

NAK'AZDLI WHUT'EN TRUST

AMENDED AND RESTATED TRUST AGREEMENT

Understanding the Amendments:

Provisions and text **highlighted in green** are proposed additions to the Trust Agreement.

Provisions and text ~~highlighted in red and stricken through~~ are proposes removals to the Trust Agreement.

Note, there may be some inconsistencies in numbering.

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NAK'AZDLI WHUT'EN TRUST

THIS AMENDED AND RESTATED TRUST AGREEMENT is made this ____ day of AUGUST, 2024.

BETWEEN:

NAK'AZDLI WHUT'EN

- and -

**TAMARA R. SAM, RHODA GREGG, LAURETTA PRINCE,
ROLENE SAM, and ILIAH PRINCE.**

(referred to as the “**Trustees**”)

PREAMBLE

WHEREAS:

- A. the Nak’azdli Whut’en Trust was established pursuant to a Trust Agreement dated March 15, 2016 between Nak’azdli Whut’en (previously referred to as the Nak’azdli Band in the Original Trust Agreement) and Rolene Sam, Tamara R. Sam, Nicholette Prince, Lauretta Prince, and Rhoda Gregg as trustees (the “**Original Trust Agreement**”);
- B. by the Original Trust Agreement, Nak’azdli Whut’en settled monetary payments received pursuant to certain Impact Benefit Agreements on the Trustees to be managed for the benefit of Nak’azdli Whut’en;
- C. pursuant to the Original Trust Agreement, the Trustees may amend the Original Trust Agreement per satisfying the requirements set out in Article 24 of the Original Trust Agreement;
- D. the Trustees wish to make certain amendments to the Original Trust Agreement, and after satisfying the requirements contained in Article 24 of the Original Trust Agreement, executed two (2) Deeds of Amendment dated as of the [insert date] (the “**Deeds of Amendment**”); and
- E. Nak’azdli Whut’en and the Trustees wish to enter into this Amended and Restated Trust Agreement in order to reflect the amendments in the Deeds of Amendment;

THEREFORE this Amended and Restated Trust Deed reads in its entirety as follows:

1. Definitions

- 1.1 Terms not otherwise defined in this Trust Agreement shall have the same meanings as defined in the *Indian Act* (Canada).
- 1.2 In this Agreement:

- (a) **“Auditor”** means a firm licensed to perform audits in the Province of British Columbia and who is a member in good standing of an institute or association of accountants incorporated under the laws of the Province of British Columbia and who is independent of the Trustees;
- (b) **“Authorized Expense(s)”** means the expenses reasonably incurred by the Trustees in each Fiscal Year in carrying out the terms of this Trust Agreement including, without limitation, payment of administrative, accounting, legal, professional, and management costs and honoraria for Trustees;
- (c) **“Authorized Investment”** means an investment purchased with funds from the Trust Account as selected by the Investment Manager(s) from those investments listed in Schedule “A” or the Investment Policy Statement, as is applicable, and in accordance with this Trust Agreement;
- (d) **“Bankruptcy and Insolvency Records Search Report”** means a written report from the superintendent of bankruptcy (Canada) informing as to the bankruptcy status of the named individual;
- (e) **“Beneficiary”** means Nak’azdli Whut’en as represented by Council;
- (f) **“Capital”** means all monies and receivables now or hereafter on deposit in the Trust Account, which for greater certainty includes any and all investment instruments in which the monies in the Trust Account may from time to time be invested hereunder as well as any capital contributions as directed by Nak’azdli Whut’en and any additions or accruals thereto;
- (g) **“Capital Encroachment”** means making withdrawals from Capital in accordance with 19;
- (h) **“Code of Ethics”** means the Code of Ethics of Nak’azdli Whut’en as it is amended from time to time and which is attached to this Trust as Schedule “E”;
- (i) **“Consult”** or **“Consultation”** means to provide:
 - (i) notice of the matter in sufficient form and detail to allow the party being consulted to prepare views on the matter;
 - (ii) a reasonable period to prepare those views;
 - (iii) an opportunity to present those views to the decision-maker; and
 - (iv) full and fair consideration by the decision-maker of any views so presented.
- (j) **“Council”** means the duly elected Chief and Council of Nak’azdli Whut’en;
- (k) **“Court”** or **“court”** means a court of competent jurisdiction in relation to the subject matter at issue, and includes a court established by Nak’azdli Whut’en;

- (l) **“Custodian”** means a Financial Institution retained by the Trustees to have custody of the Trust Property;
- (m) **“Criminal Records Check”** means a criminal records check in accordance with the Royal Canadian Mounted Police’s “Dissemination of Criminal Record Information Policy”, made pursuant to the “Ministerial Directive Concerning the Release of Criminal Record Information by the RCMP”, as may be amended from time to time;
- (n) **“Encroachable Capital”** means that Capital in the Capital Account which is in excess of 115% of the Minimum Amount;
- (o) **“Effective Date”** means March 15, 2016;
- (p) **“Elder Advisor”** means an Elder appointed by Council pursuant to Article 11;
- (q) **“Financial Institution”** means any bank or trust company that is a member institution for which the Canada Deposit Insurance Corporation has a duty to insure deposits pursuant to the *Canada Deposit Insurance Corporation Act*, (Canada) or a credit union defined under the *Financial Institutions Act* (BC) for which the Credit Union Deposit Insurance Corporation of British Columbia has a duty to guarantee deposits pursuant to the *Financial Institutions Act* (British Columbia);
- (r) **“Fiscal Year”** means the calendar year;
- (s) **“Goal Year”** means the Fiscal Year in which the Capital Account first reaches the value of the Minimum Amount;
- (t) **“Investment Policy Statement”** has the meaning ascribed to it in Article 14;
- (u) **“Legacy Account”** means the account established pursuant to Article 18;
- (v) **“Member”** means a person whose name is duly registered on the list of Members of the Nak’azdli Whut’en in accordance with the Membership Code of Nak’azdli Whut’en;
- (w) **“Minimum Amount”** means the amount described in Article 16.3;
- (x) **“Nak’azdli Whut’en Trust”** means the Trust created pursuant to the terms of the Original Trust Agreement and amended and restated pursuant to this Trust Agreement;
- (y) **“Net Income”** means, for any year, all of the income earned and net capital gains realized from the Trust Property in that year, less the aggregate for that year of:

- (i) subject to Article 15, Trust Development Expenses and Authorized Expenses incurred in and about the management of the Trust Property as determined by the Trustees to be chargeable to income;
 - (ii) any other sums in each year as the Trustees in their discretion consider to be proper allowances, reserves, deductions, disbursements and outgoings in accordance with generally accepted accounting principles; and
 - (iii) the sum that the Trustees, in their discretion, consider necessary and advisable from time to time as being on account of depreciation, depletion, deterioration or obsolescence of any of the assets of the Trust Property;
- (z) **“Own-source Revenue Agreement” or “ORA”** means an agreement between a third party and Nak’azdli Whut’en under which the third party is required to make payments to Nak’azdli Whut’en, but does not include:
 - (i) the Economic and Community Development Agreement dated June 12, 2012, between the Government of British Columbia and Nak’azdli Whut’en; and
 - (ii) any other agreement specified in a resolution of Council;
- (aa) **“Per Capita Distribution”** means a payment or distribution of Trust Property or a benefit therefrom directed to one or more Members but does not include benefits arising from programs or projects which fulfill one of more Purposes of the Trust;
- (bb) **“Purposes of the Trust” or “Purposes”** means those Purposes as set out in 3.2;
- (cc) **“Services Agreement”** means an agreement with a party retained or hired by the Trustees pursuant to this Trust which:
 - (i) sets out the duties, responsibilities and other contractual matters relevant to the engagement; and
 - (ii) requires the party retained or hired to be bound by the Trust, the Code of Ethics and all policies of the Trust;
- (dd) **“Small Disbursement”** means a payment under one thousand (\$1,000) dollars made to Council on behalf of the Beneficiary or any third parties, consistent with the Purposes of the Trust.
- (ee) **“Strategic Plan”** means a plan, consistent with the Purposes of the Trust, developed by Council in Consultation with the Members for a period of not fewer than five (5) years, to guide the use of Trust Property received by Nak’azdli Whut’en from the Trust;
- (ff) **“Trust Account”** means collectively the accounts established by the Trust for the management of Trust Property to which funds have been deposited or transferred

under this Agreement, but does not include accounts not under the direct control of the Trustees;

