

HUU-AY-AHT FIRST NATIONS



GOVERNANCE AND FISCAL AGREEMENT REGULATION

OFFICIAL CONSOLIDATION
Current to February 12, 2015

Provisions of the *Economic Development Act*, HFNA 2013, relevant to the enactment of this regulation: sections 6 (g), 22 (1) and 44.

REGISTRY OF LAWS CERTIFICATION

Certified True Copy

I certify that the *Governance and Fiscal Agreement Regulation* was passed by Executive Council on:

_____ *Mar 28/2013* _____
_____ *[Signature]* _____
Chief Councillor Jeff Cook

I certify that the *Governance and Fiscal Agreement Regulation* is enacted as law on:

_____ *Mar 28/2013* _____
_____ *[Signature]* _____
Ta'yii Hawilth Derek Peters

I certify that the *Governance and Fiscal Agreement Regulation* came into force on:

_____ *Mar 28/2013* _____
_____ *[Signature]* _____
pet Law Clerk Connie Waddell

GOVERNANCE AND FISCAL AGREEMENT REGULATION

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SCHEDULE

PART 1 – INTRODUCTORY PROVISIONS

Application

- 1 This regulation
 - (a) authorizes and directs the Chief Councillor to execute the governance and fiscal agreement on behalf of the Huu-ay-aht First Nations,
 - (b) provides a right of review to the tribunal to individuals who have been removed from an operating board,
 - (c) makes disputes arising under the governance and fiscal agreement subject to the jurisdiction of the tribunal, and
 - (d) establishes minimum expected financial performance requirements for HUU-ay-aht business enterprises.

Definitions

- 2 In this regulation:

“**Act**” means the *Economic Development Act*;

“**governance and fiscal agreement**” means the agreement referred to in Part 4 of the Act;

“**tribunal**” means the tribunal under the *Tribunal Act*.

Schedule

- 3 The form of the governance and fiscal agreement is set out in the Schedule.

PART 2 – AUTHORIZATION

Executive Council approval

- 4 Subject to the fulfillment of conditions precedent established by resolution of Executive Council under section 22 (3) of the Act, Executive Council must enter into the governance and fiscal agreement on behalf of the HUU-AY-AHT First Nations for the purpose of clearly defining the respective roles and responsibilities of the HUU-AY-AHT First Nations and each HUU-AY-AHT business enterprise relating to the governance and finances of HUU-AY-AHT business enterprises.

Authorized signatory

- 5 The Chief Councillor is authorized and directed to execute the governance and fiscal agreement on behalf of the HUU-AY-AHT First Nations in substantially the form set out in the Schedule with any non-substantive changes to correct technical, grammatical, spelling or other similar errors as may be approved by the Chief Councillor, that approval being conclusively proved by the signature of the Chief Councillor to that agreement.

Chief Councillor authorization

- 6 The Chief Councillor is authorized to
- (a) do all such other acts and things, and
 - (b) execute on behalf of the HUU-AY-AHT First Nations such other acts, assurances and things
- as may be reasonably necessary or desirable to conclude the governance and fiscal agreement.

Amendments

- 7 (1) For certainty, any amendment to the governance and fiscal agreement requiring the approval of the HUU-AY-AHT First Nations may only be approved by resolution of Executive Council.
- (2) The Chief Councillor is the authorized signatory for amendments approved under subsection (1).

PART 3 - BUSINESS SUSTAINABILITY

Minimum expected financial performance

- 8 (1) Each annual plan approved under the governance and fiscal agreement must provide for
- (a) earnings before interest, taxes, depreciation and amortization (EBITDA) to be equal to or greater than \$0,
 - (b) an annual percentage return on investment equal to or greater than the average annual percentage return on investment earned on the Invested Wealth Fund for the previous 2 fiscal years,
 - (c) payments or other compensation to the Huu-ay-aht to properly compensate the Huu-ay-aht for the fair market value of land and natural resource interests granted to the Huu-ay-aht business enterprise, and
 - (d) an annual distribution to the limited partner in the Huu-ay-aht business enterprise equal to or greater than the amount calculated as:
 - Average annual percentage return on investment earned on the Invested Wealth Fund for the previous 2 fiscal years
 - X
 - Dollar value of interest of the limited partner interest in the Limited Partnership at the end of the previous fiscal year as evidenced by the audited financial statements
 - = minimum annual distribution to limited partner.
- (2) Subject to subsection (3), if it is in the best interests of the Huu-ay-aht, Executive Council may exempt a Huu-ay-aht business enterprise for a specified period of time from one or more of the financial performance requirements under subsection (1).
- (3) The exemption from one or more financial performance requirements under subsection (2) may only be granted once to a specific Huu-ay-aht business enterprise.
- (4) Executive Council may specify how the calculations are to be made under one or more of subsections (1) (a) to (d).

PART 4 – DISPUTE RESOLUTION

Interpretation

- 9** This Part applies to any dispute under the governance and fiscal agreement and if such a dispute arises, this Part must be utilized to interpret the obligations and powers of a person as they relate to the adjudication of that dispute in accordance with the *Tribunal Act*.

Governance and fiscal agreement dispute

- 10** (1) If a dispute arises regarding the interpretation, construction, compliance with or breach of the governance and fiscal agreement or its termination, and the dispute is not resolved under section 9.1 of the governance and fiscal agreement, a party to the agreement may refer that dispute to the tribunal for a determination under Part 3 of the *Tribunal Act* after giving notice to the chair of the HDC board.
- (2) For the purposes of a referral under subsection (1),
- (a) the dispute is deemed to be one to which section 17 (1) (e) of the *Tribunal Act* applies, and
 - (b) the parties are deemed
 - (i) to have consented to the jurisdiction of the tribunal for the purposes of section 31 (2) (a) (i) of the *Tribunal Act*, and
 - (ii) to have agreed to accept as binding the final decision made by the tribunal.

