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# **SHAREHOLDERS AGREEMENT**

**January 1, 2016**

**BREWERS RETAIL INC.**

AND

**LABATT BREWING COMPANY LIMITED**

AND

**MOLSON CANADA 2005**

AND

**SLEEMAN BREWERIES LTD.**

AND

**QUALIFYING BREWER SHAREHOLDERS**

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## SHAREHOLDERS AGREEMENT

**THIS AGREEMENT** is made as of the 1<sup>st</sup> day January, 2016 (the “**Effective Date**”),

**BETWEEN:**

**BREWERS RETAIL INC. o/a THE BEER STORE**, a corporation governed by the laws of Ontario (the “**Corporation**”)

- and -

**LABATT BREWING COMPANY LIMITED**, a corporation governed by the laws of Canada (“**Labatt**”),

- and -

**MOLSON CANADA 2005**, a partnership governed by the laws of Ontario (“**Molson**”),

- and -

**SLEEMAN BREWERIES LTD.**, a corporation governed by the laws of Canada (“**Sleeman**”),

- and -

**EACH QUALIFYING BREWER SHAREHOLDER,**

**RECITALS:**

- A. On June 1, 2000, the Corporation and the LCBO, pursuant to the direction, authorization and agreement of the Province, entered into an agreement entitled “Serving Ontario Beer Consumers: A Framework for Improved Co-operation and Planning” (the “**2000 Framework Agreement**”), by which the LCBO regulates and controls various aspects of the sale of Beer in Ontario.
- B. In 2014, the Premier’s Advisory Council on Government Assets (the “**Council**”) was charged by the Premier of Ontario to review certain assets of the Province, including the beer and liquor distribution system in Ontario, and recommend ways to maximize their value to the people of Ontario.
- C. Prior to the subscription by other Qualifying Brewer Shareholders for shares in the Corporation as contemplated by this Agreement, Labatt, Molson and Sleeman (the “**Original Owners**”) owned all of the issued and outstanding shares in the capital of the Corporation.
- D. The Council made certain recommendations to the Province in its report dated April 16, 2015 entitled “Striking the Right Balance: Modernizing Beer Retailing and Distribution in Ontario” (the “**Council’s Final Report**”) to make changes to the regulation and control of Beer in Ontario, including to the retail and distribution system for Beer,

following a negotiation with the Corporation and the Original Owners that resulted in the Council, the Corporation and the Original Owners entering into a non-binding statement of principles dated April 15, 2015 entitled “Modernizing the Distribution of Beer in Ontario: Framework of Key Principles” (the “**Key Principles**”), which was accepted by the Province. The Key Principles were set out in an attachment to the Council’s Final Report.

- E. The Corporation, the Original Owners and the Province entered into a master framework agreement dated as of September 22, 2015 (the “**Master Framework Agreement**”) to record their agreement as to the manner in which the Key Principles shall be implemented.
- F. In order to implement certain aspects of the Key Principles, and as contemplated by the Master Framework Agreement, the Parties have entered into this Agreement to record their agreement as to the manner in which the Corporation’s business and affairs shall be conducted and to grant to each other certain rights and obligations with respect to the ownership of the Securities of the Corporation and other aspects of the governance and management of the Corporation.

**THEREFORE**, the parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

### **1.1 Definitions**

Whenever used in this Agreement, the following terms shall have the meanings set out below:

“**Act**” means the *Business Corporations Act* (Ontario).

“**Affiliate**” means, with respect to a party, any person, firm, corporation, partnership (including general partnerships, limited partnerships and limited liability partnerships), limited liability company, joint venture, business trust, association or other entity that directly or indirectly Controls, is Controlled by or is under common Control with such party.

“**Agreement**” means this Shareholders Agreement, including the Recitals and all Exhibits and Schedules, and all amendments or restatements as permitted, and references to “**Article**” or “**Section**” mean the specified Article or Section of this Agreement.

“**AGRPPA**” means the *Alcohol and Gaming Regulation and Public Protection Act, 1996* (Ontario).

“**Annual Beer Volume**” means, with respect to a particular Brewer (inclusive of its Affiliates), the volume of its Qualifying Sales that is produced at a facility in Ontario or imported into Ontario in accordance with the Inter-Plant Shipments Policy of the Liquor Control Board of Ontario, as it may exist from time to time.

“**Annual Budget**” means a financial budget for the Corporation for a full financial year of the Corporation as approved in accordance with this Agreement.

“**Annual Business Plan**” means an annual business plan for the Corporation for a full financial year of the Corporation as approved in accordance with this Agreement.

“**Auditor**” means the auditor of the Corporation appointed from time to time in accordance with the Act and this Agreement.

“**Beer**” has the meaning set out in the *Liquor Licence Act* (Ontario).

“**Beer Ombudsman**” means the independent beer ombudsman appointed from time to time in accordance with Section 6.6 of this Agreement.

“**Board**” means the board of directors of the Corporation constituted in accordance with this Agreement.

“**Brewer**” means a Person that manufactures Beer.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**By-Laws**” means the corporate by-laws of the Corporation, as may be amended from time to time in accordance with this Agreement.

“**Capital Reorganization**” means the reorganization of the share capital of the Corporation effected on January 1, 2016 by amendment to the articles of the Corporation whereby all of the then issued and outstanding shares of the Corporation were converted into Second Equity Shares.

“**Control**” means:

- (a) in relation to a corporation, the beneficial ownership at the relevant time of shares of such corporation carrying more than 50% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation where such voting rights are sufficient to elect a majority of the directors of the corporation; and
- (b) in relation to a Person that is a partnership, limited partnership, limited liability company or joint venture, the beneficial ownership at the relevant time of more than 50% of the ownership or voting interests of the partnership, limited partnership, limited liability company or joint venture in circumstances where it can reasonably be expected that the Person can direct the affairs of the partnership, limited liability company or joint venture;

and the words “**Controlled by**”, “**Controlling**” and similar words have corresponding meanings; the Person who Controls a Person shall be deemed to Control a corporation, partnership, limited liability company, joint venture or trust which is Controlled by such Person, and so on.

“**Director**” means a member of the Board.

**“Eligible Qualifying Brewer”** means a Qualifying Brewer that is (i) located or resident in the Province of Ontario and eligible to acquire First Equity Shares pursuant to the OSC Order, (ii) located or resident in a province or territory of Canada other than the Province of Ontario and eligible to acquire First Equity Shares pursuant to an exemption from prospectus requirements generally available under the applicable securities laws of that province or territory or (iii) neither located nor resident in Canada and that is eligible to acquire First Equity Shares pursuant to an exemption from the prospectus, registration or qualification requirements applicable under the securities laws of the jurisdiction outside of Canada in which the Qualifying Brewer is located or resident.

**“First Equity Shares”** means the First Equity Shares in the capital of the Corporation, issuable in series.

**“First Preferred Debentures”** means debentures that may be issued pursuant to Section 3.5 of this Agreement on terms to be approved as Special Majority Matters.

**“Industry Participant”** means any person, trade association or trade union involved in the beverage alcohol industry in Ontario including, for clarity, Canada’s National Brewers, the Original Owners, any other Qualifying Brewers or any of their Affiliates.

**“LCBO”** means the Liquor Control Board of Ontario.

**“Licensee”** means a Person holding a liquor sales licence issued under the *Liquor Licence Act* (Ontario).

**“Liquor Control Act”** means the *Liquor Control Act* (Ontario).

**“New Beer Agreements”** has the meaning ascribed thereto in the Master Framework Agreement.

**“New Outlets”** has the meaning set out in the Master Framework Agreement.

**“Original Owners”** has the meaning set out in the Recitals.

**“OSC Order”** means the decision of the Ontario Securities Commission rendered on October 2, 2015 in response to an application filed by the Corporation pursuant to section 74(1) of the *Securities Act* (Ontario) confirming that the prospectus requirement contained in section 53(1) of the *Securities Act* (Ontario) will not apply to the issuance, from time to time, of First Equity Shares to Qualifying Brewers located or resident in the Province of Ontario.

**“Parties”** means, collectively, the Original Owners, the Corporation and each Qualifying Brewer Shareholder that becomes a party to this Agreement, and **“Party”** means any one of them.

**“Person”** means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, limited liability company, unlimited liability company, government, government regulatory authority, governmental department, agency, commission, board, tribunal, dispute settlement panel or body, bureau, court and, where the context requires,

any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.

**“Production Year”** means, in relation to a Sales Year, the 12-month period that ends on December 31 immediately before the beginning of the Sales Year.

**“Province”** means Her Majesty the Queen in Right of Ontario.

**“Provincial Rights Agreement”** means the agreement between the Corporation and the Province dated as of the date of this Agreement.

**“Qualifying Brewer”** means a Brewer that operates one or more facilities manufacturing Beer in Ontario, sells Beer Through the Corporation and satisfies the following criteria:

- (a) it has a valid Ontario manufacturing licence issued by the Regulator;
- (b) it has a valid Canadian manufacturing licence issued by the Canada Revenue Agency;
- (c) it conducts the full brewing process up to the point of packaging, including mashing, lautering, boiling, hop separation and fermentation, in its Ontario Beer manufacturing facilities; and
- (d) it either (A) does not produce Beer in any other jurisdiction or (B) its Ontario Beer manufacturing facilities have a minimum annual capacity of 10,000 hectolitres of Beer in the aggregate and a minimum annual production of 2,500 hectolitres of Beer in the aggregate.

**“Qualifying Brewer Shareholder”** means a Qualifying Brewer that (i) has completed the purchase of 100 First Equity Shares in accordance with the terms of a Subscription Agreement entered into between the Qualifying Brewer and the Corporation on or any time after the Effective Date and (ii) continues to own such First Equity Shares as of the relevant date, and **“Qualifying Brewer Shareholders”** means all of such Persons collectively.

**“Qualifying Sales”** means sales of Beer by volume Through the Corporation.

**“Rate Sheet”** means the schedule of listing and service fees, including basic and elected service fees, to be charged by the Corporation to all Brewers selling Beer Through the Corporation.

**“Regulator”** means the LCBO, the Alcohol and Gaming Commission of Ontario and any other Ontario governmental authority or agent of the Province having jurisdiction over the sale, storage, distribution or consumption of beverage alcohol, or their successors.

**“Sales Year”** means a period of approximately 12 months:

- (a) that begins on March 1 in a year or, if March 1 is a Saturday or Sunday, that begins on the following Monday; and



- (b) that ends on the last day of February of the following year or, if the last day of February is a Friday or Saturday, that ends on the following Sunday.

“**Second Equity Shares**” means the Second Equity Shares in the capital of the Corporation.

“**Securities**” means, collectively, the First Preferred Debentures and the Shares.

“**Shares**” means all classes of shares in the capital of the Corporation authorized for issuance from time to time, including the First Equity Shares and the Second Equity Shares.

“**Shareholders**” means, collectively, the Original Owners and any Qualifying Brewer Shareholder that become a Party to this Agreement, and “**Shareholder**” means any one of such Persons.

“**Small Brewer**” means, in respect of a Sales Year, a Brewer that meets each of the following qualifications in respect of the prior Production Year:

- (a) it has worldwide production of Beer in the previous Production Year that was not more than 400,000 hectolitres or, if this is the first Production Year in which it manufactures Beer, worldwide production of Beer for the Production Year that is not expected to be more than 400,000 hectolitres;
- (b) is not a party to any agreement or other arrangement pursuant to which any Brewer that is not a Small Brewer manufactures Beer for it;
- (c) is not a party to any agreement or other arrangement pursuant to which it manufactures Beer for any Brewer that is not a Small Brewer; and
- (d) any Affiliate of it that manufactures Beer meets the qualifications set out in (a), (b) and (c) above.

For purposes of this definition:

- (e) the following will be included in determining the amount of a Small Brewer’s worldwide production of Beer for a particular Production Year:
  - (i) all Beer manufactured during the Production Year by the Small Brewer, including Beer that is manufactured under contract for another Brewer, whether or not that other Brewer is a Small Brewer;
  - (ii) all Beer manufactured during the Production Year by an Affiliate of the Small Brewer, including Beer manufactured by the Affiliate under contract for another Brewer, whether or not that other Brewer is a Small Brewer; and
  - (iii) all Beer manufactured during the Production Year by another Small Brewer under contract for the Small Brewer or for an Affiliate of the Small Brewer; and

- (f) an agreement or arrangement referred to in clause (b) of this definition does not include an agreement or arrangement that provides only for the final bottling or other packaging by a Brewer that is not a Small Brewer, including any incidental processes such as final filtration and final carbonation or the addition of any substance to the Beer that, if added, must be added at the time of final filtration.

The Board may on or before September 22, 2015, designate Qualifying Brewers, other than the Original Owners, to be Small Brewers for purposes of this Agreement. Once a Brewer qualifies as, or is so designated as, a Small Brewer it shall remain a Small Brewer for so long as it remains a Qualifying Brewer and does not become an Affiliate of a Brewer that is not a Small Brewer. As of the date of this Agreement, the Board has designated each of Brick Brewing Co. Limited and Moosehead Breweries Limited to be a Small Brewer.

**“Subscription Agreement”** means an agreement between the Corporation and an Eligible Qualifying Brewer substantially in the form of Exhibit A.

**“Subsidiary”** has, with respect to the Corporation, the meaning set out in the Act.

**“Term”** means the term (including any renewal terms) of the Master Framework Agreement.

**“Through the Corporation”** means, subject to Section 6.7, when used in relation to sales of Beer, sales by a particular Brewer and its Affiliates (including domestic and imported Beer manufactured by, produced for or distributed by that Brewer and its Affiliates) through the Corporation to Licensees and retail consumers, and in respect of sales through the Corporation to the LCBO (including northern agency stores and retail partners), one-half of the volume of such sales, but for clarity excluding sales of Beer to or through New Outlets.

**“Total Annual Beer Volume”** means the aggregate Annual Beer Volume for all Brewers (inclusive of their respective Affiliates).

**“Transfer”** includes any sale, exchange, assignment, gift, bequest, disposition, mortgage, charge, pledge, encumbrance, grant of security interest or other arrangement by which possession, legal title or beneficial ownership passes from one Person to another, or to the same Person in a different capacity, whether or not voluntary and whether or not for value, and any agreement to effect any of the foregoing; and the words **“Transferred”**, **“Transferring”** and similar words have corresponding meanings.

## 1.2 Additional Definitions

- (a) Unless there is something inconsistent in the subject matter or context, or unless otherwise provided in this Agreement, all other words and terms used in this Agreement that are defined in the Act shall have the meanings set out in the Act.

