

Form 603Corporations Act 2001
Section 671B**Notice of initial substantial holder**To Company Name/Scheme McPhersons LimitedACN/ARSN ACN 004 068 419**1. Details of substantial holder (1)**

Name CW Retail Holdings Pty Ltd (ACN 102 632 384) as trustee for the CW Retail Holdings Trust (ABN 68 102 632 384) (CWRH) and each of the entities listed in Annexure A (CW Group Entities)

ACN/ARSN (if applicable) CW Retail Holdings Pty Ltd as trustee for CW Retail Holdings Trust (ACN 102 632 384)

The holder became a substantial holder on 01/07/2022

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of Securities (4)	Number of Securities	Person's votes (5)	Voting power (6)
Fully Paid Ordinary	14,223,817	14,223,817	9.9%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of Relevant Interest	Nature of relevant interest (7)	Class and number of securities
CWRH	CW Retail Holdings Pty Ltd in its capacity as trustee is the registered holder of the shares and its relevant interest arises under s608(1)(a) (holder of securities) of the Corporations Act by reason of being the purchaser of shares pursuant to the share subscription deed attached as Annexure B and the voluntary escrow deed attached as Annexure C.	14,223,817 Fully Paid Ordinary
CW Group Entities	Relevant interest arises under s608(1)(b) and s608(3)(b).	
MFV Family Foundation Pty Ltd (ACN 606 450 186)	Relevant interest arises under sections 608(1)(b) and 608(2)(b)(ii) of the Corporation Act as they have together, the capacity to control CW Group Holdings Ltd (CWG) under	
JEG Family Foundation Pty Ltd (ACN 606 450 159)		

SG Family Foundation Pty Ltd (ACN 606 450 220)	section 608(3)(b) of the Corporations Act, pursuant to an agreement entered into between these entities as to how they will exercise their voting rights in CWG in respect of more than 50% of the total voting shares of CWG held between them.	
DGSR Family Foundation Pty Ltd (ACN 606 450 248)		
AV Family Foundation Pty Ltd (ACN 606 450 293)		
MJV Family Foundation Pty Ltd (ACN 606 450 177)		

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
CWRH CW Group Entities	CWRH	CWRH	14,223,817 Fully Paid Ordinary

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
CWRH CW Group Entities	01/07/2022	\$12,516,959 cash pursuant to the share subscription deed between McPhersons Ltd and CWRH as attached as Annexure B and the voluntary escrow deed between the same parties attached as Annexure C.		14,223,817 Fully Paid Ordinary

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
CW Group Entities	An associate of CWRH by virtue of section 12(2)(a)(ii) of the Corporations Act 2001 (Cth).

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
CW Retail Holdings Pty Ltd as trustee for CW Retail Holdings Trust (ACN 102 632 384)	C/- 6 ALBERT STREET, PRESTON, VICTORIA 3072

Signature

print name Jack Gance

capacity Director

sign here 
[Jack Gance \(Jul 1, 2022 15:25 GMT+10\)](#)

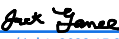
date Jul 1, 2022

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (e.g. A corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 67B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) Any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) Any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (e.g. if the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquire.

MACPHERSONS LIMITED
ANNEXURE A

This is Annexure "A" of 1 page referred to in form 603 – Notice of initial substantial holder

Signed 
Jack Gance (Jul 1, 2022 15:25 GMT+10)

print name Jack Gance

Capacity Director


Date Jul 1, 2022

CW Group Entities

Entity	ACN	Nature of Association	Nature of Relevant Interest
CW Retail Pty Ltd as trustee for the CW Retail Trust (ABN 73 738 358 083)	ACN 606 452 297	An associate of CWRH by virtue of section 12(2)(a)(ii) of the Corporations Act 2001 (Cth).	Relevant interest arises under s608(1)(b) and s608(3)(b) of the Corporations Act as CW Retail Pty Ltd controls CW Retail Holdings Pty Ltd and is the beneficiary under the CW Retail Holdings Trust.
CW Group Holdings Ltd	ACN 635 851 839	An associate of CWRH by virtue of section 12(2)(a)(ii) of the Corporations Act 2001 (Cth).	Relevant interest arises under s608(3)(b) of the Corporations Act as CW Group Holding Ltd controls CW Retail Pty Ltd is the beneficiary under the CW Retail Trust.

MACPHERSONS LIMITED
ANNEXURE B

This is Annexure “B” of 38 pages referred to in form 603 – Notice of initial substantial holder

Signed	<div><div>.</div><div></div><div>Jack Gance (Jul 1, 2022 15:25 GMT+10)</div></div>
print name	Jack Gance
Capacity	Director
Date	Jul 1, 2022

Subscription Deed

between

McPherson's Limited
ACN 004 068 419
(MCP)

and

CW Retail Holdings Pty Ltd
ACN 608 416 164
as trustee for **CW Retail Holdings Trust**
ABN 68 102 632 384
(CWRH)

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between **McPherson's Limited** ACN 004 068 419 of 105 Vanessa Street, Kingsgrove NSW 2208 (**MCP**)

and **CW Retail Holdings Pty Ltd** ACN 608 416 164 as trustee for **CW Retail Holdings Trust** ABN 68 102 632 384 c/- of Building F, 44-54 Raglan Street, Preston VIC 3072 (**CWRH**)

Recitals

A CWRH has agreed to subscribe for, and MCP has agreed to issue to CWRH, the Subscription Shares on the terms of this deed.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this deed:

ASIC means the Australian Securities & Investments Commission;

ASX means ASX Limited ACN 008 624 691 or the financial market known as the Australian Securities Exchange it operates (as the context requires);

ASX Listing Rules means the listing rules of ASX;

Business Day means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purposes, a day on which the banks are open for business in Sydney, New South Wales and Melbourne, Victoria other than a Saturday, Sunday or public holiday in Sydney, New South Wales or Melbourne, Victoria;

Completion means completion of the issue of the Subscription Shares to CWRH;

Completion Date means 1 July 2022 or such other date as the parties agree;

Conditions means the conditions precedent set out in clause 2.1;

Constitution means the constitution of MCP;

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

CW Management means CW Management Pty Ltd ACN 606 514 390 as trustee for CW Management Trust ABN 55 936 350 450;

CW Media means CW Media Pty Ltd ACN 606 548 298 as trustee for the CW Media Trust ABN 43 913 252 975;

Encumbrance means any interest or power:

- (a) reserved in or over any interest in any asset including any retentions of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or hypothecation (within the meaning of PPSA),

by way of security for the payment of any debt or other monetary obligations or the performance of any other obligations and whether existing or agreed to be granted or created;

Exclusive Distribution Agreement means the agreement of same name between MCP, CWRH and CW Management dated on or about the date of this deed;

Government Agency means any government, governmental, semi-governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity;

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

GST Law has the same meaning as in the GST Act;

Insolvency Event means the occurrence of any one or more of the following events regarding any party to this deed:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party; or
- (c) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;

Know-how Transfer and Related Intellectual Property - Development Agreement means the agreement of same name between MCP and CW Media dated on or about the date of this deed;

law includes:

- (a) any statute, regulation, rule, by-law, ordinance, proclamation, judgement, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including any Government Agency);
- (b) any regulation, rule, by-law, ordinance, proclamation or judgement made under that law; and
- (c) that law as amended, consolidated, supplemented, re-enacted or replaced;

MCP Group means MCP and its Related Bodies Corporate and **MCP Group Company** means any one of them;

Notice has the meaning given to that term in clause 12.1;

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

Preferred Brand Agreement means the agreement of same name between MCP, CWRH and CW Management dated on or about the date of this deed;

Register means the register of members kept by MCP;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Relevant Interest has the meaning given to that term in the Corporations Act;

Representatives means, in relation to a party, all officers, professional advisers, agents and attorneys of the party;

Security means a Share or other class of share, or other debt, convertible debt or equity security, in MCP;

Share means a fully paid ordinary share in MCP;

Subscription Price means \$12,439,315, (based on a subscription price of \$0.88 per Subscription Share, which is based on the five (5) day volume weighted average price of Shares to 22 March 2022);

Subscription Shares means:

- (a) 14,135,585 Shares; or
- (b) if, and to the extent permitted by law (including, without limitation, under the Corporations Act and ASX Listing Rules), prior to the Completion Date the number of Shares is greater or lesser than the number of Shares on issue at the date of this deed, then, subject to the adjustment process set out in clause 5.3, such number of Shares that will result in the total aggregate number of Shares held by CWRH and its Related Bodies Corporate on the Completion Date (immediately after the issue of such Shares) comprising exactly 9.9% of the total Shares on issue at that time;

Transaction Documents means:

- (a) this deed;
- (b) the Exclusive Distribution Agreement;
- (c) the Preferred Brand Agreement;
- (d) the Know-how Transfer and Related Intellectual Property - Development Agreement;
- (e) the Voluntary Escrow Deed; and
- (f) any other documents which the parties agree shall constitute a "Transaction Document";

Voluntary Escrow Deed means the voluntary escrow deed to be entered into between MCP and CWRH in respect of the Subscription Shares, in the form of Annexure A; and

Warranties means the representations and warranties set out in clauses 7.1 to 7.3 (inclusive).

