



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
CORPORATION FINANCE

May 25, 1994

Michael R. Sorensen  
Sorensen & Edwards, P.S.  
1201 Third Avenue, Suite 2900  
Seattle, Washington 98101-3028

ACT ICA-40  
SECTION 3(a)  
RULE \_\_\_\_\_  
PUBLIC AVAILABILITY 5/25/94

Re: ~~Ka~~Ke Tribal Corporation

Dear Mr. Sorensen:

In regard to your letter of April 25, 1994 our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely

Meredith B. Cross  
Chief Counsel

Dec

May 25, 1994

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATION FINANCE

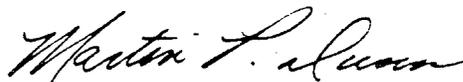
Re: Kake Tribal Corporation ("Kake Tribal")  
Incoming letter dated April 25, 1994

Based on the facts presented, without necessarily agreeing with your analysis, the Division will not recommend any enforcement action to the Commission if Kake Tribal, in reliance upon your opinion as counsel that such registration and/or reporting is not required, establishes and distributes beneficial interests in the Trust as proposed without compliance with the registration requirements of the Securities Act of 1933 or the registration and reporting requirements of the Securities Exchange Act of 1934. In reaching this position, we have noted especially that: (1) the Trust will be established in accordance with the provisions of the Alaska Native Claims Settlement Act ("ANCSA"); (2) the Trust will be established by a Native Corporation organized under ANCSA; (3) the beneficial interests in the Trust will be subject to the restrictions against alienation found in ANCSA and, therefore, will be virtually non-transferable; and (4) the certificates representing the beneficial interests in the Trust will bear a restrictive legend regarding such transfer restrictions.

The Division of Investment Management has asked us to advise you that, on the basis of the facts and representations in your letter, particularly your representation that the Trust will comply with all applicable provisions of ANCSA, it will not recommend enforcement action to the Commission if the Trust is established and operation without registration as an investment company.

Because these positions are based on the representations made in your letter, it should be noted that any different facts or conditions might require a different conclusion. Further, this response only expresses the Divisions' position on enforcement action and does not purport to express any legal conclusion on the questions presented.

Sincerely,



Martin P. Dunn  
Deputy Chief Counsel

LAW OFFICES OF  
**SORENSEN & EDWARDS, P.S.**  
1201 THIRD AVENUE, SUITE 2900  
SEATTLE, WASHINGTON 98101-3028  
TELEPHONE (206) 224-8000  
FACSIMILE (206) 224-8250

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OFFICE OF CHIEF COUNSEL  
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April 25, 1994

VIA DHL COURIER

Deputy Chief Counsel Martin Dunn  
Office of Chief Counsel  
Division of Corporate Finance  
United States Securities and Exchange Commission  
450 Fifth Street Northwest  
MS 33  
Washington, D.C. 20549

Re: Ruling Request As To Settlement Trust Under ANCSA  
Our File 55545-002

Dear Deputy Chief Counsel Dunn:

We are writing to request certain no-action rulings from the staff of the Securities and Exchange Commission ("SEC") as to the Federal securities laws and the manner in which those laws will apply to a settlement trust (herein the "Trust") which Kake Tribal Corporation (herein "Kake Tribal") proposes to establish.

As a preliminary matter we note that the staff of the SEC has already issued a no-action letters to Shee Atika, Incorporated and Goldbelt, Incorporated (two other Native Corporations) relative to the establishment of a settlement trust similar to that which Kake Tribal purposes to establish. A copy of these no-action letters is attached.

**I. RULINGS REQUESTED**

We hereby request the following rulings:

(1) that the establishment of the Trust by Kake Tribal to benefit Kake Tribal shareholders does not require any form of compliance with the Securities Act of 1933 (the "'33 Act") or the Securities Exchange Act of 1934 (the "'34 Act") provided the Trust is established as a settlement trust in accordance with the Alaska Native Claims Settlement Act (herein "ANCSA");

(2) that, following establishment of the Trust as a settlement trust in accordance with ANCSA, contributions may be

made to the Trust without the necessity of any form of compliance with the '33 Act or the '34 Act provided such contributions occur in accordance with ANCSA;

(3) that, following establishment of the Trust as a settlement trust in accordance with ANCSA, transfers may be made of the beneficial interests in the Trust (herein the "Trust Units") without the necessity of any form of compliance with the '33 Act or the '34 Act provided such transfers occur only in accordance with the terms of the Trust Agreement and ANCSA; and

(4) that, following establishment of the Trust as a settlement trust in accordance with ANCSA, the Trust is exempt from the provisions of the Investment Company Act of 1940 (the "'40 Act").

## II. FACTS

A. The Meeting. There will be a June 18, 1994 Special Meeting of the shareholders of Kake Tribal (the "Meeting") to vote upon the establishment of the Trust as a settlement trust in accordance with ANCSA. Kake Tribal will file various proxy solicitation materials with Alaska state regulators regarding the Meeting as required by 3 Alaska Administrative Code ("ACC") 08.305 et seq. These materials will include the Notice of Meeting and Proxy Statement, Proxy, and various other items to be used in the solicitation of proxies relative to the Meeting. There will not be any other items on the agenda at the Meeting besides the vote whether to establish the Trust as a settlement trust in accordance with ANCSA.

B. Purpose of Settlement Trusts. Under ANCSA, the purpose of a settlement trust is to preserve the heritage and culture of Alaska Natives and to promote the health, education, and welfare of the settlement trust's beneficiaries. Section 39(b)(1) of ANCSA, 43 U.S.C. Section 1629e(b)(1). The beneficiaries of a settlement trust must be the shareholders of the Native corporation which sponsors the settlement trust. Section 3(t) of ANCSA, 43 U.S.C. Section 1602(t). The benefits of a settlement trust can only inure to the benefit of the shareholders as a whole and cannot discriminate in favor of the officers, employees or directors of the Native corporation. Section 39(b)(1)(C) of ANCSA, 43 U.S.C. Section 1629e(b)(1)(C).

C. Establishment of Settlement Trusts. Section 36 of ANCSA, 43 U.S.C. Section 1629b, specifies the process under which the Trust is to be established. Section 36(d) of ANCSA, 43 U.S.C. Section 1629b(d), requires that the holders of an absolute majority of Kake Tribal's voting securities must approve the establishment of the Trust. Section 36(b)(2) of ANCSA, 43 U.S.C. Section 1629b(b)(2), further specifies that a written notice,

together with a proxy statement if required under applicable law, is to be sent to each shareholder at least 50 days but not more than 60 days prior to the shareholders' meeting at which establishment of the Trust is considered. Kake Tribal represents that it will provide the notice required by ANCSA and has provided its shareholders with the proxy statement required by Alaska law. If the requisite approval is obtained from its shareholders, Kake Tribal intends to transfer up to \$25 million in cash to the Trust at such time as Kake Tribal receives approval of the Trust from the IRS. It is expected that it will take several months to receive this approval, and funding may not occur, therefore, until early 1995. Other assets may also be placed in Trust from time to time.

**D. Purpose of the Trust.** Consistent with the foregoing provisions of ANCSA, the Trust Agreement provides that the purpose of the Trust is to establish a permanent fund to promote the long-term economic stability of Kake Tribal's shareholders by providing them with a source of funds for regular distribution. The Trust benefits the shareholders by preserving and augmenting Trust assets through investment, by minimizing taxes, and by protecting those permanent fund assets to the greatest extent possible from the claims of the creditors of the beneficiaries of the Trust ("Beneficiaries") and of Kake Tribal.

**E. Beneficiaries/Transfers.** Consistent with the foregoing provisions of ANCSA, Section 2 of the Trust Agreement provides that the Beneficiaries are all of the holders of Kake Tribal's common stock. The Beneficiaries will hold the same number of Trust Units as they hold shares of Kake Tribal's common stock. Valid transfers of Kake Tribal's common stock (which can occur in only very limited circumstances pursuant to Section 7(h) of ANCSA, 43 U.S.C. Section 1606(h)) result in an automatic transfer of the corresponding Trust Units. Except as noted below, the Trust Units are not transferable without also transferring the corresponding shares of Kake Tribal's common stock. In essence, the Trust Units are "stapled" to the shares of Kake Tribal's stock.

There are Class A and Class B Trust Units, corresponding to Class A and Class B shares of Settlement Common Stock of Kake Tribal. Both receive equal distributions from the Trust; however, Class B Trust Units do not generally vote. In the event Kake Tribal no longer has Class A and Class B shares of Settlement Common Stock, then rules similar to those presently used to determine Class A and Class B status for Kake Tribal's shares would apply to the Trust Units. If Kake Tribal permissibly issues additional Settlement Common Stock under ANCSA (see Section 7(g)(1) of ANCSA, 43 U.S.C. Section 1606(g)(1)), the number of Trust Units will be increased accordingly and the additional Trust

Units will be issued to those of Kake Tribal's shareholders who receive the additional Kake Tribal Settlement Common Stock.

