

LAX KW'ALAAMS INDIAN BAND
SETTLEMENT TRUST AGREEMENT

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**LAX KW'ALAAMS INDIAN BAND SETTLEMENT TRUST AGREEMENT
made as of January 1, 2003:**

AMONG:

**LAX KW'ALAAMS INDIAN BAND
(an Indian Band for the purposes of the *Indian Act*)**

(hereinafter referred to as the "Settlor" or the "Band")

OF THE FIRST PART

**AND: MARVIN WESLEY,
KAREN KNOTT,
BARBARA HENRY,
CHRISTINA PARNELL,
HARVEY RUSSELL JR., and
ROYAL TRUST CORPORATION OF CANADA**

(hereinafter individually referred to as a "Trustee" and
collectively referred to as the "Trustees")

OF THE SECOND PART

WHEREAS:

1. The Settlor entered into a Settlement Agreement dated for reference the 22nd day of October, 2002, with Canada pursuant to which Canada agreed to fulfil its respective outstanding obligations to the Settlor relating to the loss of its unsurrendered interest in the southern portion of Tsimpsean Indian Reserve No. 2;
2. By the Settlement Agreement, the Settlor is entitled to receive from Canada certain monies herein described as the Settlement Monies;
3. The Settlor and the Trustees wish to create the Lax Kw'alaams Indian Band Settlement Trust to set out the terms on which the Trustees are to hold the Settlement Monies;
4. The Settlor will authorize and direct Canada to pay the Settlement Monies into the Trust to be held by the Trustees for the Beneficiaries as set out in this Agreement;
5. All Settlement Monies, after deducting certain specific amounts which are identified herein, will be deposited into the Trust Capital Account of the said Trust as herein provided;
6. The Settlor and the Trustees intend that the Settlement Monies and the other property delivered to the Trustees are assets for the use and benefit of the present and future Members of the Settlor, as Beneficiaries, to be administered by the Trustees upon the trusts herein contained

and subject to the terms and conditions hereinafter set out;

7. In particular, the principal amount of Settlement Monies (after certain deductions) will not be available for use by Members but is to be held in trust and invested for the benefit of present and future generations of Members while revenues generated therefrom will be used for the benefit of present and future Members;
8. By ratification vote held on the 12th day of December, 2002, the majority of the Adult Members of the Settlor assented to and approved the execution and delivery of this Agreement, and have authorized and directed the Council to sign and deliver this Agreement and all related documents; and
9. The Settlor is represented by the Council.

NOW, THEREFORE, in consideration of the premises and of the respective covenants and agreements hereinafter set forth, the parties covenant and agree as follows:

PART I - INTERPRETATION

1. INTERPRETATION

1.1 **Definitions:** In this Agreement, the following capitalized terms will have the following meanings, namely:

- (a) “Adult Members” means Members of the Settlor who, at the applicable time, are of the full age of 19 years and are not disqualified from voting at elections of the Band for members of the Council;
- (b) “Agreement”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereunder”, “hereby” and similar expressions refer, unless otherwise expressly stated, to this agreement, including the recitals and the Schedules attached hereto, and not any particular article, section, subsection, paragraph or other subdivision hereof or thereof;
- (c) “Authorized Expenses” means, collectively, those expenses reasonable or necessary for the operation of the Trust including the payment of the fees of the Corporate Trustee or Investment Managers, honorariums and expenses to individual Trustees, fees and expenses paid to advisors and expenses incurred by the Council in respect of matters relating to the Trust;
- (d) “Authorized Investments” means any of those investments which the Trustees are authorized to make, in accordance with the terms of Section 14 hereof, with funds from the Trust Capital Account or the Trust Revenue Account;
- (e) “Band” means the Lax Kw'alaams Band of Indians, being the Settlor and the

party of the first part;

- (f) “Band Benefit” means a non-business activity or undertaking which is intended to provide benefit to the membership of the Band, and which comes within one of the following categories:
 - (i) education and vocational training;
 - (ii) housing on and off Reserve;
 - (iii) health including dental benefits and drug and alcohol counselling or rehabilitation;
 - (iv) social, cultural and recreational programs, including construction of related facilities;
 - (v) loans to the Trust pursuant to Section 9 of this Agreement.

- (g) “Band Development” means an activity that is for the benefit of the membership including:
 - (i) purchase or construction of lands, buildings, infrastructure, equipment and related assets for the benefit of the Band, and
 - (ii) construction of facilities and infrastructure related to social, cultural and recreational programs.

- (h) “Beneficiaries” means the present and future Members of the Band;

- (i) “Canada” means Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development unless the context requires otherwise;

- (j) “Corporate Trustee” means a corporation licenced to carry on the business of a trust company under the laws of Canada or the Province of British Columbia appointed to act as a Trustee herein as provided in Article 10;

- (k) “Council” means the "council of the band" as defined in the *Indian Act (Canada)* R.S.C. 1985, c. 1-5 of the Settlor;

- (l) “Council Resolution” means a resolution of the Council passed in accordance with Section 19;

- (m) “Disbursement Date” means the last business day of each Fiscal Year;

- (n) “Financial Institution” means a bank chartered under the *Bank Act of Canada* and a member institution for which the Canada Deposit Insurance Corporation has a duty to insure deposits pursuant to the *Canada Deposit Insurance Corporation Act*, as the same may be replaced or amended from

time to time;

- (o) “Fiscal Year” means such period of not more than twelve months as may be established by the Trustees from time to time as the fiscal year of the Trust and, unless otherwise established by the Trustees and permitted for the purposes of the *Income Tax Act*, will commence on the 1st day of January of each year and will terminate on the 31st day of December of each year;
- (p) “Individual Trustee” means a trustee other than a Corporate Trustee;
- (q) “Investment Manager” means a firm that is a member in good standing, and has been in good standing for at least 5 years, with the Investment Dealers Association of Canada or an equivalent body, that is a member of the Canadian Investor Protection Fund or an equivalent body and which has obtained registration from the B.C. Securities Commission in the category of Investment Counsel or Portfolio Manager or equivalent designation from the appropriate provincial or territorial securities commission;
- (r) “Investment Management Agreement” means a written agreement between the Trustees and an Investment Manager made pursuant to Section 14 whereby the Trust Property or a portion of the Trust Property is invested by the Investment Manager on behalf of the Trustees in accordance with Section 14.2, the prudent investor rules set out in Section 14.3 and the specific investment guidelines and objectives set out in the Investment Management Agreement or incorporated in it by reference to a separate investment policy statement or other document;
- (s) “Member” means at any relevant time a person whose name appears on the Membership List at that time;
- (t) “Membership List” means:
 - (i) if the Department of Indian Affairs and Northern Development (or some successor agency of the Government of Canada) maintains control of the membership of the Settlor, the list of persons maintained by the Department or such agency as the “Band List” for the Settlor in accordance with Section 8 of the *Indian Act* as replaced or amended from time to time;
 - (ii) if the Settlor has assumed control of its own membership in accordance with Section 10 of the *Indian Act*, as replaced or amended from time to time, the list of persons maintained by the Settlor as its "Band List"; or
 - (iii) if neither of the foregoing apply, the list identified by the Council in a Council Resolution as the “Membership List”;
- (u) “Net Income” means the taxable income of the Trust determined by the

auditors of the Trust for any particular Fiscal Year for purposes of the *Income Tax Act* without regard to the annual disbursement of Net Income described in Section 7.1 except that:

