

**MORTGAGE**

Form 026 - M

*Land Titles Act 1925*

**IMPORTANT INFORMATION**

This form is to be used to lodge a mortgage under the *Land Titles Act 1925* (the Act). You can access the Act at [www.legislation.act.gov.au](http://www.legislation.act.gov.au). You may also obtain further information and forms at [www.act.gov.au/accesscbr](http://www.act.gov.au/accesscbr).

**PRIVACY NOTICE**

The collection of personal information in this form is required by law under the *Land Titles Act 1925*, to ensure accurate and legal transfer of title or registration of other interests relating to land and for maintaining publicly searchable registers and indexes. Personal information collected on this form will be handled in accordance with the Territory Privacy Principles in Schedule 1 of the Information Privacy Act 2014. More detailed information about how Access Canberra handles this personal information is available at: <https://www.act.gov.au/acprivacy>

**INSTRUCTIONS FOR COMPLETION**

- All information should be typed or clearly printed. If completing this form by hand, please use a solid black pen only.
- This office will not accept lodgement of this form if it is not completed in full.
- Any alteration to information provided on this form must be struck through with a black pen. Substitute information must be clear, and all parties must sign in the margin. Do not use correction fluid or tape.
- Ensure all required documents are attached. If there is insufficient space in any panel, please use an Annexure Sheet.

**CERTIFICATIONS**

*Any inapplicable certification statement(s) must be deleted.*

*Certification statements must be made by the Certifier, being one of the following:*

- A legal practitioner**
- A mortgagee corporation**
- If the applicant is not represented by a legal practitioner – the applicant (i.e. self- represented party)**
- If a party to an instrument is not represented by a legal practitioner – that party (i.e. self-represented party)**

All certifications apply where the Certifier is a legal practitioner.

The first two listed certifications do not apply where the Certifier is a self-represented party. Self-represented parties are only required to make certifications relating to retaining evidence to support the registry instrument or document and ensuring the registry instrument or document is correct and compliant with relevant legislation and any prescribed requirement.

By certifying this form, the legal practitioner acknowledges they have taken reasonable steps to verify that their client or his, her or its administrator or attorney is a legal practitioner and has the right to enter into the conveyancing transaction.

**Note: - An attorney or a body corporate cannot make certification statements.**

**CONTACT AND LODGEMENT INFORMATION**

**Email:**

[actlandtitles@act.gov.au](mailto:actlandtitles@act.gov.au)

**General Enquiries:**

(02) 6207 0491

**In Person:**

Environment, Planning and Land Shopfront

Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson

Opening hours - Monday to Friday 8:30am to 4:30pm (*excluding public holidays*)



## MORTGAGE

Form 026 - M

Land Titles Act 1925

LODGING PARTY DETAILS			
Name	Email Address	Customer Reference Number	Contact Telephone Number

TITLE AND LAND DETAILS				
Volume & Folio	District/Division	Section	Block	Unit
1725:64	FYSHWICK	37	5	4

FULL NAME OF MORTGAGOR - PROPRIETOR (Surname Last) (ACN required for all companies)	FULL POSTAL ADDRESS OF MORTGAGOR - PROPRIETOR
MUTTON CORPORATION PTY LTD (ACN 641 744 069)	17 Torrens Street Braddon ACT 2612

FULL NAME AND ADDRESS OF MORTGAGEE - LENDER (Surname Last) (ACN required for all Companies)
SCARAMOUCH HOLDINGS PTY LTD (ACN 054 546 735) 17 Saltwater Avenue, Noosaville Qld 4566

TENANCY OF MORTGAGEES (Only complete if more than one Mortgagee)	INTEREST BEING MORTGAGED (ie. whole or please state share)
	WHOLE

DETAILS OF MORTGAGE (Tick whichever box applies – at least one box should be ticked)	
The covenants implied at sections 115, 116, 118 and 122 of the <i>Land Titles Act 1925</i> are hereby negated.	<input checked="" type="checkbox"/>
The provisions set forth in the registered Memorandum of Provisions (MOP) are deemed to be incorporated herein / as modified by annexure as attached. Please provide registered MOP number below.	<input type="checkbox"/>
The covenants and conditions set out in the annexure attached are deemed to be incorporated	<input checked="" type="checkbox"/>
Provide registered MOP number -	<input type="checkbox"/>

PRINCIPAL SUM (Optional)	DETAILS OF REPAYMENT (Optional)

<b>DATE</b>

<b>CERTIFICATION</b> <i>*Delete the inapplicable</i>
<b>Mortgagee</b>
<p>*The Certifier has taken reasonable steps to verify the identity of the Mortgagee or his, her or its administrator or attorney.</p> <p>*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.</p> <p>*The Certifier has retained the evidence to support this Registry Instrument or Document.</p> <p>*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.</p> <p>*The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents:</p> <p>(a) has taken reasonable steps to verify the identity of the mortgagor; or his, her or its administrator or attorney and</p> <p>(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.</p> <p>Signed By:</p> <p>&lt;Name of certifying party&gt;</p> <p>&lt;Capacity of certifying party&gt;</p> <p>for: SCARAMOUCH HOLDINGS PTY LTD</p> <p>on behalf of the Mortgagee</p>

<b>OFFICE USE ONLY</b>			
Lodged by		Registered date / by	
Data entered by		Attachments/Annexures	



