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From: John Kelly <john@piwc.com.au>

Sent: Wednesday, 6 May 2020 4:29 PM


To: Randall Corless <RandallC@mtaccountants.com.au>

Subject: RE: Mortgage

Randall we prepared the Loan Agreement in June 2019 at the time that the SMSF was about to acquire our premises, and also prepared a loan agreement between Seabridge and the SMSF with a seven year term that did not require registration.

Regards

John Kelly
General Manager
0438 838 570
john@piwc.com.au



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Lodger Details

Lodger Code
Name
Address
Lodger Box
Phone
Email
Reference

For Office Use Only

**THE BACK OF THIS FORM
MUST NOT BE USED**

MORTGAGE

Jurisdiction QUEENSLAND

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or interest being mortgaged

FEE SIMPLE

Land Title Reference **Part Land Affected?** **Land Description**

Lot 20 SP.195329 PAR
Y'PILLY 1/39

Mortgagor

Given Name(s)
Family Name
Capacity

Given Name(s)
Family Name
Capacity

Name	JOHN KELLY SUPERANNUATION FUND PTY LTD AS TRUSTEE FOR
	JOHN KELLY SUPERANNUATION FUND
ACN	632386693
ARBN	
Capacity	Trustee

Mortgagee

Given Name(s)
Family Name
Capacity
Tenancy (inc. share)

Given Name(s)
Family Name
Capacity
Tenancy (inc. share)

Name SEABRIDGE INVESTMENTS PTY LTD
ACN 143245096
ARBN
Australian Credit Licence N/A
Capacity
Tenancy (inc. share)

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference NIL

(b) Additional terms and conditions

Mortgagor Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of JOHN KELLY
SUPERANNUATION FUND PTY LTD

Full Name of Witness _____

Signer Name JOHN E KELLY

Signer Organisation _____

Signer Role SECRETARY

Witness Signature _____

Signature 

Witness Qualifications _____

Execution Date _____

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of JOHN KELLY
SUPERANNUATION FUND PTY LTD

Full Name of Witness _____

Signer Name BRONWYN C KELLY

Signer Organisation _____

Signer Role DIRECTOR

Witness Signature _____

Signature 

Witness Qualifications _____

Execution Date _____

Mortgagee Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of SEABRIDGE INVESTMENTS
PTY LTD

Full Name of Witness _____

Signer Name JOHN E KELLY

Signer Organisation _____

Signer Role SECRETARY

Witness Signature _____

Signature 

Witness Qualifications _____

Execution Date _____

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of SEABRIDGE INVESTMENTS
PTY LTD

Signer Name BRONWYN C KELLY

Full Name of Witness _____

Signer Organisation _____

Signer Role DIRECTOR

Witness Signature _____

Signature  _____

Witness Qualifications _____

Execution Date _____

**READ THIS BEFORE SIGNING A TITLES REGISTRY
TRANSFER (FORM 1) OR MORTGAGE FORM**

**IF YOU FAIL TO PROVIDE TO THE WITNESSING OFFICER ADEQUATE EVIDENCE OF YOUR ENTITLEMENT
TO SIGN THE FORM, THE WITNESSING OFFICER MAY DECLINE TO WITNESS YOUR SIGNATURE**

Note – This page is NOT part of the form and should NOT be lodged in the titles registry

Signing and witnessing of titles registry transfer or mortgage forms

A person who witnesses the signature of an individual on a titles registry form is required by law to take reasonable steps to ensure the person signing the form is entitled to do so.

If you take your transfer or mortgage form/s to a Justice of the Peace or Commissioner for Declarations (or other person qualified under Schedule 1 of the *Land Title Act 1994* to witness a titles registry form, such as a lawyer) to have your signature witnessed, you must provide to the satisfaction of the witness, the following—

1. proof of identity showing your photo and signature; **and**
2. supporting documentation that shows your name and property details, and helps to confirm you are entitled to sign the form/s.

1. Proof of identity documents

Proof of identity documents may include—

- driver licence; or
- passport.

2. Supporting documentation that helps to confirm you are entitled to sign the form/s

If you are **selling property** or are **only refinancing**, supporting documentation may include either—

- a local government current rates notice for the property, or
- a recently issued current title search statement for the property, or
- a recently issued registration confirmation statement for the property, or
- a current certificate of title (if one exists) for the property.

If you are a **purchaser** and/or **financing the purchase**, supporting documentation may include either—

- a copy of the contract of sale for the property; or
- official loan documentation from your lender; or
- a letter from a solicitor confirming you are entitled to sign the form.

Annexure A: Mortgage

This is the Annexure A referred to in the Mortgage dated 01 July 2019 between SEABRIDGE INVESTMENTS PTY LTD and John Kelly Superannuation Fund Pty Ltd as Trustee for John Kelly Superannuation Fund .

DRAFTING NOTES: Add Front Page from Dept of Lands to Register.

[Click here to download front page for free from Dept of Lands \(LPI\)](#)

Date: 01/07/2019

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- (c) **'Attachment Notice'** means any notice or process under which a Public Authority requires the payment or transfer to it or the Crown of money that would otherwise be payable to the Mortgagor and includes notices under Section 218 or Section 255 of the Income Tax Assessment Act 1936 (Commonwealth);
- (d) **'Attorney'** means an attorney appointed under this mortgage or any Collateral Security;
- (e) **'Authorisation'** includes a consent, authorisation, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption;
- (f) **'Authorised Officer'** means in relation to a Body Corporate, a person holding or acting in the office of director or secretary, or a person the title of whose office at the Body Corporate includes the word 'manager';
- (g) **'Body Corporate'** means an owners corporation as defined in the Strata Schemes Management Act 1996 (NSW).
- (h) **'Business Day'** means a day other than a Saturday or Sunday on which banks are open for general banking business in Brisbane;
- (i) **'Collateral Security'** means any current or future Guarantee, Encumbrance, negotiable instrument, agreement or other document held or taken by or given in favour of the Mortgagee or entered into by any person as security for payment of or otherwise in connection with the Secured Money;
- (j) **'Community Titles Legislation'** means:
- Community Land Development Act 1989;
 - Community Land Development Regulation 2000;
 - Community Land Management Act 1989; and
 - Community Land Management Regulation 2000;
- (k) **'Community Scheme'** includes community schemes, precinct schemes and neighbourhood schemes as defined in the Community Land Management Act 1989 (NSW);
- (l) **'Deal with'** means deal with property in any way including, without limitation, offer for sale, grant an option in respect of, create or Dispose of a right in respect of, render or permit to be subject to an Encumbrance, convert, deposit, compromise, and allow a counterclaim or right of set-off to arise in respect of;
- (m) **'Directive'** includes any present or future directive, regulation, request, requirement, rule or credit restraint programme of any Public Authority or of any self-regulating organisation (but, if not having the force of law, only if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is intended to apply);
- (n) **'Dispose of'** means sell, transfer, assign, alienate, surrender, dispose of, deposit, Lease, part with possession of and enter into any agreement or arrangement to do or allow any of these things;
- (o) **'Event of Default'** means any of the events specified in Clause 20;
- (p) **'Encumbrance'** means a mortgage, charge, pledge, lien, assignment, hypothecation, retention of title (other than a retention of title in the course of day-to-day trading), or any other right (including, without limitation, under a trust or agency arrangement) of a creditor to have its claims satisfied prior to other

- (ii) a bankruptcy notice is issued with respect to a person or any application is made or step is taken to bankrupt a person;
- (iii) a person enters into or proposes to enter into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of any of its creditors;
- (iv) a receiver or a receiver and manager is appointed to a person or the whole or part of the assets of the person;
- (v) an application is made or a step is taken for the appointment of an administrator, controller, provisional liquidator or liquidator to a person or that person's assets, or that appointment is actually made;
- (vi) an application is filed or an order is made or an effective resolution is passed for the winding up of a person; or
- (vii) anything analogous or having a substantially similar effect to any of the events specified above happens with respect to a person;
- (w) **'Lease'** means an agreement or arrangement under which property is or may be used, occupied, retained, operated or managed by a person ('Lessee') for consideration (of whatever form) payable or provided by the Lessee including, without limitation, a lease, licence, charter, hire purchase or hiring arrangement;
- (x) **'Marketable Securities'** has the meaning given to the expression 'marketable securities' in the Corporations Act;
- (y) **'Material Adverse Effect'** on a person means a material adverse effect:
 - (i) on its financial condition or business; or
 - (ii) on its ability to perform and comply with its relevant obligations under this mortgage or any Collateral Security;
- (z) **'Mortgaged Property'** means:
 - (i) the property or interest in property described in the mortgage as the property mortgaged;
 - (ii) the Improvements;
 - (iii) any Authorisation relating to the Mortgaged Property and all rights and privileges of the Mortgagor to enjoy the Mortgaged Property;
 - (iv) any monies received from the sale of the Mortgaged Property or any entitlement to monies from the sale of the Mortgaged Property;
 - (v) any interest the Mortgagor has in any insurance policy or any claim it has under any such insurance policy over the Mortgaged Property;
- (aa) **'Permitted Encumbrance'** means:
 - (i) an Encumbrance:
 - (A) created with the prior consent in writing of the Mortgagee; or
 - (B) permitted, with the consent in writing of the Mortgagee, to subsist;
 - (C) over all or any part of the Mortgaged Property, subject to and in accordance with the conditions (if any) that the Mortgagee may attach to the consent; and
 - (D) liens or charges arising in respect of the Mortgaged Property by operation of law in the ordinary course of business (other than those not discharged when due);

- (ii) **'Strata Schemes Legislation'** means the Strata Schemes (Freehold Development) Act 1973 (NSW) and the Strata Schemes Management Act 1996 (NSW) collectively;
- (jj) **'Tax'** includes all stamp and other taxes (including, but not limited to any goods and services tax), levies, imposts, deductions, charges and withholdings whatever together with interest on the same and penalties with respect to the same (if any) and charges, fees or other amounts made on or in respect of the same but excludes all taxes on the overall net income of the Mortgagee.
- (kk) **'Trust'** means the trust (if any) by which the Mortgagor holds the Mortgaged Property, whether or not that trust is set out expressly in this mortgage.

1.2 Interpretation

In this mortgage unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include the other genders;
- (c) other grammatical forms of defined words or phrases have corresponding meanings;
- (d) use of a term denoting subject matter which comprises more than one part or aspect includes a reference to each or any part or aspect of the subject matter;
- (e) a reference to a mortgage, including this mortgage, includes a reference to that mortgage as novated, altered or replaced from time to time;
- (f) a reference to a clause, part of a clause, schedule or annexure is a reference to that clause, part of a clause, schedule or annexure to this mortgage and a reference to this mortgage includes its schedules and any annexures;
- (g) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form;
- (h) the word 'person' includes an individual, a firm, body corporate, unincorporated association, incorporated association or a Public Authority;
- (i) where a party comprises two or more persons an agreement or obligation binding that party binds those persons jointly and severally;
- (j) a reference to a party to this mortgage includes that party's successors and permitted assigns;
- (k) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (l) terms defined in the Corporations Act as at the date of this mortgage have the meanings given to them in the Corporations Act at that date;
- (m) a reference to 'dollar', '\$', '\$A', '\$A\$'; or 'AUD' is a reference to Australian currency; and
- (n) a reference to a specific time for the performance of an obligation is a reference to that time in the state or territory where the obligation is to be performed;
- (o) Headings are for reference only and do not affect the interpretation of this mortgage.
- (p) A reference in this mortgage to a statute or to a provision of a statute includes where applicable:

- (c) The Mortgagee will give notice in writing to the Mortgagor of any recalculation and upon receipt of such notice the Mortgagor will pay to the Mortgagee the instalments as recalculated by the Mortgagee.
- (d) If the Mortgagor pays to the Mortgagee payments in excess of those then due and the Mortgagee accepts them, those payments will be credited to the Mortgagor's account with the Mortgagee but the Mortgagor's obligation to make any succeeding payment on the due date for payment will not be altered.

5 INTEREST ONLY

- (a) The Mortgagor will pay to the Mortgagee the principal sum, or so much of it as remains unpaid on the date of repayment shown in the Schedule and in the meantime may pay multiples of the amount shown in the Schedule in reduction of the principal sum on any due day for payment of an instalment.
 - (i) interest will reduce accordingly from the date of such partial reduction in the principal sum. The Mortgagor may repay the whole of the balance remaining unpaid at any time on payment of interest to the end of the then current month together with interest in addition set out in the Schedule.
 - (ii) In the meantime the Mortgagor will pay interest only to the Mortgagee on any amount payable under this Deed at the higher rate and calculated on monthly rests and payable on the day of each and every consecutive month following the first payment as shown in the Schedule and compounding monthly from the date upon which the amount becomes due until payment.

5.2 Rate of interest

- (a) Provided always that if the Mortgagor will on every day on which interest is payable under this security, or within fourteen days after such day, pay to the Mortgagee interest on the principal sum or on so much as for time being remains unpaid at the lower rate of interest, and will also duly observe and perform each covenant on the Mortgagor's part contained in this deed or implied, then the Mortgagee will accept interest at the lower rate in lieu of the higher rate for every month for which the interest is paid to the Mortgagee within fourteen days of falling due.
- (b) The Mortgagor agrees as an independent obligation which will not merge in any judgment or order, to pay interest on any judgement or order for the payment of all or any part of the Moneys Secured at the higher of the rate payable under the judgment or order or interest calculated at the higher rate hereunder.

6 PRINCIPAL & INTEREST

- (a) The Mortgagor will pay to the Mortgagee the principal sum, or so much of the remaining balance as will remain unpaid on the date of repayment shown in the Schedule. The Mortgagor may repay the whole of the balance remaining unpaid at any time on payment of interest to the end of the then current month together with interest in addition set out in the Schedule.
- (b) In the meantime the Mortgagor will pay the principal and interest on the principal sum or on the remaining balance, and upon any judgement or order in which this or the preceding covenant may become merged at the higher rate as follows, namely, by equal monthly payments on the day shown in the Schedule each and every month in each and every year until the principal sum and interest will be fully paid and satisfied, the first of such payments computed from the date of Joan to be made on the day shown in the Schedule and compounding monthly from the date upon which the amount becomes due until payment. Provided always, and it

- (b) The Mortgagor must make all payments in respect of the Secured Money free of any set-off or counterclaim, free of and without deduction for or on account of any present or future Taxes, and in immediately available funds.
- (c) If any payment to be made under this mortgage would otherwise fall due on day which is not a Business Day, then the due date for payment will be the preceding Business Day.

11 MORTGAGE

The Mortgagor charges the Mortgaged Property in favour of the Mortgagee as security for the payment and discharge of the Secured Money.

12 CERTIFICATES OF TITLE

The Mortgagor must:

- (a) deposit with the Mortgagee all certificates of title and other deeds evidencing any part of, interest in, or title to the Mortgaged Property as soon as they are available to the Mortgagor or its agents; and
- (b) promptly lodge with the Mortgagee all present or future Encumbrances (and all documents in connection with the Encumbrances) given or created by any person to or in favour of the Mortgagor to secure performance of any obligation, or the payment of any money, owed to the Mortgagor.

13 REPRESENTATIONS AND WARRANTIES

The Mortgagor represents and warrants to the Mortgagee that:

- (a) if the Mortgagor is a corporation it is properly incorporated and validly existing under the laws of the place in which it is incorporated;
- (b) the Mortgagor has power to enter into this mortgage and to carry out any transaction or obligation contemplated by this mortgage and all necessary action has been taken and Authorisations obtained to render this mortgage fully valid and binding on the Mortgagor and to enable the Mortgagor to carry out any transaction or obligation contemplated by this mortgage;
- (c) no Event of Default or Potential Event of Default has occurred;
- (d) there has been no breach or default by the Mortgagor in the performance or observance of any of the provisions of any statute, Encumbrance, or other legal instrument or arrangement to which it is a party or to which it is subject or by which it is bound, which may have a Material Adverse Effect on the Mortgagor or the Mortgaged Property;
- (e) an Insolvency Event has not occurred with respect to the Mortgagor or any Security Provider;
- (f) no litigation or other proceeding before any court, judicial or administrative authority, or arbitrator is:
 - (A) taking place or pending; or
 - (B) to the knowledge, or belief of the Mortgagor, likely to be commenced or threatened,

against the Mortgagor or any Security Provider or against any of the assets of the Mortgagor or a Security Provider which could have a Material Adverse Effect on the Mortgagor or any Security Provider;

- (e) obtain and renew at the proper times all Authorisations required in connection with:
 - (i) the Mortgagor performing or observing its obligations under this mortgage or any Collateral Security;
 - (ii) the enforcement by the Mortgagee of any of the Mortgagee's rights, powers or remedies under this mortgage or any Collateral Security;
 - (iii) the carrying on of the Mortgagor's business; and
 - (iv) the Mortgaged Property.
- (f) permit the Mortgagee or persons on the Mortgagee's behalf access on reasonable notice to all the business and financial records of the Mortgagor;
- (g) not incur any Financial Indebtedness without the prior consent in writing of the Mortgagee;
- (h) not do or allow anything to be done in derogation of the Mortgagee's rights, powers or remedies under this mortgage or any Collateral Security.
 - (i) any movement or change in interest rates, currencies or rates of exchange; or
 - (ii) any information, advice or opinion provided by the Mortgagee, even if provided at the request of the Mortgagor or a Security Provider, relied on by the Mortgagor or a Security Provider or provided incorrectly or negligently.

15 OBLIGATIONS RELATING TO mortgaged PROPERTY

15.1 Positive Obligations

The Mortgagor must with respect to the Mortgaged Property:

- (a) obtain, maintain and renew at the proper times, all Authorisations that are required or advisable or relied on, for or in connection with the Mortgaged Property;
- (b) carry on and maintain its business in a proper and efficient way;
- (c) prepare and maintain proper and adequate books and records;
- (d) pay when due all Taxes assessed, levied or imposed on the Mortgagor or the Mortgaged Property;
- (e) comply with the terms and conditions of each Lease to which it is a party;
- (f) exercise each of its rights that the Mortgagee requires it to exercise;
- (g) comply with its payment obligations under any agreement for the purchase of property;
- (h) comply with all obligations binding on it under any Permitted Encumbrance;
- (i) comply with all restrictive and other covenants for the time being affecting the Mortgaged Property or its use or enjoyment;
- (j) protect the Mortgaged Property and at the Mortgagor's expense prosecute or defend all legal proceedings that are, or the defence of which is, necessary or advisable for the protection of the Mortgaged Property;
- (k) keep each part of the Mortgaged Property in good working order and condition and upon notice from the Mortgagee make right any defect or shortcoming in the working order or condition of the Mortgaged Property;

- (ii) where the person with whom the deposit is made asserts or claims, or is or might be entitled to, a counterclaim against the Mortgagor or a right of set-off (however called) in respect of the deposit;
- (m) move or transfer, or allow to be moved or transferred, out of Australia any of the Mortgaged Property;
- (n) in relation to a related party of the Mortgagor:
 - (i) provide or agree to any Financial Accommodation to or at the request of;
 - (ii) allow to remain outstanding any Financial Indebtedness from;
 - (iii) pay, repay or otherwise satisfy or discharge any Financial Indebtedness owing to;
 - (iv) acquire any asset for more than a fair market value from; or
 - (v) Dispose of any asset at less than a fair market value and for cash consideration to such a related party of the Mortgagor;
- (o) declare or pay a dividend if a demand has been made on the Mortgagor under this mortgage or any Collateral Security and not satisfied in full; or
- (p) call up or receive in advance of calls any of the uncalled capital or uncalled premiums of the Mortgagor or apply that capital or those premiums otherwise than towards payment of the Secured Money.

15.3 STRATA AND COMMUNITY TITLE

Clause 0 below applies if the secured property now or in the future comprises a lot in a Strata Scheme.

15.4 Strata provisions

The mortgagor:

- (q) shall promptly pay all contributions and any other moneys which at any time become payable in respect of the secured property to the Body Corporate;
- (r) shall promptly comply with and observe the provisions of the Strata Schemes (Freehold Development) Act and any by-laws of the Strata Scheme;
- (s) shall use its best endeavours to cause any building of which the secured property forms part to be insured for its full insurable value against such risks and upon such terms and conditions as a prudent and reasonable person would consider appropriate;
- (t) shall ensure that the creditor is entitled in its absolute discretion to exercise the voting rights conferred upon it by the Strata Schemes (Freehold Development) Act;
- (u) shall procure the entry of the interest of the creditor in the secured property on the strata roll for the Strata Scheme;
- (v) irrevocably authorises the creditor at any time or times to obtain from the Body Corporate and irrevocably authorises the Body Corporate from time to time to provide to the creditor:
 - (i) all information which the creditor may require with respect to the Body Corporate, the Strata Scheme or the secured property, including, but not

- (d) effect and maintain employer's indemnity insurance, public risk and other insurances:
 - (i) which a prudent person, engaged in a similar business or undertaking to that of the Mortgagor, would effect; or
 - (ii) which are stipulated by the Mortgagee,
- (e) with underwriters approved by the Mortgagee;
- (f) immediately deliver the insurance policies referred to in clause 16 to the Mortgagee (unless the Mortgagor is unable to do so under the terms of a Permitted Encumbrance which has priority over this mortgage, in which case copies will suffice) and, on request, deliver certificates of currency in respect of those insurance policies;
- (g) punctually pay all premiums and sums necessary (including stamp duty) for effecting and keeping current every insurance policy, and promptly on request, hand to the Mortgagee the receipt for any premium or sum so paid;
- (h) immediately after they are made or effected, deliver to the Mortgagee all variations, alterations and additions to any existing insurance policies and all additional or substitute insurance policies (unless the Mortgagor is unable to do so under the terms of a Permitted Encumbrance which has priority over this mortgage, in which case copies will suffice); and
- (i) immediately after it occurs, notify the Mortgagee of any occurrence which gives or might give rise to a claim or right to claim under any insurance policy.

16.2 The Mortgagor must not:

- (a) do or allow to be done anything which might cause any policy of insurance to be prejudiced or rendered void, voidable or unenforceable;
- (b) without the prior consent in writing of the Mortgagee, cause, or take any steps to bring about, the cancellation of, or a material change or reduction in the cover provided under any insurance policy;
- (c) effect any further or other insurance in respect of the Mortgaged Property other than:
 - (i) with the interest of the Mortgagee as chargee or Mortgagee noted by endorsement; or
 - (ii) jointly in the names of the Mortgagor and the Mortgagee; or
 - (iii) make, enforce, settle or compromise a claim or do anything inconsistent with the rights or powers of the Mortgagee.
- (d) The Mortgagor must at all times, until this mortgage is fully and finally discharged, comply with all obligations and conditions relating to insurance of the Mortgaged Property or any part of it:
 - (i) contained in or implied by any Permitted Encumbrance; or
 - (ii) contained in or implied by any Lease from or under which any of the Mortgaged Property is derived.

17 OBLIGATIONS TO ALLOW OR PROCURE ACCESS

The Mortgagor must:

connection with any Event of Default or Potential Event of Default whether or not a mistake, oversight, error of judgment, omission, want of prudence or any other behaviour (other than behaviour amounting to wilful default or gross negligence) on the part of the Mortgagee, its employees, or agents, or an Attorney or Receiver caused or contributed to the action, suit, claim, demand, loss, liability, damage or expense.

- (b) The Mortgagor indemnifies the Mortgagee against and must pay to the Mortgagee on demand all losses, costs, claims, and expenses which the Mortgagee may sustain or incur or suffer as a result of any payment of the Secured Money or any part of the Secured Money being made to the Mortgagee on a day other than the due date for payment.
- (c) If:
 - (i) the Mortgagor or a Security Provider makes a payment to the Mortgagee or a Receiver; or
 - (ii) the Mortgagee or a Receiver receives or recovers any money under this mortgage or any Collateral Security,
 - (iii) in a currency other than the currency in which the obligation or liability is due (in this clause 'Required Currency'), then the Mortgagor's obligations under this mortgage or that Collateral Security will be discharged only to the extent that the Mortgagee may, upon receipt of that payment or receipt or recovery of that money, purchase sufficient Required Currency (after the payment of all costs of exchange and related expenses) with the currency received or recovered in accordance with the usual banking procedures of the Mortgagee.
- (d) If the amount of the Required Currency so purchased is, after deducting all costs of exchange and other related expenses, less than the relevant sum owing or payable under this mortgage or any Collateral Security, the Mortgagor:
 - (i) indemnifies the Mortgagee from and against any loss suffered as a result of that discrepancy; and
 - (ii) must pay to the Mortgagee on demand, despite any time or other indulgence granted to the Mortgagor or any other act, matter or thing whatever, the amount of that discrepancy.
- (e) Each indemnity by the Mortgagor in this clause:
 - (i) is a separate and independent obligation of the Mortgagor;
 - (ii) has effect despite any time, waiver, or other indulgence granted to the Mortgagor; and
 - (iii) survives the discharge or termination of this mortgage.

20 EVENTS OF DEFAULT

Any one or more of the following events will be an Event of Default:

- (a) the Mortgagor or a Security Provider fails to pay or discharge the Secured Money when due;
- (b) the Mortgagor or a Security Provider fails to perform or observe an obligation on its part contained in or implied by this mortgage or a Collateral Security;
- (c) a Collateral Security or any Encumbrance created or entered into by the Mortgagor or a Security Provider becomes enforceable;

one or more of the following events occurs without the prior consent in writing of the Mortgagee:

- (i) the registration of the transfer of any share or stock;
 - (ii) a dealing with the beneficial interest in any share or stock;
 - (iii) the issue or allotment of any new share or stock; or
 - (iv) any other action,
- (q) and as a result the persons who at the date of this mortgage together beneficially hold or control more than 50% of the voting, income and capital participation rights in the Mortgagor or a Security Provider (as the case may be) thereafter hold less than that percentage of the voting, income and capital participation rights in the Mortgagor or Security Provider;
- (r) without prejudice to the provisions of the immediately preceding clause, the control of the Mortgagor or a Security Provider or the composition of the board of directors of the Mortgagor or a Security Provider changes without the prior consent in writing of the Mortgagee in any respect which in the opinion of the Mortgagee is detrimental to its interests under this mortgage or any Collateral Security;
- (s) this mortgage or any Collateral Security, or a provision of this mortgage or any Collateral Security, is:
 - (i) found or declared by any person other than the Mortgagee; or
 - (ii) alleged or conceded by the Mortgagor,
 - (iii) to be void, voidable or unenforceable, or any person becomes entitled to terminate, rescind, or avoid all or any part of this mortgage or any Collateral Security;
- (t) without derogating from any of the preceding paragraphs where the Mortgaged Property at any time comprises a lot in a Strata Scheme:
 - (i) the making of any judicial order under the Strata Schemes Legislation for the variation, substitution or termination of the Strata Scheme relating to the Mortgaged Property; or
 - (ii) the initiation by the Body Corporate of any legal action or proceeding against the Mortgagor under the Strata Schemes Legislation.
- (u) there is in the opinion of the Mortgagee a Material Adverse Effect on the Mortgagor, the Mortgaged Property or a Security Provider, or there occurs any other event or there arises any circumstances which, although not specifically referred to in this clause, in the opinion of the Mortgagee prejudices the ability of the Mortgagor or a Security Provider to meet any 1 or more of its obligations under this mortgage or a Collateral Security.
- (v) The Secured Money will be deemed to be immediately due and payable upon the occurrence of an Event of Default.
- (w) The Mortgagee may at any time after the occurrence of any Event of Default, without needing to give any demand or notice to the Mortgagor or a Security Provider:
 - (i) enforce this mortgage;
 - (ii) enforce any Collateral Security;
 - (iii) exercise or enforce all or any of the Mortgagee's rights, powers or remedies;

- (b) take or enter into possession of, collect or get in (or any combination of these actions) the Mortgaged Property;
- (c) enter into receipt of the rents and profits of the Mortgaged Property;
- (d) carry on or concur in carrying on the business of the Mortgagor as forms part of the Mortgaged Property, in the name of the Mortgagor or the Mortgagee or otherwise;
- (e) manage the Mortgaged Property;
- (f) use all Authorisations, brand, trade and business names or marks used as part of the Mortgaged Property;
- (g) have access to and make use of the premises, plant, equipment and accounting and other services of the Mortgagor and the services of its employees and agents for any purpose or in connection with any exercise of a power or right under this clause;
- (h) operate bank accounts in the name of the Mortgagor (whether alone or jointly) to the exclusion of the Mortgagee, withdraw any money standing to the credit of that account and sign, draw, or endorse in the name of the Mortgagor cheques, promissory notes, bills of exchange, drafts and other negotiable instruments;
- (i) perform, observe, carry out, enforce specific performance of, exercise, or refrain from exercising the Mortgagor's rights and powers under, or otherwise obtain the benefit of, vary or rescind all contracts, arrangements, rights forming part of the Mortgaged Property, and instruments entered into or held by the Mortgagor, or entered into in exercise of the powers or authorities conferred by this clause in the name of the Mortgagor or otherwise;
- (j) make any arrangement or compromise which the Mortgagee thinks fit;
- (k) do all things necessary or convenient to perform or to observe any of the obligations on the part of the Mortgagor under this mortgage or any Collateral Security;
- (l) do or procure the doing of all things and pay or procure the payment of all money necessary to make good, to the satisfaction of the Mortgagee, any breach or default inherent in an Event of Default;
- (m) where any of the Secured Money for the time being remains contingent, invest, deposit or hold the Mortgaged Property in any form or in any mode of investment that the Mortgagee thinks fit and with a similar power to vary, transpose or reinvest those investments or deposits from time to time until that part of the Secured Money ceases to be contingent;
- (n) pursue debtors and do all things which the Mortgagee thinks necessary to recover or protect or in connection with the recovery or protection of any of the Mortgaged Property;
- (o) take proceedings at law or in equity which the Mortgagee considers necessary or expedient in connection with this mortgage or the Mortgaged Property, in the name of the Mortgagor or otherwise;
- (p) complete, pull down, rebuild, alter or add to, (or any combination of these things) any building, erection, development or project on any land which, or any interest in which, forms part of the Mortgaged Property;
- (q) convert, liquidate, restructure or reduce the whole or any part of the Mortgaged Property;

expedient to the Mortgagee; end, renew, surrender or accept the surrender of a lease or licence of the Mortgaged Property;

- (y) on any sale or Lease under this clause or under any statute, sell or Lease the whole or any part of the Mortgaged Property with any other property (whether real or personal) Encumbered by the Mortgagor or any other Person, by one contract and at one price, or at one rent or in any manner that the Mortgagee deems expedient, with full power to apportion all costs, expenses and purchase money or rents between the properties sold or Leased;
- (z) promote the formation of any company with a view to that company purchasing or acquiring the whole or any part of the Mortgaged Property or assuming obligations of the Mortgagor or both;
- (aa) employ managers, solicitors, professional advisers, consultants, officers, agents, auctioneers, workmen and servants for all or any of the purposes set out in this clause at the salaries or remuneration that the Mortgagee thinks fit;
- (bb) give effectual receipts for all money or assets which may come into the hands of the Mortgagee in the exercise of any power conferred by this clause, which receipts will exonerate any person paying or handing over that money or assets from all liability to see to the application of that money or assets and from all liability to enquire whether the Secured Money or any part of it has become payable or otherwise as to the propriety or regularity of any act or appointment under this mortgage;
- (cc) enter into and execute documents or agreements on behalf of itself or the Mortgagor for any purpose in connection with this mortgage or any Collateral Security (including, without limitation, to sign, to accept or to endorse cheques, promissory notes, bills of exchange and other negotiable instruments);
- (dd) delegate to any person for any time or times that the Mortgagee approves any of the powers and authorities conferred on the Mortgagee under this clause;
- (ee) do any other act and thing without limitation as the Mortgagee thinks expedient in the interests of the Mortgagee and incidental to any of the rights, powers, remedies, authorities and discretions referred to in or conferred by this clause;
- (ff) institute, conduct, defend, settle or compromise, in the name of the Mortgagor or otherwise on any terms, any proceedings, claim or dispute in connection with the Mortgaged Property or this mortgage and execute any document in connection with such action;
- (gg) the Mortgagee may:
 - (i) appoint in writing any one or more persons to be a Receiver or Receivers of the Mortgaged Property or the income of the Mortgaged Property or both with all or any of the rights, powers, remedies, authorities and discretions referred to in this clause;
 - (ii) remove that Receiver or those Receivers; and
 - (iii) if any Receiver is removed, retires or dies, appoint another or others in his place or, if the Mortgagee elects, in the case of removal or retirement, re-appoint that person.

22.2 The Mortgagee may at any time:

- (a) give up possession of the whole or any part of the Mortgaged Property; or
- (b) terminate any Receivership,
- (c) or both (a) and (b).

under or in purported exercise of any of the Mortgagee's or the Receiver's (as the case may be) rights, powers, remedies or authorities under this mortgage or any Collateral Security, no Lessee, purchaser or any other person involved with any such Disposal or Dealing:

- (d) need enquire whether there has been a default by the Mortgagor under this mortgage or any Collateral Security, or otherwise as to the propriety or regularity of the Dealing or Disposal; or
- (e) will be affected by express or constructive notice that the Dealing or Disposal is unnecessary or improper,
- (f) and despite any irregularity or impropriety, that Disposal or Dealing or attempted Disposal or Dealing will, as regards the protection of the Lessee, purchaser or other person involved with that Dealing or Disposal or attempted Dealing or Disposal, be deemed to be authorised and will, accordingly, be valid.
- (g) Neither the Mortgagee nor a Receiver will by reason of entering, or its employees, professional advisers, agents, or other persons on the Mortgagee's behalf or the Receiver's behalf (as the case may be) entering the Mortgaged Property, be liable to account as Mortgagee in possession or for anything whatever except actual receipts by the Mortgagee or the Receiver (as the case may be).
- (h) Neither the Mortgagee nor any Receiver will be liable or answerable for or in connection with any omission or delay or for any irregularity or involuntary loss which occurs as a result of or in connection with the exercise or non-exercise or attempted or purported exercise of any of the rights, powers, remedies, authorities or discretions of or conferred on the Mortgagee or a Receiver under this mortgage or any Collateral Security or otherwise.

24 RECEIPT AND APPLICATION OF MONEY

- (a) The Mortgagee may credit any money received, recovered or realised or available for receipt by the Mortgagee under this mortgage or any Collateral Security to any suspense account. The Mortgagee may keep the money in that account for as long as the Mortgagee thinks fit, accruing interest at the rate the Mortgagee thinks fit or negotiates, until the Mortgagee, at the time or times it thinks fit, applies the money in reduction or discharge of the Secured Money.
- (b) All money received by the Mortgagee or any Receiver subsequent to the enforcement of this mortgage will, when the Mortgagee decides to apply it in reduction or discharge of the Secured Money or otherwise under this clause, be applied in the following order:
 - (i) first, in payment of amounts which become owing or payable under the loan;
 - (ii) secondly, in payment of all costs, charges and expenses incurred in or incidental to the appointment of any Receiver, and the exercise of the powers of, and all expenses debts and liabilities of the Receiver or the Mortgagee;
 - (iii) thirdly, in payment of any Receiver's remuneration at the rate agreed between the Receiver and the Mortgagee at the time of or following the Receiver's appointment;
 - (iv) fourthly, towards the discharge of the Secured Money;
 - (v) fifthly, in reduction or discharge of Permitted Encumbrances;
 - (vi) sixthly, the surplus (if any) to or to the credit of an account in the name of the Mortgagor, and

27 PRESERVATION OF MORTGAGEE'S RIGHTS

The rights of the Mortgagee and the obligations and liabilities of a Mortgagor under this mortgage are not affected by anything which might otherwise affect them at law or in equity including, without limitation, any of the following:

- (a) the Mortgagee or another person granting time or other indulgence to any Mortgagor or Security Provider;
- (b) an Insolvency Event occurring with respect to a Mortgagor or a Security Provider;
- (c) any transaction or arrangement that may take place between the Mortgagee and a Security Provider, any Mortgagor or any other person;
- (d) any variation of a transaction, arrangement or agreement between the Mortgagee and a Security Provider, any Mortgagor or any other person;
- (e) the Mortgagee failing or neglecting to recover by the realisation of any Collateral Security or otherwise any of the Secured Money from any person;
- (f) any lack of power by any Mortgagor to enter into this mortgage either in its own right or in the capacity in which it is purporting to act;
- (g) the Mortgagee becoming a party to or being bound by any compromise, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction by or relating to the Mortgagor or any Security Provider;
- (h) the release, discharge, abandonment, loss, impairment, transfer of or other dealing with (either in whole or in part and whether with or without consideration) any right of the Mortgagee under this mortgage or under any Collateral Security;
- (i) the death of any person;
- (j) the obtaining of a judgement or order against a Mortgagor or a Security Provider, or any other person; or
- (k) the failure by any person intended or contemplated as a party to this mortgage to properly execute this mortgage.
- (l) Nothing contained in or implied by this mortgage will operate or be deemed to:
 - (i) discharge, release, postpone, merge or otherwise prejudice or affect any Collateral Security or right which the Mortgagee may hold, receive or claim in respect of the Secured Money; or
 - (ii) extinguish any right or remedy of the Mortgagee upon or under any Bill, promissory note, Guarantee, acknowledgment of debt, agreement for Financial Accommodation or any other contract or negotiable instrument.
- (m) Any judgment which the Mortgagee may obtain against the Mortgagor in respect of the Secured Money may be held as a Collateral Security and no other Collateral Security need merge in that judgment.
- (n) If any payment (in this clause 'Payment') made to the Mortgagee by or on behalf of the Mortgagor is subsequently avoided or conceded to be or compromised as being void or voidable under any law relating to insolvency or the protection of creditors or to any other matter or event whatever, then:
 - (i) the Payment will be deemed not to have discharged the liability of the Mortgagor in respect of which it was made despite any release, settlement or discharge which may have been given on the faith of the Payment;
 - (ii) the Mortgagee and the Mortgagor will be placed in or restored to the position they would have been in but for the Payment and may exercise the

proceedings to restrain or prevent the Mortgagee from exercising any of the Mortgagee's rights, powers or remedies under or referred to in this clause or under any Collateral Security on the basis that any such right, power or remedy is vested in or available to the Mortgagee unless the Secured Money as calculated by the Mortgagee is first paid in full or, if the amount of the Secured Money is disputed, is paid into court.

29 POWER OF ATTORNEY

The Mortgagor for valuable consideration irrevocably appoints the Mortgagee and each Authorised Officer from time to time of the Mortgagee jointly and severally to be the Mortgagor's attorney and in the Mortgagor's name (or in the name of the Mortgagee or of that attorney) and on the Mortgagor's behalf:

- (a) to do any act or thing which in the opinion of the Mortgagee or that attorney:
- (b) is necessary or expedient to give effect to any right, power or remedy conferred on the Mortgagee; or
- (c) it is necessary or expedient that the Mortgagor do,

under this mortgage or any Collateral Security;

- (d) to sign or enter into (or both) all assurances, documents, deeds, agreements, and instruments which in the opinion of the Mortgagee or that attorney it is necessary or expedient that the Mortgagor sign or enter into under this mortgage or any Collateral Security; and
- (e) generally to use the Mortgagor's name in the exercise of all or any of the powers conferred on the Mortgagee under or by this mortgage, any Collateral Security, statute, the general law or otherwise,

and the Mortgagor ratifies and confirms all and whatever the Mortgagee or any other attorney appointed under this clause may lawfully do or cause to be done under this power of attorney.

- (f) Any attorney appointed under this clause may:
 - (i) delegate its powers (including the power to delegate) to any person for any period;
 - (ii) revoke any delegation; and
 - (iii) exercise or concur in exercising any power, right or remedy despite the attorney or any director or shareholder of the attorney (being a corporation) having now or in the future a direct or personal interest in the mode or result of the exercise of that power, right or remedy.
- (g) The power of attorney created under this clause is irrevocable and is granted to secure the performance by the Mortgagor of the Mortgagor's obligations under this mortgage and each Collateral Security to which the Mortgagor is a party.

30 ILLEGALITY, FORCE MAJEURE

- (a) If at any time the Mortgagee determines that it has become unlawful or contrary to any law or Directive for it to:
 - (i) provide or to continue to provide the Facility to the Mortgagor or to any other person at the Mortgagor's request; or
 - (ii) allow the Facility (or any part of it) to remain outstanding,

then the Mortgagee will, promptly after becoming aware of the same, deliver to the Mortgagor a certificate to that effect and:

34 ENTIRE AGREEMENT

This mortgage constitutes the entire agreement of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it. Any statement made in negotiations for this mortgage which is not set out in this mortgage does not form part of the agreement between the parties.

35 SEVERABILITY

- (a) If reading down a provision of this mortgage prevents the provision being invalid or voidable it must be read down to the extent that it is necessary and capable of being read down.
- (b) If, notwithstanding the previous sub-clause, a provision of this mortgage is still invalid or voidable:
 - (i) if the provision would not be invalid or voidable if a word or words were omitted, that word or those words must be deleted; and
 - (ii) in any other case the whole provision must be deleted,
- (c) and the remainder of this mortgage continues to have full force and effect.

36 MORATORIUM LEGISLATION

To the extent permissible, no law will apply to this mortgage so as to extinguish, fetter, delay or otherwise prejudice any of the rights, powers and remedies of the Mortgagee under this mortgage or otherwise conferred on or available to the Mortgagee.

37 ASSIGNMENT

- (a) The Mortgagor may not, without the consent of the Mortgagee assign or otherwise dispose of or deal with its rights under this mortgage. The Mortgagee may at any time assign or otherwise dispose of or deal with its rights under this mortgage.
- (b) The Mortgagee may at any time disclose to a potential assignee (or like party for the purpose of this clause) such information about the Mortgagor, this mortgage or any Collateral Security.

38 NOTICES

- (a) Any notice or demand to be given or made by Mortgagee in connection with this mortgage may be signed by the Mortgagee, an Authorised Officer of the Mortgagee or any solicitor for the time being acting for the Mortgagee, whose signature may be handwritten or printed or otherwise reproduced by mechanical means.
- (b) In addition to the sufficient methods of service provided for by statute a notice or demand given or made by the Mortgagee in connection with this mortgage will be deemed to be duly given to or made, if:
- (c) sent or transmitted by facsimile to:
 - (i) any facsimile number of the Mortgagor set out in this mortgage or loan document or known to the Mortgagee at the date of this mortgage; or
 - (ii) any changed or other facsimile number for the Mortgagor published or disseminated in writing in any way by, on behalf of or at the apparent request of the Mortgagor;

entered into as part of the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust;

- (d) no restriction on the Mortgagor's right of indemnity out of or lien over the assets of the Trust exists or will be created or permitted to exist and that right of indemnity will have priority over the rights of the beneficiaries to the assets of the Trust.
- (e) The Mortgagor must not permit, and it will be an Event of Default if there occurs without the Mortgagee's prior written consent:
 - (i) any resettlement, appointment or distribution of capital of the Trust;
 - (ii) any retirement or replacement of the trustee or any appointment of a new trustee of the Trust;
 - (iii) any amendment of the agreement establishing the Trust;
 - (iv) any further encumbrance or charging whatsoever of any of the assets of the Trust;
 - (v) any breach of the provisions of the agreement establishing the Trust;
 - (vi) any termination of the Trust or variation of the vesting date; or
 - (vii) if the Trust is a unit trust, there is any transfer of or dealing with the units,

and if any of the above occurs the Mortgagor must inform the Mortgagee immediately.

40 JURISDICTION

- (a) This mortgage is governed by the laws of the state of New South Wales.
- (b) The parties irrevocably and unconditionally:
 - (i) submit to the non-exclusive jurisdiction of the courts (and all courts of appeal) of New South Wales;
 - (ii) waive any objection any party may now or in the future have to the bringing of proceedings in those courts and any claim that any proceedings have been brought in an inconvenient forum; and
 - (iii) agree, without limitation to any other mode of service permitted by law, that any deed to be served on any party in any proceeding may be served in the manner in which notices and other written communications may be given or made under this mortgage.

41 LIMITED RECOURSE BORROWING ARRANGEMENT

The Mortgagee acknowledges that this loan is a **LIMITED RECOURSE BORROWING ARRANGEMENT**, and accordingly has no recourse to any other assets held in the **John Kelly Superannuation Fund**, of which **John Kelly Superannuation Fund Pty Ltd** is a trustee.

Schedule 1: EPITOME OF MORTGAGE

1 Epitome of Mortgage

1.1 Mortgagee

- (a) Seabridge Investments Pty Ltd
- (b) 20-21 /121 Kerry Road, Archerfield QLD 4108

1.2 Mortgagor

- (a) John Kelly Superannuation Fund Pty Ltd
- (b) 20-21/121 Kerry Road, Archerfield QLD 4108

1.3 Guarantors

- (a) Name
- (b) Address

1.4 Date of loan

- (a) 01/07/2019

1.5 Principal

- (a) 225000
- (b)

1.6 Term

- (a) 5 Years
- (b) 0 Months

1.7 Date of repayment

- (a) Date

1.8 Address of security property

- (a) 20/121 Kerry Road,Archerfield QLD 4108
- (b) Lot 20 SP.195329 PAR Y'PILLY 1/39
- (c)

1.9 Variable interest rate

- (a) For each financial year, the RBA indicator lending rate for banks providing standard variable housing loans for investors, as published for the May prior to that financial year's commencement.

1.10 Higher rate of interest

- (a) # % per annum

1.11 Lower rate of interest

- (a) # % per annum

1.12 Installment amounts

- (a) Higher amount
- (b) Lower amount

1.13 Date of first installment

- (a) Date 31st July 2019

1.14 Date of subsequent consecutive monthly installments

- (a) Date last Day of Month

1.15 Additional interest on early repayment

- (a) One month interest calculated at # % per annum

1.16 Collateral Securities

- (a)

1.17 Collateral Agreements

- (a)

Executed as a DEED

Executed for and on behalf of
Seabridge Investments Pty Ltd

John E Kelly

Director
(print name and position) a duly
authorised person in the presence of:

Witness signature

Name of Witness (print)

Date:

Executed for and on behalf of John
Kelly Superannuation Fund Pty Ltd by

Bronwyn C Kelly
a duly authorised person in the
presence of:

Witness signature

Name of Witness (print)

Date: