



CowellClarke
Commercial Lawyers

BRENTON PHILIP SMITH in his personal capacity

SONIA LEANNE SMITH in her personal capacity

BRENTON PHILIP SMITH and SONIA LEANNE SMITH both in their capacities as trustees of the BP and SL Smith Family Trust and the Kiebrox Superannuation Fund
("Borrowers")

and

BSH TRANSPORT SOLUTIONS PTY LTD

BSH WASTE SOLUTIONS PTY LTD

BRENTON SMITH HOLDINGS PTY LTD

("Guarantors")

and

ROSNEY BROAD as trustee of the Lorne Superannuation Fund
("Lender")

DEED OF ACKNOWLEDGEMENT AND VARIATION

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THIS DEED made

2016

- BETWEEN** **Brenton Philip Smith** and **Sonia Leanne Smith** in their personal capacities of c/- 24 Nelcebee Terrace, Tumby Bay SA 5606
- AND** **Brenton Philip Smith** and **Sonia Leanne Smith** both in their capacities as trustees of the BP and SL Smith Family Trust and the Kiebrox Superannuation Fund of c/- 24 Nelcebee Terrace, Tumby Bay SA 5606 (the "**Borrowers**")
- AND** **BSH Transport Solutions Pty Ltd**, **BSH Waste Solutions Pty Ltd** and **Brenton Smith Holdings Pty Ltd** all c/- 19 Adelaide Place Port Lincoln SA 5606 (collectively the "**Guarantors**")
- AND** **Rosney Broad** c/- Cowell Clarke, Level 5 63 Pirie Street Adelaide SA 5000, as trustee of the Lorne Superannuation Fund ("**Lender**")

RECITALS

- A. The Lender advanced by way of a loan to the Borrowers the sum of Six Hundred Thousand Dollars (\$600,000.00) comprised of a cash loan of Five Hundred and Ten Thousand Dollars (\$510,000) and an allowance for prepaid interest of Ninety Thousand Dollars (\$90,000) (the "**Loan**").
- B. The terms of the Loan are recorded in an agreement executed by the Lender, the Borrowers and the Guarantors dated 21 December 2011 (the "**Agreement**").
- C. The Guarantors guaranteed the obligations in the Agreement of the Borrowers pursuant to a guarantee and indemnity, executed at or about the same date as the Agreement (the "**Guarantee**").
- D. The terms of the Agreement inter alia provided that:
- i. the repayment date of the Loan in full was by 25 June 2012;
 - ii. the Borrowers must pay interest on the Loan;
 - iii. the interest rate to be applied if the Borrowers were in breach of the Agreement was 35%.
 - iv. Such interest was compounding interest; and
 - v. the Borrowers indemnified the Lender against all Liabilities (as defined in the Agreement) incurred by the Lender as a result directly or indirectly of:

- a. any default of the Agreement by the Borrowers;
 - b. enforcement of the Lender's rights under the Security (as defined in the Agreement).
- E. In breach of the terms of the Agreement, the Loan was not repaid in full by 25 June 2012 or at all and as at the date of this Deed, despite numerous demands by the Lender, no amount has been repaid by either the Borrower or the Guarantors to the Lender in respect of the Loan.
- F. As at the date of this Deed the Borrowers and Guarantors are indebted to the Lender in the sum of \$2,832,302.87 comprising:
- Loan \$600,000;
 - Interest at 35% comprising \$2,171,663.65
 - Legal fees \$42,139.22
 - Establishment Fee \$16,500
 - The Exit fee \$2,000;
- (the "**Debt**").
- G. The Lender, the Borrowers and the Guarantors have agreed to enter into this Deed to acknowledge the Loan, the Debt and vary the terms of the Agreement only to the extent outlined herein.

THIS DEED WITNESSES as follows:

1. Recitals

The parties acknowledge the recitals are true and correct and form part of this Deed.

