HUU-AY-AHT FIRST NATIONS



GOVERNANCE AND FISCAL AGREEMENT REGULATION

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

Chief Councillor Jeff Cook

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

Mar 28/2013

Ta'yii Hawilth Derek Peters

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

Mar 28/2013

p/t **Law Clerk Connie Waddell**

GOVERNANCE AND FISCAL AGREEMENT REGULATION

Contents

PART 1 – INTRODUCTORY PROVISIONS
1 Application
2 Definitions
3 Schedule

PART 2 – AUTHORIZATION
4 Executive Council approval
5 Authorized signatory
6 Chief Councillor authorization
7 Amendments

PART 3 – BUSINESS SUSTAINABILITY
8 Minimum expected financial performance

PART 4 – DISPUTE RESOLUTION
9 Interpretation
10 Governance and fiscal agreement dispute
11 Review of board member removal
12 Tribunal powers confirmed
13 Tribunal costs and expenses

PART 5 - CONSEQUENTIAL AMENDMENTS AND REPEAL
14 Repeal of *Economic Development Policy Regulation*
15 – 21 Consequential Amendments

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

[43 pages follow]

SCHEDULE

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

GOVERNANCE AND FISCAL AGREEMENT

HUU-AY-AHT BUSINESS ENTERPRISES

TABLE OF CONTENTS

PART 1 - INTERPRETATION **7**
Definitions and interpretation principles 7
Schedules 7
PART 2 - BOARD APPOINTMENTS **7**
Composition of HDC board 7
Term of HDC board 7
Removal of HDC board 7
Composition of operating boards 8
Term of operating boards 8
Removal of operating boards 8
PART 3 - ANNUAL PLANNING **9**
HDC board annual planning 9
Operating boards annual planning 9
PART 4 - MAJOR DECISIONS **11**
Decisions of holdings entities requiring Executive Council approval 11
Decisions of operating entities requiring Executive Council approval 13
Decisions of operating entities requiring HDC board approval 13
PART 5 - DISTRIBUTIONS **15**
Distributions to HFN Development Limited Partnership 15
Distributions to Huu-ay-aht First Nations 16
PART 6 - REPORTING **17**
Reporting by HFN Development Limited Partnership 17
Reporting by operating limited partnerships 17
Reporting by chief executive officer 17
Audited financial statements 18
Content of reporting 18
Operational Manual 19
PART 7 - OPERATIONAL SERVICES **19**
Management services agreement 19
Chief executive officer 19
Policies and procedures 20
PART 8 - NEW OPERATING LIMITED PARTNERSHIPS **21**
Addition as a party 21
PART 9 - DISPUTE RESOLUTION **22**
Resolution by parties 22
Tribunal 22
Disputes regarding removal of board member 22
Tribunal jurisdiction 23
PART 10 - NOTICES **23**
Notices 23

PART 11 - GENERAL 24

Amendment 24
Termination by Huu-ay-aht 24
Binding agreement 24
Time 24
Counterparts 24
Waivers 24
Further documents 25
Entire agreement 25
Force majeure 25
Assignment 26

SCHEDULE 1 - PARTIES 27

SCHEDULE 2 – DEFINITIONS AND INTERPRETATION PRINCIPLES 29

Definitions 29
Interpretation Principles 32

SCHEDULE 3 - RESPONSIBILITIES OF THE EXECUTIVE COUNCIL 35

Responsibilities of the Executive Council 35

SCHEDULE 4 - RESPONSIBILITY OF THE HDC BOARD 37

Responsibilities of the HDC board 37

SCHEDULE 5 - RESPONSIBILITIES OF THE MANAGEMENT SERVICES BOARD 39

Responsibilities of the management services board 39

SCHEDULE 6 - RESPONSIBILITIES OF THE OPERATING BOARDS 41

Responsibilities of the operating boards 41

SCHEDULE 7 - RESPONSIBILITIES OF THE CHIEF EXECUTIVE OFFICER 43

Responsibilities of the chief executive officer 43

GOVERNANCE AND FISCAL AGREEMENT

THIS AGREEMENT is made as of and with effect from ◆, 2013.

BETWEEN the Parties set out in Schedule 1.

BACKGROUND:

A. 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;

B. 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;

C. HFN Development Limited Partnership was established to hold business interests of the Huu-ay-aht First Nations;

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.

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

PART 1 - INTERPRETATION

Definitions and interpretation principles

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

Schedules

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

Schedule 1 – Parties;
Schedule 2 – Definitions and Interpretation Principles;
Schedule 3 – Responsibilities of the Executive Council;
Schedule 4 – Responsibilities of the HDC board;
Schedule 5 – Responsibilities of the Management Services Board;
Schedule 6 – Responsibilities of the Operating Boards; and
Schedule 7 – Responsibilities of the Chief Executive Officer.

