

**TRUST AGREEMENT**

**OF**

**CHOGGIUNG, LIMITED**

**SETTLEMENT TRUST**

An ANCSA Settlement Trust

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# Trust Agreement of Choggiung, Limited Settlement Trust

This Trust Agreement is entered into between Choggiung, Limited, the Alaska Native village corporation for the village of Dillingham, Alaska established pursuant to the Alaska Native Claims Settlement Act of 1971, acting as the settlor, and the individuals whose names appear below as initial Trustees of the Trust.

## 1. Definitions

As used in this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings and interpretations (and derivatives of such terms shall have similar derivative meanings and interpretations). Other terms are defined in other sections of this Agreement and all defined terms are indexed in Section 17(e).

“*ANCSA*” means the Alaska Native Claims Settlement Act of 1971, as amended to date and as it may be amended, 43 U.S.C. § 1601 *et seq.*

“*Board of Directors*” means the board of directors of Choggiung.

“*Bylaws*” means the bylaws of the Trust governing the internal affairs, operation and management of the Trust, as they may be amended.

“*Choggiung*” means Choggiung, Limited.

“*Choggiung Concurrence*” means approval by the Board of Directors acting by a vote of at least two-thirds of all of the directors (and not merely of directors present at the meeting).

“*Descendant of a Native*” and “*descendant*” have the same meaning as provided in ANCSA, 43 U.S.C. § 1602(r).

“*Fund*” means the accounting allocation or designation of particular contributions, assets, liabilities, income and expenses to a particular benefit program, or to the general fund.

“*Material Adverse Effect*” means any condition which is likely to frustrate the purposes of the Trust to the degree that the Trust would not have been created if the condition was in effect at the time the Trust was created. Examples of a Material Adverse Effect would include, but are not limited to, a material change in the settlement trust provisions of ANCSA, discontinuation of or material adverse change to an income tax credit on distributions of accumulated income for taxes paid by a trust on accumulated income (if the Trust is subject to such provisions in lieu of the provisions of 26 U.S.C. §

646), discontinuation or material adverse change to the tax provisions of 26 U.S.C. § 646 (if the Trust is subject to such provisions), material change in law which would result in double taxation of trust income by a single taxing authority, or material restrictions on investment alternatives of a trust.

“*May*” means that the action is authorized but is wholly discretionary or permissive by the authorized person.

“*Merger*” means merger, consolidation, share exchange and any other means by which Choggiung and another entity may combine or otherwise have the effect of a merger. “*Merger*” does not include merger of Choggiung with a wholly-owned subsidiary or other Merger that results in Choggiung and/or its Shareholders holding, directly or indirectly, all or substantially all of the equity interest in the surviving or resulting entity.

“*Native*” has the same meaning as provided in ANCSA, 43 U.S.C. § 1602(b).

“*Original Issue Shares*” means the \_\_\_\_\_ shares of Settlement Common Stock issued by Choggiung to its original shareholders pursuant to ANCSA, 43 U.S.C. § 1606(g)(1)(A) and 1607(c).

“*Review Period*” means January 1 through June 30, inclusive, of every fifth calendar year, beginning with the calendar year that is ten years after the first calendar year during which Choggiung contributes or has contributed to the Trust in the aggregate more than \$500,000.

“*Share*” means a share (including a fractional share) of Choggiung.

“*Shareholder*” means a person owning a Share.

“*Settlement Common Stock*” means shares of stock as defined in ANCSA, 43 U.S.C. § 1602(p).

“*Subsidiary*” means an entity in which the Choggiung or the Trust has, directly or indirectly, a material financial, equity or management interest.

“*Super Majority*” means approval by not less than three-quarters of all of the Trustees (and not merely of Trustees present at the meeting).

## **2. Name**

The name of the Trust shall be “Choggiung, Limited Settlement Trust.”

### **3. Declaration as a Settlement Trust**

The Trust is, and at all times shall maintain itself as, a “settlement trust” within the meaning of ANCSA, 43 U.S.C. § 1602(t), established pursuant to ANCSA, 43 U.S.C. § 1629e.

### **4. Purpose**

(1) The purpose of the Trust shall be to promote the health, education, and welfare of the Beneficiaries and preserve the heritage and culture of Natives. The Trust shall at all times be operated for the sole benefit of the Beneficiaries in accordance with ANCSA, 43 U.S.C. § 1629e, and the laws of the State of Alaska.

(2) The Trust shall accomplish its purpose through making monetary distributions to the Beneficiaries, as provided in this Agreement, and providing other monetary, financial, nonmonetary and in-kind benefits and services to or for the benefit of the Beneficiaries.

### **5. Beneficiaries**

#### **(a) Beneficiaries**

The “*Beneficiaries*” shall consist of Shareholders, Natives and Descendants of Natives who are beneficiaries under a benefit program.

#### **(b) Custodianship**

Unless otherwise ordered by a court of competent jurisdiction:

(1) Any person who is a custodian for a Beneficiary’s Shares automatically shall be recognized as the custodian for the Beneficiary’s beneficial interest associated with those Shares.

(2) Subject to Section 5(b)(1), any person who is recognized by a court of competent jurisdiction as a custodian for a Beneficiary automatically shall be recognized as the custodian for the Beneficiary’s beneficial interest.

#### **(c) Effect of Death**

A Beneficiary shall cease to be a Beneficiary upon his or her death, but a benefit program may provide benefits to or for the benefit of the survivors or family members of a Beneficiary on account of the death of the Beneficiary.

#### **(d) Limited Rights of Beneficiaries**

Beneficiaries have a right to receive distributions or benefits only if, when and to the extent actually provided by the Trust in accordance with a benefit program. Beneficiaries may vote on matters affecting the Trust only if, when and to the extent provided by this Agreement or delegated by the Board of Trustees and have a right to receive information about the Trust only as provided by this Agreement, to the extent necessary to participate in a benefit program, as may be required by law, or as the Board of Trustees may determine.

#### **(e) Voting by Beneficiaries**

Whenever the Beneficiaries are permitted or required to vote on any matter, and except as otherwise provided in this Agreement:

(1) Only Beneficiaries of the Distribution Program may vote. Beneficiaries of any other benefit program are not entitled to vote. Any Beneficiary who is not a Native or Descendant of a Native may not vote.

(2) Each Beneficiary who is a Native or Descendant of a Native shall have one vote for each Share. Fractional Shares shall have fractional votes.

(3) A quorum for a meeting of Beneficiaries, if one is held, shall consist of Beneficiaries who are entitled to vote and own a majority of all Shares then outstanding that are owned by Beneficiaries who are entitled to vote.

(4) Except as otherwise may be required by law or the following sentences, the vote of Beneficiaries owning a majority of all Shares then outstanding that are owned by Beneficiaries who are entitled to vote (and not merely a majority of Shares owned by those Beneficiaries voting) shall be the act of the Beneficiaries. When voting on an expansion of the Beneficiaries to the Distribution Program, as described in Section 15(a)(1)(B), the voting standard that applies to shareholder approval of issuing additional shares of Settlement Common Stock as permitted by ANCSA, 43 U.S.C. §§ 1606(g)(1)(B) shall apply instead. When voting on approval by the Board of Trustees described in Section 15(a) that materially amends the Permanent Fund Program or the Distribution Program with respect to funds provided by the Permanent Fund Program or that would result in the partial or complete liquidation of the Fund held for the Permanent Fund Program or the Fund held for the Distribution Fund to the extent comprised of funds provided by the Permanent Fund Program, the voting standard that applies to shareholder approval shall be two-thirds of all Shares then outstanding that are owned by Beneficiaries who are entitled to vote.

