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2 July 2009

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Our reference: 16026/80090578

Number of pages - 57

Dear Sir/Madam

Please refer to the attached substantial shareholder notice.

**Form 603**  
Corporations Act 2001  
Section 671B

**Notice of initial substantial holder**

To Company Name/Scheme Gage Roads Brewing Co Limited

ACN/ARSN 103 014 320

**1. Details of substantial holder (1)**

Name Woolworths Limited ACN 000 014 675 (Woolworths) and each of its related bodies corporate being the entities set out in Annexure A (together, the Woolworths Group)

ACN/ARSN (if applicable) See above

The holder became a substantial holder on 30/06/09

**2. Details of voting power**

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary shares	76,410,890	76,410,890	25.2%

**3. Details of relevant interests**

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Woolworths	Registered holder of ordinary shares issued on 30/06/2009 under the placement described in the Placement Agreement (attached to this document as Annexure B)	76,410,890 ordinary shares
Woolworths Group	Woolworths Group has the same relevant interest as Woolworths by virtue of s608(3) of the Corporations Act 2001 (Cth)	76,410,890 ordinary shares

**4. Details of present registered holders**

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Woolworths and Woolworths Group	Woolworths	Woolworths	76,410,890 ordinary shares

**5. Consideration**

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
Woolworths and Woolworths Group	30/06/2009	1.62 cents per ordinary share		76,410,890 ordinary shares

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Woolworths Group	Each member of the Woolworths Group is an associate of Woolworths under section 12(2)(a) of the Corporations Act 2001 (Cth)

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
Woolworths Group	1 Woolworths Way, Bella Vista, NSW 2163

Signature

print name

P. HORTON

capacity COMPANY SECRETARY

sign here

date 2 / 7 / 2009

**DIRECTIONS**

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
  - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

**Annexure A**

This is Annexure A of 3 pages referred to in the Form 603 (Notice of Initial Substantial Holder) dated 30 June 2009. Signed for and on behalf of Woolworths Limited.

.....  
 Name: **P. HORTON**  
 Capacity: **COMPANY SECRETARY**

**Woolworths Group**

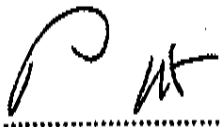
Name	ACN (if applicable)
A.C.N. 001 259 301 Pty Limited	001 259 301
Advantage Supermarkets Pty Ltd	009 312 056
Advantage Supermarkets WA Pty Ltd	084 788 492
ALH Group Pty Ltd	098 212 134
Albion Charles Hotel (BMG) Pty Ltd	110 901 730
ALH Group Property Holdings Pty Limited	114 682 969
Australian Leisure and Hospitality Group Limited	067 391 511
ALH Group (No. 1) Pty Ltd	010 657 888
Balaclava Hotel (BMG) Pty Ltd	110 901 810
Chelsea Heights Hotel (BMG) Pty Ltd	110 901 856
Cherry Hill Tavern (BMG) Pty Ltd	110 900 957
Courthouse Brunswick Hotel (BMG) Pty Ltd	110 901 892
Courthouse Hotel Footscray (BMG) Pty Ltd	110 901 712
Croxton Park Hotel (BMG) Pty Ltd	110 901 687
Daisey's Club Hotel (BMG) Pty Ltd	110 901 669
Excelsior Hotel (BMG) Pty Ltd	110 901 650
First and Last Hotel (BMG) Pty Ltd	110 901 589
Glengala Hotel (BMG) Pty Ltd	110 901 552
Lyndhurst Club Hotel (BMG) Pty Ltd	110 901 534
Manningham Hotel (BMG) Pty Ltd	110 901 507
MGW Hotels Pty Ltd	098 214 129
Aceridge Pty Limited	010 790 771
Chatswood Hills Tavern Pty. Ltd.	010 875 939
Dapara Pty Ltd	003 085 907
Stadform Developments Pty. Limited	010 896 004
Fenbridge Pty. Ltd.	010 963 854
Kawana Waters Tavern No. 3 Pty Ltd	009 674 328
Kawana Waters Tavern No. 1 Pty Ltd	009 671 603
Kawana Waters Tavern No. 2 Pty Ltd	009 673 938
Vicpoint Pty Ltd	078 484 741
Milanos Hotel (BMG) Pty Ltd	110 901 481
Monash Hotel (BMG) Pty Ltd	110 900 751
Moreland Hotel (BMG) Pty Ltd	110 901 196
Nu Hotel (BMG) Pty Ltd	110 901 105
Oakleigh Junction Hotel (BMG) Pty Ltd	110 901 169
Palace Hotel Hawthorn (BMG) Pty Ltd	110 901 132
Powel Hotel Footscray (BMG) Pty Ltd	110 901 089
Preston Hotel (BMG) Pty Ltd	110 901 061
Queensbridge Hotel (BMG) Pty Ltd	110 709 996
Racecourse Hotel (BMG) Pty Ltd	110 901 034
Shoppingtown Hotel (BMG) Pty Ltd	111 719 870
Taverner Hotel Group Pty. Ltd.	086 956 890
Amprok Pty. Ltd.	007 011 798
Auspubs Pty Ltd	086 695 801
Cooling Zephyr Pty Ltd	089 193 859
The Common Link Pty Ltd	086 504 529
E. G. Functions Pty. Ltd.	073 488 052

Elizabeth Tavern Pty. Ltd.	008 019 922
FG Joint Venture Pty Ltd	095 849 906
Fountain Jade Pty. Ltd.	007 396 063
Hadwick Pty Ltd	090 965 772
Markessa Pty. Ltd.	006 644 382
Playford Tavern Pty Ltd	077 886 545
Seaford Hotel Pty. Limited	063 024 591
The Second P Pty Ltd	089 313 146
Kilrand Hotels (Hallam) Pty. Ltd.	005 730 601
Ashwick (Vic.) No.88 Pty. Ltd.	006 327 206
Warm Autumn Pty. Ltd.	082 483 994
Werribee Plaza Tavern Pty. Ltd.	006 286 162
Waltzing Matilda Hotel (BMG) Pty Ltd	111 719 861
Wheeler's Hill Hotel (BMG) Pty Ltd	111 719 923
Andmist Pty. Limited	095 618 929
Australian Liquor and Grocery Wholesalers Pty Ltd	009 592 925
Australian Safeway Stores Pty. Ltd.	004 319 939
Barjok Pty Ltd	002 946 858
Bergam Pty Limited	109 333 208
Calvartan Pty. Limited	008 585 813
Cenijade Pty. Limited	085 854 495
Charmtex Pty Ltd	000 067 363
DSE Holdings Pty Limited	001 456 720
Dick Smith (Wholesale) Pty Ltd	000 445 956
Dick Smith Management Pty Ltd	001 585 735
Dick Smith Electronics Franchising Pty Ltd	054 295 733
Dick Smith Electronics Pty Limited	000 908 716
Dick Smith Electronics Staff Superannuation Fund Pty Limited	059 802 470
DSE (NZ) Limited	-
David Reid Electronics (1992) Limited	-
Dick Smith Electronics Limited	-
Intertan Australia Pty Ltd	002 511 944
Fabco Pty Ltd	002 960 983
Kiaora Lands Pty Limited	108 410 402
Gembond Pty. Limited	094 773 663
GreenGrocer.com.au Pty Ltd	079 889 044
Grocery Wholesalers Pty Ltd	000 013 758
Jack Butler & Staff Pty. Ltd.	009 957 171
Josona Pty Ltd	002 955 759
Kiaora Lands Pty Limited	108 410 402
Langton's Pty Ltd	133 179 656
Leasehold Investments Pty Ltd	009 237 932
Mac's Liquor Stores Pty Limited	009 714 550
Nalos Pty Ltd	002 946 821
Oxygen Nominess Pty Ltd	135 263 473
Philip Leong Stores Pty Limited	009 718 941
Progressive Enterprises Holdings Limited	113 919 878
Drumstar Pty Ltd	085 415 032
PEH (NZ IP) Pty Ltd	115 841 337
Queensland Property Investments Pty Ltd	009 661 027
Shellbelt Pty. Limited	066 891 307
Universal Wholesalers Pty Limited	002 213 185
Votrait No. 1622 Pty Limited	120 875 309
Woolies Liquor Stores Pty. Ltd.	007 939 531
Woolstar Investments Limited	-
Woolstar Pty. Limited	008 444 513
Woolworths (International) Pty Limited	115 987 972
Woolworths (HK) Sales Limited	-
Woolworths (HK) Procurement Limited	-
Woolworths Wholesale (India) Private Limited	-
Woolworths New Zealand Group Limited	-
BWS (2008) Limited	-
Progressive Enterprises Limited	-
Caledonian Leasing Limited	-
Countdown Foodmarkets Limited	-

Foodtown Supermarkets Limited	-
Fresh Zone Limited	-
General Distributors Limited	-
S R Brands Limited	-
Supervalu/ Freshchoice Limited	-
The Supplychain Limited	-
Wholesale Services Limited	-
Wholesale Distributors Limited	-
Woolworths (New Zealand) Limited	-
Woolworths (Project Finance) Pty. Limited	095 449 782
Woolworths (Publishing) Pty Ltd	009 671 149
Woolworths (Q'land) Pty Limited	000 034 819
Woolworths (R & D) Pty Limited	066 891 245
Woolworths (South Australia) Pty Limited	007 873 118
Woolworths (Victoria) Pty Limited	004 177 155
Statewide Independent Wholesalers Limited	009 519 546
Woolworths (W.A.) Pty Limited	008 668 148
Woolworths Australian Communities Foundation Pty Limited	002 885 547
Woolworths Custodian Pty Ltd	002 940 445
Woolworths Executive Superannuation Scheme Pty Limited	009 973 586
Woolworths Group Superannuation Scheme Pty Ltd	010 009 382
Woolworths Insurance Pte Limited	198701430R
Woolworths Management Pty Ltd	116 463 355
Woolworths Properties Pty Limited	000 039 252
Dentra Pty. Limited	088 641 709
Weetah Pty. Limited	009 643 430
QFD Pty. Limited	008 579 664
Woolworths Townsville Nominee Pty Ltd	113 597 434
Woolworths Trust Management Pty Limited	059 357 149
Woolworths Trustee No. 2 Pty Limited	059 357 327
Hydrogen Nominees Pty Ltd	137 689 224
Highlands No.1 Nominees Pty Ltd	137 904 048
Vincentia Nominees Pty Ltd	137 903 327

**Annexure B**

This is Annexure B of 50 pages referred to in the Form 603 (Notice of Initial Substantial Holder) dated 30 June 2009. Signed for and on behalf of Woolworths Limited.