As noted above, shares of Kake Tribal Settlement Common Stock (and, therefore, the Trust Units) are subject to severe transfer restrictions. Under Section 7(h) of ANCSA, 43 U.S.C. Section 1606(h), Kake Tribal's Settlement Common Stock is transferrable inter vivos only to Alaska Natives and even then only (1) pursuant to a divorce or child support decree; (2) pursuant to professional licensing requirements applicable to Alaska Natives engaging in certain occupations; or (3) by gift to members of the donee's immediate family. Kake Tribal's Settlement Common Stock is also transferrable in accordance with the terms of the last will and testament of a deceased shareholder. Because the Trust Agreement provides that the Trust Units are transferrable only in conjunction with the related Kake Tribal stock, the restrictions of Section 7(h) of ANCSA 43 U.S.C. 1606(h) also limit transferability of the Trust Units.

The Trust also provides that if Kake Tribal is merged, terminated or consolidated, or if Kake Tribal's shareholders vote to terminate the ANCSA nontransferability restrictions presently applicable to Kake Tribal's Settlement Common Stock, then (i) the Beneficiaries would be the holders of Kake Tribal's Settlement Common Stock on the day prior to such event; (ii) the Trust Units are transferable only in the same restricted circumstances Kake Tribal's Settlement Common Stock could have been transferred before the alienation restrictions were lifted; (iii) no additional Trust Units would be issued if Kake Tribal issues additional Settlement Common Stock; and (iv) three Trustees would be elected each year by the holders of the Class A Trust Units. These provisions are included to prevent outsiders from taking over the Trust.

**F. Trustees.** The Board of Directors of Kake Tribal Corporation will be the Trustees of the Trust. However if Kake Tribal is merged, dissolved or consolidated, or if Kake Tribal's shareholders vote to terminate the ANCSA nontransferability restrictions presently applicable to Kake Tribal's Settlement Common Stock, or if Kake Tribal's Settlement Common Stock no longer elects a majority of Kake Tribal's Board of Directors, then the Trust Beneficiaries will elect the Trustees. Three of the Trustees would be elected each year.

**G. Distributions.** All distributions from the Trust, whether such distributions are of Trust principal or income, must be made pro rata based upon the number of Trust Units held by each Beneficiary. Because the Trust Units are stapled to Kake Tribal's stock, any distributions by the Trust will necessarily also be pro rata based on the Kake Tribal stock held.

H. Representations of Kake Tribal and Trust. Kake Tribal and the Trust hereby represent that the procedure which has been followed (and will be followed) relative to the establishment of the Trust as a settlement trust will comply with the applicable provisions of ANCSA. Kake Tribal and the Trust also hereby represent that any future contributions to the Trust will be made in accordance with applicable provisions of ANCSA. Further, Kake Tribal and the Trust represent that transfers of the Trust Units will be permitted only in accordance with the provisions of the Trust Agreement and ANCSA.

### III. ANALYSIS

A. Congress Intended Settlement Trusts for Remedial Restructuring of Native Corporations. The legislative history behind Section 39 of ANCSA indicates that the settlement trust option was added to ANCSA because the corporate structure initially imposed by ANCSA had not always worked well for Alaska Natives. See, e.g., House Explanatory Statement, 133 Cong. Rec. H 11933, 11936-11937 (December 21, 1987), reprinted in 1987-5 U.S. Code Cong. & Admin. News 3299, 3307-09; see also H.R. Rep. No. 100-31, 100th Cong., 1st Sess., 4-5. Thus, Congress' intent in enacting Section 39 of ANCSA, 43 U.S.C. Section 1629e, was to afford Native corporations such as Kake Tribal an opportunity to restructure themselves, in whole or in part, into a form (the settlement trust) more responsive to the needs of their shareholders.

B. Exemption from Federal Laws. Kake Tribal's fundamental position is that Congress intended that settlement trusts (including without limitation, the establishment and funding of such trusts and the subsequent transfers of beneficial interests therein) were to be exempt from all aspects of the federal securities laws (including the '33 Act, the '34 Act and the '40 Act). Instead, Congress intended that the specialized provisions of ANCSA alone would control settlement trusts, including any potential securities law aspects of these trusts.

ANCSA has contained provisions since 1976 which have expressly exempted the stock of Alaska Native corporations from the '33 Act, the '34 Act, and the '40 Act. Section 28 of ANCSA, 43 U.S.C. section 1625. Moreover, as early as 1973, the staff of the SEC indicated it would take no action with regard to the decision by the various ANCSA regional corporations to not register their securities under the '33 Act. A copy of this no-action request and the 1973 SEC Staff response accompanies this ruling request.

The legislative history of the 1976 amendments which formally exempted the Native corporations from the federal securities laws makes clear that the various cited federal securities laws "have

little proper application to Native corporations and do not fulfill their intended purpose in this context." H. R. Rep. No. 94-729, 94th Cong., 1st Sess. 19 (1975), reprinted in, 1975-2 U.S. Code Cong. & Admin. News 2376, 2386. The result of applying registration rules to the Native corporation would likely be a complex document that "clearly is not an appropriate method of informing the stockholders", and, moreover, would also be likely "[to preclude] the one effective means of communication" regarding a proposed transaction. H. R. Rep. No. 94-729, supra at 20, reprinted in 1975-2 U.S. Code Cong. & Admin. News, supra at 2385. The same Committee report indicates that the exemption of ANCSA corporations from the Federal securities law was appropriate so long as their corporate stock was essentially inalienable, that is, transferable only to the limited extent ANCSA permits. Id. Moreover, when Congress extended the nontransferability rules in 1987 so that such rules would not automatically lapse in 1991, Congress similarly indefinitely extended the exemptions from the '33 Act and the '34 Act. Section 28 of ANCSA, 43 U.S.C. Section 1625. So long as ANCSA stock is nontransferable under ANCSA, the exemptions from the '33 Act and the '34 Act continue. The linkage Congress intended between the exemptions from the securities laws and the nontransferability of a Native corporation's stock is obvious.

Thus, ANCSA expressly exempts the establishment (and by implicit extension, the funding) of Native corporations from compliance with the '33 Act and the '34 Act. The legislative history of the settlement trust provisions clearly reveals that Congress viewed those provisions as an opportunity for Native corporations to restructure themselves, with an absolute minimum of collateral consequences, to avoid the problems encountered in using the corporate form previously required by Congress. It makes no sense to exempt the process by which the Native corporations themselves were originally established and funded from the securities laws but not the remedial process which Congress prescribed for Native corporations to avoid the problems with corporate form.

The Trust Units that Kake Tribal's Native shareholders will have in the Trust are virtually identical to the interests those shareholders received in Kake Tribal when Kake Tribal was established. For example, each Trust Unit is stapled to one share of Kake Tribal stock; the Trust Units are not transferable or otherwise alienable except in the same restricted circumstances as apply to Kake Tribal's stock; and the Trust's distributions may only be made on the same pro rata basis as are Kake Tribal distributions. Thus, a distribution of \$1.00 from the Trust will necessarily benefit precisely the same persons that distribution of \$1.00 from Kake Tribal would benefit.

We note that ANCSA does contain an express exemption for settlement trusts from the provisions of the '40 Act, Section 28(d)(2) of ANCSA, 43 U.S.C. Section 1625(d)(2), while no such express exemption is set forth from the '33 Act or the '34 Act. However, we do not think any inference should be drawn that settlement trusts were somehow to be subject to the '33 Act or '34 Act. The language relative to the '40 Act was added presumably because Congress intended different treatment with regard to the '40 Act between Native corporations and settlement trusts. (Settlement trusts are permanently exempt from the '40 Act, while Native corporations lose their exemption from the '40 Act in 2001.) It should be noted, too, that the exemption for Native corporations from the '40 Act was rewritten (for other reasons) at the same time the settlement trust provisions were added in 1987. Thus, Kake Tribal believes Congress simply overlooked the opportunity to expressly exempt settlement trusts from the '33 Act and the '34 Act when the settlement trust provisions were added.

Exemption from the Federal securities laws does not mean that settlement trusts are unregulated. For example, Congress has specified the notice and, by necessity, the solicitation period for the shareholder vote on a settlement trust. Congress has also specified that an absolute majority of shareholders must approve a settlement trust. Congress has also provided that any pertinent state laws governing proxy solicitations remain applicable. In this way the treatment of settlement trusts parallels that of Native corporations themselves. That is, Native corporations must still comply with Alaska laws on proxy solicitation and reporting to shareholders even though Native corporations are exempt from the federal securities laws. A critical distinction in this regard is that prior to the point ANCSA stock becomes alienable, an uninformed public cannot become involved with a Native corporation in the way the public could with other issuers. The uninformed public likewise has no potential involvement with a settlement trust, since only the Native corporation's shareholders can be the beneficiaries of the settlement trust. Moreover, even if Kake Tribal's stock becomes transferable, the Trust Units remain inalienable under the terms of the Trust. Thus, the "uninformed public" can never become potential investors in the Trust.

