:

- (1) the waiver of any default on the part of the Limited Partner on such terms as may be specified in such Special Resolution, and the release of the Limited Partner or the General Partner from any claims in respect thereof;
- (2) agreement to any compromise or arrangement by the Partnership with the holders of any shares or securities of the Limited Partner or any Related Party;
- (3) requiring the General Partner on behalf of the Partnership to enforce any obligation or covenant on the part of the Limited Partner; and
- (4) the waiver of any rights of the Partners under this Agreement.

ARTICLE 9

9.1 Retirement by General Partner

The General Partner may not retire except effective upon it ceasing to hold any GP Units after the admission to the Partnership of a replacement for the General Partner.

9.2 Withdrawal by General Partner

The General Partner may retire on not less than 180 days written notice thereof to the other Partners. Such retirement will be effective upon the earlier of (i) 180 days after such notice is given and (ii) the admission of a new General Partner to the Partnership by Special Resolution in replacement of the retiring General Partner. The representations and warranties of the General Partner provided in Section 3.1 must be true and correct in respect of the new General Partner upon being admitted to the Partnership. The General Partner will not retire if the effect of such retirement would be to dissolve the Partnership.

9.3 Bankruptcy or Dissolution of General Partner

The General Partner, by agreeing to be bound by this Agreement, will be deemed to retire in the event the shareholders or directors of the General Partner pass a resolution authorizing or commencing the bankruptcy, winding-up, liquidation or dissolution of the General Partner or any proceeding in connection therewith is not contested in good faith by the General Partner or the appointment of a trustee, receiver or receiver-manager of the affairs of the General Partner, but such retirement will not be effective until the admission of a new General Partner to the Partnership by Special Resolution in replacement of the retiring General Partner. The representations and warranties of the General Partner provided in Section 3.1 must be true and correct in respect of the new General Partner upon being admitted to the Partnership. The retiring General Partner will not have any right to withdraw any amount or receive any distribution from the Partnership which the General Partner would not have had the right to withdraw or receive if the General Partner were not retiring except as expressly provided for in this Agreement.

9.4 Removal of General Partner

The General Partner may be removed only by Special Resolution, and only if such Special Resolution also admits a new General Partner to the Partnership as a replacement to the General Partner being removed.

The representations and warranties of the General Partner provided in Section 3.1 must be true and correct in respect of the new General Partner upon being admitted to the Partnership. The removed General Partner will not have any right to withdraw any amount or receive any distribution from the Partnership which the General Partner would not have had the right to withdraw or receive if the General Partner were not removed except as expressly provided for in this Agreement.

9.5 Release

On the retirement or removal of the General Partner or retirement of the General Partner the Partnership will release and hold harmless the retired or removed General Partner or retired General Partner, as the case may be, from all costs, damages, liabilities or expenses suffered or incurred by it as a result of or arising out of events occurring after such retirement or removal, as the case may be, other than as a result of or arising out of any wilful act by the retired or removed General Partner in relation to the Partnership occurring after such retirement or removal, as the case may be.

9.6 Transfer of Title and Management

On the admission of a new General Partner to the Partnership to replace a retiring or removed General Partner, the retiring or removed General Partner will transfer legal title to any property of the Partnership held in its name to the new General Partner (who will hold such legal title pursuant to Section 7.7) and execute and deliver all deeds, certificates, assurances and other documents necessary or desirable to effect such transfer and the retiring or removed General Partner will do all things and take all steps to transfer the administration, management and operation of the business, affairs and undertaking of the Partnership and the books, records and accounts of the Partnership to the new General Partner and will execute and deliver all deeds, certificates, declarations and other documents necessary or desirable therefor.

9.7 New General Partner

A new General Partner will, upon admission to the Partnership, execute a counterpart of this Agreement, the Governance Agreement, and the Exchange Agreement and thereby become a party to such agreements and will agree to be bound by all of the provisions hereof and of the Governance Agreement and the Exchange Agreement, and will assume the obligations, duties and liabilities hereunder and thereunder of the General Partner. Any new General Partner will be required to have a board of directors and share ownership structure constituted in accordance with the Governance Agreement.

9.8 Continuity of Partnership

In the event of the bankruptcy, dissolution, retirement or removal of the General Partner the business of the Partnership will be continued by the remaining general partners of the Partnership.

