

A&W TRADE MARKS LIMITED PARTNERSHIP.

(“Partnership”)

and

A & W FOOD SERVICES OF CANADA INC.

(“Food Services”)

**AMENDED AND RESTATED
LICENCE AND ROYALTY AGREEMENT**

December 22, 2010

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AMENDED AND RESTATED LICENCE AND ROYALTY AGREEMENT

This AMENDED AND RESTATED LICENCE AND ROYALTY AGREEMENT made as of December 22, 2010 between **A&W Trade Marks Limited Partnership**, a limited partnership formed under the laws of British Columbia (“**Partnership**”) represented by its general partner, A&W Trade Marks Inc. and **A & W Food Services of Canada Inc.**, a Canadian corporation (“**Food Services**”) amends and restates as of the date hereof that Amended and Restated Licence and Royalty Agreement made as of January 26, 2009, between **A&W Trade Marks Limited Partnership**, and **A & W Food Services of Canada Inc.**, as heretofore amended and supplemented and in effect (the “**2009 Licence and Royalty Agreement**”)

WHEREAS by a Licence and Royalty Agreement dated February 15, 2002 (the “**Original Licence and Royalty Agreement**”) A&W Trade Marks Inc. (“**TMI**”) granted to Food Services, and Food Services obtained from TMI, the rights and licences to the A&W Marks (defined below) and the other rights and licences set forth therein in accordance with and subject to the terms and conditions therein set out;

WHEREAS by a contribution agreement dated January 25, 2009 between TMI, Food Services and Partnership, TMI, with the consent of Food Services, contributed the A&W Marks and certain other rights and licences to Partnership, subject to the terms of and on the condition that Partnership assume all of the obligations of TMI under the Original Licence and Royalty Agreement and other agreements referred to in such contribution agreement, subject to the amendments provided for in this Agreement;

WHEREAS Partnership and Food Services desire to amend and restate the 2009 Licence and Royalty Agreement upon the terms set forth herein;

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 to amend and restate the 2009 Licence and Royalty Agreement as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions

- (1) In this Agreement, unless the context otherwise requires, the following capitalized terms shall have the following meanings:

“**2009 Licence and Royalty Agreement**” has the meaning set out in the Recitals.

“**Additional A&W Outlets**” at any time means the A&W Outlets which have been added to the Royalty Pool pursuant to Section 3.2 and which are or are to be listed in an amendment to Schedule A hereto pursuant to Section 3.2.

“**Adjustment Date**” means January 5 of each year.

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

“Agreement” means this agreement as the same may be amended and supplemented from time to time and in effect.

“A&W Manual” has the meaning ascribed thereto in Section 5.3.

“A&W Mark Advertising” means any and all signs, menu strips, advertising, product packaging and labelling, promotional materials, uniforms, menus, Products, electronic media and any other materials whatsoever bearing any of the A&W Marks.

“A&W Mark Standards” has the meaning ascribed thereto in Section 5.3.

“A&W Marks” means all registered and unregistered trade-marks and certification marks, if any, and tradenames assigned by Food Services to TMI pursuant to the Acquisition Agreement entered into between the parties on February 15, 2002, including, without limitation, the trade-marks and registrations and applications therefor listed on Schedule B as amended from time to time in accordance with the Original Licence and Royalty Agreement, the 2009 Licence and Royalty Agreement and Article 7 of this Agreement.

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

“A&W Restaurants Business” means the business of franchising, licensing and operating A&W Outlets.

“Beverages Agreement” means the Amended and Restated Beverages 2002 Shared Use Trademark and Tradename Licence Agreement made effective as of December 17, 1999, and amended and restated on February 15, 2002 between TMI, as licensor, and A&W Root Beer Beverages of Canada Inc., as licensee, for the use of certain A&W Marks in association with the Excluded Beverage Products, and continued and confirmed by a Continuation of the Beverages 2002 Shared Use Trademark and Tradename Licence Agreement between Partnership and A&W Root Beer Beverages of Canada Inc. dated as of January 23, 2009 whereby the parties agreed to continue the agreement, and all references to “Licensor” in the agreement would thereafter mean Partnership.

“Business Day” means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in the city of Vancouver, British Columbia, for the transaction of banking business.

“Contracts” means any agreement, indenture, mortgage, contract, lease, deed of trust, licence, option, instrument, collective agreement, accepted purchase order or other commitment, whether written or oral, having a binding effect on Food Services.

“Core A&W Marks” means the trade-marks “A&W”, TEEN BURGER, CHUBBY CHICKEN and an A&W ROOT BEAR design.

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

“Determined Amount” has the meaning provided for in the Partnership Agreement.

“Determination Date” means, the first day of a Reporting Period.

“Event of Insolvency” means, with respect to Food Services, the occurrence of any one of the following events:

- (a) if Food Services is wound up, dissolved, liquidated or otherwise has its existence terminated (either voluntarily or involuntarily) other than as permitted by this Agreement, the General Security Agreement or the Governance Agreement, or unless such existence is immediately reinstated; or
- (b) if Food Services makes a general assignment for the benefit of its creditors or a Proposal under the *Bankruptcy and Insolvency Act* (Canada) or is adjudged bankrupt or insolvent or proposes a compromise or arrangement under the *Companies Creditors Arrangement Act* (Canada) or files any petition or answer seeking any reorganization, arrangement, composition, re-adjustment, liquidation or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors generally; or
- (c) if a court of competent jurisdiction grants an order, judgment or decree sought in an action or proceeding filed against Food Services seeking any reorganization, arrangement, composition, readjustment, liquidation, winding up, dissolution, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally and Food Services consents to or acquiesces in the pronouncement of such order, judgment or decree or such order, judgment or decree remains unvacated and unstayed for an aggregate of 10 days (whether or not consecutive) from the date of pronouncement thereof or if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for Food Services and Food Services consents to or acquiesces in such appointment or such appointment remains unvacated and unstayed for an aggregate of 10 days (whether or not consecutive).

“Excluded Beverage Products” means root beer, cream soda and other beverages packaged in cans, bottles or other containers designed for resale to end consumers but, for greater certainty, does not include root beer or cream soda or other beverages or syrups or concentrates dispensed or intended to be dispensed from a soda fountain at point of sale to the consumer.

“Fiscal Year” has the meaning ascribed thereto in the Partnership Agreement.

“Food Services” means A & W FOOD SERVICES OF CANADA INC., a corporation amalgamated under the laws of Canada.

“Forecast System Sales” in respect of any Proposed Additional A&W Outlets for any Reporting Period means the amount of the System Sales by such Proposed Additional A&W Outlets for such Reporting Period as forecast by Food Services on the basis of assumptions approved by TMI acting reasonably accompanied by a review engagement report from the Independent Accountants to the effect that they have reviewed the determination of Forecast System Sales as forecast by Food Services in respect of such Proposed Additional A&W Outlets and that nothing has come to their attention that causes them to believe that such determination is not, in all material respects, in accordance with this Agreement.

“Franchise Agreements” means the franchise agreements and interim franchise agreements that may give rise to franchise agreements with Food Services pursuant to which a Franchisee is, subject to the terms and conditions contained therein, currently permitted to operate an A&W Outlet in Canada.

“Franchisee” means the Person identified as franchisee pursuant to a Franchise Agreement.

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

“General Security Agreement” means the amended and restated general security agreement dated December 22, 2010 granted by Food Services in favour of Partnership and acknowledged by Partnership, as amended and supplemented from time to time and in effect.

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

“Governmental Authority” means the Government of Canada or a province or other political subdivision thereof and any court or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in Canada or any province or other political subdivision thereof.

“Gross Sales” for any period and in respect of any A&W Outlet means the amount of gross sales reported to Food Services by the Franchisee of such A&W Outlet under a Franchise Agreement (including an A&W Outlet owned and operated by Food Services, whether or not under a Franchise Agreement) without audit, verification or other form of independent assurance by or on behalf of Food Services and after deducting amounts for discounts for coupons and other promotional offerings and applicable sales taxes, except if the gross sales of any Franchisee have been audited by Food Services, then the “Gross Sales” of such Franchisee shall be the amount of such gross sales determined by the audit.

“Independent Accountants” has the meaning set forth in Section 4.1.

“Initial A&W Outlets” means the A&W Outlets listed in Schedule A.

“Initial A&W Outlet Period” in respect of any A&W Outlet means:

- (a) the 52 week period immediately following the date such A&W Outlet was first included in the Royalty Pool; or
- (b) if such A&W Outlet was included in the Royalty Pool for less than 52 weeks, the actual period for which such A&W Outlet was included in the Royalty Pool, in which case the Gross Sales for such A&W Outlet will be determined by dividing the Gross Sales for such A&W Outlet for the period that such A&W Outlet was included in the Royalty Pool by the number of weeks, (including a fraction of a week) that the A&W Outlet was included in the Royalty Pool and multiplying the quotient so obtained by 52.

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

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

Where:

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

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

“**Law**” means any law (including common law and equity), constitution, statute, order, treaty, regulation or rule of any Governmental Authority.

“**Lost System Sales**” for any Reporting Period means, in respect of any A&W Outlet that has Permanently Closed in such Reporting Period, the amount of the System Sales for the Initial A&W Outlet Period for such A&W Outlet.

“**Make-whole Carryover Account**” means:

- (a) on the Determination Date for a Reporting Period, the amount determined by the following formula:

$$PYMCA + LSS$$

and

- (b) on the Adjustment Date for a Reporting Period, the amount determined by the following formula:

$$PYMCA + LSS - RSS$$

Where in both cases above:

- (c) LSS is the Lost System Sales for the Reporting Period immediately preceding such Reporting Period;
- (d) PYMCA is the amount, if any, of the Make-whole Carryover Account at the beginning of the Reporting Period immediately preceding such Reporting Period; and
- (e) RSS is the Replacement System Sales attributable to any Proposed Additional Outlets added to the Royalty Pool pursuant to Section 3.2 on the Adjustment Date of such Reporting Period.