It follows that the establishment and funding of the Trust should be no more subject to the '33 Act and the '34 Act than was the establishment and funding of the Native corporations themselves. That is, the only result consonant with the purposes of ANCSA is to exempt settlement trusts from the '33 Act and the '34 Act.

**D. Trust Units Are Not Securities.** Section 2 of the '33 Act provides a definition of a "security". Section 3(10) of the '34 Act provides a similar definition. None of the items specifically

listed in either statute (such as a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificates, preorganization certification or subscription, transferable share, or investment contract) are a "beneficial interest in trust" or similar language. The closest phrase within either statute is the catch-all phrase "or, in general, any interest or instrument commonly known as a 'security'".

Typically, a security is found in an arrangement in which one person (the transferor) transfers money or property to another with an expectation that a return will be generated for the transferor without his or her direct involvement. See, e.g., Securities and Exchange Commission v. Howey, 328 U.S. 293 (1946); reh'g denied, 329 U.S. 819 (1946). The notion of a "security" therefore implies a voluntary association of two or more parties for profitable business purposes. Properly understood, however, the Trust is akin to an ancestral trust having no such voluntary association for business purposes. Trust Units are passed only through donative transfers, almost exclusively among family members, rather than sold. See section 2 of the Trust Agreement. Trust Units cannot be pledged or otherwise encumbered. See section 12 of the Trust Agreement. And operation of a business by the Trust is prohibited by ANCSA. Section 39 of ANCSA, 43 U.S.C. Section 1629e.

Moreover, there is no real volitional choice to participate in the Trust arrangement as there would be in the common understanding of a "security". While shareholders are required to vote whether to establish a settlement trust, see Section 36(d) of ANCSA, 43 U.S.C. Section 1629b(d), the actual decision to fund the trust is made by the directors of Kake Tribal, not by the Trust Beneficiaries. Moreover, this is not a situation where the shareholders are electing whether to receive cash or the Trust Units; if the vote to establish the settlement trust fails, the assets which could otherwise fund the Trust will simply be retained in corporate form and utilized by the corporate Board of Directors as they think best.

For the foregoing reasons, Kake Tribal believes the Trust Units are not securities. Accordingly no compliance with either the '33 Act or '34 Act is required as to the establishment of the Trust, the funding of the Trust, or the subsequent transfers of Trust Units.

E. No Sales Occur. Section 2(3) of the '33 Act provides a definition of "sale" (and the related term "sell"); this definition includes "every attempt \* \* \* to dispose of \* \* \* a security for value" (emphasis added). Section 3(14) of the '34 Act contains a similarly expansive definition of "sale"; the term includes "any contract to sell or otherwise dispose of." The

definition of "sale" in the '34 Act does not specifically require that a sale must be for value. Nevertheless, case authority interpreting Section 3(14) of the '34 Act makes clear that the absence of the word "value" is of no significance and that the definition of "sale" in both Acts is the same. In Lawrence v. SEC, 398 F.2d 276 (1st Cir. 1968), the court reasoned that it was "unable to detect any significant difference \* \* \* between the two \* \* \* statutes" and that there was "no reason to believe that Congress intended, one year after the passage of the Securities Act [of 1933] to dilute the concept of 'sale' \* \* \* ". Thus, both the '33 Act and the '34 Act require that value be given for a sale to exist. Even if it is assumed that "securities" are present, no sales will occur with respect to the Trust. The Kake Tribal shareholders are not giving value to acquire the Trust Units -- they are receiving the Trust Units simply because they are Kake Tribal shareholders. Similarly, when contributions are made to the Trust, the shareholders also do not give value even though their respective pro rata share of the Trust, represented by a particular Trust Unit, has been increased. Further, when transfers of the Trust Units permissibly occur, those transfers can only occur in donative settings, whether inter vivos or at death.

We note further that the staff of the SEC has previously issued at least five no-action letters which are of relevance on the point of whether a sale occurs with regard to the issuance or distribution of securities by an Alaska Native corporation. All of these no-action letters support Kake Tribal's position that no sale is present with regard to the establishment or funding of the Trust, or to the subsequent transfers of the Trust Units.

Of particular relevance are the no-action letters dated December 28, 1992 and January 11, 1994. In the no-action letter dated December 28, 1992, the SEC staff concluded that the establishment of a settlement trust by Shee Atika, Incorporated, the Alaska Native Corporation for Sitka, Alaska, was not an event requiring registration with the SEC. In the no-action letter dated January 11, 1994, the SEC staff concluded that the establishment of a settlement trust by Goldbelt, Incorporated, the Alaska Native Corporation for Juneau, Alaska, was not an event requiring registration with the SEC. The provisions of both the Shee Atika Settlement Trust and the Goldbelt Settlement Trust are virtually identical to those of the Settlement Trust which Kake Tribal proposes to establish.

In addition to the December 28, 1992 no-action letter issued to Shee Atika, and the January 11, 1994 no-action letter issued to Goldbelt, there are four other no-action letters issued by the staff of the SEC of relevance.

The first of these other no-action letters, dated December 27, 1973, concerned whether action would be taken if the twelve regional corporations formed under ANCSA did not register the stock they were to issue pursuant to ANCSA. The regional corporations argued in their no-action request that no sale was present because the Natives were not surrendering value to acquire their respective stock interests. The SEC staff concluded no action would be taken. It should be noted that this first no-action request (as well as the second request discussed in the next paragraph) occurred prior to the amendment of ANCSA to exempt Native corporation stock from the '33 Act and the '34 Act. See Section 28(a)(1) of ANCSA, 43 U.S.C. section 1625.

The second of these other no-action letters, dated April 1, 1974, involved the same issue as the December 27, 1973 no action letter, except the parties seeking the no-action letter were the Village and Urban Corporations which were to issue stock under ANCSA. The SEC staff concluded that no action would be taken despite the failures to register the securities.

The third of these other no-action letters, dated December 12, 1978, concerned whether action would be taken regarding a limited partnership formed by Cook Inlet Region, Inc. ("CIRI"), with regard to the subsequent distribution by CIRI of the limited partnership units to CIRI's shareholders. As represented to the SEC staff, the limited partnership interests were to be transferable only under the same circumstances as could CIRI's shares. These are the same restrictions Kake Tribal has placed upon transfers of the Trust Units. CIRI distributed all of the limited partnership units to its shareholders, and thus, did not retain any such units. CIRI also argued that because there would be no investment decision which the CIRI shareholders would be making whether to acquire the limited partnership units, and that because there was as a practical matter no ability to transfer the units, no public purpose would be served by requiring registration of the limited partnership units. The SEC staff concluded that no action would be taken.

The last of these no-action letters, dated November 25, 1980, concerned whether action would be taken with regard to Kavilco, Inc.'s distribution to its shareholders of the stock of Kavilco's wholly owned subsidiary, Skowl Arm Timber Corporation. Kavilco argued that the distribution of the Skowl Arm shares was not a "sale" because no value was being surrendered by the Kavilco shareholders to receive the Skowl Arm shares. The SEC staff concluded that no action would be taken.

As a final note, the staff of the SEC has long recognized that, as a general rule, distribution of a dividend by a corporation to its shareholders does not constitute a sale of a security. SEC Release No. 33-929 (July 29, 1936), 17 CFR

§ 231.929. While there are exceptions to this (as when a corporation intends to foist unregistered securities upon an uninformed public market), those exceptions have no relevance here given the virtual nontransferability of the Trust Units.

For the foregoing reasons, Kake Tribal believes neither the establishment of the Trust, the funding of the Trust, nor subsequent transfers of Trust Units constitute "sales". Accordingly no compliance with either the '33 Act or the '34 Act is required.

F. The Trust Units Need Not Be Registered Under § 12(g) of the '34 Act. Section 12(g)(1) of the '34 Act requires that every "issuer" engaged in interstate commerce which meets certain threshold requirements must file a registration statement with the Securities & Exchange Commission. Section 12(g)(1) appears to be the only registration requirement in the '34 Act which could be applicable to the Trust and the Trust Units. Kake Tribal assumes arguendo that at least certain of the threshold requirements of Section 12(g) are met by the Trust. Nevertheless, Kake Tribal does not believe that Section 12(g)(1)'s registration requirements are applicable to the Trust or to the Trust Units.

Section 12(g)(1) applies only to "issuers." Under Section 3(8) of the '34 Act, an issuer is "any person who issues or proposes to issue any security." For reasons detailed above, Kake Tribal believes that, under both the '33 Act and the '34 Act, the Trust Units are not securities. Because no securities are present, the Trust is not an "issuer" within the meaning of Section 12(g)(1) and thus Section 12(g)(1) is inapplicable to the Trust.