ARTICLE 10 DISSOLUTION OF PARTNERSHIP

10.1 Events of Dissolution

The Partnership will be dissolved on the earliest of:

- (1) the authorization of such dissolution by Special Resolution; and
- (2) the end of the Fiscal Year in which all of the property and assets of the Partnership have been disposed of.

10.2 Events Not Causing Dissolution

The Partnership will not be dissolved or terminated by the bankruptcy, retirement, death, mental incompetence, dissolution, removal, insolvency, liquidation, winding up, receivership, reorganization, admission or retirement of, or an assignment for the benefit of creditors by, any Partner, except that the Partnership will be dissolved by the bankruptcy, dissolution, retirement or removal of the General Partner unless there is a remaining general partner of the Partnership to continue the business of the Partnership, but a bankrupt General Partner will not be entitled to exercise the powers and authority of the General Partner. The trustee in bankruptcy of a bankrupt General Partner will be entitled to propose a substitute General Partner as the general partner of the Partnership and will be entitled to exercise the powers and authorities of a bankrupt General Partner until such substitute General Partner becomes a Partner.

10.3 No Further Business

Following the dissolution of the Partnership, the Partnership will not engage in any further business other than as contemplated in Section 10.4 in connection with the winding up of the business of the Partnership.

10.4 Liquidation

On dissolution of the Partnership, the General Partner (or, if the General Partner has retired or been removed and no replacement has been admitted to the Partnership or the General Partner is unable or unwilling to do so, a person appointed by the Fund as the holder of Voting Common Shares) will act as receiver (the “receiver”) of the Partnership. The receiver will prepare or cause to be prepared a statement of financial position of the Partnership which will be reported upon by the Auditor and a copy of which will be forwarded to each person shown on the Register as a partner of the Partnership at the date of dissolution and the receiver will wind up the affairs of the Partnership and all property and assets of the Partnership will be liquidated in an orderly manner and, in connection therewith, the receiver will manage and operate the business of the Partnership and have all powers and authority of the General Partner. The receiver will be paid its reasonable fees and disbursements incurred in carrying out such duties. Net Income or Net Loss and Taxable Income or Tax Loss (and all other items relevant in computing the “taxable income” (as defined in the ITA) of any Partner or the tax payable by any Partner pursuant to the ITA arising during such period) for the period of winding up will be determined as at the end of such period in accordance with the provisions of this Agreement and will be allocated to the Partners in the same manner as if there were no dissolution, liquidation and termination.

10.5 Distribution after Dissolution

The receiver will distribute the net proceeds from liquidation of the Partnership, as follows:

- (1) firstly, to pay the expenses of liquidation and the debts, liabilities and obligations of the Partnership to its creditors or to make due provision for payment thereof;
- (2) secondly, to provide reserves the receiver considers necessary for any contingent or unforeseen liability or obligation of the Partnership, which reserves will be paid to an escrow agent to be held for payment of liabilities and obligations of the Partnership; and
- (3) thirdly, to the Partners (to the extent of any balance thereof, as a return of capital) pro-rata to the holders of GP Units and LP Units in accordance with the aggregate number of units of each class issued and outstanding

10.6 Return of Capital

No Partner will have the right to demand or receive a return of capital in form other than cash, but nothing herein will prohibit a return of capital in a form other than cash.

10.7 Termination of Partnership

The Partnership will terminate at the end of the Fiscal Year after all of its net assets have been distributed as provided in this Article 10.

ARTICLE 11
BOOKS AND RECORDS AND OTHER INFORMATION

11.1 Books and Records

The General Partner will keep and maintain, or cause to be kept and maintained, at the principal office of the Partnership, full, complete and accurate books of account and records of the business of the Partnership.

