

## **ASSET PURCHASE AGREEMENT**

**THIS AGREEMENT** made effective as of the 5<sup>th</sup> day of October, 2016.

**BETWEEN:**

**FORT GARRY BREWING COMPANY LTD.**, a body corporate amalgamated under the laws of the Province of Manitoba  
(the "**Vendor**")

**AND:**

**RUSSELL BREWERIES INC.**, a reporting issuer incorporated under the laws of the Province of British Columbia  
(the "**Shareholder**")

**AND:**

**FORT GARRY BREWING COMPANY LP**, a limited partnership created under the laws of the Province of Manitoba  
(the "**Purchaser**")

**WHEREAS:**

- A.** The Vendor currently owns and operates the Business;
- B.** The Vendor owns or has rights to all of the assets used in the conduct of the Business;
- C.** The Vendor desires to sell to the Purchaser, and the Purchaser desires to purchase from the Vendor, the Purchased Assets upon and subject to the terms and conditions hereinafter set forth;
- D.** Contemporaneously herewith, the Purchaser has entered into the Lock-up Agreements with the Locked-up Shareholders, pursuant to which, among other things, the Locked-up Shareholders have agreed to vote in favour of the Shareholder Approval all of the voting shares held by them in the capital stock of the Shareholder, on the terms and subject to the conditions set forth in such Lock-up Agreements; and
- E.** Contemporaneously herewith, the Purchaser has entered into the Key Employee Agreements with each of the Key Employees.

**NOW, THEREFORE, THIS AGREEMENT WITNESSES** that, in consideration of the premises and the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereto covenant and agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 DEFINITIONS**

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) "**Accounts Receivable**" means any and all accounts, debts, claims, entitlements or other moneys due or which are owing in connection with the operation of the Business, or otherwise, prior to the Closing Date;
- (b) "**Acquisition Proposal**" means, other than the transactions contemplated by this Agreement, any written offer, proposal, expression of interest, or inquiry from any Person (other than the Purchaser or any of its Affiliates) after the date of this Agreement relating to:
  - (i) any acquisition or sale, direct or indirect, of:
    - A all or substantially all of the Purchased Assets;
    - B all or substantially all of the voting or equity securities of the Vendor; or
    - C all or substantially all of the voting or equity securities of the Shareholder, or any of its subsidiaries whose assets, individually or in the aggregate, constitute 50% or more of the fair market value of the consolidated assets of the Shareholder and its subsidiaries;
  - (ii) any take-over bid, tender offer or exchange offer for any class of voting or equity securities of the Vendor or Shareholder; or
  - (iii) a plan of arrangement, merger, amalgamation, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving the Shareholder, the Vendor or any of the Shareholder's subsidiaries;
- (c) "**Affiliate**" has the meaning ascribed to such term in *The Corporations Act* (Manitoba);
- (d) "**Agreement**" means this asset purchase agreement, the schedules attached hereto and all amendments made hereto by written agreement among the parties hereto;
- (e) "**Ancillary Agreements**" means all agreements, certificates and other instruments delivered or given pursuant to this Agreement and "**Ancillary Agreement**" means any of them, as the context requires;

- (f) **"Assigned Agreements"** means all of the contracts and agreements described in Schedule 1.1(f) of the Disclosure Letter, all of which are included in the Purchased Assets;
- (g) **"Assumed Liabilities"** means:
  - (i) liabilities and obligations that would continue to be liabilities and obligations of the Vendor if there is no Closing, to the extent that such liabilities:
    - A are accruing or due from and after Closing in respect of the Assigned Agreements or License Rights transferred and assigned to the Purchaser hereunder; and
    - B do not relate to or arise out of any breach of any representation or warranty or covenant of the Vendor hereunder or any breach by the Vendor or failure of the Vendor to perform its obligations under such Assigned Agreements or License Rights prior to Closing;
  - (ii) liabilities and obligations of the Vendor that are included in Working Capital; and
  - (iii) liabilities and obligations arising and/or accruing as a result of operations following the Closing Date related to the Permitted Liens;
- (h) **"Authorization"** means, with respect to any Person, any order, permit, approval, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person;
- (i) **"Benefit Plans"** means all employee benefit programmes of the Vendor including profit sharing, deferred compensation, pension, incentive, severance, change of control, bonus, health, insurance or life insurance plans, programmes, and arrangements (in each case, oral or written), all as listed in Schedule 3.1(w) of the Disclosure Letter;
- (j) **"Books and Records"** means all books, records, books of account, sales and purchase records, employee records, lists of suppliers and customers, credit and pricing information, files, ledgers, correspondence, lists, recipes, manuals, drawings, blueprints, reports, texts, notes, engineering designs or drawings or other information, environmental or feasibility studies, appraisals, memoranda, invoices, receipts, accounts, computer discs, tapes, back-up tapes or other means of electronic storage, and all other records or documents or information of any nature or kind whatsoever of or relating to the Business or the Purchased Assets, including all records and documents accessible through any computer system or electronically, other than all e-mails and all confidential documents that that the

Vendor may not share, sell, transfer or otherwise dispose of as a result of confidentiality obligations by which it is bound or which cannot be provided to the Purchaser because such transfer is prohibited by the agreement under which it was acquired, or any legal opinions, advice or records that, in the opinion of Vendor, are subject to solicitor client privilege in favor of the Shareholder, the Vendor or an Affiliate;

- (k) "**Break Fee**" has the meaning set out in Section 8.9;
- (l) "**Business**" means the business of producing beer under the name "Fort Garry Brewing Company" for sale to pubs, restaurants, and liquor stores, which business is currently carried on by the Vendor at the Leased Property;
- (m) "**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in the Province of Manitoba and British Columbia;
- (n) "**Cash on Hand**" means all cash, whether in a bank account, or otherwise, of the Business;
- (o) "**Closing**" means the completion of the sale by the Vendor, and the purchase by the Purchaser, of the Purchased Assets on the terms and conditions contained herein;
- (p) "**Closing Balance Sheet**" has the meaning set out in Section 2.8(e);
- (q) "**Closing Date**" means December 15, 2016 or such other date as the parties may mutually agree in writing;
- (r) "**Closing Date Consideration**" has the meaning set out in Section 2.5(d);
- (s) "**Computer Equipment**" means the computer equipment and software utilized in the operation of the Business, other than the email servers of the Vendor;
- (t) "**Deposit**" has the meaning set out in Section 2.4;
- (u) "**Derivative Personal Information**" means any copies of Personal Information, any written material created by the Purchaser and containing Personal Information or any part of the Personal Information sufficient to link the Personal Information with one or more identifiable individuals;
- (v) "**Disclosure Letter**" has the meaning set out in Section 3.1;
- (w) "**Draft Closing Balance Sheet**" has the meaning set out in Section 2.8(a);
- (x) "**Employees**" means those individuals who are actively employed by the Vendor in connection with the Business as of the Closing Date and those individuals who

are on a temporary leave of absence, layoff or disability from the employment of the Vendor as more particularly described in Schedule 3.1(v) of the Disclosure Letter;

- (y) **"Environmental Laws"** means all applicable Laws and agreements with Governmental Entities and all other statutory requirements relating to public health or the protection of the environment and all authorizations issued pursuant to such Laws, agreements or statutory requirements;
- (z) **"Escrow Agent"** means Computershare Trust Company of Canada;
- (aa) **"Escrow Agreement"** means the escrow agreement to be negotiated and entered into between the Vendor, the Purchaser, the Shareholder and the Escrow Agent, and which shall set out the terms upon which the Working Capital Holdback Amount and the General Liability Holdback Amount shall be held and released by the Escrow Agent, all in accordance with the terms and conditions of this Agreement, in form attached hereto as Exhibit 1.1(aa);
- (bb) **"Excluded Assets"** means those assets, properties, rights and interests of the Vendor listed in Schedule 1.1(bb) of the Disclosure Letter (which, for greater certainty, are specifically excluded from the Purchased Assets);
- (cc) **"Excluded Liabilities"** has the meaning set out in Section 2.10;
- (dd) **"Exclusivity Period"** has the meaning set out in Section 8.9(a);
- (ee) **"Financial Statements"** means, collectively:
  - (i) the unaudited financial statements of the Vendor relating to the Business for the period commencing on July 1, 2014 and ending on June 30, 2015;
  - (ii) the unaudited financial statements of the Vendor relating to the Business for the period commencing on July 1, 2015 and ending on September 30, 2015, excluding notes thereto;
  - (iii) the unaudited financial statements of the Vendor relating to the Business for the period commencing on October 1, 2015 and ending on December 31, 2015, excluding notes thereto;
  - (iv) the unaudited financial statements of the Vendor relating to the Business for the period commencing on January 1, 2016 and ending on March 31, 2016, excluding notes thereto; and
  - (v) the working draft (subject to change) of the unaudited financial statements of the Vendor, as of August 23, 2016, relating to the Business for the

period commencing on April 1, 2016 and ending on June 30, 2016, excluding notes thereto,

all prepared in accordance with Generally Accepted Accounting Principles, true and correct copies of which are attached as Schedule 1.1(ee) of the Disclosure Letter;

- (ff) "**General Liability Holdback Amount**" means \$1,000,000.00;
- (gg) "**Goodwill**" means:
  - (i) the right or interest of the Purchaser following Closing to represent itself as carrying on the Business in continuation of and in succession to the Vendor and the right to use any words indicating that the Business is so carried on, including the exclusive right to use the names "Fort Garry Brewing Company Ltd." and "Fort Garry Brewing Company";
  - (ii) all goodwill associated with the Trademarks; and
  - (iii) customer and supplier lists for the Business;
- (hh) "**Governmental Entity**" means any (i) multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or tax authority under or for the account of any of the above;
- (ii) "**GP**" means Fort Garry Brewing Company GP Inc., being the general partner of the Purchaser;
- (jj) "**GST**" means the Goods and Services Tax provided for in Part IX of the *Excise Tax Act* (Canada), as amended from time to time;
- (kk) "**Indemnified Party**" has the meaning set out in Section 7.5(a);
- (ll) "**Indemnifying Party**" has the meaning set out in Section 7.5(a);
- (mm) "**Independent Auditor**" has the meaning set out in Section 2.8(c);
- (nn) "**Intellectual Property**" means: (i) all websites, computer systems and application software including, without limitation, all documentation relating thereto and the latest revisions of all related object and source codes therefor, owned or used by the Vendor or relating to the Business, (ii) the Trademarks, (iii) any and all trade names, business names, brand names, service marks, copyrights, including any performing, author or moral rights, designs, inventions, patents,

franchises, formulae, processes, recipes, know-how, technology and related goodwill of the Business, (iv) any applications, registrations, issued patents, continuations in part, divisional applications or analogous rights or licence rights therefor of the Business; and (v) the rights to the telephone numbers, facsimile numbers, email addresses and domain names used by the Vendor in connection with the Business to the extent that the same may be assigned by the Vendor to the Purchaser;

- (oo) **"Inventory"** means the inventory of the Business as of the Closing Date, excepting any obsolete, defective, spoiled, expired and/or damaged inventories, as determined by the parties, each acting reasonably;
- (pp) **"Key Employee Agreements"** means the employment agreements dated as of the date hereof, and effective as of the Closing Date, between the Purchaser and the Key Employees, on terms substantially similar to the duties and responsibilities and rates of compensation and employee benefit programmes that are on the same or greater level as the terms of employment currently in place between the Key Employees and the Vendor;
- (qq) **"Key Employees"** means [REDACTED];
- (rr) **"Landlord"** means [REDACTED];
- (ss) **"Laws"** means any and all applicable laws including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, and general principles of common and civil law and equity, binding on or affecting the person referred to in the context in which the word is used;
- (tt) **"Lease"** has the meaning specified in Section 3.1(m);
- (uu) **"Leased Property"** means the land and premises listed and described in Schedule 3.1(m) of the Disclosure Letter by reference to its municipal address;
- (vv) **"License Rights"** means and includes all license and distribution rights, titles and interests of the Vendor in and under all license and distribution agreements relating to the Business, but excluding those listed in Schedule 1.1(bb) of the Disclosure Letter that are Excluded Assets, and, for greater certainty, all such license and distribution agreements relating to the Business are included as Assigned Agreements, but excluding those listed in Schedule 1.1(bb) of the Disclosure Letter that are Excluded Assets;
- (ww) **"Lien"** means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), charge, title retention agreement or

arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;

- (xx) **"Locked-up Shareholders"** means each director and/or officer of the Shareholder and the Vendor who either (i) is a shareholder of the Shareholder; or (ii) directly or indirectly controls, or otherwise represents, one or more shareholders of the Shareholder, and certain other shareholders of the Shareholder, each of whom has signed a Lock-up Agreement;
- (yy) **"Lock-up Agreement"** means the voting and support agreements dated as of the date hereof between the Purchaser and the Locked-up Shareholders pursuant to which the Locked-up Shareholders have agreed to vote in support of approving the Shareholder Approval;
- (zz) **"Loss"** and **"Losses"** have the meaning set out in Section 7.1;
- (aaa) **"Machinery, Equipment, Furniture and Tools"** means and includes all of the machinery, equipment, furniture and tools normally utilized in the operation of the Business including, without limitation, the fixed machinery and equipment used in the operation of the Business;
- (bbb) **"Material Adverse Effect"** means an effect that is materially adverse to the Business or the Purchased Assets (taken as a whole and as owned and operated as of the date hereof), the financial condition or results of operations of the Vendor taken as a whole or the ability of the Vendor to perform its obligations under this Agreement and consummate the transactions contemplated herein; provided, however, that none of the following (or their effects) will be deemed to constitute, and none of the following will be taken into account in determining whether there has been, a Material Adverse Effect:
  - (i) any adverse change, event, development, or effect arising from or relating to any of the following:
    - A financial, debt, credit, securities, capital or energy markets (including any disruption) in Canada, the United States or elsewhere;
    - B changes in the Generally Accepted Accounting Principles or any other accounting principles applicable to the Vendor or the Business or the interpretation of the foregoing;
    - C the performance, announcement or consummation of this Agreement and the transactions contemplated herein;



- D the taking of any action (or omitting to take any action) specifically required or permitted by this Agreement or the taking of any action (or omitting to take any action) that the Purchaser has requested or consented to, or which is otherwise permitted by this Agreement; or
  - E any action taken by the Purchaser other than pursuant to this Agreement; or
- (ii) any existing event, occurrence, or circumstance identified or referenced with respect to which the Vendor or the Shareholder has otherwise been notified in writing (including electronic communication) prior to the date of this Agreement; and
- (iii) any adverse change in or effect on the Purchased Assets or the Business that is cured by the Vendor or the Shareholder, as applicable, or no longer exists by the earlier of the Closing or the termination of this Agreement under Section 8.1;
- (ccc) **"Mutual Conditions"** has the meaning set out in Section 5.3(1);
- (ddd) **"Permitted Liens"** means:
  - (i) encumbrances for taxes not yet due and delinquent or the validity of which is being diligently contested in good faith by or on behalf of Vendor;
  - (ii) the right reserved to or vested in any Governmental Entity by any statutory provision or by the terms of any permit, approval, waiver, licence or similar authorization of a Governmental Entity, to terminate any such permit, approval, waiver, licence or similar authorization, or to require annual or other payments as a condition of their continuance;
  - (iii) easements, rights of way, servitudes and other similar rights in land, including rights of way and servitudes for highways and other roads, railways, sewers, drains, pipelines, gas and water mains and electric light, power, telephone, telegraph and cable television conduits, poles, wires and cables and other minor imperfections of title which do not, individually or in the aggregate, impair the use and enjoyment of any real property;
  - (iv) encumbrances incurred or created in the ordinary course of business as security in favor of the Person who is conducting the development or operation of the property to which such encumbrances relate;
  - (v) the reservations, limitations, provisos and conditions in any original grants or transfers from the Crown and all qualifications and exceptions to title under Laws;

- (vi) any encumbrance or trust arising in connection with workers' compensation, unemployment insurance, pension or employment Laws or regulations;
  - (vii) rights of general application reserved to or vested in any Governmental Entity to levy taxes on the Vendor or the income therefrom;
  - (viii) any encumbrance in respect of which Vendor delivers to Purchaser a release, discharge or withdrawal (in registrable form where applicable) or no interest letter at or prior to Closing;
  - (ix) statutory liens of landlords and liens of carriers, warehousemen, builders, mechanics, material men and other similar persons and other liens, imposed by applicable Law, including liens in favour of a public utility, incurred in the ordinary course of business for sums not yet delinquent or which are being contested in good faith;
  - (x) zoning laws and other land use restrictions, including without limitation, any restrictions and limitations applicable to the Leased Property or the use of the Leased Property as noted on any legal notations on the title to the Leased Property as registered at the applicable land titles office; and
  - (xi) those Liens listed and described in Schedule 1.1(ddd) of the Disclosure Letter;
- (eee) **"Person"** means a natural person, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning;
- (fff) **"Personal Information"** means information about an identifiable individual but does not include business contact information provided the collection, use or disclosure, as applicable, of the business contact information is for the purpose of contacting an individual in that individual's capacity as an employee or an official of an organization and for no other purpose;
- (ggg) **"Proceeding"** has the meaning set out in Section 7.5(b);
- (hhh) **"Proceeds"** has the meaning set out in Section 6.6(1)(a);
- (iii) **"Public Statement"** has the meaning set out in Section 8.8;
- (jjj) **"Purchase Price"** has the meaning set out in Section 2.3;
- (kkk) **"Purchase Price Certificate"** has the meaning set out in Section 2.8(f);