(b) Additional definitions used in this Agreement:

<b><u>Definition:</u></b>	<b><u>Where Defined:</u></b>
<b>“2000 Framework Agreement”</b>	Recital A
<b>“Adjusted Local Market Share”</b>	Schedule 6.2(c)
<b>“Allocation”</b>	Schedule 6.2(c)
<b>“Basic Service Fees”</b>	6.3(a)(ii)(A)
<b>“Board Mandate”</b>	4.8(a)
<b>“Committees”</b>	4.9(a)
<b>“Committee Mandate”</b>	4.9(d)
<b>“Confidential Information”</b>	8.1(a)
<b>“Corporation”</b>	Page 1
<b>“Council”</b>	Recital B
<b>“Council’s Final Report”</b>	Recital D
<b>“Dispute”</b>	8.2(a)
<b>“Dispute Parties”</b>	8.2(b)
<b>“Executive Committee”</b>	4.9(c)
<b>“Key Principles”</b>	Recital D
<b>“Independent Directors”</b>	4.1(c)
<b>“Independent Director Qualifications”</b>	4.1(c)
<b>“Labatt”</b>	Page 1
<b>“Large Brewers”</b>	Schedule 6.2(c)
<b>“Lead Director”</b>	4.6
<b>“Local Market Share”</b>	Schedule 6.2(c)
<b>“Lower Tier Fees”</b>	6.3(a)(ii)(B)
<b>“Major Shareholder”</b>	4.1(e)
<b>“Major Shareholder Nominee”</b>	4.1(e)
<b>“Master Framework Agreement”</b>	Recital E
<b>“Minimum Small Brewer Allocation”</b>	Schedule 6.2(c)
<b>“Molson”</b>	Page 1
<b>“Notice”</b>	8.8
<b>“Offer Notice”</b>	3.5(b)
<b>“Other Shareholders”</b>	4.1(f)
<b>“Other Shareholder Nominee”</b>	4.1(f)

<b><u>Definition:</u></b>	<b><u>Where Defined:</u></b>
“Pension Adjustment Per Hectolitre”	6.3(a)(iii)
“Pension Amount”	6.3(a)(iii)
“Percentage Sales”	4.1(e)
“Pro Rata Share”	3.5(c)
“Permitted Transferee”	7.5(a)
“Required Capital”	3.5(b)
“Sleeman”	Page 1
“Small Brewer Index Factor”	Schedule 6.2(c)
“Small Shareholder”	4.1(d)
“Small Shareholder Nominee”	4.1(d)
“Special Majority Matter”	4.12
“Subscribing Shareholder”	3.5(c)
“Subscription Amount”	3.5(c)
“Subscription Notice”	3.5(c)
“Transferor”	7.5(a)
“Zones”	Schedule 6.2(c)

### **1.3 Certain Rules of Interpretation**

In this Agreement:

- (a) **Time** - Time is of the essence in the performance of the Parties’ respective obligations.
- (b) **Currency** - Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.
- (c) **Headings** - Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (d) **Consent** - Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time period, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its consent or approval.
- (e) **Time Periods** - Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day which

the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

- (f) **Business Day** - Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next Business Day following.
- (g) **Governing Law** - This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (h) **Including** - Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (i) **No Strict Construction** - The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (j) **Number and Gender** - Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (k) **Severability** - If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (l) **Statutory References** - A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation that amends, supplements or supersedes, or is the successor of, any such statute or any such regulation.

#### **1.4 Accounting Principles**

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to International Financial Reporting Standards as issued by the International Accounting Standards Board, applicable as at the date on which the relevant calculation or action is made or taken or required to be made or taken in accordance with such standards.

#### **1.5 Recitals, Exhibit and Schedules**

The Recitals to this Agreement and the Exhibits and Schedules to this Agreement, as listed below, are an integral part of this Agreement:

Exhibit A	-	Form of Subscription Agreement
Exhibit B	-	Estimated Rate Sheet
Schedule 3.3(b)	-	Determination of Book Value
Schedule 4.12(a)	-	Certain Special Majority Matters
Schedule 4.12(b)	-	Special Majority Matters (Independent Directors)
Schedule 6.2(c)	-	Marketing Matters
Schedule 8.2	-	Arbitration Procedures

## **ARTICLE 2 PURPOSE AND SCOPE**

### **2.1 Unanimous Shareholder Agreement**

This Agreement is intended and shall be deemed to be a unanimous shareholder agreement within the meaning of the Act and the powers of the Directors to manage or supervise the management of the business and affairs of the Corporation is restricted in accordance with the terms of this Agreement.

### **2.2 Compliance with Agreement**

Each Shareholder agrees to vote and act as a shareholder of the Corporation to fulfil the provisions of this Agreement and in all other respects to comply with, and use all reasonable efforts to cause the Corporation to comply with, this Agreement and to the extent, if any, that may be permitted by law, shall cause the Director nominee(s) to act in accordance with this Agreement.

### **2.3 Provincial Rights Agreement**

The Parties acknowledge that the Corporation shall enter into the Provincial Rights Agreement with the Province effective as of the Effective Date, and each Shareholder agrees to vote and act as a Shareholder of the Corporation to fulfill the provisions of the Provincial Rights Agreement and in all other respects to use all reasonable efforts to cause the Corporation to comply with the Provincial Rights Agreement and to the extent, if any, that may be permitted by law, shall cause the Director nominee(s) to act in accordance with the Provincial Rights Agreement.

### **2.4 Compliance by Corporation**

The Corporation undertakes to carry out and be bound by the provisions of this Agreement to the full extent that it has the capacity and power at law to do so.

**ARTICLE 3**  
**FINANCIAL PARTICIPATION IN THE CORPORATION**

**3.1 Approach to Operations and Funding**

- (a) The Corporation will continue to operate on a self-sustaining basis as a low cost, efficient distributor and retailer of Beer in the Province of Ontario.
- (b) The Corporation will be operated as a self-funding corporation on a break-even cash flow basis. As an important element of this, the Rate Sheet will be set each year in accordance with this Agreement to provide sufficient, but not excess, revenue to cover all of the cash requirements of the Corporation consistent with the Annual Business Plans and Annual Budgets from time to time. For each year, once the aggregate annual revenues of the Corporation and the actual costs of funding the operations of the Corporation are known, any revenues in excess of actual costs shall be refunded to each Brewer pro rata based on its Qualifying Sales relative to the aggregate Qualifying Sales for all Brewers for that calendar year by deducting from amounts subsequently owed by that Brewer to the Corporation and any costs in excess of revenues generated and received shall be paid by each Brewer pro rata based on its Qualifying Sales relative to the aggregate Qualifying Sales for all Brewers by adding to amounts subsequently owed by that Brewer to the Corporation, in each case in such amounts and at such times as determined by the Board.
- (c) All transactions between the Corporation and its Shareholders will be transparent, auditable and on commercially reasonable terms.

**3.2 Capital Structure**

The authorized share capital of the Corporation following the Capital Reorganization shall consist of an unlimited number of series of First Equity Shares, with each series consisting of 100 shares, and 10,000 Second Equity Shares.

**3.3 Equity Participation – First Equity Shares**

- (a) Each Eligible Qualifying Brewer (including the Original Owners) shall, upon executing a Subscription Agreement and tendering to the Corporation the sum of \$100.00 in the form of cash, cheque or bank draft, be issued by the Corporation 100 First Equity Shares of a series separate from those First Equity Shares issued to any other Eligible Qualifying Brewer, at which time the Corporation shall duly register such Eligible Qualifying Brewer Shareholder as a registered holder of such First Equity Shares.
- (b) Any determination of the Book Value of the Assets or Liabilities of the Corporation (as those terms are defined in the rights, privileges, restrictions and conditions attached to the First Equity Shares in the articles of the Corporation) shall be made in accordance with the provisions of Schedule 3.3(b).

### 3.4 Equity Participation – Second Equity Shares

Pursuant to the Capital Reorganization, all of the shares in the capital of the Corporation (for clarity, other than the First Equity Shares issued or to be issued under Section 3.3) were converted into an aggregate of 10,000 Second Equity Shares, held as follows:

<u>Shareholder</u>	<u>Number of Second Equity Shares</u>
Labatt	4,492
Molson	5,088
Sleeman	420

Each of the Original Owners severally (and not jointly or jointly and severally) represents and warrants to the other Parties that it is the registered and beneficial owner of the number of Second Equity Shares indicated opposite its name above.

### 3.5 Additional Capital

- (a) Except as provided in this Agreement or as otherwise unanimously agreed by the Shareholders, none of the Shareholders shall be obligated to acquire additional Shares or to make loans to the Corporation or guarantee its indebtedness. It is the intention of the Parties that further funds required by the Corporation from time to time will be obtained, to the extent possible, by borrowing from Canadian chartered banks or other lenders acceptable to the Board.
- (b) If the Board determines, consistent with the other provisions of this Agreement, that the Corporation requires an amount of additional capital or other funding (the “**Required Capital**”) and the Required Capital cannot be obtained from Canadian chartered banks or other lenders on reasonable commercial terms, the Corporation shall give notice (an “**Offer Notice**”) to each Shareholder, stating the aggregate amount of the Required Capital sought and the price and terms of the First Preferred Debentures to be issued by the Corporation to raise the Required Capital.
- (c) Any Shareholder wishing to purchase First Preferred Debentures pursuant to an Offer Notice (a “**Subscribing Shareholder**”) shall, no later than 20 calendar days following the delivery by the Corporation of such Offer Notice, so indicate by Notice to the Corporation (a “**Subscription Notice**”). Such Subscription Notice must indicate the maximum principal amount of such First Preferred Debentures that such Subscribing Shareholder wishes to purchase (the “**Subscription Amount**”), which Subscription Amount may be greater than, equal to or less than such Subscribing Shareholder’s Pro Rata Share of the Required Capital. “**Pro Rata Share**” means a share equal to a fraction, the numerator of which is the number of votes that may be exercised in respect of the First Equity Shares held by such Subscribing Shareholder as at the date of the Offer Notice and the denominator of which is the aggregate number of votes that may be exercised in respect of all of the issued and outstanding First Equity Shares held by all such Subscribing Shareholders as at such date.



- (d) If the aggregate Subscription Amounts of all Subscribing Shareholders wishing to purchase First Preferred Debentures pursuant to an Offer Notice is greater than or equal to the Required Capital, the Corporation shall issue to the Subscribing Shareholders, and the Subscribing Shareholders shall purchase, First Preferred Debentures pursuant to such Subscription Notices in an aggregate principal amount equal to the Required Capital, as follows:
  - (i) Each Subscribing Shareholder shall purchase First Preferred Debentures having a principal amount equal to the lesser of such Subscribing Shareholder's Pro Rata Share of the Required Capital and such Subscribing Shareholder's Subscription Amount.
  - (ii) To the extent that the allocation in Section 3.5(d)(i) results in the purchase of First Preferred Debentures in an aggregate principal amount less than the Required Capital, the remaining First Preferred Debentures shall be allocated to, and purchased by, Subscribing Shareholders whose Subscription Notices indicated a Subscription Amount in excess of their respective Pro Rata Shares of the Required Capital, pro rata in relation to their respective Pro Rata Shares, up to in each case the remaining Subscription Amount not purchased pursuant to Section 3.5(d)(i).
- (e) If the aggregate Subscription Amounts of all Subscribing Shareholders wishing to purchase First Preferred Debentures pursuant to an Offer Notice is less than the Required Capital, the Corporation shall issue to the Subscribing Shareholders, and the Subscribing Shareholders shall purchase, First Preferred Debentures pursuant to such Subscription Notices as follows:
  - (i) Each Subscribing Shareholder shall purchase First Preferred Debentures having a principal amount equal to such Subscribing Shareholder's Subscription Amount.

The Corporation may offer and sell any remaining First Preferred Debentures offered pursuant to the Offer Notice not purchased by Subscribing Shareholders to any Person or Persons at the same price and upon the same terms as specified in the Offer Notice; provided that it first gives the Subscribing Shareholders the right, exercisable within fifteen days, to subscribe for, all or part of, such remaining First Preferred Debentures on such terms.

- (f) The purchase and sale of First Preferred Debentures pursuant to this Section 3.5 shall be completed on the date specified in the relevant Offer Notice, which date shall not be less than 60 days following the delivery by the Corporation of such Offer Notice.

## **ARTICLE 4 BOARD OF DIRECTORS**

### **4.1 Board of Directors**

- (a) The Corporation shall have a Board consisting of 15 Directors.

- (b) The Shareholders shall vote their Shares, at least annually and otherwise as and when required, at a meeting of Shareholders or by written resolution:
  - (i) to nominate Directors, and to elect the Directors nominated, in accordance with this Agreement from time to time; and
  - (ii) to remove any Director specified to be removed in accordance with Section 4.2.

For clarity, on any vote, each Shareholder shall be entitled to exercise such number of Total Votes as shall be equal to such Shareholder's Percentage Entitlement (as such terms are defined in the rights, privileges, restrictions and conditions attaching to the First Equity Shares).

- (c) Four of the Directors (the "**Independent Directors**") shall each meet the following qualifications (the "**Independent Director Qualifications**"):
  - (i) he or she need not be a Canadian or Ontario resident, except as may be required to ensure that the Board complies with any Canadian residency requirements under applicable law (provided that any such residency requirements shall not be required to be satisfied disproportionately by Independent Directors in relation to other Directors);
  - (ii) he or she has the appropriate level of experience and expertise to perform the duties of a director of a company of the size and complexity of the Corporation;
  - (iii) he or she has the ability to read and understand financial statements that present the breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can be expected to be raised by the Corporation's financial statements; and
  - (iv) he or she does not have a direct or indirect material relationship with an Industry Participant or any of its Affiliates or the Province or any of its agencies that could reasonably be expected to interfere with the exercise of that person's independent judgment as a Director.

The initial Independent Directors shall be as follows:

Tim Penner  
Kristine Freudenthaler  
Robert Aziz  
Tom Muir

Subject to Section 4.2(e), successors to the initial Independent Directors shall be nominated from time to time by the majority vote of the Independent Directors then in office (for clarity, an Independent Director may participate in any vote to nominate the successor to such Independent Director); provided, however, that

each such successor Independent Director must satisfy the Independent Director Qualifications.

- (d) One of the Directors (the “**Small Shareholder Nominee**”) shall be nominated by the majority vote of the Small Shareholders to serve a one-year term. A “**Small Shareholder**” is a Shareholder that (inclusive of its Affiliates) had less than 50,000 hectolitres of Qualifying Sales in the prior calendar year. Any Small Shareholder Nominee that has served as a Director in the capacity of the Small Shareholder Nominee during the last five years shall not be permitted to serve as a Small Shareholder Nominee in the then current year.
- (e) Each Major Shareholder shall be entitled to nominate one Director (a “**Major Shareholder Nominee**”) for each full 10 percentage points of its Percentage Sales during the prior calendar year (rounded up, in the case of 7 percentage points or more, to the next full 10 percentage points), provided that, for so long as the aggregate Percentage Sales of Labatt and Molson are equal to or greater than 50% and less than 97%, Labatt and Molson will be entitled to nominate four Major Shareholder Nominees each.

“**Percentage Sales**” of a Shareholder means the percentage that the Annual Beer Volume of such Shareholder (inclusive of its Affiliates) in the preceding calendar year represents of the Total Annual Beer Volume in respect of such calendar year. A “**Major Shareholder**” is a Shareholder the Percentage Sales of which are equal to or greater than 10% (determined without any rounding up).
- (f) The remaining Directors (each, an “**Other Shareholder Nominee**”) shall be nominated by Shareholders that are not Small Shareholders or Major Shareholders (the “**Other Shareholders**”), provided that no single Other Shareholder will as a result of this Section 4.1(f) be able to nominate more than one Director. For clarity, based on Total Annual Beer Volume as at the Effective Date, Sleeman shall be entitled to nominate one Other Shareholder Nominee.
- (g) Notwithstanding the foregoing, if the aggregate Percentage Sales of Labatt and Molson are equal to or greater than 97%, the Board shall consist of up to 18 Directors, being comprised of one Small Shareholder Nominee, five Independent Directors, ten Major Shareholder Nominees, with Labatt and Molson being entitled to nominate five Major Shareholder Nominees each, and up to two Other Shareholder Nominees.

#### 4.2 Removal of Directors and Other Vacancies

- (a) Directors may be specified to be removed from office as follows from time to time:
  - (i) Pursuant to the Provincial Rights Agreement, the Province may specify that all (but not less than all) of the Independent Directors be removed;
  - (ii) the Small Shareholders may by majority vote specify that the Small Shareholder Nominee be removed;

- (iii) any Major Shareholder may specify that any Major Shareholder Nominee nominated by it be removed; and
  - (iv) the Other Shareholders may by majority vote specify that any Other Shareholder Nominee be removed.
- (b) Any specification contemplated by Section 4.2(a) shall be effected by Notice to such Director, all other Directors and the Corporation.
- (c) Any vacancy occurring on the Board by reason of the death, disqualification, inability to act, resignation or removal of any Director, shall, subject to Section 4.2(d) and Section 4.2(e), be filled only by a further nominee of the Shareholder or group of Shareholders whose nominee was so affected.
- (d) Subject to Section 4.2(e), any vacancy occurring on the Board by reason of the death, disqualification, inability to act or resignation of an Independent Director shall be filled by a nominee that satisfies the Independent Director Qualifications selected by majority vote of the Independent Directors remaining in office.
- (e) As contemplated by the Provincial Rights Agreement, vacancies occurring on the Board by reason of the removal of the Independent Directors pursuant to Section 4.2(a)(i) or the resignation of all of the Independent Directors shall be filled only by nominees that satisfy the Independent Director Qualifications chosen by majority vote of a selection committee composed of an equal number of members appointed by the Province, on the one hand, and by the Major Shareholders, on the other hand, in accordance with the terms of the Provincial Rights Agreement.
- (f) If at any time a Shareholder loses its right to nominate any Director (including because such Shareholder ceases to be a Qualifying Brewer or because of a reduction in its Percentage Sales), such Director shall be removed from the Board effective as of such time and the vacancy thereby created shall be filled in accordance with Section 4.1.