11.2 Appointment of Auditor

The General Partner will, on behalf of the Partnership, retain the Auditor to review and report to the Partners upon the financial statements of the Partnership for, and as at the end of, each Fiscal Year unless the appointment of the Auditor is waived by all Partners as hereinafter provided. The Auditor, if any, appointed by the General Partner will be the auditor who is appointed to audit the financial statements of the Fund. The Partners may waive the foregoing provisions in respect of the retention of the Auditor by instruments in writing signed by all Partners and such waiver may be for a specified period or generally for all periods, but any such waiver may be revoked at any time by any Partner and if so revoked, the General Partner will retain the Auditor to review and report to the Partners as provided above but no such waiver shall require the General Partner to retain the auditor to review and report for any Fiscal Year ending before the end of the Fiscal Year in which such revocation was given. If the Partners waive the retention of the Auditor for any Fiscal Year, then the financial statements of the Partnership will be reviewed and reported upon by the General Partner, but such review and report will not be, and need not be in the form of or make the inquiries contemplated in a review and report upon the financial statements by the Auditor.

11.3 Annual Report and Income Tax Information

Within 90 days of the end of each Fiscal Year, the General Partner will forward to each person who is shown on the Register as a limited partner of the Partnership during such Fiscal Year:

- (1) financial statements of the Partnership as at the end of, and for, such fiscal period (prepared in accordance with Section 11.1 and generally accepted account principles applicable to the Partnership) containing:
 - (a) a balance sheet;
 - (b) a statement of income;
 - (c) a statement of changes in financial position; and
 - (d) a statement of changes in capital;
- (2) unless the Partners waive the retention of the Auditor pursuant to Section 11.2 and such waiver is not revoked as contemplated by Section 11.2, a report of the Auditor on the financial statements referred to in Section 11.3(1);
- (3) a report on allocations and distributions to Partners, including credits and charges to Designated Capital Accounts and Current Accounts;

- (4) such other information as, in the opinion of the General Partner, is material to the business of the Partnership; and
- (5) information concerning the amount of Taxable Income or Tax Loss and such other matters as may be necessary or required to enable a Partner to file returns under the relevant Canadian fiscal legislation.

11.4 Interim Financial Statements

The General Partner will forward, within 45 days after the end of each of the fiscal quarter during each Fiscal Year, to each person who is shown on the Register as a limited partner of the Partnership during such fiscal quarter, an unaudited statement of operations and changes in financial position of the Partnership for such fiscal quarter (prepared in accordance with Section 11.1 and generally accepted account principles applicable to the Partnership).

11.5 Accounting Policies

The General Partner is authorized to establish, from time to time, accounting policies with respect to the financial statements of the Partnership and to change, from time to time, any policy that has been so established so long as such policies are consistent with the provisions of this Agreement.

11.6 Consolidated Financial Statements

The General Partner may require that the financial statements of the Partnership for any period (or for all periods) as required by the General Partner be consolidated in accordance with generally accepted accounting principles with the financial statements of the General Partner.

ARTICLE 12 AMENDMENTS

12.1 Change of Partners

This Agreement may be amended by the General Partner without notice to or consent of any other Partners to reflect the admission, retirement or removal of any Partner, or the assignment by any Partner of the whole or any part of its interest in the Partnership, under or pursuant to the terms of this Agreement or the Act.

12.2 Amendment with Approval by Special Resolution

Subject to Section 12.3, this Agreement may only be amended by the General Partner if such amendment has been approved by Special Resolution, provided that:

- (1) no amendment may be made:
 - (a) to Section 9.4 or that would change the liability of any Limited Partner, allow any Limited Partner to take part in the management or control of the business of the Partnership, change the voting rights of any Partner or adversely affect the rights, privileges, or conditions attaching to any of the Partnership Units, or create a new class of Partnership Units ranking in priority to or pari passu with any of the Partnership Units expressly contemplated hereby, or change the

Partnership from a limited partnership to a general partnership in each case, without the unanimous written consent of the Partners; or

- (b) which would adversely affect the rights and obligations of the General Partner without the written consent of the General Partner.

12.3 Amendment by General Partner

The Partnership Agreement may be amended by the General Partner without consent of the other Partners to reflect:

- (1) a change in the name of the Partnership or the location of the registered office or principal place of business of the Partnership;
- (2) a change that, as determined by the General Partner in its sole discretion, is reasonable and necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership in which the Limited Partners have limited liability under the applicable laws;
- (3) a change that, as determined by the General Partner in its sole discretion, is reasonable, necessary or appropriate to enable the Partnership to take advantage of, or not be detrimentally affected by, changes in the ITA or other taxation laws or fiscal laws of Canada, any province of Canada or any other jurisdiction; or
- (4) a change that, as determined by the General Partner in its sole discretion, is reasonable, necessary or appropriate to cure any ambiguity in this Agreement or to correct or supplement any provisions contained in this Agreement that may be defective or inconsistent with any other provisions contained in this Agreement or that should be made to make this Agreement consistent with the disclosure set out in the Preliminary Prospectus.

but all Partners will be notified of full details of any amendment to this Agreement under this Section 12.3 promptly (and, in any event, no later than 30 days) after the effective date of such amendment and no such change may be made to this Agreement without the written consent of the General Partner.