- (i) the full amount of any capital gain and not just the taxable capital gain will be included in income for this purpose, and
 - (ii) no dividend will be grossed up for this purpose as would otherwise be required under that *Act*;
- and, without limiting the generality of the foregoing, includes taxable dividends, capital dividends, stock dividends and taxable capital gains all within the meaning of those terms in the *Income Tax Act*;
- (v) "Person" means any individual, proprietor, corporation, partnership, trust, joint venture, unincorporated organization, Indian Band, union or a governmental body and their respective heirs, legal representatives, successors and assigns;
 - (w) "Referendum" means a referendum held in accordance with Section 20 hereof;
 - (x) "Reserve" means any tract of land that has been set apart by Canada for the use and benefit of the Band being a "reserve" within the meaning of the *Indian Act*;
 - (y) "Schedule" means a schedule to this Agreement;
 - (z) "Settlement Agreement" means the Settlement Agreement entered into between the Settlor and Canada dated for reference the 22nd day of October, 2002;
 - (aa) "Settlement Monies" means the Compensation paid to the Settlor by Canada as defined in the Settlement Agreement;
 - (bb) "Termination Date" means the date upon which the earliest of the following will occur:
 - (i) the date which is twenty-one (21) years after the date of the death of the last surviving issue of Her Majesty Queen Elizabeth II, alive or *en ventre sa mere* at the date of this Agreement;
 - (ii) the end of the applicable statutory perpetuity period, if any; or
 - (iii) such earlier date as the Trustees may determine and which is authorized by not less than 75% of the Adult Members voting in favour at a Referendum held for such purpose provided that no Referendum may be held for such purpose before the 80th anniversary of the date of this Agreement;
 - (cc) "Trust" means the Lax Kw'alaams Indian Band Settlement Trust created by this Agreement;

- (dd) “Trust Accounts” mean the Trust Capital Account and the Trust Revenue Account;
 - (ee) “Trust Capital Account” means the account so titled to be established by the Trustees pursuant to Section 17 of this Agreement and includes the monies on deposit in the account designated as the Trust Capital Account or other investments of the Trustees made from funds deposited to the Trust Capital Account;
 - (ff) “Trust Property” means the Settlement Monies and includes all monies now or hereafter on deposit in the Trust Capital Account and the Trust Revenue Account (which for greater certainty includes any and all investments in which the monies in the Trust Capital Account or the Trust Revenue Account may from time to time be invested hereunder by the Trustees as specified herein) as well as any additions or accruals thereto and also includes, without limitation, all interest revenue and other income realized thereon, and the net proceeds of sale of any investment and all sums contributed or loaned to the Trust pursuant to this Agreement;
 - (gg) “Trust Revenue Account” means the account so titled, to be established by the Trustees pursuant to Section 17 of this Agreement and includes the monies on deposit in the Trust Revenue Account or other investments of the Trustees made from funds deposited to the Trust Revenue Account;
 - (hh) “Trustees” means collectively those individuals and corporations appointed or elected to act as a Trustee pursuant to this Agreement, and any individuals or corporations from time to time thereafter appointed or elected or substituted therefor, and "Trustee" means anyone of such Trustees; and
 - (ii) “Trustee's Certificate” means the certificate to be provided by the Trustees from time to time certifying the names of the then current Trustees and evidencing their signatures.
- 1.2 **Income Tax Act:** In this Agreement, any reference to the *Income Tax Act* will refer to the *Income Tax Act*, R.S.C. 1985 c.1 (5th Supplement) and the Income Tax Regulations thereunder, both as amended or replaced from time to time.
- 1.3 **Gender:** In this Agreement, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural and vice versa, words importing a gender will include the feminine, masculine and neuter genders and words importing persons include an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative.
- 1.4 **Headings for Reference Only:** the division of this Agreement into articles and sections and the provision of a table of contents and the insertion of headings are for

convenience of reference only and will not affect the construction or interpretation of this Agreement.

- 1.5 **Time of the Essence:** Time will be of the essence in this Agreement.
- 1.6 **Governing Law:** This Agreement will be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein.
- 1.7 **Place of Execution:** This Agreement is executed and delivered by the Settlor and the Trustees at a Reserve.

PART II - TRUST ARRANGEMENTS

2. CREATION OF THE TRUST

- 2.1 **Settlement of the Trust:** The Settlor hereby settles upon the Trustees the Settlement Monies and other Trust Property in trust for the collective benefit of the Beneficiaries in common upon the terms set out in this Agreement and all right, title and interest in and to the same is hereby vested in the Trustees for the benefit of the Beneficiaries on the terms set out in this Agreement.
- 2.2 **Beneficiaries of Trusts:** The Trustees hereby declare that they hold and agree to hold the Trust Property in trust for the use and benefit of the Beneficiaries subject to the terms and conditions and with the powers and duties set out and contained herein.
- 2.3 **Beneficial Ownership Held In Common:** All beneficial right, title, interest and benefit in and to the Trust Property will vest in the Beneficiaries in common. For greater certainty, the right, title and interest of the Beneficiaries in the Trust Property is a collective right in common conferred upon and accruing to the Beneficiaries as a body and not to any Member individually. Accordingly, no individual Member shall have a separate right to any interest in any particular Trust Property or to call for transfer to him or her of any part of the Trust property.
- 2.4 **Legal Ownership, No Revocation:** Subject to the terms hereof, all legal right, title, interest and benefit in and to the Trust Property will vest in the Trustees and there will be no power of revocation except as may be expressly provided for in this Agreement.
- 2.5 **Purpose and Object:** The purpose and object of this Trust is as follows:
 - (a) to make certain payments as described in Section 3.1 (a) to (c);
 - (b) to use Trust Property for the use and benefit of present and future generations of Members as set out in Sections 3 to 9;
 - (c) to ensure that the Trust Property is invested prudently and profitably in

Authorized Investments in accordance with Section I4.

- 2.6 **Location on Reserve:** The Trust will be situated on a Reserve. The mailing address and head office of the Trust shall at all times be on a Reserve. All records relating to the Trust will be kept at such location on a Reserve as the Trustees may determine from time to time by resolution in writing. Duplicate records may be maintained at an off Reserve location.
- 2.7 **Nature of Relationship:** The Trust is an unincorporated trust established to benefit the Beneficiaries and nothing contained in this Agreement is intended to constitute nor will it be deemed to constitute a general partnership, limited partnership, syndicate, association, joint venture, company or corporation.
- 2.8 **Application of Section 90 Indian Act:** The payment by Canada of the Settlement Monies to the Trust pursuant to the Settlement Agreement is being made to the Settlor by Canada and is received by the Trustees at the direction of the Settlor in accordance with Section 90 of the *Indian Act*, notwithstanding the Settlor's direction that such monies be disbursed as provided by Section 3 of this Agreement.
- 2.9 **Assets Forming Trust Property:** Without limiting the definition of "Trust Property", the Trust Property will, initially, be the Settlement Monies and thereafter such other monies and investments as are held in the Trust Capital Account and the Trust Revenue Account from time to time, including monies invested by the Trustees pursuant to the terms hereof and monies loaned or re- contributed by the Settlor from disbursements of Net Income or otherwise.
- 2.10 **Term of Trust:** This Trust will remain in force and effect from the date of execution of this Agreement until the Termination Date at which time the Trust Property will revert to the Settlor to be used for the use and benefit of the Settlor.
- 2.11 **Name of Trust:** The Trust hereby created will be known as the Lax Kw'alaams Indian Band Settlement Trust. So far as it is practicable, the Trustees shall conduct the Trust's activities, execute all documents and take all legal proceedings under this name.

3. USE OF THE SETTLEMENT MONIES

- 3.1 **Use of Settlement Monies:** The Trustees will receive the Settlement Monies in trust for the benefit of the Beneficiaries and use them as follows:
- (a) **Implementation Expenses:** The Trustees will pay to the Settlor an amount on account of outstanding professional fees and disbursements owing by the Settlor in respect to negotiation, settlement and implementation of the Settlement Agreement and this Agreement. Amounts which are not outstanding at the date Settlement Monies are received will be paid at a later date out of the Trust Capital Account. The Council will provide the Trustees with a statement by way of a Council Resolution setting out the total amount of such expenses which will be immediately paid by the Trustees. This statement shall be

supported by documentation satisfactory to the Trustees.

