SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 12716/15

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

STATEMENT OF FACTS OF THE PLAINTIFF

FILED PURSUANT TO SECTION 96(1) OF THE TRUSTS ACT 1973 (Qld)

Introduction

1. This statement of facts is filed in support of an application (CFI-9)[1] (**S 96 Application**) by the plaintiff, KordaMentha Pty Ltd (ACN 100 169 391) ("**Trustee**") in its capacity as trustee of the LM Managed Performance Fund ("**MPF**"), for directions pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), as to whether the Trustee would be justified in discontinuing this proceeding against the defendant, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("**LMIM**").

2. On 16 December 2015, the Trustee filed the claim and statement of claim (CFI-1) against LMIM. However, the claim was not initially served.

3. The principal relief sought against LMIM is for:

   (a) equitable compensation in the amount of $16,820,356.30 ("**Compensation Claim**");

   (b) a declaration that LMIM as trustee for the LM First Mortgage Income Fund ("**FMIF"**) FMIF holds the amount of $3,905,721.81 ("**Proprietary Amount**")[2] on constructive trust for the Trustee ("**Constructive Trust Claim**");

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1 In this statement of facts, CFI refers to the Court File Index an electronic copy of which appears on the website of the Supreme Court of Queensland.

2 The Trustee now knows this amount to be slightly higher but nothing turns on the point.

(c) a declaration that ("**Indemnity Claim**"):

(i) the Trustee is entitled to be indemnified out of the assets of the FMIF in respect of LMIM's liability to the Trustee for the Proprietary Amount;

(ii) the Trustee[3] has a lien or charge over the assets and undertaking of the FMIF in respect of LIMIM's liability to the Trustee for the Proprietary Amount;

(iii) the Trustee is entitled to be subrogated to the rights of LMIM in respect of the assets of the FMIF, in relation to the Proprietary Amount.

4. The theoretical basis for the Indemnity Claim was explained by Applegarth J in *KordaMentha Pty Ltd v LM Investment Management Ltd & Anor* [2016] QSC 183 at [18] to [21]. That decision was not about this particular proceeding.

5. Annexure **1** to this statement of facts is a true copy of the claim and statement of claim.

6. On 3 November 2016, the Trustee filed an application (CFI-2) pursuant to section 500(2) of the *Corporations Act* 2001 (Cth) ("**Corporations Act**") seeking leave *nunc pro tunc* to commence and proceed with the proceeding against LMIM (being a company in liquidation).

7. On 22 November 2016, Justice Daubney granted leave under section 500(2) of the Corporations Act (**S 500 Order**) (CFI-8). His Honour also ordered that:

(a) the plaintiff serve the claim and statement of claim on or before 15 December 2016 (the significance of this date is that under rule 24 of the Uniform Civil Procedure Rules, a claim remains in force for 1 year starting on the day it is filed);

(b) the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice ("**Written Notice**") to the

[3] The prayer for relief contains a typographical error in paragraph 3(b). It is the defendant (LMIM) as the trustee of the FMIF that holds the lien or charge. The plaintiff (Trustee) seeks to be subrogated to LMIM's rights under that lien or charge.

defendant's solicitors, Clayton Utz, and to the solicitors for the receiver of the FMIF, Tucker & Cowen, that a defence and counterclaim is required to be filed.

8. Annexure **2** to this statement of facts is a true copy of the S 500 Order.

9. On 28 November 2016, the claim and statement of claim was served on LMIM but the Written Notice has never been given.

10. The principal reason for the S 500 Order regarding the Written Notice was to avoid putting the parties to the expense of litigating the proceeding whilst multi-party settlement negotiations (including parties not involved in this proceeding) were ongoing to resolve various disputes that had arisen out of the affairs of LMIM and its winding up.

11. By early 2018, those multi-party settlement negotiations had come to an unsuccessful conclusion.

12. Due to time constraints, the Trustee did not obtain a direction under section 96 of the Trusts Act before filing the claim and statement of claim.

Key definitions

13. In this statement of facts:

    (a) LMIM in its role as the former trustee of the MPF is referred to as LMIM ATF the MPF;

    (b) LMIM in its capacity as responsible entity for the FMIF is referred to as LMIM ATF the FMIF;

    (c) Trust Company (PTAL) Limited ("**PTAL**") as custodian for LMIM ATF the MPF is referred to as PTAL ACF the MPF;

    (d) PTAL as custodian for LMIM ATF the FMIF is referred to as PTAL ACF the FMIF.

Standing to sue

14. As the new trustee of the MPF, the Trustee has the capacity to sue the former trustee, LMIM ATF the MPF.[4]

Service of the S 96 Application

15. The MPF has in excess of 4,500 members the majority of whom reside overseas.

16. On 16 July 2018, Justice Jackson made an order regarding service of the S 96 Application and supporting material upon the unitholders of the MPF ("**Service Order**").

17. Annexure **3** is a true copy of the Service Order.

18. Compliance with the Service Order will be addressed by way of affidavit at the hearing of the S 96 Application.

Relevant companies and individuals

19. The Trustee is the current trustee of the MPF (which is a unit trust), having, together with Calibre Capital Ltd ("**Calibre**"), replaced LMIM as trustee on 12 April 2013 by order of the Chief Justice in Supreme Court of Queensland Proceeding No. 2869 of 2013. Annexure **4** is a true copy of that order.

20. Annexure **5** is a true copy of a historical company search of the Trustee obtained from the Australian Securities and Investments Commission's (**"ASIC"**) electronic database on 17 July 2018.

21. On 5 January 2015, Calibre retired as trustee of the MPF.

22. Annexure **6** is true copy of a historical company search of LMIM obtained from ASIC's electronic database on 17 July 2018.

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4 *Young v Murphy; Swinbank v Murphy* [1996] 1 VR 279.

23. LMIM, since at least 1999, has carried on business as a professional trustee for reward, in which capacity it created and managed investment schemes.

24. LMIM was the trustee of the MPF from in or about December 2001 until 12 April 2013. Pursuant to:

    (a) trust deed dated December 2001 ("**the First Trust Deed**"), LMIM established the MPF, and became trustee of the MPF. The First Trust Deed was called the 'Constitution'. Annexure **7** is a true copy of the deed;

    (b) Deed of Variation dated 11 November 2002 ("**the Second Trust Deed**"), LMIM deleted all parts of the First Trust Deed other than the parties, and replaced it with the terms set out in the Second Trust Deed (Recital B of the Second Trust Deed). Annexure **8** is a true copy of the deed;

    (c) Deed of Variation dated 25 November 2009 ("**the Third Trust Deed**"), LMIM deleted clauses 1, 2.3, 2.4 and 3 to 27 of the Second Trust Deed, and replaced it with the terms set out in the Schedule to the Third Trust Deed (clause 1 of the Third Trust Deed). Annexure **9** is a true copy of the deed; and

    (d) Supplemental Deed Poll dated 23 October 2012 ("**the Fourth Trust Deed**"), LMIM amended clauses of the Third Trust Deed (specifically, in respect of classes of units) as set out in the Schedule to the Fourth Trust Deed. Annexure **10** is a true copy of the deed.

25. Pursuant to the First, Second, Third and Fourth Trust Deeds, LMIM agreed, among other things, to act as trustee of the scheme, and declared that it held the scheme fund and the scheme property on trust for the members.

26. LMIM has been the responsible entity of the FMIF since 28 September 1999. The FMIF is a registered managed investment scheme, pursuant to section 601EB of the Corporations Act. LMIM holds the property of the FMIF on trust for its members, pursuant to section 601FC of the Corporations Act.

27. The FMIF is under the control of Mr David Whyte of BDO, who was appointed on 21 August 2013, as court appointed receiver.

28. LMIM is under the control of its liquidators, John Park and Ginette Muller of FTI.

29. PTAL is a professional corporate trustee (formerly known as Permanent Trustee Australia Limited). Pursuant to the terms of a Custody Agreement dated 4 February 1999 ("**Custody Agreement**"):

    (a) PTAL agreed to custodially hold the Portfolio and Title Documents as agent for LMIM in relation to, among others, the FMIF; and

    (b) LMIM was responsible for taking all decisions in relation to the Portfolio and, subject to the Custody Agreement, PTAL was required to act on LMIM's Instructions in relation to any assets of the Portfolio.

30. Annexure **11** to this statement of facts is a true copy of the Custody Agreement.

31. On or about 1 November 2011, LMIM ATF the MPF and PTAL entered into a Deed of Assignment. In simple terms, the effect of this deed was to make PTAL the custodian of the relevant assets of the MPF, on the terms set out in the Custody Agreement.

32. On 29 September 2002, Australian International Investments Services Pty Ltd ("**AIIS**") was incorporated. At all material times AIIS was a wholly owned and controlled subsidiary of LMIM ATF the MPF. Annexure **12** is a true copy of a historical company search of AIIS obtained from the ASIC electronic database on 17 July 2018.

33. On 4 August 2011, Aalto Apartments Pty Ltd ("**Aalto**") was incorporated. Annexure **13** is a true copy of a historical company search of Aalto obtained from the ASIC electronic database on 17 July 2018.

Summary of the proceeding

Factual matters

34. The statement of claim is a lengthy document. The following is a summary of the claim and the statement of claim.

35. The claim relates to a series of loans made by LMIM ATF the MPF and LMIM ATF the FMIF to AIIS, which was seeking to develop land ("**Land**") situated at 7 Irving Street, Phillip, Australian Capital Territory. Phillip is a suburb of Canberra.

36. After its incorporation, AIIS acquired a 99 year lease over the Land.

37. On or about 19 January 2005, LMIM ATF the MPF and AIIS entered into a Loan Agreement for the sum of $1,140,000 for the purpose of purchasing and developing the Land ("**AIIS Loan**"). Initially, no security was obtained for the AIIS Loan.

38. Annexure **14** to this statement of facts is a true copy of the AIIS Loan.

39. The AIIS Loan was subsequently varied:[5]

    (a) on or about 11 April 2005 by a Deed of Variation between LMIM ATF the MPF and AIIS, to increase the loan amount to $4,200,000 ("**First Deed of Variation of the AIIS Loan**");

    (b) on or about 30 November 2008 by Deed of Variation between LMIM ATF the MPF and AIIS, to require AIIS to grant security to LMIM ATF the MPF ("**Second Deed of Variation of the AIIS Loan**") in the form of what became registered second mortgage no. 1611828;

    (c) on or about 22 December 2009 by Deed of Variation between LMIM ATF the MPF and AIIS, to increase the loan amount to $5,500,000 ("**Third Deed of Variation of the AIIS Loan**");

    (d) on or about 6 October 2010 by Deed of Variation between LMIM ATF the MPF and AIIS, to increase the loan amount to $7,500,000 ("**Fourth Deed of Variation of the AIIS Loan**");

    (e) on or about 14 August 2012 Deed of Variation between LMIM ATF the MPF, PTAL ACT the MPF and AIIS, to increase the loan amount to $16,800,000 ("**Fifth Deed of Variation of the AIIS Loan**");

[5] The following is a summary of the main changes brought about by the deeds of variation. The statement of claim elaborates on other relevant changes.

(f) on or about 1 February 2013 by Deed of Variation between LMIM ATF the MPF, PTAL ACT the MPF and AIIS, to increase the loan amount to $24,000,000 ("**Sixth Deed of Variation of the AIIS Loan**"),

collectively the "**MPF AIIS Loan Variation Deeds**".

40. Annexure **15** to this statement of facts is a true copy of the MPF AIIS Loan Variation Deeds.

41. On or about 8 April 2005, LMIM ATF the FMIF, PTAL ACF the FMIF and AIIS entered into a Loan Agreement ("**FMIF Loan**"). PTAL ACF the FMIF took first registered mortgage no. 1416794 over the Land as security.

42. The FMIF Loan was subsequently varied by:

(a) a Deed of Variation dated 19 June 2007;

(b) a Deed of Variation dated 12 December 2007;

(c) a Letter of Variation dated 14 April 2008;

(d) a Letter of Variation/Deed of Variation dated November 2008.

43. The Trustee does not have a copy of the deeds/letters varying the FMIF Loan.

44. LMIM ATF the FMIF and LMIM ATF the MPF entered into the following deeds of priority in relation to their respective loans and securities:

(a) on or about 30 November 2008 PTAL ACF the FMIF, LMIM ATF the FMIF, LMIM ATF the MPF and AIIS entered into a deed of priority giving (in simple terms) ("**First Priority Deed**"):

(i) the FMIF first priority up to $7,800,000 plus interest and costs;

(ii) the MPF second priority for $4,200,000 plus interest and costs;

(iii) the FMIF third priority for $7,800,000 plus interest and costs;

(iv) the MPF fourth priority for $4,200,000 plus interest and costs;

(b) on or about 22 December 2009 November 2008 PTAL ACF the FMIF, LMIM ATF the FMIF, LMIM ATF the MPF and AIIS entered into a deed of priority giving (in simple terms) ("**Second Priority Deed**"):

(i) the FMIF first priority up to $7,800,000 plus interest and costs;

(ii) the MPF second priority for $5,500,000 plus interest and costs;

(iii) the FMIF third priority for $7,800,000 plus interest and costs;

(iv) the MPF fourth priority for $5,500,000 plus interest and costs;

(c) on or about 12 October 2010[6] PTAL ACF the FMIF, LMIM ATF the FMIF, LMIM ATF the MPF and AIIS entered into a deed of priority giving (in simple terms) ("**Third Priority Deed**");

(i) the FMIF first priority up to $7,920,000 plus interest and costs;

(ii) the MPF second priority for $7,500,000 plus interest and costs;

(iii) the FMIF third priority for $7,920,000 plus interest and costs;

(iv) the MPF fourth priority for $7,500,000 plus interest and costs;

(d) on or about 15 August 2012[7] PTAL ACF the FMIF, LMIM ATF the FMIF, LMIM ATF the MPF and AIIS entered into a deed of priority giving (in simple terms) ("**Fourth Priority Deed**")

(i) the FMIF first priority up to $8,295,000 plus interest and costs;

(ii) the MPF second priority for $18,800,000 plus interest and costs;

(iii) the FMIF third priority for $8,295,000 plus interest and costs;

(iv) the MPF fourth priority for $18,800,000 plus interest and costs,

collectively, the "**Priority Deeds**".

[6] The date pleaded at paragraph 61 of the statement of claim incorrectly says 12 December 2012.
[7] The date pleaded at paragraph 91 of the statement of claim incorrectly says 14 August 2012.

45. Annexure **16** to this statement of facts is a true copy of the Priority Deeds.

46. Prior to 14 November 2011, AIIS and Aalto entered into a Land Availability Agreement regarding at a very high level, the development of the Land ("**Aalto Apartments development**").

47. LMIM obtained the following valuations in relation to the Land:

    (a) in February 2008, a CBRE valued the Land at $11.85 million "as is" and before any development approval had been obtained;

    (b) on 12 April 2012, Jones Lange LaSalle valued the Land:

        (i) "as is" and with the development approval in the amount of $8,500,000 (ex GST); and

        (ii) if the Aalto Apartments development was complete, a gross realisations value of $141,615,800 (ex GST).

48. As at 31 March 2012, the FMIF Loan was $8,126,000.

49. As at 3 April 2012, the AIIS Loan was $15,989,000 (including interest).

50. In total, LMIM ATF the MPF advanced $11,385,581.62 in principal to AIIS under the AIIS Loan. Of this amount, $3,905,721.81 (the Proprietary Amount) was paid to LMIM ATF the FMIF or PTAL ACF the FMIF, on account of interest owed by AIIS under the FMIF Loan.

51. A major component of the Compensation Claim is the amount of $9,044,723.21 representing interest that LMIM ATF the MPF allegedly lost the opportunity to earn elsewhere.

52. In or about October 2013, the Land was sold for a price not known by the Trustee. The Trustee received no money from the sale of the Land so it is reasonable to infer that the sale price was for less than $8,295,000 plus interest and costs, being the FMIF's first priority amount under the Fourth Priority Deed.