“Make-whole Carryover Payment” for any Royalty Payment Period after any Adjustment Date means 4/52 of three percent (3%) of the Make-whole Carryover Account at the beginning of such Royalty Payment Period.

“Make-whole Payment” for any period during any Reporting Period means three percent (3%) of the Lost System Sales for such period for all A&W Outlets that have Permanently Closed in such Reporting Period, determined on the assumption that the Lost System Sales for any such A&W Outlet in any such period is determined by the following formula:

$$PD \times \frac{LSS}{365}$$

Where:

- (a) PD is the number of days for which such A&W Outlet was Permanently Closed in such period; and
- (b) LSS is the Lost System Sales for any such A&W Outlet.

“Material Breach” has the meaning ascribed thereto in Section 11.3.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership dated December 22, 2010 between TMI as general partner and Food Services as limited partner, as the same may be amended and supplemented from time to time and in effect

“Permanent Closure” or **“Permanently Closed”** means an A&W Outlet:

- (a) for which a Franchise Agreement has been terminated by Food Services or has been abandoned by the franchisee; or
- (b) that has been closed for a period of six months with no prospect of re-opening or re-franchising by Food Services.

“Permitted Indebtedness” has the meaning ascribed thereto in Section 11.5(1).

“Person” means any individual, partnership, firm, trust, body corporate, government, governmental body, agency or instrumentality, unincorporated body of persons or association.

“Present Value of all Royalty Payments” means, at any date, the present value of the Royalty Payments payable for the period from such date to the end of the Term calculated using a discount rate equal to the yield to maturity of long term obligations of the Government of Canada (i.e. having a term on the date of this Agreement of approximately 30 years) at such date, which the parties agree is, at the date hereof, approximately 3.6% per annum, assuming that the aggregate Royalty Payments during each Reporting Period after such date were due and owing at the times herein set out and were equal in amount to the Royalty Payments paid or payable by Food Services to Partnership for the period of 52 weeks immediately preceding such date.

“Prime Rate” means the rate of interest published from time to time by the principal banker to TMI as its “prime rate” for loans to its commercial customers in Canadian dollars payable on demand.

“Products” means:

- (a) prepared take-out and other food and beverage products including, without limitation, hamburgers, chicken dinners, chicken strips and burgers, veggie burgers, hot dogs, fish sandwiches, fries, onion rings, gravy/sauces, fruit and vegetable products, beverages including diet and regular soft drinks, milk, coffee, tea, hot chocolate, milkshakes and floats, juices; desserts such as cake and pastry items, ice cream and cookies; breakfast items such as breakfast handheld sandwiches, hash brown potatoes, eggs, bacon, ham, sausage, toast, french toast and bakery items;
- (b) premiums and promotional items; and
- (c) other products as determined pursuant to Section 7.2;

but expressly excludes the Excluded Beverage Products.

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

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

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

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

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

“Royalty Payment” means:

- (a) for any period and at any time before the Royalty Pool first includes 1000 A&W Outlets means the total of: (i) three percent (3%) of System Sales for such period by the A&W Outlets included in the Royalty Pool at such time; (ii) the Make-whole Payment for such period; and (iii) the Make Whole Carryover Payment at such time; and
- (b) for any period at any time after the Royalty Pool first includes 1000 A&W Outlets means the total of: (i) three percent (3%) of System Sales for such period by the A&W Outlets included in the Royalty Pool at such time; (ii) three percent (3%) of the amount of Gross Sales by the Proposed Additional A&W Outlets, provided that the amount payable pursuant to this clause (ii) shall not exceed the amount of the Make-whole Payment that would have been required to be paid in such period by Food Services if the number of A&W Outlets in the Royalty Pool

had never included 1000 A&W Outlets; and (iii) three percent (3%) of the amount of Gross Sales by the Proposed Additional A&W Outlets at such time in excess of the amount of Gross Sales included in clause (ii) of this definition at such time, provided that the amount payable pursuant to this clause (iii) shall not exceed the amount of the Make-whole Carryover Payment that would have been required to be paid in such period by Food Services if the number of A&W Outlets in the Royalty Pool had never included 1000 A&W Outlets.

“Royalty Payment Period” means a period of four weeks commencing on a Monday and ending on the Sunday of the fourth week immediately following such Monday.

“Royalty Pool” at any time means the Initial A&W Outlets and the Additional A&W Outlets at such time, and for greater certainty, does not include the Permanently Closed A&W Outlets.

“Services” means:

- (a) Restaurant services; and
- (b) other services as determined pursuant to Section 7.2.

“System Sales” for any period and for any A&W Outlets means the Gross Sales by such A&W Outlets for such period.

“Term” has the meaning set forth in Section 11.1.

“Territory” means Canada.

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

Section 1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into Articles, Sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof. Unless otherwise indicated, all references to an “Article” or “Section” followed by a number and/or a letter refer to the specified Article or Section of this Agreement. The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement (including the Schedules hereto) and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.

Section 1.3 Accounting References

All accounting terms not expressly defined herein shall be construed in accordance with Canadian generally accepted accounting principles, except where the context otherwise requires.

Section 1.4 Number, etc.

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

Section 1.5 Statutory References

Except as otherwise expressly provided in this Agreement, any references to a statute or regulation shall be construed as a reference to such statute or regulation as it may be amended, re-enacted or superseded from time to time.

Section 1.6 Date for Any Action

In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

Section 1.7 Week Begins on a Monday

For the purposes of this Agreement, a week begins on a Monday.

Section 1.8 Schedules

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

Schedule A A&W Outlets

Schedule B A&W Marks

ARTICLE 2 LICENCE

Section 2.1 Grant

Subject to the terms and conditions of this Agreement (including the provisions of Section 5.3), Partnership acknowledges and agrees that, pursuant to the Original Licence and Royalty Agreement, TMI granted, and Partnership has acquired the A&W Marks and the other rights and licences set forth herein, subject to the grant to Food Services (which grant Partnership by this Agreement hereby confirms) the exclusive right and licence of Food Services in the Territory, to:

- (1) carry on the A&W Restaurants Business in association with the A&W Marks;
- (2) offer for sale, supply and sell the Services in association with the A&W Marks in A&W Outlets;
- (3) prepare and package Products in association with the A&W Marks and to distribute, dispense, offer for sale and sell Products in association with the A&W Marks;
- (4) manufacture, distribute and sell to licencees and Franchisees referred to in Section 2.2, ingredients, supplies and packaging material necessary in the uniform supply of the Services and the uniform preparation, packaging, dispensing, offering for sale and selling of the Products in association with the A&W Marks, and, incidental thereto, to permit others to prepare packaging and Products and sell packaging and Products to Food Services, licencees and Franchisees;

- (5) use the A&W Marks in the corporate names of Food Services and its Affiliates, subject to Section 2.4;
- (6) use the A&W Marks in the tradenames of Food Services and its Affiliates, subject to Section 2.4;
- (7) use all copyright in the A&W Marks as same relate to the Products and Services; and
- (8) use and display, including in A&W Mark Advertising, the A&W Marks in association with Products and Services;

all in accordance with the A&W Mark Standards.

Section 2.2 Right to Sublicence

Subject to Section 2.3, Partnership hereby acknowledges that Food Services has the right to grant to Franchisees and others sublicences and the right to grant sub-sublicences of the rights granted hereunder, being further rights and licences of equivalent or lesser scope to the right and licence granted in Section 2.1 to Food Services pursuant to this Agreement. Any further right or licence which Food Services grants pursuant to this Section 2.2 shall contain the same or substantially similar terms and conditions in respect of use, display, control, ownership and protection of the A&W Marks as are contained herein. In particular, but without limitation, any such right or licence shall require the licensee or Franchisee to adhere to the A&W Mark Standards. Food Services shall provide to Partnership copies of the standard-form licence and/or Franchise Agreement which it intends to utilize in the exercise of its rights hereunder, as amended from time to time. Without limiting the generality of the foregoing, Food Services shall ensure that:

- (1) its standard-form licence and all Franchise Agreements entered into after the date hereof, identifies Partnership as the owner of the A&W Marks and Food Services as the franchisor or licensor (and not as Partnership's agent) under any such licence or Franchise Agreements, provides an indemnity by all Franchisees or other licensees in favour of Partnership comparable to the indemnity provided in such agreement to Food Services, contains provisions comparable to the provisions of Section 5.2, and further provides assurances by such Franchisee or other licensee to cooperate with Partnership in obtaining and maintaining registration of the A&W Marks; and
- (2) either its standard-form licence and all Franchise Agreements entered into after the date hereof, requires all licensees and/or Franchisees in any A&W Mark Advertising conducted by any of the same to provide notice, where reasonable to do so, both of Partnership's ownership of the A&W Marks and of the fact that such A&W Marks are being used under licence; and
- (3) all licences that grant the right to grant further sublicences contain similar covenants to obtain for the benefit of Partnership and Food Services similar covenants to those set out in this Section.

Section 2.3 Exclusions

Food Services shall have no right to:

- (1) use the A&W Marks in association with the Excluded Beverage Products; or

- (2) sublicense the right granted in Section 2.1(5).

Section 2.4 A&W Marks in the Corporate Names and Tradenames of Affiliates

Affiliates of Food Services shall be permitted by Food Services to use the A&W Marks in their corporate names and tradenames only to the extent that any such Affiliates are sublicensed by Food Services to carry out any of the activities set out in Section 2.1(1) to Section 2.1(4) or Section 2.1(7) to Section 2.1(8), and only in accordance with Section 2.2. Without limiting the foregoing, Food Services shall ensure that any Affiliate that uses any A&W Mark in its corporate name or tradename shall agree to be bound by the terms of Section 5.2 and Section 5.5 as if such Affiliate were Food Services hereunder.

Section 2.5 Territory

Notwithstanding anything else in this Agreement, this Agreement applies to the A&W Marks in the Territory only.

**ARTICLE 3
REMUNERATION**

Section 3.1 Royalty Payment

Food Services will pay Partnership the Royalty Payment for each Royalty Payment Period on or before the 30th day following the end of such Royalty Payment Period, and will deliver to Partnership, with the payment of each Royalty Payment, a statement showing the determination of the amount of such Royalty Payment and the amount of the System Sales for such Royalty Payment Period, accompanied by a certificate of the chief financial officer of Food Services certifying, on behalf of Food Services, that the amount of the Royalty Payment for such Royalty Payment Period, as shown in such statement and paid to Partnership at the time such statement is delivered to Partnership, was determined in accordance with the terms of this Agreement.

Section 3.2 Amendments to the Royalty Pool and Schedule of Additional A&W Outlets

On each Adjustment Date, Partnership and Food Services shall amend Schedule A by listing the Additional A&W Outlets that are included in the Royalty Pool as at the Determination Date in respect of such Adjustment Date, and deleting the A&W Outlets that have Permanently Closed in the Reporting Period ended immediately prior to such Adjustment Date.

Section 3.3 No Royalties on Certain Sales

For greater certainty, Food Services shall owe no remuneration to Partnership for the right to use and exploit the A&W Marks except those payable on Gross Sales by A&W Outlets.

Section 3.4 Late Payments

Any payment by either party that is not paid on or before the date such payment is due under this Agreement shall bear interest at a rate equal to the lesser of:

- (1) the Prime Rate plus two percent (2%) per year, or
- (2) the maximum rate permitted by law,

calculated based on the number of days that payment is delinquent.

Section 3.5 Payment for Partial Royalty Payment Periods

If the Royalty Payment is payable for any period that is less than a Royalty Payment Period, the System Sales for such period will be deemed to be 1/28th of the System Sales for the Royalty Payment Period ending at the end of such period, multiplied by the number of days in such period and if any such Royalty Payment Period begins or ends before or after the Term, as if this Agreement had been in effect for the whole of such period.

Section 3.6 No Set-Off

Food Services shall not be entitled to set off against amounts payable by it under this Agreement any indebtedness or liability of any kind whatsoever of Partnership to Food Services, and Partnership shall not be entitled to set off against amounts payable by it under this Agreement any indebtedness or liability of any kind whatsoever of Food Services to Partnership.

ARTICLE 4 ACCOUNTING AND RECORDS

Section 4.1 Appointment of Independent Accountants

Food Services shall appoint and at all times retain a firm of independent accountants of recognized national reputation and reasonably acceptable to Partnership to serve as the independent accountants (“Independent Accountants”) for purposes of preparing and delivering the reports required by Section 4.2. Food Services may not remove the Independent Accountants without first giving 60 days prior written notice to the Independent Accountants, with a copy of such notice also given concurrently to Partnership. Upon any resignation by such firm or removal of such firm, Food Services shall promptly appoint a successor thereto that shall also be a firm of independent accountants of recognized national reputation and reasonably acceptable to Partnership to serve as the Independent Accountants hereunder. If Food Services shall fail to appoint a successor to a firm of Independent Accountants which has resigned or been removed within 30 days after the effective date of such resignation or removal, Partnership shall be entitled to appoint a successor firm of independent accountants of recognized national reputation to serve as the Independent Accountants hereunder. The fees of such Independent Accountants and its successor shall be payable by Food Services.

Section 4.2 Annual Independent Accountants’ Reports

On or before March 15 of each year, Food Services shall deliver to Partnership a separate report of the Royalty Payments for the preceding fiscal year of Partnership, prepared by the Independent Accountants, together with their advice to the effect that their examination:

- (1) was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as they considered necessary in the circumstances;
- (2) included, if applicable, certain agreed-upon procedures in accordance with standards established by the Canadian Institute of Chartered Accountants, relating to the System Sales for such fiscal year based on procedures determined by Food Services, so that the Royalty Payments for such fiscal year could be computed in compliance with this Agreement; and

- (3) that the nature, scope and design of the procedures will not constitute an audit made in accordance with generally accepted auditing standards, the objective of which is the issuance of an opinion.

Section 4.3 Records

Food Services shall retain all data (including, without limitation, computerized records) relating directly to, or maintained in connection with, the Franchise Agreements and the calculation of Royalty Payments at the address of Food Services set forth in Section 12.11 or, upon 30 days' notice to Partnership, at such other place where the offices of Food Services are located, and shall give Partnership access to all such data at all reasonable times upon reasonable notice, and, Food Services shall, on demand and at the expense of Partnership, deliver to Partnership a copy of all data in its possession or under the control of Food Services (including, without limitation, computerized records) relating to the Franchise Agreements and the calculation of Royalty Payments. The provisions of this Section 4.3 shall not require Food Services to transfer any proprietary material or computer programs unrelated to the Franchise Agreements and the calculation of Royalty Payments.

ARTICLE 5 USE AND DISPLAY OF TRADE MARKS

Section 5.1 Use

Food Services acknowledges that Partnership is the owner of the A&W Marks and further acknowledges the obligation of Food Services to avoid any loss of distinctiveness in the A&W Marks. Food Services shall use and display the A&W Marks in a manner and form as registered or applied for or requested to be applied for in accordance with Section 7.4 and, except as permitted by this Agreement, shall not use or display any tradename which is confusing with the A&W Marks.

Section 5.2 No Contest

Food Services shall not dispute or contest for any reason whatsoever, directly or indirectly, the ownership, distinctiveness or enforceability of the A&W Marks or the validity of any registration therefor, nor directly or indirectly dilute or depreciate or attempt to dilute or depreciate the value of the benefits and advantages attaching to the A&W Marks, nor directly or indirectly impair or attempt to impair the distinctiveness of the A&W Marks, nor counsel, procure or assist anyone else to do any of such acts. Food Services acknowledges that all benefits and advantages associated with or arising out of the use of any of the A&W Marks by Food Services itself, or any of its licensees or Franchisees, including, without limitation, the whole of the advantage of the reputation identified with the use of the A&W Marks, shall enure entirely for the benefit of Partnership. If, despite the foregoing, any right, title or interest in or to any of the A&W Marks becomes vested in Food Services or any licensee or Franchisee thereof, Food Services shall hold in trust for Partnership and/or acquire the same to be held in trust for Partnership, as applicable, and shall, at Partnership's request, forthwith unconditionally assign any such right, title or interest to Partnership. Food Services acknowledges and agrees that it has no right, title or interest in or to the A&W Marks except the use of the same as set out in this Agreement, and that nothing in this Agreement shall be construed as an assignment or grant to Food Services of any right, title or interest in or to the A&W Marks.

Section 5.3 A&W Mark Standards

Food Services shall adhere in all respects to the standards (the "A&W Mark Standards") adopted by Partnership, acting reasonably, from time to time with respect to the character and quality of the Products

and Services sold in association with the A&W Marks, and as set forth in the Operations Manual as amended from time to time (the "A&W Manual"). Food Services, after consultation with Partnership, shall have the right to periodically issue in written form, with a copy to Partnership, supplements and amendments to the A&W Manual, together with additional instructions and directions from time to time, and such supplements, amendments and additional instructions shall, provided that such supplements, amendments and additional instructions are reasonable, be deemed part of the A&W Manual for purposes of this Agreement.

Section 5.4 Advertising

Food Services shall retain for inspection by Partnership representative samples of A&W Mark Advertising upon execution of this Agreement and immediately following the implementation of any new marketing direction or strategy which renders the then currently provided A&W Mark Advertising no longer reasonably representative. Food Services shall retain such samples for as long as Food Services deems necessary, but in any event for no less than six years from the date of implementation of such A&W Mark Advertising.

Section 5.5 No Depreciating Value

Food Services shall not do or suffer to be done any act, including any advertising or promotion, which has the effect of depreciating the value of, or bringing into disrepute, or otherwise reflecting negatively on, the A&W Restaurants Business or the A&W Marks.

Section 5.6 Public Notice

Food Services shall display the name of Partnership and indicate that the A&W Marks are used under licence on labels, packaging, signage, advertising, stationery, invoices, and other indicia in a manner and with sufficient frequency so as to bring this information to the attention of the public. Food Services shall not itself nor shall Food Services permit any of its Franchisees or other sublicensees to indicate to the public that any Products or Services being provided by any of them are being provided as agents or on behalf of Partnership.

Section 5.7 Inspection

Food Services shall, upon request made not more frequently than three (3) times per calendar year and upon reasonable notice, allow Partnership or its duly authorized representative to inspect during business hours its premises or any other premises at which Products and Services sold in association with the A&W Marks are manufactured or packaged or offered for sale or sold by or under the authority of Food Services to ensure that the nature, standard and quality of the such Products and Services are in accordance with Section 5.3; provided however that if any such inspection reveals a breach of the provisions of Section 5.3 at a given business location, Partnership, acting reasonably, shall then have the right to conduct such number of additional inspections at such location as may be appropriate in order to give effect to its rights pursuant to this Agreement. The reasonable out of pocket costs of such inspections shall be borne by Food Services. Further, Food Services shall pay on behalf of A&W Root Beer Beverages of Canada Inc. the reasonable out of pocket costs of all inspections of the licensee under the Beverages Agreement and/or any of its licensees or franchisees, as may be reasonably required in order for Partnership to monitor the use of any of the A&W Marks in association with the Excluded Beverage Products. Food Services will pay all invoices and/or accounts with respect to any of the foregoing inspections within thirty (30) days of receipt of same.

ARTICLE 6
MAINTENANCE OF TRADE MARKS AND REGISTRATIONS

Section 6.1 Registrations

Partnership shall apply for and prosecute all applications for registration of the A&W Marks which have not become registrations as of the date hereof and all new A&W Marks as requested by Food Services pursuant to Section 7.4. Further, Partnership shall make reasonable commercial efforts to register and maintain the registrations for the A&W Marks still in use by Food Services, excepting only those A&W Marks which Food Services has given notice to Partnership that Food Services has ceased to use pursuant to Section 7.6. Partnership shall use counsel acceptable to Food Services, acting reasonably, in the application, prosecution, registration and maintenance of the foregoing.

Section 6.2 Costs

Food Services shall bear the reasonable out of pocket costs of the application for and prosecution, registration and maintenance of the A&W Marks. Food Services will pay all invoices and/or accounts with respect to any of the foregoing costs within thirty (30) days of receipt of same.

Section 6.3 Further Documents

Food Services shall execute all such documents and do all such things, and shall cause its licencees and Franchisees to execute all such documents and do all such things, as are required to assist Partnership in obtaining and maintaining registration of the A&W Marks.

ARTICLE 7
AMENDMENTS TO THE A&W MARKS

Section 7.1 Notice of New A&W Marks or New Uses

Prior to the use of:

- (1) any new trade mark in an A&W Outlet,
- (2) the A&W Marks for wares other than those set out in (a) through (c) of the definition of Products, or for services other than Services, or
- (3) any variation of an A&W Mark;

Food Services will notify Partnership of same.

Section 7.2 Consent to for Certain New Products and Services

Any new use referred to in Section 7.1(2) shall require the prior written consent of Partnership, which consent shall not to be unreasonably withheld or delayed, and, in any event, if Partnership does not give notice in writing that it does not consent within 30 days of its receipt of such notice, Partnership shall be deemed to have consented to such new use.

Section 7.3 A&W Mark Standards for Certain New Products and Services

Where Food Services has obtained the consent for a new use referred to in Section 7.1(2) and consulted with Partnership respecting standards for the control of the character and quality of same, Food Services shall have the right to issue in written form, with a copy to Partnership, standards for the control of the character and quality of such new uses, and such standards shall, provided that such standards are reasonable, be adopted by Partnership and deemed part of the A&W Manual for purposes of this Agreement.

Section 7.4 Applications

At the request of Food Services, and subject to Section 7.3, Partnership shall adopt A&W Mark Standards for and shall apply for, prosecute and, if commercially feasible, have registered in the Territory:

- (1) all new trade-marks to be used in the A&W Restaurants Business, whether such trade-marks are consisting of or including or being confusingly similar to the existing A&W Marks, or otherwise; and
- (2) extensions or additions of wares and services in respect of existing A&W Marks.

Food Services shall bear the reasonable out of pocket costs of such applications and registrations. Partnership shall use counsel acceptable to Food Services, acting reasonably, in the application, prosecution, registration and maintenance of the foregoing.

Section 7.5 Extension of Licence

Upon notice from Food Services to Partnership pursuant to Section 7.1(1) or Section 7.1(3), or upon the adoption of standards pursuant to Section 7.3, Schedule B shall be deemed to include such trade mark or extension or addition and same shall be deemed to be an A&W Mark and to be licenced hereunder.

Section 7.6 Notice of Ceasing to Use A&W Marks

Food Services shall provide written notice to Partnership in the event that Food Services ceases using any one or more A&W Marks. Notwithstanding any cessation in the use of any such mark, such mark remains an A&W Mark hereunder for the purposes of Section 7.7.

Section 7.7 No Other Licences

Partnership shall not assign any A&W Marks or grant any other licence or rights to the A&W Marks to any other Person, and shall make no use of or otherwise exploit in any manner the A&W Marks, except as permitted by, and pursuant to the provisions of this Agreement and the Beverages Agreement. Except in accordance with Article 5 of the Beverages Agreement, Partnership will not amend the Beverages Agreement without the written consent of Food Services, which consent may not be unreasonably withheld or delayed, except that Food Services may withhold for any reason or without reason its consent to any change to the scope of the licence or the wares in association with which the Beverages Agreement permits the licensee to use the marks licenced thereunder.

Section 7.8 Preservation of A&W Marks

If Partnership intends to abandon any application or permit any registration to be expunged, or fail to renew any registration, or otherwise restrict or limit any application or registration for any A&W Mark,

Partnership will first notify Food Services and permit Food Services to assume the prosecution or maintenance of such application or registration.

ARTICLE 8 COMMERCIAL DILIGENCE OF FOOD SERVICES

Section 8.1 Business Standards

In addition to Food Services' obligations respecting compliance with the A&W Mark Standards set out in Section 5.3, Food Services shall:

- (1) operate and conduct its business in at least the manner and to at least the standards that its business is presently conducted;
- (2) manage and supervise the management of the Franchisees in the manner of a competent and qualified manager of similar franchises of branded quick service restaurants;
- (3) monitor on behalf of Partnership and Food Services the compliance of Franchisees and all other licencees (if any) with the trade mark and character and quality standards set under the Franchise Agreements, or such other applicable agreements, including without limitation, those terms and conditions relating to the use, display, control and protection of the A&W Marks and the compliance with the A&W Mark Standards, and Food Services shall notify Partnership of any material breach of same and advise Partnership of the course of action Food Services will take in enforcing such obligations or terms;
- (4) enforce the observance and performance of the Franchise Agreements by Franchisees in a manner that is consistent with good and prudent business practices; and
- (5) obtain all permits, licences and approvals necessary for Food Services to carry on the A&W Restaurants Business, comply with all Laws applicable to the carrying on of the A&W Restaurants Business, and remain in good standing in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary.

Section 8.2 Reports of Compliance

Quarterly, Food Services shall provide Partnership with:

- (1) a written report detailing the use of the A&W Marks by Food Services and its Franchisees or licencees at all A&W Outlets, including details of all licences of the A&W Marks granted by Food Services to Franchisees or licencees since the last report; and
- (2) a certificate from an officer of Food Services to the effect that Food Services is using the A&W Marks in accordance with this Agreement.

Section 8.3 Inspections

From time to time, when requested by Partnership, acting reasonably, Partnership will contract with a third party to inspect, the use of the A&W Marks by Food Services and by Food Services' Franchisees and licencees to determine whether the A&W Marks are being used in accordance with the standards

prescribed by this Agreement, and Food Services shall cooperate with such inspection. Food Services shall bear the reasonable out of pocket costs of such inspections.

Section 8.4 Franchisee Payments and Reporting Requirements

Food Services shall collect or cause the collection of all payments called for under the terms and provisions of each Franchise Agreement and shall cause the Franchisees to comply with the reporting requirements of each Franchise Agreement, and in respect thereof, Food Services shall perform the following servicing and collection supervision activities:

- (1) perform, or cause to be performed, standard accounting services, and perform general record keeping services, with respect to the Franchise Agreements;
- (2) respond to any telephone or written inquiries of Franchisees concerning the Franchise Agreements;
- (3) keep Franchisees informed of the proper place and method for making payments with respect to the Franchise Agreements;
- (4) contact Franchisees to effect collection and to discourage delinquencies in the payment of monies due under the Franchise Agreements, doing so by any lawful means, including, but not limited to, the following:
 - (a) transmittal of routine past due notices;
 - (b) preparing and mailing collection letters;
 - (c) contacting delinquent Franchisees by telephone to encourage payment;
 - (d) transmittal of reminder notices to delinquent Franchisees;
 - (e) initiating and pursuing termination or enforcement actions deemed necessary by Food Services; and
- (5) take such other action as may, in the reasonable discretion of Food Services, be necessary or appropriate to carry out the duties and obligations imposed upon Food Services pursuant to the terms of this Section 8.4.

Section 8.5 Business Plans

Food Services will submit to Partnership annually before the Determination Date in each year, for review by the Governance Committee of the Board of Directors of Partnership, a business plan for Food Services for the Reporting Period commencing on such Determination Date, including, in respect of such Reporting Period, a summary of projected System Sales, Forecast System Sales, the number and locations of A&W Outlets that may be Proposed Additional Outlets, a projection of potential Lost System Sales, a projection of A&W Outlets that might be Permanently Closed, together with such information as may be reasonable required by the members of such Governance Committee to consider and assess the operations and plans of Food Services for such Reporting Period.

Section 8.6 Carry on Business

During the Term, Food Services shall carry on the A&W Restaurants Business. Food Services shall not, directly or indirectly, in any manner whatsoever including, without limitation, either individually, or in partnership, jointly or in conjunction with any other Person, or as principal, agent or shareholder:

- (1) be engaged in any undertaking;
- (2) have any financial or other interest (including an interest by way of royalty or other compensation arrangements) in or in respect of a business of any Person; or
- (3) advise, lend money to or guarantee the debts or obligations of any Person in respect of a business;

in Canada (other than the A&W Restaurants Business) which is the same as or substantially similar to or which competes with the business carried on by Partnership.

Notwithstanding the foregoing, nothing herein shall prevent Food Services from owning not more than 1% of the issued shares of a corporation, the shares of which are listed on a recognized stock exchange or traded in the over-the-counter market in Canada, which carries on a business which is the same as or substantially similar to or which competes with or would compete with the business of Partnership.

For the purposes of this Section, the business carried on by Partnership means the quick service restaurant business as mutually agreed upon by NPD Group Canada Corp. and the Canadian Foodservice and Restaurant Association and used in the survey known as "CREST" and which meets the following three criteria:

- (A) limited service (i.e. self service)
- (B) a significant proportion of takeout or delivery sales; and
- (C) low average eater cheque.

The provisions of this Section shall not apply to a Person to whom this Agreement is assigned by Food Services or a Person who becomes an Affiliate of Food Services following a Change of Control ("Change of Control" as defined in the Governance Agreement).

Section 8.7 Use of the Core Marks

Except as expressly agreed to in writing by the parties, Food Services shall use all of the Core A&W Marks in the A&W Restaurants Business.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES OF FOOD SERVICES

Food Services represents and warrants to Partnership, as of the date hereof, as follows:

Section 9.1 Organization and Good Standing

Food Services has been duly organized and is validly existing and in good standing under the laws of Canada, has qualified to do business and is in good standing in each jurisdiction where the character of its

properties or the nature of its activities makes such qualification necessary and where failure to so qualify would have a material and adverse effect on its ability to perform its obligations hereunder, and has full power, authority and legal right to own its property, to carry on its business as presently conducted, and to enter into and perform its obligations under this Agreement.

Section 9.2 Power and Authority; No Conflicts

The execution and delivery by Food Services of this Agreement and Food Services' performance of, and compliance with, the terms hereof are within the power of Food Services and have been duly authorized by all necessary corporate action on the part of Food Services. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated to be consummated by Food Services, nor compliance with the provisions hereof, will conflict with or result in a material breach of, or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, any of the provisions of any Law applicable to Food Services or its properties or the charter or bylaws or other organizational documents and agreements of Food Services, or any of the provisions of any contract or other instrument to which Food Services is a party or by which it or its property is bound or result in the creation or imposition of any material lien, charge or encumbrance upon any of its property pursuant to the terms of any such contract or other instrument.

Section 9.3 Consents

Food Services is not required to obtain the consent of any other party or the consent, licence, approval or authorization, or registration or declaration with, any Governmental Authority, in connection with the execution, delivery or performance by Food Services of this Agreement, or the validity or enforceability of this Agreement against Food Services.

Section 9.4 Due Execution and Delivery

This Agreement has been duly executed and delivered by Food Services and constitutes a legal, valid and binding instrument enforceable against Food Services in accordance with its terms (subject to applicable insolvency Laws and to general principles of equity).

Section 9.5 No Litigation

Except as disclosed in writing by Food Services to Partnership prior to the date hereof, there is no action, suit, proceeding or investigation, at law or in equity, by any Person, nor any arbitration, administrative or other proceeding by or before any Governmental Authority (collectively, the "Litigation") pending, or, to the knowledge of Food Services, threatened in writing against or affecting Food Services or any of its respective properties or rights or any of its assets which would affect the consummation of the transactions contemplated herein or would have any effect or change that is or, as far as can be reasonably determined, is reasonably likely to be materially adverse to the results of operations, financial condition, assets, properties, or business of Food Services.

Section 9.6 Due Qualification

Food Services has obtained or made all material licences, registrations, consents, approvals, waivers and notifications of creditors, lessors and other persons, in each case, in connection with the execution and delivery of this Agreement by Food Services, and the consummation by Food Services of all the transactions herein contemplated to be consummated by Food Services and the performance of its obligations hereunder.

Section 9.7 No Default

Food Services is not now in default under any Contract or other instrument to which Food Services is a party or by which it or its properties is or are bound, or with respect to any order of any court, administrative agency, arbitrator or Governmental Authority, which would have a material adverse effect on the obligations of Food Services, taken as a whole, contemplated hereunder; and no event has occurred which with notice or lapse of time or both would constitute such a material default with respect to any such Contract or other instrument or with respect to any such order of any court, administrative agency, arbitrator or Governmental Authority.

ARTICLE 10 INFRINGEMENT AND INDEMNIFICATION

Section 10.1 Indemnity

Food Services agrees to indemnify and hold Partnership and its directors, officers, employees and agents harmless from and against any and all losses, liabilities, claims, demands, actions and causes of action (including all costs and legal fees in connection therewith) whatsoever that may be suffered or incurred by or threatened against any such indemnified party as a result of or arising in connection with:

- (1) the use or display by Food Services or any Franchisee or other sublicensee of any of the A&W Marks;
- (2) any Franchise Agreement; and
- (3) all other activities of Food Services pursuant to this Agreement.

Section 10.2 Discussions in the Event of Infringement of Third Party Rights

Where Partnership has received notice that any A&W Mark infringes the rights of any third party, Partnership shall notify Food Services of the same and, subject to Food Services' rights to conduct litigation set out in Section 10.4, the parties will discuss the appropriate course of action to be taken in respect of such A&W Mark, and only in the event that it is unlikely that Food Services will be able to provide to Partnership the indemnification set out in Section 10.1, the parties will agree, acting reasonably, on the appropriate course of action to be taken in respect of such A&W Mark.

Section 10.3 Insurance

During the Term, Food Services shall maintain with a reputable insurer insurance against such risks and to such limits as a prudent owner engaged in a similar business would carry.

Such insurance shall name Partnership as an additional insured. Food Services, at the request of Partnership, shall submit to Partnership certificates of insurance showing compliance with the

requirement set out in this Section and shall furnish to Partnership certificates, confirming the renewal of each of the said policies at least ten (10) days prior to the expiry of each such policy or renewal thereof. Partnership shall ensure that each such certificate states that the policy or policies referred to therein will not be cancelled or altered without at least thirty (30) days prior written notice to Partnership. If Partnership receives notice from any insurer regarding impending cancellation or lapse of any such policy due to the non-payment by Food Services of any premium instalments, Partnership may at its option pay the required premium instalments on behalf of and for the account of Food Services and Food Services agrees to promptly reimburse Partnership for all amounts so paid.

Section 10.4 Infringement

In the event that Partnership or Food Services becomes aware of actual or threatened infringement or violation of an A&W Mark, that party shall promptly notify the other party in writing. Subject to the rights of A&W Root Beer Beverages of Canada Inc. under the Beverages Agreement, Food Services will have sole conduct of all legal proceedings and negotiations relating to the A&W Marks unless Food Services refuses or fails to initiate proceedings within two months after Partnership requests same or Partnership is sued for exploiting the A&W Marks, and in any such event Partnership will be entitled to institute proceedings in respect of its own interests. If a party commences an infringement or passing off action against such third party infringer, the other party shall have the right to join in and participate in such action at its own expense. In any event, Partnership and Food Services shall assist one another and cooperate in any infringement or passing off litigation involving any A&W Marks at the other's reasonable request without expense to the requesting party.

Section 10.5 Expenses

Partnership and Food Services shall recover their respective actual out-of-pocket expenses, or equitable proportions thereof, associated with any litigation or settlement thereof from any recovery made by any party. All further amounts recovered shall be divided between the parties equitably, having regard to the relative harm done to each of them for which the recovery was made. If the parties cannot agree on the equitable division of such recoveries, either party may refer the matter to arbitration in accordance with Section 12.2.

Section 10.6 Consultation

Partnership and Food Services shall keep each other informed of the status of their respective activities regarding any actual, pending or threatened litigation or settlement thereof concerning the A&W Marks. In connection with the foregoing, each shall provide the other with copies of all correspondence, court documents, settlement agreements and all other relevant documents and agreements respecting the same. Neither party may settle any infringement or passing off action without the prior written consent of the other party, not to be unreasonably withheld or delayed.

ARTICLE 11 TERM AND REMEDIES

Section 11.1 Term

This Agreement and the rights and licences hereby granted shall be effective from the date hereof and terminate 99 years after December 31, 2001, namely, on December 30, 2100 (the "Term").

Section 11.2 Right to Accelerate on Event of Insolvency

If an Event of Insolvency occurs, Food Services will immediately pay to Partnership, without demand therefor by Partnership, the Present Value of all Royalty Payments. The parties agree that the Present Value of all Royalty Payments is a genuine pre-estimate of damages for loss of bargain and not a penalty, and is not expected to be greater than the amount Partnership would have received if Food Services had performed its obligations hereunder. The parties acknowledge and agree that:

- (1) because the A&W Marks are closely connected with the A&W Outlets and this Agreement does not provide for any right of termination by Partnership or otherwise, Partnership is not required to mitigate its damages or to seek to terminate this Agreement and attempt to licence the A&W Marks to any other person in mitigation of its damages;
- (2) if an Event of Insolvency occurs, such Event of Insolvency would give rise to a justifiable apprehension in Partnership that Royalty Payments would not be made;
- (3) the A&W Marks have a unique and distinctive character which has its greatest value in conjunction with the A&W Restaurants Business and may be of limited or minimal value if separated from the A&W Restaurants Business, and
- (4) the parties have specifically considered, negotiated and agreed that in the event the occurrence of an Event of Insolvency it is just and appropriate that the Present Value of all Royalty Payments became immediately due and payable.

Section 11.3 Declaration of Material Breach

Partnership may, at its option and in its sole discretion, declare Food Services in material breach (“**Material Breach**”) of this Agreement immediately upon written notice to Food Services if (i) any one or more of the following events have occurred; and (ii) the security of the General Security Agreement has become enforceable and Partnership has taken any step or proceeding to enforce the same (other than solely providing a notice of default):

- (1) any resolution is passed, order made or other steps taken for the winding up, liquidation or other termination of the existence of Food Services other than permitted by this Agreement, the General Security Agreement or the Governance Agreement;
- (2) Food Services ceases to carry on business; or
- (3) Food Services defaults in the performance or observance of any of the covenants, agreements, terms, conditions or provisos hereof on Food Services’ part to be kept, observed or performed and such default continues for a period of 60 days after written notice thereof by Partnership to Food Services setting forth the nature of the default. If such default is a non-monetary matter that is capable of being cured but cannot reasonably be cured within such 60 day period, Food Services may extend the 60 day period to a maximum of 120 days after the Notice of Default if Food Services shall within the said 60 day period submit to Partnership a written statement stating (a) that such default is capable of being cured but cannot reasonably be cured within the said 60 day period, and (b) the program or schedule (with an estimated completion date of no later than 120 days after the notice of the default is received by Food Services) that Food Services proposes to undertake in order that such default may be cured but Food Services may not extend such 60 day period unless: (i) Food Services shall thereafter diligently

commence and diligently continuously carry out to conclusion all acts necessary to cure such default and shall continue diligently to carry out all such acts until such default is cured, considering the nature of such default and shall cure such default within a maximum of 120 days after notice thereof; and (ii) during such 120 day period there is no material impairment of the value of the assets of Food Services or Partnership or the security granted by Food Services to Partnership, and if Food Services after such 60 day period shall fail to diligently commence or diligently carry out as required by (i) above or if there is a material impairment as set out in (ii) above, Partnership may immediately declare Food Services in Material Breach without further or other notice of breach or opportunity to cure.

Section 11.4 Prepayment upon Declaration of Material Breach

In the event Partnership declares a Material Breach to occur, Food Services will immediately pay to Partnership, without demand therefor by Partnership, an amount equal to the total of the Royalty Payments payable by Food Services to Partnership for the 52 week period immediately preceding the date upon which Partnership declares a Material Breach to occur. Such amount will be paid as a prepayment to be applied to the Royalty Payment due in the last 52 weeks of the Term and shall be held without interest by Partnership until the last 52 weeks of the Term or until Partnership shall choose, in its discretion, to apply all or part of such amount to Royalty Payments becoming due and owing hereunder. In the event Partnership chooses to apply all or part of such amount to Royalty Payments becoming due and owing hereunder, Food Services shall immediately pay an equal amount to Partnership so that Partnership shall always hold as a prepayment an amount equal to the total of the Royalty Payments payable by Food Services to Partnership for 52 week period immediately preceding the date upon which Partnership declares a Material Breach to occur. Partnership may, in its discretion, accept such deposit or prepayment by way of an unconditional letter of credit issued by a financial institution approved by, and in a form and on terms acceptable to, Partnership. Food Services shall be entitled to direct Partnership to apply the prepayment to current unpaid Royalty Payments if it makes corresponding payment to Partnership in an equal amount to maintain the prepayment.

Section 11.5 Subordination of the Accelerated Payment

- (1) **Agreement to Subordinate.** Partnership agrees with Food Services that the payments to be made by Food Services to Partnership under Section 11.2 or Section 11.4 (each such payment herein called an “**Accelerated Payment**”), shall be, and is hereby made, subordinate and subject in right of payment, to the extent and in the manner hereinafter set forth in the following subsections of this Section 11.5, to the prior payment in full of all Permitted Indebtedness (“**Permitted Indebtedness**” as defined in the General Security Agreement), whether now outstanding or hereafter incurred.
- (2) **Distribution on Dissolution, etc.** Upon any distribution of the assets of Food Services upon any dissolution or winding-up or total liquidation of Food Services (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors of Food Services or otherwise), or upon any distribution of the assets of Food Services by a receiver or receiver-manager appointed by Partnership, any creditor of Food Services or by an order a court of competent jurisdiction, payments will be made in the following order, subject to the rights of holders of a security interest in Partnership Securities (as defined in the General Security Agreement) or holders of other prior ranking charges:

- (a) all Royalty Payments (but not any Accelerated Payments) that would have been due and unpaid to the date of distribution but for the application of Section 11.2 or Section 11.4, as the case may be, plus interest thereon;
- (b) all costs of Partnership arising from or related to the default of Food Services, including all costs provided for in the General Security Agreement;
- (c) principal, interest and costs of collection of the Permitted Indebtedness;
- (d) any Accelerated Payment remaining unpaid; and
- (e) any Royalty Payments remaining unpaid and not included within an Accelerated Payment,

Subject to applicable law and the claims, if any, of other creditors of Food Services, any surplus will be paid to Food Services.

- (3) **Payment on Delivery of Assets.** Any payment or distribution of assets of Food Services, whether in cash, property or securities, to which Partnership would be entitled except for the provisions of this Section 11.5, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for benefit of creditors or other liquidating agent making such payment or distribution, directly to the Persons entitled thereto or their representative or representatives, to the extent necessary to pay the amounts set out above in full after giving effect to any concurrent payment or distribution, or provision therefor, to the persons entitled thereto.
- (4) **Payments in Trust.** In the event that, notwithstanding the foregoing, any payment or distribution of assets of Food Services, whether in cash, property or securities, shall be received by any Person not entitled thereto as herein provided, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to the Persons entitled thereto as herein provided.
- (5) **Reliance on Certificate.** Upon any payment or distribution of assets of Food Services referred to in this Section 11.5, the parties hereto shall be entitled to rely upon a certificate of the trustee in bankruptcy, receiver, assignee for benefit of creditors or other liquidating agent making such payment or distribution, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Permitted Indebtedness and other indebtedness of Food Services, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Section 11.5.
- (6) **Subrogation of the Accelerated Payment.** Subject to the payment in full of all Permitted Indebtedness, to the extent that Food Services, or the trustee in bankruptcy, receiver, assignee for benefit of creditors or other liquidating agent making such payment or distribution, has made any payment or distribution of assets to holders of Permitted Indebtedness pursuant to Section 11.5(2), Partnership shall be subrogated to the rights of the holders of Permitted Indebtedness to receive payments or distributions of assets of Food Services made on the Permitted Indebtedness, until the Accelerated Payment shall be paid in full, and no such payments or distributions to the holders of Permitted Indebtedness, of cash, property or securities which otherwise would be payable or distributable to Partnership shall, as between Food Services, its creditors other than the

holders of Permitted Indebtedness, and Partnership, be deemed to be a payment by Food Services to Partnership on account of the Accelerated Payment, it being understood that the provisions of this Section 11.5 are and are intended solely for the purpose of defining the relative rights of Partnership, on the one hand, and the holders of Permitted Indebtedness, on the other hand.

- (7) **Rights of Partnership Reserved.** Except as specifically herein set out, nothing contained in this Section 11.5 is intended to or shall impair, as between Food Services and its creditors (other than the holders of Permitted Indebtedness), the obligation of Food Services, which is unconditional and absolute, to pay to Partnership the Accelerated Payment, as and when the same shall become due and payable in accordance with the terms hereof, or affect the relative rights of Partnership and creditors of Food Services other than the holders of the Permitted Indebtedness, nor shall anything herein or therein prevent Partnership from exercising all remedies under the General Security Agreement otherwise permitted by applicable law upon default under the General Security Agreement of this Agreement, subject to the rights, if any, under this Section 11.5 of the holders of Permitted Indebtedness in respect of cash, property or securities of Food Services received by Partnership upon the exercise of any such remedy.
- (8) **Right to Payment of Royalty Payment Preserved.** Except as specifically herein set out, nothing contained in this Section 11.5, shall affect the obligation of Food Services to make, or prevent Food Services from making, at any time, the Royalty Payment or affect any payments of amounts equal to the Royalty Payments that are not paid.
- (9) **No Knowledge without Notice.** Notwithstanding the provisions of this Section 11.5, Partnership shall be not be charged with knowledge of the existence of any Permitted Indebtedness or of any default in the payment thereof, unless and until Partnership shall have received written notice thereof from Food Services or from the holder of any Permitted Indebtedness or from the representative of any such holder.
- (10) **Subordination Not to be Impaired.** No right of any present or future holder of any Permitted Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of Food Services or by any act or failure to act, in good faith, by any such holder, or by any non-compliance by Food Services with the terms, provisions and covenants of this Agreement, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.
- (11) **Agreement with holder of Permitted Indebtedness.** Partnership will enter into an agreement with a holder or holders of Permitted Indebtedness as requested by Food Services from time to time as may be necessary or appropriate to acknowledge and effectuate the subordination of the Accelerated Payment to the payment of Permitted Indebtedness as provided in this Section 11.5.
- (12) **Right of Food Services to Create Additional Permitted Indebtedness.** Nothing contained in this Agreement shall be construed or interpreted as prohibiting, limiting or restricting the right of Food Services to create, assume or incur Permitted Indebtedness, from time to time hereafter or, subject to the terms of the General Security Agreement, from mortgaging, pledging, assigning, charging or in any way encumbering any or all of its properties to secure any Permitted Indebtedness, now existing or hereafter created, assumed or incurred by Food Services.

Section 11.6 Remedies

Partnership and Food Services agree that, in the event of breach of this Agreement by Food Services, Partnership's sole remedies shall be:

- (1) a judgment for payment of any and all monetary amounts that are due and owing by Food Services to Partnership pursuant to this Agreement and enforcement of any such judgement;
- (2) the remedies of Partnership under Article 11;
- (3) the remedies to which Partnership is entitled under the General Security Agreement;
- (4) injunctive relief to enjoin further breach of this Agreement;
- (5) specific performance by Food Services of Food Services' obligations hereunder;
- (6) damages if and to the extent the Royalty Payment is impaired as a result of the wilful misconduct of Food Services or a fraudulent or grossly negligent act or omission by Food Services; and
- (7) recovery of costs associated with seeking and obtaining such judgement, injunctive relief, specific performance or damages.

Partnership may exercise the foregoing remedies concurrently.

Section 11.7 Rights and Obligations on Termination

Upon termination or expiration of this Agreement for any reason, Food Services shall have a reasonable time to cease all use of the A&W Marks. Further, all amounts owing from either party to the other as of the date of any such termination or expiration shall become immediately due and payable. Within thirty (30) days of the expiration or termination of this Agreement, Food Services will effect a change of its corporate and business name(s) to remove "A&W" or any term confusingly similar thereto from any and all such names.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Force Majeure

If the performance of any part of this Agreement by either party, or of any obligation under this Agreement is prevented or delayed by reason of force majeure, the party affected may give written notice to the other containing reasonable particulars of the force majeure in question and the effect of such force majeure as it relates to the obligations of the affected party hereunder. Such force majeure will not constitute a default hereunder, provided that the party affected by the delay makes reasonable efforts to correct the reason for such delay and such force majeure does not harm or impair the A&W Marks. "Force majeure" does not include the inability of either party to obtain financing or any other financial inability on the part of either party.

Section 12.2 Arbitration

In the event of any dispute arising between the parties concerning this Agreement, its enforceability or the interpretation thereof, the same shall be settled by a single arbitrator appointed pursuant to the provisions of the *Commercial Arbitration Act* (British Columbia), or any successor legislation then in force. The place of arbitration shall be Vancouver, British Columbia. The language to be used in the arbitration proceedings shall be English. This Section 12.2 shall not prevent a party hereto from applying to a court of competent jurisdiction for interim protection such as, by way of example, an interim injunction.