- (b) **Per Capita Distribution:** The Trustees will pay to the account of the Settlor stipulated in a Council Resolution, on a one time only basis, an amount of \$3,400,000 being 20% of the Settlement Monies for the purpose of completing a per capita distribution to the Members upon such terms as may be set out in the Council Resolution provided that such terms provide for the shares of Members who, at the time of the distribution will be under the age of 19 years. to be held in trust until the Member is 19 years old.
- (c) **Settlor Administration Payment:** The Trustees will pay to an account of the Settlor stipulated in a Council Resolution an amount equal to the estimate of the Council by way of a Council Resolution of the cost to implement the Settlement Agreement and this Agreement. This estimate shall be supported by documentation satisfactory to the Trustees and will, in no event exceed an amount of \$400,000.00. The Council will provide the Trustees with an accounting by way of a Council Resolution on the use of such funds within 12 months of the date of payment and will return any overpayment which will form part of the Trust Capital Account. If it is subsequently determined that the actual expenses exceed the estimate, the Trustees will pay the Settlor an amount equal to the shortfall from the Trust Capital Account provided that the total paid, including the amount of any shortfall, shall in no event exceed the amount of \$400,000.00.
- (d) **Trust Capital Account:** The Trustees will deposit the portion of the Settlement Monies not required for immediate payment under Section 3.1 (a) to (c) into the Trust Capital Account.

4. TRUST ACCOUNTS - PURPOSE AND USE OVERVIEW

- 4.1 **Trust Accounts - Overview:** The Trustees will hold the Trust Property in one of the two Trust Accounts - the Trust Capital Account or the Trust Revenue Account.
- 4.2 **Trust Capital Account - Overview:** The Trust Capital Account is to receive the net Settlement Monies (after payment of the amounts identified in Section 3.1 (a) to (c). The principal amount of the Trust Capital Account will not be available for use of Members. It will be kept invested so that it will earn income for present and future Members. By executing this agreement the Settlor agrees to loan an additional amount to the Trust each year by way of a deposit to increase the principal amount of the Trust Capital Account in the amount set out in Section 9.1 to ensure that an amount equal to 50% of the Net Income for the preceding year is added to the Trust Capital Account, that the Trust Capital Account is never less than the amount deposited pursuant to Section 3.1(d) and that the principal amount of the Trust Capital Account increases each year to compensate for the rate of inflation.
- 4.3 **Trust Revenue Account - Overview:** The Trust Revenue Account is to receive the proceeds of the loans to be made by the Settlor to the Trust under Section 9.2. As

provided in Section 6.2, the funds in the Trust Revenue Account will be available for payment of expenses related to operation of the Trust that are Authorized Expenses and for disbursement in accordance with the disbursement procedure set out in Section 8.

4.4 **Restriction on Use:** For greater certainty, none of the Settlement Monies may be used for any of the following purposes except as expressly permitted in this Agreement:

- (a) **No Per Capita Distribution.** Except as permitted by Section 3.1 (b), the Settlement Monies shall not be used, directly or indirectly, for any per capita distribution to the Members;
- (b) **No Security.** The Trustees shall not mortgage, pledge, hypothecate or in any way encumber the Settlement Monies or any interest therein for any purpose whatsoever, and shall not borrow monies save for loans from the Settlor provided in Section 9;
- (c) **No Lending.** The Trustees shall not lend, invest, release, distribute or advance in any way, including to themselves or to any other Person, the Settlement Monies or any interest therein save for Authorized Investments as provided in Section 14.

5. TRUST CAPITAL ACCOUNT - INVESTMENT AND USE

- 5.1 **Investment:** Monies in the Trust Capital Account may only be invested in Authorized Investments in accordance with Section 14.
- 5.2 **Use-Principal:** The principal of the Trust Capital Account must be kept in Authorized Investments at all times. The principal will include the net Settlement Monies pursuant to Section 3.1 (d) and the loans by the Settlor as provided in Section 9.1.
- 5.3 **Use-Income:** The Net Income of the Trust Capital Account will be disbursed on the Disbursement Date of each Fiscal Year to the Settlor by the procedure set out in Section 7.

6. TRUST REVENUE ACCOUNT - INVESTMENT AND USE

- 6.1 **Investment:** Monies in the Trust Revenue Account may only be invested in Authorized Investments in accordance with Section 14.
- 6.2 **Use - Principal and Income:** Both the principal and Net Income in the Trust Revenue Account is available for use:
 - (a) for payment of Authorized Expenses; and
 - (b) for Band Benefits and Band Developments in accordance with the provisions of

Section 8.

7. DISBURSEMENT OF NET INCOME

- 7.1 **Annual Disbursement of Net Income:** The Net Income of the Trust will be estimated prior to the end of the Fiscal Year by the Trustees in accordance with the applicable provisions of Part 1 of the *Income Tax Act* regarding the calculation of taxable income of a trust. The estimate will thereafter be reviewed and either confirmed or adjusted for the Fiscal Year by the auditors of the Trust. The final determination of the Net Income of the Trust by the auditors will be final and binding on the Trustees and the Settlor. On the last business day of each Fiscal Year ("Disbursement Date") the Net Income will be due and payable to the Settlor and will be delivered to the Settlor, as soon as practicable on or after the Disbursement Date, by way of a transfer of an amount of funds equal to such Net Income from the Trust Capital Account to an account of the Settlor as set out in a Council Resolution.
- 7.2 **Promissory Note:** If, because of the nature of the investments held in the Trust Capital Account immediately prior to the end of the fiscal Year, it is not possible or in the best interests of the Beneficiaries to effect a transfer of monies equal to the Net Income, the Trustees will issue an unconditional demand promissory note to the Settlor for the amount of the shortfall. Payment of the note will be effected by transfer of an amount equal to the promissory note from the Trust Capital Account to the account of the Settlor as set out in a Council Resolution as soon as possible after the end of the Fiscal Year.
- 7.3 **Adjustments:** If the auditors determine the Net Income to be different from the Trustees' estimate, the amount of the difference will be paid forthwith by transfer as appropriate between the account of the Settlor as set out in a Council Resolution and the Trust Capital Account.

8. DISBURSEMENT FOR BAND DEVELOPMENTS AND BENEFITS

- 8.1 **Source and Use of Funds:** The Trustees are hereby authorized and empowered to use Trust Property in the Trust Revenue Account for a Band Development or Benefit in accordance with the provisions and subject to the restrictions set out in this section. For greater certainty, Trust Property in the Trust Capital Account may not be used for a Band Development or Benefit and may only be used as provided in Section 5.
- 8.2 **Disbursement Procedure:** The procedures to be followed by the Trustees for disbursement of funds in the Trust Revenue Account will be as follows:
- (a) the Council will not apply for funds from the Trustees for a Band Benefit or Development unless and until it has first applied for such grants or other funding as may be available for such Band Benefits or Developments from provincial and federal government sources and has obtained responses confirming the amount

of funds available from such sources;

- (b) except as provided by Section 9.4, the Trustees may not transfer funds from the Trust Revenue Account to the Settlor for a purpose which qualifies as a Band Benefit if the particular Band Benefit program for which the request is made will in the opinion of the Trustees require the payment of more than 25% of the Net Income for the preceding Fiscal Year in any Fiscal Year during which such Band Benefit program is in effect. This restriction will not apply if the terms and conditions for the use of the funds and the maximum amount to be paid by the Trustees in each Fiscal Year or in total has been authorized by a majority of the Adult Members voting in favour at a Referendum held for such purpose;
- (c) the Trustees may not transfer funds of more than 25% of the Net Income for the preceding Fiscal Year from the Trust Revenue Account to the Settlor for a particular Band Development in any Fiscal Year unless the terms and conditions for the use of such funds and the amount to be paid by the Trustees has been authorized by a majority of the Adult Members voting in favour at a Referendum held for such purpose;
- (d) the Trustees may not use funds from the Trust Revenue Account for a Band Benefit or Band Development unless the Trustees have received a written application from the Council by way of a Council Resolution, approved at a duly convened meeting of Council with a quorum of Council members in attendance, which outlines:
 - (i) the purpose for which the money is requested;
 - (ii) compliance with the conditions set out in Section 8.2 (a);
 - (iii) when required by Section 8.2 (b) or Section 8.2 (c), the approval of Adult Members by way of a Referendum;
 - (iv) the Band department which will be responsible for using the funds requested in the application for the Band Benefit or Band Development project and for reporting on the expenditure of the funds so used to Council and to the Trustees;
 - (v) Any other requirements that the Trustees may impose on such applications from time to time pursuant to their powers under Article 11 and their duties under Article 13 of this Agreement
- (e) upon receipt of an application by Section 8.2 (d) from Council, the Trustees will review the application to ensure that the proposed use qualifies as a Band Development or Band Benefit, and that all other application requirements imposed by this Agreement or by the Trustees pursuant to this Agreement are met before exercising their discretion to approve the application;
- (f) if an application is approved by the Trustees, the Trustees may disburse the approved funds from the Trust Revenue Account to an account of the Settlor with a Financial Institution as set out in the Council Resolution for use by the

Band department so designated in the Council Resolution and, for greater certainty, upon such disbursement of funding by the Trustees the Council is solely responsible, through the designated Band department, to ensure that the funding is used in accordance with the terms of the application; and

- (g) Council shall provide the Trustees with annual audited statements, within 90 days of the end of the Fiscal Year, indicating how the funding for each application was used in that Fiscal Year.