  
.....  
Name: P. HORTON  
Capacity: COMPANY SECRETARY

**CLAYTON UTZ**

## Subscription agreement

**Woolworths Limited**  
Woolworths

**Gage Roads Brewing Co Limited**  
Company

Clayton Utz  
Lawyers  
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia  
PO Box H3 Australia Square Sydney NSW 1215  
T +61 2 9353 4000 F +61 2 8220 6700

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Our reference 178/16026

Legal\109423011.1



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**Subscription agreement dated****Parties**

**Woolworths Limited ABN 88 000 014 675 (Woolworths) of 1 Woolworths Way, Bella Vista, NSW 2153**

**Gage Roads Brewing Co Limited ABN 22 103 014 320 (Company) of 14 Absolon St, Palmyra, WA 6157**

**Background**

Subject to the satisfaction or waiver of the Conditions, Woolworths has agreed to subscribe for the Placement Shares and the Company has agreed to issue the Placement Shares on the terms contained in this agreement.

**Operative provisions****1. Definitions and interpretation****1.1 Definitions**

In this agreement:

**Accounting Standards** means, at any time:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports;
- (b) the accounting standards approved under the Corporations Act; and
- (c) generally accepted accounting principles, policies, practices and procedures in Australia to the extent not inconsistent with the accounting standards described in paragraph (b).

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited ABN 98 008 624 691.

**Authorisation** means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Government Agency or any other person.

**Board** means the board of Directors.

**Business** means the business conducted by the Company as at the date of this agreement.

**Business Day** has the meaning given in the Listing Rules.

**Change of Control Event** means:

- (a) the despatch of a notice of meeting to consider a scheme of arrangement between the Company and its creditors or members or any class thereof pursuant to section 411 of the Corporations Act;
- (b) the announcement of a takeover bid, or receipt by the Company of a bidder's statement, in respect of the Company; or

- (c) the date upon which a person has voting power (as defined in the Corporations Act) in the Company of excess of 50%.

**Company Warranties** means the warranties set out in Schedule 1.

**Conditions** means those conditions precedent to Placement Completion set out in clause 2.1.

**Constitution** means the constitution of the Company a copy of which has been provided to Woolworths prior to the date of this agreement.

**Corporations Act** means the *Corporations Act 2001 (Commonwealth)*.

**Director** means a director of the Company.

**Due Diligence Materials** means:

- (a) the written information and documents provided to Woolworths by the Company and its Representatives before the date of this agreement; and
- (b) the written questions raised by Woolworths in the due diligence process and the written responses given to those questions by the Company and its Representatives before the date of this agreement.

**Encumbrance** means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person.

**End Date** means 15 August 2009.

**Exclusivity Period** means the period starting on the date of this agreement and ending on whichever is the earlier of the date this agreement is terminated pursuant to its terms and the later of the Placement Completion Date and the Option Completion Date.

**Explanatory Memorandum** means the explanatory memorandum to be prepared by the Company in respect of the Transaction for the purposes of the Shareholder Resolutions.

**Full Year Accounts** means the reports in respect of the Company referred to in, and complying with the requirements of, Division 1 of Chapter 2M of the Corporations Act for the financial year ending 30 June 2010 and prepared in accordance with the Accounting Standards, and including an unqualified audit opinion by the Company's auditors.

**Governmental Agency** means any government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity, including the Takeovers Panel.

**Group** means the Company and its Subsidiaries and where the context requires or allows any one or more of them.

**Half-Yearly Accounts** means the reports in respect of the Company referred to in, and complying with the requirements of, Division 2 of Chapter 2M of the Corporations Act for the half year ending 31 December 2009 and prepared in accordance with the Accounting Standards and including an unqualified review opinion by the Company's auditors.

**Indemnified Losses** means, in relation to any fact, matter or circumstance, all losses, costs, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action,

demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).

**Independent Expert** means the independent expert referred to in clause 4.1(a).

**Independent Expert Report** means the report referred to in clause 4.1(a)(i).

**Insolvency Event** means in relation to a person:

- (a) insolvency official: the appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official to the person or to the whole or a substantial part of the property or assets of the person;
- (b) arrangements: the entry by the person into a compromise or arrangement with its creditors generally;
- (c) winding up: the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or dissolution of the person other than where the application or order (as the case may be) is set aside within 14 days;
- (d) suspends payment: the person suspends or threatens to suspend payment of its debts generally;
- (e) ceasing business: the person ceases or threatens to cease to carry on business; or
- (f) insolvency: the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act.

**Last Accounts** means the reviewed balance sheet, income statement, cash flow statement and statement of changes in equity of the Company and its controlled entities for the half year ended on the Last Balance Date.

**Last Balance Date** means 31 December 2008.

**Listing Rules** means the listing rules of the ASX from time to time.

**Material Adverse Change** means an event, occurrence or matter which individually or when aggregated with all such events, occurrences or matters has, will, or is reasonably likely to diminish the consolidated earnings before interest, tax, depreciation and amortisation (excluding all non recurring items) of the Group by \$60,000 or more or the consolidated excess of total assets over total liabilities of the Group by \$300,000 or more (excluding the loss of sales revenues for the Group resulting directly from the cancellation of the Company's existing supply agreement with VOK Beverages Pty Ltd).

**Meeting** means the meeting of the Company's shareholders to be convened and held for the purpose of considering the Shareholders Resolutions.

**Notice of Meeting** means the notice given by the Company to shareholders of the Meeting and includes the Explanatory Memorandum and any other documents to be sent out to the Company's shareholders in respect of the Meeting.

**Option** means the option granted pursuant to clause 5.1.

**Option Completion** means the completion of the issue and allotment of the Option Shares in accordance with this agreement.

**Option Completion Date** means the date which is two (2) Business Days after the service of the Option Exercise Notice by Woolworths under clause 5.2.

**Option Contingent Component** means:

- (a) zero, if the Tax Loss Condition is not satisfied; and
- (b) \$286,880.00 (being 0.88 cents per Option Share) if the Tax Loss Condition is satisfied.

**Option Exercise Period** means the period from the date of this agreement until 5.00 pm on the tenth Business Day after the date of the Meeting.

**Option Initial Component** means \$528,120.00 (being 1.62 cents per Option Share).

**Option Price** means the Option Initial Component plus the Option Contingent Amount.

**Option Shares** means 32,600,000 Shares.

**Permitted Event** means:

- (a) the issue of securities to directors or employees of the Company pursuant to the exercise of options (to subscribe for shares) in existence prior to the date of this agreement and listed in paragraph 2.1(b) of Schedule 1; and
- (b) the termination of the agreement dated 7 July 2008 between the Company and Ballydooley Cider Company.

**Placement Completion** means the completion of the issue and allotment of the Placement Shares in accordance with this agreement.

**Placement Completion Date** means the date on which Placement Completion occurs.

**Placement Contingent Component** means:

- (a) zero, if the Tax Loss Condition is not satisfied; and
- (b) \$672,415.83 (being 0.88 cents per Placement Share) if the Tax Loss Condition is satisfied.

**Placement Initial Component** means \$1,237,856.42 (being 1.62 cents per Placement Share).

**Placement Price** means the Placement Initial Component plus the Placement Contingent Component.

**Placement Shares** means 76,410,890 Shares.

**Prescribed Occurrence** means:

- (a) any of the events described in section 652C(1)(a) to (h) (inclusive) of the Corporations Act as if the reference to the "target" was a reference to the "Company";

- (b) ~~the Company or a Group member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its securities;~~

- (c) the Company or a Group member declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
- (d) the Company or a Group member issuing, or agreeing to issue, securities or other instruments convertible into shares or debt securities;
- (e) the Company or a Group member making any change or amendment to its Constitution;
- (f) the Company or a Group member:
- (i) acquires or disposes of;
  - (ii) agrees to acquire or dispose of; or
  - (iii) offers, proposes, announces a bid or tendering for,  
any securities, business, assets, interests in a joint venture, entity or undertaking (or any right, title or interest therein), the value of which, in aggregate, exceeds \$300,000 (except stock in trade acquired or disposed of in the ordinary course of the Business or as a result of the termination prior to the date of this agreement of the joint venture agreement between the Company and VOK Beverages Pty Ltd, without the prior written consent of Woolworths;
- (g) the Company or a Group member entering into or agreeing to enter into a contract or changing the terms of an existing contract in a manner which is inconsistent with this agreement;
- (h) an Insolvency Event occurring in relation to the Company or a Group member;
- (i) the Company or a Group member materially increasing its level of financial indebtedness (including financial liabilities incurred under finance leases);
- (j) the Company or a Group member making any material loans, advances or capital contributions to or investments in any person other than the Company or a wholly-owned Subsidiary of the Company, other than in the ordinary and usual course of the Business;
- (k) the Company or a member of the Group undertakes any expenditure, or enters in to any commitment which would require expenditure or payment by the Company or a member of the Group of an amount which, in aggregate, exceeds \$300,000;
- (l) the Company or a Group member is or becomes a party to any material prosecution, litigation or arbitration other than as a plaintiff or applicant, in respect of a Group member or the Business or their assets that exposes a Group member or the Business to a potential liability exceeding \$300,000 (excluding legal costs) or having a material effect on the Business, not including litigation that is frivolous or vexatious;
- (m) the Company revalues any of its assets;
- ~~(n) the Company does not carry on its business in a normal, proper and efficient manner and in the ordinary course; or~~
- (o) the occurrence of any Change of Control Event,

except a Prescribed Event does not include any such event that occurs with the prior written consent of Woolworths or a Permitted Event.

**Relevant Interest** has the meaning given to that term in sections 608 and 609 of the Corporations Act.

**Representatives** means, in relation to a party, that party's directors, officers, employees, agents or advisers (including lawyers, accountants, consultants, bankers, financial advisers and any representatives of those advisers).

**Share** means a fully paid ordinary share in the capital of the Company.

**Shareholder Resolutions** means the resolutions of the shareholders of the Company referred to in clauses 2.1(a) and 2.1(b).