Review of board member removal

- 11** (1) If a dispute under section 2.6 of the governance and fiscal agreement arises regarding the removal of a board member from an operating board and the individual who has been removed from the operating board gives notice to the chair of the HDC board of the dispute, that individual may appeal to the tribunal under Part 3 of the *Tribunal Act* from the decision to remove him or her from the operating board.
- (2) For the purposes of an appeal under subsection (1),
- (a) the chair of the HDC board is deemed to be the person who made the administrative decision appealed from, and
 - (b) the decision to remove the applicant from an operating board is deemed to be an administrative decision made under this regulation to which section 17 (1) (a) of the *Tribunal Act* applies.
- (3) If under section 23 of the *Tribunal Act* the tribunal makes an order setting aside the decision to remove the applicant from an operating board, the HFN Development Limited Partnership must take all necessary steps to reinstate the applicant as a board member of the applicable operating board.
- (4) A dispute under section 2.6 of the governance and fiscal agreement regarding the removal of a board member from an operating board must not be referred to a committee under section 9.1 of the governance and fiscal agreement.

Tribunal powers confirmed

- 12** For greater certainty, the tribunal has the power to order the payment of money as part of any decision made in respect of a dispute referred to in section 10 or 11.

Tribunal costs and expenses

- 13** In addition to the powers conferred by section 47 of the *Administrative Tribunals Act* (British Columbia), the tribunal has the power to require a party to pay part or all of the actual costs and expenses of the tribunal in connection with all or part of a hearing of a dispute referred to in section 10 or 11.

PART 5 –CONSEQUENTIAL AMENDMENTS AND REPEAL**Repeal of *Economic Development Policy Regulation***

- 14** *The Economic Development Policy Regulation is repealed.*

Consequential Amendments***Cash Management Policy Regulation***

- 15** *Section 2 of the Cash Management Policy Regulation is amended by*
- (a) adding “and” at the end of paragraph (b),*
 - (b) striking out “, and” at the end of paragraph (c), and*
 - (c) repealing paragraph (d).*
- 16** *Section 4 (3) of the Cash Management Policy Regulation is repealed.*

Purchasing Policy Regulation

- 17** *Section 2 (c) of the Purchasing Policy Regulation is repealed.*
- 18** *Section 4 (7) is amended by*
- (a) striking out “or business enterprise” and “or the Chief Executive Officer of the Huu-ay-aht Development Corporation”,*
 - (b) adding “or” at the end of paragraph (a),*
 - (c) striking out “, or” at the end of paragraph (b), and*
 - (d) repealing paragraph (c).*

Risk Management Policy Regulation

- 19** *Section 1 of the Risk Management Policy Regulation is amended by*
- (a) adding “and” at the end of paragraph (a),*
 - (b) striking out “, and” at the end of paragraph (b), and*
 - (c) repealing paragraph (c).*
- 20** *Section 2 is amended by striking out “, HUU-ay-aht public bodies and HUU-ay-aht business enterprises” and substituting “and HUU-ay-aht public bodies”.*
- 21** *Section 3 (3) is repealed.*

SCHEDULE**GOVERNANCE AND FISCAL AGREEMENT**

[42 pages follow]

RESOLUTION NO. 2015-049 OF EXECUTIVE COUNCIL
MADE FEBRUARY 12, 2015

SCHEDULE



HUU-AY-AHT FIRST NATIONS
and
HUU-AY-AHT BUSINESS ENTERPRISES

GOVERNANCE AND
FISCAL AGREEMENT

As amended by Resolution 2015-049 of Executive Council, made February 12, 2015.



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GOVERNANCE AND FISCAL AGREEMENT

THIS AGREEMENT is made as of and with effect from _____, 2015.

BETWEEN the Parties set out in Schedule 1.

BACKGROUND:

- A. HFN Development Limited Partnership was established to hold business interests of the HUU-ay-aht First Nations to pursue HUU-ay-aht First Nations' economic development;
- B. The HUU-ay-aht First Nations is the sole limited partner in HFN Development Limited Partnership and the sole shareholder of HUU-ay-aht Development Corporation, the general partner of HFN Development Limited Partnership;
- C. HFN Development Limited Partnership is a limited partner with at least a 51% interest in each of the operating limited partnerships and a shareholder with at least a 51% interest in each of the operating general partners;
- D. The operating limited partnerships were established to carry out certain business opportunities approved by the Executive Council in accordance with the *Economic Development Act*;
- E. The *Economic Development Act* requires the Parties to enter into a governance and fiscal agreement to define their respective roles and responsibilities relating to the governance and finances of HUU-ay-aht business enterprises used to pursue HUU-ay-aht First Nations' economic development.

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

PART 1 - INTERPRETATION

Definitions and interpretation principles

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

Schedules

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

- Schedule 1 – Parties;
- Schedule 2 – Definitions and Interpretation Principles;
- Schedule 3 – Responsibilities of the Executive Council;
- Schedule 4 – Responsibilities of the HDC board;

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

Division of Agreement

1.3 This Agreement is divided into the following divisions represented by the number or letter as indicated in ascending order:

1. PARTS;

1.1 sections;

(a) subsections;

(i) paragraphs; and

(A) subparagraphs.

PART 2 - GUIDING PRINCIPLES

Vision and values

2.1 The Parties acknowledge and agree that HUU-ay-aht business enterprises are created for the following purposes and their activities are guided by the following principles:

- (a) HUU-ay-aht First Nations and HUU-ay-aht business enterprises will cooperate with each other to develop harmonious working relationships to achieve the vision of HUU-ay-aht First Nations' economic development referred to in section 2 of the *Economic Development Act*;
- (b) HUU-ay-aht First Nations' economic development, and business conducted by HUU-ay-aht business enterprises to further that economic development, will be carried out in accordance with the values set out in section 3 of the *Economic Development Act*;
- (c) the treaty rights of the HUU-ay-aht First Nations, its responsibilities, cultural values, beliefs and practices will be acknowledged, respected and protected by HUU-ay-aht business enterprises; and
- (d) HUU-ay-aht First Nations' economic development, and the HUU-ay-aht business enterprises which carry out that economic development, is work that is intended to benefit the HUU-ay-aht First Nations and all HUU-ay-aht citizens.

Accountability framework

2.2 By becoming a Party, each HUU-ay-aht business enterprise declares its desire and commitment to be bound by, and comply with, the following accountability framework:

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- (a) each Party has reciprocal accountability to each other and to the HUU-ay-aht First Nations in the performance of its duties and the exercise of its powers under this Agreement;
 - (b) each Party will use the processes established in the *Economic Development Act* and this Agreement to obtain any necessary direction or authorization and to review and report on HUU-ay-aht First Nations' economic development so as to achieve the vision of HUU-ay-aht First Nations' economic development in accordance with the values referred to in section 2.1;
 - (c) each HUU-ay-aht business enterprise will maintain records of all decisions made, make those records available to members of the Economic Development Committee on request, will only engage in decision making that is transparent and will be accountable to the HUU-ay-aht First Nations for those decisions,
 - (d) each Party in a disagreement with another Party that cannot be resolved informally between them will only use the dispute resolution processes set out in Part 10 to resolve that disagreement and will exhaust those processes prior to initiating any judicial proceedings; and
 - (e) each Party will perform its duties and exercise its powers under this Agreement in accordance with the guiding principles set out in this Part.