9. ANNUAL LOANS BY SETTLOR TO TRUST

9.1 **Annual Loan to Trust Capital Account:** The Settlor hereby agrees to advance an amount to the Trust each year by way of loan which amount shall be deposited by the Trustees to and form part of the principal of the Trust Capital Account. The loan will be advanced within 90 days of the end of each Fiscal Year. The amount of the loan will be determined by Council within 90 days of the end of the Fiscal Year and shall be equal to:

- (a) the amount, if any, by which the Trust Capital Account is then less than the portion of the Settlement Monies deposited into the Trust Capital Account pursuant to Section 3.1 (d), and
- (b) an amount which is equal to the greater of:
 - (i) 50% of the amount received by the Settlor on the preceding Disbursement Date in accordance with Section 7.1, and
 - (ii) a percentage of the amount in the Trust Capital Account at the end of the immediately preceding Fiscal Year, which percentage is the same as the percentage by which the consumer price index published by Statistics Canada (all items - British Columbia) for the end of such Fiscal Year has increased over the amount of such index at the end of the previous Fiscal Year.

The Settlor hereby agrees to make further loans to the Trust to be deposited by the Trustees to and form part of the principal of the Trust Capital Account equal to 50% of amounts received by the Settlor from the Trustees pursuant to Sections 7.2 and 7.3. The Settlor shall make the further loans within 10 days of receipt by it of the amounts.

9.2 **Annual Loan to Trust Revenue Account:** The Settlor hereby agrees to advance an amount to the Trust each year by way of loan which amount shall be deposited by the Trustees to and form part of the Trust Revenue Account. The loan will be advanced within 10 days of the end of each Fiscal Year. The amount of the loan will be equal to the amount received by the Settlor on the preceding Disbursement Date in accordance with Section 7.1 less the annual loan for that year to the Trust Capital Account made pursuant to Section 9.1. The Settlor hereby agrees to make

further loans to the Trust to be deposited by the Trustees to and form part of the Trust Revenue Account equal to 50% of amounts received by the Settlor from the Trustees pursuant to Sections 7.2 and 7.3. The Settlor shall make the further loans within 10 days of receipt by it of the amounts.

- 9.3 **Date of Payment:** The loans to be made under this section will be repayable by the Trustees to the Settlor without interest on the Termination Date.
- 9.4 **Payment from Trust Revenue Account:** The Council may direct the Trustees to use funds in the Trust Revenue Account for the purposes of making a loan under this section. The use of the funds for this purpose will qualify as a Band Benefit. Notwithstanding Section 8.2 (b), no Referendum will be required when funds in the Trust Revenue Account are used for the purposes of a loan pursuant this section.
- 9.5 **Set-Off for Non-Payment:** If the amount of the combined loans has not been advanced by the Settlor within 90 days of the Fiscal Year end, the Trustees will obtain the amount to the extent possible by way of set-off from funds otherwise payable to the Settlor which will include monies in the Trust Revenue Account even though the Council has not made application for use of such funds pursuant to Section 8.2 (d).

PART III - THE TRUSTEES

10. APPOINTMENT AND REPLACEMENT OF TRUSTEES

- 10.1 **Conditions of Appointment:** The appointment of Trustees will be as follows:
- (a) The Trustees will consist of 5 Individual Trustees and 1 Corporate Trustee which is independent of the Settlor.
 - (b) The first Trustees will be those who are appointed by Council as Trustees under this Agreement and their term of office will expire when elections are held pursuant to Section 10.
 - (c) All Individual Trustees will thereafter be elected by the Adult Members in the same manner, for the same terms and at the same time as elections are conducted for Council.
 - (d) The Corporate Trustee will be a corporation licenced to act as a trust company under the laws of Canada or the Province of British Columbia. The Corporate Trustee will be appointed from time to time by the Council for a term of not less than 3 years (which term may be renewed) after approval of the appointment by a Council Resolution and on such terms and conditions as may be agreed upon between the Corporate Trustee and Council in writing. Such terms and conditions shall only permit termination of the appointment by

Council by reason of incompetence, refusal to act or fraud and termination of the appointment by the Corporate Trustee on giving not less than 90 days written notice addressed to Council and the Individual Trustees. The terms of the agreement shall specify the authorized signatories of the Corporate Trustee for the purposes of Section 18.1.

- (e) Each Trustee by accepting his or her appointment as Trustee thereby accepts the duties and obligations as Trustee contained herein, and agrees to observe and carry out the same according to the terms and conditions hereof. Each Individual Trustee shall provide a written confirmation to the Council and the Corporate Trustee which confirms:
 - (i) acceptance of the appointment as Trustee,
 - (ii) receipt of a copy of this Agreement,
 - (iii) that the Trustee has read this Agreement;
 - (iv) that the Trustee is qualified to act as an Individual Trustee in accordance with Section 10.3;
 - (v) that the Trustee will notify the Council and the Corporate Trustee if he or she ceases to satisfy the qualifications for an Individual Trustee as set out in Section 10.3;
 - (vi) that the Trustee will carry out the duties and obligations as Trustee contained herein, and
 - (vii) the current address and phone number of the Trustee.

10.2 **Remuneration:** The following rules apply in respect to remuneration of Trustees:

- (a) The remuneration of the Corporate Trustee will be such amount as is agreed upon from time to time between the Corporate Trustee and Council in writing and in accordance with a Council Resolution.
- (b) Each Individual Trustee will be paid a reasonable honorarium as may be established from time to time by the Council by Council Resolution.
- (c) All Trustees will be reimbursed for reasonable expenses incurred by them upon production of proper receipts and invoices for all expenses for which they request reimbursement.
- (d) The Trustees shall only act for the Trust in the capacity of Trustees and shall not perform any other services for the Trust and shall not receive any remuneration for acting in connection with the Trust save the remuneration allowed under Section 10.2 (a) and (b).

10.3 **Qualifications - Individual Trustees:** Each Individual Trustee must be a Member and must satisfy the following qualifications throughout the term of his or her appointment:

- (a) be 19 years of age or older;

- (b) not have been found incapable of managing his or her affairs by reason of mental infirmity;
- (c) in the case of all Individual Trustees, not be a member of the Council;
- (d) not be an undischarged bankrupt;
- (e) not have been convicted of:
 - (i) an indictable offence; or
 - (ii) a summary offence involving fraud, theft or false pretences; and
- (f) not be in arrears with the Band unless the Band has accepted a payment plan to retire the arrears by the Member.

The appointment or election of a person in default of such qualifications is void but any decisions of the Trustees during the period such person was acting as Trustee shall remain in force and effect unless set aside by order of the Supreme Court of British Columbia.