(5) If Choggiung issues shares of Settlement Common Stock under ANCSA, 43 U.S.C. § 1606(g)(1)(C), that have more or less than one vote per share, and such

shares of Settlement Common Stock are Shares in accordance with Section 15(d) , then in lieu of subsections (2), (3) and (4) respecting action by the Beneficiaries –

(A) Each Beneficiary who is a Native or Descendant of a Native shall have a greater or lesser vote for each such Share owned by the Beneficiary proportional to the votes associated with such Beneficiary's Shares.

(B) A quorum for a meeting of Beneficiaries, if one is held, shall consist of Beneficiaries who are entitled to vote and own Shares accounting for a majority of the total votes of Shares then outstanding that are owned by Beneficiaries who are entitled to vote.

(C) Except as otherwise may be required by law or the following sentences, the vote of Beneficiaries owning Shares accounting for a majority of all votes of all Shares then outstanding that are owned by Beneficiaries who are entitled to vote (and not merely a majority of votes of Shares then outstanding that are owned by those Beneficiaries voting) shall be the act of the Beneficiaries. When voting on an expansion of the Beneficiaries to the Distribution Program, as described in Section 15(a)(1)(B), the voting standard that applies to shareholder approval of issuing additional shares of Settlement Common Stock as permitted by ANCSA, 43 U.S.C. § 1606(g)(1)(B) or § 1606(g)(1)(C) shall apply instead. When voting on approval by the Board of Trustees described in Section 15(a) that materially amends the Permanent Fund Program or the Distribution Program with respect to funds provided by the Permanent Fund Program or that would result in the partial or complete liquidation of the Fund held for the Permanent Fund Program or the Fund held for the Distribution Fund to the extent comprised of funds provided by the Permanent Fund Program, as described in Section 15(a)(5), the voting standard that applies to shareholder approval is two-thirds of all votes of all Shares then outstanding that are owned by Beneficiaries who are entitled to vote.

## **6. Term and Irrevocability**

### **(a) Term**

The term of the Trust shall be perpetual. In accordance with ANCSA, 43 U.S.C. § 1629e(b)(4), the Trust shall not be subject to any laws against perpetuities.

### **(b) Irrevocability**

This Agreement, and the Trust created by this Agreement, are not subject to any power in Choggiung to revoke, alter, amend or terminate, except to the extent expressly set forth in this Agreement. Choggiung shall have no power to withdraw assets from the Trust, except as provided in the instrument governing the initial transfer of an asset from Choggiung to the Trust.

## **7. Benefit Programs**

### **(a) Initial Benefit Programs**

Initially the Trust shall have only the following benefit programs:

Distribution Program: a program to make monetary distributions to all Beneficiaries based on the number of Shares held by each Beneficiary on the record date for each distribution. The Beneficiaries of the Distribution Program shall be all persons who are Shareholders on the record date.

Permanent Fund Program: a program to receive contributions and invest assets on a permanent basis and distribute funds to the Distribution Program.

Scholarship Program: a program to provide monetary or in-kind benefits, scholarships, stipends and support of educational and vocational activities, certifications, training, career counseling, apprenticeships, internships and similar career, job and educational programs, opportunities and benefits for Beneficiaries.

The initial program charters for the Permanent Fund Program and the Distribution Program are attached as Exhibit \_\_\_\_.

### **(b) Adoption and Modification of Benefit Programs**

The Board of Trustees may adopt other programs consistent with the Trust's purpose and this Agreement for the benefit of the Beneficiaries as the Board of Trustees considers appropriate. Each benefit program shall be adopted by approval of a "program charter" for the benefit program that sets forth or describes the benefit program's purpose; beneficiaries; any mandatory or permissive, or limitations on, investment of the benefit program's Fund; any mandatory or permissive, or limitations on, use of the benefit program's Fund; and other matters essential to the benefit program. Distributions and benefits shall be made to, among and for the benefit of the Beneficiaries in such manner as may be provided in this Agreement and program charters relating to the Permanent Fund Program and the Distribution Fund or the program charter relating to other benefit programs and, except as otherwise provided in this Agreement or relating to the Permanent Fund Program and the Distribution Fund or their program charters, do not need to be proportional to, or based on, ownership of Shares. Except for the Permanent Fund Program and the Distribution Program, the Board of Trustees' approval of a program charter, a material modification of a program charter, and termination of a benefit program, shall not take effect until it has received Choggiung Concurrence. The Permanent Fund Program and the Distribution Program may not be materially modified or terminated except as an action under Section 15(a) or as otherwise expressly permitted by this Agreement. A program charter may be modified and a benefit program may be terminated even if this would result in making some Beneficiaries ineligible under a

benefit program or reducing or canceling benefits provided by a benefit program, without regard to whether this results in unequal treatment of current Beneficiaries compared to past, future or potential Beneficiaries.

**(c) Cooperation with Other Organizations**

The Trust may implement a benefit program, in whole or in part, by providing monetary or in-kind support to tribes, nonprofit corporations and other organizations that, in the judgment of the Board of Trustees, will promote the purpose of the benefit program.

**8. Contributions and Funds**

**(a) General Authority to Accept Contributions**

The Board of Trustees is authorized to receive cash and property, real or personal, tangible or intangible, contributed to the Trust by Choggiung or by any other person. All such contributions shall be held and administered in trust, and distributed, in accordance with this Agreement.

**(b) Separate Fund for each Benefit Program and General Fund**

A separate fund shall be established by the Trust for each benefit program, in addition to a general fund. For example, all contributions, assets, liabilities, income and expenses set aside for the Permanent Fund Program shall be held in the Fund established for just the Permanent Fund Program. All contributions, assets, liabilities, income and expenses set aside for the Distribution Program shall be held in the Fund established for just the Distribution Program. All contributions, assets, liabilities, income and expenses set aside for the Scholarship Program shall be held in the Fund established for just the Scholarship Program.

**(c) Contribution and Designation of Fund**

Concurrent with making a contribution to the Trust, Choggiung (or other person making a contribution) shall designate the Fund in which the contribution should be held. Absent any such designation, the Board of Trustees shall determine the Fund in which the contribution will be held.

**(d) Investment and Use of Permanent Fund**

The Trust shall use the assets of the Permanent Fund to invest, to pay the costs to administer the Permanent Fund Program, and to distribute funds to the Distribution Fund net of administrative costs, in accordance with the program charter and policies adopted by the Board of Trustees. The primary priority of the Permanent Fund is that the real value of the principal of the Permanent Fund not be diminished over the long term by

distributions, the effects of inflation, investment losses or administrative costs. The secondary priority of the Permanent Fund is to distribute funds to the Distribution Fund so that it can make distributions to Beneficiaries that are predictable, sustainable and constant over the long term.