Even if the Commission is inclined to rule that the Trust Units are securities so that the Trust is an issuer, both the Trust and the Trust Units should be exempt from the registration requirements of the '34 Act by Section 12(h) of that Act. Section 12(h) confers upon the Commission the discretion to exempt any issuer of securities

if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.

As discussed above, the Trust Units only benefit the relatively small number of holders of Kake Tribal's common stock. The Trust Units cannot be freely traded; they are "stapled" to shares of

Kake Tribal stock, and Kake Tribal's shares can only be transferred in very limited circumstances by Federal law. The Trust can only issue new Trust Units in the future, in extremely limited circumstances (see Section 7 of ANCSA, 43 U.S.C. Section 1606(g)) and only then if an absolute majority of Kake Tribal's existing stock approves the new shares. Congress' intent was clear: Kake Tribal's stock and the Trust Units are exempt from the application of federal securities laws; this exemption is due in large part to the narrow and specialized scope of stock transactions in the Alaska Native context. In light of this unique context, the Commission would be acting well within the bounds of its proper discretion to exempt the Trust and Trust Units under Section 12(h) of the '34 Act.

#### IV. ENCLOSED DOCUMENTS

We include copies of the foregoing in support of our ruling requests:

- A. Copy of the Trust Agreement establishing the Trust;
- B. Copy of no-action request and SEC Staff Response dated January 11, 1994;
- C. Copy of no-action request and SEC Staff Response dated December 28, 1992;
- D. Copy of Section 3 of ANCSA, 43 U.S.C. § 1602;
- E. Copy of Section 7(g) and 7(h) of ANCSA, 43 U.S.C. § 1606(g) and (h);
- F. Copy of Section 28 of ANCSA, 43 U.S.C. § 1625.
- G. Copy of Section 36 of ANCSA, 43 U.S.C. § 1629b;
- H. Copy of Section 39 of ANCSA, 43 U.S.C. § 1629e;
- I. Copy of ANCSA legislative history, including the House Explanatory Statement;
- J. Copy of no-action request and SEC Staff response dated December 27, 1973;
- K. Copy of no-action request and SEC Staff response dated April 1, 1974;
- L. Copy of no-action request and SEC Staff response dated December 12, 1978;

- M. Copy of no-action request and SEC Staff response dated November 25, 1980;
- N. Copy of Excerpts From House Report No. 94-729, 94th Cong., 1st Sess. (1975);
- O. Copy of House Report No. 100-31, 100th Cong., 1st Sess. (1987); and

#### V. PROCEDURAL MATTERS

In the event the SEC staff is inclined to issue any unfavorable ruling, Kake Tribal requests a conference before the issuance of the ruling. The establishment of the Trust is an actual transaction, and is not a hypothetical nor alternative transaction. Nevertheless, the Trust has not been fully consummated and is subject to minor, nonmaterial modifications as may be suggested.

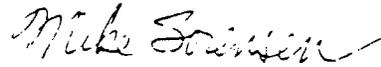
We hereby request an advance copy of the ruling to be issued to the undersigned as Kake Tribal's authorized representative via facsimile transmission. The telecopier number of Kake Tribal's authorized representative is: (206) 224-8250.

#### VI. CONCLUSION

Based on the foregoing, we hereby request the staff of the SEC to provide no-action rulings as indicated above.

Please contact us if you have any questions.

SORENSEN & EDWARDS, P.S.



Michael R. Sorensen



Bruce N. Edwards

**Kake Tribal  
Shareholder  
Settlement Trust**



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## THE KAKE TRIBAL SHAREHOLDER SETTLEMENT TRUST

There is hereby established the "Kake Tribal Shareholder Settlement Trust," which is a Trust effective on the date appearing below. This Trust is among Kake Tribal Corporation (Kake Tribal), and the initial Board of Trustees, composed of Gordon Jackson, Harold Martin, Lolanda Cavanaugh, Stanley Adams, Henrich Kadake, Sr., Marvin Kadake, Archie Cavanaugh Jr., Pete Martin, Jr., and Norman Jackson (the "Trustees").

WHEREAS, Kake Tribal is an Village Corporation, organized and existing under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601, et seq. (herein, the "ANCSA"), and is authorized to hold, invest, manage and/or distribute property and funds for and on behalf of its shareholders; and

WHEREAS ANCSA authorizes the conveyance of assets by a Native corporation to a Settlement Trust; and

WHEREAS, consistent with the intent and purposes of ANCSA as amended, Kake Tribal desires to create a Settlement Trust (herein the "Trust") under ANCSA for the purpose of establishing a settlement trust to promote the long-term economic stability of Kake Tribal's shareholders by providing a source of funds for regular distribution to the Trust Beneficiaries, which would be done by preserving assets and growing those assets through investment and by minimizing taxes, and by protecting such settlement trust assets to the greatest extent possible from the claims of creditors of the Beneficiaries and of Kake Tribal; and

WHEREAS, the Board of Directors of Kake Tribal has approved the establishment of this Settlement Trust and has authorized the President, Vice President and Secretary of Kake Tribal to execute this Trust on behalf of Kake Tribal; and

WHEREAS, Kake Tribal recognizes that circumstances and events will change as time passes and that it is desirable to have the continued existence of the Trust reviewed by the Trustees and the Beneficiaries at periodic intervals; and

WHEREAS, the efficient management of the Trust will require that the Trustees employ such personnel, administrators, money managers, financial advisors, brokers, custodians, and such other entities to assist in the investment and management of the Trust Assets;

NOW THEREFORE, it is hereby agreed and declared as follows:

1. NAME OF TRUST.

This Trust shall be known as the Kake Tribal Shareholder Settlement Trust.

2. BENEFICIARIES AND TRUST UNITS.

2.1 The provisions of this section shall determine the Beneficiaries of this Trust.

2.1.1 The Initial Beneficiaries of this Trust shall be the holders of the Settlement Common Stock of Kake Tribal. Each Initial Beneficiary shall own a number of Trust Units equal to the number of shares of Kake Tribal Settlement Common Stock owned by such Initial Beneficiary so that the total number of Trust Units outstanding shall equal the total number of shares of Kake Tribal Settlement Common Stock then outstanding. There shall be Class A and Class B Trust Units as described below.

2.1.2 The initial ownership of Trust Units shall be determined as of 5:00 p.m. on the day the shareholders of Kake Tribal approve a resolution first establishing a settlement trust, whether or not the provisions of this Agreement are subsequently modified as set out herein.

2.2 The Trust Units shall be subdivided into Class A Trust Units, which shall have one vote per unit on each matter specified in this Agreement for a vote by the Beneficiaries, and Class B Trust Units, which shall have no vote on any matter. Class A Trust Units shall correspond to the Class A shares of Kake Tribal, and Class B Trust Units shall correspond to the Class B shares of Kake Tribal. Notwithstanding the foregoing, Class B Trust Units shall be converted into Class A Trust Units automatically upon a valid transfer of Class B Trust Units to a person who is a Native or Descendant of a Native, and Class A Trust Units shall be converted automatically into Class B Trust Units upon a valid transfer of such Class A Trust Units to a person who is not a Native or Descendant of a Native. Except with regard to voting rights, Class A and Class B Trust Units shall in all manners be equivalent. Further, even if non-Natives or persons not Descendants of a Native are at any time permitted in any fashion to vote on matters relative to Kake Tribal, such persons shall not be permitted to vote on any matter pertaining to this Trust.

2.3 So long as (i) Kake Tribal has not been merged (regardless of whether Kake Tribal is the surviving corporation), consolidated or dissolved and (ii) the restrictions on stock alienation imposed by section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) apply to Kake Tribal's Settlement Common Stock:

2.3.1 The Beneficiaries of this Trust shall be the holders of the Settlement Common Stock of Kake Tribal, with one Class A Trust Unit corresponding to each Class A share of Kake Tribal, and with one Class B Unit corresponding to each Class B share of Kake Tribal.

2.3.2 In the event that additional shares of Kake Tribal Settlement Common Stock are issued pursuant to Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust), the number of Trust Units shall be increased accordingly and the additional Trust Units shall be issued to the same persons and in the same number as is the additional Kake Tribal Settlement Common Stock.

2.3.3 The Trust Units may only be transferred at the same time and in the same manner as the related share of Kake Tribal Settlement Common Stock may permissibly be transferred. If a Kake Tribal shareholder shall transfer in any permissible manner his or her Kake Tribal Settlement Common Stock, then that Beneficiary shall also be deemed to have transferred the corresponding Trust Units in the Trust to the transferee of the Kake Tribal Settlement Common Stock, so that the Trust Units will accompany the ownership of Kake Tribal Settlement Common Stock.

2.4 If Kake Tribal has been merged (regardless of whether Kake Tribal is the surviving corporation), consolidated or dissolved, or if the restrictions on stock alienation imposed by Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) no longer apply to Kake Tribal's Settlement Common Stock, then:

2.4.1 The Beneficiaries of this Trust shall be the holders of the Settlement Common Stock of Kake Tribal, with one Class A Trust Unit corresponding to each Class A share of Kake Tribal, and with one Class B Trust Unit corresponding to each Class B share of Kake Tribal, determined as of the day immediately prior to the date upon which Kake Tribal was merged (regardless of whether Kake Tribal is the surviving corporation), consolidated, or dissolved, or as of the day prior to the first date upon which such ANCSA stock restrictions no longer apply to Kake Tribal's Settlement Common Stock. The transfer agent of Kake Tribal shall prepare and deliver to the Trustees a list of the shareholders of Kake Tribal and their last

known addresses as of such day. No further shareholder lists shall be required from Kake Tribal's transfer agent. Nothing in this Section 2.4.1 shall prevent a transfer of Trust Units after such day which is otherwise in accord with Section 2.4.3.

2.4.2 In the event that additional shares of Kake Tribal Settlement Common Stock are issued pursuant to ANCSA, the number of Trust Units shall not be increased and issued accordingly.

2.4.3 Beneficiaries may transfer their Trust Units only to the extent and in the manner that transfer of the Settlement Common Stock of Kake Tribal was allowed on the day prior to the date Kake Tribal was merged (regardless of whether Kake Tribal is the surviving corporation), consolidated or dissolved, or the day prior to the first date the restrictions on stock alienation imposed by section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) no longer apply to Kake Tribal's Settlement Common Stock.

### 3. TRANSFER OF ASSETS TO TRUST.

Kake Tribal hereby transfers and delivers to the Trustees the property listed and described in Schedule "A" attached hereto and made a part of this Trust, for the Trustees to manage, invest, and reinvest, and to receive and manage all interest, dividends, rents and other income and profits from the property as hereinafter provided. This property, together with any other property which may hereafter be conveyed to the Trustees hereunder shall constitute the Trust Fund and shall be held, administered and distributed as provided in this Agreement.

### 4. ADDITIONAL CONTRIBUTIONS TO TRUST ESTATE.

Kake Tribal, or any other person or entity, may at any time, make contributions to this Trust, by any manner whatsoever, in addition to the initial contribution described in Section 3 and all such additional contributions shall be governed by the provisions of this Trust. The Trustees are authorized and empowered, in their discretion, to receive additional contributions and to add the same to the Trust Fund to be administered pursuant to the provisions of this Trust.

### 5. IRREVOCABILITY OF TRUST.

This Trust is irrevocable, and Kake Tribal shall not have the right or power to alter, amend, revoke or terminate this Trust, as other-

wise provided in Sections 7 and 27 of this Agreement.

## 6. DISTRIBUTIONS TO BENEFICIARIES.

6.1. Beginning with the calendar year following the calendar year in which trust assets first exceed \$25,000,000 and continuing thereafter during the term of this Trust, the Trustees shall distribute seventy-five percent (75%) of the estimated Net Cash Income to the Beneficiaries on the second Monday of each of the following months:

(i) June -- distributing 75 % of the estimated Net Cash Income for first six months of the current calendar year; and

(ii) December -- distributing such amount which, when added to the June distribution, will equal 75 % of the estimated Net Cash Income for the current calendar year.

6.2. Net Cash Income distributions shall be pro rata based upon the number of Trust Units owned by each Beneficiary.

6.3. During the term of this Trust, no distribution shall be made to any Beneficiary from Trust Principal except as described in Section 7. Any principal distribution which is made shall be pro rata based upon the number of Trust Units owned by each Beneficiary.

6.4. After first making the distribution(s) provided for in the Sections 6.1 and 6.5, the Trustee shall then add any remaining undistributed Net Cash Income to the Principal of this Trust Fund.

6.5. The Trustees may, in their discretion, also distribute any portion of the Net Cash Income from a particular calendar year which is not distributed under Section 6.1. The distributions under this Section 6.5 may only be made with regard to Net Cash Income earned in years beginning in the calendar year 2000. Net Cash Income earned in years before the calendar year 2000 may not be distributed under this Section 6.5. Any distribution under this Section shall be made only at the same time as the other distributions for such calendar year. Any Net Cash Income from such year beginning the calendar year 2000 which could be, but is not, currently distributed under this Section 6.5 or under Section 6.1 shall be added to Principal, and thereafter distributed to Beneficiaries only as Principal is distributed. Nothing in this Section permits the Trustees to distribute Net Cash Income from a period other than the current calendar year which has been accumulated.

6.6. The Trustees shall compare the amount of distributions distributed with regard to a particular year under Section 6.1 (and to the extent applicable, Section 6.5) with the amount which would have been distributed for such year determined by substituting actual Net Cash Income for the estimated Net Cash Income.

6.6.1 In the event that the amount of distributions actually made for such year is less than the amounts which would have been distributed for such year based on actual Net Cash Income (an "under distribution"), the amount of such under distribution, if it exceeds \$100,000, shall be distributed within the period permitted by Treasury Regulation Section 1.663(b)-1 as amended to the holders of the Trust Units of record on the record date for the immediately preceding distribution. If the amount of the under distribution is \$100,000 or less, no distribution under this Section shall be made.

6.6.2 In the event that the amount of distributions actually made for such year is more than the amounts which would have been distributed for such year based on actual Net Cash Income (an "over distribution"), the amount of such over distribution shall be recouped by reducing the amount of the June distribution for the next succeeding calendar year to those Beneficiaries of record as of the record date for such June distribution.

6.6.3 The adjustments provided in this Section 6.6 shall be made regardless of whether the record holders of the Trust Units which received the over distribution or the under distribution, as the case may be, are different from the record holders which bear the burden or receive the benefit of the adjustment.

## 7. REVIEW OF TRUST.

7.1. Within a 180 day period following the tenth Anniversary of this Trust, the Trustees may:

7.1.1 Modify the percentage of estimated Net Cash Income which is required to be distributed by deleting "75%" and substituting any whole integer between "0%" and "100%";

7.1.2 Modify the Principal distribution provisions by permitting any portion of the Principal to be distributed, whether on a recurring basis or in a single lump sum; or

7.1.3 Terminate this Trust and distribute all principal (including accrued income) to the Beneficiaries.

7.2. Any such decision by the Trustees would require the affirmative vote of at least two-thirds of the incumbent Trustees. The modification would not be effective until approved by the affirmative vote of the holders of more than one-half (at least 50%+1) of the Class A Trust Units.

7.3. Except as described in Sections 7.1 and 7.2, the Trust would automatically continue for a further ten years (measured from the tenth Anniversary of this Trust) if there is no final action of the Trustees and/or Beneficiaries within such 180 day period. During such continuation, the method of income distribution specified in Section 6 shall continue. Within 180 days of each succeeding ten-year Anniversary of the Trust, the Trustees, upon an affirmative two-thirds vote of the incumbent Trustees, subject to a vote of the Class A Trust Units as described in Section 7.2, could make the same choices as described in Section 7.1.

7.4. Neither the Beneficiaries nor the Trustees have any independent ability to make the modifications described in this Section 7, and such modifications may only be made as provided herein.

7.5 In no event shall the Trust Assets ever revert to Kake Tribal.

7.6. Votes by the holders of the Class A Trust Units pursuant to this Trust Agreement (including pursuant to Section 7.2) shall be done by mail, without the need for a formal meeting, with each Class A Trust Unit having one vote. Solicitation of competing ballots by rival groups shall not be permitted, and the Trustees shall number each ballot sequentially and take all other steps as shall be necessary to ensure the integrity of such balloting. If competing solicitation does occur, or misleading solicitation is occurring in any manner, the Trustees may petition the Superior Court for the First Judicial District, Juneau, Alaska, to enjoin such activities, to order that no vote at all shall occur, or to take such other remedial action as shall be deemed necessary. The Trustees shall permit voting to occur over at least thirty days. In all events, such voting shall be concluded no later than the 180th day following the respective ten-year anniversary of the Trust.

7.7. If the Trust is to be dissolved, the Trustees, after paying all necessary and proper expenses of administration, including its fees, and income taxes due from the Trust, shall distribute the balance of the Trust Fund pro rata to the Beneficiaries based upon the Trust Units. Thereafter, the Trust shall terminate.

7.8. During the period of time the vote of the Class A Trust Units is occurring, the Trustees shall continue to make distributions to the Beneficiaries as specified in Section 6.

## 8. OTHER TERMINATION.

8.1. If at any time during the term of the Trust any of the following events occur, the Trustees may, but need not, terminate the Trust:

8.1.1. A change in state, federal, or other governmental law or regulation, including judicial interpretations thereof, which will have a Material Adverse Effect on the purposes for which the Trust has been established. Before termination may occur under this provision, both of the following must find that a Material Adverse Effect will result: (i) the Trustees (as set forth in §10.4.3); and (ii) a court of competent jurisdiction. The findings of the Trustees must be made, and the petition or complaint for the judicial determination must be filed, within thirty-six (36) months after the effective date of the change, or else the change cannot be found to have a Material Adverse Effect.

8.1.2. Failure of the Trust to receive favorable rulings from the Internal Revenue Service on or before December 31, 1995, as to such tax issues upon which the Trustees in their absolute discretion shall deem it necessary and prudent to obtain such rulings.

8.2. To terminate the Trust under this Section, the Trustees shall follow the procedure set forth in Section 7.7.

## 9. INVESTMENT ADVICE AND SERVICES.

9.1. Without intending to limit the Trustees' powers granted elsewhere in this Agreement, the Trustees may place all or a portion of the Trust Assets under the supervision of one or more professional money managers, who may be delegated the authority by the Trustees to direct specific investment of such portion of the Trust Assets. Alternatively, the Trustees may themselves direct the investment of some or all of the Trust Assets, and in this connection, may seek such professional advice from financial advisors and/or consultants as the Trustees deem necessary.

9.2. Subject to any written contractual agreements entered by the Trustees, all money managers and financial advisors serve at the pleasure of the Trustees.

## 10. TRUSTEES.

10.1. The Trust shall at all times be managed by a Board of Trustees, who shall be selected as follows:

10.1.1 So long as (i) Kake Tribal has not been merged (regardless of whether Kake Tribal is the surviving corporation), consolidated or dissolved, and (ii) the restrictions on stock alienation imposed by Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) apply to Kake Tribal's Settlement Common Stock, and (iii) Kake Tribal's Settlement Common Stock elects a majority of Kake Tribal's Board of Directors, the Trustees for the Trust shall be the then incumbent members of the Kake Tribal Board of Directors. Removal of any director of Kake Tribal pursuant to Alaska law shall be deemed the automatic removal by Kake Tribal of such person as a Trustee. Any vacancies created by the death, incapacity, resignation or removal of a Trustee shall be deemed filled when the corresponding directorship of Kake Tribal is filled.

10.1.2 If Kake Tribal has been merged (regardless of whether Kake Tribal is the surviving corporation), consolidated or dissolved, or if the restrictions on stock alienation imposed by Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) no longer apply to Kake Tribal's Settlement Common Stock, or if Kake Tribal's Settlement Common Stock no longer elects a majority of Kake Tribal's Board of Directors, then the Trustees shall be selected for the Trust as follows:

(a) On the day prior to such merger, consolidation, or dissolution, or the lifting of the restrictions imposed by Section 7 of ANCSA on the Kake Tribal Settlement Common Stock (as such provision reads on the Effective Date of this Trust), or on the day prior to the day on which Kake Tribal's Settlement Common Stock no longer elects a majority of Kake Tribal's Board of Directors, each then serving Trustee shall be converted to a term appointment as Trustee, with the unexpired portion of each respective term as a director of Kake Tribal (but for such merger, consolidation or other such described event) constituting each respective remaining term in office as Trustee. Thereafter, upon the expiration of each Trustee's term, elections shall be held to fill such vacancy. Ninety (90) days prior to such expiration of the term of a Trustee, or upon the death, resignation or disability of a Trustee, the Chairman of the Trustees shall notify the Trustees in writing of the need for a successor member and the Trustees shall conduct an election for a successor member of the Trustees.

(b) Within fifteen (15) days after receipt of the notice described in Section 10.1.2(a) stating the need for a successor member, the Trustees shall mail to the holders of the Class A Trust Units a written request for nominations of a successor member of the Trustees and a form for the nominations. Each holder of a Class A Trust Unit may nominate one person for each position to be filled. The holders of Class A Trust Units must return the nominations to the Trustees within fifteen (15) days after the date the Trustees mailed the request for nominations. Upon receipt of the nominations, the Trustees shall mail each nominee written notice of the nomination. Any person who desires to have his or her name withdrawn must respond in writing to the Trustees within fifteen (15) days of the date of the mailing of the notice. The Trustees shall then prepare and mail the ballots to the holders of the Class A Trust Units within twenty-one (21) days after the deadline for responses from the nominees. Each Class A Trust Unit has one vote for each Trustee to be elected, with cumulative voting to apply. The holders of the Class A Trust Units must return their ballots to the Trustees within thirty (30) days after the date the Trustees mailed the ballots. The nominees with the most votes shall be elected to the positions to be filled in order of the most votes received. The Trustees shall tabulate the results and immediately notify the nominees of the results, shall make the results available for review at the office of the Trustees, and shall enclose a report of the results to the Beneficiaries with the next Income distribution.

10.2. The Trustees shall meet at least once each year during the month of March. The Trustees shall also meet at the call of the Chairman or any three Trustees.

10.3. The Trustees shall elect a Chairman and Secretary, and other officers, and shall hire employees and agents as the Trustees deem appropriate.

10.4. The duties of the Trustees shall include in addition to the other duties set forth herein, and subject to the other provisions of this Agreement, the duty:

10.4.1. To immediately ensure the proper custody of all assets contributed to the Trust;

10.4.2. To establish investment policy, to formulate the allocation for the Trust's assets to comprise an investment portfolio, and to review such policy and asset allocation at least annually, making such modifications therein as shall be deemed necessary. It shall

require the affirmative vote of two-thirds of the incumbent Trustees to establish or amend investment policy or asset allocations;

10.4.3. To petition for, after approval by two-thirds (2/3) of the incumbent Trustees, a judicial determination as to whether a change in governmental law or regulation will result in a Material Adverse Effect as provided in Section 8;

10.4.4. To determine whether to retain various financial and legal specialists as the Trustees shall deem necessary and prudent to perform this Trust, and to establish compensation therefor, to review the performance thereof, and to terminate their services;

10.4.5. To make amendments to this Trust as provided in Sections 7 and 27.

10.4.6. To compromise, settle, arbitrate, defend any claim or demand in favor of or against the Trust;

10.4.7. To incur reasonable expenses related to Trust administration and to authorize the payment therefor from the Trust;

10.4.8. To determine allocations of various items (in whole or in part) between Principal and Income as provided in this Trust Agreement; and

10.4.9. To exercise all other powers necessary to carry this Trust into effect, all of which shall be exercised in a fiduciary capacity as provided within AS 13.36.075 and this Agreement.

10.5. A majority of the Trustees shall constitute a quorum for the transaction of Trust business. No action shall be taken by the Trustees without approval of a majority of members at a meeting in which a quorum is present. Notwithstanding the foregoing, where this Trust Agreement requires a greater number of Trustees to vote to approve a specific action, such greater number shall apply.

10.6. Persons serving as Trustees shall be entitled to receive reasonable compensation and reimbursement of their reasonable expenses in performing their duties as officers and Trustees of the Trust.

10.7. No bond, surety, or security shall be required to secure performance of the Trustees's duties, although the same may be obtained in the discretion of the Trustees at the expense of the Trust.

The Trustees may at the expense of the Trust obtain such Trustees' Insurance coverage insuring the Trustees of the Trust and the Trust against errors and omissions and such other liability exposures as the Trustees deem appropriate.

## 11. ASCERTAINING BENEFICIARIES.

11.1. Prior to the merger (regardless of whether Kake Tribal is the surviving corporation), consolidation or dissolution of Kake Tribal, and so long as the restrictions on stock alienation imposed by Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) apply to Kake Tribal's Settlement Common Stock, then all communications, voting documents, and payments shall be mailed to a Beneficiary at the most recent address furnished to the Trustees by the transfer agent of Kake Tribal. The Trustees shall have no duty or responsibility to determine who the Beneficiaries are, or to verify the completeness or accuracy of the shareholder list furnished to the Trustees by Kake Tribal's transfer agent.

11.2. After merger (regardless of whether Kake Tribal is the surviving corporation), consolidation or dissolution of Kake Tribal, or after the restrictions on stock alienation imposed by Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) no longer apply to Kake Tribal's Settlement Common Stock, then the Trustees shall thereafter be responsible for determining the Beneficiaries of the Trust. The Trustees shall rely on the last address received from Kake Tribal's transfer agent until a written notice of change of address is received from a Beneficiary. The Trustees shall not have a duty to locate Beneficiaries and any unclaimed distributions shall be added to Trust Principal until claimed by the appropriate Beneficiary. Any distributions not claimed after a five (5) year period shall be forfeited by the Beneficiary. At the time of termination of the Trust, any distributions which have been unclaimed for twelve (12) months or more shall be forfeited by the Beneficiary. Any distributions which have been unclaimed for less than twelve (12) months shall be held until one (1) year after the termination of the Trust, at which time the unclaimed distribution shall be forfeited and distributed proportionately to all other Beneficiaries. In addition, if a Beneficiary's share of the final Trust distribution is returned to the Trustees as unclaimed, and remains unclaimed for twelve (12) months, that payment shall be forfeited and distributed proportionately to all other Beneficiaries.