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this deed and references to this deed include any recital, schedule or annexure;
 - (iv) any contract (including this deed) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (x) time is a reference to legal time in Melbourne, Victoria;
- (xi) a reference to a day or a month means a calendar day or calendar month;
- (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this deed as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) headings and the table of contents are for convenience only and do not form part of this deed or affect its interpretation;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (i) where there are two or more persons in a party each are bound jointly and severally; and
- (j) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed.

2 Conditions

2.1 Conditions

Completion of the issue of any Subscription Shares under this deed is subject to and will not proceed unless the following conditions precedent have been satisfied or waived before the Completion Date and otherwise remain satisfied or waived (as the case may be) up to Completion:

- (a) **(agreements entered into)** each of the Preferred Brand Agreement, the Exclusive Distribution Agreement and the Know-how Transfer and Related Intellectual Property -

Development Agreement have been entered into by the parties to them and remain on foot as at Completion;

- (b) **(shareholder approval)** MCP obtains all approvals required by law from its shareholders to the issuance of the Subscription Shares to CWRH under this deed;
- (c) **(regulatory approvals)** MCP and CWRH each obtain all approvals required from Government Agencies (including, without limitation, ASX and ASIC) to the transactions contemplated by the Transaction Documents;
- (d) **(tax invoices under agreements)** CW Media and CW Management have each provided MCP a tax invoice in respect of monies payable for the deliverables and incremental ranging commitments to be provided by or on behalf of CW Media and CW Management pursuant to the Know-how Transfer and Related Intellectual Property - Development Agreement and the Preferred Brand Agreement respectively on and from the Completion Date (or such other date as agreed to by the parties to those agreements), and which tax invoices shall record payment requiring to be made by MCP on the Completion Date.

2.2 Waiver of Conditions

The Conditions may only be waived in writing by mutual agreement between CWRH and MCP, and will be effective only to the extent specifically set out in that waiver.

2.3 Conduct of the parties

Each party must use all reasonable endeavours within its own capacity to ensure that each Condition is fulfilled before the Completion Date.

2.4 Failure of Condition

If a party has complied with its obligations under clause 2.3, it may terminate this deed by giving notice in writing to the other party if one or more Conditions are not fulfilled or waived by the Completion Date.

3 Subscription

3.1 Application for Subscription Shares

Subject to clause 2.1, CWRH hereby:

- (a) irrevocably applies to MCP for the Subscription Shares;
- (b) agrees to accept the Subscription Shares on and subject to the conditions of this deed;
- (c) agrees to become a member of MCP, and to be bound by the Constitution; and
- (d) authorises and requests MCP to record CWRH's details in MCP's Register as the holder of the Subscription Shares issued to CWRH on Completion.

4 Completion

4.1 Time and place

Completion will take place at 10:00am on the Completion Date at Thomson Geer's Sydney offices (which, as at the date of this deed, is Level 14, 60 Martin Place, Sydney NSW 2000), or any other place or time agreed in writing by the parties.

4.2 Obligations of CWRH

On Completion, CWRH must:

- (a) pay MCP the Subscription Price;
- (b) deliver to MCP the Voluntary Escrow Deed duly executed by CWRH; and
- (c) do all other things necessary or desirable and which are within its own capacity to complete the issue of the Subscription Shares.

4.3 Obligations of MCP

On Completion, MCP must, subject to satisfaction of the payment of the Subscription Price under clause 4.2(a):

- (a) cause a meeting of the directors of MCP be held to approve:
 - (i) the issue of the Subscription Shares to CWRH; and
 - (ii) the issue of certificate(s) to and in the name of CWRH evidencing its title to the Subscription Shares,
 with effect subject to and on Completion;
- (b) issue and allot the Subscription Shares to CWRH:
 - (i) free from Encumbrances;
 - (ii) credited as fully paid; and
 - (iii) ranking equally with the existing Shares at Completion;
- (c) issue a certificate to and in the name of CWRH evidencing its title to the Subscription Shares;
- (d) record CWRH's name in the Register in respect of the Subscription Shares;
- (e) if required and to the extent MCP is permitted to do so under the Corporations Act at that time, lodge with ASX a cleansing notice that complies with sections 708A(5)(e) and (6) of the Corporations Act in respect of the Subscription Shares; and
- (f) do all other things necessary or desirable and which are within its own capacity to complete the issue of the Subscription Shares to CWRH.

4.4 Simultaneous actions

In respect of Completion:

- (a) the obligations of the parties under this deed in respect of Completion are interdependent; and
- (b) all actions required to be performed in respect of the Subscription Shares to be issued at Completion will be taken to have occurred simultaneously on the Completion Date.

5 Changes to capital

5.1 Subscription right for placements and rights issues

- (a) Subject to clause 5.1(b) and all applicable laws including, without limitation, the Corporations Act and ASX Listing Rules, if, after the Completion Date, MCP undertakes:

- (i) a capital raising via a placement or rights issue of Shares for cash consideration, MCP must allow CWRH to participate in that placement or rights issue on a pro-rata basis by reference to the proportion of Shares held by CWRH immediately prior to announcement by MCP of that placement or on the 'record date' for that rights issue (as applicable); and
 - (ii) a rights issue of Shares for cash consideration, MCP must allow CWRH to subscribe for additional Shares up to an amount, and at price and on such other terms, as if CWRH held, on the 'record date' for that rights issue, all Subscription Shares.
- (b) CWRH's rights under clause 5.1(a) will cease to apply on the date on which CWRH ceases to hold any Shares.
 - (c) CWRH acknowledges and confirms that clause 5.1(a) does not apply to issues of Securities for non-cash consideration or issues of Securities under any employee incentive schemes of MCP which comply with all applicable laws.

5.2 Capital management initiatives

Subject to all applicable laws including, without limitation, the Corporations Act and ASX Listing Rules, if MCP undertakes any capital management initiatives in respect of its Shares, such as an on-market or equal access off-market share buy-back, CWRH will participate in the capital management initiative provided it is on the same terms as applicable to all other shareholders of MCP such that the total aggregate number of Shares held by CWRH and its Related Bodies Corporate does not exceed 9.9% of the total Shares on issue at any time.

5.3 Reorganisation events

Subject to all applicable laws including, without limitation, the Corporations Act and ASX Listing Rules, if, prior to the Completion Date, MCP undertakes:

- (a) a bonus issue of Shares, the number of Subscription Shares must be increased by the number of Shares which CWRH would have received if the bonus issue had taken place immediately after the Completion Date without, for the avoidance of doubt, a change to the Subscription Price;
- (b) a consolidation of Shares, the number of Subscription Shares must be consolidated in the same ratio as the Shares without, for the avoidance of doubt, a change to the Subscription Price;
- (c) a subdivision of Shares, the number of Subscription Shares must be subdivided in the same ratio as the Shares without, for the avoidance of doubt, a change to the Subscription Price;
- (d) a pro rata cancellation of Shares, the number of Subscription Shares must be reduced in the same ratio as the Shares are reduced and, on the Completion Date, MCP must pay to CWRH an amount equal to the amount paid per Share on the relevant cancellation for each Subscription Share which is not issued as a result of the application of this clause 5.3(d);
- (e) a return of capital, the number of Subscription Shares must remain the same but, on the Completion Date for the Subscription Shares, MCP must pay to CWRH an amount equal to the capital return per Share for each Subscription Share so issued; or
- (f) any other reorganisation of Shares or similar transaction, the number of Subscription Shares must be reorganised and any payments by MCP made so that CWRH will not receive a benefit that holders of Shares do not receive, and the holders of Shares do not receive a benefit that CWRH does not receive, as if CWRH had held the Subscription Shares at the time of the transaction without, for the avoidance of doubt, any change to the Subscription Price,

and, to the extent that any such adjustment contemplated above does not comply with, or is not consistent with, the spirit and intention of, and principles underlying, the ASX Listing Rules, the parties must act in good faith to agree to reasonable amendments to such adjustment to ensure such compliance or consistency.

6 Standstill

6.1 Standstill

- (a) Subject to clauses 6.2 through 6.4 (inclusive) and all applicable laws including, without limitation, the Corporations Act and ASX Listing Rules, on and from the date of this deed, CWRH must not, and must procure that its Related Bodies Corporate do not, purchase or otherwise acquire a Relevant Interest in Shares or Securities convertible into Shares which would result in the total aggregate number of Shares held by CWRH and its Related Bodies Corporate, or in which they have a Relevant Interest, (assuming all Securities held by them are converted into Shares) exceeding 9.9% of the total Shares on issue at that time.
- (b) CWRH and its Related Bodies Corporate shall not seek the support of any holders of Shares, or join with any holders of Shares, in order to oppose any actions by MCP's board of directors, other than for shareholder resolutions that are contrary to the interest of CWRH and/or any of its Related Bodies Corporate and where CWRH has provided notice of CWRH's and/or its Related Bodies Corporate's intention to provide such opposition at least two (2) weeks prior to the date of the MCP shareholder meeting at which such shareholder resolutions will be considered by MCP shareholders.

6.2 Exclusive Distribution Agreement

- (a) Clause 6.1 shall cease to have any effect, and CWRH and its Related Bodies Corporate shall not be bound by any of the restrictions therein, immediately and without notice if the Exclusive Distribution Agreement terminates or expires for any reason except where:
 - (i) MCP has terminated the Exclusive Distribution Agreement under clause 15.1(b) of the Exclusive Distribution Agreement; or
 - (ii) CWRH or CW Management has wrongfully terminated or repudiated the Exclusive Distribution Agreement.
- (b) For the avoidance of doubt, 'expiry' within the meaning of clause 6.2(a) includes the expiry of the Exclusive Distribution Agreement by reason of the completion of its term (including any renewed terms of the Exclusive Distribution Agreement).

6.3 Takeover bid

Clause 6.1 shall cease to have any effect, and CWRH and its Related Bodies Corporate shall not be bound by any of the restrictions therein, immediately and without notice if CWRH (whether by itself or in conjunction with one or more other parties) issues a bona fide offer to MCP and/or its shareholders to acquire all of the Shares in MCP at that time, following the date of this deed.

6.4 Bonus shares

CWRH will not be deemed to have breached its obligations under clause 6.1 where, as a result of an issue of bonus Shares or bonus Securities to CWRH and/or a Related Body Corporate of CWRH by MCP, CWRH and/or its Related Bodies Corporate hold (or have a Relevant Interest in) Shares or Securities convertible into Shares exceeding 9.9% of the total Shares on issue at that time.

7 Warranties

7.1 Mutual warranties

Each party represents and warrants to the other party that each of the following warranties is true and accurate at the date of this deed and will be true and accurate on the Completion Date:

- (a) it:
 - (i) is validly existing and in good standing; and
 - (ii) has complete and unrestricted power and authority to enter into, perform its obligations under and carry out the transactions contemplated by this deed;
- (b) this deed constitutes valid, legal and binding obligations on it, enforceable against it in accordance with its terms;
- (c) the execution, delivery and performance by it of this deed will not:
 - (i) result in a breach of any law;
 - (ii) result in a breach of any provision of its constitution or other constituent documents;
 - (iii) result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this deed; or
 - (iv) result in a breach of any order, judgement or decree of any court or Government Agency to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this deed;
- (d) it has taken all action and obtained all consents necessary to enter into and perform its obligations under this deed; and
- (e) it is not subject to an Insolvency Event,

and, if a party has entered into this deed as trustee of a trust (**Trust**), it warrants to the other party that each of the following warranties is true and accurate at the date of this deed:

- (f) it has been validly appointed as trustee of the Trust;
- (g) it is the only trustee of the Trust;
- (h) it is not aware of any action to remove it as trustee of the Trust;
- (i) it has power under the trust deed of the Trust to enter into and observe its obligations under this deed;
- (j) it has entered into this deed in its capacity as trustee of the Trust;
- (k) it has the authorisations necessary to enter into this deed and perform its obligations under this deed;
- (l) it has the right to be indemnified out of the assets of the Trust in respect of its obligations under this deed and the transactions contemplated by this deed; and
- (m) the trust fund of the Trust will be sufficient to satisfy such right of indemnity.

7.2 Additional MCP warranties

MCP represents and warrants to CWRH each of the following warranties is true and accurate at the date of this deed and will be true and accurate on the Completion Date:

- (a) on Completion, CWRH will be the registered holder of the Subscription Shares issued to it on Completion; and
- (b) the Subscription Shares will be issued:
 - (i) free from Encumbrances;
 - (ii) credited as fully paid; and
 - (iii) ranking equally with the existing Shares at the time of such issue.

7.3 Additional CWRH warranties

CWRH represents and warrants to MCP that each of the following warranties is true and accurate at the date of this deed and will be true and accurate on the Completion Date:

- (a) it has not relied on any warranty, representation, promise, undertaking, statement or conduct (including in respect of the future financial performance or prospects of the MCP Group), whether made by an MCP Group Company or any of its officers or Representatives, except those expressly set out in this deed or any of the Transaction Documents, in making its decision to subscribe for the Subscription Shares.

7.4 Application of Warranties

Each of the Warranties:

- (a) does not merge and survives after Completion; and
- (b) is separate and independent and is not limited by reference to any other Warranty.

7.5 Indemnity

Each party shall indemnify, and keep indemnified, each other party against any actions, proceedings, liabilities, claims, demands, costs or expenses suffered or incurred by that other party arising out of any breach of a Warranty given by the indemnifying party.

8 Termination

8.1 Termination rights

- (a) Either party (**non-defaulting party**) may terminate this deed if:
 - (i) the other party suffers an Insolvency Event prior to the Completion Date;
 - (ii) the other party commits a material breach of this deed and fails to remedy the breach to the non-defaulting party's reasonable satisfaction within 20 Business Days of the non-defaulting party issuing a notice to the defaulting party requesting rectification of the breach by the defaulting party; or
 - (iii) any of the Preferred Brand Agreement and/or the Exclusive Distribution Agreement terminates or expires after Completion for any reason except where:
 - (A) if the non-defaulting party is:
 - (I) MCP – CWRH or CW Management; or
 - (II) CWRH – MCP,
 has terminated the Exclusive Distribution Agreement under clause 15.1(b) of that agreement;
 - (B) if the non-defaulting party is:

(I) MCP – CWRH or CW Management; or

(II) CWRH – MCP,

has terminated the Preferred Brand Agreement under clause 12.1(b) of that agreement; or

(C) the non-defaulting party (and in the case where CWRH is the non-defaulting party, CWRH or CW Management as the case may be) has wrongfully terminated or repudiated the Preferred Brand Agreement or the Exclusive Distribution Agreement.

(b) CWRH may terminate this deed immediately by written notice to MCP if any of the Preferred Brand Agreement, the Know-how Transfer and the Related Intellectual Property - Development Agreement and the Exclusive Distribution Agreement are terminated prior to Completion for any reason.

8.2 Effect of termination

Termination of this deed does not affect any accrued rights or remedies of either party.

8.3 Rights not limited

Any clause of this deed giving a party a right of termination is in addition to, and not limited by, any other rights or remedies of the terminating party against the other party.

9 Dispute resolution

9.1 Bar to proceedings

A party must not commence any legal proceedings, except legal proceedings seeking interlocutory relief pursuant to a dispute, arising out of or in connection with this deed unless and until the parties have complied with the dispute resolution process set out in clause 9.2.

9.2 Dispute resolution process

The parties shall use their best endeavours and act in good faith in resolving their dispute by the procedures set out in each of the clauses below in the following order:

- (a) first by negotiation in accordance with clause 9.3;
- (b) then by mediation in accordance with clause 9.4; and
- (c) then by arbitration in accordance with clause 9.5.

9.3 Negotiation

- (a) The aggrieved party shall notify the other party of the dispute by giving the other party written notice (a **Dispute Notice**) specifying:
 - (i) the nature of the dispute;
 - (ii) the outcome required by the aggrieved party; and
 - (iii) the action the aggrieved party believes will settle the dispute.
- (b) The parties must, using their best endeavours and acting in good faith, at first instance seek to resolve the dispute by mutual negotiation within twenty-one (21) days of the non-aggrieved party's receipt of the Dispute Notice.
- (c) If the dispute remains unresolved following the mutual negotiation referred to in clause 9.3(b):

- (i) either party may refer the matter to a mutually agreed mediator with at least 10 years' experience as a mediator for mediation; or
- (ii) if the parties cannot mutually agree on a mediator, either party may request that the then acting President of the Law Institute of Victoria appoint a mediator with at least 10 years' experience as a mediator to resolve the dispute.

9.4 Mediation

- (a) Unless the parties otherwise agree in writing, mediation pursuant to this clause 9.4 shall be conducted as follows:
 - (i) the mediation must be held in Melbourne, Victoria, Australia;
 - (ii) the parties must attend the mediation and try to resolve the dispute;
 - (iii) the parties shall:
 - (A) equally share the costs of the mediation, including the cost of the mediator and venue; and
 - (B) bear their own costs in attending mediation;
 - (iv) the parties to the mediation may be represented by a lawyer, accountant and/or business advisor;
 - (v) everything that occurs before, during and after the mediation will be confidential and in closed session; and
 - (vi) no documents brought into existence specifically for the purpose of the mediation process will be called into evidence in any subsequent litigation by any of the parties to the dispute unless agreed between all parties.
- (b) If the dispute remains unresolved thirty (30) days following the appointment of the mediator referred to in clause 9.3(b):
 - (i) either party may refer the matter to a mutually agreed arbitrator with at least 10 years' experience as an arbitrator for arbitration; or
 - (ii) if the parties cannot mutually agree on an arbitrator, either party may request that the International Chamber of Commerce Australia (Victoria Branch) appoint one (1) arbitrator with at least 10 years' experience as an arbitrator to arbitrate the dispute.

9.5 Arbitration

Unless the parties otherwise agree in writing, arbitration pursuant to this clause 9.5 shall be conducted as follows:

- (a) the arbitration must be held in Melbourne, Victoria, Australia;
- (b) the arbitration will be conducted in accordance with the UNCITRAL Arbitration Rules (current at the time of the referral of the dispute to arbitration) and the language of the arbitration will be English;
- (c) the parties shall:
 - (i) equally share the costs of the arbitration in the first instance subject to any arbitral award regarding costs; and
 - (ii) bear their own costs in attending arbitration in the first instance subject to any arbitral award regarding costs;

- (d) all parties to the arbitration may be represented by a lawyer, accountant and/or business advisor;
- (e) everything that occurs before, during and after the arbitration will be confidential and in closed session;
- (f) no documents brought into existence specifically for the purpose of the arbitration process will be called into evidence in any subsequent litigation by any of the parties to the dispute unless agreed between all parties;
- (g) the arbitrator shall have power to make a determination binding on the parties to the dispute;
- (h) it will be the role of the arbitrator to act fairly, in good faith and without bias with the purpose of making a binding determination upon the parties and he or she will treat all matters in confidence; and
- (i) the arbitrator is to deal with any matter as expeditiously as possible.

10 Confidentiality

10.1 Confidentiality

Each party must, and must procure that its Representatives, keep confidential the existence and terms of this deed, all negotiations between the parties in relation to the subject matter of this deed and all information given to it under this deed.

10.2 Permitted disclosure

Nothing in this deed prevents a person from disclosing matters referred to in clause 10.1:

- (a) if disclosure is required to be made by law or the rules of a recognised stock or securities exchange, provided that the party required to make the disclosure has, to the fullest extent possible and having regard to the required timing of the disclosure, consulted with and obtained the prior written approval of the other party (which shall not be unreasonably withheld or delayed) as to the form and content of the disclosure;
- (b) if the person has not through any voluntary act or omission (other than entry into this deed) caused the disclosure obligation to arise;
- (c) if the person has, before disclosure is made, notified the other party of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given the other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
- (d) to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by this deed or to the auditor of a party;
- (e) to any financier who has made a bona fide proposal to provide finance to a party in relation to the transactions contemplated by this deed;
- (f) in the case of CWRH only, is disclosed by CWRH or a Related Body Corporate to a prospective third party external investor, financier, purchaser of shares or assets in CWRH or a Related Body Corporate, or in connection with any listing, capital investment, capital raising, joint venture or exit event, provided that, the potential investor, financier or purchaser has executed a customary confidentiality agreement in connection with such transaction unless such disclosure falls within one of the other exceptions listed in this clause 10.2 ;
- (g) to any employee of a party who has a need to know such information;
- (h) with the prior written approval of the other party;

- (i) where the matter has come into the public domain other than as a result of a breach by any party to this deed;
- (j) to a Related Body Corporate of that person; or
- (k) in the case of disclosure by any party in a disclosure document, information memorandum or data room prepared by the party or its Related Bodies Corporate in connection with an exit or liquidity event, provided that such party has consulted with the other party as to the form and content of the disclosure or, in the case of the exit or liquidity event, the potential purchaser has executed a customary confidentiality agreement in connection with such transaction unless such disclosure falls within one of the other exceptions listed in this clause 10.2.

11 GST

This clause applies if a party to this deed is, or becomes, liable to pay GST regarding any Supply of goods, services or anything else under this deed.

11.1 Definitions

Capitalised expressions which are not defined in this deed but which have a defined meaning in the GST Act have the same meaning in this clause.

11.2 GST payable in addition to consideration

- (a) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (b) If a party (**Supplier**) makes a Taxable Supply under this deed, then the Recipient of the Taxable Supply must pay the Supplier the GST payable on the Taxable Supply in addition to the consideration for the Supply.

11.3 Tax Invoice

Within seven days of a Supply being made under this deed, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

11.4 Payment of GST

Subject to the Supplier issuing a Tax Invoice to the Recipient as required under clause 11.3, the Recipient must pay the GST on the Taxable Supply under this deed to the Supplier at the same time as the Recipient pays the consideration for the Supply to the Supplier.

11.5 Reimbursement or indemnity

Despite any other provision of this deed, if the whole or part of any consideration under this deed is a reimbursement or an indemnity to one party of an expense, loss, outgoing or liability incurred or to be incurred by the other party, the consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other party can claim an Input Tax Credit. The other party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise.

11.6 Adjustment Events

If an Adjustment Event occurs regarding a Supply under this deed, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event within seven days of the Supplier becoming aware of the Adjustment Event.

11.7 Additional amount

If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment not later than the fourteenth business day of the month following the month in which the Adjustment Note is issued to the Recipient.

11.8 Credit or refund

If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment not later than the fourteenth business day of the month following the month in which the Adjustment Note is issued to the Recipient.

12 Notices

12.1 Service of notices

A notice, consent, approval or other communication under this deed (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 12.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by email, or any other lawful means.

12.2 Effect of receipt

A Notice given in accordance with this clause 12 is treated as having been given and received:

- (a) if personally delivered, on delivery;
- (b) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia); and
- (c) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

12.3 Addresses

- (a) The particulars for delivery of Notices are initially:

MCP

Name:	McPherson's Limited
Attention:	Grant Peck
Address:	105 Vanessa Street, Kingsgrove NSW 2208
Email:	gpeck@mcpher.com.au

CWRH

Name: CW Retail Holdings Pty Ltd as trustee for CW Retail Holdings Trust

Attention: Jack Gance

Address: c/- of Building F, 44-54 Raglan Street, Preston VIC 3072

Email: jack@mychemist.com.au

- (b) A party may change its address for the delivery of Notices by notifying that change to the other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

13 General

13.1 Stamp duty

CWRH must pay all stamp duty (including any penalties) payable or assessed in connection with this deed and any document required by or contemplated under this deed.

13.2 Legal costs

Except as expressly stated otherwise in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

13.3 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

13.4 Severability

- (a) Subject to clause 13.4(b), if a provision of this deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this deed.
- (b) Clause 13.4(a) does not apply if severing the provision:
- (i) materially alters the:
 - (A) scope and nature of this deed; or
 - (B) the relative commercial or financial positions of the parties; or
 - (ii) would be contrary to public policy.

13.5 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

13.6 Consents

Except as expressly stated otherwise in this deed, a party may conditionally or unconditionally give or withhold consent to be given under this deed and is not obliged to give reasons for doing so.

13.7 Rights cumulative

Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party.

13.8 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13.9 Survival

The rights and obligations of the parties do not merge on:

- (a) completion of any transaction under this deed; or
- (b) termination or expiration of this deed.

13.10 Amendment

This deed may only be varied or replaced by an agreement executed by the parties.

13.11 Assignment

- (a) A party must not assign its interest in this deed without the prior written consent of the other party.
- (b) Any purported dealing in breach of this clause is of no effect.

13.12 Counterparts

This deed may be executed (including by way of electronic signature) and exchanged (including by way of email) by any number of counterparts and all of these counterparts taken together constitute one and the same instrument. This deed is only binding on the parties on the exchange of counterparts and the parties consent to this deed being executed by way of electronic means.

13.13 Entire understanding

- (a) This deed and the other Transaction Documents contain the entire understanding between the parties as to the subject matter of this deed and the other Transaction Documents.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed and the other Transaction Documents are merged in and superseded by this deed and the other Transaction Documents and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this deed and the other Transaction Documents; or

- (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

13.14 No Partnership or agency

- (a) Nothing contained or implied in this deed will create or constitute, or be deemed to create or constitute, a partnership, agency, trustee or other fiduciary relationship between the parties.
- (b) A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

Executed as a deed

Executed as a deed by **McPherson's Limited**
ACN 004 068 419 in accordance with section
127 of the *Corporations Act 2001* (Cth):



Director

ARI MERVIS

Name of Director
BLOCK LETTERS



~~*Director/*Company Secretary~~

GRANT PECK

Name of ~~*Director/*Company Secretary~~
BLOCK LETTERS
~~*please strike out as appropriate~~

Executed as a deed by **CW Retail Holdings**
Pty Ltd ACN 608 416 164 as trustee for CW
Retail Holdings Trust ABN 68 102 632 384 in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Director

Name of Director
BLOCK LETTERS

~~*Director/*Company Secretary~~

Name of ~~*Director/*Company Secretary~~
BLOCK LETTERS
~~*please strike out as appropriate~~

Executed as a deed

Executed as a deed by **McPherson's Limited**
ACN 004 068 419 in accordance with section
127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed as a deed by **CW Retail Holdings**
Pty Ltd ACN 608 416 164 as trustee for CW
Retail Holdings Trust ABN 68 102 632 384 in
accordance with section 127 of the
Corporations Act 2001 (Cth):



Mario verrocchi (Mar 23, 2022 21:16 GMT+10)

Director

Mario verrocchi

Name of Director
BLOCK LETTERS



Damien Gance (Mar 23, 2022 21:17 GMT+10)

*Director/*Company Secretary

Damien Gance

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Annexure A
Voluntary Escrow Deed

See over page.

Voluntary Escrow Deed

between

McPherson's Limited
ACN 004 068 419
(MCP)

and

CW Retail Holdings Pty Ltd
ACN 608 416 164
as trustee for **CW Retail Holdings Trust**
ABN 68 102 632 384
(CWRH)

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This deed is made on

2022

between **McPherson's Limited** ACN 004 068 419 of 105 Vanessa Street, Kingsgrove NSW 2208 (**MCP**)

and **CW Retail Holdings Pty Ltd** ACN 608 416 164 as trustee for **CW Retail Holdings Trust** ABN 68 102 632 384 c/- of 6 Albert Street, Preston VIC 3072 (**CWRH**)

Recitals

- A MCP and CWRH have entered into a Subscription Deed, under which MCP has agreed to issue the Escrowed Shares to CWRH.
- B MCP and CWRH have agreed to escrow the Escrowed Shares during the Escrow Period on the terms set out in this deed.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this deed:

ASX means ASX Limited ACN 008 624 691 or the financial market known as the Australian Securities Exchange it operates (as the context requires);

ASX Listing Rules means the listing rules of ASX;

Business Day means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purposes, a day on which the banks are open for business in Sydney, New South Wales and Melbourne, Victoria other than a Saturday, Sunday or public holiday in Sydney, New South Wales or Melbourne, Victoria;

CHESS means the Clearing House Electronic Subregister System;

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

Dispose means to sell, transfer, encumber, assign or otherwise dispose or agree to do any of those things directly or through another person by any means, including the following:

- (a) granting or exercising an option;
- (b) using an asset as collateral;
- (c) decreasing an economic interest; and
- (d) disposing of part of an asset,

and **Disposed** and **Disposal** have corresponding meanings;

Escrow Period means a period of two (2) years commencing on the date of this deed;

Escrowed Shares means [insert number] fully paid ordinary shares in MCP;

Government Agency means any government, governmental, semi-governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity;

Holding Lock means a facility that prevents the Escrowed Shares from being deducted from CWRH's holding or entered into the holding of any other party (whether on CHESS or an issuer sponsored sub-register) pursuant to a transfer or conversion by CWRH;

Insolvency Event means the occurrence of any one or more of the following events regarding any party to this deed:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party; or
- (c) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;

law includes:

- (a) any statute, regulation, rule, by-law, ordinance, proclamation, judgement, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including any Government Agency);
- (b) any regulation, rule, by-law, ordinance, proclamation or judgement made under that law; and
- (c) that law as amended, consolidated, supplemented, re-enacted or replaced;

Notice has the meaning given to that term in clause 8.1;

Representatives means, in relation to a party, all officers, professional advisers, agents and attorneys of the party;

Subscription Deed means the deed of same name between MCP and CWRH dated [insert];

Transaction Documents has the meaning given to that term in the Subscription Deed; and

Warranties means the representations and warranties set out in clause 5.1.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this deed and references to this deed include any recital, schedule or annexure;
 - (iv) any contract (including this deed) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (x) time is a reference to legal time in Melbourne, Victoria;
- (xi) a reference to a day or a month means a calendar day or calendar month;
- (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this deed as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) headings and the table of contents are for convenience only and do not form part of this deed or affect its interpretation;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (i) where there are two or more persons in a party each are bound jointly and severally; and
- (j) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed.

2 Voluntary escrow

2.1 Voluntary escrow

Subject to this deed, CWRH must not do any of the following during the Escrow Period:

- (a) Dispose of, or agree or offer to Dispose of, the Escrowed Shares; or
- (b) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Escrowed Shares.

2.2 Holding Lock

- (a) CWRH consents to:
 - (i) MCP entering the Escrowed Shares on an issuer sponsored sub-register; and
 - (i) the application of a Holding Lock on the Escrowed Shares during the Escrow Period.
- (b) For the avoidance of doubt, CWRH also consents to the refusal of MCP and/or its share registry to process or register any paper-based transfer of the Escrowed Shares during the Escrow Period.

2.3 No restrictions on voting and distributions and if required by law

For the avoidance of doubt, nothing in this deed prohibits, restricts or otherwise limits the entitlement of CWRH as an ordinary shareholder of MCP to:

- (a) exercise, or control the exercise of, a right to vote attached to the Escrowed Shares;
- (b) receive dividends or other distributions in respect of the Escrowed Shares *pari passu* with all other holders of fully paid ordinary shares in the capital of MCP; or
- (c) deal with any or all of the Escrowed Shares if required by law to do so.

2.4 Expiry of Escrow Period

MCP acknowledges and agrees to:

- (a) five (5) days before the expiration of the Escrow Period, notify ASX of the impending release of the Escrowed Shares from its issuer sponsored sub-register, in accordance with the ASX Listing Rules; and
- (b) upon expiration of the Escrow Period, release the Escrowed Shares to CWRH or its nominee(s).

3 Exceptions to escrow restrictions

3.1 Takeovers

- (a) If a full or proportional takeover offer is made in accordance with the Corporations Act for securities in the same class as the Escrowed Shares, CWRH may accept that offer for all or part of the Escrowed Shares or execute an irrevocable undertaking to do so, provided that:
 - (ii) the offer has been accepted by the holders of at least 50% of the securities in that class which are not subject to escrow and to which offers under the bid relate;
 - (iii) if for any reason the takeover offer does not become unconditional, the Escrowed Shares must be returned to escrow on the terms of this deed, including the Holding Lock.
- (b) Each party acknowledges, warrants and agrees that it has not entered into this deed to construct a defence against a takeover bid.

3.2 Scheme of arrangement

The Escrowed Shares may be Disposed of or cancelled as part of a merger by way of compromise or arrangement under Part 5.1 of the Corporations Act provided that the Escrowed Shares become subject to the provisions of this deed, including the Holding Lock, if for any reason the merger by way of compromise or arrangement does not take effect.

4 Consequences of breach

Subject to clause 2.3, if CWRH breaches this deed, MCP is entitled to:

- (a) take all steps necessary to enforce this deed or to rectify the breach;
- (b) refuse to acknowledge, deal with, accept or register any Disposal of any of the Escrowed Shares. This is in addition to the other rights and remedies of MCP; and
- (c) seek to recover damages from CWRH to the extent MCP suffers any loss as a result of that breach.

5 Warranties

5.1 Mutual warranties

Each party represents and warrants to the other party that each of the following warranties is true and accurate at the date of this deed:

- (a) it:
 - (i) is validly existing and in good standing; and
 - (ii) has complete and unrestricted power and authority to enter into, perform its obligations under and carry out the transactions contemplated by this deed;
- (b) this deed constitutes valid, legal and binding obligations on it, enforceable against it in accordance with its terms;
- (c) the execution, delivery and performance by it of this deed will not:
 - (i) result in a breach of any law;
 - (ii) result in a breach of any provision of its constitution or other constituent documents;
 - (iii) result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this deed; or
 - (iv) result in a breach of any order, judgement or decree of any court or Government Agency to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this deed;
- (d) it has taken all action and obtained all consents necessary to enter into and perform its obligations under this deed; and
- (e) it is not subject to an Insolvency Event,

and, if it has entered into this deed as trustee of a trust (**Trust**), it warrants to the other party that each of the following warranties is true and accurate at the date of this deed:

- (f) it has been validly appointed as trustee of the Trust;
- (g) it is the only trustee of the Trust;
- (h) it is not aware of any action to remove it as trustee of the Trust;
- (i) it has power under the trust deed of the Trust to enter into and observe its obligations under this deed;
- (j) it has entered into this deed in its capacity as trustee of the Trust;

- (k) it has the authorisations necessary to enter into this deed and perform its obligations under this deed;
- (l) it has the right to be indemnified out of the assets of the Trust in respect of its obligations under this deed and the transactions contemplated by this deed; and
- (m) the trust fund of the Trust will be sufficient to satisfy such right of indemnity.

5.2 Application of Warranties

Each of the Warranties:

- (a) does not merge and survives after the completion of all transactions contemplated in this deed; and
- (b) is separate and independent and is not limited by reference to any other Warranty.

5.3 Indemnity

Each party shall indemnify, and keep indemnified, each other party against any actions, proceedings, liabilities, claims, demands, costs or expenses suffered or incurred by that other party arising out of any breach of a Warranty given by the indemnifying party.

6 Dispute resolution

6.1 Bar to proceedings

A party must not commence any legal proceedings, except legal proceedings seeking interlocutory relief pursuant to a dispute, arising out of or in connection with this deed unless and until the parties have complied with the dispute resolution process set out in clause 6.2.

6.2 Dispute resolution process

The parties shall use their best endeavours and act in good faith in resolving their dispute by the procedures set out in each of the clauses below in the following order:

- (a) first by negotiation in accordance with clause 6.3;
- (b) then by mediation in accordance with clause 6.4; and
- (c) then by arbitration in accordance with clause 6.5.

6.3 Negotiation

- (a) The aggrieved party shall notify the other party of the dispute by giving the other party written notice (a **Dispute Notice**) specifying:
 - (i) the nature of the dispute;
 - (ii) the outcome required by the aggrieved party; and
 - (iii) the action the aggrieved party believes will settle the dispute.
- (b) The parties must, using their best endeavours and acting in good faith, at first instance seek to resolve the dispute by mutual negotiation within twenty-one (21) days of the non-aggrieved party's receipt of the Dispute Notice.
- (c) If the dispute remains unresolved following the mutual negotiation referred to in clause 6.3(b):
 - (i) either party may refer the matter to a mutually agreed mediator with at least 10 years' experience as a mediator for mediation; or

- (ii) if the parties cannot mutually agree on a mediator, either party may request that the then acting President of the Law Institute of Victoria appoint a mediator with at least 10 years' experience as a mediator to resolve the dispute.

6.4 Mediation

- (a) Unless the parties otherwise agree in writing, mediation pursuant to this clause 6.4 shall be conducted as follows:
 - (i) the mediation must be held in Melbourne, Victoria, Australia;
 - (ii) the parties must attend the mediation and try to resolve the dispute;
 - (iii) the parties shall:
 - (A) equally share the costs of the mediation, including the cost of the mediator and venue; and
 - (B) bear their own costs in attending mediation;
 - (iv) the parties to the mediation may be represented by a lawyer, accountant and/or business advisor;
 - (v) everything that occurs before, during and after the mediation will be confidential and in closed session; and
 - (vi) no documents brought into existence specifically for the purpose of the mediation process will be called into evidence in any subsequent litigation by any of the parties to the dispute unless agreed between all parties.
- (b) If the dispute remains unresolved thirty (30) days following the appointment of the mediator referred to in clause 6.3(b):
 - (i) either party may refer the matter to a mutually agreed arbitrator with at least 10 years' experience as an arbitrator for arbitration; or
 - (ii) if the parties cannot mutually agree on an arbitrator, either party may request that the International Chamber of Commerce Australia (Victoria Branch) appoint one (1) arbitrator with at least 10 years' experience as an arbitrator to arbitrate the dispute.

6.5 Arbitration

Unless the parties otherwise agree in writing, arbitration pursuant to this clause 6.5 shall be conducted as follows:

- (a) the arbitration must be held in Melbourne, Victoria, Australia;
- (b) the arbitration will be conducted in accordance with the UNCITRAL Arbitration Rules (current at the time of the referral of the dispute to arbitration) and the language of the arbitration will be English;
- (c) the parties shall:
 - (i) equally share the costs of the arbitration in the first instance subject to any arbitral award regarding costs; and
 - (ii) bear their own costs in attending arbitration in the first instance subject to any arbitral award regarding costs;
- (d) all parties to the arbitration may be represented by a lawyer, accountant and/or business advisor;

- (e) everything that occurs before, during and after the arbitration will be confidential and in closed session;
- (f) no documents brought into existence specifically for the purpose of the arbitration process will be called into evidence in any subsequent litigation by any of the parties to the dispute unless agreed between all parties;
- (g) the arbitrator shall have power to make a determination binding on the parties to the dispute;
- (h) it will be the role of the arbitrator to act fairly, in good faith and without bias with the purpose of making a binding determination upon the parties and he or she will treat all matters in confidence; and
- (i) the arbitrator is to deal with any matter as expeditiously as possible.

7 Confidentiality

7.1 Confidentiality

Each party must, and must procure that its Representatives, keep confidential the existence and terms of this deed, all negotiations between the parties in relation to the subject matter of this deed and all information given to it under this deed.

7.2 Permitted disclosure

Nothing in this deed prevents a person from disclosing matters referred to in clause 7.1:

- (a) if disclosure is required to be made by law or the rules of a recognised stock or securities exchange, provided that the party required to make the disclosure has, to the fullest extent possible having regard to the required timing of the disclosure, consulted with and obtained with the prior written approval (which shall not be unreasonably withheld or delayed) of the other party as to the form and content of the disclosure;
- (b) if the person has not through any voluntary act or omission (other than entry into this deed) caused the disclosure obligation to arise;
- (c) if the person has, before disclosure is made, notified the other party of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given the other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
- (d) to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by this deed or to the auditor of a party;
- (e) to any financier who has made a bona fide proposal to provide finance to a party in relation to the transactions contemplated by this deed;
- (f) in the case of CWRH only, is disclosed by CWRH or a Related Body Corporate to a prospective third party external investor, financier, purchaser of shares or assets in CWRH or a Related Body Corporate, or in connection with any listing, capital investment, capital raising, joint venture or exit event, provided that the potential purchaser has executed a customary confidentiality agreement in connection with such transaction unless of the other exceptions in this clause 7.2 apply;
- (g) to any employee of a party who has a need to know such information;
- (h) with the prior written approval of the other party;
- (i) where the matter has come into the public domain other than as a result of a breach by any party to this deed;

- (j) to a Related Body Corporate of that person; or
- (k) in the case of disclosure by any party in a disclosure document, information memorandum or data room prepared by the party or its Related Bodies Corporate in connection with an exit or liquidity event, provided that such party has consulted with the other party as to the form and content of the disclosure or, in the case of the exit or liquidity event, the potential purchaser has executed a customary confidentiality agreement in connection with such transaction.

8 Notices

8.1 Service of notices

A notice, consent, approval or other communication under this deed (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 8.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by email, or any other lawful means.

8.2 Effect of receipt

A Notice given in accordance with this clause 8 is treated as having been given and received:

- (a) if personally delivered, on delivery;
- (b) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia); and
- (c) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

8.3 Addresses

- (a) The particulars for delivery of Notices are initially:

MCP

Name:	McPherson's Limited
Attention:	Grant Peck
Address:	105 Vanessa Street, Kingsgrove NSW 2208
Email:	gpeck@mcpher.com.au

CWRH

Name:	CW Retail Holdings Pty Ltd as trustee for CW Retail Holdings Trust
Attention:	Jack Gance
Address:	c/- of 6 Albert Street, Preston VIC 3072

Email: jack@mychemist.com.au

- (b) A party may change its address for the delivery of Notices by notifying that change to the other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

9 General

9.1 Legal costs

Except as expressly stated otherwise in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

9.2 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

9.3 Severability

- (a) Subject to clause 9.3(b), if a provision of this deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this deed.
- (b) Clause 9.3(a) does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this deed; or
 - (B) the relative commercial or financial positions of the parties; or
 - (ii) would be contrary to public policy.

9.4 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

9.5 Consents

Except as expressly stated otherwise in this deed, a party may conditionally or unconditionally give or withhold consent to be given under this deed and is not obliged to give reasons for doing so.

9.6 Rights cumulative

Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party.

9.7 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.

- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

9.8 **Survival**

The rights and obligations of the parties do not merge on:

- (a) completion of any transaction under this deed; or
- (b) termination or expiration of this deed.

9.9 **Amendment**

This deed may only be varied or replaced by an agreement executed by the parties.

9.10 **Assignment**

- (a) A party must not assign its interest in this deed without the prior written consent of the other party.
- (b) Any purported dealing in breach of this clause is of no effect.

9.11 **Counterparts**

This deed may be executed (including by way of electronic signature) and exchanged (including by way of email) by any number of counterparts and all of these counterparts taken together constitute one and the same instrument. This deed is only binding on the parties on the exchange of counterparts and the parties consent to this deed being executed by way of electronic means.

9.12 **Entire understanding**

- (a) This deed and the other Transaction Documents contain the entire understanding between the parties as to the subject matter of this deed and the other Transaction Documents.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed and the other Transaction Documents are merged in and superseded by this deed and the other Transaction Documents and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this deed and the other Transaction Documents; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

Executed as a deed

Executed as a deed by **McPherson's Limited**
ACN 004 068 419 in accordance with section
127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed as a deed by **CW Retail Holdings**
Pty Ltd ACN 608 416 164 as trustee for CW
Retail Holdings Trust ABN 68 102 632 384 in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Director


*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

MACPHERSONS LIMITED
ANNEXURE C

This is Annexure “C” of 14 pages referred to in form 603 – Notice of initial substantial holder

Signed	<div><div>.</div><div></div><div><div>Jack Gance (Jul 1, 2022 15:25 GMT+10)</div><div></div></div></div>
print name	<div>Jack Gance</div> <div></div>
Capacity	<div>Director</div> <div></div>
Date	<div>Jul 1, 2022</div> <div></div>

Voluntary Escrow Deed

between

McPherson's Limited
ACN 004 068 419
(**MCP**)

and

CW Retail Holdings Pty Ltd
ACN 608 416 164
as trustee for **CW Retail Holdings Trust**
ABN 68 102 632 384
(**CWRH**)

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This deed is made on

1 July

2022

between **McPherson's Limited** ACN 004 068 419 of 105 Vanessa Street, Kingsgrove NSW 2208 (**MCP**)

and **CW Retail Holdings Pty Ltd** ACN 608 416 164 as trustee for **CW Retail Holdings Trust** ABN 68 102 632 384 c/- of 6 Albert Street, Preston VIC 3072 (**CWRH**)

Recitals

- A MCP and CWRH have entered into a Subscription Deed, under which MCP has agreed to issue the Escrowed Shares to CWRH.
- B MCP and CWRH have agreed to escrow the Escrowed Shares during the Escrow Period on the terms set out in this deed.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this deed:

ASX means ASX Limited ACN 008 624 691 or the financial market known as the Australian Securities Exchange it operates (as the context requires);

ASX Listing Rules means the listing rules of ASX;

Business Day means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purposes, a day on which the banks are open for business in Sydney, New South Wales and Melbourne, Victoria other than a Saturday, Sunday or public holiday in Sydney, New South Wales or Melbourne, Victoria;

CHESS means the Clearing House Electronic Subregister System;

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

Dispose means to sell, transfer, encumber, assign or otherwise dispose or agree to do any of those things directly or through another person by any means, including the following:

- (a) granting or exercising an option;
- (b) using an asset as collateral;
- (c) decreasing an economic interest; and
- (d) disposing of part of an asset,

and **Disposed** and **Disposal** have corresponding meanings;

Escrow Period means a period of two (2) years commencing on the date of this deed;

Escrowed Shares means 14,223,817 fully paid ordinary shares in MCP;

Government Agency means any government, governmental, semi-governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity;

Holding Lock means a facility that prevents the Escrowed Shares from being deducted from CWRH's holding or entered into the holding of any other party (whether on CHES or an issuer sponsored sub-register) pursuant to a transfer or conversion by CWRH;

Insolvency Event means the occurrence of any one or more of the following events regarding any party to this deed:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party; or
- (c) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;

law includes:

- (a) any statute, regulation, rule, by-law, ordinance, proclamation, judgement, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including any Government Agency);
- (b) any regulation, rule, by-law, ordinance, proclamation or judgement made under that law; and
- (c) that law as amended, consolidated, supplemented, re-enacted or replaced;

Notice has the meaning given to that term in clause 8.1;

Representatives means, in relation to a party, all officers, professional advisers, agents and attorneys of the party;

Subscription Deed means the deed of same name between MCP and CWRH dated 24 March 2022;

Transaction Documents has the meaning given to that term in the Subscription Deed; and

Warranties means the representations and warranties set out in clause 5.1.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this deed and references to this deed include any recital, schedule or annexure;
 - (iv) any contract (including this deed) or other instrument includes any variation or replacement of it and as it may be assigned or novated;

- (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (x) time is a reference to legal time in Melbourne, Victoria;
- (xi) a reference to a day or a month means a calendar day or calendar month;
- (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this deed as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) headings and the table of contents are for convenience only and do not form part of this deed or affect its interpretation;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (i) where there are two or more persons in a party each are bound jointly and severally; and
- (j) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed.

2 Voluntary escrow

2.1 Voluntary escrow

Subject to this deed, CWRH must not do any of the following during the Escrow Period:

- (a) Dispose of, or agree or offer to Dispose of, the Escrowed Shares; or

- (b) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Escrowed Shares.

2.2 Holding Lock

- (a) CWRH consents to:
 - (i) MCP entering the Escrowed Shares on an issuer sponsored sub-register; and
 - (i) the application of a Holding Lock on the Escrowed Shares during the Escrow Period.
- (b) For the avoidance of doubt, CWRH also consents to the refusal of MCP and/or its share registry to process or register any paper-based transfer of the Escrowed Shares during the Escrow Period.

2.3 No restrictions on voting and distributions and if required by law

For the avoidance of doubt, nothing in this deed prohibits, restricts or otherwise limits the entitlement of CWRH as an ordinary shareholder of MCP to:

- (a) exercise, or control the exercise of, a right to vote attached to the Escrowed Shares;
- (b) receive dividends or other distributions in respect of the Escrowed Shares *pari passu* with all other holders of fully paid ordinary shares in the capital of MCP; or
- (c) deal with any or all of the Escrowed Shares if required by law to do so.

2.4 Expiry of Escrow Period

MCP acknowledges and agrees to:

- (a) five (5) days before the expiration of the Escrow Period, notify ASX of the impending release of the Escrowed Shares from its issuer sponsored sub-register, in accordance with the ASX Listing Rules; and
- (b) upon expiration of the Escrow Period, release the Escrowed Shares to CWRH or its nominee(s).

3 Exceptions to escrow restrictions

3.1 Takeovers

- (a) If a full or proportional takeover offer is made in accordance with the Corporations Act for securities in the same class as the Escrowed Shares, CWRH may accept that offer for all or part of the Escrowed Shares or execute an irrevocable undertaking to do so, provided that:
 - (ii) the offer has been accepted by the holders of at least 50% of the securities in that class which are not subject to escrow and to which offers under the bid relate;
 - (iii) if for any reason the takeover offer does not become unconditional, the Escrowed Shares must be returned to escrow on the terms of this deed, including the Holding Lock.
- (b) Each party acknowledges, warrants and agrees that it has not entered into this deed to construct a defence against a takeover bid.

3.2 Scheme of arrangement

The Escrowed Shares may be Disposed of or cancelled as part of a merger by way of compromise or arrangement under Part 5.1 of the Corporations Act provided that the Escrowed Shares become subject to the provisions of this deed, including the Holding Lock, if for any reason the merger by way of compromise or arrangement does not take effect.

4 Consequences of breach

Subject to clause 2.3, if CWRH breaches this deed, MCP is entitled to:

- (a) take all steps necessary to enforce this deed or to rectify the breach;
- (b) refuse to acknowledge, deal with, accept or register any Disposal of any of the Escrowed Shares. This is in addition to the other rights and remedies of MCP; and
- (c) seek to recover damages from CWRH to the extent MCP suffers any loss as a result of that breach.

5 Warranties

5.1 Mutual warranties

Each party represents and warrants to the other party that each of the following warranties is true and accurate at the date of this deed:

- (a) it:
 - (i) is validly existing and in good standing; and
 - (ii) has complete and unrestricted power and authority to enter into, perform its obligations under and carry out the transactions contemplated by this deed;
 - (b) this deed constitutes valid, legal and binding obligations on it, enforceable against it in accordance with its terms;
 - (c) the execution, delivery and performance by it of this deed will not:
 - (i) result in a breach of any law;
 - (ii) result in a breach of any provision of its constitution or other constituent documents;
 - (iii) result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this deed; or
 - (iv) result in a breach of any order, judgement or decree of any court or Government Agency to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this deed;
 - (d) it has taken all action and obtained all consents necessary to enter into and perform its obligations under this deed; and
 - (e) it is not subject to an Insolvency Event,
- and, if it has entered into this deed as trustee of a trust (**Trust**), it warrants to the other party that each of the following warranties is true and accurate at the date of this deed:
- (f) it has been validly appointed as trustee of the Trust;

- (g) it is the only trustee of the Trust;
- (h) it is not aware of any action to remove it as trustee of the Trust;
- (i) it has power under the trust deed of the Trust to enter into and observe its obligations under this deed;
- (j) it has entered into this deed in its capacity as trustee of the Trust;
- (k) it has the authorisations necessary to enter into this deed and perform its obligations under this deed;
- (l) it has the right to be indemnified out of the assets of the Trust in respect of its obligations under this deed and the transactions contemplated by this deed; and
- (m) the trust fund of the Trust will be sufficient to satisfy such right of indemnity.

5.2 Application of Warranties

Each of the Warranties:

- (a) does not merge and survives after the completion of all transactions contemplated in this deed; and
- (b) is separate and independent and is not limited by reference to any other Warranty.

5.3 Indemnity

Each party shall indemnify, and keep indemnified, each other party against any actions, proceedings, liabilities, claims, demands, costs or expenses suffered or incurred by that other party arising out of any breach of a Warranty given by the indemnifying party.

6 Dispute resolution

6.1 Bar to proceedings

A party must not commence any legal proceedings, except legal proceedings seeking interlocutory relief pursuant to a dispute, arising out of or in connection with this deed unless and until the parties have complied with the dispute resolution process set out in clause 6.2.

6.2 Dispute resolution process

The parties shall use their best endeavours and act in good faith in resolving their dispute by the procedures set out in each of the clauses below in the following order:

- (a) first by negotiation in accordance with clause 6.3;
- (b) then by mediation in accordance with clause 6.4; and
- (c) then by arbitration in accordance with clause 6.5.

6.3 Negotiation

- (a) The aggrieved party shall notify the other party of the dispute by giving the other party written notice (a **Dispute Notice**) specifying:
 - (i) the nature of the dispute;
 - (ii) the outcome required by the aggrieved party; and
 - (iii) the action the aggrieved party believes will settle the dispute.

- (b) The parties must, using their best endeavours and acting in good faith, at first instance seek to resolve the dispute by mutual negotiation within twenty-one (21) days of the non-aggrieved party's receipt of the Dispute Notice.
- (c) If the dispute remains unresolved following the mutual negotiation referred to in clause 6.3(b):
 - (i) either party may refer the matter to a mutually agreed mediator with at least 10 years' experience as a mediator for mediation; or
 - (ii) if the parties cannot mutually agree on a mediator, either party may request that the then acting President of the Law Institute of Victoria appoint a mediator with at least 10 years' experience as a mediator to resolve the dispute.

6.4 Mediation

- (a) Unless the parties otherwise agree in writing, mediation pursuant to this clause 6.4 shall be conducted as follows:
 - (i) the mediation must be held in Melbourne, Victoria, Australia;
 - (ii) the parties must attend the mediation and try to resolve the dispute;
 - (iii) the parties shall:
 - (A) equally share the costs of the mediation, including the cost of the mediator and venue; and
 - (B) bear their own costs in attending mediation;
 - (iv) the parties to the mediation may be represented by a lawyer, accountant and/or business advisor;
 - (v) everything that occurs before, during and after the mediation will be confidential and in closed session; and
 - (vi) no documents brought into existence specifically for the purpose of the mediation process will be called into evidence in any subsequent litigation by any of the parties to the dispute unless agreed between all parties.
- (b) If the dispute remains unresolved thirty (30) days following the appointment of the mediator referred to in clause 6.3(b):
 - (i) either party may refer the matter to a mutually agreed arbitrator with at least 10 years' experience as an arbitrator for arbitration; or
 - (ii) if the parties cannot mutually agree on an arbitrator, either party may request that the International Chamber of Commerce Australia (Victoria Branch) appoint one (1) arbitrator with at least 10 years' experience as an arbitrator to arbitrate the dispute.

6.5 Arbitration

Unless the parties otherwise agree in writing, arbitration pursuant to this clause 6.5 shall be conducted as follows:

- (a) the arbitration must be held in Melbourne, Victoria, Australia;
- (b) the arbitration will be conducted in accordance with the UNCITRAL Arbitration Rules (current at the time of the referral of the dispute to arbitration) and the language of the arbitration will be English;
- (c) the parties shall:

- (i) equally share the costs of the arbitration in the first instance subject to any arbitral award regarding costs; and
- (ii) bear their own costs in attending arbitration in the first instance subject to any arbitral award regarding costs;
- (d) all parties to the arbitration may be represented by a lawyer, accountant and/or business advisor;
- (e) everything that occurs before, during and after the arbitration will be confidential and in closed session;
- (f) no documents brought into existence specifically for the purpose of the arbitration process will be called into evidence in any subsequent litigation by any of the parties to the dispute unless agreed between all parties;
- (g) the arbitrator shall have power to make a determination binding on the parties to the dispute;
- (h) it will be the role of the arbitrator to act fairly, in good faith and without bias with the purpose of making a binding determination upon the parties and he or she will treat all matters in confidence; and
- (i) the arbitrator is to deal with any matter as expeditiously as possible.

7 Confidentiality

7.1 Confidentiality

Each party must, and most procure that its Representatives, keep confidential the existence and terms of this deed, all negotiations between the parties in relation to the subject matter of this deed and all information given to it under this deed.

7.2 Permitted disclosure

Nothing in this deed prevents a person from disclosing matters referred to in clause 7.1:

- (a) if disclosure is required to be made by law or the rules of a recognised stock or securities exchange, provided that the party required to make the disclosure has, to the fullest extent possible having regard to the required timing of the disclosure, consulted with and obtained with the prior written approval (which shall not be unreasonably withheld or delayed) of the other party as to the form and content of the disclosure;
- (b) if the person has not through any voluntary act or omission (other than entry into this deed) caused the disclosure obligation to arise;
- (c) if the person has, before disclosure is made, notified the other party of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given the other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
- (d) to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by this deed or to the auditor of a party;
- (e) to any financier who has made a bona fide proposal to provide finance to a party in relation to the transactions contemplated by this deed;
- (f) in the case of CWRH only, is disclosed by CWRH or a Related Body Corporate to a prospective third party external investor, financier, purchaser of shares or assets in CWRH or a Related Body Corporate, or in connection with any listing, capital investment, capital raising, joint venture or exit event, provided that the potential

purchaser has executed a customary confidentiality agreement in connection with such transaction unless of the other exceptions in this clause 7.2 apply;

- (g) to any employee of a party who has a need to know such information;
- (h) with the prior written approval of the other party;
- (i) where the matter has come into the public domain other than as a result of a breach by any party to this deed;
- (j) to a Related Body Corporate of that person; or
- (k) in the case of disclosure by any party in a disclosure document, information memorandum or data room prepared by the party or its Related Bodies Corporate in connection with an exit or liquidity event, provided that such party has consulted with the other party as to the form and content of the disclosure or, in the case of the exit or liquidity event, the potential purchaser has executed a customary confidentiality agreement in connection with such transaction.

8 Notices

8.1 Service of notices

A notice, consent, approval or other communication under this deed (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 8.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by email, or any other lawful means.

8.2 Effect of receipt

A Notice given in accordance with this clause 8 is treated as having been given and received:

- (a) if personally delivered, on delivery;
- (b) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia); and
- (c) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

8.3 Addresses

- (a) The particulars for delivery of Notices are initially:

MCP

Name:	McPherson's Limited
Attention:	Grant Peck
Address:	105 Vanessa Street, Kingsgrove NSW 2208
Email:	gpeck@mcpher.com.au

CWRH

Name: CW Retail Holdings Pty Ltd as trustee for CW Retail Holdings Trust

Attention: Jack Gance

Address: c/- of 6 Albert Street, Preston VIC 3072

Email: jack@mychemist.com.au

- (b) A party may change its address for the delivery of Notices by notifying that change to the other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

9 General

9.1 Legal costs

Except as expressly stated otherwise in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

9.2 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

9.3 Severability

- (a) Subject to clause 9.3(b), if a provision of this deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this deed.
- (b) Clause 9.3(a) does not apply if severing the provision:
- (i) materially alters the:
 - (A) scope and nature of this deed; or
 - (B) the relative commercial or financial positions of the parties; or
 - (ii) would be contrary to public policy.

9.4 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

9.5 Consents

Except as expressly stated otherwise in this deed, a party may conditionally or unconditionally give or withhold consent to be given under this deed and is not obliged to give reasons for doing so.

9.6 Rights cumulative

Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party.

9.7 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

9.8 Survival

The rights and obligations of the parties do not merge on:

- (a) completion of any transaction under this deed; or
- (b) termination or expiration of this deed.

9.9 Amendment

This deed may only be varied or replaced by an agreement executed by the parties.

9.10 Assignment

- (a) A party must not assign its interest in this deed without the prior written consent of the other party.
- (b) Any purported dealing in breach of this clause is of no effect.

9.11 Counterparts


This deed may be executed (including by way of electronic signature) and exchanged (including by way of email) by any number of counterparts and all of these counterparts taken together constitute one and the same instrument. This deed is only binding on the parties on the exchange of counterparts and the parties consent to this deed being executed by way of electronic means.

9.12 Entire understanding

- (a) This deed and the other Transaction Documents contain the entire understanding between the parties as to the subject matter of this deed and the other Transaction Documents.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed and the other Transaction Documents are merged in and superseded by this deed and the other Transaction Documents and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this deed and the other Transaction Documents; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

Executed as a deed

Executed as a deed by **McPherson's Limited**
ACN 004 068 419 in accordance with section
127 of the *Corporations Act 2001* (Cth):



Director

Ari Mervis

Name of Director
BLOCK LETTERS



~~*Director/*Company Secretary~~

Grant Peck

Name of ~~*Director/*Company Secretary~~
BLOCK LETTERS
~~*please strike out as appropriate~~

Executed as a deed by **CW Retail Holdings**
Pty Ltd ACN 608 416 164 as trustee for **CW**
Retail Holdings Trust ABN 68 102 632 384 in
accordance with section 127 of the
Corporations Act 2001 (Cth):



[mario verrocchi \(Jun 28, 2022 13:45 GMT+10\)](#)

Director

mario verrocchi

Name of Director
BLOCK LETTERS



[Jack Gance \(Jun 28, 2022 06:56 GMT+3\)](#)

~~*Director/*Company Secretary~~

Jack Gance

Name of ~~*Director/*Company Secretary~~
BLOCK LETTERS
~~*please strike out as appropriate~~