### **4.3 Directors' Terms**

Other than with respect to the Small Shareholder Nominee who will serve a one-year term, Directors shall be elected for terms of three years each, beginning on the Effective Date, provided, however, that the initial Independent Directors shall be elected for terms of one, two, three and four years, respectively. Subject to Section 4.1(d), Directors may serve on the Board for successive terms, provided that no Director shall serve on the Board for more than nine consecutive years following the Effective Date.

### **4.4 Process for Nomination or Removal**

Shareholders entitled as a group to nominate or specify for removal any Directors shall do so by resolution in writing or by majority vote of such Shareholders present and voting at a meeting of such Shareholders duly called in accordance with the By-laws.

#### **4.5 Chair of the Board**

One of the Directors shall be elected from time to time as Chair of the Board by majority vote of the Directors. The Chair of the Board shall chair meetings of the Board and meetings of Shareholders, but shall not be entitled to a second or casting vote.

#### **4.6 Lead Director**

One of the Independent Directors shall be elected from time to time to serve as the lead director (the “**Lead Director**”) by majority vote of the Independent Directors then in office. The Lead Director will only have a second or casting vote if there is a tie vote among the Independent Directors on any Special Majority Matter or any matter that is required under this Agreement to be approved by a majority of Independent Directors.

#### **4.7 Chief Executive Officer**

The Chief Executive Officer of the Corporation shall not be a Director, but shall be invited to attend most meetings of the Board. At each regular meeting of the Board, the Chief Executive Officer shall report to the Board with respect to the current status of the operations of the Corporation and with respect to all major developments or planned action involving the Corporation and shall present to the meeting complete current financial information with respect to the Corporation and such other information as may be requested by the Board from time to time.

#### **4.8 Mandate and Meetings of the Board**

- (a) The Board shall, with the approval of a majority of the Independent Directors then in office, adopt and keep current a board mandate document specifying the role and responsibilities of the Board and the skills and qualifications required of Directors (the “**Board Mandate**”). The Board Mandate shall reflect best practices for board governance and the special role played by the Independent Directors, including their mandate to represent the interests of all Shareholders, and to ensure that all business and affairs of the Corporation are conducted in a manner that is fair to all Shareholders. All material matters relating to the business and affairs of the Corporation shall be determined by the Board.
- (b) The Board shall meet at least once every three months, or as may be more frequently scheduled or called by the Chair of the Board or the Lead Director. Directors may attend meetings of the Board in person, by telephone or by video conference or other communication facilities that permit all individuals participating in the meeting to hear and communicate with each other simultaneously, and a Director participating in such a meeting by such means shall be deemed to be present at the meeting. Written or electronic notice of any meeting of the Board shall be given to each Director at least five Business Days prior to the scheduled date of such meeting, unless such notice is waived by all of the Directors. Any four Directors shall be entitled to call meetings of the Board upon notice as set out in this Section 4.8.

#### 4.9 Committees of the Board

- (a) The Board shall appoint the following committees of the Board (together with the Executive Committee, the “**Committees**”):
  - (i) Finance and Audit Committee;
  - (ii) Governance and Human Resources Committee (to have responsibility as well for health and safety matters); and
  - (iii) Retail and Marketing Committee.
- (b) Each Committee shall include at least one Independent Director. The Retail and Marketing Committee shall include at least one Small Shareholder Nominee or Other Shareholder Nominee who is not a Nominee of an Original Owner.
- (c) The Board shall appoint an executive committee (the “**Executive Committee**”) comprised of three directors, including the Lead Director. For so long as the aggregate Percentage Sales of Labatt and Molson are equal to or greater than 50%, the other two members of the Executive Committee shall be Major Shareholder Nominees of Labatt and Molson. The Executive Committee shall have the authority to deal with all matters, other than Special Majority Matters, specifically delegated to it by the Board with the additional approval of a majority of the Independent Directors, provided that such matters shall be limited to operational decisions that are not material (for this purpose, any matter or series of related matters that involves a payment, settlement, commitment or expense of less than \$500,000 in aggregate shall not be material), including any specific capital expenditures that are generally provided for in an approved Annual Business Plan. All meetings of the Executive Committee shall be minuted and the minutes shall be distributed to all of the Directors in a timely manner. Directors shall be entitled to receive upon their request any additional information relating to matters approved by the Executive Committee, including any information available to the Executive Committee in connection with such matters.
- (d) The Board shall, with the approval of a majority of the Independent Directors then in office, adopt and keep current a committee mandate document specifying the role and responsibilities of, and the powers of the Board delegated to, each Committee (each, a “**Committee Mandate**”).

#### 4.10 Quorum

A quorum for any meeting of the Board or a Committee shall consist of:

- (a) an equal number of Major Shareholder Nominees of each of Labatt and Molson, who together must constitute a majority of the Directors present at any meeting of the Board or any Committee for so long as Labatt and Molson are entitled to nominate and elect a majority of the Directors pursuant to Section 4.1(e) or Section 4.1(g); and

- (b) at least two Independent Directors for any meeting of the Board and at least one Independent Director for any meeting of a Committee.

#### **4.11 Approval of Matters Generally**

Notwithstanding any other provision of this Agreement or the Act, but subject to Section 4.10 and Section 4.12, no obligation of the Corporation will be entered into, no decision will be made and no action taken by or with respect to the Corporation, directly or indirectly, with respect to any material matters of the Corporation (including any Special Majority Matters), without obtaining approval by a simple majority of the Directors serving on the Board at the relevant time and in attendance at the meeting of the Board (or, in the case of a written resolution, without obtaining approval from all Directors serving on the Board at the relevant time) or, with respect to any matter delegated by the Board to the Executive Committee, approval by the Executive Committee.

#### **4.12 Special Approval of Certain Matters**

Notwithstanding any other provision of this Agreement or the Act, but subject to Section 4.10, in addition to the approval referred to in Section 4.11, no obligation of the Corporation will be entered into, no decision will be made and no action taken by or with respect to the Corporation, directly or indirectly, with respect to any of the matters (each, a “**Special Majority Matter**”):

- (a) referred to in Schedule 4.12(a), without also obtaining the approval of such matter by at least 80% of the Directors then in office and present at the duly constituted meeting considering the matter; or
- (b) referred to in Schedule 4.12(b), without also obtaining the approval of such matter by at least the majority of the Independent Directors then in office and present at the duly constituted meeting considering the matter, but in any case no fewer than two Independent Directors (or, in the case of a written resolution, without obtaining approval from all Independent Directors then in office).

#### **4.13 Review of Certain Matters**

During the one year period commencing six months following the Effective Date, the Board shall review and reconsider (as Special Majority Matters) all decisions and actions made or taken by the Corporation prior to the Effective Date that would have an ongoing application and that would have constituted Special Majority Matters referred to in Schedule 4.12(b) if made or taken on or after the Effective Date (including all policies implementing any aspects of the New Beer Agreements and the Board Mandate and Committee Mandates, but excluding the 2016 Annual Budget, the 2016 Annual Business Plan, the capital spending budget for 2016 and the designation of certain Qualifying Brewers to be Small Brewers for purposes of this Agreement) and such matters shall be subject to the approval of the Board and also by at least the majority of the Independent Directors then in office. In addition, upon the request of a majority of the Independent Directors at any time, acting reasonably, the Board shall review and reconsider any Special Majority Matters referred to in Schedule 4.12(b) that were previously made or taken.

#### **4.14 Independent Director Compensation and Expenses**

- (a) The Corporation shall compensate the Independent Directors for their services at reasonable commercial rates in effect from time to time as determined by the Board.
- (b) The Corporation shall promptly reimburse in full each Independent Director for all of his or her reasonable out-of-pocket expenses incurred in attending each meeting of the Board or any Committee and in carrying out other duties or activities on behalf of the Corporation.
- (c) In appropriate circumstances, the Independent Directors shall be entitled, acting reasonably, (with the prior approval of the Chairman of the Board, acting reasonably, as to subject matter and quantum of expense) to engage, at the expense of the Corporation, outside legal and other advisors to assist them in discharging their responsibilities as contemplated by this Agreement.

#### **4.15 Directors and Officers Insurance**

The Corporation shall maintain directors and officers liability insurance coverage for the Directors and officers of the Corporation on terms and conditions and in an amount consistent with customary practice and otherwise acceptable to the Board.

#### **4.16 Indemnification**

The Corporation shall indemnify each Director and such Director's heirs and legal representatives against all reasonable and documented costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by such Director in respect of any civil, criminal or administrative proceeding to which such Director is made a party by reason of being or having been a Director provided (i) such Director acted honestly and in good faith with a view to the best interests of the Corporation; and (ii) in the case of a criminal or administrative proceeding that is enforced by a monetary penalty, such Director had reasonable grounds for believing that his or her conduct was lawful.

#### **4.17 Fiduciary Duties**

- (a) The Parties acknowledge that some or all of the Directors may have, from time to time, possible conflicts of interest arising from, among other matters, their past or present relationships with, or investments in, a Shareholder. Subject to their fiduciary duties to the Corporation under applicable law, the requirements of this Agreement and the Act, such conflicts of interest shall not, in and of themselves, disqualify such Directors from their office nor from exercising their rights and responsibilities as directors of the Corporation.
- (b) The Shareholders and the Corporation acknowledge that the Directors may share Confidential Information of the Corporation with the Shareholders to permit the Shareholders to monitor the business and affairs of the Corporation; provided, however, that the receiving Shareholder must comply with Section 8.1. The



Corporation acknowledges that such sharing of Confidential Information is not a breach of the fiduciary duty owed by the Directors to the Corporation.

- (c) In addition to giving consideration to the best interests of the Corporation in carrying out their duties in supervising the management of the Corporation:
  - (i) the Directors may give due consideration to broader stakeholder interests in accordance with applicable law; and
  - (ii) in addition to clause (i), the Independent Directors may give due consideration to the Key Principles as reflected in the New Beer Agreements and their purposes and intent and the broader public interest.

The Independent Directors may consult with Qualifying Brewer Shareholders as appropriate to inform and assist them in carrying out their duties under this Agreement, provided that such consultation is done in a manner that reflects the fiduciary duty of all Directors to act in the best interests of the Corporation and all of its Qualifying Brewer Shareholders and not the interests of any individual Qualifying Brewer Shareholder or group of Qualifying Brewer Shareholders, subject to the principles in clauses (i) and (ii) of this Section 4.17(c).

- (d) The Parties acknowledge that as part of the services that the Corporation provides to Brewers Distributing Ltd. pursuant to a services agreement that is based on cost recovery, the Corporation hosts certain data and information belonging to Brewers Distributing Ltd. and that all such data and information is confidential and proprietary and is subject to the protections afforded by such services agreement.

## **ARTICLE 5 FINANCIAL AND OTHER INFORMATION**

### **5.1 Auditors**

PricewaterhouseCoopers LLP or another nationally recognized firm authorized to audit public companies in Canada shall be appointed as Auditor.

### **5.2 Information for Directors**

The Directors will be entitled to have access to information of the Corporation in accordance with the Act.

### **5.3 Information for Shareholders**

- (a) In addition to the information that a Shareholder is entitled to receive under the Act, each Shareholder shall be entitled to receive the following:
  - (i) as soon as practicable, but in any event within 45 days after the end of each quarter of the Corporation's financial year, unaudited financial statements of the Corporation for and as at the end of such quarter, prepared in accordance with generally accepted accounting principles,

consistently applied, and accompanied by a discussion of variances from the Annual Budget;

- (ii) as soon as practicable, but in any event within 90 days after the end of each financial year of the Corporation, audited annual financial statements of the Corporation for and as at the end of such financial year, prepared in accordance with generally accepted accounting principles, consistently applied, and accompanied by an audit report of the Auditor;
  - (iii) as soon as practicable, but in any event within 30 days after the beginning of each financial year of the Corporation, the Annual Budget and Annual Business Plan for such financial year, together with an analysis of the impact of the Annual Budget on the Rate Sheet; and
  - (iv) any information reasonably required by Shareholders whose securities are publicly traded to comply with their own reporting obligations.
- (b) The Corporation shall operate on the principle that all Shareholders and their Affiliates are entitled to receive information relating to the Corporation on an equitable basis. To the extent that any information relating to the Corporation is being shared with certain Shareholders on a regular basis (other than information provided to a Shareholder relating only to such Shareholder, such as its own sales or other Confidential Information), the Corporation shall make arrangements to provide all Shareholders with access to such information (which may be shared with their respective Affiliates) on the same basis; provided, however, that, to the extent that the Corporation charges reasonable amounts for the provision of any such information, a Shareholder has paid the relevant amounts.

#### **5.4 Information for the Public**

The Corporation shall make the following information available to the public on its website in a timely manner:

- (a) the audited annual financial statements of the Corporation for and as at the end of each financial year, prepared in accordance with generally accepted accounting principles, consistently applied, and accompanied by an audit report of the Auditor;
- (b) the Corporation's annual operations report, prepared on a basis that provides no less information than has been consistent with recent past practice, including details of the amount and use of capital expenditures incurred in the year to which such report relates;
- (c) any policies adopted by the Board that give effect to any of the provisions of the Key Principles as reflected in the New Beer Agreements;
- (d) this Agreement, the Master Framework Agreement and the By-Laws; and

- (e) the composition of the Board and the Committees, and the Board Mandate and Committee Mandates, as they exist from time to time.

## **5.5 Regulatory Matters**

- (a) The Corporation shall continue to follow compliance protocols to ensure the manner in which it operates is in compliance with applicable laws.
- (b) The Regulator is and will be empowered to require additional disclosure from the Corporation, and to monitor, investigate, audit and enforce applicable legislation and regulations and the Regulator's policies in place from time to time, including compliance with social responsibility requirements, in order to ensure compliance with the New Beer Agreements.

## **ARTICLE 6**

### **MATTERS RELATING TO MANAGEMENT OF THE CORPORATION**

#### **6.1 Annual Business Plan and Annual Budget**

- (a) Prior to the beginning of each financial year of the Corporation, the Corporation shall prepare a detailed budget and a detailed business plan for such financial year, and shall present such budget and plan to the Board, including the Independent Directors, for approval in sufficient time that such budget and business plan may be approved in accordance with this Agreement (and thereby become the Annual Budget and Annual Business Plan for such financial year) prior to the beginning of such financial year.
- (b) The Corporation shall conduct its business and affairs in a financial year substantially in accordance with the Annual Budget and Annual Business Plan in respect of such financial year and any variations from such Annual Budget or Annual Business Plan approved in accordance with this Agreement from time to time.

#### **6.2 Merchandising, Marketing, Promotions and Shelf Space**

- (a) All merchandising, marketing, promotions and shelf space programs and policies relating to the operations of the Corporation shall incorporate the use of clearly defined Beer categories and, where applicable, subcategories except where the Corporation can demonstrate that to do so would not be practicable, with all categories and subcategories being distinctly and prominently incorporated. Categories and subcategories shall be established based on fair and reasonable criteria which, along with the categories and subcategories themselves and the brands included in those categories and subcategories, shall be as approved by a majority of the Independent Directors then in office. All Brewers shall be allowed to have products listed in all categories and subcategories, and the criteria established for each category or subcategory shall not be structured to exclude any Brewer from participating in any category or subcategory based on ownership or production volume. There shall be a subcategory called "Ontario craft beer" within the category of "Domestic specialty beer":

- (i) Any brand of Beer proposed to be included in the “Ontario craft beer” subcategory must also meet the requirements of the “Domestic specialty beer” category (i.e., premium pricing and domestic production).
  - (ii) In addition, to be included in the “Ontario craft beer” subcategory, at least 70% of the worldwide production of that brand must be produced at facilities in Ontario having annual production of Beer of less than 400,000 hectolitres.
  - (iii) The “Ontario craft beer” subcategory shall be distinctly displayed and marketed, with a prominence no less than that of the “Domestic specialty beer” category.
- (b) The Corporation shall provide opportunities for all Brewers to participate in more merchandising, marketing and promotional activities and other activities directed to supporting the growth of all brands and Brewers that sell Through the Corporation greater than those in effect as of the Effective Date. All merchandising, marketing, promotions and shelf space shall be allocated in accordance with the New Beer Agreements except where the Corporation can demonstrate that to do so would not be practicable. Where the Corporation charges Brewers a fee for any merchandising, marketing, promotions or shelf space, such fees shall be paid for by Brewers based on competitively set rates.
- (c) The Corporation shall allocate merchandising, shelf space, marketing and promotions as set forth in Schedule 6.2(c).

### 6.3 Rate Sheet

- (a) The Rate Sheet shall continue to be tiered and will be structured to achieve the objectives set out in Section 3.1 such that, from September 1, 2015:
- (i) There shall be separate rate categories for packaged and draught beer, and the relative difference between the two categories shall be consistent with past practice.
  - (ii) For each of packaged and draught Beer, the following rates shall be established per hectolitre of Beer sold through the Corporation:
    - (A) “**Basic Service Fees**”, which shall not include more than \$3.00 in respect of Pension Adjustment Per Hectolitre; and
    - (B) “**Lower Tier Fees**”, which shall not include any amount in respect of Pension Adjustment Per Hectolitre. The Lower Tier Fees will be at least \$2.00 per hectolitre less than the Basic Service Fees.
  - (iii) All Brewers shall pay the same Basic Service Fees on volume of Beer sold through the Corporation with the following exceptions:
    - (A) Brewers (inclusive of their Affiliates) with worldwide production of Beer of less than 1,000,000 hectolitres per year shall be entitled

to pay Lower Tier Fees on their first 50,000 hectolitres of Beer sold through the Corporation each year; and

- (B) the Basic Service Fees to be paid by the Original Owners and Brewers (inclusive of their Affiliates) with worldwide production of Beer of 1,000,000 hectolitres per year or more shall be adjusted upwards to recover any portion of the Pension Amount that is not recovered by the Corporation as a result of clause 6.3(a)(ii) and 6.3(a)(iii)(A).

**“Pension Adjustment Per Hectolitre”** means the solvency amortization portion of the aggregate cash pension payments of the Corporation in any particular year (the **“Pension Amount”**) divided by the number of hectolitres of Beer sold through the Corporation in that year.

- (iv) The methodology by which the Rate Sheet is calculated for each year shall remain constant during the Term, which methodology is reflected in the calculation of the estimated Rate Sheet set out as Exhibit B.
  - (v) All elected service fees, with the exception of those for merchandising, shelf space, marketing and promotions, shall reasonably approximate the actual cost of providing such services.
  - (vi) Except as otherwise contemplated by the New Beer Agreements, Qualifying Brewers other than the Original Owners shall be treated no less favourably than any other Brewer, including with respect to any rebates or other adjustments to service charges and elected service fees.
- (b) To the extent that the Corporation reasonably determines in good faith that it is not practicable to begin immediately changing rates in accordance with Section 6.3(a) from and after September 1, 2015, it shall as soon as practicable following the implementation of the Rate Sheet in accordance with Section 6.3(a) make retroactive adjustments to the amounts charged to and paid by Brewers so as to put each Brewer in the position that it would have been in had such Rate Sheet been implemented effective September 1, 2015.

#### **6.4 Listing Opportunities**

Qualifying Brewers (inclusive of their Affiliates) having Annual Beer Volume of less than 10,000 hectolitres per year shall be provided with 2 free product listings in 7 stores of the Corporation proximate to their breweries. All Qualifying Brewers shall be permitted 2 free seasonal SKU swaps for one existing SKU.

#### **6.5 Other Channels**

The Corporation shall not impose any restrictions on the retail, distribution or marketing channels that Brewers may use and shall not penalize Brewers who use such channels outside the Corporation. For clarity, this would not apply to policies that the Corporation may adopt from time to time with respect to the use of its keg pool and similar owned assets.

## **6.6 Beer Ombudsman**

- (a) There shall be an independent Beer Ombudsman, who shall be appointed from time to time by the majority of the Independent Directors then in office. The Beer Ombudsman shall hear complaints from Brewers and customers regarding operational issues relating to the Corporation. The reasonable compensation and expenses of the Beer Ombudsman shall be paid by the Corporation.
- (b) If the Beer Ombudsman is unable to resolve a complaint, it may be submitted to the dispute resolution process established pursuant to Section 8.2.
- (c) The Beer Ombudsman shall report to the Independent Directors at least annually and the Independent Directors shall by majority vote assess the performance of and, acting reasonably and in consultation with the Board, determine the compensation of the Beer Ombudsman from time to time. The annual report of the Beer Ombudsman shall be made available to the public on the Corporation's website after its approval by the Independent Directors and presentation to the Board.

## **6.7 Inclusion of Draught Sales in Sales "Through the Corporation"**

A majority of the Independent Directors may, on one occasion during the two-year period following the date of this Agreement, require the Corporation to review whether the inclusion of sales of draught Beer in the definition of "Through the Corporation" for purposes of this Agreement creates results that are unfairly biased towards any group of Brewers that has a higher proportion of sales of draught Beer taking into consideration the revenues generated by the Corporation from fees charged to Brewers who sell draught Beer through the Corporation and the regulatory requirements for certain Brewers to sell Beer to Licensees through the Corporation. If, as a result of such review, a majority of the Independent Directors (without any requirement for Board approval) determines that such inclusion creates such results, the definition of "Through the Corporation" in Section 1.1 shall be amended to exclude sales of draught Beer.

## **ARTICLE 7 DEALING WITH SHARES**

### **7.1 Restrictions on Transfer of Shares**

- (a) Except as expressly provided in this Agreement, no Shareholder shall Transfer any Securities held by it, or any of its rights or obligations under this Agreement, to any Person.
- (b) Notwithstanding anything else contained in this Agreement, every Transfer of Shares held by a Shareholder, in addition to the requirements of the Corporation's articles and the other requirements of this Agreement, shall be subject to the condition that the proposed transferee, if not already bound by the terms of this Agreement, shall first agree, in writing, to become a party to and be bound by the terms of this Agreement, by executing a form of counterpart and acknowledgement acceptable to the Corporation.

## 7.2 Endorsement on Certificates

Share certificates of the Corporation shall bear the following language either as an endorsement or on the face of each such share certificate:

“The shares represented by this certificate are subject to the terms and conditions of a unanimous shareholders agreement dated as of January 1, 2016 as it may be amended, which agreement contains, among other things, restrictions on the right of the holder to transfer or sell the shares. A copy of such agreement is on file at the registered office of the Corporation.”

## 7.3 Issue of Additional Shares

Without the prior written agreement of the Shareholders, the Corporation shall not issue any further shares in the capital of the Corporation, or other securities convertible or exchangeable into shares in the capital of the Corporation, other than 100 First Equity Shares issued to each Eligible Qualifying Brewer pursuant to Section 3.3.

## 7.4 Pledge of Shares

Notwithstanding the provisions of Section 7.1, any Shareholder may pledge, charge, mortgage or otherwise encumber any of its Shares to a bank or other financial institution for the purpose of securing any borrowings by such Shareholder, provided that such bank or financial institution acknowledges to the Parties in writing that the pledge, charge, mortgage or encumbrance of such Shares shall at all times be subject to all the terms and conditions of this Agreement, including the prohibition against Transferring such Shares contained in Section 7.1 except as permitted pursuant to this Article.

## 7.5 Permitted Transferees

- (a) Subject to the provisions of this Section 7.5, each Shareholder (a “**Transferor**”) shall be entitled, upon prior Notice to the Corporation, to sell, transfer and assign all (but not less than all) of its Shares to (i) any Affiliate or (ii) any Person in connection with the acquisition by such Person of substantially all of the assets of the Shareholder (in each case, a “**Permitted Transferee**”). No such Transfer shall be effective until the Permitted Transferee executes and delivers to the Corporation a counterpart to this Agreement in compliance with Section 7.1(b). No such Transfer shall release or discharge the Transferor from any of its liabilities or obligations under this Agreement.
- (b) The Transferor shall, at all times after the Transfer of Shares to a Permitted Transferee:
  - (i) be jointly and severally liable with the Permitted Transferee for the observance and performance of the covenants and obligations of the Permitted Transferee under this Agreement;

- (ii) cause the Permitted Transferee to remain an Affiliate for so long as the Permitted Transferee has any registered or beneficial interest in the Shares; and
  - (iii) indemnify the other Parties against any loss, damage or expense incurred as a result of the failure by the Permitted Transferee to comply with the provisions of this Agreement.
- (c) Any Permitted Transferee may, upon prior Notice to the Corporation, at any time Transfer back to the applicable Transferor all (but not less than all) such Shares held by such Permitted Transferee.
- (d) The rights of any Permitted Transferee of a Shareholder shall not be any greater than the rights that its Transferor would have if it held Shares directly, and if those rights would have changed (for example, by a Qualifying Brewer Shareholder ceasing to be a Qualifying Brewer), the rights of such Permitted Transferee shall change at the same time and with the same effect.

## 7.6 Insolvency or Default of a Shareholder

If any Shareholder (i) makes an assignment for the benefit of creditors, (ii) is the subject of any proceedings under any bankruptcy or insolvency law, (iii) avails itself of the benefit of any other legislation for the benefit of debtors or (iv) takes steps to wind up or terminate its corporate existence other than in connection with a corporate reorganization that results in the shares of the Corporation held by such Shareholder being held by a successor or continuing entity, the Corporation shall redeem, in accordance with the articles of the Corporation, the First Equity Shares held by such Shareholder. In the event that, a Shareholder ceases to be a Qualifying Brewer, its First Equity Shares shall become subject to the restrictions set forth in the articles of the Corporation.

## ARTICLE 8 GENERAL

### 8.1 Confidentiality

- (a) Except as otherwise expressly provided for in this Agreement, none of the Parties shall, at any time or under any circumstances, without the consent of the Corporation, directly or indirectly communicate or disclose to any Person (other than its employees, agents, advisors and representatives and their respective Affiliates as reasonably necessary in connection with its interest in the Corporation, and to those of the other Parties) or make use of (except in connection with its interest in the Corporation) any Confidential Information howsoever acquired by such Party. In this Agreement, “**Confidential Information**” means any confidential knowledge or information howsoever acquired by such Party relating to or concerning the customers, products, technology, trade secrets, systems or operations, or other confidential information regarding the property, business or affairs, of the Corporation or any of its Subsidiaries. However, the foregoing obligation of confidentiality shall not apply to:



- (i) information that is or becomes generally available to the public (other than by disclosure by such Party or its employees, agents, nominees, advisors or representatives contrary to this Section 8.1);
- (ii) information that is reasonably required to be disclosed by a Party to protect its interests in connection with any valuation or legal proceeding in relation to this Agreement;
- (iii) information that is required to be disclosed by law or by the applicable regulations or policies of any regulatory agency of competent jurisdiction or any stock exchange; or
- (iv) disclosure of information by a Shareholder in connection with a proposed transaction relating to such Shareholder, provided such Shareholder obtains a prior written covenant of confidentiality on reasonable commercial terms from the Person to whom it proposes to disclose such information.

Notwithstanding the foregoing, if a Party in good faith determines that disclosure of Confidential Information to the Province (which in no event may include the LCBO) is warranted in the circumstances, such Party shall notify the Corporation and the Board requesting the Corporation to provide such information to the Province. Unless such information is subject to privilege, the Corporation shall provide such information to the Province within 15 Business Days of such Notice. The Corporation shall retain the right to prevent the disclosure of any information that is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) pursuant to the protections afforded by that Act.

- (b) Each of the Parties acknowledges that disclosure of any Confidential Information in contravention of this Section 8.1 may cause significant harm to the Corporation and its Subsidiaries and that remedies at law may be inadequate to protect against a breach of this Section. Accordingly, the Corporation shall be entitled, in addition to any other relief available to it, to the granting of injunctive relief without proof of actual damages or the requirement to establish the inadequacy of any of the other remedies available to it. None of the Parties shall assert any defence in proceedings regarding the granting of an injunction or specific performance based on the availability to the Corporation of any other remedy. Each Party acknowledges that it shall be liable to the other Parties for disclosure of any Confidential Information in contravention of this Section 8.1 by it or any of its Affiliates or any of their respective employees, agents, nominees, advisors or representatives.

## 8.2 Dispute Resolution

- (a) Any controversy or dispute arising out of or relating to this Agreement, including its validity, existence, breach, termination, construction or application, or the rights, duties or obligations of any Party or any other legal relationship associated with or arising from this Agreement (a “**Dispute**”) shall be resolved in the manner set forth in this Section 8.2.

- (b) A Party claiming that a Dispute has arisen shall provide Notice of such Dispute to the other party or parties to the Dispute (collectively, the “**Dispute Parties**”) and to the Beer Ombudsman. The Notice shall include a concise description of the Dispute and the position of the party providing the Notice. The Dispute Parties shall discuss and negotiate the potential resolution of the Dispute in good faith with the intent of reaching an equitable solution for each such Dispute Party, acting reasonably, within 30 days of such Notice.
- (c) If a Dispute is not resolved pursuant to the process set forth in Section 8.2(b) within the 30-day period specified in such Section, the Beer Ombudsman shall assist the Dispute Parties to attempt to reach an equitable solution within a further 30-day period, through mediation. The Beer Ombudsman shall not be authorized to impose a decision or resolution of the Dispute on the Dispute Parties in the course of a mediation held under this Section 8.2(c). Subject to this Agreement, the Beer Ombudsman may conduct the mediation in such manner as he or she considers appropriate. Under the Beer Ombudsman’s supervision, any settlement reached by the Dispute Parties during the mediation shall be confirmed in writing. The existence and any element of any negotiation or mediation pursuant to Section 8.2(b) or Section 8.2(c) shall be confidential and shall be subject to Section 8.1 of the Agreement. Confidential information regarding the property, business or affairs of any Dispute Party that is disclosed during the negotiation or mediation shall be kept confidential by the Beer Ombudsman and all other Dispute Parties as if Section 8.1 of the Agreement included such information within the definition of Confidential Information.
- (d) Unless the Dispute Parties agree to an unequal allocation of costs, the fees and expenses of the Beer Ombudsman with respect to a mediation held under Section 8.2(c) and costs of any mediation facilities shall be periodically billed to and paid in equal proportions by the Dispute Parties as the mediation proceeds. Where a Dispute is referred to arbitration pursuant to Section 8.2(e), the costs of the mediation held under Section 8.2(c) shall be awarded by the Arbitration Tribunal pursuant to the procedures set out in Schedule 8.2 to this Agreement.
- (e) Any Dispute not resolved in its entirety pursuant to the process set forth in Section 8.2(b) or Section 8.2(c) within the 60-day period specified in such Sections shall be referred to and determined by arbitration before a single arbitrator in accordance with the *Arbitration Act*, 1991 (Ontario) (or the *International Commercial Arbitration Act* (Ontario), as applicable) and the procedures set out in Schedule 8.2 to this Agreement.
- (f) A Dispute Party may apply to the Ontario Superior Court of Justice for interim measures of protection at any time prior to the appointment of an Arbitration Tribunal pursuant to Section 8.2(e) and Schedule 8.2 to this Agreement.
- (g) If the Province commences any dispute resolution proceeding under the Master Framework Agreement in connection with the same subject matter as a Dispute against the Corporation or an Original Owner arising out of or relating to this Agreement, any proceeding before the Beer Ombudsman, mediation, arbitration or court proceeding under this Section 8.2 shall be stayed pending the final

resolution of such proceeding. If in the proceeding under the Master Framework Agreement, the Corporation or Original Owner is found not to have breached this Agreement, or if the Province elects to exercise a Final Award permitting it to terminate the New Beer Agreements, the Dispute Parties shall be estopped from bringing any claim or seeking or obtaining any compensation or other remedy of any kind (other than such termination by the Province under the Master Framework Agreement), including for breach of contract, for restitution, under tort or trust law, against the Corporation or an Original Owner in connection with such Dispute. For clarity, if a Dispute Party has obtained an award from an Arbitration Tribunal under this Agreement and such award has been satisfied by the Corporation or the Original Owners, as applicable, such that the Province is precluded under Section 8.6(d) of the Master Framework Agreement from seeking termination under that agreement, this Section 8.2(g) shall not affect such Dispute Party's right to retain the proceeds of such award.

### **8.3 By-Laws and Policies**

The By-Laws of the Corporation shall not be inconsistent with the provisions of the New Beer Agreements. Subject to the transitional period for review of certain decisions and actions made or taken by the Corporation prior to the Effective Date as set out in Section 4.13, the policies of the Corporation shall not be inconsistent with the provisions of the New Beer Agreements. For clarity, any inconsistency in such policies prior to the review and reconsideration set out in Section 4.13 shall be deemed not to constitute a breach of, or for purposes of, any New Beer Agreement.

### **8.4 Enurement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party).

### **8.5 Entire Agreement**

This Agreement together with the other New Beer Agreements constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties pertaining to that subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, pertaining to that subject matter, including any prior unanimous shareholder agreement. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the other New Beer Agreements.

### **8.6 Termination**

This Agreement shall terminate at the expiration or termination of the Master Framework Agreement. This Agreement shall also terminate prior to the end of the Term upon:

- (a) the dissolution or bankruptcy of the Corporation or the making by the Corporation of an assignment under the provisions of the *Bankruptcy and Insolvency Act* (Canada)
- (b) the date on which this Agreement is terminated by written agreement of all of the Shareholders; or
- (c) one Person becoming the beneficial owner of all of the Shares;

except that the provisions of Sections 8.1 and 8.2 shall continue in the event of a termination for any reason.

### **8.7 Independent Legal Advice**

The Parties acknowledge that they have entered into this Agreement willingly with full knowledge of the obligations imposed by the terms of this Agreement. The Parties acknowledge that they have each been afforded the opportunity to obtain independent legal advice and confirm by the execution of this Agreement that they have either done so or waived their right to do so, and agree that this Agreement constitutes a binding legal obligation and that they are estopped from raising any claim on the basis that they have not obtained such advice.

### **8.8 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

- (a) in the case of a Notice to the Corporation at:

Brewers Retail Inc.  
5900 Explorer Drive  
Mississauga, Ontario, L4W 5L2

Attention: President  
Fax: (905) 361-4240

- (b) in the case of a Notice to Labatt at:

Labatt Brewing Company Limited  
207 Queen’s Quay West  
Suite 299, P.O. Box 133  
Toronto, Ontario  
M5J 1A7

Attention: General Counsel  
Fax: (416) 681-4087

- (c) in the case of a Notice to Molson at:

Molson Canada 2005  
33 Carlingview Drive  
Etobicoke, Ontario  
M9W 5E4

Attention: Vice President, General Counsel  
Fax: (416) 679-0630

- (d) in the case of a Notice to Sleeman at:

Sleeman Breweries Ltd.  
551 Clair Road  
Guelph, Ontario  
N1L 1E9

Attention: President and Chief Executive Officer  
Fax: (519) 822-3164

- (e) in the case of a Notice to a Qualifying Brewer Shareholder (other than the Original Owners) at the most recent address for such Qualifying Brewer Shareholder provided by it to the Corporation for such purpose or, if such Qualifying Brewer Shareholder has not provided such an address, at the registered or principal office of such Qualifying Brewer Shareholder in Ontario.

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section

## **8.9 Costs and Expenses**

Except as otherwise specified in this Agreement, all costs and expenses (including the fees and disbursements of accountants, financial advisors, legal counsel and other professional advisors) incurred in connection with this Agreement, including the obligations under this Agreement, the completion of the transactions contemplated by this Agreement and the enforcement of this Agreement are to be paid by the Party incurring those costs and expenses.

## **8.10 Amendments and Waivers**

No amendment to this Agreement shall be valid or binding unless approved:

- (a) by Shareholders holding at least two-thirds of the voting rights attached to the First Equity Shares; and
- (b) in respect of an amendment made during the Term, by a majority of the Independent Directors.

No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give such waiver and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

### **8.11 Regulatory Authority**

Nothing in this Agreement or the other New Beer Agreements derogates from current or future legislative or regulatory authority under the Liquor Control Act, AGRPPA or any other statute or regulation of the Province.

### **8.12 Assignment**

Except as may be expressly provided in this Agreement, none of the Parties to this Agreement may assign its rights or obligations under this Agreement without the prior written consent of the Board.

### **8.13 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

*[Signature pages follow]*

IN WITNESS OF WHICH the Parties have duly executed this Agreement.

**LABATT BREWING COMPANY  
LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**MOLSON CANADA 2005**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SLEEMAN BREWERIES LTD.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BREWERS RETAIL INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**FORM OF SUBSCRIPTION AGREEMENT**



**BREWERS RETAIL INC.**  
**SUBSCRIPTION AGREEMENT**  
**(FOR QUALIFYING BREWERS**  
**LOCATED OR RESIDENT IN ONTARIO)**

---

Name of Subscriber

**INSTRUCTIONS**

Please complete and sign the **first page** of the Subscription Agreement and deliver your completed and signed Subscription Agreement (along with any other documents required to be delivered under this Subscription Agreement) and full payment of the aggregate subscription price for the First Equity Shares (by certified cheque or bank draft payable to “Brewers Retail Inc.”) to the Corporation at 5900 Explorer Drive, Mississauga, Ontario, L4W 5L2, Attention: Ted Moroz, President, Phone: 905.361.4204, Fax: 905.361.4204, Email: [Ted.moroz@thebeerstore.ca](mailto:Ted.moroz@thebeerstore.ca). Any further documentation required by the Corporation, any regulatory authority or the Premier of Ontario’s Advisory Council on Government Assets, under applicable securities laws, or as otherwise contemplated by this Agreement is to be delivered to the Corporation at the address above.

Your subscription is made on the terms and conditions set out in the Subscription Agreement. Ensure that you read the entire agreement carefully, and seek independent investment, legal, tax and other professional advice as you consider necessary.

The securities for which you are subscribing are non-transferrable securities of a private company and are subject to an indefinite hold period.

**SUBSCRIPTION AGREEMENT**

**TO: Brewers Retail Inc. (the “Corporation”)**

The Subscriber named below subscribes for and agrees to purchase from the Corporation one hundred (100) First Equity Shares in the capital of the Corporation for the aggregate subscription price set out below (representing a subscription price of \$1.00 per First Equity Share), on and subject to the attached “Terms and Conditions of the Offering” (together with this page and the attached Schedule, the “Agreement”).

<b>Number of First Equity Shares</b>	<b>Subscriber’s Aggregate Subscription Price (at \$1.00 per First Equity Share)</b>
100	\$100.00

Signed by the Subscriber on \_\_\_\_\_, 201\_\_.

**Please complete this entire Agreement. Please print, except in the case of signatures.**

\_\_\_\_\_  
Name of Subscriber

\_\_\_\_\_  
Signature of Subscriber (or authorized signatory / agent on behalf of Subscriber)

\_\_\_\_\_  
Residential or head office address of Subscriber

\_\_\_\_\_  
Name and official capacity or title of authorized signatory / agent (if applicable)

\_\_\_\_\_  
Telephone number of Subscriber

\_\_\_\_\_  
Email address of Subscriber

\_\_\_\_\_  
Facsimile number of Subscriber

The Corporation accepts this subscription on the terms and conditions contained in this Agreement as of this 22<sup>nd</sup> day of January, 2016.

**Brewers Retail Inc.**

Per: \_\_\_\_\_  
Authorized signatory

*This is the first page of an agreement composed of 10 pages (not including Schedule A).*

## TERMS AND CONDITIONS OF THE OFFERING

The terms and conditions of the Subscriber's purchase of First Equity Shares from the Corporation are as follows:

### 1. Definitions

In this Agreement, the following terms have the following meanings:

- 1.1 “**Agreement**” means this Subscription Agreement, including Schedule A, as it may be amended or supplemented by written agreement between the parties.
- 1.2 “**Business Day**” means any day excluding a Saturday, Sunday or statutory holiday in the province of Ontario.
- 1.3 “**Communication**” is defined in Section 5.1.
- 1.4 “**Corporation**” means Brewers Retail Inc., a corporation incorporated under the *Business Corporations Act* (Ontario) and includes any successor corporation to it.
- 1.5 “**First Equity Shares**” means the First Equity Shares in the capital of the Corporation.
- 1.6 “**OSC Decision**” means the decision of the Ontario Securities Commission attached as Schedule “A” to this Agreement.
- 1.7 “**person**” will be broadly interpreted and includes:
  - 1.7.1 an individual;
  - 1.7.2 a corporation;
  - 1.7.3 a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not; and
  - 1.7.4 an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative.
- 1.8 “**Personal Information**” is defined in Section 5.10.
- 1.9 “**Purchased Shares**” means the First Equity Shares purchased by the Subscriber under this Agreement.
- 1.10 “**Shareholders Agreement**” is defined in Section 2.2.
- 1.11 “**Subscriber**” means the person named as the “Subscriber” on the execution page of this Agreement.
- 1.12 “**United States Securities Act**” means the United States *Securities Act of 1933*, as amended.
- 1.13 “**U.S. Person**” means a “U.S. person” as defined in Regulation S under the United States Securities Act.

## 2. Terms and Conditions of Purchase

- 2.1 **Offer and Acceptance:** By signing this Agreement, the Subscriber offers to subscribe for the number of First Equity Shares set out on the first page of this Agreement. The Corporation may reject the Subscriber's subscription for First Equity Shares set out in this Agreement if the Subscriber is not a Qualifying Brewer (as defined below). This Agreement is not enforceable against the Corporation until it has been accepted by the Corporation. The First Equity Shares to be issued under this Agreement are part of an offering by the Corporation of ownership of the Corporation to all Qualifying Brewers (as defined below).
- 2.2 **Shareholders Agreement:** The Subscriber agrees to be bound by all of the terms and conditions of the unanimous shareholder agreement dated as of the 1<sup>st</sup> day of January, 2016 between the Corporation, Molson Canada 2005, Labatt Brewing Company Limited, Sleeman Breweries Ltd. and all of the holders of First Equity Shares from time to time, as it may be amended from time to time (the "**Shareholders Agreement**"). By signing this Agreement, the Subscriber will be bound by, and shall thereupon automatically become a party to, the Shareholders Agreement.
- 2.3 **Compliance with Laws:** The Subscriber agrees to comply with applicable securities laws, including the OSC Decision, concerning the purchase of, the holding of, and the resale restrictions applicable to, the Purchased Shares.
- 2.4 **Expenses:** All costs incurred by the Subscriber (including any fees and disbursements of any legal counsel or other advisors retained by the Subscriber) relating to the purchase of the Purchased Shares will be borne by the Subscriber.
- 2.5 **Share Certificates:** Certificates representing the Purchased Shares will be available for delivery to the Subscriber against payment to the Corporation of the aggregate subscription price for the Purchased Shares.

## 3. Representations, Warranties and Covenants of the Subscriber

- 3.1 **Representations, Warranties and Covenants:** The Subscriber represents and warrants to, and covenants with, the Corporation as follows, and acknowledges that the Corporation is relying on the representations and warranties given by the Subscriber in this Agreement, despite any investigation made by or on behalf of the Corporation.
- 3.1.1 **Residence:** The Subscriber is resident in the place identified as the Subscriber's residential or head office address on the first page of this Agreement, and that address is the Subscriber's residential or business office address and is not being used solely for the purpose of acquiring the Purchased Shares. The Subscriber is located or resident in the Province of Ontario and eligible to acquire First Equity Shares pursuant to the OSC Decision.
- 3.1.2 **Purchasing as Principal:** The Subscriber is purchasing the Purchased Shares as principal for the Subscriber's own account and not for the benefit of any other person. The Subscriber is not purchasing the Purchased Shares with a view to the resale or distribution of any of the Purchased Shares.

- 3.1.3 **Qualifying Brewer:** The Subscriber operates one or more facilities manufacturing Beer (as defined in the *Liquor Licence Act* (Ontario) in Ontario, sells Beer through the Corporation and satisfies the following criteria (a “**Qualifying Brewer**”):
- 3.1.3.1 it has a valid Ontario manufacturing licence issued by the Alcohol and Gaming Commission of Ontario;
  - 3.1.3.2 it has a valid Canadian manufacturing licence issued by the Canada Revenue Agency;
  - 3.1.3.3 it conducts the full brewing process up to the point of packaging, including mashing, lautering, boiling, hop separation and fermentation, in its Ontario Beer manufacturing facilities; and
  - 3.1.3.4 it either (A) does not produce Beer in any other jurisdiction or (B) its Ontario Beer manufacturing facilities have a minimum annual capacity of 10,000 hectolitres of Beer in the aggregate and a minimum annual production of 2,500 hectolitres of Beer in the aggregate.
- 3.1.4 **Other Representations in Subscription Agreement:** The representations made by the Subscriber in this Agreement, including the statements made by the Subscriber on page 1 of this Agreement, and any other documents delivered by the Subscriber under this Agreement, are true and correct.
- 3.1.5 **Purchase under OSC Decision:** The Subscriber is aware that the Corporation is relying on the OSC Decision, which provides an exemption from the requirements under securities laws to provide the Subscriber with a prospectus, and no prospectus has been filed by the Corporation with any regulatory authority in connection with the issuance of the Purchased Shares, and as a consequence:
- 3.1.5.1 the Subscriber is restricted from using some of the civil remedies otherwise available under securities laws and certain protections, rights and remedies provided by securities laws, including statutory rights of rescission or damages, will not be available to the Subscriber; and
  - 3.1.5.2 the Subscriber may not receive information that would otherwise be required to be provided to the Subscriber under securities laws.
- 3.1.6 **Resale Restrictions:** The Subscriber is aware that there are restrictions on the Subscriber’s ability to resell the Purchased Shares and it is the Subscriber’s responsibility to consult the Subscriber’s own advisors to find out what those restrictions are and to comply with them before selling the Purchased Shares. The Subscriber is aware that the Subscriber will not be able to resell the Purchased Shares except in accordance with limited exemptions under the Shareholders Agreement and applicable securities laws and agrees that certificates representing the First Equity Shares may bear a legend indicating that the resale of those securities is restricted.

3.1.7 **Absence of Public Market:** The Subscriber is aware that:

- 3.1.7.1 the Corporation is not a “reporting issuer” or the equivalent in any jurisdiction and, accordingly, the Purchased Shares will be subject to an indefinite hold period under applicable securities laws, including the OSC Decision;
- 3.1.7.2 the First Equity Shares are not listed on any stock exchange and no market, public or otherwise, exists for the First Equity Shares; and
- 3.1.7.3 the First Equity Shares are subject to transfer restrictions contained in the Corporation’s constating documents and unanimous shareholders agreement to which the Subscriber will become a party pursuant to the execution and delivery of this Agreement.