**State** means the State of Western Australia.

**Subscriber Rights Deed** means a deed in the form of that in Schedule 5.

**Subsidiary** has the meaning given in the Corporations Act.

**Supply Agreement** means the supply agreement between Woolworths and the Company dated with the same date as the date of this agreement.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

**Tax Loss Condition** means, subject to clause 7,:

- (a) a senior counsel appointed pursuant to clause 7 issues an opinion that it is more likely than not that the Company will not be prevented from deducting all tax losses as at 31 December 2009 (or any part thereof) by virtue of the operation of Divisions 165, 166 or 175 of the Income Tax Assessment Act 1997; and
- (b) the Company's auditor provides a certificate in writing to Woolworths that the auditor is satisfied (to a standard applicable to a full year audit opinion and having regard to the opinion of the senior counsel referred to in (a) and any change of control in, or ownership of, the Company arising from or in relation to the Transaction and previous issues and sales of Shares) that either:
  - (i) the balance sheet forming part of the Half Yearly Accounts lodged (or to be lodged) with ASX has disclosed (or will disclose) a deferred tax asset for carry forward unused tax losses as at 31 December 2009 of not less than \$2,425,810; or
  - (ii) the balance sheet forming part of the Full Year Accounts lodged (or to be lodged) with ASX has disclosed (or will disclose) a deferred tax asset for carry forward unused tax losses as at 31 December 2009 (but, for the avoidance of doubt, excluding tax losses incurred after 31 December 2009) of not less than \$2,425,810.

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**Tax Loss Condition Satisfaction Date** means the first date upon which it is the case that the Tax Loss Condition has been satisfied.

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**Transaction** means the transaction contemplated by this agreement.



**VOK Termination Deed** means the deed dated 1 May 2009 between the Company and VOK Beverages Pty Ltd.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression person includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (e) a reference to any document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
- (h) reference to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this agreement and a reference to this agreement includes any schedule, exhibit or annexure to this agreement;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) a reference to \$ or dollar is to Australian currency unless otherwise specified.

## 2. Placement

### 2.1 Conditions

The issue of the Placement Shares is conditional on:

- (a) **Section 611 item 7:** the shareholders in the Company having passed an ordinary resolution approving the issue of, and the acquisition of a Relevant Interest in, the Placement Shares by all persons who may acquire such a Relevant Interest in connection with the Transaction for the purposes of and in accordance with section 611, item 7, of the Corporations Act and Listing Rule 7.1 and for all other purposes under the Listing Rules;
- (b) **Election of new director:** the shareholders in the Company having passed an ordinary resolution approving the following person nominated by Woolworths having been elected and appointed as a director of the Company: Steven Greentree

(c) **ASX waivers and confirmations:**

- (i) ASX granting a written waiver from the application of Listing Rule 10.1 in relation to the operation of the Supply Agreement during the initial 3 year term and the 2 year option extension term or alternatively, confirming in writing that Listing Rule 10.1 does not apply to the operation of the Supply Agreement during the initial 3 year term and the 2 year option extension term.
- (ii) ASX granting a written waiver from the application of Listing Rule 6.18 in relation to the subscriber rights, and exercise thereof, pursuant to the Subscriber Rights Deed.
- (iii) ASX confirming in writing that the rights contained in clause 2 of the Subscriber Rights Deed do not breach, and are not inconsistent with, Listing Rule 14.4.

(d) **Other approvals:** any other approval required by law, a Governmental Agency, the Listing Rules, ASIC, the ASX, or of the Company's shareholders agreed by the parties as necessary or desirable in order to implement the issue of the Placement Shares and such approvals are not withdrawn or revoked;

(e) **Governmental Agencies:** none of the following is in effect or has been issued or made (and not withdrawn) between the date of this agreement and Placement Completion:

- (i) a conditional or unconditional decision, determination or statement by any Governmental Agency to the effect that it objects to the issue of the Placement Shares, and that decision, determination or statement would have the effect or likely effect of materially impeding the implementation of the issue of the Placement Shares;
- (ii) a preliminary or final decision, determination, or order issued by any Governmental Agency preventing the issue of the Placement Shares; or
- (iii) a temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or the Takeovers Panel or other legal restraint or prohibition preventing the issue of the Placement Shares;

(f) **Notice of Meeting:** on or before 12 June 2009:

- (i) the Board unanimously recommending that shareholders in the Company support the Shareholder Resolutions and including a recommendation to that effect in the Notice of Meeting;
- (ii) the Independent Expert Report concluding that the proposed issue of the Placement Shares for the Placement Price pursuant to this agreement is "fair and reasonable" in the context of the interests of the Company's shareholders; and
- (iii) ~~the Notice of Meeting having been sent to the Company's shareholders and containing the recommendation referred to in clause 2.1(f)(i) and the report referred to in clause 2.1(f)(ii);~~

(g) **Maintenance of Recommendation:** the Board having not changed or withdrawn the recommendation referred to in clause 2.1(f)(i) or made any public statement

which is inconsistent with its recommendation and no Director having made any public statement in support of any transaction which is inconsistent with the Transaction or the Shareholders Resolutions being approved by the shareholders of the Company at the Meeting;

- (h) **No Prescribed Occurrences or MAC:** no Prescribed Occurrence or a Material Adverse Change having occurred, been announced, become public or otherwise become known to Woolworths between the date of this agreement and the Placement Completion Date; and
- (i) **Compliance:** the Company having complied with all its payment obligations under the VOK Termination Deed such that VOK Beverages Pty Ltd has not been issued any Shares under the VOK Termination Deed and has ceased to have any rights, whether unconditional or contingent to be issued shares in the Company.

## 2.2 Reasonable endeavours to satisfy conditions

Each party must use all reasonable endeavours to ensure that all of the Conditions are satisfied as soon as practicable after the date of this agreement and in any event before the End Date and in particular:

- (a) the Company must prepare for and hold the Meeting and seek to have the Shareholder Resolutions passed in accordance with the timetable set out in Schedule 4;
- (b) each party must otherwise co-operate with, and comply with all reasonable requests of each other party for the purposes of procuring the satisfaction of any Condition and must not take any action that will or is likely to hinder or prevent the satisfaction of any Condition; and
- (c) each party must keep each other party informed of any fact, matter or circumstance of which it becomes aware that may result in a Condition not being satisfied in accordance with its terms.

## 2.3 Benefit of Conditions

- (a) The Conditions in clauses 2.1(b), 2.1(c), 2.1(f), 2.1(g), 2.1(h) and 2.1(i) are for the benefit of Woolworths and may be unilaterally waived in whole or in part only by Woolworths by notice in writing to the Company.
- (b) The Conditions in clauses 2.1(a), 2.1(d) and 2.1(e) may not be waived by the parties.

## 2.4 Agreement to subscribe for Placement Shares

Subject to the terms of this agreement, on Placement Completion Woolworths agrees to subscribe for and the Company agrees to allot and issue to Woolworths at the Placement Price the Placement Shares less the Option Shares if Woolworths has exercised the Option prior to Placement Completion.

## 2.5 Time and date of Placement Completion

Placement Completion will take place on the day that is two (2) Business Days after the date of satisfaction or waiver of each of the Conditions in clause 2.1, or such other date as the Company and Woolworths agree.

**2.6****Company's obligations on Placement Completion**

Subject to the satisfaction or waiver of all of the Conditions, on Placement Completion the Company must:

- (a) issue to Woolworths fully paid up and free of all Encumbrances the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion);
- (b) immediately notify ASX of the issue of the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion) in accordance with Listing Rule 3.10.5 and apply for official quotation of the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion) by the ASX;
- (c) satisfy all the conditions and requirements in section 708A(5) of the Corporations Act including, concurrently with the issue of the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion), issuing a notice under section 708A(5)(e) and in accordance with section 708A(6) in a form and manner previously approved by Woolworths or, if the Company is not eligible to issue a notice under Section 708A(5)(e), then the Company must, within 10 Business Days of the day of the issue of the Placement Shares, do all such things necessary to satisfy Section 708A(11) of the Corporations Act (including lodging with ASIC a prospectus prepared in accordance with the Corporations Act);
- (d) deliver to Woolworths an executed original counterpart of the Subscriber Rights Deed; and
- (e) perform all other obligations required to be performed by it on Placement Completion under this agreement.

The giving of a notice under section 708A(5)(e) pursuant to clause 2.6(c) constitutes a warranty by the Company in favour of Woolworths that the Placement Shares are and will be in a class of securities that were quoted securities at all times in the 3 months prior to the Placement Completion Date and trading in that class of securities on ASX has not been suspended for more than a total of 5 days in the 12 months prior to the Placement Completion Date.

**2.7****Obligations of Woolworths on Placement Completion**

Subject to the satisfaction or waiver of all of the Conditions, on Placement Completion Woolworths:

- (a) will be taken to have subscribed for the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion);
- (b) agrees to become a member of the Company in respect of the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion) and agrees to be bound by the Company's Constitution on the issue and allotment to it of the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion);
- (c) must pay to the Company the Placement Initial Component less the Option Initial Component if Woolworths has exercised the Option prior to Placement Completion; and

- (d) must deliver to the Company an executed original counterpart of the Subscriber Rights Deed.

## 2.8 Interdependence of obligations at Placement Completion

- (a) In respect of Placement Completion:
- (i) the obligations of the parties under clauses 2.6 and 2.7 are interdependent; and
  - (ii) the obligations of the parties under clauses 2.6 and 2.7 will be taken to have occurred simultaneously on the Placement Completion Date.
- (b) If any obligation specified in clause 2.6 or 2.7 is not performed in accordance with such clause then, without limiting any other rights of the parties, Placement Completion is taken not to have occurred and any document delivered, or payment made, under any of clauses 2.6 to 2.7 must be returned immediately to the party that delivered it or paid it.

## 2.9 Holding Statement

Immediately after Placement Completion, the Company must give Woolworths a statement showing it as the holder of the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion).

## 2.10 Holding Quotation

The Company will procure that official quotation of the Placement Shares (less the Option Shares if Woolworths has exercised the Option prior to Placement Completion) is granted within five (5) Business Days after the Placement Completion Date.

## 2.11 Placement Contingent Component

Woolworths shall within five (5) Business Days after the Tax Loss Condition Satisfaction Date pay to the Company the Placement Contingent Component (if any) less the Option Contingent Component (if any) if Woolworths exercised the Option prior to Placement Completion.

## 3. Use of Placement Price

The Company will use the Placement Initial Component for the purposes set out in Part 1 of Schedule 3 and the Placement Contingent Component (if it is not zero) for the purposes set out in Part 2 of Schedule 3.