**(e) Use of Distribution Fund**

(1) Except to the extent modified in accordance with this Agreement, the Beneficiaries of the Distribution Program shall be all persons who are Shareholders on the record date.

(2) Periodically the Trust shall distribute from the Distribution Fund to the Beneficiaries the maximum amount that can be distributed, consistent with the Trust's primary and secondary priorities set forth in Section 8(d). The amount shall be based on current or accumulated net income of the Trust less appropriate reserves and an amount to reflect the effect of inflation, a percentage of the average net asset value of the Trust, or such other method or combination of methods as the Board of Trustees may adopt from time to time, consistent with Section 8(d). The Board of Trustees shall adopt such distribution policies as shall from time to time, in the judgment of the Board of Trustees, best implement the provisions of Sections 8(d).

(3) Each distribution shall be made to all Beneficiaries, pro rata, proportional to their ownership of Qualifying Shares on the record date for such distribution.

(4) Distributions to Beneficiaries shall be made from the Distribution Fund. In the discretion of the Board of Trustees, and provided it is consistent with the Trust's primary and secondary priorities set forth in Section 8(d) and the distribution policies approved by the Board of Trustees, the Trust may use the principal of the Distribution Fund to make distributions to the Beneficiaries.

(5) The Board of Trustees may adopt policies to cancel, reinstate, reissue and otherwise manage distributions that are stale, unclaimed or uneconomical.

**(f) Use of Other Funds**

The Trust shall use the assets of a Fund, other than the Permanent Fund, solely for the benefit program associated with that Fund, including the costs to administer that benefit program. In addition to direct payments to Beneficiaries, except as otherwise provided in the program charter funds may be paid for the benefit of Beneficiaries and funds may be expended to provide in-kind, indirect or nonmonetary benefits.

**(g) Administrative Expenses**

Funds held in the general fund shall be used solely for the purpose of paying the Trust's general administrative expenses. If the funds held in the general fund are insufficient to pay the Trust's general administrative expenses, the Trust may use its assets to pay its general administrative expenses, excluding providing benefits to or for the benefit of Beneficiaries and costs to administer specific benefit programs (which are to be charged to the Funds held for those benefit programs), in which case the Trust's general administrative expenses shall be charged proportionally to each Fund.

**(h) Principal, Income, Reserves and other Management of Fund**

Except to the extent restricted by Section 8(d), a program charter may permit the Board of Trustees to distribute, expend or use principal and/or income held in a Fund to implement the benefit program associated with that Fund, to retain principal and/or income in the Fund, to establish reserves, to accumulate assets for future use, or otherwise to manage, permit or restrict use of the Fund for its associated benefit program.

**(i) Transfer between Funds**

Except to the extent restricted by Section 8(d), the Board of Trustees may, acting by a Super Majority and with Choggiung Concurrence, transfer assets, liabilities, income and expenses in one Fund to another Fund.

**9. Trustees**

**(a) Number and Authority to Appoint**

The number of Trustees shall be no fewer than 3 and no more than 11, the exact number to be determined by the Board of Directors and stated in the Bylaws. The Board of Directors has the exclusive authority to appoint and remove the trustees.

**(b) Qualifications and Term**

(1) Only a natural person may serve as a Trustee.

(2) The Board of Directors may appoint trustees who are Independent Trustees. "Independent Trustees" are persons who (a) are not directors, officers, shareholders or employees of Choggiung or a Subsidiary, and are not related to such persons, (b) are not officers or employees of the Trust or a Subsidiary, and are not related to such persons, and (c) have not recently had, do not have, and do not reasonably anticipate having, directly or indirectly, any material financial transactions with Choggiung, the Trust, or any Subsidiary. For purposes of the preceding sentence, a professional relationship a person may have with Choggiung, the Trust or a Subsidiary, such as by an attorney, accountant, realtor or investment adviser, shall not be considered a material financial

transaction. Not more than one-third of the entire Board of Trustees may be Independent Trustees.

(3) After appointing Independent Trustees, if any, the Board of Directors shall appoint such additional “Director Trustees” as may be necessary to fill vacancies from among the directors of Choggiung who are willing to serve as Trustees.

(4) After appointing the Independent Trustees and all directors who are willing to serve as Director Trustees, the Board of Directors shall appoint such other persons (“Additional Trustees”) as may be necessary to fill vacancies.

(5) Except as provided in Section 9(b)(2), Trustees may, but need not, be Beneficiaries, Natives, Descendants of Natives or officers of Choggiung. At all times not less than a majority of the Trustees shall consist of Director Trustees. Except as otherwise provided in this Agreement, Independent Trustees, Director Trustees and Additional Trustees have the same rights and responsibilities and reference to “Trustee” without qualification refers to the Independent Trustees, the Director Trustees and the Additional Trustees collectively and without distinction.

(6) The terms of the Director Trustees shall be co-extensive with their terms as directors. The Independent Trustees and Additional Trustees shall serve staggered 3-year terms that expire at the Choggiung annual shareholders meeting and appointment of his or her successor.

(7) A reduction in the number of Trustees shall not shorten the term of a Trustee. A reduction or increase in the number of Independent Trustees shall be allocated as equally as possible among all classes of Independent Trustees. A reduction in the number of Additional Trustees shall be allocated to the classes in the order their terms expire. An increase in the number of Additional Trustees shall be allocated as equally as possible among all classes of Additional Trustees.

**(c) Removal, Suspension, Replacement and Resignation**

(1) Whenever there is a vacancy by reason of resignation, removal, death, other vacancy, the Board of Directors may appoint a replacement Trustee. Except as provided in this subsection, the replacement Trustee shall be the same type – Independent, Director or Additional – and class, if applicable, as the Trustee being replaced. When filling a vacancy, the Board of Directors may convert a vacant Independent Trustee or Additional Trustee position to a Director Trustee position, may convert a Director Trustee position to an Independent Trustee or Additional Trustee position if no director is willing to serve as a Director Trustee, or reduce or expand the number of Trustees, subject to Sections 9(a) and 9(b).

(2) Failure of an Independent Trustee to meet the qualifications to be an Independent Trustee shall cause the automatic resignation, removal or other vacancy of or by such person as a Trustee, but such person may be reappointed as a Trustee if the person is otherwise qualified.

(3) Resignation, removal, death, other vacancy of or by any person who is a director or officer of Choggiung from all such positions with Choggiung and who also is a Trustee shall cause the automatic resignation, removal or other vacancy of or by such person as a Trustee, but such person may be reappointed as a Trustee if the person is otherwise qualified.

(4) Any Trustee may resign by delivering his or her written resignation to the Board of Trustees' Chair or Secretary. Resignation by a Trustee who is a Choggiung director or officer shall not affect his or her position as a Choggiung director or officer.

(5) Choggiung may remove any Trustee for cause, notwithstanding that the person is a director or officer of Choggiung. Removal of a Trustee who is a Choggiung director or officer shall not affect his or her position as a Choggiung director or officer.