- 10.4 **Replacement of Trustees:** The Council by way of Council Resolution will forthwith (and in any event within 30 days) appoint a person to act as a replacement Trustee upon the retirement or death of a Trustee, for the balance of the replaced Trustee's term of office. The replacement Trustee must satisfy the same qualifications as the replaced Trustee, accept in writing his or her appointment and agree in writing to be bound by the terms of this Agreement by providing a written confirmation to the Council and the Corporate Trustee in the form set out in Section 10.1 (c). A replacement Trustee will be vested with the Trust Property and all the trusts, powers and authorities of the replaced Trustee without any further assignment, transfer or conveyance.
- 10.5 **Vacant Trustee Position:** In the event that less than five delegates stand for election for a Trustee position, Council may appoint a Trustee to fill the vacant position(s). Any Trustee so appointed will hold a temporary office of 2 years, after which Council shall call for a by-election to fill the position for the remainder of the vacant term (i.e. until the next set of elections under Section 10 (c)). The Trustee to be elected in the by-election will be elected by the Adult Members in the same manner and for the same terms as elections are conducted for Council.
- 10.6 **Retirement of Individual Trustee:** An Individual Trustee will serve for his or her elected term or terms unless:
- (a) he or she dies;
 - (b) he or she resigns by written notice to the Council and the other Trustees;
 - (c) he or she fails, without reasonable excuse, satisfactory to the Council after receipt of appropriate prior notice thereof, to attend 3 consecutive meetings of the Trustees;
 - (d) he or she ceases to satisfy the qualifications of a Trustee as set out in Section 10.3;
 - (e) he or she breaches the requirements of Section 15 or takes a personal benefit in the Trust Property or the proceeds thereof except as expressly permitted hereunder ;
 - (f) the Adult Members voting in a Referendum decide to terminate his or her

appointment.

Upon the retirement of a Trustee, the retiring Trustee or his or her personal representative shall execute and deliver such documents as the other Trustees may reasonably require for the purpose of conveying to the other Trustees, or the replacement Trustee, any Trust Property or interest in Trust Property held in the name of the retiring Trustee.

- 10.7 **Training:** Following each election of individual Trustees, the Corporate Trustee will arrange a seminar for the purposes of:
- (a) familiarizing the Individual Trustees on the terms of the Trust, the responsibilities of the Trustees and the procedures for making and implementing Trustee decisions;
 - (b) providing details of the Trust's financial position; and
 - (c) such other issues as may assist the Individual Trustees to perform their duties.

The Corporate Trustee shall, in addition to the foregoing, provide on-going advice and training to the Individual Trustees to assist them to perform their duties hereunder.

11. POWERS OF TRUSTEES

- 11.1 **General Powers:** Subject to their duties as Trustees and the express terms hereof, including Section 14 which restricts their power to make investments, the Trustee will have the same power in administering the Trust Property as they would have if they were the absolute owners thereof.
- 11.2 **Specific Powers:** Subject to the terms hereof and without limiting the generality of Section 11.1, the Trustees are specifically authorized and empowered to:
- (a) invest the Trust Property by way of Authorized Investments as provided in Section 14;
 - (b) retain, dismiss and replace independent advisors (including, without limiting the generality of the foregoing, legal counsel, accountants and auditors, bookkeepers, realtors, appraisers, property managers, auctioneers, architects and engineers) to assist the Trustees in carrying out their responsibilities and obligations under this Agreement provided that Investment Managers may only be appointed and dismissed in accordance with the terms of Section 14. The Trustees may but will not be bound to act upon the advice of such advisors and will not be responsible for any loss caused by so acting (or not so acting) if the decision to so act (or not so act) was reasonable in the circumstances;
 - (c) establish the Trust Capital Account and the Trust Revenue Account in accordance with Sections 17 and 18 and, subject always to the provisions of

this Agreement, make such reasonable arrangements governing banking procedures as they from time to time deem advisable except that the arrangements for withdrawal of funds from such accounts must be in compliance with the provisions of Section 18.1;

- (d) institute, prosecute and defend any suits or actions or other proceedings affecting them or the Trust Property or any part thereof, and make application to any court of competent jurisdiction in respect of this Agreement;
- (e) as required pursuant to Section 13.2 (h) of this Agreement, engage and pay for the services of a qualified independent auditor to issue an audit report;
- (f) execute all documentation reasonably necessary or incidental to the proper and effective administration of the Trust Accounts or the Trust Property generally;
- (g) in respect of any corporation, trust, firm, association or organization in which the Trustee as trustee hereof may from time to time be interested, enter into all and any arrangements with such corporations, trusts, firms, associations or organizations as it might have done had it held its interest otherwise than as a trustee including, without limiting the generality of the foregoing, pooling agreements, voting trust agreements, buy and sell agreements, and shareholders agreements of any nature or kind whatsoever;
- (h) vote as the Trustees see fit, in person or by proxy in respect of shares, units in unit trusts or mutual funds, or other securities comprised in the Trust Property and to delegate their discretionary powers in respect thereof and to exercise all rights attaching to any such shares, units or other securities comprised in the Trust Property and to make payment therefor and to consent to or participate in dissolutions, reorganizations, consolidations, mergers or sales affecting such shares, units or other securities comprised in the Trust Property and in such connection to pay assessments, subscriptions and other charges;
- (i) vote for the election of nominees of the Trustees to any executive office or to membership on any board of directors or executive or other committee of any corporation, the shares or other securities of which are comprised in the Trust Property and to authorize such nominees to serve in any such office or on any such board or committee;
- (j) collect, sue for and receive all sums of money coming due to the Trustees as trustee and engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any action, suit, proceeding, dispute, claim, demand or other litigation, regulatory or judicial, relating to the Trust, the Trust Property or the affairs of the Trust, and enter into agreements therefor, whether or not any suit or proceeding is commenced or claims asserted and, in advance of any controversy, enter into agreements regarding the arbitration or settlement thereof;

- (k) subject to the terms of Sections 17 and 18, establish accounts with one or more Financial Institutions and deposit any cash comprised in the Trust Property to such account upon such terms and conditions as the Trustee may see fit;
- (l) incur and pay out of the Trust Property any charges, expenses or disbursements which are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust, including, without limitation, taxes, duties, insurance premiums, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in any part of the world in connection with the Trust or any part of the Trust Property or upon or against any part of the Trust Property;
- (m) renew, modify, release, waive, compromise, extend, consolidate or cancel in whole or in part, any obligation owed to the Trustees by any person and, where relevant, any obligation owed by the Trustees to any person;
- (n) appoint, employ or engage any person to assist the Trustees in all matters relating to the Trust and the management and administration thereof, including matters which the Trustees, where an individual, could undertake in person, and to pay such person reasonable remuneration from the Trust Property;
- (o) purchase and pay for out of the Trust Property insurance for the protection of the Trust Property and the Trustees, officers, employees and agents of the Trust in such amounts as the Trustees may consider adequate to cover the claims and liabilities of every nature arising with respect to the Trust Property; and
- (p) do all such other acts and things as are incidental to the foregoing, and to exercise all powers which may be necessary or useful to promote or carry out any of the purposes of the Trust, and to promote or carry out the provisions of this Agreement.

12. CONDUCT OF TRUST MEETINGS

12.1 **Basic Rules:** The Trustees will meet as often as may be required for the efficient administration of the Trust and at least every 3 months and the conduct of all meetings of Trustees will be governed by the following rules:

- (a) unless waived in writing by each Trustee, notice of the meeting will be given by the Corporate Trustee in writing to each Trustee at least 10 clear days prior to the meeting and the notice will state the place and time of the meeting. The Corporate Trustee may call a meeting at any time and will be obliged to do so upon receiving a request for a meeting from any 2 or more Trustees or to ensure that there is at least one meeting every 3 months;
- (b) the quorum for meetings of the Trustees will be the Corporate Trustee and 3 Individual Trustees, with each Trustee to be present in person, or attending by telephone or other communication facility which permits each Trustee to

communicate with all other Trustees at the meeting;

- (c) the Corporate Trustee will be represented by one or more employees at each meeting but all representatives will collectively have only 1 vote;
- (d) the representative of the Corporate Trustee will be the chairperson for each meeting (in this section hereinafter referred to as the "Chair");
- (e) except as specifically otherwise provided or required herein, all decisions and actions of Trustees will be in accordance with the majority vote of the Trustees at the meeting;
- (f) in case of a tie, the Corporate Trustee as Chairman will cast the deciding vote;
- (g) meetings of the Trustees will be held on any reserve as defined in the *Indian Act* within British Columbia as the Trustees may determine;
- (h) every reasonable effort will be made to hold such meetings at a Reserve of the Settlor; and
- (i) minutes of decisions taken at all Trustees meetings will be recorded by a person approved by the Corporate Trustee and such record will be circulated to and signed by the Trustees taking part in the meeting.