ARTICLE 13 NOTICES

13.1 Notices

Any notice, communication, demand or payment required or permitted to be given or made to a Partner hereunder will be sufficiently given or made for all purposes if delivered personally to the address in Canada of such Partner as it appears on the Register or, in the case of a notice, communication or demand, if sent by facsimile transmission or other means of electronic communication (and confirmed by personal delivery as soon as practicable thereafter) to such address or sent by registered mail within Canada, postage prepaid, to such address. Any such notice, communication or demand that is sent by mail will be deemed to have been received on the sixth day after the date on which the same is deposited in a regularly maintained receptacle for the deposit of mail, addressed and sent as aforesaid. In the event of any disruption, strike or interruption in the Canadian postal service after mailing and prior to receipt and deemed receipt of any such notice, communication or demand will be deemed to have been received on the sixth day following full resumption of the postal service. Any Partner may change its address to

another address in Canada by giving written notice of such change to the General Partner pursuant to this Section 13.1. Accidental failure to give any notice, communication or demand required or permitted to be given or made hereunder to any Partner in accordance with the provisions hereof will not affect the validity of such notice, communication or demand unless such Partner shall have been materially and adversely affected by such failure.

ARTICLE 14 POWER OF ATTORNEY

14.1 Power of Attorney

Each Limited Partner hereby irrevocably nominates, constitutes and appoints the General Partner, with full power of substitution, as its agent and true and lawful attorney to act on its behalf with full power and authority in its name, place and stead to:

- (1) execute, swear to, acknowledge, deliver, make and record or file when, as and where required and under seal or otherwise:
 - (a) this Agreement, the Certificate, any amendment to this Agreement or the Certificate made in accordance with the terms of this Agreement and any other instrument required to qualify, continue and keep in good standing the Partnership as a limited partnership under the laws of the Province of British Columbia or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property or assets in order to establish or maintain the limited liability of the Limited Partners and to comply with the applicable laws of such jurisdiction;
 - (b) any instrument, and any amendment to the Certificate, necessary to reflect this Agreement or any amendment to this Agreement made in accordance with the terms of this Agreement;
 - (c) any instrument required in connection with the dissolution or termination of the Partnership in accordance with the terms of this Agreement;
 - (d) any agreement, instrument, deed or other document executed in connection with the administration, management, control and operation of the business, affairs and undertaking of the Partnership pursuant to the terms of this Agreement and of the Act;
 - (e) subject to compliance with Section 7.3, any agreement, instrument, deed or other document executed in connection with the sale, exchange or other disposition of the property, assets and undertaking of the Partnership as an entirety or substantially as an entirety or any part thereof or interest therein;
 - (f) all elections, determinations or designations under the ITA or any other taxation laws or other fiscal laws of Canada, any province of Canada or any other jurisdiction in respect of the affairs of the Partnership, the dissolution of the Partnership or a Partner's interest in the Partnership;

- (g) any agreement, instrument, deed or document in connection with any legal proceeding by or against the Partnership in connection with its business, property or assets, including any consent to any judgment against the Partnership; and
 - (h) any instrument required by any governmental authority in connection with the Partnership or its business, property or assets; and
- (2) to make any application for and receive any amount of credit or grant under any incentive program of Canada, any province of Canada or any other jurisdiction.