(6) If a Trustee is the subject of an action to remove the person as a director or officer of Choggiung, as evidenced by a noticed Shareholder meeting or a judicial or arbitral proceeding for that purpose, and if the removal is successful the Trustee's term will automatically terminate under Section 9(c)(2), then the Board of Directors may suspend the director-officer-Trustee so long as the action is pending and may appoint an interim replacement Trustee. If the removal action is pending for more than six months, that shall constitute cause to remove the director-officer-Trustee. The interim Trustee shall serve for the remainder of the former Trustee's term or, if the interim Trustee was appointed in connection with an action to remove a director, until either the removal action is dismissed or denied or a replacement director is appointed to replace the removed director.

(7) Removal shall be without prejudice to contract rights, if any, of the person so removed. Appointment as a Trustee shall not of itself create contract rights.

## **10. Management of the Trust**

### **(a) Management by Board of Trustees**

The Trustees shall act as a Board of Trustees, and as such shall exercise or direct the exercise of all Trust responsibilities and shall manage the affairs of the Trust.

**(b) Quorum**

At any meeting of the Board of Trustees, a majority of all of the Trustees shall constitute a quorum for the transaction of business. If a quorum is not present, a lesser number may adjourn the meeting to some future time.

**(c) Voting**

At all meetings of the Board of Trustees, each Trustee shall have one vote. Trustees may not vote by proxy.

**(d) Board of Trustees Action**

Unless this Agreement or applicable law requires a greater number or this Agreement or the Bylaws (without regard to any amendment after the initial approval of the Bylaws) provides for a lesser number, the act by a majority of all of the Trustees (and not merely a majority of the Trustees present at the meeting) shall constitute the act of the Board of Trustees. The Bylaws may provide for action without a meeting. Any reference in this Agreement to action by the Trustees shall refer to action by the Board of Trustees taken in accordance with this Section 10. Unless a Trustee is acting pursuant to specific authority granted by the Board of Trustees or in his or her capacity as an officer of the Trust, no individual Trustee shall have authority to act on behalf of the Board of Trustees or the Trust.

**(e) Officers**

Choggiung or the Board of Trustees may appoint officers of the Trust, as provided in the Bylaws.

**(f) Minutes and Reports**

The Board of Trustees shall keep accurate minutes of all actions of the Board of Trustees, including the vote on any matter. Promptly after minutes are approved, the Board of Trustees shall send a copy of the approved minutes to Choggiung. Upon request by Choggiung, the Board of Trustees shall provide copies of reports, agreements and other matters reviewed or acted upon in connection with the matters described in the minutes.

**(g) Loans**

No loans by the Trust to a borrower or by a lender to the Trust shall be contracted on behalf of the Trust and no evidence of indebtedness shall be issued in the name of the Trust unless authorized by resolution of the Board of Trustees. Such authority may be general or limited to specific instances.

### **(h) Compensation**

Persons serving as Trustees may receive reasonable compensation and reimbursement of their reasonable expenses in performing their duties as Trustees. The policy of the Trust for compensating Trustees and reimbursing expenses of the Trustees shall not take effect, and shall not be modified, until it has received Choggiung Concurrence.

### **(i) Confidentiality**

The Trustees and Choggiung shall keep all information regarding the Trust and its assets and affairs confidential, and may use and disclose such information only in accordance with generally applicable confidentiality policies approved by the Board of Trustees.

### **(j) Reliance on Choggiung**

Unless and until the Board of Trustees decides to sever the Trust from Choggiung in accordance with Section 15(f), the Trust may rely on Choggiung to ascertain and communicate with the Beneficiaries on behalf of the Trust, and to provide accounting and other administrative services for the benefit of the Trust. If Choggiung declines to provide such services to the Trust or the Trustees conclude that it would be in the best interests of the Trust to obtain such services from a third party, the Trust may obtain some or all of such services from a third party. Choggiung may charge the Trust and the Trust shall pay to Choggiung the commercially reasonable value of such services provided to the Trust payable on commercially reasonable terms.

## **11. Trustees' Powers**

### **(a) Authorized Powers**

Except as otherwise provided in this Agreement, the Trustees are empowered to do all things appropriate or necessary for the orderly management and administration of the Trust. Without limiting this general power, and without limiting other powers granted or otherwise possessed by the Trustees under ANCSA or Alaska law, the Trustees shall have (1) the power, with Choggiung Concurrence, to approve and amend Bylaws governing the internal affairs, operation and management of the Trust and setting forth in more detail the power, authority and discretion of the Trustees, and (2) the power to adopt and amend such other rules, regulations and policies for the conduct of the meetings and the management of the Trust as they may deem proper, and such Bylaws and rules, regulations and policies shall govern except to the extent inconsistent with this Agreement or applicable law. The initial Bylaws of the Trust are attached as Exhibit B.

## **(b) Limitations**

In exercising the powers possessed by the Trustees, the Trustees shall not cause or permit the Trust to:

- (1) Operate as a business, in violation of ANCSA, 43 U.S.C. § 1629e(b)(1)(A);
- (2) Alienate land or any interest in land received from Choggiung (unless Choggiung is the recipient), in violation of ANCSA, 43 U.S.C. § 1629e(b)(1)(B);
- (3) Discriminate in favor of a group of individuals composed only or principally of employees, officers or directors of Choggiung, in violation of ANCSA, 43 U.S.C. § 1629e(b)(1)(C), or discriminate in favor of a group of individuals composed only or principally of the Trustees or officers or employees of the Trust;
- (4) Make any investment or engage in any activity which is prohibited to a Settlement Trust under ANCSA or otherwise is prohibited by this Agreement;
- (5) Accept conveyance of subsurface estate in Choggiung land, in violation of ANCSA, 43 U.S.C. § 1629e(a)(2).

## **12. Standard of Care of Trustees**

### **(a) In General**

Each Trustee, as a fiduciary, shall perform his or her duties as a Trustee in good faith, solely in the interests of the Beneficiaries, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent investor, acting in a like capacity and familiar with such matters as a lay person and not an expert, would use in the conduct of an enterprise of a like character and with like aims.

### **(b) Trustee with Special Expertise**

Notwithstanding Section 12(a), a Trustee who possesses special skills or expertise shall employ those skills and expertise in the discharge of his or her duties as a Trustee, and shall be held to the standard of care, prudence and diligence, applicable to an expert possessing such skills and expertise.

### **(c) Retention of Assets Contributed by Choggiung**

Notwithstanding Section 12(a), the Trust may retain any asset contributed to the Trust by Choggiung.

#### **(d) Distribution of Assets Contributed by Choggiung**

Notwithstanding Section 12(a), the Trust may distribute, expend or transfer any asset contributed to the Trust by Choggiung in accordance with the benefit program associated with the Fund designated for that contribution or as otherwise authorized pursuant to this Agreement.

#### **(e) Reliance on Experts and Committees**

(1) Legal, Accounting and Other Professionals. The Trustees may consult with and obtain independent legal, accounting and other professional advice in the event of any questions as to any provision of this Agreement or as to any of the Trustees' powers, duties or actions. The Trustees shall not incur any liability and shall be fully protected if they act in good faith in accordance with the opinions and advice of legal counsel, accountants and other professionals.