The duties owed by LMIM ATF the MPF

53. The statement of claim alleges that LMIM ATF the MPF was subject to the following legal obligations:

    (a) an equitable duty of care to exercise the same care that an ordinary, prudent person of business would exercise in the conduct of that business;

    (b) a fiduciary duty not to place itself in a conflict of interest or duty;

    (c) a duty under section 22 of the Trusts Act to exercise the same care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons, when exercising a power of investment;

    (d) various duties under section 24(e), (g), (h), (j) and (n) of the Trusts Act.

Breach of the duties

54. The statement of claim alleges numerous breaches of duty by LMIM but a high level summary of the principal factual matters alleged to give rise to the breaches is as follows.

55. First, LMIM ATF the MPF loaned money to AIIS in 2009, 2010 and 2011 using the CBRE valuation from February 2008. The basic contention is that the CBRE valuation was out of date and should not have been relied upon.

56. Second, the amounts cumulatively advanced by LMIM to AIIS eventually exceeded a loan to value ratio of 100%.

57. Third, LMIM ATF the MPF paid the Proprietary Amount to LMIM ATF the FMIF or PTAL ACF the FMIF. The thrust of this allegation is that it benefitted the FMIF at the expense of the MPF.

58. Fourth, LMIM ATF the MPF loaned more money to AIIS than it was likely to recover if the Aalto Apartments development proceeded.

59. Fifth, LMIM ATF the MPF failed to obtain the necessary internal approvals before entering into the Sixth Deed of Variation.

60. These alleged breaches are set against a background where LMIM ATF the MPF initially entered into the AIIS Loan without taking security and by the time it did take security, LMIM ATF the FMIF had entered into the FMIF Loan and obtained a first ranking mortgage.

The loss suffered by LMIM ATF the MPF in relation to the Compensation Claim

61. The Trustee alleges that the MPF suffered the following losses as a result of the breaches.

62. The first loss is the amount of $7,775,633.09 being the principal debt it is owed under AIIS Loan ($11,385,581.62 minus $3,609,648.53 less receipts applied to principal).

63. The second loss is the amount of $9,044,723.21 being the lost opportunity to earn interest elsewhere.

64. The total loss claimed is $16,820,356.30.

The Constructive Trust Claim

65. The Trustee also seeks a declaration that the LMIM ATF the FMIF holds the Proprietary Amount on constructive trust for LMIM ATF the MPF.

66. The success of the Constructive Trust Claim (being based upon an asserted remedial constructive trust) would depend in this case upon, inter alia, the ability of the Trustee to trace the Proprietary Amount into the hands of LMIM ATF the FMIF.

The Indemnity Claim

67. The Trustee also seeks a declaration that LMIM is entitled to be indemnified out of the assets of the FMIF in relation to the Proprietary Amount and has a lien or charge over the assets of the FMIF in this respect. The Trustee then seeks to be subrogated to the rights of LMIM.

Other relevant events

The First Proceeding and the Second Proceeding

68. On 27 August 2014, the Trustee commenced Supreme Court of Queensland Proceeding no. 8032/14 against LMIM for $5,128,071.34 plus interest and costs ("**First Proceeding**").

69. On 27 August 2014, Trustee also commenced Supreme Court of Queensland Proceeding no. 8034/14 against LMIM for $18,982,171.51 plus interest and costs ("**Second Proceeding**").

70. On 18 August 2015, Justice Daubney heard the Trustee's application under section 96 of the Trusts Act in relation to the First Proceeding and the Second Proceeding ("**First Section 96 Application**").

71. Annexure **17** to the statement of fact is a true copy of the order made by Daubney J on 26 August 2015 in relation to the First Section 96 Application ("**Order**")

72. Annexure **18** to the statement of facts is a true copy of his Honour's reasons for making the Order, which are cited as *Kordamentha Pty Ltd v LM Investment Management Limited (Receivers and Managers Appointed); Re: KordaMentha Pty Ltd* [2015] QSC 376 ("**Reasons**")

73. Subject to Order 2 of the Order, Daubney J directed at Orders 1.1 and 1.2, pursuant to section 96 of the Trusts Act that the Trustee would be justified in prosecuting the First Proceeding and the Second Proceeding.

74. Order 2 states that each of Orders 1.1 and 1.2 is conditional upon there being filed in each of the First Proceeding and the Second Proceeding respectively a Deed Poll executed by IMF Bentham Limited ("**IMF**") by which IMF agrees to pay adverse costs orders made against the Trustee in each proceeding during the term of the litigation funding made between the Trustee and IMF and to give the defendant(s) in

each proceeding written notice of any termination of the litigation funding agreement within 7 days of such termination.

75. Daubney J stated at [17] of the Reasons:

> "In reaching my conclusion with respect to the appropriateness of making directions under s 96, I expressly do so on the basis that litigation funding will be provided on terms which are identical to those put before me in the confidential information. Should that situation change, and it be the case that the litigation funder will only provide funding on terms different from those put before me, then I consider that this would be a circumstance which would require the legal advisers for the Trustee, in proper discharge of their obligations as officers of the Court, to bring these matters back before the Court for further consideration."

76. The existence of a funding agreement for the First Proceeding and the Second Proceeding was important for two principal reasons:

(a) it enabled the Trustee reliably to fund its own costs of prosecuting the proceedings; and

(b) it provided the defendant in the proceedings with more certainty that any costs orders in its favour against the Trustee would be met.

77. On 17 April 2018, IMF gave notice to the Trustee, 14 days' notice of the termination of the funding agreement in relation to the First Proceeding and the Second Proceeding.

78. On 18 April 2018, Mr Whyte's lawyers wrote to the Trustee's lawyers in the First Proceeding and the Second Proceeding to, relevantly, raise:

(a) section 601FH(b) of the Corporations Act as a possible defence to the Indemnity Claim; and

(b) section 601GA(2) of the Corporations Act as a possible defence to the Indemnity Claim.

79. On 1 May 2018, the funding agreement with IMF terminated.

80. On the same day, the Trustee's solicitors wrote to Mr Whyte's solicitors and LMIM's solicitors to:

(a) give written notice of the termination of the funding agreement;

(b) advise that the Trustee intends to discontinue the First Proceeding and the Second Proceeding if so advised by the Supreme Court of Queensland acting pursuant to section 96 of the Trusts Act.

81. On 4 May 2018, the Trustee applied for directions for under section 96 of the Trusts Act that it would be justified in discontinuing the First Proceeding and the Second Proceeding ("**Second Section 96 Application**").

82. On 7 June 2018, Justice Boddice heard the Trustee's Second Section 96 Application. On the same day, his Honour ordered, in effect, that pursuant to section 96 of the Trusts Act the Trustee is directed that it would be justified in discontinuing the First Proceeding and the Second Proceeding.

83. Annexure **19** is a true copy of the sealed order made by Boddice J. The Trustee is seeking to obtain a copy of the *ex tempore* reasons given by Boddice J.

84. Boddice J also made orders in relation to the costs of the First Proceeding and the Second Proceeding that upon the discontinuance by the plaintiff, the plaintiff would pay the defendants' costs up to the date of discontinuance on a standard basis.

85. On 7 June 2018, the Trustee discontinued the First Proceeding and the Second Proceeding. Annexure **20** is a true copy of the sealed discontinuance filed in each proceeding.

The FMIF Proceeding and the RE Management Fee Proceeding

86. On 19 December 2014, Mr Whyte commenced Supreme Court of Queensland Proceeding no. S12317/14 ("**FMIF Proceeding**") in which LMIM ATF the FMIF is suing six current and former directors of LMIM, LMIM and the Trustee for, at most, $15,546,147 plus interest and costs.

87. On 9 November 2016, Mr Whyte commenced Supreme Court of Queensland Proceeding no. 11560/16, in which LMIM ATF the FMIF is suing LMIM for various

declarations, equitable compensation, compensation pursuant to section 1317H(1) of the Corporations Act, interest and costs ("**RE Management Fee Proceeding**").

88. The quantum of the RE Management Fee Proceeding is difficult to ascertain from the amended statement of claim but appears to be in excess of $30 million.

89. The Trustee is not a party to the RE Management Fee Proceeding but it is relevant because Mr Whyte will likely seek to rely upon the RE Management Fee Proceeding in this proceeding as a basis for deploying the clear accounts rule by way of defence.

90. The clear accounts rule has recently been discussed by Jackson J in *Park & Muller (Liquidators of LM Investment Management Ltd) v Whyte No 2* [2017] QSC 229 at [186] and [187] and *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte No 3* [2017] QSC 230 at [124] to [143].

91. Relevantly, the clear accounts rule provides that:[8]

> "…where trustee's entitlement to an indemnity for a liability properly incurred is subject to a counter-liability for his breach of trust a balance is to be ascertained on the cross-liabilities and the trustee is entitled to payment of any balance in his or her favour."

Correspondence relating to this proceeding

92. On 3 May 2018, the solicitor for Mr Whyte wrote to the solicitors for the Trustee and asked, inter alia, that the Trustee either take steps to progress its claim or alternatively, discontinue the proceeding.

93. On 14 May 2018, the solicitors for Mr Whyte wrote to the solicitors for the Trustee following up their letter of 3 May 2018.

94. On 28 May 2018, the solicitors for the Trustee wrote to the solicitors for Mr Whyte and declined to discontinue the proceeding or give the Written Notice.

95. On 4 June 2018, the solicitors for Mr Whyte wrote to the solicitors for the Trustee and among other things:

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8 *RWG Management Ltd v Cmr for Corporate Affairs* [1985] VR 385 per Brooking J.

(a) stated that there was no pleading of any material facts or any tracing process to support the Constructive Trust Claim;

(b) raised section 601FH(b) of the Corporations Act as a defence;

(c) raised the clear accounts rule as a defence;

(d) raised Mr Whyte joining the proceeding as a defendant.

96. On 13 June 2018, the solicitors for Mr Whyte wrote to the solicitors for the Trustee following up their letter of 4 June 2018.

97. On 25 June 2018, the solicitors for the Trustee wrote to the solicitors for Mr Whyte offering an undertaking to resolve Mr Whyte's complaints.

98. On 26 June 2018, the solicitors for Mr Whyte wrote to the solicitors for the Trustee to reject that offered undertaking and follow up on the issue of Mr Whyte joining the proceeding.

99. On 3 July 2018, the solicitors for the Trustee wrote to the solicitors for Mr Whyte and stated that the Trustee had decided to discontinue the proceeding if directed by the Court acing pursuant to section 96 of the Trusts Act. The letter said that in the circumstances it was unnecessary for Mr Whyte to become a party.

100. On 5 July 2018, the solicitors for the Trustee wrote to the solicitors for Mr Whyte and the solicitors for LMIM and by way of notice provided a copy of, relevantly, the S 96 Application.

101. Annexure **21** is a true copy bundle of the correspondence identified in paragraphs 92 to 100 of the statement of facts above.

Estimated value of the MPF

102. As at 11 July 2018, the Trustee holds cash at bank in the amount of $8,162,021.

103. Of that amount, $6,555,502.57 ("**Tax Refund**") is the net amount recently refunded by the Australian Taxation Office ("**ATO**") to the Trustee in respect of withholding tax paid. The ATO paid the tax Refund to the Trustee on the basis that it would be distributed to the unitholders of the MPF.

104. The available cash after deducting the Tax Refund is $1,606,518.43.

105. The Trustee holds the Tax Refund on trust for the purpose of making a distribution to the unitholders of the MPF.

106. The Trustee expects to receive approximately $830,000 from the sale of the asset of a company called 457-459 Lygon Street Pty Ltd.

107. The only other significant assets held by the Trustee are the choses in action. These are contingent assets.

108. The Trustee expects cash outgoings (net of GST) over the next 12 months alone to be in excess of $1,250,000, which includes the following:

(a) remuneration for the Trustee estimated to be approximately $600,000 (no remuneration has been paid to the Trustee in the past 12 months);

(b) legal fees relating to ongoing litigation. In this respect it does not appear likely that the FMIF Proceeding is going to settle and the Trustee is going to have to continue to defend the claim to protect the remaining assets of the MPF;

(c) legal fees and other costs associated with the administration of the MPF and the distribution process.

109. Even if the cash outgoings do not exceed $1,250,000 the outgoings will be significant.

Estimated value of the assets of LMIM and the FMIF

110. LMIM is in liquidation, and the Trustee understands that LMIM will have no money of its own (as opposed to money in the FMIF) to meet any judgment against it.

111. The Trustee does not have a copy of the insurance policies, but it is a matter of public record that LMIM has the benefit of insurance policies that *might* respond to the Compensation Claim if successful.

112. In relation to those insurance policies the Trustee further states:

(a) the insurance policies were drawn upon by the directors of LMIM to defend themselves in *Australian Securities and Investments Commission v Drake (No. 2)* (2016) 340 ALR 75 ("***Drake No. 2***");

(b) the insurance policies are being drawn upon by the directors of LMIM to defend themselves in the FMIF Proceeding;

(c) the directors' defence costs in the FMIF Proceedings will be significant.

113. Annexure **22** to this statement of facts is a true copy of a report dated 29 June 2018 ("**June 2018 FMIF Report**") by Mr David Whyte in relation to the FMIF.

114. The June 2018 Report estimates that (as at 31 May 2018) the net assets available to distribute to unitholders in the FMIF to be between $62,038,970 and $67,806,865.

115. The Trustee cannot independently verify these figures.

Financial inability to fund the proceeding

116. Mr David O'Brien, a partner of MinterEllison, estimates that the Trustee's costs of prosecuting this proceeding to the conclusion of a trial will be approximately $1.2M – $1.35M exclusive of GST.

117. In relation to the costs estimate a number of factors need to be mentioned:

(a) the proceeding is at early stage. No notice of intention to defend and defence has been filed;

(b) there has been no disclosure yet;

(c) the Constructive Trust Claim would involve a tracing exercise, which would likely be expensive;

(d) Mr Whyte has raised a number of defences in correspondence that could lead to amendments of the statement of claim or to interlocutory disputes;

(e) Mr Whyte is a well-resourced defendant who has demonstrated a willingness to bring interlocutory applications in related proceedings (this is not intended in any way as a criticism)

118. Even if the costs are less than the amount estimated, the costs will be significant.

119. The Trustee estimates that its remuneration for prosecuting this proceeding to the conclusion of a trial will be in the range of $250,000 to $350,000 exclusive of GST.

120. Mr O'Brien estimates that the Trustee's costs of defending the FMIF Proceeding will be approximately $700,000 - $850,000 exclusive of GST.

121. The FMIF Proceeding is much more advanced than this proceeding and would likely come to trial first.

122. The Trustee estimates that its remuneration for defending the FMIF Proceeding will be approximately $150,000 - $250,000 exclusive of GST.

123. The Trustee is of the opinion that it cannot fund the prosecution of the proceeding out of the Trustee's own resources whilst also defending the FMIF Proceeding.

124. The Trustee has not received any offer from unitholders of the MPF to fund the proceeding.

125. The Trustee has not sought litigation funding in relation to the proceeding because it costs money to seek funding and the Trustee it is of the opinion that such funding is unlikely to be forthcoming.

126. In this respect, the Trustee states that:

(a) the RE Managements Fee Proceeding and the FMIF Proceeding is relevant to the clear accounts rule and the Indemnity Claim in this proceeding;

(b) in proceedings the First Proceeding and the Second Proceeding, IMF terminated it funding agreement with the Trustee. Although those proceedings are not the same as this proceeding, it is a factor most funders would likely consider relevant;

(c) Mr Whyte has raised in correspondence defences to the Constructive Trust Claim and the Indemnity Claim;

(d) the directors were successful in the *Drake No. 2*, which, relevantly, included issues concerning the constitution of the MPF and exclusions therein;

127. The Trustee would also disclose to any potential funder that IMF had terminated its funding agreement in the First proceeding and the Second Proceeding.

The Trustee's opinion regarding the discontinuance

128. The Trustee is aware that if it discontinues the proceeding it will likely be ordered to pay LMIM's costs on the standard basis.

129. Although not part to the proceeding, it is possible that Mr Whyte will also seek a costs order in favour of the FMIF.

