

**FOOTHILLS CREAMERY GROUP LTD.**

- and -

**THE WESTERN INVESTMENT COMPANY OF CANADA LIMITED**

- and -

**ATB FINANCIAL**

- and -

**2099859 ALBERTA LTD.**

- and -

any other Person who becomes a party hereto from time to time

---

**UNANIMOUS SHAREHOLDERS AGREEMENT**

---

February 28, 2018

## TABLE OF CONTENTS

<b>Article I - DEFINITIONS AND INTERPRETATION .....</b>	<b>2</b>
1.1 Definitions.....	2
1.2 Interpretation .....	6
<b>Article II - IMPLEMENTATION OF AGREEMENT .....</b>	<b>6</b>
2.1 Shareholder Covenant .....	6
2.2 Conflict .....	6
2.3 Notice of Unanimous Shareholder Agreement .....	6
2.4 Endorsement on Share Certificates .....	7
2.5 Term.....	7
2.6 Change in Shares.....	7
<b>Article III - AUTHORIZED SHARES .....</b>	<b>7</b>
3.1 Authorized Capital .....	7
<b>Article IV - REPRESENTATIONS AND WARRANTIES .....</b>	<b>7</b>
4.1 Representations and Warranties of Shareholders .....	7
4.2 Representations and Warranties of the Corporation .....	8
<b>Article V - DIRECTORS AND OFFICERS.....</b>	<b>9</b>
5.1 Directors.....	9
5.2 Director Remuneration .....	10
5.3 Board Meetings.....	11
5.4 Notice of Meeting and Waiver of Notice .....	11
5.5 Quorum.....	12
5.6 Voting.....	12
5.7 Officers.....	12
5.8 Management of Business and Affairs .....	12
<b>Article VI - SHAREHOLDERS .....</b>	<b>13</b>
6.1 Calling Shareholder Meetings.....	13
6.2 Waiver of Notice .....	13
6.3 Quorum.....	13
6.4 Voting.....	13
<b>Article VII - LIMITATIONS ON DECISION MAKING .....</b>	<b>14</b>
7.1 Limitations on Decision Making.....	14
<b>Article VIII - TRANSFER OF SECURITIES GENERALLY.....</b>	<b>15</b>
8.1 Limitations on Security Transactions .....	15
8.2 Invalid Security Transactions .....	15
8.3 Surrendering of Share Certificates.....	16
8.4 Transferees and Acquirers Bound.....	16
8.5 Shareholders to Facilitate Permitted Transfers .....	16
8.6 Specific Transfers .....	16
<b>Article IX - PRE-EMPTIVE RIGHT .....</b>	<b>17</b>
9.1 Pre-Emptive Right .....	17
9.2 Pre-emptive Right Exclusions.....	17
<b>Article X - RIGHT OF FIRST REFUSAL .....</b>	<b>18</b>
10.1 Offer to Purchase .....	18
10.2 Acceptance of Offer .....	18
10.3 Unaccepted Shares .....	19
10.4 Re-submission of Offer .....	19
10.5 Positions as Director and/or Officer .....	19

<b>Article XI – DRAG-ALONG RIGHTS .....</b>	<b>19</b>
11.1 Drag-Along Rights .....	19
11.2 Corporate Transaction .....	20
11.3 Notice of Sale .....	20
11.4 Closing.....	20
11.5 Waiver .....	22
11.6 Priority Over Right of First Refusal.....	22
<b>Article XII - TAG-ALONG RIGHTS .....</b>	<b>22</b>
12.1 Tag-Along Right .....	22
12.2 Tag-Along Notice.....	22
12.3 Mechanics of Tag-Along Right .....	23
12.4 Subject to Right of First Refusal .....	23
<b>Article XIII - PUT AND CALL OPTIONS .....</b>	<b>23</b>
13.1 Put and Call Option – Newco .....	23
13.2 Closing.....	24
13.3 Satisfaction of Existing Indebtedness .....	24
13.4 Failure to Close by Newco.....	24
13.5 Positions as Director and/or Officer .....	25
<b>Article XIV - WITHDRAWAL OF A SHAREHOLDER .....</b>	<b>25</b>
14.1 Deemed Withdrawals .....	25
14.2 Right to Corporation .....	26
14.3 Right to Remaining Shareholders .....	26
14.4 Continuance of Put Option .....	26
14.5 Purchase Price.....	26
14.6 Closing Date and Manner of Payment.....	26
14.7 Satisfaction of Existing Indebtedness .....	27
14.8 Failure to Close by Withdrawing Shareholder .....	27
14.9 Positions as Director and/or Officer .....	27
<b>Article XV - VALUATION .....</b>	<b>28</b>
15.1 Determination.....	28
15.2 Valuation.....	28
15.3 Valuation Review .....	28
15.4 Cooperation with Valuators.....	29
15.5 Costs and Expenses of Valuator .....	29
<b>Article XVI - GENERAL PROVISIONS TO NON-COMPETITION AND NON-SOLICITATION ARTICLES .....</b>	<b>29</b>
16.1 Existing Non-Competition Covenants .....	29
16.2 General Exceptions .....	29
16.3 Obligations Not Exhaustive .....	30
16.4 Acknowledgement of Principals .....	30
16.5 Remedies.....	30
16.6 Remedies Cumulative .....	30
16.7 Terms Cascading .....	30
<b>Article XVII - NON-COMPETITION.....</b>	<b>30</b>
17.1 Non-Competition .....	30
<b>Article XVIII - NON-SOLICITATION .....</b>	<b>31</b>
18.1 Non-Solicitation .....	31
<b>Article XIX - GENERAL PROVISIONS .....</b>	<b>31</b>
19.1 Reporting to Shareholders.....	31
19.2 Further Acts .....	32

19.3	Notices .....	32
19.4	Violation of Law .....	32
19.5	Amendments.....	32
19.6	Execution and Counterpart.....	32
19.7	Exclusive Jurisdiction and Applicable Law .....	33
19.8	Severability.....	33
19.9	Survival.....	33
19.10	Enurement .....	33
19.11	Time .....	33
19.12	Entire Agreement.....	33
19.13	Independent Legal Advice.....	33

**SCHEDULES**

- A: Participation Agreement
- B: Shareholder Addresses

## UNANIMOUS SHAREHOLDERS AGREEMENT

Dated effective the 28th day of February, 2018.

### **AMONG:**

**FOOTHILLS CREAMERY GROUP LTD.,**

a body corporate existing under the laws of the Province of Alberta  
(the "**Corporation**")

- and -

**THE WESTERN INVESTMENT COMPANY OF CANADA LIMITED,**

a body corporate existing under the laws of the Province of Alberta  
("**Western**")

- and -

**ATB FINANCIAL,**

a Crown corporation operating in the Province of Alberta  
("**ATB**")

- and -

**2099859 ALBERTA LTD.**

a body corporate existing under the laws of the Province of Alberta  
("**Newco**")

- and -

any other Person who becomes a party hereto from time to time

### **RECITALS:**

**WHEREAS** the Corporation was incorporated under the laws of the Province of Alberta on the 16<sup>th</sup> day of February, 2018;

**AND WHEREAS** the Corporation is in the business of the production of dairy products, including butter, ice cream and soft serve mixes, and activities ancillary thereto;

**AND WHEREAS** it is the desire of all of the Parties to provide for certain matters in regard to the operation and management of the Corporation;

**AND WHEREAS** it is the desire of all of the Parties to provide for certain rights and restrictions in relation to the transfer of Shares;

**AND WHEREAS**, as of the date hereof, all of the Shares are held as follows:

Western	3,075,000 Class A Common Shares
ATB	337,875 Class A Common Shares and 2,262,125 Class B Common Shares
Newco	675,000 Class A Common Shares

**AND WHEREAS** the number of Shares held by Western shall increase, on the date of this Agreement to 3,325,000 upon issuance of an additional 250,000 Class A Common Shares pursuant to the Share Purchase Agreement;

**AND WHEREAS** all of the Parties have agreed to the terms and conditions hereinafter contained;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements hereinafter contained, the sufficiency of which is acknowledged by each of the Parties, the Parties do covenant and agree as follows:

## ARTICLE I - DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

- (a) "**Act**" means the *Business Corporations Act* (Alberta), as amended from time to time;
- (b) "**Agreement**" means this Unanimous Shareholders Agreement, the recitals hereto and the schedules attached hereto, all as same may be amended from time to time;
- (c) "**Applicable Law**" means, in relation to any Person, property or transaction, all applicable provisions of federal, provincial or municipal laws, by-laws, statutes, rules, regulations, official directives and orders of all Governmental Authorities;
- (d) "**Articles**" means the articles of incorporation of the Corporation, as amended from time to time;
- (e) "**ATB**" has that meaning ascribed to such term in the preamble;
- (f) "**ATB Nominee**" has that meaning ascribed to such term in Section 5.1(b);
- (g) "**Board**" means all of the Directors appointed from time to time;
- (h) "**Business Day**" means any day excluding Saturday, Sunday and any day which is a statutory holiday under the laws of the Province of Alberta;
- (i) "**By-laws**" means the by-laws of the Corporation, as amended from time to time;
- (j) "**Call Notice**" has that meaning ascribed to such term in Section 13.1(d);
- (k) "**Call Option**" has that meaning ascribed to such term in Section 13.1(b);
- (l) "**Call Shares**" has that meaning ascribed to such term in Section 13.1(c);
- (m) "**CBV**" has that meaning ascribed to such term in Section 15.2;
- (n) "**CBV Determination**" has that meaning ascribed to such term in Section 15.2(d);
- (o) "**Closing Date**" has that meaning ascribed to such term in Section 11.4(b)(i), 12.3,

- 13.2(b) or 14.6(a), as applicable;
- (p) "**Corporate Transaction**" has that meaning ascribed to such term in Section 11.2;
  - (q) "**Corporation**" has that meaning ascribed to such term in the preamble;
  - (r) "**Determination Date**" has that meaning ascribed to such term in Section 15.2;
  - (s) "**Darren**" means Darren D. Bayrack;
  - (t) "**Director**" means a Person who is, from time to time, appointed as a director of the Corporation;
  - (u) "**Don**" means Donald E. Bayrack;
  - (v) "**Don Employment Agreement**" means the employment agreement entered into between Don and the Corporation dated February 28, 2018;
  - (w) "**Drag-Along Rights**" means the rights set forth in Section 11.1;
  - (x) "**End Date**" has that meaning ascribed to such term in Section 17.1;
  - (y) "**Governmental Authority**" means any: (i) federal, provincial, territorial, state, regional, municipal, local or other government or any governmental or public department, court, tribunal, arbitral body, statutory body, commission, board, bureau or agency; (ii) self-regulatory organization or authority; (iii) subdivision, agent, commission, board or authority of any of the foregoing; or (iv) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;
  - (z) "**Incapacity**" means, with respect to a natural person, the condition existing when they are declared or considered:
    - (i) a "*represented adult*" as defined in the *Adult Guardianship and Trusteeship Act* (Alberta);
    - (ii) a "*formal patient*" as defined in the *Mental Health Act* (Alberta);
    - (iii) a person of unsound mind as determined by a court of competent jurisdiction elsewhere than in Alberta; or
    - (iv) to suffer from some other physical or mental disability which prevents them from engaging in the business of the Corporation for a period of two (2) consecutive years or more;
  - (aa) "**Independent Director**" has that meaning ascribed to such term in Section 5.1(f)(i);
  - (bb) "**Initial CBV Determination**" has that meaning ascribed to such term in Section 15.3;
  - (cc) "**Laurie**" means Laurie J. Bayrack;
  - (dd) "**Lien**" means any lien, mortgage, pledge, assignment, charge, claim, security interest, encumbrance, hypothecation or other restriction upon or in any property or assets (including accounts and contract rights);
  - (ee) "**Majority**" has that meaning ascribed to such term in Section 11.1(a);
  - (ff) "**Mary Ellen**" means Mary Ellen Bayrack-Kutinac;
  - (gg) "**Newco Nominee**" has that meaning ascribed to such term in Section 5.1(b);