(2) Investment Advisers. The Trustees may consult with and obtain investment advice from financial and investment advisers and may place some or all of the Trust property under the direct management of one or more money managers or investment advisers, provided that the Trustees shall exercise due care in the selection, review and control of money managers and investment advisers and, at all times, shall observe the standard policy of diversification of risk. The Trustees shall not incur any liability and shall be fully protected if they act in good faith in accordance with the advice so received, and in the case of money managers, in permitting the investments directed by the money managers to occur.

(3) Committees. The Trustees may establish one or more committees comprised of such persons as the Board of Trustees considers appropriate, who need not be Trustees, Beneficiaries or officers. A committee shall assist and advise the Board of Trustees by investigating, considering and recommending to the Board regarding such matters as may be referred to the committee. The Trustees shall not incur any liability and shall be fully protected if they rely in good faith on the information and advice received from a committee as to matters within the authority of the committee that the Trustees reasonably believe merit confidence.

#### **(f) Determinations of Principal, Income, Inflation-proofing and Net Asset Value**

In determining the principal, current and accumulated net income, the effects of inflation, investment losses, net asset value, and making distributions, the Board of Trustees shall not incur any liability and shall be fully protected in acting in good faith reliance on the advice of its accountants, financial and other advisers, regardless of whether the determinations, distributions and actions actually made are consistent with the Trust Agreement or program charter.

**(g) Accounting for Assets Held in Different Funds**

All contributions made to a particular Fund and assets held by a Fund shall be held and accounted for separately. Profits, income, gains, expenses and losses, including associated taxes, respecting a Fund shall add to or be charged to that Fund. Notwithstanding the accounting of the Trust's assets by Fund, all assets may be pooled, including without limitation, for investment or custodial purposes, and shall be owned by the Trust without segregation or separate identification; the accounting is strictly a matter of internal administration of the Trust.

**(h) Allocation of Income**

To the extent permitted by applicable law, for tax and accounting purposes the Board of Trustees may allocate income attributable to or earned on assets held in one Fund to distributions made from a different Fund.

**(i) Limitation of Liability**

A Trustee who acts in accordance with the standard of care set forth in this Section 12 applicable to such Trustee shall not be liable for any loss arising out of any investment or other act approved by him or her in the good faith exercise of his or her judgment or discretion.

**(j) Interested Transactions – Conflicts of Interest**

(1) In addition to administrative services provided by Choggiung to the Trust in accordance with Section 10(j), the Trust may enter contracts and other transactions between the Trust and Choggiung, or Subsidiaries, and such transactions shall not violate the Trustees' fiduciary duties, if (a) the relationship is disclosed to or known by the Trustees, (b) the goods, services or financing obtained by the Trust are reasonably needed by the Trust, (c) the goods, services or financing provided by the Trust can be provided consistent with the Trust's policies and without subjecting the Trust to extraordinary risk, and (d) the price and terms paid by or to the Trust are commercially reasonable and fair as to the Trust at the time it was authorized, approved or ratified.

(2) The Board of Trustees may appoint a standing or ad hoc "conflicts committee" consisting of at least 3 persons to consider and approve transactions described in Section 12(j)(1). The members of the conflicts committee may but need not be Trustees, and a majority of the members of the conflicts committee shall be Independent Trustees or persons who would qualify to be appointed as Independent Trustees under Section 9(b)(2).

(3) A transaction shall be conclusively deemed to satisfy the standards in Section 12(j)(1) if the transaction is approved by the Board of Trustees and the transaction is found to satisfy the standards in Section 12(j)(1) by the Board of Trustees

and also by a majority of the members of the conflicts committee and a majority of the members of the conflicts committee who are or would qualify to be appointed as Independent Trustees.

(4) In the absence of affirmative action as described in Section 12(j)(3), a transaction to provide goods, services or financing to or by the Trust shall be conclusively deemed to satisfy the standard in clause (d) of Section 12(j)(1) if:

(A) The goods, services or financing are a type generally provided by Choggiung, the Trust or a Subsidiary to third parties and the price and terms are similar to the price and terms generally applicable to transactions with third parties;

(B) The goods, services or financing are provided to the Trust or its Subsidiary at no more than 115% of Choggiung's or its Subsidiary's actual, reasonable cost or provided by the Trust or its Subsidiary at no less than 115% of the Trust's or its Subsidiary's actual, reasonable cost, including an appropriate allocation of overhead and indirect costs; or

(C) An independent expert engaged by the Board of Trustees or conflicts committee has advised that the standard has been satisfied.

(5) In the absence of affirmative action as described in Section 12(j)(3), the person asserting the validity of the contract or transaction has the burden of proving that the contract or transaction satisfies the standards in Section 12(j)(1).

### **(k) Bonding**

Upon Choggiung's request or if required by the Board of Trustees, any or all Trustees or officers shall provide a bond to secure performance of the Trustee's and officer's duties, in such amount, issued by such surety, covering such liabilities and risks, and with such terms as may be accepted by Choggiung or the Board of Trustees, as may be appropriate. The cost of the bond shall be a cost of administration of the Trust. Failure to provide an acceptable bond within 30 days after Choggiung's request, and conduct by the Trustee or officer that violates the terms of the bond, shall be cause for removal of the Trustee or officer.

## **13. Restrictions on Transfers of Beneficial Interests**

### **(a) Spendthrift Restrictions**

No Beneficiary shall have any power, voluntarily or involuntarily, to sell, assign, transfer, encumber or in any other manner dispose of or anticipate the Beneficiary's beneficial interest in the Trust or the principal or income of the Trust. No Beneficiary shall have any power, voluntarily or involuntarily, to sell, assign, transfer, encumber or in any other manner dispose of or anticipate the Beneficiary's interest in a distribution by

the Trust to the Beneficiary or to another for the benefit of the Beneficiary prior to the actual distribution by the Trust to the Beneficiary or to another for the benefit of the Beneficiary in the manner authorized by this Agreement. The Beneficiaries' beneficial interests shall not be subject to claims of creditors, including spouses, former spouses and others. No Beneficiary shall have any assignable interest in the Trust or in the Trust's principal or income. Neither the principal nor the income of the Trust shall be liable for the debts of any Beneficiary, including tort actions or alimony.

**(b) ANCSA Restrictions**

The beneficial interests of Beneficiaries may not be transferred in violation of ANCSA, 43 U.S.C. §1629e(c)(8). In addition to the restrictions contained in Section 13(a) and ANCSA, 43 U.S.C. § 1629e(c)(8), to the greatest extent permitted by law, the statutory restrictions on alienability that are applicable to Settlement Common Stock of a Native Corporation pursuant to ANCSA, 43 U.S.C. § 1606(h)(1)(B), are hereby incorporated in this Agreement and made fully applicable to the beneficial interests of the Beneficiaries in the Trust and the principal and income of the Trust, regardless of whether such statutory restrictions cease to apply to Shares.

**14. Choggiung Access to Information**

Choggiung has an absolute right to inspect, review and copy all books, records, documents and information of every kind of the Trust and to inspect the physical properties of the Trust, and the Trust shall provide to Choggiung such information as Choggiung may request regarding the Trust's assets, liabilities, income, expenses, operations and Beneficiaries, subject to Choggiung entering a commercially reasonable confidentiality agreement if requested by the Trust.