PART 3 - BOARD APPOINTMENTS

Composition of HDC board

- 3.1** The HUU-ay-aht First Nations will, by Executive Council resolution, vote its shares in HDC so that the HDC board is comprised of all of the members of the Economic Development Committee, a majority of whom must not be
- (a) a member of the Legislature,
 - (b) a member of Executive Council, or
 - (c) a government employee.

Term of HDC board

- 3.2**
- (a) The HUU-ay-aht First Nations will, by Executive Council resolution, vote its shares in HDC so that the term of office for each HDC board member corresponds to his or her term of office as an Economic Development Committee member.
 - (b) For certainty, if a HDC board member resigns or otherwise ceases to be a member of the Economic Development Committee, he or she is deemed to have resigned or otherwise ceased to be a HDC board member as of the date he or she ceased to be a member of the Economic Development Committee.

Removal of HDC board

- 3.3** The Huu-ay-aht First Nations will only vote its shares in HDC to remove a HDC board member where that individual ceases to be a member of the Economic Development Committee.

Composition of operating boards

- 3.4** (a) HFN Development Limited Partnership will vote its shares in each of the operating general partners so that each of the operating boards is comprised of five individuals,
- (i) a majority of whom are not members of the HDC board,
 - (ii) no more than one of whom is a member of Executive Council or the Executive Director,
 - (iii) all of whom bring particular expertise or other considerations to the operating board, and
 - (iv) at least one of whom is a non-citizen.
- (b) For certainty,
- (i) an operating board may be comprised of a majority of non-citizens if fewer than two Huu-ay-aht citizens meet the criteria in subsection (a) and wish to serve on the operating board, and
 - (ii) one or more of the same five individuals may be appointed to more than one operating board.

Term of operating boards

- 3.5** HFN Development Limited Partnership will vote its shares in each of the operating general partners so that the term of office for each operating board member is four years or until that member resigns or is removed in accordance with this Agreement and the constating documents of the applicable operating general partner.

Removal of operating boards

- 3.6** (a) HFN Development Limited Partnership will only vote its shares in an operating general partner to remove an operating board member in one or more of the following circumstances:
- (i) the board member is persistently absent from meetings of the operating board;

- (ii) the board member engages in conduct which amounts to impropriety or malfeasance;
 - (iii) the board member exerts undue influence over other members, the chief executive officer or staff of the applicable operating limited partnership;
 - (iv) the board member breaches the conflict of interest rules of the applicable operating limited partnership;
 - (v) the board member is grossly incompetent;
 - (vi) the operating board or board member is not acting in accordance with the law, the economic development plan, the business mandate of the applicable operating limited partnership, the annual plan of the applicable operating limited partnership or this Agreement; or
 - (vii) the operating board or board member is not acting in a manner consistent with making every reasonable effort to meet or exceed minimum expected financial performance requirements prescribed under the *Governance and Fiscal Agreement Regulation*.
- (b) A dispute regarding the removal of a board member from an operating board under subsection (a) must be dealt with in accordance with section 10.3.
- (c) HFN Development Limited Partnership must not fill a vacancy on an operating board created by the removal of an individual from that operating board under subsection (a) until 30 days after his or her removal or until a disagreement regarding that removal is resolved in accordance with section 10.3, whichever is later.

Board orientation

- 3.7** An individual appointed to the HDC board or an operating board must participate in a board orientation, including a review of the board of directors' operational manual, conducted by the chief operations officer as soon as practicable after that individual's appointment.

PART 4 - ANNUAL PLANNING

HDC board annual planning

- 4.1** (a) On or before the end of each fiscal year, the HDC board will approve an annual plan for HFN Development Limited Partnership for the next fiscal year.
- (b) The annual plan approved under subsection (a) will include
- (i) a budget for HFN Development Limited Partnership for the next fiscal year,

- (ii) capital contribution and financing expectations from HFN Development Limited Partnership to each operating limited partnership,
 - (iii) distribution expectations from each operating limited partnership to HFN Development Limited Partnership,
 - (iv) financial performance and employment targets, and
 - (v) a communications plan taking into consideration the comprehensive communications plan set out in the economic development plan.
- (c) The HDC board must conduct an annual performance evaluation similar to that of an operating board contemplated in the annual performance evaluation policy referred to in section 8.3(b)(x).

Operating boards annual planning

- 4.2**
- (a) Each operating limited partnership must, at least 90 days before the end of each fiscal year, provide for approval by the HDC board a proposed annual plan for that operating limited partnership for the next fiscal year.
 - (b) The proposed annual plan provided by an operating limited partnership under subsection (a) must include
 - (i) a statement of how the annual plan for, and the activities to be engaged in by, that operating limited partnership during the next fiscal year contribute towards the HUU-ay-aht First Nations achieving the goals and objectives set out in the economic development plan,
 - (ii) a budget for that operating limited partnership for the next fiscal year in the form and with the content required by the HDC board,
 - (iii) a brief descriptive overview of any major project that operating limited partnership intends to carry out during that fiscal year, or continue from the previous fiscal year, including a proposed project schedule, budget, a list of resources necessary or desirable for the project, including human, financial and capital resources, and a plan on how to acquire those resources for the project,
 - (iv) distribution expectations from that operating limited partnership to HFN Development Limited Partnership,
 - (v) financial performance and employment targets, and
 - (vi) a description of any anticipated material variations to any applicable business plan for that operating limited partnership as it relates to the period covered by that annual plan.