## 4. Approval of Company's shareholders and ASX

### 4.1 Company's Obligations

The Company must:

- (a) Independent Expert: for the purposes of the Meeting:

- (i) ~~engage an Independent Expert to prepare a report in accordance with the~~  
Corporations Act and ASIC Regulatory Guide 74 including as to whether the proposed issue of the Placement Shares for the Placement Price pursuant to this agreement is "fair and reasonable" in the context of the interests of the Company's shareholders; and

- (ii) promptly provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (b) **Notice of Meeting:** as soon as practicable after the date of this agreement, prepare the Notice of Meeting in compliance with the Corporations Act, ASIC Regulatory Guide 74, and the Listing Rules, make available to Woolworths drafts of the Notice of Meeting and drafts of the Independent Expert's Report and consider in good faith comments from Woolworths and its Representatives on drafts of the Notice of Meeting;
- (c) **Directors' recommendation:** state in the Notice of Meeting (on the basis of statements made to it by each of its Directors) that the Board unanimously recommends that shareholders in the Company support the placement of the Placement Shares pursuant to this agreement and vote in favour of the Shareholder Resolutions subject to:
- (i) each of the Directors' normal fiduciary obligations in relation to matters occurring, or of which the Director becomes aware, after the date of this agreement which, in the opinion of independent legal counsel representing the Company in relation to the Transaction, require the Company or the Directors to change their recommendations; and
- (ii) the Independent Expert's Report stating that the placement of the Placement Shares at the Placement Price pursuant to this agreement is "fair and reasonable" in the context of the interests of the Company's shareholders;
- (d) **ASX approval:** provide drafts of the documents to be sent out to the Company's shareholders in respect of the Meeting to the ASX for the purpose of ASX approving (or not objecting to) those documents in accordance with Listing Rule 15.1, and liaise with ASX with regards to those documents;
- (e) **ASIC lodgement:** lodge with ASIC the Notice of Meeting and other documents to be sent out to the Company's shareholders in respect of the Meeting and liaise with ASIC with regards to those documents;
- (f) **Board Approval:** procure that a meeting of the Board is convened to approve the despatch to the Company's shareholders of the Notice of Meeting and the Independent Expert's Report;
- (g) **Convening of Meeting:** take all necessary steps to convene the Meeting in compliance with the Corporations Act, ASIC Regulatory Guides, the Listing Rules and the Company's Constitution and consider at that Meeting the Shareholder Resolutions, all in accordance with the timetable specified in Schedule 4; and
- (h) **Updating:** promptly provide to the Company's shareholders and Woolworths all such further or new information of which the Company becomes aware that arises after the Notice of Meeting has been despatched until the Placement Completion Date which is necessary to ensure that the Notice of Meeting despatched to the Company's shareholders:
- 
- (i) is not misleading or deceptive (whether by omission or otherwise); and
- (ii) continues to comply with all applicable laws, Listing Rules and ASIC Regulatory Guides.

## 5. Option

### 5.1 Grant of Option

The Company grants to Woolworths an option to be issued the Option Shares for the Option Price subject to the terms and conditions of this agreement.

### 5.2 Exercise of Option

- (a) Subject to clause 5.2(b), at any time during the Option Exercise Period, Woolworths may exercise the Option by delivering to the Company a notice in writing duly executed by Woolworths.
- (b) The Option may not be exercised at any time after the occurrence of Placement Completion.

### 5.3 Time and date of Option Completion

Option Completion will take place on the Option Completion Date, or such other date as the Company and Woolworths agree.

### 5.4 Company's obligations on Option Completion

On Option Completion the Company will:

- (a) issue to Woolworths the Option Shares, fully paid up and free of all Encumbrances;
- (b) immediately notify ASX of the issue of the Option Shares in accordance with Listing Rule 3.10.5 and apply to ASX for official quotation of the Placement Shares;
- (c) satisfy all the conditions and requirements in section 708A(5) of the Corporations Act including, concurrently with the issue of the Option Shares, issuing a notice under section 708A(5)(e) and in accordance with section 708A(6) in a form and manner previously approved by Woolworths or, if the Company is not eligible to issue a notice under Section 708A(5)(e), then the Company must, within 10 Business Days of the day of the issue of the Option Shares, do all such things necessary to satisfy Section 708A(11) of the Corporations Act (including lodging with ASIC a prospectus prepared in accordance with the Corporations Act);
- (d) deliver to Woolworths an executed original counterpart of the Subscriber Rights Deed; and
- (e) perform all other obligations required to be performed by it on Option Completion under this agreement.

The giving of a notice under section 708A(5)(e) pursuant to clause 5.4(c) constitutes a warranty by the Company in favour of Woolworths that the Placement Shares are and will be in a class of securities that were quoted securities at all times in the 3 months prior to the Option Completion Date and trading in that class of securities on ASX has not been suspended for more than a total of 5 days in the 12 months prior to the Option Completion Date.

### 5.5 Obligations of Woolworths on Option Completion

Subject to the satisfaction or waiver of all of the Conditions, on Option Completion Woolworths:

- (a) will be taken to have subscribed for the Option Shares;
- (b) agrees to become a member of the Company in respect of the Option Shares and agrees to be bound by the Company's Constitution on the issue and allotment to it of the Option Shares; and
- (c) must pay to the Company the Option Initial Component; and
- (d) deliver to the Company an executed original counterpart of the Subscriber Rights Deed.

## 5.6 Interdependence of obligations at Option Completion

- (a) In respect of Option Completion:
  - (i) the obligations of the parties under clauses 5.5 and 5.6 are interdependent; and
  - (ii) the obligations of the parties under clauses 5.5 and 5.6 will be taken to have occurred simultaneously on the Option Completion Date.
- (b) If any obligation specified in clause 5.5 or 5.6 is not performed in accordance with such clause then, without limiting any other rights of the parties, Option Completion is taken not to have occurred and any document delivered, or payment made, under any of clauses 5.5 to 5.6 must be returned immediately to the party that delivered it or paid it.

## 5.7 Holding Statement

Immediately after Option Completion, the Company must give Woolworths a holding statement showing it as the holder of the Option Shares.

## 5.8 Holding Quotation

The Company will procure that official quotation of the Option Shares is granted within five (5) Business Days after the Option Completion Date.

## 5.9 Option Contingent Amount

If the Option is exercised Woolworths shall within five (5) Business Days after the Tax Loss Condition Satisfaction Date pay to the Company the Option Contingent Amount (if any).

## 6. Use of Option Price

Unless otherwise agreed by the parties, the Company will use the Option Initial Component for the purposes set out in Part 3 of Schedule 3 and the Option Contingent Component (if not zero) for the purposes set out in Part 4 of Schedule 3.

## 7. Tax Loss Condition

- (a) ~~Woolworths shall be entitled, and obliged, to appoint a senior tax counsel expert in Tax Law as selected by Woolworths, in its sole and absolute discretion, to consider whether the senior counsel concerned is prepared to give the opinion referred to in paragraph (a) of the definition of Tax Loss Condition.~~
- (b) The senior counsel appointment pursuant to clause 7(a) must be made by Woolworths by 31 December 2009 unless the Company in its sole and absolute



discretion notifies Woolworths in writing by 1 December 2009 that Woolworths need not make such an appointment by 31 December 2009 (on the basis that the Company, acting in good faith, has formed the view that the auditor will not or is not likely to give the certificate referred to in paragraph (b)(i) of the definition of Tax Loss Condition (ie in respect of the balance sheet forming part of the Half Yearly Accounts)).

- (c) In the event that the Company gives a written notice to Woolworths pursuant to clause 7(b) then the senior counsel appointment pursuant to this clause 7 must be made by Woolworths by 30 June 2010.
- (d) In the event that Woolworths makes the appointment pursuant to this clause 7 by 31 December 2009 but the Company's auditor does not subsequently provide the certificate referred to in paragraph (b)(i) of the definition of Tax Loss Condition (ie in respect of the balance sheet forming part of the Half Yearly Accounts) then the opinion so obtained (**First Opinion**) shall be disregarded for the purposes of paragraph (a) of the definition of Tax Loss Condition (ie shall not be treated as an opinion fulfilling the requirements of paragraph (a)) and Woolworths must make a new appointment pursuant to this clause 7 by 30 June 2010. Such new appointment may be of the same senior counsel who gave the First Opinion or a different senior counsel, as determined by Woolworths in its sole and absolute discretion. In such a case the Company's auditor in considering whether to give the certificate referred to in paragraph (b)(ii) of the definition of Tax Loss Condition (ie in respect of the balance sheet forming part of the Full Year Accounts) shall disregard the First Opinion and instead have regard to the opinion of the senior counsel newly appointed by Woolworths pursuant to Woolworths' obligations under this clause 7(d).
- (e) Woolworths shall bear all fees of any one or more senior counsel appointed pursuant to this clause 7.
- (f) The Company shall bear all fees of its auditors in respect of work related to considering whether to give, and giving, a certificate referred to in paragraph (b) of the definition of Tax Loss Condition.

## **8. Company Warranties**

### **8.1 Company Warranties**

The Company represents and warrants to Woolworths that each Company Warranty is true and correct and not misleading or deceptive as at:

- (a) the date of execution of this agreement; and
- (b) the time immediately prior to the later of Placement Completion and Option Completion.

### **8.2 Company Warranties separate**

Each Company Warranty is to be treated as a separate warranty and is not limited by reference to any other warranty or any other provision of this agreement.

### **8.3 Survival**

Each Company Warranty will remain in full force and effect after Placement Completion or Option Completion (as the case may be) and liability thereunder will not be confined to

breaches which are discovered prior to the Placement Completion Date or Option Completion Date (as the case may be).

#### **8.4 Reliance**

The parties acknowledge that Woolworths has entered into this agreement in reliance on the Company Warranties.

#### **8.5 Indemnity for breach of Company Warranty**

Without limiting any other remedy available to Woolworths, the Company must pay to Woolworths on demand:

- (a) the amount of any Indemnified Loss suffered or incurred by Woolworths arising out of or in connection with the breach of any Company Warranty; and
- (b) an amount equal to any additional Tax assessable on Woolworths arising out of or in connection with the receipt by Woolworths of a payment under this clause 8.5 or otherwise in respect of the breach of any Company Warranty.