3.1.8 **No Government Endorsement or Insurance:** The Subscriber is aware that:

- 3.1.8.1 no stock exchange, governmental agency, securities commission or similar regulatory authority has reviewed or passed on or made any finding or determination as to the merits of, or made any recommendation or endorsement with respect to, the Purchased Shares; and
- 3.1.8.2 there is no government or other insurance covering the Purchased Shares.

The Subscriber is aware of the characteristics of the Purchased Shares and the provisions relating to the issuance in the Purchased Shares, and has the sophistication and experience in the Corporation’s industry (or has received appropriate independent advice) to be capable of evaluating the merits of ownership in the Purchased Shares and the Corporation.

3.1.9 **Capacity and Authority:** If the Subscriber is:

- 3.1.9.1 a corporation, the Subscriber is duly incorporated and validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
- 3.1.9.2 a partnership, syndicate or other form of unincorporated organization, the Subscriber has the necessary legal capacity and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the Subscriber has obtained all approvals necessary in order to do so; or
- 3.1.9.3 an individual, the Subscriber is of full age of majority and has the legal capacity and competence to enter into and execute this Agreement and to perform the Subscriber’s obligations under this Agreement.

- 3.1.10 **Due Execution and Delivery:** This Agreement has been duly executed and delivered by the Subscriber, and constitutes a legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms.
- 3.1.11 **No Breach:** The entering into of this Agreement by the Subscriber and the performance by the Subscriber of the transactions contemplated by this Agreement do not and will not result in the violation of any of the terms and provisions of any law, judgment or order applicable to the Subscriber, or (if applicable) the constating documents of the Subscriber, or any agreement, written or oral, to which the Subscriber may be a party or by which the Subscriber is or may be bound.
- 3.1.12 **United States Securities Laws:** The Subscriber is not a U.S. Person and the Purchased Shares were not offered to the Subscriber in the United States. At the time the buy order for the Purchased Shares originated, the Subscriber was outside the United States. This Agreement was executed and delivered by the Subscriber outside the United States.
- 3.1.13 **Independent Advice:** In connection with this Agreement and the investment in the Purchased Shares, the Subscriber has not relied upon the Corporation (or any of the Corporation's directors, officers, employees, agents or representatives) for investment, legal, tax or other professional advice, and the Subscriber has sought or elected not to seek the advice of the Subscriber's own personal investment advisers, legal counsel and tax advisers. The Subscriber is aware that legal counsel retained by the Corporation are acting as counsel to the Corporation, and not as counsel to the Subscriber and the Subscriber may not rely upon that legal counsel in any respect. The Subscriber has had the opportunity to seek, and was not prevented or discouraged by the Corporation from seeking, any independent advice which the Subscriber considered necessary before the execution and delivery of this Agreement.
- 3.1.14 **Representations Relied On:** No person (including the Corporation) has made to the Subscriber any written or oral representations:
- 3.1.14.1 that any person will resell or repurchase any of the Purchased Shares, other than the Corporation;
  - 3.1.14.2 that any person will refund the purchase price for the Purchased Shares, other than the Corporation if the Subscriber ceases to be Qualifying Brewer or voluntarily delivers the Purchased Shares for redemption;
  - 3.1.14.3 as to the future price or value of any of the Purchased Shares; or
  - 3.1.14.4 that any of the Purchased Shares will be listed and posted for trading on a stock exchange.

- 3.1.15 **No Offering Document or Advertisement:** The Subscriber has not received (and has no need to receive) an offering memorandum, prospectus or other disclosure document in respect of the Purchased Shares or the Corporation describing the business and affairs of the Corporation, other than the welcome letter dated December 2, 2015 and the documents specifically referred to therein (the “**Welcome Letter**”) delivered by the Corporation concurrently with this Agreement and which the Subscriber acknowledges receiving, in order to assist the Subscriber in making a decision in respect of the subscription for the Purchased Shares. The Subscriber has not become aware of any sales literature or advertisement (including in printed public media, or on radio, television or the internet) with respect to the distribution of the Purchased Shares.
- 3.1.16 **Future Issuances of First Equity Shares:** The Subscriber is aware that the Corporation may complete additional issuances of First Equity Shares to Qualifying Brewers in the future pursuant to its agreement with the Province of Ontario to allow all Qualifying Brewers in Ontario to participate in ownership of the Corporation and that any future issuances of First Equity Shares may have a dilutive effect on current securityholders, including the Subscriber.
- 3.2 **Notification of Change:** The Subscriber will notify the Corporation of any changes in any representation, warranty or other information relating to the Subscriber set out in this Agreement.
- 4. Interpretation**
- 4.1 **Extended Meanings:** In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words “**including**” or “**includes**” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.
- 4.2 **Sections and Headings:** The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 4.3 **References:** References in this Agreement to a Section or Schedule are to be construed as references to a Section or Schedule of or to this Agreement unless otherwise specified.
- 4.4 **Statutory Instruments:** Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.
- 4.5 **Entire Agreement:** This Agreement, together with, the Welcome Letter, the Shareholders Agreement and any other agreement or agreements and other documents to be delivered under this Agreement, constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to that subject matter, other than the provisions of the non-disclosure agreement between the Corporation and the Subscriber, and there are no representations, warranties or other agreements between the parties, express or implied, in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Welcome Letter, the Shareholders



Agreement or in any of the other agreements and documents delivered under this Agreement. No party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement, the Welcome Letter, or in any of the other agreements and documents delivered under this Agreement.

## 5. General

5.1 **Notices:** Any notice or other communication required or permitted to be delivered under this Agreement (a “**Communication**”) must be in writing and either:

5.1.1 personally delivered;

5.1.2 sent by prepaid registered mail; or

5.1.3 sent by facsimile or email.

Any Communication to the Corporation must be sent as follows:

5900 Explorer Drive  
Mississauga, Ontario  
L4W 5L2

Attention: Ted Moroz, President  
Facsimile no.: 905.361.4204  
Email address: [Ted.moroz@thebeerstore.ca](mailto:Ted.moroz@thebeerstore.ca)

Any Communication to the Subscriber will be addressed to the address, facsimile number or email address of the Subscriber as provided in this Agreement.

Either party may change its address for delivery of Communications by sending the other party a Communication given in accordance with this Section 5.1. A Communication will, if personally delivered or sent by facsimile or email before 4:00 p.m. (local time at the place of delivery or receipt) on a Business Day, be deemed to be given and received on that day and will otherwise be deemed to be given and received on the next Business Day. A Communication sent by mail will be deemed to have been given and received on the fifth Business Day after the Communication is posted (but if there is a general mail disruption during that period, the Communication will be deemed to have been given and received on the fifth Business Day after the disruption ends).

5.2 **Severability:** Each Section of this Agreement is distinct and severable, and if any Section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect the legality, validity or enforceability of the remaining Sections of this Agreement, in whole or in part, or the legality, validity or unenforceability of that Section, in whole or in part, in any other jurisdiction, in each case as long as the legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to either party to this Agreement.

- 5.3 **Governing Law, Submission to Jurisdiction:** This Agreement will be governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that province. Each of the parties to this Agreement irrevocably and unconditionally submits and attorns to the exclusive jurisdiction of the courts of the province of Ontario to determine all issues, whether at law or in equity, arising from this Agreement.
- 5.4 **Amendments:** The provisions of this Agreement may only be amended with the written consent of each of the parties to this Agreement.
- 5.5 **Further Assurances:** Each party to this Agreement will, at the request of the other party to this Agreement, perform any further acts and execute and deliver any further documents as may be reasonably required to fully give effect to this Agreement. The Subscriber will promptly execute, deliver and file (or assist the Corporation in filing) any reports, undertakings or other documents, and will promptly provide any assurances, undertakings and information, as may be required by law or by any securities commission or other regulatory authority in connection with the transactions contemplated by this Agreement.
- 5.6 **Assignment and Enurement:** Neither this Agreement nor any right or obligation under this Agreement may be assigned by either party without the prior written consent of the other party to this Agreement. This Agreement enures to the benefit of and is binding upon the parties to this Agreement and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.
- 5.7 **Counterparts and Electronic Delivery:** This Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, email or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.
- 5.8 **Survival:** The representations, warranties, consents, covenants and indemnities contained in this Agreement or in any certificate, document or instrument delivered under this Agreement will survive the completion of the transactions contemplated by this Agreement.
- 5.9 **Currency:** Unless otherwise specified, all currency amounts in this Agreement are expressed in Canadian dollars.
- 5.10 **Personal Information:** The Subscriber consents to the collection by the Corporation of personal information about the Subscriber (as defined under applicable privacy laws, the “**Personal Information**”) for the purpose of completing the transactions contemplated by this Agreement. The Subscriber consents to the Corporation retaining the Personal Information for as long as permitted or required by law or business practices. The Subscriber acknowledges that the Corporation may use the Personal Information: (i) internally (for the purpose of managing the relationship between and contractual obligations of the Corporation and the Subscriber); (ii) for income tax-related purposes; (iii) to demonstrate compliance with securities laws; and (iv) in record books prepared in respect of the offering of the securities contemplated in this Agreement. The Subscriber acknowledges that the Corporation may disclose the Personal Information: (i) to the Canada Revenue Agency; (ii) to professional advisers of the Corporation in connection with the performance of their professional services; (iii) as required by securities regulatory authorities, stock exchanges and other regulatory bodies; (iv) to a governmental or other authority to which the disclosure is required by court order or subpoena compelling that disclosure (if there is no reasonable alternative to that

disclosure); (v) to a court determining the rights of the parties under this Agreement; (vi) to any other parties involved in the offering of the securities contemplated in this Agreement, including legal counsel; and (vii) as otherwise required or permitted by law. The Subscriber consents to the use and disclosure of the Personal Information set out in this Section 5.10.

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**SCHEDULE A  
TO THE SUBSCRIPTION AGREEMENT**

**DECISION OF THE ONTARIO SECURITIES COMMISSION**

*{See attached }*

October 2, 2015

IN THE MATTER OF  
THE SECURITIES ACT  
R.S.O 1990, CHAPTER S.5, AS AMENDED  
(THE "ACT")

AND

IN THE MATTER OF  
BREWERS RETAIL INC.  
(THE "FILER")

DECISION

**Background**

The Ontario Securities Commission (the "**Commission**") has received an application from the Filer pursuant to subsection 74(1) of the Act for a decision (the "**Exemption Sought**") that the prospectus requirement contained in subsection 53(1) of the Act (the "**Prospectus Requirement**") shall not apply to the issuance by the Filer, from time to time, of First Equity Shares to Qualifying Brewers (each as defined below).

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

**Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation existing under the *Business Corporations Act* (Ontario) (the "**OBCA**") operating under the business name "The Beer Store" ("**TBS**").
2. The Filer has executed the document titled "Modernizing the Distribution of Beer in Ontario Framework of Key Principles" (the "**Key Principles**") dated April 15, 2015, which has also been executed by the Premier of Ontario's Advisory Council on Government Assets (the "**Council**"), the current owners of the Filer (the "**Current Owners**") and the Ontario Ministry of Finance, pursuant to which the parties are negotiating detailed changes to the beer retail and distribution system in Ontario to be contained in the documents necessary to implement the Key Principles (the "**New Beer Agreements**"). The New Beer Agreements

will require that ownership of the Filer be open to all brewers with facilities in Ontario, that all Qualifying Brewers (as defined below) be offered a meaningful opportunity to become equity shareholders of the Filer by subscribing for new shares of the Filer and that any transactions between the Filer and its shareholders be transparent, auditable and commercially reasonable. The New Beer Agreements will also provide that the Filer will continue to operate on a self-sustaining basis as a low cost, efficient distributor of beer in Ontario and will be operated as a self-funding corporation on a break-even cash flow basis. An important element of this is the schedule of listing and service fees to be charged by the Filer to all brewers selling products through the Filer which will be set each year to provide sufficient, but not excess, revenue to cover all of the cash requirements of the Filer consistent with approved operating and capital plans.

3. The articles of amendment of the Filer (the “**Articles**”) and the unanimous shareholders agreement of the Filer (the “**Shareholders’ Agreement**”) will define a “**Qualifying Brewer**” as a brewer that operates a brewery in Ontario, sells beer through TBS and satisfies all of the following criteria:
  - (a) it has a valid Ontario manufacturing license issued by the Alcohol and Gaming Commission of Ontario;
  - (b) it has a valid Canadian manufacturing license issued by the Canada Revenue Agency;
  - (c) it conducts the full brewing process up to the point of packaging, including mashing, lautering, boiling, hop separation and fermentation, in its Ontario Beer manufacturing facilities; and
  - (d) it either (A) does not produce Beer in any other jurisdiction or (B) its Ontario Beer manufacturing facilities have a minimum annual capacity of 10,000 hectolitres of Beer in the aggregate and a minimum annual production of 2,500 hectolitres of Beer in the aggregate.
4. The Qualifying Brewers entitled to subscribe for First Equity Shares of the Filer under the Shareholders’ Agreement will either be: (A) located or resident in the Province of Ontario and eligible to acquire First Equity Shares of the Filer pursuant to the Exemption Sought; (B) located or resident in a province or territory of Canada other than the Province of Ontario and eligible to acquire First Equity Shares of the Filer pursuant to an exemption from prospectus requirements generally available under the applicable securities laws of that province or territory; or (C) neither located nor resident in Canada, and eligible to acquire First Equity Shares pursuant to an exemption from the prospectus, registration or qualification requirements applicable under the securities laws of the jurisdiction outside of Canada in which the Qualifying Brewer is located or resident.
5. Pursuant to the Articles and the New Beer Agreements, the capital of the Filer will be restructured and the Filer will be authorized to issue an unlimited number of First Equity

Shares and a fixed number of Second Equity Shares as well as First Preferred Debentures as follows:

- (a) The First Equity Shares will be offered to all Qualifying Brewers (including the Current Owners) for nominal consideration, and will provide the holders with voting rights in proportion to the volume of their annual sales of beer through TBS that is produced at a facility in Ontario or imported into Ontario in accordance with Ontario's Inter-Plant Transfer Policy for beer from time to time. On liquidation of TBS, the First Equity Shares will entitle the holders to share in any increase in the book value of TBS from December 31, 2014 (subject to certain adjustments to reflect legacy assets and liabilities of the Current Owners) in proportion to the service fees that the holders have paid to TBS from September 1, 2015. The First Equity Shares would also entitle the holders to receive any dividends declared by the board of directors of TBS with the approval of a majority of the Independent Directors (as defined in the Shareholders' Agreement).
- (b) The Second Equity Shares will be non-voting and will be issued to the Current Owners in exchange for their existing equity in, and any other financing (other than trade payables) provided to, TBS (effected through a court approved plan of arrangement or other tax-efficient mechanism), and will entitle the holders to receive any residual value upon liquidation of TBS, after the liquidation amount payable to the holders of the First Equity Shares. Holders of the Second Equity Shares would not be entitled to receive dividends.

Exemptive relief is not sought at this time for any distribution of Second Equity Shares and therefore any distributions of Second Equity Shares must be under a prospectus or an exemption from the prospectus requirement that is generally available under applicable securities laws and must comply with the registration requirement if applicable. Resale of Second Equity Shares distributed under an exemption from the Prospectus Requirement will be a deemed distribution of such securities within the meaning of the Act.

- (c) If TBS requires new capital, the First Preferred Debentures may be issued to any Qualifying Brewers (including the Current Owners) from time to time to fund capital replacement or improvements (e.g., when TBS cannot borrow from third parties on reasonable commercial terms), and will entitle the holders to annual interest at a reasonable commercial rate as well as the return of their principal when redeemed by TBS or upon liquidation of TBS, in priority to any distribution to the holders of any class of shares of TBS. The First Preferred Debentures will contain limited covenants only (such as with respect to the payment of interest and acceleration upon an event of insolvency).

Exemptive relief is not sought at this time for any distribution of First Preferred Debentures and therefore any distributions of First Preferred Debentures must be under a prospectus or an exemption from the prospectus requirement that is generally

available under applicable securities laws and must comply with the registration requirement if applicable. Resale of First Preferred Debentures distributed under an exemption from the Prospectus Requirement will be a deemed distribution of such securities within the meaning of the Act.

6. In compliance with the applicable provisions of the OBCA, the Filer will continue to hold annual meetings of shareholders.
7. The Filer is not a reporting issuer under applicable Canadian securities laws of any jurisdiction and has no present intention of becoming a reporting issuer in Ontario or any other jurisdiction.
8. There is currently no market for the securities of the Filer. The Filer has no present intention of listing or posting its securities on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* (“**NI 21-101**”) or on any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.
9. The Council has advised the Filer that, as of June 1, 2015, there were approximately 153 Qualifying Brewers. Not all of the Qualifying Brewers are known to be, or are expected to be at the time of the issuance of First Equity Shares, “accredited investors” as defined in Section 1.1 of NI 45-106.
10. Prior to the initial issuance of First Equity Shares, each Qualifying Brewer will receive a welcome letter (an “**Initial Disclosure Document**”) containing a summary of the current TBS structure, a description of the ownership opportunity that is being made available to Qualifying Brewers in Ontario pursuant to the New Beer Agreements and a description of the contractual right of rescission and right of action for damages if the Initial Disclosure Document contains a misrepresentation. The Initial Disclosure Document will attach as schedules the following:
  - (a) The Articles, including provisions of the First Equity Shares and the Second Equity Shares, and all amendments thereto.
  - (b) The most recent annual and interim financial statements of the Filer.
  - (c) The most recent annual budget of the Filer.
  - (d) The form of subscription agreement to be entered into between the Filer and the Qualifying Brewer in respect of the First Equity Shares.
  - (e) The form of Shareholders’ Agreement to be entered into by the Qualifying Brewer, including all amendments thereto.
  - (f) This decision.



- (g) A statement to the effect that, as a consequence of this decision, certain protections, rights and remedies provided by the Act, including statutory rights of rescission or damages will not be available to the Qualifying Brewers and that certain restrictions are imposed on the disposition of the First Equity Shares.
11. The Initial Disclosure Document is not being prepared primarily to assist the Qualifying Brewers to make an investment decision in respect of the First Equity Shares, but rather, it is being prepared to describe the agreement between the Filer and the Province of Ontario on changes to the beer retail and distribution system in Ontario and the involvement of Qualifying Brewers in that system. Qualifying Brewers will be, or will become, familiar with TBS through its sales of beer through TBS, which is one of the characteristics of a Qualifying Brewer.
  12. Pursuant to the Shareholders' Agreement, in addition to the information required under the OBCA, TBS has agreed to provide its shareholders with: (i) quarterly unaudited and annual audited financial statements, (ii) TBS's annual budget and its annual business and capital plans, together with an analysis of the impact of those on the schedule of listing and service fees to be charged by TBS to all brewers selling products through TBS, and (iii) any information reasonably required by publicly owned shareholders to comply with their own reporting obligations.
  13. Pursuant to the Shareholders' Agreement, members of the board of directors of the Filer will be permitted to share confidential information of the Filer with its shareholders, and provisions will be made for such information to be so shared with its shareholders on an equitable basis.
  14. Pursuant to the Shareholders' Agreement, all shareholders of the Filer are to be provided with equal opportunity, in compliance with applicable securities laws, to subscribe for any additional required capital (in the form of First Preferred Debentures), if any, from time to time, on terms to be approved by a majority of the Independent Directors.
  15. The First Equity Shares of the Filer will be non-transferrable under the Shareholders' Agreement, except to a person who controls or is controlled by the Qualifying Brewer.
  16. All certificates, if any, representing First Equity Shares and Second Equity Shares will bear a legend stating that the securities represented by the certificate are subject to restrictions on transfer.
  17. The Filer does not currently intend to issue any securities other than First Equity Shares, Second Equity Shares and First Preferred Debentures.
  18. The Filer has considered whether, under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") and other applicable securities legislation, it would be considered to be engaged in or holding itself out as engaging in the business of trading in securities and therefore required to register as a dealer. The Filer does not receive any fees or other income from engaging in trades or acts in

furtherance of distributions and its activities do not have the attributes typical of a person or company carrying on the business of a dealer. Having considered these facts and the guidance provided in section 1.3 of the Companion Policy to NI 31-103, the Filer has concluded that it does not require relief from the registration requirements contained in subsection 25(1) of the Act.

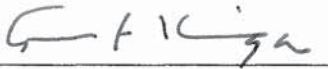
## **Decision**

The Commission is satisfied that the decision meets the test set out in the Act for the Commission to make the decision.

The decision of the Commission is that the Exemption Sought is granted provided that:

- (a) the Filer is in compliance with the provisions of the OBCA;
- (b) the only securities to be issued by the Filer are First Equity Shares, Second Equity Shares and First Preferred Debentures;
- (c) the Filer is not a reporting issuer in any jurisdiction of Canada;
- (d) no securities of the Filer are traded in Canada or any other country on a marketplace as defined in NI 21-101 or on any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
- (e) the First Equity Shares and Second Equity Shares of the Filer are only issued to Qualifying Brewers;
- (f) solicitations for First Equity Shares and Second Equity Shares of the Filer are conducted solely by the Filer and that there are no finder's fees or commissions paid in connection with the issuance or transfer of shares of the Filer;
- (g) the certificates representing the First Equity Shares and Second Equity Shares bear a legend that they are subject to restrictions on transfer;
- (h) the Filer does not make any written or oral representations to Qualifying Brewers regarding potential future profits from any business relationship with the Filer or regarding any profits arising from the Qualifying Brewer's interest in any securities of the Filer, other than stating the interest rate applicable to any First Preferred Debentures;
- (i) at the time of entry into any subscription agreement to acquire First Equity Shares of the Filer, Qualifying Brewers are provided with a contractual right of rescission and a right of action for damages if the Initial Disclosure Document contains a misrepresentation;

- (j) prior to the distribution of any First Equity Shares by the Filer to a Qualifying Brewer, the Filer delivers to such Qualifying Brewer the Initial Disclosure Document, including the schedules thereto, and a copy of this decision;
- (k) the Filer will provide ongoing access to information and disclosure to the shareholders of the Filer in accordance with the requirements of the OBCA and the Shareholders' Agreement, including certain disclosure as to the affairs of the Filer, as described in paragraph 12 above;
- (l) the exemptions contained in this decision cease to be effective
  - (i) if any of the provisions of the Articles or the Shareholders' Agreement of the Filer relevant to the exemptions granted herein, including the restrictions on transfers of the Filer's securities and the disclosure obligations of the Filer to its shareholders, are amended in any material respect without prior written consent of the Commission; or
  - (ii) upon any securities of the Filer being traded in Canada or any other country on a marketplace as defined in NI 21-101 or on any other facility for bringing together buyers and sellers of securities where trading data is publicly reported; and
- (m) the first trade of any First Equity Shares (other than to a Qualifying Brewer, to a person who controls or is controlled by the Qualifying Brewer or to the Filer itself) shall be deemed a distribution of such securities within the meaning of the Act.



Ontario Securities Commission



Ontario Securities Commission

**EXHIBIT B**  
**ESTIMATED RATE SHEET**

The following is an illustration of the rate sheet methodology applied to the Corporation's 2015 budget.

Subject to the terms of paragraph 6.3 of this agreement, the Rate Sheet is to be set such that both of the following criteria are achieved:

- i) Basic Service Fee draught rates per hectolitre shall be equal to the sum of (A) 82.675% multiplied by the result of the Basic Service Fee packaged rate less any Pension Adjustment Per Hectolitre included in the Basic Service Fee packaged rate, and (B) the applicable Pension Adjustment Per Hectolitre; and
- ii) The sum of volumes by brewer multiplied by the applicable Basic Service Fee rate, shall equal the Basic Service Fee Requirement (as hereafter defined).

**Budget 2015 Retail and Licensee Volumes**

<b>Retail and Licensee Volumes</b>		
<b>Hectolitres (hL)</b>	<b>2015 budget</b>	<b>Reference</b>
<b>Packaged Volumes</b>		
Subject to Lower Tier Fees	237,221	
Subject to Basic Service Fees		
Brewers with <1m hL globally	207,923	W
Original Owners and Brewers >1m hL globally	4,457,344	X
<b>Total Packaged Volumes</b>	<b>4,902,487</b>	<b>A</b>
<b>Draught Volumes</b>		
Subject to Lower Tier Fees	23,061	
Subject to Basic Service Fees		
Brewers with <1m hL globally	606	Y
Original Owners and Brewers >1m hL globally	660,910	Z
<b>Total Draught Volumes</b>	<b>684,577</b>	<b>B</b>

**Basic Service Fee Requirement based on cash costs of operating the Corporation**

<b>Basic Service Fee Requirement</b>		
<b>\$'000</b>	<b>2015 budget</b>	<b>Reference</b>
<b>Total expenses<sup>1</sup></b>	<b>411,274</b>	
Less: non-cash expenses <sup>2</sup>	(37,604)	
Add: capital expenditure and defined benefit plan cash funding <sup>3</sup>	63,619	
<b>Total cash costs of operating the Corporation</b>	<b>437,289</b>	
Less: other revenue <sup>4</sup>	(178,824)	
<b>Basic Service Fee Requirement (Total)<sup>5</sup></b>	<b>258,465</b>	
Pension Amount	(17,207)	C
<b>Basic Service Fee Requirement (applicable to Lower Tier Fees)</b>	<b>241,258</b>	<b>D</b>

Note 1: Total expenses includes cost of sales, wages and benefits, occupancy costs, operating costs, other operating expenses and current income tax expense

Note 2: Includes depreciation and amortization and Defined Benefit Plan Expense. Defined Benefit Plan Expense means the budgeted accounting expense for the relevant period for the defined benefit plans sponsored by TBS including but not limited to Brewers Retail Inc Pension Plan for Salaried Employees, Brewers Retail Pension Plan for Bargaining Unit Employees, Post-Employment Benefits for Brewers Retail Inc (LTD), and Post-Retirement Benefits for Brewers Retail Inc (LTD). For the avoidance of doubt, any TBS defined contribution plan is excluded from this definition.

Note 3: Includes capital expenditures and defined benefit plan cash funding.

Note 4: Includes elected fee revenue, other revenue, draught and related product revenue, miscellaneous income and proceeds from real estate disposals.

Note 5: Basic Service Fee Requirement means the total basic fees required to cover the costs of the Corporation (net of other revenues).

Calculation of Pension Adjustment per Hectolitre

Calculation of Pension Adjustment Per Hectolitre		
	2015 budget	Reference
Pension Amount (\$'000)	17,207	C
Volumes subject to Pension Amount (hL)	5,326,782	$E = (W + X + Y + Z)$
Pension Adjustment Per Hectolitre (\$ / hL)	\$3.23	$F = C / E$
Pension Adjustment inclusion in Basic Service Fees per Section 6.3(a)(ii)(A) (\$ / hL)	\$3.00	G = Lesser of F and \$3.00
Volumes of Brewers with <1m hL globally (hL)	208,528	W + Y
Pension Cost to be Covered by Brewers with <1m hL globally (\$'000)	626	$H = G * (W + Y)$
Pension Amount to be covered by Original Owners and Brewers >1m hL globally (\$'000)	16,581	I = C - H
Volumes of Original Owners and Brewers >1m hL globally (hL)	5,118,254	X + Z
Pension Adjustment on volumes of Original Owners and Brewers >1m hL globally (\$ / hL)	\$3.24	$J = I / (X + Z)$

Calculation of Rate Card based on 2015 Budget

Rate Sheet		
\$ / Hectolitre (hL)	2015 budget	Reference
	Used in calculations only -> <b>\$44.12</b>	$K = (D / (A + B * 82.675\%))$
	Used in calculations only -> <b>\$36.47</b>	$N = L * 82.675\%$
<b>Packaged rate<sup>6</sup></b>		
Lower Tier Fees	\$44.12	L = Lesser of K and (M - \$2.00)
Basic Service Fees	\$47.12	M = K + G
Original Owners and Brewers > 1mhL	\$47.36	K + J
<b>Draught rate<sup>6</sup></b>		
Lower Tier Fees	\$36.47	Lesser of N and (O - \$2.00)
Basic Service Fees	\$39.47	$O = (K * 82.675\%) + G$
Original Owners and Brewers > 1mhL	\$39.71	$(K * 82.675\%) + J$

Note 6: To the extent the Lower Tier Fee rate is \$2.00 less than Basic Service Fees (i.e. condition met when  $L = M - \$2.00$ ), then the Basic Service Fees and the Basic Service Fees paid by the Original Owners and Brewers with >1m hL globally shall be adjusted upwards to recover any shortfall in the Basic Service Fee Requirement

**SCHEDULE 3.3(B)**  
**DETERMINATION OF BOOK VALUE**

**SCHEDULE 4.12(A)**  
**CERTAIN SPECIAL MAJORITY MATTERS**

- (a) Any amendment of the articles of the Corporation or the By-Laws.
- (b) Any material change in the nature of the business of the Corporation.



**SCHEDULE 4.12(B)**  
**SPECIAL MAJORITY MATTERS (INDEPENDENT DIRECTORS)**

- (a) Any amendment of the articles of the Corporation or the By-Laws.
- (b) The price and other terms of any First Preferred Debentures to be issued by the Corporation.
- (c) Any material change in the nature of the business of the Corporation.
- (d) Any transaction with one or more (but less than all) Shareholders or other related parties.
- (e) The provision of confidential information of the Corporation to shareholders (whether directly or by Directors), except to the extent contemplated by Section 4.17(b).
- (f) Any potential future distributions to Shareholders, including any redemption or early repayment of First Preferred Debentures or Second Equity Shares and any dividends declared by the Board on the First Equity Shares.
- (g) Any change in the number of Directors.
- (h) Delegation of Board powers to any Committee.
- (i) Any policies to the extent relating to the Key Principles as reflected in the New Beer Agreements, including policies in relation to corporate donations by the Corporation to political parties, other than ordinary course operational policies; provided however, that in respect of the policies of the Corporation adopted by the Board on December 8, 2015 only changes to such policies must be so approved.
- (j) Any matter that would result in any class of Brewer being treated differently (other than as contemplated by the New Beer Agreements), including with respect to product categorization.
- (k) Any sale of any material assets of the Corporation not provided for in an Annual Budget or Annual Business Plan.
- (l) Any Transfer of Shares other than (A) as expressly permitted by this Agreement or (B) for greater clarity, one resulting from a merger, acquisition or other similar transaction involving a Shareholder.
- (m) Any changes to the user agreement with Brewers selling Beer Through the Corporation.
- (n) The appointment from time to time of the Beer Ombudsman.

- (o) Any amendment of any of the New Beer Agreements or any other documents to the extent that they embody any of the Key Principles.
- (p) The sale of all or substantially all of the assets of the Corporation.
- (q) Each Annual Budget, Annual Business Plan and capital spending budget, and any material variation from any such approved budget or plan, including the resulting Rate Sheet. If the majority of the Independent Directors does not provide such approval of any Annual Budget following the first Annual Budget approved by the new Board, the prior year's approved Annual Budget will continue with adjustments necessary to reflect changes in costs over which management of the Corporation cannot exercise control.
- (r) The approval requirements of the majority of Independent Directors then in office under Sections 4.8(a), 4.9(c) and (d), 4.13, 8.10 and paragraph (c)(ii) of Schedule 6.2(c).
- (s) Any changes to the Board Mandate and any Committee Mandates that were approved by the Board on December 8, 2015.

**SCHEDULE 6.2(C)**  
**MARKETING MATTERS**

## SCHEDULE 6.2(c)

- (a) The Corporation shall allocate merchandising, marketing, promotions and shelf space for Small Brewers based on each Small Brewer's Adjusted Local Market Share multiplied by a Small Brewer Index Factor.
- (i) **"Local Market Share"** means a Brewer's share of all Qualifying Sales in a particular Zone.
- (ii) **"Zones"** means the geographic subdivisions into which Ontario is divided, as established by the Corporation for the administration of the provisions of Section 6.2 of the Agreement and this Schedule 6.2(c), and **"Zone"** means any one of those geographic subdivisions.
- (iii) **"Adjusted Local Market Share"** means a Brewer's Local Market Share meaningfully adjusted for the growth or decline of such Brewer's brands such that the combined Adjusted Local Market Shares of all Brewers expressed as a percentage always equals 100%.
- (iv) The **"Small Brewer Index Factor"** shall be equal to the Minimum Small Brewer Allocation in a particular Zone divided by the combined Adjusted Local Market Shares of all Small Brewers in a particular Zone, where the **"Minimum Small Brewer Allocation"** is equal to 20%. For example, if the combined Adjusted Local Market Shares of all Small Brewers is 10% in a particular Zone, the Small Brewer Index Factor for that particular Zone would be 2 (20% divided by 10%). The Small Brewer Index Factor for any Zone cannot have a value less than 1. For clarity, if the combined Adjusted Local Market Shares of all Small Brewers in a particular Zone is less than 20% (i.e., the Small Brewer Index Factor has a value of more than 1), the Corporation will allocate the merchandising, marketing, promotions and shelf space in that Zone to Small Brewers based on each Small Brewer's Adjusted Local Market Share multiplied by the Small Brewer Index Factor for that Zone. If the combined Adjusted Local Market Shares of all Small Brewers in a particular Zone is greater than 20% (i.e., the Small Brewer Index Factor has a value of less than 1), the Corporation will allocate merchandising, marketing, promotions and shelf space in that Zone to Small Brewers based on each Small Brewer's Adjusted Local Market Share.
- (v) A Small Brewer's allocation of merchandising, shelf space, marketing and promotions in a particular Zone pursuant to the foregoing (its **"Allocation"**) shall not exceed 5%, unless that Small Brewer's Adjusted Local Market Share in such Zone is greater than 5%, in which case that Small Brewer shall receive an Allocation in such Zone equal to its Adjusted Local Market Share, which, for clarity, shall not be multiplied by the Small Brewer Index Factor.

- (vi) If pursuant to clause (v), the Allocation of one or more Small Brewers is capped at 5% or is equal to its Adjusted Local Market Share in any Zone, then the additional Allocations that those Small Brewers would have received had their Allocations not been capped at 5% or had their Adjusted Local Market Shares been multiplied by the Small Brewer Index Factor shall be added to the Allocations of other Small Brewers in that particular Zone proportionate to their Allocations in such Zone subject to clause (v).
- (b) The Corporation shall allocate remaining merchandising, shelf space, marketing and promotions for Brewers who are not Small Brewers (“**Large Brewers**”) in each Zone, based on each Large Brewer’s Adjusted Local Market Share.
- (c) The Board may from time to time modify (and shall review and reconsider, as contemplated by Section 4.13 of the Agreement) the merchandising, marketing, promotions and shelf space programs contemplated by this Schedule 6.2(c) and the method of determining Allocations as specified in this Schedule 6.2(c) provided that any such modifications must be:
  - (i) consistent with the spirit and intent of this Schedule 6.2(c) and the New Beer Agreements; and
  - (ii) approved by the majority of the Independent Directors.

**SCHEDULE 8.2**  
**ARBITRATION PROCEDURES**

**1. Definitions and Interpretation**

- (a) **Definitions** – Unless otherwise defined in this Schedule, all terms defined in the Agreement which are used in this Schedule have the same meaning as provided for those terms in the Agreement. Where used in this Schedule, unless the context or subject matter otherwise requires, the following words and phrases shall have the meaning set forth below:

“**Act**” means the *Arbitration Act, 1991* (Ontario) or the *International Commercial Arbitration Act* (Ontario), as applicable.

“**Approved Arbitrator**” means a retired judge of the Supreme Court of Canada, Ontario Superior Court or Court of Appeal or a senior qualified lawyer who is impartial and independent of the Parties.

“**Arbitration Tribunal**” means the arbitrator appointed pursuant to Section 2 of this Schedule.

“**Court**” means the Ontario Superior Court of Justice.

“**Dispute**” means any matter which a Party, in accordance with the Agreement, submits to arbitration in accordance with the terms of this Schedule.

“**Procedures**” means the arbitration procedures described in this Schedule.

“**Schedule**” means this schedule of arbitration procedures.

- (b) **Governing Law and Jurisdiction** – The seat of the arbitration shall be Toronto, Ontario and all Disputes referred to arbitration (including the scope of the agreement to arbitrate, the law relating to the enforcement of the agreement to arbitrate, any relevant limitation periods, the law governing the procedure of the arbitration, the law relating to available remedies, set-off claims, conflict of laws rules and claims to costs and interest) shall be governed by the laws of the Province of Ontario.
- (c) **Time** – In the computation of time under the Procedures or an order or direction given by the Arbitration Tribunal pursuant to this Schedule, except where a contrary intention appears or the Parties otherwise agree:
- (i) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
  - (ii) where the time for doing any act under this Schedule or any order or direction given by the Arbitration Tribunal expires on a day which is not a

Business Day, the act may be done on the next day that is not a Business Day; and

- (iii) delivery of a document or notice provided for in this Schedule or any order or direction given by the Arbitration Tribunal made after 5:00 p.m. (Toronto time) or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

## 2. **Commencement of Arbitration**

- (a) Any Party (or Parties) (collectively, the “**Claimant**”) may commence arbitration of a Dispute by delivering a written notice (a “**Notice of Arbitration**”) to the Party (or Parties) against whom the Claimant seeks a remedy (collectively, the “**Respondent**”). Where a Dispute arises which involves more than one Respondent, the Claimant may commence arbitration of the Dispute by delivering a Notice of Arbitration to each Party that is a Respondent. Where the Notice of Arbitration alleges breach of this Agreement by the Corporation or an Original Owner, the Province shall be provided with a copy of such Notice of Arbitration by the Corporation or the Original Owner within 10 days of receipt of the Notice of Arbitration.
- (b) In the Notice of Arbitration, the Claimant shall describe the substance of the Dispute and name three individuals whom the Claimant is prepared to appoint as arbitrator, each of such individuals to be an Approved Arbitrator.
  - (i) Within 10 days of receipt of the Notice of Arbitration, the Respondent shall by Notice to the Claimant agree to the appointment of one of the three individuals named by the Claimant or provide the Claimant with a list of three other individuals who are Approved Arbitrators.
  - (ii) Within 10 days of receipt of the Respondent’s list, by Notice to the Respondent, the Claimant shall agree to the appointment of one of such individuals, or provide a further list of three Approved Arbitrators. The Parties shall continue to exchange lists of three Approved Arbitrators in this fashion until the Arbitration Tribunal is appointed.
  - (iii) If the Arbitration Tribunal is not appointed within 30 days of the initial receipt by the Respondent of the Notice of Arbitration, either Dispute Party may provide copies of the exchanged lists to the Independent Directors, who shall appoint the Arbitration Tribunal by majority vote.
- (c) Where any Party is a party to two or more pending arbitrations in relation to the same Dispute, such Party may apply to the Court for the consolidation of such arbitrations and other Parties to such arbitrations shall agree to the consolidation on such terms as the Court shall consider just.

## 3. **Arbitration Procedures** – The following procedures shall apply to the arbitration of any Dispute, except as the Parties may otherwise agree or as the Arbitration Tribunal otherwise directs:

- (a) Within 20 days of the appointment of the Arbitration Tribunal, the Claimant shall deliver to the Respondent and the Arbitration Tribunal a written statement (the “**Complaint**”) concerning the Dispute setting forth, with particularity, the full names, descriptions and addresses of the Parties, the nature of the Complaint, the allegations of fact supporting the Dispute submitted for arbitration and the relief or remedy sought.
- (b) Within 30 days after the delivery of the Complaint, the Respondent shall deliver to the Claimant and the Arbitration Tribunal a written response (the “**Answer**”) to the Complaint setting forth, with particularity, its position on the Dispute and the allegations of fact supporting the Answer.
- (c) If the Respondent fails to deliver an Answer within the time limit referred to in Section 3(b), the Respondent shall, subject to Section 3(f), be deemed to have admitted the allegations of fact alleged in the Complaint and have accepted the Claimant’s entitlement to the relief and remedy set out in the Complaint.
- (d) Within 10 days after the delivery of any Answer, the Claimant may deliver to the Respondent and the Arbitration Tribunal a written reply to that Answer, setting forth, with particularity, its response, if any, to the Answer.
- (e) If the Respondent wants to submit any other Dispute to the Arbitration Tribunal it may, within the time provided for the delivery of the Answer to the Complaint, also deliver to the Claimant and the Arbitration Tribunal a counter-complaint (the “**Countercomplaint**”) setting forth, with particularity, the nature of the Countercomplaint, the allegations of fact supporting the Countercomplaint and the relief or remedy sought, for the Arbitration Tribunal to decide. Within 20 days of the delivery of a Countercomplaint, the Claimant shall deliver to the Respondent making a Countercomplaint and the Arbitration Tribunal a written response to such Countercomplaint (the “**Response to Countercomplaint**”) setting forth, with particularity, its position on the Countercomplaint and the allegations of fact supporting the Response to Countercomplaint. If the Claimant fails to deliver a Response to Countercomplaint within such 20 day period, the Claimant shall be deemed, subject to Section 3(f), to have admitted the allegations of fact alleged in the Countercomplaint, and have accepted the Respondent’s entitlement to the relief and remedy set out in the Countercomplaint. Within 10 days after the delivery of a Response to Countercomplaint, the Respondent may deliver to the Claimant and the Arbitration Tribunal a written reply to such Response to Countercomplaint setting forth, with particularity, its response to such Response to Countercomplaint. Any Dispute submitted to arbitration in accordance with this Section 3(e) shall be governed by, and dealt with as if it were the subject of a Notice of Arbitration, that shall be determined by the same Arbitration Tribunal as part of the same arbitration proceeding as the Notice of Arbitration.
- (f) The time limits set for the delivery of the documents referred to in Sections 3(a) to 3(e) inclusive may be extended by agreement of the Parties or by the Arbitration Tribunal for such period, on such terms, and for such reasons as the Arbitration Tribunal may determine upon application made to the Arbitration Tribunal in writing by either the Claimant or the Respondent on Notice to the



other, with such application being made either before the expiry of the time limit in issue or within two days after such expiry, and the Arbitration Tribunal may relieve the applying Dispute Party of the consequences of its failure to comply with the time limit in issue, provided, however, that the other Dispute Party shall be given an opportunity to make submissions on the application.

- (g) Within 20 days following the completion of the steps set out in Sections 3(a) to 3(e) of this Schedule, a Dispute Party may, upon Notice to the other Dispute Party and to the Arbitration Tribunal, request the Arbitration Tribunal to give directions and make any order which is, in the discretion of the Arbitration Tribunal, reasonable regarding any procedural matters which properly should be resolved before the arbitration proceeds further, including the amendment of any pleadings, the provision of particulars, the production of documents and the need for examinations for discovery in connection with the arbitration, either by way of oral examination or written interrogatories, and a determination as to the manner in which evidence shall be presented to the Arbitration Tribunal (by way of agreed statement of facts, sworn evidence and transcripts of cross-examinations on such sworn evidence or viva voce, or some combination thereof). In making any order or giving any direction in respect of any procedural matter the Arbitration Tribunal may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. The Notice requesting any direction or order pursuant to this subsection shall state the direction or order sought and set out the reasons for seeking such direction or order. Nothing in this Section shall be taken to limit the jurisdiction of the Arbitration Tribunal to deal with procedural matters in accordance with the Act.
- (h) If no Dispute Party has requested directions in accordance with Section 3(g), the Arbitration Tribunal shall give directions regarding the further procedural steps in the arbitration, including any production of documents, any examinations for discovery, and the nature of any hearing (“**Hearing**”). In making any order or giving any direction in respect of any procedural matter the Arbitration Tribunal may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. Each of the Parties shall have an opportunity to make oral submissions to the Arbitration Tribunal in respect of such procedural steps.
- (i) Unless the time for making an award is extended by agreement of the Parties or by court order, the Arbitration Tribunal shall make an award within 60 days after completion of any Hearing or other final procedural step in which evidence or argument are provided to the Arbitration Tribunal. The award shall be in writing and shall state the reasons on which it is based. Executed copies of all awards shall be delivered by the Arbitration Tribunal to each Dispute Party as soon as is reasonably possible.

- 4. **Agreement to be Bound** – No individual shall be appointed to the Arbitration Tribunal unless he or she agrees in writing to be bound by all provisions of this Schedule.

5. **Arbitration Tribunal Discretion** – Subject to the Act, the Agreement and this Schedule, the Arbitration Tribunal may conduct the arbitration in such manner as the Arbitration Tribunal considers appropriate.
6. **Interim Relief** – At the request of any Dispute Party to the arbitration, the Arbitration Tribunal may take such interim measures as the Arbitration Tribunal considers necessary in respect of the Dispute, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Arbitration Tribunal may require security for the costs of such measures.
7. **Remedies** – The Arbitration Tribunal may make final, interim, interlocutory and partial awards. An award may grant any remedy or relief which the Arbitration Tribunal considers just and equitable. The Arbitration Tribunal shall state in the award whether or not the Arbitration Tribunal views the award as final or interim, for purposes of any judicial proceedings in connection with such award.
8. **Experts** – The Arbitration Tribunal shall not, without the written consent of the Parties to the arbitration, appoint any expert or other consultant or retain any counsel to advise him or her.
9. **Appeal** – The award of the Arbitration Tribunal shall be final and binding on the Parties to the arbitration, and shall not be subject to any appeal to court, even on questions of law. An appeal on any question of fact, law or mixed fact and law may be made to an appeal arbitration tribunal composed of three arbitrators (the “**Appeal Arbitration Tribunal**”), who shall be chosen through the process set out in paragraph 2 of this Schedule. The procedures to be applied by the Appeal Arbitration Tribunal shall be determined by that tribunal as it considers appropriate. The award of the Appeal Arbitration Tribunal shall be final and binding and shall not be subject to any appeal to court or to any other arbitrator, even on questions of law. The Appeal Arbitration Tribunal may grant interim relief. The Appeal Arbitration Tribunal may dismiss the appeal, or give the award that it finds the Arbitration Tribunal should have given.
10. **Costs of Arbitration** – The fees and expenses of the Arbitration Tribunal and any Appeal Arbitration Tribunal and costs of the arbitration facilities shall be periodically billed to and paid in equal proportions by the Parties to the arbitration as the Arbitration proceeds. The Arbitration Tribunal and any Appeal Arbitration Tribunal shall have the power to award costs, including the fees and expenses of the Arbitration Tribunal and costs of the arbitration facilities, the fees and expenses of the Beer Ombudsman in connection with any mediation of the same Dispute and costs of the mediation facilities, and the legal fees of an opposing Dispute Party in the mediation and the arbitration upon hearing submissions by any Dispute Party requesting same, and any responding submissions from the other Dispute Party. All of these costs shall be awarded to the successful party on a full indemnity basis, as such term or equivalent amended term is used in the *Rules of Civil Procedure*.
11. **Interest** – The Arbitration Tribunal shall award pre- and post-judgment interest on any damages awarded to the successful party in accordance with the *Courts of Justice Act* (Ontario).

12. **Notices** – All Notices and all other documents required or permitted by this Schedule to be given by any Dispute Party to the arbitration to the other shall be given in accordance with Section 8.8 of the Agreement. All Notices and all other documents required or permitted by this Schedule to be given by any Dispute Party to the arbitration to the Arbitration Tribunal shall be given in accordance with the Arbitration Tribunal's instructions.
  
13. **Confidentiality** – The existence of the arbitration and any element of the arbitration (including an appeal) shall be confidential. Confidential information regarding the property, business or affairs of any Dispute Party that is disclosed during the arbitration shall be kept confidential by the Arbitration Tribunal, any Appeal Arbitration Tribunal and all other Dispute Parties.