OENOVIVA

**NOTE TO RECEIVERS.** THIS FAX IS SENT IN THREE PARTS FOR TRANSMISSION:
Friday, 20 December 2024

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JUDICIARY

PART 2

TO: HIGH COURT OF HONG KONG
THE JUDICIAL CLERK TO MASTER J WONG,
ATTN: MS. CECILIA LAU, AND
THE JUCIAL CLERK TO MASTER J. HUI
ATTN: E. TO
ROOM G31, G/F, HIGH COURT BUILDING,
38 QUEENSWAY, HONG KONG
EMAIL: ENQUIRY@JUDICIARY.HK
FAX; +852-2524-2034

CC: THE HIGH COURT OF AUSTRALIA
(LIQUIDATOR AND MANAGING CONTROLLER APPOINTED),
ATTN: MR STEPHEN GAGELER, ACTING CHIEF JUSTICE,
50 PARKES PLACE, PARKES,
AUSTRALIAN CAPITAL TERRITORY 2600
EMAIL: REGISTRY@HCOURT.GOV.AU.

Cc,
THE ANDREW GARRETT FAMILY IRREVICABLE LIVING TRUST ENTITIES
LEVEL 29, OLAYA TOWERS TOWER B, INTERSECTION OF OLAYA STREET & MOHAMMED BIN ABDUL-AZIZ STREET, RIYADH 11523.
Attn: DAE HUNG SO, CLOBAL PRESIDENT, JOINT CEO, EMAIL oenovivawashingtoninc@gmail.com
Attn: JENNE MARIE ESCH, GLOBAL COO AND JOINT CEO, EMAIL: jmesch@pm.me
Attn: PETER D KERIN, GLOBAL CONSIGLIERI: pk@sabas.net.au
Attn: PAUL DEVERALL RIGBY, GLOBAL CFO, EMAIL: cfo.global.bwff@gmail.com

AMG 8476: RE HCMP-1855-2022: IN THE MATTER OF THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED), ENFORCEMENT PROCEEDINGS, "*THE MAIN PROCEEDINGS*".

DEAR JUDICIAL CLERKS TO THE HONOURABLE MASTERS & MR. GAGELER,

This Communique is PART 2 being the Exhibits marked as Annexures 3 and 4.

I, Licensor, swear this communique and its annexures to be true and correct Statements of Fact under penalty of perjury, except where otherwise deposed, pursuant to the operation of s61 of *the Commonwealth of Australia Constitution Act* 1900 (UK) as my undisputed personal property pursuant to Notice of Crystallisation of Personal Property Security Interests / Notice of Seizure of Collateral/ Notice of Retention of Collateral / Notice of Appointment as Managing Controller to Windsor Family Office dated 1st June 2019 served on Her Majesty Queen Elizabeth II (Licensee) on the 3rd June 2019 (THE FIRST ENACTMENT).

I act for King Chares III, Licensee.

ADELAIDE, Friday, December 20, 2024.

Kind Regards

Signature: ______________________________

Name / Title: ANDREW MORTON GARRETT: Global Chairman/ Joint Trustee of the Boards of Trustees of the Andrew Garrett Family Trust No 4 trading as OenoViva Capital Resources (Global) and the Better World Future Fund (Global), The Crown Attorney General to Commonwealth of Nations and the United Nations, Managing Controller and Liquidator appointed to the Crown (Liquidator and Managing Controller Appointed), the Commonwealth of Nations (Liquidator and Managing Controller Appointed), the British Empire Property Trusts (Liquidator and Managing Controller Appointed), the Queen 's Dominions Property Trusts (Liquidator and Managing Controller Appointed), the United Nations (Liquidator and Managing Controller Appointed), (Liquidator and Managing Controller Appointed), the United States of America (Liquidator and Managing Controller Appointed), and the Cestuie Que Vie Trust (Liquidator and Managing Controller Appointed).

Witnessed

……………………………………………………

Dae Hung So, Power of Attorney, Global President/ Joint Global CEO.
Sole Director and Shareholder OenoViva (Washington) Inc., Joint Trustee.

# SHARE SALE AGREEMENT

**BETWEEN:**

**SUNTORY (AUST) PTY LTD**
**ACN 001 628 780**

**Vendor**

**AND**

**ANDREW MORTON GARRETT**

**Purchaser**

PHILLIPS FOX
BARRISTERS SOLICITORS

19-29 Young Street Adelaide, South Australia 5000 Australia
Tel 61-8 210 5811 Fax 61-8 231 0014 Diskfax 61-8 210 5860 DX 511 ADELAIDE
Reference: Jeremy V. [illegible]/SUNT6041-002/MTM
Telephone: (08) 210 5857

**THIS AGREEMENT** is made the 27th day of July 1995

**BETWEEN:**

**SUNTORY (AUST) PTY LTD ACN 001 628 780** the registered office of which is at 22 Mandible Street Alexandria in the State of New South Wales 2015 ("Vendor")

**AND:**

**ANDREW MORTON GARRETT** of 9 Woodley Road Glen Osmond in the State of South Australia 5064 and/or his nominee appointed in writing acceptable to the Vendor ("Purchaser")

**INTRODUCTION:**

A. The Wine Company Pty Ltd ACN 008 018 602 is a company incorporated in the State of South Australia the registered office of which is at Kangarilla Road McLaren Vale South Australia 5171 ("Company").

B. The Vendor is the registered holder and beneficial owner of 119,600 A Class shares, 598,002 B Class shares and 1,500,000 C Class shares of $1.00 par value in the capital of the Company.

C. The Vendor has agreed to sell the Shares to the Purchaser who has agreed to purchase the same subject to and upon the terms and conditions contained in this Agreement.

**OPERATIVE PART:**

## 1. INTRODUCTION

The matters referred to in the Introduction are true and correct in every material particular and shall form part of this Agreement.

## 2. DEFINITIONS AND INTERPRETATION

In this Agreement and in any document made pursuant to the provisions of this Agreement unless there be something in the subject or context inconsistent therewith:

### 2.1 Definitions

2.1.1 "Accounts Receivable" means all amounts owing to the Company on the Settlement Date by any person other than Gomel or any person lent moneys under the loan agreements specified in clause 15.2;

2.1.2 "bank cheque" means a cheque drawn by a bank (as defined in the Banking Act 1959 of the Commonwealth of Australia or an Act of a State or Territory of Australia) upon itself;

2.1.3 "Business Day" means a day other than a Saturday, Sunday or a public holiday in New South Wales or South Australia;

2.1.4 "Business Name" means the business name "McLarens on the Lake" Registered No. 0244787R registered in the name of Gomel;

2.1.5 "Claim" against any person means any claim, action, proceeding, demand, cost, damage, loss, expense or liability whatever incurred or suffered by, or brought or made or recovered against, the person, however arising (whether or not presently ascertained, immediate, future or contingent);

2.1.6 " Company" means The Wine Company Pty Ltd ACN 008 018 602;

2.1.7 "Document" includes any paper or other material on which there is writing or printing or on which there are marks symbols or perforations having a meaning for persons qualified to interpret them and a disc or tape or other article from which sounds images or messages are capable of being reproduced;

2.1.8 "Encumbrance" means any mortgage charge (whether fixed or floating) guarantee pledge lien title retention or conditional sale agreement bill of sale lease hire or hire purchase agreement option restriction as to transfer use or possession easement subordination to any right of any person, caveat, equity, trust power and any other encumbrance or security interest whatsoever and any other adverse right or interest of any nature and any agreement to create any of them or allow any of them to exist;

2.1.9 "Gomel" means Gomel Pty. Ltd. ACN 008 167 173;

2.1.10 "Interest" means the sum calculated by applying the rate of 8% per annum to the amount of $1,800,000.00 for the period 1 April 1995 to Settlement less the sum calculated by applying the rate of 8% per annum to any payment made in reduction of the Thomson Liability for the period from the day of any such payment to Settlement;