130. In all of the circumstances, the Trustee is of the opinion that it is in the best interests of the unitholders of the MPF for the Proceedings to be discontinued.

Attitude of the members of the MPF

131. The Trustee does not yet know the attitude of any members of the MPF to the S 96 Application.

132. The Trustee will bring to the attention of this Honourable Court the attitude of any members of the MPF who communicate with the Trustee in that respect.

17 July 2018

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 12716/15

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

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Annexure 1

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 12716/15

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

CLAIM

The plaintiff claims:

1. Equitable compensation calculated as follows:

Payments pursuant to the AIIS Loan of	$11,385,581.62
Less receipts applied to principal of	$3,609,648.53
Net Loss	$7,775,633.09
Plus lost opportunity interest	$9,044,723.21
Equitable compensation:	$16,820,356.30

2. A declaration that the defendant as trustee for the LM First Mortgage Income Fund ("**FMIF**") holds the amount of $3,905,721.81 on constructive trust for the plaintiff, in its capacity as trustee of the LM Managed Performance Fund ("**MPF**");

3. A declaration that:

   (a) the plaintiff is entitled to be indemnified out of the assets of the FMIF in respect of the defendant's liability to the plaintiff in this proceeding, in respect of the amount of $3,905,721.81;

SUPREME COURT OF QUEENSLAND BRISBANE

CLAIM

Filed on behalf of the plaintiff

Form 2 Rule 22

MINTERELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien
@minterellison.com
Reference DOB 407747963

MJ: 125916266_3 (W2007)

(b) the plaintiff has a lien or charge over the assets and undertaking of the FMIF in respect of the defendant's liability to the plaintiff in this proceeding, in respect of the amount of $3,905,721.81;

(c) the plaintiff is entitled to be subrogated to the rights of the defendant in respect of the assets of the FMIF, in respect of the amount of $3,905,721.81;

4. Interest pursuant to s.58 of the *Civil Proceedings Act* 2011 (Qld) but excluding interest on so much of the claim for equitable compensation as includes the lost opportunity to earn interest;

5. Costs;

6. Such further or other order as the Court sees fit.

The plaintiff makes this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

And filed in the Brisbane Registry on 16th December 2015

SUPREME COURT OFFICE BRISBANE

Registrar

To the defendant: TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff's address for service shown in this claim as soon as possible.

Address of Registry:	QEII Courts of Law Complex 415 George Street Brisbane QLD 4000

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that Notice.

PARTICULARS OF THE PLAINTIFF:

Name:	KordaMentha Pty Ltd (ACN 100 169 391) in its capacity as trustee of the LM Managed Performance Fund
Plaintiff's residential or business address:	Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
Plaintiff's solicitors name:	David Thomas O'Brien
and firm name:	Minter Ellison
Solicitor's business address:	Waterfront Place, 1 Eagle Street, BRISBANE QLD 4000
Address for Service:	Waterfront Place, 1 Eagle Street, BRISBANE QLD 4000
DX:	102 BRISBANE
Telephone:	(07) 3119 6000
Fax:	(07) 3119 1000
Email address:	david.obrien@minterellison.com

Signed: Minter Ellison.

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 15 December 2015

This claim is to be served on:	LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)
of:	FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT, BUNDALL, QLD, 4217
and of:	BDO, LEVEL 10, 12 CREEK STREET, BRISBANE, QLD, 4000
and of:	McGRATHNICOL, LEVEL 7, 175 EAGLE STREET, BRISBANE, QLD, 4000

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

STATEMENT OF CLAIM

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STATEMENT OF CLAIM

Filed on behalf of the plaintiff

Form 2 Rule 22

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Reference NYB DOB 407747963

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This claim in this proceeding is made in reliance on the following facts:

1. The plaintiff:

   (a) is a company duly incorporated according to law;

   (b) is capable of suing in its corporate name; and

   (c) in the premises pleaded in paragraphs 4 to 11 below, has been with Calibre Capital Ltd ACN 108 318 985 (**"Calibre"**) a trustee of a trust named the LM Managed Performance Fund ("**the MPF**") since 12 April 2013 and the sole trustee of the MPF since on or about 5 January 2015.

2. The defendant:

   (a) is a company duly incorporated according to law;

   (b) is, subject to the plaintiff obtaining leave to proceed against the defendant pursuant to s.500 of the *Corporations Act* 2001 (Cth), capable of being sued in its corporate name;

   (c) since at least 1999, has carried on business as a professional trustee for reward, in which capacity it created and managed investment schemes;

   (d) in the premises pleaded in paragraphs 4 to 11 below, was the trustee of the MPF from in or about December 2001 until 12 April 2013; and

   (e) in the premises pleaded in paragraphs 15 and 16 below, has been the responsible entity of a registered managed investment scheme named the LM First Mortgage Income Fund ("**the FMIF**") since 28 September 1999.

3. In this pleading:

   (a) the defendant, when acting in its capacity as the trustee of the MPF, is referred to as "the defendant ATF the MPF";

   (b) the defendant, when acting in its capacity as the responsible entity of the FMIF, is referred to as "the defendant ATF the FMIF."

The LM Managed Performance Fund

4. By a trust deed dated 4 December 2001 ("**the First Trust Deed**"), the defendant:

   (a) established a unit trust named The LM Managed Performance Fund ("**the MPF**"); and

   (b) became trustee of the MPF.

5. By a Deed of Variation dated 11 November 2002 ("**the Second Trust Deed**"), the defendant ATF the MPF deleted all parts of the First Trust Deed other than the parties, and replaced them with the terms set out in the Second Trust Deed (Recital B of the Second Trust Deed).

6. By a Deed of Variation dated 25 November 2009 ("**the Third Trust Deed**"), the defendant ATF the MPF deleted clauses 1, 2.3, 2.4 and 3 to 27 of the Second Trust Deed, and replaced them with the terms set out in the Schedule to the Third Trust Deed (clause 1 of the Third Trust Deed).

7. By a Supplemental Deed Poll dated 23 October 2012 ("**the Fourth Trust Deed**" the defendant ATF MPF amended the Third Trust Deed in the way set out in the Schedule to the Fourth Trust Deed (clause 2 of the Fourth Trust Deed).

8. Relevantly, the following were terms of the First, Second, Third and Fourth Trust Deeds:

   (a) the defendant was the Manager (clause 1.1 of each Deed);

   (b) the Constitution was the Trust Deed including any Schedule, Annexure or Amendments to it (clause 1.1 of each Deed);

   (c) the Scheme was the trust created by the Deed to be known as the LM Managed Performance Fund (clause 1.1 of each Deed);

   (d) the assets of the Scheme were:

      (i) the Scheme Fund (clauses 1.1 of the First and Second Trust Deeds); subsequently

      (ii) the Scheme Property (clause 1.1 of the Third Trust Deed);

   (e) the Manager agreed to act as trustee of the Scheme (clause 2.1 of each Deed);

   (f) the Manager declared that it held:

      (i) the Scheme Fund (clauses 2.2 of the First and Second Deeds); subsequently

      (ii) the Scheme Property (clause 2.2 of the Third Trust Deed);

   on trust for the Members;

(g) the name of the Scheme was:

(i) The LM Managed Performance Fund (clause 2.3 of the First Trust Deed); subsequently

(ii) The LM Managed Performance Fund or any other name that the Manager may determine from time to time (clauses 2.3 of the Second and Third Trust Deeds);

(h) the beneficial interest in the Scheme Fund would be divided into Units (clause 3.1 of each Deed);

(i) the Constitution might be modified or repealed or replaced with a new Constitution by the Manager if the Manager reasonably considered that the change would not adversely affect Members' rights or was deemed necessary to conduct the affairs of the Scheme (clauses 24.1 of the First and Third Trust Deeds; clause 18.1 of the Second Trust Deed);

(j) the Manager must resign if (being a corporation) it became an externally-administered body corporate as defined in the *Corporations Act 2001* (clauses 23.1(b)(ii) of the First and Third Trust Deeds; clause 17.1(b)(ii) of the Second Trust Deed).

9. On or about 19 March 2013, John Richard Park and Ginette Dawn Muller were appointed voluntary administrators of the defendant.

10. In the premises, pursuant to clause 23.1(b)(ii) of the Third Trust Deed the defendant was required to resign as Manager of the MPF.

11. By order of this Honourable Court made on 12 April 2013:

(a) the defendant was removed as trustee of the MPF; and

(b) the plaintiff, and Calibre, were appointed jointly and severally as trustees of the MPF.

12. On or about 1 August 2013, the defendant's creditors resolved to place the defendant into liquidation, and Mr Park and Ms Muller were appointed its liquidators.

13. On or about 5 January 2015, Calibre retired as trustee of the MPF.

14. In the premises, the plaintiff is the sole trustee and Manager of the MPF.

The LM First Mortgage Income Fund

15. On or about 28 September 1999, the defendant established the LM First Mortgage Income Fund ("**the FMIF**").

16. Since on or about 28 September 1999:

    (a) the FMIF has been, and remains, a registered managed investment scheme, pursuant to s.601EB of the *Corporations Act* 2001 (Cth).

    (b) the defendant has been, and remains, the Responsible Entity of the FMIF;

    (c) the defendant has held, and continues to hold, the property of the FMIF on trust for its members, pursuant to s.601FC of the *Corporations Act* 2001 (Cth).

17. Pursuant to the terms of a Custody Agreement dated 4 February 1999, between the defendant and Permanent Trustee Australia Ltd ACN 008 412 913 (later re-named The Trust Company (PTAL) Ltd) ("**PTAL**"):

    (a) PTAL agreed to custodially hold the Portfolio and Title Documents as agent for the defendant in relation to (inter alia) the FMIF (clause 2.1 and Schedule 2);

    (b) the defendant was responsible for taking all decisions in relation to the Portfolio and, subject to the Custody Agreement, PTAL was required to act on the defendant's Instructions in relation to any assets of the Portfolio (clause 4.1);

    (c) the plaintiffs will rely upon the full terms of the Custody Agreement at the hearing of this proceeding.

18. In this pleading:

    (a) PTAL, when acting in its capacity as the custodian trustee of the FMIF, is referred to as "PTAL ACF the FMIF"; and

(b) PTAL, when acting in its capacity as the custodian trustee of the MPF, is referred to as "PTAL ACF the MPF."

Duties owed by the defendant ATF the MPF

19. At all material times, the defendant ATF the MPF owed a fiduciary duty to the beneficiaries of the MPF not to place itself in a position of conflict of interest or duty.

20. At all material times, the defendant ATF the MPF owed a duty to the beneficiaries of the MPF to exercise the same care that an ordinary, prudent person of business would exercise in the conduct of that business were it his or her own.

21. At all material times, the defendant ATF the MPF owed duties to the beneficiaries of the MPF:

(a) pursuant to s.22 of the *Trusts Act* 1973 (Qld), ("**the Trusts Act**") to exercise the care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons, when exercising a power of investment; and

(b) pursuant to s.24 of the Trusts Act to take into account, inter alia, the following matters, when exercising a power of investment:

(i) the risk of capital or income loss or depreciation (s.24(e));

(ii) the likely income return and the timing of income return (s.24(g));

(iii) the length of the term of the proposed investment (s.24(h));

(iv) the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment (s.24(j)); and

(v) the cost (including commissions, fees, charges and duties payable) of making the proposed investment (s.24(n)).

Incorporation of Australian International Investment Services Pty Ltd

22. On or about 29 September 2002, Australian International Investment Services Pty Ltd ACN 102 261 898 ("**AIIS**") was registered as a company.

23. At all material times:

    (a) the sole director and secretary of AIIS was Mr Peter Drake; and

    (b) Mr Drake was a director of the defendant; and

    (c) Mr Drake was the Chairman and Chief Executive Officer of the defendant.

24. On a date that is unknown to the plaintiff, but which was not later than 21 December 2004, LMIM acquired all the shares of AIIS, in its capacity as trustee of the MPF.

Particulars

An ASIC company search for AIIS records that document number 1E0549876, effective 21 December 2004, was received and processed on 23 December 2004.

25. In the premises, at all material times after 21 December 2004:

    (a) AIIS was a wholly-owned subsidiary of LMIM ATF the MPF; and

    (b) LMIM ATF the MPF controlled the actions of AIIS.

Acquisition by AIIS of a lease over land located in Canberra, ACT

26. On a date that is unknown to the plaintiff, but which occurred after AIIS was incorporated on 29 September 2002, AIIS acquired a leasehold interest in land situated at 7 Irving Street, Phillip, Australian Capital Territory; more particularly described as Block 1, Section 22, Division of Phillip, Volume 1541 in Folio 73, Deposit Plan 2329 ("**the Land**").

27. Insofar as they are known to the plaintiff, the terms of the lease over the Land were:

(a) the lease was granted on 11 December 1998; and

(b) the term of the lease was 99 years.

The MPF's loan to AIIS ("the AIIS Loan")

28. On or about 19 January 2005:

(a) the defendant ATF the MPF, as Lender; and

(b) AIIS as Borrower,

entered into a Loan Agreement ("**the AIIS Loan**").

29. Relevantly, the following were terms of the AIIS Loan:

(a) the Borrower had requested the AIIS Loan from the Lender (Recital A);

(b) the Lender had agreed to make the Loan available to the Borrower on the terms and conditions of the Loan Agreement (Recital B);

(c) the "Loan" was $1,140,000.00 (item 8, schedule);

(d) the "Approved Purpose" was "purchase and development of [the Land]" (item 1, schedule);

(e) the "Commencement Date" was 23 December 2004 (item 4, schedule);

(f) the "Expiry Date" was 22 December 2008 (item 5, schedule);

(g) the Interest Rate was 10% per annum (item 6, schedule);

(h) no securities were taken as security for the performance of AIIS's obligations under the AIIS Loan; and

(i) the Lender was to provide the Loan to the Borrower "on or after the Commencement Date" (clause 2).

The FMIF's loan to AIIS ("the FMIF Loan")

30. On a date that is unknown to the plaintiff, but which the plaintiff believes occurred on or about 8 April 2005, parties including:

(a) the defendant ATF the FMIF; and

(b) PTAL ACF the FMIF; and

(c) AIIS,

entered into a Loan Agreement ("**the FMIF Loan**"), by which the defendant ATF the FMIF, or in the alternative PTAL ACF the FMIF, loaned money to AIIS.

Particulars

(i) On or about 30 November 2008:

A. PTAL ACF the FMIF;

B. the defendant ATF the FMIF (as First Lender);

C. the defendant ATF the MPF (as Second Lender); and

D. AIIS as Mortgagor,

executed a Priority Deed. Item 4(a) of the Schedule to the Priority Deed states that the First Lender's Security included a Loan Agreement with AIIS, dated 8 April 2005.

31. On or about 12 April 2005, the defendant ATF the FMIF caused PTAL ACF the FMIF to take a mortgage over the Land, as security for the performance of AIIS's obligations under the FMIF Loan.

Particulars

(i) Mortgage 1416794, registered on 27 April 2005.

(ii) Item 4(b) of the Schedule to the Priority Deed dated 30 November 2008.

32. On 27 April 2005, the mortgage granted to the defendant ATF the FMIF was registered over the Land, as first registered mortgage 1416794.

33. The Principal Sum secured by registered mortgage 1416794 was $1,690,000.00.

Particulars

(i) Item 7 of registered mortgage 1416794;

(ii) Clause 2 of the Memorandum of Provisions registered as document 1200308.

34. Other than as pleaded in paragraphs 30 to 33 above, the terms of the FMIF Loan are presently unknown to the plaintiff.

35. The FMIF Loan was subsequently varied by:

(a) a Deed of Variation dated 19 June 2007;

(b) a Deed of Variation dated 12 December 2007;

(c) a Letter of Variation dated 14 April 2008; and

(d) a Letter of Variation/Deed of Variation, dated November 2008.

Particulars

Stated in item 4(a) of the Schedule to the Priority Deed dated 30 November 2008.

36. Other than as pleaded in paragraph 35 above, the terms upon which the FMIF Loan was varied are unknown to the plaintiff.