- (hh) "**Non-Objecting Party**" has that meaning ascribed to such term in Section 15.3(a);
- (ii) "**Notice**" has that meaning ascribed to such term in Section 19.3(a);
- (jj) "**Objecting Party**" has that meaning ascribed to such term in Section 15.3(a);
- (kk) "**Objection Notice**" has that meaning ascribed to such term in Section 15.3(a);
- (ll) "**Offer**" has that meaning ascribed to such term in Section 10.1(a);
- (mm) "**Offer Notice**" has that meaning ascribed to such term in Section 9.1(a);
- (nn) "**Offer Terms**" has that meaning ascribed to such term in Section 10.1(a);
- (oo) "**Offered Securities**" has that meaning ascribed to such term in Section 9.1(a);
- (pp) "**Offered Shares**" has that meaning ascribed to such term in Section 10.1(a);
- (qq) "**Offeree**" has that meaning ascribed to such term in Section 10.1(a);
- (rr) "**Offeror**" has that meaning ascribed to such term in Section 10.1(a);
- (ss) "**Party**" means, at any time, any Person who is then a party to and bound by this Agreement, and "**Parties**" means all of the them;
- (tt) "**Permitted Transfer**" means any of the following:
  - (i) any transfer of Shares by a Shareholder to a trust (including, for greater certainty, a registered retirement savings plan) for retirement or estate planning purposes if the Shareholder or Principal retains the right to vote or to direct the voting of such Shares following such transfer;
  - (ii) any transfer of Shares by a Shareholder which is a trust to the principal beneficiary of that trust;
  - (iii) any transfer of Shares by a Shareholder to a holding company provided such holding company is, and covenants for so long as it holds the Shares, to be controlled by such transferring Shareholder; and
  - (iv) any transfer by operation of law of Shares to a personal representative of a deceased or incapacitated Shareholder;
- (uu) "**Permitted Transferee**" means any Person being transferred Shares pursuant to a Permitted Transfer;
- (vv) "**Person**" means and includes natural persons, corporations, partnerships, ventures, associations, companies, trusts or other entities, whether or not legal entities;
- (ww) "**Pre-emptive Right**" has that meaning ascribed to such term in Section 9.1(a);
- (xx) "**Principal**" means, to the extent applicable, the principal of a closely-held Shareholder who is not a natural person, and, as such term applies to Newco, "**Principal**" shall mean either one of Don, Darren, Mary Ellen or Laurie, and "**Principals**" shall mean all of them;
- (yy) "**Purchase Price**" has that meaning ascribed to such term in Section 13.2(c) or Section 14.6(b), as applicable;
- (zz) "**Purchaser**" has that meaning ascribed to such term in Section 14.6(b);
- (aaa) "**Put/Call FMV**" has that meaning ascribed to such term in Section 13.1(c);
- (bbb) "**Put Call Option Agreement**" means that Put Call Option Agreement between Western

and ATB dated February 28, 2018, pursuant to which ATB and/or Western may sell their Shares on the terms and conditions set forth therein;

- (ccc) "**Put Notice**" has that meaning ascribed to such term in Section 13.1(e);
- (ddd) "**Put Option**" has that meaning ascribed to such term in Section 13.1(a);
- (eee) "**Put Shares**" has that meaning ascribed to such term in Section 13.1(c);
- (fff) "**Remaining Shareholders**" has that meaning ascribed to such term in Section 11.1(a) or 12.1, as applicable;
- (ggg) "**Retiring Director**" has that meaning ascribed to such term in Section 5.1(g);
- (hhh) "**Second CBV Determination**" has that meaning ascribed to such term in Section 15.3(b);
- (iii) "**Securities**" means Shares and any security or obligations of the Corporation that is convertible into, exercisable for or exchangeable for Shares;
- (jjj) "**Selling Shareholder**" has that meaning ascribed to such term in Section 12.1;
- (kkk) "**Shareholder**" means a Person who is the owner of any of the Shares from time to time;
- (lll) "**Shareholder Indebtedness**" means, with respect to a Shareholder, all then outstanding Shareholder Loans;
- (mmm) "**Shareholder Loan**" means, with respect to a Shareholder, a loan advanced to the Corporation by that Shareholder;
- (nnn) "**Share Purchase Agreement**" has that meaning ascribed to such term in Section 9.2(d);
- (ooo) "**Shares**" means all of the issued and outstanding shares of the Corporation from time to time;
- (ppp) "**Subject Shares**" has that meaning ascribed to such term in Section 12.1 or Section 15.1, as applicable;
- (qqq) "**Tag-Along Notice**" has that meaning ascribed to such term in Section 12.2;
- (rrr) "**Tag-Along Participant**" means any Shareholder who has exercised Tag-Along Rights pursuant to Article XII;
- (sss) "**Tag-Along Proportionate Interest**" means, with respect to any exercise of Tag-Along Rights by a Tag-Along Participant, that number of Shares offered for sale by the Selling Shareholder multiplied by a percentage which shall be determined by dividing (A) the total number of Shares then owned by such Tag-Along Participant by (B) the sum of: (x) the aggregate number of Shares held by all Tag-Along Participants exercising their Tag-Along Rights pursuant to Section 12.1; and (y) the total number of Shares then owned by the Selling Shareholder;
- (ttt) "**Tag-Along Rights**" means the rights set forth in Section 12.1;
- (uuu) "**Tag-Along Shares**" has that meaning ascribed to such term in Section 12.3;
- (vvv) "**Third Person**" means a Person who is not a Shareholder;
- (www) "**Third Person Purchaser**" has that meaning ascribed to such term in Section 11.1(a) or Section 12.1, as applicable;
- (xxx) "**Time Period**" has that meaning ascribed to such term in Section 17.1;

- (yyy) "**Western**" has that meaning ascribed to such term in the preamble;
- (zzz) "**Western Nominee**" has that meaning ascribed to such term in Section 5.1(b);
- (aaaa) "**Withdrawal Event**" has that meaning ascribed to such term in Section 14.1(a); and
- (bbbb) "**Withdrawing Shareholder**" has that meaning ascribed to such term in Section 14.1(a).

## **1.2 Interpretation**

- (a) The captions and headings in this Agreement are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section, subsection or Schedule refers to the specified Article, Section or subsection of, or Schedule to, this Agreement. The terms "hereof", "hereunder", "hereto", "hereby", "herein", and similar expressions refer to this Agreement and not to any particular Article, Section, subsection, Schedule or other portion of this Agreement and include any agreement supplemental hereto.
- (b) Words importing the singular number only shall include the plural and *vice versa*, and words importing the masculine gender shall include the feminine gender and *vice versa*.
- (c) Whenever used in this Agreement, the words "includes" and "including" and similar terms of inclusion will not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather will mean "includes but is not limited to" and "including but not limited to", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive.

## **ARTICLE II - IMPLEMENTATION OF AGREEMENT**

### **2.1 Shareholder Covenant**

Each Shareholder shall, to the extent applicable, vote or cause to be voted the Shares directly or indirectly owned thereby, and otherwise sign, perform and/or do, as applicable, all agreements, documents and instruments required to be signed, performed and/or done by them so as to fully implement the terms and conditions of this Agreement.

### **2.2 Conflict**

In the event of any conflict between the provisions of this Agreement on the one hand and the Articles, By-Laws, or both, on the other, the provisions of this Agreement shall govern. Each Shareholder agrees to vote or cause to be voted the Shares owned by it as necessary so as to cause the Articles or By-Laws, or both, as the case may be, to be amended to resolve any such conflict in favour of the provisions of this Agreement.

### **2.3 Notice of Unanimous Shareholder Agreement**

The Corporation, by its execution hereof, hereby acknowledges that it has actual notice of the terms of this Agreement, consents hereto and hereby covenants with each of the Shareholders that it will at all times during the continuance hereof be governed by this Agreement in carrying out its business and affairs and accordingly, shall give or cause to be given such notices, execute or cause to be executed such deeds, transfers and documents and do or cause to be done all such acts, matters and things as may from time to time be necessary or conducive to the carrying out of the terms and intent hereof. This Agreement is intended to constitute a Unanimous Shareholders Agreement within the meaning of the Act.

## **2.4 Endorsement on Share Certificates**

Any and all certificates representing Shares now or hereafter owned by the Shareholders during the currency of this Agreement shall have the following conspicuously endorsed thereon:

*“The securities represented by this share certificate are subject to a unanimous shareholders agreement dated the 28<sup>th</sup> day of February, 2018, as it may be amended, and may be pledged, sold or otherwise transferred only in accordance with the provisions of that agreement. Any transfer made in contravention of such restrictions is null and void. A copy of the agreement is on file at the registered office of the Corporation and available for inspection on request without charge.”*

## **2.5 Term**

This Agreement shall terminate on the earlier of:

- (a) the Corporation being wound-up or dissolved;
- (b) the date that there is only one Shareholder; or
- (c) the date upon which all of the Parties otherwise agree in writing to terminate this Agreement.

## **2.6 Change in Shares**

The provisions of this Agreement relating to Shares shall apply *mutatis mutandis* to any shares or securities into which such Shares may be converted, changed, reclassified, re-divided, re-designated, redeemed, subdivided or consolidated, to any Shares or Securities that are received by the Shareholders as a stock dividend or distribution payable in Shares or other Securities and to any shares or securities of the Corporation or of any successor or continuing company or corporation to the Corporation that may be received by the Shareholders on a Corporate Transaction.

### **ARTICLE III - AUTHORIZED SHARES**

#### **3.1 Authorized Capital**

The authorized share capital of the Corporation is an unlimited number of:

- Class A Common Shares;
- Class B Common Shares; and
- Preferred Shares, issuable in series.

### **ARTICLE IV - REPRESENTATIONS AND WARRANTIES**

#### **4.1 Representations and Warranties of Shareholders**

Each of the Shareholders, as to itself, represents, warrants and covenants, as applicable, to the Corporation and to the other Shareholders that:

- (a) in the case of a corporation, it is a corporation duly existing under the laws of the jurisdiction of its incorporation;
- (b) in the case of a partnership, it is a partnership duly organized under the laws of its jurisdiction of organization;
- (c) in the case of a trust, the trustee is the duly appointed and sole trustee of the trust

under the trust agreement forming the trust;

- (d) in the case of an individual, they are the age of majority and are legally competent to execute this Agreement and take all action pursuant to hereto;
- (e) it has the requisite power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to duly observe, abide by and perform all of its covenants, undertakings and obligations herein set forth;
- (f) it has taken all necessary action to authorize the execution and delivery of, and performance by it of its obligations under, this Agreement and no such action requires the consent or approval of any regulatory authority or Governmental Authority or agency having jurisdiction over it, except such as has already been obtained;
- (g) the execution and delivery of, and the performance of its obligations under, this Agreement will not be in contravention of or in conflict with:
  - (i) in the case of a corporation, the constating documents, by-laws or resolutions of its directors or shareholders;
  - (ii) in the case of each partnership, the partnership agreement under which it was formed; or
  - (iii) in the case of a trust, the trust agreement under which it was formed;and in any case, the provisions of any applicable statute or regulation or the provisions of any indenture, instrument, agreement, judgment, order or undertaking to which it is subject;
- (h) this Agreement constitutes a valid and legally binding obligation, enforceable against it in accordance with its terms subject to the availability of equitable remedies and the enforcement of creditors' rights generally;
- (i) other than as provided for herein, such Shareholder is not subject to, nor shall it enter into, any voting agreement or voting trust in respect of its ownership of Shares; and
- (j) except for the Lien in favour of the Corporation provided for in the Articles, and except as otherwise permitted or contemplated hereunder or with the consent in writing of all of the Shareholders first obtained, all Shares held by them from time to time shall remain free and clear of all Liens whatsoever during the duration of this Agreement. With regard to the foregoing, each of the Shareholders may grant a security interest in, and pledge of, any Shares, and any rights attached or related thereto, they hold from time to time to and in favour of:
  - (i) Third Person lenders to the Corporation, including for certainty Bank of Montreal;
  - (ii) In respect of Shares owned by Western, Third Person lenders of Western, including for certainty ATB Financial; or
  - (iii) another Shareholder;in each case, with the prior consent of the Board.