2.1.11 "Land" means all of the land owned by the Company at Kangarilla Road McLaren Vale South Australia 5171 and known as "McLarens on the Lake" being the whole of the land comprised in Certificate of Title Register Book Volume 5142 Folio 697 including all buildings, fixtures, and other improvements thereon;

2.1.12 "Land Contract" means a contract for the sale of the Land to M.O.L. as trustee of the M.O.L. Unit Trust or its nominee in terms of the draft contract set out in the First Schedule;

2.1.13 "Mildara Blass Agreements" means the Agreement for Purchase of Business dated 19 January 1995 between the Company, Nasser Feedlot Pty Ltd and Wypanda Pty Ltd as vendors, Mildara Blass Limited as purchaser and the Vendor as covenantor ("Mildara Blass Agreement") and a Trade Mark Assignment Agreement dated 19 January 1995 between the Company as assignor, Mildara Blass Limited as assignee and the Vendor as covenantor ("Trade Mark Agreement") copies of which are attached as the Seventh Schedule;

2.1.14 "M.O.L." means M.O.L. Pty Ltd ACN 064 792 221;

2.1.15 "Plant & Equipment" means all the plant and equipment owned by Gomel including the items set out in the Second Schedule;

2.1.16 "Purchase Price" means the amount set forth in Clause 4;

2.1.17 "Settlement" means the completion of the Vendor's and Purchaser's obligations under this Agreement on the Settlement Date;

2.1.18 "Settlement Date" means 26 July 1995 or such other day as the parties may agree;

2.1.19 "Shares" means all the shares in the capital of the Company registered in the name of the Vendor, less one A class share;

2.1.20 "Subsidiaries" means Justera Pty Ltd ACN 008 204 019, Gomel Pty Ltd ACN 008 167 173, Wypanda Pty Ltd ACN 008 137 291, Detling Pty Ltd ACN 008 163 497 and Nasser Feedlot Pty Ltd ACN 008 111 760;

2.1.21 "Tax" means all forms of direct and indirect taxation (including penalties) levied by any government or governmental or statutory authority in any country, including (without limitation) income tax, capital gains tax, payroll tax, sales tax, group tax, land tax, fringe benefits tax, superannuation guarantee charge, training guarantee levy, customs duty, stamp duty, council rates, water rates, electricity charges, licence fees, wine grapes levies and local authority charges;

2.1.22 "Thomson Liability" means the Company's liability to pay $392,014.93 to AN & EW Thomson or Thomson Fruit Growers Pty Ltd for the supply of grapes pursuant to the contract attached as the Third Schedule;

2.1.23 "Trade Mark" means the Trade Mark Registered No. A534257 in the name of the Company being the words "McLarens on the Lake" with graphic registered in class 33.

2.2 **Interpretation**

2.2.1 Words importing any gender shall include all other genders; words importing natural persons shall include partnerships corporations and associations and vice versa; words importing the singular number shall include the plural and vice versa; headings are for convenience and shall not affect the interpretation of this Agreement;

2.2.2 An expression used or defined in the Corporations Law has the same meaning in this Agreement unless specifically defined in this Agreement;

2.2.3 A reference to a statute or to any provision thereof includes a reference to that statute or provision as from time to time amended consolidated or re-enacted and includes also any past statute or provision which such statute or provision has directly or indirectly replaced;

2.2.4 Reference to a Clause or Schedule is to a clause or schedule (as the case may be) of or to this Agreement;

2.2.5 In this Agreement where a word or phrase is given a particular meaning other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

2.2.6 If the day on or by which any act matter or thing is to be done is not a Business Day such act matter or thing shall be done on the next succeeding day which is a Business Day;

2.2.7 For convenience words and phrases defined in this Agreement are indicated by capital letters but the absence of a capital letter shall not alone imply that a word or phrase is being used with a meaning different from that given by a definition;

2.2.8 No clause, subclause or paragraph of this Agreement shall limit the operation of any other clause, subclause or paragraph of this Agreement unless expressly stated to do so.

## 3. AGREEMENT TO SELL AND PURCHASE

The Vendor agrees to sell to the Purchaser who agrees to purchase all the Vendor's right title and interest in and to the Shares at and for the Purchase Price calculated in accordance with Clause 4 subject to and upon the terms and conditions contained in this Agreement.

## 4. PURCHASE PRICE

The Purchase Price payable by the Purchaser for the Shares shall be the net tangible assets of the Company on the Settlement Date as determined by the auditors of the Company in accordance with generally accepted accounting principles consistently applied excluding any investments by the Company in any of the Subsidiaries and excluding any amounts owing to the Company by Gomel and excluding any amounts owing by the Company to any of the Subsidiaries less the amount of $1,800,000.00 and less the amount of Interest.

## 5. PAYMENT OF PURCHASE PRICE

The Purchase Price shall be paid in full by the Purchaser at settlement to the Vendor by cheque .

## 6. TITLE

Title to and benefit of the Shares shall pass to the Purchaser at Settlement.

## 7. SETTLEMENT

Settlement shall take place on the Settlement Date at the Adelaide offices of Phillips Fox.

8. **SETTLEMENT PROCEDURE**

The Vendor shall, on or before the Settlement Date:

8.1 **Share Transfers**

Deliver to the Purchaser, duly executed transfers of the Shares in a form permitted by the Articles of Association of the Company in favour of the Purchaser accompanied by the Certificate for the Shares and any other document which may be required to vest the full beneficial ownership of the Shares in the Purchaser;

8.2 **Records**

Deliver to the Company, Gomel or the Purchaser, to the extent that the following is in the possession and control of by the Vendor the Certificate of Incorporation an up-to-date copy of the Memorandum and Articles of Association the Register of Members Register of Directors' Shareholdings Register of Directors Principal Executive Officers and Secretaries Register of Charges and any other register required to be kept by the Company and Gomel the Common Seal of the Company and Gomel the Minute Books of Shareholders and Directors Meetings all securities licences and certificates and documents of title held by the Company and Gomel or on their behalf;

8.3 **Other Documents**

Deliver to the Company, Gomel or the Purchaser, to the extent that the following is in the possession and control of the Vendor and are owned by the Company all documents relating to the affairs business or property of the Company and Gomel including without limiting the generality of the foregoing the trading and financial records the books of account cheque butts bank statements deposit books cheque books and statutory returns and notices of assessment (such delivery to be either at or after Settlement as requested by the Purchaser);

8.4 **Meeting of Directors**

Before the resignations of the directors of the Company and Gomel take effect, cause a meeting of directors of the Company and Gomel to be duly held and procure at such meeting that the directors:

8.4.1 Approve the transfers of the Shares to the Purchaser and subject to the payment of any necessary stamp duty by the Purchaser direct that the requisite entries be made in the register of members of the Company to that effect together with the cancellation of the existing certificates for the Shares and the issue of new certificates for the Shares in the name of the Purchaser;

8.4.2 Revoke all existing authorities for the operation of the bank accounts of the Company and Gomel and grant new authorities to the Purchaser or its representatives as directed by the Purchaser;

8.4.3 Appoint such persons as are nominated by the Purchaser to the boards of directors of the Company and Gomel and as the secretaries and public officers of the Company and Gomel and accept the resignations referred to in clause 8.4.4; and

8.4.4 Produce written resignations of each director, secretary and public officer of the Company and Gomel (other than Alexander John Paior and Michael Cowan Garrett as director and secretary of the Company respectively and Michael Cowan Garrett as secretary of Gomel and any other officer of either company which the Purchaser advises the Vendor that it does not require), each containing an acknowledgment that the relevant person is not entitled to any compensation for loss of office or any consideration for or in connection with their services or resignation from office.

8.5 **Certificate of Auditors**

Deliver to the Purchaser a certificate of the auditors of the Company stating what the net tangible assets of the Company are at 5:00pm on the business day immediately before the Settlement Date (determined in accordance with generally accepted accounting principles consistently applied) which specifies each tangible asset and each tangible liability and their respective values.

8.6 **Produce Licences**

Deliver to the Purchaser the McLarens on the Lake general facility licence granted to Gomel.