The power of attorney granted herein is coupled with an interest and is irrevocable and will survive the disability or legal incapacity of a Limited Partner or the assignment by a Limited Partner of the whole or any part of its interest in the Partnership and extends to and is binding upon the heirs, executors, administrators and other legal representatives and successors and assigns of such Limited Partner and, if such Limited Partner is a natural person, will survive the death or disability of such Limited Partner until notice of such death or disability is given to the General Partner and may be exercised by the General Partner on behalf of each Limited Partner in executing any agreement, instrument, deed or other document by listing all the Limited Partners thereon and executing such agreement, instrument, deed or other document with a single signature as attorney and agent for all of them or by executing such agreement, instrument, deed or other document on behalf of the Partnership as General Partner. Each Limited Partner agrees to be bound by any representation or action made or taken by the General Partner pursuant to the power of attorney granted herein and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.

14.2 Incapacity and Continuing Power of Attorney

In accordance with the *Power of Attorney Act* (British Columbia), the *Powers of Attorney Act* (Alberta), the *Substitute Decisions Act*, 1992 (Ontario) and the *Civil Code of Quebec* and any similar legislation governing a power of attorney, each Limited Partner declares that the power of attorney granted herein may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on its part. The power of attorney granted herein is intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act*, 1992 (Ontario), exercisable during a Limited Partner's incapacity to manage property, or any similar power of attorney under equivalent legislation in any province or territory of Canada, including, without limiting the generality of the foregoing, an enduring power of attorney and a mandate in anticipation of incapacity under the *Civil Code of Quebec* (a "CPOA"). The power of attorney granted herein will not revoke or terminate any CPOA granted previously and will not be revoked or terminated by the execution in the future of a CPOA and each Limited Partner hereby declares that it may have multiple CPOAs. Each Limited Partner hereby agrees not to take any action in future which results in the revocation or termination or termination of the power of attorney granted hereby. The General Partner may require, in connection with any subscription for, or assignment of, LP Units that the form of subscription or assignment, if any, be accompanied by the explanatory notes set out in the *Powers of Attorney Act* (Alberta) and a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.

14.3 Delivery of Power of Attorney

To evidence the foregoing provisions of this Article 14, each Limited Partner will execute and deliver a power of attorney in the form attached hereto as Schedule "B" or in such other form as may be accepted by the General Partner.

**ARTICLE 15
MISCELLANEOUS**

15.1 Strict Performance of Covenants

The failure of any party to seek redress for a violation of or to insist upon strict performance of any provision hereof will not prevent a subsequent act which would have originally constituted a violation of such provision or any other provision hereof from having the effect of an original violation of such provision or any other provision hereof.

15.2 Severability

If any provision of this Agreement or portion thereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable: (a) the remainder of this Agreement or the application of such provision or portion thereof to any other person or circumstance shall be not affected thereby; and (b) the Partners will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.3 Limited Partner Not a General Partner

If any provision of this Agreement has the effect of imposing upon any Limited Partner (other than the General Partner) any of the liabilities or obligations of a general partner such provision will be of no force or effect.

15.4 Counterparts

This Agreement may be executed in several counterparts (including counterparts by facsimile) each of which once signed shall be deemed to be an original. This Agreement may also be adopted in any subscription form or similar instrument signed by a Limited Partner with the same effect as if such Limited Partner had executed a counterpart of this Agreement. All counterparts and adopting instruments taken together will constitute one and the same instrument.

15.5 Time of the Essence

Time will be of the essence of each provision of this Agreement. Any extensions, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

15.6 Further Assurances

The parties hereto agree to execute such further and other agreements, instruments, deeds and documents, cause such resolutions to be passed, exercise their influence, do and perform and cause to be done and performed such further and other acts and things that may be necessary or desirable in order to give full effect to this Agreement and every part hereof. Without limiting the generality of the foregoing, the Limited Partners agree to execute such confirmations and acknowledgements as may be requested by the General Partner for purposes of confirming to third parties the power and authority of the General Partner as herein set forth.

15.7 Binding Effect

This Agreement will be binding upon and enure to the benefit of the parties hereto (including each person who subscribes for Partnership Units by delivering a subscription in accordance with Section 4.4, upon acceptance of such subscription by the General Partner), their respective heirs, executors, administrators and other legal representatives and, to the extent permitted hereunder, their respective successors and assigns.

[Execution page follows]

IN WITNESS WHEREOF this Agreement is executed as of December 22, 2010.

A&W TRADE MARKS INC.

By: “John R. McLernon”
Title: Director

A & W FOOD SERVICES OF CANADA INC.

