

**YUULU?IL?ATH FIRST NATION GOVERNMENT**

**Enacted under the Economic Development Act Section 4.1**

**GOVERNANCE AND FISCAL  
AGREEMENT AMENDMENT  
REGULATION**

**YFNR 23/2013**



This regulation enacted on December 10, 2013

Signed

  
Charles McCarthy, President of the  
Yuulu?il?ath First Nation

DEPOSITED IN THE  
REGISTRY OF LAWS

ON 12 / Dec / 2013



Signature of Law Clerk



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## PART 1 - INTRODUCTORY PROVISIONS

### Short Title

- 1.1 This Regulation may be cited as the Governance and Fiscal Agreement Amendment Regulation.



## **PART 2 - GOVERNANCE AND FISCAL AGREEMENT REGULATION AMENDMENTS**

### **Governance and Fiscal Agreement Regulation amendments**

2.1 The Governance and Fiscal Agreement Regulation YFNR 12/2011 is amended as follows:

(a) by updating Schedule 1:

to amend the Governance and Fiscal Agreement Regulation YFNR 12/2012 to replace the Schedule 1, Governance and Fiscal Agreement of April, 2012 with the revised agreement of December 9, 2013. Form numbered DCS-5 in Schedule 2 to this regulation.





**SCHEDULE 1 – GOVERNANCE AND FISCAL AGREEMENT (DECEMBER 9, 2013)**

YUULU?IL?ATH GOVERNMENT  
and  
YUULU?IL?ATH BUSINESSES

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GOVERNANCE AND FISCAL AGREEMENT

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**YUULU?IL?ATH FIRST NATION GOVERNMENT  
AND YUULU?IL?ATH BUSINESSES  
GOVERNANCE AND FISCAL AGREEMENT**

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## GOVERNANCE AND FISCAL AGREEMENT

THIS AGREEMENT is made as of and with effect from 11<sup>th</sup> day of February, 2014.

BETWEEN the Parties as set out in Schedule 1.

### BACKGROUND:

- A. The Yuulu?il?ath First Nation is the sole limited partner in the holdings limited partnership and the sole shareholder of the holdings general partner;
- B. The holdings limited partnership is a limited partner with at least a 51% interest in each of the operating limited partnerships and a shareholder with at least a 51% interest in each of the operating general partners;
- C. The holdings limited partnership was established to hold business interests of the Yuulu?il?ath First Nation;
- D. The operating limited partnerships were established to carry out certain business opportunities approved by the Executive in accordance with the Economic Development Act;
- E. The Economic Development Act requires the Parties to enter into a governance and fiscal agreement to define their respective roles and responsibilities relating to the governance and finances of Yuulu?il?ath businesses.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements contained in this Agreement, the Parties covenant and agree each with the other as follows:

## PART 1 - INTERPRETATION

### Definitions and interpretation principles

- 1.1 Unless otherwise indicated, words and expressions appearing in this Agreement will be interpreted or construed as indicated in Schedule 2 and this Agreement will be interpreted in accordance with the interpretation principles set out in Schedule 2.

### Schedules

- 1.2 The following Schedules are attached to and form part of this Agreement:

- Schedule 1 – Parties;
- Schedule 2 – Definitions and Interpretation Principles;
- Schedule 3 – Responsibilities of the Executive;

Schedule 4 – Responsibilities of the Holdings Board;  
Schedule 5 – Responsibilities of the Management Services Board;  
Schedule 6 – Responsibilities of the Operating Boards; and  
Schedule 7 – Responsibilities of the Chief Executive Officer.

## **PART 2 - BOARD APPOINTMENTS**

### **Composition of holdings board**

- 2.1** The Yuulu?il?ath First Nation will, by Executive resolution, vote its shares in the holdings general partner so that the holdings board is comprised of all of the members of the economic development committee, except for
- (a) the asset manager, and
  - (b) the economic development officer.

### **Term of holdings board**

- 2.2** The Yuulu?il?ath First Nation will, by Executive resolution, vote its shares in the holdings general partner so that the term of office for each holdings board member corresponds to his or her term of office as an economic development committee member.

### **Removal of holdings board**

- 2.3** The Yuulu?il?ath First Nation will only vote its shares in the holdings general partner to remove a holdings board member where the member ceases to be a member of the economic development committee.

### **Composition of operating boards**

- 2.4**
- (a) The holdings limited partnership will vote its shares in each of the operating general partners so that each of the operating boards is comprised of five individuals,
    - (i) a majority of whom are not members of the holdings board,
    - (ii) all of whom bring particular expertise or other considerations to the operating board, and
    - (iii) one of whom may be a non-citizen.
  - (b) For certainty, one or more of the same five individuals may be appointed to more than one operating board.

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### **Term of operating boards**

- 2.5 The holdings limited partnership will vote its shares in each of the operating general partners so that the term of office for each operating board member is four years or until that member resigns or is removed in accordance with this Agreement and the constating documents of the applicable operating general partner.

### **Removal of operating boards**

- 2.6 (a) The holdings limited partnership will only vote its shares in an operating general partner to remove an operating board member in one or more of the following circumstances:
- (i) the board member is persistently absent from meetings of the operating board;
  - (ii) the board member engages in conduct which amounts to impropriety or malfeasance;
  - (iii) the board member exerts undue influence over other members, the chief executive officer or staff of the applicable operating limited partnership;
  - (iv) the board member breaches the conflict of interest rules of the applicable operating limited partnership;
  - (v) the board member is grossly incompetent;
  - (vi) the operating board or board member is not acting in accordance with the law, the economic development plan, the business mandate of the applicable operating limited partnership, the annual plan of the applicable operating limited partnership or this Agreement; or
  - (vii) the operating board or board member is not acting in the best interests of the Yuulu?il?ath First Nation.
- (b) A dispute regarding the removal of a board member from an operating board under subsection (a) must be dealt with in accordance with section 9.4.

## **PART 3 - ANNUAL PLANNING**

### **Holdings board annual planning**

- 3.1 (a) On or before December 31 of each year, the holdings board will approve an annual plan for the holdings limited partnership for the next fiscal year.
- (b) The annual plan approved under subsection (a) will include



- (i) a budget for the holdings limited partnership for the next fiscal year,
- (ii) capital contribution and financing expectations from the holdings limited partnership to each operating limited partnership,
- (iii) distribution expectations from each operating limited partnership to the holdings limited partnership, and
- (iv) financial performance, employment and training objectives.