8.7 **Release of Mortgage**

Deliver to the Purchaser an original executed deed of release of the mortgage over the shares held by Andrew Morton

Garrett and Averil Gay Garrett ("the Garretts") in the Company, constituted under a deed dated 29 May 1990 between the Vendor and the Garretts, in a form sufficient to extinguish the mortgage and all rights relating to it, and an original copy of the deed of mortgage.

8.8 **McLarens on the Lake Intellectual Property**

Deliver to the Purchaser the original certificate of registration for the Trade Mark and of the Business Name.

## 9. WARRANTIES

As part of the terms of the sale of the Shares the Vendor warrants to the Purchaser that:

9.1 **Shares Sold**

The Shares have been duly allotted and are fully paid and the Vendor is the absolute legal and beneficial owner of the same and that subject to clause 17 has full right and power to sell and transfer or cause the sale and transfer of the Shares to the Purchaser;

9.2 **New Shares**

Neither the Company nor Gomel are under any obligation actual or prospective to allot any shares whether as a result of the exercise of an option, conversion of a convertible right or otherwise;

9.3 **Shares Unencumbered**

Subject to clause 17 the Shares shall be sold free from all Encumbrances;

9.4 **Liabilities**

At Settlement neither the Company nor Gomel will have any actual or contingent liability whatsoever other than:-

9.4.1 the Company's liability to pay the unpaid portion of the Thomson Liability ;

9.4.2 the Company's liability (if any) under clauses 13.2 and 16.2A of the Mildara Blass Agreement and any documents referred to in those clauses;

9.4.3 any amount owing by Gomel to the Company;

9.4.4 the amount of $50,000.00 owing by the Company to the Purchaser in respect of the Purchaser's redundancy entitlement; and

9.4.5 the Company's liability to pay any amounts to Wypanda Pty Ltd and Justere Pty Ltd.

9.5 **Assets**

9.5.1 The Company shall at the Settlement Date have at least the following assets:-

9.5.1.1 a debt owing to it of One Million Dollars ($1,000,000.00) in accordance with the loan agreement set out in the Sixth Schedule;

9.5.1.2 cash on hand of at least the sum of Eight Hundred and Fifty Thousand Dollars ($850,000.00) plus Interest and less any amount paid in respect of the Thomson Liability prior to or on Settlement;

9.5.1.3 a loan to and the whole of the issued capital of Gomel; and

9.5.1.4 the Trade Mark.

9.5.2 The assets of the Company and Gomel at Settlement are not subject to any Encumbrance.

9.6 **Issued Shares**

The Company shall at the Settlement Date have on issue a total of 2,696,004 shares;

9.7 **Total Shares**

The Shares are all of the shares issued by the Company other than those registered in the name of the Garretts or each of them and other than the one (1) A class share retained by the Vendor;

9.8 **Net Tangible Assets**

At Settlement the Company shall have net tangible assets, excluding any investments by the Company in any of the Subsidiaries and excluding any amounts owing to the Company by Gomel and excluding any amounts owing by the Company to any of the Subsidiaries of at least $1.80 million plus Interest less any amount paid in respect of the Thomson

Liability determined in accordance with generally accepted accounting principles consistently applied;

9.9 **Schedule of Assets**

At Settlement, the assets of Gomel shall be at least those listed in the Second Schedule;

9.10 **No Other Subsidiaries**

At Settlement, the Subsidiaries shall be the only subsidiaries of the Company and other than Gomel none of these Subsidiaries will have any assets (other than those referred to in clause 9.4.5) or liabilities or conduct any trading activity;

9.11 **No Powers of Attorney**

Neither the Company nor Gomel have given to any person any power of attorney or other authority to bind the Company or Gomel (express, implied or ostensible) which will be still in effect at Settlement;

9.12 **No Employees**

Neither the Company nor Gomel has any employees;

9.13 **Authorities**

After due enquiry to the best of the Vendor's knowledge and belief the Vendor has full power and authority to enter into and perform the transactions the subject of the Agreement and subject to clause 17 doing so will not result in a breach of any other instrument of any kind;

9.14 **Land Contract**

The Company will not be in breach of any representation, warranty or other provision of the Land Contract;

9.15 **Tax Returns**

All tax returns of the Company and the Subsidiaries are up to date and have been, and for the return for the period 1 October 1994 to the Settlement Date will be within one (1) month after Settlement, correctly prepared and lodged as required by law;

9.16 **Disclosure**

After due enquiry full and true disclosure has been made by the Vendor of all information which in the reasonable opinion of the Vendor is material to the Purchaser, which is within the Vendor's knowledge, concerning the Company and its Subsidiaries and all information that has been disclosed is true and correct in all material respects;

9.17 **Trade Mark and Business Name Warranties**

Subject to the restrictions imposed by clauses 22 and 4 of the Mildara Blass Agreements and excluding Claims made by Cellarmaster Wines Pty Ltd or any of its agents, licensees or assignees:

9.17.1 the Trade Mark is duly registered in accordance with the Trade Marks Act 1955 (Cth) and the Business Name is duly registered in accordance with the Business Names Act 1963 (SA);

9.17.2 the Company owns all right, title and interest in and to the Trade Mark and Gomel owns all right, title and interest in and to the Business Name and no third party has a legal or beneficial interest in or to the right to use the Trade Mark or the Business Name;

9.17.3 the Company is the legal and beneficial owner of the Trade Mark and Gomel is the legal and beneficial owner of the Business Name free and clear of any Encumbrance;

9.17.4 the Trade Mark and the Business Name and the use of either of them does not and will not infringe the intellectual property rights (including business names, trade marks, patents, designs, copyright and rights to confidential information) of any third party;

9.17.5 so far as the Vendor is aware, there has not been an infringement or misuse of the Trade Mark or the Business Name or any other act which may affect their validity or enforceability;

9.17.6 there is no pending or threatened litigation or any infringement or other claims involving the Trade Mark or the Business Name; and

### 9.18 No Profits

At Settlement the Company will not have any profits whether of a capital or revenue nature including without limitation any retained profits other than those profits contained in its profits reserve which will be offset by accumulated losses.

The warranties set out in clause 9 are separate representations and warranties, both as at the date of this Agreement and as at Settlement, except that, where a warranty refers to only one such date, that warranty is given with respect to that date only.

## 10. MILDARA BLASS AGREEMENTS

### 10.1 Purchaser's Acknowledgment

The Purchaser acknowledges that the Company will, after Settlement, be subject to continuing obligations under the Mildara Blass Agreements and in particular but without limiting the generality of the foregoing the restraints in clause 22 of the Mildara Blass Agreement and clause 4 of the Trade Mark Agreement.

### 10.2 Company not to breach Mildara Blass Agreements

10.2.1 The Purchaser agrees with the Vendor that after Settlement he will procure that the Company will not breach any of its obligations under the Mildara Blass Agreements which having arisen prior to Settlement continue after Settlement or which arise after Settlement.

10.2.2 Without limiting any other provision of this Agreement, the Vendor acknowledges and warrants that the Company is not in breach of any of the provisions of the Mildara Blass Agreements at Settlement and has not breached any provision thereof prior to Settlement and that the Company will have no obligations under clauses 4, 12.3, 16.1, 16.2(b), 16.3 and 16.6 of the Mildara Blass Agreement arising before Settlement and continuing after Settlement or arising after Settlement.

10.3 **Indemnity**

10.3.1 The Purchaser will indemnify and keep indemnified the Vendor in respect of any Claim suffered or incurred by the Vendor as a result of the Company not complying with:

10.3.1.1 its obligation under clause 23A of the Mildara Blass Agreement unless the Vendor fails to deliver the work of art referred to in clause 23A of the Mildara Blass Agreement pursuant to the undertaking given in accordance with clause 15.4; and

10.3.1.2 any of its obligations referred to in clause 10.2.1;

excluding the obligations contained in clauses 13.2 and 16.2A of the Mildara Blass Agreement and excluding obligations the subject of clause 10.2.2.