- (III) **"Purchased Assets"** means and includes all of the property and assets of every kind and description and wheresoever situate, owned by the Vendor and used or utilized in the Business, but excluding the Excluded Assets. Without limiting the generality of the foregoing, the Purchased Assets will include all of the assets of the Business shown or reflected in the Financial Statements as being owned by the Vendor and/or used in the Business, other than the Excluded Assets and the assets which have been disposed of or consumed in the ordinary course of the Business since the date of the Financial Statements, and for greater certainty, the Purchased Assets shall include, but shall not be limited to:
- (i) the Cash on Hand
  - (ii) all of the Vendor's interest in and to the Lease and the Leased Property;
  - (iii) the Assigned Agreements;
  - (iv) the Accounts Receivable;
  - (v) the Signs;
  - (vi) the Computer Equipment;
  - (vii) the Goodwill;
  - (viii) the License Rights;
  - (ix) the Machinery, Equipment, Furniture and Tools;
  - (x) the Intellectual Property;
  - (xi) the Books and Records;
  - (xii) any prepaid expenses included in Working Capital; and
  - (xiii) the Inventory;
- (mmm) **"Purchaser's Conditions"** has the meaning set out in Section 5.1(1);
- (nnn) **"Purchaser's Indemnified Persons"** has the meaning set out in Section 7.1;
- (ooo) **"Purchaser's Solicitors"** means MacPherson Leslie & Tyerman LLP;
- (ppp) **"Release Amount"** has the meaning set out in Section 7.6(c);
- (qqq) **"Release Date"** has the meaning set out in Section 7.6(c);
- (rrr) **"Release Interest"** has the meaning set out in Section 7.6(c);

- (sss) "**Remuneration**" has the meaning set out in Section 4.3(1);
- (ttt) "**Required Cash on Hand**" means \$304,030.00;
- (uuu) "**Required Working Capital**" means \$857,328.00;
- (vvv) "**Response Period**" has the meaning set out in Section 8.9(d);
- (www) "**Rights**" has the meaning set out in Section 2.9;
- (xxx) "**SEDAR**" means the System for Electronic Document Analysis and Retrieval;
- (yyy) "**Shareholder Approval**" means the approval by the shareholders of the Shareholder of a special resolution as to the transactions contemplated by this Agreement, which Shareholder Approval shall be sought by the Shareholder at a meeting of the shareholders of the Shareholder, such meeting to be properly called and held as soon as commercially reasonable after the date of this Agreement;
- (zzz) "**Signs**" means all of the signs and signage used in, by or in relation to, or displayed with respect to, the Business as at the Closing Date;
- (aaaa) "**Subsequent Release Amount**" has the meaning set out in Section 7.6(c);
- (bbbb) "**Superior Proposal**" means any *bona fide* Acquisition Proposal:

that:

- (i) is reasonably capable of being completed without undue delay, taking into account all financial, legal, regulatory and other aspects of such proposal and the Person making such proposal;
- (ii) in the case of a Superior Proposal to acquire the outstanding voting or equity securities of the Vendor or the Shareholder, is made available to all shareholders of the Vendor or the Shareholder, as applicable, on the same terms and conditions (other than in the case of an asset transaction);
- (iii) in respect of which, to the extent necessary, financing commitment letters reasonably satisfactory to the Vendor's or Shareholder's board of directors, as applicable, are provided from the sources of financing to be used to complete the transaction contemplated by such proposal establishing that such financing is available without delays or conditions (other than the conditions attached to such Superior Proposal);
- (iv) is not subject to a due diligence condition; and

- (v) in respect of which the Vendor's or Shareholder's board of directors determines, in its good faith judgment, after consultation with its outside legal and financial advisors, that:
  - A failure to recommend such Superior Proposal to the shareholders of the Shareholder or the Vendor, as applicable, would be inconsistent with its fiduciary duties under applicable law; and
  - B having regard for all of its terms and conditions, such Superior Proposal, will, if consummated in accordance with its terms (but not assuming away any risk of non-completion), result in a transaction more favourable to the shareholders of the Shareholder or the Vendor, as applicable, from a financial point of view than the transactions contemplated herein;
- (cccc) "**Technology and Trade-Mark License Agreement**" means the Technology and Trade-Mark License Agreement dated October 2, 2012, between the Shareholder, Russell Brewing Company Ltd. and [REDACTED], a true and correct copy of which has been provided to the Purchaser;
- (dddd) "**Time of Closing**" means close of business of the Business on the Closing Date;
- (eeee) "**Trademarks**" means all of the registered and unregistered trademarks owned or used by the Vendor or the Shareholder in carrying on the Business and listed in Schedule 3.1(p) of the Disclosure Letter;
- (ffff) "**Vendor's Conditions**" has the meaning set out in Section 5.2(1);
- (gggg) "**Vendor's Indemnified Persons**" has the meaning set out in Section 7.2;
- (hhhh) "**Vendor's Solicitors**" means Fasken Martineau DuMoulin LLP;
- (iiii) "**Warranty Claim**" means a claim made by either a Purchaser's Indemnified Person or a Vendor's Indemnified Person based on, or with respect to, the inaccuracy or breach of any representation or warranty made by any party and contained in this Agreement or Ancillary Agreement;
- (jjjj) "**Working Capital**" means the amount by which the current assets of the Vendor (being Cash on Hand, Accounts Receivable, Inventory and prepaid expenses) exceed the current liabilities of the Vendor, computed in accordance with Generally Accepted Accounting Principles; and
- (kkkk) "**Working Capital Holdback Amount**" means \$350,000.00.

## **1.2 ACCOUNTING PRINCIPLES**

Wherever in this Agreement reference is made to a calculation to be made in accordance with Generally Accepted Accounting Principles (which includes International Financial Reporting Standards), such reference shall be deemed to be to the Generally Accepted Accounting Principles for private enterprises from time to time approved by the Canadian Institute of Chartered Professional Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with Generally Accepted Accounting Principles.

## **1.3 INTERPRETATION NOT AFFECTED BY HEADINGS OR PARTY DRAFTING**

The division of this Agreement into articles, sections, subsections, paragraphs and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to an article, section, subsection, paragraph or schedule refers to the specified article, section, subsection or paragraph of, or schedule to, this Agreement. Each party hereto acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

## **1.4 NUMBER, GENDER**

In this Agreement, words importing the singular number only shall include the plural and vice versa and words importing gender shall include all genders.

## **1.5 CERTAIN PHRASES, ETC.**

In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". Unless otherwise specified, the words "Article" and "Section" followed by a number mean and refer to the specified Article or Section of this Agreement. In the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

## **1.6 KNOWLEDGE**

Where any representation or warranty contained in this Agreement is qualified by reference "to the Vendor's knowledge", "to the Shareholder's knowledge" or like or similar qualification, it refers to the actual knowledge of Benjamin Li Yu, [REDACTED] after having made reasonable inquiry of those Vendor's or Shareholder's employees with responsibility for the relevant subject matter.

## **1.7 NON-BUSINESS DAYS**

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment shall be made or such action shall be taken on or not later than the next succeeding Business Day.

## **1.8 ENTIRE AGREEMENT**

This Agreement, as it may be amended, replaced or restated from time to time, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior drafts, agreements, understandings, negotiations and discussions, whether written or oral, between the parties, including without limitation (i) the Letter of Intent between the Vendor, the Shareholder, and Westcap Mgt. Ltd. dated December 29, 2015; and (ii) the Letter of Intent between the Vendor, the Shareholder, and Westcap Mgt. Ltd. dated April 8, 2016. There are no conditions, covenants, agreements, representations, warranties, indemnities or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided or as contained in any document delivered pursuant to this Agreement.

## **1.9 TIME OF ESSENCE**

Time shall be of the essence of this Agreement.

## **1.10 CURRENCY**

All dollar amounts in this Agreement are expressed in the lawful currency of Canada.

## **1.11 APPLICABLE LAW**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Manitoba and the federal laws of Canada applicable therein. The parties hereby irrevocably agree that the Courts of the Province of Manitoba are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

## **1.12 SEVERABILITY**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

## **1.13 AMENDMENTS AND WAIVERS**

No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented to in writing by such party. No waiver of any provision of this Agreement shall

constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided.

#### **1.14 MATERIAL ADVERSE EFFECT**

The party alleging the occurrence of a Material Adverse Effect has the burden of proof with respect to whether a Material Adverse Effect has occurred.

#### **1.15 EXHIBITS**

The following are the schedules annexed hereto and incorporated by reference and deemed to be part hereof:

- |                   |   |                                 |
|-------------------|---|---------------------------------|
| Exhibit 1.1(aa)   | - | Escrow Agreement                |
| Exhibit 5.1(1)(b) | - | Form of Vendor's Certificate    |
| Exhibit 5.1(1)(e) | - | Trademark Assignment Agreements |
| Exhibit 5.2(1)(c) | - | Form of Purchaser's Certificate |

### **ARTICLE 2** **SALE AND PURCHASE**

#### **2.1 PURCHASE AND SALE OF PURCHASED ASSETS**

Upon and subject to the terms and conditions hereof, the Vendor shall absolutely sell, assign, transfer and set over to the Purchaser on the Closing Date, all of the right, title and interest of the Vendor in and to all of the Purchased Assets, free and clear of all tenancies, liens, charges, security interests, options, mortgages, rights of first refusal and encumbrances of any kind whatsoever, other than Permitted Liens. The Purchaser agrees to purchase the Purchased Assets for the Purchase Price.

#### **2.2 ASSUMED LIABILITIES**

Upon and subject to the terms and conditions hereof, on the Closing Date the Purchaser will assume and thereafter pay, perform, discharge and satisfy all Assumed Liabilities accruing on and after the Closing Date, and will indemnify the Vendor against such Assumed Liabilities.

#### **2.3 PURCHASE PRICE**

Subject to adjustment in accordance with Sections 2.7 and 2.8, the aggregate consideration to be paid (the "**Purchase Price**") by the Purchaser to the Vendor for the Purchased Assets shall be the sum of \$7,715,545.00.

#### **2.4 PAYMENT OF THE DEPOSIT**

Upon execution of this Agreement, the Purchaser shall pay the amount of \$200,000.00 (the "**Deposit**") to the Vendor's Solicitors in trust for the Vendor by way of certified cheque, bank



draft, certified solicitor's trust cheque, or wire transfer. The Deposit shall, unless the purchase and sale of the Purchased Assets is not completed on the Closing Date, be applied against the Purchase Price on Closing in accordance with Section 2.5. In the event that this Agreement is terminated in accordance with Section 8.1, then the Deposit shall either:

- (a) be returned to the Purchaser forthwith in the event that the Purchaser is without fault for such termination and:
  - (i) the Purchaser terminates the Agreement pursuant to Sections 8.1(a), or 8.1(c);
  - (ii) the Purchaser or the Vendor or Shareholder terminates the Agreement pursuant to Section 8.1(e);
  - (iii) the Vendor or Shareholder terminates the Agreement pursuant to Section 8.1(f); or
  - (iv) the parties mutually agree to terminate the Agreement pursuant to Section 8.1(g); or
- (b) be forfeited to the Vendor forthwith in the event that the Vendor is without fault for such termination and the Vendor or Shareholder terminates the Agreement pursuant to Sections 8.1(b) or 8.1(d), provided that the forfeiture of the Deposit to the Vendor in accordance with the foregoing shall constitute the sole and exclusive remedy of the Vendor and Shareholder as a result of this Agreement being terminated in accordance with Section 8.1.

## **2.5 PAYMENT OF PURCHASE PRICE**

The Purchase Price payable by the Purchaser to the Vendor shall be paid as follows:

- (a) the Deposit shall be applied to the Purchase Price;
- (b) the Working Capital Holdback Amount shall be paid by the Purchaser to the Escrow Agent on the Closing Date by way of certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer, to be held by the Escrow Agent in escrow pursuant to the terms and conditions of the Escrow Agreement pending final adjustments in accordance with the provisions of Section 2.8;
- (c) the General Liability Holdback Amount shall be paid by the Purchaser to the Escrow Agent on the Closing Date by way of certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer, to be held by the Escrow Agent in escrow pursuant to the terms and conditions of the Escrow Agreement; and
- (d) the balance of the Purchase Price, being the sum of \$6,165,545.00 (the "**Closing Date Consideration**") shall be paid by the Purchaser to the Vendor's Solicitors on

the Closing Date by way of certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer.

## **2.6 ALLOCATION OF PURCHASE PRICE**

The Vendor and the Purchaser acknowledge and agree that the Purchase Price shall be allocated among the Purchased Assets as described in Schedule 2.6 of the Disclosure Letter, unless the Purchaser and the Vendor mutually agree otherwise in writing. The Vendor and the Purchaser agree to report the sale and purchase of the Purchased Assets for all federal, provincial and local tax purposes in a manner consistent with such allocation.

## **2.7 ADJUSTMENTS TO PURCHASE PRICE**

The Vendor and the Purchaser hereby agree that they will promptly adjust all items normally adjusted between a vendor and a purchaser in the sale of assets similar to the Purchased Assets, and that such adjustments will be made as of the Closing Date. Without limiting the generality of the foregoing, the Vendor and the Purchaser agree to make such adjustments to all property taxes, business taxes, utility payments and insurance payments associated with the Business.

## **2.8 ADJUSTMENT OF PURCHASE PRICE – WORKING CAPITAL**

- (a) Within 60 days following the Closing Date, the Vendor will cause its accountant to prepare and deliver to the Purchaser a draft closing balance sheet of the Vendor, prepared as of the close of business on the day before the Closing Date (the "**Draft Closing Balance Sheet**"). The Draft Closing Balance Sheet is to be prepared in accordance with Generally Accepted Accounting Principles applied on a basis consistent with past practices and is to set out the Working Capital of the Business as at the Closing Date.
- (b) Within 30 days following receipt of the Draft Closing Balance Sheet, the Purchaser shall cause its accountants to review the Draft Closing Balance Sheet and shall notify the Vendor in writing if the Purchaser has any objections to the Draft Closing Balance Sheet. The notice of objection must contain a statement of the basis of each of the Purchaser's objections and each amount in dispute. The Vendor shall provide access, upon every reasonable request, to the Purchaser and its accountants to all working papers of the Vendor's accountants, accounting books and records and the appropriate personnel to verify the accuracy, presentation and other matters relating to the preparation of the Draft Closing Balance Sheet. The Purchaser shall be deemed to have accepted the Draft Closing Balance Sheet if it does not notify the Vendor of any objection within the said period of 30 days.

- (c) If the Purchaser disputes the Draft Closing Balance Sheet, the parties will work expeditiously and in good faith in an attempt to resolve such dispute within a further period of 15 days after the date of notification by the Purchaser to the Vendor of such dispute, failing which the dispute shall be submitted for determination to an independent national firm of chartered professional accountants mutually agreed to by the Vendor and the Purchaser (and, failing such agreement between the Vendor and the Purchaser within a further period of 5 Business Days, such independent national firm of chartered professional accountants shall be Ernst & Young LLP) (the "**Independent Auditor**"). The determination of the Independent Auditor shall be final and binding upon the parties and shall not be subject to appeal, absent manifest error. The Independent Auditor shall be deemed to be acting as experts and not as arbitrators.
- (d) The Vendor and the Purchaser shall each bear the fees and expenses of their respective accountants in preparing or reviewing, as the case may be, the Draft Closing Balance Sheet. In the case of a dispute and the retention of an Independent Auditor to determine such dispute, the costs and expenses of such Independent Auditor shall be borne equally by the Vendor (as to 50%) and the Purchaser (as to 50%). However, the Vendor and the Purchaser shall each bear their own costs in presenting their respective cases to the Independent Auditor.
- (e) Immediately following the 30 day period referred to in Section 2.8(b), or the resolution of any dispute in accordance with the foregoing, as the case may be, the Vendor shall deliver to the Purchaser the final closing balance sheet (the "**Closing Balance Sheet**"). Such Closing Balance Sheet shall be final and binding upon the parties and shall not be subject to appeal, absent manifest error.
- (f) The Purchase Price for the Purchased Assets shall be increased or decreased, as the case may be, dollar-for-dollar to the extent that the Working Capital as determined from the Closing Balance Sheet is more or less, respectively, than the Required Working Capital. The Vendor and the Purchaser shall, within five (5) Business Days after delivery of the Closing Balance Sheet by the Vendor to the Purchaser, deliver to the Escrow Agent a form of notice of release (the "**Purchase Price Certificate**") signed by both of them certifying the amount by which the Purchase Price is to be increased or decreased and the amount to be released to the Vendor or Purchaser and a direction to pay, in the form set out in the Escrow Agreement. If there is a decrease to the Purchase Price, the amount of such decrease shall be paid to the Purchaser by the Escrow Agent within five (5) Business Days after receipt by the Escrow Agent of the Purchase Price Certificate, as contemplated by the Escrow Agreement. The balance of the Working Capital Holdback Amount (if any) shall then be paid to the Vendor. If the amount of the decrease is greater than the Working Capital Holdback Amount, the Escrow Agent shall pay the Working Capital Holdback Amount to the Purchaser within five (5) Business Days after receipt by the Escrow Agent of the Purchase Price Certificate and the Vendor shall pay to the Purchaser by certified cheque, bank draft, certified solicitor's trust cheque,

or wire transfer within the same five (5) Business Day period the amount by which the decrease exceeds the Working Capital Holdback Amount. If there is no change in the Purchase Price or if there is an increase in the Purchase Price, the Escrow Agent shall pay the Working Capital Holdback Amount to the Vendor within five (5) Business Days after receipt by the Escrow Agent of the Purchase Price Certificate and the Purchaser shall pay the amount of the increase, if any, to the Vendor by certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer within the same five (5) Business Day period. The determination and adjustment of the Purchase Price in accordance with the provisions of this Section 2.8 shall not limit or affect any other rights or causes of action which either the Purchaser or the Vendor may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement.

- (g) Following the Closing Date, the Purchaser will provide reasonable access during business hours to the Vendor and the Shareholder, including through its representatives, to make reasonable investigation of the Books and Records in order to prepare the Draft Closing Balance Sheet pursuant to this Section 2.8.

## **2.9 UNASSIGNABLE CONTRACTS**

If any rights, benefits or remedies (the "**Rights**") under any Assigned Agreements are not assignable by the Vendor to the Purchaser without the consent of the other party thereto and such consent is not obtained, and provided that the Purchaser, acting reasonably, agrees to close without receiving such consent, then, for a period of 1 year following the Closing Date:

- (a) the Vendor will hold the Rights for the benefit of the Purchaser,
- (b) the Vendor will, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser shall specify, take all such reasonable actions and do all such things as shall, in the opinion of the Purchaser, be necessary or desirable in order that the obligations of the Vendor under such Assigned Agreements may be performed in a manner such that the value of the Rights shall be preserved and shall enure to the benefit of the Purchaser and such that all moneys receivable under such Assigned Agreements may be received by the Purchaser, and
- (c) the Vendor will promptly pay over to the Purchaser all such moneys collected by the Vendor in respect of such Assigned Agreements, subject to the Purchaser assuming all liabilities and expenses related to such Assigned Agreements as of the Closing Date.