First Deed of Variation of the AIIS Loan

37. On or about 11 April 2005:

(a) the defendant ATF the MPF, as Lender; and

(b) AIIS as the Borrower,

entered into a Deed of Variation of the AIIS Loan ("**the First Deed of Variation of the AIIS Loan**").

38. Relevantly, the following were terms of the First Deed of Variation of the AIIS Loan:

(a) the Principal Security was defined as the AIIS Loan (item 4, Schedule);

(b) the Principal Security was varied as follows:

(i) the Loan Amount was increased to $4,200,000.00; and

(ii) the variation to the Principal Security contained in the First Deed of Variation of the AIIS Loan would be effective as and from 11 April 2005;

(item 6, Schedule).

Second Deed of Variation of the AIIS Loan

39. On or about 30 November 2008:

(a) the defendant ATF the MPF, as Lender; and

(b) AIIS as the Borrower;

entered into a Deed of Variation of the AIIS Loan ("**the Second Deed of Variation of the AIIS Loan**").

40. Relevantly, the following were terms of the Second Deed of Variation of the AIIS Loan:

(a) the Principal Security was defined as the AIIS Loan, as varied by the First Deed of Variation of the AIIS Loan (item 4, Schedule);

(b) the Principal Security was varied as follows:

(i) the Expiry Date was extended from 22 December 2008 to 1 May 2009;

(ii) AIIS was required to provide additional security, including a second registered mortgage over the Land;

(iii) the variation to the Principal Security contained in the Second Deed of Variation of the AIIS Loan would be effective as and from 22 December 2008;

(item 6, Schedule).

41. On 30 November 2008, the mortgage granted to the defendant ATF the MPF was registered over the Land, as second registered mortgage 1611828.

Priority Deed

42. On or about 30 November 2008:

(a) PTAL ACF the FMIF, as First Lender or Custodian;

(b) LMIM ATF the FMIF;

(c) LMIM ATF the MPF, as Second Lender; and

(d) AIIS as Mortgagor,

entered into a Priority Deed.

43. Relevantly, the Priority Deed provided that:

(a) the First Lender's Security, including:

(i) the FMIF Loan, as varied by Deeds of Variation dated 19 June 2007 and 12 December 2007, a Letter of Variation dated 14 April 2008, and a Letter of Variation/Deed of Variation dated November 2008; and

(ii) the first registered mortgage number 1416794 over the Land,

had the first priority to the extent of all money secured by it, up to a total of $7,800,000.00, plus interest and costs (clause 3.1 and Schedule, items 4 and 5);

(b) the Second Lender's Security, including:

(iii) the AIIS Loan, as varied by the First and Second Deeds of Variation; and

(iv) the second registered mortgage over the Land,

had the second priority to the extent of all money secured by it, up to a total of $4,200,000.00, plus interest and costs (clause 3.1 and Schedule, items 6 and 7);

(c) the First Lender's Security had the third priority, to the extent of all money secured by it in excess of $7,800,000.00, plus interest and costs (clause 3.1 and Schedule, items 4 and 5); and

(d) the Second Lender's Security had the fourth priority, to the extent of all money secured by it in excess of $4,200,000.00, plus interest and costs (clause 3.1 and Schedule, items 6 and 7).

Internal approvals for the Third Deed of Variation of the AIIS Loan

44. On 6 August 2009, Ms Shelley Chalmers, of the defendant's Commercial Lending section, sent an email with the subject: "For consideration – Canberra JA MPF term ext & loan increase" to the following recipients:

(a) recipients described as "321 MPF Investment Committee";

(b) Mr David Monaghan, a director of the defendant;

(c) Mr Eghard van der Hoven;

(d) Mr Nick Daking; and

(e) Ms Lisa Darcy, a director of the defendant.

45. The email dated 6 August 2009, had attached to it a document entitled "Credit Committee Synopsis – Managed Performance Fund – Variation," dated 5 August 2009 ("**the Synopsis**").

46. By the Synopsis, approval was sought from the persons listed in subparagraphs 44(b) to 44(e) above, together with Ms Chalmers, for the AIIS Loan to be varied on the following basis:

(a) the term of the AIIS Loan would be extended for one year, to 1 May 2010;

(b) the maximum approved loan amount would be increased to $5.5 million;

(c) the reason for increasing the maximum approved loan amount to $5.5 million was stated to be:

"...to allow rollover fee and interest capitalization for both MPF and FMIF loans during the extension";

(d) an updated valuation was not to be obtained; and

(e) the reason for not obtaining an updated valuation was stated to be:

"...as site is "commercial" in nature and 2 year valuation rule applies."

47. Relevantly, the Synopsis stated that:

(a) the existing development approval for the Land had been issued on 19 May 2008;

(b) the existing development approval was for a commercial project;

(c) the Land had last been valued in February 2008, by CBRE Canberra;

(d) that valuation had valued the Land at $11.85 million;

(e) the valuation had been conducted on the following basis:

(i) "as is"; and

(ii) before the development approval had been obtained;

(f) the current balance of the AIIS Loan was $4.064 million;

(g) the balance of the FMIF Loan was approximately $7.7 million;

(h) "total exposure" across both the FMIF and the MPF was approximately $11.8 million;

(i) interest from the AIIS Loan and the FMIF Loan "capitalise[d]" to the AIIS Loan; and

(j) the term of the MPF Loan had expired.

48. In response, on or about 6 August 2009, the persons listed in subparagraphs 44(b) to 44(e) above, together with Ms Chalmers, responded that they approved the proposed transaction.

Third Deed of Variation of the AIIS Loan

49. In accordance with the internal approvals obtained, as pleaded in paragraphs 44 to 48 above, on or about 22 December 2009:

    (a) LMIM ATF the MPF; and

    (b) AIIS,

    entered into a Deed of Variation of the AIIS Loan ("**the Third Deed of Variation of the AIIS Loan**").

50. Relevantly, the following were terms of the Third Deed of Variation of the AIIS Loan:

    (a) the Principal Security was defined as the AIIS Loan, as varied from time to time (item 4, Schedule);

    (b) the Principal Security was varied as follows:

        (i) the Expiry Date was varied from 1 May 2009 to 1 May 2010;

        (ii) the Loan Amount was increased to $5,500,000.00; and

        (iii) the variation to the Principal Security contained in the Third Deed of Variation of the AIIS Loan would be effective as and from 22 December 2009,

    (item 6, Schedule).

Second Priority Deed

51. On or about 22 December 2009:

    (a) PTAL ACF the FMIF, as First Lender or Custodian;

    (b) LMIM ATF the FMIF;

(c) LMIM ATF the MPF, as Second Lender; and

(d) AIIS as Mortgagor;

entered into a Priority Deed ("**the Second Priority Deed**").

52. Relevantly, the Second Priority Deed provided that:

(a) the First Lender's Security, as pleaded in paragraph 43(a) above, had the first priority to the extent of all money secured by it, up to a total of $7,800,000.00, plus interest and costs (clauses 3.1 and Schedule, items 4 and 5);

(b) the Second Lender's Security, as pleaded in paragraph 43(b) above, had the second priority to the extent of all money secured by it, up to a total of $5,500,000.00, plus interest and costs (clauses 3.1 and Schedule, items 6 and 7); and

(c) the First Lender's Security, as pleaded in paragraph 43(c) above, had the fourth priority to the extent of all money secured by it in excess of $7,800,000.00, plus interest and costs (clauses 3.1 and Schedule, items 4 and 5);

(d) the Second Lender's Security, as pleaded in paragraph 43(d) above, had the fourth priority to the extent of all money secured by it in excess of $5,500,000.00, plus interest and costs (clauses 3.1 and Schedule, items 6 and 7).

Internal approvals for the Fourth Deed of Variation of the AIIS Loan

53. On 1 September 2010, Ms Shauna Larkin, of the defendant's Client Relations – Treasury Services section, sent an email with the subject: "Increase and term extension to AIIS MPF. Voting require please" to the following recipients:

(a) recipients described as "321 MPF Investment Committee";

(b) Mr Greg McDonald;

(c) Mr Eghard van der Hoven, a director of the defendant;

(d) Ms Lisa Darcy, a director of the defendant; and

(e) Ms Shelley Chalmers.

54. The email dated 1 September 2010, had attached to it a document entitled "Credit Committee Synopsis – Managed Performance Fund – Variation" ("**the Synopsis**").

55. By the Synopsis, approval was sought from the persons listed in subparagraphs 53(b) to 53(e) above for the AIIS Loan to be varied on the following basis:

(a) the amount of the AIIS Loan would be increased, from $5,500,000.00 to $7,500,000.00;

(b) the term of the AIIS Loan would be extended from 1 May 2010 to 1 May 2011;

(c) the interest rate would be raised from 10% to 12% per annum;

(d) the reason for increasing the maximum approved loan amount to $7.5 million was stated to be:

"...to accommodate FMIF and MPF interest capitalisation and consultancy costs in order to achieve the residential approval";

(e) the MPF would rely upon any valuation obtained by the FMIF; and

(f) the LVR would increase to 130%.

56. Relevantly, the Synopsis stated that:

(a) the Land had last been valued in February 2008, by CBRE Canberra;

(b) in that valuation, CBRE Canberra had valued the Land at $11.85 million;

(c) the valuation had been conducted on the following basis:

(i) "as is"; and

(ii) before development approval had been obtained;

(d) a commercial development was no longer considered feasible;

(e) the development approval obtained for a commercial development had lapsed;

(f) a residential development was considered highly likely;

(g) a development approval for residential purposes was being pursued;

(h) no updated valuation was required;

(i) the current balance of the AIIS Loan was $5,150,000.00;

(j) the "total exposure" for the AIIS Loan and the FMIF Loan was approximately $13 million;

(k) interest from the AIIS Loan and the FMIF Loan "capitalise[d]" to the AIIS Loan; and

(l) the term of the MPF Loan had expired.

57. In response, on or about 1 September 2010 the persons listed in subparagraphs 53(b) to 53(e) above responded that they approved the proposed transaction.

58. At an MPF Credit Committee meeting on 2 September 2010 the Credit Committee resolved to approve the proposed transaction.

Fourth Deed of Variation of the AIIS Loan

59. In accordance with the internal approvals obtained, as pleaded in paragraphs 53 to 58 above, on or about 6 October 2010:

(a) LMIM ATF the MPF; and

(b) AIIS,

entered into a Deed of Variation of the AIIS Loan ("**the Fourth Deed of Variation of the AIIS Loan**").

60. Relevantly, the terms of the Fourth Deed of Variation of the AIIS Loan were:

(a) the AIIS Loan was amended with effect at and from the Effective Date, to read as set out in Annexure A (clause 3.1);

(b) the Effective Date was the date of the Deed (clause 1.1);

(c) the date of the Deed was 6 October 2010 (page 1);

(d) the document was executed as a Deed on 6 October 2010 (page 5);

(e) a document entitled "Loan Agreement" was annexed to the Fourth Deed of Variation of the AIIS Loan, as Annexure A;

(f) relevantly, the terms of the "Loan Agreement" that was Annexure A to the Fourth Deed of Variation of the AIIS Loan were:

(i) the Borrower had requested the Loan from the Lender (Recital A);

(ii) the Lender had agreed to make the Loan available to the Borrower on the terms and conditions of the Loan Agreement (Recital B);

(iii) the "Loan" was $7,500,000.00 (item 8, schedule);

(iv) the "Approved Purpose" was "purchase and development of [the Land]" (item 1, schedule);

(v) the "Commencement Date" was 23 December 2004 (item 4, schedule);

(vi) the "Expiry Date" was 1 May 2011 (item 5, schedule);

(vii) the Interest Rate was 10% per annum, increasing to 12% per annum with effect from 23 August 2010 (item 6, schedule).

Third Priority Deed

61. On or about 12 December 2010:

(a) PTAL ACF the FMIF, as First Lender or Custodian;

(b) LMIM ATF the FMIF;

(c) LMIM ATF the MPF, as Second Lender; and

(d) AIIS as Mortgagor;

entered into a Priority Deed ("**the Third Priority Deed**").

62. Relevantly, the Third Priority Deed provided that:

(a) the First Lender's Security, as pleaded in paragraph 43(a) above, had the first priority to the extent of all money secured by it, up to a total of $7,920,000.00, plus interest and costs (clauses 3.1 and Schedule, items 4 and 5);

(b) the Second Lender's Security, as pleaded in paragraph 43(b) above, had the second priority to the extent of all money secured by it, up to a total of $7,500,000.00, plus interest and costs (clauses 3.1 and Schedule, items 6 and 7);

(c) the First Lender's Security, as pleaded in paragraph 43(c) above, had the fourth priority to the extent of all money secured by it in excess of $7,920,000.00, plus interest and costs (clauses 3.1 and Schedule, items 4 and 5);

(d) the Second Lender's Security, as pleaded in paragraph 43(d) above, had the fourth priority to the extent of all money secured by it in excess of $7,500,000.00, plus interest and costs (clauses 3.1 and Schedule, items 6 and 7).

Internal approvals for the Extension Letter for the AIIS Loan

63. By an MPF Credit Committee Synopsis dated 10 May 2011, approval was sought to extend the term of the AIIS Loan from 1 May 2011 to 1 May 2012.

64. Relevantly, the Synopsis stated that:

(a) AIIS wished to *"progress the development approval process for a residential development on the site"*;

(b) the Land had last been valued in February 2008, by CBRE Canberra;

(c) in that valuation, CBRE Canberra had valued the Land at $11.85 million;

(d) the valuation had been conducted on the following basis:

(i) "as is"; and

(ii) before development approval had been obtained;

(e) an updated valuation was to be obtained once development approval was obtained;

(f) the current balance of the AIIS Loan was $6,495,000.00;

(g) the "total exposure" for the AIIS Loan and the FMIF Loan was approximately $14.4 million; and

(h) interest from the AIIS Loan and the FMIF Loan "capitalise[d]" to the AIIS Loan.

65. In response, the following persons approved the proposed transaction:

(a) Mr Grant Fisher, by email dated 22 May 2011;

(b) Ms Francene Mulder, a director of the defendant, by email dated 23 May 2011;

(c) Mr Simon Tickner, a director of the defendant, by email dated 23 May 2011;

(d) Ms Lisa Darcy, a director of the defendant, by email dated 3 June 2011.

66. Further, at an MPF Credit Committee meeting on 16 May 2011, the Credit Committee resolved to approve the proposed transaction.

Extension Letter for the AIIS Loan

67. In accordance with the internal approvals obtained, as pleaded in paragraphs 63 to 66 above, by letter dated 27 May 2011 the defendant notified AIIS that the Credit Committee had approved an extension of the AIIS Loan, on the following basis:

(a) the term of the AIIS Loan was extended to 1 May 2012; and

(b) the defendant did not require an updated valuation for the Land.

Particulars

Letter from Ms Shelley Chalmers of the defendant's Property Asset Management Department, to AIIS care of Mr Peter Drake, dated 27 May 2011.

68. AIIS accepted the extension of the AIIS Loan on these terms, by an Acceptance Form executed by Mr Peter Drake, the sole director of AIIS, dated 3 June 2011.

Incorporation of Aalto Apartments Pty Ltd

69. On or about 4 August 2011, Aalto Apartments Pty Ltd ACN 152 486 630 ("**Aalto**") was registered as a company.

Appointment of PTAL as custodian trustee of the MPF, and assignment of the securities for the AIIS Loan

70. On or about 1 November 2011:

(a) LMIM ATF the MPF; and

(b) PTAL,

entered into a Deed of Assignment.

71. Recitals C and D to the Deed of Assignment stated:

C. PTAL and LM have agreed that PTAL will assume the role and responsibilities of custodian of the Fund in accordance with the terms of the Custody Agreement which will require LM to transfer the legal interest in the securities to PTAL.

D. PTAL and LM wish to enter into this document to record the basis upon which the legal interest in the Securities will be transferred to PTAL.