*Land Titles Act 1925*

TITLE AND LAND DETAILS				
Volume & Folio	District/Division	Section	Block	Unit
1725:64	FYSHWICK	37	5	4
<b>CERTIFICATION</b> <i>*Delete the inapplicable</i>				
<p>*The Certifier has taken reasonable steps to verify the identity of the [<del>transferor/transferee/mortgagor/mortgagee/caveator/applicant/covenantor/covenantee/encumbrancer/encumbrancee/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party/Donor</del>] or his, her or its administrator or attorney.</p> <p>*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.</p> <p>*The Certifier has retained the evidence to support this Registry Instrument or Document.</p> <p>*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.</p> <p>Signed By:</p> <p>&lt;Name of certifying party&gt; &lt;Capacity of certifying party&gt;</p> <p>for: <i>MUTTON CORPORATION PTY LTD</i></p> <p>on behalf of the [<del>transferor/transferee/mortgagor/mortgagee/caveator/applicant/covenantor/covenantee/encumbrancer/encumbrance/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party/Donor</del>]</p>				



**ANNEXURE**

Form 029 - ANN

*Land Titles Act 1925*

TITLE AND LAND DETAILS					
Volume & Folio	District/Division	Section	Block	Unit	Consideration (Only complete is if requesting transactions not be aggregated)
1725:64	FYSHWICK	37	5	4	

ANNEXURE TO (insert dealing type)	TOTAL NUMBER OF PAGES IN ANNEXURE
MORTGAGE	

PARTIES TO DOCUMENT (Please state all parties this annexure relates to/supports)
SCARAMOUCH HOLDINGS PTY LTD (ACN 054 546 735) -MORTGAGEE
MUTTON CORPORATION PTY LTD (ACN 641 744 069) – MORTGAGOR

**PARTIES:**

1 **SCARAMOUCH HOLDINGS PTY LTD** ACN 054 546 735

(the "**Mortgagee**")

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

(the "**Mortgagor**")

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## 1 INTERPRETATION

### 1.1 Definitions

In this document, unless the context otherwise requires:

- (a) **'Addresses for Service'** means in relation to each party:
- Mortgagor: the address as set out in Item 2 of Schedule A – Particulars;
- Mortgagee: the address as set out in Item 1 of Schedule A – Particulars;
- (b) **'Approved Plans'** means plans and specifications approved by the Mortgagee and all relevant government bodies;
- (c) **'Attorney'** means any attorney depicted under clause 14 and any person who derives a right by delegation directly or indirectly from an attorney;
- (d) **'Authorised Representative'** means in relation to any party:
- (i) that party's lawyer; and
- (ii) a person appointed by that party to act as an authorised representative for the purpose of this document and whose appointment is notified in writing by the appointor to the other party;
- (e) **'Bankruptcy'** means:
- (i) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth);
- (f) **'Building Documents'** means the records, books of account, approvals, plans, drawings, specifications, schedules, feasibility studies, reports, certificates and other documents relating to any Building Works, including, without limitation, the Mortgagor's copy or counterpart of the Building Contracts and the Approved Plans;
- (g) **'Building Works'** includes the demolition, alteration or construction of Improvements;
- (h) **'Business Day'** means a day which is not a Saturday, Sunday or a public or bank holiday in the Australian Capital Territory;
- (i) **'Credit Support'** means:
- (i) any Guarantee by which any person guarantees the payment of the Loan Facility;
- (ii) any Security which secures:
- (A) payment of the Secured Money; or
- (B) the payment of moneys or damages owing (actually or contingently) from time to time by any guarantor in relation to a Guarantee of the payment of the Secured Money;
- (j) **'Credit Support Provider'** means a person:
- (i) who has given a Credit Support; or
- (ii) who holds any property which is subject to a Security which is a Credit Support;
- (k) **'Crown'** means the Crown in right of the Australian Capital Territory;
- (l) **'Default Notice'** means a notice under clause 9.4;
- (m) **'Encumbrance'** in relation to any property means:
- (i) any interest in or right over the property; and
- (ii) anything which prevents, restricts or delays:
- (iii) the exercise of any right over the property;
- (iv) the use of the property; or
- (v) the registration of any interest in or dealing with the property;
- (n) **'Environmental Legislation'** means any legislation which addresses environmental matters, including, without limitation, legislation concerning land use, development, pollution, waste, disposal, toxic and hazardous substances, conservation of natural or cultural resources and resource allocation;
- (o) **'Environmental Liabilities'** means any liability, obligation, expense, penalty or fine arising out of a breach of Environmental Legislation which could be

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Georgina Cassie Mutton

- imposed upon the Mortgagor or the Mortgagee or any occupier of the Secured Property as a result of activities carried on during the ownership or occupation of the Secured Property by the Mortgagor or one of its predecessors in title or any previous occupier of the property;
- (p) **'Event of Default'** means any event described in clause 6;
- (q) **'Government Body'** means:
- (i) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;
  - (ii) any public authority constituted by or under a law of any country or political sub-division of any country; and
  - (iii) any person deriving a right by delegation directly or indirectly from any other government body;
- (r) **'Improvements'** means any improvements, fixtures or structures to or on the Secured Property;
- (s) **'Insurance'** means any insurance taken out or required to be taken out by the Mortgagor under this document;
- (t) **'Loan Facility'** means the loan from the Mortgagee to the Mortgagor pursuant to a Deed of Loan dated on or about the date of this Mortgage ;
- (u) **'Material Adverse Effect'** means a material adverse effect upon either:
- (i) the ability of the Mortgagor to perform its obligations under this document; or
  - (ii) the effectiveness, priority or enforceability of this or any other Credit Support;
- (v) **'Mortgagee'** means the party referred to in Item 1 of Schedule A - Particulars;
- (w) **'Mortgagor'** means the party referred to in Item 2 of Schedule A - Particulars;
- (x) **'Permitted Encumbrance'** means an Encumbrance created with the consent of the Mortgagor, an Encumbrance that is a Collateral Security or an Encumbrance arising by operation of law to secure a monetary obligation maturing not more than ninety (90) days after the date on which it is originally incurred;
- (y) **'Potential Event of Default'** means any thing which with the giving of notice, lapse of time, fulfilment of any condition or determination of materiality will constitute, or would be likely to constitute, an Event of Default;
- (z) **'Receiver'** means a receiver or receiver and manager appointed under this document and any person who derives a right by delegation directly or indirectly from any receiver;
- (aa) **'Remedy Proceeds'** means money received from the exercise of any right against the Secured Property;
- (bb) **'Representative'** of a person means an officer, employee, contractor or agent of that person;
- (cc) **'Secured Money'** means all moneys and damages which now or in the future are owing (actually or contingently) by the Mortgagor to the Mortgagee under this document, the Loan Facility or any Credit Support (including but not limited to Credit Support relating to the Loan Facility) from the Mortgagor and, without limitation, includes moneys and damages payable in relation to this document:
- (i) by the Mortgagor alone or jointly or severally with any other person;
  - (ii) if there is more than one Mortgagor, by all or any of them;
  - (iii) by the Mortgagor in its own right or in any other capacity in which it enters into this document;
  - (iv) to the Mortgagee in its own right or in any other capacity in which it enters into this document;
  - (v) by the Mortgagor as liquidated or unliquidated damages caused or contributed to by any breach by the Mortgagor of any obligation owed by the Mortgagor to the Mortgagee, any tort by the Mortgagor or any other act or omission of the Mortgagee relating to this document;
- (dd) **'Secured Property'** means the property referred to in Item 3 of Schedule A - Particulars;
- (ee) **'Security'** means any instrument or transaction which reserves or creates a Security Interest or under which a person agrees to create a Security Interest;
- (ff) **'Security Interest'** means an interest in or right over property which secures the payment of a debt or other monetary obligation or the performance of any other obligation;
- (gg) **'Taxes'** means taxes, rates, levies, imposts and duties (other than those on the net overall income of the Mortgagee) and any interest, penalties, fines and expenses relating to any of them.

## 1.2 General

In this document, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any

statutory instrument issued under, that legislation or legislative provision;

- (b) a word denoting the singular number includes the plural number and vice versa;
- (c) a word denoting an individual or person includes a corporation, firm, authority, Government Body and vice versa;
- (d) a word denoting a gender includes all genders;
- (e) a reference to a clause is to a clause of this document;
- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as varied, novated, supplemented or replaced from time to time; and
- (g) a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns.

**1.3 Headings and Parts of Speech**

In this document:

- (a) headings are for convenience of reference only and do not affect interpretation; and
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

**2 SECURITY AND RELEASE**

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**2.1 Security**

The Mortgagor provides the Secured Property as Security for the Secured Money.

**2.2 Release**

The Mortgagee shall at the request of the Mortgagor release the Secured Property from the Security Interest held by the Mortgagee if the Mortgagor's obligation to pay the Secured Money is satisfied and in the Mortgagee's opinion no payment towards the satisfaction of the Mortgagor's obligation to pay the Secured Money is likely to be void or voidable under any law relating to Bankruptcy.

**3 REPRESENTATIONS AND WARRANTIES**

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**3.1 List**

The Mortgagor represents and warrants that:

- (a) this document is enforceable by the Mortgagee in accordance with its terms and is not void or voidable;
- (b) any Security Interest which this document purports to create is validly created and has the priority which it purports to have under this document or any priority agreement between the Mortgagor, the Mortgagee and the holder of another Security Interest in the Secured Property;

(c) the unconditional execution and delivery of, and performance by the Mortgagor of, its obligations under this document does not contravene:

- (i) a law or directive from a Government Body;
- (ii) an agreement or instrument to which the Mortgagor is a party; or
- (iii) an obligation of the Mortgagor to any other person;

(d) all information given to, and each statement made to, the Mortgagee relating to this document or the Secured Property or both by or at the direction of the Mortgagor is correct, complete and not misleading;

(e) except as notified to the Mortgagee in writing prior to the date of this document:

- (i) no litigation, arbitration or administrative proceeding is now current, pending or, to the knowledge of the Mortgagor, threatened which has or is likely to have a Material Adverse Effect;
- (ii) there are no Encumbrances over the Secured Property other than Permitted Encumbrances;
- (iii) there are no Environmental Liabilities affecting the Secured Property and the use of the Secured Property complies with all Environmental Legislation.

**3.2 General**

(a) The interpretation of any statement contained in any representation or warranty shall not be restricted by reference to or inference from any other statement contained in any other representation or warranty.

(b) The Mortgagor acknowledges that the Mortgagee has entered into this document in reliance upon the representations and warranties.

(c) Each representation and warranty will survive the execution of this document and be deemed to be repeated with reference to the facts and circumstances then existing whenever any financial accommodation secured by this document is granted by the Mortgagee or any property becomes subject to any Security Interest created by this Deed.

**4 GENERAL UNDERTAKINGS**

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**4.1 Prohibited Dealings and Variation of Other Secured Indebtedness**

- (a) The Mortgagor shall not:
  - (i) cause or permit any person to acquire any interest in the Secured Property except Permitted Encumbrances;

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- (ii) subdivide, consolidate or dedicate for any public purpose, the Secured Property, or accept the surrender or cause the termination before its expiration, of any lease of the Secured Property;
- (iii) consent to the subletting, give a licence to use or occupy or part with possession of the Secured Property; or
- (iv)
  - (A) cause or permit any person to acquire any easement, profit a prendre or covenant which burdens the Secured Property; or
  - (B) release or vary an easement, profit a prendre or covenant which benefits the Secured Property.

**4.2 Title Documents**

- (a) The Mortgagor shall upon entering into this document deposit with the Mortgagee the title documents relating to the Secured Property.
- (b) The Mortgagee may have possession and control of the title documents until the Mortgagee is obliged to release the Secured Property from the Security Interest created by this document.
- (c) The rights of the Mortgagee under this clause 4.2 are subject to the rights of the holder of any other Encumbrance over the Secured Property which ranks in priority before any Security Interest created by this document to have possession of the title documents.
- (d) The Mortgagor may from time to time and at reasonable times at its request and at its own cost and on payment of the Mortgagee's costs and expenses relating to the exercise of the Mortgagor's right, inspect and make copies or abstracts of, or extracts from, the title documents or other documents relating to the Secured Property in the possession or under the control of the Mortgagee.

**4.3 Insurance**

Until the Secured Money is fully repaid, the Mortgagor shall take out and maintain Insurance for the full replacement value of the Secured Property with the Mortgagee noted on the policy as Mortgagee.

**4.4 Material Adverse Effect**

The Mortgagor shall use its best endeavours to delay and prevent any occurrence in relation to the Mortgagor or to the Secured Property or both which has or is likely to have a Material Adverse Effect.

**4.5 Mortgagor's Other Obligations**

The Mortgagor shall duly perform its obligations in relation to the Secured Property, including, without limitation, under any Encumbrance over the Secured Property, under any law

applicable to the Secured Property and under any lawful direction from any Government Body including but not limited to the prompt payment of all rates, contributions and any other moneys which at any time become payable in respect of the Secured Property to any Government Body.

**4.6 Mortgagee's Rights to Entry and Assistance**

- (a) The Mortgagee and its nominees may at any reasonable time enter on any property owned, used or occupied by the Mortgagor for any purpose related to this document.
- (b) The Mortgagor shall provide the Mortgagee with all reasonable assistance and facilities to enable the Mortgagee to exercise its rights under this document.

**4.7 Information**

The Mortgagor shall give to the Mortgagee in writing:

- (a) full particulars of any Event of Default or Potential Event of Default immediately after its occurrence;
- (b) immediately upon receipt, a copy of any notice or order received from any Government Body or any other person relating to any proposal in relation to the Secured Property which if implemented may have, or be likely to have, a Material Adverse Effect;
- (c) as soon as it is commenced or, to the knowledge of the Mortgagor, is threatened, full particulars of any litigation, arbitration or administrative proceeding which affects the Mortgagor or the Secured Property and which may have, or be likely to have, a Material Adverse Effect;
- (d) upon being notified of it, full particulars of any resumption or proposal to resume.

**4.8 Further Assurances**

The Mortgagor shall promptly execute any document and do anything else that the Mortgagee from time to time reasonably requires for further or more perfectly:

- (a) establishing the priority of this document and stamping and registering it in any jurisdiction that the Mortgagee demands;
- (b) giving to the Mortgagee the rights that this document purports to give or which are contemplated by it; and

**4.9 Default**

The Mortgagor shall not cause or permit any Event of Default to occur.

**4.10 Mortgagor's Other Obligations**

The Mortgagor shall duly comply with its obligations in relation to the Secured Property, including, without limitation, under any Encumbrance over the Secured Property, any lawful direction from any Government Body and any law applicable to the Secured Property.

#### 4.11 Development Approvals

The Mortgagor shall not undertake any work requiring development or building approval on the property without first obtaining the Mortgagee's consent as well as any necessary development or building approval from the relevant Government Body. The Mortgagee may give their consent conditionally.

#### 4.12 Encroachments

- (a) The Mortgagor shall not undertake any development on the land which will encroach on adjoining land unless the Mortgagor obtains an easement to authorise the continued existence of that development or acquire the land which is the subject of the encroachment, if a failure to do so would cause or contribute to a Material Adverse Effect.
- (b) If any improvement on adjoining land at any time encroaches on the Secured Property the Mortgagor shall cause the encroachment to be removed if its existence would cause or contribute to a Material Adverse Effect.

#### 4.13 Reporting

The Mortgagor shall give to the Mortgagee immediately upon receipt a copy of any notice or order received from any Government Body relating to:

- (a) any proposal of the Government Body to resume or change the permitted use of the Secured Property which, if implemented, may have or be likely to have a Material Adverse Effect; and
- (b) any alleged environmental liability or breach of Environmental Legislation.

### 5 DAMAGE TO SECURED PROPERTY

While ever the Secured Money remains owing to the Mortgagee, in the event of damage occurring to the Secured Property under which the Mortgagor is able to make an Insurance claim, the Mortgagee may take over the Mortgagor's role in dealing with the Insurance company and may direct any proceeds payable from the Insurance policy up to the full amount of the Secured Money then outstanding be paid to the Mortgagee instead of to the Mortgagor. The Mortgagor shall notify the Mortgagee of any damage to the property or Insurance claim in relation to it within three (3) Business Days of such event happening or claim being made and shall do all things and sign all documents, if any, necessary to enable the Mortgagee to exercise its rights under this clause.

### 6 DEFAULT

Each of the following is an Event of Default (whether or not caused by anything outside the control of the Mortgagor):

- (a) the Mortgagor does not pay the Secured Money in accordance with this document or perform its obligations under clause 4.1;
- (b) the Mortgagor does not perform one of its other obligations under this document and the default is not capable of rectification or, if that default is capable of rectification:
  - (i) it is not rectified within ten (10) Business Days (or any other longer period agreed by the Mortgagee) of its occurrence; and
  - (ii) the Mortgagor does not during that period take all action which in the Mortgagee's opinion is necessary or desirable to quickly remedy that default;
- (c) a representation, warranty or statement made or deemed to be made by or on behalf of the Mortgagor, whether in this document or not, is untrue or misleading in any material respect;
- (d) this document is void, voidable or otherwise unenforceable by the Mortgagee or is claimed to be so by the Mortgagor;
- (e) a Security Interest which this document purports to create ceases to have the priority which it purports to have under this document or under any agreement between the Mortgagor and the Mortgagee or ceases to secure the payment of the Secured Moneys or the performance of the obligations which it purports to secure, otherwise than by any act of the Mortgagee;
- (f) a distress, attachment or execution is levied or becomes enforceable against any property of the Mortgagor;
- (g) an authorisation from a Government Body necessary to enable: the Mortgagor to perform its obligations under this document or to enable the Mortgagee to exercise its rights under this document is withdrawn or terminates or its withdrawn or termination is threatened;
- (h) an event or series of events, whether related or not, including, without limitation, any material adverse change in the property or financial condition of the Mortgagor, occurs which has, or is in the Mortgagee's opinion likely to have, a Material Adverse Effect;
- (i) any person who holds a Security over the Secured Property becomes entitled to exercise a right under that Security to recover any moneys the payment of which is secured by that Security or enforce any other obligation the performance of which is secured by it;

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Gregory Sparks

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Jacqueline Scherz

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Benjamin David Mutton

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Georgina Cassie Mutton

**7 DEFAULT POWERS**

**7.1 General**

- (a) The Mortgagee may, subject to the operation of any applicable law, at any time after an Event of Default has occurred, exercise any or all of the rights set out in this clause 7 in any manner and at any time, notwithstanding that a Receiver has been appointed.
- (b) The interpretation of any right set out in this clause 7 shall not be restricted by reference to or inference from any other right.

**7.2 Statutory and Implied Powers**

The Mortgagee may exercise all rights capable of being conferred by the statutes and other laws of any relevant jurisdiction upon Mortgagees including but not limited to any power of sale.

**7.3 Dealings**

The Mortgagee may:

- (a) take possession or control of and get in the Secured Property;
- (b) manage, quietly enjoy and otherwise deal with the Secured Property;
- (c) exercise the rights of the Mortgagor and perform the obligations of the Mortgagor in respect of the Secured Property and cause and permit any other person to perform their obligations in respect of the Secured Property;
- (d) vary, replace or release any right or interest of the Mortgagor or any other person;
- (e) vary, replace, rescind or terminate any agreement relating to the Secured Property to which it or the Mortgagor is a party;
- (f) acquire or grant easements, profits à prendre and covenants which benefit or burden the Secured Property and dedicate for any public purpose any part of the Secured Property;
- (g) subdivide or consolidate the Secured Property;
- (h) grant options and rights of first refusal to acquire the Secured Property;
- (i) sever trees and Improvements from the Secured Property and deal with them separately from the balance of the Secured Property; and
- (j) exercise the Mortgagor’s rights and performance and observe its obligations under any lease of the Secured Property;

**7.4 Ancillary Powers**

The Mortgagee may:

- (a) employ or engage any person for the purpose of exercising any of the Mortgagee’s rights under this clause 7;
- (b) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings relating to the Secured Property;
- (c) give receipts for and satisfy, release, or compromise any debt or other obligation owed to or by the Mortgagor in relation to the Secured Property;
- (d) enter into and execute and deliver documents and agreements relating to the exercise of its rights under this clause 7;
- (e) delegate to any person any right (including this right of delegation) under this clause 7; and
- (f) do anything incidental or conducive to the exercise of any of its rights under this clause 7.

**7.5 Receivers**

The Mortgagee may:

- (a) either before or after it has taken possession of the Secured Property appoint in writing:
  - (i) any one or more persons to be an administrator or Receiver of the Secured Property or a part of it; or
  - (ii) different administrators or Receivers for different parts of the Secured Property;
- (b) if more than one person is appointed as administrator or Receiver of any property, the Mortgagee may appoint them jointly or jointly and severally;
- (c) remove the administrator or Receiver and appoint another if the administrator or Receiver is removed, retires or dies and, in the case of removal or retirement, reappoint that administrator or Receiver; and
- (d) fix the remuneration of the administrator or Receiver.

**7.6 Bankruptcy**

The Mortgagee may where rents are owed (whether actually or contingently) to the Mortgagor, prove the rents in a Bankruptcy, receive dividends and agree to a composition or a scheme of arrangement relating to the rents.

**7.7 Building Works**

The Mortgagee may:

- (a) carry out any Building Works in any manner the Mortgagee thinks fit and in doing so may:
  - (i) adhere to or vary the Approved Plans; and
  - (ii) increase or reduce the estimated costs of carrying out the Building Works;

- (b) use any materials, plant and equipment of the Mortgagor upon the Secured Property in the carrying out of the Building Works;
- (c) enter into any contracts or arrangements in relation to the Building Works;
- (d) expend the balance of any moneys held by the Mortgagee and intended to form part of the Secured Moneys towards the carrying out of the Building Works,  
and:
- (e) the Mortgagor shall cause and permit the Building Documents to be delivered to the Mortgagee;
- (f) the Mortgagee will not be liable to the Mortgagor if the Mortgagee does not carry out or complete any Building Works or having begun to do so, stops.

**8 RECEIVERS**

**8.1 Agent**

The Mortgagee may appoint a Receiver who will be the agent of either:

- (a) the Mortgagor, who alone shall be responsible for the Receiver’s acts and omissions and remuneration; or
- (b) the Mortgagee.

**8.2 Powers**

- (a) A Receiver shall have the right in relation to any property of which the Receiver is appointed to do everything that the Mortgagor may lawfully authorise an agent to do on behalf of the Mortgagor in relation to that property and, without limitation, a Receiver may in relation to that property exercise:
  - (i) the rights capable of being conferred upon Receivers by the *Corporations Act 2001* (Cth) and statutes and laws of any relevant jurisdiction;
  - (ii) the rights of the Mortgagee under this document except the right to accelerate payment of the Secured Money and the right to appoint a Receiver;
  - (iii) the rights of the Mortgagor and, if the Mortgagor is a corporation, the directors of the Mortgagor; and
  - (iv) any other rights the Mortgagee may by written notice to a Receiver give to a Receiver.
- (b) The Mortgagee may by written notice to a Receiver at the time of a Receiver’s appointment or any subsequent times give any rights to, or limit any rights of, a Receiver.

**9 EXERCISE OF DEFAULT RIGHTS**

**9.1 No Hindrance**

The Mortgagor shall not cause or permit the Mortgagee, a Receiver or an Attorney to be prevented or hindered from exercising its rights under this document.

**9.2 Mortgagee in Possession**

- (a) If the Mortgagee, a Receiver or an Attorney exercises its rights under this document or takes possession of the Secured Property, it will not be liable to account as Mortgagee in possession.
- (b) If the Mortgagee has taken possession of the Secured Property it may give up possession of the Secured Property at any time.
- (c) The obligations of the Mortgagor under this document relating to the Secured Property shall not be affected by the Mortgagee, any Receiver or any Attorney taking possession of the Secured Property.

**9.3 Exclusion of Legislation**

- (a) The provisions implied in securities by any statute will for the purposes of this document be negated or varied only so far as they are inconsistent with the provisions of this document and are otherwise varied so as to become consistent with this document.
- (b) Any statutory restrictions (other than mandatory restrictions) upon any right of the Mortgagee, Receiver or Attorney to deal with the Secured Property will not apply to the rights of those persons under this document.

**9.4 Default Notice**

- (a) The Mortgagor and the Mortgagee, to the extent that any applicable law permits and to the extent not inconsistent with the express terms of this document, dispense with:
  - (i) any notice to the Mortgagor (including, without limitation, any notice identifying a default by the Mortgagor, giving a period to rectify it and stating that the power to sell the Secured Property, appoint a Receiver to the Secured Property or take possession of the Secured Property can be exercised if the default is not rectified); or
  - (ii) any lapse of time (including, without limitation, a period to rectify a default),

prescribed by any statute or rule of law or equity and which would otherwise be required to be given or allowed before the Mortgagee exercises its rights relating to an Event of Default.

- (b) If an applicable law requires that notice be given or a lapse of time before any right can be exercised, then if no particular period of notice or lapse of time is required, the period of notice or lapse shall be one day.

**10 APPLICATION OF MONEY**

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**10.1 Method**

The Remedy Proceeds shall, subject to any mandatory statutory requirements, be applied or paid by the Mortgagee, any Receiver or any Attorney as follows:

- (a) first, towards any moneys owing (actually or contingently) by the Mortgagor to any person who is in the Mortgagee’s opinion, the holder of any Security Interest ranking in priority before the Security Interest created by this document to the extent that their Security Interest secures the payment of those moneys in priority before the Secured Money;
- (b) secondly:
  - (i) towards the Secured Money which is then due and owing and, if any Secured Money is contingently owing or owing but not due, in accordance with clause 10.5 and the Remedy Proceeds shall be appropriated between those categories of Secured Money as the Mortgagee requires; and
  - (ii) to any person who is in the Mortgagee’s opinion the holder of any Security Interest in the Secured Property which ranks equally with any Security Interest created by this document to the extent that their Security Interest secures the payment of those moneys equally with the Secured Money;
- (c) thirdly, towards any moneys owing (actually or contingently) by the Mortgagor to any person who in the Mortgagee’s opinion is the holder of any Security Interest in the Secured Property which ranks in priority after any Security Interest created by this document to the extent that their Security Interest secures the payment of those moneys in priority after the Secured Money; and
- (d) fourthly, to any person entitled to the Secured Property or authorised to give receipts for those moneys.

**10.2 Mortgagee’s Certificate and Disputes**

- (a) The Mortgagee may rely upon a certificate issued by any person who claims to be entitled to receive any of the Remedy Proceeds to the effect that moneys are owing (actually or contingently) by the Mortgagor to it and stating the amount owing (actually or contingently) without being obliged to make any further inquiry.
- (b) If there is any dispute between any persons (other than the Mortgagee) as to who is entitled to receive the Remedy Proceeds, the Mortgagee may pay those

moneys into court and if that is done the Mortgagee will have no further obligations in relation to those moneys.

**10.3 No Interest on Remedy Proceeds**

The Mortgagee is not obliged to pay interest to any person upon the Remedy Proceeds.

**10.4 Payment Into Bank Account**

If the Mortgagee pays the Remedy Proceeds or any other moneys received under or pursuant to this document into a bank account in the name of any person to whom the Mortgagee is obliged to pay moneys under clause 10.1 and notifies that person of the particulars of the account the Mortgagee will have no further obligations in relation to those Remedy Proceeds or other moneys.

**10.5 Contingent Debts**

If part of the Secured Money is contingently owing or owing but not due and the Mortgagee receives any Remedy Proceeds or other moneys under or pursuant to this document the Mortgagee may:

- (a) pay those Remedy Proceeds or other moneys into a suspense account and hold them to secure the payment of such part of the Secured Money; and
- (b) at any time appropriate any moneys in the suspense account towards the satisfaction of any moneys due by the Mortgagor to the Mortgagee in any way that the Mortgagee requires,

and when the Secured Money is satisfied in full and, in the opinion of the Mortgagee no further part of the Secured Money is contingently owing or may otherwise become owing in the future, the Mortgagee shall pay the balance of the Remedy Proceeds to any person entitled to the Secured Property or authorised to give receipts for those moneys.

**10.6 Payments During Default Notice Period**

If during the period from the service of a notice requiring the rectification of a default by the Mortgagor under this document in the payment of moneys until the expiration of that notice the Mortgagor pays any moneys to the Mortgagee towards satisfaction of the Secured Money the Mortgagee may apply those moneys first, towards satisfaction of any moneys due and owing by the Mortgagor to the Mortgagee other than those which are the subject of the notice and secondly, towards satisfaction of the moneys which are the subject of the notice.

**10.7 Accounting for Remedy Proceeds**

The Mortgagee, any Receiver or any Attorney is not obliged to account to the Mortgagor for any Remedy Proceeds or any other moneys relating to the exercise by any of them of any right under this document until moneys are actually received in immediately available funds and, without

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Gregory Sparks

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Jacqueline Scherz

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Benjamin David Mutton

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Georgina Cassie Mutton

limitation, if any of them sell the Secured Property on terms whereby:

- (a) any part of the purchase price remains unpaid (secured or unsecured) after transfer of the Secured Property to the purchaser; or
- (b) the purchase price is payable in instalments on or before the transfer of the Secured Property to the purchaser,

they are not obliged to account for the purchase price before those Remedy Proceeds or that other money is actually received in immediately available funds.

**11 THIRD PARTY DEALINGS**

**11.1 Mortgagee’s Receipts and Discharges**

The Mortgagee may give valid discharges and receipts for any moneys payable by any third party in respect of any exercise of a right under this document by the Mortgagee, any Receiver or any Attorney.

**11.2 No Duty to Inquire**

- (a) Any person dealing with the Mortgagee, any Receiver or any Attorney in relation to the exercise by any of them of a right under this document shall not be concerned to inquire whether:
  - (i) any Event of Default has occurred;
  - (ii) the Receiver or Attorney is properly appointed;
  - (iii) the right is otherwise properly exercised by that person; and
  - (iv) any moneys paid by it to the Mortgagee, Receiver or Attorney are properly applied,

and the title of that person to any property acquired by it from the Mortgagee, Receiver or Attorney, shall not be adversely affected by any improper exercise of the right or application of moneys by the Mortgagee, any Receiver or any Attorney.

- (b) The benefit of clause 11.2(a) is held on trust for the benefit of the Mortgagee and each person dealing with the Mortgagee, any Receiver or any Attorney.

**12 COSTS AND EXPENSES**

**12.1 General**

The Mortgagor shall pay, and if paid by the Mortgagee reimburse, to the Mortgagee:

- (a) the Mortgagee’s reasonable costs and expenses relating to this document, including, without limitation, those which the Mortgagor is liable to pay under any applicable law and those in relation to:

- (i) the negotiation, preparation, execution, stamping and registration of this document and any subsequent document discharging it;
  - (ii) any consent, request for consent, communication, the waiver of any right or the variation or replacement of this document;
  - (iii) the exercise or attempted exercise or the preservation of any rights of the Mortgagee under this document;
  - (iv) any Event of Default or Potential Event of Default; and
  - (v) the creation, lodgement, registration or release of, or any dealing relating to, any Encumbrance, including any Security Interest created by this document, over the Secured Property; and
- (b) any Taxes and registration or other fees (and fines and penalties relating to the Taxes and fees) which are payable or are assessed by a relevant government body to be payable in relation to this document, any document contemplated by it or any transaction contemplated by it.

**12.2 Legal Costs**

A reference to costs and expenses in this document includes, without limitation, legal costs and expenses on a full indemnity basis.

**12.3 Acts at Mortgagor’s Expense**

Anything which this document states is to be done by either the Mortgagee or the Mortgagor is to be done at the Mortgagor’s expense.

**12.4 Remuneration**

The Mortgagee, any Receiver and any Attorney shall be remunerated by the Mortgagor for any services rendered by them in relation to the exercise of any right under this document and the rate of the remuneration and the manner of payment will be that determined by the Mortgagee.

**13 INDEMNITIES**

**13.1 General**

- (a) The Mortgagor indemnifies the Mortgagee against any liability, loss, cost or expense caused or contributed to by any Event of Default or the exercise or attempted exercise of any right by the Mortgagee, any Receiver or any Attorney under this document.
- (b) The Mortgagor shall indemnify each Receiver and Attorney and their respective Representatives and the Representatives of the Mortgagee against any liability, loss, cost and expense caused or contributed to by anything the Mortgagee is indemnified against under

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Gregory Sparks

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Jacqueline Scherz

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Benjamin David Mutton

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Georgina Cassie Mutton

clause 13.1(a) and the Mortgagee holds the benefit of this clause 13.1(b) upon trust for those persons.

**13.2 Independence and Survival**

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the Mortgagor and survives the termination of this document.

**14 ATTORNEY**

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**14.1 Appointment and Powers**

The Mortgagor irrevocably appoints the Mortgagee its Attorney with the right:

- (a) at any time to:
  - (i) perform the obligations of the Mortgagor under this document;
  - (ii) do everything which in the Attorney’s opinion is necessary or expedient to enable the exercise of any right of the Mortgagee or any Receiver in relation to this document;
  - (iii) if the Secured Property is or is proposed to be the subject of any dealing or other thing which may have or is likely to have a Material Adverse Effect, do anything in relation to the Secured Property to prevent or delay that Material Adverse Effect;
  - (iv) appoint substitutes and otherwise delegate its rights (including this right of delegation); and
- (b) after any Event of Default has occurred, to do everything that the Mortgagor may lawfully authorise an agent to do in respect of the Secured Property.

**14.2 General**

- (a) Any Attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- (b) The Mortgagor shall ratify any exercise of a right by an Attorney.
- (c) The power of attorney is granted for valuable consideration (receipt of which is acknowledged by the Mortgagor) and to secure the performance of the obligations of the Mortgagor to the Mortgagee under this document and any proprietary interests of the Mortgagee under this document.

**15 MISCELLANEOUS**

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**15.1 Currency of Payment**

The Mortgagor shall pay the Secured Money in Australian dollars.

**15.2 Appropriation**

The Mortgagee may, subject to any express provision in this document to the contrary, appropriate any payment towards

the satisfaction of any moneys due by the Mortgagor in relation to this document in any way that the Mortgagee requires and notwithstanding any purported appropriation by the Mortgagor.

**15.3 Payments in Gross**

The Mortgagee in applying towards satisfaction of the Secured Money any money received by it shall credit the Mortgagor only with that part of those moneys which is actually received by the Mortgagee in immediately available funds. Funds which are received but are not immediately available shall be credited on the date upon which they become available.

**15.4 Set-Off**

The Mortgagee may:

- (a) set-off against the Secured Money any debt due and owing by the Mortgagee to the Mortgagor, including, without limitation, any moneys in any currency held by the Mortgagee for the account of the Mortgagor in any place; and
- (b) if the debt due and owing by the Mortgagee to the Mortgagor is payable in a currency other than that in which the debt due and owing by the Mortgagor to the Mortgagee is payable, convert the Mortgagee’s debt into the currency in which the Mortgagor’s debt is payable by applying an exchange rate determined by the Mortgagee.

**15.5 Mortgagee’s Determination**

- (a) If any matter related to this document is to be resolved by the determination or opinion of the Mortgagee or an Attorney or Receiver:
  - (i) the determination or opinion of the Mortgagee, Attorney or Receiver will be binding upon the Mortgagor if it is reasonable;
  - (ii) the Mortgagee, Attorney or Receiver is not obliged to give the reasons for a determination or opinion; and
  - (iii) the Mortgagor will have the onus of proving that a determination or opinion of the Mortgagee, Attorney or Receiver is unreasonable.
- (b) A determination or an opinion of an Authorised Representative of the Mortgagee, which is given to the Mortgagor or otherwise expressed or acted upon by the Mortgagee as being a determination or an opinion of the Mortgagee, will be deemed to be a determination or opinion of the Mortgagee.

**15.6 Rights Cumulative**

The rights of the Mortgagee in respect of this document are cumulative and in addition to any other rights of the Mortgagee.

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Gregory Sparks

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Jacqueline Scherz

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Benjamin David Mutton

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Georgina Cassie Mutton

**15.7 Exercise of Rights**

- (a) A single or partial exercise or waiver by the Mortgagee of any right relating to this document will not prevent any other exercise of that right or the exercise of any other right.
- (b) The Mortgagee and its Representatives will not be liable for any loss, cost or expense of the Mortgagor caused or contributed to by waiver of, the exercise of, attempted exercise of, failure to exercise or delay in exercising a right and the Mortgagee holds the benefit of this clause 15.7 upon trust for itself and its Representatives.

**15.8 Business Days**

- (a) If the day on which anything is to be done under this document is not a Business Day that thing shall be done on the succeeding Business Day, except where it is to be done on demand in which case it shall be done on the next following Business Day.
- (b) If a payment is received from the Mortgagor by the Mortgagee on the due date but after the time specified for payment that payment will be deemed to have been received before the specified time on the following Business Day.

**15.9 Variation**

No variation or waiver of, or any consent to any departure by a party from, a provision of this document is effective unless it is confirmed in writing signed by the Mortgagee and then that variation, waiver or consent is effective only in circumstances for which it may be made or given.

**15.10 Liability of Parties**

If any party to this document consists of more than one person then the liability of those persons under this document is a joint liability of all those persons and a separate liability of each of them.

**15.11 Severance**

If any provision of this document is unenforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the unenforceable provision, are and continue to be, enforceable in accordance with their terms.

**15.12 Counterparts**

This document may be executed by any number of counterparts and all of these counterparts taken together constitute one and the same instrument.

**15.13 Attorneys**

If this document is executed on behalf of a party by an Attorney, that Attorney by executing declares that the Attorney has no notice of the revocation of the power of

Attorney under the authority of which the Attorney executes this document on behalf of that party.

**15.14 Governing Law and Jurisdiction**

This document is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

**16 NOTICES**

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**16.1 General**

Any notice, demand, certification or other communication under this document shall be given in writing and in the English language and may be given by an Authorised Representative of the sender.

**16.2 Method of Giving Notices**

A communication required or permitted to be given by any party to another under this document must be in writing and is treated as being duly given if it is:

- (a) left at that party's address; or
- (b) sent by pre-paid mail to that party's address.

**16.3 Time of Receipt**

A communication given to a party in accordance with this clause 16 is treated as having been duly given and received:

- (a) when delivered (in the case of it being left at that party's address);
- (b) on the third (3<sup>rd</sup>) Business Day after posting (in the case of it being sent by pre-paid mail); and
- (c) on the Business Day of transmission (in the case of it being given by facsimile and sent to the facsimile receiver number of that party and no intimation having been received that the notice had not been received, whether that intimation comes from that party or from the operation of facsimile machinery or otherwise) where such transmission is prior to 5 pm or at 9 am on the next Business Day where such transmission occurs on a non-Business Day or after 5 pm on a Business Day.

**16.4 Address of Parties**

For the purposes of this clause 16, the initial addresses of the parties for service shall be as set out in the definition of Address for Service.

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Gregory Sparks

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Jacqueline Scherz

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Benjamin David Mutton

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Georgina Cassie Mutton

## Schedule A – Particulars

### 1 MORTGAGEE

3 SCARAMOUCH HOLDINGS PTY LTD (ACN 054 546 735)  
of A. Joseph & Co, 63 Wigram Street, Harris Park NSW 2150

### 2 MORTGAGOR

4 MUTTON CORPORATION PTY LTD (ACN 641 744 069)  
of 17 Torrens Street Braddon ACT 2612

### 3 PROPERTY

Unit 4 Units Plan 2782 Block 37 Section 5 Fyshwick

## Execution

### MORTGAGEE

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

### MORTGAGOR

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