By: “Paul Hollands”
Title: Director

SCHEDULE "A"

FORM OF SUBSCRIPTION

A&W TRADE MARKS LIMITED PARTNERSHIP

SUBSCRIPTION [*AND JOINDER*]

TO: A&W TRADE MARKS INC., the General Partner

The undersigned hereby tenders this subscription and subscribes for _____ Units in A&W TRADE MARKS LIMITED PARTNERSHIP at a Subscription Price of \$_____ per Unit [and agrees to become a Limited Partner*]. The undersigned hereby acknowledges receipt of a copy of the Amended and Restated Agreement of Limited Partnership dated for reference December 22, 2010 between A&W Trade Marks Inc. and A & W Food Services of Canada Inc. (the "Partnership Agreement") and specifically accepts and adopts each and every provision of the Partnership Agreement and agrees to be bound thereby [and hereby joins in the Partnership Agreement as a party thereto and the execution hereof is execution by the undersigned of the Partnership Agreement *]. Without limiting the generality of the foregoing, the undersigned hereby represents and warrants to and covenants with the Partnership that the undersigned:

- (1) has and will continue to have the capacity and competency to enter into and be bound by the Partnership Agreement and will, at the request of the General Partner, provide such evidence of compliance with such representation, warranty and covenant as the General Partner may request; and
- (2) is and will be a resident of Canada within the meaning of the ITA and is not and will not be a "non-Canadian" within the meaning of the *Investment Canada Act*.

After acceptance of this subscription the undersigned agrees to tender the Subscription Price [insert description of the time or times when the Subscription Price is to be paid].

The address of the undersigned to be shown on the Register is: ***

(Address)

Facsimile No: _____

All capitalized terms used herein will have the meaning given thereto in the Partnership Agreement.

DATED _____ the day of _____, _____.

If a corporation:

[NAME OF SUBSCRIBER]

By: _____
Title: _____

C/S

If an individual:

SIGNED, SEALED AND DELIVERED by _____)
[NAME OF SUBSCRIBER] in the presence of: _____)
_____)
(Name) _____)
_____)
(Address) _____)

_____ [seal]
Print Name: _____

If other:

[NAME OF SUBSCRIBER]

By: _____
Title: _____

Accepted this _____ day of _____, _____

A&W TRADE MARKS INC., as General
Partner of A&W TRADE MARKS LIMITED
PARTNERSHIP

By: _____
Title: _____

- * Include if subscriber is not already a Limited Partner.
- ** Include and complete if applicable.
- *** Insert resident address in case of individual and address in the Province of British Columbia in all other cases.

SCHEDULE "B"

FORM OF POWER OF ATTORNEY

The undersigned, a limited partner of A&W TRADE MARKS LIMITED PARTNERSHIP (the "Partnership"), hereby irrevocably nominates, constitutes and appoints under seal the General Partner, with full power of substitution, as its agent and true and lawful attorney to act on behalf of the undersigned with full power and authority in its name, place and stead to:

- (1) execute, swear to, acknowledge, deliver, make and record or file when, as and where required and under seal or otherwise:
 - (a) any amendment to the Amended and Restated Agreement of Limited Partnership dated December 22, 2010 between A&W Trade Marks Inc. and A & W Food Services of Canada Inc, as amended and in effect from time to time (the "Partnership Agreement"), the Certificate, any amendment to the Partnership Agreement or the Certificate made in accordance with the terms of this Agreement and any other instrument required to qualify, continue and keep in good standing the Partnership as a limited partnership under the laws of the Province of British Columbia or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property or assets in order to establish or maintain the limited liability of the Limited Partners and to comply with the applicable laws of such jurisdiction;
 - (b) any instrument, and any amendment to the Certificate, necessary to reflect the Partnership Agreement or any amendment to the Partnership Agreement made in accordance with the terms of the Partnership Agreement;
 - (c) any instrument required in connection with the dissolution or termination of the Partnership in accordance with the terms of the Partnership Agreement;
 - (d) any agreement, instrument, deed or other document executed in connection with the business, affairs and undertaking of the Partnership pursuant to the terms of the Partnership Agreement or the Act;
 - (e) subject to compliance with Section 7.3 of the Partnership Agreement, any agreement, instrument, deed or other document executed in connection with the sale, exchange or other disposition of the property, assets and undertaking of the Partnership as an entirety or substantially as an entirety or any part thereof or interest therein;
 - (f) all elections, determinations or designations under the ITA or any other taxation laws or other fiscal laws of Canada, any province of Canada or any other jurisdiction in respect of the affairs of the Partnership, the dissolution of the Partnership or a Partner's interest in the Partnership;
 - (g) any agreement, instrument, deed or document in connection with any legal proceeding by or against the Partnership in connection with its business, property or assets, including any consent to any judgment against the Partnership; and

