

# The Deed

## GWAII FOREST CHARITABLE TRUST

THIS DEED OF TRUST is made on the 29<sup>th</sup> day of March, 2007 by the Gwaii Trust Society (the "Settlor"), the Gwaii Trust Society, Mr. Warren Foster and Mr. Brad Setso as trustees (collectively, the "Initial Trustees") and KPMG Inc. as protector (the "Initial Protector").

### WHEREAS:

- A. Pursuant to that certain agreement between Her Majesty the Queen in the Right of British Columbia ("**British Columbia**") and Her Majesty the Queen in the Right of Canada ("**Canada**") dated July 12, 1988, as amended, relating to the establishment of a national park in Gwaii Haanas/South Moresby Island (the "**South Moresby Agreement**"), British Columbia and Canada equally advanced funds to establish the South Moresby Forest Replacement Account (together with accumulations thereto as of March 31, 2007, the "**SMFRA Account**").
- B. The objectives of British Columbia and Canada in entering into the South Moresby Agreement and in establishing the SMFRA Account were to offset the effect on the Islands to reductions in timber supply and employment losses arising from the creation of the South Moresby/Gwaii Haanas National Park.
- C. A strategic plan was developed in 2000 and revised in April 2003 for the SMFRA Account (the "**2003 Strategic Plan**") which expanded and defined the scope of the South Moresby Agreement to include increasing community stability through increasing sustainable forest management.
- D. The Settlor has deposited the sum of \$5 into an account (the "**Account**") for the benefit of the Trust.
- E. The Settlor understands that British Columbia may deposit that portion of the funds held by the SMFRA Account that is within its control into the Account and may transfer any other property of the SMFRA Account that is within its control to the Trustees for the benefit of the Trust.
- F. The Settlor understands that Canada may authorize British Columbia to deposit that portion of the SMFRA Account that are within its control into the Account and may transfer any other property of the SMFRA Account that is within its control, to the Trustees for the benefit of the Trust.
- G. The Settlor understands that the deposit of all the funds existing in the SMFRA Account as of March 31, 2007 into the Account by British Columbia for and on behalf of Canada and British Columbia shall be by way of grant to the Trustees as an addition to the Trust Property.
- H. The Settlor wishes to complete this Deed, thereby evidencing the terms and conditions of the trusts on which the Trustees will hold the Trust Property.

NOW, THEREFORE, the Settlor hereby declares as follows:

**Name of Charity**

1. The charitable trust governed by this Deed is designated and known as the “Gwaii Forest Charitable Trust” or such other name as the Trustees, from time to time, shall approve.

**Definitions**

2. For all purposes of this Deed including the recitals hereto, except as otherwise expressly provided herein or unless the context otherwise requires:
  - (a) “**Account**” has the meaning set out in recital D;
  - (b) “**Accounting Entity**” means a firm of chartered accountants licensed to do business in the Province of British Columbia and any affiliate of such a firm providing services such as those to be provided by the Protector;
  - (c) “**Agency Agreement**” means the agency agreement to be entered into between the Trustees and the Forest Society as it may be amended, from time to time;
  - (d) “**Applicable Law**” means the statute and common law of British Columbia and the statute and common law of Canada applicable therein;
  - (e) “**Auditor**” means, in respect of any Fiscal Year, the auditor of the Trust as described in section 33;
  - (f) “**Application for Funding**” means a written application made by the Forest Society to the Trustees, in the form provided to the Forest Society, from time to time, by the Trustees and made on or before the time in each Fiscal Year for the submission of such applications, notice of which is provided, from time to time, by the Trustees to the Forest Society or another person acting as the agent of the Trust, which sets out all details required by the Trustee of a proposed Eligible Project which the Trustees are requested by the Forest Society to fund from the Capital or the Income pursuant to section 22;
  - (g) “**Breach**” has the meaning set out in section 38;
  - (h) “**British Columbia**” has the meaning set out in recital A;
  - (i) “**Canada**” has the meaning set out in recital A;
  - (j) “**Canadian Financial Institution**” means a Canadian chartered bank or a trust company incorporated under the laws of Canada or a Canadian province;
  - (k) “**Capital**” means, at any time in any Fiscal Year, the aggregate value of the cash, investments and other property at that time forming part of the Trust Property which then consists of the sum of (A) \$5.00 (B) up to \$24,000,000 of the

aggregate amount of any funds deposited to the Account as a grant from Canada and British Columbia as contemplated in recitals E and F, (C) the Third Party Contribution Principal and (D) an amount equal to the sum of adding the products of multiplying, respectively, (x) the inflation rate in Canada as measured by reference to the consumer price index prepared by the Bank of Canada or the successor thereto for each Fiscal Year concluded before such time by (y) the aggregate value of the Trust Property as set out in the Financial Statements for each such Fiscal Year;

(l) **“Communities”** means the separate communities of the Islands which are, as of the date hereof:

- (i) the incorporated municipality of the Village of Masset;
- (ii) the incorporated municipality of the Village of Port Clements;
- (iii) the incorporated municipality of the Village of Queen Charlotte;
- (iv) the Skidegate Band Council, being a band as defined in the Indian Act for the benefit of which lands identified as “Skidegate Reserve #1” have been set aside by Canada;
- (v) the Old Massett Village Council, being a band as defined in the Indian Act for the benefit of which lands identified as “Masset Reserve #1 have been set aside by Canada;
- (vi) Skeena-Queen Charlotte Regional District Area D (which includes the unincorporated village of Tlell);
- (vii) Skeena-Queen Charlotte Regional District Area E (which includes the unincorporated village of Sandspit); and

as they exist as of the time of the execution of this Trust Deed and as they may exist, under another name or legal status from time to time hereafter and will include any other community, from time to time, accepted as a separate community of the Islands by the agreement of the then existing Communities;

(m) **“Community Representative”** means, in respect of:

- (i) the incorporated municipality of the Village of Masset, the Mayor thereof, from time to time;
- (ii) the incorporated municipality of the Village of Port Clements, the Mayor thereof, from time to time;
- (iii) the incorporated municipality of the Village of Queen Charlotte, the Mayor thereof, from time to time;

- (iv) the Band Council of Skidegate, being a band as defined in the Indian Act for the benefit of whom lands identified as "Skidegate Reserve #1" have been set aside by Canada, any member of the band council thereof who is duly appointed by the Chief and Council thereof to be the Community Representative, from time to time;
- (v) the Band Council of Old Massett Village Council, being a band as defined in the Indian Act for the benefit of whom lands identified as "Masset Reserve #1 have been set aside by Canada, any member of the band council thereof who is duly appointed by the Chief and Council thereof to be the Community Representative, from time to time;
- (vi) Skeena-Queen Charlotte Regional District Area D, the Regional Director thereof, from time to time;
- (vii) Skeena-Queen Charlotte Regional District Area E, the Regional Director thereof, from time to time; and
- (n) **"Crowns' Share of Trust Property"** means, at any time, the result of subtracting from (A) the value of all the Trust Property at such time (B) the Third Party Contribution Amount at such time;
- (o) **"Cure Actions"** has the meaning set out in section 38(b)(i);
- (p) **"Deed"**, **"herein"**, **"hereto"**, **"hereunder"** and similar expressions refer to this Deed of Trust together with all other deeds and writings in amendment hereof or supplementary or ancillary hereto or in implementation hereof;
- (q) **"Duly Qualified Natural Person"** means a natural person who is:
  - (i) at least the age of majority under Applicable Law;
  - (ii) in the sole discretion of the Protector, of good character and reputation; and
  - (iii) in the sole discretion of the Protector, of a professional background that will allow him or her to carry out the duties and powers of a Trustee under this Deed.
- (r) **"Eligible Project"** means a project presented to the Trustees by the Forest Society or another person acting as the agent of the Trust for funding by the Trust which is determined by the Trustees to satisfy:
  - (i) standards and objectives for Eligible Projects set, from time to time, by the Trustees which are consistent with and advance the Purposes; and
  - (ii) other operational requirements for Eligible Projects set, from time to time, by the Trustees which are consistent with and advance the Purposes;

- (s) “**Event of Default**” has the meaning set forth in section 41;
- (t) “**Financial Statements**” in respect of any Fiscal Year, means the audited financial statements of the Trust in respect of such Fiscal Year prepared in accordance with GAAP and audited by the Auditor;
- (u) “**Fiscal Quarter**” means one of the four fiscal quarters of the Trust in each Fiscal Year;
- (v) “**Fiscal Year**” means a Fiscal Year of the Trust commencing on January 1 in each calendar year and ending on December 31 in such calendar year;
- (w) “**Forest Society**” means the Gwaii Forest Society, a society formed under the *Society Act* British Columbia and any corporate successor thereof which has purposes substantially the same as to the Purposes set out in this Deed;
- (x) “**Former Trustees**” has the meaning set out in section 46;
- (y) “**GAAP**” means generally accepted accounting principles in effect from time to time as prescribed by the Canadian Institute of Chartered Accountants;
- (z) “**Gwaii Trust Society**” means the Gwaii Trust Society, a society incorporated under the *Society Act* and any corporate or other successor thereto;
- (aa) “**Income**” means, at any time in any Fiscal Year, the income from time to time earned by the investment of that part of the Trust Property that is capable of investment which shall consist of the sum of (A) any amount in excess of \$24,000,000 of the funds deposited in the Account as a grant from Canada and British Columbia as contemplated in recitals E and F (B) all dividends earned from such investments, (C) all interest earned from such investments, (D) all capital gains earned from such investments and (E) any other amount forming part of the Trust Property at such time which is not Capital;
- (bb) “**Indian Act**” means the *Indian Act* R.S.C. 1985 c. I-5;
- (cc) “**Interim Trustees**” has the meaning set out in section 42;
- (dd) “**Initial Protector**” means KPMG Inc. of Vancouver, British Columbia;
- (ee) “**Initial Trustees**” means the Gwaii Trust Society and each of the two directors, from time to time, who are members of the Executive Committee of the Gwaii Trust Society; provided that upon any natural person ceasing to be such a director who is a member of the Executive Committee of the Gwaii Trust Society, he or she shall cease to be one of the Initial Trustees and his or her successor as a director of the Gwaii Trust Society and a member of the Executive Committee of the Gwaii Trust Society shall be deemed to become one of the Initial Trustees;

- (ff) “**Islands**” means, collectively, the islands of the archipelago known as “Haida Gwaii” and also known as the “Queen Charlotte Islands”;
- (gg) “**Material Adverse Change**” means an occurrence, event or condition that, subject to section 46, in the sole discretion of the Protector reasonably could cause a long-term significant diminution of the value of the Trust Property;
- (hh) “**Notice of Acceptance**” has the meaning set out in section 39;
- (ii) “**Notice of Arbitration**” has the meaning set out in section 46;
- (jj) “**Notice of Breach**” has the meaning set out in section 38(b)(i);
- (kk) “**Notice of Objection**” has the meaning set out in section 39;
- (ll) “**Operations Report**” means, in respect of any Fiscal Year, a written report on the management and operations of the Trust prepared by the Trustees in consultation with some or all the Professional Advisers in respect of such fiscal year, which shall include:
  - (i) a summary and explanation of the procedures used in the review, evaluation and approval of Eligible Projects in such fiscal year;
  - (ii) a full listing of all Eligible Projects for which funding by the Trust was funded in such Fiscal Year in sufficient detail to allow the Protector to determine if such Eligible Projects are in accordance with the Purposes;
  - (iii) a summary and explanation of the investment strategy of the Trust in such Fiscal Year and any material changes in the investment of the Trust Property; and
  - (iv) a summary and explanation of the results of consultation between the Trustees and the Forest Society in such Fiscal Year with respect to the development of plans for the use of income from the Trust Property including receiving additional funds for the carrying out of such plans;
- (mm) “**Perpetuities Act**” means the *Perpetuities Act* R.S.B.C. 1996 c.358;
- (nn) “**Professional Advisors**” means actuaries, investment managers, trust companies, custodians of securities, lawyers, accountants and other professional, advisors and agents reasonably required to advise and serve the Trustees in the exercise of their duties and powers pursuant to the provisions of this Deed;
- (oo) “**Protector**” means the Canadian Financial Institution or an Accounting Entity, for the time being, holding the office of Protector pursuant to the provisions of this Deed;

- (pp) **“Protector Declaration”** means a written declaration of a Protector, in the form attached hereto as Schedule B, accepting the terms of this Deed and agreeing to discharge all the duties, powers, discretions, rights and authorities of the Protector herein imposed and granted on all the terms and conditions set out in this Deed;
- (qq) **“Purposes”** means charitable purposes which are both consistent with the SMFRA Purposes and which are beneficial to the Communities in a manner which Applicable Law regards as wholly and exclusively charitable including, but not limited to, the advancement of education and the indemnification of Canada and British Columbia pursuant to section 24, the whole as determined by the Trustees in their sole and absolute discretion;
- (rr) **“Quarterly Statements”** means, in respect of each fiscal quarter of the Trust, the unaudited interim quarterly financial statements for the Trust in respect of such fiscal quarter of the Trust, prepared by the Auditors in accordance with GAAP;
- (ss) **“Reporting Material”** means, collectively, the Quarterly Statements, the Financial Statements and the Operations Report;
- (tt) **“Settlor”** means the Gwaii Trust Society acting as settler of the Trust;
- (uu) **“SMFRA Account”** has the meaning set out in recital A;
- (vv) **“SMFRA Purposes”** means the objectives of British Columbia and Canada for the SMFRA Account that are set out in the South Moresby Agreement and have been amended and varied by the 2003 Strategic Plan, such purposes being incremental to the statutory obligations of Canada and British Columbia with respect to sustainable forest management and community stability on the Islands;
- (ww) **“Society Act”** means the *Society Act* R.S.B.C. 1996 c.433;
- (xx) **“Sole Interim Trustee”** has the meaning set out in section 42;
- (yy) **“South Moresby Agreement”** has the meaning set out in recital A;
- (zz) **“2003 Strategic Plan”** has the meaning set out in recital C a copy of which is attached hereto as Schedule C;
- (aaa) **“Tax Act”** means, at any time, the *Income Tax Act* R.S.C. 1985 c.1 (5<sup>th</sup> Supplement);
- (bbb) **“Third Party Contribution Aggregate Growth”** means, at any time, the amount of the Trust Property that is, net of any taxes and any dispositions of funds from the Trust Property in support of the Purposes or otherwise under this Deed, the sum, at such time, of (A) the amount equal to, the increase in value resulting from the investment of the Third Party Contribution Principle and (B) the amount equal to the increase in value resulting from the re-investment of the Third Party Contribution Aggregate Growth, from time to time, up to such time;



- (ccc) **“Third Party Contribution Amount”** means, at any time, the amount that is the sum of (A) \$5.00 (B) the Third Party Contribution Principle and (C) the Third Party Contribution Aggregate Growth at that time;
- (ddd) **“Third Party Contribution Principal”** means, at any time, the aggregate principal amount, at that time, of all funds donated to the Trust by third parties to the Trust other than Canada and British Columbia;
- (eee) **“Trust”** means the charitable trust established by this Deed;
- (fff) **“Trust Property”** means the property held, from time to time, by the Trustees on the trusts set out in this Deed, being all amounts paid to, and all property transferred to or acquired by the Trustees, from time to time, and accepted by the Trustees as, or declared by the Trustees to be, Trust Property together with all accretions and additions thereto and substitutions therefor and all income thereon accumulated by the Trustees including, any amounts granted by Canada and British Columbia to the Trustees to be held as part of the Trust Property so as to be, at any time, the sum of (A) the Capital and (B) the Income;
- (ggg) **“Trustees”** means, at any time, the corporate person and natural persons that are, at such time, the Trustees pursuant to the provisions of this Deed, and includes any Interim Trustees;
- (hhh) **“Trustee Act”** means, at any time, the *Trustee Act* R.S.B.C. 1996 c.464;
- (iii) **“Trustee Declaration”** means a written declaration of each Trustee in the form attached hereto as Schedule A acknowledging receipt of the Trust Property as then constituted and accepting the terms of this Deed and agreeing to discharge all the duties, powers, discretions, rights and authorities of the Trustees herein imposed and granted on all the terms and conditions set out in this Deed;
- (jjj) **“Website”** means an internet website maintained from time to time by the Trustees or a similar publicly available electronic vehicle for the dissemination of information maintained by the Trustees; and
- (kkk) **“Year End”** has the meaning set out in section 33.

### **Interpretation**

3. In this Deed, unless something in the subject-matter or context is consistent therewith:
  - (a) **“this Deed”** means this trust deed as it may from time to time be supplemented or amended and in effect and includes the schedules hereto;
  - (b) all references in this Deed to **“sections”** and other subdivisions or schedules are to the designated sections or other subdivisions or schedule of or attached to this Deed;

- (c) the words "herein", "hereof" and "hereunder" am other words of similar import refer to this Deed as a whole and not to any particular section or other subdivision;
- (d) the headings are for convenience only and do not form part of this Deed and are not intended to interpret, define or limit the scope, extent or intent of this Deed;
- (e) the singular of any term includes the plural, and vice versa, the use of any term is equally applicable to any gender and, where applicable, a body corporate, the word "or" is not exclusive and the word "including" is not limiting (whether or not non-limiting language is used with reference thereto);
- (f) 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, email, facsimile, telex, telegraph or telecopy;
- (g) any reference to a statute is a reference to the applicable statute and to any regulations made pursuant thereto and includes all amendments made thereto and in force from time to time and any statute or regulation that has the effect of supplementing or superseding such statute or regulation; and
- (h) all accounting terms not defined in this Deed have those meanings generally ascribed to them in accordance with GAAP.

#### **Schedules**

4. The following are the Schedules attached hereto, incorporating by reference herein and deemed to be part hereof:

- Schedule A - Trustee Declaration
- Schedule B - Protector Declaration
- Schedule C - 2003 Strategic Plan
- Schedule D - KPMG Inc. Additional Terms and Conditions
- Schedule E - KPMG Inc. Engagement Letter

#### **Establishment of the Trust**

5. Subject to earlier termination in accordance with the provision of sections 63 and 64, the Trust is established in perpetuity for the Purposes.
6. By each of the Initial Trustees executing and delivering a Trustee Declaration to the Settlor and the Protector, the Initial Trustees declare that they will, as Trustees, hold the Trust Property in trust on the trusts set out in this Deed and for the Purposes and will administer such trusts as set out in this Deed.

## Charitable Purposes

7. The Trustees will hold and stand possessed of the Trust Property in trust to be used exclusively for the Purposes.
8. The Trustees will only use the Income and, subject to section 27, the Capital, to fund Eligible Projects which are in furtherance of the Purposes including Eligible Projects, which:
  - (a) will contribute to the long-term sustainability of forest resources on the Islands;
  - (b) will support stability of the Communities through adjustment to changes to the forest economy of the Islands; and
  - (c) will advance the Purposes as the Trustees determine in their sole and absolute discretion.
9. The Trustees will carry out the Purposes in accordance with Applicable Law through their own actions or through the Forest Society, or, from time to time, another person, acting as the agent of the Trustees under the terms of the Agency Agreement or, if another person acts as such agent, an agency agreement in substantially the form and content of the Agency Agreement. The Trustees shall have complete discretion to choose to authorize another person that is not the Forest Society to thus act as its agent from time to time.
10. In the event that the Trust is registered as a registered charity within the meaning of the Tax Act, the Trustees subject to sections 7, 8 and 9 may interpret and apply the powers and instructions provided to them in this Trust Deed in such manner as to ensure that the Trust complies with all filing and other requirements of the Tax Act for maintaining its registered charity status.
11. Notwithstanding any provision of this Trust Deed:
  - (a) no part of the Trust Property shall enure to the direct benefit of nor be applied to or for any private individual or enterprise except where such benefit is provided in a manner which is regarded as charitable and which is incidental to the overriding benefit provided to the Communities;
  - (b) no part of the activities of the Trust shall consist of carrying on propaganda, or otherwise attempting to influence legislation, or of participation, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office unless such activities are permitted by the Tax Act; and
  - (c) no part of the Trust Property shall, during any period in which the Trust is registered as a charitable organization under the Tax Act, be used or applied for any purpose that, in the opinion of the Trustees or their legal counsel, might

reasonably result in denial by governmental authorities of the tax exemption of the Trust pursuant to the Tax Act attributable to such registration.

### **Appointment, Removal and Replacement of Protector**

12. Upon the creation of the Trust hereunder, the Protector shall be the Initial Protector and thereafter the Protector shall be any Canadian Financial Institution or an Accounting Entity which may, from time to time, be appointed as the Protector pursuant to section 13 or section 14, as the case may be, to replace the Initial Protector; provided, however, that prior to the appointment of any proposed Protector becoming effective, such proposed Protector shall execute a Protector Declaration and deliver it to the Trustees.
13. The Protector shall have the power and right, at any time and from time to time, to resign as Protector and appoint a Canadian Financial Institution or an Accounting Entity to act as Protector; provided, however, that the Protector shall provide to the Trustees at least three months' prior written notice of its intention to resign as Protector, and shall make reasonable efforts to consult adequately with the Trustees as to the identity of any replacement Protector.
14. Upon the bankruptcy, dissolution, winding up or resignation of a Protector, the Supreme Court of British Columbia shall be petitioned by the Trustees to appoint a Protector to replace the bankrupt, dissolved, wound up or resigned Protector. If, at any time, there is no Protector, this Deed will be interpreted and construed as if the provisions relating to the role of the Protector were severable from the rest of this Deed, and the validity, legality and enforceability of the remaining provisions of this Deed will not be affected or impaired in any way; provided, however, that during any period in which there is no Protector, no distributions will be made by the Trustees in support of Eligible Projects until a new Protector is appointed and executes a Protector Declaration other than such distributions as are required to fulfill the existing financial commitments of the Trust.
15. On the appointment of a Protector and the acceptance by such Protector of the duties and obligations under this Deed, such Protector shall have all the rights, powers, duties and authorities that were granted to or imposed on the Protector under the provisions of this Deed including the contents of Schedules D and E.
16. No Canadian Financial Institution or Accounting Entity shall become a Protector unless it executes and delivers a Protector Declaration to the Trustees.
17. If a Protector has resigned or is appointed in accordance with this Deed, a copy of the resignation, or the instrument appointing it, certified by at least two of the Trustees, including the Gwaii Trust Society, is conclusive evidence to any person of such resignation or appointment.

### **Duties of the Trustees**

18. The Trustees must exercise in their collective discretion as determined, from time to time in accordance with the procedure set out in section 19, the duties and powers under this Deed in a fiduciary capacity with a view to carrying out the Purposes.

19. (a) Any meeting of the Trustees shall be validly constituted for the exercise of the discretion of the Trustees under this Deed if all the Trustees are present.
- (b) Questions arising at any meeting of the Trustees shall be decided by the consensus of the unanimous agreement of all the Trustees unless such consensus cannot be reached in respect of a motion that is before the Trustees, in which case, such motion may be passed by a majority of the Trustees at the next meeting of the Trustees; provided that any motion authorizing any encroachment on the Capital may only be passed by the unanimous vote of all the Trustees.
20. Upon reasonable request by the Protector, the Trustees shall do anything reasonably necessary or desirable to assist the Protector in the discharge of its powers and duties pursuant to this Deed, including providing access to Trust Property and records related thereto during normal business hours upon reasonable written notice by the Protector.
21. The Trustees have a duty to develop with the assistance of the Professional Advisors, in respect of each Fiscal Year, an investment strategy for the investment of the Trust Property in such Fiscal Year that shall be completed and published by the Trustees on the Website on or before the commencement of such Fiscal Year; provided that in the first Fiscal Year, the Trustees shall have until ninety days after the commencement of such first Fiscal Year to complete and publish such investment strategy. Such investment strategy shall include investment objectives, long and short term risk profiles, Trust Property return objectives, investment manager return expectations, asset mix and eligible investments, investment manager guidelines, investment performance objectives and other criteria to be used by the Trustees to review and evaluate the investment result of the investment managers of the Trust.
22. The Trustees shall review not less than once in each Fiscal Year at a time or times chosen by the Trustees, all Applications for Funding delivered to the Trustees in such Fiscal Year by the Forest Society or another person acting as agent of the Trust in order to determine which of such Applications for Funding are Eligible Projects. In respect of each such project described in an Application for Funding that is determined hereunder to be an Eligible Project, the Trustees shall also have a duty to determine if they shall receive funding from the Capital (subject to the procedure for encroachment on the Capital set out in section 27) or the Capital or the Income of the Trust Property and, if the Trustees decide to fund such Eligible Project from the Income or, subject to section 27, the Capital, the Trustees shall also determine the amount of such funding, the term of such funding and any other terms and conditions of such funding that the Trustees may, in their sole discretion, determine in respect of such Eligible Project. In respect of each such Eligible Project that the Trustees decides shall receive funding from the income of the Trust Property, the Trustees shall have a duty to monitor such Eligible Project by receiving reports from the Forest Society or another person acting as agent of the Trust in such intervals as the Trustees deems appropriate to ensure that such Eligible Project is being carried out in accordance with the applicable Application for Funding and the Purposes.

## **Strategic Plan**

23. The Trustees, in consultation with the Forest Society or another person acting as agent for the Trust, shall prepare before the first anniversary of the settlement of the Trust a strategic plan for the use of the funds of the Trust to be disbursed in furtherance of the Purposes which will contemplate such use in respect of the circumstances reasonably foreseeable by the Trustees over the five-year period immediately following publication of such strategic plan. Such strategic plan shall be reviewed by the Trustees in consultation with the Forest Society or another person acting as agent for the Trust not less than every two years after its initial publication and, in such review, the Trustees will amend or vary such strategic plan so as to make it current in respect of the circumstances reasonably foreseeable by the Trustees in the next five-year period following such review. Such reviews and rendering current of such strategic plan shall continue during the continuance in existence of the Trust. The Trustees will be guided by such strategic plan as amended or varied, from time to time, pursuant to this section 23 in carrying out its duties and powers under this Trust. Such strategic plan and all amendments thereto and variations thereof shall be published on the Website promptly after it is initially agreed upon, amended or varied.

## **Indemnification of Canada and British Columbia**

24. The Trustees shall indemnify and save harmless Canada and British Columbia from and against any liability arising to Canada or British Columbia as a result of any order, summons, citation, directive, charge, fine, penalty, liability, expense (including reasonable fees and disbursements of legal counsel, consultants, expert witnesses and other professionals), costs (including remediation costs), damages or losses, demand, suit, action, prosecution, petition or proceeding resulting from programs or projects funded by the Trustees from the Trust Property or from the administration of the Trust. Such indemnification shall be paid from the Trust Property, it being recognized that Canada and British Columbia are "eligible donees" pursuant to the provisions of the Tax Act and such indemnification being one of the Purposes.

## **General Powers of the Trustees**

25. The Trustees shall invest and reinvest all or any part or parts of the Trust Property in its sole discretion pending use of the Trust Property for the Purposes; provided, however, that in exercising its duties under this section 25, the Trustees shall be bound by all the provisions of the Trustee Act, including, without limitation,
- (a) the provisions that relate to the investment of trust property;
  - (b) the standard of care of a trustee with respect to the investment of trust property;
  - (c) the liability of trustees in respect of overall investment strategies;
  - (d) the abrogation of the common law rules regarding anti-netting;
  - (e) the delegation of authority with respect to investments; and

(f) the passing of trustee accounts.

26. The Trustees may appoint or employ Professional Advisors and may seek advice and other professional services from such Professional Advisors (for such periods to such extent and generally on such terms and in such manner as the Trustees may, from time to time, think fit) in respect of such matters as the Trustees shall, from time to time, determine that it is prudent to seek such advice; provided that nothing in this Deed requires that the Trustees, in exercising their duties and powers hereunder must follow such advice if the Trustees, in their sole discretion, determine that is not appropriate to do so.

27. The Trustees may, subject to:

- (a) managing the value of the Trust Property in order to maintain the value of the Capital from erosion by inflation;
- (b) maintaining any other reserves which the Trustees, in their sole discretion, deems, prudent and appropriate; and
- (c) the investment strategy of the Trust contemplated in section 21;

(in each case, without effecting any invalid accumulation of income pursuant to the provisions of the Perpetuities Act); distribute to the Forest Society acting as Agent for the Trustees, part of the Capital or the Income in furtherance of the Purposes as funding for Eligible Projects in accordance with the provisions of section 22; provided that any encroachment upon the Capital in order to distribute part of the Capital in furtherance of the Purposes must be approved by the unanimous decision of the Trustees, after appropriate consultation with the Community Representatives and may only be effected if the Trustees determine with the advice of the Professional Advisers that such encroachment on the Capital can be restored within a reasonable period of time after such encroachment so not to impair, in the long term, the ability of the Trust adequately to fund the Purposes. It is further provided that the Trustees may, in its sole discretion accumulate such part of the income earned on the Trust Property in any year subject to any requirement of the Tax Act to disburse any part of such income in any year, in which case, income earned on the Trust Property in any year, if any, which is accumulated and not distributed or applied in that year, may be distributed, paid, applied or utilized in any subsequent year for the Purposes as funding for Eligible Projects; provided that any such accumulation must be disposed of in order not to effect any invalid accumulation of income pursuant to the Perpetuities Act. However, if, at any time, there is a requirement under Applicable Law to distribute any accumulation of the Income, the Trustees shall firstly dispose of such accumulation in support of one or more Eligible Projects and, if that is, in whole or in part, not possible then the Trustees shall dispose of all or the balance of such accumulation of the Income, as the case may be, to one or more charitable or not-for-profit organizations that have purposes relating to the Islands that are similar to those of the Trust.

28. In addition to all powers conferred upon the Trustees by this Deed or Applicable Law, the Trustees shall have the powers, rights and authorities incidental to ownership of the Trust Property as if it were the beneficial owner of the Trust Property subject at all times to the Purposes.
29. The Trustees shall have the full power to make all such arrangements and provisions of any nature as it shall in its sole discretion think fit for the convenient administration of the Trust and the exercise of its powers and discretions under this Deed for the Purposes.
30. The Trustees shall take reasonable steps to ensure that Eligible Projects funded by disbursements from the Trust Property, do not confer any direct or indirect benefit on a Member of the Legislative Assembly of the Province of British Columbia, a Member of Parliament of the Parliament of Canada or any employee of British Columbia or Canada.
31. The Trustees shall have the power, with the written consent of the Protector, to amend this Deed in such manner as to allow the Trust to become registered as a charitable organization pursuant to the Tax Act; provided that any such amendment shall only be made in order to ensure that the Purposes are exclusively charitable in accordance with Applicable Law while remaining consistent with the principles enunciated in the South Moresby Agreement as amended by the 2003 Strategic Plan and to make changes to any provisions of this Deed which the Canada Revenue Agency would require to be changed before such registration could be achieved.

#### **Specific Powers of the Trustees**

32. Subject to and without limiting the generality of sections 25 to 31, inclusive, of this Deed, and subject to the trusts set out in this Deed but in addition to all powers conferred upon the Trustees by this Deed and by Applicable Law, the Trustees shall have the powers, rights and authorities set out below, namely:
  - (a) the Trustees may place on current or deposit account with any Canadian Financial Institution, any cash for the time being forming part of the Trust Property and may place the securities or other documents of title to any investments then comprising in the Trust Property in any bank, safety deposit box or securities depository system held at or operating any Canadian Financial Institution;
  - (b) the Trustees may arrange that any assets comprising the Trust Property to be held in the name of any Canadian Financial Institution;
  - (c) the Trustees may retain the Trust Property, or any part or parts thereof, in the form in which it was received by the Trustees for as long as the Trustees in its sole discretion considers fit; or it may, at any time or times, sell, call in or convert into money the same, or the investments for the time being representing the same and, without limiting the generality of the foregoing, may invest the proceeds of sale, and any other Trust Property in or upon any investments by Applicable Law or herein authorized with power to vary and transpose the same;



- (d) the Trustees may vote in person or by proxy upon any securities held by it, exercise options, conversion privileges and rights to subscribe for additional securities attaching to any securities held by it and make payments therefor and, as the holder of such securities, consent to or participate in dissolutions, reorganizations, consolidations, mergers or sales to which such holders may consent or participate in and in connection therewith pay assessments, subscriptions and other charges; provided, however, that in each case to do so would be consistent with the charitable purposes set out in this Deed;
- (e) the Trustees may insure any property forming part of the Trust Property, in such amount or amounts as it may in its sole discretion decide, against loss or damage by any risk and it may also insure the Trustees and the directors and officers of the Trustees from time to time against liability for negligence associated with the ownership and use of such property in such amount or amounts as it may in its sole discretion decide; provided that the Trustees shall not be liable for any failure to maintain insurance or for failure to maintain a particular amount of any type of insurance;
- (f) the Trustees may settle, compromise or waive any claim which is due to it in its capacity as Trustees or which is owing by it in its capacity as Trustees or made against it in its capacity as Trustees for money or for money's worth, for or without such consideration, and upon such terms as it may in its sole discretion decide;
- (g) the Trustees may release any security granted to the Trustees in order to secure any indebtedness owed to the Trustees in its capacity as Trustees, in whole or in part, with or without consideration;
- (h) the Trustees may sell any asset forming part of the Trust Property for cash or for credit, or for part cash and part credit, and with or without interest and with or without security;
- (i) the Trustees may pay, out of the income from the Trust Property, all or any income taxes, gift taxes, capital gains taxes and other taxes, and interest and penalties thereon, that may be attributable to the Trust Property or any income therefrom;
- (j) the Trustees may, on behalf of the Trust, file any returns and make any elections, designations or determinations required or permitted to be made by trustees under the Tax Act and may execute all documents and do all things as may be required to give effect to such elections, designations or determinations; and
- (k) the Trustees may, in their sole discretion, make application to the Canadian Revenue Authority for registration of the Trust as a charitable organization under the Tax Act, may discontinue any such application and, if, at any time, the Trust is thus registered as a charitable organization under the Tax Act, the Trustees may, in their sole discretion, do all things necessary to terminate such registration.

### **Audit and Financial Statements**

33. The Trustees shall engage the Auditor from Fiscal Year to Fiscal Year, which Auditor shall be independent of the Trustees and the Protector and have the professional accreditation as an auditor as granted by the Institute of Chartered Accountants of British Columbia or any successor organization thereto and provide notice in writing of the appointment of such Auditor to the Protector at least fourteen days prior to the end of each Fiscal Year (each, a "Year End").
34. In respect of each Fiscal Quarter or Fiscal Year, the Trustees shall:
- (a) maintain and prepare, or cause to be maintained and prepared, the Reporting Material;
  - (b) cause the Quarterly Statements for each Fiscal Quarter in such Fiscal Year to be delivered to the Protector within fourteen days of receipt thereof by the Trustees;
  - (c) cause the Financial Statements for such Fiscal Year to be audited by the Auditor; and
  - (d) cause the Financial Statements and the Operations Report for such Fiscal Year to be delivered to the Protector within fourteen days of receipt of the final audited Financial Statements for such Fiscal Year from the Auditor; and
35. The Trustees shall make available the Financial Statements and Operations Report to the members of the Communities by:
- (a) making copies of the Financial Statements and Operations Report available for viewing at a publicly accessible location located in one of the Communities during regular business hours;
  - (b) publishing in a newspaper or other periodical distributed within the Communities a notice describing the availability and location of the Financial Statements and Operations Report for review pursuant to section 35(a); and
  - (c) publishing the Reporting Material on the Website not less than fourteen days after they are delivered to the Protector.

### **Review by Protector**

36. The Trustees shall provide the following documents to the Protector:
- (a) the Quarterly Statements in respect of each Fiscal Quarter within thirty days of the end of such Fiscal Quarter;
  - (b) the Financial Statements and the Operations Report in respect of each Fiscal Year within forty-five days of the end of such Fiscal Year; and

- (c) copies of any monthly reports relating to the investment of the Trust Funds and all regular reports of the actuaries retained by the Trustees, to the Trustees.

and after the receipt of the documentation described in sections 36(a) and 36(b) in respect of each Fiscal Year, the Protector shall make all necessary inquiries and carry out all necessary investigations to make the determination of the Protector under section 38.

37. The Trustees shall undertake all reasonable commercial efforts:
- (a) promptly to respond to any inquiries made by the Protector pursuant to section 36; and
  - (b) to do any thing reasonably necessary to assist the Protector in carrying out any investigation pursuant to section 36.
38. Within ninety days of the receipt of the Financial Statements and Operations Report by the Protector pursuant to section 36(b), and based on its review of the Reporting Material and such other inquiries as the Protector shall make pursuant to section 36, the Protector shall determine whether the Trustees are in breach of their obligations under this Deed or Applicable Law or whether there are reasonable grounds to believe that any or all of the Trust Property has been used, with the knowledge and acquiescence of the Trustees, for one or more purposes that are other than one or more of the Purposes during the Fiscal Year just ended (each, a "**Breach**"), and:
- (a) if the Protector determines that there are no reasonable grounds to believe that there may have been a Breach, the Protector shall forthwith provide written notice to the Trustees that it has found no Breach; and
  - (b) if the Protector determines that there are reasonable grounds to believe that there may have been a Breach, the Protector shall deliver to the Trustees:
    - (i) a written notice of such Breach (a "**Notice of Breach**") including a full description of the facts surrounding such Breach including, where reasonably possible, documentation evidencing such facts and the advice of the Protector in respect of the course or courses of action that would effectively cure such Breach (the "**Cure Actions**"); and
    - (ii) the written opinion of legal counsel to the Protector that such Breach has occurred.

#### **Objection by Trustees to Notice of Breach**

39. The Trustees shall, within forth-five days of its receipt of such Notice of Breach, provide to the Protector either:
- (a) a written notice (a "**Notice of Objection**") setting out in detail why such alleged Breach has not occurred; or

- (b) a written notice (a “**Notice of Acceptance**”) setting out that the Trustees agree with the conclusions of the Notice of Objection and stating that the Trustees will forthwith effect the Cure Actions described in the Notice of Objection.
40. If the Trustees provide a Notice of Objection to the Protector pursuant to section 39(a), the Trustees and the Protector shall meet to discuss the alleged Breach and recommended Cure Actions. Such discussions may result in the Trustees providing a Notice of Acceptance to the Protector. Following such discussions, the Protector will provide written notice to the Trustees either affirming, amending or revoking its Notice of Breach, including any Cure Actions described therein. The determination of the Protector set out in such notice shall be finally determinative of all matters set out therein save and except for any decision set out therein to change the Trustees and any such decision to change the Trustees shall be subject to appeal pursuant to sections 46 to 48, inclusive.

#### **Event of Default**

41. Subject to section 40, an event of default (an “**Event of Default**”) will exist if a Notice of Breach has been delivered to the Trustees pursuant to section 38(b)(i) and:
- (a) no Notice of Objection or Notice of Acceptance is provided to the Protector in the forty-five day period described in section 39; or
  - (b) the Notice of Breach is not revoked pursuant to section 40; and
  - (c) whether or not the Trustees have delivered a Notice of Acceptance pursuant to section 39(b), the Cure Actions described in the Notice of Breach, as amended by section 40, if applicable, are not carried out in all material respects by the Trustees within a period of forty-five days after the later of, as the case may be:
    - (i) in the circumstances described in section 41(a), the date of the receipt of the Notice of Breach by the Trustees; or
    - (ii) in the circumstances described in section 41(b), the date that the Protector affirms or amends the Notice of Breach; or
  - (d) any Trustee that is a society or other corporation declares or is petitioned into bankruptcy, is dissolved or wound up without the Trustees and the Protector having agreed upon a new Trustee to replace such Trustee that is a Canadian Financial Institution or a professional firm of chartered accountants;
  - (e) the commencement of a law suit by one or more parties that are not the Protector, its officer, employees, contractors or agents, which makes a claim to the possession or other control of all or a material part of the Trust Property that constitutes a risk to the Trust Property; or
  - (f) upon the resignation of the Trustee that is a society or other corporation without the Trustees and the Protector having agreed upon a new a Trustee to replace such

Trustee that is a Canadian Financial Institution or a professional firm of chartered accountants.

42. If an Event of Default exists, the Protector shall provide written notice thereof to the Trustees, and the Protector shall have the power and right (but not the obligation), to terminate the Trustees as the Trustees of the Trust so that they become Former Trustees of the Trust and immediately replace them with a Canadian Financial Institution as a sole interim Trustee (as appointed under this section 42 or section 43(d), as the case may be, respectively, hereinafter known as, the “**Sole Interim Trustee**”) and the Protector shall also have the power and right (but not the obligation) to appoint two Duly Qualified Natural Persons, as further interim Trustees after the appointment of the Sole Interim Trustee (the Sole Interim Trustee and such additional natural persons appointed to be Trustees under this section 42 or section 43(d), as the case may be, are respectively hereinafter known, collectively, as the “**Interim Trustees**”). Upon the termination of the Former Trustees as Trustees of the Trust, they will present their accounts in accordance with Applicable Law.
43. Notwithstanding anything contained in sections 36 to 42, inclusive, if the Protector determines, in its sole discretion, at any time, or from time to time, that it is necessary immediately to change the Trustees in order to protect the Trust Property because there exists such an imminent risk to the Trust Property by virtue of the then Trustees remaining as the Trustees that there may be a Material Adverse Change in the Trust Property, the Protector shall have the right and the obligation to:
- (a) give not less than five days’ written notice to the Trustees that states:
    - (i) that the Protector has concluded that there exists a risk to the Trust Property of the sort contemplated in this section 43; and
    - (ii) the circumstances that have led the Protector to come to the conclusion described in section 43(a)(i);
  - (b) consult, during such five-day period, with the Trustees with respect to any measure that might be effected to avert such risk to the Trust Property other than replacement of the Trustees;
  - (c) take, during and after such five-day period, any such remedial steps as the Protector shall determine to be reasonably required to protect the Trust Property, including retaining legal counsel and commencing one or more law suits and seeking injunctive relief for and on behalf of the Trustees and the Trust in any such law suit;
  - (d) at the end of such five-day period, if the Protector determines that the risk to the Trust Property requires the replacement of the Trustees, the Protector shall declare that an Event of Default exists by written notice to the Trustees and the Protector shall then act as if an Event of Default exists under section 42 and do all things contemplated in section 42.

(e) provided that, unless it poses an immediate risk to the Trust Property, the commencement of a law suit by one or more parties which makes a claim to all or a material part of the Trust Property shall not be the basis of the Protector making a determination to change the Trustees pursuant to this section 43.

44. The Protector may, from time to time, seek the direction of the Supreme Court of British Columbia in respect of its fulfilling its right and obligation under section 43. From and after receipt of a notice contemplated in section 43, the Trustee shall promptly do all things required by the Protector that are necessary or reasonably desirable in order to secure the Trust Property from any risk described in such notice.
45. If the Protector takes any action to replace the Trustees pursuant to the provisions of sections 36 to 44, inclusive, the Protector shall procure publication on the Website and in a newspaper circulating in the Communities, a full explanation of why such action was taken, within fourteen days of taking such action. The Protector shall also publish notice, in the same manner, of one and public meeting of the residents of the Islands to be held on the Islands at a place and a time convenient for the residents of the Islands determined in consultation with the Community Representatives. At such meeting, such actions of the Protector to replace the Trustees shall be discussed. Representatives of the Trustees that are subject to such action and legal counsel for such Trustees shall be entitled to be present and be heard at any such meetings.

#### Appeal of Protector's Decision

46. If the Trustees are removed pursuant to sections 36 to 44, inclusive (collectively, the "Former Trustees"), the Former Trustees may, within one hundred and twenty days of such removal, submit to arbitration either the single question of whether any alleged Breach has or has not occurred or the single question of whether there was at the time of the Protector taking action under section 43 a risk of a Material Adverse Change to the Trust Property, as the case may be, by providing written notice to the Protector (a "Notice of Arbitration"), and such arbitration will be conducted in accordance with the following provisions:
- (a) arbitration will be carried out by a single arbitrator agreed to by the Former Trustees and the Protector, but if no arbitrator is agreed to within fourteen days after the provision of a Notice of Arbitration, the Former Trustees and the Protector will cause an arbitrator to be appointed by the British Columbia International Arbitration Centre, or if such body has ceased to exist or is otherwise unable to appoint an arbitrator, by the Supreme Court of British Columbia on application, and in either case the parties will cooperate in causing, and do all things reasonably necessary to cause, an arbitrator to be appointed in accordance with the foregoing;
- (b) the arbitrator shall be required to render his or her decision together with written reasons for his or her decision;

- (c) the decision of the arbitrator will be binding on the parties and conclusive for the purposes of this Deed as to the question of whether or not Breach has occurred, but will not be a precedent in any subsequent arbitration under this Agreement; and
  - (d) all arbitrations conducted under this Deed will be conducted according to the laws governing commercial arbitration in British Columbia.
47. If, in any arbitration conducted pursuant to section 46, the arbitrator determines that an alleged Breach has not occurred or there was no risk of a Material Adverse Change to the Trust Property, the Former Trustees shall be reinstated as the only Trustees of the Trust by the Protector notifying the Interim Trustees in writing that they are to be replaced as soon as each of the Former Trustees has executed a Trustee Declaration and delivered it to the Communities and to the Protector. Thereupon, the Interim Trustees shall transfer the Trust Property to the Former Trustees and present their accounts in accordance with Applicable Law.
48. Any dispute referred to arbitration hereunder will be dealt with on an expeditious basis with the Former Trustees and the Protector using all commercially reasonable efforts to obtain and implement a timely decision of the arbitrator.

#### **Other Removal and Replacement of Trustees**

49. The Protector may appoint a Canadian Financial Institution to act as Sole Interim Trustee and two Duly Qualified Natural Persons as Interim Trustees:
- (a) immediately, if, for any reason there has ceased to be a Trustee that is a society or corporation; or
  - (b) if the Trustees for the time being has given notice pursuant to section 56 of this Deed that they intend to resign as the Trustees, at the time that such resignation takes effect;
50. From any time that the Initial Trustees cease to be the Trustees pursuant to any provision of this Deed, the Communities shall have three years in which to propose to the Protector a corporate person and at least two natural persons as satisfactory successors to the Interim Trustees. During the first six months of such three-year period, it shall be necessary for the Communities, as represented by the Community Representatives, to achieve the consensus of the unanimous agreement of all the Communities about the identity of one corporate and two natural persons to replace the Interim Trustees. After such six-month period, such decision of the Communities may be made on the basis of all but one of the Communities agreeing to the new proposed Trustees. The Protector shall consult in good faith with the Communities as reasonably requested by the Community Representatives as to which one corporate person and two natural persons shall be acceptable as the Trustees in succession to the Interim Trustees. The Protector may accept or reject any of the persons proposed by the Community to be the Trustees in succession to the Interim Trustees.

51. During all or any part of the three-year period contemplated in section 50 before any Trustees proposed by the Communities pursuant to section 50 replace the Sole Interim Trustee or the Interim Trustees, as the case may be, the Sole Interim Trustee or the Interim Trustees, as the case may be, may continue to make distributions from the Trust Property in accordance with this Deed. If, after the end of such three-year period, such Trustees proposed by the Communities have not become the Trustees, the Sole Interim Trustee or the Interim Trustees, as the case may be, will not continue to make distributions from the Trust Property in accordance with this Deed and no further such distributions will be made until new Trustees proposed by the Communities pursuant to section 50 have become the Trustees.
52. At any time after the three-year period contemplated in section 50 in which the Interim Trustees remain as the Trustees, because the Communities as represented by the Community Representatives could not propose satisfactory successors to the Interim Trustees, the Communities as represented by the Community Representatives may request the Protector to consider satisfactory successors to the Interim Trustees proposed by the unanimous agreement of all the Communities as represented by the Community Representatives except one. If the Protector, in its sole discretion, determines that the one corporate and two natural persons proposed by the Communities pursuant to this section 50 would be appropriate Trustees to replace the sole Interim Trustee or the Interim Trustees, as the case may be, the Protector shall notify the sole Interim Trustee or the Interim Trustees as the case may be, in writing that they are to be replaced as soon as each of the Trustees proposed by the Communities has executed a Trustee Declaration and delivered it to the Communities and to the Protector.
53. If the Protector rejects any corporate or natural persons proposed by the Communities pursuant to section 50, then the Community Representatives shall be entitled, within one hundred and twenty days of the Protector giving written notice of such rejection of any proposed new Trustees to the Community Representatives, to seek an order from the Supreme Court of British Columbia to the effect that the proposed new Trustees are an appropriate replacement for the Sole Interim Trustee or the Interim Trustees, as the case may be, based upon it being shown that such proposed new Trustees are (i) supported by the Community Representatives to replace the Sole Interim Trustee or the Interim Trustees, as the case may be, and (ii) can reasonably be demonstrated to be capable of carrying out the duties and powers of the Trustees under this Deed.
54. Forthwith upon any Trustees ceasing to be Trustees, they will be deemed to have transferred and delivered all Trust Property held by them to the Trustees appointed to replace them and will execute and deliver all documents which may be reasonably requested to give effect to such transfer. Such resigning Trustees shall thereupon become Former Trustees and shall be discharged of all duties and obligations to continue to act as Trustees under this Deed but shall not be discharged from its duty to account for its acts during its trusteeship hereunder. Forthwith upon ceasing to be Trustees, such Former Trustees must render and deliver to the Protector an accounting of the Trust Property up to the date on which such Former Trustees ceased to be Trustees.



55. No person shall become one of the Trustees, unless that person executes a Trustee Declaration and delivers it to the Communities and the Protector.
56. Any Trustee may resign as a Trustee at any time by giving at least one hundred and eighty day's written notice to the Communities and the Protector of such resignation.
57. If a Trustee resigns or is appointed in accordance with this Deed, a copy of the resignation of such Trustee or the instrument appointing such Trustee, as the case may be, is conclusive evidence to any person of such resignation or appointment.

#### **Liability and Remuneration of the Trustees**

58. Except as otherwise provided herein, the exercise by the Trustees in good faith of any of the powers, rights, authorities or discretions given to the Trustees by this Deed in accordance with Applicable Law shall not subject the Trustees to any liability of any kind whatsoever and the Trustees shall not be liable to make good any loss or diminution in value of the Trust Property unless such loss or diminution is caused by the negligence or bad faith of the Trustees and all persons claiming any beneficial interest in the Trust Property shall be deemed to take with notice of and subject to the provisions of this section 58.
59. The Trustees shall be entitled to be paid reasonable charges, advances and expenses for time expended and acts done by them in connection with the trusts hereby created in accordance with the provisions relating to the reimbursement of trustees set out in the Trustee Act and, in addition shall also be entitled to be reimbursed from the Trust Property for all charges and advances made and expenses incurred by it or on its behalf in the administration of the trusts, powers and provisions of this Deed including the costs of actuaries, investment managers, the Auditor, legal counsel and custodians of securities. The Trustees are entitled to deduct, retain and reimburse themselves out of the income from the Trust Property or, if there is not sufficient of such income, the Trust Property from time to time in its sole discretion the amount of all such reasonable charges, advances and expenses.

#### **Liability and Remuneration of Protector**

60. Except as otherwise provided herein, the exercise by any Protector in good faith of any of the powers, rights, authorities or discretions given to that Protector by this Deed shall not in and of themselves subject that Protector to fiduciary or trust-like duties to the Trust or the beneficiaries thereof. For greater certainty, the only duties of the Protector to the Trust or the beneficiaries thereof are those created by this Deed.
61. The Protector shall be entitled to retain legal and other necessary counsel and other expert professionals as are reasonably required in order to provide legal advice to the Protector in respect of any aspect of its duties and powers under this Deed. The Protector shall be entitled to be paid reasonable charges, advances and expenses for time expended and acts done by it in connection with the trusts hereby created and shall also be entitled to be reimbursed out of the Income, or if there is not sufficient Income, from the Capital, for all

charges and advances made and expenses (including the fees and disbursement of legal counsel and other expert professionals) incurred by it or on its behalf in the administration of the trusts, powers and provisions of this Deed, including the Trustees saving harmless and indemnifying the Protector and its respective partners, directors, officers, employees and agents from and against any loss, damage, liability, claim or action incurred or sustained and not attributable to the fraud, wilful misconduct or gross negligence of the Protector or any of its directors, officers and employees. Any Protector being an Accounting Entity or a Canadian Financial Institution shall be entitled to charge and be paid for all usual professional or other charges for business done and time spent and services rendered by him and expenses incurred by him in the proper execution of his services as Protector. The Protector shall present invoices to the Trustees in respect of all amounts contemplated in this section 61 not less than three months after such amounts were incurred or expended by the Protector and the Trustees will pay all such invoices that are supported by adequate documentary evidence of amounts incurred or expended within 30 days of the delivery of any such invoice to the Trustees. The Protector will keep an accurate journal of all amounts incurred or expended in the course of fulfilling his duties under this Deed and will provide the information contained therein to the Auditor for inclusion in the audit of the Trustee for each fiscal year.

#### **Limitation of Liability of Protector and Indemnity**

62. (a) The Protector shall not be liable for any loss of Trust Property or for any loss, damage or injury suffered by the Trustees resulting from the discharge of the Protector's office and obligations hereunder or attempted discharge of those obligations unless the same shall arise by reason of the Protector's own fraud, wilful misconduct or gross negligence. Without limiting the generality of the foregoing, in no event shall the Protector be liable to the Trustees as a result of the content of any statement made, opinion expressed or other communication made as contemplated by this Deed unless the statement, comment, opinion or other communication is made in bad faith.
- (b) The Trustees and the Trust shall pay, indemnify and save harmless the Protector from any and all fees, costs, expenses and liabilities properly made or incurred in the carrying out of its duties as Protector pursuant to the terms of this Deed, or in attempting to carry out its duties or taking steps it believes are necessary or desirable to carry out its duties hereunder, or against any claims, demands, actions or lawsuits in any way relating to the discharge of its duties or obligations as Protector hereunder, or to its failure to discharge its duties or obligations hereunder, including its legal fees and expenses incurred in respect thereof on a full indemnity basis, unless the fees, costs, legal fees or liabilities are incurred by the Protector by reason of its own fraud, gross negligence or wilful misconduct..

#### **Termination of the Trust**

63. Notwithstanding that this Trust is to be perpetual, if:

- (a) an Event of Default occurs; or

- (b) the Protector makes a determination of imminent risk to the Trust Property under section 43; and

pursuant to either of the foregoing (a) or (b), the Protector terminates the appointment of the Trustees and appoints Interim Trustees; and

notwithstanding:

- (c) any appeal and arbitration under section 46; and  
(d) any efforts under sections 49, 50, 51, and 52.

the terminated Trustees are not re-instated and no new Trustees are appointed to replace the Interim Trustees pursuant to sections 50 and 51 and no new Trustees are thus appointed pursuant to section 52 for a period of three further years commencing immediately after the period of three years contemplated in section 50 and the Interim Trustees decline to carry on in that capacity as Interim Trustees, then the Protector, on 180 days' written notice to the Interim Trustees and Canada, shall direct the Interim Trustees to distribute the Trust Property as follows:

- (e) fifty per cent of the Crowns' Share of the Trust Property shall be disposed of by the Trustees pursuant to written direction of the Protector, after consultation with the Trustees, to one or more other charitable organizations, the charitable purposes of which are restricted to activities to be carried out on the Islands;
- (f) fifty per cent of the Crowns' Share of the Trust Property shall be paid to Canada or such one or more charitable organizations as Canada shall name within the 180 day notice period; and
- (g) one hundred per cent of the Third Party Contribution Amount, if any, shall be disposed of by the Trustees to one or more charitable organizations, the charitable purposes of which are restricted to be carried out on the Islands,

and once the foregoing distributions are complete, the Interim Trustees shall wind-up the Trust.

64. If, for any reason pursuant to Applicable Law, the Trustees determine, in consultation with legal counsel for the Trust and with the concurrence of the Protector, that it is necessary to re-settle the Trust Property onto a new trust with purposes identical to those of the Trust because the Trust will fail if such re-settlement does not occur, then the Trust Property shall be resettled onto a new trust with purposes identical to those of the Trust and the then Trustees shall be the trustees of such new trust and the then Protector shall be the protector of such new trust.

### **General**

65. No part of the income of the Trust will be payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor of the Trust;

provided, however, that the Trust will be permitted to pay reasonable amounts in respect of salaries, wages, fees or honorariums or other amounts for services rendered, reasonable out-of-pocket costs, and to pay other reasonable expenses that are associated with the normal operation of the Trust to the extent that (i) such payment would not cause the Trust to fail to be or to cease to be a charitable trust according to the applicable law as it may exist from time to time and (ii) such reasonable amounts do not exceed amounts that would be paid in arm's length situations in similar circumstances.

66. This Deed and the trusts hereby created will be irrevocable.
67. This Deed will be binding upon the Settlor, its successors and assignees and the Trustees and Protector and their respective successors and assignees.
68. Wherever the singular or masculine is used in this Deed the same shall be construed as meaning the plural, neuter or feminine where the context so requires and vice versa.
69. Time shall be of the essence in this Deed.
70. Except as otherwise indicated in a written notice provided to the Settlor, the Trustee and the Protector any notice, document or communication required or permitted to be given hereunder shall be in writing and delivered by hand or electronic transmission or facsimile as follows or as such contact information may be changed, from time to time, pursuant to notices provided to the Settlor, the Trustees or the Protector, as the case may be, by the Settlor, the Trustees or the Protector, as the case may be, in accordance with this section 70:

(a) To the Settlor:

Gwaii Trust Society  
P.O. Box 397  
162 Raven Avenue  
Old Massett, British Columbia  
V0T 1M0

**Attention: The Administrator**

Facsimile: 250-626-3261

with a copy to:

McCarthy Tétrault LLP  
1300 – 777 Dunsmuir Street  
Vancouver, British Columbia  
V7Y 1K2

**Attention: D. Anthony Knox**

(b) To the Trustees:

Gwaii Trust Society  
P.O. Box 397  
162 Raven Avenue  
Old Massett, British Columbia  
V0T 1M0

**Attention: The Administrator**

Facsimile: 250-626-3261

Warren Foster  
485 Alliford Bay Road  
P.O. Box 233  
Sandspit, British Columbia  
V0T 1T0

Facsimile: 250-637-5703

Brad Setso  
319 Eagle Avenue  
P.O. Box f555  
Masset, British Columbia  
V0T 1M0

Email: [bsjyelt@island.net](mailto:bsjyelt@island.net)

with a copy to:

McCarthy Tétrault LLP  
1300 – 777 Dunsmuir Street  
Vancouver, British Columbia  
V7Y 1K2

**Attention: D. Anthony Knox**

(c) To the Protector:

KPMG Inc.  
777 Dunsmuir Street  
Vancouver, British Columbia  
V7Y 1K3

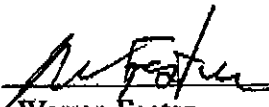
**Attention: Todd Martin**


Facsimile: 604-691-3036

71. This Deed shall enure to the benefit of and be binding upon the Settlor, the Trustee the Protector and their respective successors and assigns.
72. If any of the provisions of this Deed are invalid, illegal or unenforceable in any respect, or if it would make any of the trusts intended to be created by this Deed invalid, illegal or void, such provision shall be severable from the rest of this Deed and the validity, legality and enforceability of the remaining provisions in this Deed will not be affected or impaired in any way thereby.
73. This Deed will be construed and governed in accordance with the laws of British Columbia.
74. The headings in this Deed are for convenience of reference only and do not form part of this Deed and are not intended to qualify, or to be referred to in construing, the provisions of this Deed.

IN WITNESS WHEREOF the Settlor has executed this Deed.

**GWAI TRUST SOCIETY**

By:  \_\_\_\_\_  
Warren Foster  
Title: Director

By:  \_\_\_\_\_  
Brad Setso  
Title: Director

## TRUSTEE DECLARATION

### WHEREAS:

- A. The Gwaii Forest Charitable Trust (the "Trust") was formed pursuant to a Deed of Trust made on the 29<sup>th</sup> of March, 2007 (the "Deed").
- B. Pursuant to section 55 of the Deed, no person shall become one of the Trustees of the Trust unless that person executes a Trustee Declaration and delivers it to the Communities and to the Protector.
- C. The undersigned, Gwaii Trust Society, is willing to execute this Trustee Declaration in order to become a Trustee; and
- D. Unless otherwise defined in this Trustee Declaration, all capitalized terms used herein have the meaning ascribed thereto in the Deed.

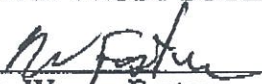
### NOW, THEREFORE:


The undersigned declares:

- 1. the undersigned has read, understands and accepts the terms of the Deed.
- 2. the undersigned will discharge all the duties, powers, discretions, rights and authorities of a Trustee set out in the Deed.
- 3. the undersigned will, as a Trustee, hold the Trust Property in trust on the terms set out in the Deed and for the Purposes and will administer such trusts as set out in the Deed.

DATED the 29<sup>th</sup> day of March, 2007.

GWAII TRUST SOCIETY

  
\_\_\_\_\_  
Per: Warren Foster  
Director

  
\_\_\_\_\_  
Per: Brad Setso  
Director