10.3.2 Without limiting clause 10.3.1, the Vendor acknowledges that the indemnity contained in clause 10.3.1 does not extend to a breach of the Mildara Blass Agreement by the Company of any of its obligations under clauses 13.2 and 16.2A of the Mildara Blass Agreement arising from the Vendor's failure to comply with its obligations under clause 10.4 of this Agreement.

10.3.3 Notwithstanding any other provision of this Agreement (except clauses 13.6.1 and 13.8) the Vendor will indemnify and keep indemnified the Purchaser in respect of any Claim suffered or incurred by the Purchaser, the Company or Gomel as a result of the Company not complying with or being in breach of any of the provisions of the Mildara Blass Agreements prior to Settlement, and its obligations under clauses 13.2 and 16.2A of the Mildara Blass Agreement after Settlement.

10.4 **Vendor to pay Company's Liabilities**

The Vendor will pay on behalf of the Company any liability the Company suffers or incurs which is referred to in clause 9.4.2.

## 11. ASSIGNMENT OF ACCOUNTS RECEIVABLE

### 11.1 Assignment

The Purchaser acknowledges that the Company will immediately prior to but subject in all respects to Settlement assign to the Vendor or its nominee all the Accounts Receivable owing to the Company for an amount equivalent to the amount of Accounts Receivable to be specified in a deed in the form set out as the Fourth Schedule ("Debt Assignment") and the Purchaser hereby consents to such assignment and agrees to cause the Company at the request of the Vendor to do all acts and things including without limitation the execution of all such documents as may be reasonably required by the Vendor to give effect to such assignment and collect all such debts in accordance with the Debt Assignment .

### 11.2 Future Receipts

The parties acknowledge and agree that it is their intention that all amounts owing or to become owing to either the Company or the Subsidiaries (whether present, future or contingent) that are not included in the certificate of the auditors prepared under clause 8.5 and were not included in the calculation of the Purchase Price and which relate to the conduct of the Company or the Subsidiaries and their businesses before Settlement are to be assigned to the Vendor and in the event that the Purchaser or the Company becomes aware of any such amount which was not assigned pursuant to the Debt Assignment the Purchaser agrees to cause the Company to pay such amount to the Vendor or to do all acts and things including without limitation the execution of all such documents as may be reasonably required by the Vendor to assign the debt in respect of that amount to the Vendor in either case at all cost to the Vendor (including without limitation stamp duty and Taxes).

### 11.3 Accounts Receivable

In the event that the Company receives payment of any Accounts Receivable the Purchaser agrees to cause the Company to pay such amount to the Vendor within fourteen (14) days from receipt.

## 12. PURCHASER'S INDEMNITY

The Purchaser shall indemnify and keep indemnified the Vendor from and against all Claims against the Vendor with respect to claims made against the Vendor by Eyas Management Services Pty

Ltd as a result of any action taken by the Purchaser or the Company after the Settlement Date relating to any purported termination of any rights of Byas Management Services Pty Ltd under a certain Heads of Agreement dated 14th May 1993 relating to the restaurant premises at Kangarilla Road McLaren Vale and known as "McLarens on the Lake".

## 13. VENDOR'S INDEMNITY

### 13.1 Vendor to Indemnify

The Vendor shall subject to the limitations contained in clauses 13.4, 13.5, 13.6, 13.7 and 13.8 indemnify and keep indemnified separately the Purchaser, M.O.L., the Company and Gomel from and against all Claims against any of them by reason of, directly or indirectly:

13.1.1 any breach of any warranty or other provision of this Agreement or the Land Contract;

13.1.2 the conduct of the Company and the Subsidiaries and their businesses before Settlement and the conduct of those of the Subsidiaries to be deregistered pursuant to clause 16.1 on and after Settlement;

13.1.3 any assessment, re-assessment, amended assessment, default assessment, penalty, fine or other Tax liability or obligation of the Company or Gomel or other imposition whatsoever, made in respect of the conduct of the Company or any Subsidiary or any of their businesses before Settlement or the conduct of those of the Subsidiaries to be deregistered pursuant to clause 16.1 after Settlement;

13.1.4 the failure to maintain the Company's or any Subsidiary's registers or Documents in accordance with the Corporations Law or any other law prior to Settlement;

13.1.5 any transaction between the Company or any Subsidiary and Mildara Blass Limited or any associate of Mildara Blass Limited;

13.1.6 any breach of contract, tort or other act or omission whatsoever on the part of the Company or any Subsidiary prior to Settlement;

13.1.7 the failure of the Vendor to meet its obligations under clause 10.4; or

13.1.8 any Tax which may be incurred by the Purchaser, M.O.L., the Company or Gomel as a result of the performance by the Vendor of its obligations under this clause,

including the amount of all costs and expenses incurred by the Purchaser, M.O.L., the Company or Gomel in contesting or defending any Claim.

13.2 **Payment of Claim**

In the event of any Claim outlined in clause 13.1 occurring, the Vendor will pay to the Purchaser, M.O.L., the Company or Gomel or to the person making the Claim (if any), as directed by the Purchaser, the amount of the Claim, immediately upon written notice being given to the Vendor by the Purchaser of the occurrence of the Claim, provided that the Vendor is satisfied that the Claim has actually occurred.

13.3 **Indemnity may be Sought**

If payment is not made by the Vendor under clause 13.2, the Purchaser, M.O.L., the Company or Gomel may seek indemnification under clause 13.1 in a court of competent jurisdiction.

13.4 **Exclusion from Operation of Indemnity**

The indemnities contained in this clause 13 shall not apply to the liability of the Company to pay the Thomson Liability.

13.5 **Exclusion of pre 29 May 1990 Events**

The indemnities contained in this clause 13 shall not apply to any liability which relates to an event which occurred prior to the 29th day of May 1990 provided that such liability has not been caused substantially or in whole by any action of the Company after the 29th day of May 1990.

13.6 **Limitation of Indemnities**

13.6.1 Subject to clause 13.6.2 the indemnities contained in this Agreement other than clause 13.1.3 shall be limited to Claims of which the Vendor is notified in writing during the period of three (3) years from the date of Settlement;

13.6.2 The indemnity provided in clause 13.1.1 in relation to a breach of clause 2.25 of the Land Contract shall be limited to Claims of which the Vendor is notified in writing during the period of 12 months from the date of Settlement.

13.7 **Exclusion of Indemnities - Eyas Management Services Pty Ltd**

The indemnities contained in this clause 13 shall not apply to Claims made against the Vendor or the Company by Eyas Management Service Pty Ltd as a result of any action taken by the Purchaser or the Company after the Settlement Date relating to any purported termination of any rights of Eyas Management Services Pty Ltd under a certain Heads of Agreement dated 14th May 1993.

13.8 **Exclusion of Indemnities - Work of Art**

Notwithstanding any other provision of this Agreement the indemnities contained in this Agreement including without limitation under this clause 13 and clause 10.3.3 shall not apply to any Claims made pursuant to clause 23A of the Mildara Blass Agreement unless the Vendor fails to deliver the work of art referred to in clause 23A of the Mildara Blass Agreement pursuant to the undertaking given in accordance with clause 15.4.

## 14. ACCESS TO BOOKS AND RECORDS

The Vendor shall give the Purchaser full access to the books and records and other information concerning the Company and Gomel between the date hereof and Settlement.

## 15. CONDITIONS PRECEDENT

The obligations of the parties under this Agreement other than those which arise prior to Settlement are subject in all respects to satisfaction of the following conditions precedent on or before the Settlement Date:

15.1 **Sale of Land**

The Company entering into and completing settlement on an agreement to sell the Land to M.O.L. or its nominee in accordance with the Land Contract;

15.2 **Loan**

The Company making:

15.2.1 a loan to the Purchaser of the Purchase Price payable upon demand and interest free in the terms of the loan agreement set out in Fifth Schedule; and

15.2.2 a loan to the Purchaser and Averil Gay Garrett as Trustees for The Garrett Family Trust to subscribe for units in the M.O.L. Unit Trust to purchase the Land repayable upon demand and interest free in the terms of the loan agreement set out in the Sixth Schedule.