#### **8.6 Company to notify potential breaches**

If before the later of Placement Completion and Option Completion the Company becomes aware of any fact, matter or circumstance which results in or is reasonably likely to result in a breach of any Company Warranty, then the Company must promptly provide to Woolworths a notice describing that fact, matter or circumstance in reasonable detail.

### **9. Woolworths Warranties**

#### **9.1 Woolworths Warranties**

Woolworths represents and warrants to the Company that each Woolworths Warranty is true and correct and not misleading or deceptive as at:

- (a) the date of execution of this agreement; and
- (b) the time immediately prior to the later of Placement Completion and Option Completion.

#### **9.2 Woolworths Warranties separate**

Each Woolworths Warranty is to be treated as a separate warranty and is not limited by reference to any other warranty or any other provision of this agreement.

#### **9.3 Survival**

Each Woolworths Warranty will remain in full force and effect after Placement Completion or Option Completion (as the case may be) and liability thereunder will not be confined to breaches which are discovered prior to the Placement Completion Date or Option Completion Date (as the case may be).

#### **9.4 Reliance**

The parties acknowledge that the Company has entered into this agreement in reliance on the Woolworths Warranties.

## 9.5 Indemnity for breach of Woolworths Warranty

Without limiting any other remedy available to the Company, Woolworths must pay to the Company on demand:

- (a) the amount of any Indemnified Loss suffered or incurred by the Company arising out of or in connection with the breach of any Woolworths Warranty; and
- (b) an amount equal to any additional Tax assessable on the Company arising out of or in connection with the receipt by the Company of a payment under this clause 9.5 or otherwise in respect of the breach of any Woolworths Warranty.

## 10. Exclusivity and Confidentiality

### 10.1 No Solicitation

Subject to clause 10.2, during the Exclusivity Period, the Company must ensure that it and its employees, officers and advisers (and, to the extent it is reasonably able to influence them, its associates), do not, except with the prior written consent of Woolworths, directly or indirectly solicit any offer or proposal by any person other than Woolworths to:

- (a) acquire or become the holder (whether by share purchase, scheme, capital reconstruction, purchase of assets, tender offer or otherwise) of:
  - (i) all or a substantial part of the Company's business; or
  - (ii) any substantial part of the Company's share capital (it being acknowledged that 5% of its ordinary shares would constitute a substantial part of its share capital);
- (b) acquire control (as determined in accordance with section 50AA of the Corporations Act) of the Company; or
- (c) otherwise merge with the Company.

### 10.2 Compliance with Law

Clause 10.1 shall not require a Director to breach his or her duties as a Director, or require the Company to breach any order of a court or other relevant regulatory or statutory authority, or otherwise act unlawfully on any other basis.

### 10.3 Confidentiality

- (a) **Confidentiality:** Subject to clauses 10.3(b) and 10.3(c), each party must keep the terms of this agreement, and information of which it has become aware in connection with this agreement, confidential.
- (b) **Exceptions:** A party may make any disclosure in relation to this agreement:
  - (i) to any professional adviser, financial adviser, banker, financier or auditor where that person is obliged to keep the information confidential;
  - (ii) to comply with any applicable law, or any requirement of any regulatory body (including any relevant stock exchange);
  - (iii) to any of its employees to whom it is necessary to disclose the information;

- (iv) to obtain the consent of any third party to any term of, or to any act pursuant to, this agreement (including, to obtain the consents and satisfy the other conditions referred to in clause 2.1);
- (v) to enforce its rights or to defend any claim or action under this agreement;
- (vi) to a related body corporate, on receipt of its undertaking to keep the information confidential; or
- (vii) where the information has come into the public domain through no fault of that party.

(c) **Public announcements:**

- (i) Immediately after the execution of this agreement, the parties will each issue a separate public announcement in a form previously approved by the other party (acting reasonably) and in the case of the Company reflecting, amongst other things, the support of the Board for the Transaction.
- (ii) Except as required by applicable law or the requirements of any regulatory body (including any relevant stock exchange), all press releases and other public announcements in relation to this agreement must be in terms agreed by the parties.

## 11. Termination

### 11.1 Termination

The issue of the Placement Shares (and the rights and obligations under clause 2) may be terminated at any time prior to the Placement Completion:

- (a) by Woolworths, if the Company is in breach of any of its obligations under this agreement and Woolworths has given notice to the Company under this clause setting out the relevant circumstances and the relevant circumstances have continued to exist for 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Placement Completion Date) from the time such notice is received;
- (b) by Woolworths or by the Company, if the Independent Expert opines that the issue of the Placement Shares pursuant to this agreement is not fair and reasonable to the Company's shareholders;
- (c) by Woolworths, if the Board changes or withdraws its recommendation in relation to the Transaction;
- (d) by Woolworths or the Company, if any of the Conditions which are for that party's benefit (as provided in clause 2.3) is not satisfied or waived by the earlier of the End Date or the date specified for its satisfaction (or an event occurs which would prevent such a Condition being satisfied by either such date); or
- (e) by Woolworths or the Company, if any of the Conditions which are not capable of waiver (as provided in clause 2.3) is not satisfied by the earlier of the End Date or the date specified for its satisfaction (or an event occurs which would prevent such a Condition being satisfied by either such date).

**11.2 Termination after notice to Complete**

If a party fails to satisfy its obligations for either Placement Completion or Option Completion, the other party may give a notice requiring the party to satisfy those obligations within a period of two (2) Business Days from the date of receipt of the notice, and declaring time to be of the essence in all respects. If the party fails to satisfy those obligations on the date specified in the other party's notice, the other party may, without affecting or limiting any other rights it might have, terminate its obligations in respect of the Placement Completion or Option Completion, as the case may be.

**11.3 End date**

The issue of the Placement Shares (and the rights and obligations under clause 2) may be terminated by either party if the Placement Completion has not occurred by the End Date.

**11.4 Effect of termination**

In the event of termination of the issue of the Placement Shares (and the rights and obligations under clause 2) by either party pursuant to this clause 11:

- (a) the parties shall not be liable to each other in respect of obligations under clause 2 except in relation to any breach of clause 2 occurring before termination; and
- (b) the remainder of this agreement shall survive such termination.

**11.5 Other termination**

This clause 11 does not limit the rights of a party in respect of any rights it may have to terminate this agreement whether arising under law, equity or otherwise.

**12. General****12.1 Further Acts**

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this agreement.

**12.2 Notices**

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as shown below:

**Woolworths**

Name: Woolworths Limited  
 Address: 1 Woolworths Way, Bella Vista, NSW 2153  
 Fax: 02 8888 3680

For the attention of: Company Secretary

**Company**

Name: Gage Roads Brewing Co Limited  
 Address: 14 Absolon Street, Palmyra DC, WA, 6961 OR  
 PO Box 2024, Palmyra DC, WA, 6961  
 Fax: 08 9331 2400  
 For the attention of: Company Secretary

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 12.2(b); and
- (e) will be deemed to be received by the addressee:
  - (i) (in the case of prepaid post) on the third business day after the date of posting to an address within Australia, and on the fifth business day after the date of posting to an address outside Australia;
  - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is a non business day, or is after 5.00 pm on a business day, when that communication will be deemed to be received at 9.00 am on the next business day; and
  - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 12.2(b), unless that delivery is made on a non business day, or after 5.00 pm on a business day, when that communication will be deemed to be received at 9.00 am on the next business day,

and where "business day" means a day which is not a Saturday, Sunday or public holiday in the place of receipt of that communication.

**12.3 Expenses**

Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this agreement.

**12.4 Amendments**

This agreement may only be varied by a document signed by or on behalf of each of the parties.

**12.5 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party.

**12.6 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.

**12.7 Counterparts**

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, all of which together constitute one agreement.

**12.8 Survival of certain provisions; no merger**

- (a) Clauses 10.3, 11 and 12 will survive termination of this agreement.
- (b) If this agreement is terminated, no party will be liable to any other party except in respect of any breach of this agreement occurring before termination.
- (c) No right or obligation of any party will merge on completion of any transaction under this agreement. All rights and obligations under this agreement survive the execution and delivery of any transfer or other document which implements any transaction under this agreement.

**12.9 Entire agreement**

To the extent permitted by law, in relation to the subject matter of this agreement, this agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior written or other agreement between the parties.

---

**13. Governing law and jurisdiction****13.1 Governing law**

This agreement is governed by and must be construed according to the law applying in the State.

**13.2 Jurisdiction**

---

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 13.2(a).

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## Schedule 1 Company Warranties

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### 1. The Company

#### 1.1 Capacity and authorisation

The Company is a company properly incorporated and validly existing under the laws of Australia, has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under this agreement and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so.

#### 1.2 Valid obligations

This agreement constitutes valid legal and binding obligations of the Company and is enforceable against the Company in accordance with its terms.

#### 1.3 Breach or default

The execution, delivery and performance of this agreement by the Company does not and will not result in a breach of or constitute a default under:

- (a) any agreement to which the Company is party;
- (b) any provision of the constitution of the Company; or
- (c) any law or regulation or any order, judgment or determination of any court or Government Authority by which the Company is bound.

#### 1.4 Solvency

No Insolvency Event has occurred in relation to the Company or any member of the Group.

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### 2. Shares and share capital

#### 2.1 Securities on issue

The Company has no shares, options, convertible notes or other securities as of the date of this agreement, and has no obligations to issue any of the same, other than:

- (a) 226,232,669 Shares of which 223,232,669 are quoted on the ASX and 3,000,000 issued to an employee of the company are in escrow until 22 January 2010; and
  - (b) 3,000,000 options issued to three non-director employees with the following terms:
    - (i) 750,000 40 cent options expiring 12 July 2012; and
    - (ii) 750,000 20 cent options expiring 19 December 2012; and
    - (iii) 750,000 30 cent options expiring 19 December 2012; and
    - (iv) 750,000 40 cent options expiring 19 December 2012.
-

### 3. Shares

#### 3.1 Placement Shares and Option Shares

- (a) The Placement Shares shall comprise 25% of the issued Share capital of the Company immediately after their issue (assuming for this purpose that the options referred to in paragraph 2.1(b) above had been exercised, and Shares issued pursuant to those option exercises, prior to the Placement Completion).
- (b) The Option Shares shall comprise 12.45 % of the issued Share capital of the Company immediately after their issue (assuming for this purpose that the options referred to in paragraph 2.1(b) above had been exercised, and Shares issued pursuant to those option exercises, prior to the Option Completion and assuming that the Placement Shares were not issued).
- (c) The Placement Shares and the Option Shares are in a class of securities that were quoted securities at all times in the 3 months prior to the date of this agreement and trading in that class of securities on ASX has not been suspended for more than a total of 5 days in the 12 months prior to the date of this agreement.