## **2.10 OBLIGATIONS NOT ASSUMED**

Other than the Assumed Liabilities, the Purchaser does not assume, and shall not in any way be liable for, any obligation or responsibility for the payment of any debt, claim, demand or liability

(whether current, absolute, contingent or accrued) of or against the Vendor whatsoever that arose or accrued on or before the Closing Date, including, without limiting the generality of the foregoing:

- (a) liabilities for taxes, duties, levies, assessments, surcharges, or other such charges, including penalties, interests and fines with respect thereto, payable by the Vendor to any Governmental Entity, authority, board, bureau or commission, domestic or foreign, including, without limitation, taxes under the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), *The Retail Sales Tax Act* (Manitoba), or any other taxes on sales, income, goods, consumption, capital or corporations;
- (b) subject to Section 4.3, liabilities or obligations to or in respect of any of the Employees or any of the Vendor's current or former employees up to the Closing Date;
- (c) any accounts payable or accrued liabilities not included with the Assumed Liabilities;
- (d) liabilities to the Shareholder or to any person, firm or corporation not dealing at arm's length with the Vendor or the Shareholder;
- (e) liabilities in respect of the Assigned Agreements arising out of, or relating to, any event or happening prior to the Closing Date;
- (f) liabilities to any bank or other lender of the Vendor, all of which shall be discharged on Closing as any such related security agreements pertain to the Purchased Assets;
- (g) any and all liabilities in respect of product liabilities associated with any products of the Business manufactured and/or distributed prior to the Closing Date, provided such products are distributed in the form manufactured prior to the Closing Date;
- (h) any and all liabilities in respect of any obligations not expressly assumed by the Purchaser hereunder; and
- (i) any and all other debts or liabilities of the Vendor in respect of the Business, the Purchased Assets not expressly assumed by the Purchaser hereunder, or any other business of the Vendor,

(collectively, the "**Excluded Liabilities**").

## 2.11 TAXES

Subject to Section 2.12 hereof, the Vendor shall be liable for, and shall pay, all sales and transfer taxes and all other taxes, duties and like charges payable upon, and in connection with, the sale and transfer of the Purchased Assets.

## 2.12 ELECTION FORMS

- (1) The Vendor hereby represents and warrants to the Purchaser that:
  - (a) the Vendor is a GST registrant for the purposes of the *Excise Tax Act* (Canada);
  - (b) the Purchased Assets comprise all or substantially all of the property used in the Business; and
  - (c) the Business is a "commercial activity" within the meaning of the *Excise Tax Act* (Canada).
- (2) The Purchaser hereby represents and warrants to the Vendor that it is, or will as of the Closing Date be, a GST registrant for the purposes of the *Excise Tax Act* (Canada).
- (3) The Vendor and the Purchaser shall jointly elect under section 167(1) of the *Excise Tax Act* (Canada) that no tax be payable with respect to the purchase and sale of the Purchased Assets and the Purchaser shall complete and file such election in compliance with the requirements of the *Excise Tax Act* (Canada). The Purchaser shall file such election in prescribed form and within the time limits contained in the *Excise Tax Act* (Canada) with the appropriate Government Authority. Any GST incurred in connection with the transactions contemplated by this Agreement, including, for greater certainty, where an election pursuant to section 167 of the *Excise Tax Act* (Canada) is not or cannot be validly made in respect of the Purchased Assets, shall be borne by the Purchaser and shall be paid to Vendor upon request therefor, including any applicable interest or penalties.
- (4) The Vendor and the Purchaser will jointly execute, and each of them will file promptly following the Closing Date, an election under section 22 of the *Income Tax Act* (Canada) with respect to the transfer of the Accounts Receivable.
- (5) The Vendor and the Purchaser shall execute and file a joint election under subsection 20(24) of the *Income Tax Act* (Canada) and the corresponding provisions of any other applicable taxing statute or regulation, within the prescribed time periods in order to allow the Vendor to deduct from income, the amount of customer deposits, and allowing the Purchaser to include in its income, the amount of such customer deposits in respect of the assumption of any future obligations to supply goods or perform services for which the Vendor has included amounts in its taxable income under paragraph 12(1)(a) of the *Income Tax Act* (Canada).

## 2.13 TITLE

On the Closing Date, the Vendor shall convey to the Purchaser title to the Purchased Assets free and clear of all tenancies, liens, charges, security interests, options, mortgages, rights of first refusal and encumbrances of any kind whatsoever, other than Permitted Liens, and free of any claims or litigation in respect thereof.

## ARTICLE 3 REPRESENTATIONS AND WARRANTIES

### 3.1 REPRESENTATIONS AND WARRANTIES OF THE VENDOR

Subject to the disclosures set forth in the disclosure letter of the Vendor delivered to the Purchaser concurrently with the execution of this agreement (the "**Disclosure Letter**"), the Vendor hereby represents and warrants as follows to the Purchaser, on the date hereof and as of the Closing Date, and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the purchase by the Purchaser of the Purchased Assets:

#### **Matters Related to the Vendor**

- (a) **Incorporation and Qualification of the Vendor.** The Vendor is a corporation duly amalgamated and organized and validly existing under the laws of Manitoba and has the corporate power to own or lease and operate its property, carry on the Business and to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party. Except as disclosed in Schedule 3.1(a) of the Disclosure Letter, the Vendor is not conducting the Business in any jurisdiction other than the Province of Manitoba. The Vendor is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) nor has it made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof, nor has it had any petition for a receiving order presented in respect of it. The Vendor has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver has been appointed in respect of the Vendor or any of the Purchased Assets and no execution or distress has been levied upon any of the Purchased Assets.
- (b) **Validity of Agreement.** The execution, delivery and performance of this Agreement and any applicable Ancillary Agreements and the consummation of the transactions herein provided:
  - (i) other than the Shareholder Approval, have been duly authorized by all corporate action on the part of the Vendor;

- (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under:
    - (A) any provision of the constating documents, by-laws or resolutions of the board of directors or shareholders of the Vendor;
    - (B) any judgment, decree, order or award of any Governmental Entity or arbitrator having jurisdiction over the Vendor; or
    - (C) any contracts or instruments to which the Vendor is a party or pursuant to which any of the Purchased Assets may be affected;
  - (iii) to the knowledge of the Vendor and the Shareholder, will not result in a breach of, or cause the termination or revocation of, any authorization necessary to the ownership of the Purchased Assets or the operation of the Business;
  - (iv) will not result in the violation of any Law; and
  - (v) will not result in the creation or imposition of any Lien on any of the Purchased Assets.
- (c) **Required Consents and Authorizations.** Except as is disclosed in Schedule 3.1(c) of the Disclosure Letter, there is no requirement:
- (i) to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Entity as a condition to:
    - (A) the lawful completion of the transactions contemplated by this Agreement; and/or
    - (B) the operation of the Business by the Purchaser after the Closing Date; or
  - (ii) under any contract relating to the Business or to which the Vendor is a party or by which the Vendor is bound, to give any notice to or to obtain the consent or approval of any party to such contract relating to the consummation of the transactions contemplated by this Agreement;
- (d) **Execution and Binding Obligation.** The execution and delivery of this Agreement and each Ancillary Agreement has been duly authorized by all necessary corporate action on the part of the Vendor (other than the Shareholder Approval) and this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms subject only to any limitation under applicable Laws relating to:



- (i) bankruptcy, winding up, insolvency, arrangement and other laws of general application affecting the enforcement of creditors' rights; and
- (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

#### **Matters Relating to the Purchased Assets**

- (e) **Sufficiency of the Purchased Assets.** The Purchased Assets include all rights and property necessary to conduct the Business substantially in the same manner as it was conducted prior to the Closing. With the exception of those items described in Schedule 3.1(e) of the Disclosure Letter: (i) all of the Purchased Assets are situated at the Leased Property and (ii) no property other than the Purchased Assets shall be situated at the Leased Property on the Closing. None of the Purchased Assets including, but not limited to, the Inventory, have been subject to any write-downs or write-offs, other than write-downs or write-offs that are reflected in the Financial Statements.
- (f) **Title to the Assets.** The Vendor owns all of the Purchased Assets (whether real, personal or mixed and whether tangible or intangible). The Vendor has legal and beneficial ownership of the Purchased Assets free and clear of all Liens except for the Permitted Liens.
- (g) **No Options, etc.** No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase or other acquisition from the Vendor of any of the Purchased Assets other than pursuant to purchase orders for Inventory sold in the ordinary course. No Person has any lease, license or contractual right from the Vendor as to, in respect of or affecting the Purchased Assets or any part or parts thereof, other than the Purchaser pursuant to the terms hereof.
- (h) **Condition of Purchased Assets.** During the 2 years preceding the date of this Agreement, there has not been any significant interruption of operations, being an interruption of more than 2 days, of the Business due to inadequate maintenance of any of the buildings, plants, structures, equipment and other tangible personal property of the Vendor (including the Leased Property and all aspects thereof) of the Business. All Purchased Assets owned or used by the Vendor in the Business (i) are in good working order and will be in good working order on the Closing Date subject only to normal wear and tear; and (ii) have been maintained in all respects in accordance with generally accepted industry practice.
- (i) **Assigned Agreements.** Schedule 1.1(f) of the Disclosure Letter sets forth a complete list of the Assigned Agreements. The Assigned Agreements represent, collectively, all agreements, contracts, and commitments, whether written or oral,

of any nature or kind whatsoever, that are necessary for the operation of the Business in substantially the way carried on prior to Closing.

- (j) **No Breach of Assigned Agreements.** Except as disclosed in Schedule 3.1(j) of the Disclosure Letter, the Vendor has performed all of the obligations required to be performed by it, is entitled to all benefits under, and is not alleged to be in default of, any Assigned Agreement. Each of the Assigned Agreements is in full force and effect, unamended, and, to the knowledge of the Vendor, there exists no default or event of default or event, occurrence, condition or act (including the purchase of the Purchased Assets) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default or event of default under any Assigned Agreement. True, correct and complete copies of all Assigned Agreements have been delivered to the Purchaser.
- (k) **Inventory.** All Inventory:
  - (i) has been maintained at levels consistent with past practice;
  - (ii) has been acquired and/or produced by the Vendor only in *bona fide* transactions entered into in the ordinary course of the Business;
  - (iii) is of good and merchantable quality, useable and capable of being sold or processed in the ordinary course of the Business and at normal profit margins, except to the extent adequately reserved for in the Financial Statements, on which such Inventory is or will be shown, which reserves are or will be determined on a basis consistent with past practice of the Vendor and in accordance with Generally Accepted Accounting Principles; and
  - (iv) has been valued in the Financial Statements and/or other Books and Records, as applicable, at the lower of either (i) cost or (ii) net realizable value (as defined by Generally Acceptable Accounting Principles).
- (l) **Accounts Receivable.** The Accounts Receivable arose in the ordinary course of the Business from *bona fide* sales made or services performed, and are valid and subsisting accounts owing to the Vendor. To the Vendor's knowledge, none of the Accounts Receivable are subject to dispute nor any set-offs or counterclaims of the account debtor, and are fully collectible to the extent not reserved for in the Financial Statements. The Accounts Receivable have been calculated by the Vendor in accordance with Generally Accepted Accounting Principles.
- (m) **Leased Property.**
  - (i) The Vendor is not a party to, or under any agreement to become a party to, any lease with respect to real property other than the lease described in

Schedule 3.1(m) of the Disclosure Letter, a copy of which has been provided to the Purchaser (the "**Lease**"). The Lease is in good standing, creates a good and valid leasehold estate in the Leased Property thereby demised, and is in full force and effect without amendment, except as disclosed in Schedule 3.1(m) of the Disclosure Letter.

- (ii) With respect to the Lease: (i) all rents and additional rents have been paid, (ii) no waiver, indulgence or postponement of the lessee's obligations has been granted by the lessor, (iii) there exists no event of default or event, occurrence, condition or act (including the purchase of the Purchased Assets) of the Vendor which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default under the Lease, and (iv) to the knowledge of the Vendor, all of the covenants to be performed by any party under the Lease have been fully performed. The Leased Property, the current uses thereof, and the conduct of the Business thereon comply with all restrictive covenants, governmental and quasi-governmental regulations, ordinances, statutes, enactments, requirements, Laws and bylaws including, without limitation, those dealing with zoning, town planning schemes, parking, access, loading facilities, landscaped areas, building, electrical and plumbing codes, fire and public health and safety and all Laws with respect to the environment.
- (iii) No alteration, repair, improvement or other work has been ordered, directed or requested in writing to be done or performed to or in respect of the Leased Property by any municipal, provincial or other competent authority, which alteration, repair, improvement or other work has not been completed, and the Vendor knows of no written notification having been given to it of any such outstanding work being ordered, directed or requested, other than those that have been complied with. All accounts for work and services performed and materials placed or furnished upon or in respect of the Leased Property at the request of the Vendor have been fully paid and satisfied, and no person is entitled to claim a lien under *The Builders' Liens Act* (Manitoba) or similar legislation in other jurisdictions against the Leased Property or any part thereof, other than current accounts in respect of which the payment due date has not yet passed.
- (iv) There is nothing owing in respect of the Leased Property by the Vendor to any municipal corporation or to any other corporation or commission owning or operating a public utility for water, gas, electrical power or energy, steam or hot water, or for the use thereof, other than current accounts in respect of which the payment due date has not yet passed. No part of the Leased Property has been taken or expropriated by any federal, provincial, municipal or other competent authority nor has any notice or proceeding in respect thereof been given or commenced. The Leased

Property is not currently undergoing any alteration or renovation nor is any such alteration or renovation contemplated. There are no outstanding levies, charges or fees assessed against the Leased Property by any Governmental Entity (including development or improvement levies, charges or fees).

- (n) **Real Property.** The Vendor does not own any real property relating to the Business.
- (o) **Environmental Matters.** Except as set forth in Schedule 3.1(o) of the Disclosure Letter:
  - (i) to Vendor's knowledge, the Leased Property:
    - (A) have never been used by the Vendor or the Landlord as a waste disposal site or as a licensed landfill; or
    - (B) have never, during the time it was leased or used by the Vendor, or owned by the Landlord, had asbestos, asbestos-containing materials, PCBs, radioactive substances or aboveground or underground storage systems, active or abandoned, located thereon; and
  - (ii) neither the Vendor nor, to the Vendor's knowledge, the Landlord has been required by any Governmental Entity to:
    - (A) alter the Leased Property in order to be in compliance with Environmental Laws; or
    - (B) perform any environmental closure, decommissioning, rehabilitation, restoration or post-remedial investigations, on, about, or in connection with the Leased Property; and
  - (iii) the Business has been operated by the Vendor in accordance with all environmental Laws.

Schedule 3.1(o) of the Disclosure Letter lists all reports and documents relating to environmental matters affecting the Business and the Leased Property which are in the possession or under the control of the Vendor. Copies of all such reports and documents (if any) have been provided to the Purchaser. There are no other reports or documents relating to environmental matters affecting the Vendor, the Business and/or the Leased Property which have not been made available to the Purchaser whether by reason of confidentiality restrictions or otherwise. All remediation identified in such reports and documents have been completed.

- (p) **Intellectual Property.** Attached as Schedule 3.1(p) of the Disclosure Letter is a complete and accurate list of all Intellectual Property owned or used by the Vendor in carrying on the Business. Schedule 3.1(p) of the Disclosure Letter also includes complete and accurate particulars of all registrations or applications for registration of the Intellectual Property. The Vendor is either (i) the legal and beneficial owner of the Intellectual Property, free and clear of all Liens other than Permitted Liens, and is not party to or bound by any contract or other obligation whatsoever that limits or impairs its ability to sell, transfer, assign or convey, or that otherwise affects, the Intellectual Property; or (ii) is properly and duly licensed and/or otherwise authorized to use the Intellectual Property and such licenses and/or or authorizations are included in the Assigned Agreements. No Person has been granted any interest in, or right to use, all or any portion of the Intellectual Property. To the knowledge of the Vendor, there are no claims of any infringement or breach of any industrial or intellectual property rights of any other Person by the Vendor, nor have they received any notice that the conduct of the Business, including the use of the Intellectual Property, infringes upon or breaches any industrial or intellectual property rights of any other Person, and the Vendor has no knowledge of any infringement or violation of the rights of the Vendor in the Intellectual Property. To the knowledge of the Vendor, the conduct of the Business does not infringe upon the patents, trademarks, licences, trade names, business names, copyright or other industrial or intellectual property rights, domestic or foreign, of any other Person. The Vendor is not aware of any state of facts that casts doubt on the validity or enforceability of any of the Intellectual Property. The Purchaser has been provided with a true and complete copy of all contracts or agreements related to the Intellectual Property. To the extent that the Intellectual Property includes copyrightable subject-matter owned by the Vendor, the Vendor shall obtain, as of the Closing Date, a written waiver of moral rights in favour of the Purchaser by any and all authors of such copyrightable subject-matter.
- (q) **No Litigation.** There is no claim or litigation pending or threatened with respect to the Purchased Assets, or the use thereof by the Vendor or which would affect the right of the Purchaser to own and obtain all benefits from the Purchased Assets.

## Other Matters

- (r) **Residency of the Vendor.** The Vendor is not a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada).
- (s) **Financial Statements.** The Financial Statements have been prepared in accordance with Generally Accepted Accounting Principles applied on a basis consistent with those of previous fiscal years and present fairly and correctly, in all respects, the assets (including the Purchased Assets), liabilities (whether accrued, absolute, contingent or otherwise) of the Business and the Vendor, the

financial condition of the Business, the results of operations of the Business, and the cash flows of the Business and the Vendor for the period covered by such Financial Statements.