#### **4.2 Representations and Warranties of the Corporation**

The Corporation represents and warrants to and in favour of the Shareholders that:

- (a) the Corporation is a corporation duly existing under the laws of the Province of Alberta,

and has the requisite power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to duly observe, abide by and perform all of its covenants, undertakings and obligations herein set forth;

- (b) the Corporation has taken all necessary corporate action to authorize the execution and delivery of, and performance of its obligations under, this Agreement, and no such action requires the consent or approval of any regulatory authority or Governmental Authority or agency having jurisdiction over it;
- (c) the execution and delivery of, and the performance of its obligations under, this Agreement, will not be in contravention of or in conflict with the Articles, By-Laws or resolutions of its Directors and Shareholders, the provisions of any applicable statute or regulation or the provisions of any indenture, instrument, agreement, judgment, order or undertaking to which the Corporation is subject; and
- (d) this Agreement constitutes a valid and legally binding obligation of the Corporation, enforceable against it in accordance with its terms, subject to the availability of equitable remedies and the enforcement of creditors' rights generally.

#### **ARTICLE V - DIRECTORS AND OFFICERS**

##### **5.1 Directors**

- (a) Subject to the balance of this Section 5.1 and Section 7.1(c), the Board shall initially consist of **FIVE (5)** Directors, and shall be increased to consist of **SIX (6)** Directors no later than one hundred eighty (180) days following the date of this Agreement upon the appointment by the Board (in accordance with the Act and the Articles) of an Independent Director.
- (b) Western shall be entitled to nominate **TWO (2)** Directors (the "**Western Nominees**") to the Board, ATB shall be entitled to nominate **TWO (2)** Directors (the "**ATB Nominees**") to the Board and Newco shall be entitled to nominate **ONE (1)** Director (the "**Newco Nominee**") to the Board, so long as, in each case, they continue to be a Shareholder.
- (c) At all times when the Board has appointed a person to the office of Chief Executive Officer of the Corporation, the Board shall be increased to consist of **SEVEN (7)** Directors and such person shall be a Director for so long as he or she fills such office.
- (d) Each person nominated or otherwise put forth for the position of director of the Corporation shall be an individual who is not disqualified under the Act from acting as a director.
- (e) The Shareholders acknowledge and agree that:
  - (i) initially, the Directors shall be:
    - (A) Shafeen Mawani and Scott Tannas, as the Western Nominees;
    - (B) Blake McDonald and Terry Freeman, as the ATB Nominees; and
    - (C) Don, as the Newco Nominee;until, with respect to each of them, he is no longer eligible to be a Director under the Act, resigns or his successor is appointed; and
  - (ii) within one hundred eighty (180) days following the date of this Agreement they shall identify and put forward to the Board for appointment as an Independent

Director in accordance with Section 5.1(a) an individual mutually agreed upon by a majority of them.

- (f) The Shareholders shall:
- (i) fill director positions by appointing (A) the Persons nominated in accordance with this Section 5.1, to the extent applicable, (B) the Person who from time to time holds the position of Chief Executive Officer of the Corporation, if the Directors appoint a Person to such office, and (C) one or more independent directors mutually agreed upon by a majority of the Shareholders, to the extent required to fill any balance of director seats on the Board (each an "**Independent Director**"). For the purposes of this Article V, a Director is independent if he or she would be independent within the meaning of Section 1.4 of National Instrument 52-110 *Audit Committees*;
  - (ii) to the extent applicable, not cause the Shares directly or indirectly owned or controlled thereby to be voted for the removal of any Director nominated by any of Western, ATB or Newco in accordance with Section 5.1(b) unless the Shareholder who nominated the subject Director proposes or approves that the applicable individual be removed as a director, in which case the Shareholders shall cause all of the Shares directly and indirectly owned by them to be so voted. For certainty, upon a Shareholder with, with respect to Section 5.1(b), nomination rights ceasing to be a Shareholder, any directors appointed to the Board as a result of such nomination rights shall, immediately upon the subject Shareholder ceasing to be a Shareholder, thereafter be deemed to be Independent Directors and may be removed and replaced as Independent Directors, except in the case of ATB ceasing to be a Shareholder in relation to the Put Call Option Agreement, in which case the ATB Nominees shall be deemed to thereafter be Western Nominees and, for certainty, in such case Western shall thereafter be entitled to nominate **FOUR (4)** Directors in the aggregate so long as it is a Shareholder; and
  - (iii) if the Directors are prohibited by the Act or the Articles from increasing the number of Directors to **SEVEN (7)** in accordance with Section 5.1(c), the Shareholders shall take all such actions and do all such things as may be required to lawfully increase the number of Directors to **SEVEN (7)**.
- (g) If a Director ceases to be a Director for any reason (a "**Retiring Director**"), to the extent applicable, the Shareholder which nominated the Retiring Director shall nominate an individual to fill the vacancy thereby created as soon as reasonably possible following the vacancy arising. If the Shareholder entitled to do so fails to nominate an individual to fill the vacancy created by the departure of the Retiring Director within ten (10) days after the vacancy arises, the remaining Directors shall appoint an individual to fill the vacancy and that individual shall serve as a Director until the Shareholder entitled to do so nominates an individual to fill the vacancy.

## 5.2 Director Remuneration

- (a) No amount is payable by way of salary, bonus or otherwise to any Director for acting as a director of the Corporation if such Director is a Western Nominee, an ATB Nominee or is not considered to be an Independent Director. For certainty, until the third (3<sup>rd</sup>) anniversary date of this Agreement Don shall not be considered to be in Independent

Director and shall not receive any remuneration for serving as a Director.

- (b) The Directors may determine from time to time the remuneration, if any, to be paid to a Director for his or her services as a director of the Corporation if such Director is considered to be an Independent Director. Such remuneration shall be market based and determined by the Directors in good faith.
- (c) Notwithstanding anything else in this Agreement, at any time after the third (3<sup>rd</sup>) anniversary date of this Agreement Don shall be considered an Independent Director and shall be entitled to receive remuneration for acting as a director of the Corporation in accordance with Section 5.2(b).

### **5.3 Board Meetings**

- (a) By written notice to all of the Directors in accordance with Section 5.4(a), any Director may convene a meeting of the Board. Unless otherwise agreed to by the Board, a meeting of the Board shall be held no less frequently than once every three (3) months.
- (b) Every meeting of the Board, however convened, will be conducted in accordance with this Agreement. Attendance at a meeting may be in person, by telephone conference or by other electronic means.

### **5.4 Notice of Meeting and Waiver of Notice**

- (a) Notice of any meeting shall be delivered to each Director in accordance with Section 19.3, such that it is received, or deemed to be received, not less than ten (10) days prior to such meeting, and shall state:
  - (i) the time and location of such meeting; and
  - (ii) in general terms, the nature of the business to be transacted at the meeting and such information as may be reasonably required by each Director to evaluate the business to be transacted.

Notwithstanding the foregoing, however, emergency meetings of the Board in connection with matters of an urgent nature (where the need for a meeting of the Board could not have been reasonably foreseen) may be called on not less than twenty-four (24) hours' notice.

- (b) The notice requirements for any meeting of the Directors may be waived or the period of notice for calling such meeting reduced with the unanimous consent of the Directors. Attendance by a Director at a meeting is deemed to be a waiver of notice of the meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.
- (c) Notwithstanding Section 5.5, if, within half an hour after the time fixed for the holding of a meeting, the quorum pursuant to Section 5.5 is not present, such meeting shall be automatically adjourned and rescheduled for the following week at the same time and on the same day of the week. In the event that a quorum pursuant to Section 5.5 is not present at the rescheduled meeting, such meeting shall be automatically adjourned for twenty-four (24) hours. If at such further rescheduled meeting a quorum referred to in Section 5.5 is not present within half an hour from the time fixed for the subject meeting, the Directors then present shall be deemed to constitute a quorum.

## 5.5 Quorum

Subject to Section 5.4(c), quorum at any meeting of the Directors shall exist only if a majority of the Directors, which majority must include, to the extent that, in each case, Newco, Western and ATB are a Shareholder at the subject time, the Newco Nominee, at least one of the Western Nominees and at least one of the ATB Nominees, are present, either in person, by telephone conference or by other electronic means.

## 5.6 Voting

Except as otherwise required by this Agreement, questions arising at any meeting of the Board shall be decided by a majority of votes. No Director shall have a second or casting vote on any matter tabled or voted on at any meeting of the Board.

## 5.7 Officers

- (a) The Board may from time to time appoint, and replace, such officers as it shall deem necessary who shall have such authority and shall perform such functions and duties as may from time to time be prescribed by the Board or otherwise set out in the By-Laws.
- (b) Unless and until otherwise determined by the Board or the subject person resigns or dies, the following persons shall hold the office(s) set forth beside their respective name:

Don	President
Cathy Sanders	Plant Manager
Jaycee Ho	Controller and Office Manager

## 5.8 Management of Business and Affairs

- (a) Subject to the provisions hereof, the Directors will manage, or supervise the management of, the business and affairs of the Corporation in accordance with this Agreement, the Act and the By-laws.
- (b) So long as each of Western and ATB are Shareholders and are willing, Western and/or ATB shall provide management services to the Corporation, which services shall include:
  - (i) assistance with driving sales growth of the business of the Corporation;
  - (ii) assistance with quarterly financial reporting;
  - (iii) preparing materials for the Board; and
  - (iv) preparing financial documentation;

and in compensation therefore the Corporation shall pay to Western and ATB, in equal proportions, management fees equal to an aggregate \$150,000 per financial year during the term of this Agreement, such management fees to be paid by the Corporation to Western and ATB in four (4) equal installments throughout the subject financial year within fifteen (15) days of the end of each subject financial quarter.

- (c) If ATB ceases to be a Shareholder, but Western remains a Shareholder and is willing, Western shall continue to provide the management services described in Section 5.8(b) to the Corporation and Western shall be entitled to receive management fees equal to an aggregate \$150,000 per financial year during the term of this Agreement, such management fees to be paid by the Corporation to Western in four (4) equal

installments throughout the subject financial year within fifteen (15) days of the end of each subject financial quarter.