12.2 **Additional Rules:** The Trustees may from time to time make additional rules, not inconsistent with the basic rules set out in Section 12.1 to govern their procedure.

13. DUTIES OF TRUSTEES

13.1 **General Duties:** Subject to the express provisions hereof, the Trustees, and each of them, shall observe and adhere to the duties and standards of care imposed upon trustees by the general law. Without limitation, such duties and standards of care shall include the following:

- (a) **Honesty, Good Faith and Standard of Care:** The Trustees shall exercise their powers and discharge their duties honestly, in good faith and in the best interests of the Beneficiaries. Each Trustee will exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in similar circumstances.
- (b) **Carry Out the Terms of the Trust:** The Trustees shall make themselves familiar with the terms of the Trust as set out in this Agreement and carry out such terms exercising to the extent necessary their power to retain advisors. They shall ensure that they keep themselves informed as to the affairs of the Trust at all times and participate in the decisions of the Trustees.
- (c) **Independence/Delegation:** Each of the Trustees is appointed to exercise his or her own independent judgment as a trustee and is not required to follow the

direction of the Settlor, the Beneficiaries or the Council. Trustees are individually responsible for carrying out their duties although they may use agents and employees to do so if care is used in appointing and supervising such agents and employees.

13.2 **Specific Duties:** Without limiting the generality of Section 13.1 and subject to the terms hereof, the Trustees shall have the following specific duties:

- (a) **Receipt and Use of Settlement Monies:** The Trustees will receive and use the Settlement Monies in accordance with Section 3.
- (b) **Receipt and Review of Applications for Funding from Council:** The Trustees will accept applications for funding from Council pursuant to Section 8.2 (d) biannually on March 31 and September 30 in each Fiscal Year. The Trustees will review and decide whether to approve such applications for funding in April and October respectively of each Fiscal Year.
- (c) **Trust Accounts:** The Trustees will hold funds forming part of the Trust Property in the Trust Accounts in accordance with Sections 4 - 6, 17 and 18.
- (d) **Ownership and Custody of Trust Property:** The Trustees will record the ownership to any asset forming part of the Trust Property in the name of the Corporate Trustee as agent for the Trustees and make arrangements for the safety and security of Trust Property including obtaining such insurance as may be prudent in the circumstances.
- (e) **Investments:** The Trustees will invest the Trust Property in accordance with Section 14.
- (f) **Annual Disbursement of Net Income:** The Trustees will disburse the Net Income in accordance with Section 7.
- (g) **Band Benefits:** The Trustees will comply with the restrictions in Section 8 relating to use of Trust Property in the Trust Revenue Account for a Band Benefit.
- (h) **Maintenance of Records:** The Corporate Trustee will maintain adequate records of all transactions affecting the Trust Property and keep them on a Reserve in accordance with Section 2.6. Without limitation, the Corporate Trustee will maintain a minute book for the Trust which will include the following:
 - (i) constituting documents:
 - (1) an original executed copy of this Agreement;
 - (2) an original executed copy of all amendments to this Agreement,
 - (3) an original executed copy of any restatements of this

- Agreement;
 - (ii) settlement records:
 - (1) a copy of the receipt for the Settlement Monies received under Section 3.1;
 - (2) a copy of the cheque for the Settlement Monies from Canada;
 - (iii) Trustee records:
 - (1) a copy of all confirmations received pursuant to Section 10.1 (e);
 - (2) minutes of all meetings or resolutions of the Trustees;
 - (3) copies of reports sent to Adult Members pursuant to Section 13.2 (l);
 - (iv) contractual documents:
 - (1) copies of all Investment Management Agreements and all written agreements entered into by the Trustees;
 - (v) financial records:
 - (1) copies of all documents relating to the loans by the Settlor under Section 9;
 - (2) copies of financial statements prepared pursuant to Section 13.2 (i);
 - (3) copies of all tax returns filed under Section 13.2 (j);
 - (4) banking documents executed under Section 17.3;
 - (5) all other financial records relating to the Trust.
- (i) **Financial Statements:** The Trustees will cause to be prepared, for each Fiscal Year, audited financial statements for the Trust prepared in accordance with Canadian generally accepted accounting principles, consistently applied. The Trustees will have each of the financial statements audited by an independent firm of chartered accountants, who will provide a written report on the financial statements for each Fiscal Year to the Trustees and Council, within 90 days of the end of each such Fiscal Year.
- (j) **Tax Returns:** The Trustees will file any required tax returns or other filings and withhold from any payments any required amount and remit all taxes and other assessments required by any applicable law to be so withheld and remitted.
- (k) **Reports to Council:** The Trustees will provide Council with:
 - (i) a certified copy of the minutes of each meeting of Trustees which will be posted in the administrative office of the Settlor in an area where Members have access; and
 - (ii) a copy of all ledgers, registers and documents or recordings of transactions affecting the Trust Property as and when requested by Council by way of Council Resolution.
- (l) **Attendance at Band and Council Meetings:** The Trustees will attend general meetings of Members and Council meetings, when requested by

Council by way of Council Resolution, and not less often than once a year and will report on the administration of the Trust Property in relation to the purposes of the Trust as set forth herein.

- (m) **Reports to Band Members:** The Corporate Trustee will cause to be prepared and make available for distribution to Members within 120 days of the end of each Fiscal Year:
 - (i) a copy of the audited financial statements of the Trust for such Fiscal Year;
 - (ii) a written report to be prepared by the Corporate Trustee on behalf of the Trustees summarizing activities of the Trust during such Fiscal Year together with such other information about the Trust and its activities as the Trustees deem appropriate.
- (n) **Minutes of Meetings:** A copy of the minutes of each meeting of the Trustees will be provided to the Council within 14 days of the meeting. The Trustees will make available the minutes of all meetings of the Trustees for inspection by Members during business hours at the location which such records are kept. A Member, upon request, may obtain a copy of the minutes of any such meeting.
- (o) **Conflicts of Interest:** The Trustees will disclose conflicts of interests as set out in Section 15.

14. INVESTMENTS

14.1 **Authorized Investments:** The Trustees may only invest the Trust Property as follows:

- (a) in investments specifically permitted to trustees under the provisions of Sections 15 to 18 of the *Trustee Act* of British Columbia as the same were in force immediately prior to the enactment of the *Trustee Investment Statutes Amendment Act*, S.B.C. 2002 c 33, or
- (b) by depositing all or part of the Trust Property with one or more Investment Managers who have been appointed and have entered into an Investment Management Agreement with the Trustees in accordance with this section to invest the Trust Property on behalf of the Trustees.

The Trustees shall ensure that the Trust Property will be kept invested by Investment Managers pursuant to the terms of an Investment Management Agreement to the greatest extent practicable rather than by the Trustees.

14.2 **Appointment of Investment Managers:** The Trustees shall appoint Investment Managers from time to time to manage the investment of all or any part of the Trust Property pursuant to the terms of Investment Management Agreements. Prior to such appointment, the Trustees shall obtain the approval of the Council by way of a Council Resolution to the appointment and such terms provided that if, in the view of the Trustees, it is necessary for an Investment Manager to be appointed in order to discharge their obligation under Section 14.1 and the Council shall not provide approval within such time as the Trustees consider reasonable, the Trustees may appoint an Investment Manager despite the failure of Council to approve the appointment. Notwithstanding any other provision hereof, the terms of the Investment Management Agreement shall limit investments to those permitted by the prudent investor rules set out in Section 14.3 and shall set out, or incorporate by reference to an investment policy statement or some other document, investment guidelines and objectives.