**15.3 Financial Assistance**

The Company properly completing the procedure set out in section 205(10) of the Corporations Law to enable it to make the loans described in clause 15.2 and it being enabled to make those loans and to assign the Accounts Receivable in accordance with the Debt Assignment if applicable.

**15.4 Work of Art**

The Purchaser delivering to the Vendor the work of art referred to in clause 23A of the Mildara Blass Agreement and the Vendor providing an undertaking to the Purchaser to deliver this work of art to Mildara Blass Limited as soon as reasonably possible after Settlement.

**15.5 Best Endeavours**

The Vendor and the Purchaser shall each use their best endeavours to ensure that the conditions precedent are satisfied.

## 16. DEREGISTRATION OF SUBSIDIARIES

**16.1 Applications to Deregister**

By or within a reasonable time after Settlement the Vendor must, at its expense:

16.1.1 make all necessary applications to the Australian Securities Commission under Section 573 of the Corporations Law to have all of the Subsidiaries except Gomel deregistered;

16.1.2 undertake all necessary acts (including without limitation procuring that the Subsidiaries except Gomel declare a dividend for an amount equal to the amount of retained profits set out in the balance sheet of those companies as at the Settlement Date prepared by the Auditor of the Company) required to enable all of the Subsidiaries except Gomel to be deregistered in accordance with the applications; and

16.1.3 continue to prosecute those applications after Settlement until deregistration of those companies.

16.2 **Purchaser's Assurances**

The Purchaser will procure that none of the Subsidiaries except Gomel trade prior to their deregistration in accordance with clause 16.1 and will not do anything to hinder the prosecution of those applications.

## 17. MILDARA BLASS CHARGE

17.1 **Acknowledgment**

17.1.1 The Purchaser acknowledges that the Shares may be subject to a fixed and floating equitable charge created by a deed dated 19 January 1995 made between the Vendor as chargee and Mildara Blass Limited as chargor ("Charge").

17.1.2 The Vendor acknowledges that:

17.1.2.1 prior to execution of the Charge Mildara Blass Limited was aware that the Vendor was to sell the Shares to the Purchaser; and

17.1.2.2 it considers that the Shares may not be subject to the Charge.

17.2 **Settlement Notwithstanding**

Notwithstanding that the Shares may be subject to the Charge the Vendor and Purchaser have agreed to settle on the basis that the Vendor indemnifies the Purchaser in the manner set out in clause 17.3.

17.3 **Vendor's Share Indemnity**

In addition to all other indemnities given by the Vendor under this Agreement the Vendor also agrees to indemnify and keep indemnified separately the Purchaser, M.O.L., the Company and Gomel from and against all Claims against any of them arising directly or indirectly from any Claim brought by Mildara Blass Limited in respect of Shares which may be subject to the Charge and the Vendor further agrees with the Purchaser that if the Purchaser is required by law to transfer the Shares to the Vendor or any other person as a result of any such Claim by Mildara Blass Limited that the Vendor will repay the Purchase Price to the Purchaser together with the amount (if any) of any Tax which may be incurred by the Purchaser, M.O.L., the Company or Gomel arising therefrom.

17.4 **Release of Charge**

The Vendor will endeavour after Settlement to have the Shares released from the Charge and will request a release of the charge in accordance with clause 18 of the Charge as soon as reasonably practicable.

18. **VENDOR TO FUND LITIGATION COSTS**

18.1 **Notice of Claim**

Without limiting any indemnity provided by the Vendor to the Purchaser under this Agreement, if at any time, a claim, suit, proceeding, action or other litigation ("Litigation") is commenced against the Company in relation to any matter which occurred before Settlement (including without limitation by Mildara Blass Limited or any other person for a breach of the Mildara Blass Agreement) then the Company shall give to the Vendor notice in writing of that fact setting out all material information relating to the Litigation that the Company is aware of ("Claims Notice").

18.2 **Vendor's Obligation to Fund or Litigate**

The Vendor, shall within fourteen (14) days after receipt of the Claims Notice:

18.2.1 provide the Company with sufficient funds to satisfy or pay the claim the subject of the Litigation ("Claim Amount"); or

18.2.2 if the Vendor denies or disputes the claim the subject of the Litigation, then give to the Company notice in writing to request the Company not to make the payment in whole or in part in respect of that Claim Amount, but at the expense and direction of the Vendor to take such action (including legal proceedings) as the Vendor may direct to avoid, dispute, defend or appeal or compromise the Litigation and any adjudication thereof. The Vendor shall cause the Company to be immediately put and thereafter maintained in sufficient funds within sufficient time to make the payment (if it is required by law to be made prior to this determination by a Court) and to pay all costs and expenses of the action; or

18.2.3 at the cost in all things of the Vendor dispute, defend, appeal or compromise the Litigation on behalf of the Company.

18.3 **Conduct of Pre-Settlement Matters**

18.3.1 The Purchaser acknowledges that prior to Settlement the Company had instructed the Adelaide Office of Phillips Fox to act for it in three matters which relate to the Company and which will not be finalised prior to Settlement ("Matters");

18.3.2 The Purchaser agrees that after Settlement the Matters may continue to be conducted by Phillips Fox at the expense in all things of the Vendor and without limiting any other indemnity in this Agreement the Vendor will indemnify and keep indemnified the Purchaser and the Company against any cost, expense, loss, damage, liability or Tax suffered or incurred by either or both of them in respect of the Matters; and

18.3.3 The Purchaser agrees to cause the Company to pay all amounts received by the Company in respect of the Matters to the Vendor within fourteen (14) days from receipt.

## 19. NO MERGER

All representations, warranties, undertakings and obligations made or given in this Agreement remaining to be performed or capable of having effect after Settlement shall not merge on Settlement or on the transfer of the Shares but shall continue in full force and effect notwithstanding Settlement and transfer of the Shares.

## 20. WAIVERS

20.1 A party's failure or delay to exercise a power or a right under this Agreement or otherwise does not operate as a waiver of that power or right.

20.2 The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.

20.3 No waiver of any power or right under this Agreement or otherwise shall be effective unless it is in writing.

## 21. NOTICES

Any notice to be given under or in connection with this Agreement shall be in writing and may be signed by the authorised agent of the party giving same and may be served by delivery posting by registered or certified mail facsimile or telex to the respective addresses hereinbefore appearing.

## 22. OTHER DOCUMENTS

The parties shall either before or after Settlement do all such acts matters and things and shall sign or execute and deliver all such Documents and writings as may in the reasonable opinion of the parties be necessary or expedient to further and more effectually carry into effect the provisions of this Agreement.

## 23. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes and prevails over any prior agreement covenant or understanding (if any) between the parties and no further or other terms or agreements are deemed to arise between the parties by way of collateral or other agreements by reason of any promise representation warranty or undertaking (if any) given or made by either party to the other on or prior to the execution of this Agreement and the existence of any such collateral or other agreement is hereby negatived.

## 24. AMENDMENT

No amendment of this Agreement shall bind the parties unless made in writing expressed to be supplemental to or in substitution for the whole or a part of this Agreement.

## 25. SEVERANCE

Any provision of this Agreement that is or becomes invalid unlawful void or unenforceable shall be capable of severance without affecting any other of the respective obligations or rights of the parties.

## 26. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws in force in the State of South Australia and the parties agree by their execution of this Agreement to irrevocably submit to the non-exclusive jurisdiction of the Courts in the State of South Australia in respect of all matters arising under or in connection with this Agreement.

27. **COSTS**

Each party shall bear their own costs of and incidental to the negotiation preparation execution and completion of this Agreement and any other document to be executed pursuant to this Agreement or to give effect to the provisions of this Agreement.

28. **STAMP DUTY**

28.1 **Payment of Stamp Duty**

The Purchaser shall pay all stamp duty and any government fees payable in respect of the transfer of the Shares. The Vendor shall pay all stamp duty and any government fees payable in respect of the transfer of the Land; and

28.2 **Responsibility**

The Purchaser is responsible for the submission of this and any other documents required by Law to be submitted by any statutory or other government authority for the purpose of stamping the transfers of the Shares within the time or times prescribed therefore and agrees to prosecute the assessment of duty on such transfers and the making of the requisite entries in the register of members of the Company as soon as is reasonably possible.

29. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts which when executed shall constitute one document. If the counterparts are used then this Agreement shall come into effect on the last exchange of either original or facsimiled counterparts. If facsimiled counterparts are used then original counterparts shall be exchanged forthwith but failure to exchange originals shall not affect this Agreement.

**EXECUTED** unconditionally as an Agreement.

| | |
|---|---|
| **SIGNED** for and on behalf of **SUNTORY (AUST) PTY LTD** by Gen Saito its Attorney in the presence of: ) | **SUNTORY (AUST) PTY LTD** by its Attorney Gen Saito who states that he has no notice of the revocation of the Power of Attorney under the authority of which he has executed his instrument: |
| ............................................<br>Witness | ............................................<br>Gen Saito |

**SIGNED** by the said **ANDREW MORTON GARRETT** in the presence of: )

Mark Pistilli

..............................................................

Witness

..............................................................

Andrew Morton Garrett

Sender to keep 605 22189056 095 Lift and peel

; Treasury Wine Estates Vintners + TWE Page 1

# NOTICE OF CRYSTALLISATION OF CHARGES

## NOTICE OF SEIZURE OF PROPERTY

63501522242064

; National Australia Bank Limited

TO: **NATIONAL AUSTRALIA BANK LIMITED (ACN 004 044 937)** of 800 Bourke Street, Docklands, Victoria, 3006

**( "the Chargor")**

**TREASURY WINE ESTATES VINTNERS LIMITED (ACN 004 094 599)** of 58 Queensbridge Street, Southbank, Victoria, 3006

**( "the Second Chargor")**

**AND**

**TREASURY WINE ESTATES LIMITED (ACN; 004 373 862) ("TWE")** of 58 Queensbridge Street, Southbank, Victoria, 3006

**FOSTER'S GROUP PTY LTD (ACN 007 620 886) ("FBG")** of 77-87 Southbank Boulevard, Southbank, Victoria, 3006

**SABMILLER BEVERAGE INVESTMENTS PTY LTD (ACN 150 900 093) ("SAB Miller")** of 77-87 Southbank Boulevard, Southbank, Victoria, 3006

**(Together hereinafter "the Controlling Minds")**

**WHEREAS** by Deed of Settlement dated 26th July 2000 ("The Deed") executed between the MBL Entities and the AMG Entities (as defined) the Second Chargor indemnified the AMG Entities as follows;

> 17.3 MBL indemnifies the AMG Entities against all actions proceedings claims demands or prosecutions of any kind or nature and howsoever arising by whomsoever and whenever brought or commenced against or incurred by the AMG Entities (or their agents and employees) and also against all costs and damages and expenses which the AMG Entities may pay or be made liable to pay in defending or settling the same arising directly or indirectly out of the registration or use by MBL of the Andrew Garrett Trade Mark, the Garrett Trade Mark, the
>
> 14
>
> Garrett Family Trade Mark or the Stylised Script Trade Mark in the MBL Territory or arising directly or indirectly from any act or omission of MBL or any of its agents, representatives, employees or servants in relation thereto.

**WHEREAS** the Chargor gave an undertaking as to damages on the 4th August 2016 ("the Undertaking") and prior in SASC-2004-127; *Andrew Garrett Wine Resorts Pty Ltd & Anor v National Australia Bank Limited* as follows;

ORDER WITH INJUNCTION
UNDERTAKING



1. The defendant, National Australia Bank Ltd, by counsel, undertakes to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge shall hereafter be of the opinion that any person shall have sustained any loss or damage by reason of these orders and undertakings which the defendant ought to pay.

2. Shu Mu Tseng by counsel, undertakes to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge shall hereafter be of the opinion that any person shall have sustained any loss or damage by reason of the undertaking given by Mr Andrew Garrett and Mrs Andrew Garrett in relation to the Furniture Sale Agreement dated 19 February 2004 and the Registered Livestock Mortgage dated 29 April 2004.

CROSS UNDERTAKINGS

1. John Jackson, on behalf of Evajade Pty Ltd, as the trustee of the Andrew Garrett Family Trust and the Andrew Garrett Family Trust No 2, undertakes not to remove from the jurisdiction, dispose of, mortgage, assign, charge, or otherwise deal with any of the assets of those two trusts, or with the right to receive moneys from Mildara Blass Ltd or Beringer Blass Estate Wines Ltd until further order.

2. Andrew Morton Garrett, both in his personal capacity and as trustee of the Andrew Garrett Family Trust, undertakes not to remove from the jurisdiction, dispose of, mortgage, assign, charge, or otherwise deal with any of the assets of the Andrew Garrett Family Trust and the Andrew Garrett Family Trust No 2, or with the right to receive moneys from Mildara Blass Ltd or Beringer Blass Estate Wines Ltd until further order.

3. Andrew Morton Garrett, both in his personal capacity and as trustee of the Andrew Garrett Family Trust, undertakes not to deal with the assets the subject of the Furniture Sale Agreement dated 19 February 2004 and the Registered Livestock Mortgage dated 29 April 2004 until further order.

4. Each of Andrew Morton Garrett and John Jackson undertake to swear, serve on the solicitors for the defendant and file with the Court by no later than Friday, 13 August 2004 an affidavit:

    4.1 disclosing the full value of the assets of the Andrew Garrett Family Trusts No 1 and No 2, held by Evajade Pty Ltd or any other person, both held jointly with another or solely, identifying with full particularity the nature of all such assets and their whereabouts, in the affidavit;

    4.2 disclosing the full value of any and all assets of the Andrew Garrett Family Trust No 1 or No 2 which since 1 January 2002 have been disposed of, mortgaged, charged, or otherwise dealt with, identifying with full particularity the nature of all such assets and their whereabouts, if known, in the affidavit;

    4.3 disclosing the full value of any and all assets acquired by the Andrew Garrett Family Trust No 1 or No 2 since 1 January 2002 in the affidavit;

    4.4 disclosing any charge granted over any of the assets of the Andrew Garrett Family Trust No 1 or No 2, including over any assets which were previously but no longer owned by either of those trusts in the affidavit;

    4.5 disclosing any variation in the terms of the trust deeds for either the Andrew Garrett Family Trust No 1 or No 2, including a change in trustee thereof;

    4.6 disclosing any borrowings of either the Andrew Garrett Family Trusts No 1 or No 2;

    4.7 exhibiting any and all documents relating to any transactions of either of the Andrew Garrett Family Trusts No 1 or No 2, including but not limited to:

        (a) copies of all and any documents of variation of trust or of replacement of trustees;

        (b) copies of all and any documents of transfer of assets;

        (c) copies of all and any loan documents or contracts;

        (d) copies of all and any charges granted over their assets;

        (e) copies of all and any receipt or payment of moneys by either trust.

5. Shu Mu Tseng, by counsel, undertakes not to deal with or enforce the right to receive moneys from Mildara Blass Ltd or Beringer Blass Estate Wines Ltd, the Bill of Sale dated 29 April 2004, the Furniture Sale Agreement dated 19 February 2004 and the Registered Livestock Mortgage dated 29 April 2004 until 27 August 2004 or until the bank takes possession of the property the subject of the possession order dated 26 July 2004, whichever is the earlier.

6. Michael Garrett undertakes that he will not exercise any of his powers under either of the deeds of trust of the Andrew Garrett Family Trust No 1 and the Andrew Garrett Family Trust No 2, including but not limited to appointing a new trustee to either trust or replacing the existing trustee, Evajade Pty Ltd until further order.