PART 2 - BOARD APPOINTMENTS

Composition of HDC board

2.1 The Huu-ay-aht First Nations will, by Executive Council resolution, vote its shares in HDC so that the HDC board is comprised of the members of the economic development committee, a majority of whom must not be members of Executive Council.

Term of HDC board

2.2 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.

Removal of HDC board

2.3 The Huu-ay-aht First Nations will only vote its shares in HDC to remove a HDC board member where the member ceases to be a member of the economic development committee.

Composition of operating boards

2.4 (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 Huu-ay-aht First Nations government or its senior administration,

(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 First Nations 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

2.5 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 he or she resigns or is removed in accordance with this Agreement and the constating documents of the applicable operating general partner.

Removal of operating boards

2.6 (a) 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 9.3.

PART 3 - ANNUAL PLANNING

HDC board annual planning

3.1 (a) On or before December 31 of each 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.

Operating boards annual planning

3.2 (a) Each operating limited partnership must, on or before September 30 of each 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, and

(v) financial performance and employment targets.

(c) The HDC board must consider the annual plan provided by an operating limited partnership under subsection (a) on or before November 30 of that year and

(i) approve the annual plan, with or without conditions, or

(ii) require the operating limited partnership to amend and resubmit a revised proposed annual plan in the form and with the content required by the 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 15 days and, upon 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 15 days, with or without conditions.

(e) If an annual plan has not been approved by December 31 of any given year, the annual plan for that operating limited partnership for the previous fiscal year will continue as the annual plan for the current fiscal year until that time as a proposed annual plan is approved by the HDC board, with the necessary changes required and so far as applicable.

PART 4 - MAJOR DECISIONS

Decisions of holdings entities requiring Executive Council approval

4.1 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 major decisions without the prior approval of the Executive Council by resolution and only upon receiving a directive 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;

(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 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 the 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 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 material transaction not in the ordinary and usual course of business;

(u) making any distribution of available cash except in accordance with this Agreement;

(v) consolidating, amalgamating or merging 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 or personal property held by HFN Development Limited Partnership or HDC.

Decisions of operating entities requiring Executive Council approval

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

(a) renaming the applicable operating limited partnership or operating general partner;

(b) entering into any material contract or commitment or engaging in any material transaction not in the ordinary and usual course of business;

(c) making any distribution of available cash except in accordance with this Agreement;

(d) consolidating, amalgamating or merging the applicable operating limited partnership or operating general partner with or into any other entity;

(e) commencing any proceedings to wind up, dissolve or liquidate the applicable operating limited partnership or operating general partner;

(f) making any assignment for the benefit of the creditors of the applicable operating limited partnership or operating general partner or any application for a receiving order against the applicable operating limited partnership or operating general partner;

(g) continuing the applicable operating limited partnership or operating general partner under the laws of any other jurisdiction; or

(h) charging, mortgaging, hypothecating, transferring, pledging or otherwise creating an interest or charge on any real or personal property held by the applicable operating limited partnership or operating general partner.

Decisions of operating entities requiring HDC board approval

4.3 Notwithstanding anything to the contrary in the constating documents of the applicable operating limited partnership or operating general partner, an operating limited partnership or operating general partner will not take any action in respect of or within the scope of any of the following decisions without the prior approval of the 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 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) 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 any one contract;

(i) acquiring real property for any amount;

(j) acquiring personal property for an amount exceeding $50,000 for any one item;

(k) borrowing money or establishing a line of credit in an amount exceeding $100,000 for any one loan or line of credit;

(l) obtaining more than one loan or line of credit within a 120 day period where the aggregate amount of the loans or lines of credit exceeds $100,000;

(m) guaranteeing any loans;

(n) 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;

(o) settling any claim of or against the applicable operating limited partnership where the amount claimed is greater than $25,000; or

(p) adopting any policy or procedure of the nature contemplated in section 7.3(b) or 7.3(c) except in accordance with section 7.3.

PART 5 - DISTRIBUTIONS

Distributions to HFN Development Limited Partnership

5.1 (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 the holding limited partnership's share of that available cash, and upon the terms or conditions, as the HDC board may direct in accordance with this section, and

(ii) reinvest in the applicable operating limited partnership any available cash not distributed under paragraph (i).

(b) On or before January 31 of each year, each operating general partner will notify the HDC board of the amount of any available cash for the applicable operating limited partnership.