## **ARTICLE VI - SHAREHOLDERS**

### **6.1 Calling Shareholder Meetings**

The Board or one or more Shareholders holding directly or indirectly in the aggregate 10% or more of the Shares shall be entitled to call a meeting of the Shareholders. Notice of any meeting of Shareholders shall be delivered to each Shareholder and Director in accordance with Section 19.3, such that it is received, or deemed to be received, not less than fifteen (15) days prior to and not more than fifty (50) days prior to such meeting, and shall state:

- (a) the time and location of such meeting; and
- (b) in general terms, the nature of the business to be transacted at the meeting and such information as may be reasonably required by each Shareholder to evaluate the business to be transacted;

provided that if “special business” (as used in Section 129 of the Act) is to be conducted at such meeting, the information required by Section 129 of the Act shall also be included in the notice, and provided further that meetings of the Shareholders may be held at any time without formal notice if all of the Shareholders are present or if all of the absent Shareholders have waived their right to receive notice.

### **6.2 Waiver of Notice**

The notice requirements for any meeting of the Shareholders may be waived or the period of notice for calling such meeting reduced with the unanimous consent of the Shareholders. Attendance by a Shareholder at a meeting is deemed to be a waiver of notice of the meeting, except where a Shareholder attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

### **6.3 Quorum**

- (a) Subject to Section 6.3(b), quorum at any meeting of the Shareholders shall exist only if the Shareholders present, either in person, by telephone conference or by other electronic means, or represented by proxy hold, in the aggregate, at least 80% of the Shares.
- (b) Notwithstanding Section 6.3(a), if, within half an hour after the time fixed for the holding of a meeting, the quorum pursuant to Section 6.3(a) is not present, such meeting shall be automatically adjourned and rescheduled for the following week at the same time and on the same day of the week. In the event that a quorum pursuant to Section 6.3(a) is not present at the rescheduled meeting, such meeting shall be automatically adjourned for twenty-four (24) hours. If at such further rescheduled meeting a quorum referred to in Section 6.3(a) is not present within half an hour from the time fixed for the subject meeting, the Shareholders then present shall be deemed to constitute a quorum.

### **6.4 Voting**

Except as otherwise required by law or by this Agreement, questions arising at any meeting of the Shareholders shall be decided by the affirmative vote of the holders of not less than 50% of the Shares represented at the subject meeting in person or by proxy and entitled to vote thereon. No Director, Shareholder, chairman or other Person shall have a second or casting vote

on any matter tabled or voted on at any meeting of the Shareholders.

## **ARTICLE VII - LIMITATIONS ON DECISION MAKING**

### **7.1 Limitations on Decision Making**

Notwithstanding any provision of this Agreement to the contrary, the Corporation shall not do or permit the occurrence of any of the following without first receiving:

- (a) unanimous approval of the Board, in respect of:
  - (i) making any loan or advance to, or owning any stock or other securities of, any Person, unless it is wholly owned by the Corporation;
- (b) the approval of at least two-thirds (2/3rds) of the Board, in respect of:
  - (i) authorizing the granting of a guarantee or indemnity or otherwise becoming liable for the debts or obligations of any Person, except for trade accounts of the Corporation or any subsidiary arising in the ordinary course of business;
  - (ii) making any investment greater than \$100,000;
  - (iii) adoption or implementation of the annual business plan and budget for general, administrative and operating expenses and for capital expenditures;
  - (iv) approving the annual financial statements;
  - (v) appointing, changing or removing, as applicable, its bankers, auditors, fiscal year end or making any material change in its accounting principles;
  - (vi) entering into or amending the compensation arrangement with any of the five (5) highest paid (with respect to total compensation) senior management staff members of the Corporation from time to time;
  - (vii) entering into any agreement or transaction with any officers, directors or employees of the Corporation or any Shareholder (other than those agreements and transactions contemplated in Article XIV);
  - (viii) hiring, terminating the employment of or replacing any of the five (5) highest paid (with respect to total compensation) senior management staff members of the Corporation from time to time;
  - (ix) paying quarterly employee bonuses in excess of \$25,000 in the aggregate;
  - (x) establishing any profit sharing or stock based (or stock related such as phantom stock plans) benefit plans;
  - (xi) selling, assigning, licensing, pledging or encumbering material technology or intellectual property, other than licenses granted in the ordinary course of business;
  - (xii) authorizing any distributions or dividends, paying or distributing amounts out of any stated capital account, reducing any stated capital account, distributing any surplus or earnings or returning any capital on any Shares;
  - (xiii) incurring any aggregate indebtedness in excess of \$50,000 that is not already included in a Board-approved budget, other than trade credit incurred in the ordinary course of business, and excepting indebtedness to the Bank of

Montreal;

- (xiv) authorizing the transfer or issuance of any Securities, except for the transfer or issuance of Shares resulting from a sale or transfer of Securities permitted under and pursuant to Section 8.6, Article X, Article XI, Article XII, Article XIII or Article XIV;
  - (xv) entering into any strategic relationship, joint venture or franchise arrangement involving the payment, contribution or assignment by the Corporation or to the Corporation of assets with a value greater than \$200,000;
  - (xvi) commencing, compromising or settling any action, suit, proceeding or investigation, or submitting to binding arbitration, where the amount in dispute is \$25,000 or more;
  - (xvii) acknowledging the insolvency of the Corporation or the inability of the Corporation to pay its debts as they become due, making an assignment for the benefit of the creditors of the Corporation, appointing or allowing the appointment of any receiver, receiver-manager, trustee, liquidator or other Person acting in a similar capacity, instituting any proceeding seeking to have the Corporation adjudicated a bankrupt or insolvent or taking any action or instituting any proceeding for the purpose of, or leading to, the liquidation, dissolution, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of the Corporation or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors;
  - (xviii) changing materially the business of the Corporation or taking any action which may lead to or result in such change;
  - (xix) entering into any business acquisitions or divestitures discussions with Third Persons; and
  - (xx) authorizing a Corporate Transaction;
- (c) the approval of Shareholders holding, in the aggregate, at least 80% of the issued and outstanding voting Shares, in respect of:
- (i) amending the Articles, By-Laws or other constating documents of the Corporation;
  - (ii) increasing the number of directors comprising the Board to a number greater than **SEVEN (7)**; and
  - (iii) decreasing the number of directors comprising the Board to a number fewer than **FIVE (5)**.

#### **ARTICLE VIII - TRANSFER OF SECURITIES GENERALLY**

##### **8.1 Limitations on Security Transactions**

Except as otherwise provided in this Agreement, no Securities, nor any Shareholder's interest in the Corporation or any Shareholder's rights under this Agreement, shall at any time be sold, assigned, transferred, pledged, encumbered or otherwise disposed of by a Shareholder.

##### **8.2 Invalid Security Transactions**

Any sale, assignment, transfer, pledge, encumbrance or other disposition of any of the Securities

or any interest in any of the Securities that is not made in accordance with any applicable provisions of this Agreement shall be of no force and effect and the Corporation and the other Shareholders shall continue to treat the purported transferor as the holder of the Securities purported to be transferred, and the purported transferor shall remain for all purposes the holder of the Securities purported to be transferred.

### **8.3 Surrendering of Share Certificates**

Any of the Shares may be transferred pursuant to this Agreement without the surrender of the share certificate representing the Share to be transferred.

### **8.4 Transferees and Acquirers Bound**

Except in the event that a purported transferee or acquirer of Shares is already a Shareholder and Party, any Shares purportedly issued or transferred, all in accordance with the terms of this Agreement, shall not be effective unless and until, without limitation, the transferee or acquirer thereof agrees by instrument in writing, in the form attached hereto as Schedule "A" or such other form required by the Corporation, to, *inter alia*, observe and be bound by all of the provisions of this Agreement.

### **8.5 Shareholders to Facilitate Permitted Transfers**

Each Shareholder shall, without undue delay, give and execute all necessary documents, consents and approvals necessary to effect a transfer of or issuance of Securities permitted pursuant to, and completed in accordance with, the provisions of this Agreement.

### **8.6 Specific Transfers**

Notwithstanding anything contained herein:

- (a) a transfer of Securities by a Shareholder to any Permitted Transferee thereof shall be permitted at any time and without the consent of the Board or any other Shareholder, provided that notice thereof shall be provided to the Corporation promptly and without delay and the provisions of Section 8.4 are complied with;
- (b) a sale, assignment or transfer of Securities by a Shareholder, which is otherwise not permitted pursuant to this Agreement, may be permitted at any time with the prior written consent of the Board, in accordance with the terms of Section 7.1(b)(xiv) to the extent applicable, provided: (i) the provisions of Section 8.4 are complied with, and subject to any conditions imposed by the Board in respect of such sale, assignment or transfer; and (ii) in respect of a sale, assignment or transfer of Securities by Western, the provisions of Article XII are complied with;
- (c) any transfer and sale of Securities by ATB to a direct or indirect subsidiary of ATB or any Crown corporation established by the Province of Alberta to operate as ATB Capital is expressly permitted, provided that timely notice thereof shall be provided to the Corporation and the provisions of Section 8.4 are complied with;
- (d) any transfer and sale of Securities by ATB and/or Western in accordance with and pursuant to the terms of the Put Call Option Agreement, are hereby expressly permitted, provided that timely notice thereof shall be provided to the Corporation and the provisions of Section 8.4 are complied with;
- (e) any transfer and sale of Securities by ATB, Western and/or Newco to Jaycee Ho and/or Cathy Sanders in accordance with and pursuant to the terms of their respective employment agreements with the Corporation dated as of the date of this Agreement,

are hereby expressly permitted, provided that the provisions of Section 8.4 are complied with; and

- (f) except in accordance with Article XI, Article XII or Article XIV, Newco shall not be entitled to sell, transfer or otherwise dispose of any Shares on or before the third (3<sup>rd</sup>) anniversary date of this Agreement without the prior written consent of Western and ATB, to the extent same are Shareholders at the time the subject consent is sought hereunder, which consent shall be in the sole and absolute discretion of each of Western and ATB with no obligation to act reasonably.

## **ARTICLE IX - PRE-EMPTIVE RIGHT**

### **9.1 Pre-Emptive Right**

- (a) Subject to Section 9.1(d), the Corporation agrees that no Securities shall be issued at any time unless the Corporation, by written notice (an “**Offer Notice**”), first advises the Shareholders of the Corporation’s intention to issue such Securities (the “**Offered Securities**”). Each Shareholder shall have a pre-emptive right, exercisable within a period of seven (7) days from receipt of an Offer Notice from the Corporation, to elect in writing, and within three (3) days of such election, to purchase up to that percentage of the Offered Securities which corresponds to its percentage of ownership of the issued and outstanding Shares as at such time, at the same price and on the same terms as those that are specified in the Offer Notice (the “**Pre-emptive Right**”).
- (b) If less than all of the Shareholders elect to acquire Offered Securities under Section 9.1(a) or such Shareholders collectively elect to acquire less than all of the Offered Securities, then each participating Shareholder which has elected to acquire its proportionate share of the Offered Securities under Section 9.1(a) may acquire a proportionate share, or other share as may be agreed to by such participating Shareholders, of any Offered Securities not subscribed for under Section 9.1(a). For the purposes of this Section 9.1(b), “**proportionate share**” means the proportion that the Shares held by each Shareholder participating under this Section 9.1(b) (prior to the issuance of such additional Offered Securities) bears to the aggregate of the Shares held by all Shareholders participating under this Section 9.1(b) (prior to the issuance of such additional Offered Securities).
- (c) If any Shareholder does not elect to exercise its Pre-emptive Right in full in accordance with Section 9.1(a) and any Offered Securities remain unsubscribed for after giving effect to Section 9.1(b), the Corporation may issue any such Offered Securities which were not subscribed for by the Shareholders to Third Persons within sixty (60) days from the issuance of the Offer Notice, provided that such issuance is at a price not less than the price and on terms not more favourable than the terms at which such Offered Securities were offered to the Shareholders.
- (d) Following the issuance of Offered Securities or sixty (60) days following the issuance of the Offer Notice from which an issuance of the Offered Securities did not result, as the case may be, the provisions of this Section 9.1 shall once again apply to any intention by the Corporation to issue any Securities.