- (t) **Ordinary Course.** Since the date of the Financial Statements, the Business has been carried on in the usual and ordinary course and, except as disclosed in Schedule 3.1(t) of the Disclosure Letter, the Vendor has not entered into any transaction related to the Business out of the usual and ordinary course of the Business, except any transactions or acts required by this Agreement.
- (u) **No Change.** Since the date of the Financial Statements, there has been no change in the affairs, business, prospects, operations or condition of the Business, financial or otherwise, whether arising as a result of any legislative or regulatory change, revocation or any license or right to do business, fire, explosion, accident, casualty, labour dispute, flood, drought, riot, storm, condemnation, act of God, public force or otherwise, except changes occurring in the usual and ordinary course of business which have not adversely affected the affairs, prospects, operations or condition of the Business, financial or otherwise.
- (v) **Employment Matters.** The Vendor is not bound by or a party to any collective bargaining agreement with respect to the Business. No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent:
  - (i) holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, designation or successor rights;
  - (ii) to the knowledge of the Vendor, has applied to be certified as the bargaining agent of any of the Employees; or
  - (iii) to the knowledge of the Vendor, has applied to have the Vendor declared a related employer pursuant to applicable labour legislation with respect to the Business;

To the Vendor's knowledge, there is no current union organizing activity among the Employees. Schedule 3.1(v) of the Disclosure Letter contains a correct and complete list of each Employee, officer, independent contractor, consultant and agent of the Vendor as of the date of this Agreement, whether actively at work or not, their salaries, wage rates, commissions and consulting fees, bonus arrangements (including, without limitation, any bonuses related to change of control, incentive compensation, profit sharing and/or severance), benefits, positions, ages, status as full-time or part-time employees and length of service. The T4s and associated compensation details filed by the Vendor or otherwise provided to the Purchaser for fiscal years 2013, 2014 and 2015, accurately reflect all wages, salaries, commissions and consulting fees, bonus arrangements, and

benefits paid by the Vendor to the Employees. No Employee has any agreement as to length of notice or severance payment required to terminate his or her employment, other than such as results by Law from the employment of an employee without an agreement as to notice or severance.

- (w) **Benefit Plans.** The only benefit plans existing in respect of the Employees are the Benefit Plans. True, correct and complete copies of the Benefit Plans and related documentation have been provided to the Purchaser and the Benefit Plans are accurately listed on Schedule 3.1(w) of the Disclosure Letter. The Benefit Plans are duly registered where required by, and are in good standing under, all applicable Laws. All required employer and employee contributions and premiums under the Benefit Plans, or with the recommendation of an actuary for such Benefit Plan, and, where applicable, the Laws of the jurisdictions that govern such Benefit Plan, have been made, no past service funding liabilities exist, and there are no actions, claims or proceedings pending or threatened (other than routine claims for benefits) relating to any of the Benefit Plans. No notice has been received by the Vendor of any complaints or other proceedings of any kind involving the Vendor or any of the Employees before any pension board or committee relating to any Benefit Plan. All reports, returns and similar documents (including applications for approval of contributions) with respect to any Benefit Plan required to be filed with any Governmental Entity or distributed to any Benefit Plan participant have been duly filed on a timely basis or distributed. There is no requirement to provide post-retirement profit sharing, medical or health benefits to the Employees.
- (x) **GST and RST.** The Vendor is registered under Part IX of the *Excise Tax Act* (Canada) and under *The Retail Sales Tax Act* (Manitoba).
- (y) **Taxes.** The Vendor has paid all taxes, duties, levies, assessments, surcharges, or other such charges, including penalties, interests and fines with respect thereto, due and payable by the Vendor to any federal, provincial, municipal or other government or governmental agency, authority, board, bureau or commission, domestic or foreign, including, without limitation, required source deductions, withholdings and taxes under the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), *The Retail Sales Tax Act* (Manitoba), or any other taxes on sales, income, goods, consumption, capital or corporations.

### 3.2 RELIANCE

The Vendor hereby acknowledges that, in completing the transactions contemplated hereunder (including, without limitation, the purchase of the Purchased Assets), the Purchaser is relying upon the representations, warranties and covenants contained in this Agreement and those contained in any Ancillary Agreement.

### 3.3 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants as follows to the Vendor, and acknowledges and confirms that the Vendor, on the date hereof and as of the Closing Date, is relying on such representations and warranties in connection with the sale by the Vendor of the Purchased Assets:

- (a) **Creation and Power.** The Purchaser is a limited partnership created, duly organized, and validly existing under the laws of Manitoba and has the power and authority to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party. The GP is a corporation duly incorporated and organized and validly existing under the laws of Manitoba.
- (b) **Validity of Agreement.** The execution, delivery and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party:
  - (i) have been duly authorized by all necessary partnership action on the part of the Purchaser and corporate action on the part of the GP;
  - (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which the Purchaser or the GP is a party or pursuant to which any of its assets or property may be affected; and
  - (iii) will not result in the violation of any Law.
- (c) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which the Purchaser is a party have been duly executed and delivered by the Purchaser and constitute legal, valid and binding obligations of the Purchaser, enforceable in accordance with their respective terms subject only to any limitation under applicable Laws relating to:
  - (i) bankruptcy, insolvency, arrangement or other similar laws of general application affecting the enforcement of creditors' rights; and
  - (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **Financial Capability.** The Purchaser has the financial capabilities to make and complete the payment of the Purchase Price, and any other payment obligations of the Purchaser, pursuant to this Agreement and the availability of such funds is not and will not be subject to the consent, approval or authorization of any other Person.



### 3.4 REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDER

The Shareholder hereby represents and warrants as follows to the Purchaser, on the date hereof and as of the Closing Date, and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the purchase by the Purchaser of the Purchased Assets:

- (a) **Incorporation and Qualification of the Shareholder.** The Shareholder is a corporation duly incorporated and organized and validly existing under the laws of British Columbia and has the corporate power to own or lease and operate its property, and to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party. The Shareholder is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) nor has it made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof, nor has it had any petition for a receiving order presented in respect of it. The Shareholder has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver has been appointed in respect of the Shareholder.
- (b) **Validity of Agreement.** The execution, delivery and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party:
  - (i) other than the Shareholder Approval, have been duly authorized by all necessary corporate action on the part of the Purchaser;
  - (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which the Purchaser is a party or pursuant to which any of its assets or property may be affected; and
  - (iii) will not result in the violation of any Law.
- (c) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which the Shareholder is a party have been duly executed and delivered by the Shareholder and constitute legal, valid and binding obligations of the Shareholder enforceable in accordance with their respective terms subject only to any limitation under applicable Laws relating to:
  - (i) bankruptcy, insolvency, arrangement or other similar laws of general application affecting the enforcement of creditors' rights; and

- (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **Lock-up Agreements.** To the knowledge of the Shareholder, there has not been any breach of any of the Lock-up Agreements by any party to any such agreement.
- (e) **Trademarks.** With respect to all Trademarks that are not owned by the Vendor, the Shareholder is the legal and beneficial owner of such Trademarks, free and clear of all Liens other than Permitted Liens, and the Shareholder is not party to or bound by any contract or other obligation whatsoever that limits or impairs its ability to sell, transfer, assign or convey, or that otherwise affects, such Trademarks.

## **ARTICLE 4**

### **COVENANTS**

#### **4.1 COVENANTS OF THE VENDOR**

- (1) From the date hereof until the Closing Date, the Vendor will conduct the Business in the ordinary course of the normal day-to-day operations of Vendor and the Business consistent with past practices and undertaken in accordance with prudent business practices and in compliance with Laws.
- (2) Without limiting the generality of Section 4.1(1), the Vendor shall:
  - (a) not increase, in any manner, the compensation or employee benefits of any of the Employees or any pension, severance or termination amount or other employee benefit not required by the Benefit Plans, except where specifically approved by the Purchaser in advance;
  - (b) not hire any new Employees for the Business, except where specifically approved by the Purchaser in advance, such approval not to be unreasonably withheld; and
  - (c) remit, within the times provided for in governing legislation, all employee deductions and employer remittances required by Law or by contract to be made from the Employees' wages or salaries until the close of business on the Closing Date, to the authorities, persons or entities entitled to receive payments of such amounts.
- (3) In accordance with past practice, the Vendor shall pay on or before the Closing Date all supplier's invoices delivered to the Vendor due on or before the Closing Date relating to the Business and any of the Purchased Assets.

- (4) The exercise of any rights of access or inspection by or on behalf of the Purchaser under this Section shall not affect or mitigate the covenants, representations and warranties of the Vendor hereunder which shall continue in full force and effect.
- (5) The Vendor shall provide the Purchaser with the Vendor's registration number under Part IX of the *Excise Tax Act* (Canada) prior to Closing.
- (6) As soon as reasonably practical after the Closing Date and no later than 1 year after the Closing Date, the Vendor shall deliver to the Purchaser a bulk sale clearance certificate pursuant to Section 45 of *The Tax Administration and Miscellaneous Taxes Act* (Manitoba), a Disposition of Business Enterprise Certificate issued by the Manitoba Workers' Compensation Board, and confirmation of good standing as of the Closing Date as to remittances of withholdings, GST, CPP and Employment Insurance premiums by the Vendor from Canada Revenue Agency.

## 4.2 COVENANTS OF THE SHAREHOLDER

The Shareholder shall properly call and hold a meeting of its shareholders, and will use its commercially reasonable efforts to obtain the Shareholder Approval, prior to the Closing Date.

## 4.3 EMPLOYEES

- (1) The Vendor shall continue to be responsible for, and will discharge, all indebtedness, liabilities, commitments, obligations or damages with respect to any Employees of the Vendor for salaries, wages, pensions, bonuses, employee benefits, accrued sick leave, vacation pay, severance pay, and other remuneration (collectively, the "**Remuneration**") in any way relating, directly or indirectly, to (i) events occurring prior to the Closing, (ii) the employment of Employees by the Vendor prior to the Closing, or (iii) the Closing of the transactions contemplated by this Agreement.
- (2) The Vendor shall terminate all of the Employees with effect as of the Closing Date, other than Employees listed in Schedule 4.3(2) of the Disclosure Letter under the heading "Employees not to be Terminated by the Vendor". The Vendor shall comply with all Laws regarding the termination of such Employees, and shall be fully responsible for all amounts owing to such Employees for Remuneration at the rates provided for in the current arrangements with such Employees up to and including the Closing Date, and including any and all amounts arising on account of the Employees' aforementioned termination (whether pursuant to statute or common law or otherwise). The Vendor hereby agrees to indemnify the Purchaser for all amounts owing to or in respect of the Employees for Remuneration for the period up to and including the Closing Date, including any and all amounts arising on account of the Employees' aforementioned termination (whether pursuant to statute or common law or otherwise).
- (3) No later than five (5) Business Days following the date hereof, Purchaser shall make written offers of continued employment to all of the Employees, in the form attached to

Schedule 4.3(3) of the Disclosure Letter, other than any Employees listed in Schedule 4.3(2) of the Disclosure Letter under the heading "Employees not to be Employed by the Purchaser", effective as of the Closing, on the following terms and conditions:

- (a) to be conditional on and effective from the Closing;
- (b) to be for terms and conditions of employment that:
  - (i) provide that such Employee will have substantially similar duties and responsibilities as such Employee enjoyed prior to the Closing;
  - (ii) provide rates of compensation, including base salary and other cash payments (including incentive compensation) that is the same or greater than the rates of compensation and other cash payments that such Employees enjoyed prior to the Closing; and
  - (iii) provide each Employee through the Purchaser's own employee benefit programmes, including profit sharing, deferred compensation, pension, incentive, severance, bonus, health, insurance or life insurance plans, programmes, and arrangements (in each case, oral or written) in such a manner as to provide each Employee with the same or greater level of substantially similar benefits under the Benefit Plans;
- (c) to provide that such Employee's employment with the Vendor will be treated as service with Purchaser for all purposes and the continuity of such Employee's employment from Vendor to Purchaser is deemed to be unbroken for all purposes, including service-related entitlements provided by the Purchaser and vacation, severance and termination obligations, and for vesting and eligibility purposes for pension and post-retirement benefit plans.

#### **4.4 COVENANTS OF THE PURCHASER**

- (1) In addition to any other confidentiality obligations of the Purchaser pursuant to Section 8.8, the Purchaser represents and warrants and agrees that it shall be solely responsible for its own compliance with all applicable privacy laws, which laws shall include the *Personal Information Protection Act* S.A. 2003, c P-6.5, the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c 5, and any similar law that governs the collection, use, disclosure, retention, destruction and/or storage of any Personal Information that is disclosed to or otherwise acquired by the Purchaser in connection with this agreement.
  - (a) Prior to Closing, the Purchaser shall limit and shall cause its employees and agents to limit all collection, use, retention and disclosure of all Personal Information transferred to it, if any, solely for purposes related to the transactions contemplated herein, including the determination whether to proceed with such

transactions, or that, if Closing occurs, will be required to carry on with the Business thereafter.

- (b) Prior to Closing, the Purchaser shall use appropriate security measures to safeguard all Personal Information transferred to it, and to protect it against accidental or unauthorized access, use, copying, alteration, deletion, destruction, dissemination or disclosure. Prior to Closing, access by representatives of the Purchaser to Personal Information shall be restricted to those persons under obligations of confidentiality to the Purchaser who require access to the Personal Information for the purposes of this Agreement.
  - (c) If Closing occurs, the Purchaser shall limit and shall cause its employees and agents to limit the use and disclosure of the Personal Information transferred to it, if any, to those purposes for which the Personal Information was initially collected by the Vendor or the Shareholder, unless otherwise permitted by applicable law.
  - (d) If Closing does not occur, the Purchaser covenants and agrees that it will immediately and securely destroy all Personal Information transferred to it, including any Derivative Personal Information, in its custody or control or the custody or control of its representatives or Affiliates.
- (2) The Purchaser acknowledges that none of the insurance policies maintained by the Vendor or under which the Vendor is covered in respect of the Purchased Assets will be transferred or assigned to the Purchaser at the Closing and no insurance will be provided with respect to the Business or the Purchased Assets under such insurance policies and the Purchaser covenants and agrees to purchase and maintain insurance policies as of the Closing Date with respect to the Business and the Purchased Assets. After the Closing and except as otherwise expressly provided in this Agreement, all rights or claims with respect to any matter arising prior to Closing, whether or not known, which may arise under or with respect to the Vendor's insurance policies, will be deemed assigned to Vendor. After the Closing, no claims regarding any matter whatsoever, whether arising from events occurring prior to, at or after the Closing, will be made against or with respect to the Vendor's insurance policies by the Purchaser or its successors, assignees, or any persons or entities subrogated to such rights. Each of the obligations and undertakings set out in this Section 4.4 will continue in force after Closing as to the Vendor, the Shareholder and the Purchaser and all of their respective successors or assigns.
- (3) The Purchaser acknowledges that, following the Closing Date, each of the Vendor and the Shareholder may immediately or at any time, including at any time prior to the expiry of the survival period of any representations, warranties or covenants of the Vendor and the Shareholder, distribute, sell, dividend, return capital, or otherwise transfer, for value or otherwise, all or substantially all of its assets remaining following the Closing to certain third parties, which may include any or all of its shareholders, its creditors, third

party purchasers, or any other person, and neither the Vendor nor the Shareholders has made any representation or warranty with respect to the ability to pay following the Closing Date for any Loss upon a Purchaser's Indemnified Person seeking indemnification from the Vendor pursuant to Section 7.1.

- (4) The Purchaser will use its commercially reasonable efforts to obtain all filings, notifications, consents, approvals and Authorizations described in Schedule 3.1(c) of the Disclosure Letter, or as otherwise required for the operation by the Purchaser of the Business after the Closing, prior to the Closing Date.
- (5) In the event that the Closing does take place on or before December 31, 2016 or such other date as the parties may mutually agree in writing, or this Agreement is terminated pursuant to the terms of this Agreement, the Purchaser shall immediately cause the names of the Purchaser and the GP to be changed so as to remove any reference to "Fort Garry Brewing Company", and forthwith provide to the Vendor and the Shareholder certified executed copies of the applicable name change documents required to change the name of the Purchaser and the GP and to forfeit any business name registration relating to the "Fort Garry Brewing Company" business name.

## **ARTICLE 5**

### **CLOSING CONDITIONS**

#### **5.1 CONDITIONS FOR THE BENEFIT OF THE PURCHASER**

- (1) The Purchaser's obligation to complete the purchase and sale of the Purchased Assets shall be subject to the following conditions precedent (the "**Purchaser's Conditions**") being satisfied or waived within the time frame stated:
  - (a) at or before the Time of Closing, the Vendor shall deliver all documents in Section 6.2(1) required to be delivered by the Vendor, duly signed, declared and executed;
  - (b) at or before the Time of Closing, the Vendor shall have delivered to the Purchaser a certificate in the form of Exhibit 5.1(1)(b) attached hereto confirming that each of the representations and warranties of the Vendor as set out in Article 3 are true and accurate in all respects as at the Closing Time (other than such representations and warranties of the Vendor and the Shareholder that refer to a specified date, which need only be true and correct in all respects on and as of such specified date) and that the Vendor has performed all covenants required to be performed by it under Article 4;
  - (c) at or before the Time of Closing, the Vendor shall have delivered to the Purchaser the required documentation to transfer, or otherwise assign, the Assigned Agreements to the Purchaser in a form satisfactory to the Purchaser's Solicitors, acting reasonably;

- (d) at or before the Time of Closing, the Vendor shall have delivered to the Purchaser the required documentation to transfer, or otherwise assign, the License Rights to the Purchaser in a form satisfactory to the Purchaser's Solicitors, acting reasonably;
  - (e) at or before the Time of Closing, the Vendor shall have delivered to the Purchaser the required documentation to transfer, or otherwise assign, the Intellectual Property to the Purchaser in a form satisfactory to the Purchaser's Solicitors, acting reasonably including, without limitation, duly signed copies of the Trademark Assignment Agreements attached hereto as Exhibit 5.1(1)(e); and
  - (f) at or before the Time of Closing, there shall not have occurred an event constituting a Material Adverse Effect.
- (2) The Purchaser's Conditions are for the Purchaser's sole benefit, and having been granted for good and valuable consideration and each may be waived unilaterally by the Purchaser at the Purchaser's election effected by notice in writing to the Vendor or as to any to be satisfied at the Time of Closing by proceeding with the Closing, and if any of the Purchaser's Conditions are not satisfied or waived within the time herein provided, then the Purchaser's obligations hereunder shall be at an end, including without limitation, the Purchaser's obligation to purchase the Purchased Assets. No waiver of any of the Purchaser's Conditions dealing with the representations and warranties of the Vendor shall in any manner affect the Purchaser's remedies in respect of any representation or warranty that is not true and correct or in respect of any obligations not fully performed and complied with.

