

[REDACTED]
[REDACTED]
and

[REDACTED]
[REDACTED]
and

Heritage Council of Western Australia

Heritage Agreement Deed of Covenant
Old Swan Brewery

Arnold Bloch Leibler
Ref: KAG 01-1910659
ABL/7190454v3

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PARTICULARS

- 1 VENDOR [REDACTED]
[REDACTED]
- 2 PURCHASER [REDACTED]
[REDACTED]
- 3 HERITAGE COUNCIL **HERITAGE COUNCIL OF WESTERN AUSTRALIA**
a body corporate established under the *Heritage of Western Australia Act 1990* (WA) of Level 2, 491 Wellington Street, Perth WA

E-mail:
- 4 LAND The land described in the Contract of Sale.
- 5 HERITAGE AGREEMENT The agreement dated 19 January 1993 between the Heritage Council, [REDACTED] and [REDACTED] as:

(a) varied by a deed of variation undated but stamped on 30 March 2000; and

(b) supplemented by a deed of covenant between [REDACTED], Heritage Council and the Vendor dated 21 September 2006 (**Deed of Covenant**).
- 6 CONTRACT OF SALE The contract dated 16 July 2019 between the Vendor and the Purchaser for the sale of the Vendor's interest in the Land to the Purchaser.
- 7 EFFECTIVE DATE 25 OCTOBER 2019 2019, being the date upon which settlement of the sale of the Land to the Purchaser is to occur pursuant to the Contract of Sale

TERMS AND CONDITIONS OF DEED

1 BACKGROUND

- (a) Heritage Council, [REDACTED] were parties to the Heritage Agreement.
- (b) By the Deed of Covenant, the Vendor assumed all of [REDACTED] rights and obligations under the Heritage Agreement.
- (c) By a letter dated 15 July 2019, the Minister for Lands approved the proposed assignment of the Vendor's interest in the Land to the Purchaser.
- (d) The Purchaser has agreed to assume all of the Vendor's rights and obligations under the Heritage Agreement on the terms of this deed.

2 Definitions and interpretation

2.1 Definitions

In this deed, words and phrases described in the Particulars have the same meanings when used in this deed. Other terms used in this deed are defined below:

[REDACTED] means [REDACTED]

"Business Day" means a day on which Banks are open for general banking business in Perth, excluding Saturdays, Sundays and public holidays.

"Cost" means any cost, charge, expense, outgoing, payment, fee, liability or penalty of any kind, including legal and professional fees.

[REDACTED] means [REDACTED]

"Particulars" means the particulars forming part of this deed.

2.2 Words and expressions

In this deed, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or attachment is a reference to a party, clause, paragraph, schedule or attachment to or of this deed;
- (e) a reference to this deed includes any schedules or attachments;
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to "\$", or "dollar" is a reference to Australian currency;
- (h) the background or recitals to this deed are adopted as and form part of this deed;
- (i) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) a reference to a time is a reference to Australian Western Standard Time;

- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it;
- (p) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation; and
- (q) a reference to a body or entity, other than a party to this document, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body;
 is a reference to the body which replaces it or which substantially succeed to its powers or functions.

2.3 Other rules of interpretation

In this deed, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;
- (b) **(consents and approvals)** if the doing of any act, matter or thing requires the consent, approval or agreement of any party, that consent, approval or agreement may be given conditionally or unconditionally or withheld in that party's absolute discretion;
- (c) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this deed is given by them or for their benefit jointly and severally;
- (d) **(Business Days)** if:
 - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
 - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period); and
- (e) **(inconsistency within document)** if a clause of this deed is inconsistent with a schedule or annexure of this deed, the clause prevails to the extent of the inconsistency.

2.4 Rights and powers subject to statute

The parties acknowledge that:

- (a) the exercise of a right or power under this deed, including a right to terminate, may from time to time be subject to a statutory stay, limitation or restriction, including under Parts 5.1, 5.2 and/or 5.3A of the Corporations Act; and
- (b) they must make their own searches, investigations, enquiries and evaluations in relation to any exercise or proposed exercise of a right or power under this deed.

3 Compliance with Heritage Agreement

- (a) On and from the Effective Date:
 - (i) the Purchaser agrees to be bound by and must comply with the terms of the Heritage Agreement as if the Purchaser were named as "Lessee" in the Heritage Agreement; and
 - (ii) a reference in the Heritage Agreement to the "Lessee" must be read as a reference to the Purchaser.
- (b) The Heritage Council acknowledges that on and from the Effective Date, the Purchaser has replaced the Vendor under the Heritage Agreement in accordance with this deed and the Purchaser must comply with the Heritage Agreement on that basis.

4 Release by Heritage Council

- (a) Subject to clause 4(b), as at the Effective Date, the Heritage Council releases and discharges the Vendor from any obligation, liability or claim under the Heritage Agreement.
- (b) The provisions of clause 4(a) will not apply in respect of any obligation, liability or claim which arose under the Heritage Agreement prior to the Effective Date.

5 Costs

- (a) Each party must pay its own costs and expenses of and incidental to the instructions for and the instructions for and the preparation, negotiation, execution and stamping of this deed.
- (b) The Purchaser must pay all duty, fines and penalties assessed on this deed under the *Duties Act 2008* (WA).

6 Notices

6.1 Method

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("**notices**") given by a party under or in connection with this deed must be:

- (a) in writing;
- (b) signed by the sender or a person duly authorised by the sender or, where transmitted by e-mail, sent by the sender or a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 6.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by e-mail to that address.

6.2 Receipt

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (a) if sent by prepaid post, either:
 - (i) on the day on which the relevant postal service estimates delivery will occur; or
 - (ii) on the first day of the period during which the relevant postal service estimates delivery will occur,

based on the most recent estimate published by the relevant postal service as at the date on which the notice is sent;

- (b) if transmitted by e-mail, on transmission;

but if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

6.3 Address of parties

Unless varied by notice in accordance with this clause 6, the parties' addresses and other details are as detailed in the Particulars.

6.4 Requirement for written notice

For the avoidance of doubt, the requirement in clause 6.1(a) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions "written" or "in writing" in relation to some but not all notices.

7 General

7.1 Entire agreement

This deed constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this deed and have no further effect.

7.2 Paramountcy of document

If this deed conflicts with any other document, agreement or arrangement, this deed prevails to the extent of the inconsistency.

7.3 No merger

The provisions of this deed will not merge on completion of any transaction contemplated in this deed and, to the extent any provision has not been fulfilled, will remain in force.

7.4 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this deed under that power.

7.5 Amendment

This deed may not be amended or varied unless the amendment or variation is by a deed in writing signed by all parties.

7.6 Assignment

No party may assign, transfer or otherwise deal with this deed or any right or obligation under this deed without the prior written consent of each other party.

7.7 Severability

Part or all of any provision of this deed that is illegal or unenforceable will be severed from this deed and will not affect the continued operation of the remaining provisions of this deed.

7.8 Waiver

Waiver of any power or right under this deed:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

7.9 Rights, remedies additional

Any rights and remedies that a person may have under this deed are in addition to and do not replace or limit any other rights or remedies that the person may have.

7.10 Further assurances

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this deed and the transactions contemplated by it (including, but not limited to, the execution of documents).

7.11 Authority to complete

After the execution of this deed by the Purchaser and the Heritage Council, the Purchaser and Heritage Council authorise the Vendor to complete:

- (a) the definition of Effective Date in item 7 of the Particulars, with the date of settlement under the Contract of Sale; and
- (b) each other detail which requires completion.

7.12 Governing law and jurisdiction

This deed will be governed by and construed in accordance with the laws in force in the State of Western Australia and each party submits to the non-exclusive jurisdiction of the courts of that State.


EXECUTION PAGE FOR DEED

THIS DEED is made on

2019

EXECUTED as a DEED

EXECUTED by [REDACTED])
[REDACTED] in accordance with)
Section 127 of the Corporations Act 2001


Signature of director

Signature of director / company secretary
(delete as applicable)

DANIEL BLEN
Name of director (print)

Name of director / company secretary
(print)

EXECUTED by [REDACTED])
[REDACTED] in accordance)
with Section 127 of the Corporations Act
2001

Signature

[REDACTED]

(delete as applicable) company secretary

[REDACTED]

Name
(print)


SIGNED for and on behalf of the HERITAGE)
COUNCIL OF WESTERN AUSTRALIA:)

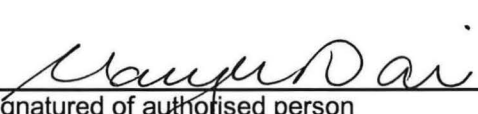

Signature of authorised person

ANNE ARNOLD
Name

CHAIR PERSON
Office Held

BEN HARVEY
Name of Witness

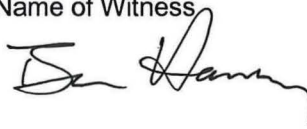



Signed of authorised person

Vaughan Dames
Name

Assistant Director General
Office Held

BEN HARVEY
Name of Witness



**CERTIFICATE UNDER SECTION 90
OF THE HERITAGE ACT 2018**

I, the Hon. David Templeman MLA, Minister for Heritage, hereby certify that this Deed is:

- 1) necessary for the purposes of, and complies with, the *Heritage Act 2018*; and
- 2) to take effect on and from the 'Effective Date' specified in Item 7 of the Deed.

Dated the 23rd day of October 2019



David Templeman MLA
Minister for Heritage