(gg) **“Trust Administrator”** means:

- (i) a person who has a Chartered Professional Accounting designation or an accounting designation from the Aboriginal Financial Officers Association of Canada; or
- (ii) a professional services firm, which provides as its primary service advice on accounting through persons who have a Chartered Professional Accounting designation or an accounting designation from the Aboriginal Financial Officers Association of Canada; or
- (iii) an entity which can provide administrative, book and record keeping services and which employs individuals who have a Chartered Professional Accounting designation or an accounting designation from the Aboriginal Financial Officers Association of Canada; and
- (iv) is independent of the Trust, the Trustees, and any co-management or third party management services provided to Nak’azdli Whut’en;

(hh) **“Trust Development Expenses”** means the expenses of Nak’azdli Whut’en approved by Council incurred in establishing this Trust;

(ii) **“Trust Property”** means Capital and, without limitation, all income realized thereon but excluding all amounts which have been paid or disbursed therefrom whether out of income or Capital in the normal course of the administration of or pursuant to the provisions of this Trust Agreement;

(jj) **“Trustee”** means a Member appointed in accordance with Article 5 or Article 7;

(kk) **“Trustee Appointment Committee”** means the committee pursuant to Article 4;

(ll) **“Uncooperative Trustee”** means a Trustee who, has acted incompetently, or has breached the Code of Ethics or is otherwise unwilling, unable or unreasonably refuses to act or to continue to act cooperatively with the other Trustees and whose conduct hampers the efficient administration of the Trust;

(mm) **“Unencumbered Payment”** means:

- (i) a payment made by any third parties to Nak’azdli Whut’en which is not subject to any right, title or interest of any party other than that of Nak’azdli Whut’en; or
- (ii) a payment made by any third parties to Nak’azdli Whut’en which was initially subject to right, title or interest of a party or parties other than

Nak'azdli Whut'en and for which the right, title or interest of the other party or parties has subsequently been entirely extinguished; and

(nn) **“Youth Advisor”** means a person who is at least 16 years of age appointed by Council pursuant to Article 11.

2. Creation of the Nak'azdli Whut'en Trust

- 2.1 Nak'azdli Whut'en settled the amount of fifty dollars (\$50.00) on the Trustees on the Effective Date to hold in trust on the terms set out in this Agreement, with the intent of establishing the Nak'azdli Whut'en Trust.
- 2.2 The Settlor and the Beneficiary of the Nak'azdli Whut'en Trust is Nak'azdli Whut'en.
- 2.3 The Trustees hereby agree to hold the Trust Property in trust for the benefit of the Beneficiary, subject to the terms set out in this Agreement.
- 2.4 Nak'azdli Whut'en acknowledges that any Trust Property received by it as Beneficiary of the Nak'azdli Whut'en Trust is to be applied by it, or directed by it, only for the Purposes identified in this Trust Agreement, in accordance with the Strategic Plan. All beneficial right, title, interest and benefit in and to the Trust Property shall vest in the Beneficiary.
- 2.5 Subject to the terms hereof, all legal right, title and interest in and to the Trust Property shall vest in the Trustees and there shall be no power of revocation.

3. Use of Trust Property and Purposes of the Trust

- 3.1 Trust Property can be used only for the following:
 - (a) for the Purposes set out in 3.2;
 - (b) to pay Authorized Expenses; and
 - (c) to make Authorized Investments.
- 3.2 The Purposes of the Trust are, subject to the terms of the Trust, to provide Trust Property to the Beneficiary to enable it to:
 - (a) provide funding to assist Members to pursue education and training, and where appropriate, for the development of education and training programs within Nak'azdli Whut'en;
 - (b) provide funding to assist in providing care and services to the elders of Nak'azdli Whut'en;
 - (c) in conjunction with programs offered by other parties, to assist with funding to create and promote economic development, including entrepreneurship, for Nak'azdli Whut'en and its Members;

- (d) provide funding to promote and support health, safety and well-being of Members, including providing supplementary or enhanced health care related services or facilities for Members;
- (e) provide funding to assist in meeting the social needs of Members;
- (f) provide funding to assist in establishing and promoting sport and recreational programs for Nak'azdli Whut'en;
- (g) provide funding to assist with the construction or improvement of facilities, including infrastructure, owned or operated by Nak'azdli Whut'en;
- (h) provide funding to assist in the promotion and the preservation, study and learning of the language and cultural heritage of Nak'azdli Whut'en;
- (i) provide funding to assist in the provision of housing to Members;
- (j) provide funding to assist negotiations or litigation where an issue in the negotiations or litigation is the protection or advancement of Treaty, Inherent or Indigenous rights;
- (k) provide funding to assist programs or initiatives which promote justice, security and protection for Members;
- (l) provide funding to assist historical and legal research into land and other claims that Nak'azdli Whut'en may have;
- (m) provide funding to assist the establishment of programs which protect, maintain or enhance the natural environment of the reserve or other lands owned or controlled by Nak'azdli Whut'en or that are within the traditional territory of Nak'azdli Whut'en;
- (n) provide funding to assist in the acquisition of land, the ownership of which will provide a tangible benefit to Nak'azdli Whut'en;
- (o) provide funding to assist in enhancing Nak'azdli Whut'en governance and administration;
- (p) provide funding to assist in enhancing management of land owned or controlled by Nak'azdli Whut'en or that are within the traditional territory of Nak'azdli Whut'en;
- (q) provide funding to assist in emergency disaster relief; and
- (r) provide funding for any other purpose which, in the opinion of Council, is in the best interests of Nak'azdli Whut'en, provides a tangible benefit to Nak'azdli Whut'en and is consistent with the Purposes set out in this paragraph.

- 3.3 No funds shall be withdrawn from the Trust Account except for uses authorized under this Article and only by means of a decision duly documented in the minutes of a Trustee meeting and evidenced by an executed Trustee Resolution from such Trustee meeting, in the form provided in Schedule “D” hereto.

4. Trustee Appointment Committee

- 4.1 Whenever there is a vacancy amongst the Trustees or when the term of one or more Trustees will expire within 60 days, Council shall appoint a Trustee Appointment Committee comprised of five (5) Members. The Committee members should have experience in business and finance and be familiar with the culture and traditions of Nak’azdli Whut’en. Not more than one (1) member of the Committee may be a member of Council.
- 4.2 Members of the Trustee Appointment Committee are bound by the Code of Ethics.
- 4.3 The Trustee Appointment Committee shall:
- (a) receive, review and consider applications by eligible Members seeking appointment as Trustee;
 - (b) appoint eligible Members as Trustee(s);
 - (c) advise Council in writing of these appointments; and
 - (d) keep minutes of meetings and decisions made during the course of Committee meetings.

5. Trustees

- 5.1 There shall be five (5) Trustees for the Nak’azdli Whut’en Trust, a majority of whom must be resident within the traditional territory of Nak’azdli Whut’en. A Trustee must be a Member.
- 5.2 A Member who:
- (a) is at least nineteen (19) years of age;
 - (b) has not been removed as a Trustee under 6.1(b), (e), (f) or (k) within the thirty-six (36) month period immediately previous to the application for appointment;
 - (c) is not an undischarged bankrupt or insolvent, as those terms are defined in the *Bankruptcy and Insolvency Act* (Canada) or in any other jurisdiction;
 - (d) has not been adjudged or declared to be mentally incompetent or incapable of managing his or her own affairs by a court of competent jurisdiction;
 - (e) has either successfully completed training at the introductory level from the National Aboriginal Trust Officers Association of Canada (NATOA) or from such

successor organization or other qualified training centre that may exist from time to time, or agrees in writing to do complete the course within twelve (12) months of being appointed as a Trustee;

- (f) subject to 5.10, has not been convicted of an offence under the *Criminal Code* (Canada) or an offence in any other jurisdiction which, if committed in Canada, would be an offence under the *Criminal Code*, (Canada);
- (g) is not a party in a court proceeding in which Nak'azdli Whut'en or the Trust is a party, other than as a representative of the Trust enforcing the terms of the Trust or an agreement made thereunder,

is eligible to apply for and be appointed as a Trustee.

5.3 A member of Council cannot be a Trustee.

5.4 A Member who meets the criteria in 5.2 and 5.3 and who is seeking appointment or reappointment as Trustee shall submit an application to the Trustee Appointment Committee in the form and with such information that the Trustee Appointment Committee deems necessary in order to assess the qualifications of the applicant.

5.5 The initial Trustees shall establish and publish the process for the consideration of applications and determining who shall be appointed as Trustees.

5.6 Subject to 5.7, Trustees shall be appointed for four (4) year terms.

5.7 Subject to 5.8, all Trustees are eligible to serve two (2) consecutive terms.

5.8 The Trustee Appointment Committee, in Consultation with Council, may allow a Trustee to serve more than two (2) consecutive terms.

5.9 The Trustee Appointment Committee, shall, prior to appointing a person as a Trustee, obtain, with respect to and with the cooperation of the potential Trustee:

- (a) a Criminal Records Check; and
- (b) a Bankruptcy and Insolvency Records Search report from the Superintendent of Bankruptcy.

5.10 If the Criminal Records Check discloses that the individual has been convicted of an offence under the *Criminal Code* (Canada) or an offence in any other jurisdiction which, if committed in Canada, would be an offence under the *Criminal Code*, (Canada) then the following applies:

- (a) in the event that the individual has been convicted of an indictable offence involving theft, conversion, fraud, forgery or any other related offense, that individual shall not be entitled to take office;

- (b) in the event that the individual has been convicted of any other offence under the *Criminal Code* (Canada) or an offence in any other jurisdiction which, if committed in Canada, would be an offence under the *Criminal Code*, (Canada), the Trustee Appointment Committee, in its discretion, may determine that despite the conviction, the individual is be entitled to take office.
- 5.11 Eligible Members whose convictions are considered by the Trustee Appointment Committee and Council to have been committed in defense of Treaty or Indigenous rights and title shall not be prevented from being selected as Trustee nor shall such convictions require the removal of such a Trustee.
- 5.12 Prior to taking office as a Trustee, the Member must agree in writing to come a party to, and be bound by, the terms of the Code of Ethics and the terms of this Trust and to faithfully and to the best of his or her abilities carry out the duties of Trustee, by signing the Trustee's Undertaking in Schedule "B".
- 5.13 Each Trustee in his or her own personal capacity has the obligation to ensure that he or she complies with all laws to which he or she may be subject, whether in Canada or otherwise, with respect to their personal and business affairs, and not to subject the Trust to any potential liability as a result of the failure to so comply. Trustees shall indemnify and hold harmless the Trust and the other Trustees from all costs, charges and expenses whatsoever arising from any claims arising the Trustee's personal and business affairs.

6. Removal of Trustees

- 6.1 A Trustee shall serve as Trustee until his or her term expires or until he or she:
 - (a) is insolvent or is declared or adjudged to be bankrupt;
 - (b) subject to 6.2, is convicted of an offence under the *Criminal Code* (Canada) or an offence outside Canada which, if committed in Canada, would be an offence under the *Criminal Code* (Canada);
 - (c) fails to complete the training required in 5.2(e);
 - (d) is adjudged to be mentally incompetent or incapable of managing his or her own affairs by a court of competent jurisdiction;
 - (e) in any twelve (12) month period after his/her appointment as a Trustee, fails to attend three (3) meetings of the Trustees of which meetings the Trustee has received notice;
 - (f) fails to disclose his or her interest in a material contract as required in 21.1 or participates in a discussion or votes on any resolution contrary to 21.5;
 - (g) is elected to Council;

- (h) being a resident of the traditional territory of Nak'azdli Whut'en when appointed as a Trustee ceases to live within the traditional territory, with the result that a majority of Trustees no longer reside within the traditional territory;
 - (i) becomes a party to litigation involving Nak'azdli Whut'en or the Trust except as a representative of the Trust enforcing the terms of the Trust or an agreement made thereunder;
 - (j) resigns by delivery of a notice in writing to the other Trustees indicating an effective resignation date of not less than fourteen (14) days next following delivery;
 - (k) subject to 6.5, is determined to be an Uncooperative Trustee; or
 - (l) ceases to be a Member.
- 6.2 A Trustee who is convicted of an offence under the *Criminal Code* (Canada) or an offence outside Canada which, if committed in Canada, would be an offence under the *Criminal Code* (Canada), other than an offence set out in 5.10(a), may request of the Council that despite being convicted of an offence, that he or she be permitted to continue to act as a Trustee.
- 6.3 If a Trustee is considered by the majority of the other Trustees and Council to be an Uncooperative Trustee, the Trustees and Council may resolve to remove the Uncooperative Trustee by joint resolution. If the Trustees, exclusive of the Uncooperative Trustee, and Council do not agree on the removal of an Uncooperative Trustee, the Uncooperative Trustee may be removed by resolution of the remaining Trustees.
- 6.4 The resolution to remove a Trustee shall not be effective until the alleged Uncooperative Trustee has had an opportunity to respond to the reasons given for the intended removal.
- 6.5 A Trustee who has been removed pursuant to a decision under this Article may seek a review of the decision by an Arbitrator under Article 29. The Arbitrator may uphold the removal or reinstate the Trustee on such conditions as are appropriate in the circumstances.
- 7. Replacement of Trustees**
- 7.1 If there is a vacancy among the Trustees, Council shall appoint a Trustee Appointment Committee as provided for in Article 4, which shall appoint a replacement Trustee.
- 7.2 In the event the length of the remaining term of the Trustee being replaced is longer than six (6) months, the Trustee appointed to replace that Trustee shall serve out the term of the Trustee being replaced. Service for more than twelve (12) months shall count as one (1) term for the purpose of 5.7.
- 7.3 In the event the length of the remaining term of the Trustee being replaced is shorter than six (6) months, the Trustee appointed to replace that Trustee shall be appointed for a term of four (4) years.

8. Honoraria and Reimbursement of Trustee Expenses

- 8.1 The Trustees shall be paid honoraria for their services as Trustees and shall be reimbursed for reasonable expenses incurred by them in the performance of their duties, and approved in advance by a majority of the Trustees, in accordance with Schedule “C” of this Agreement.
- 8.2 The amounts for honoraria and reimbursement of expenses for Schedule “C” shall be established and thereafter amended from time to time, by resolution of the Trustees in Consultation with Council. Upon establishing the amounts and making any amendment to Schedule “C”, the Trustees shall:
- (a) immediately post Schedule “C” and any amendment on the websites, if any, of the Trust and Nak’azdli Whut’en; and
 - (b) report the amounts established and any amendments thereto at the next annual Nak’azdli Whut’en meeting at which the Trustees report on the activities of the Trust.

9. Duties and Powers of all Trustees

- 9.1 All Trustees have first and foremost, a duty of loyalty to the Trust and must act in the best interests of the Trust and the Beneficiary.
- 9.2 Without in any way limiting or derogating from the powers, authorities, discretions and immunities available to the Trustees, whether under any statute or at law or otherwise, the Trustees shall exercise the following duties:
- (a) to establish the Trust Account, comprised of the Capital Account and the Legacy Account, and other such accounts that the Trustees in their discretion may deem necessary from time to time for the management and investment of the Trust Property and to make such arrangements governing banking procedures as are consistent with this Agreement;
 - (b) to ensure that the arrangements governing banking procedures requires the approval of at least one (1) Trustee and the Trust Administrator for all transactions involving Trust Property;
 - (c) in Consultation with Council, establish the honoraria and reimbursement amounts for Schedule “C”;
 - (d) to enter into a Services Agreement with each professional advisor retained by the Trust;
 - (e) to provide orientation and training with respect to this Trust to newly appointed Trustees and to Council after each general election;

- (f) to immediately notify the Council of any breaches of this Agreement as soon as they become aware of such breaches;
- (g) to pay such honoraria and disbursements as are permitted by this Agreement;
- (h) to maintain a copy of all Trustee Resolutions;
- (i) to provide Council with a copy of all ledgers, registers and documents or recordings of transactions affecting the Trust Property upon request;
- (j) to accept any notice that may be required to be served on the Trustees;
- (k) to notify Council that a Trustee has ceased to be a Trustee as a result of any of the events set out in Article 6 and of the requirement to appoint a Trustee Appointment Committee to replace that Trustee(s);
- (l) with the assistance and advice of such investment advisors or managers as the Trustees deem appropriate, to invest Trust Property in accordance with Schedule "A" and the Investment Policy Statement;
- (m) to monitor the performance of all advisors and professionals retained by the Trust and take such steps that are necessary from time to time to correct deficiencies, if any, in their performance;
- (n) to hold meetings of the Trustees only as required but not fewer than three (3) times each year;
- (o) to respond to inquiries from Council and to make such reports to Council with respect to the Trust Property and management and administration thereof, as Council may reasonably request;
- (p) to submit to Council, within one hundred and twenty (120) days following the end of each Fiscal Year, an audit and annual report for the purposes of informing Council and Members about the status and expenditures of each Trust Account;
- (q) to present the annual report and the audit at the Annual General Assembly of Nak'azdli Whut'en each year;
- (r) to meet with Council at least one (1) other time during each fiscal year to provide Council with an update regarding the status and activities of the Trust;
- (s) to ensure that all actions being contemplated by the Trustees are in accordance with the Trust Agreement and that all uses of Trust Property are evidenced by Trustee Resolutions;
- (t) to develop policies and procedures:
 - (i) to govern the overall management of the Trust;

- (ii) to ensure that no funds are withdrawn, invested, transferred or expended from the Trust without the requirements and obligations set out in this Trust Agreement having first been met by the Trustees and any authorized recipient of Trust Property;
 - (iii) to ensure that Trust Property distributed for Purposes of the Trust is used for such Purposes and no other;
 - (iv) to ensure that the Trustees manage the Trust and Trust Property in a manner consistent with this Agreement;
 - (u) to add to the Capital of the Trust Property, at such times and in such amounts as requested by Council on behalf of the Settlor, or by the terms of this Trust;
 - (v) with the assistance of such professional advisors as are deemed appropriate, to become familiar with legislation and regulations as maybe required in the management of the Trust;
 - (w) to fulfill such other duties, do all such other things and execute such documents as may be required by the Trustees for the purpose of administering this Trust; and
 - (x) upon direction from Council, to obtain, at the expense of the Trust, bonding or security for the due and faithful administration of the Trust and/or errors and omission insurance.
- 9.3 Whenever the Trustees are required to attend a meeting of Members or Council, at least three (3) Trustees shall attend the meeting.
- 9.4 Without in any way limiting or diminishing the powers, authorities, duties, discretions and immunities available to the Trustees, whether under any statute or at law or otherwise, the Trustees may exercise the following powers:
- (a) to compromise, settle and adjust any claim or demand made against the Trust or Trust Property and to institute and defend proceedings at law and to proceed to the final determination thereof or compromise of the same;
 - (b) to select, retain and act upon the opinion or advice of, or information obtained from legal counsel, chartered accountants, certified general accountants, certified management accountants, investment managers, investment consultants, real estate appraisers, administrative assistants, agents or other advisors qualified in the field for which their advice and opinions are sought as the Trustees may deem;
 - (c) necessary from time to time for the purpose of discharging their duties hereunder, and may pay out of the Trust Property as expenses compensation to such advisors employed or retained by the Trustees. When retaining an advisor for a mandate of significance, the Trustees shall adhere to prudent commercial practices, including issuing requests for proposals where appropriate;

- (d) in accordance with transparent and fair hiring practices, to hire qualified staff to assist the Trustees in fulfilling the obligations of the Trust and to pay the reasonable salaries, wages, fees and costs for the service of such persons;
- (e) to consult with Council and Members as the Trustees deem necessary and appropriate;

9.5 In the event the Trustees must exercise any discretion on matters not included in this Trust Agreement or reasonably incidental to their Duties and Powers, the Trustees shall consult with Council prior to exercising such discretion.

10. Duties and Powers of Council

10.1 Without in any way limiting or derogating from the powers, authorities, discretions and immunities available to Council, whether under any statute or at law or otherwise, Council shall exercise the following duties under this Trust:

- (a) prior to being entitled to receive income under 17.2, to develop Strategic Plans, and to present such plans, when developed, to the Members for approval;
- (b) to settle on the Trust the amounts referred to 10.2;
- (c) to provide a copy of each ORA and settlement agreement upon execution thereof to the Trustees;
- (d) to Consultation with Trustees with respect to the honoraria and reimbursement amounts for Schedule “C”;
- (e) to assist the Trustees to organize and hold meetings of the Members as required under this Trust;
- (f) to participate in Consultations with Trustees and Members as required in this Trust;
- (g) to meet with the Trustees to review the audit, the investment report and the administration and management of the Trust including but not limited to reviewing the performance of all parties to the Trust Agreement and all professional advisors retained under the terms of the Trust Agreement, at least once per year or more frequently as required;
- (h) to ensure that all reports concerning the Trust that are provided to Council are available for inspection by the Members at the administrative offices of Nak’azdli Whut’en; and
- (i) to appoint a Trustee Appointment Committee when required by the terms of this Trust to do so.

10.2 Nak’azdli Whut’en may, in its discretion, settle on the Trust for the benefit of the Beneficiary any portion of the payments made by the Province to the Nak’azdli Whut’en

pursuant to the Economic and Community Development Agreement dated June 12, 2012, between the Government of British Columbia and Nak'azdli Whut'en.

- 10.3 Nak'azdli Whut'en shall settle on the Trust for the benefit of the Beneficiary, Unencumbered Payments received in respect of ORAs, and Unencumbered Payments received from government with respect to the settlement of claims based on Indigenous rights and title as follows:
- (a) during the first ten (10) years after the Effective Date, 80% of all such amounts;
 - (b) from the eleventh (11th) year after the Effective Date to the termination of the Trust, ninety (90%) of Unencumbered Payments received in respect of ORAs and (90%) of Unencumbered Payments received from government with respect to the settlement of claimed based on Indigenous rights and title.
- 10.4 The obligations under 10.3 apply only to ORAs which are entered into by Nak'azdli Whut'en after the Effective Date.
- 10.5 Nak'azdli Whut'en may, in its discretion, settle amounts in addition to those required under 10.3.

11. Elder Advisor and Youth Advisor

- 11.1 Council may appoint an Elder Advisor and Youth Advisor to the Trust, each of whom may:
- (a) provide advice to Trustees when requested;
 - (b) participate in meetings of the Trustees; and
 - (c) participate in Consultations as required in this Trust.
- 11.2 The Elder Advisor and the Youth Advisor shall be:
- (a) bound by the Code of Ethics; and
 - (b) entitled to honoraria and reimbursement of expenses in accordance with Schedule "C".

12. Trust Administrator

- 12.1 The Trustees shall select a Trust Administrator who shall fulfill the following duties:
- (a) to maintain the accounts of the Trust;
 - (b) be one (1) of at least two (2) persons jointly authorized in banking arrangements to approve any transactions involving Trust Property;
 - (c) to attend all meetings of the Trustees, either in person or by a form of telecommunication acceptable to the Trustees;

- (d) to maintain adequate records of all transactions affecting the Trust Property;
- (e) to provide monthly statements regarding each account of the Trust to the Trustees;
- (f) to ensure the Trustees receive quarterly investment reports;
- (g) to maintain the contact information for all Trustees;
- (h) together with the Trustees to provide orientation and training with respect to this Trust to newly appointed Trustees and to Council after each general election as appropriate;
- (i) to immediately notify the Council and the Trustees of any breaches of this Agreement of which the Trust Administrator is aware;
- (j) upon direction from the Trustees, to obtain, at the expense of the Trust, bonding or security for the due and faithful;
- (k) administration of the Trust and/or errors and omission insurance;
- (l) to maintain a copy of all Trustee Resolutions required for the administration of this Trust;
- (m) to accept any notice that may be required to be served on the Trustees; and
- (n) to provide the Trustees with a copy of all ledgers, registers and documents or recordings of transactions affecting the Trust Property upon request.

13. Custodian

- 13.1 The Trustees shall ensure that when the Trust owns securities that there is a Custodian, who shall:
- (a) hold the marketable securities;
 - (b) settle the trades as directed by the Trustees or any investment manager retained by the Trustees; and
 - (c) receive and disburse funds as directed by the Trustees.

14. Authorized Investments and Investment Policy Statement

- 14.1 “**Investment Policy Statement**” means the written statement reflecting the following criteria that the Trustees shall have regard to in investing the Trust Property in addition to any others that a prudent investor would consider relevant to the circumstances:
- (a) the investment of Trust Property with a view to obtaining a reasonable return while avoiding undue risk, having regard to the circumstances of the Trust;

- (b) a review of the Investment Policy Statement at reasonable intervals for the purpose of determining that the investments continue to be appropriate to the circumstances of the Trust;
 - (c) a consideration of the following matters, insofar as they are relevant to the circumstances of the Trust:
 - (i) the purposes and probable duration of the Trust, the total value of the Trust's assets and the needs and circumstances of the Beneficiaries;
 - (ii) the special relationship or value of an asset to the purpose of the Trust or one or more of the Beneficiaries;
 - (iii) the need to maintain the real value of the Capital or income of the Trust;
 - (iv) the need to maintain a balance that is appropriate to the circumstances of the Trust between,
 - (1) risk,
 - (2) expected total return from income and the appreciation of capital,
 - (3) liquidity, and
 - (4) regularity of income;
 - (v) the importance of diversifying the investments to an extent that is appropriate to the circumstances of the Trust; and
 - (vi) the role of different investments or courses of action in the Trust portfolio.
- 14.2 The Trustees shall, from time to time, prepare, monitor, and amend an Investment Policy Statement for the Trust setting out investment objectives, risk tolerance, and other investment parameters.
- 14.3 The Trustees shall not be limited to investments permitted by law for Trustees, but may invest in such manner and in such investments as they shall deem advisable, including investments in mutual funds, unit Trusts or any other pooled funds, provided that, in exercising their investment powers, the Trustees shall only invest in investments in which a prudent investor might invest and which are permitted by the Investment Policy Statement.
- 14.4 Until the Investment Policy Statement has been developed, the Trustees shall be permitted to purchase only those Authorized Investments listed in Schedule "A".

15. Authorized Expenses and Trust Development Expenses

- 15.1 Authorized Expenses and Trust Development Expenses shall be paid first from income earned on income, then from income, then from Capital.
- 15.2 The Trustees shall each Fiscal Year pay all Authorized Expenses, including taxes, if any, provided that such Authorized Expenses shall only be paid when:
- (a) detailed in an invoice and submitted to the Trust Administrator; or
 - (b) pursuant to a written contract or other arrangement signed by the Trustees; and
 - (c) in all cases, the expense has been included in an Annual Trust Operations Budget prepared and approved by the Trustees.
- 15.3 Subject to 15.2(a), the Trustees shall pay the Trust Development Expenses.

16. Capital Account

- 16.1 The Trustees shall establish the Capital Account into which ninety percent (90%) of the amounts contributed by Nak'azdli Whut'en the Band shall be deposited to be managed in accordance with this Agreement.
- 16.2 ~~Until the Capital Account has reached a value of twenty five million dollars ((2015) \$25,000,000), adjusted annually for inflation as measured by the Consumer Price Index for Canada as published by Statistics Canada, no income or Capital shall be spent or used except for Authorized Expenses and Trust Development Expenses.~~
- 16.2 Until the Capital Account has reached a value of twenty-five million dollars (\$25,000,000), no income or Capital shall be spent or used except for Authorized Expenses, Trust Development Expenses and Small Disbursements.
- 16.3 ~~Upon attaining the value referred to in 16.2, or the amount determined under 16.6, as the case may be, that amount, adjusted annually for inflation as measured by the Consumer Price Index for Canada as published by Statistics Canada, shall be maintained as the Minimum Amount in the Capital Account for the duration of this Trust.~~
- 16.3 Upon the Capital Account attaining the value of twenty-five million dollars (\$25,000,000), or the amount determined under 16.6, as the case may be (the year of which is referred to as the "Goal Year"), that amount, with adjustments annually after the Goal Year for inflation as measured by the 5-year rolling average of the Consumer Price Index for Canada as published by Statistics Canada, shall be maintained as the Minimum Amount in the Capital Account for the duration of this Trust.
- 16.4 The Trustees shall calculate the Minimum Amount annually and whenever a request under Article 19 is made.

16.5 The Trustees shall develop a plan to enable the Trust to maintain the Minimum Amount over the term of the Trust and to return to the Minimum Amount when it falls below that amount.

16.6 The Minimum Amount may be increased, but not decreased, by resolutions of the Trustees and Council and this Article shall apply to that increased amount.

17. Use of the Capital Account

17.1 The Trustees may, in Consultation with the Council, make Small Disbursements out of the Net Income prior to the Goal Year, in aggregate amounts not exceeding one thousand dollars (\$1,000) annually.

17.2 ~~Upon achieving the value referred to in 16.2~~ Subsequent to the Goal Year and subject to 16.3 and 16.5, the Trustees shall transfer the Net Income annually to Council on behalf of the Beneficiary for the implementation of the Strategic Plan.

17.3 The Trustees shall not transfer Trust Property to the Council on behalf of the Beneficiary if Trust Property has been used by Council for purposes not authorized by this Trust, until such time that the Council has rectified the inappropriate use of Trust Property to the satisfaction of the Trustees.

18. Legacy Account

18.1 The Trustees shall establish the Legacy Account into which ten percent (10%) of the amounts settled by Nak'azdli Whut'en ~~the Band~~ shall be deposited to be managed in accordance with this Agreement.

18.2 For the first twenty-five (25) years after the Effective Date, the Trustees shall not use or spend Trust Property in the Legacy Account except as permitted for Authorized Expenses and for Trust Development Expenses.

18.3 In the Fiscal Year following the 25th anniversary of the Effective Date, the Trustees shall Consult with the Members regarding their views on the appropriate use of the Trust Property in the Legacy Account for one (1) or more Purposes of the Trust in accordance with the Strategic Plan.

18.4 Following Consultation under 18.3, the Trustees shall, in Consultation with Council, determine the appropriate use of the Legacy Fund to fulfill one (1) or more Purposes of the Trust in accordance with the Strategic Plan.

19. Capital Encroachments

19.1 Subject to 16.2 and 16.3, the Trustees may encroach on Encroachable Capital (“**capital encroachment**”) in the Capital Account to fund projects which fulfill the Purposes of the Trust in accordance with the Strategic Plan, as follows:

(a) prior to making the request for a capital encroachment, the Trustees must have obtained appropriate financial advice as to the impact of the capital encroachment on the Trust and make that opinion available to Members and Council;

(b) ~~capital encroachments up to an aggregate amount of two hundred and fifty thousand dollars (\$250,000.00) of Encroachable Capital in any one year, may be made provided that the Trustees and Council have Consulted with the Members regarding the encroachment and the proposed use of funds; and~~

(b) capital encroachments up to an aggregate amount of two hundred and eighty thousand dollars (\$280,000.00), adjusted annually after the Goal Year for inflation as measured by the 5-year average of the Consumer Price Index for Canada as published by Statistics Canada, of Encroachable Capital in any one year, may be made provided that the Trustees and Council have Consulted with the Members regarding the encroachment and the proposed use of funds; and

(c) capital encroachments in excess of the amount permitted under 19.1(b) in any one year may be made provided that the request has been approved in accordance with Article 25.

19.2 ~~In lieu of a capital encroachment, the Trustees may pledge Encroachable Capital for security for a loan for a multi-year project(s) which fulfills a Purpose(s) of the Trust, provided that the aggregate amount so pledged together with the capital encroachments during the year does not exceed the limits set out in this Article, and in all other respects, the provisions of this Article apply to such pledges as though they were capital encroachments.~~

19.2 In addition to the capital encroachment, the Trustees may loan any or all of the Encroachable Capital to the Beneficiary, or pledge any or all of the Encroachable Capital as a security for a loan advanced by any third party to the Beneficiary (“additional capital encumbrance”), which fulfill the Purposes of the Trust in accordance with the Strategic Plan, as follows:

(a) prior to making the request for an additional capital encumbrance, the Trustees must have obtained appropriate business, legal, financial and tax advice as to the impact of the further capital encumbrance on the Trust and make the opinions obtained available to the Members and Council;

(b) the request must be approved in accordance with Article 25, with a minimum of 25% of Members who are eligible to vote cast ballot under 25.1(c);

(c) in the event of default by the Beneficiary with respect to a loan connected with an additional capital encumbrance, the Trustee may:

(i) redirect the Net Income entitlement of Council on behalf of the Beneficiary under 17.2 to offset the liabilities of the Beneficiary to the Trust as a result of the default and the amount offset pursuant to this paragraph shall satisfy

the obligations of the Trustees to transfer the Net Income annually to the Beneficiary under 17.2 to the extent of the amount redirected; and

- (ii) subject to approval by the Members in accordance with Article 25, forgive any liabilities of the Beneficiary to the Trust as a result of the default and treat the benefit obtained by the Beneficiary from such forgiveness as a capital distribution from the Trust.

20. Conduct of Meetings

20.1 The conduct of all meetings of the Trustees shall be governed by the following:

- (a) the quorum for meetings of Trustees shall be three (3) Trustees, a majority of whom must be Members;
- (b) the Youth Advisor and Elder Advisor may attend Trustees' meetings;
- (c) the Trustees may invite Council or Members to attend a portion or all of any meeting(s);
- (d) subject to 20.1(k), the Trustees may hold meetings where some or all of the Trustees may participate by telephone or other telecommunication facility which permits each Trustee to communicate with all other Trustees;
- (e) at the first meeting held in each year, the Trustees shall choose a Chairperson and a Vice Chairperson from among the Trustees;
- (f) the Chairperson or a majority of Trustees may call meetings of the Trustees as required;
- (g) the Chairperson shall chair meetings of the Trustees and the Vice Chairperson shall chair meetings in the absence of the Chairperson;
- (h) the Trustees shall use their best efforts to make decisions based upon a consensus, but if a consensus cannot reasonably be reached, then the Trustees shall decide the issue by way of a vote;
- (i) where a decision of the Trustees is determined by a vote, it shall require a majority of the Trustees at the meeting to vote in favor of the resolution;
- (j) minutes of decisions taken at all Trustee meetings shall be recorded in writing by the Trustees;
- (k) except in exceptional circumstances, meetings of the Trustees shall be on the Reserve lands of Nak'azdli Whut'en;

- (l) there shall be fourteen (14) days' advance written notice of the place, date and time of every meeting, to be given to all Trustees, the Elder Advisor and Youth Advisor, unless all Trustees agree in writing to shorter notice;
 - (m) there shall be fourteen (14) days' notice, posted in the office of the administration of the Trust and the Council, of meetings of the Trustees which have been determined by the Trustees to be open to Members;
 - (n) the Trustees may act either by an instrument in writing signed by the majority of the Trustees outside of a meeting, or by a resolution passed by a majority thereof at a meeting by telephone or other telecommunication facility, and decisions or acts of such a majority of the Trustees shall, for all purposes of this Trust, be deemed the decision or act of the Trustees. Every deed or instrument of every nature executed by the Trustees, for the time being in office shall, be as valid, effectual and binding as if executed by all; and
 - (o) all resolutions of the Trustees shall be reduced to writing in accordance with Schedule "D".
- 20.2 Where the application of Article 21 results in fewer than three (3) Trustees being eligible to decide a matter, the legal counsel for the Trust shall make a recommendation as to how the matter can be decided.
- 21. Conflict of Interest**
- 21.1 A Trustee who:
- (a) is a party to or has a familial relationship with a party to a material contract (for greater certainty, a material contract includes a proposed project for funding) of the Trust or to a proposed material contract of the Trust or which is being recommended; or,
 - (b) is a director, officer, partner, principal, sole proprietorship or employee or is related by blood or marriage to such a person where the company, partnership, sole proprietorship or related business is a party to a material contract or proposed material contract entered into in accordance with this Agreement; or
 - (c) has a relationship to a party to a material contract which may reasonably give rise to a perception of a conflict of interest,
 - (d) shall disclose in writing to the Trustees the nature and extent of his or her interest and have the same entered into the minutes of the Trustees.
- 21.2 Unless the contrary is demonstrated, it will be presumed that a familial relationship exists between a Trustee and the following persons: common law or lawful spouse, son, daughter, brother, sister, grandparent, aunt, uncle, first cousin, foster parent, foster child, adopted child, step-child and step-parent.

- 21.3 The disclosure required under 21.1 shall be made:
- (a) at the meeting at which a proposed contract is first considered by the Trustees;
 - (b) if the Trustee was not then interested in a proposed contract, at the first meeting after the Trustee becomes so interested;
 - (c) if the Trustee becomes interested after a contract is made, at the first meeting after the Trustee becomes so interested; or,
 - (d) if a person who is interested in a contract later becomes a Trustee, at the first meeting after the person becomes a Trustee.
- 21.4 Where a disclosure is made under 21.1, the Trustees may determine that the relationship is not one which gives rise to a conflict of interest so as to disentitle the Trustee from participating in the discussion and vote with respect to the material contract.
- 21.5 Subject to 21.4, a Trustee described in 21.1 may not participate in any discussion of the contract nor vote on any resolution to approve the contract.
- 21.6 A material contract involving this Agreement between the Trustees and one (1) or more of the Trustees, or between the Trustees and a company or organization of which one (1) or more of the Trustees is a partner, shareholder, employee or employee of a related company, director or officer, or in which one (1) or more of the Trustees has a material interest, is neither void or voidable by reason of that relationship or by reason only that a Trustee with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of Trustees that authorized the contract if the Trustee disclosed his or her interest as required above and the contract was approved by the Trustees and was reasonable and fair to Members of the Nak'azdli Whut'en at the time it was approved.
- 21.7 The Trust Administrator, and all other advisors and consultants ("advisors") who provide advice to the Trustees must provide a written statement to the Trustees within sixty (60) days of the start of each Fiscal Year outlining any conflict of interest or potential conflict of interest that has or might arise due to other services offered by the advisor or any of its related companies or entities and this written statement shall be entered into the minutes and presented at the next meeting of Trustees. The advisors shall forthwith report an actual or potential conflict of interest which arises and of which the Trustees were not previously informed.
- 21.8 A dispute as to whether a conflict of interests exists in a particular circumstance shall be referred to the legal counsel for the Trust for resolution.

22. Prohibitions and Protective Measures

- 22.1 No Trust Property shall be applied or distributed by the Trustees or, if received by the Beneficiary, used by the Beneficiary, directly or indirectly:

- (a) to pay the debt or deficit which occurs as the result of ordinary operations of Council;
 - (b) to pay a debt of Council except as may have been authorized under 19.2;
 - (c) to make a Per Capita Distribution;
 - (d) to provide loans to any Member(s) except through a program managed by Council which is available to all Members; or
 - (e) to replace or substitute funding for programs or services which government is required to fund by way of treaty or other agreement.
- 22.2 Despite 22.1(c), the Beneficiary may develop and fund programs with Trust Property, consistent with the Purposes of the Trust, which provide benefits directly to all Members or certain specified groups of Members.
- 22.3 Benefits to individual Members from programs under 22.2 are not Per Capita Distributions.
- 22.4 Except as provided for in 19.2, the Trustees shall not mortgage, pledge, assign, encumber or grant a security interest of any kind whatsoever against the Trust Property.

23. Audit

- 23.1 Each year the Trustees shall appoint an Auditor who shall conduct a consolidated audit of the accounts of the Trust, in accordance with generally accepted auditing principles.
- 23.2 The Auditor shall be required by the Trustees to submit its report to Council and the Trustees within one hundred and twenty (120) days of the end of each Fiscal Year, and if requested by the Trustees, attend to a meeting of the Members to explain the audit and answer questions arising therefrom.
- 23.3 Any Member, at the expense of the Beneficiary, shall be entitled to receive a copy of the annual consolidated audit of the accounts of the Trust on request and without charge.

24. Amendments to Trust Agreement

- 24.1 This Trust Agreement shall not be amended or varied except as expressly provided herein.
- 24.2 This Trust Agreement shall not be amended with respect to the following:
- (a) who the Beneficiaries of the Trust are;
 - (b) Article 3 - Use of Trust Property and Purposes of the Trust;
 - (c) Article 22 - Prohibitions and Protective Measures;
 - (d) Article 23 - Audit;

- (e) Article 24 - Amendments to the Trust Agreement;
- (f) Article 25 - Community Approval Process; and
- (g) Article 27 - Termination

24.3 Amendments to Articles 16, 17, 18 and 19 may be made providing such amendments:

- (a) are approved by Members in a vote conducted pursuant to Article 25; and
- (b) a minimum of 25% of Members who are eligible to vote cast ballots and of those, a majority cast ballots in favour of the proposed amendment.

24.4 Amendments to this Trust:

- (a) for the purpose of facilitating the efficient management or operation of the Trust;
- (b) to remove any conflicts or inconsistencies which may exist between any of the terms of this Trust and any provision of any applicable law or regulation;
- (c) to make changes or corrections required for the purposes of curing or correcting typographical error, clerical omission, mistake, manifest error or any ambiguity arising from defective or inconsistent provisions in this Trust;
- (d) changes necessitated by changes in the law;
- (e) changes in the status of the Beneficiary which require amendment in order to comply with that change; or
- (f) to ensure protection from taxation,

may be made by the Trustees, after:

- (g) receiving a written legal opinion explaining the legal implications of the proposed amendment and that the amendment does not substantially alter the rights of a party to the Trust;
- (h) receiving a written opinion from an appropriate financial advisor explaining the financial implications of the proposed amendment; and
- (i) Consultation with the Council.

24.5 The following Schedules may be amended by the Trustees after Consultation with Council:

- (a) Schedule "A" Authorized Investments;
- (b) Schedule "C" Honoraria; and
- (c) Schedule "E" Code of Ethics.

- 24.6 Except as otherwise provided, this Trust may be amended upon approval by the Members in accordance with Article 25.

25. Community Approval Procedure

- 25.1 Where approval of the Members is required under this Trust, the following process shall be followed:

- (a) Members shall be given 30 days written notice that a vote is to be taken on a date fixed in the notice, which notice shall set out:
 - (i) the decision that Members are being asked to make;
 - (ii) sufficient detail of the issues to reasonably inform Members about the decision to be made;
 - (iii) the date on which the Trustees and Council will hold an information meeting to discuss the decision to be made;
 - (iv) the date the vote will be taken;
 - (v) a procedure by which mail-in ballots will be accepted;
 - (vi) such other information as is required to ensure that each Member is adequately informed about the decision and how to cast a ballot;
- (b) all Members are entitled to be heard at the information meeting;
- (c) votes will be taken by secret ballot; and
- (d) except as required in 24.3(b), decisions will be by majority vote of those Members who cast a vote.

26. Notice

- 26.1 Whenever notice must be given in this Agreement to parties, such notice shall be served personally or shall be sent by prepaid recorded delivery or by facsimile or by email transmission at the following addresses or numbers:

- (a) to Nak'azdli Whut'en at the following address:

Nak'azdli Whut'en
120 Highway 27
Fort St. James BC V0J 1P0
Email:
Facsimile: 250-996-8010

- (b) to the Trustees at the following address:

Nak'azdli Whut'en Trust
120 Highway 27
Fort St. James, BC V0J 1P0
Email:
Facsimile:

26.2 Notice provided in accordance with 26.1 shall be deemed to have been received by the addressee upon personal service or delivery, and twenty-four (24) hours after electronic confirmation that notice sent by facsimile or email transmission has been received.

26.3 In the event of interference, disconnection or delay of telecommunications services, all notices shall be served personally or sent by prepaid recorded delivery.

27. Termination

27.1 The term of this Agreement shall commence on the Effective Date and this Agreement may only be terminated in the following circumstances:

(a) at any time after the expiration of not less than twenty (25) years from the Effective Date, the Trust Property may be transferred to a new trust established for the benefit of the Beneficiary provided that the terms of the new trust have been approved by the Members in accordance with Article 25 and includes the provisions of Articles 22, 23 and 24; or

(b) at any time after the expiration of not less than forty (40) years from the Effective Date, the Trust may be terminated upon the following conditions having been first been met:

(i) the Trustees, in Consultation with Council and Members shall prepare a plan outlining how the Trust Property will be used for the benefit of the Beneficiary; and

(ii) the plan shall be approved by the Members in accordance with 25.

27.2 This Trust, unless terminated sooner in accordance with 27.1, shall terminate eighty (80) years after the Effective Date.

27.3 Upon termination of this Trust under 27.1(b) or 27.2, the Trust Property will be returned to the Settlor, or, if approved by the Members, settled in a new trust, providing that in either case, the Trust Property shall be used for the benefit of the Beneficiary.

28. Protection and Indemnification of Trustees

28.1 The Trustees shall have no responsibility or liability for losses to the Trust arising from the specific investment of Trust Property in Authorized Investments other than to ensure such investments comply with the Investment Policy Statement.

- 28.2 Provided that the Trustees have complied with the terms of this Trust when using or advancing Trust Property, and in the absence of knowledge that Council or any other authorized recipient intends to misuse Trust Property advanced under the Trust, the Trustees are not responsible for funds once they are properly transferred under this Trust.
- 28.3 It is understood and agreed that each and every Trustee of this Trust shall be deemed to have assumed his office (including successor Trustees) on the express understanding, agreement and condition that every Trustee of this Trust from time to time, and his/her heirs, executors, administrators and estate and effects respectively shall from time to time, and at all times be indemnified and saved harmless out of the funds of the Trust from and against all costs, charges and expenses whatsoever which are brought, commenced, or prosecuted against him/her for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him/her in or about the execution of the duties of his/her office, and also from and against all other costs, charges and expenses he/she sustains or incurs in or about or in relation to the affairs of the Trust, except such costs, charges or expenses as are occasioned by his/her own wilful neglect or deliberate default, and the Trustees shall not be liable for any error in judgment.
- 28.4 The Trustees may rely and act any statement, advice or report prepared by a professional retained by the Trustees and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement, opinion or report, providing it was reasonable at the time to rely on the statement, advice or report.
- 28.5 No Trustee shall be liable for acts, omissions, receipts, neglects or defaults of any other Trustee or person, firm or corporation employed or engaged by the Trust, or for joining in any receipt of or act of conformity, or for any loss, damage or expense occasioned by the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be placed out or invested, or for any loss or damages arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on his/her part, or for any other loss, damage or misfortune which may happen in the execution of the duties of his/her respective office or trust, or in relation thereto, unless the same shall happen by or through his/her own wilful neglect or deliberate default, and he/she shall be entitled to rely upon the defence of good faith.
- 28.6 The Trustees jointly shall have a first and paramount lien charged on all of the assets from time to time comprising the Trust as security to them for the payment of all sums and monies which the Trust is charged with paying pursuant to the indemnities and protection of their personal estates as provided in this Article and elsewhere in this Trust Agreement. Such lien shall extend to cover and include the Capital of the Trust as well as the Income therefrom and the future Income of the Trust. For the purpose of enforcing such lien, and in the event that the cash, or income or capital of the Trust in the hands of the Trustees shall at any time, or from time to time, be insufficient for the payment of monies properly due to the Trustees as in this Indenture provided, or as by the law provided, then, in each such event, and from time to time, the Trustees shall be entitled to sell all or such portion

of the Trust Property as may be necessary to pay and discharge the monies so payable, and to utilize the proceeds of any such sale for such purpose.

- 28.7 Should the Trustees, for any reason, fail to assess or report or pay any taxes that may be subject to assessment or payment during the currency of this Trust, and for which the Trust might be responsible, the Trustees shall not be liable for any such failure, and in the event that the Trustees should be called upon to pay any such taxes, or penalties, or other charges thereon, any such money so paid out by the said Trustees shall be returned to them out of the Income of the Trust, and if the Income has been expended by the Trustees before such payment or disbursement, then and in that event there shall be refunded to the Trustees out of the Capital of the Trust all such monies paid out and expended by them. This provision for indemnity and reimbursement shall also extend to and apply to any other fines, levies, assessments and damages levied against the Trustees or the Trust, and to any matter or thing done or omitted to be done in connection with the management and operation and administration and carrying out of this Trust.
- 28.8 The Trustees shall not be personally liable for any monies to become due or for any claims against the Trust or for any investment executed by the Trustees under the provisions hereof, but the Trustees shall have the power to bind the Trust estate without rendering themselves personally liable.
- 28.9 Nothing herein contained shall be construed or interpreted to require or authorize the Trust to pay or indemnify a Trustee for any fines, costs, penalties, forfeitures or assessments arising from the Trustee's personal obligations to report to any entity to which the Trustee is obliged to report under the laws of Canada or such other jurisdiction to which the Trustee is subject.

29. Mediation and Arbitration

- 29.1 This Article applies to the following:
- (a) a dispute between the parties as to the interpretation or application of a provision of this Trust;
 - (b) a question as to whether one (1) or more of the Trustees, the Beneficiary, or Council has failed to fulfill any obligations of this Trust;
 - (c) a review under 6.5; and
 - (d) a dispute, difference, or question among the parties to this Trust concerning matters not specifically provided for in this Trust.
- 29.2 Except a review pursuant to 6.5, which shall proceed directly to binding arbitration, disputes referred to this Article for resolution or determination will progress through the following steps:
- (a) informal discussion, involving such advisors as may be appropriate;

- (b) mediation;
 - (c) binding arbitration; and
 - (d) commencement of judicial proceedings in accordance with this Article.
- 29.3 At all stages of the process under this Article, the parties can involve such advisors as are appropriate to the circumstances. The costs of such advisor(s) shall be borne by the party retaining the advisor(s).
- 29.4 Despite 29.3, and except in respect of judicial proceedings, a mediator or an arbitrator, as the case may be, may determine that the costs of any advisors be paid by the Trust and may, where appropriate, require that those costs be paid in advance.
- 29.5 Nothing in this Article prevents a party from commencing judicial proceedings at any time:
- (a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
 - (b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the dispute under this Article.
- 29.6 If an agreement has not been concluded through informal discussions within thirty (30) days, or such other period as agreed by the parties, a party may deliver a notice to the other party to proceed to mediation.
- 29.7 Upon receiving a request from a party to proceed with mediation, the parties will agree on a mediator within fourteen (14) days.
- 29.8 In the absence of agreement under 29.7, the parties may request an alternate dispute resolution organization to recommend three (3) mediators and the parties will agree on a mediator within seven (7) days. In the absence of agreement, a party may apply to the court of competent jurisdiction to appoint a mediator.
- 29.9 The mediator will, without delay, consult with the parties and arrange for the commencement of the mediation.
- 29.10 Unless the parties agree otherwise the mediation will be terminated within thirty (30) days of its commencement.
- 29.11 Upon termination of the mediation proceedings, the mediator will submit a mediation report to the parties.
- 29.12 Unless the parties agree otherwise, the mediation report will be:
- (a) confidential;
 - (b) non-binding on the parties; and

(c) without prejudice.

- 29.13 Costs, including the remuneration and expenses of the mediator, will be shared equally among the parties. Each party will bear its own costs to participate in a dispute resolution process.
- 29.14 Unless a provision in this Agreement requires a dispute to be resolved pursuant to this Article, arbitration may only be initiated if a dispute has not been resolved through informal discussion or mediation. A party seeking to proceed to arbitration will give notice of its intention to the other party.
- 29.15 In the event a dispute proceeds to arbitration, the parties will select an arbitrator by agreement. If the parties are unable to agree upon the selection of an arbitrator, an application will be made to a court of competent jurisdiction to appoint an arbitrator.
- 29.16 An individual who has acted as mediator in a dispute cannot act as an arbitrator for that dispute, except with the consent of the parties.
- 29.17 An arbitrator may grant any person that is not a party, on application and on such terms as the arbitrator may determine, intervenor status if, in the opinion of the arbitrator, the interest of that person may be directly affected by the arbitration.
- 29.18 Except as reasonably required for the purpose of enforcement of the award or determination of the arbitrator, the details and information disclosed at the arbitration shall be held confidential by the parties and the arbitrator.
- 29.19 The award, order or determination which shall be made by the arbitrator, shall be absolutely final, conclusive and binding upon the parties and their respective heirs, executors, administrators, successors and assigns. The arbitrator shall have the full, power and authority to hear and determine the resolution of the applicable dispute, difference or question, and to fix the costs of the arbitration and there shall be no appeal from such decision. The arbitration shall take place in accordance with *The Arbitration Act* (British Columbia), as revised, except where otherwise expressly provided herein.
- 29.20 Each party acknowledges and agrees that, notwithstanding the within section, each party shall be entitled to obtain relief by way of a temporary or permanent injunction, in addition to any and all other legal or equitable remedies available to each party, to enforce their respective obligations under this Trust Agreement.

30. Enforcement

- 30.1 Notwithstanding anything contained herein, and subject to other rights of enforcement at law and the rights of others at law to enforce the terms hereof, in the event of non-performance by the Trustees or Council of their respective obligations and duties hereunder Council or the Trustees, as the case may be, shall have the right to apply to a court of competent jurisdiction to enforce the Trust according to its terms.

31. Other Provisions

- 31.1 This Agreement shall in all respects be construed under and regulated by the laws of the Province of British Columbia, and the parties agree that at all times the principal place of administration of the Trust shall be on the reserve lands of the Nak'azdli Whut'en.
- 31.2 The Nak'azdli Whut'en hereby nominates, appoints, and authorizes Council to do all things, make all decisions and to perform such acts on behalf of the Nak'azdli Whut'en, as the agent of the Nak'azdli Whut'en, as called for by this Agreement and the Trustees can deal with Council as agent and representative of Nak'azdli Whut'en.
- 31.3 A reference to a statute includes every amendment to it, every regulation made under it, and any statute enacted in replacement of it.
- 31.4 Where there is a reference to a sum of money (e.g., \$750,000.00), the amount so referenced shall be adjusted annually for inflation as measured by the Consumer Price Index published by Statistics Canada.
- 31.5 The Trustees may rely upon a document provided that it is in correct form and appears to be signed by the party authorized to execute such document.
- 31.6 All Trustees shall maintain notice of a current resident address at the place of administration of the Trust and notice to that address shall be good and sufficient notice for all purposes of this Agreement;
- 31.7 The headings are inserted solely for convenience and shall not control or affect the meaning or construction of any part of this Agreement.
- 31.8 Words herein in the singular include the plural and words herein in the plural include the singular.
- 31.9 Words importing male persons include female persons and corporations. Words importing female persons include male persons and corporations.
- 31.10 A reference to notice calculated in days shall always be deemed to mean business days, excluding Sundays and holidays, but including Saturdays.
- 31.11 Any resolution of the Trustees required for the purposes of this Agreement shall be passed at a meeting of the Trustees held in accordance with the procedures prescribed by this Trust and any rules made hereunder.
- 31.12 The following Schedules form part of this Agreement.
- (a) Schedule "A" - Authorized Investments;
 - (b) Schedule "B" - Trustee's Undertaking;
 - (c) Schedule "C" - Honouraria and Reimbursement of Expenses for Trustees;
 - (d) Schedule "D" - Trustees' Resolution; and

(e) Schedule “E” - Code of Ethics.

Signed this ____ day of August, 2024.

Chief Aileen Prince

Councillor Mark Barfoot Jr.

Councillor Mark Prince

Councillor Catherine Lessard

Councillor Murial Sam

Councillor Paul Bird

Councillor Alyssa Lepka

Councillor Nolan Sagalon

Councillor Fred Sam

Trustee Tamara R. Sam

Trustee Laretta Prince

Trustee Rhoda Gregg

Trustee Rolene Sam

Trustee Iliah Prince

**SCHEDULE “A”
AUTHORIZED INVESTMENTS**

**SCHEDULE “B”
TRUSTEE’S UNDERTAKING**

SCHEDULE “C”
HONORARIA AND REIMBURSEMENT OF EXPENSES FOR TRUSTEES

**SCHEDULE “D”
TRUSTEES’ RESOLUTION**

SCHEDULE “E”
NAK’AZDLI WHUT’EN TRUST CODE OF ETHICS