### **Operating boards annual planning**

- 3.2 (a) Each operating limited partnership must, on or before October 31 of each year, provide for approval by the holdings board a proposed annual plan for that operating limited partnership for the next fiscal year.
- (b) The proposed annual plan provided by an operating limited partnership under subsection (a) must include
- (i) a statement of how the annual plan for, and the activities to be engaged in by, that operating limited partnership during the next fiscal year contributes towards the Yuulu?il?ath First Nation achieving the goals and objectives set out in the economic development plan,
  - (ii) a budget for that operating limited partnership for the next fiscal year in the form and with the content required by the holdings board,
  - (iii) a brief descriptive overview of any major project that operating limited partnership intends to carry out during that fiscal year, or continue from the previous fiscal year, including a proposed project schedule, budget, a list of resources necessary or desirable for the project, including human, financial and capital resources, and a plan on how to acquire those resources for the project,
  - (iv) distribution expectations from that operating limited partnership to the holdings limited partnership,
  - (v) financial performance, employment and training objectives; and
  - (vi) a description of any anticipated material variations to any applicable business plan for that operating limited partnership as it relates to the period covered by that annual plan.
- (c) The holdings board must consider the annual plan provided by an operating limited partnership under subsection (a) and on or before November 30 of that year and

- (i) approve the annual plan, with or without conditions, or
  - (ii) require the operating limited partnership to amend and resubmit a revised proposed annual plan in the form and with the content required by the holdings board.
- (d) If the holdings board requires an operating limited partnership to amend and resubmit a revised proposed annual plan under subsection (c)(ii), that operating limited partnership must provide the holdings board with a revised proposed annual plan in the form and with the content required by the holdings board within 15 days and, upon receipt of the revised proposed annual plan, the holdings board must consider the revised proposed annual plan and must approve, or amend and approve, the annual plan within 15 days, with or without conditions.
- (e) If an annual plan has not been approved by December 31 of any given year, the annual plan for that operating limited partnership for the previous fiscal year continues as the annual plan for the current fiscal year until such time as a proposed annual plan is approved by the holdings board, with the necessary changes required and so far as applicable.

## **PART 4 - MAJOR DECISIONS**

### **Decisions of holdings entities requiring Executive directive**

**4.1** Notwithstanding anything to the contrary in the constating documents of the holdings limited partnership or holdings general partner, the holdings limited partnership and holdings general partner will not take any action in respect of or within the scope of any of the following major decisions without the prior approval of the Executive by resolution and only upon receiving a directive from the Executive under Part 5 of the Economic Development Act:

- (a) making any changes to the constating documents of the holdings limited partnership or holdings general partner;
- (b) renaming the holdings limited partnership or holdings general partner;
- (c) making any change in the authorized or issued capital of the holdings limited partnership or holdings general partner;
- (d) issuing any units in the capital of the holdings limited partnership or any shares in the capital of the holdings general partner, or granting any right, option or other commitment for the issuance of such units or shares;
- (e) redeeming any units in the capital of the holdings limited partnership or any shares in the capital of the holdings general partner;

- (f) entering into a partnership, joint venture or other similar relationship with a third party;
- (g) creating or investing in any operating limited partnership;
- (h) purchasing or accepting a gift of any units in the capital of any operating limited partnership or any shares in the capital of any operating general partner;
- (i) selling, transferring or otherwise disposing of all or any substantial part of the undertaking, property or assets of the holdings limited partnership or holdings general partner;
- (j) selling, transferring or otherwise disposing of any units in the capital of any operating limited partnership or any shares in the capital of any operating general partner;
- (k) waiving any right of substantial value;
- (l) awarding, entering into, amending, terminating or waiving compliance with the terms of any contracts which
  - (i) are not at a fixed or predetermined price, or
  - (ii) commit the holdings limited partnership to amounts exceeding \$250,000 for any one contract;
- (m) acquiring real property for any amount;
- (n) acquiring personal property for an amount exceeding \$250,000 for any one item;
- (o) borrowing money or establishing a line of credit in an amount exceeding \$150,000 for any one loan or line of credit;
- (p) obtaining more than one loan or line of credit within a 90 day period where the aggregate amount of such loans or lines of credit exceeds 200,000;
- (q) guaranteeing any loans;
- (r) investing funds not immediately required for the operation of the holdings limited partnership in any instrument other than securities issued or guaranteed by Canada or a province or territory of Canada or fixed deposits, notes, certificates or other short-term paper of, or guaranteed by, a financial institution;
- (s) settling any claim of or against the holdings limited partnership where the amount claimed is greater than \$50,000;

- (t) entering into any material contract or commitment or engaging in any transaction not in the ordinary and usual course of business;
- (u) making any distribution of available cash except in accordance with this Agreement;
- (v) consolidating, amalgamating or merging the holdings limited partnership or holdings general partner with or into any other entity;
- (w) commencing any proceedings to wind up, dissolve or liquidate the holdings limited partnership or holdings general partner;
- (x) making any assignment for the benefit of the creditors of the holdings limited partnership or holdings general partner or any application for a receiving order against the holdings limited partnership or holdings general partner;
- (y) continuing the holdings limited partnership or holdings general partner under the laws of any other jurisdiction; or
- (z) charging, mortgaging, hypothecating, transferring, pledging or otherwise creating an interest or charge on any real property held by the holdings general partner.

**Decisions of operating entities requiring Executive approval or directive**

4.2 Notwithstanding anything to the contrary in the constating documents of the applicable operating limited partnership or operating general partner, an operating limited partnership or operating general partner will not take any action in respect of or within the scope of any of the following major decisions without the prior approval of the Executive by resolution and only upon receiving a directive from the Executive under Part 5 of the Economic Development Act:

- (a) renaming the applicable operating limited partnership or operating general partner;
- (b) entering into any material contract or commitment or engaging in any material transaction not in the ordinary and usual course of business;
- (c) making any distribution of available cash except in accordance with this Agreement;
- (d) consolidating, amalgamating or merging the applicable operating limited partnership or operating general partner with or into any other entity;
- (e) commencing any proceedings to wind up, dissolve or liquidate the applicable operating limited partnership or operating general partner;

- (f) making any assignment for the benefit of the creditors of the applicable operating limited partnership or operating general partner or any application for a receiving order against the applicable operating limited partnership or operating general partner; or
- (g) continuing the applicable operating limited partnership or operating general partner under the laws of any other jurisdiction.

#### **Decisions of operating entities requiring holdings board approval**

4.3 Notwithstanding anything to the contrary in the constating documents of the applicable operating limited partnership or operating general partner, an operating limited partnership or operating general partner will not take any action in respect of or within the scope of any of the following decisions without the prior approval of the holdings board by resolution:

- (a) making any changes to the constating documents of the applicable operating limited partnership or operating general partner;
- (b) making any change in the authorized or issued capital of the applicable operating limited partnership or operating general partner;
- (c) adopting any policy or procedure of the nature contemplated in sections 7.3(b) or 7.3(c) except in accordance with section 7.3,
- (d) issuing any units in the capital of the applicable operating limited partnership or any shares in the capital of the applicable operating general partner, or granting any right, option or other commitment for the issuance of such units or shares;
- (e) redeeming any units in the capital of the applicable operating limited partnership or any shares in the capital of the applicable operating general partner;
- (f) entering into a partnership, joint venture or other similar relationship with a third party;
- (g) selling, transferring or otherwise disposing of all or any substantial part of the undertaking, property or assets of the applicable operating limited partnership or operating general partner;
- (h) waiving any right of substantial value;
- (i) awarding, entering into, amending, terminating or waiving compliance with the terms of any contracts which
  - (i) are not at a fixed or predetermined price, or

- (ii) commit the applicable operating limited partnership to amounts exceeding the greater of \$150,000 or a spending limit established by the holdings board for that operating limited partnership;
- (j) acquiring real property for any amount;
- (k) acquiring personal property for an amount exceeding \$150,000 for any one item;
- (l) borrowing money or establishing a line of credit in an amount exceeding \$100,000 for any one loan or line of credit;
- (m) obtaining more than one loan or line of credit within a 90 day period where the aggregate amount of such loans or lines of credit exceeds \$150,000;
- (n) guaranteeing any loans;
- (o) lending funds not immediately required for the operation of the applicable operating limited partnership other than to another operating limited partnership in an amount not exceeding \$50,000 and for a period not exceeding 12 months;
- (p) investing funds not immediately required for the operation of the applicable operating limited partnership in any instrument other than securities issued or guaranteed by Canada or a province or territory of Canada or fixed deposits, notes, certificates or other short-term paper of, or guaranteed by, a financial institution;
- (q) settling any claim of or against the applicable operating limited partnership where the amount claimed is greater than \$50,000; or
- (r) charging, mortgaging, hypothecating, transferring, pledging or otherwise creating an interest or charge on any real property held by the applicable operating general partner.

## PART 5 - DISTRIBUTIONS

### Distributions to Yuulu?il?ath First Nation

- 5.1 (a) If at the end of any fiscal year the holdings general partner determines that the holdings limited partnership has available cash, notwithstanding anything to the contrary in the constating documents of the holdings limited partnership, the holdings general partner will
- (i) distribute to or for the benefit of the Yuulu?il?ath First Nation as much or all of the Yuulu?il?ath First Nation's share of such available cash, and upon such terms or conditions, as the Executive may direct in accordance with this section, and

- (ii) reinvest in the holdings limited partnership any available cash not distributed under paragraph (i).
- (b) No later than 60 days following the end of each fiscal year, the holdings general partner will notify the Executive of the amount of any available cash for that year.
- (c) No later than 30 days following receipt of the notice under subsection (b), the Executive will notify the holdings general partner of the anticipated amount, time and terms and conditions of any distribution under subsection (a)(i).
- (d) No later than 30 days following receipt of the notice under subsection (c), the holdings general partner may notify the Executive of any concern it has regarding the effect of the anticipated distribution on the holdings limited partnership.
- (e) No later than 150 days following the end of each fiscal year and after considering any concerns under subsection (d), the Executive may issue a direction for a distribution under subsection (a)(i).
- (f) A direction under subsection (e) may direct the holdings general partner to
  - (i) distribute an amount that is equal to or less than the anticipated amount,
  - (ii) advance the distribution at a later time than the anticipated time, or
  - (iii) make the distribution on terms or conditions that differ from the anticipated terms and conditions
 set out in the notice under subsection (c).
- (g) If the Executive issues a direction under subsection (e), then on or before 30 days after it receives the direction, the holdings general partner will authorize the distribution of the amount of available cash to or for the benefit of Yuulu?il?ath First Nation at the times and on the terms and conditions specified in the direction.
- (h) For certainty, the time periods set out in this section may be shortened by written agreement of the Parties.

### **Distributions to holdings limited partnership**

- 5.2** (a) If at the end of any fiscal year an operating general partner determines that the applicable operating limited partnership has available cash, notwithstanding anything to the contrary in the constating documents of the applicable operating limited partnership, the operating general partner will
- (i) distribute to or for the benefit of the holdings limited partnership as much or all of the holding limited partnership's share of such available cash, and

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upon such terms or conditions, as the holdings board may direct in accordance with this section, and

- (ii) reinvest in the applicable operating limited partnership any available cash not distributed under paragraph (i).
- (b) No later than 30 days following the end of each fiscal year, each operating general partner will notify the holdings board of the amount of any available cash for the applicable operating limited partnership.
- (c) No later than 30 days following receipt of the notice under subsection (b), the holdings board will notify each operating general partner of the anticipated amount, time and terms and conditions of any distribution under subsection (a)(i).
- (d) No later than 30 days following receipt of the notice under subsection (c), an operating general partner may notify the holdings board of any concern it has regarding the effect of the anticipated distribution on the applicable operating limited partnership.
- (e) No later than 120 days following the end of each fiscal year and after considering any concerns under subsection (d), the holdings board may issue a direction for a distribution under subsection (a)(i).
- (f) A direction under subsection (e) may direct the operating general partner to
  - (i) distribute an amount that is equal to or less than the anticipated amount,
  - (ii) advance the distribution at a later time than the anticipated time, or
  - (iii) make the distribution on terms or conditions that differ from the anticipated terms and conditionsset out in the notice under subsection (c).
- (g) If the holdings board issues a direction in accordance with subsection (e), then on or before 30 days after it receives the direction, the applicable operating general partner will authorize the distribution of the amount of available cash to or for the benefit of the holdings limited partnership at the times and on the terms and conditions specified in the direction.
- (h) For certainty, the time periods set out in this section may be shortened by written agreement of the Parties.



## PART 6 - REPORTING

### Reporting by holdings limited partnership

- 6.1 At least quarterly, the holdings limited partnership will, within 45 days of the end of the fiscal quarter, report to the Executive on its financial and operational circumstances, including its financial results compared to any prescribed minimum expected financial performance.

### Reporting by operating limited partnerships

- 6.2 At least quarterly, or more frequently if requested by the holdings board, each operating limited partnership will report to the holdings limited partnership on its financial and operational circumstances, including its financial results compared to any prescribed minimum expected financial performance.

### Reporting by chief executive officer

- 6.3 (a) At the request of the chair of the holdings board, the chief executive officer will report to the holdings board on the financial and operational circumstances of an operating limited partnership.
- (b) At the request of the chair of the economic development committee, the chief executive officer will report to the Hitacu Assembly, the Legislature or the Executive on the financial and operational circumstances of an operating limited partnership.

### Content of reporting

- 6.4 (a) The reporting under section 6.1, in respect of the holdings limited partnership, and under section 6.2, in respect of the applicable operating limited partnership, will include a review of
- (i) how that limited partnership is fulfilling its business mandate,
  - (ii) the financial results of that limited partnership's operations for the applicable reporting period,
  - (iii) the number of Yuulu?il?ath citizens employed by that limited partnership and the full time equivalent of their positions,
  - (iv) the number of contracting and training opportunities provided by that limited partnership to other Yuulu?il?ath businesses, businesses owned or operated by Yuulu?il?ath citizens and to Yuulu?il?ath citizens, and

- (v) how the information provided under paragraphs (i) to (iv) compares to the information reported under those subparagraphs in the previous reporting period.
- (b) The reporting under section 6.2, in respect of the applicable operating limited partnership will also include a description of any material variations to any applicable business plan for that limited partnership as it relates to the period covered by the report.

## **PART 7 - OPERATIONAL SERVICES**

### **Management services agreement**

- 7.1 (a) If directed to do so by the Executive, the management services limited partnership will, acting through the management services general partner, enter into an agreement with each of the other operating general partners for the provision of management, administrative, financial, record keeping, accounting and advisory services by the management services limited partnership to each of the other operating general partners.
- (b) The management services agreement will include provisions
- (i) requiring the management services limited partnership to carry out the responsibilities set out in Schedule 5 and any other responsibilities approved by the holdings board from time to time, and
  - (ii) establishing the compensation to be paid to the management services limited partnership by each of the operating general partners that receive management services from the management services limited partnership.

### **Chief executive officer**

- 7.2 (a) The management services limited partnership will retain an individual to hold the office of chief executive officer of the Yuulu?il?ath businesses.
- (b) The management services limited partnership will cause the chief executive officer to enter into an employment or independent contractor agreement with the management services limited partnership.
- (c) The employment or independent contractor agreement will include provisions
- (i) requiring the chief executive officer to carry out the responsibilities set out in Schedule 7 and any other responsibilities approved by the management services board from time to time, and

- (ii) establishing the chief executive officer's salary, which must be a competitive salary commensurate with individuals of similar skill and experience.

### **Policies and procedures**

- 7.3 (a) Each operating board may develop, adopt by resolution and implement written operational policies and procedures that may be necessary or desirable for the better and more efficient operation of the applicable operating limited partnership.
- (b) Without limiting subsection (a) but subject to subsection (d), each operating board will, within six months of signing this Agreement, develop, adopt by resolution and implement the following written operational policies and procedures:
- (i) a human resources and personnel policy providing for the preferential hiring of Yuulu?il?ath citizens, subject to demonstrable levels of skill and experience necessary for the position;
  - (ii) a contracting and procurement policy;
  - (iii) terms of reference for the operating board, individual members of the operating board and the chairperson of the operating board;
  - (iv) operating board governance guidelines;
  - (v) code of conduct and conflict of interest guidelines;
  - (vi) director travel and expense guidelines;
  - (vii) terms of reference for a human resources, governance and compliance committee;
  - (viii) terms of reference for a finance, audit and risk management committee;
  - (ix) committee operating guidelines and terms of reference; and
  - (x) annual operating board and chief executive officer performance evaluation.
- (c) Subject to subsection (d), each operating board will, within three months of receiving from the holdings board a written request to do so, develop, adopt by resolution and implement any other written policy or procedure required by the holdings board.
- (d) Prior to adopting a policy or procedure under subsection (b) or (c), an operating board must first obtain the written consent of the holdings board to the policy or procedure substantially in the form to be adopted by the operating board.

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## PART 8 - NEW OPERATING LIMITED PARTNERSHIPS

### Addition as a party

- 8.1 (a) The holdings limited partnership will cause each operating limited partnership and operating general partner established after the date of this Agreement to enter into this Agreement, thereby agreeing to be bound by all of the terms contained in this Agreement as if that operating limited partnership or operating general partner was an original party to this Agreement and, in those circumstances, this Agreement is deemed to be amended by adding that operating limited partnership and operating general partner as a party to this Agreement.
- (b) Upon any operating limited partnership entering into this Agreement in accordance with subsection (a), the table in Schedule 1 is deemed to be amended by adding an additional row with
- (i) the name of the new operating limited partnership in Column 1 of that new row, and
  - (ii) the registration number of the new operating limited partnership in Column 2 of that new row.
- (c) Upon any operating general partner entering into this Agreement in accordance with subsection (a), the table in Schedule 1 is deemed to be amended by adding an additional row with
- (i) the name of the new operating general partner in Column 1 of that new row, and
  - (ii) the registration or incorporation number of the new operating general partner in Column 2 of that new row.
- (d) For certainty, the consent of the other operating limited partnerships and operating general partners is not required for a new operating limited partnership to be added as a Party under this section.

### Addition to management services agreement

- 8.2 If a direction from the Executive has been given respecting entry into a management services agreement under section 7.1, the holdings limited partnership will cause each operating general partner established after the date of this Agreement to enter into the management services agreement, thereby agreeing to be bound by all of the terms contained in the management services agreement as if that operating general partner was an original party to the management services agreement and, in those circumstances, the management services agreement is deemed to be amended by adding that operating general partner as a party to the management services agreement.

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## PART 9 - DISPUTE RESOLUTION

### Resolution by parties

- 9.1 Each Party will endeavour to resolve informally and as between those involved any disputes in respect of the interpretation, construction, compliance with or breach of this Agreement or its termination. If a dispute arises and any Party gives notice to the chair of the holdings board of such dispute, then such dispute will be referred to a committee comprised of the chair of the holdings board and one representative of each Party to the dispute which will meet within 15 days of the date of such notice to discuss and attempt to resolve the dispute. If such committee resolves the dispute, the committee will confirm the resolution of the dispute in writing within that 15 day period.

### Mediation

- 9.2 If a dispute has not been resolved in accordance with section 9.1 within 15 days of the first notice of the dispute, the disputing Parties will attempt to resolve the dispute by participating in a structured negotiation conference with a mediator under the Commercial Mediation Rules of the British Columbia International Commercial Arbitration Centre, except that the disputing Parties may agree upon the identity of a mediator other than that appointed by the said Centre, and such mediation is to occur within 30 days of the expiration of the time period set out in section 9.1. If the dispute is resolved through such mediation, the disputing Parties will confirm the resolution of the dispute in writing within 30 days following the mediation.

### Arbitration

- 9.3 If the dispute has not been resolved through mediation within the 30 days contemplated in section 9.2 and any Party gives notice to the chair of the holdings board to that effect, the matter in dispute will be settled by arbitration pursuant to the British Columbia Commercial Arbitration Act, R.S.B.C. 1996, c. 55. Any Party desiring arbitration will make a demand for such by notice to the chair of the holdings board and within 30 days after such notice is received by the chair of the holdings board, the disputing Parties will agree upon and appoint a single arbitrator. In the event the disputing Parties fail to agree upon and appoint a single arbitrator within that time period, then within 15 days thereafter the disputing Parties will each designate an arbitrator and both designated arbitrators will, within 30 days after their designation, jointly designate a third arbitrator satisfactory to them as chair of the arbitration panel. If the disputing Parties fail to appoint an arbitrator or the arbitrators designated by the disputing Parties are unable to agree upon the selection of the third arbitrator within the time period set out above, that arbitrator will be appointed by a judge of the Supreme Court of British Columbia. Each disputing Party will pay its own costs and one-half of the fees and expenses of the arbitrator, if one arbitrator is agreed upon, or the fees and expenses of the arbitrator that each party in dispute has designated and one-half of the fees and expenses of the third arbitrator if appointed under this section 9.3. All arbitration proceedings will be in Vancouver, British Columbia or such other place as the disputing Parties may agree upon

in writing. The decision of the arbitrators is final, binding and conclusive on the disputing Parties and judgment upon any award rendered may be entered in any court of competent jurisdiction. The provisions of this section 9.3 is deemed to be a submission to arbitration within the provisions of the British Columbia Commercial Arbitration Act, provided that any limitation on the remuneration of the arbitrator imposed by such legislation will not be applicable.

#### **Disputes regarding removal of board member**

- 9.4** (a) Despite sections 9.1 through 9.3, if a dispute contemplated under section 2.6 arises regarding the removal of a board member from an operating board and the individual who has been removed from the operating board gives notice to the chair of the holdings board of such dispute, that dispute may be referred by that individual to the Administrative Decisions Review Board in accordance with the Administrative Decisions Review Act.
- (b) The referral of a dispute to the Administrative Decisions Review Board in accordance with subsection (a) is, for the purposes of interpreting the provisions of this Agreement as they relate to the Administrative Decisions Review Act, deemed to be a review request filed under section 3.1 of the Administrative Decisions Review Act to which section 1.3(a) of that Act applies and, for the purposes of the review request,
- (i) the individual that gave notice to the chair of the holdings board in accordance with subsection (a) is deemed to be the applicant,
  - (ii) the holdings limited partnership is deemed to be the Yuulu?il?ath institution responsible for the determination that is the subject of the review, and
  - (iii) the chair of the holdings board is deemed to be a Yuulu?il?ath public employee.
- (c) For certainty, a dispute contemplated under section 2.6 regarding the removal of a board member from an operating board will not be referred to a committee under section 9.1, mediated under section 9.2 or settled by arbitration under section 9.3.

## **PART 10 - NOTICES**

### **Notices**

- 10.1** A notice, demand, request, statement or other communication required or permitted to be given under this Agreement must be written and is deemed to be validly given:

- (a) if delivered by hand to an officer or agent of such Party at its address given below;
- (b) if delivered by facsimile transmission to such Party at its facsimile number given below; or
- (c) if during the times the post office is normally operating, it is mailed in British Columbia prepaid and registered to a party addressed as follows:

**To the Yuulu?il?ath First Nation:**

P.O. Box 699  
Ucluelet, BC V0R 3A0  
Facsimile: 250-726-7552

**To the holdings limited partnership or any operating limited partnership:**

at the registered office of the partnership

or to such other address as each Party may from time to time advise the others in writing, and any such notice will be deemed to have been received seven days after mailing, or if delivered, when delivered, provided that if the notice is mailed and there occurs between the time of mailing and the actual or deemed receipt of the notice, a mail strike, slow down, or other labour dispute which might affect delivery of the notice, then the notice is effective only when actually delivered.

## **PART 11 - GENERAL**

### **Amendment**

- 11.1** Subject to the addition of new operating limited partnerships as Parties in accordance with section 8.1, this Agreement may only be amended with the written agreement of each and every Party.

### **Binding agreement**

- 11.2** This Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

### **Time**

- 11.3** Time is of the essence in this Agreement. No extension of, or amendment to, this Agreement, unless clearly stated in such extension or amendment, operates as a waiver of this provision.

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## Counterparts

- 11.4 This Agreement, or any amendment to it, may be executed in multiple counterparts, each of which is deemed an original agreement, and all of which constitute one agreement. All counterparts and adopting instruments must be construed together and constitute one and the same agreement.