11.3. After merger (regardless of whether Kake Tribal is the surviving corporation), consolidation or dissolution of Kake Tribal,

or after the restrictions on stock alienation imposed by Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) no longer apply to Kake Tribal's Settlement Common Stock, no transfer of a Trust Unit which is otherwise permissible shall be effective until the transferee of a Trust Unit shall provide a written notice of the transfer to the Trustees together with any evidence of transfer requested by the Trustees. Prior to the time a transferee has properly documented the transfer, the Trustees may, but need not, do any of the following: (a) continue to make distributions to the record owner of the Trust Units; (b) interplead such deposits into a court of competent jurisdiction or (c) deposit all payments due to the transferee in an interest bearing account. In the event the Trustees elect to pursue (b) or (c) above, and the transferee has not adequately documented such transfer within five (5) years of any deposit into such account or court, the amounts of such deposit shall be forfeited and added to Trust Principal. In addition, if the transfer has not been adequately documented prior to the final Trust distribution, and is not adequately documented within twelve (12) months thereafter, that payment shall be forfeited and distributed proportionately to all other Beneficiaries.

#### 12. SPENDTHRIFT CLAUSE.

No beneficial interest or Trust Unit under this Trust, whether in Income or Principal, shall be subject to anticipation, assignment, pledge, sale, gift or transfer in any manner, except as herein provided, nor shall any Beneficiary have the power to anticipate, encumber, or charge such interest or Trust Unit, nor shall such interest or Trust Unit be liable for or subject to the debts, contracts, obligations, liabilities, or torts of any Beneficiary or of any person except those of the Trust itself.

#### 13. TRUSTEES' POWERS.

In the administration of the Trust, the Trustees shall have such power as shall be necessary and commensurate with their duty to manage the Trust. By way of illustration and not of limitation (except as expressly indicated), the Trustees shall have the following powers, all of which shall be exercised in a fiduciary capacity as provided within AS 13.36.075, as amended:

13.1. To hold and continue to hold as an investment the funds or assets received hereunder, and any additional property which may be received and accepted by the Trustees, so long as the Trustees deem proper, and to invest and reinvest in any securities or property,

deemed by the Trustees to be for the best interest of the Trust and the Beneficiaries, except that no investment shall be made which is prohibited for Settlement Trusts under ANCSA or by this Agreement or does not meet the policies established by the Trustees;

13.2. To deduct, retain, expend, and pay out of any money belonging to the Trust any and all necessary and proper expenses in connection with the operation and conduct of the Trust, and to pay all taxes (except income taxes), insurance premiums, and other legal assessments, debts, claims, or charges which at any time may be due and owing by, or which may exist against, the Trust. Income taxes due and payable by the Trust shall be payable from Principal, but not from Cash Income;

13.3. To vote all securities belonging to the Trust, and to become a party to any stockholders' agreements deemed advisable by the Trustees in connection with such securities;

13.4. To compromise, settle, arbitrate, or defend any claim or demand in favor of or against the Trustees; to enforce any bonds, mortgages, security agreements, or other obligations or liens held hereunder; and to enter upon such contracts and agreements and to make such compromises or settlements of debts, claims or controversies as the Trustees may deem necessary or advisable;

13.5. To incur and pay the ordinary and necessary expenses of administration including, but not limited to, reasonable attorney, accounting and other professional fees;

13.6. To act hereunder through an agent or attorney-in-fact, by and under power of attorney duly executed by the Trustees, in carrying out any of the powers and duties herein authorized;

13.7. To determine the manner in which the expenses incidental to or in connection with the administration of the Trust shall be apportioned between Principal and Income;

13.8. To make any division or distribution required under the terms of this Trust in kind or in money, or partly in kind and partly in money. The Trustees shall not be required to make physical division of the Trust Fund except when necessary for distribution of Principal, but may, in their discretion, keep the Principal of the Trust in one or more consolidated funds. The Trustees shall not be required to make any provision for depreciation in respect of any tangible property, or for the purpose of amortizing or making good

any amounts paid in premiums on the purchase of securities or of any other property;

13.9. To freely act under all or any of the powers given to the Trustees by this Trust in all matters concerning the Trust herein created, after forming their judgment based upon all the circumstances of any particular situation as to the wisest and best course to pursue in the best interests of the Trust and its Beneficiaries, without the necessity of obtaining the consent or approval of any court;

13.10. To invest and reinvest in such stocks, bonds and other securities and properties as the Trustees may deem advisable, including stocks and unsecured obligations, undivided interests, interests in investment trusts, legal and discretionary common trust funds, mutual funds, leases, and property which is within or outside of Alaska. Notwithstanding this authorization, the Trustees shall limit investments to those which are allowed by this Agreement, are allowed for Settlement Trusts under ANCSA, and are allowed by the policies established by the Trustees. Provided, in no event may the Trustees purchase or hold shares of stock in Kake Tribal and its successors or subsidiaries, nor shall the Trustees loan money to any person or entity other than through the purchase of a bond or other security for which a recognized and regular market exists;

13.11. To make any election permitted by tax law which is deemed to be in the best interest of the Trust, Kake Tribal, or the Beneficiaries;

13.12. To restate this Trust Agreement without action of the Beneficiaries at any time following any modification permitted to be made by this Agreement; and

13.13. To issue certificates representing the Trust Units, if certificates are deemed appropriate, with such certificates in such form and to contain such provisions as the Trustees shall deem appropriate. Without limiting the generality of the foregoing, such certificates may contain a Testamentary Disposition Clause similar to that described in AS 13.16.705, as amended, to facilitate non-probate transfer of the Trust Units upon death of a holder. The provisions of this Section shall apply only after the merger (regardless of whether Kake Tribal is the surviving corporation), consolidation or dissolution of Kake Tribal, or after the restrictions on stock alienation imposed by Section 7 of ANCSA (as such provision reads on the Effective Date of this Trust) no longer apply to Kake Tribal's

#### Settlement Common Stock.

13.14. The powers herein granted to the Trustees may be exercised in whole or in part, from time to time, and shall be deemed to be supplementary to and not exclusive of the general powers of Trustees pursuant to law, and shall include all powers necessary to carry the Trust into effect, and in general the Trustees shall have the powers of an individual owner of property who is under no trust obligation.

#### 14. TRUSTEES' STANDARD OF CARE.

14.1. The Trustees, as fiduciaries, will be required to discharge their duties with respect to the Trust 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.

14.2. The Trust hereby indemnifies each Trustee from any and all loss, without limitation all attorneys' fees and costs of defense occasioned by such Trustee's service as a Trustee of this Trust to the greatest extent permitted by law.

14.3. If indemnification of a Trustee exists under Section 14.2, but that this Trust shall, for whatever reasons, not make some or all of the required indemnification, then to the extent that indemnification is not so made by the Trust, Kake Tribal hereby indemnifies each Trustee from any and all loss occasioned by such Trustee's service as a Trustee of this Trust.

#### 15. RESPONSIBILITIES OF TRUSTEES.

By way of illustration and not of limitation, the Trustees shall be conclusively presumed to have met the standard of care required by Section 14.1 in the following circumstances:

15.1. The Trustees may act upon any written notice, request, waiver, consent, receipt or other paper or document furnished to them, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained. The Trustees shall not incur any liability and shall be fully protected in acting in accordance with any of the foregoing which the Trustees in good faith believe to be

genuine and what it purports to be.

15.2. The Trustees may consult with and obtain independent legal and accounting advice in the event of any questions as to any provision herein and as to any of the Trustees' duties. The Trustees shall not incur any liability and shall be fully protected in acting in good faith in accordance with the opinions and instructions of such legal counsel or accountants.

15.3. The Trustees may consult with and obtain investment advice from financial advisors, and may place some or all of the Trust Assets under the direct management of one or more money managers. The Trustees shall not incur any liability and shall be fully protected in acting 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.

15.4. In making their estimates of Net Cash Income, the Trustees shall not incur any liability and shall be fully protected in acting in good faith in relying upon the estimates of such Net Cash Income made by their financial advisors and money managers, whether the distributions resulting therefrom are an Under distribution or Over distribution of actual Net Cash Income.

15.5. Any claims of damages, causes of actions or rights the Trustees may have against any person (including without limitation, accountants, legal counsel, financial advisors, or money managers) as to an event for which the Trustees' liability has been limited under this Section shall be assigned by the Trustees to the Trust.

#### 16. 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.

#### 17. ACCOUNTING BY TRUSTEES.

The fiscal year of the Trust shall be the calendar year. The Trustees shall cause to be prepared for each year audited financial statements in conformity with the basis of accounting defined in this Agreement. Such statements shall be forwarded to the Beneficiaries with the first Income distribution of the succeeding calendar year. Annual

accountings shall be on file with the Trustees and sent to those Beneficiaries who submit a written request for a copy of the accounting. The Trustees may at any time render an account of its proceedings for the Trust to a court of competent jurisdiction.

#### 18. PAYMENTS TO MINOR OR DISABLED BENEFICIARIES.

In case any payments or any notice becomes due or payable to a minor, as defined by Alaska law, or to a person under legal disability, then the notice shall be given or amounts shall be paid out by the Trustees in one of the following ways:

18.1 to the legally appointed guardian or conservator of such Beneficiary, or if none, then

18.2 to any Custodians appointed for such person, pursuant to the Alaska Uniform Gifts to Minors Act, to hold such person's interest under ANCSA (as such provision reads on the Effective Date of this Trust), or if none, then

18.3 to any parent of a minor Beneficiary provided such parent is a "Native" or "Descendant of a Native" as defined in ANCSA (as such provision reads on the Effective Date of this Trust).

#### 19. PRINCIPAL AND INCOME.

19.1. In the case of bonds, notes, or other evidence of indebtedness taken or purchased at a premium, the Trustees shall not be required to set aside any part of the income therefrom as a sinking fund to retire or absorb such premium.

19.2. Except as provided in this Trust Agreement, the Trustees shall have the right and power to determine how all receipts, disbursements, and gains or losses from the sale of assets held by the Trust shall be credited, charged, or apportioned as between Principal and Income. In default of any such determination by the Trustees, the provisions of Alaska law shall control.

#### 20. ANCSA PROHIBITIONS ON TRUST ACTIVITY.

This Trust shall not engage in any of the following activities so long as such activities are prohibited by ANCSA: (i) alienate land or any interest in land received from Kake Tribal; (ii) operate as a business; (iii) discriminate in favor of a group of individuals composed only or principally of the officers, directors or employees of Kake Tribal or

the Trustees; (iv) be the transferee or purchaser of Net Operating Losses from Kake Tribal; or (v) receive a conveyance of a subsurface estate in land.

#### 21. ACCEPTANCE OF TRUST.

Subject to the other provisions of this Agreement, the Trustees hereby accept the Trust created by this instrument and agree to carry out the provisions hereof.

#### 22. SAVINGS CLAUSE.

If any provisions of this Trust are unenforceable, the remaining provisions shall nevertheless be carried into effect.

#### 23. HEADINGS.

Headings used in this Trust are inserted for convenience only and shall be disregarded in construing this Trust.

#### 24. SITUS AND APPLICABLE LAW.

All questions pertaining to the validity, function and administration of this Trust shall be determined in accordance with the laws of the State of Alaska. Kake, Alaska is hereby designated as the situs of the Trust.

#### 25. REGISTRATION.

This Trust shall be registered pursuant to AS 13.36.005 et seq., as amended, with the Clerk of the Court, First Judicial District, Juneau, Alaska.

#### 26. GRAMMATICAL REFERENCES.

All grammatical references to number, gender or person shall be read and interpreted as may be required by the existing facts as they exist at the time this Trust is created, and no strained interpretation is to be permitted.

#### 27. AMENDMENTS TO THE TRUST.

Even though this Trust is irrevocable, and even though the shareholders of Kake Tribal have theretofore approved the establishment of this Trust as required by applicable law, the Trustees may make

limited amendments to this Trust as follows:

27.1. At any time during the first three (3) years of the Trust, the Trustees may amend any technical aspect of the Trust, including, but not limited to: (i) the timing of distributions, (ii) the voting procedures to be used by the Trustees, (iii) the Trustees's powers, (iv) the date for the annual meeting of the Trustees, (v) the numbering of Sections, pages, and cross-references, and (vi) the need for bonding of the Trustees. An amendment described in this Section shall be accomplished by one or more written agreements between Kake Tribal and the Trustees.

27.2. After the third year of the Trust, amendments described in Section 27.1 may only be made once each five (5) years at the annual meeting of the Trustees and then in the manner described for such changes in Section 27.1.

27.3. At any time the Trustees, upon a vote of two-thirds of the incumbent Trustees, may petition the Superior Court, First Judicial District, Juneau, Alaska, to reform in any manner this Trust as necessary to avoid any Material Adverse Effect in lieu of petitioning such court to terminate this Trust as described in Section 8. The Trustees shall be the only necessary parties to such proceeding, although interested Beneficiaries may appear in such action at their own expense.

27.4. Notwithstanding any provision of this Trust Agreement, the Trustees may not use the powers contained in this Section to change the designated Beneficiaries of the Trust or their respective shares of the Trust, to revoke the Trust, to cause the Trust Fund to revert in any manner to Kake Tribal, or to reduce the length of time between votes as described in Section 7.

27.5. At any time prior to December 31, 1995, the Trustees and Kake Tribal by written agreement shall make any and all such changes herein (including without limitation, deleting or amending Section 6, Section 7 or any other provision from this Agreement) as shall be necessary to obtain favorable rulings or avoid unfavorable rulings from the Internal Revenue Service as a result of the request described in Section 8.

## 28. DEFINITIONS.

As used herein the following terms shall have the following meanings:

28.1. "Anniversary of this Trust" means, with regard to any calendar year, the calendar day within such year which corresponds to the calendar day when the shareholders of Kake Tribal adopted the first resolution establishing a settlement trust, whether or not the provisions of this Agreement are subsequently modified as set out herein.

28.2. "Cash Income" means the total of all earnings of the Trust Fund, including but not limited to interest, rents, ordinary dividends, and any other dividends or capital gains allocated to Income pursuant to this Trust Agreement, calculated on a cash accounting basis.

28.3. "Beneficiary(ies)" means the holders of the Trust Units.

28.4. "Material Adverse Effect" means any change which has a likelihood of frustrating the purposes of the Trust to the degree that the Trust would not have been created if the change 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 (as such provisions read on the Effective Date of this Trust), significant increases in the income taxes on accumulated Trust income or Trust distributions, discontinuation of the income tax credit on distributions of accumulated income for taxes paid by the Trust on accumulated income, changes in law which would result in double taxation of income by a single taxing authority, or restrictions on investment alternatives.

28.5. "Net Cash Income" means the Cash Income remaining after payment of all necessary and proper expenses of administration, but before the payment of any item properly allocated to Principal (including without limitation any taxes, such as income, real estate, or excise taxes), calculated on a cash accounting basis.

28.6. "Principal" means the initial contribution to the Trust by Kake Tribal, plus any additional property which may thereafter be contributed to the Trust pursuant to Section 4, plus undistributed Net Cash Income (which has been added to Principal).

28.7. "Trust" means the trust created under this Agreement.

28.8. "Trustees" means the Trustees of the Trust when referred to collectively. "Trustee" means a Trustee of the Trust when referred to singly.

28.9. "Trust Fund" means the property listed in Exhibit "A", plus all property thereafter contributed to this Trust and all rents, dividends, income and profits of whatever nature generated by the property listed in Exhibit "A", or from property thereafter contributed to the Trust.

28.10. "Trust Unit" means a beneficial interest in the Trust as described in Section 2.

28.11 Other Terms: other capitalized terms (words or phrases) used herein and not otherwise defined have the meaning given by ANCSA, on the Effective Date of this Trust.

#### 29. EFFECTIVE DATE.

This Trust is executed effective as of the date of signing. The Trustees, by execution hereof, acknowledge receipt of the property listed on Schedule A hereto. Upon approval of the shareholders of Kake Tribal of a resolution establishing a settlement trust, this Trust shall be deemed to become a Settlement Trust within the meaning of ANCSA (as such provision reads on the Effective Date of this Trust), whether or not the provisions of this Agreement are subsequently modified as set out herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed this 18th day of April 1994.

TRUSTEES

/s/  
Gordon Jackson  
Chairman and Trustee

/s/  
Henrich Kadake, Sr.  
Secretary and Trustee

/s/  
Harold Martin, Trustee

/s/  
Stanley Adams, Trustee

/s/  
Lolanda Cavanaugh, Trustee

/s/  
Norman Jackson, Trustee

/s/  
Archie Cavanaugh, Jr., Trustee

/s/  
Marvin Kadake, Trustee

/s/  
Pete Martin, Jr., Trustee

KAKE TRIBAL, INCORPORATED

By:

/s/  
Gordon Jackson,  
President/CEO

/s/  
Henrich Kadake, Sr.  
Corporate Secretary

/s/  
Harold Martin, Vice President

## **SCHEDULE A Trust Property**

Cash of \$1,000.00

[This \$1,000 is intended as a nominal amount so that the Trust can be established. Other amounts may be contributed in the discretion of the Kake Tribal Corporation Board of Directors. This is described in more detail in the Notice of Meeting and Proxy Statement Mailed to Kake Tribal Shareholders on approximately April 27, 1994.]