## **5.2 CONDITIONS FOR THE BENEFIT OF THE VENDOR**

- (1) The Vendor's obligation to complete the purchase and sale of the Purchased Assets shall be subject to the following conditions precedent (the "**Vendor's Conditions**") being satisfied or waived at or before the Time of Closing:
- (a) the Vendor shall have received confirmation of the Shareholder Approval, in a form satisfactory to the Vendor's Solicitors, acting reasonably;
  - (b) the Purchaser shall deliver all documents in Section 6.2(2) required to be delivered by the Purchaser, duly signed, declared and executed; and
  - (c) the Purchaser shall have delivered to the Vendor a certificate in the form of Exhibit 5.2(1)(c) attached hereto confirming that each of the representations and warranties of the Purchaser as set out in Article 3 are true and accurate as at the Closing Time (other than such representations and warranties of the Purchaser that refer to a specified date, which need only be true and correct in all respects on and as of such specified date) and that the Purchaser has performed all covenants required to be performed by it under Article 4.

- (2) The Vendor's Conditions are for the Vendor's sole benefit, and having been granted for good and valuable consideration and each may be waived unilaterally by the Vendor at the Vendor's election effected by notice in writing to the Purchaser or as to any to be satisfied at the Time of Closing by proceeding with the Closing, and if any of the Vendor's Conditions are not satisfied or waived within the time herein provided, then the Vendor's obligations hereunder shall be at an end, including without limitation, the Vendor's obligation to sell the Purchased Assets. No waiver of any of the Vendor's Conditions dealing with the representations and warranties of the Purchaser shall in any manner affect the Vendor's remedies in respect of any representation or warranty that is not true and correct or in respect of any obligations not fully performed and complied with.

### **5.3 CONDITIONS FOR THE BENEFIT OF THE VENDOR AND THE PURCHASER**

- (1) The Purchaser's and the Vendor's obligation to complete the purchase and sale of the Purchased Assets shall be subject to the following conditions precedent (the "**Mutual Conditions**") being satisfied or waived at or before the Time of Closing:
- (a) the Escrow Agent has duly executed and delivered the Escrow Agreement;
  - (b) prior to Closing, all filings, notifications, consents, approvals and Authorizations described in Schedule 3.1(c) of the Disclosure Letter, or as otherwise required for the operation by the Purchaser of the Business after the Closing, shall have been obtained on terms satisfactory to the Purchaser, acting reasonably;
  - (c) at the Time of Closing, there shall be no order, direction or request from any authority having jurisdiction prohibiting the Transaction; and
  - (d) at the Time of Closing, there shall be no action or proceeding pending or threatened by any Person, Governmental Entity, regulatory body or agency to enjoin, restrict or prohibit the sale and purchase of the Purchased Assets contemplated hereby.
- (2) The Mutual Conditions are for both the Purchaser's and Vendor's benefit, and having been granted for good and valuable consideration and may be waived by the Purchaser and the Vendor at the Purchaser's and Vendor's election effected by notice in writing to the Purchaser or Vendor, as applicable, or as to any to be satisfied at the Time of Closing by proceeding with the Closing, and if any of the Mutual Conditions are not satisfied or waived within the time herein provided, then the Purchaser's and Vendor's obligations hereunder shall be at an end, including without limitation, the Vendor's obligation to sell the Purchased Assets and the Purchaser's obligation to purchase the Purchased Assets. No waiver of any of the Mutual Conditions dealing with the representations and warranties of the Purchaser and Vendor shall in any manner affect the Purchaser's and Vendor's remedies in respect of any representation or warranty that is not true and correct or in respect of any obligations not fully performed and complied with.



**ARTICLE 6**  
**CLOSING ARRANGEMENTS**

**6.1 CLOSING**

Subject to Sections 5.1, 5.2 and 5.3, the purchase and sale of the Purchased Assets shall be completed at the Time of Closing by delivery of documents listed in Section 6.2.

**6.2 DELIVERIES AT CLOSING**

- (1) At or before the Closing Time, the Vendor shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Purchaser all documents, instruments and things which are to be delivered by the Vendor pursuant to the provisions of this Agreement, including, without restricting the generality of the forgoing:
- (a) the Escrow Agreement duly executed by the Vendor and any other documents reasonably required by the Escrow Agent with respect to the deposit of the Working Capital Holdback Amount and the General Liability Holdback Amount with the Escrow Agent;
  - (b) a bill of sale in respect of the Purchased Assets in a form satisfactory to the Purchaser's Solicitors;
  - (c) the certificate referred to in Section 5.1(1)(b);
  - (d) the GST election form, section 22 accounts receivable election form and subsection 20(24) customer deposits election form referred to in Section 2.12 hereof;
  - (e) any form or election required or desirable, acting reasonably, under *The Retail Sales Tax Act* (Manitoba);
  - (f) certified copies of resolutions of the board of directors of the Vendor and the Shareholder, authorizing the entry into this Agreement and the carrying out of the transactions contemplated hereunder;
  - (g) certified copy of resolutions of the shareholders of the Shareholder with respect to the Shareholder Approval;
  - (h) all consents or approvals obtained by the Vendor for the purpose of validly assigning the Assigned Agreements;
  - (i) possession of the Purchased Assets and all keys, computer codes, access cards, and like devices for the Purchased Assets;

- (j) either: (i) all transfers, assignments, instruments and other documents which are necessary or desirable to complete the legal assignment and transfer of the bank account(s) of the Business into the name of the Purchaser, together with a copy of a bank statement for such bank account(s) of the Business, or other written evidence, reasonably acceptable to the Purchaser's Solicitors acting reasonably, confirming that the Business has the Required Cash on Hand or (ii) confirmation of a wire transfer, in an amount equal to the Required Cash on Hand, to an account designated by the Purchaser;
  - (k) all conveyances, transfers, assignments, instruments and other documents which are necessary or desirable to complete the legal assignment, sale and transfer of the Purchased Assets (including, without limitation, any and all Intellectual Property, the Assigned Agreements and the License Rights) to the Purchaser, including, without limitation, duly signed copies of the Trademark Assignment Agreements attached hereto as Exhibit 5.1(1)(e), executed by the Vendor and the Shareholder, as applicable;
  - (l) written waivers of moral rights in favour of the Purchaser by any and all authors of any copyrightable Intellectual Property;
  - (m) discharges, releases or withdrawals (in registrable form where applicable) or no interest or payout letters in respect of Liens, other than Permitted Encumbrances, in respect of the Purchased Assets, in form reasonably acceptable to the Purchaser's Solicitors, acting reasonably;
  - (n) a certificate of status, compliance, good standing or like certificate with respect to each of the Vendor and the Shareholder, issued by appropriate government officials of its jurisdiction of incorporation.
- (2) At or before the Closing Time, the Purchaser shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Vendor all documents, instruments, and things which the Purchaser is to deliver, or cause to be delivered, pursuant to the provisions of this Agreement including, without restricting the generality of the forgoing:
- (a) the Escrow Agreement duly executed by the Purchaser and any other documents reasonably required by the Escrow Agent with respect to the deposit of the Working Capital Holdback Amount and the General Liability Holdback Amount with the Escrow Agent;
  - (b) a written direction to the Vendor's Solicitors to release the Deposit;
  - (c) the Closing Date Consideration as required by Section 2.5(d);
  - (d) evidence of the delivery of the Working Capital Holdback Amount and the General Liability Holdback Amount to the Escrow Agent;

- (e) the certificate referred to in Section 5.2(1)(c);
- (f) certified copies of resolutions of the board of directors the Purchaser and the GP authorizing the entry into this Agreement and the carrying out of the transactions contemplated hereunder, in form reasonably acceptable to the Vendor's Solicitors;
- (g) the GST election form, section 22 accounts receivable election form and subsection 20(24) customer deposits election form referred to in Section 2.12 hereof;
- (h) any form or election required or desirable under *The Retail Sales Tax Act* (Manitoba); and
- (i) a certificate of status, compliance, good standing or like certificate with respect to Purchaser and the GP, issued by appropriate government officials of its jurisdiction of incorporation.

### **6.3 CLOSING UNDERTAKINGS**

- (1) The Closing (including for certainty the delivery of executed documents) shall take place upon such reasonable trust conditions, if any, as may be agreed upon by the Vendor's Solicitors and the Purchaser's Solicitors.
- (2) The Closing Date Consideration shall be paid to the Vendor's Solicitors in trust on or before the Closing Date and shall be held on such trust conditions as may be reasonably stipulated by the Purchaser's Solicitors.

### **6.4 DELIVERY OF RECORDS AND ASSETS**

At the Time of Closing, the Vendor shall deliver to the Purchaser the Purchased Assets, vacant possession of the Leased Property, and copies of all of the warranties and the service, operational and other manuals relating to the Purchased Assets that are in the possession of the Vendor and copies of all plans of the Leased Property which are in the possession of the Vendor.

### **6.5 TRANSFER OF POSSESSION**

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect as at the Time of Closing.

### **6.6 RISK OF LOSS**

- (1) Until the Time of Closing, the Purchased Assets shall remain at the risk of the Vendor. The Vendor shall maintain all risk insurance in respect of the Purchased Assets which provides for loss settlement on a replacement cost basis if the Purchased Assets are repaired or replaced and on an actual cash value basis if the Purchased Assets are not repaired or replaced. The Vendor shall also maintain all risk business interruption

insurance with respect to any such loss, damage or other casualty in respect of the Business until Time of Closing. In the event of any loss, damage or claim in respect of any risk for which insurance is to be carried as aforesaid arising before the Time of Closing, the Purchaser, as an additional condition of Closing, shall be entitled to be satisfied that the insurers have accepted the claim of the Vendor for payment in accordance with the terms of the policies. If any destruction or damage occurs to the Purchased Assets on or before the Time of Closing, or if any or all of the Purchased Assets are appropriated, expropriated or seized by governmental or other lawful authority on or before the Time of Closing, the Vendor shall forthwith give notice thereof to the Purchaser, and the Purchaser shall have the option, exercisable by notice to the Vendor on or before the Time of Closing:

- (a) to reduce the Purchase Price of the Purchased Assets by an amount equal to the proceeds of insurance (and, if any such policy provided for a deductible amount, by an amount equal to such deductible amount) or compensation for destruction or damage or appropriation, expropriation or seizure and business interruption with respect thereto (in this Section referred to as the "**Proceeds**"), and to complete the purchase; or
- (b) to complete the purchase without reduction of the Purchase Price, in which event all Proceeds shall be payable to the Purchaser and all right and claim of the Vendor to any such amounts not paid by the Closing Date shall be assigned to the Purchaser.

## **ARTICLE 7**

### **INDEMNIFICATION**

#### **7.1 INDEMNIFICATION IN FAVOUR OF THE PURCHASER**

Subject to Section 7.3, Section 7.4, and Section 7.5, the Vendor shall indemnify and save the Purchaser and its partners, directors, officers, employees, agents and representatives (collectively, the "**Purchaser's Indemnified Persons**") harmless of and from any loss, liability, claim, damage (including incidental and consequential damage) or expense (whether or not involving a third-party claim) including legal expenses (each, a "**Loss**" and collectively, "**Losses**") suffered by, imposed upon or asserted against any of the Purchaser's Indemnified Persons as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

- (a) any failure of the Vendor or the Shareholder to perform or fulfill any covenant under this Agreement or any Ancillary Agreement;
- (b) any Warranty Claim made by the Purchaser;
- (c) the Excluded Liabilities; and

- (d) except to the extent disclosed in writing by the Vendor in this Agreement and/or the Disclosure Letter, any facts, circumstances, events, conditions or occurrences in existence on or prior to the Closing Date, relating directly or indirectly to the Business and/or the Purchased Assets, including all liabilities of whatever nature relating to Employees whose employment was terminated prior to or on the Closing Date, even though such Losses may be suffered after the Closing Date.

## **7.2 INDEMNIFICATION IN FAVOUR OF THE VENDOR**

The Purchaser shall indemnify and save the Vendor and the Shareholder and its shareholders, directors, officers, employees, agents and representatives (the "**Vendor's Indemnified Persons**") harmless of and from any Losses suffered by, imposed upon or asserted against any of the Vendor's Indemnified Persons as a result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any failure of the Purchaser to perform or fulfil any covenant of the Purchaser under this Agreement or any Ancillary Agreement;
- (b) any Warranty Claim made by the Vendor; and
- (c) the Assumed Liabilities.

## **7.3 CLAIM LIMITATIONS**

Notwithstanding anything else contained in this Agreement, the obligations set forth in Sections 7.1 and 7.2 are subject to the following limitations:

- (a) The maximum aggregate amount of Losses for which the indemnifying party shall be liable to the indemnified party, in respect of any and all claims, shall be an amount equal to the Purchase Price.
- (b) The Vendor and the Shareholder will not be liable for any Losses to the Purchaser unless the aggregate amount of the Purchaser's liability in respect of all such Losses exceeds, in the aggregate, 0.5% of the Purchase Price, and, in such case, the Vendor and the Shareholder shall be liable for the amount of all such Indemnity Claims (subject to Section 7.3(a)).
- (c) Under no circumstances shall any indemnified parties be indemnified for punitive damages, except with respect to a claim by a third party, in which case only to the extent of the amount of punitive damages payable to such third party as determined by a final, non-appealable award of a court of competent jurisdiction, or any other damages, including special, incidental consequential, indirect or any other similar damages, including lost profits, lost revenues, business interruptions or loss of business opportunity or reputation.

- (d) In the event an indemnification payment is made by an indemnifying party to an indemnified party in respect of a Loss and the indemnified party receives a payment under an insurance policy in connection with such Loss, the indemnified party shall, within 5 Business Days, make payment to the indemnifying party of immediately available funds in an amount equal to the lesser of (i) the insurance amount received by the indemnified party; and (ii) the amount of the applicable indemnification payment made by the indemnifying party hereunder, in each case, net of the annual insurance premium increases directly related to the Warranty Claim for which such insurance payment was made.
- (e) None of the Purchaser's Indemnified Persons shall be entitled to assert a Warranty Claim if any party or its representatives had knowledge of such actual or alleged breach at or prior to the Closing Date by reason of the Vendor or its representatives having delivered notice thereof in a schedule, supplemental schedule, an officer's certificate, or other written notice.
- (f) The Purchaser acknowledges that all representations and warranties made by the Vendor and the Shareholder contained in this Agreement or any Ancillary Agreement are subject to the disclosures provided in the Disclosure Letter.

#### **7.4 TIME LIMITATIONS**

- (a) The representations and warranties of the Vendor contained in this Agreement and in any Ancillary Agreement and the indemnification in favour of the Purchaser set out in Section 7.1 shall survive the Closing and, notwithstanding the Closing or any investigation made by or on behalf of the Purchaser shall continue for a period of 1 year after the Closing Date and any claim in respect thereof shall be made in writing during such time period.
- (b) The representations and warranties of the Purchaser contained in this Agreement and in any Ancillary Agreement and the indemnification in favour of the Vendor set out in Section 7.2 shall survive the Closing and, notwithstanding the Closing or any investigation made by or on behalf of the Vendor, shall continue for a period of 1 year after the Closing Date and any claim in respect thereof shall be made in writing during such time period.

#### **7.5 PROCEDURE FOR INDEMNIFICATION—THIRD PARTY CLAIMS**

- (a) Promptly after an indemnified party (an "**Indemnified Party**") under Section 7.1 or Section 7.2 becomes aware of any matter that may give rise to a Loss to the Indemnified Party, including receipt of a notice of the commencement against the Indemnified Party of any proceeding, the Indemnified Party will, if a claim is to be made against an indemnifying party under such Section, give notice to the indemnifying party (an "**Indemnifying Party**") of the commencement of such matter or claim. The failure to notify the Indemnifying Party will not relieve the

Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action is prejudiced by the Indemnified Party's failure to give such notice.

- (b) If any proceeding referred to in Section 7.5(a) (a "**Proceeding**") is brought against an Indemnified Party and such Indemnified Party gives notice to the Indemnifying Party of the commencement of the Proceeding, the Indemnifying Party will be entitled to participate in the Proceeding. Subject to the next following sentence, to the extent that the Indemnifying Party wishes to assume the defense of the Proceeding with counsel satisfactory to the Indemnified Party, it may do so provided it reimburses the Indemnified Party for all of its out-of-pocket expenses arising prior to or in connection with such assumption. The Indemnifying Party may not assume defence of the Proceeding if the Indemnifying Party is also a party to the Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate, or the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend the Proceeding and provide indemnification with respect to the Proceeding. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of the Proceeding, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this Section 7.5 for any fees of other counsel or any other expenses with respect to the defense of the Proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of the Proceeding, other than reasonable costs of investigation. If the Indemnifying Party assumes the defense of a Proceeding:
  - (i) it will be conclusively established for purposes of this Agreement that the claims made in that Proceeding are within the scope of, and subject to, indemnification;
  - (ii) no compromise or settlement of such claims may be made by the Indemnifying Party without the Indemnified Party's consent unless:
    - A there is no finding or admission of any violation of Laws or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party, and
    - B sole relief provided is monetary damages that are paid in full by the Indemnifying Party, and
  - (iii) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent.

If notice is given to an Indemnifying Party of the commencement of any Proceeding and the Indemnifying Party does not, within ten Business Days after

receipt of such notice, give notice to the Indemnified Party of its election to assume the defense of the Proceeding, the Indemnifying Party will be bound by any determination made in the Proceeding or any compromise or settlement effected by the Indemnified Party.

- (c) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle the Proceeding. In such case, the Indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).
- (d) Where the defence of a Proceeding is being undertaken and controlled by the Indemnifying Party, the Indemnified Party will use all reasonable efforts to make available to the Indemnifying Party those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in evaluating and defending any such claims. However, the Indemnifying Party shall be responsible for the expense associated with any employees made available by the Indemnified Party to the Indemnifying Party pursuant to this Section 7.5(d), which expense shall be equal to an amount to be mutually agreed upon per person per hour or per day for each day or portion thereof that the employees are assisting the Indemnifying Party and which expenses shall not exceed the actual cost to the Indemnified Party associated with the employees.
- (e) With respect to any Proceeding, the Indemnified Party shall make available to the Indemnifying Party, or its representatives on a timely basis, all documents, records and other materials in the possession of the Indemnified Party, at the expense of the Indemnifying Party, reasonably required by the Indemnifying Party for its use in defending any such claim and shall otherwise cooperate on a timely basis with the Indemnifying Party in the defence of such claim.
- (f) With respect to any reassessment for taxes or other liability enforceable by Lien against the property of the Indemnified Party, the Indemnifying Party's right to so contest shall only apply after payment of the reassessment or the provision of such security as is necessary to avoid a Lien being placed on the property of the Indemnified Party.
- (g) The Indemnified Party and the Indemnifying Party agree to keep the other fully informed as to the status of any Proceeding and any related proceedings.



## 7.6 RELEASE OF GENERAL LIABILITY HOLDBACK AMOUNT

- (a) All claims for indemnification by the Purchaser's Indemnified Persons under this Agreement must first be made against the General Liability Holdback Amount until the General Liability Holdback Amount is exhausted or reserved for pending but unresolved claims for indemnification pursuant to this Agreement, prior to proceeding directly against the Vendor for any Loss or Losses.
- (b) The parties hereto agree that the accrued interest earned on the General Liability Holdback Amount shall be available to fund indemnity claims made by the Purchaser's Indemnified Persons pursuant to this Agreement.
- (c) In accordance with the terms of the Escrow Agreement, on the 1<sup>st</sup> year anniversary of the Closing Date (the "**Release Date**"), the balance of the General Liability Holdback Amount shall be released to the Vendor less the aggregate amount of all Losses specified in any then unresolved indemnification claims made by the Purchaser's Indemnified Persons (the "**Release Amount**"). In addition, on the Release Date, the Purchaser shall pay and deliver, by way of certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer as directed by the Vendor, to the Vendor interest equal to five percent per year on the amount that is equal to the Release Amount minus \$400,000, if such amount is positive (the "**Release Interest**"). If any amount has been reserved and withheld from distribution from the General Liability Holdback Amount on the Release Date on account of an unresolved claim for indemnification and, subsequent to such Release Date, such claim becomes resolved, the Escrow Agent shall promptly release (i) to the Purchaser an amount of Losses claimed, if any, due in respect of such resolved claim pursuant to the terms of the Escrow Agreement, and (ii) to the Vendor an amount equal to the excess, if any, of the amount theretofore reserved and withheld from distribution in respect of such claim over the payment, if any, made pursuant to the foregoing clause (i) of this sentence (the "**Subsequent Release Amount**"). In addition, upon such release, the Purchaser shall pay and deliver, by way of certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer as directed by the Vendor, to the Vendor (A) if the Purchaser is required to pay the Release Interest pursuant to this Section 7.6(c), interest equal to five percent per year on the Subsequent Release Amount (B) if the Purchaser is not required to pay the Release Interest pursuant to this Section 7.6(c), interest equal to five percent per year on the amount equal to the sum of the Release Amount and the Subsequent Release Amount minus \$400,000.
- (d) The Purchaser acknowledges that, following the Closing Date: (a) each of the Vendor and the Shareholder may immediately or at any time, including at any time prior to the expiry of the survival period of any representations, warranties or covenants of the Vendor and the Shareholder, distribute, sell, dividend, return capital, or otherwise dispose or transfer, for value or otherwise, all or substantially all of its assets remaining following the Closing to certain third parties, which

may include any or all of its shareholders, its creditors, third party purchasers, or any other person; and (b) each of the Vendor and the Shareholder may dissolve, wind-up, liquidate or otherwise cease to exist. Accordingly, the indemnification provisions in Article 7 will, from and after the Closing, constitute the sole and exclusive remedies of the Purchaser and the Vendor and Shareholder with respect to any breach of representation or warranty or non-performance, partial or total, of any covenant or agreement contained in this Agreement.

## **ARTICLE 8**

### **GENERAL**

#### **8.1 TERMINATION**

This Agreement may be terminated:

- (a) by the Purchaser if a breach of any provision of this Agreement has been committed by the Vendor or the Shareholder and such breach has not been waived by the Purchaser, provided that the Purchaser is not also in breach of this Agreement;
- (b) by the Vendor or the Shareholder if a breach of any provision of this agreement has been committed by the Purchaser and such breach has not been waived by the Vendor and the Shareholder, provided that the Vendor or the Shareholder are not also in breach of this Agreement;
- (c) by the Purchaser if any condition in Section 5.1 has not been satisfied by the Closing Date or if satisfaction of such a condition becomes impossible (other than through the failure of the Purchaser to comply with its obligations under this agreement), and the Purchaser has not waived such condition on or before such date;
- (d) by the Vendor and the Shareholder if any condition in Section 5.2 has not been satisfied by the Closing Date or if satisfaction of such a condition becomes impossible (other than through the failure of the Vendor or the Shareholder to comply with their obligations under this Agreement), and the Vendor and the Shareholder have not waived such condition on or before such date;
- (e) by the Vendor or the Shareholder or the Purchaser if any condition in Section 5.3 has not been satisfied by the Closing Date or if satisfaction of such a condition becomes impossible (other than through the failure of the Purchaser if it is the terminating party or of the Vendor or Shareholder if it is the terminating party to comply with its obligations under this agreement), and the Vendor, Shareholder and Purchaser has not waived such condition on or before such date;

- (f) by the Vendor or the Shareholder if the Vendor's or the Shareholder's board of directors, subject to complying with this Agreement, authorizes the Vendor or the Shareholder to enter into a legally binding Agreement with respect to a Superior Proposal; or
- (g) by mutual consent of the Purchaser, the Vendor and the Shareholder.

The Purchaser will promptly return to the Vendor and the Shareholder all original documents, data or other materials delivered to the Purchaser by the Vendor or the Shareholder, and will destroy all copies and reproductions (both written and electronic) in its possession and in the possession of Persons to whom it was disclosed.

## **8.2 EXPENSES**

Except as otherwise expressly provided in this Agreement, all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and accountants) incurred in connection with this Agreement, the Ancillary Agreements and the transactions contemplated therein shall be paid by the party incurring such expenses.

## **8.3 FURTHER ASSURANCES**

Each of the parties hereto shall from time to time execute and deliver all such further documents and instruments and do all acts and things as any other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

## **8.4 BROKERS**

The Purchaser and the Vendor covenant and agree to indemnify and hold the other harmless from and against any obligation or liability, and any expenses incurred in investigating same (including reasonable attorney's fees), based in any way on any agreements, arrangements or understandings made or claimed to have been made by the indemnifying party with any third party with respect to broker's or finder's fees in connection with the transactions contemplated by this Agreement.

## **8.5 BENEFIT OF THE AGREEMENT**

This Agreement shall enure to the benefit of and be binding upon the respective heirs, personal representatives, executors, successors and permitted assigns of the parties hereto.

## **8.6 ASSIGNMENT**

This Agreement shall not be assigned by any party hereto without the written consent of the other parties, except that the Purchaser may assign its interest under this Agreement to an Affiliate; provided however, such assignment shall not release the Purchaser from its obligations hereunder.

## 8.7 NOTICES

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, email or by facsimile to the recipient as follows:

To the Vendor or the Shareholder:

202 - 13018 80th Avenue  
Surrey, BC V3W 3A8  
Attention: [REDACTED]  
Email: [REDACTED]

with copy to:

Evans & Evans, Inc.  
1610-400 Burrard Street  
Vancouver, BC V6C 3A6  
Attention: Michael Evans  
Email: michaelevans@shaw.ca

Fasken Martineau DuMoulin  
2900 – 550 Burrard Street  
Vancouver, BC V6C 0A3  
Attention: Georald Ingborg  
Email: gingborg@fasken.com

To the Purchaser:

c/o Westcap Mgt. Ltd.  
[REDACTED]  
Attention: [REDACTED]  
Email: [REDACTED]

with copy to:

MacPherson Leslie & Tyerman LLP  
1500, 410 – 22nd Street East  
Saskatoon, Saskatchewan, S7K 5T6  
Attention: Todd Rosenberg  
Email: trosenberg@mlt.com

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

## 8.8 CONFIDENTIALITY

In addition and further to the Confidentiality Agreement between the Shareholder and Westcap Mgt. Ltd. dated November 19, 2015, which remains in full force and effect, up to and including the Closing Date, under no circumstances shall the Vendor or the Purchaser disclose this Agreement, or any contents of this Agreement, to any Person, without the prior written consent of the other parties hereto, except that (a) the parties shall be entitled to advise their respective employees, agents, advisors and consultants of the sale of the Business contemplated by this Agreement; and (b) the parties shall be entitled to make such disclosures as may be required by Law, regulatory policy and by any stock exchange. Up to and including the Closing Date, any press release or public statement or announcement (each, a "**Public Statement**") with respect to the transactions contemplated by this Agreement shall be made only with the prior written consent and joint approval of the Vendor and the Purchaser, unless such Public Statement is required by Law or by any stock exchange, in which case the party required to make the Public Statement shall use its commercially reasonable efforts to obtain the approval of the other parties as to the form, nature and extent of the disclosure in such Public Statement. Without limiting the foregoing, each of the Purchaser, Vendor and Shareholder acknowledge that, pursuant to applicable securities Laws, the Shareholder shall be required to: (a) make Public Statements upon the entering into of this Agreement disclosing the existence and parties to this Agreement, the transactions contemplated hereby and negotiations of the Purchaser, Vendor and Shareholder; (b) publically disclosing this Agreement and the Ancillary Agreements, including making this Agreement publically available on SEDAR; (c) disclosing to the TSX Venture Exchange and the applicable securities regulators the existence and parties to this Agreement, and the transactions contemplated hereby and a copy of this Agreement and the Ancillary Agreements; (d) providing to the shareholders of the Shareholders, documents which will be made publically available on SEDAR containing disclosure including with respect to the existence and parties to this Agreement, the transactions contemplated hereby and negotiations of the Purchaser, Vendor and Shareholder and a copy of this Agreement, and each of the Purchaser, Vendor and Shareholder consent to the foregoing and agree that the foregoing will not constitute a breach of this Section 8.8.

## 8.9 EXCLUSIVITY

- (a) The Vendor and the Shareholder each agree that they will not, directly or indirectly, through any officer, director, employee, partner, agent, representative or otherwise, make, solicit, initiate or encourage a proposal or offer from any person or entity relating to any Acquisition Proposal for a period commencing on the date this Agreement is executed, continuing up to and including the later of December 31, 2016 (or such other date as the parties may mutually agree in writing), the termination of this Agreement pursuant to the terms of this Agreement or the Closing Date (the "**Exclusivity Period**").
- (b) Notwithstanding Section 8.9(a), if, at any time following the date of this Agreement and prior to obtaining the Shareholder Approval, the Shareholder or the Vendor receives an unsolicited Acquisition Proposal, which, as concluded in good faith by the Vendor's or Shareholder's board of directors, constitutes or, if consummated in accordance with its

terms, could reasonably be expected to be, a Superior Proposal, then the Vendor or the Shareholder may: (i) furnish information with respect to the Vendor or the Shareholder and its subsidiaries to the person making such Acquisition Proposal; and/or (ii) enter into, participate, facilitate and maintain discussions or negotiations with, and otherwise cooperate with or assist, the person making such Acquisition Proposal. In the event it receives an Acquisition Proposal, the Vendor or the Shareholder shall promptly notify the Purchaser in writing within 24 hours of receipt of any Acquisition Proposal, including a copy thereof or an accurate description of all terms and conditions thereof.

- (c) Notwithstanding Section 8.9(a), if, at any time following the date of this Agreement and prior to obtaining the Shareholder Approval, the Shareholder or the Vendor receives an unsolicited Acquisition Proposal, which, as concluded in good faith by Vendor's or Shareholder's board of directors, constitutes a Superior Proposal, the Vendor may terminate this Agreement so as to enter into a definitive agreement with respect to such Superior Proposal, provided that the Vendor or Shareholder shall, upon providing notice of such termination to the Purchaser, pay to the Purchaser a termination fee in the amount of \$750,000.00 (the "**Break Fee**") and, for greater certainty, a refund of the Deposit to the Purchaser. The Break Fee and the Deposit shall be paid to the Purchaser, by way of certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer, at the time that notice of termination of this Agreement is delivered to the Purchaser. Each of the Vendor, the Shareholder and the Purchaser acknowledge that such sum will be the sole and exclusive remedy in lieu of any other damages or remedies available to the Purchaser at law or in equity for such termination of this Agreement by the Vendor and Shareholder.
- (d) Each of the Vendor and the Shareholder covenants that it will not accept, approve, endorse, recommend or enter into any agreement, understanding or arrangement in respect of a Superior Proposal unless: (i) the Vendor and Shareholder has complied with their obligations under Section 8.9(b) and has provided the Purchaser with a copy of the Superior Proposal; and (ii) a period (the "**Response Period**") of ten (10) business days has elapsed from the date that is the later of (x) the date on which the Purchaser receives written notice from the Vendor or the Shareholder that the board of directors of the Vendor or the Shareholder has determined, subject only to compliance with Section 8.9(c) and this Section 8.9(d), to accept, approve, endorse, recommend or enter into a definitive agreement with respect to such Superior Proposal, and (y) the date the Purchaser receives a copy of the Superior Proposal. During the Response Period, the Purchaser will have the right, but not the obligation, to offer to amend this Agreement, including an increase in, or modification of, the Purchase Price. The board of directors of the Vendor or the Shareholder shall review any such written offer by the Purchaser to amend this Agreement to determine whether the Acquisition Proposal to which Purchaser is responding would continue to be a Superior Proposal when assessed against such proposed amendment. If the board of directors of Vendor and Shareholder determine that the Acquisition Proposal no longer constitutes a Superior Proposal, the Vendor and Shareholder will enter into an amendment to this Agreement with the Purchaser incorporating the amendments to the Agreement as set out in the written offer to amend.

If the board of directors of the Vendor and the Shareholder determine that the Acquisition Proposal continues to be a Superior Proposal, the Vendor and the Shareholder may, subject to the requirements of Section 8.9(c), terminate this Agreement pursuant to Section 8.9(b) in order to accept or enter into an agreement, understanding or arrangement to proceed with the Superior Proposal.

#### **8.10 VENDOR NAME CHANGE**

The Vendor hereby covenants and agrees with the Purchaser that the Vendor:

- (a) shall not, from and after the Closing Date, use either of the names "Fort Garry Brewing Company Ltd." or "Fort Garry Brewing Company", or any of the Intellectual Property, in any manner whatsoever; and
- (b) shall, as soon as possible following the Closing Date, take such steps as may be required in order to change the Vendor's name to a numbered Manitoba corporation (or to another dissimilar name that does not contain the phrase "Fort Garry Brewing") and shall ensure that any extra-provincial registrations related to the Vendor are promptly updated.

#### **8.11 NON-MERGER**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive the Closing.

#### **8.12 PARAMOUNTCY**

In the event of any conflict between the terms of this Agreement and any Ancillary Agreement or other thing to be executed and delivered by the parties or their Affiliates or any of them, as the case may be, pursuant to this Agreement, this Agreement shall prevail to the extent of the inconsistency.

#### **8.13 COUNTERPARTS**

This Agreement may be executed by facsimile or electronically by PDF document and in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

**[Signature page to follow.]**

**IN WITNESS WHEREOF** the parties hereto have caused the Agreement to be executed as of the day and year first written above.

**FORT GARRY BREWING COMPANY LTD.**

(*seal*)

Per: “*Benjamin Li Yu*”  
Name: Benjamin Li Yu  
Title: President

**RUSSELL BREWERIES INC.**

(*seal*)

Per: “*Benjamin Li Yu*”  
Name: Benjamin Li Yu  
Title: CEO

**FORT GARRY BREWING COMPANY LP,  
by its General Partner, FORT GARRY  
BREWING COMPANY GP INC.**

(*seal*)

Per: “*Myron Johnson*”  
Name: Myron Johnson  
Title: Director



**EXHIBIT 1.1(aa)**  
**ESCROW AGREEMENT**

## ESCROW AGREEMENT

ESCROW AGREEMENT (the "**Agreement**") dated as of <@>, 2016,

BY AND AMONG:

**FORT GARRY BREWING COMPANY LTD.**, a corporation  
amalgamated under the laws of Manitoba ("**Vendor**");

AND: **RUSSELL BREWERIES INC.**, a corporation incorporated under  
the laws of British Columbia ("**RBI**");

AND: **FORT GARRY BREWING COMPANY LP**, a limited partnership  
created under the laws of Manitoba (the "**Purchaser**");

AND: **COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust  
company licensed to carry on business in all Provinces in Canada  
(the "**Escrow Agent**" or "**Computershare**").

**WHEREAS** the Vendor, RBI, and the Purchaser have entered into an asset purchase agreement dated as of <@>, 2016 (the "**Purchase Agreement**") that provides, among other things, that the Vendor sells and the Purchaser purchases certain assets of the Vendor, upon and subject to the terms and conditions contained in the Purchase Agreement;

**WHEREAS** the Purchase Agreement contemplates that an amount equal to the Escrow Amount shall be deposited in escrow with the Escrow Agent, to be held and distributed by the Escrow Agent on the terms and conditions set forth herein;

**WHEREAS** the Purchaser, and the Vendor wish to appoint the Escrow Agent to act as escrow agent in connection with the Purchase Agreement; and

**WHEREAS** the foregoing recitals are representations and statements of fact made by the Vendor and the Purchaser and not by the Escrow Agent;

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH THAT**, in consideration of the foregoing recitals, the covenants and agreements hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings assigned to them in the Purchase Agreement. For the purposes of this Agreement, the following terms shall have the following meanings:
  - (a) "**Business Day**" means any day (prior to 4:30 p.m.), other than a Saturday or a Sunday, when Canadian chartered banks are open for regular business in the city of Winnipeg, Manitoba, Canada.
  - (b) "**Claims**" means any claims for damages suffered by, imposed upon or asserted against the Purchaser giving rise to indemnification pursuant to Article 7 of the Purchase Agreement.