(c) On or before March 31 of each year, the HDC board will notify each operating general partner of the anticipated amount, time and terms and conditions of any distribution under subsection (a)(i).

(d) On or before April 15 of each year, an operating general partner may notify the HDC board of any concern it has regarding the effect of the anticipated distribution on the applicable operating limited partnership.

(e) On or before May 31 of each year and after considering any concerns under subsection (d), the HDC board may issue a direction for a distribution under subsection (a)(i).

(f) A direction under subsection (e) may direct the operating general partner to

(i) distribute an amount that is equal to or less than the anticipated amount,

(ii) advance the distribution at a later time than the anticipated time, or

(iii) make the distribution on terms or conditions that differ from the anticipated terms and conditions

set out in the notice under subsection (c).

(g) If the HDC board issues a direction in accordance with subsection (e), then on or before June 15 of the year in which the direction was issued, the applicable operating general partner will authorize the distribution to or for the benefit of HFN Development Limited Partnership the amount of available cash, at the times and on the terms and conditions specified in the direction.

(h) For certainty, the time periods set out in this section may be shortened by written agreement of the Parties.

Distributions to Huu-ay-aht First Nations

5.2 (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 that available cash, and upon the 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) On or before February 28 of each year, HDC will notify Executive Council of the amount of any available cash.

(c) On or before March 15 of each year, Executive Council will notify HDC of the anticipated amount, time and terms and conditions of any distribution under subsection (a)(i).

(d) On or before April 30 of each 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) On or before May 15 of each fiscal year and after considering any concerns 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 conditions

set out in the notice under subsection (c).

(g) If Executive Council issues a direction under subsection (e), then on or before June 30 of the year in which the direction was issued, HDC will authorize the distribution to or for the benefit of Huu-ay-aht First Nations the amount of available cash, at the times and on the terms and conditions specified in the direction.

(h) For certainty, the time periods set out in this section may be shortened by written agreement of the Parties.

PART 6 - REPORTING

Reporting by HFN Development Limited Partnership

6.1 At least quarterly, 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

6.2 At least monthly, 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

6.3 (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 or the Executive Council on the financial and operational circumstances of an operating limited partnership.

Audited financial statements

6.4 (a) The annual financial statements of Huu-ay-aht business enterprises must be audited.

(b) The audited financial statements of Huu-ay-aht business enterprises must be prepared in accordance with accounting standards for private enterprise (ASPE).

(c) Every reasonable effort must be made to prepare interim and quarterly unaudited financial statements for Huu-ay-aht business enterprises in accordance with ASPE after taking into account the practicality and cost of full compliance with those standards.

Content of reporting

6.5 (a) The reporting under section 6.1, in respect of HFN Development Limited Partnership, and under section 6.2, in respect of the applicable operating limited partnership, will include a review of

(i) how that limited partnership is fulfilling its business mandate,

(ii) the financial results of that limited partnership's operations for the applicable reporting period, including a comparison to financial performance targets,

(iii) the number of Huu-ay-aht First Nations 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 First Nations citizens and to Huu-ay-aht First Nations 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 6.2, in respect of the applicable operating limited partnership, will also include a description of any material variations to any applicable business plan for that limited partnership as it relates to the period covered by the report.

Operational Manual

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

(i) constating documents of each Huu-ay-aht corporation,

(ii) limited partnership agreement,

(iii) operating limited partnership's business mandate,

(iv) governance and fiscal policies and procedures, and

(v) director, officer and committee terms of reference prepared under paragraph (i)

PART 7 - OPERATIONAL SERVICES

Management services agreement

7.1 (a) The management limited partnership will enter into an agreement with each of the other operating limited partnerships for the provision of management, administrative, financial, record keeping, accounting and advisory services by the management limited partnership to each of the other operating limited partnerships.

(b) 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 other operating limited partnerships for the provision of those services.

Chief executive officer

7.2 (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

7.3 (a) Each operating board may develop, adopt by resolution and implement written operational policies and procedures that may be necessary or desirable for the better and more efficient operation of the applicable operating limited partnership.