Section 12.3 Assignment

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

- (1) Partnership and Food Services (each, an “Assignor”) may each assign this Agreement and all benefit thereof as security for bona fide loans from one or more institutional lenders (each, a “Lender”), provided that any such Lender has agreed by written instrument, in form and substance satisfactory to the other party to this Agreement, acting reasonably (such instrument to be delivered to such other party prior to the assignment as security becoming effective or attaching) that:
 - (a) the rights and interest of the Lender are subject to the rights and interests of the other party under this Agreement;
 - (b) prior to realizing on such security, the Lender will provide notice to such other party giving it a reasonable opportunity to cure the default given the nature of the default; and
 - (c) should such security be realized upon with the result that the interest of the Assignor is vested in an assignee, acquirer or other successor in interest, including the Lender (the “Successor”), then the Lender will cause such Successor to be bound by all the provisions of this Agreement in all respects and to the same extent as the Assignor was bound, and provided further that the Assignor will continue to be bound by all the provisions of this Agreement as if such transfer of interest had not occurred and will perform any obligations hereunder to the extent that the Successor fails to do so; and
- (2) Food Services may assign this Agreement and all benefit thereof in conjunction with the sale or transfer of the whole (but not a part) of its business associated with the A&W Marks, provided that:
 - (a) prior written notice of such assignment is given to Partnership; and
 - (b) Food Services has complied with its obligations under the Governance Agreement respecting Partnership’s right of first offer at such time.

Section 12.4 Entire Agreement

Except as otherwise set out herein, this Agreement constitutes the entire agreement between the parties relating to the licence of the A&W Marks granted hereby and supersedes all previous writings and understandings. No term or provision of this Agreement shall be varied or modified by any prior or

subsequent statement, conduct or act of either of the parties, except that the parties may amend this Agreement by written instrument specifically referring to and executed in the same manner as this Agreement.

Section 12.5 No Partnership

Nothing in this Agreement shall be deemed or construed to constitute or create between the parties hereto a partnership, association, joint venture or agency.

Section 12.6 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 12.7 Binding Effect

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

Section 12.8 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect. The parties shall use all commercially reasonable efforts to promptly replace any severed provision with one of the same business purpose or effect.

Section 12.9 Survival

The parties' obligations under Section 6.3, Section 10.1 and Section 11.7 shall survive the termination or expiration of this Agreement.

Section 12.10 No Waiver

Any waiver of breach or failure by a party to require performance under this Agreement shall not constitute a waiver of any subsequent or further breach or prevent such party from requiring performance thereafter.

Section 12.11 Notice

All notices, requests and other communications hereunder shall be in writing and shall be sent by first class mail, hand delivery or facsimile transmission:

if to Partnership, to:

c/o Conrad A. Pinette, Trustee
#1430 - 1100 Melville Street
Vancouver, British Columbia
V6E 4A6

Telecopier No.: (604) 684-4495

if to Food Services, to:

#300 – 171 West Esplanade
North Vancouver, British Columbia
V7M 3K9

Attention: The President

Telecopier No.: (604) 983-7206

or to such other address or facsimile number as may be provided by notice hereunder. Any notice required or permitted to be given concerning this Agreement shall be effective upon receipt by the party to whom it is addressed.

Section 12.12 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 12.13 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.

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: “John R. McLernon”
Authorized Signing Officer

A & W FOOD SERVICES OF CANADA INC.

By: “Paul Hollands”
Authorized Signing Officer


SCHEDULE A



A&W OUTLETS




“A&W Outlets” means the A&W Outlets listed in Schedule A to the First Amending Agreement to the Amended and Restated Licence and Royalty Agreement dated January 5, 2010 between A&W Trade Marks Limited Partnership and A&W Food Services of Canada Inc.



SCHEDULE B



A&W MARKS



| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|---|--------------------|----------------|
| 1. | GRANDMA BURGER | Appln.No. 1424056 | hamburgers |
| 2. | AUNTIE BURGER | Appln.No. 1424058 | hamburgers |
| 3. | AUNTIE | Appln. No. 1424059 | hamburgers |
| 4. | TANTE | Appln.No. 1424060 | hamburgers |
| 5. | GRANDMA | Appln.No. 1424061 | hamburgers |
| 6. | TANTE BURGER | Appln.No. 1424066 | hamburgers |
| 7. | GRAND-MAMAN | Appln.No. 1424196 | hamburgers |
| 8. | GRAND-MAMAN BURGER | Appln.No. 1424198 | hamburgers |
| 9. | PAPA BURGER | Reg. No. 120,254 | hamburgers |
| 10. | MAMA BURGER | Reg. No. 120,255 | hamburgers |
| 11. | BABY BURGER | Reg. No. 120,256 | hamburgers |
| 12. | MAMA BURGER & Design  | Reg. No. 123,122 | hamburgers |
| 13. | THE BURGER FAMILY | Reg. No. 123,194 | hamburgers |



| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|---|------------------|----------------------------------|
| 14. | GRANDPA BURGER | Reg. No. 127,168 | hamburgers |
| 15. | TEEN BURGER | Reg. No. 128,403 | hamburgers |
| 16. | CHUBBY DINNER | Reg. No. 169,895 | prepared chicken dinners |
| 17. | CHUBBY '21' | Reg. No. 169,896 | prepared chicken dinners |
| 18. | CHUBBY '9' | Reg. No. 170,306 | prepared chicken dinners |
| 19. | CHUBBY '15' | Reg. No. 170,307 | prepared chicken dinners |
| 20. | WHISTLE DOG | Reg. No. 173,182 | ready-to-eat bun-type sandwiches |
| 21. | CHUBBY 'JUNIOR' | Reg. No. 174,693 | prepared chicken dinners |
| 22. | GIRL'S HEAD Design  | Reg. No. 177,162 | hamburgers |
| 23. | PAPA'S HEAD Design  | Reg. No. 177,163 | hamburgers |

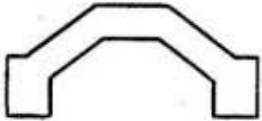
| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|--|------------------|---|
| 24. | BOY'S HEAD Design  | Reg. No. 177,164 | hamburgers |
| 25. | BABY'S HEAD Design  | Reg. No. 177,166 | hamburgers |
| 26. | A&W | Reg. No. 191,782 | wares: root beer, cola and orange flavoured drinks; concentrates and syrups for making root beer, cola and orange flavoured drinks; prepared take-out and other foods and beverages, namely hot dogs, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple pies, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate; soft drinks services: - restaurant services. |
| 27. | A&W & Design (orange & brown)  | Reg. No. 191,783 | wares: root beer, cola and orange flavoured drinks; concentrates and syrups for making root beer, cola and orange flavoured drinks; prepared take-out and other foods and beverages, namely hot dogs, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple pies, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate. services: restaurant services. |


| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|---|------------------|---|
| 28. | A&W & Design (black and white)  | Reg. No. 191,784 | wares: root beer, cola and orange flavoured drinks; concentrates and syrups for making root beer, cola and orange flavoured drinks; prepared take-out and other foods and beverages, namely hot dogs, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple pies, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate. services: restaurant services. |
| 29. | HAM N' EGGER | Reg. No. 196,430 | ready-to-eat bun-type sandwiches |
| 30. | CHUBBY '14' Design CHUBBY '14' | Reg. No. 196,629 | prepared chicken dinners |
| 31. | CHUBBY '20' | Reg. No. 196,630 | prepared chicken dinners |
| 32. | A&W ROOT BEER | Reg. No. 204,917 | root beer and concentrates and syrups for making root beer |
| 33. | A&W ROOT BEER & Design  | Reg. No. 204,918 | root beer and concentrates and syrups for making root beer |
| 34. | THE A&W GREAT ROOT BEAR | Reg. No. 230,834 | wares: root beer, cola and orange flavoured drinks; concentrates and syrups for making root beer, cola and orange flavoured drinks; prepared take-out and other foods and beverages, namely hot dogs, hamburgers, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate services: restaurant services |




| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|---|------------------|---|
| 35. | WHISTLE STOP | Reg. No. 239,925 | restaurant services |
| 36. | YANKEE FRANK | Reg. No. 246,891 | hot dogs |
| 37. | RENT-A-MUG | Reg. No. 248,434 | root beer, cola and orange flavoured drinks |
| 38. | SUPER TEEN BURGER | Reg. No. 252,179 | hamburgers |
| 39. | PAPA TEEN | Reg. No. 252,357 | hamburgers |
| 40. | MAMA | Reg. No. 269,786 | hamburgers |
| 41. | GRANDPA | Reg. No. 269,787 | hamburgers |
| 42. | TEEN | Reg. No. 269,788 | hamburgers |
| 43. | PAPA | Reg. No. 270,029 | hamburgers |
| 44. | GRANDPA TEEN | Reg. No. 270,030 | hamburgers |
| 45. | GRAND-PAPA BURGER | Reg. No. 270,708 | hamburgers |
| 46. | A&W & Design (black & white)  | Reg. No. 272,329 | wares: beverages, namely soft drinks, concentrates and syrups for making soft drinks, floats, milkshakes and milk; prepared food products, namely ready-to-eat bun-type sandwiches, desserts, french fries, onion rings, chicken, fish and salads services: - restaurant services. |
| 47. | A&W; Design (brown & orange)  | Reg. No. 272,330 | restaurant services |



| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|--|------------------|---|
| 48. | THE GREAT A&W ROOT BEAR | Reg. No. 272,582 | wares: root beer, cola and orange flavoured drinks; concentrates and syrups for making root beer, cola and orange flavoured drinks; prepared take-out and other foods and beverages, namely hot dogs, hamburgers, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple pies, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate, teddy bears services: restaurant services. |
| 49. | LA GOURMANDISE | Reg. No. 273,784 | desserts comprising sponge cake, ice cream, flavoured topping, whipped topping, and one-half cherry |
| 50. | GRAND MERE | Reg. No. 275,623 | desserts, namely, hot apple turnover, vanilla ice cream, and caramel topping |
| 51. | A&W Design  | Reg. No. 277,165 | restaurant services |
| 52. | MENOU MENOUM | Reg. No. 277,465 | restaurant services |
| 53. | CHUBBY CHICKEN | Reg. No. 283,714 | prepared chicken dinners |
| 54. | MOZZA | Reg. No. 286,075 | hamburgers |
| 55. | CHUBBY CHICKEN; Design  | Reg. No. 288,671 | prepared chicken dinners |




| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|--|------------------|---|
| 56. | A&W ROOT BEER Design  | Reg. No. 304,174 | wares: canned and bottled soft drinks; soft drinks, floats, milk shakes, milk and mugs services: restaurant services |
| 57. | MOZZA BURGER | Reg. No. 328,149 | hamburgers |
| 58. | LES PÉPITES DE POULET A&W | Reg. No. 333,454 | chicken chunks |
| 59. | TARGET & ARROW Design  | Reg. No. 336,174 | wares: root beer, onion rings services: restaurant services |
| 60. | GO FOR THE FLAVOUR | Reg. No. 337,531 | restaurant services |
| 61. | LE GRAND OURS A&W | Reg. No. 338,879 | wares: root beer, cola and orange-flavoured drinks, concentrates and syrups for making root beer, cola and orange-flavoured drinks; prepared take-out and other foods and beverages, namely hot dogs, hamburgers, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple pies, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate. services: restaurant services. |
| 62. | ROOT BEER A&W | Reg. No. 338,969 | wares: root beer services: restaurant services |



| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|--|----------------------|--|
| 63. | CHICKEN GRILL | Reg. No. 341,429 | ready-to-eat bun-type sandwiches |
| 64. | BON PAS ORDINAIRE | Reg. No. 341,726 | restaurant services |
| 65. | BACON N'EGGER | Reg. No. 341,901 | ready-to-eat bun-type sandwiches |
| 66. | Arch Design  | Reg. No. 342,630 | restaurant services |
| 67. | A&W CHOCOLATE CRISP | Reg. No. 343,418 | dessert bars |
| 68. | CROC' PINOTTES | Reg. No. 348,979 | dessert bars |
| 69. | GRILL-O-POULET | Reg. No. 350,305 | ready-to-eat bun-type sandwiches |
| 70. | CHEF-D'OEUF | Reg. No. 350,387 | ready-to-eat bun-type sandwiches |
| 71. | CROC' PINOTTES AU CHOCOLAT | Reg. No. 350,567 | dessert bars |
| 72. | SUPER TEEN | Reg. No. 351,541 | ready-to-eat bun-type sandwiches |
| 73. | ALLEN & WRIGHT | Reg. No. 351,939 | wares: ice cream sundaes services: restaurant services |
| 74. | GREAT A&W ROOT BEAR | Reg. No. 375,504 | wares: root beer, cola and orange flavoured drinks; concentrates and syrups for making root beer, cola and orange flavoured drinks; prepared take-out and other foods and beverages, namely hot dogs, hamburgers, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple pies, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate; as well as teddy bears services: restaurant services. |
| 75. | DOUBLE MOZZA | Reg. No. 379,817 | hamburgers |

| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|---|----------------------|--|
| 76. | DOUBLE TEEN | Reg. No. 379,818 | hamburgers |
| 77. | GRAND OURS A&W | Reg. No. 381,606 | wares: root beer, cola and orange flavoured drinks; concentrates and syrups for making root beer, cola and orange flavoured drinks; prepared take-out and other foods and beverages namely hot dogs, hamburgers, french fries, onion rings, fish and chips, grilled cheese sandwiches, apple pies, apple turnovers, cole slaw, prepared chicken dinners and hot chocolate; as well as teddy bears. services: restaurant services. |
| 78. | DOUBLE MOZZA BURGER | Reg. No. 383,299 | hamburgers |
| 79. | DOUBLE TEEN BURGER | Reg. No. 383,671 | hamburgers |
| 80. | THE FRIENDSHIP CONTINUES | Reg. No. 396,459 | restaurant services |
| 81. | A&W & Design (pink & teal)  | Reg. No. 415,254 | soft drinks |
| 82. | POULET CHAMPÊTRE A&W | Reg. No. 447,133 | chicken sandwiches |
| 83. | TRIPLE DELICE | Reg. No. 447,474 | ready-to-eat bun-type sandwiches |
| 84. | COUNTRY CHICKEN DELUXE | Reg. No. 454,303 | chicken sandwiches |

| | Trade-mark | Apn./Reg. No. | Wares/Services |
|-----|--|------------------|---|
| 85. | A&W ROOT BEER & MUG Design  | Reg. No. 460,517 | wares: soft drinks services: restaurant services |
| 86. | UN AMI DE TOUJOURS | Reg. No. 463,799 | restaurant services |
| 87. | A&W ROOT BEER WITH MUG ON MUG Design  | Reg. No. 469,313 | soft drinks |
| 88. | SAUSAGE N' EGGER | Reg. No. 471,193 | ready-to-eat bun-type sandwiches |
| 89. | TU VOIS L'OURS | Reg. No. 472,877 | restaurant services |
| 90. | SEE THE BEAR | Reg. No. 472,880 | restaurant services |
| 91. | RONDELLE BURGER | Reg. No. 495,314 | hamburgers |
| 92. | A&W Design  | Reg. No. 503,897 | soft drinks |

| | Trade-mark | Apn./Reg. No. | Wares/Services |
|------|---|-------------------|---|
| 93. | RINGER | Reg. No. 538,357 | hamburgers |
| 94. | A&W EXPRESS | Reg. No. 541,960 | drive-through restaurant services |
| 95. | BEAR SIZE | Reg. No. 565, 246 | beverages, namely, soft drinks, floats, milkshakes, milk and hot chocolate; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely, hamburgers, ready-to-eat bun-type sandwiches, desserts, french fries, onion rings, chicken, fish and chips; ice cream; cookies; salads |
| 96. | BEAR SIZE IT | Reg. No. 565,247 | beverages, namely, soft drinks, floats, milkshakes, milk and hot chocolate; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely, hamburgers, ready-to-eat bun-type sandwiches, desserts, french fries, onion rings, chicken, fish and chips; ice cream; cookies; salads |
| 97. | A&W & Design  | Reg. No. 565,252 | wares: beverages, namely: soft drinks, floats, milkshakes, milk and hot chocolate; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely: ready-to-eat bun-type sandwiches, chicken, fish, french fries, onion rings, salads, desserts, ice cream and cookies services: restaurant services. |
| 98. | A&W ROOT BEER & MUG Design  | Reg. No. 565,253 | soft drinks |
| 99. | CHUBBY | Reg. No. 566,857 | prepared chicken dinners; ready-to-eat bun-type sandwiches; chicken strips and chicken nuggets |
| 100. | BÉBÉ BURGER | Reg. No. 568,084 | ready-to-eat bun-type sandwiches |
| 101. | LA FAMILLE BURGER | Reg. No. 568,086 | ready-to-eat bun-type sandwiches |

| | Trade-mark | Apn./Reg. No. | Wares/Services |
|------|---|------------------|--|
| 102. | HOME OF THE BURGER FAMILY | Reg. No. 577,417 | restaurant services |
| 103. | DANCING BEAR Design  | Reg. No. 589,764 | wares: beverages, namely: soft drinks, floats, milkshakes, milk, hot chocolate, tea, iced tea and coffee; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely: ready-to-eat bun-type sandwiches, chicken, fish, french fries, onion rings, poutine, hot dogs, salads, desserts, ice creams, cookies, pastries, prepared meals, toast, eggs, hash browns, bagels, muffins services: restaurant and beverage services |
| 104. | WALKING BEAR Design  | Reg. No. 589,871 | wares: beverages, namely: soft drinks, floats, milkshakes, milk, hot chocolate, tea, iced tea and coffee; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely: ready-to-eat bun-type sandwiches, chicken, fish, french fries, onion rings, poutine, hot dogs, salads, desserts, ice creams, cookies, pastries, prepared meals, toast, eggs, hash browns, bagels, muffins services: restaurant and beverage services |
| 105. | BEAR WITH MUG Design  | Reg. No. 589,879 | wares: beverages, namely: soft drinks, floats, milkshakes, milk, hot chocolate, tea, iced tea and coffee; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely: ready-to-eat bun-type sandwiches, chicken, fish, french fries, onion rings, poutine, hot dogs, salads, desserts, ice creams, cookies, pastries, prepared meals, toast, eggs, hash browns, bagels, muffins services: restaurant and beverage services |
| 106. | CHUBBY '10' | Reg. No. 601,720 | prepared chicken dinners |

| | Trade-mark | Apn./Reg. No. | Wares/Services |
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| 107. | CRUISIN' THE DUB | Reg. No. 647,817 | restaurant services |
| 108. | ONCLE | Reg. No. 760,324 | hamburgers |
| 109. | ONCLE BURGER | Reg. No. 760,325 | hamburgers |
| 110. | UNCLE BURGER | Reg. No. 761,826 | hamburgers |
| 111. | Arrow Design  | Reg. No. 766,793 | wares: beverages, namely: soft drinks, floats, milkshakes, milk, coffee, tea, juices and hot chocolate; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely: ready-to-eat bun-type sandwiches, hamburgers, chicken burgers, veggie burgers, hotdogs, chicken, fish, french fries, onion rings, salads, hash brown potatoes, eggs, bacon, ham, sausage, toast, french toast, desserts, ice cream and cookies services: restaurant services. |
| 112. | A&W & Arrow Design  | Reg. No. 777,370 | wares: beverages, namely: soft drinks, floats, milkshakes, milk, coffee, tea, juices and hot chocolate; concentrates and syrups for making soft drinks; prepared take-out and other food products, namely: ready-to-eat bun-type sandwiches, hamburgers, chicken burgers, veggie burgers, hotdogs, chicken, fish, french fries, onion rings, salads, hash brown potatoes, eggs, bacon, ham, sausage, toast, french toast, desserts, ice cream and cookies services: restaurant services. |
| 113. | THE DUB | Reg. No. 782,375 | services: restaurant services and carry out food services. |
| 114. | UNCLE | Reg. No. 783,362 | hamburgers |