**15. Amendment and Termination of Trust**

**(a) Material Amendment and Termination, In General**

(1) The Board of Trustees may approve the following actions:

(A) Amendment. Amend this Agreement in such manner as may be deemed appropriate by the Board of Trustees.

(B) Expansion of Beneficiaries. Amend this Agreement to expand the Beneficiaries of the Distribution Program to include Descendants of Natives who are Descendants of persons to whom Original Issue Shares were issued, subject to such exceptions, limitations, qualifications and conditions as the Board of Trustees considers appropriate, in which case the then existing Beneficiaries shall not be entitled to receive any compensation as a result of the addition of Beneficiaries.

(C) Partial Liquidation. Permit all or any portion of the Fund held for a benefit program to be distributed to that benefit program's Beneficiaries or to the Permanent Fund or Distribution Fund for distribution to the Distribution Program's Beneficiaries, other than as part of that benefit program, or permit all or any portion of a Fund other than the Fund held for the Permanent Fund Program or the Distribution Program to be distributed to one or more tribes, nonprofit corporations and other organizations that, in the judgment of the Board of Trustees, will promote the purpose of the benefit program associated with that Fund.

(D) Termination. Terminate the Trust.

(2) Any approval by the Board of Trustees described in Section 15(a) shall not be effective unless (1) it is approved by a Super Majority of the Board of Trustees at two in-person or video conference meetings held at least 30 days and not more than 120 days apart, and (2) the Board of Trustees provides to Choggiung not less than 30 days' prior written notice of each meeting that includes the substance of the proposal under consideration and permits Board of Directors representatives to attend and speak at the Board of Trustees meetings.

(3) Any approval by the Board of Trustees described in Section 15(a) shall not be effective unless approved by the Board of Directors acting by a vote of at least three-quarters of all of the directors (and not merely of directors present at the meeting).

(4) Any approval by the Board of Trustees described in Section 15(a)(1)(B) shall not be effective unless the Beneficiaries approve the action.

(5) Any approval by the Board of Trustees described in Section 15(a) that would materially amend the Permanent Fund Program or the Distribution Program with respect to funds provided by the Permanent Fund Program or that would result in the partial or complete liquidation of the Fund held for the Permanent Fund Program or the Fund held for the Distribution Fund to the extent comprised of funds provided by the Permanent Fund Program shall not be effective unless (1) during a Review Period or in connection with a Merger, the Board of Trustees approves the action, and (2) the Beneficiaries approve the action. Failure of the Beneficiaries to approve the action within 120 days after the Trust first solicits ballots shall constitute rejection of the action. Any action and approval in connection with a Merger shall be conditioned on the Merger closing.

(6) The approval by the Board of Directors and the Beneficiaries on action that would materially amend the Permanent Fund Program or the Distribution Program with respect to funds provided by the Permanent Fund Program or that would result in the partial or complete liquidation of the Fund held for the Permanent Fund Program or the Fund held for the Distribution Fund to the extent comprised of funds provided by the Permanent Fund Program shall not be effective unless, in addition to their approvals

required under Sections 15(a)(3) and 15(a)(5), the Board of Directors and Beneficiaries approve the action a second time, using the same procedures and standards as applied to the first approvals, and such second approvals occur (a) not sooner than 30 days after the first annual shareholders meeting that follows the initial approval by the Board of Directors, and (b) not later than two years after the initial approval by the Beneficiaries.

**(b) Frustration of Purpose**

If a change in law or regulation, including judicial interpretation, occurs that has or will have a Material Adverse Effect on the purposes for which the Trust has been established, the Board of Trustees and Board of Directors, with the approval of the Beneficiaries, may approve that the Trust be terminated and all principal and accumulated income in the Trust be distributed to the Distribution Fund for distribution to the Beneficiaries of the Distribution Program. The Board of Trustees and Board of Directors shall act in the same manner as provided in Section 15(a)(2) and 15(a)(3). The Board of Trustees and Board of Directors may not, however, approve termination of the Trust unless the Board of Trustees, Choggiung and a court of competent jurisdiction each find that this condition has been satisfied. The findings of the Board of Trustees and Board of Directors must be made and the petition or complaint for the judicial determination must be filed within 24 months after the earlier of the effective date of the change or when the Board of Trustees first learns of the change, or else the change cannot be found to have a Material Adverse Effect. The Board of Trustees or Board of Directors may petition the Superior Court, Third Judicial District, Anchorage, Alaska, to reform the Trust in any manner as necessary to avoid any Material Adverse Effect in lieu of or as an alternative to petitioning such court to make a finding that would permit termination of the Trust pursuant to this section. The Trust shall give Choggiung and the Beneficiaries notice of commencement of judicial proceedings pursuant to this section.

**(c) Failure of Substantial Funding**

If, during the five years after the effective date of the Trust, Choggiung has not contributed to the Trust in the aggregate more than \$500,000 (including the net fair market value of non-cash assets), the Board of Trustees, with Choggiung Concurrence, may terminate the Trust and distribute all principal and accumulated income in the Trust to the Distribution Fund Beneficiaries. Choggiung may from time to time extend the contribution deadline by notifying the Board of Trustees.

**(d) Additional Settlement Common Stock**

If Choggiung amends its Articles of Incorporation to authorize the issuance of additional shares of Settlement Common Stock as permitted by ANCSA, 43 U.S.C. § 1606(g)(1)(B) or § 1606(g)(1)(C) or otherwise, then

(1) If the amendment is to authorize the issuance of additional shares of Settlement Common Stock as permitted by 43 U.S.C. § 1606(g)(1)(B) or § 1606(g)(1)(C) and is approved by the shareholders within 5 years after the shareholders approve establishment of the Trust, this Agreement shall be automatically amended to provide that such additional shares of Settlement Common Stock shall be Shares for purposes of this Agreement and the benefit programs, specifically including the Distribution Program, but Settlement Common Stock having greater or lesser per share voting power, as provided in ANCSA, 43 U.S.C. § 1606(g)(1)(C), shall not have a greater or lesser beneficial interest than other Shares. The then existing Beneficiaries shall not be entitled to receive any compensation as a result of the expansion of the class of Beneficiaries; and

(2) If Section 15(d)(1) does not apply, then (a) the Board of Directors may amend this Agreement to provide that such additional shares of Settlement Common Stock shall be Shares for purposes of this Agreement and the benefit programs, specifically including the Distribution Program, but Settlement Common Stock having greater or lesser per share voting power, as provided in ANCSA, 43 U.S.C. § 1606(g)(1)(C), shall not have a greater or lesser beneficial interest than other Shares, or (b) the Board of Trustees, with approval by the Board of Directors, may adopt a program charter for a distribution program for only shareholders receiving the additional shares of Settlement Common Stock and their successors and modify this Agreement and the program charter for the Permanent Fund Program to provide for distributions, on such basis as the Board of Trustees may specify with Choggiung Concurrence, to both the Fund for the Distribution Program excluding the additional shares of Settlement Common Stock and the Fund for the distribution program only for shareholders receiving the additional shares of Settlement Common Stock and their successors. The Board of Trustees and Board of Directors shall act in the same manner as provided in Section 15(a)(2) and 15(a)(3). If amendment of this Agreement is not approved, then only the Shares outstanding immediately prior to the amendment of the Articles of Incorporation, and shares of Settlement Common Stock received in exchange or substitution for such Shares, shall be Shares for purposes of this Agreement. If amendment of this Agreement is approved, the then existing Beneficiaries shall not be entitled to receive any compensation as a result of the expansion of the class of Beneficiaries. In lieu of or in addition to the Board of Directors approving an amendment to this Agreement, the Board of Directors may authorize the Shareholders to approve an amendment concurrent with their vote on whether to amend the Articles of Incorporation using the same quorum and voting standards as apply to shareholder vote on whether to amend the Articles of Incorporation.

