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SAMPLE

LOAN AGREEMENT

between

ARNOLD (A.) BRIGHT-LIGHTHOUSE
&
LOTSA LOOT LIMITED
(ACN 394 787 333)

and

CAP'N JACK SPARROW ENTERPRISES PTY LTD
(ACN 343 784 343)
&
DAVIE DOUBLE-CROSS

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Date

Parties

Lenders	<p>A. BRIGHT-LIGHTHOUSE Address: c/- Seal Rocks Lighthouse, Sugarloaf Point NSW 2423 Email: circa@1875.com.au</p> <p>LOTSALOOT LIMITED (ACN 394 787 333) Address: X marks the spot, Paradise SA 5075 Email: cash@lotsaloot.com.au</p> <p>(together, the <i>Lenders</i> and each a <i>Lender</i>)</p>
Borrowers	<p>CAP'N JACK SPARROW ENTERPRISES PTY LTD (ACN 343 784 343) Address: Never See Me Again Estate, Savvyville NSW 2656 Email: jack@piratemail.com</p> <p>DAVIE DOUBLE-CROSS Address: 88 D'Vitale Loop, Out-of-the-way WA 6122 Email: davie@xx.com</p> <p>(together, the <i>Borrowers</i> and each a <i>Borrower</i>)</p>

Recitals

- A Prior to the date of this agreement, the Lenders advanced the Existing Advances to the Borrowers.
- B The parties have agreed that the Existing Advances constitute a loan from the Lenders to the Borrowers on the terms of this agreement.
- C In addition, the Lenders have agreed to lend to the Borrowers, and the Borrowers have agreed to borrow from the Lenders, the Further Advances on the terms of this agreement.
- D This agreement is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

Operative provisions

1. Definitions and interpretation

Definitions

1.1 The following definitions apply in this agreement unless the context requires otherwise:

Aggregate Principal Sum means USD 800,000.00, being the total amount of the Existing Advances plus the total amount of the Further Advances, which is the total amount that the Lenders have agreed to lend to the Borrowers, and which the Borrowers have agreed to borrow from the Lenders, pursuant to this agreement.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Controller has the meaning given in the Corporations Act.

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

Default Rate means a rate of interest of 10.00% per annum.

Demand Notice has the meaning given in clause 4.1.

Disclosed means, in respect of the making/giving of a Warranty at a Warranty Time, fairly disclosed to any Lender by or on behalf of the Borrowers in writing prior to that Warranty Time, with sufficient detail such that a prudent lender in the position of the Lenders, and possessing their experience of the industries and markets in which the Borrowers operate, ought reasonably be able to identify (including by way of inference) the nature, scope and implications of the matter disclosed.

Event of Default means the occurrence of any of the following:

- (a) a Material Adverse Event;
- (b) the Borrowers breach clause 6 (“Negative pledge”) in any Material respect;
- (c) the Borrowers breach clause 7 (“Preservation of business and assets”) in any Material respect;
- (d) the Borrowers breach clause 8 (“Insurance”) in any Material respect;
- (e) the Borrowers breach, or are found to have breached, clause 5 (“Warranties”) in any Material respect;
- (f) this agreement as a whole, or any Material part of it, becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to have full force and effect;
- (g) any Borrower repudiates this agreement or, in the reasonable opinion of the Lenders, evinces an intention to repudiate this agreement;
- (h) the Borrowers fail to pay in full any sum payable by them pursuant to this agreement when due;
- (i) an Insolvency Event occurs in respect of any Borrower; or
- (j) a material breach of this agreement occurs in respect of any Borrower for the purposes of clause 13.10.

Excluded Matter means, in respect of the making/giving of a Warranty at a Warranty Time, any fact, matter, event or circumstance that was:

- (a) Disclosed; or
- (b) actually known to any Lender at that Warranty Time.

Existing Advances means the advances made by the Lenders to the Borrowers in the amounts, and on the dates, set out in Schedule 1.

Financial Indebtedness means any obligation of the Borrowers to pay or repay money (whether present or future, actual or contingent, sole or joint) as a result of:

- (a) borrowing or raising money (with or without security), including any premium and any capitalised interest on that money;
- (b) any bond, note, loan stock, debenture, commercial paper or similar instrument;
- (c) any acceptance credit facility or dematerialised equivalent, bill-discounting, note purchase or documentary credit facilities;
- (d) monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Borrowers in the event of non-payment of such receivables or financial assets when due;
- (e) any deferred payments for assets or services acquired, other than trade credit that is given in the ordinary course of trading and which does not involve any deferred payment of any amount for more than 60 days;
- (f) any rental or hire charges under finance leases (whether for land, machinery, equipment or otherwise);
- (g) any counter-indemnity obligation in respect of any guarantees, bonds, indemnities, standby letters of credit or other instruments issued by a third party in connection with the performance of contracts by the Borrowers;
- (h) any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities that are not shown as borrowed money in the financial statements of the Borrowers because they are contingent, conditional or otherwise);
- (i) any derivative transaction entered into in connection with protection against, or benefit from, fluctuation in any rate or price; and
- (j) any guarantee, counter-indemnity or other assurances against financial loss that any Borrower has given for any item referred to in paragraphs (a) to (i) of this definition that has been incurred by any other person.

Further Advances means the advances to be made by the Lenders to the Borrowers pursuant to this agreement in the amounts, and on the dates, set out in Schedule 2.

Governmental Agency means any government or governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Insolvency Event means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) for a person that is a body corporate:
 - (i) except for the purpose of a solvent reconstruction or amalgamation:
 - (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
 - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (C) a resolution that it be wound up is passed or proposed;
 - (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
 - (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
 - (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
 - (v) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
 - (vi) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;
 - (vii) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
 - (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
 - (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
 - (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or

- (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and
- (b) for a person that is a natural person:
 - (i) a bankruptcy notice is issued against the person;
 - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
 - (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
 - (iv) the person proposes or effects a moratorium involving any of the person's creditors;
 - (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
 - (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
 - (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
 - (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

Interest Commencement Date means the date of this agreement.

Interest Rate means 3.70% per annum.

Interest Term means the period commencing on and including the Interest Commencement Date and ending on and including the Repayment Date.

Material means reasonably material to the Lenders in the context of the transactions (taken as a whole) that are contemplated by this agreement.

Material Adverse Event means any fact, matter, event or circumstance that (directly or indirectly) has adversely affected, or is reasonably likely to adversely affect, the ability of the Borrowers to perform, or otherwise comply with, their obligations under this agreement, where the actual or reasonably expected consequences therefrom are Material.

Outstanding Interest means, at any time, the amount of the interest accrued under clause 3.1 that is outstanding at that time.

Outstanding Principal means, at any time, the amount of the Aggregate Principal Sum that is outstanding at that time.

Permitted Purpose means the purpose or purposes described in Schedule 4.

Permitted Security means:

- (a) any Security Interest created or outstanding with the prior written consent of the Lenders (which the Lenders may withhold or delay in their absolute discretion);

- (b) any Security Interest for Taxes either: (i) not yet due; or (ii) being contested in good faith and by appropriate proceedings, provided in each case that adequate accruals or reserves have been established in the books of the Borrowers;
- (c) any liens arising by operation of law and in the ordinary course of trading of the Borrowers, provided that no amounts in respect of those liens are overdue for payment;
- (d) any Security Interest arising under any retention of title, hire purchase or other conditional sale arrangement having a similar effect in respect of goods supplied to the Borrowers in their ordinary course of trading and on the supplier's standard or usual terms, provided that the Security Interest did not arise as a result of any default or omission by the Borrowers;
- (e) any PPSA Deemed Security Interest;
- (f) any netting or set-off arrangement entered into in the ordinary course of the banking arrangements of the Borrowers for the purpose of netting debit and credit balances; and
- (g) any payment or close out netting or set-off arrangement under any hedging transaction entered into for the purpose of:
 - (i) hedging any risk to which the Borrowers are exposed in their ordinary course of trading; or
 - (ii) any interest rate or currency management operations of the Borrowers that are carried out in the ordinary course of business and for non-speculative purposes only,
 excluding, in each case, any Security Interest under a credit support arrangement in relation to a hedging transaction.

Potential Event of Default means any fact, matter, event or circumstance that will, or is reasonably likely to, become or cause an Event of Default (including upon the performance of this agreement or the giving of any notice, the expiry of any grace period or the making of any determination under this agreement, or any combination of any of the foregoing).

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Deemed Security Interest means an interest of the kind referred to in section 12(3) of the PPSA where the transaction concerned does not, in substance, secure payment or performance of an obligation.

Repayment Date has the meaning given in clause 4.1(b).

Security Interest means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, guarantee, right of set-off, option, right to acquire, right of pre-emption or other security interest of any kind (whether legal or equitable), including any assignment by way of security, trust arrangement for the purpose of providing security, retention of title arrangement or sale and repurchase agreement, or any other agreement or arrangement having a similar effect, howsoever created or arising, and any agreement to create any of the foregoing.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay, or delay in paying, any of the same).

Warranties means the representations and warranties set out in Schedule 3, which are made and given by the Borrowers to the Lenders pursuant to clause 5.

Warranty Time means the time of execution of this agreement and each and every time at which any Existing Advance or Further Advance was or is made by the Lenders to the Borrowers pursuant to this agreement.

Interpretation

- 1.2 The following rules of interpretation apply in this agreement unless the context requires otherwise:
- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
 - (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
 - (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
 - (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
 - (f) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
 - (g) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
 - (h) a reference to writing includes any communication sent by post, facsimile or email;
 - (i) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
 - (j) all monetary amounts are in Australian currency;
 - (k) the word "**month**" means calendar month and the word "**year**" means 12 calendar months;
 - (l) the meaning of general words is not limited by specific examples introduced by "**include**", "**includes**", "**including**", "**for example**", "**in particular**", "**such as**" or similar expressions;
 - (m) a reference to a "**party**" is a reference to a party to this agreement, and a reference to a "**third party**" is a reference to a person that is not a party to this agreement;
 - (n) a reference to any thing is a reference to the whole and each part of it;