### **9.2 Pre-emptive Right Exclusions**

The Corporation shall not be obligated to make an offer under or to otherwise comply with Section 9.1, and the Pre-emptive Right shall not apply to, any Securities that are to be issued

pursuant to:

- (a) and in accordance with the provisions of Section 8.6 or Article X, Article XI, Article XII, Article XIII or Article XIV;
- (b) and in accordance with the terms of the employment agreements dated as of the date of this Agreement between the Corporation and each of Jaycee Ho and Cathy Sanders, provided that the Corporation shall have obtained the consent of Newco to such issuance of Securities;
- (c) the exchange of Class B common shares of the Corporation for Class A common shares of the Corporation in accordance with the Articles;
- (d) the issuance of 250,000 Class A common shares of the Corporation to Western in exchange for 286,881 Class "A" common shares of Foothills Creamery Ltd., pursuant to a share purchase agreement dated as of the date of this Agreement (the "**Share Purchase Agreement**");
- (e) the issuance of Securities in a share dividend, capital reorganization or similar transaction, where all holders of Shares are treated in an equivalent manner; or
- (f) the issuance of Securities by the Corporation in a share or asset purchase or other similar transaction where Securities of the Corporation are used to fund all or a portion of the applicable purchase price.

#### **ARTICLE X - RIGHT OF FIRST REFUSAL**

##### **10.1 Offer to Purchase**

- (a) In the event that any Shareholder (the "**Offeror**") desires to sell, transfer, assign or otherwise dispose of any Securities to a *bona fide* arm's length Third Person, the Offeror shall first make an offer in writing (in this Article, an "**Offer**") to all of the other Shareholders (individually an "**Offeree**" and collectively the "**Offerees**") to sell such Securities (the "**Offered Shares**") thereto. The Offer shall specify and incorporate the exact terms and conditions of the proposed sale, including the purchase price and payment thereof (the "**Offer Terms**").
- (b) In the event there is only one (1) Offeree, the Offeree may purchase any or all of the Offered Shares, in such number as determined in the sole discretion of the Offeree.
- (c) In the event there is more than one (1) Offeree, the Offeror shall make and deliver the Offer to the Offerees on a *pro rata* basis in proportion to each of the Offerees direct shareholdings of Shares.

##### **10.2 Acceptance of Offer**

- (a) Within fourteen (14) days after receiving an Offer each Offeree may accept it by delivering written notice to such effect to the Offeror. To the extent the Offer is accepted, the purchase and sale of the subject Offered Shares shall be completed in accordance with the Offer Terms. In the event that no acceptance is received by the Offeror upon the expiration of the said fourteen (14) day period, the Offer shall be deemed to have been refused.
- (b) Upon expiry of the said fourteen (14) day period, if one or more, but not all, Offerees have accepted the Offer, the Offeror shall be required forthwith to offer the remaining, unaccepted Offered Shares in a similar written offer to those Offerees who accepted the

Offer in the first instance and such Offerees shall have a further ten (10) day period after receipt of such subsequent offer to accept that further offer on a *pro rata* basis according to the direct shareholdings of the Shares held by those Offerees who accepted the Offer in the first instance and, as such, are presented with the subsequent offer referred to herein (and in such event, in calculating the number of Shares owned by an Offeree for the purposes of calculating their *pro rata* share referred to herein, there shall be included any Offered Shares which such Offeree agreed to purchase by acceptance of the Offer made in the first instance by the Offeror, but which transaction has not as at that time been completed). In the event that no acceptance is received by the Offeror upon the expiration of the said ten (10) day period, the subject, subsequent Offer shall be deemed to have been refused.

- (c) If any of the Offered Shares still remain unaccepted after the provisions of Section 10.2(b) have been complied with, the process shall be repeated until either all the Offered Shares have been accepted or until all Offerees have refused, actual or deemed, the offer to purchase all or part of the then remaining Offered Shares.

### **10.3 Unaccepted Shares**

Upon all Offerees having refused, actual or deemed, the offer to purchase all or part of the Offered Shares, the Offeror may sell, transfer, assign or otherwise dispose of some or all of the unaccepted Offered Shares to a Third Person at a price not less than the price and on terms not more favourable than the terms at which such Offered Shares were offered to the Offerees.

### **10.4 Re-submission of Offer**

If no sale is completed by the Offeror within thirty (30) days following the expiration of the last aforementioned fourteen (14) or ten (10) day period, as applicable, the Offeror shall be required, before selling, transferring, assigning or otherwise disposing of the Offered Shares, to again offer the Offered Shares to the Shareholders in the manner hereinbefore provided and such process shall be repeated so often as any Shareholder decides to sell, transfer, assign or otherwise dispose of any Shares.

### **10.5 Positions as Director and/or Officer**

In connection the completion of a sale by the Offeror pursuant to Article X, the Offeror, or their legal representative, as applicable, shall, or to the extent applicable, shall cause its Principal(s) to, as applicable, tender to the Corporation forthwith upon the completion of the sale by the Offeror their resignation as Director and/or officer of the Corporation, if applicable.

## **ARTICLE XI – DRAG-ALONG RIGHTS**

### **11.1 Drag-Along Rights**

- (a) Shareholders holding no less than 67% of the total number of issued and outstanding Shares (the "**Majority**") shall have the right and authority, as agent for all of the other Shareholders (in this Article, the "**Remaining Shareholders**") and the Corporation, at any time and from time to time to enter into and execute an agreement on behalf of all of the Shareholders and the Corporation for the sale of all of the then outstanding Securities (and Shareholder Indebtedness) and such agreement shall be binding upon all of the Shareholders so long as such agreement is:
  - (i) with a Person unrelated to any Party (in this Article, the "**Third Person Purchaser**");

- (ii) *bona fide* and arm's length;
  - (iii) provides that all of the Shareholders shall sell or transfer their Shares at the same time;
  - (iv) provides that all Securities being purchased from Remaining Shareholders are purchased by the Third Person Purchaser on terms and conditions no less favourable than the Securities being purchased from the Majority; and
  - (v) provides that all Shareholder Indebtedness being purchased from Remaining Shareholders is purchased by the Third Person Purchaser on terms and conditions no less favourable than the Shareholder Indebtedness being purchased from the Majority.
- (b) The Majority shall be entitled to perform all acts and execute and deliver all documents that they deem necessary (in their absolute discretion) to consummate the transactions contemplated by this Section 11.1, for and on behalf of each of the Remaining Shareholders, and each Remaining Shareholder shall immediately upon the request of the Majority execute such agreements and related documents and perform all such acts as may from time to time be required to consummate the transactions contemplated by this Section 11.1.

## **11.2 Corporate Transaction**

The obligation of any Shareholder to transfer its Securities to a proposed Third Person Purchaser pursuant to Section 11.1 shall also apply, *mutatis mutandis*, to a sale of all or substantially all of the assets of the Corporation, or a merger, amalgamation, consolidation, plan of arrangement, reorganization or other form of business combination, whether pursuant to a statutory procedure or otherwise (each a “**Corporate Transaction**”). To the extent that such a Corporate Transaction requires shareholder approval under Applicable Law, the Remaining Shareholders shall take all necessary action, including voting all of their Shares at a meeting of Shareholders of the Corporation (or executing a written resolution in lieu thereof), in favour of such Corporate Transaction and to not exercise any rights of dissent or other shareholder remedies in connection therewith.

## **11.3 Notice of Sale**

In the case of a transaction contemplated in this Article XI, the Majority shall forthwith give notice of any such transaction to the Remaining Shareholders forthwith upon the said right being exercised, such notice to include, without limitation, the proposed closing date for the subject transaction.

## **11.4 Closing**

- (a) In connection with the closing of a transaction contemplated by this Article XI, each Remaining Shareholder shall:
- (i) contemporaneously with the completion of the subject transaction, execute and deliver to the Third Person Purchaser all applicable notices, documents and other assurances as may be necessary to effect the subject transaction in accordance with the requirements of this Article XI;
  - (ii) agree to give customary representations and warranties relating to ownership, title and ability to convey its Securities (and Shareholder Indebtedness);
  - (iii) transfer its subject Securities (and Shareholder Indebtedness) to the Third

Person Purchaser free and clear (except as may be otherwise permitted by the Third Person Purchaser) of all Liens, voting agreements, trusts, proxies and other contractual restrictions (excepting the restrictions set forth in this Agreement);

- (iv) not be directly liable in respect of any indemnification in connection with such transaction:
  - (A) in excess of the consideration received by such Shareholder therefrom;
  - (B) for the breach of representations or warranties made by any other Shareholder; and
  - (C) other than on a several (and not a joint and several) basis.
- (b) Unless otherwise agreed to by the Majority, Third Person Purchaser and Remaining Shareholders:
  - (i) the closing date for the subject transaction (in this Article, the "**Closing Date**") shall be such date agreed to by the Majority and the Third Person Purchaser, provided that, such date shall be no earlier than fifteen (15) Business Days after the date the Notice referred to in Section 11.3 is delivered by the Majority to the Remaining Shareholders;
  - (ii) subject to Section 11.4(b)(iii), any amounts payable by the Third Person Purchaser to the Remaining Shareholders shall be paid in cash or by way of bank draft, certified cheque or wire transfer; and
  - (iii) in the event that, on the Closing Date, a Remaining Shareholder is indebted to the Corporation in an amount recorded and verified, such Remaining Shareholder shall satisfy and discharge all or any portion of such indebtedness. If such Remaining Shareholder does not satisfy such amounts, the Third Person Purchaser may, upon written request of the Corporation and to the extent that cash is available from the consideration payable to such Remaining Shareholder, satisfy and discharge all or any portion of such indebtedness and shall receive and take credit against the consideration payable to such Remaining Shareholder for the amount or amounts so paid on account of any such indebtedness.
- (c) If, on the Closing Date, a Remaining Shareholder refuses to complete the subject transaction, the Corporation shall have the right separately upon such default (without prejudice to any other rights which the proposed Third Person Purchaser may have), upon payment by the proposed Third Person Purchaser of the balance due on the Closing Date (less or plus any adjustment herein permitted) to the credit of the subject Remaining Shareholder in any chartered bank in the City of Calgary, or to the solicitors for the Corporation on behalf of and in the name of the subject Remaining Shareholder, to complete the transaction as aforesaid and to obtain delivery of all share certificates to which the Third Person Purchaser is then entitled and the subject Remaining Shareholder hereby irrevocably constitutes the Corporation, as applicable, its true and lawful attorney with the power to execute and deliver all documents and instruments and take all steps in each case to give effect to such acceptance, to establish a binding contract of purchase and sale between them and the Third Person Purchaser, and to complete the purchase and sale contemplated thereunder. Such appointment, being coupled with an interest, is irrevocable by each Remaining Shareholder and shall not be

revoked by the insolvency, bankruptcy, death, incapacity, dissolution, liquidation or other termination of the existence of the subject Remaining Shareholder. The power of attorney granted in this Section 11.4(c) is not intended to be a continuing power of attorney.

