

BETWEEN

SCARAMOUCH HOLDINGS PTY LIMITED
ACN 054 546 735 as Trustee for SCARAMOUCH HOLDINGS
PTY LIMITED SUPERANNUATION FUND
ABN 22 958 061 185

AND

MUTTON CORPORATION PTY LTD
ACN 641 744 069

AND

BENJAMIN DAVID MUTTON
GEORGINA CASSIE MUTTON

DEED OF LOAN



Bedfords Legal

Contents

1	DEFINITIONS & INTERPRETATION	1
	1.1 Definitions	1
	1.2 PPSA Definitions	4
	1.3 Interpretation	4
2	CONDITIONS PRECEDENT	5
	2.1 Initial Drawdown	5
	2.2 Non-satisfaction of conditions precedent	6
3	LOAN ADVANCE	6
4	INTEREST	6
5	COSTS	6
6	REPAYMENT	7
	6.1 Repayment	7
	6.2 Early Repayment	7
7	PAYMENTS	7
	7.1 Payment Manner	7
	7.2 Payment Dates	7
	7.3 Set-off Exclusion	8
	7.4 Tax Indemnity	8
8	COVENANTS RE TRUST	8
9	CAVEATABLE INTEREST	9
10	MORTGAGE	9
11	REPRESENTATIONS	9
12	POSITIVE UNDERTAKINGS	11
13	NEGATIVE UNDERTAKINGS	12
14	DEFAULT	13
	14.1 Default Events	13
	14.2 Default Declaration	14
	14.3 Acceptance of Moneys	14
15	DEFAULT INTEREST	14
16	PROTECTION OF LENDER	15
	16.1 Lender not liable for losses	15
	16.2 Discretion on consent	15
	16.3 Borrower's risk	15
17	GUARANTEE	15
18	POWER OF ATTORNEY	16

18.1	Appointment of Attorney	16
19	INDEMNITY	16
20	STAMP DUTIES	16
21	GST	17
22	CONFIDENTIALITY	17
23	ASSIGNMENT	18
24	NOTICES	18
24.1	Notices	18
24.2	Service	19
24.3	Address for Service	19
24.4	Deemed Receipt	19
25	GOVERNING LAW	20
26	GENERAL PROVISION	20
26.1	Consumer Credit Code	20
26.2	Continuing Performance	20
26.3	Statement by Lender	20
26.4	Waivers	20
26.5	Remedies	20
26.6	Severability	20
26.7	Moratorium Legislation	21
26.8	Reimbursement of Lender	21
26.9	Counterparts	21
26.10	Prohibition on oral amendments	21
26.11	Defective execution	21
26.12	Execution by attorney	22

This **Deed** is made the _____ day of _____ 2020.

Between

1 **SCARAMOUCH HOLDINGS PTY LTD** (ACN 054 546 735) as Trustee for
SCARAMOUCH HOLDINGS PTY LIMITED SUPERANNUATION FUND ABN 22 958 061
185

of A. Joseph & Co, 63 Wigram Street, Harris Park NSW 2150

(the "**Lender**")

2 **MUTTON CORPORATION PTY LTD** (ACN 641 744 069)

of 17 Torrens Street Braddon ACT 2612

(the "**Borrower**")

3 **BENJAMIN DAVID MUTTON**

GEORGINA CASSIE MUTTON

of 1 Lobella Street O'Connor ACT

(collectively the "**Guarantors**")

Background

- A The Lender has agreed, at the request of the Borrower, to provide a loan facility to the Borrower, the principal amount of which is not to exceed the Advance.
- B In consideration for the Lender providing the loan, the Guarantors have agreed to guarantee to the Lender the performance of the Borrower under this Deed.
- C The Lender and Borrower have agreed to enter into this Deed to set out the terms and conditions of the loan facility.

Operative Provisions


1 DEFINITIONS & INTERPRETATION

1.1 Definitions

Meanings apply to capitalised terms used in this Deed as specified in this provision, unless the context otherwise requires:

- (a) '**Advance**' means an amount of ONE HUNDRED THOUSAND dollars (\$100,000.00) provided or, where the context requires, to be provided under this Deed by the Lender to, or at the direction of, the Borrower;

- (b) **"Business Day"** means a day on which trading banks are open for ordinary business in the Australian Capital Territory excluding a Saturday, Sunday or public holiday;
- (c) **"Business Hours"** means the hours between 9.00am and 5.00pm on a Business Day;
- (d) **"Continuing Default"** at any time, means any Default Event that is continuing or subsisting or has not been remedied or rectified by the Borrower or waived by the Lender, or where the Borrower is not in full compliance with any provision of any waiver, as at that time;
- (e) **"Default Event"** means the occurrence, without the prior written consent of the Lender, of any default event specified in clause 14.1 (Default Events), whether or not within the power or control of the Borrower;
- (f) **"Default Interest Rate"** means the rate of twelve per cent (12%) per annum;
- (g) **"Drawdown Date"** means the date of this Deed or such other date as the Lender and the Borrower agree in writing;
- (h) **"Interest Payment Date"** means the date of this Deed and every anniversary of the date of this Deed;
- (i) **"Interest Period"** in relation to the Loan means each 12 month period, except that:
 - (i) the initial Interest Period commences on the date of this Deed and ends on the Repayment Date; and
 - (ii) the subsequent Interest Period commences on the day after the Repayment Date and ends on the date the Loan and all unpaid accrued interest is paid in full;
- (j) **"Interest Rate"** means the rate of four and one half per cent (4.5%) per annum;
- (k) **"Loan"** means, at any time and from time to time, the principal amount of the Advance outstanding at that time;
- (l) **"Loan Moneys"** means all Loans, interest and other moneys and liabilities due or payable from or by the Borrower to the Lender, including moneys and liabilities incurred or arising:
 - (i) under or in relation to or in connection with this Deed or any other agreement created at any time between the Borrower and the Lender;
 - (ii) by way of principal, interest, cost, indemnity, tax, duty, damages or monetary judicial order under, in relation to, in connection with or as a result of any breach of or default under this Deed or that other agreement;

- (m) **"Permitted Security"** means:
- (i) any security interest arising in favour of any governmental agency by operation of legislation, where there is no default in payment of any moneys or performance of any liability due to that governmental agency or where payment is disputed in good faith and in the decision of the Lender on reasonable and substantial grounds; or
 - (ii) any possessory lien arising by operation of law in the ordinary course of business activity, where there is no default in payment of any moneys or performance of any liability due to the lien creditor;
- (n) **"PPSA"** means:
- (i) the *Personal Property Securities Act 2009* (Cth); and
 - (ii) the *Personal Property Securities Regulations 2010* (Cth);
- as amended, supplemented or affected by any other applicable legislation of the Commonwealth, or any State or Territory, of Australia;
- (o) **"PPSA Personal Property"** means personal property within the meaning of, and as defined in, PPSA;
- (p) **"PPSA Register"** means the Personal Property Securities Register within the meaning of, and as defined in, PPSA;
- (q) **"PPSA Security Interest"** means a security interest relating to PPSA Personal Property within the meaning of, and as defined in, PPSA, including:
- (i) any interest of a transferee under a transfer of an account or chattel paper;
 - (ii) the interest of a consignor who delivers goods to a consignee under a commercial agreement; and
 - (iii) the interest of a lessor or bailor of goods under a PPS lease;
- (r) **"Property"** means Unit 4 Units Plan 2782 Block ~~37~~⁵ Section ~~5~~³⁷ Fyshwick known as Unit 4, 79-81 Gladstone Street Fyshwick 
- (s) **"Repayment Date"** means, subject to the provisions of this Deed relating to prepayment and accelerated repayment of the Loan, the earlier of the following dates:
- (i) the date that completion of the sale of the Property by the Borrower occurs;
 - (ii) the date one (1) year from the date of this Deed;
 - (iii) such date as the Lender and the Borrower agree in writing;

- (t) **"Security Interest"** means any security interest in or security right over or in connection with any asset which in substance, whether or not in form, is a security for the payment of any moneys or performance of any other liability, including:
- (i) any PPSA Security Interest;
 - (ii) any mortgage, charge, pledge, lien, trust or right created or conferred in relation to any asset;
 - (iii) any title retention interest or other legal or equitable proprietary title or interest retained or reserved in any asset, including any credit or conditional sale agreement, hire purchase agreement, sale and leaseback agreement, financial lease or bailment;
 - (iv) any other right conferred on, or agreement with, any creditor to be paid in priority or preference by recourse to any asset or its proceeds; or
 - (v) any deposit of moneys by any person with any other person under any agreement where:
 - (A) those moneys are payable to or withdrawable by that person upon condition that that person or any third party must perform any other liability of that person or any third party to the other person; or
 - (B) that other person stipulates for or is entitled to claim any right of set-off under an express agreement with that person, excluding any right arising by operation or implication of any law or banking custom or usage; and

1.2 PPSA Definitions

Words and expressions used in this Deed, whether capitalised or otherwise, which are defined in PPSA but which are not expressly and separately defined in this Deed have the same meanings as defined in PPSA when used in this Deed, unless the context otherwise requires.

1.3 Interpretation

Rules of interpretation apply to this Deed as specified in this provision, unless the context otherwise requires:

- (a) headings and subheadings are for convenience only and do not affect interpretation;
- (b) words denoting the singular number include the plural, and the converse also applies;
- (c) words denoting any gender include all genders;

- (d) a defined word or expression has corresponding effect in relation to its other grammatical forms;
- (e) any reference to a party to any agreement or document includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) any reference to any agreement or document includes that agreement or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) any reference to a provision, comprising a clause, recital, schedule, annexure, exhibit, appendix or attachment, is a reference to a provision of this Deed;
- (h) the words "include", "including", "for example", and similar expressions are used without limitation;
- (i) the expression "at any time" includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period;
- (j) a reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (k) no provision of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or that provision; and
- (l) any liability, representation or warranty undertaken by, or right conferred on, two (2) or more persons binds or benefits all of those persons jointly and each of them severally.

2 CONDITIONS PRECEDENT

2.1 Initial Drawdown

The Lender's obligation to provide the Loan to, or at the direction of, the Borrower is subject to and conditional upon:

- (a) the Lender having received evidence satisfactory to the Lender that the Borrower has validly entered into, and become bound by the terms of, this Deed and that this Deed has, where necessary, been duly stamped;
- (b) the Borrower having made the payments to the Lender specified in clause 5 as being payable on or before the Drawdown Date;
- (c) no Default Event or event which, with the giving of notice or the lapse of time or both, would be a Default Event under this Deed having occurred and, having occurred, continuing to subsist;
- (d) the representations and warranties of the Borrower contained in clause 8 (Representations) being true and correct on the Drawdown Date.

2.2 Non-satisfaction of conditions precedent

If each of the conditions precedent set out in clause 2.1 has not been fulfilled and fully satisfied or waived by the Drawdown Date, the Lender will not be under any obligation to make the Advance available to the Borrower.

3 LOAN ADVANCE

- (a) Subject to the prior and continuing satisfaction of the conditions precedent set out in clause 2.1, the Lender will, upon request by the Borrower, provide the Advance to the Borrower by way of cash Advance on the Drawdown Date:
 - (i) upon and subject to the provisions of this Deed; and
 - (ii) in reliance upon the representations made in clause 8 (Representations).
- (b) The Advance will be provided to the Borrower by way of bank cheque drawn by the Lender payable to the Borrower or as the Borrower directs in writing.

4 INTEREST

- (a) The Borrower must pay interest on outstanding Loans in compliance with this provision.
- (b) The rate of interest applicable to any Loan in relation to any Interest Period is the Interest Rate.
- (c) Interest accrues on the outstanding principal amount of a Loan from day to day and for the actual number of days elapsed and must be computed on the basis of a year of 365 days.
- (d) The Borrower must pay all interest in advance:
 - (i) by payment of \$4,500.00 on initial Interest Payment Date; and
 - (ii) by payment at the Default Interest Rate on the date of repayment or prepayment of any Loan and on the applicable part of any Loan, in the event of partial repayment or prepayment, on the day immediately following the Repayment Date and on each subsequent anniversary of the Repayment Date.

5 COSTS

The Borrower must indemnify the Lender upon demand against any cost, charge, expense, disbursement, fee, commission, tax, duty or other payment incurred by the Lender at any time in connection with:

- (a) the Loan Moneys or this Deed;

- (b) the preparation, negotiation, execution, performance or termination of, any amendment to or any consent, claim, demand or waiver given or made under, this Deed;
- (c) all taxes (excluding any income tax payable by the Lender), outgoings, penalties, fines, demands, charges or costs, stamp and other duties and assessments imposed by any court or by any federal, state or municipal, statutory or other authority or otherwise (including any related bank charges, financial institutions duties and debits taxes) directly or indirectly upon this Deed or any receipt or payment under this Deed;
- (d) any remedy or rectification of any breach or default by the Borrower of or under this Deed;
- (e) any exercise or enforcement, or attempted exercise or enforcement, of any right or remedy conferred on the Lender under this Deed or by law;
- (f) any protection of this Deed or legal right, title or interest of the Borrower or the Lender; or
- (g) the engagement of any agent under any provision of this Deed or in relation to any matter of concern to the Lender in connection with this Deed.

6 REPAYMENT

6.1 Repayment

The Borrower must repay to the Lender in full the principal amount of each outstanding Loan on the Repayment Date, together with all accrued interest and other moneys due to the Lender under this Deed.

6.2 Early Repayment

The Lender agrees that the Borrower may repay the whole or any part of the Loan then outstanding at any time and from time to time plus any Interest outstanding by giving the Lender fourteen (14) days' notice in writing of its intention to do so and specifying the sum that will be paid to the Lender.

7 PAYMENTS

7.1 Payment Manner

The Borrower must make any payment to the Lender required under this Deed in Australian dollars not later than 4:00pm on the due date for payment by bank cheque or in other immediately available funds to the account or place notified at any time by the Lender to the Borrower.

7.2 Payment Dates

Any payment by the Borrower required under this Deed falling due on a day which is not a Business Day must be made on the immediately preceding Business Day in the

same calendar month or, if none, on the immediately preceding Business Day with appropriate adjustment for interest.

7.3 Set-off Exclusion

The Borrower must make any payment required under this Deed without any set-off, counterclaim or other deduction or withholding, whether on account of taxes or otherwise, except for any tax deduction or withholding compelled by law.

7.4 Tax Indemnity

The Borrower must indemnify the Lender upon demand for any tax deduction or withholding required or made from any payment due under this Deed.

8 COVENANTS RE TRUST

- 8.1. The Borrower being the trustee of a trust covenants with the Lender that whilst any monies remain owing to the Lender hereunder it will not without the prior written consent of the Lender:
- (a) make any distribution of the whole or any part of the capital of the Trust;
 - (b) where the trustee is a corporate trustee do anything with respect thereto which would, if the capital of the trust were beneficially owned by the Trustee and if the issued capital of the trustee was an amount equal to the value of such capital, constitute a reduction in the trustee's share capital for the purposes of Division 1 of Part 2J.1 of the *Corporations Act 2001 (Cth)*;
 - (c) make or permit to be made any amendment of or modification to the deed governing the trust; and
 - (d) cease to be the trustee of the trust or permit its holding of that office to be terminated or do anything which would disqualify it from holding that office.
- 8.2. The Borrower further covenants with the Lender that it will, within 7 days of being requested by the Lender so to do, furnish to the Lender a Statutory Declaration made by two of the directors of the Borrower stating:
- (a) whether or not since the date of this Deed there has been a distribution or other alienation of the whole or any part of the capital of the trust and, if so, giving full particulars thereof;
 - (b) whether or not since the date of this Deed there has been any amendment of or modification to the Deed governing the trust and, if so, giving full particulars thereof; and
 - (c) whether or not the Borrower is still the trustee of the trust and, if not, giving full particulars of its ceasing to be such trustee.

9 CAVEATABLE INTEREST

- (a) The Borrower grants to the Lender a charge over the title to the Property. The charge entitles the Lender to lodge a caveat against the title to the Property. The cost of the preparation and registration of the caveat and any withdrawal of caveat shall be the Borrower's expense.
- (b) Without limiting clause 13, the Borrower may not without the Lender's prior written consent increase any existing liability, or create any new liability, affecting or relating to the Property.

10 MORTGAGE

- (a) The Borrower must enter into a mortgage with the Lender to enable the Lender to register the charge over the title to the Property on the land titles register.
- (b) The parties agree that the terms of any mortgage required to be entered into pursuant to clause 10(a) will be consistent with the terms of this Deed and otherwise contain usual provisions, such as are contained in a mortgage registered over the title to the Property in favour of a bank.

11 REPRESENTATIONS

The Borrower represents and warrants to the Lender that:

- (a) except as disclosed in writing to the Lender and dispensed with in writing by the Lender, neither the execution nor the performance of this Deed will:
 - (i) violate in any respect any statute, decree, rule or regulation or any determination, order or award of any court or any governmental, judicial or public body or authority applicable to the Borrower; or
 - (ii) cause any limitation (whether imposed by statute, decree, rule or regulation) on any of the powers of the Borrower or on the Borrower's right or ability to exercise such powers to be exceeded; or
 - (iii) conflict with, or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which the Borrower is a party or which is binding upon the Borrower or any of the Borrower's assets; or
 - (iv) result in a mortgage, charge, lien or other encumbrance over any of the Borrower's assets; or
 - (v) cause any limit on the powers of the Borrower in respect of borrowing, guaranteeing, raising financial accommodation or otherwise, as the case may be, to be exceeded;
- (b) except as disclosed in writing to the Lender and dispensed with in writing by the Lender, the Borrower is not in default or difficulty under any deed, agreement or other document or obligation to which it is a party or by which

it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities), which default or difficulty is reasonably likely to adversely affect the ability of the Borrower to comply with its obligations under this Deed;

- (c) no Default Event or event which, with the giving of notice or the lapse of time or both, would be a Default Event has occurred and, having occurred, is continuing to subsist;
- (d) except as disclosed in writing to the Lender and dispensed with in writing by the Lender, no litigation or administrative or other proceedings before, or of, any court or governmental authority or agency or other tribunal have, to the knowledge of the Borrower, been initiated or threatened against the Borrower or any of the Borrower's assets which would or might have a material adverse effect upon the business, assets or financial condition of the Borrower;
- (e) all of the most recent annual or half-yearly or both (as the case requires) accounts of the Borrower provided by the Borrower to the Lender provide a true and fair view of the financial position of the Borrower and, except as otherwise disclosed in writing to the Lender and dispensed with in writing by the Lender, no material adverse change has occurred since the date of those accounts to the financial condition of the Borrower;
- (f) the Borrower has procured, and delivered to the Lender, a certified copy of any governmental consent or contractual consent from any governmental or public agency or other person for the execution and performance of, or action to be performed in connection with, this Deed;
- (g) this Deed constitutes an unconditional, valid and enforceable legal liability of the Borrower in compliance with its provisions;
- (h) all facts and information specified in any letter, memorandum, report or other document given to the Lender at any time by or on behalf of the Borrower in connection with the Borrower are true, accurate complete and up-to-date in all respects;
- (i) the Borrower holds the full, absolute and entire legal and beneficial right, title and interest to or in all its assets, except where the Borrower is trustee of any trust which has been expressly disclosed in the provisions of this Deed or by written notice to the Lender before its execution by the Borrower; and
- (j) the Borrower holds all its assets free and clear of any Security Interest, or any other adverse right or interest of any third party, except:
 - (i) for any Permitted Security;
 - (ii) as notified in writing to the Lender before execution of this Deed by the Borrower; or
 - (iii) in relation to real property, any adverse encumbrance or interest, excluding a Security Interest, specified in any public register before the date of this Deed.

12 POSITIVE UNDERTAKINGS

The Borrower must at any time during the continuance of this Deed:

- (a) keep financial records as directed by the Lender;
- (b) promptly notify the Lender upon a receipt of actual notice by the Borrower of:
 - (i) any Default Event;
 - (ii) any legal action or proceeding in which the Borrower is engaged involving a claim in excess of five thousand dollars (\$5,000.00) or its equivalent in any foreign currency or with any governmental agency which if adversely decided against the Borrower would have a material adverse effect; or
 - (iii) any fact, or series of facts, which may affect the ability of the Borrower to perform its liability under this Deed or materially affect or change the financial condition of the Borrower or the value of its assets;
- (c) for any purpose relating to this Deed, perform any action within the power and control of the Borrower to provide any necessary document, information and assistance to the Lender;
- (d) comply with the requirements of all applicable laws, rules, regulations, orders and decrees of any person, non-compliance with which would, or might, in the Lender's opinion, have a material adverse effect on the Borrower's ability to comply with its obligations under this Deed;
- (e) notify the Lender forthwith of the occurrence of any Default Event or event which, with the giving of notice or the lapse of time or both, would become a Default Event of which the Borrower becomes aware which either would, or might, in the Lender's opinion, adversely effect the ability of the Borrower fully and promptly to perform its obligations under this Deed;
- (f) to keep its assets and undertaking insured, and to ensure that any major asset leased by it is insured, against such risks and in such amounts as would prudently be insured against by a person carrying on business similar to the Borrower and to deliver to the Lender upon request by the Lender written details of such insurances and appropriate evidence that all such insurances are in full force and effect and that all relevant premiums have been paid;
- (g) to ensure that no assets of, or under the control of, the Borrower are transferred, or otherwise alienated, to any person otherwise than: -
 - (i) in the ordinary course of business for proper market value in money or money's worth; or
 - (ii) without the Lender's prior written consent;
- (h) to notify the Lender forthwith of any litigation or administrative or other proceedings initiated or threatened against the Borrower or any of the

Borrower's assets where the amount involved is, or could reasonably be expected to be, one hundred thousand dollars (\$100,000.00) or its equivalent in any other currency, or more; and

- (i) to notify the Lender forthwith of any event or change in the Borrower's circumstances, the effect of which either would or might render any representation or warranty made in this Deed untrue or incorrect in any respect.

13 NEGATIVE UNDERTAKINGS

The Borrower must not at any time during the continuance of this Deed, without the prior written consent of the Lender:

- (a) transfer any assets of the Borrower, except for transfer of assets of the Borrower in the usual course of daily business activity and where, in the case of any specific transfer, the value of assets transferred does not exceed five thousand dollars (\$5,000.00) or where permitted under this Deed;
- (b) create any Security Interest affecting or relating to any asset of the Borrower;
- (c) create any liability by way of financial indebtedness, including any liability in relation to:
 - (i) moneys borrowed or raised;
 - (ii) any financial accommodation of any nature or description, including any liability under or in relation to any bill of exchange or acceptance credit, guarantee, convertible note or redeemable share, or discounting, factoring or hire purchase agreement or finance or capital lease;
 - (iii) any deferred purchase price for a period exceeding 90 days of any asset or service or any liability to deliver goods or provide services paid for in advance by any financing party;
 - (iv) any financial, gold or currency exchange agreement of any nature or description, including any currency, principal or interest rate swap or futures agreement or hedging transaction; or
 - (v) any financing transaction of any nature or description,
except:
 - (vi) any liability for payment of goods and services incurred in the ordinary course of business;
 - (vii) under this Deed;
- (d) create any agreement or perform any action to provide any financial support to any person, including:

- (i) advancing credit, creating any agreement or performing any action to, with or at the request of that person under or as a result of which that person incurs financial indebtedness within any previous meaning specified in this provision;
- (ii) subscription or purchase of any share or other marketable security, including any debenture, stock, bond or promissory note, in, or created or issued by, that person;
- (iii) making any payment as, or in the nature of, any dividend to that person;
- (iv) release of any liability or obligation of that person;
- (v) payment, or creating any agreement for the payment, of any management or consultancy fees or remuneration or other fees or remuneration of a similar nature; and
- (vi) provision of any other financial subvention, contribution or assistance of any nature to that person;

14 DEFAULT

14.1 Default Events

Specified default events for the purposes of this Deed comprise:

- (a) failure by the Borrower to pay any moneys on the due date and in the manner and currency specified in this Deed;
- (b) failure by the Borrower to perform any liability under this Deed, excluding payment default, and, in relation to any rectifiable failure in the decision of the Lender, within 14 days following notice by the Lender requiring rectification;
- (c) non-compliance by the Borrower with or the fact of inaccuracy of any representation or warranty made or deemed to be made or repeated by the Borrower in this Deed, or in any document delivered to the Lender under or in connection with this Deed, which has a material adverse effect;
- (d) the enforceability of any Security Interest over any asset of the Borrower securing payment for any amount after the occurrence of any breach of or default under that Security Interest;
- (e) the appointment of any receiver, manager or receiver and manager over, or possession taken by any secured party under any Security Interest of, any asset of the Borrower;
- (f) the fact of any attachment, execution, writ of execution, distress, distraint, garnishee order, charging order or similar legal process being enforced or levied against any asset of the Borrower for any amount;

- (g) cessation of payment generally by the Borrower, in the reasonable decision of the Lender, or the inability of the Borrower to pay all its debts as and when they become due and payable;
- (h) the appointment of any administrator of the Borrower;
- (i) any legal action or proceeding against the Borrower, not being in the decision of the Lender an action or proceeding being wholly disputed by the Borrower on reasonable and substantial grounds, being commenced in any court of competent jurisdiction, judicial order made or resolution passed for the liquidation, winding up of the Borrower; or
- (j) the creation by the Borrower of any debt arrangement with its creditors generally or any class of creditors, including any compromise, composition, moratorium, scheme of arrangement or reconstruction, suspension of any payment or right, restriction on any right or enforcement of any right, property transfer for the benefit of creditors, management, administration, voluntary administration, company arrangement or deed of company arrangement.

14.2 Default Declaration

The Lender may at any time during any Continuing Default declare the Loan Moneys to be immediately due and payable, when the Loan Moneys become immediately due and payable.

14.3 Acceptance of Moneys

The Lender may exercise its rights under clause 14.1:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this Deed after the occurrence of any Default Event;
- (b) notwithstanding the occurrence of any previous or other Default Event; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

15 DEFAULT INTEREST

- (a) The Borrower must pay to the Lender upon demand by the Lender at any time interest ("default interest") on any amount payable by the Borrower to the Lender under this Deed, including interest payable under this provision, which is unpaid.
- (b) Default interest accrues from day to day from and including the due date for payment up to the date of actual payment calculated on the basis of a year of 365 days.
- (c) The liability of the Borrower for default interest constitutes a liability of the Borrower separate and independent from any other liability under this Deed, both before and after judgment.

- (d) Default interest is payable at the Default Interest Rate.
- (e) Unpaid default interest must be capitalised at the end of each Interest Period.

16 PROTECTION OF LENDER

16.1 Lender not liable for losses

The Lender is not answerable for any involuntary losses or irregularities which may occur in, or by, the exercise or non-exercise of any of the powers, rights or remedies conferred on the Lender by this Deed.

16.2 Discretion on consent

In any case where, under or pursuant to this Deed, the doing or execution of any act, matter or thing by the Borrower is dependant upon the consent or approval of the Lender, such consent or approval may be given conditionally or unconditionally or may be withheld by the Lender in its absolute uncontrolled discretion, unless this Deed expressly provides otherwise.

16.3 Borrower's risk

Whenever the Borrower is obliged or required under this Deed to do or effect any act, matter or thing, then the doing of such act, matter or thing will, unless this Deed expressly provides otherwise, be at the sole risk and expense of the Borrower.

17 GUARANTEE

- (a) In consideration of the Lender, at the request of the Guarantors and the Borrower entering into the Security Documents, the Guarantors hereby expressly guarantee to the Lender the due and punctual payment of all moneys and the due and punctual performance by the Borrower of all the covenants, conditions and provisions in the Security Documents to be paid, performed or observed by the Borrower and the Guarantors.
- (b) The Borrower and the Guarantors covenant with the Lender that this guarantee shall be a continuing guarantee and that the liability of the Guarantors shall continue until each and every obligation on the part of the Borrower under the Security Documents is duly performed and completed and the liability of the Guarantors hereunder shall not be abrogated, altered prejudiced or affected by any neglect or forbearance by the Lender or by the granting by the Lender to the Borrower of time or by any other forbearance, act or thing permitted or omitted.
- (c) The Guarantors further covenant with the Lender to hold the Lender indemnified against all losses, damages, expenses and costs which the Lender may incur by reason of any breach or default on the part of the Borrower under the covenants and obligations on the part of the Borrower to be observed and performed in the Security Documents and the Guarantors hereby expressly covenant and agree that this guarantee shall be binding upon them jointly and severally.

18 POWER OF ATTORNEY

18.1 Appointment of Attorney

The Borrower irrevocably appoints:

- (a) the Lender and its successors and assigns; and
- (b) every director, secretary and officer of the Lender whose title includes the word 'manager', severally the attorney of the Borrower with power, at the expense of the Borrower, at any time and from time to time;
 - (i) after the occurrence of a Default Event or an event which, with the giving of notice or the lapse of time or both, would be a Default Event; or
 - (ii) after the Borrower has failed to comply with any of the Borrower's obligations under this Deed or under any agreement or instrument required under or for the purposes of this Deed or under any agreement or instrument collateral to this Deed or to which this Deed is collateral, upon request by the Lender, to do all acts and things and to execute all documents as may, in the Lender's opinion, be reasonably necessary or desirable or expedient to give effect to any right or power conferred on the Lender by this Deed.

19 INDEMNITY

The Borrower must at any time indemnify the Lender upon demand against any loss, cost, charge, expense, disbursement, fee, commission, tax, duty or other payment incurred by the Lender resulting directly or indirectly from any default in payment of any amount due by the Borrower under this Deed, including any principal, interest or cost, or any other Default Event.

20 STAMP DUTIES

The Borrower must promptly within the initial applicable period prescribed by law and in any event indemnify the Lender upon demand in relation to any stamp or similar or other duty payable in connection with:

- (a) the execution, performance, variation, exercise or enforcement of this Deed, or any right of the Lender under this Deed;
- (b) the extension of further, additional or increased loan or other credit accommodation by the Lender to the Borrower at any time under, or agreement by the Borrower and the Lender to increase the amount payable under, this Deed; or
- (c) the receipt or payment of any moneys under this Deed, or under any transaction contemplated by this Deed, including moneys paid by the Lender by way of refund to any third party.

21 GST

- (a) This provision applies to any GST taxable supply by any party ("supplier") under or in connection with this Deed to or for the benefit of any other party ("recipient") in relation to any consideration, remuneration, cost or other payment payable to the supplier or reimbursable or indemnified by the recipient under this Deed ("consideration") in connection with that supply.
- (b) Any consideration has been or will be specified, calculated or assessed under or by reference to any provision of this Deed initially without reference to, and exclusive of, any GST payable by the supplier on or in relation to that consideration ("tax exclusive payment").
- (c) The recipient must increase the tax exclusive payment by any additional amount, sufficient that the total amount payable by the recipient, after discounting for the amount of any GST liability of the supplier on that total, is equal to the tax exclusive payment.
- (d) The supplier must at any time deduct from any cost or expense which:
 - (i) has been incurred by the supplier in connection with this Deed or any taxable supply;
 - (ii) is reimbursable, wholly or partly, by the recipient to the supplier under this Deed; and
 - (iii) includes any GST payable by any supplier of any supply to the supplier comprised in the cost or expense amount payable by the recipient,the amount of any input tax credit to which the supplier is entitled for any acquisition connected with that cost or expense or, as applicable, to the extent of the relevant part of that cost or expense.
- (e) Any party must at any time comply with any GST law in performing this Deed.
- (f) The supplier must upon request by the recipient issue to the recipient tax invoices in proper form and in compliance with any GST law connected with any supply of any right, property or services by the supplier under this Deed.
- (g) The supplier must at any time perform any action, including provision of any copy invoice and other document, information and assistance in form and content sufficient to enable the recipient to verify or calculate any input tax credit or other fact relating to any supply or acquisition of any right, property or services under or connected with this Deed.

22 CONFIDENTIALITY

- (a) Each of the Borrower and the Lender as a party to this Deed must not disclose any information ("confidential information"), including the fact of the existence or the contents of this Deed, arising out of the execution of, this Deed, except where permitted by or in compliance with this provision.

- (b) Each party may disclose any confidential information:
- (i) to any officer, employee or legal, financial, accountancy or other agent or adviser or auditor of that party;
 - (ii) to any subsidiary of that party, where the recipient agrees to comply with this provision;
 - (iii) with the consent of the other party, not to be unreasonably withheld, to any person; or
 - (iv) where that party reasonably believes that that disclosure is required, permitted or compelled by any law, including PPSA, or the rules of any stock exchange.
- (c) The Lender may disclose any confidential information in relation to the Borrower where the Lender decides that that disclosure is necessary or expedient, without need for consent from the Borrower, directly or indirectly, to any person in connection with:
- (i) any search by the Lender of the PPSA Register for the purpose of disclosure of any registration where the Borrower is a grantor or secured party;
 - (ii) any actual or potential transfer of, or subparticipation relating to, any right or liability arising under this Deed;
 - (iii) any actual or potential transfer of this Deed;
 - (iv) the provision of any service for the assistance or benefit of the Lender in the performance of this Deed or any business activity of the Lender;
 - (v) any derivative contract or transaction relating to the Borrower; or
 - (vi) the enforcement by the Lender of this Deed.

23 ASSIGNMENT

This Deed is binding on, and operates for the benefit of, both the Borrower and the Lender and their respective successors and assigns, except that the Borrower must not assign this Deed or any of its rights or obligations under this Deed without the Lender's prior written consent. The Lender may at any time assign, charge or otherwise deal with its rights under this Deed.

24 NOTICES

24.1 Notices

All notices given under this Deed must be made:

- (a) in writing; and

- (b) signed by the sender or, if a corporate party, an authorised officer of the sender, including any director, secretary or person notified in that capacity by that corporate party, or under the seal or any power of attorney conferred by the sender;

and given by one of the following means:

- (c) by sending it by prepaid post to the address of the party to be served or its solicitor;
- (d) by electronic mail to the email of the party to be served or its solicitor; or
- (e) by delivering it to the party to be served or to its solicitor.

24.2 Service

A notice shall be deemed to be given and received:

- (a) if sent by pre-paid post, three (3) Business Days after it has been posted;
- (b) if sent by email during Business Hours, on the day it was sent; and if sent outside Business Hours, on the first Business Day after the day it was sent; and
- (c) if delivered during Business Hours, on the day of delivery; and if delivered outside Business Hours, on the first Business Day after the day of delivery.

24.3 Address for Service

The address for service of each of the parties is:

- (a) the Lender:

c/- A. Joseph & Co, 63 Wigram Street, Harris Park NSW 2150

Email: gregs@depot28.com.au

- (b) the Borrower:

1 Lobella Street, O'Connor ACT 2602

Email:

or at such other address or number as is subsequently notified by a party as being its address or number for service under this Deed.

24.4 Deemed Receipt

A delivery confirmation receipt issued by the recipient's email (or the sender's server) to any party seeking to serve any other party by electronic mail shall constitute sufficient and good proof of service for the purposes of this Deed.

25 GOVERNING LAW

This Deed is governed by and construed under the law in the Australian Capital Territory. The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts which may hear appeals therefrom.

26 GENERAL PROVISION

26.1 Consumer Credit Code

The Borrower acknowledges and agrees that the National Credit Code at Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth) does not apply to the credit provided by the Lender to the Borrower under this Deed.

26.2 Continuing Performance

- (a) Any representation or warranty in this Deed survives the execution of and advance of credit under this Deed and continues until final termination of this Deed by the Lender.
- (b) Any indemnity agreed by the Borrower under this Deed:
 - (i) constitutes a liability of the Borrower separate and independent from any other liability under any other agreement;
 - (ii) survives the payment of the Loan Moneys or the termination of this Deed; and
 - (iii) continues until final termination of this Deed by the Lender.

26.3 Statement by Lender

A statement in writing signed by a director, secretary, or officer of the Lender whose title includes the word 'manager' stating the amount due or owing by the Borrower to the Lender or any other act, matter or thing arising under this Deed as at any date or dates set out in that statement will be prima facie evidence of the facts so stated.

26.4 Waivers

Any failure or delay by the Lender to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by the Lender does not preclude any other or further exercise of that or any other right by the Lender.

26.5 Remedies

The rights of the Lender under this Deed are cumulative and not exclusive of any rights provided by law.

26.6 Severability

- (a) If any provision of this Deed is, or at any time becomes, prohibited by, or unlawful under, any applicable law, regulation or other condition actually

applied or otherwise becomes void or unenforceable, it will be severed from this Deed and rendered ineffective so far as is possible without modifying the remaining provisions of this Deed. The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect. Where, however, the provisions of any such applicable law, regulation or other condition may be waived, they are waived by the Borrower and the Lender to, but not beyond, the full extent permitted by the law, regulation or other condition to enable this Deed to constitute a valid and binding obligation enforceable in accordance with its terms.

- (b) Any prohibited, unlawful, void or unenforceable provision will be replaced forthwith by an allowable, lawful, effective and enforceable provision which so far as possible achieves the same economic benefit or burden for the Lender and the Borrower as the prohibited, unlawful, void or unenforceable provision was intended to achieve. All obligations of the Borrower under this Deed will survive the expiration or termination of this Deed to the extent required for their full observance and performance.

26.7 Moratorium Legislation

The provisions of legislation at any time operating directly or indirectly to lessen or otherwise vary or affect in favour of the Borrower any liability under this Deed or delay or otherwise prevent or have a prejudicial effect on the exercise by the Lender of any right are negated and excluded from this Deed, to the fullest extent permitted by law.

26.8 Reimbursement of Lender

To the extent permissible at law, the Borrower must, forthwith upon demand, pay to the Lender an amount equivalent to any moneys paid by the Lender in respect of any liability imposed on the Borrower under or by virtue of this Deed, notwithstanding that any statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, directly or indirectly, imposes such liability upon the Lender.

26.9 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

26.10 Prohibition on oral amendments

Neither this Deed nor any provision of this Deed may be amended, modified, waived, discharged or terminated orally.

26.11 Defective execution

If there is any defect in the execution of this Deed by the Borrower or the Lender, that party may re-execute or ratify its purported execution. That re-execution or ratification will relate back to the original purported execution by that party.

26.12 Execution by attorney

If this Deed is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Deed, states that at the time of such execution he or she had no notice of the revocation of that power of attorney.

EXECUTION

LENDER

EXECUTED by SCARAMOUCH HOLDINGS)
PTY LTD ACN 054 546 735 pursuant to section)
127 of the Corporations Act 2001 (Cth):)




) Director: Gregory Sparks
)



) Secretary: Jacqueline Scherz
)

BORROWER

EXECUTED by MUTTON CORPORATION PTY)
LTD ACN 641 744 069 pursuant to section 127)
of the Corporations Act 2001 (Cth):)



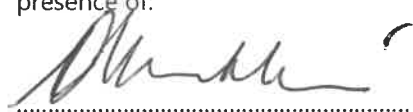
) Director: Benjamin David Mutton
)

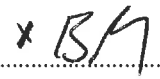


) Secretary: Georgina Cassie Mutton
)

GUARANTOR

SIGNED SEALED AND DELIVERED by)
Benjamin David Mutton in the)
presence of:)





) Benjamin David Mutton
)

Signature of Witness:)
GRAEME CHARLES NETTLE)
Barrister & Solicitor)

Name of Witness:)

EXECUTED by Georgina Cassie Mutton in the)
presence of:)





) Georgina Cassie Mutton
)

Signature of Witness:)
GRAEME CHARLES NETTLE)
Barrister & Solicitor)

Name of Witness:))