**(e) Merger**

Choggiung promptly shall notify the Board of Trustees if Choggiung has entered into an agreement to Merge or a meeting of Shareholders has been called to approve a Merger. If Choggiung merges with another entity, then the Board of Trustees may, with

Choggiung Concurrence, amend this Agreement to provide that shares of the merged entity issued to persons in consideration of shares or interests that were not, before the Merger, Shares for purposes of this Agreement shall not be Shares for some or all purposes of this Agreement and to amend Section 9 and the Bylaws to reduce or eliminate the direct or indirect power of shareholders of the merged entity who do not hold Shares, or hold only shares that are considered to be Shares for only some purposes, to appoint or affect the composition of the Board of Trustees or to serve as Director Trustees. In lieu of or in addition to the Board of Trustees approving an amendment to this Agreement, the Board of Trustees may, with Choggiung Concurrence, authorize the Shareholders to approve an amendment concurrent with their vote on whether to merge using the same quorum and voting standards as apply to shareholder vote on whether to merge. If the Shares outstanding before any Merger constitute, or would constitute, less than 70% of the outstanding shares of the merged entity after Merger (including the effect of any previous Mergers), the Board of Trustees may approve action under Section 15(f) as if the Merger was an amendment to Choggiung's Articles of Incorporation to terminate alienability restrictions.

**(f) Termination of Alienability Restrictions and Issuance of Other Forms of Stock or Voting Rights**

(1) Choggiung shall immediately notify the Trust if a Shareholder meeting is called to amend Choggiung's Articles of Incorporation for the following purposes:

(A) To terminate alienability restrictions, as defined in ANCSA, 43 U.S.C. § 1602(s), on the outstanding Shares, in accordance with ANCSA, 43 U.S.C. § 1629c(b);

(B) To authorize the issuance of shares of stock other than Settlement Common Stock, as permitted by ANCSA, 43 U.S.C. § 1606(g)(2), that would have voting power respecting electing directors who would have authority as members of the Board of Directors regarding Choggiung Concurrence or regarding appointing persons who will serve as Trustees or who may serve as a Trustee; or

(C) To authorize conferring upon the holder of an evidence of indebtedness voting power respecting electing directors who would have authority as members of the Board of Directors regarding Choggiung Concurrence or regarding appointing persons who will serve as Trustees or who may serve as a Trustee.

For purposes of Sections 15(f)(1)(B) or 15(f)(1)(C), authority to veto or materially condition or affect election of directors, appointment of persons who will serve as Trustees, or matters relating to the Trust that may be submitted to the Shareholders for approval shall be considered to be voting power.

(2) If the Shareholders duly approve amendment of Choggiung's Articles of Incorporation as described in Sections 15(f)(1)(B) or 15(f)(1)(C), Choggiung also shall immediately notify the Trust if the Board of Directors considers using the authority granted by such amendments or issues shares of stock or evidence of indebtedness as described in Sections 15(f)(1)(B) or 15(f)(1)(C).

(3) Prior to the holding of such vote, within 12 months after the vote approving such amendment and such amendment becoming effective, within 12 months after Choggiung issues shares of stock other than Settlement Common Stock or evidence of indebtedness as described in Sections 15(f)(1)(B) or 15(f)(1)(C), and within 2 months of every fifth anniversary of the issuance of such stock or evidence of indebtedness, the Board of Trustees may approve amendments to this Agreement that would have the effect of severing the Trust from Choggiung and severing the beneficial interests in the Trust from Shares. Such amendments shall be effective only if the Shareholders approve the amendment of Choggiung's Articles of Incorporation and, as to amendments described in Sections 15(f)(1)(B) or 15(f)(1)(C), Choggiung issues such shares of stock other than Settlement Common Stock or such evidence of indebtedness.

(4) The amendments to this Agreement approved by the Board of Trustees under Section 15(f)(3) shall, except to the extent prohibited by law –

(A) Respecting termination described in Section 15(f)(1)(A), define the Beneficiaries as all persons holding Shares outstanding immediately prior to the termination of alienability restrictions becoming effective, if the amendment is approved prior to or concurrent with the termination of alienability restrictions becoming effective; or all persons holding Shares outstanding as of the date the amendment is approved, if the amendment is approved after the termination of alienability restrictions has become effective; and their successors. Persons later determined to hold or be entitled to succeed to Shares as of such date through gift, inheritance or other transfer permitted by ANCSA, 43 U.S.C. § 1606(h), that had not been processed as of that date also shall be Beneficiaries.

(B) Respecting termination described in Sections 15(f)(1)(B) or 15(f)(1)(C), define the Beneficiaries as all persons holding Shares outstanding immediately prior to issuance of shares of stock other than Settlement Common Stock or evidence of indebtedness as described in Sections 15(f)(1)(B) or 15(f)(1)(C), if the amendment is approved within 60 days after such issuance; or all holders of Shares outstanding as of the date the amendment is approved, if the amendment is approved more than 60 days after issuance of shares of stock other than Settlement Common Stock or evidence of indebtedness as described in Sections 15(f)(1)(B) or 15(f)(1)(C); and their successors. Persons later determined to hold or be entitled to succeed to Shares as of such date through gift, inheritance or other transfer permitted by ANCSA, 43 U.S.C. § 1606(h), that had not been processed as of that date also shall be Beneficiaries.

(C) Continue the alienability restrictions as to such beneficial interests without regard to alienation of Shares.

(D) Remove the requirement that certain Trustees be directors of Choggiung and provide for the election and removal of Trustees by direct vote of the Beneficiaries of the Distribution Program using the same quorum and voting standard as generally applies to election of Choggiung directors.

(E) Restrict or eliminate the power of Choggiung to control or affect the management or operation of the Trust.

(F) Make such other amendments as the Board of Trustees reasonably determine to be necessary or convenient to fulfill the Trust's purposes.

(5) If the Board of Trustees initiates action for a judicial declaration of amendments allowed by law, the action shall toll the deadlines for the Board of Trustees to approve amendments that are the subject of the action. Unless and until the Board of Trustees approves amendments to this Agreement that have the effect of severing the Trust from Choggiung and severing the beneficial interests in the Trust from Shares, shares of Replacement Common Stock, as defined in ANCSA, 43 U.S.C. § 1602(q), issued in exchange for shares of Settlement Common Stock that were Shares shall constitute Shares. Shares of stock other than Settlement Common Stock, as permitted by ANCSA, 43 U.S.C. § 1606(g)(2), and evidence of indebtedness shall never constitute Shares. No Beneficiary or Shareholder shall be entitled to any compensation as a result of an amendment approved pursuant to this Section 15(f), but the Board of Trustees shall give Choggiung and the Beneficiaries of the Distribution Program at least 45 days' prior notice before the Board of Trustees' initial consideration of such amendment.