2. Interpretations and definitions

Unless qualified by or inconsistent with the context:

- 2.1 a reference to one gender includes the other genders; reference to a person includes an incorporated or unincorporated body or other association of persons or a governmental agency and vice versa; the singular includes the plural and vice versa;

- 2.2 where a party comprises more than one person, this Deed applies to all of them together and each of them separately;
- 2.3 headings are for convenience of reference and will not affect the interpretation of this Deed;
- 2.4 this Deed is written in plain English as far as possible. Its terms are to be interpreted so as to give effect to the parties' agreement. No rule will apply to resolve a doubt as to the interpretation of a provision in this Deed against the party that prepared this Deed or that particular provision. The specific provisions will not limit the interpretation of general provisions;
- 2.5 a reference to costs includes legal costs on a full indemnity basis;
- 2.6 in this Deed where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- 2.7 a reference to writing is to be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form;
- 2.8 this Deed binds the parties' respective heirs, successors, legal personal representatives and assigns;
- 2.9 the approval or consent of a party means that party's prior written approval or consent which is not to be unreasonably withheld or delayed. Similar expressions have corresponding meanings;
- 2.10 a reference to a clause or a Schedule is a reference to a clause of or schedule to this Deed;
- 2.11 wherever "include" or "for example" or any form of those words are used, they must be construed as if they were followed by "(without being limited to)";
- 2.12 if the day on or by which a person must do something under this Deed is not a Business Day, the person must do it on or by the next Business Day; and
- 2.13 any amount payable pursuant to this Deed is expressed to be inclusive of GST. The recipient of any taxable supply is not liable to pay any additional amounts to the supplier in respect of GST.

3. Variation

The terms of the Agreement are varied as follows:

- 3.1 The principal debt to be repaid as at the date of the execution of this deed is the sum of \$1.2 million (the “**Principal Sum**”);
- 3.2 Interest will accrue on the Principal Sum at 6% per annum (the “**Interest**”);
- 3.3 The Interest accrues daily on the basis of a 365 day year on and from 1 December 2016 until and including the day all of the Principal Sum is repaid;
- 3.4 Interest is payable calendar monthly in arrears on the last day of each calendar month.
- 3.5 The Borrower must repay the Principal Sum, together with any unpaid interest referred to at clause 3.2 by 30 June 2017 or as otherwise agreed in writing by the Lender;
- 3.6 The Agreement, the Guarantee and this Deed constitute the entire agreement between the parties concerning the variation of the terms of the Agreement;
- 3.7 As at the date of this Deed, the contact details for Notices (as defined in the Agreement) for the purpose of the Agreement or this Deed are:

Lender: Rosney Broad
c/- Cowell Clarke
Level 5, 63 Pirie Street
ADELAIDE SA 5000

Borrowers: Brenton Philip Smith and Sonia Leanne Smith
c/- 24 Nelcebee Terrace
TUMBY BAY SA 5606

Guarantors: BSH Transport Solutions Pty Ltd
BSH Waste Solutions Pty Ltd
Brenton Smith Holdings Pty Ltd
c/- 19 Adelaide Place
PORT LINCOLN SA 5606

A notice is deemed to be received;

- i. in the case of hand delivery, on the date of delivery;
- ii. in the case of prepaid post, 4 Business Days after being sent by prepaid post;
- iii. in the case of facsimile, on receipt by the sender of a successful transmission answerback; or
- iv. in the case of electronic mail, on the day of transmission provided that the sender can give evidence of transmission and the intended recipient does not give evidence of non-receipt.

but otherwise the terms of the Agreement remain in all other respects, other than as varied by this Deed.

4. Acknowledgements

The Borrowers and the Guarantors agree and acknowledge that:

- 4.1 They are indebted to the Lender in the amount of the Debt;
- 4.2 As at the date of this Deed no amount in connection with the Debt has been repaid.
- 4.3 Save for the variations to the Agreement outlined in clause 3 above, the terms of the Agreement and the Guarantee are in all other respects enforceable and binding;
- 4.4 They are liable for the Lender's legal fees on an indemnity basis (including in connection with the cost of and preparation of this Deed) which:
 - 4.4.1 as at the date of this Deed total \$42,816.37; and
 - 4.4.2 may continue to accrue and to the extent further legal fees are incurred by the Lender in respect of any matter relating to the Agreement, the Guarantee or the Deed, the Borrowers and Guarantors will continue to be liable; and
 - 4.4.3 are to be paid by the Borrowers and the Guarantors by no later than 30 June 2017, or such other date as agreed in writing

(the "**Legal Fees**").

- 4.5 The Guarantor's Guarantee is not varied by this deed;
- 4.6 The Guarantee is a continuing guarantee and applies and is enforceable in respect of the terms of this Deed.
- 4.7 The Principal Sum, Interest and the Legal Fees are payable by the Borrowers and the Guarantors without defence, condition or qualification, set-off or deduction, counter-claim, cross claim or cross demand by the Borrowers and the Guarantors; and
- 4.8 there is no dispute in connection with the Principal Sum, Interest or Legal Fees and hereby release the Lender from any claim, including but not limited to any allegations relating to the application of the National Consumer Credit Protection Act 2009 to the Loan or the Lender.
- 4.9 The Principal Sum, Interest and the Legal Fees are secured by a valid and enforceable mortgage in favour of the Lender over the land development (Development No 9231D012107) at allotment comprising pieces 6 & 7 deposited plan 81225 in the area of Tumby Bay Hundred Hutchison, Certificate of Title Reference Volume 6052 Folio 23 mortgage number 11695610.

5. Breach of Deed and Termination

If the Borrowers or Guarantors are in breach of any term of this Deed and such breach is not remedied within seven days, then the Lender reserves the right to terminate the Deed and its variation to the Agreement and rely on the terms of the Agreement and Guarantee as though they were not varied by this Deed. The acknowledgments contained at clause 4 of this Deed shall survive any termination.

6. In the event of a breach by the Borrowers and Guarantors of the terms of this Deed, the Borrowers and Guarantors will jointly and severally agree to consent to judgment in the Supreme Court of South Australia for the total amount outstanding under the terms of the Agreement at the time of the breach.

7. Confidentiality Undertaking


The parties agree for themselves, their servants and agents, including their legal representatives that the terms and substance of this Deed will be confidential and must not be disclosed to any other person under any circumstances except as required by law or with the written consent of the parties.

8. Counterparts

This Deed may be executed in any number of counterparts and the execution will be as effective and binding on the parties as if each party had signed each copy. Satisfactory evidence of execution of this Deed will include evidence by facsimile or e-mail of execution by the relevant party and in that case the executing party undertakes to produce the original as soon as reasonably practicable.

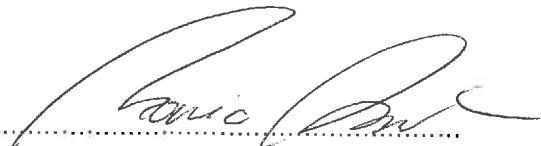
EXECUTED AS A DEED

SIGNED AS A DEED by BRENTON PHILIP SMITH in the presence of:

)
) 
)



.....
Witness

SIGNED AS A DEED by SONIA LEANNE SMITH in the presence of:

)
) 
)


.....
Witness

EXECUTED by BSH Transport Solutions)
PTY LTD in accordance with Section 127(1))
of the Corporations Act 2001:)


.....
*Director/*Sole Director and Sole Secretary
PHILIP
Print Full Name: BRENTON ^ SMITH

.....
*Director/*Secretary
Print Full Name:

(*please delete the inapplicable title)
(Note: please affix common seal if required by the Company's Constitution)

EXECUTED by BSH Waste Solutions Pty)
Ltd in accordance with Section 127(1) of the)
Corporations Act 2001:)



.....
*Director/*Sole Director and Sole Secretary

Print Full Name: SONIA LEANNE SMITH

.....
*Director/*Secretary

Print Full Name:

EXECUTED by Brenton Smith Holdings)
Pty Ltd in accordance with Section 127(1) of)
the Corporations Act 2001:)


.....
*Director/*Sole Director and Sole Secretary

Print Full Name: BRENTON PHILIP SMITH

.....
*Director/*Secretary

Print Full Name:

EXECUTED AS A DEED

SIGNED AS A DEED by ROSNEY BROAD)
as trustee of the Lorne Superannuation Fund)
in the presence of:)


.....


.....
Witness