- (c) **"Dispute Notice"** has the meaning specified in Section 7(b).
  - (d) **"Escrow Amount"** means, collectively, the Indemnity Escrow Amount and the Working Capital Escrow Amount.
  - (e) **"Indemnity Escrow Amount"** means the sum of one million Dollars (\$1,000,000) which is initially deposited with the Escrow Agent hereunder, plus (i) any interest or other amounts accrued thereon in accordance with Section 4, less (ii) any amount deducted pursuant to Sections 5, 6, and 8 hereof, and less (iii) any amounts paid pursuant to this Agreement.
  - (f) **"Indemnity Escrow Period Termination Date"** means ●, 2017.
  - (g) **"Loss Notice"** has the meaning specified in Section 8(a).
  - (h) **"Purchase Agreement"** has the meaning specified in the preamble.
  - (i) **"Remaining Indemnity Escrow Amount"** means such portion of the Indemnity Escrow Amount set aside or required to be set aside by the Escrow Agent pursuant to Section 8(a) with respect to any Loss Notice delivered by the Purchaser prior to the Escrow Period Termination Date which shall not have been otherwise paid, settled or resolved on or before the Escrow Period Termination Date.
  - (j) **"Working Capital Escrow Amount"** means the sum of three hundred fifty thousand Dollars (\$350,000) which is initially deposited with the Escrow Agent hereunder, plus (i) any interest or other amounts accrued thereon in accordance with Section 4, less (ii) any amount deducted pursuant to Sections 5, 6, and 7 hereof, and less (iii) any amounts paid pursuant to this Agreement.
2. **Appointment of Escrow Agent.** The Vendor and the Purchaser hereby appoint the Escrow Agent to act as agent on their behalf pursuant to this Agreement, and the Escrow Agent hereby accepts such appointment on the terms and conditions of this Agreement.
  3. **Delivery of the Escrow Amount.** The Purchaser shall remit to the Escrow Agent the Escrow Amount, being initially the sum of \$1,350,000, by way of certified cheque, bank draft, certified solicitor's trust cheque, or wire transfer payable to the Escrow Agent in its capacity as escrow agent hereunder. The Escrow Amount shall be held in a segregated interest bearing trust accounts of the Escrow Agent for each of the Indemnity Escrow Amount and the Working Capital Escrow Amount, each designated in the name of the Purchaser and Vendor jointly. In the event that any funds received by the Escrow Agent are in the form of an uncertified cheque or cheques, the Escrow Agent shall be entitled to delay the time for release of such part of the funds until such uncertified cheque or cheques have cleared in the ordinary course by the financial institution upon which the same are drawn. The Escrow Agent will disburse monies according to this Agreement only to the extent that monies have been deposited with it and have actually cleared.
  4. **Placement of Escrow Amount.** Until released in accordance with this Agreement, the Escrow Amount, and all interest accruing thereon, shall be kept segregated in the records of the Escrow Agent and shall be deposited in one or more interest-bearing trust accounts to be maintained by the Escrow Agent in the name of the Escrow Agent at one or more banks listed in Schedule "A" to this Agreement (each such bank, an **"Approved Bank"**).

The Escrow Agent shall pay to the Vendor interest at an annual rate which is equal to 2.25% percent less than the prime rate of interest announced from time to time by The Bank of Nova Scotia on Canadian dollar loans made to its most credit worthy customers in Canada. Such payment obligation shall be calculated daily and paid to the account(s) within three (3) Business Days of each month-end. The Escrow Agent may receive investment earnings in excess of or less than the interest payable to the Vendor pursuant to this Section, such earnings being for the Escrow Agent's benefit or at its risk, as applicable.

All amounts held by the Escrow Agent pursuant to this Agreement shall be held by the Escrow Agent for the Purchaser and Vendor jointly, and the delivery of the Escrow Amount to the Escrow Agent shall not give rise to a debtor-creditor or other similar relationship. The amounts held by the Escrow Agent pursuant to this Agreement are at the sole risk of the Purchaser and Vendor, jointly, and, without limiting the generality of the foregoing, the Escrow Agent shall have no responsibility or liability for any diminution of the Escrow Amount which may result from any deposit made with an Approved Bank pursuant to this Section 4.1, including any losses resulting from a default by the Approved Bank or other credit losses (whether or not resulting from such a default) and any credit or other losses on any deposit liquidated or sold prior to maturity. The parties hereto acknowledge and agree that the Escrow Agent will have acted prudently in depositing the Escrow Amount at any Approved Bank, and that the Escrow Agent is not required to make any further inquiries in respect of any such bank.

At any time and from time to time, the Purchaser and Vendor, jointly, shall be entitled to direct the Escrow Agent by written notice (a) not to deposit any new amounts in any Approved Bank specified in the notice and/or (b) to withdraw all or any of the Escrow Amount that may then be deposited with any Approved Bank specified in the notice and re-deposit such amount with one or more of such other Approved Banks as specified in the notice. With respect to any withdrawal notice, the Escrow Agent will endeavor to withdraw such amount specified in the notice as soon as reasonably practicable and each of the Purchaser and Vendor acknowledges and agrees that such specified amount remains at the sole risk of the Purchaser and Vendor, jointly, prior to and after such withdrawal.

5. **Authorized Disbursements.** The Escrow Agent is hereby authorized to disburse funds out of monies constituting the Escrow Amount, only in accordance with Sections 6, 7 or 8.
6. **Release from Escrow.** Subject to Section 7 and 8 hereof, the Escrow Amount (or any portion thereof) shall be released by the Escrow Agent as follows:
  - (a) at any time upon receipt of a written joint notice from the Purchaser and the Vendor substantially in the form attached hereto as Schedule "B", the Escrow Agent shall pay from the Indemnity Escrow Amount or the Working Capital Escrow Amount, as applicable, to the Party specified in such notice the amount specified therein;
  - (b) in accordance with Section 7 hereof;
  - (c) in accordance with Section 8 hereof; and
  - (d) on the Indemnity Escrow Period Termination Date, to the Vendor any Indemnity Escrow Amount less any Remaining Indemnity Escrow Amount.

7. **Net Working Capital Adjustments.** Upon receipt of written instructions signed by the Purchaser, the Vendor and RBI in connection with any working capital adjustment pursuant to Section 2.8 of the Asset Purchase Agreement substantially in the form attached hereto as Schedule "B" (the "**Form of Notice of Release**"), the Escrow Agent shall without any further investigation promptly distribute and pay such amount from the Working Capital Escrow Amount as directed in accordance with the Form of Notice of Release. For greater certainty, the escrow period for the Working Capital Escrow Amount shall terminate upon the release by the Escrow Agent of the Working Capital Escrow Amount in accordance with the provisions of Section 6 or this Section 7, as applicable.

8. **Loss Notice; Dispute Notice.**

- (a) **Loss Notice.** If the Purchaser reasonably determines that it has a Claim, the Purchaser shall give a written notice of such determination to the Escrow Agent and to the Vendor, setting out the reasons for the dispute as well as the amount under dispute and reasonable details of the calculation of such amount (a "**Loss Notice**").

Upon receipt of a Loss Notice, the Escrow Agent shall promptly notify the Vendor and RBI in writing that it has received a Loss Notice, including a copy thereof, and shall set aside from the Indemnity Escrow Amount the amount claimed in the Loss Notice. The Escrow Agent shall hold the said amount until (i) it disburses such amount in accordance with Section 8(b) or (ii) is otherwise jointly instructed by the Purchaser and Vendor in writing pursuant to Section 6(a); or (ii) it disburses such amount in accordance with 8(b) or Section 8(c).

- (b) **Dispute Notice.** If the Vendor wishes to dispute the Purchaser's Claim under the Loss Notice, the Vendor shall, within fifteen (15) days of receipt of the Loss Notice from the Escrow Agent, send a signed written notice to both the Escrow Agent and to the Purchaser stating such dispute and summarizing the basis for such dispute (a "**Dispute Notice**").

If the Escrow Agent receives a Dispute Notice within the requisite time, it shall take no further action pursuant to such Loss Notice, until receipt by it of a final and binding determination by a court or arbitration panel of competent jurisdiction or alternatively, receipt by it of written instructions signed by the Vendor and the Purchaser. The Escrow Agent shall have no duty to inquire as to the truth of any statements made in a Loss Notice or Dispute Notice nor shall the Escrow Agent have a duty to confirm receipt by the Vendor or the Purchaser, as the case may be, of such Loss Notice or Dispute Notice,

- (c) **No Dispute Notice.** If no Dispute Notice is received by the Escrow Agent within fifteen (15) days after delivery by the Escrow Agent of the related Loss Notice to the Vendor in accordance with Section 8, then the Escrow Agent shall disburse the amount set aside pursuant to Section 8(a) and pay forthwith to the Purchaser the amount specified in the relevant Loss Notice.

9. **Responsibility of Escrow Agent; Indemnification.**

- (a) The Purchaser and the Vendor acknowledge and agree that the Escrow Agent acts hereunder as an escrow agent only and (i) shall not be responsible or liable in any

manner whatsoever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it (including, without limitation, the Purchase Agreement), for the form or execution of such instruments, for the identity, authority or right of any Person or party executing or depositing such instruments or for determining or compelling compliance therewith, and shall not otherwise be bound thereby; (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Escrow Agent; (iii) shall not be required to take notice of any default or to take any action with respect to such default involving any expense or liability, unless notice in writing of such default is formally given to the Escrow Agent, and unless it is indemnified and funded, in a manner satisfactory to it, against such expense or liability; (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction (including, without limitation, wire transfer instructions, whether incorporated herein or provided in a separate written instruction), instrument, statement, certificate, request or other document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper Person, and shall have no responsibility for determining the accuracy thereof; and, (v) may employ and consult counsel satisfactory to it, including in-house counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel.

- (b) The Escrow Agent may employ such counsel, accountants, engineers, appraisers, other experts, agents, agencies and advisors as it may reasonably require for the purpose of discharging its duties under this Agreement, and the Escrow Agent may act and shall be protected in acting in good faith on the opinion or advice or on information obtained from any such parties and shall not be responsible for any misconduct on the part of any of them. The reasonable costs of such services shall be added to and be part of the Escrow Agent's fee hereunder.
- (c) The Escrow Agent shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this Agreement. Such documentation must not require the exercise of any discretion or independent judgment.
- (d) No provision of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur financial liability in the performance of its duties or the exercise of any of its rights or powers unless indemnified as provided for herein, other than as a result of its own gross negligence, wilful misconduct or bad faith.
- (e) The Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except for its own gross negligence, wilful misconduct or bad faith.
- (f) The Escrow Agent shall incur no liability with respect to the delivery or non-delivery of any cash whether delivered by hand, wire transfer, registered mail or bonded courier.

- (g) The forwarding of a cheque by the Escrow Agent will satisfy and discharge the liability for any cash amounts due to the extent of the sum or sums represented thereby (plus the amount of any tax deducted or withheld as required by law) unless such cheque is not honoured on presentation; provided that in the event of non-receipt of such cheque by the payee, or loss or destruction thereof, the Escrow Agent upon being furnished with reasonable evidence of such non-receipt, loss or destruction and indemnity reasonably satisfactory to it, will issue to such payee a replacement cheque for the amount of such cheque.
- (h) The Purchaser and the Vendor shall equally pay the costs and expenses reasonably incurred by the Escrow Agent's services hereunder, in connection with the administration of the escrow created hereby or the performance or observance of its duties hereunder; covered by the remuneration are included, without limitation, all out-of-pocket expenses and disbursements incurred or made by the Escrow Agent in the administration of its services and duties created hereby, in excess of its compensation for normal services or not (including the reasonable fees and disbursements of its outside counsel and other outside advisors required for discharge of its duties hereunder). Any amount owing under this Section and unpaid thirty (30) days after request for such payment will bear interest from the expiration of such thirty (30) days at a rate per annum equal to the then current rate charged by the Escrow Agent, payable on demand. If payment is not received when due, the Escrow Agent shall be entitled to draw down on the Escrow Amount in order to effect such payment and may sell, liquidate, convey or otherwise dispose of any investment for such purpose.
- (i) The Purchaser and the Vendor shall jointly, as to 50% each, indemnify the Escrow Agent and its affiliates, their successors, assigns, and each of their directors, officers, employees and agents (the "Indemnified Parties") and save them harmless against all actions, proceedings, liability, claims, damages, costs and expenses (including expert consultant and legal fees and disbursements on a solicitor and client basis) whatsoever arising from the performance of the Escrow Agent's duties hereunder (unless arising from the Escrow Agent's gross negligence, bad faith or wilful misconduct) and including any action or liability brought against or incurred by the Indemnified Parties in relation to or arising out of any breach by the Purchaser or the Vendor. This indemnity shall survive the resignation or removal of the Escrow Agent and the termination or discharge of this Agreement. Notwithstanding any other provision of this agreement, any liability of the Escrow Agent shall be limited to direct damages sustained by a party to this agreement which in aggregate shall not exceed the amount of funds held pursuant to this agreement.
- (j) Notwithstanding any other provision of this Agreement, and whether such losses or damages are foreseeable or unforeseeable, the Escrow Agent shall not be liable under any circumstances whatsoever for any (a) breach by any other party of securities law or other rule of any securities regulatory authority, (b) lost profits or (c) special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages.
- (k) The Escrow Agent does not have any interest in the Escrow Amount but is serving as escrow agent only and is not a debtor of the parties hereto in respect of the Escrow Amount.

- (l) The Escrow Agent shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim or demand with respect to, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by it in writing, and signed by the parties hereto and if its duties herein are affected, unless it shall have given its prior written consent thereto.
  - (m) The Escrow Agent accepts the duties and responsibilities under this Agreement as agent, and no trust is intended to be, or is or will be, created hereby and the Escrow Agent shall owe no duties hereunder as trustee.
  - (n) The Escrow Agent will have no responsibility for seeking, obtaining, compiling, preparing or determining the accuracy of any information or document, including the representative capacity in which a party purports to act, that the Escrow Agent receives as a condition to a release from escrow under this Agreement.
  - (o) This Section 9 shall survive notwithstanding any termination of this Agreement or the resignation or removal of the Escrow Agent.
10. **Dispute Resolution.** It is understood and agreed that should any dispute arise with respect to the delivery, ownership, right of possession and/or disposition of the Escrow Amount, or should any claim be made upon the Escrow Agent or the Escrow Amount by a third party, the Escrow Agent, upon receipt of notice of such dispute or claim, is authorized and shall be entitled (at its sole option and election) to retain in its possession without liability, all or any of said Escrow Amount until such dispute shall have been settled either by the mutual written agreement of the parties involved or by a final order, decree or judgment of a court or arbitrator of competent jurisdiction, the time for perfection of an appeal of such order, decree or judgment having expired. A copy of any such settlement or final order, decree or judgment of a court or arbitrator of competent jurisdiction shall be delivered to the Escrow Agent by the Purchaser or the Vendor forthwith upon receipt thereof. The Escrow Agent may, but shall be under no duty whatsoever to, institute or defend any legal proceedings which relate to the Escrow Amount.
11. **Arbitration.** Any disputes with respect to this Agreement shall be resolved by arbitration and any party may demand by written notice to the other party that the matter be submitted to arbitration. The notice shall set out the reasons for the dispute and reasonable details to support the dispute. The Purchaser and the Vendor shall cooperate in completing any arbitration as expeditiously as possible, the procedure to commence no later than thirty (30) days from the date the notice was sent, and the arbitrator may hire such experts as may appear to be appropriate. All of the costs and expenses of the arbitration shall be borne equally by the Vendor and the Purchaser. Any award rendered by the arbitrator shall be final and binding on the parties. [NTD: consider arbitration clause]
12. **Resignation of Escrow Agent; Successor by Merger**
- (a) **Resignation and delivery.** The Escrow Agent may at any time resign as such, subject to this Section 12, by delivering written notice of resignation to the other parties to this Agreement and by delivering the Escrow Amount (less any portion thereof previously distributed in accordance with this Agreement) to any successor escrow agent designated by the Purchaser and the Vendor, or by a court of competent jurisdiction,



whereupon the Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of the Escrow Agent will take effect on the earlier to occur of (the "Resignation Date"): (i) the appointment of a successor escrow agent as aforesaid or by a court of competent jurisdiction; or (ii) the day which is 30 days after the date of delivery of the Escrow Agent's written notice of resignation to the other parties hereto, or such shorter notice as the parties accept as sufficient. If the Escrow Agent has not received written notice of the designation of a successor escrow agent by the Resignation Date, the Escrow Agent's sole responsibility after such time shall be to retain and safeguard the Escrow Amount until receipt of written notice of the designation of a successor escrow agent hereunder or pursuant to a final non-appealable order of a court of competent jurisdiction. If a successor escrow agent has not been appointed within 90 days of the date of the delivery of its written notice of resignation, the Escrow Agent shall deliver the Escrow Amount (less any portion thereof previously distributed in accordance with this Agreement) to the legal counsel designated by the Purchaser and the Vendor, jointly, and all of the Escrow Agent's duties and obligations under this Agreement shall thereupon cease immediately. Failing such designation by the Purchaser and the Vendor, jointly, the Escrow Agent shall deliver such Escrow Amount into a court of competent jurisdiction whereupon this Agreement shall terminate and the Escrow Agent shall have no further duties and obligations under this Agreement. The Purchaser and the Vendor, acting together, shall have power at any time to remove the existing Escrow Agent and to appoint a successor escrow agent.

- (b) **Deduction of fees.** If the Escrow Agent resigns or is removed pursuant to this Section 12, the Escrow Agent shall be entitled, prior to delivery to any party of the Escrow Amount, to deduct from the Escrow Amount any amounts owing to it in respect to outstanding fees, disbursements and interest thereon whereupon this Agreement shall terminate and the Escrow Agent shall have no further duties and obligations under this Agreement.
- (c) **Incapacity.** If the Escrow Amount is to be released hereunder to a party who has become bankrupt, has gone into liquidation or has otherwise become incapable of performing their rights and responsibilities under this Agreement, the Escrow Agent shall forthwith deliver the Escrow Amount, less any amounts owing to it in respect to outstanding fees, disbursements and interest thereon, into a court of competent jurisdiction. If all of the parties hereunder have become bankrupt, have gone into liquidation or have otherwise become incapable of performing their rights and responsibilities under this Agreement, the Escrow Agent shall forthwith deliver the Escrow Amount, less any amounts owing to it in respect to outstanding fees, disbursements and interest thereon, into a court of competent jurisdiction and provide written notice to the Purchaser and the Vendor of the disposition of such Escrow Amount. Upon such delivery of the Escrow Amount, this Agreement shall terminate and the Escrow Agent shall have no further duties and obligations.
- (d) **Incapacity of Escrow Agent.** In the event of the Escrow Agent resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Purchaser and the Vendor acting together, shall forthwith appoint a successor escrow agent; failing such appointment by the Purchaser and the Vendor, the retiring Escrow Agent, acting alone,

may apply, at the expense of the Purchaser and the Vendor, equally as to 50% each, to a justice of the Court of Queen's Bench of Manitoba on such notice as such justice may direct, for the appointment of a successor escrow agent; but any successor escrow agent so appointed by the Court shall be subject to removal as aforesaid by the Purchaser and the Vendor, acting together.

- (e) **Transfer and delivery; fees.** Any successor escrow agent appointed under any provision of this Section 12 shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba and, if required by the applicable legislation for any other jurisdiction, in such other jurisdictions. On any such appointment, the successor escrow agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Escrow Agent hereunder. At the request of the Purchaser and the Vendor or the successor escrow agent, the retiring Escrow Agent, upon payment of the amounts, if any, due to it pursuant to this Agreement, including any amounts owing to it in respect to outstanding fees, disbursements and interest thereon, shall duly assign, transfer and deliver to the successor escrow agent all property and money held, and all records kept, by the retiring Escrow Agent hereunder or in connection herewith.
- (f) **Succession.** Any corporation into or with which the Escrow Agent may be merged or consolidated or amalgamated, or any corporation resulting therefrom to which the Escrow Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Escrow Agent shall be the successor to the Escrow Agent hereunder without any further act on its part or any of the parties hereto, provided that such corporation would be eligible for appointment as a successor escrow agent hereunder.

13. **Tax Reporting.**

- (a) The Purchaser and Vendor agree that, for tax reporting purposes, all interest or other taxable income earned from the investment of the Escrow Amount in any tax year shall (i) to the extent such interest is distributed by the Escrow Agent to any person or entity pursuant to the terms of this Agreement during such tax year, be allocated to such person or entity, and (ii) otherwise be allocated to the Vendor in the taxation year that it was earned, notwithstanding that no such amount has been distributed.
- (b) The Purchaser and Vendor agree to provide the Escrow Agent with their certified tax identification numbers and others forms, documents and information that the Escrow Agent may request in order to fulfill any tax reporting function.

14. **Anti-money Laundering.**

- (a) Each party to this Agreement (in this paragraph referred to as a “representing party”), other than the Escrow Agent, hereby represents to the Escrow Agent that any account to be opened by, or interest to held by, the Escrow Agent in connection with this Agreement, for or to the credit of such representing party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case such representing party hereby agrees to complete, execute and deliver forthwith to the Escrow Agent a Declaration, in the Escrow Agent’s prescribed form or in such other form as may be satisfactory to it, as

to the particulars of such third party.

- (b) The Escrow Agent shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Escrow Agent, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorist or economic sanctions legislation, regulation or guideline. Further, should the Escrow Agent, in its sole judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering, anti-terrorist or economic sanctions legislation, regulation or guideline, then it shall have the right to resign on ten (10) days written notice to the other parties to this Agreement, provided (i) that the Escrow Agent's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Escrow Agent's satisfaction within such ten (10) day period, then such resignation shall not be effective.

- 15. **Privacy.** The parties acknowledge that the Escrow Agent may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- a) to provide the services required under this agreement and other services that may be requested from time to time;
- b) to help the Escrow Agent manage its servicing relationships with such individuals;
- c) to meet the Escrow Agent's legal and regulatory requirements; and
- d) if Social Insurance Numbers are collected by the Escrow Agent, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that Computershare may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this agreement for the purposes described above and, generally, in the manner and on the terms described in its Privacy Code, which Computershare shall make available on its website, [www.computershare.com](http://www.computershare.com), or upon request, including revisions thereto. Computershare may transfer personal information to other companies in or outside of Canada that provide data processing and storage or other support in order to facilitate the services it provides. Further, each party agrees that it shall not provide or cause to be provided to Computershare any personal information relating to an individual who is not a party to this agreement unless that party has assured itself that such individual understands and has consented to the aforementioned terms, uses and disclosures.

- 16. **Notices.** Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when

personally delivered if such date is a Business Day and such delivery was made prior to 4:30 p.m. (Pacific Time) and otherwise on the next Business Day, (b) when transmitted as a scanned or pdf attachment to an email (with electronic confirmation of receipt) if such date is a Business Day and such delivery was made prior to 4:30 p.m. (Eastern Time) and otherwise on the next Business Day, provided that a copy is mailed by registered mail (return receipt requested), (c) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties at the address set forth below, or at such other address as such party may specify by written notice to the other party hereto:

**to the Vendor at:**

**FORT GARRY BREWING COMPANY LTD.**

202 - 13018 80th Avenue  
Surrey, BC V3W 3A8

Attention: [REDACTED]

Facsimile: (●) ●

Email: [REDACTED]

**And with a copy to Fasken Martineau DuMoulin LLP at:**

**Fasken Martineau LLP**

2900 - 550 Burrard Street  
Vancouver, British Columbia V6C 0A3

Attention: Georald Ingborg

Facsimile: (604) 632-3225

Email: gingborg@fasken.com

**to the Purchaser at:**

**FORT GARRY BREWING COMPANY LP**

c/o Westcap Mgt. Ltd.  
Suite 830, 401 - 22nd Street East  
Saskatoon, Saskatchewan S7K 5T6

Attention: [REDACTED]

Facsimile: [REDACTED]

Email: [REDACTED]

**With a copy to MacPherson Leslie & Tyerman LLP at:**

MacPherson Leslie & Tyerman LLP  
1500 - 410 - 22nd Street East  
Saskatoon, Saskatchewan S7K 5T6  
MacPherson Leslie & Tyerman LLP  
Attention: Todd Rosenberg  
Facsimile: (306) 975-7145  
Email: trosenberg@mlt.com

**to the Escrow Agent at:**

**Computershare Trust Company of Canada**  
**3rd Floor, 510 Burrard Street**  
**Vancouver, BC, V6C 3B9**

Attention: General Manager, Corporate Trust Department  
Email: corporatetrust.vancouver@computershare.com

Any party to this Agreement may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such party at its changed address.

**17. Miscellaneous.**

- (a) The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- (b) Unless the context shall otherwise require, the singular shall include the plural and *vice versa*, and each pronoun in any gender shall include all other genders.
- (c) This Agreement may be executed in any number of counterparts and any party hereto may execute any such counterpart by facsimile (followed by the originally executed document forwarded promptly thereafter to the other party hereto), each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by all of the parties. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
- (d) This Agreement or any provision hereof may be amended or waived only by written instrument duly signed by the party against whom such amendment or waiver is sought to be enforced.
- (e) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.

- (f) No failure on the part of the Purchaser or the Vendor to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.
  - (g) If one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and the remaining provisions hereof shall remain in full force and effect.
  - (h) This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other Person any rights, remedies or any other type or types of benefits.
  - (i) No party may assign its rights hereunder without the prior written consent of the other parties, except that Purchaser may assign this Agreement in conjunction with a permitted assignment of the Purchase Agreement provided such assignment shall not relieve Purchaser of its obligations under the Purchase Agreement or this Agreement.
  - (j) This Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.
  - (k) This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.
  - (l) All references herein to money amounts are to lawful money of Canada.
  - (m) The Escrow Agent shall have no obligations with respect to tax reporting other than to deliver the required annual statement of interest earned.
  - (n) The Schedules attached to this Agreement shall, for all purposes of this Agreement, form an integral part of it. This Agreement shall override the Schedules attached hereto to the extent of any inconsistency.
  - (o) Any reference to time of day or date means the local time or date in Winnipeg, Manitoba, Canada.
18. **Force Majeure.** Except for the payment obligations of the Vendor and the Purchaser contained herein, none of the parties shall be liable to the other, or held in breach of this Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, strikes, lockouts, riots, terrorism, acts of war, epidemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section.

19. **Day Not A Business Day.** Whenever any payment shall be due, any period of time shall begin or end, any calculation is to be made or any other action is to be taken on, or as of, or from a period ending on, a day other than a Business Day, such payment shall be made, such period of time shall begin or end, and such other actions shall be taken, as the case may be, on, or as of, or from a period ending on, the next succeeding Business Day.
20. **Language.** The parties hereto have requested that this Agreement and all documents ancillary thereto be prepared in the English Language. *Les parties aux présentes ont demandé que tous les documents s'y rapportant soient rédigés en anglais.*

**(SIGNATURE PAGE FOLLOWS)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective as of the date first above written.

**FORT GARRY BREWING COMPANY LTD.**

By: \_\_\_\_\_  
Authorized Signing Officer

**RUSSELL BREWERIES INC.**

By: \_\_\_\_\_  
Authorized Signing Officer

**FORT GARRY BREWING COMPANY LP, by  
its General Partner, FORT GARRY BREWING  
COMPANY GP INC.**

By: \_\_\_\_\_  
Authorized Signing Officer

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

By: \_\_\_\_\_  
●  
●, Corporate Trust Services

By: \_\_\_\_\_  
●  
●, Corporate Trust Services



**SCHEDULE A**  
**Approved Banks**

<b>Bank</b>	<b>Relevant S&amp;P Issuer Credit Rating (as at Sep 1, 2016)</b>
ANZ Banking Group	AA-
Bank of America NA	A
Bank of Montreal	A+
Bank of Scotland	A
The Bank of Nova Scotia	A+
Bank of Tokyo-Mitsubishi UFJ	A+
Canadian Imperial Bank of Commerce	A+
Citibank NA	A
HSBC Bank of Canada	AA-
National Australia Bank Limited	AA-
National Bank of Canada	A
Royal Bank of Canada	AA-
Societe Generale (Canada Branch)	A
The Toronto-Dominion Bank	AA-
BNP Paribas	A

**SCHEDULE B**  
**Form of Notice of Release**

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**Date:** ●, 20●

**TO:** Computershare Trust Company of Canada ("**Escrow Agent**")

Pursuant to Section **[6(a)]/[7]** of the Escrow Agreement entered into as of ●, 2016 by and among **FORT GARRY BREWING COMPANY LP ("Purchaser")**, **FORT GARRY BREWING COMPANY LTD. ("Vendor")**, **RUSSELL BREWERIES INC.** and the Escrow Agent (the "**Escrow Agreement**"), you are hereby instructed to release to the ●, out of the **[Indemnity Escrow Amount/Working Capital Escrow Amount]** (as defined in the Escrow Agreement), the following amount: \$\_\_\_\_\_.

**FORT GARRY BREWING COMPANY LP, by its  
General Partner, FORT GARRY BREWING COMPANY  
GP INC.**

\_\_\_\_\_  
By: Authorized Signatory

**FORT GARRY BREWING COMPANY LTD.**

\_\_\_\_\_  
By: Authorized Signatory

**RUSSELL BREWERIES INC.**

\_\_\_\_\_  
By: Authorized Signatory

**EXHIBIT 5.1(1)(b)**

**VENDOR'S CERTIFICATE**

**OFFICER'S CERTIFICATE**

**TO:** FORT GARRY BREWING COMPANY LP

**RE:** Asset Purchase Agreement dated as of October 5, 2016 between Fort Garry Brewing Company Ltd., Russell Breweries Inc., and Fort Garry Brewing Company LP (the "**Asset Purchase Agreement**")

This certificate is delivered to you pursuant to Section 5.1(1)(b) of the Asset Purchase Agreement. Unless otherwise defined in this certificate, all capitalized terms used herein shall have the same meanings as in the Asset Purchase Agreement.

I, [●], President of Fort Garry Brewing Company Ltd., being the body corporate which carries on the Business, and the Vendor under the Asset Purchase Agreement, hereby certify for and on behalf of the Vendor, and without personal liability, that:

1. The representations and warranties of the Vendor to the Purchaser contained in the Asset Purchase Agreement were true and correct on the date of the Asset Purchase Agreement and are true and correct in all respects at and as of the time of delivery of this certificate on the date hereof with the same force and effects as if such representations and warranties were made at and as of the time of delivery of this certificate (other than such representations and warranties of the Vendor that refer to a specified date, which need only be true and correct in all respects on and as of such specified date); and
2. The Vendor has performed all covenants required to be performed by it as at the Closing Time on the Closing Date under the Asset Purchase Agreement.

**DATED** the [●] day of [●], 2016

**Signed, sealed and delivered** )  
in the presence of )  
)  
)  
)  
)

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
[●]

**EXHIBIT 5.2(1)(c)**

**PURCHASER'S CERTIFICATE**

**OFFICER'S CERTIFICATE**

**TO:** FORT GARRY BREWING COMPANY LTD.

**RE:** Asset Purchase Agreement dated as of October 5, 2016 between Fort Garry Brewing Company Ltd., Russell Breweries Inc., and Fort Garry Brewing Company LP (the "**Asset Purchase Agreement**")

This certificate is delivered to you pursuant to Section 5.2(1)(c) of the Asset Purchase Agreement. Unless otherwise defined in this certificate, all capitalized terms used herein shall have the same meanings as in the Asset Purchase Agreement.

I, [●], President of Fort Garry Brewing Company GP Inc., General Partner of Fort Garry Brewing Company LP, being the Purchaser under the Asset Purchase Agreement, hereby certify for and on behalf of the Purchaser, and without personal liability, that:

1. The representations and warranties of the Purchaser to the Vendor contained in the Asset Purchase Agreement were true and correct on the date of the Asset Purchase Agreement and are true and correct in all respects at and as of the time of delivery of this certificate on the date hereof, with the same force and effects as if such representations and warranties were made at and as of the time of delivery of this certificate (other than such representations and warranties of the Purchaser that refer to a specified date, which need only be true and correct in all respects on and as of such specified date); and
2. The Purchaser has performed all covenants required to be performed by it as at the Closing Time on the Closing Date under the Asset Purchase Agreement.

**DATED** the [●] day of [●], 2016

**Signed, sealed and delivered** )  
in the presence of )  
)  
)  
)  
)

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
[●]

**EXHIBIT 5.1(1)(e)**

**TRADEMARK ASSIGNMENT AGREEMENTS**

## **ASSIGNMENT OF TRADEMARK & TRADEMARK RIGHTS**

**WHEREAS**, the undersigned, **Fort Garry Brewing Company Ltd.** (“Assignor”) whose full post office address is: 1[REDACTED] is the legal and beneficial owner of the Canadian trademark [REDACTED], as used in association with, among other things, brewed alcoholic beverages, bearing application serial [REDACTED] (the “Trademark”), and is the owner of such application and registration in the Canadian Intellectual Property Office;

**AND WHEREAS**, **Fort Garry Brewing Company LP** (the "Assignee") whose full post office address is: [REDACTED] desires to acquire the Trademark, the application, the registration and all goodwill, right and title therein and thereto;

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor does hereby assign to the Assignee, all right, title and interest of the Assignor in and to the Trademark together with all prior user rights and the goodwill of the business associated with and symbolized by the Trademark.

The Assignor hereby covenants that it has full right, power and authority and has been duly authorized to convey the right, title and interest in the Trademark as herein assigned, and that it has not and will not execute any agreement or instrument inconsistent or in conflict with the within assignment. The Assignor further covenants that, when requested, it will execute all documents and take all such further actions as may be necessary, desirable or convenient to enable the Assignee to obtain, maintain and enforce its rights and interest in and to the Trademark.

The undersigned agrees to execute and deliver to the Assignee all such further documents as may be necessary to give effect to the assignment of rights reflected herein.

SIGNED at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2016.

	<b>FORT GARRY BREWING COMPANY LTD.</b>
Per:	
Name:	
Title:	
I have authority to bind the Corporation	

## **ASSIGNMENT OF TRADEMARK & TRADEMARK RIGHTS**

**WHEREAS**, the undersigned, **Russell Breweries Inc.** ("Assignor") whose full post office address is: **[REDACTED]** is the legal and beneficial owner of the Canadian trademark **B**, as used in association with, among other things, brewed alcoholic beverages, bearing application serial No. 0778193 filed in Canada on March 22, 1995 and registered in Canada on February 9, 1996 under Registration No. TMA454012 (the "Trademark"), and is the owner of such application and registration in the Canadian Intellectual Property Office;

**AND WHEREAS**, **Fort Garry Brewing Company LP** (the "Assignee") whose full post office address is: **[REDACTED]** desires to acquire the Trademark, the application, the registration and all goodwill, right and title therein and thereto;

**NOW THEREFORE**, for the sum of ten (\$10.00) dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Assignee to enter into an asset purchase agreement dated October 5, 2016 between the Assignee, as purchaser, Fort Garry Brewing Company Ltd. (being a wholly-owned subsidiary of the Assignor), as Vendor, and the Assignor, the Assignor does hereby assign to the Assignee, all right, title and interest of the Assignor in and to the Trademark together with all prior user rights and the goodwill of the business associated with and symbolized by the Trademark.

The Assignor hereby covenants that it has full right, power and authority and has been duly authorized to convey the right, title and interest in the Trademark as herein assigned, and that it has not and will not execute any agreement or instrument inconsistent or in conflict with the within assignment. The Assignor further covenants that, when requested, it will execute all documents and take all such further actions as may be necessary, desirable or convenient to enable the Assignee to obtain, maintain and enforce its rights and interest in and to the Trademark.

The undersigned agrees to execute and deliver to the Assignee all such further documents as may be necessary to give effect to the assignment of rights reflected herein.

SIGNED at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2016.

	<b>RUSSELL BREWERIES INC.</b>
Per:	
Name:	
Title:	
I have authority to bind the Corporation	