THE COURT ORDERS that:

1. Evajade Pty Ltd is joined as the fourth defendant by counterclaim herein.
2. Michael Garrett is joined as the fifth defendant by counterclaim herein.
3. The orders made against Mrs Averil Gay Garrett on 28th July 2004 be continued until further order.
4. Mrs Averil Gay Garrett is to swear, serve on the solicitors for the defendant and file with the Court by no later than Friday, 13 August 2004 an affidavit:
   - 4.1 disclosing the full value of the assets of the Andrew Garrett Family Trusts No 1 and No 2, held by Evajade Pty Ltd or any other person, both held jointly with another or solely, identifying with full particiularity the nature of all such assets and their whereabouts, in the affidavit;
   - 4.2 disclosing the full value of any and all assets of the Andrew Garrett Family Trust No 1 or No 2 which since 1 January 2002 have been disposed of, mortgaged, charged, or otherwise dealt with, identifying with full particularity the nature of all such assets and their whereabouts, if known, in the affidavit;
   - 4.3 disclosing the full value of any and all assets acquired by the Andrew Garrett Family Trust No 1 or No 2 since 1 January 2002 in the affidavit;
   - 4.4 disclosing any charge granted over any of the assets of the Andew Garrett Family Trust No 1 or No 2, including over any assets which were previously but no longer owned by either of those trusts in the affidavit;
   - 4.5 disclosing any variation in the terms of the trust deeds for either the Andrew Garrett Family Trust No 1 or No 2, including a change in trustee thereof;
   - 4.6 disclosing any borrowings of either the Andrew Garrett Family Trusts No 1 or No 2;
   - 4.7 exhibiting any and all documents relating to any transactions of either of the Andrew Garrett Family Trusts No 1 or No 2, including but not limited to:
     - (a) copies of all and any documents of variation of trust or of replacement of trustees;
     - (b) copies of all and any documents of transfer of assets;
     - (c) copies of all and any loan documents or contracts;
     - (d) copies of all and any charges granted over their assets;
     - (e) copies of all and any receipt or payment of moneys by either trust.
5. This defendant's notice for specific directions dated 26 July 2004 is adjourned to a date to be fixed.
6. Liberty to apply by any party.

Settled on 18.08.2004 by : KCSGOS

For Mr Shu Mu Tseng: Dr C Bleby
For Evajade Pty Ltd: Mr J Jackson (director)
For Mr J Crosby and Mr P Marshall: Mr N Baldock



Presiding Officer The Honourable Justice Besanko
For Plaintiff 1, 2 : No appearance
For Defendant 1 : Mr M Livesey with Mr S Evans
For Defendant by Counter Claim 1 : Mr Garrett in person

**WHEREAS**, for the purposes of this Notice and the Deed of Appointment of Managing Controller dated 1st May 2016, OENOVIVA (UK & IRELAND) PTY LTD (ACN; 156 587 183), OENOVIVA (CHINA) PTY LTD (ACN; 156 599 094) and ANDREW MORTON GARRETT in their capacities as Joint Trustees of the Andrew Garrett Family Trust No 4 ABN; 42 388 204 496, trading as OenoViva (Global) and, as joint Trustees of the Andrew Garrett Family Trust No 3 ABN; 21 675 178 730 and, as joint Trustees of the Andrew Garrett Family Trust No 2 ABN; 95 862 501 644and as joint Trustees of the Andrew Garrett Family Trust ABN; 78 761 760 976 of Level 1/82 Flinders Street, Adelaide, SA 5000 are defined as "the Chargee"

**WHEREAS** s123 of *the Personal Property Security Act* 2009 (Cth) ("PPSA") allows for the secured party to seize assets intellectual property and anything of value, and

**WHEREAS**, the Chargor admitted that the quantum of the loss Cost and Damage caused by it in respect to the Intellectual Property of the Chargee, (only) related to OenoViva Business Systems and OenoViva Hand Crafting ("OBS"), is in excess of $49,868,419,474.56 for the First Term of the Global License of OBS as granted to the Australian Domiciled Master Regional Licensees ("the AMRLs") and, $49,868,419,474.56 for the Second Term and, $11,635,798,316 in respect to part of the Third term expired as at the date of Notice of Crystallisation of Charge/ Seizure of Property, and

**WHEREAS,** the Chargor admitted that the date of commencement for the First Term of OBS was the 19th January 1994 being the first date of Loss, Cost and Damage caused to OBS and the Chargees by Treasury Wine Estates Vintners Limited ACN 004 094 599 ("The Second Chargor") and that the Chargor and the Second Chargor have, in concert, acted unlawfully in order to frustrate the actions of the Chargee to obtain compensation from the Chargor and the Second Chargor, deliberately and with malice, and therefor become liable for costs loss and damage from 19th January 1994, and

**WHEREAS,** the Second Chargor indemnified the costs loss and damage of the AMG Entities pursuant to cl17.3 of a Deed of Settlement executed on the 26th July 2000 ("the Deed") between the parties to the Deed at a time when Fosters' Brewing Group Pty Ltd ("FBG") was the Controlling mind of the Second Chargor and was and remains liable for the actions of the Second Chargor as a wholly owned subsidiary from the date of execution of the Deed until the 11th December 2011, and

**WHEREAS,** on the 11th December 2011 the Second Chargor was demerged from FBG and Treasury Wine Estates Limited became the controlling mind of the Second Chargor as wholly owned subsidiary and is liable for the actions of the Second Chargor between the 11th December 2011 and today's date, and

**WHEREAS,** The Liability of the controlling mind as the parent entity of the Second Chargor from time to time gives rise to a securable interest in favour of the Chargee over FBG and TWE as a matter of equity and law, and

**WHEREAS,** SAB Miller Beverage Investments Pty Ltd ("SAB Miller") became the Parent to FBG on the 11th December 2011, and

**WHEREAS,** On the 23rd December 2015, the Second Chargor committed an act of Insolvency by filing an affidavit dated 23rd December 2015 that;

1. Was perjury of the Deponent, Matthew Critchley, and
2. The 24th occasion of perjury by the Second Chargor, and
3. Was struck out in respect of its text by the Honourable Justice Middleton on the 11th March 2016, and
4. Was not sworn by an officer of the Company and as such was inadmissible as evidence under the Federal Court Rules in respect to the application dated 23rd December 2015 issued by the Second Chargor under s459H of the Corporations Act 2001 (Cth)

**WHEREAS,** the Second Chargor failed to make an application under s459H of the Corporations act to set aside a Statutory Letter of Demand dated 29th March 2016 served on it by the Chargee, which failure became a second act of insolvency on the 21st April 2016, and

**WHEREAS,** the Second Chargor filed and served an affidavit of the deponent, Matthew Critchley dated 19th April 2016 in VID 949 of 2015 that was the 25th occasion of perjury by the Second Chargor, and

**WHEREAS,** the Chargor admitted that were it not for the actions of the Chargor, FBG, TWE and the Second Chargor then the AMRLs would have been established on or prior to the 19th January 1994 and the quantum of the loss Cost and Damage caused by the Chargor and the Second Chargor to the AMRLs in respect to OBS, is in excess of $12,467,104,868.64 for the First Term of the Global License of OBS as granted to the AMRLs and $ $12,467,104,868.64 for the Second Term and $2,908,949,579.00 in respect to part of the Third term expired as at the date of Notice of Crystallisation of Charge/ Seizure of Property, and

**WHEREAS,** the Chargor and the Second Chargor have admitted that Prejudgement interest at the rate of 12% per annum compounding is applied to the calculation of Cost Loss and Damage applying to the date of the Notice of Crystallisation/Seizure of Property, and

**WHEREAS,** between the 6th April 2016 and today's date the Chargor and the Second Chargor admitted that they had defrauded the Chargee and entities related to the Chargee which estimation of cost, loss and damage is not calculated as yet and in respect to which all rights have been reserved, and

**WHEREAS,** the total quantum of loss, cost, damage and prejudgment interest in respect to the interests of the Chargees related only to OBS exceeds the value of the Net Assets of both the Chargor and the Second Chargor , and

**WHEREAS,** the Chargor holds Bank Accepted Bills of Exchange ("Bills") for value drawn on the balance sheet of the Chargee with Serial Numbers SN 61.00001/16, SN 61.00002/16, SN 61.00013/16, SN 61.00014/16, SN 61.00021/16, SN 61.00022/16 totalling AU$ 5,086,100,000 and has not paid the Payees set out on the face of the aforementioned Bills in accordance with the duties of the Paying Bank as the Drawee, and

