



## **Annexure A: Mortgage**

This is the Annexure A referred to in the Mortgage dated 05 August 2019 between SEABRIDGE INVESTMENTS Pty LTD and John Kelly Superannuation Fund Pty Ltd as Trustee for John Kelly Superannuation Fund .

Date: 05/08/2019

## Contents

1	DEFINITIONS AND INTERPRETATION	5
1.1	Definitions	5
1.2	Interpretation	10
2	CONSIDERATION	11
3	RECEIPT OF LOAN AND CHARGE OF MORTGAGED PROPERTY	11
4	FIXED & VARIABLE INTEREST	11
4.2	Amortisation	11
5	INTEREST ONLY	12
5.2	Rate of interest	12
6	PRINCIPAL & INTEREST	12
7	CAPITALISATION OF INTEREST	13
8	FURTHER ADVANCES	13
9	COLLATERAL SECURITIES AND AGREEMENTS	13
10	OBLIGATION TO PAY AND DISCHARGE THE SECURED MONEY	13
11	MORTGAGE	14
12	CERTIFICATES OF TITLE	14
13	REPRESENTATIONS AND WARRANTIES	14
14	GENERAL AND FINANCIAL UNDERTAKINGS	15
15	OBLIGATIONS RELATING TO mortgaged PROPERTY	16
15.1	Positive Obligations	16
15.2	Prohibitions	17
15.3	STRATA AND COMMUNITY TITLE	18
15.4	Strata provisions	18
15.5	Community Title	19
15.6	Community Title	19
16	OBLIGATIONS RELATING TO INSURANCE	19
16.1	The Mortgagor must:	19
16.2	The Mortgagor must not:	20
17	OBLIGATIONS TO ALLOW OR PROCURE ACCESS	20
18	OBLIGATIONS TO PROVIDE FURTHER ASSURANCES	21

19	INDEMNITIES	21
20	EVENTS OF DEFAULT	22
21	OBLIGATIONS TO GIVE NOTICE OR PROVIDE INFORMATION	25
	21.2 The Mortgagor must:	25
22	MORTGAGEE'S POWERS	25
	22.2 The Mortgagee may at any time:	28
23	RECEIVERS	28
	23.2 Exercise of powers	29
24	RECEIPT AND APPLICATION OF MONEY	30
25	NO OBLIGATION TO EXERCISE RIGHTS OR GIVE CONSENT	31
26	CONTINUING SECURITY	31
27	PRESERVATION OF MORTGAGEE'S RIGHTS	31
28	COMBINING ACCOUNTS, SET-OFF	33
29	POWER OF ATTORNEY	34
30	ILLEGALITY, FORCE MAJEURE	34
31	AMENDMENT IN WRITING	35
32	DEED	35
33	COSTS	35
34	ENTIRE AGREEMENT	36
35	SEVERABILITY	36
36	MORATORIUM LEGISLATION	36
37	ASSIGNMENT	36
38	NOTICES	36
39	TRUST PROVISIONS	37
40	JURISDICTION	38
41	LIMITED RECOURSE BORROWING ARRANGEMENT	Error! Bookmark not defined.
	Schedule 1: EPITOME OF MORTGAGE	39

THIS DEED dated 5th Day of AUGUST 2019

**PARTIES:**

Seabridge Investments Pty Ltd  
(ACN/ABN 143 245 096 ) of 20-21/121 Kerry Road, Archerfield  
(Mortgagee)

OF THE FIRST PART

**AND**

**John Kelly Superannuation Fund Pty Ltd**

ACN 632 386 693) of 20-21/121 Kerry Road, Archerfield] (Mortgagor)

OF THE SECOND PART

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this mortgage, the following terms have these meanings unless the context otherwise requires:

- (a) **'Advance'** means each amount of credit provided by the Mortgagee to the Mortgagor;
- (b) **'Association'** means a community association, a precinct association or a neighbourhood association as defined in the Community Land Management Act 1989 (NSW);
- (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 21;
- (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 creditors with, or from the proceeds of, or by recourse to any asset and includes any agreement, arrangement or deed conferring such a right;
- (q) **'Facility'** means the credit facility where the Mortgagee has provided Financial Accommodation to the Mortgagor or to any other person at the request of the Mortgagor in consideration of which the Mortgagor has agreed to enter into this mortgage;

- (r) **'Financial Accommodation'** means any financial accommodation or form of financial accommodation including, without limitation:
- (i) an advance, loan, forbearance, or payment;
  - (ii) discounting, or drawing, accepting, endorsing, or becoming in any other way liable under, a bill of exchange, cheque, promissory note, warrant or other negotiable instrument at the request of, on behalf of, or for the benefit of another party;
  - (iii) giving or allowing credit;
  - (iv) giving or paying money under a Guarantee;
  - (v) providing financial accommodation by way of:
  - (vi) entering into or performing a Lease;
  - (vii) purchasing, or giving value for a right or asset; or
  - (viii) creating, assuming or undertaking a liability;
  - (ix) The principal sum advanced to the mortgagor the date of this loan for the term and on with interest payable at the rate of and frequency shown in the Schedule;
- (s) **'Financial Indebtedness'** means indebtedness, whether present or future, secured or unsecured, or actual or contingent arising under, in relation to, or as a result of any Financial Accommodation but does not include the deferred purchase price for any goods or services where the goods or services are obtained on normal commercial terms in the ordinary course of trading and the deferral is for less than 90 days;
- (t) **'Guarantee'** means a guarantee, indemnity, letter of credit, letter of comfort giving rise to legal liabilities, or any other obligation whatever called and of whatever nature:
- (i) to pay, to purchase, or to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of;
  - (ii) to indemnify against the consequences of default in the payment of; or
  - (iii) otherwise to be responsible for;
  - (iv) any obligation or indebtedness of any other person;
- (u) **'Improvements'** means all buildings, fixtures, fences or other structures at any time on the Mortgaged Property and includes all carpets, floor coverings, light fittings, blinds, curtains, building materials, plant, machinery, fittings and other like things of any nature at any time forming part of or attaching to those improvements or the Mortgaged Property;
- (v) **'Insolvency Event'** means the happening of any of these events:
- (i) if a person, being an individual, dies or becomes incapable of managing that person's own affairs;
  - (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);
- (bb) **'Potential Event of Default'** means any condition, act or event which, with the giving of any notice, the lapse of any period of time or the fulfilment of any requirement or any combination of the above could become an Event of Default;
- (cc) **'Public Authority'** means any government or minister, or any governmental, semi-governmental or judicial entity, department, instrumentality or authority;

- (dd) **'Receiver'** means any receiver or receiver and manager appointed under this mortgage or any Collateral Security;
- (ee) **'Secured Money'** means all amounts which the Mortgagor owes to the Mortgagee at any time, including:
  - (i) all amounts which at any time the Mortgagee has advanced or paid, or has become liable to advance or pay, for any reason:
    - (A) to or on behalf of the Mortgagor; or
    - (B) at the express or implied request of the Mortgagor; or
    - (C) because of any act or omission of the Mortgagor; or
    - (D) because of any act or omission of the Mortgagee made at the express or implied request of the Mortgagor; and
  - (ii) all amounts for which at that time the Mortgagor is or may become actually or contingently liable to the Mortgagee for any reason, including all amounts for which the Mortgagor is or may become liable to the Mortgagee in respect of any orders, drafts, cheques, promissory notes, bills of exchange, letters of credit, Guarantees, bonds and other instruments or engagements (whether negotiable or not) which:
    - (A) have been drawn, issued, accepted, endorsed, discounted or paid by the Mortgagee; or
    - (B) are held by the Mortgagee as a result of any transaction entered into by the Mortgagee for, or on behalf of, or at the express or implied request of the Mortgagor; and
  - (iii) all amounts which at that time are owing and unpaid, or owing but not presently payable, or owing upon a contingency, by the Mortgagor to the Mortgagee for any reason; and
  - (iv) all amounts which at that time the Mortgagee is entitled to recover or claim from the Mortgagor for any reason (including any assignment, transfer or disposition by any person to the Mortgagee of any property); and
  - (v) all amounts which at that time it is reasonably foreseeable or at some future time falls into any of the descriptions in (a), (b), (c) or (d) above applied as at that future time; and
  - (vi) all amounts which at that time the Mortgagor owes or is liable for, to any assignee of the Mortgagee because the assignee performs an agreement or exercises a right the Mortgagee had before the time of the assignment; and
  - (vii) all amounts which are payable to the Mortgagee under this mortgage or under any Collateral Security.
- (ff) **'Security Provider'** means any person other than the Mortgagor who enters into or gives a Collateral Security.
- (gg) **'Strata Act'** means the Strata Schemes (Freehold Development) Act 1973;
- (hh) **'Strata Scheme'** has the same meaning as in the Strata Schemes (Freehold Development) Act;
- (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:
  - (i) any equivalent or corresponding act of parliament or other form of legislation in force in another state or territory of Australia and, in the case of companies legislation, in any other place or jurisdiction in which a company to which the reference applies is incorporated or deemed to be incorporated;

- (ii) all statutory instruments made under any such act of parliament or other form of legislation; and
- (iii) amendments, consolidations or re-enactments of or substitutions for the act of parliament, other form of legislation, or statutory instrument referred to or deemed under this clause to be referred to.

## **2 CONSIDERATION**

The Mortgagor acknowledges incurring obligations and giving rights under this mortgage for valuable consideration received from the Mortgagee.

## **3 RECEIPT OF LOAN AND CHARGE OF MORTGAGED PROPERTY**

- (a) The Mortgagor acknowledges receipt of the principal sum advanced by the Mortgagee on the date and for the term shown in the Schedule. The loan is made and at the request of the Guarantors and on security of the property as set out in the Epitome of Mortgage in the Schedule.
- (b) The mortgagor charges the mortgaged property with the payment to the mortgagee or the monies owing including principal and interest, and the performance of the mortgagor's obligations under this mortgage and under any loan or collateral agreement.

## **4 FIXED & VARIABLE INTEREST**

- (a) In the event that interest is expressed in the Epitome of Mortgage to be variable then the Mortgagee may from time to time increase or decrease the rate of interest payable hereunder and will notify the Mortgagor of such increase or decrease by service on the Mortgagor of a notice in writing providing details of the basis of the variation.
- (b) The increase or decrease of the interest rate may only be made by the mortgagee to reflect variations in the Reserve Bank official cash rate published from time to time.
- (c) The increase or decrease in the rate of interest will come into effect on a date to be specified in the notice to the Mortgagor.
- (d) The Mortgagee may recalculate the instalments payable by the mortgagor if there is an alteration to the rate of interest payable or if there is any further advance or any other moneys become payable.

### **4.2 Amortisation**

- (a) The Mortgagee will recalculate the instalments payable so as to ensure, as nearly as practicable, that the principal moneys secured and interest on it will be repaid to the Mortgagee on the due date.
- (b) In the event that instalments are not recalculated then any additional interest payable will be capitalised quarterly.
- (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 is hereby agreed and declared, that if the Mortgagor will on every day on which principal and interest is hereinbefore made payable under this security, or within fourteen days after each such days respectively, pay to the Mortgagee interest on the principal sum or on so of the remaining balance as will for the time

being remain unpaid at the lower rate and will also duly observe and perform each and every covenant on the

- (c) Mortgagor's part herein contained or implied then the Mortgagee will accept interest on the said principal sum or on so much of the remaining balance as will for the time being remain unpaid at the lower rate in lieu of the higher rate for every month for which such interest will be paid to the Mortgagee within such fourteen days aforesaid.
- (d) 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.

## **7 CAPITALISATION OF INTEREST**

- (a) Without prejudice to the rights of the Mortgagee on default by the Mortgagor if any interest payable hereunder is not paid by the due date for payment then such unpaid interest will quarterly be added to and will form part of the principal moneys covered by this security, and will carry interest, until such repayment at such higher rate as may be shown in the schedule to the mortgage.

## **8 FURTHER ADVANCES**

- (a) From time to time the parties may agree in writing to the making of further advances on such terms as to interest and repayments as are agreed.
- (b) Such writing will form part of this deed and all rights and obligations relating to such further advances will be the same as those contained herein except as may be varied by such writing.

## **9 COLLATERAL SECURITIES AND AGREEMENTS**

- (a) The Mortgagor covenants with the Mortgagee to grant the Collateral Securities and Collateral Agreements referred to in the Schedule.
- (b) The Mortgagor will punctually perform observe and fulfil the terms and conditions of the Collateral Securities and Collateral Agreements in strict accordance with any instrument under which these arise and agrees that any breach of any Collateral Security or Collateral Agreement will be deemed to be a breach of this Mortgage and vice versa.

## **10 OBLIGATION TO PAY AND DISCHARGE THE SECURED MONEY**

- (a) The Mortgagor must pay the Secured Money in full to or as directed by the Mortgagee:
  - (i) at the time or times and in the way agreed in writing between the Mortgagor and the Mortgagee; or
  - (ii) otherwise, on demand.
- (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;

- (ii) all information provided by or on behalf of the Mortgagor or a Security Provider to the Mortgagee (including, without limitation, in any financial statements) is true and accurate and not misleading (including by omission);

- (iii) the Mortgagor and each Security Provider has complied with all Tax laws in all jurisdictions in which it is subject to Tax and has paid all Taxes due and payable by it and no material claims are being asserted against it with respect to Taxes;
- (iv) the Mortgagor does not act as trustee of any trust or settlement and is the sole beneficial owner of the Mortgaged Property other than as disclosed in this mortgage or to the Mortgagee in writing;
- (v) it has good title to the Mortgaged Property;
- (vi) all the Mortgagor's assets included in its latest accounts are free of any other third party right or interest other than an Encumbrance under or created by a Collateral Security or a Permitted Encumbrance; and
- (vii) the Mortgagor benefits by executing this mortgage.
- (g) The representations and warranties in this clause are in addition to any other representations and warranties contained in a Collateral Security.
- (h) The Mortgagor acknowledges that the Mortgagee has incurred or will incur obligations under or in connection with this mortgage or a Collateral Security in reliance on the representations and warranties in this clause.
- (i) The Mortgagor acknowledges that:
  - (i) it has not given or entered into this mortgage or any Collateral Security in reliance on and may not and will not rely on any representation, warranty, promise or statement made or alleged to be made by the Mortgagee or any person on behalf of the Mortgagee at any time, unless the representation, warranty, promise or statement is in writing and signed by the Mortgagee, or by an Authorised Officer of the Mortgagee;
  - (ii) the obligations of the Mortgagee are limited to those which are expressly set out in this mortgage or a Collateral Security; and
  - (iii) in respect of interest rates and rates of exchange, the Mortgagee is not liable in connection with, or to be held in any respect responsible for:
    - (A) any movement or change in interest rates, currencies or rates of exchange; or
    - (B) 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.

## **14 GENERAL AND FINANCIAL UNDERTAKINGS**

The Mortgagor must from the date of this mortgage until the Secured Money is repaid in full:

- (a) when the Mortgagor is a corporation, maintain its corporate existence;
- (b) comply with all Laws at any time in force and all mandatory requirements of any Public Authority;
- (c) duly and punctually pay all Taxes assessed, levied or imposed upon the Mortgagor or upon any Security Property held in any capacity by the Mortgagor;
- (d) do all things necessary to ensure that no Event of Default occurs;
- (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;
- (l) renew or replace when worn out or destroyed all present or future property used in connection with the Mortgaged Property;

- (m) carry out all work required by any Public Authority in relation to the Mortgaged Property; and
- (n) claim or join with the Mortgagee in claiming purchase money or compensation in relation to a resumption or acquisition by a Public Authority of the Mortgaged Property.

## 15.2 Prohibitions

The Mortgagor must not, without the prior consent in writing of the Mortgagee:

- (a) Deal with or Dispose of any of the Mortgaged Property;
- (b) execute, create, or permit to subsist any Encumbrance over or affecting the Mortgaged Property other than a Permitted Encumbrance;
- (c) apply for or obtain any money, goods or services from any person or fail to pay any amount owed to any person which might lead to:
  - (i) an Encumbrance or liability being imposed on the Mortgaged Property; or
  - (ii) this mortgage or any Collateral Security being in any way postponed or prejudicially affected;
- (d) surrender or allow to be surrendered any of the Mortgaged Property to a Public Authority or any other person or:
  - (i) compromise with, or agree on the purchase money or compensation payable by, a Public Authority; or
  - (ii) give a release to a Public Authority,
- (e) in relation to a resumption or acquisition by a Public Authority of the Mortgaged Property;
- (f) pull down, alter, extend or remove any Improvement forming part of the Mortgaged Property;
- (g) start or acquire a business not carried on by the Mortgagor at the date of this mortgage;
- (h) take on, or enter into a Lease, or acquire for consideration any asset other than in the ordinary course of the Mortgagor's business;
- (i) buy or enter into any agreement to buy any goods on terms reserving title to the supplier (or any other person) until payment is made for those goods (or any other goods or services);
- (j) agree to account to or hold in trust for any person the proceeds of sale of goods sold by the Mortgagor (whether or not in the ordinary course of business) with the express or implied authority of the owner of the goods;
- (k) factor, discount, assign, allow any right of set-off (however described) in respect of or otherwise Dispose of any of its book debts, monetary claims or revenues;
- (l) deposit, or allow the deposit of, any money or funds with any person:
  - (i) on terms to the effect that the deposit, or money standing to the credit of the Mortgagor in respect of that deposit, is or will be redeemable or repayable or may or will be withdrawn only if the Mortgagor pays some other debt, or discharges or performs some other obligation; or
  - (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.

## 16 STRATA AND COMMUNITY TITLE

Clause 16.1 below applies if the secured property now or in the future comprises a lot in a Strata Scheme.

### 16.1 Strata provisions

The mortgagor:

- (a) 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;
- (b) shall promptly comply with and observe the provisions of the Strata Schemes (Freehold Development) Act and any by-laws of the Strata Scheme;
- (c) 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;
- (d) 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;
- (e) shall procure the entry of the interest of the creditor in the secured property on the strata roll for the Strata Scheme;
- (f) 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 limited to, information relating to the present or future by-laws of the Strata Scheme and the compliance with obligations and exercise of rights of the Body Corporate; and

- (ii) a certificate under s 70(1)(c) of the Strata Schemes (Freehold Development) Act.

## **16.2 Community Title**

Clauses 16.3 below applies if the secured property now or in the future comprises a lot in a Community Scheme.

## **16.3 Community Title**

The mortgagor:

- (a) shall promptly pay all contributions and any other moneys which at any time become payable in respect of the secured property to the association;
- (b) shall promptly comply with and observe the provisions of the Community Titles Legislation and any by-laws of the plan;
- (c) 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;
- (d) shall ensure that the creditor is entitled in its absolute discretion to exercise the voting rights conferred upon it by the Community Titles Legislation;
- (e) shall give notice of the interest of the creditor in the secured property to the association pursuant to the relevant Community Titles Legislation;
- (f) irrevocably authorises the creditor at any time or times to obtain from the association and irrevocably authorises the association from time to time to provide to the creditor:
  - (i) all information which the creditor may require with respect to the association, the Community Scheme, the plan or the secured property including, but not limited to, the present or future by-laws of the plan and the compliance with obligations and exercise of rights of the association; and
  - (ii) a certificate under s 26 of the Community Land Management Act.

## **17 OBLIGATIONS RELATING TO INSURANCE**

### **17.1 The Mortgagor must:**

- (a) insure and keep insured all of the Mortgaged Property as is of an insurable nature against risk of loss or damage by fire and all other risks (including business interruption and loss of rent) that the Mortgagee may from time to time stipulate:
  - (i) in an amount satisfactory to the Mortgagee in each case; or
  - (ii) for full insurable value;
- (b) (whichever is the greater) and with:
  - (i) the interest of the Mortgagee as chargee or Mortgagee noted by endorsement on the policy; or
  - (ii) if the Mortgagee so directs, in the joint names of the Mortgagor and the Mortgagee for their respective rights and interests,
- (c) with underwriters approved by the Mortgagee;
- (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 17 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.

#### **17.2 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.

## **18 OBLIGATIONS TO ALLOW OR PROCURE ACCESS**

The Mortgagor must:

- (a) ensure that all books, records, and accounts of the Mortgagor are available for inspection at all reasonable times by the Mortgagee, its employees, professional advisers, agents, and other persons on the Mortgagee's behalf;

- (b) allow and give reasonable assistance to the Mortgagee, its employees, professional advisers, agents or other persons on the Mortgagee's behalf to inspect and take copies of or extracts from all books, vouchers and other documents in writing relating in any way to the business transactions of the Mortgagor;
- (c) allow or procure for the Mortgagee, its employees, professional advisers or agents, or other persons on the Mortgagee's behalf full and unfettered access upon reasonable notice to any land or building for the time being:
  - (i) occupied by the Mortgagor; or
  - (ii) forming or containing any part of the Mortgaged Property; and
- (d) allow or procure for the Mortgagee, its employees, professional advisers, agents, contractors, consultants and workmen full and unfettered access at all times to enter on or examine the Mortgaged Property:
  - (i) to examine the state of repair, order and condition of the Mortgaged Property;
  - (ii) to do any act or thing which ought to have been done by the Mortgagor under this mortgage or any Collateral Security;
  - (iii) to make right, to the extent possible, any Event of Default; or
  - (iv) to exercise any of the rights, powers or remedies of the Mortgagee;

or any combination of the above and give reasonable assistance to those persons to do any or all of the above.

## **19 OBLIGATIONS TO PROVIDE FURTHER ASSURANCES**

The Mortgagor must do, and must cause each other person having an interest in the Mortgaged Property or claiming under, or in trust for, the Mortgagor to do, all acts and things and execute all documents as and when the Mortgagee may from time to time reasonably require for:

- (a) perfecting the security created by this mortgage; and
- (b) providing more effective security to the Mortgagee over the Mortgaged Property for the payment of the Secured Money,
- (c) including, without limitation, executing any Encumbrance in a form prepared on behalf of or otherwise satisfactory to the Mortgagee (including but not limited to legal mortgages over property acquired by the Mortgagor after the date of this mortgage) over or in respect of any of the Mortgaged Property and, if required by the Mortgagee, ancillary Guarantees or other documents in a form prepared on behalf of or otherwise satisfactory to the Mortgagee. The obligations of the Mortgagor under this clause are in addition to any covenants or undertakings for further assurance implied by law or contained in this mortgage or any Collateral Security.

## **20 INDEMNITIES**

- (a) The Mortgagor indemnifies the Mortgagee from and against all actions, suits, claims, demands, losses, liabilities, damages and expenses which may be made, brought against, suffered or incurred by the Mortgagee arising out of or in 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.

## 21 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;
- (d) any person takes possession or attempts to take possession of Mortgaged Property, or any property of the Mortgagor or a Security Provider;
- (e) an Insolvency Event occurs with respect to the Mortgagor or a Security Provider;

- (f) without the prior consent in writing of the Mortgagee, the Mortgagor or a Security Provider creates or is party to or purports or attempts to create or be party to an Encumbrance which might by any means rank or be made to rank prior to or equally with this mortgage or any Collateral Security;
- (g) an execution or distress is issued or levied against the Mortgagor, a Security Provider or any Mortgaged Property, and is not stayed or satisfied within 5 Business Days;
- (h) any statement, representation or warranty made to the Mortgagee by or on behalf of the Mortgagor or a Security Provider or made in a certificate, report or opinion given or delivered to the Mortgagee and:
  - (i) which induced the Mortgagee to enter into a Collateral Security;
  - (ii) which induced the Mortgagee to provide any Financial Accommodation; or
  - (iii) on which the Mortgagee relied in agreeing to provide or to continue to provide any Financial Accommodation,
- (i) proves to be incorrect or misleading in any respect which the Mortgagee considers to be material;
- (j) an undertaking given by or on behalf of the Mortgagor or any Security Provider to the Mortgagee or the Mortgagee's solicitors is not complied with promptly and in accordance with its terms and, unless otherwise specified, within 5 Business Days of the giving of the undertaking;
- (k) a condition subsequent contained in or implied by this mortgage or a Collateral Security and whether prescribing an act or event in the control of the Mortgagor or otherwise, is not satisfied in accordance with its terms;
- (l) any Financial Accommodation is used for a purpose other than that for which it was provided;
- (m) without the prior consent in writing of the Mortgagee, the Mortgagor or a Security Provider Deals with or Disposes of any of its assets or its undertaking or any part of its assets or undertaking other than in the ordinary course of its business;
- (n) without the prior consent in writing of the Mortgagee, the Mortgagor or a Security Provider that is a corporation:
  - (i) reduces or attempts to reduce its share capital;
  - (ii) buys or acquires shares in itself or incurs liabilities in connection with the purchase or acquisition of shares in itself, or attempts to do so; or
  - (iii) becomes a party to a self-acquisition scheme;
- (o) without the prior consent in writing of the Mortgagee, the Mortgagor or a Security Provider that is a corporation makes an alteration or amendment to the provisions of its constitution which may in the reasonable opinion of the Mortgagee detrimentally affect the interests of the Mortgagee under this mortgage or under any Collateral Security;
- (p) where, at the relevant time, the Mortgagor or a Security Provider is a corporation (other than a corporation whose shares are listed by Australian Stock Exchange Limited or an exchange subsidiary of Australian Stock Exchange Limited), any 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;
    - (A) conferred by law;
    - (B) under or arising in connection with this mortgage or any Collateral Security;
    - (C) arising in any other way whatever, or

- (D) any combination of the above.

## **22 OBLIGATIONS TO GIVE NOTICE OR PROVIDE INFORMATION**

The Mortgagor must notify the Mortgagee in writing of:

- (a) every occurrence of an Event of Default or Potential Event of Default as soon as the Mortgagor becomes aware of the occurrence;
- (b) every change, event or set of circumstances which would cause a repetition by the Mortgagor, on any day after the date of this mortgage, of any representation or warranty in clause 13 or in any Collateral Security to be false or misleading in any way, as soon as the Mortgagor becomes aware of the change, event or set of circumstances;
- (c) every acquisition or resumption by a Public Authority of any of the Mortgaged Property, and every proposal by a Public Authority so to resume or acquire, as soon as the Borrower becomes aware of the resumption, acquisition or proposal (as the case may be);
- (d) the particulars and location of any Mortgaged Property on request by the Mortgagee.

### **22.2 The Mortgagor must:**

- (a) promptly provide the Mortgagee, its employees, professional advisers and agents with all information regarding the business and affairs of the Mortgagor or any Security Provider as the Mortgagee from time to time requires;
- (b) provide to the Mortgagee as soon as they are available and, in any event, by no later than 3 months after the respective annual balance dates for the accounts of the Mortgagor and the Security Provider, copies of the annual profit and loss accounts and balance sheets of the Mortgagor and the Security Provider as at the relevant balance date;
- (c) provide to the Mortgagee copies of all reports, accounts, notices and circulars issued by the Mortgagor or a Security Provider to their members as and when issued;
- (d) promptly provide to the Mortgagee such other financial or operating information as may reasonably be required by the Mortgagee from time to time regarding the Mortgagor, a Security Provider or any Mortgaged Property.
- (e) The Mortgagee may employ any professional adviser, agent or consultant, at the cost of the Mortgagor, to assess any information or material provided to the Mortgagee under this mortgage or to exercise any right of the Mortgagee under this mortgage.

## **23 MORTGAGEE'S POWERS**

The Mortgagee may, at any time after the occurrence of any Event of Default:

- (a) do all acts and things and exercise or enforce all rights, powers and remedies allowed to or conferred by law on a Mortgagee or which an absolute owner could do, exercise or enforce in relation to the Mortgaged Property;
- (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;
- (r) expend money in connection with the exercise or attempted exercise of any or any combination of the above rights, powers, remedies, authorities and discretions (which money will then form part of the Secured Money);
- (s) pay off any Encumbrance, (including, without limitation, a Permitted Encumbrance) and, at the cost of the Mortgagor, take a transfer or assignment of

that Encumbrance and, if the Mortgagee so elects, any ancillary or collateral Guarantee to that Encumbrance, for the benefit of the Mortgagee and, in connection with that paying off:

- (i) the Mortgagor will be indebted to the Mortgagee in an amount equal to the amount paid by the Mortgagee;
  - (ii) that debt will be immediately payable to the Mortgagee and form part of the Secured Money and interest will accrue on the outstanding amount of that debt as provided for in the definition of 'Secured Money';
  - (iii) the Mortgagee need not enquire whether the money claimed to be owing under or in connection with the or any prior Encumbrance is actually owing;
  - (iv) the person holding or having the benefit of the prior Encumbrance need not enquire whether there is any money owing under this mortgage or any Collateral Security; and
  - (v) the Mortgagor authorises and directs any person holding or having the benefit of a prior Encumbrance to provide the Mortgagee with any information the Mortgagee may require in connection with the prior Encumbrance, including, without limitation, the state of accounts under or in respect of that prior Encumbrance;
- (t) provide any Financial Accommodation for the account of the Mortgagor or obtain Financial Accommodation from any other person, for any purpose which, and on the terms and conditions that, the Mortgagee considers necessary or expedient in connection with any of the rights, powers or remedies of the Mortgagee or the Mortgaged Property; and
- (u) in the name of the Mortgagor or otherwise, secure the payment or repayment of any Financial Indebtedness in connection with that Financial Accommodation by any Encumbrance over the Mortgaged Property and irrespective of whether that Encumbrance will rank in priority to, equally with or after this mortgage or any Collateral Security;
- (v) sell or concur in selling (whether or not the Mortgagee has taken possession of the Mortgaged Property) any part of the Mortgaged Property:
- (i) either by public auction, private treaty, option or tender;
  - (ii) in one lot or in parcels;
  - (iii) for cash or on credit;
  - (iv) with power to allow the whole or any part of the purchase money to remain owing on a mortgage of the property sold, on any other Encumbrance or without any Encumbrance; and
  - (v) subject to any conditions that the Mortgagee considers expedient;
- (w) sever fixtures belonging to the Mortgagor and sell them apart from any other part of the Mortgaged Property;
- (x) Lease in the name of the Mortgagor or otherwise the whole or any part of the Mortgaged Property for any term, at the rent and on the terms that seem 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.

### **23.2 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).

## **24 RECEIVERS**

Every Receiver will, subject to any limitation or restrictions set out in the deed or other instrument under which the Receiver is appointed, have in relation to the Mortgaged Property in respect of which the Receiver is appointed:

- (a) power in the name and on behalf and at the cost of the Mortgagor to do or omit to do anything which the Mortgagor itself or an absolute owner could do or have done in respect of any such property;
- (b) (with the consent of the Mortgagee) all the powers conferred by law on Mortgagees in possession as such powers are varied and extended and applicable to the Mortgagee under this mortgage;
- (c) all the rights and powers conferred by law or under statute (including, without limitation, the Corporations Act) on receivers or receivers and managers; and
- (d) all the rights, powers, remedies, discretions and privileges available to or conferred on the Mortgagee anywhere under this mortgage (other than the power to appoint Receivers).
- (e) A Receiver will be the agent of the Mortgagor, and the Mortgagor will alone be responsible for the Receiver's acts and defaults, but if at any time, a resolution is passed or an order is made for the winding-up of the Mortgagor, the Receiver will to the extent required by law cease to be the agent of the Mortgagor and may, if the Mortgagee notifies him in writing, become the agent of the Mortgagee. The Mortgagee may, despite that resolution or order, exercise its power to appoint a further Receiver at or after that time.
- (f) The obligations, prohibitions and restrictions set out in or implied by this mortgage are not to be construed as limiting any rights, powers, remedies or discretions exercisable by a Receiver appointed under this mortgage who is, or who is deemed under this mortgage to be, an agent of the Mortgagor.
- (g) If two or more persons are appointed to be the Receiver under this mortgage, those persons may be appointed jointly, severally or jointly and severally as the Mortgagee may, in the instrument of appointment, stipulate. In the absence of any stipulation, the appointment will be deemed to have been made jointly and severally.
- (h) The Mortgagee may fix the remuneration of any Receiver appointed under this mortgage at an amount agreed between the Mortgagee and the Receiver or, in the absence of agreement, at a rate determined by the Mortgagee.

## **24.2 Exercise of powers**

- (a) The Mortgagee or a Receiver will, before it exercises a right, power or remedy under this clause or conferred by law:
  - (i) give any notice or demand; and
  - (ii) allow any time to elapse,
- (b) which it is required by law to give or allow. If, however, any notice, demand or requirement that time elapse which is otherwise applicable by law is able to be waived or negated by agreement, it is waived and negated. If any requirement that time elapse is not able to be waived or negated but is, or the time period involved is, able to be truncated or abridged, the time period which must elapse is fixed as the longer of one (1) day and the minimum period required by law.
- (c) If the Mortgagee or any Receiver Disposes of or Deals with or attempts to Dispose of or Deal with any of the Mortgaged Property (with or without any other property) 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.

## 25 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
- (c) the surplus (if any) referred to in paragraph (f) will not carry interest and the Receiver or the Mortgagee may pay that surplus to the credit of an account in the name of the Mortgagor in the books of the Mortgagee or, in the name of the Mortgagor at any bank (within the meaning of the Banking Act 1959

(Commonwealth)) and, on that crediting, the Receiver and the Mortgagee will be under no further liability in respect of that surplus.

- (d) In applying any money under this clause in or towards satisfaction of the Secured Money:
  - (i) the account of the Mortgagor will be credited only with so much of the money available for the purpose as is actually received by the Mortgagee;
  - (ii) any credit will date from the time of receipt (as determined by the Mortgagee); and
  - (iii) the Mortgagee may apply that money towards satisfaction of any part of the Secured Money as the Mortgagee may see fit, and
- (e) this clause will apply even though, in the exercise of any power of sale, the Mortgagee or the Receiver may have transferred the Mortgaged Property and taken an Encumbrance to secure the unpaid balance of the purchase money.

## **26 NO OBLIGATION TO EXERCISE RIGHTS OR GIVE CONSENT**

Each of the Mortgagee and a Receiver may:

- (a) exercise any right, power, remedy or authority;
- (b) give or decline to give any consent; or
- (c) make or decline to make any decision;
- (d) under this mortgage, in the Mortgagee's or the Receiver's (as the case may be) absolute and unfettered discretion. Neither the Mortgagee nor the Receiver need give a reason for the exercise or non-exercise, the consent or declining to give consent, or the decision or declining to give a decision. Neither the Mortgagee nor the Receiver will be liable or accountable for any loss arising out of or in connection with its delaying, declining or omission to exercise any right, power, remedy or authority, to give any consent, or to make any decision.
- (e) The Mortgagee need not resort to any Collateral Security in priority to this mortgage or any of its rights under this mortgage. Subject to the mandatory requirements of any applicable law, the Mortgagor may not require the Mortgagee to marshal or consolidate:
  - (i) this mortgage or this mortgage with any other Collateral Security or Encumbrance; or
  - (ii) any other Collateral Security or Encumbrance with this mortgage or this mortgage.

## **27 CONTINUING SECURITY**

This mortgage will be a continuing security, and will not be considered as wholly or partially discharged by the payment at any time in the future of any of the Secured Money or by any settlement of account or by any other matter or thing whatever and applies to the present and any future balance of the Secured Money.

## **28 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 might 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 rights and will be subject to the liabilities which each would have had or been subject to if the Payment and any release, discharge or settlement given on the faith of the Payment had not been made or given;
  - (iii) the Mortgagor must take all steps and sign all documents, and must procure that all relevant third parties take all steps and sign all documents that the

Mortgagee may require in connection with the replacement or reinstatement of this mortgage or any Collateral Security previously held by the Mortgagee from the Mortgagor or any other Security Provider;

- (iv) the Mortgagor must pay all costs, expenses, duties and fees in connection with the replacement or re-instatement of this mortgage or any Collateral Security; and
- (v) despite anything to the contrary contained in or implied by this mortgage, the Mortgagee may retain this mortgage and any Collateral Security until the Mortgagee is satisfied that no such payment made to the Mortgagee remains liable to be avoided.
- (o) Every release, settlement or discharge between or involving the Mortgagor and the Mortgagee will be subject to the provisions of this clause.

## **29 COMBINING ACCOUNTS, SET-OFF**

- (a) If the Mortgagor has 2 or more accounts with the Mortgagee, the Mortgagee may at any time, without notice to the Mortgagor or any other person, merge or consolidate any 2 or more of those accounts.
- (b) The Mortgagee may but need not set-off or apply:
  - (i) any sum or part of a sum standing to the credit of any account with the Mortgagee of:
    - (A) the Mortgagor;
    - (B) any person liable jointly with the Mortgagor; or
    - (C) the Mortgagor and such a person jointly; or
    - (D) any debt or liability of the Mortgagor to the Mortgagee on any account or owing in any way whatever (and whether the Mortgagee is legally or beneficially or in any other way entitled to that debt or liability),against or in reduction or discharge of any part of the Secured Money.
- (c) The rights and powers of the Mortgagee under the preceding subclauses are and will be enforceable and able to be exercised regardless of:
  - (i) the currencies in which accounts, sums, debts or liabilities are denominated;
  - (ii) the maturity or otherwise of any debt, liability or account;
  - (iii) the actual, contingent, prospective, primary, collateral, several, joint, or joint and several nature of any of the debts or liabilities;
  - (iv) any agreement to give notice in respect of any debt, liability or account;
  - (v) any course of dealing between the Mortgagee and the Mortgagor or any other person; and
  - (vi) any other matter or thing whatever.
- (d) The Mortgagor must not at any time claim or purport to exercise any right of set-off or other right or relief at law or in equity which has or might have the effect of reducing or discharging the Secured Money. The Mortgagor must not bring 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.

### **30 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.

### **31 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:

- (b) in the case of (a) or (b) or both, the obligation of the Mortgagee to continue to provide the Facility will be cancelled; and

- (c) if the Mortgagee so requires, the Mortgagor will, on such date as the Mortgagee specifies, repay the Secured Money.
- (d) If an act of force majeure occurs:
  - (i) the obligations of the Mortgagee under this mortgage (including, without limitation, its obligations to continue to provide or maintain the Facility) will be suspended to the extent that the Mortgagee is wholly or partially unable to comply with those obligations by force majeure;
  - (ii) the Mortgagee will as soon as practicable notify the Mortgagor of the force majeure and the extent to which the Mortgagee is unable to comply with its obligations under this mortgage;
  - (iii) the Mortgagee may by notice to the Mortgagor, to the extent that it is necessary (in the Mortgagee's reasonable determination) for it to do so terminate its obligations under this mortgage and on receipt of such notice:
    - (A) the obligation of the Mortgagee to continue to provide the Facility will be cancelled; and
    - (B) if the Mortgagee so requires, the Mortgagor will, on such date as the Mortgagee specifies, repay the Secured Money.
- (e) Force majeure includes, without limitation, fire, storm, flood, earthquake, explosion, accident, war, act of a public enemy, rebellion, insurrection, sabotage, epidemic, labour dispute, electrical failure, telecommunications failure and an act of God.

## **32 AMENDMENT IN WRITING**

No amendment to this mortgage has any force unless it is in writing and signed by all of the parties to this mortgage.

## **33 DEED**

This mortgage is executed as a deed.

## **34 COSTS**

The Mortgagor must pay or reimburse the Mortgagee on demand for all costs and expenses of the Mortgagee in relation to:

- (a) the negotiation, preparation, execution, delivery, completion or registration of this mortgage;
- (b) any variation, amendment, discharge or release of this mortgage;
- (c) any consent or approval of the Mortgagee given under this mortgage;
- (d) any actual or attempted exercise or enforcement of a power, right or remedy conferred on or implied in favour of the Mortgagee under this mortgage;
- (e) all taxes, stamp duties, registration fees and other duties, fines and penalties in respect to any of them, which may be payable or determined to be payable in connection with this mortgage,

including in each case, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.



### **35 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.

### **36 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.

### **37 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.

### **38 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.

### **39 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;

- (d) left for the Mortgagor, or sent by prepaid post to the Mortgagor at:
  - (i) any address of the Mortgagor set out in this mortgage or loan document or known to the Mortgagee at the date of this mortgage;
  - (ii) any changed or other address for the Mortgagor published or disseminated in writing in any way by, on behalf of or at the apparent request of the Mortgagor;
  - (iii) the Mortgagor's usual abode or place of business;
  - (iv) the Mortgagor's registered office; or
  - (v) any premises owned or occupied by the Mortgagor;
  - (vi) delivered personally to the Mortgagor.
- (e) Any such method of service will be valid and sufficient even if:
  - (i) the Mortgagor is bankrupt, insolvent, mentally ill, dead or absent from the place at or to which the notice or demand is left, delivered or sent;
  - (ii) the Mortgagor does not receive the notice or demand; or
  - (iii) where the notice or demand is sent by post, it is returned to the Mortgagee through the post office unclaimed.
- (f) Any such notice or demand will be deemed to have been received by the Mortgagor:
  - (i) if left or delivered personally, on the same day;
  - (ii) if sent by post to an address in Australia, on the second Business Day (in the place to which it is addressed) after the date of posting;
  - (iii) if sent by post to an address outside Australia, on the fourth Business Day (in the place to which it is addressed) after the date of posting;
  - (iv) if sent by facsimile, upon dispatch.

## 40 TRUST PROVISIONS

- (a) The Mortgagor has entered into and executed this mortgage on its own behalf and as trustee of the Trust and the Mortgagor and its successors as such trustee from time to time will be liable under the terms and conditions of this mortgage as such trustee to the intent that all the assets from time to time both present and future of the Trust, whether by reason of original settlement or any accretion to the Trust or of any purchase gift or other transfer or acquisition however occurring, will be available to satisfy the liabilities of the Mortgagor under this mortgage and the Mortgagor's right of indemnity out of same is hereby charged with the payment of the Secured Money provided however that nothing in this clause will release the Mortgagor from any liability in its personal capacity and the Mortgagor warrants as follows:
- (b) that all of the powers and discretions conferred by the agreement establishing the Trust are at the date of this mortgage capable of being validly exercised by the Mortgagor as trustee of the trust and that the same have not been varied or revoked and that the Trust is a valid and subsisting Trust as at the date of this mortgage;
- (c) that the Mortgagor is the sole trustee of the Trust and as such has full and unfettered power pursuant to the terms of the agreement establishing the Trust to encumber the assets of the Trust and that this mortgage is being executed and



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.

## 41 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.

## 42 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) 05/08/2019

### 1.5 Principal

- (a) \$270,000.00
- (b)
- (c)

### 1.6 Term

- (a) 6 Years
- (b) 0 Months

### 1.7 Date of repayment

- (a) 5<sup>th</sup> Day of each month.

### 1.8 Address of security property

- (a) 21/121 Kerry Road, Archerfield QLD 4108
- (b) Lot 21 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(5.94 % per annum for the 2019/2020 financial year)

### 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 5<sup>th</sup> September 2019

**1.14 Date of subsequent consecutive monthly installments**

- (a) Date 5<sup>th</sup> 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

Liza Green  
.....  
Name of Witness (print)

Date: 1/8/2019

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

Liza Green  
.....  
Name of Witness (print)

Date: 1/8/2019