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- (c) The HDC board must consider the annual plan provided by an operating limited partnership under subsection (a) at least 60 days before the end of the fiscal year and
 - (i) approve the annual plan, with or without conditions, or
 - (ii) require the operating limited partnership to amend and resubmit a revised proposed annual plan in the form and with the content required by the HDC board.
 - (d) If the HDC board requires an operating limited partnership to amend and resubmit a revised proposed annual plan under subsection (c)(ii), that operating limited partnership must provide the HDC board with a revised proposed annual plan in the form and with the content required by the HDC board within 30 days and, on receipt of the revised proposed annual plan, the HDC board must consider the revised proposed annual plan and must approve, or amend and approve, the annual plan within 30 days, with or without conditions.
 - (e) If an annual plan for the following fiscal year has not been approved by the end of the current fiscal year, the annual plan for that operating limited partnership for the current fiscal year continues as the annual plan for the following fiscal year until such time as a proposed annual plan for that following fiscal year is approved by the HDC board, with the necessary changes required and so far as applicable.
 - (f) An operating board must conduct an annual performance evaluation in accordance with the annual performance evaluation policy referred to in section 8.3(b)(x).

PART 5 - MAJOR DECISIONS

Decisions of holdings entities requiring Executive Council approval

- 5.1** Notwithstanding anything to the contrary in the constating documents of HFN Development Limited Partnership or HDC, HFN Development Limited Partnership and HDC will not take any action in respect of or within the scope of any of the following decisions without first receiving a direction from the Executive Council under Part 5 of the *Economic Development Act*:
- (a) making any changes to the constating documents of HFN Development Limited Partnership or HDC;
 - (b) renaming HFN Development Limited Partnership or HDC;
 - (c) making any change in the authorized or issued capital of HFN Development Limited Partnership or HDC;

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- (d) issuing any units in the capital of HFN Development Limited Partnership or any shares in the capital of HDC, or granting any right, option or other commitment for the issuance of such units or shares;
 - (e) redeeming any units in the capital of HFN Development Limited Partnership or any shares in the capital of HDC;
 - (f) entering into a partnership, joint venture or other similar relationship with a third party;
 - (g) creating or investing in any operating limited partnership;
 - (h) purchasing or accepting a gift of any units in the capital of any operating limited partnership or any shares in the capital of any operating general partner;
 - (i) selling, transferring or otherwise disposing of all or any substantial part of the undertaking, property or assets of HFN Development Limited Partnership or HDC;
 - (j) selling, transferring or otherwise disposing of any units in the capital of any operating limited partnership or any shares in the capital of any operating general partner;
 - (k) waiving any right of substantial value;
 - (l) awarding, entering into, amending, terminating or waiving compliance with the terms of any contracts which
 - (i) are not at a fixed or predetermined price, or
 - (ii) commit HFN Development Limited Partnership to amounts exceeding \$50,000 for any one contract;
 - (m) acquiring real property for any amount;
 - (n) acquiring personal property for an amount exceeding \$50,000 for any one item;
 - (o) borrowing money or establishing a line of credit in an amount exceeding \$100,000 for any one loan or line of credit;
 - (p) obtaining more than one loan or line of credit within a 120 day period where the aggregate amount of such loans or lines of credit exceeds \$100,000;
 - (q) guaranteeing any loans;
 - (r) investing funds not immediately required for the operation of HFN Development Limited Partnership in any instrument other than securities issued or guaranteed

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- by Canada or a province or territory of Canada or fixed deposits, notes, certificates or other short-term paper of, or guaranteed by, a financial institution;
- (s) settling any claim of or against HFN Development Limited Partnership where the amount claimed is greater than \$25,000;
 - (t) entering into any material contract or commitment or engaging in any transaction not in the ordinary course of business;
 - (u) making any distribution of available cash except in accordance with this Agreement;
 - (v) consolidating, amalgamating or merging HFN Development Limited Partnership or HDC with or into any other entity;
 - (w) commencing any proceedings to wind up, dissolve or liquidate HFN Development Limited Partnership or HDC;
 - (x) making any assignment for the benefit of the creditors of HFN Development Limited Partnership or HDC or any application for a receiving order against HFN Development Limited Partnership or HDC;
 - (y) continuing HFN Development Limited Partnership or HDC under the laws of any other jurisdiction; or
 - (z) charging, mortgaging, hypothecating, transferring, pledging or otherwise creating an interest or charge on any real property held by HFN Development Limited Partnership or HDC.

Decisions of operating entities requiring Executive Council approval

5.2 Notwithstanding anything to the contrary in the constating documents of the applicable operating limited partnership or operating general partner, an operating limited partnership or operating general partner will not take any action in respect of or within the scope of any of the following decisions without first receiving a direction from the Executive Council under Part 5 of the *Economic Development Act*:

- (a) renaming the applicable operating limited partnership or operating general partner;
- (b) consolidating, amalgamating or merging the applicable operating limited partnership or operating general partner with or into any other entity;
- (c) commencing any proceedings to wind up, dissolve or liquidate the applicable operating limited partnership or operating general partner;
- (d) making any assignment for the benefit of the creditors of the applicable operating limited partnership or operating general partner or any application for a receiving

order against the applicable operating limited partnership or operating general partner; or

- (e) continuing the applicable operating limited partnership or operating general partner under the laws of any other jurisdiction.

Decisions of operating entities requiring HDC board approval

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

- (a) making any changes to the constating documents of the applicable operating limited partnership or operating general partner;
- (b) making any change in the authorized or issued capital of the applicable operating limited partnership or operating general partner;
- (c) issuing any units in the capital of the applicable operating limited partnership or any shares in the capital of the applicable operating general partner, or granting any right, option or other commitment for the issuance of such units or shares;
- (d) redeeming any units in the capital of the applicable operating limited partnership or any shares in the capital of the applicable operating general partner;
- (e) entering into a partnership, joint venture or other similar relationship with a third party;
- (f) selling, transferring or otherwise disposing of all or any substantial part of the undertaking, property or assets of the applicable operating limited partnership or operating general partner;
- (g) waiving any right of substantial value;
- (h) entering into any material contract or commitment or engaging in any transaction not in the ordinary course of business;
- (i) making any distribution of available cash except in accordance with this Agreement;
- (j) awarding, entering into, amending, terminating or waiving compliance with the terms of any contracts which
 - (i) are not at a fixed or predetermined price, or