(6) An amendment pursuant to this Section 15(f) does not require approval of the Beneficiaries or of Choggiung. All amendments described in this Section 15(f) shall be approved by the Board of Trustees acting in the same manner as provided in Section 15(a)(2). The Board of Trustees may authorize the Shareholders to approve an amendment pursuant to this Section 15(f) concurrent with their vote on whether to amend Choggiung's Articles of Incorporation using the same quorum and voting standards as apply to shareholder vote on the amendment. All amendments described in this Section 15(f) shall be accomplished by a written document executed by the Chairman of the Board of Trustees. The Trust shall give notice of the amendment to the Beneficiaries of the Distribution Program and Choggiung.

**(g) Modification of ANCSA Limitations**

If ANCSA is amended to reduce or eliminate limitations on the powers of the Trustees, as described in Section 11(b), the Board of Directors may amend the Trust Agreement to reduce or eliminate the limitations on the powers of the Trustees to the

extent then permitted by ANCSA. The Board of Directors shall act in the same manner as provided in Section 15(a)(3). Before taking action, the Board of Directors shall consult with the Board of Trustees.

**(h) Technical Amendments**

The Board of Trustees may, with Choggiung Concurrence, amend any technical or non-substantive provision of the Trust, including the numbering of sections, pages and cross-references.

**(i) Reformation**

The Board of Trustees, with approval by the Board of Directors, may petition the Superior Court, Third Judicial District, Anchorage, Alaska, to reform the Trust in any manner as may be necessary to achieve the purposes of the Trust, for the benefit of the Beneficiaries, or to comply with applicable law, as may be permitted by law. Seeking judicial reformation, and adopting reformation authorized or ordered by the court, shall be authorized by the Board of Trustees and approved by the Board of Directors acting in the same manner as provided in Section 15(a)(2) and 15(a)(3). The Board of Trustees shall be the only necessary party to such a proceeding but the Trust shall give notice of commencement of such proceedings to the Beneficiaries and Choggiung.

**(j) No Beneficiary or Choggiung Initiation of Action**

Neither the Beneficiaries nor Choggiung may initiate or compel the Board of Trustees or Board of Directors to consider any action described in Section 15.

**(k) Incidental Rights for Expanded Beneficiaries and Additional Shares**

If the Board of Trustees expands the Beneficiaries of the Distribution Program, in accordance with Section 15(a)(1)(B), or Choggiung issues additional shares of Settlement Common Stock, in accordance with Section 15(d), the approving bodies shall concurrently decide (and amend this Agreement appropriately) whether and to what extent the additional beneficiaries or additional shares will have rights, other than the right to participate in regular distributions, that otherwise are incidental to or associated with being Beneficiaries of the Distribution Program, such as notice, voting and liquidation rights.

**(l) Procedures upon Termination**

If the Trust is to be terminated, after paying all expenses of administration and termination relating to the Trust, including Trustees' fees and income taxes due from the Trust, the Board of Trustees shall distribute the balance of the Fund held for the Permanent Fund Program and Distribution Program pro rata to the Distribution Program Beneficiaries who are Shareholders based on the number of Shares held by each

Beneficiary on the record date for the distribution and shall distribute the balance of all other Funds to one or more tribes, nonprofit corporations and other organizations that, in the judgment of the Board of Trustees, will promote the purposes of the benefit programs associated with those Funds. Thereafter, the Trust shall terminate. The Board of Trustees may adopt policies to avoid waste when dealing with distribution of inconsequential amounts or unclaimed distributions, including contributing the remaining assets to a tribe, corporation, society or organization engaged in charitable, religious, eleemosynary, benevolent, educational or similar purposes that are consistent with or supportive of the purposes of the Trust.

**(m) No Reversion to Choggiung**

Under no circumstance, and in no event, shall any of the assets of the Trust revert to Choggiung because of termination of the Trust or any benefit program, except for real property contributed to the Trust by Choggiung, which shall be returned to Choggiung, and except as provided in the instrument governing the initial transfer of an asset from Choggiung to the Trust.

**(n) Limitations on Amendments**

Except to the extent expressly permitted by this Agreement, Choggiung and the Board of Trustees may not use the powers contained in Section 15: to cause any asset of the Trust (other than real property contributed to the Trust by Choggiung or contributed by Choggiung subject to a reversionary interest) to revert in any manner to Choggiung; to reduce the procedure for approval, length of time between Review Periods or the time periods specified in Section 15(a); to alter the bodies that must approve an action or reduce the quorum or voting standards set forth in this Agreement; to change the investment or distribution principles and rules set forth in Section 8(d) and 8(e); to reduce the standards that must be satisfied to enter a contract or transaction between the Trust and Choggiung or its Subsidiaries; or to cause the Trust not to have the status of a Settlement Trust under ANCSA, 43 U.S.C. § 1629e. Except as otherwise permitted by this Agreement, no other amendments are permitted to this Agreement.

**16. Choggiung Existence**

If for any reason Choggiung ceases to exist, or is unable or unwilling to perform its duties under this Agreement, the Board of Trustees shall petition the Superior Court, Third Judicial District at Anchorage, Alaska to name a replacement entity, authorize the Beneficiaries of the Distribution Program to act in place of Choggiung, reform this Agreement, or take such other action as may be appropriate in the circumstances. The Trust shall give notice of commencement of such proceedings to the Beneficiaries of the Distribution Program and Choggiung.

## 17. Miscellaneous

### (a) Severability of Provisions

In case any provision of this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

### (b) Headings

The headings of the Sections of this Agreement have been inserted for convenience of reference only and shall not restrict or otherwise modify any of the terms or provisions of this Agreement.

### (c) Governing Law and Situs

All questions pertaining to the purpose, validity, function and administration of the Trust and the Trustees and pertaining to interpretation of this Agreement shall be governed by ANCSA and the laws of the State of Alaska, excluding choice of laws. Dillingham, Alaska is designated as the situs of the Trust. Anchorage, Alaska shall be the exclusive venue for litigation respecting the Trust.

### (d) Third Party Reliance

No person dealing with the Trust or with the Trustees in any manner (including, without limitation, in purchasing, renting or leasing any of the property of the Trust) shall be required to inquire into the authority of the Trustees to enter into any transaction, or to account for the application of any money paid to the Trustees on any account.

### (e) Index of Defined Terms

The following terms are defined in this Agreement on the pages set forth below:

Additional Trustees.....	10	Independent Trustee.....	9
ANCSA.....	1	Material Adverse Effect.....	1
Beneficiaries .....	3	May .....	2
Board of Directors .....	1	Merger.....	2
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Descendant of a Native.....	1	Share .....	2
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Trustee ..... 10

**18. Effective Date**

This Trust shall become effective when executed by Choggiung and the initial trustees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2018.

Trustor:

**Choggiung, Limited**

By: \_\_\_\_\_  
\_\_\_\_\_, President

Accepted by initial Trustees:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____