### **11.5 Waiver**

Except as otherwise provided herein, the Remaining Shareholders and the Corporation acknowledge and agree that any transactions referred to in Section 11.1 entered into by the Majority may be on such terms and conditions as the Majority in their sole discretion deem appropriate, and so long as the Majority have acted in a *bona fide* manner, the Remaining Shareholders and the Corporation hereby jointly and severally waive any rights which any of them may have:

- (a) to disapprove of or pre-empt the transaction pursuant to any provision of Applicable Law or common law; and
- (b) pursuant to any provision of Applicable Law or common law regarding notice, voting rights or any other rights, including the right to be paid the fair value for their Securities.

### **11.6 Priority Over Right of First Refusal**

In cases where the provisions of this Article XI apply:

- (a) the provisions of Article X shall not apply, such that the Majority can exercise the rights granted to them hereunder without first having to take any action which would, but for this Section 11.6, be required under Article X; and
- (b) the provisions of Article XII shall not apply.

## **ARTICLE XII - TAG-ALONG RIGHTS**

### **12.1 Tag-Along Right**

To the extent the subject Selling Shareholder has not exercised its rights under Article XI, to the extent applicable, if a Shareholder (a "**Selling Shareholder**") proposes to sell, transfer, assign or otherwise dispose of certain Shares (in this Article, the "**Subject Shares**") to a Third Person (in this Article, a "**Third Person Purchaser**") in a transaction, then, each other Shareholder (in this Article, individually a "**Remaining Shareholder**" and collectively the "**Remaining Shareholders**") shall have the right to sell to such Third Person Purchaser that number of Shares then held by such Remaining Shareholder in an number equal to its Tag-Along Proportionate Interest.

### **12.2 Tag-Along Notice**

In each case, a Selling Shareholder shall give a written notice (each a "**Tag-Along Notice**") to each Remaining Shareholder (with a copy to the Corporation) of its intention to transfer the Subject Shares, which Tag-Along Notice shall:

- (a) set out the number of Shares which they propose to transfer to the Third Person Purchaser, the identity of the Third Person Purchaser, the proposed effective date and closing date of such transfer and the price and other terms and conditions of such transfer; and
- (b) include a *bona fide* offer from the Third Person Purchaser to the Remaining Shareholders to purchase that number of Shares then held by each such Remaining Shareholder equal to its Tag-Along Proportionate Interest, on the same terms and

conditions as the proposed sale with the Selling Shareholder.

### **12.3 Mechanics of Tag-Along Right**

The Selling Shareholder shall provide a Tag-Along Notice, as required by Section 12.2, to each Remaining Shareholder no later than ten (10) Business Days before the date that the closing associated with the definitive agreement with the Third Person Purchaser is to occur (in this Article XII, the "**Closing Date**"). Upon receipt of a Tag-Along Notice, each Remaining Shareholder may exercise their Tag-Along Right by delivering to the Selling Shareholder not later than five (5) Business Days before the Closing Date, written notice stating that such Remaining Shareholder wishes to sell a number of Shares up to its Tag-Along Proportionate Interest (the "**Tag-Along Shares**"), and one or more certificates properly endorsed for transfer, or comparable transfer document, representing the Tag-Along Shares to be sold by the Selling Shareholder on behalf of such Tag-Along Participant along with a power of attorney authorizing the Selling Shareholder to transfer such Tag-Along Shares on the terms set forth in the Tag-Along Notice. A Remaining Shareholder who fails to exercise their rights in accordance with the foregoing shall be deemed to have waived their subject Tag-Along Right. The Selling Shareholder shall effect the sale of the Tag-Along Shares, and the number of Shares to be sold to the Third Person Purchaser by the Selling Shareholder shall be reduced accordingly.

### **12.4 Subject to Right of First Refusal**

Nothing in this Section shall be construed or interpreted to limit the application of Article X. For certainty, to the extent applicable, no Shareholder may sell, transfer, assign or otherwise dispose of Shares to a Third Person, as contemplated in this Article XII, without having first complied with the provisions of Article X.

## **ARTICLE XIII - PUT AND CALL OPTIONS**

### **13.1 Put and Call Option – Newco**

Subject to any variances hereto mutually agreed by Western and Newco:

- (a) Newco shall have the option, but not the obligation, to, at any time after the third (3<sup>rd</sup>) anniversary date of this Agreement, require Western to acquire all, but not less than all, of the Shares then held by Newco (the "**Put Option**").
- (b) Western shall have the option, but not the obligation, to, at any time after the third (3<sup>rd</sup>) anniversary date of this Agreement, acquire all, but not less than all, of the Shares then held by Newco (the "**Call Option**").
- (c) The purchase price payable by Western to Newco for any Shares subject to an exercised Call Option (the "**Call Shares**") or Put Option (the "**Put Shares**") shall be the aggregate fair market value (as agreed or otherwise determined in accordance with the below provisions) of the Call Shares or Put Shares, as applicable, as of the date immediately preceding the date Newco or Western, as applicable delivers the Call Notice or the Put Notice, as applicable, to the other party, (the "**Put/Call FMV**").
- (d) Western shall give written notice to Newco of Western's intention to exercise the Call Option (the "**Call Notice**"). The Call Notice shall specify the Call Shares (by class and number) and Western's proposal of the Put/Call FMV. If Newco, by notice within ten (10) days of receipt of the Call Notice, agrees with Western's proposal of the Put/Call FMV set forth in the Call Notice, such proposed Put/Call FMV shall be the 'Put/Call FMV' hereunder. If Newco does not agree with Western's proposal of the Put/Call FMV set

forth in the Call Notice, the Put/Call FMV shall be determined in accordance with Article XV.

- (e) Newco shall give written notice to Western of Newco's intention to exercise the Put Option (the "**Put Notice**"). The Put Notice shall specify the Put Shares (by class and number) and Newco's proposal of the Put/Call FMV. If Western, by notice within ten (10) days of receipt of the Put Notice, agrees with Newco's proposal of the Put/Call FMV set forth in the Put Notice, such proposed Put/Call FMV shall be the 'Put/Call FMV' hereunder. If Western does not agree with Newco's proposal of the Put/Call FMV set forth in the Put Notice, the Put/Call FMV shall be determined in accordance with Article XV.
- (f) The Put Option and the exercise of Newco's option thereunder, shall be conditional on the Don Employment Agreement, and Don's employment thereunder, having not been terminated by the Corporation with Cause (as defined in the Don Employment Agreement) on or prior to the date Newco elects to, or would have elected to, but for this clause, exercise the subject Put Option.

### **13.2 Closing**

Subject to any variances hereto mutually agreed by Western and Newco, the purchase and sale of Call Shares or Put Shares, as applicable, shall:

- (a) include that portion of Newco's then outstanding Shareholder Indebtedness which bears the same relationship to all of Newco's then outstanding Shareholder Indebtedness as the number of Call Shares or Put Shares, as applicable, bears to the total number of Shares then held by Newco, and, in such regard, the purchase price payable by Western to Newco in respect of a purchase of Call Shares or Put Shares, as applicable, shall be increased by the amount of the Shareholder Indebtedness to be included as part of the transaction in accordance with the foregoing;
- (b) be completed on the tenth (10<sup>th</sup>) Business Day after the Put/Call FMV has been determined in accordance with Section 13.1(d) or 13.1(e), as applicable (in this Article XIII, the "**Closing Date**"); and
- (c) the purchase price for the Shares (and, as and to the extent applicable, Shareholder Indebtedness) shall be paid by Western to Newco (in this Article XIII, the "**Purchase Price**") on the Closing Date by cash, bank draft, certified cheque or solicitor's trust cheque.

### **13.3 Satisfaction of Existing Indebtedness**

If, at the Closing Date, Newco is indebted to the Corporation, Western shall have the right to satisfy that indebtedness on behalf of Newco by remitting to the Corporation, on behalf of Newco, that portion of the Purchase Price that is equal to the subject indebtedness. That remittance by Western shall constitute payment in full by Western to Newco of the amount so remitted.

### **13.4 Failure to Close by Newco**

If, on the Closing Date, Newco does not complete the sale of the subject Call Shares or Put Shares, as applicable, for any reason, the Corporation shall have the right separately upon such default (without prejudice to any other rights which Western may have), upon deposit of the Purchase Price (less or plus any adjustment herein permitted) to the credit of Newco in any chartered bank in the City of Calgary, or to the solicitors for the Corporation on behalf of and in

the name of Newco, such deposit to constitute valid and effective payment of the Purchase Price to Newco, to complete the subject transaction and to obtain delivery of all share certificates and evidences of indebtedness, regarding acquired Shareholder Indebtedness, to which Western is then entitled and Newco hereby irrevocably constitutes the Corporation, as applicable, its true and lawful attorney with the power to execute and deliver all documents and instruments and take all steps in each case to give effect to such acceptance, to establish a binding contract of purchase and sale between them and Western, and to complete the purchase and sale contemplated thereunder. Such appointment, being coupled with an interest, is irrevocable by Newco and shall not be revoked by the insolvency, bankruptcy, dissolution, liquidation or other termination of the existence of Newco. The power of attorney granted in this Section 13.4 is not intended to be a continuing power of attorney.

### **13.5 Positions as Director and/or Officer**

The Newco Nominee shall, to the extent that the subject Call Shares or Put Shares, as applicable, constitute 100% of all Shares held by Newco, tender to the Corporation on the Closing Date his or her resignation as Director and/or officer of the Corporation.

## **ARTICLE XIV - WITHDRAWAL OF A SHAREHOLDER**

### **14.1 Deemed Withdrawals**

- (a) Each of the following events shall be, upon determination by the Board (which it shall undertake in good faith), a withdrawal by a subject Shareholder (each a "**Withdrawing Shareholder**") under the terms of this Agreement (each a "**Withdrawal Event**"):
- (i) if the subject Shareholder is a natural person they are, or in the event of a Shareholder which is not a natural person, to the extent applicable, the Principal of the subject Shareholder is, party to a divorce action or a court action regarding the division of matrimonial property;
  - (ii) bankruptcy or insolvency of the subject Shareholder or the Principal of the subject Shareholder;
  - (iii) if the Shares of the subject Shareholder are seized or attached in any way for the payment of any judgment, damages or order and such seizure or attachment is not remedied within sixty (60) days of the seizure or attachment;
  - (iv) the subject Shareholder fails to perform or is otherwise in breach of any material term of this Agreement, or any instrument or document delivered pursuant to this Agreement (which for greater certainty shall not include the Don Employment Agreement), and such failure or breach is not remedied within fifteen (15) days after receipt by that subject Shareholder of a written notice from the Corporation regarding the subject failure or breach;
  - (v) in the event that the subject Shareholder is not a natural person, to the extent applicable, the winding-up or dissolution of the subject Shareholder;
  - (vi) the Incapacity of the subject Shareholder or the Principal of the subject Shareholder, as applicable; and
  - (vii) the death of the subject Shareholder or the Principal of the subject Shareholder, as applicable.
- (b) For the purposes of Section 14.1(a), if Newco is the subject Shareholder then Newco will only be considered to be a Withdrawing Shareholder and a Withdrawal Event will only

be considered to have occurred if all references to the Principal of the subject Shareholder in Section 14.1(a) are read as referring to Don only. For greater certainty, if any of Darren, Mary Ellen or Laurie, and not Don, are subject to an event listed in Section 14.1(a) then Newco will not be considered to be a Withdrawing Shareholder and a Withdrawal Event will not be considered to have occurred.

#### **14.2 Right to Corporation**

In the event of a Withdrawal Event, the Corporation shall have the exclusive right, but not the obligation, to purchase all but not less than all of the Shares (and Shareholder Indebtedness) owned by the subject Withdrawing Shareholder. The Corporation may exercise the right granted as aforesaid by giving notice in writing to the Withdrawing Shareholder, or their legal representative, as applicable, within thirty (30) days following the date upon which the subject Withdrawal Event is determined in accordance with Section 14.1.

#### **14.3 Right to Remaining Shareholders**

In the event that the Corporation elects not to or does not exercise the right granted thereto in Section 14.2, or exercises the said right but does not complete a transaction of purchase and sale contemplated thereby if, at the time of closing, the purchase of the Shares (and Shareholder Indebtedness) by the Corporation is then prohibited by Applicable Law, then, in such event, the remaining Shareholders may exercise the rights vested in the Corporation pursuant to this Article XIV, *mutatis mutandis*, provided that the subject option period shall be thirty (30) days following the date upon which the remaining Shareholders receive notice of the option arising. If more than one (1) remaining Shareholder exercises their rights under this Section 14.3, they shall, unless otherwise agreed, each purchase the Withdrawing Shareholder's Shares on a *pro rata* basis.

#### **14.4 Continuance of Put Option**

In the event that: (a) Newco is a Withdrawing Shareholder; (b) the Corporation elects not to or does not exercise the right granted thereto in Section 14.2; and (c) the remaining Shareholders elect not to or do not exercise the right granted thereto in this Section 14.3, then Newco shall still be permitted to exercise the Put Option in accordance with Article XIII.

#### **14.5 Purchase Price**

Unless otherwise agreed by the subject Withdrawing Shareholder, or their legal representative, as applicable, and Purchaser, the purchase price for any Shares held by a Withdrawing Shareholder shall be the then fair market value thereof, as determined in accordance with Article XV.

#### **14.6 Closing Date and Manner of Payment**

- (a) The closing date for a transaction contemplated by this Article XIV (in this Article XIV, the "**Closing Date**") shall be as soon as practicable following a determination of the purchase price for the subject Shares, but shall in any event be not later than the latest of:
  - (i) sixty (60) days after the Corporation or subject, exercising remaining Shareholder(s), as applicable, gives notice exercising its right to purchase the Shares of the Withdrawing Shareholder, or
  - (ii) thirty (30) days after the purchase price for the subject Shares is determined in accordance with Article XV.

- (b) Unless otherwise agreed by the Withdrawing Shareholder or their legal representative, as applicable, and the Corporation or the subject, exercising remaining Shareholders, whomever is purchasing the Shares (and Shareholder Indebtedness) of the Withdrawing Shareholder, (the "**Purchaser**"), the purchase price to be paid for the Shares (and, as and to the extent applicable, Shareholder Indebtedness) of the Withdrawing Shareholder (in this Article XIV, the "**Purchase Price**") shall be paid by the Purchaser over a period of up to one (1) year from the Closing Date, as determined by the Purchaser in their sole and absolute discretion, and, in such regard, the Purchaser shall issue and deliver to the Withdrawing Shareholder, or their legal representative, as applicable, an interest-bearing promissory note in the amount of the Purchase Price, interest on the outstanding balance of the Purchase Price from time to time shall accrue at a rate of 5% per annum, compounded and calculated monthly. Notwithstanding the foregoing, the Purchaser may at any time, in their sole and absolute discretion and without penalty, pre-pay all amounts payable by it to the Withdrawing Shareholder or their legal representative, as applicable.

#### **14.7 Satisfaction of Existing Indebtedness**

If, at the Closing Date, the Withdrawing Shareholder is indebted to the Corporation, the Purchaser shall have the right to satisfy that indebtedness on behalf of the Withdrawing Shareholder by remitting to the Corporation, on behalf of the Withdrawing Shareholder, that portion of the Purchase Price that is equal to the subject indebtedness. That remittance by the Purchaser shall constitute payment in full by the Purchaser to the Withdrawing Shareholder of the amount so remitted.

#### **14.8 Failure to Close by Withdrawing Shareholder**

If, on the Closing Date, the Withdrawing Shareholder, or their legal representative, as applicable, does not complete the sale of the subject Shares for any reason, the Corporation shall have the right separately upon such default (without prejudice to any other rights which the Purchaser may have), upon deposit of the Purchase Price (less or plus any adjustment herein permitted) to the credit of the Withdrawing Shareholder in any chartered bank in the City of Calgary, or to the solicitors for the Corporation on behalf of and in the name of the Withdrawing Shareholder, such deposit to constitute valid and effective payment of the Purchase Price to the Withdrawing Shareholder, to complete the subject transaction and to obtain delivery of all share certificates to which the Purchaser is then entitled and the subject Withdrawing Shareholder hereby irrevocably constitutes the Corporation, as applicable, its true and lawful attorney with the power to execute and deliver all documents and instruments and take all steps in each case to give effect to such acceptance, to establish a binding contract of purchase and sale between them and the Purchaser, and to complete the purchase and sale contemplated thereunder. Such appointment, being coupled with an interest, is irrevocable by each Shareholder and shall not be revoked by the insolvency, bankruptcy, death, incapacity, dissolution, liquidation or other termination of the existence of the subject Shareholder.

#### **14.9 Positions as Director and/or Officer**

A Withdrawing Shareholder, or their legal representative, as applicable, shall, or to the extent applicable, shall cause its Principal(s) to, as applicable, tender to the Corporation forthwith upon the subject Withdrawal Event their resignation as Director and/or officer of the Corporation.

## ARTICLE XV - VALUATION

### 15.1 Determination

Where provided in this Agreement that the fair market value of certain Shares (in this Article XV, in each case, the "**Subject Shares**") shall be determined in accordance with this Article XV, the value of each such Subject Share shall be:

- (a) for the purposes of Article XIV, equal to the price at which Shares were offered to Persons as part of the then most recent share offering, subject to Section 15.2(a); and
- (b) for the purposes of Article XIII, as determined in accordance with Section 15.2(b).

### 15.2 Valuation

With respect to:

- (a) Section 15.1(a), in the event that, as at the date that a determination of the fair market value of Subject Shares is being sought (the "**Determination Date**"), a share offering has not been made within the one hundred eighty (180) days preceding the Determination Date, then the Corporation or the subject Withdrawing Shareholder, or their legal representative, as applicable, may, by written request delivered to the other relevant party no later than twenty (20) days following the date upon which the date the subject Withdrawal Event was determined in accordance with Section 14.1; and
- (b) Section 15.1(b), the determination of Put/Call FMV in the event that Western and Newco have not agreed to the Put/Call FMV within ten (10) days of the Call Notice or Put Notice, as applicable, Western or Newco may, by written request delivered to the other relevant party no later than twenty (20) days following the date upon which the subject Call Notice or Put Notice was delivered;

request that the fair market value of the Subject Shares be determined by valuation, such valuation to be completed by an independent chartered business valuator ("**CBV**") selected by the Board and, in such regard:

- (c) upon, with respect to Article XIII, Western or Newco, or, with respect to Article XIV, the Corporation or the subject Withdrawing Shareholder, or their legal representative, as applicable, making a written request for a valuation as aforesaid, the Board shall, without undue delay, select and direct a CBV to complete a valuation of the Subject Shares at the expense of, with respect to Article XIII, Western and Newco, in equal shares, or, with respect to Article XIV, the Withdrawing Shareholder; and
- (d) subject to Section 15.3, the determination of the CBV of the value of the Subject Shares (each a "**CBV Determination**") shall be final and binding;

provided however that, in relation to Article XIV, if a CBV Determination was made within the one hundred eighty (180) days preceding the subject Determination Date, provided such CBV Determination pertained to Shares of the same or similar class as the Subject Shares, the fair market value of each Subject Share shall be deemed to be equal to the fair market value of each Share which was the subject of such CBV Determination and, if the event that there was more than one CBV Determination within the one hundred eighty (180) days preceding the subject Determination Date, then the then most recent CBV Determination.

### 15.3 Valuation Review

In relation to Article XIII, upon an initial CBV Determination being obtained in accordance with

Section 15.2 (the "**Initial CBV Determination**"):

- (a) either Western or Newco (an "**Objecting Party**") may provide written notice to the other (the "**Non-Objecting Party**") of its objection to the Initial CBV Determination (the "**Objection Notice**") within twenty (20) Business Days of receipt of the Initial CBV Determination.
- (b) In the event that Western or Newco has delivered an Objection Notice to the other in accordance with Section 15.3(a), the Objecting Party shall, without undue delay, select and direct another independent CBV, which independent CBV is acceptable to the Non-Objecting Party, acting reasonably, to complete a second valuation of the Subject Shares at the expense of the Objecting Party and the resulting determination shall be the "**Second CBV Determination**" and the value of the Subject Shares hereunder shall be the average of the Initial CBV Determination and the Second CBV Determination and shall be final and binding.
- (c) In the event that Western and Newco are unable to agree on an independent CBV in respect of the Second CBV Determination, the subject independent CBV shall be selected by the Board.

#### **15.4 Cooperation with Valuers**

The Corporation shall cooperate fully, as and to the extent reasonably requested by a CBV, in connection with the valuation of Subject Shares. Such cooperation shall include the provision of records and information which are relevant to conducting such valuation.

#### **15.5 Costs and Expenses of Valuator**

The fees and expenses of a CBV in relation to a valuation contemplated by this Article XV shall be borne by:

- (a) with respect to Article XIII, Western and Newco, in equal shares in respect of an Initial CBV Determination or the Objecting Party, in respect of a Second CBV Determination; or
  - (b) with respect to Article XIV, the subject Withdrawing Shareholder;
- as applicable.

### **ARTICLE XVI - GENERAL PROVISIONS TO NON-COMPETITION AND NON-SOLICITATION ARTICLES**

#### **16.1 Existing Non-Competition Covenants**

It is acknowledged that Don is bound by restrictive covenants set forth in the Don Employment Agreement, and the restrictive covenants set forth in Article XVII and Article XVIII constitute separate and independent obligations of Don from the obligations under the Don Employment Agreement and the rights of the Corporation under this Agreement are in addition to, and not in substitution for, any rights of the Corporation under the Don Employment Agreement. The Corporation is not bound to exercise any right or remedy, and the exercise of rights and remedies under this Agreement is without prejudice to the rights of the Corporation in respect of the Don Employment Agreement.

#### **16.2 General Exceptions**

Nothing in Article XVII or Article XVIII shall:

- (a) apply to the ownership by a Shareholder or its Principal(s) of fewer than 5% of the outstanding securities of an entity offering its securities to the public and having its

securities listed on a stock exchange;

- (b) apply to the ownership by a Shareholder or its Principal(s) of an interest in a Person which, at the time of the initial acquisition of an interest therein by such Shareholder or Principal(s), was not in direct competition with the business of the Corporation, provided that the Shareholder or Principal(s) do not control or influence the subsequent decision to compete with the business of the Corporation; or
- (c) restrict a Shareholder, or the Principal(s) thereof, from acquiring an interest in a Person as a result of a merger, sale or other disposition of an interest in a business that is not in direct competition with the business of the Corporation.

### **16.3 Obligations Not Exhaustive**

Each Party acknowledges that the obligations contained in Article XVII and Article XVIII are not in substitution for any obligations which that Party may now or hereafter owe to another Party and which exist apart from Article XVII and Article XVIII and do not replace any rights of any Party with respect to those obligations.

### **16.4 Acknowledgement of Principals**

Each closely-held Shareholder that is subject to Article XVII and Article XVIII and is not a natural person shall cause its Principal(s) to acknowledge, in writing, to the other Shareholders that such Principal is bound by and agree to comply with the restrictive covenants set forth in Article XVII and Article XVIII, as if such Principal was a Shareholder under this Agreement.

### **16.5 Remedies**

Each Party specifically acknowledges that a breach or threatened breach by such Party of any of the provisions of Article XVII and Article XVIII would cause the other Parties irreparable harm not compensable in damages alone. Each Party further acknowledges that it is essential to the effective enforcement of this Agreement that in addition to any other remedies to which any other Party may be entitled, any other Party shall be entitled to seek and obtain, in a summary manner, from any court having jurisdiction under Section 19.7 interim, interlocutory and permanent injunctive relief without showing irreparable harm, specific performance and other equitable remedies.

### **16.6 Remedies Cumulative**

The rights and remedies of the Parties under Article XVII and Article XVIII are cumulative and in addition to and not in substitution of any rights or remedies provided in law.

### **16.7 Terms Cascading**

In the event that the provisions of Article XVII and Article XVIII are deemed in legal proceedings or otherwise by a court to exceed the time, geographic or scope limitations permitted by Applicable Law, then such provisions shall be, to the extent permitted by Applicable Law, reformed to the maximum time, geographic or scope limitations, as the case may be, permitted by Applicable Law.

## **ARTICLE XVII - NON-COMPETITION**

### **17.1 Non-Competition**

Subject to Sections 16.1 and 16.2, each Shareholder other than ATB shall not, for so long as they are a Shareholder and for a period of three (3) years commencing on the date they are no longer a Shareholder (in each case, the subject "End Date") (the "Time Period"), shall not, directly or

indirectly, whether through a corporation or otherwise, individually or in partnership, jointly or in conjunction with any person, firm, association, syndicate, corporation or any other entity, whether as principal, agent, employee, employer, consultant, shareholder, investor, creditor, licensor, licensee, independent contractor, franchisor, distributor, supplier, trustee, director, officer or otherwise, carry on or be engaged in or have any financial or other interests in, or be otherwise commercially involved in any endeavor, activity or business which is substantially the same as or is in competition with, in whole or in part, the business of the Corporation within 500 km of Edmonton, Kelowna or Calgary, and well as such other locals where the Corporation has operations as at the End Date. For the purpose of this Section 17.1, "**business**" shall mean the business of the production of dairy products, including butter, ice cream and soft serve mixes, and activities ancillary thereto.

#### **ARTICLE XVIII - NON-SOLICITATION**

##### **18.1 Non-Solicitation**

Subject to Sections 16.1 and 16.2, each Shareholder other than ATB shall not, for the subject Time Period, either directly or indirectly:

- (a) solicit or attempt to solicit, induce, encourage or facilitate any employees, consultants or other service providers of the Corporation who were employees, consultants or other service providers of the Corporation as at the End Date to leave the employment of, or consulting or other service provider relationship with, the Corporation;
- (b) solicit or attempt to solicit, induce, encourage or facilitate any customer of the Corporation to become the customer of any business or enterprise whose products and/or services compete with the products and/or services of the Corporation; or
- (c) interfere or attempt to interfere in an adverse manner with the business carried on by the Corporation (being the business of the production of dairy products, including butter, ice cream and soft serve mixes, and activities ancillary thereto) or persuade or attempt to persuade any customer or prospective customer, employee, consultant or supplier of the Corporation to discontinue or alter in an adverse manner, such persons or entities relationship with the Corporation.

The restrictions in this Section 18.1 will only apply to the extent the Shareholder actually knows or should reasonably have known that a person or entity alleged to have been solicited, induced, or encouraged by the Shareholder was an employee, consultant, service provider, or customer of the Corporation.

#### **ARTICLE XIX - GENERAL PROVISIONS**

##### **19.1 Reporting to Shareholders**

The Corporation shall, unless otherwise waived, provide to each Shareholder:

- (a) within one hundred twenty (120) days of each fiscal year end, annual audited financial statements for the Corporation in respect of such then, most recently completed, fiscal year end and prepared in accordance with International Financial Reporting Standards, which are in effect from time to time in Canada, as published in Part I of the Handbook of the Chartered Professional Accountants of Canada; and
- (b) regularly, but no less than often than every three (3) months, operational and financial updates on the operations of the Corporation, the contents and format of such updates

to be as determined by the Board from time to time.

## 19.2 Further Acts

Each Party covenants and agrees that upon the reasonable request of another Party, such Party shall and will make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, instruments and assurances whatsoever, as may be deemed necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement or for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

## 19.3 Notices

- (a) Any notice, writing, direction, communication, document or other instrument required or permitted to be given under the provisions of this Agreement (in this Section 19.3, each a "**Notice**") shall be in writing and delivered to the email address indicated below for the relevant Parties:

In the case of the **Corporation**:

Foothills Creamery Group Ltd.  
c/o ATB Financial  
Suite 600, 444 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 0X8  
Attention: Blake McDonald  
Email: [REDACTED]

In the case of a **Shareholder**, to such email address set forth opposite their name in Schedule "B" hereto, as same may be amended or supplemented from time to time, or, with respect to Section 8.4, as set forth in a participation agreement delivered to the Corporation.

- (b) Any Notice shall be deemed to have been given or received on the day on which the recipient, either by return email or a notice delivered by another method in accordance with this Section 19.3(b), acknowledges having received the subject email, with an automatic "read receipt" not constituting acknowledgment of an email for the purposes of this Section 19.3(b).
- (c) The Parties may notify each other of a change of email address at any time in writing.

## 19.4 Violation of Law

Notwithstanding any of the terms of this Agreement, the Corporation shall not be obligated to take any action which would constitute a violation of any Applicable Law, or if such action would render the Corporation insolvent.

## 19.5 Amendments

This Agreement may not be amended without the written agreement of the Corporation and all of the then current Shareholders.

## 19.6 Execution and Counterpart

This Agreement may be executed in two or more counterparts, and may be delivered originally, by facsimile or by Portable Document Format (PDF) or other electronic means and each such

original, facsimile copy, or PDF when so executed shall be deemed to be an original and each of which taken together shall constitute one and the same agreement.

**19.7 Exclusive Jurisdiction and Applicable Law**

This Agreement shall be interpreted in accordance with the laws of the Province of Alberta. Each of the Parties hereto irrevocably attorns to the jurisdiction of the Courts of the Province of Alberta.

**19.8 Severability**

Any provision of this Agreement which is or is rendered or found to be invalid or unenforceable may be severed from this Agreement, and such severance shall not affect the validity or enforceability of the remaining terms, conditions and provisions of this Agreement.

**19.9 Survival**

Notwithstanding the termination of this Agreement, the provisions of Sections 19.3, 19.7 and 19.10, and any other provisions hereof which, by their terms, are intended to survive termination of this Agreement, shall survive such termination and be continuing.

**19.10 Enurement**

This Agreement shall enure to the benefit of and be binding upon the Parties hereto, together with their respective heirs, executors, administrators, successors, assigns and legal representatives.

**19.11 Time**

Time shall be of the essence in this Agreement.

**19.12 Entire Agreement**

Subject to Section 16.1, this Agreement constitutes the entire agreement between the Parties with respect to all of the matters referred to herein and its execution has not been induced by, nor do any of the Parties rely upon or regard as material, any representations or writings whatsoever not incorporated herein and made a part hereof.

**19.13 Independent Legal Advice**

In respect of this Agreement and their respective rights and obligations hereunder, each Party hereby expressly acknowledges and confirms that, prior to executing this Agreement, they either obtained independent legal advice or waived their opportunity to do so.

*[Execution Page Follows]*

**IN WITNESS WHEREOF** each of the individual Parties have affixed their signatures and their seals and the corporate Parties have affixed their seals by its proper officers effective as at the day and year first written above.

**FOOTHILLS CREAMERY GROUP LTD.**

Per: (signed) "Blake McDonald"  
Name: Blake McDonald  
Title: Director

**THE WESTERN INVESTMENT COMPANY OF  
CANADA LIMITED**

Per: (signed) "Scott Tannas"  
Name: Scott Tannas  
Title: President

**ATB FINANCIAL**

Per: (signed) "Blake McDonald"  
Name: Blake McDonald  
Title:

**2099859 ALBERTA LTD.**

Per: (signed) "Donald Bayrack"  
Name: Donald Bayrack  
Title: President

*Signature Page to Unanimous Shareholders Agreement (Foothills Creamery Group Ltd.)*

## SCHEDULE "A"

to the Unanimous Shareholders Agreement dated for reference the 28<sup>th</sup> day of February, 2018 among Foothills Creamery Group Ltd., The Western Investment Company of Canada Limited, ATB Financial, 2099859 Alberta Ltd. and any other Person who becomes a party thereto from time to time

---

### PARTICIPATION AGREEMENT

**THIS AGREEMENT** dated the [●] day of [●], 20[●], by and between Foothills Creamery Group Ltd. (the "**Corporation**") and [NAME OF NEW SHAREHOLDER] [of/having a principal place of business at] [RESIDENTIAL ADDRESS/OR PRINCIPAL PLACE OF BUSINESS] (the "**New Shareholder**").

All capitalized terms herein have the meanings ascribed thereto in the Unanimous Shareholders Agreement dated effective the 28<sup>th</sup> day of February, 2018 among the Corporation, the Shareholders as at the date same was executed and any other Person who has become a party thereto from time to time, as amended from time to time, (the "**Agreement**").

**WHEREAS** the New Shareholder wishes to acquire Shares and become a Shareholder;

**[AND WHEREAS the Principal(s) of the New Shareholder are [●];]**

**AND WHEREAS** Section 8.4 of the Agreement requires each new Shareholder of the Corporation to become a party to the Agreement;

NOW THEREFORE in consideration of [the Corporation's issuance of the Shares to the New Shareholder/the transfer and sale of Shares to the New Shareholder by [TRANSFEROR] and the acceptance and recognition thereof by the Corporation], and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Status of Shareholder**

As the New Shareholder has acquired Shares, the New Shareholder agrees and acknowledges that [he/she/it] is a Shareholder, as such term is defined in the Agreement, and has all the general rights, privileges, restrictions and obligations of a Shareholder under the Agreement.

2. **Agreement to be Bound by the Agreement**

The New Shareholder agrees to observe and be bound by all of the terms, conditions and provisions of the Agreement and hereby agrees to become a party to the Agreement.

3. **Address for Notice**

With respect to Section 19.3 of the Agreement, the New Shareholder's email address for notices is: [●].

4. **General**

To the extent applicable, the provisions of Article XVI of the Agreement apply to this Participation Agreement *mutatis mutandis*.

**IN WITNESS WHEREOF** the Parties have executed this Participation Agreement effective as of the date first above written.

**FOOTHILLS CREAMERY GROUP LTD.**

**[NEW CORPORATE SHAREHOLDER]**

Per:

\_\_\_\_\_  
Name:

Title:

Per:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**[NEW INDIVIDUAL SHAREHOLDER]**

**SCHEDULE "B"**

to the Unanimous Shareholders Agreement dated for reference the 28<sup>th</sup> day of February, 2018 among Foothills Creamery Group Ltd., The Western Investment Company of Canada Limited, ATB Financial, 2099859 Alberta Ltd. and any other Person who becomes a party thereto from time to time

---

**SHAREHOLDER ADDRESSES**

<b>Shareholder</b>	<b>Address</b>
Western	1010 24 <sup>th</sup> Street SE, High River, Alberta T1V 2A7
ATB	Suite 600, 444 7 <sup>th</sup> Avenue SW, Calgary, Alberta T2P 0X8
Newco	300, 2912 Memorial Drive SE, Calgary, Alberta T2A 6R1