(b) Without limiting subsection (a) but subject to subsection (d), each operating board will, within six months of signing this Agreement, develop, adopt by resolution and implement the following written operational policies and procedures:

(i) a human resources and personnel policy providing for the preferential hiring of Huu-ay-aht First Nations citizens, subject to demonstrable levels of skill and experience necessary for the position;

(ii) a contracting and procurement policy;

(iii) terms of reference for the operating board, individual members of the operating board and the chairperson of the operating board;

(iv) operating board governance guidelines;

(v) code of conduct and conflict of interest guidelines including a requirement of directors, officers and employees of Huu-ay-aht business enterprises to make 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 operating board and 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 will 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 8 - NEW OPERATING LIMITED PARTNERSHIPS

Addition as a party

8.1 (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 and the management services agreement, thereby agreeing to be bound by all of the terms contained in this Agreement and the management services agreement as if that operating limited partnership or operating general partner was an original party to that agreement and, in those circumstances, this Agreement and the management services agreement are deemed to be amended by adding that operating limited partnership and operating general partner as a party to that agreement.

(b) Upon any operating limited partnership entering into this Agreement in accordance with subsection (a), the table in Schedule 1 is deemed to be amended by adding an additional row with

(i) the name of the new operating limited partnership in Column 1 of that new row, and

(ii) the registration number of the new operating limited partnership in Column 2 of that new row.

(c) Upon any operating general partner entering into this Agreement in accordance with subsection (a), the table in Schedule 1 is deemed to be amended by adding an additional row with

(i) the name of the new operating general partner in Column 1 of that new row, and

(ii) the registration or incorporation number of the new operating general partner in Column 2 of that new row.

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

PART 9 - DISPUTE RESOLUTION

Resolution by parties

9.1 Each Party will endeavour to resolve informally and as between those involved any disputes in respect of the interpretation, construction, compliance with or breach of this Agreement or its termination. If a dispute arises and any Party gives notice to the chair of the 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

9.2 If the dispute has not been resolved within the 30 days contemplated in section 9.1 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

9.3 (a) Despite sections 9.1 and 9.2, if a dispute contemplated under section 2.6 arises regarding the removal of a board member from an operating board and the individual who has been removed from the operating board gives notice to the chair of the HDC board of that dispute, 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 contemplated under section 2.6 regarding the removal of a board member from an operating board will not be referred to a committee under section 9.1.

Tribunal jurisdiction

9.4 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 10 - NOTICES

Notices

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

(a) if delivered by hand to an officer or agent of a Party at its address given below; or

(b) if delivered by facsimile transmission to a 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 a notice is deemed to have been received seven days after mailing, or if delivered, when delivered, provided that if the notice is mailed and there occurs between the time of mailing and the actual or deemed receipt of the notice, a mail strike, slow down or other

labour dispute which might affect delivery of the notice, then the notice is effective only when actually delivered.

PART 11 - GENERAL

Amendment

11.1 Except for the addition of new operating limited partnerships as Parties in accordance with section 8.1, and subject to section 11.2, this Agreement may only be amended with the written agreement of each and every Party.

Termination by Huu-ay-aht

11.2 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 3 months written notice to the other Parties.

Binding agreement

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

Time

11.4 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

11.5 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 constitutes one agreement. All counterparts and adopting instruments must be construed together and constitute one and the same agreement.

Waivers

11.6 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 are deemed or construed to be a consent or waiver to or of any other breach or default in the performance by that Party. 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

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

Entire agreement

11.8 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

11.9 (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 a cause of delay occur, the Party unable to perform its obligations under this Agreement must, 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

11.10 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.

[execution ◆]

SCHEDULE 1 - PARTIES

Column 1 Party	Column 2 Registration No.

SCHEDULE 2 – DEFINITIONS AND INTERPRETATION PRINCIPLES

Definitions

1.1 The following words and expressions have the following meanings:

"annual plan" means, as applicable,

(a) the plan approved by the HDC board under section 3.1(a), or

(b) the plan approved by the HDC board under section 3.2(c) or 3.2(d);

"Agreement" means this Agreement including all of its Schedules;

"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;

"business mandate" means the nature of business the Huu-ay-aht business enterprises is mandated to engage in under section 15 of the Economic Development Act;

"business plan" means a business plan prepared in accordance with section 18 of the Economic Development Act;

"chief executive officer" means the individual retained to hold the office of chief executive officer of Huu-ay-aht business enterprises under section 7.2;

"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;

"Constitution" means the constitution of the Huu-ay-aht First Nations, adopted in accordance with the Maa-nulth Treaty;

"Economic Development Act" means the Huu-ay-aht First Nations Economic Development Act;

"economic development committee" means the standing committee on economic development continued under section 8 of the Economic Development Act;

"economic development plan" means the plan and any updates to that plan approved by Council in accordance with section 16 of the Economic Development Act;

"employment or independent contractor agreement" means the agreement entered into by the management limited partnership and the chief executive officer in accordance with section 7.2;

"Executive Council" means the executive branch of the Huu-ay-aht First Nations government, as referred to in the Constitution;

"fiscal year" means a one-year period commencing on April 1 of one calendar year and ending on March 31 of the same calendar year;

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

"HDC board" means the board of directors of HDC;

"HDC" means the general partner of the HFN Development Limited Partnership;

"HFN Development Limited Partnership" means the limited partnership registered under the Partnership Act under registration number ◆;

"holiday" has the meaning given to that term in the Interpretation Act;

"Huu-ay-aht business enterprises" means HFN Development Limited Partnership, the general partner of HFN Development Limited Partnership, each operating limited partnership, the general partner of each operating limited partnership and the applicable business mandate for each of them;

"Huu-ay-aht First Nations" means that Maa-nulth First Nation referred to as the "Huu-ay-aht First Nations" recognized as a legal entity in accordance with the Maa-nulth Treaty.

"Huu-ay-aht First Nations citizen" means an individual who is on the citizenship register maintained in accordance with the Huu-ay-aht First Nations Citizenship and Treaty Enrolment Act;

"Huu-ay-aht First Nations government" means the government of the Huu-ay-aht First Nations, as referred to in 13.1.2 of Chapter 13 Governance of the Maa-nulth Treaty and the Huu-ay-aht First Nations Government Act;

"Huu-ay-aht Tribunal" means the tribunal established under section 3 (1) of the Huu-ay-aht First Nations Tribunal Act;

"Interpretation Act" means the Huu-ay-aht First Nations Interpretation Act;

"Maa-nulth Treaty" means the Maa-nulth First Nations Final Agreement between the Huu-ay-aht First Nations, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, Toquaht Nation, Uchucklesaht Tribe, Ucluelet First Nation, Canada and British Columbia, which took effect on April 1, 2011, and includes any amendments made to it from time to time in accordance with its provisions;

"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 7.1;

"non-citizen" means any individual who is not a Huu-ay-aht First Nations citizen;

"operating board" means the board of directors of an operating general partner;

"operating general partner" means the general partner of an operating limited partnership;

"operating limited partnership" means a limited partnership registered under the Partnership Act and

(a) the interest of which is 51% or more owned legally and beneficially by HFN Development Limited Partnership, and

(b) is identified in Column 1 of the table in Schedule 1 of the Economic Development Act as a limited partnership, other than HFN Development Limited Partnership;

"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 British Columbia Partnership Act, R.S.B.C. 1996, c. 348;

"People's Assembly" means the People's Assembly, as referred to in the Constitution;

"Tribunal Act" means the Huu-ay-aht First Nations Tribunal Act.

Interpretation Principles

1.2 (a) Gender and entity. Unless the context or the Parties require otherwise, in this Agreement wherever the singular or masculine is used it will be construed as if the plural or feminine or neuter, as the case may be, had been used and vice versa. Any reference to a corporate entity includes and is also reference to any corporate entity that is a successor to that entity.

(b) General statements. The word "or" is not exclusive and "including", when following any general statement, is not limiting and will be construed to refer to all other things that reasonably could fall within the scope of that general statement, whether or not non-limiting language, such as "without limitation" is used with reference thereto.

(c) Headings. Headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit, or enlarge the scope of any provision of this Agreement.

(d) 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.

(e) Legislation. A reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for, or in replacement of, it.

(f) Writing. The words "written" or "in writing" include printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception including telex, telegraph, telecopy, facsimile or electronic mail.

(g) Business days. Where the time for doing any act falls or expires on a day which is not a business day (or at a specified time on a day which is not a business day), the time for doing that act will be extended to the next business day (or that specified time on the next business day).

(h) 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.

(i) No contra preferentum. The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties to this Agreement.

(j) 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.

(k) Severability. Each of the provisions contained in this Agreement are distinct and severable and a determination of illegality, invalidity or unenforceability of any that 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.

(l) Approvals. A reference to "approval", "authorization", "consent", "designation", "waiver" or "notice" means written approval, authorization, consent, designation, waiver or notice.

(m) Currency. A reference to currency means Canadian currency.

(n) Defined words. A cognate of a defined term has a meaning corresponding to that of the defined term.

(o) 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.

(p) Accounting framework. All accounting terms used in this Agreement have the meanings ascribed to them by the accounting framework applicable to Huu-ay-aht business enterprises, as determined by the Executive Council from time to time.

(q) Mandatory and permissive acts. The word "will" denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as

practicable after the event that gives rise to the obligation. The word "may" is to be construed as permissive, but the use of the words "may not" is to be construed as disempowering.

(r) 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 SERVICES BOARD

Responsibilities of the management services board

1.1 The management services 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 7.3 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 monthly, 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 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.