- (h) any instrument required by any governmental authority in connection with the Partnership or its business, property or assets; and
- (2) to make any application for and receive any amount of credit or grant under any incentive program of Canada, any province of Canada or any other jurisdiction.

This power of attorney is coupled with an interest and is irrevocable and will survive the disability or legal incapacity of the undersigned or the assignment by the undersigned of the whole or any part of the interest of the undersigned in the Partnership and extends to and is binding upon the heirs, executors, administrators and other legal representatives and successors and assigns of the undersigned and, if the undersigned is a natural person, will survive the death or disability of the undersigned until notice of such death or disability is given to the General Partner. This power of attorney may be exercised by the General Partner on behalf of the undersigned in executing any agreement, instrument, deed or other document by listing all the Limited Partners thereon and executing such agreement, instrument, deed or document with a single signature as attorney and agent for all of them or by executing such agreement, instrument, deed or other document on behalf of the Partnership as General Partner.

The undersigned agrees to be bound by any representation or action made or taken by the General Partner pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under this power of attorney.

In accordance with the *Power of Attorney Act* (British Columbia), the *Powers of Attorney Act* (Alberta), the *Substitute Decisions Act, 1992* (Ontario) and the *Civil Code of Quebec* and any similar legislation governing a power of attorney, the undersigned hereby declares that this power of attorney may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on the part of the undersigned. This power of attorney is intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during the undersigned's incapacity to manage property, or any similar power of attorney under equivalent legislation in any province or territory of Canada, including, without limiting the generality of the foregoing, an enduring power of attorney and a mandate in anticipation of incapacity under the *Civil Code of Quebec* (a "CPOA"). This power of attorney will not revoke or terminate any CPOA granted previously and will not be revoked or terminated by the execution in the future of a CPOA and the undersigned hereby declares that the undersigned may have multiple CPOAs. The undersigned hereby agrees not to take any action in future which results in the revocation or termination or termination of this power of attorney. The General Partner may require, in connection with any subscription or assignment, if any, be accompanied by the explanatory notes set out in the *Powers of Attorney Act* (Alberta) and a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.

All capitalized terms in this power of attorney which are not defined herein will have the meanings assigned to them in the Partnership Agreement.

This power of attorney will be governed by and construed in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF the undersigned has executed and delivered this power of attorney under seal as of this _____ day of _____, _____.

If a corporation:

[NAME OF LIMITED PARTNER]

By: _____

Title: _____ C/S

If an individual:

SIGNED, SEALED AND DELIVERED by _____)

[NAME OF LIMITED PARTNER] in the presence)

of: _____)

_____)

_____)

(Name) _____)

_____)

_____)

(Address) _____)

_____)

_____ [seal]

Print Name:

If other:

[NAME OF LIMITED PARTNER]

By: _____

Title: _____ C/S

SCHEDULE "C"

FORM OF LIMITED PARTNER UNIT CERTIFICATE

No. _____ Class _____ LP Units

UNIT CERTIFICATE

A&W TRADE MARKS LIMITED PARTNERSHIP

(a limited partnership formed under the laws of the Province of British Columbia)

THIS IS TO CERTIFY that _____ is the owner of _____ LP Units in A&W TRADE MARKS LIMITED PARTNERSHIP and, as such, is entitled to all of the rights and privileges in respect of the Partnership Units represented hereby set forth in the Amended and Restated Agreement of Limited Partnership dated for reference December 22, 2010 between A&W Trade Marks Inc. and A&W Food Services of Canada Inc., as amended and in effect from time to time (the "Partnership Agreement").

This Certificate and the Partnership Units represented hereby are held subject to the conditions and restrictions contained in the Partnership Agreement.

DATED the _____ day of _____, _____.