#### 3.2 Ranking

From the date of issue, the Placement Shares and the Option Shares will rank equally in all respects, including for future dividends payable, with all other Shares.

#### 3.3 Encumbrances

The Placement Shares and the Option Shares will be free from all Encumbrances.

#### 3.4 Purpose of Placement Shares

None of the Placement Shares or the Option Shares are being issued by the Company for the purpose of resale (whether by selling or transferring them or granting, issuing or transferring interests in, options or warrants over them).

### 4. Compliance

- (a) The Company has at all times since incorporation conducted its business and affairs in accordance with:
  - (i) the Company's constitution;
  - (ii) all applicable laws;
  - (iii) the ASX Listing Rules;
  - (iv) any policy or class order of ASIC (to the extent that such policy or class order is legally binding on the Company); and
  - (v) all applicable regulations,

~~except for the late lodgement of the Company's accounts with ASX for the year ended 30 June 2007.~~

- (b) The Company is not in breach of any order, judgment or award of any court, tribunal or Government Agency in any jurisdiction.

- (c) No exemption under sections 111AS or 111AT of the Corporations Act, or order under sections 340 or 341 of the Corporations Act, does or will cover the issue of the Placement Shares, the Company, or any person, as a director or auditor of the Company at any time during the 12 months before the date of issue of either the Placement Shares or the Option Shares, as the case may be.
- (d) The Company is able to provide, and there is nothing as at the Execution Date preventing it from providing a notice under subsections 708A(5)(e) and (6) of the Corporations Act in accordance with the timetable set out in Schedule 4
- (e) The Company will comply with its payment obligations under the VOK Termination Deed.

## 5. Accounts

### 5.1 The Last Accounts

The Last Accounts:

- (a) give a true and fair view of:
  - (i) the financial position and the assets and liabilities of the Company and its controlled entities as at the Last Balance Date; and
  - (ii) the income, expenses and operational results of the Company and its controlled entities for the financial period ended on the Last Balance Date;
- (b) have been prepared:
  - (i) in compliance with the Corporations Act, the Accounting Standards and all other applicable laws and regulations;
  - (ii) applying the same principles, policies, practices and procedures as were applied in preparing the audited accounts of the Company and its controlled entities for the each of the 3 immediately preceding financial years, other than as disclosed in the Last Accounts;
- (c) are not affected by any extraordinary, unusual or non-recurring item or any other factor that might make the financial position or operational results of the Company and its controlled entities disclosed in the Last Accounts misleading or deceptive, other than as disclosed in the Last Accounts; and
- (d) contain specific provisions adequate to cover, or full particulars in notes of, all liabilities of the Company and its controlled entities as at the Last Balance Date including all liabilities in respect of Tax and all contingent liabilities.

### 5.2 Position since the Last Balance Date

Since the Last Balance Date:

- (a) ~~there has been no Material Adverse Change;~~
- (b) the Company has carried on its business in the ordinary and usual course consistent with its usual business practices and has not made any significant change to the nature or scale of any activity comprised in its business, other than the termination

of its distribution and convertible note agreements with VOK Beverages Pty Ltd on 1 May 2009;

- (c) the Company has not issued or allotted any shares or other securities, bought back or redeemed any shares or other securities or otherwise reduced its share capital, declared or paid any dividends or other distributions or authorised, or agreed conditionally or otherwise to do, any of those things other than as disclosed to the ASX including;
- (i) the issue of 1,107,500 Shares on 22 January 2009 at an issue price of \$0.01; and
  - (ii) the issue of 4,275,000 Shares on 22 January 2009 to employees of the Company at an issue price of \$0.
- (d) the Company has not disposed of or created any Encumbrance over any asset except in the ordinary course of business;
- (e) the Company has not incurred or entered into commitments to incur capital expenditure in excess of \$300,000 in aggregate; and
- (f) there has been no material increase or decrease in the levels of debtors, creditors or inventory or in the average collection or payment periods for debtors and creditors of the Company and:
- (i) is not presently in default in paying any creditor by the due date for payment; and
  - (ii) no debt owing to the Company has been released or settled for an amount less than its full amount.

## 6. Disclosure

### 6.1 Accuracy of due diligence materials

All information contained in the Due Diligence Materials is accurate and not misleading or deceptive.

### 6.2 Completeness of Due Diligence Materials

The Due Diligence Materials include all information relating to the Company:

- (a) which the Company or its Representatives know or should reasonably be expected to know is material to Woolworths in entering into and completing the Transaction; or
- (b) the disclosure of which might reasonably be expected to affect the willingness of Woolworths to subscribe for any Shares or the price or other terms or conditions on which Woolworths would be willing to subscribe for any Shares.

### 6.3 Disclosure to ASX

- (a) The Company has no information that a reasonable person would expect to have a material effect on the price or value of Shares that has not been disclosed to ASX prior to the date of this agreement or that would be required to be disclosed as "excluded information" under subsection 708A(6) save for in relation to the

transaction contemplated between the Company and Woolworths as documented in this Agreement and the Supply Agreement.

- (b) No information disclosed by or on behalf of the Company, its shareholders, ASX or ASIC, or otherwise made publicly available by the Company was or is in any material respect misleading or deceptive, contained or contains any material omissions or involved or involves conduct that is misleading or deceptive in any material respect.

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## Schedule 2 Woolworths Warranties

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### 1. General

#### 1.1 Capacity and authorisation

- (a) Woolworths has full power and authority to enter into and perform its obligations under this agreement.
- (b) All necessary authorisations for the execution, delivery and performance by Woolworths of this agreement have been or will be obtained before Settlement.
- (c) Woolworths is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.
- (d) Woolworths enters into and performs this agreement on its own account and not as trustee for or nominee of any other person.

#### 1.2 Valid obligations

This agreement constitutes valid legal and binding obligations of Woolworths and is enforceable against Woolworths in accordance with its terms.

#### 1.3 Breach or default

The entry into and performance of this agreement and all documents executed pursuant to this agreement by Woolworths does not constitute a breach of any obligation (including any statutory, contractual or fiduciary obligation), or default under any agreement or undertaking by which Woolworths is bound.

#### 1.4 Solvency

No Insolvency Event has occurred in relation to Woolworths, nor is there any act which has occurred or any omission made which may result in an Event of Insolvency occurring in relation to Woolworths.

**Schedule 3 Use of proceeds****Part 1 Use of Placement Initial Component**

Description	Use of Proceeds
Capital expenditure being the purchase of additional capital equipment and associated installation and commissioning expenses required to produce at least 30,000 cases of the Goods, as defined in the Supply Agreement, per month, in response to Purchase Orders issued by Woolworths, estimated to be a total of \$702,000.	At least \$702,000 (100%) of the expected \$702,000 total capital expenditure programme.
Operating expenses, general working capital, costs and capital expenditure required to ensure WQA certification within 6 months after the commencement date, and other non specific uses of funds.	The balance of the Placement Initial Component.
Total Placement Initial Component	\$1,237,856.42

**Part 2 Use of Placement Contingent Component**

Description	Use of Proceeds
Operating expenses, general working capital, and other non specific uses of funds.	\$672,415.83

**Part 3 Use of Option Initial Component**

Description	Use of Proceeds
Capital expenditure being the purchase of additional capital equipment and associated installation and commissioning expenses required to produce at least 30,000 cases of the Goods, as defined in the Supply Agreement, per month in response to Purchase Orders issued by Woolworths, estimated to be a total of \$702,000.	At least \$528,120 (75.2%) of the expected \$702,000 total capital expenditure programme.
Total Placement Initial Component	\$528,120

**Part 4 Use of Option Contingent Component**

Description	Use of Proceeds
Capital expenditure being the purchase of additional capital equipment and associated installation and commissioning expenses required to produce at least 30,000 cases of the Goods, as defined in the Supply Agreement, per month in response to Purchase Orders issued by Woolworths, estimated to be a total of \$702,000.	At least \$173,880 (24.8%) of the expected \$702,000 total capital expenditure programme, if not already spent.
Operating expenses, general working capital, costs and capital expenditure required to ensure WQA certification within 6 months after the commencement date, and other non specific uses of funds.	The balance of the Option Contingent Component.
Total Placement Contingent Component	\$286,880



**Schedule 4 Timetable****Part 1 Placement timetable**

Action	Date
Company provides Notice of Meeting to ASIC and ASX	20 May 2009
Dispatch of Notice of Meeting to shareholders	27 May 2009
Company holds Meeting	26 June 2009
Company notifies ASX of results of meeting	26 June 2009
Placement Completion	30 June 2009
Company lodges Appendix 3B with ASX	30 June 2009
Cleansing notice under section 708A(5) provided to ASX	30 June 2009
Quotation of Placement Shares	30 June 2009

## Schedule 5 Subscriber Rights Deed

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**CLAYTON UTZ**

## **Subscriber Rights Deed**

**Woolworths Limited**

Woolworths

**Gage Roads Brewing Co Limited**

Company

Clayton Utz  
Lawyers  
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia  
PO Box 113 Australia Square Sydney NSW 1215  
T +61 2 9353 4000 F +61 2 8220 6700

[www.claytonutz.com](http://www.claytonutz.com)

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Our reference: 173/46028

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## Subscriber Rights Deed made at \_\_\_\_\_ on \_\_\_\_\_

**Parties** **Gage Roads Brewing Co Limited ABN 22 103 014 320** of 14 Absolon St,  
Palmyra, WA 6157 (Company)

**Woolworths Limited ABN 88 000 014 675** of 1 Woolworths Way, Bella  
Vista, NSW 2153 (Woolworths)

### Background

- A. The parties have entered into the Subscription Agreement.
- B. The parties wish to document certain rights granted to Woolworths pursuant to its subscription for Shares in the Company.
- C. The Company and Woolworths agree that Woolworths is granted the rights set out by the terms of this deed.

### Operative provisions

#### 1. Definitions and interpretation

##### 1.1 Definitions

**Acceptance Period Commencement Date** means:

- (a) if there is no Dispute, the date on which the Offer Notice is received by Woolworths; or
- (b) if there is a Dispute, the date on which the Dispute is determined.

**ASX** means ASX Limited ACN 008 624 691.

**ASX Listing Rules** means the listing rules of the ASX, as amended from time to time.

**Business Day** means a business day as defined in the ASX Listing Rules.

**Corporations Act** means the Corporations Act 2001(Cth).

**Diluting Event** means an issue of Shares other than a Pro-Rata Issue.

**Directors** means the directors of the Company from time to time.

**Dispute** has the meaning given to that term in clause 4.3(a).

**Expert** has the meaning given to that term in clause 4.3(b).

**Incumbent Nominee** has the meaning given in clause 2.1(c).

**Member** means any person who is entered in the register of members of the Company as a holder of Shares.

**Offer Notice** means a notice addressed to Woolworths and delivered in accordance with clause

**Pro-Rata Issue** means an issue of Shares made pursuant to an offer to all holders of fully paid Shares on a pro-rata basis in respect of all the Shares that they hold (other than to holders in

respect of whom the exception in Listing Rule 7.7.1 applies and is being relied upon by the Company).

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Interest** has the meaning given to that term in the Corporations Act.

**Share** means a fully paid ordinary share in the capital of the Company.

**Subscription Agreement** means the subscription agreement between Woolworths and the Company dated on or about 14 May 2009.

**Subscription Notice** means a notice delivered in accordance with clause 5.1.

**Subscription Price** means the subscription price per Share payable for Top-Up Shares as determined in accordance with clause 3.4.

**Top-Up Rights** means the rights conferred by clauses 3 to 5.

**Top-Up Shares** means, in relation to a Diluting Event, those Shares which members of Woolworths Group are entitled to subscribe for in respect of that Diluting Event, the number of such Shares being determined in accordance with clause 3.

**Trading Day** a day which is a Trading Day as defined in the ASTC Settlement Rules for the Company's Shares.

**Woolworths Nominee** has the meaning given in clause 2.1(a).

**Woolworths Group** means Woolworths and its Related Bodies Corporate.

**Woolworths Group Shareholding** the aggregate number of Shares in which Woolworths Group has a Relevant Interest.

## 1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(f) ~~a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;~~

- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

## 2. Director Nomination Rights

### 2.1 Nomination Rights

- (a) Woolworths may nominate one person to be a director on the board of Directors of the Company (Woolworths Nominee).
- (b) Woolworths may at any time remove any Woolworths Nominee nominated under this clause 2.1.
- (c) In circumstances where a Woolworths Nominee nominated under this clause 2.1 is due to retire by rotation or is eligible for re-election at any time (Incumbent Nominee), Woolworths may propose a new nominee under clause 2.1(a) and if such a nomination is made, Woolworths will procure that the Incumbent Nominee will not be eligible to offer him or herself for re-election.
- (d) In the event that the resolution referred to in clause 2.1(b) of the Subscription Agreement is not passed at the meeting referred to in clause 4.1 of that agreement, Woolworths may propose a new nominee under clause 2.1(a).
- (e) If a Woolworths Nominee is removed (either by Woolworths or by a resolution of Members), retires, fails to be re-elected by resolution of Members or ceases to hold office as a Director for any reason, Woolworths may nominate another Woolworths Nominee in that person's place under clause 2.1(a) and neither the Directors nor the Company in general meeting may appoint a successor who is not a Woolworths Nominee.
- (f) The nomination of a Woolworths Nominee under clause 2.1(a) or the removal of a Woolworths Nominee under clause 2.1(b) shall be effected by written notice to the Company signed by Woolworths.
- (g) Woolworths may not nominate a particular individual as a Woolworths Nominee if that individual has been removed by a resolution of Members or, being a Director retiring by rotation, is not re-elected by resolution of Members.
- (h) Where the Company receives under this clause 2.1 a notice of nomination, the Directors shall appoint the Woolworths Nominee so nominated as a Director.
- (i) While the Company is admitted to the official list of the ASX, any Director appointed by the board of Directors under clause 2.1(h) must retire from office at, and will be eligible for re-election at, the next annual general meeting following his or her appointment.

- (j) The Company and Directors will support the re-election of the then current or proposed Woolworths Nominee at each annual general meeting (unless the board of Directors reasonably believes that they would be in breach of their fiduciary or statutory duties as directors to do so or Woolworths provides written notice to the board of Directors not to support the re-election).
- (k) Any Woolworths Nominee nominated under clause 2.1(a) who is appointed as a Director will be taken to have been appointed to represent the interests of Woolworths and section 203D of the Corporations Act applies.
- (l) For the avoidance of doubt, this clause 2 does not give Woolworths the right to nominate pursuant to this clause 2 more than one director to the board of the Company at any one time provided that nothing in this deed in any way limits Woolworths' ability to propose the election by shareholders at any general meeting of more than one nominee of Woolworths to the board of Directors or in any way limits the ability of the board of Directors at its absolute discretion to appoint at any time any person to the board of Directors with the result that Woolworths has two or more nominees on the board of Directors.

## 2.2 Cessation of Nomination Rights

- (a) If at any time Woolworths Group has a Relevant Interest in less than 10% of the Shares on issue for a continuous period of 3 months or more after the date of this deed, Woolworths will cease to have the rights set out in clause 2.1.
- (b) If Woolworths ceases to be entitled to the rights set out in clause 2.1, Woolworths must procure that the Woolworths Nominee must resign his or her position as Director unless otherwise agreed with the Company.

## 3. Top-Up Rights

### 3.1 Top-Up Right

In relation to each Diluting Event, the Company must offer Woolworths the right for Woolworths (or any other member of Woolworths Group nominated in writing by Woolworths) to subscribe for Top-Up Shares in accordance with clauses 3 to 5.

### 3.2 Number of Top-Up Shares

Subject to clause 3.3, where the Company is required under clause 3.1 to offer Woolworths (or its nominee) the right to subscribe for Top-Up Shares, the number of Top-Up Shares to be offered in aggregate to the members of Woolworths Group in respect of a Diluting Event is the number of Shares which would need to be issued to members of Woolworths Group simultaneously with the Diluting Event such that Woolworths Group Shareholding after the issue of those Shares bears the same proportion to the total number of Shares on issue immediately following the Diluting Event (assuming for this purpose that all the Top-Up Shares in question were issued simultaneously with the Shares issued under the Diluting Event) as Woolworths Group Shareholding immediately prior to the Diluting Event bore to the total number of Shares on issue immediately prior to the Diluting Event.

### 3.3 Overlapping Dilution Events

Where the Company is required under clause 3.1 to offer Woolworths (or its nominee) the right to subscribe for Top-Up Shares in relation to a Diluting Event (Current Diluting Event) and at the time immediately prior to the Current Diluting Event:



- (a) the period for Woolworths to deliver a Subscription Notice under clause 5.1 in respect of an earlier Diluting Event (Earlier Diluting Event) has not expired and Woolworths has not delivered a Subscription Notice in respect of the Earlier Diluting Event; or
- (b) Woolworths has delivered a Subscription Notice in respect of the Earlier Diluting Event and Top-Up Shares have not been issued,

then, for the purpose of clauses 3 to 5, the number of Top-Up Shares to be offered in aggregate to the members of Woolworths Group in respect of the Current Diluting Event is the number of Shares which would need to be issued to members of Woolworths Group simultaneously with the Current Diluting Event such that Woolworths Group Shareholding after the issue of those Shares (determined as if the Woolworths Group had been issued all Top-Up Shares to which it was entitled in respect of the Earlier Diluting Event) bears the same proportion to the total number of Shares on issue immediately following the Current Diluting Event (assuming for this purpose that all of the Top-Up Shares in relation to the Earlier Diluting Event and the Current Diluting Event, and all of the Shares to be issued under the Earlier Diluting Event, had been already issued) as Woolworths Group Shareholding immediately prior to the Current Diluting Event (determined as if the Woolworths Group had been issued all Top-Up Shares to which it was entitled in respect of the Earlier Diluting Event) bore to the total number of Shares on issue immediately prior to the Current Diluting Event (determined as if all Shares under the Earlier Diluting Event had been issued and all Top-Up Shares which the Woolworths Group was entitled to be issued in respect of the Earlier Diluting Event had been issued).

### 3.4 Subscription Price

The subscription price per Share ("Subscription Price") for Top-Up Shares is as follows:

- (a) in the case of an issue of Top-Up Shares consequent upon a Diluting Event that is an issue of Shares for cash consideration, the amount per Share that is the same as that cash consideration per Share; and
- (b) in all other cases, the amount per Share that is 100% of the volume weighted average price at which Shares are traded in the ordinary course of trading on the stock market conducted by ASX for the thirty Trading Days immediately prior to the announcement by the Company of the occurrence of the Diluting Event except that if, during that period, Shares are traded on a cum-entitlement or cum-dividend basis in respect of an entitlement or a dividend which has been announced to ASX, the price at which the Shares are traded will be reduced by an amount equal to the value of the entitlement or dividend as the case may be to the extent that the Top-Up Shares will not have the right to participate in that entitlement or dividend.

### 3.5 Ranking of Top-Up Shares

Top-Up Shares, when issued, will rank equally in all respects with all other Shares issued under the Diluting Event.

### 3.6 Lapse of Top-Up Rights

- (a) Subject to clause 3.6(b), Woolworth's Top-Up Rights will automatically lapse if at any time after the date of this deed:

(i) ~~the Woolworths Group has a Relevant Interest in less than 5% of the ordinary Shares on issue; or~~

(ii) the strategic relationship between the Company and any member of the Woolworths Group as contemplated by the supply agreement between

the parties dated on or about 14 May 2009 has, in the opinion of both the Company and the Woolworths both acting reasonably, effectively ceased.

- (b) If there has been a Diluting Event and the Company has not complied with its obligations under clause 4 in respect of that Diluting Event then for the purposes of clause 3.6(a) the Company will be deemed to have issued to Woolworths (and the Woolworths Group will be deemed to have a beneficial interest in) the total number of Top-Up Shares for which Woolworths is entitled to be offered the right to subscribe in respect of that Diluting Event.

## **4. Diluting Events**

### **4.1 Notice of Diluting Events**

If a Diluting Event gives rise to Top-Up Rights under clause 3, the Company must deliver an Offer Notice in respect of the Diluting Event to Woolworths (which shall be received by Woolworths for and on behalf of the members of Woolworths Group) within 2 Business Days after the Diluting Event.

### **4.2 Contents of Offer Notice**

An Offer Notice must be in writing and state in relation to the Diluting Event:

- (a) the date on which the Diluting Event occurred;
- (b) the number of Shares on issue immediately prior to the Diluting Event;
- (c) the number of Shares which will be on issue immediately following the Diluting Event;
- (d) the number of Top-Up Shares the Company considers that it is required to offer Woolworths under clause 3 and the details of the calculation and information on which the Company has based that determination;
- (e) the price the Company considers to be the Subscription Price for the Top-Up Shares in relation to the Diluting Event;
- (f) confirmation that neither Member approval nor approval of the ASX is required in connection with the issue of the Top-Up Shares;
- (g) an offer (irrevocable until the expiration of the period referred to in clause 5.1) is made to Woolworths for Woolworths or any member of Woolworths Group to subscribe on the terms and conditions set out in clause 3 for the number of Top-Up Shares determined in accordance with clause 3.

### **4.3 Dispute**

- (a) Within 10 Business Days after Woolworths receives an Offer Notice, Woolworths may by written notice to the Company dispute the information in the Offer Notice (Dispute) and give details of the basis of that Dispute.
- (b) ~~If the Company and Woolworths do not resolve the Dispute within 7 Business Days after the Dispute first occurs, then the Company and Woolworths shall use all reasonable endeavours to agree on an independent person (Expert) to determine the Dispute. If they do not agree on an Expert, within 10 Business Days after the~~

Dispute first occurs the Expert will be nominated by the President of the Institute of Chartered Accountants, Australia upon the request of either party.

- (c) Woolworths and the Company shall use best endeavours to procure that the Expert shall thereafter determine the Dispute as quickly as possible, but in any event no later than 10 Business Days after the Expert's appointment.
- (d) The Company and Woolworths must provide the Expert with all information which the Expert reasonably requires to enable him to determine the Dispute and must provide the other party to the Dispute with a copy of all information provided to the Expert.
- (e) The Expert's determination in relation to the Dispute is final and binding in the absence of manifest error or proof that information relevant to the determination of the Dispute either was not provided to the Expert or was inaccurate. In making that determination the Expert acts as an expert and not as an arbitrator.
- (f) The Company and Woolworths must each pay half of the Expert's costs of determining the Dispute unless the Expert determines otherwise.

## **5. Issue of Top-Up Shares**

### **5.1 Subscription Notice**

Within 10 Business Days after the Acceptance Period Commencement Date or such longer period as the parties may agree in writing, Woolworths may deliver to the Company a notice which, if delivered, must state:

- (a) the names of the members of Woolworths Group that will subscribe for Top-Up Shares;
- (b) the number of Top-Up Shares to be subscribed for by each of those members of Woolworths Group, which may be some or all of the Top-Up Shares but which in aggregate must be not more than the total number of Top-Up Shares determined under clause 3;
- (c) in relation to the issue of the Top-Up Shares or any offer of them to the members of Woolworths Group referred to in clause 5.1(a), none of those Woolworths Group members is an investor to whom a disclosure document is required to be given under Chapter 6D of the Corporations Act;
- (d) the Subscription Price; and
- (e) if any consents, rulings or approvals are required to be obtained or any notices are required to be lodged in relation to the application for, or issue of, the Top-Up Shares under any law, regulation, judicial decree, order or judgment applicable to Woolworths Group, that the offer in the Offer Notice is accepted (for the number of Top-Up Shares referred to in clause 5.1(b)) subject to receipt of those consents, rulings, approvals or lodgement of those notices (which shall be specified in the notice).

### **5.2 Related Bodies Corporate**

Where the Subscription Notice names a Related Body Corporate of Woolworths, that notice is given by Woolworths as agent for that Related Body Corporate.

### 5.3 Offer to Lapse if Subscription Notice not delivered

The offer contained in an Offer Notice lapses in respect of any Top-Up Shares for which it is not accepted under a Subscription Notice within the time set out in clause 5.1.

### 5.4 Regulatory Approvals

- (a) If Woolworths delivers a Subscription Notice which is expressed to be subject to receipt of any applicable consents, rulings or approvals or the lodgement of any notices required under any law, regulation, judicial decree, order or judgment applicable to Woolworths Group (conditions), Woolworths must use its best endeavours to enable those conditions to be satisfied as soon as reasonably practicable after it delivers the Subscription Notice.
- (b) The Company must use its best endeavours to provide all reasonable assistance to the members of Woolworths Group in connection with Woolworths Group obtaining any regulatory approvals which may be required in connection with the issue of the Top-Up Shares.

### 5.5 Member and ASX approvals

The Company must not, without the prior written consent of Woolworths, issue or agree to issue any Shares or securities to any person other than a member of the Woolworths Group (Restricted Issue) which would, or would be reasonably likely to, result in any approval from Members or ASX being required in connection with any Top-Up Shares the Company would otherwise be required to issue under this deed as a consequence of any such Restricted Issue.

### 5.6 Obligations of Woolworths Group and Company

If Woolworths has delivered a Subscription Notice in respect of a Diluting Event, then within 5 Business Days after the date on which all conditions for the issue of the Top-Up Shares by the Company are satisfied:

- (a) Woolworths (or each Related Body Corporate of Woolworths named in the Subscription Notice as relevant):
  - (i) will be taken to have subscribed for the Top-Up Shares that are the subject of the Subscription Notice;
  - (ii) must pay by bank cheque an amount equal to the total Subscription Price for the number of Top-Up Shares subscribed for; and
  - (iii) agrees to become a member of the Company and to be bound by the constitution of the Company in respect of the Top-Up Shares that are the subject of the Subscription Notice; and
- (b) the Company must:
  - (i) issue the Top-Up Shares that are the subject of the Subscription Notice to Woolworths (or each Related Body Corporate of Woolworths named in the Subscription Notice as relevant), fully paid up and free of all encumbrances of any kind;
  - (ii) deliver to Woolworths (or each Related Body Corporate of Woolworths named in the Subscription Notice as relevant) a holding statement in respect of the Top-Up Shares that are the subject of the Subscription

Notice, in the name of Woolworths (or each Related Body Corporate of Woolworths named in the Subscription Notice as relevant);

- (iii) notify the ASX of the issue of the Top-Up Shares in accordance with ASX Listing Rule 3.10.5;
- (iv) satisfy all the conditions and requirements in section 708A(5) of the Corporations Act including, concurrently with the issue of the Top-Up Shares, issuing a notice under section 708A(5)(e) and in accordance with section 708A(6) and in a form and manner previously approved by Woolworths or, if the Company is not eligible to issue a notice under Section 708A(5)(e), then the Company must, within 10 Business Days of the day of the issue of the Top-Up Shares, lodge with the Australian Securities and Investments Commission a prospectus prepared in accordance with the Corporations Act and do all such things necessary to satisfy Section 708A(11) of the Corporations Act;
- (v) provide evidence to Woolworths's satisfaction that the Top-Up Shares have been approved by ASX for official quotation; and
- (vi) enter Woolworths's name (or the name of each Related Bodies Corporate named in the Subscription Notice as relevant) in the register of Members.

## 5.7 Interdependence

The requirements of clause 5.6 are interdependent and must be carried out contemporaneously. No delivery or payment will be deemed to have been made until all deliveries and payments have been made.

## 5.8 Approvals not obtained

If a Subscription Notice is expressed to be subject to a condition referred to in clause 5.4 and all such conditions have not been satisfied or waived on or before the date which is 60 Business Days after the Acceptance Period Commencement Date then:

- (a) the agreement to subscribe for the Top-Up Shares terminates;
- (b) the members of Woolworths Group are not required to deliver applications or pay the Subscription Price in accordance with clause 5.6; and
- (c) the Company is not required to issue the Top-Up Shares in accordance with clause 5.6.

## 6. Representations and Warranties

### 6.1 Warranties

- (a) Each party represents and warrants to each other party:
  - (i) it is duly incorporated and validly existing under the laws of the place of its incorporation;
  - (ii) it has full corporate power to execute, deliver and perform its obligations under this deed;

- (iii) the execution, delivery and performance of this deed has been properly authorised by it;
  - (iv) this deed constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy;
  - (v) there are no actions, claims, proceedings or investigations pending or to the best of its knowledge threatened against it or by it that may have a material adverse effect on its ability to perform its obligations under this deed.
- (b) Each party shall be deemed to represent and warrant the matters specified in clause 6.1(a) throughout the duration of this deed.

## 6.2 Notification of breach

Each party undertakes to give written notice immediately to each other party of any matter or event coming to its attention that shows any of the representations and warranties given by it in this deed to be or to have been untrue or misleading or breached.

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## 7. Remedies

### 7.1 Remedies

Without prejudice to other rights, each party acknowledges and agrees that:

- (a) a breach or threatened breach of this agreement by a party could cause irreparable harm and significant injury to the other party that may be difficult to ascertain;
- (b) damages are not a sufficient remedy in respect of any breach or threatened breach of this agreement; and
- (c) each party has the right to seek specific performance or injunctive or other relief (as appropriate) as a remedy for any breach or threatened breach of this agreement, in addition to other rights and remedies available to it at law or in equity.

**Executed as a deed.**

**Executed by Gage Roads Brewing Co  
Limited, ABN 22 103 014 320** in accordance  
with section 127 of the *Corporations Act* by or in  
the presence of:

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

**Executed by Woolworths Limited ABN 88  
000 014 675** in accordance with section 127 of the  
*Corporations Act* by or in the presence of:

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Signature of Director or Sole Director and  
Secretary

\_\_\_\_\_  
Name of Director or Sole Director and  
Secretary in full

\_\_\_\_\_  
Signature of Director or Sole Director and  
Secretary

\_\_\_\_\_  
Name of Director or Sole Director and  
Secretary in full

Signed as an agreement.

Executed by Woolworths Limited ABN 88  
000 014 678 by or in the presence of:



Signature of Director

MICHAEL LUSCOMBE

Name of Director in full

Executed by Gage Roads Brewing Co  
Limited ABN 22 103 014 320 by or in the  
presence of:

Signature of Director

Name of Director in full



Signature of Secretary/other Director

PETER J HORTON

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full



Signed as an agreement.

Executed by Woolworths Limited ABN 88  
000 014 675 by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

Executed by Gage Roads Brewing Co  
Limited ABN 22 103 014 320 by or in the  
presence of:

  
\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

IAN PETER OLSON

\_\_\_\_\_  
Name of Director in full

  
\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Signature of Secretary/other Director

JOHN HORDEMAKER

\_\_\_\_\_  
Name of Secretary/other Director in full