- (ii) commit the applicable operating limited partnership to amounts exceeding the greater of \$50,000 or a spending limit established by the HDC board for that operating limited partnership;
- (k) acquiring real property for any amount;
- (l) acquiring personal property for an amount exceeding \$50,000 for any one item;
- (m) borrowing money or establishing a line of credit in an amount exceeding \$100,000 for any one loan or line of credit;
- (n) obtaining more than one loan or line of credit within a 120 day period where the aggregate amount of such loans or lines of credit exceeds \$100,000;
- (o) guaranteeing any loans;
- (p) lending funds not immediately required for the operation of the applicable operating limited partnership other than to another operating limited partnership in an amount not exceeding \$50,000 and for a period not exceeding 12 months;
- (q) investing funds not immediately required for the operation of the applicable operating limited partnership in any instrument other than securities issued or guaranteed by Canada or a province or territory of Canada or fixed deposits, notes, certificates or other short-term paper of, or guaranteed by, a financial institution;
- (r) settling any claim of or against the applicable operating limited partnership where the amount claimed is greater than \$25,000; or
- (s) adopting any policy or procedure of the nature contemplated in section 8.3(b) or 8.3(c) except in accordance with section 8.3.
- (t) charging, mortgaging, hypothecating, transferring, pledging or otherwise creating an interest or charge on any real held by the applicable operating limited partnership or operating general partner.

PART 6 - DISTRIBUTIONS

Distributions to HUU-ay-aht First Nations

- 6.1** (a) If at the end of any fiscal year HDC determines that HFN Development Limited Partnership has available cash, notwithstanding anything to the contrary in the constating documents of HFN Development Limited Partnership, HDC will
- (i) distribute to or for the benefit of the HUU-ay-aht First Nations as much or all of the HUU-ay-aht First Nations' share of such available cash, and on such terms or conditions, as Executive Council may direct in accordance with this section, and

-
- (ii) reinvest in HFN Development Limited Partnership any available cash not distributed under paragraph (i).
 - (b) No later than 75 days following the end of each fiscal year, HDC will notify Executive Council of the amount of any available cash for that year.
 - (c) No later than 105 days following the end of each fiscal year, Executive Council will notify HDC of the anticipated amount, time and terms and conditions of any distribution under subsection (a)(i).
 - (d) No later than 150 days following the end of each fiscal year, HDC may notify the Executive Council of any concern it has regarding the effect of the anticipated distribution on HFN Development Limited Partnership.
 - (e) No sooner than 150 days and no later than 165 days following the end of each fiscal year and after considering any concerns raised by HDC under subsection (d), the Executive Council may issue a direction for a distribution under subsection (a)(i).
 - (f) A direction under subsection (e) may direct HDC to
 - (i) distribute an amount that is equal to or less than the anticipated amount,
 - (ii) advance the distribution at a later time than the anticipated time, or
 - (iii) make the distribution on terms or conditions that differ from the anticipated terms and conditionsset out in the notice under subsection (c).
 - (g) If Executive Council issues a direction in accordance with subsection (e), then on or before 210 days following the end of the fiscal year, HDC will authorize the distribution of the amount of available cash to or for the benefit of HUU-ay-aht First Nations at the times and on the terms and conditions specified in the direction.
 - (h) For certainty, the time periods set out in this section may be shortened by written agreement of the applicable Parties.

Distributions to HFN Development Limited Partnership

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

available cash, and on such terms or conditions, as the HDC board may require in accordance with this section, and

- (ii) reinvest in the applicable operating limited partnership any available cash not distributed under paragraph (i).
- (b) No later than 60 days following the end of each fiscal year, each operating general partner will notify the HDC board of the amount of any available cash for the applicable operating limited partnership for that year.
- (c) No later than 120 days following the end of each fiscal year, the HDC board will notify the applicable operating general partner of the anticipated amount, time and terms and conditions of any distribution to be made by that operating limited partnership under subsection (a)(i).
- (d) No later than 135 days following the end of each fiscal year, an operating general partner will notify the HDC board of any concern it has regarding the effect of the anticipated distribution on the applicable operating limited partnership.
- (e) No sooner than 135 days and no later than 180 days following the end of each fiscal year and after considering any concerns raised by an operating board under subsection (d), the HDC board may notify an operating limited partnership that it requires a distribution under subsection (a)(i).
- (f) A notice under subsection (e) may require the operating general partner to
 - (i) distribute an amount that is equal to or less than the anticipated amount,
 - (ii) advance the distribution at a later time than the anticipated time, or
 - (iii) make the distribution on terms or conditions that differ from the anticipated terms and conditionsset out in the notice under subsection (c).
- (g) If the HDC board issues a notice in accordance with subsection (e), then on or before 195 days following the end of the fiscal year, the applicable operating general partner will authorize the distribution of the amount of available cash to or for the benefit of HFN Development Limited Partnership at the times and on the terms and conditions specified in the notice.
- (h) For certainty, the time periods set out in this section may be shortened by written agreement of the applicable Parties.

PART 7 - REPORTING

Reporting by HFN Development Limited Partnership

- 7.1** At least quarterly, within 45 days of the end of each fiscal quarter, HFN Development Limited Partnership will report to Executive Council on its financial and operational circumstances, including its financial results compared to minimum expected financial performance requirements prescribed under the *Governance and Fiscal Agreement Regulation*.

Reporting by operating limited partnerships

- 7.2** At least quarterly, or more frequently if requested by the HDC board, each operating limited partnership will report to HFN Development Limited Partnership, with an information copy to Executive Council, on its financial and operational circumstances, including its financial results compared to minimum expected financial performance requirements prescribed under the *Governance and Fiscal Agreement Regulation*.

Reporting by chief executive officer

- 7.3** (a) At the request of the chair of the HDC board, the chief executive officer will report to the HDC board on the financial and operational circumstances of an operating limited partnership.
- (b) At the request of the chair of the Economic Development Committee, the chief executive officer will report to the People's Assembly, the Legislature or the Executive Council on the financial and operational circumstances of an operating limited partnership.

Content of reporting

- 7.4** (a) The reporting under section 7.1, in respect of HFN Development Limited Partnership, and under section 7.2, in respect of the applicable operating limited partnership, will include a review of
- (i) how that limited partnership is fulfilling its business mandate,
 - (ii) the financial results of that limited partnership's operations for the applicable reporting period, including a comparison to financial performance targets,
 - (iii) the number of HUU-ay-aht citizens employed by that limited partnership and the full time equivalent of their positions, including a comparison to employment targets,
 - (iv) the number of contracting and training opportunities provided by that limited partnership to other HUU-ay-aht business enterprises, businesses owned or operated by HUU-ay-aht citizens and to HUU-ay-aht citizens, and

- (v) how the information provided under paragraphs (i) to (iv) compares to the information reported under those paragraphs in the previous reporting period.
- (b) The reporting under section 7.2, in respect of the applicable operating limited partnership, will also include a description of any material variations to any applicable business plan for that limited partnership as it relates to the period covered by the report.