14.3 **Prudent Investor Rules:** All Investment Management Agreements shall limit investments that may be made by the Investment Manager to those that satisfy the rules set out below:

- (a) subject to the specific criteria for investments and standard of care set out below, an Investment Manager may invest Trust Property in any form of property or security in which a prudent investor might invest.
- (b) an Investment Manager must have regard to the following criteria in investing the Trust Property in addition to any others that a prudent investor would consider relevant to the circumstances:
 - (i) general economic conditions;
 - (ii) the possible effect of inflation or deflation;
 - (iii) the expected tax consequences of investment decisions or strategies;
 - (iv) the role that each investment or course of action plays within the overall portfolio of the Trust;
 - (v) the expected total return from income and the appreciation of capital;
 - (vi) the resources of the Beneficiaries;
 - (vii) needs for liquidity, regularity of income and preservation or appreciation of capital;
 - (viii) an asset's special relationship or special value, if any, to the purposes of the Trust or to the Beneficiaries; and
 - (ix) diversification of the investment of the Trust Property to an extent that is appropriate having regard to general economic and market conditions.
- (c) in investing Trust Property, an Investment Manager must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

- 14.4 **Termination of Appointment of Investment Manager:** The Trustees may terminate the appointment of any Investment Manager in accordance with the terms of the applicable Investment Management Agreement or as otherwise permitted by law. The Trustees shall give notice in writing to the Council of such termination and recommend a replacement Investment Manager to be appointed pursuant to Section 14.2.
- 14.5 **Safekeeping of Instruments:** The Trustees shall ensure that all instruments representing Authorized Investments are retained by the Corporate Trustee.

15. CONFLICT OF INTEREST

- 15.1 **Duty to Disclose:** A Trustee who:
- (a) is a party to a contract, or proposed contract of the Trustees entered into or to be entered into in accordance with the terms and conditions of this Agreement; or
 - (b) is a director or an officer of or has a material interest in any Person who is a party to a contract or proposed contract of the Trustees entered into or to be entered into in accordance with the terms and conditions of this Agreement;
- will disclose in writing to the other Trustees, and will request to have entered in the minutes of meetings of Trustees, the nature and extent of such Trustees' relationship and extent of his or her interest.
- 15.2 **Timing of Disclosure:** The disclosure required of a Trustee by Section 15.1 of this Agreement will be made:
- (a) at the meeting at which a proposed contract is first considered by the Trustee;
 - (b) if the Trustee was not then interested in a proposed contract, at the first meeting after he or she becomes so interested;
 - (c) if the Trustee becomes interested after a contract is made, at the first meeting after he or she becomes so interested; or
 - (d) if a person who is interested in a contract becomes a Trustee subsequent to execution thereof, at the first meeting after he or she becomes a Trustee.
- 15.3 **Exclusion from Discussion:** A Trustee described in Section 15.1 of this Agreement will not take part in discussions or deliberations concerning any such contract and will not vote on any resolution to approve the same.
- 15.4 **Method of Disclosure:** For purposes of this section a general notice to the Trustees by a Trustee declaring that he or she is a director or officer of, or has a material interest, in a Person and is to be regarded as interested in any contract made with

that Person, is a sufficient declaration of interest in relation to any contract so made.

- 15.5 **Effect on Contract:** A contract is neither void nor voidable by reason of a relationship contemplated in Section 15.1 or by reason only that a Trustee with an interest in the contract is present at, or is counted to determine the existence of a quorum at, a meeting of Trustees that authorized or approved the contract if the Trustee disclosed his or her interest in accordance with subsections 15.2 (b) or 15.2 (d), as the case may be, the contract was approved by the Trustees and was reasonable and fair at the time the same was approved.
- 15.6 **Not Relieved of Duty:** For greater certainty, nothing in Section 15 shall relieve a Trustee of his or her duty under Section 13.

16. LIABILITY AND INDEMNITIES OF TRUSTEES

- 16.1 **Bonding Not Required:** Unless otherwise required by law, no Trustee will be required to give a bond, surety or security for the performance of the Trustee's duties under this Agreement.
- 16.2 **No Contractual Liability:** The Trustees shall not incur personal liability by reason only of executing documents on behalf of the Trust.
- 16.3 **Liability for Co-Trustees:** No Trustee will be personally liable for the acts or defaults of another Trustee if the first Trustee has performed his or her duties in accordance with the provisions hereof.
- 16.4 **Limit on Personal Liability:** If a Trustee has performed his or her duties in accordance with the provisions hereof, the Trustee will not be personally liable for:
- (a) any loss to the Trust arising in consequence of the failure, depreciation or loss of any investment of Trust Property;
 - (b) the neglect, omission, misconduct or default of any advisor.
- 16.5 **Indemnity:** Each of the Trustees, and their heirs and personal representatives, will be indemnified and saved harmless out of the Trust Property from and against all costs, charges and expenses which the Trustee sustains or incurs in connection with any action, suit or proceeding threatened, started or prosecuted against the Trustee for or in respect of any act, matter or thing done, or omitted to be done, by the Trustee in and about the execution of the duties of the Trustee as a Trustee if the Trustee has performed his or her duties in accordance with Section 13.1.
- 16.6 **Approval of Accounts and Discharge of Trustees:** The continuing and successor Trustees are empowered to approve the accounts of a Trustee who has ceased to act

and such approval will constitute a full and sufficient discharge to such Trustee and the Trustee will not be required to pass any account before a court.

- 16.7 **Discharge of Trustees Upon Payment:** A receipt given by a person purporting to be the authorized officer of the recipient entitled to receive payment made by the Trustees in accordance with the provisions of this Agreement will constitute a full and sufficient discharge to the Trustees.

PART IV - ACCOUNTS WITH FINANCIAL INSTITUTIONS

17. OPENING OF ACCOUNTS

- 17.1 **Separate Accounts:** The Trustees will cause the following accounts to be opened at a branch located on a reserve as defined in the *Indian Act* of a Financial Institution designated by the Trustees:
- (a) Trust Capital Account; and
 - (b) Trust Revenue Account
- 17.2 **Initial Deposit of Funds:** All Settlement Monies other than those monies to be paid as provided in Section 3.1 (a) to (c) will initially be deposited into the Trust Capital Account. The funds may thereafter be placed in Authorized Investments or otherwise dealt with in accordance with this Trust Agreement.
- 17.3 **Banking Documents:** At the time of, or prior to, the opening of the Trust Accounts, the Trustees will execute and deliver to the Financial Institution the following in respect of the operation of the Trust Accounts:
- (a) the Financial Institution's standard agreement respecting operation of accounts if the terms of such agreement do not contradict the provisions of this Agreement including, without limitation, Section 18.1; and
 - (b) such other certificates, instruments and other documents as the Financial Institution may reasonably request relating to the operation of the Trust Accounts including a list of Trustees authorized to sign directions on the Account if the terms of such documents do not contradict the provisions of this Agreement including, without limitation, Section 18.1.
- 17.4 **Change of Authorized Signatories:** The Trustees will forthwith provide an amended Trustees Certificate (or such similar document as may be required by the Financial Institution) each time there is a change in the Trustees authorized to sign directions on the Trust Accounts.
- 17.5 **Deposit Insurance:** The Trustees shall take all reasonable steps to maximize the extent

of deposit insurance in respect of the Trust Accounts. Without limitation, the Trustees shall disclose to each Financial Institution the interest of the Members as the Beneficiaries of the Trust so that, to the greatest extent possible, the interest of each Member in a deposit with the Financial Institution shall be deemed for purposes of deposit insurance with the Canada Deposit Insurance Corporation to be a separate deposit pursuant to the *Canada Deposit Insurance Corporation Act*, as the same may be replaced or amended from time to time, and shall request the Financial Institution to provide written confirmation that this is the case.

18. CONDITIONS FOR PAYMENT OF FUNDS BY FINANCIAL INSTITUTION

- 18.1 **Payment of Funds:** Notwithstanding any other provision of this Agreement, the terms of the arrangement with the Financial Institution relating to the Trust Accounts must, as a minimum requirement, only permit the release of monies whether by cheque or otherwise from the Accounts by written authorization of a representative of the Corporate Trustee authorized to do so by the agreement between the Corporate Trustee and the Council described in Section 10.1 (d).

PART V - GENERAL

19. COUNCIL RESOLUTION REQUIREMENTS

- 19.1 **General:** Any Council Resolution required for the purposes of this Agreement will be passed at a meeting of the Council held in accordance with the procedures prescribed by the *Indian Act* and Regulations made thereunder.
- 19.2 **Additional Requirements:** A Council Resolution authorizing, directing or requesting the Trustees to carry out some activity provided for by this Agreement shall not be acted on by the Trustees unless Council delivers to the Trustees a copy of the minutes of the meeting at which such Council Resolution was passed and a certified copy of the Council Resolution.

20. REFERENDUM

- 20.1 **Procedure for Referendum:** The following procedures will apply for matters which are required by this Agreement to be determined by Referendum:
- (a) a Referendum may only be called by Council and by way of a Council Resolution;
 - (b) all votes in the Referendum will be cast by way of a secret in-person ballot, electronic ballot, or secret mail-in ballot (by request);
 - (c) an information meeting to explain the referendum will be held by Council at least 30 days before the Referendum date at the Reserve, and any other location

directed by the voting officer;

- (d) at least 90 days before the Referendum date the Council will appoint a voting officer who will do all things necessary to organize and conduct the Referendum;
- (e) the voting officer will mail or deliver a notice of Referendum to every Adult Member at least 60 days prior to the Referendum date which contains the following information:
 - (i) the date, time and place of the information meeting;
 - (ii) issue on which the Referendum is required;
 - (iii) consequences that occur if Referendum passes and if it fails;
 - (iv) reasons why Referendum has been called;
 - (v) the text of the Referendum;
 - (vi) letter of instructions for voting in-person or electronically and for requesting a mail-in ballot;
 - (vii) such further and other information as the voting officer considers appropriate;
- (f) Members may request a mail-in ballot within 7 days of the delivery of the notice of Referendum. Upon receipt of valid request, the voting officer will mail or deliver a mail-in package (if mail, by registered mail) to the Member which will include the following:
 - (i) a declaration of elector;
 - (ii) text of the Referendum;
 - (iii) ballot for indicating yes or no to the proposed Referendum;
 - (iv) an envelope to seal the ballot in and a second envelope pre-addressed to the voting officer;
 - (v) letter of instructions;
 - (vi) such further and other information as the voting officer considers appropriate;

After 7 days after the delivery of the notice of Referendum, requests for mail-in ballot will no longer be accepted and the Member may only cast a vote by in-person or electronic ballot.

- (g) save as expressly provided herein, the procedures to be followed by the voting officer and the Members in voting as set out in Sections 4 to 20 of the Indian Referendum Regulations (C.R.C. J978 c. 957 as amended) shall apply *mutatis mutandis* as if references therein to “the electoral officer” were references to “the voting officer” except that no statement shall be filed under Section 18(2) of the Regulations with the local office of the Department of Indian Affairs and Northern Development and no statement shall be delivered under Section 19 of the Regulations except to the chief of the Band.

- (h) the procedures to be followed in appeals shall be as set out in Sections 31 to 32 of the said Regulations as they were in force immediately prior to SOR/2000 - 392 but amended by deleting Section 31(4) and by replacing all references to “the Minister” and “the Assistant Deputy Minister” with references to “the person appointed from time to time by the Council to consider such appeals” and replacing all references to “the electoral officer” with references to “the voting officer”. The person to be appointed by the Council from time to time to hear appeals shall be a barrister and solicitor in good standing with the Law Society of British Columbia and not interested in the matter under appeal.

21. AMENDMENT

- 21.1 **Amendment by Referendum:** Subject to the provisions of this section, this Agreement may be amended by written agreement among the Settlor and the Trustees, if execution and delivery of any such amending agreement by the Settlor has been authorized by a majority of the Adult Members voting in favour at a Referendum held for such purpose.

No amendment to this Trust Agreement may be made at any time which would permit access by the Settlor or Beneficiaries to the principal of the Trust Capital Account or which would reduce the principal amount of the Trust Capital Account to an amount which is less than the aggregate of the following:

- (a) the amount of the Settlement Monies deposited into the Trust Capital Account pursuant to Section 3.1 (d); and
- (b) a sum equal to the interest that would have been earned on such amount if it had been invested and earned interest expressed as a percentage which is equal to the percentage increase in the consumer price index, if any, between the end of the first Fiscal Year of the Trust and the end of the immediately preceding Fiscal Year as reported by Statistics Canada (British Columbia - all items).

The provisions of this Section 21.1 are unalterable and may not be amended by Referendum or otherwise.

- 21.2 **Amendment - Income Tax Purposes:** It is the intention of the Settlor and the Trustees that the income earned by the Trust pursuant to this Agreement be exempt from income tax under the Income Tax Act (Canada) and any applicable provincial income tax legislation and it is intended that the Settlor will obtain rulings from Canada Customs and Revenue Agency ("CCRA") at the time that it enters into this Agreement and from time to time thereafter confirming that such income is exempt. If the Trustees receive an opinion in writing from their solicitors that such income will not be exempt from such tax or if CCRA rules at any time that any income earned by the Trust under this Agreement will not be exempt on a basis proposed by the Settlor, then the Council and Trustees are authorized to amend this Agreement to the extent reasonable or necessary to obtain a favourable ruling. The Council will not be required to obtain consent from the Members for an amendment under this Section 21.2. Any amendment pursuant to

this provision must not be inconsistent with the purpose and object of the Trust as set out in Section 2.5 of this Agreement.

- 21.3 **Amendment - Typographical Errors:** The Trustees may amend this Agreement without the consent of the Council or the Members to the extent necessary to correct any obvious typographical errors. A copy of the amended Agreement will be delivered to the Council.

22. **NOTICE**

- 22.1 Whenever in this Agreement it is required that notice be given or served by any party to or on the other parties, including any change of address, such notice will be given or served in writing by delivering the notice personally or by forwarding by facsimile or by prepaid registered mail to:

- (a) The Settlor (and Council) at the following address:

Lax Kw'alaams Indian Band
206 Shashaak Street
Port Simpson, B.C. V0V 1H0
Fax: (250) 625-3246

- (b) The Trustees at the following addresses:

Marvin Wesley
P.O. Box 167
Lax Kw'alaams, B.C. V0V 1H0
Tel: (250) 625-3226
Fax: (250) 625-3246

Karen Knott
P.O. Box 71
Lax Kw'alaams, B.C. V0V 1H0
Tel: (250) 625-3445
Fax: (250) 625-3293

Barbara Henry
P.O. Box 71
Lax Kw'alaams, B.C. V0V 1H0
Tel: (250) 625-3445
Fax: (250) 625-3293

Christine Parnell
107 - 1607 E. Hastings St.
Vancouver, B.C. V5L 1S7
Tel: (604) 251-7200

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Harvey Russell Jr.
P.O. Box 207
236 Simpson Blvd.
Lax Kw'alaams, B.C. V0V 1H0

Royal Trust of Canada
Royal Trust Aboriginal Services Group
Suite 900, 220 Portage Ave.
Winnipeg, Manitoba R3C 0A5
Tel: (204) 988-6747
Fax: (204) 988-6745

Any notice or communication will be sufficient if delivered personally or by facsimile, or if given by registered mail, postage prepaid, addressed as set forth above, and will be effective on delivery if delivered personally upon electronic confirmation of receipt if sent by facsimile or 5 business days after mailing if mailed. In the event of an anticipated or actual stopping of postal service, registered mail will not be used.

EXECUTED by **BARBARA HENRY**)
 in the presence of:)
)
“Karen V. Nelson”)
 Signature)
Karen Nelson)
 Print Name)
)
 Address)
)

“Barbara Henry”)
BARBARA HENRY, Trustee

EXECUTED by **CHRISTINE PARNELL**)
 in the presence of:)
)
“James Reynolds”)
 Signature)
James Reynolds)
 Print Name)
#500 – 221 West Esplanade)
 Address)
North Vancouver, B.C. V7M 3J3)

“Christine Parnell”)
CHRISTINE PARNELL, Trustee

EXECUTED by **HARVEY RUSSELL JR.**)
 in the presence of:)
)
“Howard Green”)
 Signature)
Howard Green)
 Print Name)
Port Simpson)
 Address)
)

“Harvey Russell Jr.”)
HARVEY RUSSELL JR., Trustee

EXECUTED by)
ROYAL TRUST CORPORATION OF)
CANADA, Trustee)
 by its duly authorized signatories:)
)
)
 Per: _____)
 Authorized Signatory)
)
)
 Per: _____)
 Authorized Signatory)