This Certificate is not valid unless signed on behalf of A&W TRADE MARKS LIMITED PARTNERSHIP by an authorized representative of A&W TRADE MARKS INC. as General Partner

A&W TRADE MARKS INC.

By: _____
Title:

SCHEDULE "D"

FORM OF GENERAL PARTNER UNIT CERTIFICATE

No. _____ GP Units

UNIT CERTIFICATE

A&W TRADE MARKS LIMITED PARTNERSHIP

(a limited partnership formed under the
laws of the Province of British Columbia)

THIS IS TO CERTIFY that _____ is the owner of _____ GP Units in A&W TRADE MARKS LIMITED PARTNERSHIP and, as such, is entitled to all of the rights and privileges in respect of the Partnership Units represented hereby set forth in the Amended and Restated Agreement of Limited Partnership dated for reference December 22, 2010 between A&W Trade Marks Inc. and A&W Food Services of Canada Inc., as amended and in effect from time to time (the "Partnership Agreement").

This Certificate and the Partnership Units represented hereby are held subject to the conditions and restrictions contained in the Partnership Agreement.

DATED the _____ day of _____, _____.

This Certificate is not valid unless signed on behalf of A&W TRADE MARKS LIMITED PARTNERSHIP by an authorized representative of A&W TRADE MARKS INC. as General Partner

DATED the _____ day of _____, _____.

This Certificate is not valid unless signed on behalf of A&W TRADE MARKS LIMITED PARTNERSHIP by an authorized representative of A&W TRADE MARKS INC. as General Partner

A&W TRADE MARKS INC.

By: _____
Title:

SCHEDULE "E"

**ASSIGNMENT OF PARTNERSHIP UNITS IN
A&W TRADE MARKS LIMITED PARTNERSHIP**

The undersigned, a partner of A&W TRADE MARKS LIMITED PARTNERSHIP (the "Partnership"), hereby transfers to

(Name of Assignee)

(the "Assignee") all of the undersigned's right, title and interest in and to _____ Partnership Units (the "Assigned Units") in the Partnership and assigns to the Assignee all of the interest of the undersigned in the Partnership that is represented thereby. The undersigned agrees to furnish to the General Partner of the Partnership (the "General Partner") such certificates, assurances, instruments and other documents as the General Partner may require to effect this transfer and assignment. The undersigned agrees that this transfer and assignment will not be effective until all such certificates, assurances, instruments and other documents have been furnished to the General Partner as aforesaid and the name of the Assignee is shown on the Register (as defined in the Amended and Restated Agreement of Limited Partnership dated for reference December 22, 2010 between A&W Trade Marks Inc. and A&W Food Services of Canada Inc., as amended and in effect from time to time (the "Partnership Agreement")) as the holder of the Assigned Units.

Dated the _____ day of _____, _____.

If a corporation:

[NAME OF LIMITED PARTNER]

By: _____
Title:

C/S

If an individual:

SIGNED, SEALED AND DELIVERED by)
[NAME OF LIMITED PARTNER] in the presence)
of:)
)
_____)
(Name))
_____)
)
_____)
(Address))

_____ [seal]
Print Name:

If other:

[NAME OF SUBSCRIBER]

By: _____

Title:

The Assignee hereby accepts the above transfer and assignment and agrees to be bound as a party to the Partnership Agreement. Without limiting the generality of the foregoing, the Assignee hereby represents and warrants to and covenants with the Partnership that the Assignee:

has and will continue to have the capacity and competency to enter into and be bound by this Agreement and will, at the request of the General Partner, provide such evidence of compliance with such representation, warranty and covenant as the General Partner may request; and

is and will be a resident in Canada within the meaning of the ITA and is not and will not be a “non-Canadian” within the meaning of the *Investment Canada Act*.

The address of the Assignee is:

(Address)

Facsimile No: _____

Dated the _____ day of _____, _____.

If a corporation:

[NAME OF ASSIGNEE]

By: _____

Title:

C/S

If an individual:

SIGNED, SEALED AND DELIVERED by)
[NAME OF ASSIGNEE] in the presence)
of:)
)
_____)
(Name))
_____)
_____)
(Address))

_____) [seal]
Print Name:

If other:

[NAME OF ASSIGNEE]

By: _____
Title: