

**A&W TRADE MARKS LIMITED PARTNERSHIP**

**(the “Partnership”)**

**and**

**A & W FOOD SERVICES OF CANADA INC.**

**(“Food Services”)**

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**FIFTH AMENDING AGREEMENT TO  
AMENDED AND RESTATED LICENCE AND ROYALTY AGREEMENT**

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**January 5, 2015**

**FIFTH AMENDING AGREEMENT TO  
AMENDED AND RESTATED LICENCE AND ROYALTY AGREEMENT**

This Fifth Amending Agreement made as of January 5, 2015 between **A&W Trade Marks Limited Partnership**, a limited partnership formed under the laws of British Columbia (the "Partnership") and **A & W Food Services of Canada Inc.**, a Canadian corporation ("Food Services").

**WHEREAS** the Partnership and Food Services entered into an Amended and Restated Licence and Royalty Agreement dated December 22, 2010, as amended January 5, 2011, January 5, 2012, January 5, 2013 and January 5, 2014 (collectively, the "Licence and Royalty Agreement") pursuant to which Schedule A thereto would be amended on an annual basis to add Proposed Additional A&W Outlets and to remove A&W Outlets that had Permanently Closed during the immediately preceding Reporting Period;

**AND WHEREAS** Schedule B hereto sets out the Proposed Additional A&W Outlets to be added to the Royalty Pool on January 5, 2015, being the Adjustment Date for the Reporting Period commencing November 3, 2014;

**AND WHEREAS** Schedule C hereto sets out the A&W Outlets that Permanently Closed during the Reporting Period ended November 2, 2014;

**AND WHEREAS** Schedule D hereto sets out the conveyances and regrants of A&W Outlets contained in the Royalty Pool during the Reporting Period ended November 2, 2014;

**AND WHEREAS** the parties hereto are desirous of amending the Licence and Royalty Agreement pursuant to the terms thereof to add the Proposed Additional A&W Outlets listed in Schedule B hereto to the Royalty Pool, to remove the Permanently Closed A&W Outlets listed in Schedule C hereto from the Royalty Pool, and to record the conveyances and regrants set out in Schedule D hereto.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT**, in consideration of the premises and mutual covenants and agreements herein set forth and other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

**ARTICLE 1 INTERPRETATION**

**Section 1.1 Definitions**

In this Agreement, unless the context otherwise requires, capitalized terms used herein shall have the same meaning as set out in the Licence and Royalty Agreement.

**Section 1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into Articles, Sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or

interpretation hereof. Unless otherwise indicated, all references to an “Article” or “Section” followed by a number and/or a letter refer to the specified Article or Section of this Agreement. The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement (including the Schedules hereto) and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.

**Section 1.3 Number, etc.**

Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.

**Section 1.4 Schedules**

The following Schedules attached hereto are incorporated herein by reference and deemed to be a part hereof:

Schedule A	Amended and Restated Royalty Pool
Schedule B	Proposed Additional A&W Outlets
Schedule C	A&W Outlets Permanently Closed
Schedule D	Conveyances and Regrants

**ARTICLE 2 AMENDMENTS TO LICENCE AND ROYALTY AGREEMENT**

**Section 2.1 Amendment of Royalty Pool**

- (1) Food Services represents and warrants to the Partnership that:
  - (a) Schedule A attached hereto sets out the amended and restated Royalty Pool under the Licence and Royalty Agreement after taking into effect the addition of the Proposed Additional A&W Outlets listed in Schedule B hereto, the removal of the A&W Outlets that have Permanently Closed listed in Schedule C hereto and the conveyances and regrants set out in Schedule D hereto;
  - (b) Schedule B attached hereto sets out the Proposed Additional A&W Outlets to be added to the Royalty Pool on January 5, 2015;
  - (c) Schedule C attached hereto sets out the A&W Outlets that Permanently Closed during the Reporting Period ended November 2, 2014; and
  - (d) Schedule D attached hereto sets out the conveyances and regrants of A&W Outlets contained in the Royalty Pool during the Reporting Period ended November 2, 2014.
- (2) Effective January 5, 2015, the Parties hereto hereby agree that the Royalty Pool be and is hereby amended and restated as set out in Schedule A attached hereto.

**Section 2.2 Amendment Procedure**

The parties hereto agree that the amendment procedure with respect to the Royalty Pool shall be completed in accordance with the terms and procedures set out in the Licence and Royalty Agreement.

**ARTICLE 3 MISCELLANEOUS****Section 3.1 Assignment**

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

**Section 3.2 Further Assurances**

The parties agree that they will execute all necessary or desirable documents and generally provide such further assurances as may be required in order to enable compliance with all obligations hereunder.

**Section 3.3 Binding Effect**

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

**Section 3.4 Law**

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

**Section 3.5 Language**

The parties have requested that this Agreement and all communications and documents relating to this Agreement be expressed in the English language. Les parties ont exigé que la présente convention ainsi que tous communications et documents s'y rattachant soient rédigés dans la langue anglaise.

**Section 3.6 Amendment**

The Licence and Royalty Agreement, as amended by this Agreement, shall be read together as if the amendments to the Licence and Royalty Agreement contained herein were incorporated therein and shall be referred to collectively as the "Licence and Royalty Agreement". Except as amended hereby, the Licence and Royalty Agreement shall continue in full force and effect.

**Section 3.7 Counterparts**

This Agreement may be executed by telecopier or other means of electronic transmission and in one or more counterparts, each of which shall be deemed to be an original and both of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized officers.

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

By: *“Donald T. Leslie”*  
Authorized Signing Officer

**A & W FOOD SERVICES OF CANADA INC.**

By: *“Donald T. Leslie”*  
Authorized Signing Officer

**SCHEDULE A**  
**AMENDED AND RESTATED ROYALTY POOL**

*[Schedule A containing the Amended and Restated Royalty Pool has been omitted]*

**SCHEDULE B**

**PROPOSED ADDITIONAL A&W OUTLETS**

*[Schedule B containing the list of Proposed Additional A&W Outlets has been omitted]*

**SCHEDULE C**

**A&W OUTLETS PERMANENTLY CLOSED**

*[Schedule C containing the list of A&W Outlets that Permanently Closed has been omitted]*



**SCHEDULE D**

**CONVEYANCES AND REGRANTS**

*[Schedule D containing the list of Conveyances and Regrants of A&W Outlets has been omitted]*