Operational Manual

7.5 At least annually, HFN Development Limited Partnership must provide the economic development officer with an updated copy of the board of directors' operational manual including

- (a) the constating documents of each Huu-ay-aht corporation,
- (b) the limited partnership agreement for HFN Development Limited Partnership and each operating limited partnership,
- (c) each operating limited partnership's business mandate, and
- (d) any policies or procedures adopted under section 8.3.

PART 8 - OPERATIONAL SERVICES

Management services agreement

- 8.1**
- (a) The HDC board may, by resolution, direct the management limited partnership, acting through the management general partner, and an operating limited partnership, acting through its general partner, to enter into a management services agreement for the provision of management, administrative, financial, record keeping, accounting and advisory services by the management limited partnership to that operating limited partnership.
 - (b) If directed by the HDC board in accordance with subsection (a), the management general partner and each applicable operating general partner will enter into the management services agreement.
 - (c) The management services agreement will include provisions
 - (i) requiring the management limited partnership to carry out the responsibilities set out in Schedule 5 and any other responsibilities approved by the HDC board from time to time, and
 - (ii) establishing the compensation to be paid to the management limited partnership by each of the operating limited partnerships that receive management services from the management limited partnership.

Chief executive officer

- 8.2** (a) The management limited partnership will retain an individual to hold the office of chief executive officer of the HUU-ay-aht business enterprises.
- (b) The management limited partnership will cause the chief executive officer to enter into an employment or independent contractor agreement with the management limited partnership.
- (c) The employment or independent contractor agreement will include provisions
- (i) requiring the chief executive officer to carry out the responsibilities set out in Schedule 7 and any other responsibilities approved by the management board from time to time, and
 - (ii) establishing the chief executive officer's salary, which must be a competitive salary commensurate with individuals of similar skill and experience.

Policies and procedures

- 8.3** (a) Each operating board may develop, adopt by resolution and implement written operational policies and procedures that may be necessary or desirable for the better and more efficient operation of the applicable operating limited partnership.
- (b) Without limiting subsection (a) but subject to subsection (d), each operating board will, within six months of signing this Agreement, develop, adopt by resolution and implement the following written operational policies and procedures:
- (i) a human resources and personnel policy providing for the preferential hiring of HUU-ay-aht citizens, subject to demonstrable levels of skill and experience necessary for the position;
 - (ii) a contracting and procurement policy;
 - (iii) terms of reference for the operating board, individual members of the operating board and the chair of the operating board;
 - (iv) operating board governance guidelines;
 - (v) code of conduct and conflict of interest guidelines including a requirement of directors, officers and employees of HUU-ay-aht business enterprises to take the HUU-ay-aht Oath;
 - (vi) director travel and expense guidelines;
 - (vii) terms of reference for a human resources, governance and compliance committee;

- (viii) terms of reference for a finance, audit and risk management committee;
 - (ix) committee operating guidelines and terms of reference;
 - (x) annual operating board performance evaluation; and
 - (xi) annual chief executive officer performance evaluation.
- (c) Subject to subsection (d), each operating board will, within three months of receiving from the HDC board a written request to do so, develop, adopt by resolution and implement any other written policy or procedure required by the HDC board.
- (d) Prior to adopting a policy or procedure under subsection (b) or (c), an operating board must first obtain the written consent of the HDC board to the policy or procedure substantially in the form to be adopted by the operating board.

PART 9 - NEW OPERATING LIMITED PARTNERSHIPS

Addition as a party

- 9.1**
- (a) HFN Development Limited Partnership will cause each operating limited partnership and operating general partner established after the date of this Agreement to enter into this Agreement, thereby agreeing to be bound by all of the terms contained in this Agreement as if that operating limited partnership or operating general partner was an original party to this Agreement and, in those circumstances, this Agreement is deemed to be amended by adding that operating limited partnership and operating general partner as a party to this Agreement.
 - (b) On any operating limited partnership entering into this Agreement in accordance with subsection (a), the table in Schedule 1 is deemed to be amended by adding an additional row with
 - (i) the name of the new operating limited partnership in Column 1 of that new row, and
 - (ii) the registration number of the new operating limited partnership in Column 2 of that new row.
 - (c) On any operating general partner entering into this Agreement in accordance with subsection (a), the table in Schedule 1 is deemed to be amended by adding an additional row with
 - (i) the name of the new operating general partner in Column 1 of that new row, and
 - (ii) the registration or incorporation number of the new operating general partner in Column 2 of that new row.

- (d) For certainty, the consent of the other operating limited partnerships and operating general partners is not required for a new operating limited partnership to be added as a Party under this section.

PART 10 - DISPUTE RESOLUTION

Resolution by parties

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

Tribunal

- 10.2** If the dispute has not been resolved within the 30 days contemplated in section 10.1 and any Party gives notice to the chair of the HDC board to that effect, the matter in dispute may be referred by that Party to the Huu-ay-aht Tribunal in accordance with Part 3 of the *Tribunal Act*.

Disputes regarding removal of board member

- 10.3** (a) Despite sections 10.1 and 10.2, if a dispute arises regarding the removal of an individual from an operating board under section 3.6 and that individual gives notice to the chair of the HDC board of that dispute within 30 days of his or her removal, that dispute may be referred by that individual to the Huu-ay-aht Tribunal in accordance with the *Tribunal Act*.
- (b) The referral of a dispute to the Huu-ay-aht Tribunal in accordance with subsection (a) is, for the purposes of interpreting the provisions of this Agreement as they relate to the *Tribunal Act*, deemed to be a notice of appeal filed under section 20(1) of the *Tribunal Act* to which section 17 (1) (a) of that Act applies and, for the purposes of hearing the appeal,
- (i) the individual that gave notice to the chair of the HDC board in accordance with subsection (a) is deemed to be the appellant,
 - (ii) HFN Development Limited Partnership is deemed to be the Huu-ay-aht public body responsible for the administrative decision that is the subject of the appeal, and
 - (iii) the chair of the HDC board is deemed to be the administrative decision maker.