## Waivers

- 11.5 No consent or waiver, express or implied, by any Party to or of any breach or default by another Party in the performance by the other Party of its obligations in this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, does not constitute a waiver of such Party of its rights in this Agreement.

## Further documents

- 11.6 Each of the Parties will, with reasonable dispatch, upon receipt of a written and reasonable request to such effect, sign such ancillary documents or instruments, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their voting rights and other powers and do and perform and cause to be done or performed any other act as may be required to ensure the full performance of and give full effect to this Agreement.

## Entire agreement

- 11.7 This Agreement constitutes the entire agreement between the Parties pertaining to the transactions contemplated in this Agreement and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations, covenants, obligations or agreements between the Parties except as set out in this Agreement.

## Force majeure

- 11.8 (a) No default – Except for the obligation to make the payments required in this Agreement, a Party is not considered in default of its duties or liable for any damages or delay if such default, damages or delay is the result of force majeure.
- (b) Duty – Should such a cause of delay occur, the Party unable to perform its obligations under this Agreement will, whenever possible, take the necessary steps to put an end to such a cause of delay or, if unable to do so, to lessen their impact on the other Parties.
- (c) Rights of other parties – The Party to whom the duty or obligation is owed in respect of which a cause of delay has occurred may, in such circumstances, for as



long as the force majeure prohibits the other Party from performing its duties under this Agreement, take temporary steps to mitigate the damages it may sustain on the understanding that no claim may result from such actions in favour of the other Party.

**Assignment**

**11.9** Except with the written consent of each of the other Parties, which consent may be arbitrarily withheld, no Party may assign any of its benefits, obligations or liabilities under or in respect of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of and with effect from the day and year first above written.

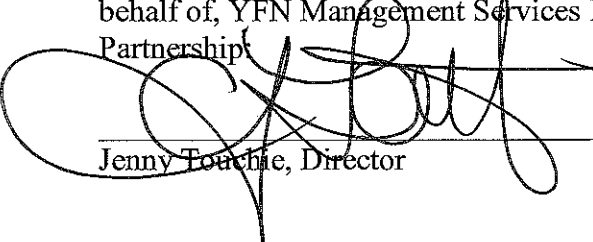
EXECUTED by Charles McCarthy, for and on )  
behalf of the Yuulu?il?ath First Nation as )  
represented by the Yuulu?il?ath government: )

  
Charles McCarthy, President )

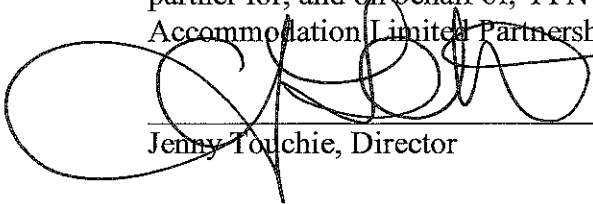
EXECUTED by YFN Holdings Inc., by its )  
duly authorized signatory, on its own behalf )  
and as general partner for, and on behalf of, )  
YFN Holdings Limited Partnership: )

  
Lawrence Baird, Director )

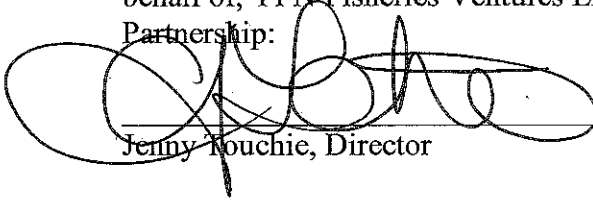
EXECUTED by YFN Management Services, )  
by its duly authorized signatory, on its own )  
behalf and as general partner for, and on )  
behalf of, YFN Management Services Limited )  
Partnership: )

  
Jenny Touchie, Director )

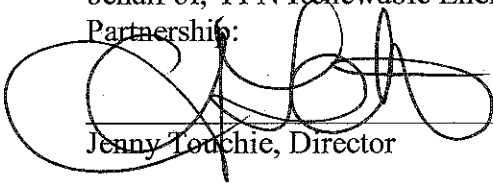
EXECUTED by YFN Resorts and Accommodation Inc., by its duly authorized signatory, on its own behalf and as general partner for, and on behalf of, YFN Resorts and Accommodation Limited Partnership: )  
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Jenny Touchie, Director )  
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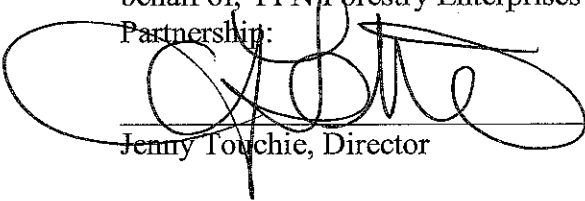
EXECUTED by YFN Fisheries Ventures Inc., by its duly authorized signatory, on its own behalf and as general partner for, and on behalf of, YFN Fisheries Ventures Limited Partnership: )  
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Jenny Touchie, Director )  
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EXECUTED by YFN Renewable Energy Inc., by its duly authorized signatory, on its own behalf and as general partner for, and on behalf of, YFN Renewable Energy Limited Partnership: )  
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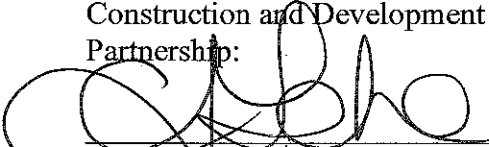
EXECUTED by YFN Forestry Enterprises Inc., by its duly authorized signatory, on its own behalf and as general partner for, and on behalf of, YFN Forestry Enterprises Limited Partnership: )  
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Jenny Touchie, Director )  
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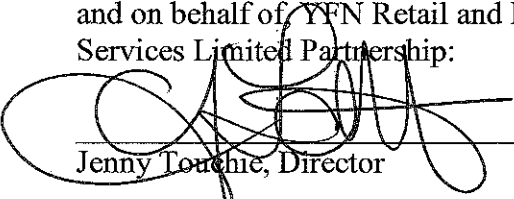
YUULU?IL?ATH FIRST NATION GOVERNMENT  
AND YUULU?IL?ATH BUSINESSES  
GOVERNANCE AND FISCAL AGREEMENT

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EXECUTED by, WYA Construction and )  
Development Inc., by its duly authorized )  
signatory, on its own behalf and as general )  
partner for, and on behalf of, WYA )  
Construction and Development Limited )  
Partnership: )

  
\_\_\_\_\_  
Jenny Touchie, Director )

EXECUTED by, YFN Retail and Food )  
Services Inc., by its duly authorized signatory, )  
on its own behalf and as general partner for, )  
and on behalf of YFN Retail and Food )  
Services Limited Partnership: )

  
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Jenny Touchie, Director )

**SCHEDULE 1 – PARTIES**

Column 1 Party	Column 2 Registration No.
Yuulu?il?ath First Nation	N/A
YFN Holdings Limited Partnership by its general partner YFN Holdings Inc.	LP57185
YFN Holdings Inc.	BC0918764
YFN Management Services Limited Partnership by its general partner YFN Management Services Inc.	LP600706
YFN Management Services Inc.	BC0336429
YFN Resorts and Accommodation Limited Partnership by its general partner YFN Resorts and Accommodation Inc.	452512-07
YFN Resorts and Accommodation Inc.	BC0838795
YFN Fisheries Ventures Limited Partnership by its general partner YFN Fisheries Ventures Inc.	527658-1011
YFN Fisheries Ventures Inc.	BC0871435
YFN Renewable Energy Limited Partnership by its general partner YFN Renewable Energy Inc.	495357-09
YFN Renewable Energy Inc.	BC0842117
YFN Forestry Enterprises Limited Partnership by its general partner YFN Forestry Enterprises Inc.	383252-04
YFN Forestry Enterprises Inc.	BC0667866
WYA Construction and Development Limited Partnership by its general partner WYA Construction and Development Inc.	LP604418
Wya Construction and Development Inc.	BC0958631
YFN Retail and Food Services Limited Partnership by its general partner YFN Retail and Food Services Inc.	LP600703
YFN Retail and Food Services Inc.	BC0957580

**YUULU?IL?ATH FIRST NATION GOVERNMENT  
AND YUULU?IL?ATH BUSINESSES  
GOVERNANCE AND FISCAL AGREEMENT**

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## SCHEDULE 2 – DEFINITIONS AND INTERPRETATION PRINCIPLES

### Incorporated definitions and interpretation principles

- 1.1 (a) Word or expressions defined in the Economic Development Act or the Interpretation Act that are also used in this Agreement will, except where the context requires otherwise or as otherwise indicated, have the same meaning as those words or expression defined in the Economic Development Act or the Interpretation Act.
- (b) The interpretation principles set out in the Interpretation Act will apply to this Agreement in the same manner as if this Agreement were legislation, with the necessary changes.

### Definitions

- 1.2 The following words and expressions have the following meanings:

“**Administrative Decisions Review Act**” means the Yuulu?il?ath First Nation Administrative Decisions Review Act, YFNS 7/2011;

“**Agreement**” means this Agreement including all of its Schedules;

“**annual plan**” means, as applicable,

- (a) the plan approved by the holdings board under section 3.1(a), or
- (b) the plan approved by the holdings board under section 3.2(c) or 3.2(d);

“**available cash**” means cash available from the operations of the holdings limited partnership or an operating limited partnership, as applicable, at the end of that partnership’s fiscal year less

- (a) the amount necessary to cover the current liabilities of that partnership,
- (b) the amount necessary to cover the budget for that partnership for the next fiscal year, as set out in the annual plan for that partnership, and
- (c) a reserve equal to 25% of the balance, after deducting the amounts in subsections (a) and (b);

“**business day**” means a day that is not a holiday;

“**chief executive officer**” means the individual retained to hold the office of chief executive officer of Yuulu?il?ath businesses under section 7.2;

**“Economic Development Act”** means the Yuulu?il?ath First Nation Economic Development Act, YFNS 34/2014;

**“economic development committee”** means the standing committee on economic development established under section 2.3 of the Economic Development Act;

**“employment or independent contractor agreement”** means the agreement entered into in accordance with section 7.2;

**“fiscal year”** means a one-year period commencing on January 1 of one calendar year and ending on December 31 of the same calendar year;

**“force majeure”** means any event beyond the control of a Party which could not have been reasonably foreseen and against which it could not have protected itself such as, without limiting the generality of the foregoing, natural catastrophes, epidemics, fires, accidents, acts of war (whether declared or not), insurrections, riots, acts of terrorism, wildcat strikes, partial or total work stoppages or slowdowns, lock-outs, changes in market conditions, power or communications breakdowns, interventions by civil or military authorities, compliance with all orders of all governmental authorities, courts or tribunals or public authorities;

**“Hitacu Assembly”** means the Hitacu Assembly, as referred to in the Constitution;

**“management services agreement”** means the agreement entered into in accordance with section 7.1;

**“management services board”** means the board of directors of the management services general partner;

**“management services general partner”** means the general partner of the management services limited partnership;

**“management services limited partnership”** means the limited partnership established under the Partnership Act under registration number LP600706;

**“non-citizen”** means any individual who is not a Yuulu?il?ath citizen;

**“Parties”** means the Yuulu?il?ath First Nation and each of the Yuulu?il?ath businesses set out in Schedule 1 and “Party” means any one of them;

**“Partnership Act”** means the British Columbia Partnership Act, R.S.B.C. 1996, c. 348.;

**“Yuulu?il?ath First Nation”** means that Maa-nulth First Nation referred to as the “Yuulu?il?ath First Nation” established as a legal entity in accordance with the Maa-nulth Treaty.

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### Interpretation Principles

- 1.3 (a) **Successor to corporate entity.** Any reference to a corporate entity includes and is also reference to any corporate entity that is a successor to such entity.
- (b) **Numbering.** Any reference in this Agreement to a numbered section or a subsection or a lettered Schedule refers to the section or subsection in this Agreement that bears that number or the Schedule to this Agreement that bears that letter, unless specifically stated otherwise and a reference to a series of numbers or letters by the first and last numbers or letters of the series includes the number or letter first and last mentioned.
- (c) **Legislation.** A reference to a statute includes every regulation made under it, and any law enacted in substitution for, or in replacement of, it.
- (d) **References to whole agreement.** The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular paragraph, article, section, subsection or other subdivision.
- (e) **No contra preferentum.** The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties to this Agreement.
- (f) **Governing law.** This Agreement will be governed and construed according to the laws of the Province of British Columbia, and the Parties irrevocably attorn to the jurisdiction of the courts thereof, including all limitation periods but excluding all conflicts of law rules that would apply the laws of another jurisdiction.
- (g) **Severability.** Each of the provisions contained in this Agreement are distinct and severable and a determination of illegality, invalidity or unenforceability of any such provision or part of this Agreement by a court of competent jurisdiction will not affect the validity or enforceability of any other provision of this Agreement, unless as a result of such determination this Agreement would fail in its essential purposes.
- (h) **Approvals.** A reference to “approval”, “authorization”, “consent”, “designation”, “waiver” or “notice” means written approval, authorization, consent, designation, waiver or notice.
- (i) **Currency.** A reference to currency means Canadian currency.
- (j) **Discretion.** Wherever this Agreement provides that an action will be taken, a consent or approval must be obtained or a determination must be made, the party taking such action or giving or withholding such consent or approval or making



the determination, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination, but where this Agreement states that a party may decide or has discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or in making that determination.

- (k) **Accounting framework.** All accounting terms used in this Agreement have the meanings ascribed to them by the accounting framework applicable to Yuulu?il?ath businesses, as determined by the Executive from time to time.
- (l) **Party's designate.** Every reference to a party in this Agreement will include any person designated to act for or on its behalf with respect to any provision of this Agreement.

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### SCHEDULE 3 – RESPONSIBILITIES OF THE EXECUTIVE

#### Responsibilities of the Executive

- 1.1 The Executive has the following responsibilities relating to Yuulu?il?ath businesses:
- (a) appointing holdings board members;
  - (b) where necessary, removing holdings board members;
  - (c) approving the renaming of any Yuulu?il?ath business;
  - (d) where necessary, approving the winding up or merging of any Yuulu?il?ath business;
  - (e) approving amendments to the constating documents of the holdings limited partnership or holdings general partner;
  - (f) approving major decisions of the holdings limited partnership, including expenditures in excess of \$250,000;
  - (g) approving distributions of available cash from the holdings limited partnership to the Yuulu?il?ath First Nation;
  - (h) approving any new business opportunities to be implemented and owned or operated by an existing or new operating limited partnership; and
  - (i) any other responsibilities set out in this Agreement, the constating documents of the holdings limited partnership or holdings general partner or any applicable law.

**SCHEDULE 4 – RESPONSIBILITY OF THE HOLDINGS BOARD****Responsibilities of the holdings board**

- 1.1 The holdings board has the following responsibilities relating to Yuulu?il?ath businesses:
- (a) appointing operating board members;
  - (b) where necessary, removing operating board members;
  - (c) approving amendments to the constating documents of any operating limited partnership or operating general partner;
  - (d) approving an annual plan for the holdings limited partnership and each operating limited partnership;
  - (e) approving major decisions of each operating limited partnership, including expenditures over \$150,000;
  - (f) approving distributions of available cash from each operating limited partnership to the holdings limited partnership;
  - (g) reporting to the Executive on the financial and operational circumstances of the holdings limited partnership; and
  - (h) any other responsibilities set out in this Agreement, the constating documents of any operating limited partnership or operating general partner or any applicable law.

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## **SCHEDULE 5 – RESPONSIBILITIES OF THE MANAGEMENT SERVICES BOARD**

### **Responsibilities of the management services board**

- 1.1 The management services board has the following responsibilities relating to Yuulu?il?ath businesses:
- (a) appointing the chief executive officer;
  - (b) overseeing the chief executive officer;
  - (c) where necessary and only for just cause, dismissing the chief executive officer;  
and
  - (d) any other responsibilities set out in this Agreement, the management services agreement, the constating documents of the management services limited partnership or management services general partner or any applicable law.

**SCHEDULE 6 – RESPONSIBILITIES OF THE OPERATING BOARDS****Responsibilities of the operating boards**

- 1.1 Each operating board has the following responsibilities relating to Yuulu?il?ath businesses:
- (a) overseeing the operations of the applicable operating limited partnership;
  - (b) developing, adopting and implementing written operational policies and procedures that may be necessary or desirable for the better and more efficient operation of the applicable operating limited partnership, including the policies and procedures required under section 7.3 of this Agreement;
  - (c) recommending a proposed annual plan for the applicable operating limited partnership to the holdings board for approval;
  - (d) approving expenditures of the applicable operating limited partnership over \$50,000 and less than \$150,000;
  - (e) reporting to the holdings board on the financial and operational circumstances of the applicable operating limited partnership; and
  - (f) any other responsibilities set out in this Agreement, the constating documents of the operating limited partnership or operating general partner or any applicable law.

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## SCHEDULE 7 – RESPONSIBILITIES OF THE CHIEF EXECUTIVE OFFICER

### Responsibilities of the chief executive officer

- 1.1 The chief executive officer has the following responsibilities relating to Yuulu?il?ath businesses:
- (a) overseeing the day to day operations of the operating limited partnerships;
  - (b) hiring staff of the operating limited partnerships;
  - (c) where necessary and only for just cause, dismissing staff of the operating limited partnerships;
  - (d) preparing a proposed annual plan for each operating limited partnership for recommendation by the applicable operating board and approval by the holdings board;
  - (e) approving expenditures of an operating limited partnership of \$50,000 or less;
  - (f) keeping up-to-date, accurate financial records for each operating limited partnership;
  - (g) at least quarterly or as required, reporting to each operating board on the financial and operational circumstances of the applicable operating limited partnership;
  - (h) as requested, reporting to the holdings board, the Hitacu Assembly, the Legislature or the Executive on the financial and operational circumstances of an operating limited partnership;
  - (i) delegating authority to staff of the operating limited partnerships as he or she sees fit;
  - (j) providing management, administrative, financial, record keeping, accounting and advisory services to the holdings limited partnership as requested by the holdings board; and
  - (k) any other responsibilities set out in this Agreement, the employment or independent contractor agreement, the constating documents of any Yuulu?il?ath business or any applicable law.