**WHEREAS,** on the 23rd April 2016 the Chargee provided to the Chargor a copy of a Charge to secure the interests of the Chargor in the Chargee executed by the Chargee ("the Charge"), and

**WHEREAS,** valuable consideration has passed between the Chargee and the Chargor in respect to the Charge and execution by the Chargor is not necessary as a consequence of performance, and

**WHEREAS,** the Chargee is the holder of a Security Interest registered on the Personal Property Security Register ("PPSR") as interest No 201604240003952 in accordance with the provisions of the Personal Property Security Act 2009 (Cth) ("PPSA") described in the Notice of Crystallisation of Charge set out in this Notice, and

**WHEREAS,** The Chargee registered its securable interest over FBG, TWE and SAB Miller on the 26th April 2016 on the PPSR which was given verification Number 201604260009756, and

**WHEREAS,** the Chargee is entitled to rely on the Charge and the registered Security Interests in accordance with various agreements executed between the Chargors and the Chargee, equity and law, and

**WHEREAS,** The Chargee received an amendment demand from TWE and the Second Chargor dated 27th April 2016 amongst other correspondence, and

**WHEREAS,** between the 18th April 2016 and the date of this Notice the Chargee guaranteed the debts and lawful operation of the Chargor and the Second Chargor ("The Guarantee") subject to the condition of the termination of employment of Simon Illsley with the Chargor for unlawful conduct, and

**WHEREAS,** The Chargee received an amendment demand from the Chargor dated 28th April 2016 that was authored by Simon Illsley evidencing his continued employment with the Chargor, and

**WHEREAS,** the ongoing employment of Simon Illsley is a default under the Guarantee and consequently a default under the Charge and the Registered Security Interest, and

**WHEREAS,** the Chargee now terminates the Guarantee with immediate effect and the Chargor and the Second Chargor are insolvent as a consequence of admitting liabilities greater than the combined Nett Assets of the Chargor, the Second Chargor, FBG, TWE and SAB Miller, and

**WHEREAS,** The Chargee registered its securable interest over the Chargor and the Second Chargor on the 26th April 2016 on the PPSR which was given verification Number 201604260009756, and

**WHEREAS**, the Chargee is entitled to issue a Notice of Crystallisation of Charge on the Chargor and the Second Chargor in accordance with Clause 1.9.1 of the Charges in the event of a default, and

**WHEREAS** events of Default have occurred as described in this Notice, and

**WHEREAS,** the total quantum of loss, cost, damage and prejudgment interest in respect to the interests of the Chargees exceeds the value of the Net Assets of both the Chargor and the Second Chargor , and

**NOW TAKE NOTICE** that the floating charge comprised within the Charge is to convert into a fixed charge with immediate effect with respect to the property described in schedule 1.

Dated this 1st Day of May 2016

Signed on behalf of the Chargee by its duly authorised attorney

Andrew Morton Garrett
Joint Trustee and Controller Appointed

## SCHEDULE 1

## PROPERTY SUBJECT TO FIXED CHARGE.

All of the assets and undertaking of **the Chargors and the Controlling Minds** which are not otherwise subject to a fixed charge by virtue of the Charge including without limitation;

- Their entitlement to receive money from accounts held by **the Chargors and the Controlling Minds and their related entities,** including Bank Accounts held with any Bank.
- Their entitlement to any loan accounts made to any other related entities related to **the Chargors and the Controlling Minds and their related entities,**
- All assets including Plant & Equipment, Customers, Books and Records belonging to **the Chargors and the Controlling Minds and their related entities.**
- **the Chargors and the Controlling Minds and their related entities** entitlement to be paid money in respect to invoices raised by them and any other invoices outstanding as owed to **the Chargors and the Controlling Minds and their related entities** at the date of this Notice.
- Intellectual Property
- Assets and Undertakings
- Stock
- Fixtures and fittings

- any other asset of value
- Choses in Action against any person

## CHARGE

**Registration Details**

| | | | |
|---|---|---|---|
| Registration number: | 201112200545274 | Change number: | 27864500 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 001745063 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 12/06/2014 18:00:03 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 26/11/2008.

## CHARGE

**Registration Details**

| | | | |
|---|---|---|---|
| Registration number: | 201112200736179 | Change number: | 15742921 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 001765135 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 30/04/2012 22:29:11 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 19/02/2009.

## CHARGE

**Registration Details**

| | | | |
|---|---|---|---|
| Registration number: | 201112200818830 | Change number: | 15745051 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 001768215 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 30/04/2012 22:56:38 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 10/03/2009.

## CHARGE

**Registration Details**

| | | | |
|---|---|---|---|
| Registration number: | 201112204235211 | Change number: | 15811590 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 001835018 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 01/05/2012 21:50:59 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 30/07/2009.

## ❖ CHARGE

### Registration Details

| | | | |
|---|---|---|---|
| Registration number: | 201112204281806 | Change number: | 6188482 |
| Registration kind: | Security Interest | | |
| Giving of notice identifier: | Pre-loaded ASIC Security | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |

## ❖ CHARGE

### Registration Details

| | | | |
|---|---|---|---|
| Registration number: | 201112210715663 | Change number: | 15949843 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 001887855 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 02/05/2012 23:42:02 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 29/10/2009.

## ❖ CHARGE

### Registration Details

| | | | |
|---|---|---|---|
| Registration number: | 201112211915189 | Change number: | 15849865 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 001958767 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 02/05/2012 12:40:26 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 31/03/2010.

## ❖ CHARGE

### Registration Details

| | | | |
|---|---|---|---|
| Registration number: | 201112230046854 | Change number: | 16595676 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 002124617 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 11/05/2012 01:50:48 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 21/01/2011.

## ❖ CHARGE

### Registration Details

| | | | |
|---|---|---|---|
| Registration number: | 201112230769676 | Change number: | 16042756 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | 002188396 | | |
| Registration start time: | 30/01/2012 00:00:00 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 04/05/2012 02:06:59 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

This registration is migrated from Register of Company Charges with the registration start date 09/06/2011.

❖ CHARGE

**Registration Details**

| | | | |
|---|---|---|---|
| Registration number: | 201202080115698 | Change number: | 11364753 |
| Registration kind: | Security Interest | | |
| Giving of notice identifier: | ML1760044M | | |
| Registration start time: | 08/02/2012 09:38:11 (Canberra Time) | | |
| Registration end time: | 30/01/2019 23:59:59 (Canberra Time) | | |
| Registration last changed: | 08/02/2012 09:38:11 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | No |
| Registration State: | Current | | |

❖ CHARGE

**Registration Details**

| | | | |
|---|---|---|---|
| Registration number: | 201207110075910 | Change number: | 32860638 |
| Registration kind: | Security Interest | | |
| Giving of notice identifier: | 1238074 | | |
| Registration start time: | 11/07/2012 15:14:18 (Canberra Time) | | |
| Registration end time: | No stated end time | | |
| Registration last changed: | 16/04/2015 17:13:46 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | Yes |
| Registration State: | Current | | |

❖ CHARGE

**Registration Details**

| | | | |
|---|---|---|---|
| Registration number: | 201402250015230 | Change number: | 32636323 |
| Registration kind: | Security interest | | |
| Giving of notice identifier: | MAWS001- 1660-02 | | |
| Registration start time: | 25/02/2014 09:56:06 (Canberra Time) | | |
| Registration end time: | 26/01/2018 23:59:59 (Canberra Time) | | |
| Registration last changed: | 31/03/2015 13:18:57 (Canberra Time) | | |
| Subordinate registration: | Not stated | Transitional: | No |
| Registration State: | Current | | |

❖ **the aforementioned securities and any other security interest registered by National Australia Bank on the Personal Property Security Register or otherwise over Toad Park Pty Ltd Fifty Cal Pty Ltd as amended by National Australia Bank Limited forthwith to remove any reference to it on the aforementioned securities and replace those references with reference to the Trustee of the Andrew Garrett Family Trust No 4 Secured Party Group 101909580.**