- (c) For certainty, a dispute regarding the removal of an individual from an operating board under section 3.6 will not be referred to a committee under section 10.1.

Tribunal jurisdiction

10.4 The Parties agree

- (a) to submit to the jurisdiction of the HUU-ay-aht Tribunal, and
- (b) to accept as binding a final decision made by the HUU-ay-aht Tribunal.

PART 11 - NOTICES

Notices

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

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

To the HUU-ay-aht First Nations:

3483 Third Avenue Port Alberni, BC V9Y 4E4

Facsimile: 250-723-4646

To the HFN Development Limited Partnership or any operating limited partnership:

at the registered office of the partnership

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

PART 12 - GENERAL

Amendment

12.1 Subject to the addition of new operating limited partnerships as Parties in accordance with section 9.1 this Agreement may only be amended with the written agreement of each and every Party.

Termination

- 12.2** (a) A Party may, with the consent of the HDC board, such consent not to be unreasonably refused, conditioned or delayed, terminate its rights and obligations under this Agreement by giving twelve months' written notice to HDC.
- (b) Where the Party wishing to terminate its rights and obligations under this Agreement is HDC, HDC must give twelve months' written notice to the HUU-ay-aht First Nations.
- (c) Despite subsection, if Executive Council holds a referendum under section 4 of the *Referendum and Recall Act* to determine the opinion of HUU-ay-aht citizens on the termination of this Agreement, and at least 60% of eligible voters vote to terminate this Agreement, Executive Council on behalf of HUU-ay-aht First Nations may terminate this Agreement with three months' written notice to the other Parties.

Binding agreement

12.3 This Agreement enures to the benefit of and is binding on the Parties and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

Time

12.4 Time is of the essence in this Agreement. No extension of, or amendment to, this Agreement, unless clearly stated in that extension or amendment, operates as a waiver of this provision.

Counterparts

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

Waivers

12.6 No consent or waiver, express or implied, by any Party to or of any breach or default by another Party in the performance by the other Party of its obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other

breach or default in the performance by that Party hereunder. Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long that failure continues, does not constitute a waiver of that Party of its rights under this Agreement.

Further documents

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

Entire agreement

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

Force majeure

- 12.9**
- (a) No default – Except for the obligation to make the payments required in this Agreement, a Party is not considered in default of its duties or liable for any damages or delay if that default, damages or delay is the result of force majeure.
 - (b) Duty – Should such a cause of delay occur, the Party unable to perform its obligations under this Agreement will, whenever possible, take the necessary steps to put an end to that a cause of delay or, if unable to do so, to lessen their impact on the other Parties.
 - (c) Rights of other Parties – The Party to whom the duty or obligation is owed in respect of which a cause of delay has occurred may, in those circumstances, for as long as the force majeure prohibits the other Party from performing its duties under this Agreement, take temporary steps to mitigate the damages it may sustain on the understanding that no claim may result from that actions in favour of the other Party.

Assignment

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

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

EXECUTED by HUU-AY-AHT FIRST)
 NATIONS by its duly authorized signatory:)
)
)
)
)
)
 _____)
 Print Name:)
 Chief Councillor

EXECUTED by HFN DEVELOPMENT)
 CORPORATION by its duly authorized)
 signatory, on its own behalf and as general)
 partner for, and on behalf of, HFN)
 DEVELOPMENT LIMITED)
 PARTNERSHIP:)
)
)
 _____)
 Print Name:)
 Director

EXECUTED by HFN MANAGEMENT)
 CORPORATION by its duly authorized)
 signatory, on its own behalf and as general)
 partner for, and on behalf of, HFN)
 MANAGEMENT LIMITED PARTNERSHIP:)
)
)
)
 _____)
 Print Name:)
 Director

EXECUTED by HFN FORESTRY)
 CORPORATION by its duly authorized)
 signatory, on its own behalf and as general)
 partner for, and on behalf of, HFN)
 FORESTRY LIMITED PARTNERSHIP:)
)
)
)
 _____)
 Print Name:)
 Director

EXECUTED by HFN FISHERIES)
CORPORATION by its duly authorized)
signatory, on its own behalf and as general)
partner for, and on behalf of, HFN)
FISHERIES LIMITED PARTNERSHIP:)
)
)
)

Print Name:)
Director)

EXECUTED by HFN LANDS)
CORPORATION by its duly authorized)
signatory, on its own behalf and as general)
partner for, and on behalf of, HFN LANDS)
LIMITED PARTNERSHIP:)
)
)
)

Print Name:)
Director)

EXECUTED by HFN GRAVEL)
CORPORATION by its duly authorized)
signatory, on its own behalf and as general)
partner for, and on behalf of, HFN GRAVEL)
LIMITED PARTNERSHIP:)
)
)
)

Print Name:)
Director)

EXECUTED by HFN MARKET)
CORPORATION by its duly authorized)
signatory, on its own behalf and as general)
partner for, and on behalf of, HFN MARKET)
LIMITED PARTNERSHIP:)
)
)
)

Print Name:)
Director)

SCHEDULE 1 – PARTIES

Column 1 Party	Column 2 Registration No.
Huu-ay-aht First Nations	N/A
HFN Development Limited Partnership	553527-11
HFN Development Corporation	BC0906155
HFN Management Limited Partnership	LP594527
HFN Management Corporation	BC0951938
HFN Forestry Limited Partnership	271295-99
HFN Forestry Corporation	BC0568157
HFN Fisheries Limited Partnership	271289-99
HFN Fisheries Corporation	BC0582721
HFN Lands Limited Partnership	553528-11
HFN Lands Corporation	BC0825585
HFN Gravel Limited Partnership	497480-09
HFN Gravel Corporation	BC0845887
HFN Market Limited Partnership	LP604378
HFN Market Corporation	BC0964688

SCHEDULE 2 – DEFINITIONS AND INTERPRETATION PRINCIPLES

Incorporated definitions and interpretation principles

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

Definitions

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

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

“annual plan” means, as applicable,

- (a) the plan approved by the HDC board under section 4.1(a), or
- (b) the plan approved by the HDC board under section 4.2(c) or 4.2(d);

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

- (a) the amount necessary to make current assets equal current liabilities of that partnership,
- (b) the amount necessary to cover any planned capital and operating expenditures of that partnership for the next fiscal year which will not be funded from ongoing operations, as set out in the annual plan for that partnership, and
- (c) a reserve equal to 25% of the balance, after deducting the amounts in subsections (a) and (b);

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

“chief executive officer” means the individual retained to hold the office of chief executive officer of HUU-ay-aht business enterprises under section 8.2;

“constating documents” means, in respect of a HUU-ay-aht business enterprise, its articles of incorporation, partnership agreement or other similar document, as amended from time to time in accordance with its terms, this Agreement and any applicable law;

“*Economic Development Act*” means the *Economic Development Act*, HFNA 2/2013;

“employment or independent contractor agreement” means the agreement entered into in accordance with section 8.2;

“fiscal year” means a one-year period commencing on April 1 of one calendar year and ending on March 31 of the following calendar year;

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

“Governance and Fiscal Agreement Regulation” means the Governance and Fiscal Agreement Regulation, HFNR 4/2013;

“government employee” has the meaning given to that term in the *Financial Administration Act*, HFNA 7/2011;

“HDC” means the general partner of the HFN Development Limited Partnership;

“*Interpretation Act*” means the *Interpretation Act*, HFNA 14/2011;

“major decision” means a decision requiring approval of the Executive Council under section 5.1 or 5.2 or approval of the HDC board under section 5.3;

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

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

“management limited partnership” means HFN Management Limited Partnership registered under the *Partnership Act* under registration number LP594527;

“management services agreement” means the agreement entered into in accordance with section 8.1;

“non-citizen” means any individual who is not a Huu-ay-aht citizen;

“Parties” means the Huu-ay-aht First Nations and each of the Huu-ay-aht business enterprises set out in Schedule 1 and “Party” means any one of them;

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

“*Tribunal Act*” means the *Tribunal Act*, HFNA 13/2011.

Interpretation Principles

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

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

- (k) Accounting framework. All accounting terms used in this Agreement have the meanings given to them by the accounting framework applicable to HUU-ay-aht business enterprises, as determined by the Executive Council, by resolution, from time to time.
- (l) Party's designate. Every reference to a Party in this Agreement will include any person designated to act for or on its behalf with respect to any provision of this Agreement.

SCHEDULE 3 - RESPONSIBILITIES OF THE EXECUTIVE COUNCIL

Responsibilities of the Executive Council

- 1.1** The Executive Council has the following responsibilities relating to Huu-ay-aht business enterprises:
- (a) appointing HDC board members;
 - (b) where necessary, removing HDC board members;
 - (c) approving the renaming of any Huu-ay-aht business enterprises;
 - (d) where necessary, approving the winding up or merging of any Huu-ay-aht business enterprise;
 - (e) approving amendments to the constating documents of HFN Development Limited Partnership or HDC;
 - (f) approving major decisions of HFN Development Limited Partnership, including expenditures in excess of \$50,000;
 - (g) approving distributions of available cash from HFN Development Limited Partnership to the Huu-ay-aht First Nations;
 - (h) approving any new business opportunities to be implemented and owned or operated by an existing or new operating limited partnership; and
 - (i) any other responsibilities set out in this Agreement, the constating documents of HFN Development Limited Partnership or HDC or any applicable law.

SCHEDULE 4 - RESPONSIBILITY OF THE HDC BOARD

Responsibilities of the HDC board

- 1.1** The HDC board has the following responsibilities relating to HUU-ay-aht business enterprises:
- (a) appointing operating board members;
 - (b) where necessary, removing operating board members;
 - (c) approving amendments to the constating documents of any operating limited partnership or operating general partner;
 - (d) approving an annual plan for the HFN Development Limited Partnership and each operating limited partnership;
 - (e) approving major decisions of each operating limited partnership, including expenditures over \$50,000;
 - (f) approving distributions of available cash from each operating limited partnership to the HFN Development Limited Partnership;
 - (g) reporting to the Executive Council on the financial and operational circumstances of the HFN Development Limited Partnership; and
 - (h) any other responsibilities set out in this Agreement, the constating documents of any operating limited partnership or operating general partner or any applicable law.

SCHEDULE 5 - RESPONSIBILITIES OF THE MANAGEMENT BOARD

Responsibilities of the management board

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

SCHEDULE 6 - RESPONSIBILITIES OF THE OPERATING BOARDS

Responsibilities of the operating boards

- 1.1** Each operating board has the following responsibilities relating to Huu-ay-aht business enterprises:
- (a) overseeing the operations of the applicable operating limited partnership;
 - (b) developing, adopting and implementing written operational policies and procedures that may be necessary or desirable for the better and more efficient operation of the applicable operating limited partnership, including the policies and procedures required under section 8.3 of this Agreement;
 - (c) recommending a proposed annual plan for the applicable operating limited partnership to the HDC board for approval;
 - (d) approving expenditures of the applicable operating limited partnership over \$5,000 and less than \$50,000;
 - (e) reporting to the HDC board on the financial and operational circumstances of the applicable operating limited partnership; and
 - (f) any other responsibilities set out in this Agreement, the constating documents of the operating limited partnership or operating general partner or any applicable law.

SCHEDULE 7 - RESPONSIBILITIES OF THE CHIEF EXECUTIVE OFFICER

Responsibilities of the chief executive officer

- 1.1** The chief executive officer has the following responsibilities relating to Huu-ay-aht business enterprises:
- (a) overseeing the day to day operations of the operating limited partnerships;
 - (b) hiring staff of the operating limited partnerships;
 - (c) where necessary and only for just cause, dismissing staff of the operating limited partnerships;
 - (d) preparing a proposed annual plan for each operating limited partnership for recommendation by the applicable operating board and approval by the HDC board;
 - (e) approving expenditures of an operating limited partnership of \$5,000 or less;
 - (f) keeping up-to-date, accurate financial records for each operating limited partnership;
 - (g) at least quarterly or as required, reporting to each operating board on the financial and operational circumstances of the applicable operating limited partnership;
 - (h) as requested, reporting to the HDC board, the People's Assembly, the Legislature or the Executive Council on the financial and operational circumstances of an operating limited partnership;
 - (i) delegating authority to staff of the operating limited partnerships as he or she sees fit;
 - (j) providing management, administrative, financial, record keeping, accounting and advisory services to HFN Development Limited Partnership as requested by the HDC board; and
 - (k) any other responsibilities set out in this Agreement, the employment or independent contractor agreement, the constating documents of any Huu-ay-aht business enterprises or any applicable law.