72. Relevantly, the Deed of Assignment provided that:

(a) with effect from the Commencement Date, PTAL would become the legal owner of certain Assets and Securities (clause 2.1);

(b) the Commencement Date was 1 November 2011 (clause 1.1); and

(c) the Securities were the securities, agreements and other documents described in Schedule 2 to the Deed (clause 1.1), which included:

(i) the AIIS Loan;

(ii) the First, Second, Third and Fourth Deeds of Variation;

(iii) the Extension Letter;

(iv) the First and Second Priority Deeds; and

(v) registered mortgage 1611828.

73. On or about 1 November 2011, registered mortgage 1611828 was transferred from LMIM ATF the MPF to PTAL ACF the MPF, pursuant to clause 2.1 of the Assignment Deed.

74. The transfer of registered mortgage 1611828 from LMIM ATF the MPF to PTAL ACF the MPF was registered on 3 February 2012.

Internal approval for Fifth Deed of Variation of the AIIS Loan, and Land Availability Agreement between AIIS and Aalto

75. By an MPF Credit Committee Synopsis dated 14 November 2011, approval was sought for the following variation to the AIIS Loan:

(a) to increase the Maximum Approved Loan Amount of the AIIS Loan from $7,500,000.00 to $16,800,000.00;

(b) for the interest rate of 12% per annum to remain unchanged; and

(c) for an updated valuation to be obtained once development approval was obtained.

76. Relevantly, the Synopsis stated that:

(a) the highest and best use for the Land was residential;

(b) AIIS had entered into an agreement with Aalto to develop a residential scheme called "Aalto Apartments", which would include 278 residential units and a 67-place childcare centre;

(c) the latest financial update, dated 1 November 2011, contained the following financial analysis for the project:

Net Sales Revenue (after GST paid)			*$126.53m*
Built Form Cost	*$85.00*		
Contingency (5%)	*$ 4.25*	*$89.25m*	
Professional Fees		*$ 3.99m*	
Statutory Fees		*$ 3.05m*	
Misc		*$ 0.20m*	
Holding Costs		*$ 0.06m*	
Finance Charges		*$ 0.89m*	
Interest Expense		*$ 14.29m*	*$111.73m*
Add – back GST reclaimed			*$ 8.92m*
Net Development Profit			*$ 23.72m*
Less Combined Loans to FMIF and MPF (at 8.11.11)			*$ 16.05m*
Less FMIF/MPF Interest @ 12% for project life of 41mths			*$ 7.59m*
Residual Balance			*$ 0.08m*

(d) the increase to the AIIS Loan Amount was sought to pay certain costs until 31 March 2012, the date on which a development approval was expected, at which point a new valuation would be sought based on the DA, and on an "as-complete" basis;

(e) as at 21 October 2011, the balance of the FMIF Loan was $7,849,504;

(f) as at 8 November 2011, the balance of the AIIS Loan was $8,194,253;

(g) a sale of the Land "as is" would be likely to result in a sale price of about $3 million, which would result in the MPF writing off its investment of approximately $8.2 million.

77. At an MPF Credit Committee meeting on 16 November 2011, the following persons approved the proposed transaction:

(a) Ms Lisa Darcy (Chair and Executive Director), a director of the defendant;

(b) Mr Peter Drake (Chief Executive Officer), a director of the defendant;

(c) Mr Eghard van der Hoven (Executive Director), a director of the defendant;

(d) Ms Francene Mulder (Executive Director), a director of the defendant;

(e) Mr Grant Fischer (Chief Financial Officer); and

(f) Scott King (Development Manager).

78. A document entitled "Land Availability Agreement AIIS Pty Ltd and Aalto Apartments Pty Ltd" was annexed to the MPF Credit Committee Synopsis dated 14 November 2011.

79. The document entitled "Land Availability Agreement AIIS Pty Ltd and Aalto Apartments Pty Ltd" set out the following "AIIS Entitlement Calculation as at 30.6.11":

FMIF Loan Balance as at 30.6.11	*$7,849,604*	*(Item 1)*
FMIF Interest (12%) over the Life of the Project	*$4,156,870*	*(Item 2)*
MPF Loan Balance as at 30.6.11	*$6,987,755*	*(Item 3)*
MPF Interest (12%) over the Life of the Project	*$3,946,759*	*(Item 4)*
MPF Interest (12%) on funded Development Costs over the Life of the Project	*$3,639,808*	*(Item 5)*
TOTAL AIIS Pty Ltd Entitlement	*$26,580,796*	

Land Availability Agreement between AIIS and Aalto

80. On a date which is unknown to the plaintiff, but which it believes occurred before 14 November 2011, AIIS and Aalto entered into a Land Availability Agreement.

81. Relevantly, the terms of the Land Availability Agreement were:

(a) AIIS was the registered proprietor of the Land (Recital A);

(b) AIIS wished to sell the Land, in order to recover its indebtedness to the financier that held a registered mortgage over the Land (Recital B);

(c) Aalto had identified the Land as being appropriate for development and sale (Recital C);

(d) AIIS did not wish to develop the Land itself (Recital D);

(e) AIIS had agreed to make the Land available to Aalto to enable Aalto to develop the Land at Aalto's risk and for its own benefit (Recital E);

(f) AIIS was required to make the Land available to Aalto to enable Aalto to develop the Land (clause 2.1);

(g) Aalto was:

(i) required to use its best endeavours to obtain Development Borrowings from a third party financier (clause 7.1);

(ii) authorised to provide a real property mortgage over the Land, for this purpose (clause 8);

(iii) required to market and sell the units (clause 10);

(iv) required to pay any Development Income in the following order of priority (clause 9):

A. payment of the costs of sale of the units (including GST, sales commissions, mortgagee costs, legal fees and adjustments);

B. repayment of any amount owed to an External Lender;

C. payment of any unpaid Development Costs;

D. repayment of any unpaid Development Costs paid by Aalto;

E. repayment of any Development Costs paid by an LM Lender after 30 June 2011;

F. payment of the AIIS Entitlement, which was defined to be $26,580,796 (clause 1.1); and

G. the balance to Aalto.

Jones Lange LaSalle Valuation Report

82. LMIM obtained a valuation report for the Land from Jones Lang LaSalle valuers, dated 12 April 2012.

83. The valuer assessed the market value of the Land as follows:

(a) as is, described as current market land value with development approval: $8.5 million (GST exclusive); and

(b) as if the Aalto Apartments development was complete: $141,615,800 as a gross realisations value (GST inclusive).

84. The report also stated that:

(a) it was prepared for LMIM for internal reporting purposes only ("valuation purpose," page 3);

(b) the valuation was current as at the date of valuation only, being 12 April 2012 (page 4);

(c) the valuation was based on the following critical assumptions, conditions and limitations (page 2):

- *The valuation is current as at the date of valuation only, being 12 April 2012. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property).*

- *We do not accept liability for losses arising from such subsequent changes in value. Without limiting this statement, we do not accept any liability where this valuation is relied upon more than three months after the date of valuation, or earlier if you become aware of any factors that may have any effect on the valuation.*

- *This report is relevant at the date of valuation and to the circumstances prevailing at that time. However, within a changing economic environment experiencing fluctuations in interest rates, inflation levels, rents and global economic circumstances, acceptable returns on investment may, as a consequence, be susceptible to future variation. We therefore strongly recommend that before any action is taken involving an acquisition, disposal, shareholding restructure or*

other transaction more than three months after the date of this report, you consult the Valuer.

Internal approvals for the Fifth Deed of Variation of the AIIS Loan

85. On 8 May 2012, Ms Ann McCallum, of the defendant's Property Asset Management section, sent an email with the subject: "AIIS and Aalto – redocumentation following Land Availability Agreement" to recipients described as "321 MPF Investment Committee."

86. The email dated 8 May 2012, sought approval (relevantly) for the term of the AIIS Loan to be extended to 1 September 2012.

87. Relevantly, the email stated that:

    (a) as at 30 June 2011 the balance of the AIIS Loan totalled $14,574,322.07;

    (b) no further funds would be advanced to AIIS under the AIIS Loan, except for interest and fees relating to the first mortgage facility from the FMIF;

    (c) on this basis, the balance of the AIIS Loan as at 31 March 2012, was $15,086,480.07.

88. In response, the following persons approved the proposed transaction:

    (a) Mr Andrew Petrik, by email dated 8 May 2012;

    (b) Mr Grant Fischer, by email dated 8 May 2012;

    (c) Mr Eghard van der Hoven, a director of the defendant, by email dated 8 May 2012;

    (d) Mr Simon Tickner, by email dated 9 May 2012;

    (e) Mr Scott King, by email dated 17 May 2012; and

    (f) Ms Lisa Darcy, a director of the defendant, by email dated 17 May 2012.

Fifth Deed of Variation of the AIIS Loan

89. In accordance with the internal approvals obtained, as pleaded in paragraphs 85 to 88 above, on or about 14 August 2012:

(a) PTAL as Lender;

(b) LMIM ATF the MPF; and

(c) AIIS as the Borrower,

entered into a Deed of Variation of the AIIS Loan ("**the Fifth Deed of Variation of the AIIS Loan**").

90. Relevantly, the terms of the Fifth Deed of Variation of the AIIS Loan were:

(a) the AIIS Loan was amended with effect at and from the Effective Date, to read as set out in Annexure A (clause 4.1);

(b) the Effective Date was 1 July 2011 (clause 1.1);

(c) relevantly, the terms of the "Loan Agreement" that was Annexure A to the Fourth Deed of Variation of the AIIS Loan were:

(i) the Borrower had requested the Loan from the Lender (Recital A);

(ii) the Lender had agreed to make the Loan available to the Borrower on the terms and conditions of the Loan Agreement (Recital B);

(iii) the "Loan" was $16,800,000.00 (item 8, schedule);

(iv) the "Approved Purpose" was (item 1, schedule):

A. purchase and development of the Land;

B. payment of interest on the AIIS Loan;

C. payment of interest on the FMIF Loan; and

D. towards payment of the AIIS Entitlement, as defined in the Land Availability Agreement;

(v) the "Commencement Date" was 23 December 2004 (item 4, schedule);

(vi) the "Expiry Date" was 1 September 2012 (item 5, schedule);

(vii) the Interest Rate was nil (item 6, schedule).

Fourth Priority Deed

91. On or about 14 August 2012:

(a) PTAL ACF the FMIF, as First Lender or Custodian;

(b) LMIM ATF the FMIF;

(c) LMIM ATF the MPF, as Second Lender; and

(d) AIIS as Mortgagor,

entered into a Priority Deed ("**the Fourth Priority Deed**").

92. Relevantly, the Fourth Priority Deed provided that:

(a) the First Lender's Security, as pleaded in paragraph 43(a) above, had the first priority to the extent of all money secured by it, up to a total of $8,295,000.00, plus interest and costs (clauses 3.1 and Schedule, items 4 and 5);

(b) the Second Lender's Security, as pleaded in paragraph 43(b) above, had the second priority to the extent of all money secured by it, up to a total of $18,800,000.00, plus interest and costs (clauses 3.1 and Schedule, items 6 and 7);

(c) the First Lender's Security, as pleaded in paragraph 43(c) above, had the fourth priority to the extent of all money secured by it in excess of $8,295,000.00, plus interest and costs (clauses 3.1 and Schedule, items 4 and 5);

(d) the Second Lender's Security, as pleaded in paragraph 43(d) above, had the fourth priority to the extent of all money secured by it in excess of

$18,800,000.00, plus interest and costs (clauses 3.1 and Schedule, items 6 and 7).

Sixth Deed of Variation of the AIIS Loan

93. On or about 1 February 2013:

(a) PTAL as Lender;

(b) LMIM ATF the MPF; and

(c) AIIS as the Borrower;

entered into a Deed of Variation of the AIIS Loan ("**the Sixth Deed of Variation of the AIIS Loan**").

94. Relevantly, the terms of the Sixth Deed of Variation of the AIIS Loan were:

(a) the AIIS Loan was amended with effect at and from the Effective Date, to read as set out in Annexure A (clause 4.1);

(b) the Effective Date was 1 December 2012 (clause 1.1);

(c) relevantly, the terms of the "Loan Agreement" that was Annexure A to the Sixth Deed of Variation of the AIIS Loan were:

(i) the Borrower had requested the Loan from the Lender (Recital A);

(ii) the Lender had agreed to make the Loan available to the Borrower on the terms and conditions of the Loan Agreement (Recital B);

(iii) the "Loan" was $24,000,000.00 (item 8, schedule);

(iv) the "Approved Purpose" was (item 1, schedule):

A. purchase and development of the Land;

B. payment of interest on the AIIS Loan;

C. payment of interest on the FMIF Loan; and

D. towards payment of the AIIS Entitlement, as defined in the Land Availability Agreement;

(v) the "Commencement Date" was 23 December 2004 (item 4, schedule);

(vi) the "Expiry Date" was 1 September 2013 (item 5, schedule);

(vii) the Interest Rate was nil (item 6, schedule; clause 4 of the Loan Agreement).

Appointment of administrators to the defendant, and sale of the Land

95. The plaintiff repeats and relies upon the matters pleaded in paragraphs 9 to 14 above.

96. On a date that is unknown to the plaintiff, but which the plaintiff believes occurred in or about October 2013, the Land was sold.

97. The plaintiff and Calibre, in their then capacity as the trustees of the MPF, did not receive any money from the sale of the Land.

The defendant's breaches of duty

Equitable duty of care

Third Deed of Variation of the AIIS Loan

98. In the premises pleaded in paragraphs 44 to 50 above, the defendant ATF the MPF entered into the Third Deed of Variation of the AIIS Loan, notwithstanding that the defendant knew, or ought to have known, that:

Combined loan to value ratio of 111.4%

(a) by reason of the matters pleaded in paragraphs 31, 32, 41, 46(c), 47(i) and 52 above:

(i) interest on the FMIF Loan was capitalised to, and paid from, the AIIS Loan;

(ii) the second registered mortgage that the defendant ATF the MPF held over the Land was the only security for the AIIS Loan of any value; and

(iii) the defendant ATF the MPF would not recover any moneys from the sale of the Land, while any amount above $7,800,000.00 plus interest and costs remained owing to the defendant ATF the FMIF;

(b) the Third Deed of Variation of the AIIS Loan increased the loan to value ratio of the FMIF and AIIS Loans to 111.4%, in that:

(i) the increase to the Loan Amount of the AIIS Loan by the Third Deed of Variation of the AIIS Loan increased the total balance of the FMIF and AIIS Loans to $13.2 million; and

(ii) the most recent valuation that had been obtained for the Land, which was the CBRE Valuation, had valued the Land at $11.85 million;

(c) in the premises, LMIM ATF the MPF failed to assess whether the security obtained for the AIIS Loan was adequate, in light of the increase to the Loan Amount of the AIIS Loan by the Third Deed of Variation of the AIIS Loan;

Reliance upon CBRE Valuation

(d) the defendant ATF the MPF relied upon the CBRE Valuation in entering into the Third Deed of Variation of the AIIS Loan on or about 22 December 2009, in circumstances where:

(i) the CBRE Valuation had been obtained in or about February 2008;

(ii) the defendant ATF the MPF failed to obtain an up to date valuation of the Land, before entering into the Third Deed of Variation of the AIIS Loan;

(iii) the CBRE Valuation had been performed on an "as is" basis, without taking any development approval into account;

(iv) when LMIM ATF the MPF entered into the Third Deed of Variation of the AIIS Loan, a development approval had been obtained for commercial development of the Land;

(v) notwithstanding the matters pleaded in subparagraph 98(d)(iii) and (iv) above, LMIM ATF the MPF did not obtain a valuation of the Land for commercial development purposes, before entering into the Third Deed of Variation of the AIIS Loan.

Fourth Deed of Variation of the AIIS Loan

99. In the premises pleaded in paragraphs 53 to 60 above, the defendant ATF the MPF entered into the Fourth Deed of Variation of the AIIS Loan, notwithstanding that the defendant knew, or ought to have known, that:

Combined loan to value ratio of 130%

(a) by reason of the matters pleaded in paragraphs 31, 32, 41, 52, 55(d) and 56(k) above:

(i) interest on the FMIF Loan was capitalised to, and paid from, the AIIS Loan;

(ii) the second registered mortgage that the defendant ATF the MPF held over the Land was the only security for the AIIS Loan of any value; and

(iii) the defendant ATF the MPF would not recover any moneys from the sale of the Land, while any amount above $7,800,000.00 plus interest and costs remained owing to the defendant ATF the FMIF;

(b) the Fourth Deed of Variation of the AIIS Loan increased the loan to value ratio of the FMIF and AIIS Loans to 130%, in that:

(i) the increase to the Loan Amount of the AIIS Loan by the Fourth Deed of Variation of the AIIS Loan increased the total balance of the FMIF and AIIS Loans to $15.3 million; and

(ii) the most recent valuation that had been obtained for the Land, which was the CBRE Valuation, had valued the Land at $11.85 million;

(c) in the premises, LMIM ATF the MPF failed to assess whether the security obtained for the AIIS Loan was adequate, in light of the increase to the Loan Amount of the AIIS Loan by the Fourth Deed of Variation of the AIIS Loan;

Reliance upon CBRE Valuation

(d) the defendant ATF the MPF relied upon the CBRE Valuation in entering into the Fourth Deed of Variation of the AIIS Loan on or about 6 October 2010, in circumstances where:

(i) the CBRE Valuation had been obtained in or about February 2008;

(ii) in the premises, the defendant ATF the MPF failed to obtain an up to date valuation of the Land, before entering into the Fourth Deed of Variation of the AIIS Loan;

(iii) the CBRE Valuation had been performed on an "as is" basis, without taking any development approval into account;

(iv) when LMIM ATF the MPF entered into the Fourth Deed of Variation of the AIIS Loan, AIIS intended to undertake a residential development of the Land;

(v) notwithstanding the matters pleaded in subparagraph 99(d)(iv) above, LMIM ATF the MPF did not obtain a valuation of the Land for residential development purposes, before entering into the Fourth Deed of Variation of the AIIS Loan.

Extension Letter for the AIIS Loan

100. In the premises pleaded in paragraphs 63 to 68 above, the defendant ATF the MPF entered into the Extension Letter, notwithstanding that the defendant knew, or ought to have known, that:

Combined loan to value ratio of 130%

(a) by reason of the matters pleaded in paragraphs 31, 32, 41, 61, 62, 55(d) and 64(h) above:

(i) interest on the FMIF Loan was capitalised to, and paid from, the AIIS Loan;

(ii) the second registered mortgage that the defendant ATF the MPF held over the Land was the only security for the AIIS Loan of any value; and

(iii) the defendant ATF the MPF would not recover any moneys from the sale of the Land, while any amount above $7,920,000.00 plus interest and costs remained owing to the defendant ATF the FMIF;

(b) the matters pleaded in paragraphs 99(b) and 99(c) above, upon which the plaintiff repeats and relies;

Reliance upon CBRE Valuation

(c) the defendant ATF the MPF relied upon the CBRE Valuation in entering into the Extension Letter on or about 27 May 2011, in circumstances where:

(i) the CBRE Valuation had been obtained in or about February 2008;

(ii) in the premises, the defendant ATF the MPF failed to obtain an up to date valuation of the Land, before entering into the Extension Letter;

(iii) the CBRE Valuation had been performed on an "as is" basis, without taking any development approval into account;

(iv) when LMIM ATF the MPF entered into the Extension Letter, AIIS intended to undertake a residential development of the Land;

(v) notwithstanding the matters pleaded in subparagraph 100(c)(iv) above, LMIM ATF the MPF did not obtain a valuation of the Land

for residential development purposes, before entering into the Extension Letter.

Fifth Deed of Variation of the AIIS Loan

101. In the premises pleaded in paragraphs 85 to 88 above, the defendant ATF the MPF entered into the Fifth Deed of Variation of the AIIS Loan, notwithstanding that the defendant knew, or ought to have known, that:

Feasibility fails to include interest accruing on development costs

(a) AIIS had entered into the Land Availability Agreement, as pleaded in paragraphs 80 and 81 above;

(b) as pleaded in paragraph 81(g)(iv)(F) above, the maximum amount that AIIS was entitled to receive pursuant to the terms of the Land Availability Agreement was the "AIIS Entitlement" of $26,580,796;

(c) the AIIS Entitlement was calculated in the manner pleaded in paragraph 79 above; that is, by calculating:

(i) the amounts owing under the FMIF and AIIS Loans as at 30 June 2011; and

(ii) the interest that would accrue on the FMIF and AIIS Loans over the life of the Aalto Apartments development; and

(iii) interest that would accrue to LMIM ATF the MPF, on funded development costs over the life of the project;

(d) the MPF Credit Committee approval for the Fifth Deed of Variation of the AIIS Loan, was provided on the basis of the feasibility for the Aalto Apartments development, pleaded in paragraph 76(c) above;

(e) the feasibility for the Aalto Apartments development was calculated based on the following costs totalling $23.64 million, over the life of the Aalto Apartments development:

(i) a combined loan balance of $16.05 million for the FMIF and AIIS Loans, as at 8 November 2011; and

(ii) interest totalling $7.59 million on the FMIF and AIIS Loans, for a project life of 41 months;

(f) the feasibility the defendant prepared for the Aalto Apartments development did not take into account the additional amount of $2,940,796.00 in interest that would accrue to the MPF over the life of the project, as included in the AIIS Entitlement;

Particulars

$2,940,796.00 is the difference between the AIIS Entitlement of $26,580,796, and the amount of $23.64 million included for principal and interest in the defendant's feasibility for the Aalto Apartments development and pleaded in paragraph 101(e) above;

(g) in the premises, if LMIM ATF the MPF had included in its feasibility for the Aalto Apartments development the additional amount of $2,940,796.00 in interest that would accrue to the MPF over the life of the project, as included in the AIIS Entitlement , the defendant's feasibility for the Aalto Apartments development would have predicted a shortfall;

Reliance upon Jones Lang LaSalle Valuation

(h) the defendant ATF the MPF relied upon the Jones Lang LaSalle valuation dated 12 April 2012, in entering into the Fifth Deed of Variation of the AIIS Loan on or about 14 August 2012, in circumstances where:

(i) that valuation had been prepared for the defendant for internal reporting purposes only, as pleaded at paragraph 84(a) above;

(ii) that valuation was valid at the date of valuation only, as pleaded at paragraph 84(c) above; and

(iii) Jones Lang LaSalle did not accept any liability where the valuation was relied upon more than three months after the date of valuation, as pleaded at paragraph 84(c) above;

FMIF and AIIS Loans exceed the amount allowed for in the feasibility

(i) the plaintiff repeats and relies upon paragraph 101(e) above;

(j) by no later than 1 May 2012, the defendant ATF the MPF was aware that:

(i) the balance of the FMIF Loan was $8,126,000.00, as at 31 March 2012;

(ii) the balance of the AIIS Loan was $15,989,000 as at 3 April 2012; and

(iii) the maximum approved Loan Amount of the FMIF Loan was $8,295,000 as at 31 March 2012;

Particulars

Recorded in a project summary for the Aalto Apartments dated 30 April 2012, attached to an email from Ms Shelley Chalmers of the defendant to the MPF Investment Committee, dated 1 May 2012;

(k) in the premises:

(i) as at 3 April 2012, the combined balances of the FMIF Loan and the AIIS Loan totalled $24,115,000.00;

(ii) as at 3 April 2012, the combined balances of the FMIF Loan and the AIIS Loan exceeded the amount of $23.64 million allowed for these costs in the feasibility LMIM ATF the MPF had prepared for the Aalto Apartments development, as pleaded at paragraph 101(e) above;

(iii) upon execution of the Fifth Deed of Variation of the AIIS Loan, the combined Loan Amounts of the FMIF Loan and the AIIS Loan totalled $25.095 million, comprising:

A. the Loan Amount of $16.8 million for the AIIS Loan, provided for by the Fifth Deed of Variation of the AIIS Loan; and

B. the Loan Amount of $8,295,000 for the FMIF Loan, as pleaded at paragraph 101(j)(iii) above; and

(iv) in the premises, the increase to the Loan Amount of the AIIS Loan by the Fifth Deed of Variation of the AIIS Loan permitted the combined Loan Amounts of the FMIF and AIIS Loans to exceed the amount of $23.64 million LMIM ATF the MPF had allowed for these costs in the feasibility it had prepared for the Aalto Apartments development, as pleaded at paragraph 101(e) above.

Sixth Deed of Variation of the AIIS Loan

102. In the premises pleaded in paragraphs 93 and 94 above, the defendant ATF the MPF entered into the Sixth Deed of Variation of the AIIS Loan, notwithstanding the defendant knew, or ought to have known, that:

No internal approvals

(a) the defendant ATF the MPF did not prepare any Synopsis in respect of the Sixth Deed of Variation of the AIIS Loan;

(b) the Sixth Deed of Variation of the AIIS Loan was not approved by the MPF Credit Committee or the MPF Investment Committee;

(c) in the premises the defendant ATF the MPF failed to assess whether the security obtained for the AIIS Loan was adequate, in light of the increase to the Loan Amount of the AIIS Loan by the Sixth Deed of Variation of the AIIS Loan;

Feasibility fails to include interest accruing on development costs

(d) the matters pleaded in paragraphs 101(a) to 101(g) above, upon which the plaintiff repeats and relies;

Reliance upon Jones Lang LaSalle Valuation

(e) the defendant ATF the MPF relied upon the Jones Lang LaSalle valuation dated 12 April 2012 in entering into the Sixth Deed of Variation of the AIIS Loan on or about 1 February 2013, in circumstances where:

(i) that valuation had been prepared for the defendant for internal reporting purposes only, as pleaded at paragraph 84(a) above;

(ii) that valuation was valid at the date of valuation only, as pleaded at paragraph 84(c) above; and

(iii) Jones Lang LaSalle did not accept any liability where the valuation was relied upon more than three months after the date of valuation, as pleaded at paragraph 84(c) above;

FMIF and AIIS Loans exceed the amount allowed for in the feasibility

(f) upon execution of the Sixth Deed of Variation of the AIIS Loan, the combined Loan Amounts of the FMIF Loan and the AIIS Loan totalled at least $32,295,000, comprising:

(i) the Loan Amount of $24 million for the AIIS Loan, provided for by the Sixth Deed of Variation of the AIIS Loan; and

(ii) the Loan Amount of $8,295,000 for the FMIF Loan, as pleaded at paragraph 101(j)(iii) above; and

(g) in the premises, the increase to the Loan Amount of the AIIS Loan by the Sixth Deed of Variation of the AIIS Loan permitted the combined Loan Amounts of the FMIF and AIIS Loans to exceed the amount of $23.64 million LMIM ATF the MPF had allowed for these costs in the feasibility it had prepared for the Aalto Apartments development, as pleaded at paragraph 101(e) above;

FMIF and AIIS Loans exceed the AIIS Entitlement

(h) the plaintiff repeats and relies upon paragraphs 101(a), 101(b) and 102(f) above;

(i) in the premises, by the execution of the Sixth Deed of Variation of the AIIS Loan, the combined Loan Amounts of the FMIF and AIIS Loans exceeded the amount AIIS was entitled to recover pursuant to the AIIS Entitlement.

Breach of duty

103. In the premises pleaded in:

(a) paragraphs 98(a) to 98(c) above, by entering into the Third Deed of Variation of the AIIS Loan;

(b) paragraphs 99(a) to 99(c) above, by entering into the Fourth Deed of Variation of the AIIS Loan;

(c) paragraphs 100(a) and 100(b) above, by entering into the Extension Letter for the AIIS Loan;

(d) paragraphs 101(i) to 101(k) above, by entering into the Fifth Deed of Variation of the AIIS Loan; and

(e) paragraphs 102(f) to 102(i) above, by entering into the Sixth Deed of Variation of the AIIS Loan,

the defendant breached the duty that it owed to the beneficiaries of the MPF not to place itself in a position of conflict of interest or duty, in that the duties that it owed to the beneficiaries of the MPF conflicted with the duties that it owed to the beneficiaries of the FMIF.

104. In the premises pleaded in paragraphs 98 to 102 above, by entering into the Third, Fourth, Fifth and Sixth Deeds of Variation of the AIIS Loan and the Extension Letter, and by performing the terms of these Deeds and the Extension Letter, the defendant breached the duty it owed to the beneficiaries of the MPF

to exercise the same care that an ordinary, prudent person of business would exercise in the conduct of that business were it his or her own.

Duties under the *Trusts Act* 1973 (Qld)

105. In the premises pleaded in paragraphs 98 to 102 above, by entering into the Third, Fourth, Fifth and Sixth Deeds of Variation of the AIIS Loan and the Extension Letter, and by performing the terms of these Deeds and the Extension Letter, the defendant breached the duty it owed pursuant to s.22 of the *Trusts Act* 1973 (Qld), to exercise the care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons, when exercising a power of investment.

106. The defendant breached the duty that it owed pursuant to s.24(e) of the *Trusts Act* 1973 (Qld) to take into account the risk of capital or income loss or depreciation when exercising its power of investment:

(a) by entering into the Third Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 98 above;

(b) by entering into the Fourth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 99 above;

(c) by entering into the Extension Letter and by performing the terms of the Extension Letter, in the premises pleaded in paragraph 100 above;

(d) by entering into the Fifth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 101 above; and

(e) by entering into the Sixth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 102 above.

107. The defendant breached the duty that it owed pursuant to s.24(g) of the *Trusts Act* 1973 (Qld) to take into account the likely income return and the timing of income return:

(a) by entering into the Third Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 98 above;

(b) by entering into the Fourth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 99 above;

(c) by entering into the Extension Letter and by performing the terms of the Extension Letter, in the premises pleaded in paragraph 100 above;

(d) by entering into the Fifth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 101 above; and

(e) by entering into the Sixth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 102 above.

108. The defendant breached the duty that it owed pursuant to s.24(h) of the *Trusts Act* 1973 (Qld) to take into account the length of the term of the proposed investment:

(a) by entering into the Third Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 98 above;

(b) by entering into the Fourth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 99 above;

(c) by entering into the Extension Letter and by performing the terms of the Extension Letter, in the premises pleaded in paragraph 100 above;

(d) by entering into the Fifth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 101 above; and

(e) by entering into the Sixth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 102 above.

109. The defendant breached the duty that it owed pursuant to s.24(j) of the *Trusts Act* 1973 (Qld) to take into account the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment:

(a) by entering into the Third Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 98 above;

(b) by entering into the Fourth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 99 above;

(c) by entering into the Extension Letter and by performing the terms of the Extension Letter, in the premises pleaded in paragraph 100 above;

(d) by entering into the Fifth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 101 above; and

(e) by entering into the Sixth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 102 above.

110. The defendant breached the duty that it owed pursuant to s.24(n) of the *Trusts Act* 1973 (Qld) to take into account the cost of making the proposed investment:

(a) by entering into the Third Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 98 above;

(b) by entering into the Fourth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 99 above;

(c) by entering into the Extension Letter and by performing the terms of the Extension Letter, in the premises pleaded in paragraph 100 above;

(d) by entering into the Fifth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 101 above; and

(e) by entering into the Sixth Deed of Variation of the AIIS Loan and by performing the terms of that Deed, in the premises pleaded in paragraph 102 above.

Loss suffered by the MPF

111. In consequence of the defendant's breaches of duty:

(a) the defendant ATF the MPF caused amounts totalling $11,385,581.62 to be paid to AIIS, or to be paid at the direction of AIIS, pursuant to the terms of the AIIS Loan;

(b) the defendant ATF the MPF received payments in respect of the AIIS Loan totalling $4,228,314.36, which:

(i) are first applied to the interest of $618,365.83 that had accrued on the AIIS Loan, at the time of receiving these payments;

(ii) the balance of $3,609,948.53 is applied to the amounts paid to, or at the direction of AIIS, as pleaded in paragraph 111(a);

(iii) in the premises, the assets of the defendant ATF the MPF were depleted by a net amount of $7,775,633.09;

(c) the defendant ATF the MPF caused the payments pleaded in paragraph 111(a) to be made, in circumstances where the only real property security that the defendant ATF the MPF held for the AIIS Loan was the second registered mortgage over the Land;

(d) when the Land was sold, as pleaded in paragraphs 96 and 97 above, the plaintiff and Calibre ATF the MPF did not receive any money from the sale of the Land;

(e) in the premises, by reason of the defendant's breaches of duty:

(i) the assets of the defendant ATF the MPF were depleted by the amount of $11,385,581.62 paid to AIIS, or paid at the direction of AIIS, less the $3,609,948.53 of payments received and applied to that amount; resulting in the assets of the defendant ATF the MPF being depleted by the net amount of $7,775,633.09 and

(ii) the plaintiff ATF the MPF has lost the amount of $11,385,581.62 paid to AIIS, or paid at the direction of AIIS, less the $3,609,948.53 of payments received and applied to that amount; resulting in a net loss of $7,775,633.09;

(iii) the defendant ATF the MPF lost the opportunity to lend the money paid to AIIS to a different borrower, and thereby recover the amount advanced, and earn interest on the money advanced.

Particulars

The best particulars that the plaintiff presently can provide are that the defendant ATF the MPF would have earned interest approximately equal to the amount of interest that accrued on the AIIS Loan, but which (in the premises pleaded in paragraphs 96 and 97 above) was never recovered by the defendant ATF the MPF.

The best particulars that the plaintiff presently can provide of the amount of interest that accrued on the AIIS Loan, but which was not recovered by the defendant ATF the MPF, are that an account statement for the AIIS Loan dated 22 November 2011 records that $9,044,723.21 in interest accrued up to 22 November 2011, and which included interest that was pre-booked up to 31 March 2015.

Interest paid on the FMIF Loan

112. The plaintiff repeats paragraphs 22 to 25 above.

113. Up to 2 January 2013 AIIS, or the defendant ATF the MPF, paid $3,905,721.81 to the defendant ATF the FMIF, or alternatively to PTAL as Custodian of the FMIF, in interest accruing on the FMIF Loan.

114. In the premises pleaded in paragraphs 46(c), 47(i), 55(d), 56(k), 64(h), 87(b), 90(c)(iv)(C) and 94(c)(iv)(C) above, the payments pleaded in paragraph 113 were made from the amounts LMIM ATF the MPF advanced to AIIS pursuant to the AIIS Loan.

Constructive trust

115. The defendant was:

(a) in the premises pleaded in paragraphs 4 to 8 above, aware that it, ATF the MPF, held the assets of the MPF on trust for the beneficiaries of the MPF;

(b) in the premises pleaded in paragraphs 44 to 48, 53 to 58, 63 to 66, 85 to 88 and 98 to 110 above, aware that the payments to itself ATF the FMIF, or alternatively to PTAL as Custodian of the FMIF, of $3,905,721.81 were made in breach of trust.

116. Insofar as PTAL may hold in its capacity as Custodian of the FMIF:

(a) the amount of $3,905,721.81, as pleaded in paragraph 113 above, it holds that amount as agent for the defendant ATF the FMIF pursuant to clause 2.1 of the Custody Agreement;

(b) assets representing the value it received from the payments of $3,905,721.81, as pleaded in paragraph 113 above, it holds those assets as agent for the defendant ATF the FMIF, pursuant to clause 2.1 of the Custody Agreement.

117. In the premises, the defendant ATF the FMIF holds the amount of $3,905,721.81, as pleaded in paragraph 113 above, on a constructive trust for the plaintiff, in its capacity as trustee of the MPF.

Right of subrogation

118. The plaintiff repeats paragraphs 112 to 114 above.

119. The payments totalling $3,905,721.81 pleaded in paragraph 113 above delivered value to the defendant ATF the FMIF in relation to which the plaintiff is entitled to trace.

120. The defendant is insolvent.

121. In the premises:

(a) the defendant received the interest payments accruing on the FMIF Loan totalling $3,905,721.81, in its capacity as trustee of the FMIF;

(b) as a former trustee of the FMIF, the defendant has a right of indemnity out of the assets of the FMIF, in respect of the defendant's liability in this proceeding regarding the interest payments totalling $3,905,721.81.

122. Any right of indemnity of the defendant ATF the FMIF operates as an equitable lien or charge over the assets of the FMIF.

123. The defendant ATF the FMIF holds the assets of the FMIF subject to any right of indemnity charge and lien of the defendant over those assets.

124. By reason of the matters pleaded in paragraphs 112 to 114, and 118 to 123 above, the plaintiff is entitled to be subrogated to the defendant's right of indemnity and lien or charge, in respect of the defendant's liability in this proceeding regarding the payments totalling $3,905,721.81 pleaded in paragraph 113.

The plaintiff claims the following relief:

1. Equitable compensation calculated as follows:

Payments pursuant to the AIIS Loan of	$11,385,581.62
Less receipts applied to principal of	$3,609,648.53
Net Loss	$7,775,633.09
Plus lost opportunity interest	$9,044,723.21
Equitable compensation:	$16,820,356.30;

2. A declaration that the defendant ATF the FMIF holds the amount of $3,905,721.81 on constructive trust for the plaintiff, in its capacity as trustee of the MPF;

3. A declaration that:

   (a) the plaintiff is entitled to be indemnified out of the assets of the FMIF in respect of the defendant's liability to the plaintiff in this proceeding, in respect of the amount of $3,905,721.81;

   (b) the plaintiff has a lien or charge over the assets and undertaking of the FMIF in respect of the defendant's liability to the plaintiff in this proceeding, in respect of the amount of $3,905,721.81;

   (c) the plaintiff is entitled to be subrogated to the rights of the defendant in respect of the assets of the FMIF, in respect of the amount of $3,905,721.81;

4. Interest pursuant to s.58 of the *Civil Proceedings Act* 2011 (Qld) but excluding interest on so much of the claim for equitable compensation as includes the lost opportunity to earn interest;

5. Costs;

6. Such further or other order as the Court sees fit.

Signed: Mit Ehn.

Description: SOLICITOR FOR THE PLAINTIFF.

This pleading was settled by Andrew Crowe QC and Ms Ahern of Counsel.

NOTICE AS TO DEFENCE

Your defence must be attached to your notice of intention to defend.

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 12716/15

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

ORDER

Before: Justice Daubney
Date: 22 November 2016
Initiating document: Application filed 3 November 2016

THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 500(2) of the *Corporations Act* 2001 (Cth), the plaintiff be granted leave *nunc pro tunc* to commence and to proceed with this Supreme Court of Queensland proceeding against the defendant, LM Investment Management Limited (Receivers & Managers Appointed)(In Liquidation)(ACN 077 208 461), on the condition that any judgment against the defendant will not be enforced without further leave of the court.

2. The plaintiff serve the claim and statement of claim in this matter on or before 15 December 2016.

3. The defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant's solicitors, Clayton Utz, and to the solicitors for the receiver of the LM First Mortgage Income Fund, Tucker & Cowen, that a defence and any counterclaim is required to be filed.

4. The applicant plaintiff's costs and expenses of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

Signed: Deputy Registrar

SUPREME COURT OFFICE BRISBANE

ORDER

Filed on behalf of the Plaintiff

Form 59 Rule 661

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NYB DOB 407747963

ME_134483212_2

- 1 JAN 2017

Duplicate

SUPREME COURT OF QUEENSLAND
REGISTRY Brisbane
NUMBER 12716/15

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

ORDER

Before: Justice Jackson

Date: 16 July 2018

Initiating document: Application filed 5 July 2018

THE ORDER OF THE COURT IS THAT:

1. The plaintiff serve the application for direction under section 96 of the *Trusts Act* 1973 (Qld) on unitholders of the Managed Performance Fund **("MPF")** in accordance with this order.

2. By 4.00pm on 17 July 2018, the plaintiff is to email to the MPF unitholders a notice informing them that the plaintiff has applied (“**S 96 Application**”) to this Honourable Court for direction under section 96 of the *Trusts Act* 1973 (Qld) to discontinue this proceeding, and that they may view all substantive Court documents upon which the plaintiff intends to rely in support of its S 96

ORDER

Filed on behalf of the plaintiff

SUPREME COURT OFFICE BRISBANE

Form 59 Rule 661

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference NYB DOB 407747963

Application on the web-site the address of which is: http://www.kordamentha.com/creditor-information/australia/109 ("**Website**").

3. Where the plaintiff receives a response to an email that indicates the email was not received and the plaintiff has a postal address for any relevant MPF unitholder or unitholders, the plaintiff is to post the email to the postal address of the MPF unitholder.

4. Service of the S 96 Application be deemed to be effective on each of the MPF unitholders as of 24 July 2018.

5. Before sending the emails referred to in paragraph 2 of this order, the plaintiff is to upload to the Website, copies of:

   (a) the S 96 Application;

   (b) the application for directions about service;

   (c) the affidavit of Jarrod Villani to be filed in support of the application for directions about service;

   (d) the affidavit of David O'Brien to be filed in support of the application for directions about service;

   (e) this order;

   (f) the Statement of Facts drawn pursuant to section 96 (1) of the *Trusts Act* 1973 (Qld); and

   (g) any substantive affidavits (including all the exhibits) that the plaintiff intends to reply upon in support of its S 96 Application.

6. Where the plaintiff proposes to rely on further material in support of its S 96 Application, it may serve that material by uploading the material to the Website, sending letters to a postal address to unitholders to whom order 3 applies, and otherwise by email to the unitholders.

7. The plaintiff is not required to take further steps to serve MPF unitholders whose email addresses return permanent undeliverable receipts and for which the plaintiff does not have a postal address.

8. The plaintiff's costs and expenses of and incidental to its application for this order are reserved.

9. The plaintiff is to serve a copy of this order on LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) and Mr David Whyte in his capacity as Court Appointed Receiver of the property of the LM First Mortgage Income Fund.

Signed: _____
Deputy Registrar

SUPREME COURT OFFICE BRISBANE

"A"

SUPREME COURT OF QUEENSLAND

Duplicate

REGISTRY: Brisbane
NUMBER: 2869/13

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED) ABN 68077 208 461 AND LM ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) ACN 055 691 426

Applicants	**JOHN RICHARD PARK AND GINETTE MULLER IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED) AND LM ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED)**
Respondents	**THE MEMBERS OF THE MANAGED PERFORMANCE FUND**

ORDER

Judge:	de Jersey CJ
Date:	12 April 2013
Initiating document:	Originating Application filed 26 March 2013

The Court orders that:

1. LM Investment Management Limited (Administrators Appointed) is removed as trustee of the trust named The LM Managed Performance Fund.

2. Korda Mentha Pty Ltd (ACN 100 169 391) and Calibre Capital Pty Ltd (ABN 66 108 318 985) are appointed as joint and several trustees of the trust named The LM Managed Performance Fund.

3. Orders 1 and 2 are made without prejudice to any lien or charge, or any right of reimbursement or any right of indemnity that :

   (a) LM Investment Management Limited, as former trustee; and

SUPREME COURT OFFICE 75645v BRISBANE

Piper Alderman

(b) The Applicants in their capacity as joint and several administrators of LM Investment Management Limited,

may have against the assets of the trust.

4. The costs of both the applicants and the respondents shall be assessed on the indemnity basis and paid out of the assets of the trust.

REGISTRAR

27975645v1

Company Extract Current & Historical for KORDAMENTHA PTY LTD

Request ID:	180717-AN0AL-00258	Report Created:	17-Jul-2018 8:34 AM
Charge back no:		ASIC Extract Date:	17-Jul-2018 8:34 AM
Subject:	KORDAMENTHA PTY LTD	File Number:	466010570

This Company Extract Current & Historical report contains all data received in a Company Extract Current & Historical obtained at 17 Jul 2018 8:34 AM, sourced from the Australian Securities and Investment Commission's database under section 1274A of the Corporations Act 2001. This report has been enhanced with on-screen related searching information. To report any errors or omissions regarding this report please contact Equifax.

Identity

ASIC organisation details

Name:	KORDAMENTHA PTY LTD
Name start date:	15-Aug-2002
ABN:	43100169391
ACN :	100169391
Registration date:	10-Apr-2002
Next review date:	10-Apr-2019
Status:	Registered
Company Type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	VIC
Document Number:	017546648
Disclosing Entity:	No

ASIC organisation details (10-Apr-2002 - 14-Aug-2002)

Name:	KORDA MENTHA & COLLEAGUES PTY LTD
Name start date:	10-Apr-2002
ABN:	43100169391
ACN :	100169391
Registration date:	10-Apr-2002
Next review date:	10-Apr-2019
Status:	Registered
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	VIC
Document Number:	0E7209488
Disclosing Entity:	No

Registered Office

Current Address: LEVEL 31, 525 COLLINS STREET
MELBOURNE VIC
3000
from:21-Aug-2017
Doc No: 7E9346260

Previous Address(es):

LEVEL 24, 333 COLLINS STREET
MELBOURNE VIC
3000
from:23-Oct-2002
until:20-Aug-2017
Doc No: 018555276

LEVEL 10, 350 COLLINS STREET
MELBOURNE VIC
3000
from:10-Apr-2002
until:22-Oct-2002
Doc No: 0E7209488

Principal Place of Business

Current Address:

LEVEL 31, 525 COLLINS STREET
MELBOURNE VIC
3000
from:14-Aug-2017
Doc No: 7E9346260

Previous Address(es):

LEVEL 24, 333 COLLINS STREET
MELBOURNE VIC
3000
from:21-Oct-2002
until:13-Aug-2017
Doc No: 018555276

LEVEL 10, 350 COLLINS STREET
MELBOURNE VIC
3000
from:10-Apr-2002
until:20-Oct-2002
Doc No: 0E7209488

Contact Address for ASIC use only

Previous Address(es):

GPO BOX 2183
MELBOURNE VIC
3001
from:11-May-2011
until:14-Sep-2011

Section 146A of the Corporations Act 2001 states: 'A contact address is the address to which communications and notices are sent from ASIC to the company'.
This address is recorded for ASIC use only.

Org Structure

Director (2)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Current	KORDA, MARK ANTHONY '(MARK KORDA)' LEVEL 31, 525S COLLINS STREET MELBOURNE VIC 3000	10-Apr-2002		25-Mar-1957 in MELBOURNE, VIC	52573624	018866408
	MENTHA, MARK FRANCIS XAVIER '(MARK MENTHA)' LEVEL 31, 525S COLLINS STREET MELBOURNE VIC 3000	10-Apr-2002		25-Dec-1959 in COBRAM, VIC	39923128	018866409

Secretary (4)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document

Current	KORDA, MARK ANTHONY '(MARK KORDA)' LEVEL 31, 525S COLLINS STREET MELBOURNE VIC 3000	10-Apr-2002		25-Mar-1957 in MELBOURNE, VIC	52573624	018866408
Previous	ASHBY, CAROLYN ANN 115 WHITTLESEA-KINGLAKE ROAD KINGLAKE VIC 3763	15-Dec-2014	01-May-2017	24-Jul-1971 in PRESTON, VIC	565191288	7E6597621
	ASHBY, CAROLYN ANN 115 WHITTLESEA-KINGLAKE ROAD KINGLAKE VIC 3763	13-Dec-2013	03-Feb-2014	24-Jul-1971 in PRESTON, VIC	565191288	1F0476707
	ASHBY, CAROLYN ANN 115 WHITTLESEA-KINGLAKE ROAD KINGLAKE VIC 3763	19-Dec-2012	30-Jan-2013	24-Jul-1971 in MELBOURNE, VIC	565191288	028382566

Share structure

Class:	ORDINARY
Class Code:	ORD
Shares issued:	100
Paid on shares issued:	$ 100.00 total
Unpaid on shares issued:	$ 0.00 total
ASIC document:	10016939M (AR 2002)

Members(2)

Name	Class	Shares	Beneficially Held	Paid	ASIC Document
KMMKIV PTY LTD LEVEL 31, 525 COLLINS STREET MELBOURNE VIC 3000 ACN :134280112	ORDINARY	50	No	Yes	7E9346260
KMMMIV PTY LTD LEVEL 31, 525 COLLINS STREET MELBOURNE VIC 3000 ACN :134330386	ORDINARY	50	No	Yes	7E9346260

Previous Members(2)

Name	Class	Shares	Beneficially Held	Paid	ASIC Document
KORDA, MARK ANTHONY '(MARK KORDA)' LEVEL 31, 525S COLLINS STREET MELBOURNE VIC 3000	ORDINARY	50	Yes	Yes	10016939M (AR 2002)
MENTHA, MARK FRANCIS XAVIER '(MARK MENTHA)' LEVEL 31, 525S COLLINS STREET MELBOURNE VIC 3000	ORDINARY	50	Yes	Yes	10016939M (AR 2002)

For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database.
Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Annual returns

Year	Return Due	Extension	AGM due	Extension	AGM held	Outstanding
2002	31-Jan-2003	unknown	unknown	unknown	unknown	No

When the table above states "unknown" for a date, the precise date may be available from records taken over on 1 January 1991 and held by the ASIC in paper or microfiche.

Securities (ASIC)

Definition and Notes

As of January 30th 2012 ASIC current securities and charges are no longer available from ASIC due to the Personal Properties Securities Act (PPSA).

07-Jan-2008 : ESANDA FINANCE CORPORATION LIMITED

ASIC Charge No: 1569616
registered:07-Jan-2008
created:24-Dec-2007
Status: Satisfied
Fixed / Floating: Fixed
Chargees: ESANDA FINANCE CORPORATION LIMITED
ACN :004346043

ASIC Doc No	Form	Description	Pages	Lodged	Processed
027074425	312	NOTIFICATION OF (A) DISCHARGE	2	18-Feb-2011	18-Feb-2011

ASIC Documents

Document(s)

ASIC Doc No	Form	Description	Pages	Received	Processed	Effective
7E9346260	484	Change to Company Details (B) Change of Registered Address (C) Change of Principal Place of Business (Address) (A2) Change Member Name or Address	2	14-Aug-2017	14-Aug-2017	14-Aug-2017
7E9030130	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	2	08-May-2017	08-May-2017	08-May-2017
7E6597621	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	2	15-Dec-2014	15-Dec-2014	15-Dec-2014
028875648	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	4	05-Feb-2014	06-Feb-2014	06-Feb-2014
1F0476707	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	3	19-Dec-2013	20-Dec-2013	20-Dec-2013
028325436	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	4	04-Feb-2013	05-Feb-2013	05-Feb-2013
028382566	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	4	19-Dec-2012	20-Dec-2012	20-Dec-2012
027074425	312	(A) Notification of Discharge	2	18-Feb-2011	18-Feb-2011	18-Feb-2011

1F0251266	484	(N) Change to Company Details Changes to (Members) Share Holdings	5	19-Oct-2009	20-Oct-2009	20-Oct-2009
7E1426252	309	(A) Notification of Details of a Charge	6	07-Jan-2008	07-Jan-2008	24-Dec-2007
10016939M	316	(L) Annual Return Annual Return - Proprietary Company	3	28-Jan-2003	05-Mar-2003	23-Jan-2003
018866409	304	(C) Notification of Change of Name or Address of Officeholder	2	28-Jan-2003	05-Mar-2003	20-Jan-2003
018866408	304	(C) Notification of Change of Name or Address of Officeholder	2	28-Jan-2003	05-Mar-2003	20-Jan-2003
018555276	203	Notification Of (A) Change of Address (G) Change of Address - Principal Place of Business	1	16-Oct-2002	22-Oct-2002	21-Oct-2002
017546648	205	(A) Notification of Resolution Changing Company Name	1	15-Aug-2002	15-Aug-2002	01-Aug-2002
0E7209488	201	(C) Application For Registration as a Proprietary Company	3	10-Apr-2002	10-Apr-2002	10-Apr-2002

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END OF REPORT

Company Extract Current & Historical for LM INVESTMENT MANAGEMENT LIMITED

Request ID:	180717-AN0AL-00264	Report Created:	17-Jul-2018 8:36 AM
Charge back no:		ASIC Extract Date:	17-Jul-2018 8:36 AM
Subject:	LM INVESTMENT MANAGEMENT LIMITED	File Number:	325194112

This Company Extract Current & Historical report contains all data received in a Company Extract Current & Historical obtained at 17 Jul 2018 8:36 AM, sourced from the Australian Securities and Investment Commission's database under section 1274A of the Corporations Act 2001. This report has been enhanced with on-screen related searching information. To report any errors or omissions regarding this report please contact Equifax.

Identity

ASIC organisation details

Name:	LM INVESTMENT MANAGEMENT LIMITED
Name start date:	06-Aug-1998
ABN:	68077208461
ACN :	077208461
Registration date:	31-Jan-1997
Next review date:	31-Jan-2019
Status:	** Under External Administration And/Or Controller Appointed **
Company Type:	Australian Public Company
Governance Type:	C
Class:	Limited By Shares
Subclass:	Unlisted Public Company
Registered in:	QLD
Document Number:	7E5097309
Disclosing Entity:	No

ASIC organisation details (06-Aug-1998 - 18-Mar-2013)

Name:	LM INVESTMENT MANAGEMENT LIMITED
Name start date:	06-Aug-1998
ABN:	68077208461
ACN :	077208461
Registration date:	31-Jan-1997
Next review date:	31-Jan-2019
Status:	Registered
Company type:	Australian Public Company
Class:	Limited By Shares
Subclass:	Unlisted Public Company
Registered in:	QLD
Document Number:	014236975
Disclosing Entity:	No

ASIC organisation details (26-Mar-1997 - 05-Aug-1998)

Name:	PLANNED PROPERTY SYNDICATION LTD
Name start date:	26-Mar-1997
ABN:	68077208461
ACN :	077208461
Registration date:	31-Jan-1997

Next review date:	31-Jan-2019
Status:	Registered
Company type:	Australian Public Company
Class:	Limited By Shares
Subclass:	Unlisted Public Company
Registered in:	QLD
Document Number:	011876588
Disclosing Entity:	No

ASIC organisation details (31-Jan-1997 - 25-Mar-1997)

Name:	PLANNED PROPERTY SYNDICATION PTY LTD
Name start date:	31-Jan-1997
ABN:	68077208461
ACN :	077208461
Registration date:	31-Jan-1997
Next review date:	31-Jan-2019
Status:	Registered
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Document Number:	011664971
Disclosing Entity:	No

Registered Office

Current Address:

C/- FTI CONSULTING C/- FTI CONSULTING LEVEL 20, 345 QUEEN STREET
BRISBANE QLD
4000
from:17-Apr-2018
Doc No: 8E0071298

Previous Address(es):

22 MARKET STREET
BRISBANE QLD
4000
from:07-Sep-2016
until:16-Apr-2018
Doc No: 7E8301918

FTI CONSULTING 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT
BUNDALL QLD
4217
from:29-Mar-2013
until:06-Sep-2016
Doc No: 7E5105009

LEVEL 4 RSL CENTRE, 9 BEACH ROAD
SURFERS PARADISE
QLD
4217
from:10-Feb-1997
until:28-Mar-2013
Doc No: 010807638

C/- TOP SHELF COMPANY SERVICES SUITE 1, 31 CROMBIE AVENUE
BUNDALL QLD
4217
from:31-Jan-1997
until:09-Feb-1997
Doc No: 011664971

Principal Place of Business

Current Address:

LEVEL 4 RSL CENTRE, 9 BEACH ROAD

SURFERS PARADISE
QLD
4217
from:01-Jul-1998

Contact Address for ASIC use only

Previous Address(es): PO BOX 588
SURFERS PARADISE
QLD
4217
from:28-Jun-2003
until:02-Aug-2013

Section 146A of the Corporations Act 2001 states: 'A contact address is the address to which communications and notices are sent from ASIC to the company'.
This address is recorded for ASIC use only.

Org Structure

Director (17)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Current	VAN DER HOVEN, EGHARD 10 ROWES COURT SORRENTO QLD 4217	22-Jun-2006		21-Jan-1962 in DURBAN, SOUTH AFRICA	475440059	1F0109176
	MULDER, FRANCENE MAREE 109 STRAWBERRY ROAD MUDGEERABA QLD 4213	30-Sep-2006		24-Apr-1961 in SOUTHPORT, QLD	348088508	1F0069214
Previous	DRAKE, PETER CHARLES 13 ALBATROSS AVENUE NOBBY BEACH QLD 4218	31-Jan-1997	09-Jan-2015	23-Aug-1955 in WHANGARA, NEW ZEALAND	37558848	1E2914414
	PHILLIPS, KATHERINE JANE UNIT 1, 93-95 BIRRIGA ROAD BELLEVUE HILL NSW 2023	13-Jul-2012	20-Jun-2013	21-Mar-1980 in SOUTHPORT, QLD	750478721	7E4588883
	O'SULLIVAN, JOHN FRANCIS APARTMENT 1110 AL HALAWI, 18 THE SHORELINE PALM JUMERIAH AL HALAWI DUBAI UNITED ARAB EMIRATES	27-Nov-2007	30-Sep-2012	30-Nov-1951 in TIMARU, NEW ZEALAND		7E4048590
	FISCHER, GRANT PETER UNIT 146, 1 MOORES CRESENT VARSITY LAKES QLD 4227	14-Mar-2012	12-Aug-2012	28-Nov-1968 in SYDNEY, NSW	24504365	7E4367220
	TICKNER, SIMON JEREMY 2016 THE CIRCLE SANCTUARY COVE QLD 4212	18-Sep-2008	13-Jul-2012	05-Mar-1962 in LONDON, UNITED KINGDOM	462727831	7E4097067
	DARCY, LISA MAREE 22 ROUEN AVENUE PARADISE POINT QLD 4216	12-Sep-2003	21-Jun-2012	16-Sep-1964 in BULLI, NSW	449116410	019612584
	DILLON, JOHN 15 FRANCIS STREET MERMAID BEACH QLD 4218	08-Jun-2005	28-Aug-2008	09-May-1950 in URMSTON, UNITED KINGDOM	11582972	7E1014532
	LLEWELLYN, JOHN VALLANDER 140 HONEYEATER DRIVE BURLEIGH WATERS QLD 4220	01-Jun-2007	30-Jun-2008	14-Dec-1949 in TREDEGAR, UNITED KINGDOM	7110583	7E1139324
	CARNE, MARTYN ANDREW	19-Jul-2002	06-Jun-2006	18-Sep-1963	46507292	07720846M

	11 TIPPERARY AVENUE KILLARNEY HEIGHTS NSW 2087			in SYDNEY, NSW		(AR 2002)
	MCMAHON, BRETT SAMUEL UNIT 125 DEEPWATER POINT, 326-342 MARINE PARADE LABRADOR QLD 4215	20-Aug-2004	27-May-2005	03-Jul-1957 in SYDNEY, NSW	10240334	020670882
	BLACK, GEOFFREY MURRAY 46 EARL STREET ROSEVILLE NSW 2069	31-Mar-1999	20-May-2005	04-Aug-1960 in CHRISTCHURCH, NEW ZEALAND	21991741	014874140
	AUBORT, PETER 1263 CURRUMBIN CREEK ROAD CURRUMBIN VALLEY QLD 4223	25-Mar-1997	12-Sep-2003	06-Sep-1967 in DUBBO, NSW	73664064	07720846M (AR 2002)
	QUINN, JOHN WATSON 15 SEAFARER COURT SURFERS PARADISE QLD 4217	17-Nov-2000	12-Feb-2002	28-Feb-1953 in AUCKLAND, NEW ZEALAND	100228265	015964420
	DWYER, MICHAEL PATRICK 14 YACHT STREET SOUTHPORT QLD 4215	31-Jan-1997	14-Dec-2001	01-May-1955 in WARWICK, QLD	96834014	010808222
	GILLTRAP, GEORGE STEPHENSON 16 DOUBLEVIEW DRIVE ELANORA QLD 4221	31-Jan-1997	31-Jan-1997	20-Feb-1949 in ROTORUA, NEW ZEALAND	83408383	010807643

Secretary (5)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Previous	HODGE, CAROLYN ANNE 47 PINNAROO STREET HOPE ISLAND QLD 4212	23-Sep-2004	04-Jul-2013	14-Jun-1963 in SYDNEY, NSW	150796871	1F0093922
	DRAKE, PETER CHARLES OCEANVIEW EASEMENT NOBBY BEACH QLD 4218	31-Jan-1997	23-Sep-2004	23-Aug-1955 in WHANGARA, NEW ZEALAND	37558848	010808222
	DARCY, LISA MAREE 22 ROUEN AVENUE PARADISE POINT QLD 4216	24-Jan-2003	23-Sep-2004	16-Sep-1964 in BULLI, NSW	449116410	07720846M (AR 2002)
	QUINN, JOHN WATSON 64 THOMAS DRIVE SURFERS PARADISE QLD 4217	10-May-1999	14-May-1999	28-Mar-1953 in AUCKLAND, NEW ZEALAND		014874940
	GILLTRAP, GEORGE STEPHENSON 16 DOUBLEVIEW DRIVE ELANORA QLD 4221	31-Jan-1997	31-Jan-1997	20-Feb-1949 in ROTORUA, NEW ZEALAND	83408383	010807643

Appointed Auditor (3)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Current	ERNST & YOUNG OTHER :024870595 'WATERFRONT PLACE' LEVEL 1, 1 EAGLE STREET BRISBANE QLD 4000	01-Oct-2003		unknown in QLD		020698531 (FR 2004)
Previous	KPMG OTHER :024510530 CORPORATE CENTRE ONE CNR BUNDALL AND SLATER AVENUE BUNDALL QLD 4217	21-Sep-1999	21-Nov-2003	unknown in QLD		016010134 (FR 1999)
	SHEEHY, MICHAEL JOHN	30-Nov-1997	21-Sep-1999	unknown		07720846H

	BUTLER MCMURTRIE LEVEL 5 RSL CENTRE, 9 BEACH ROAD SURFERS PARADISE QLD 4217			unknown		(AR 1997)

Receiver Manager (6)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Current	JAHANI, SAID GRANT THORNTON AUSTRALIA LIMITED LEVEL 17, 383 KENT STREET SYDNEY NSW 2000	16-Nov-2015		unknown unknown		7E7499212
	JAHANI, SAID GRANT THORNTON AUSTRALIA LIMITED LEVEL 17, 383 KENT STREET SYDNEY NSW 2000	16-Nov-2015		unknown unknown		7E7499219
	CONNELLY, ANTHONY NORMAN MCGRATHNICOL LEVEL 7, 175 EAGLE STREET BRISBANE QLD 4000	11-Jul-2013		unknown unknown		7E8533489
	HAYES, JOSEPH DAVID MCGRATHNICOL LEVEL 12, 20 MARTIN PLACE SYDNEY NSW 2000	11-Jul-2013		unknown unknown		7E9540373
Previous	DICKERSON, GAYLE LEVEL 17 383 KENT STREET SYDNEY NSW 2000	16-Nov-2015	22-Mar-2017	unknown unknown		7E7499212
	DICKERSON, GAYLE LEVEL 17 383 KENT STREET SYDNEY NSW 2000	16-Nov-2015	22-Mar-2017	unknown unknown		7E7499219

Appointed Liquidator (Creditors Voluntary Winding Up) (4)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Current	PARK, JOHN RICHARD FTI CONSULTING 'FTI CONSULTING' LEVEL 20, 345 QUEEN STREET BRISBANE QLD 4000	01-Aug-2013		unknown unknown		8E0036963
	PARK, JOHN RICHARD FTI CONSULTING 'FTI CONSULTING' LEVEL 20, 345 QUEEN STREET BRISBANE QLD 4000	01-Aug-2013		unknown unknown		8E0036963
Previous	MULLER, GINETTE DAWN FTI CONSULTING 22 MARKET STREET BRISBANE QLD 4000	01-Aug-2013	17-May-2017	unknown unknown		7E8296775
	MULLER, GINETTE DAWN FTI CONSULTING 22 MARKET STREET BRISBANE QLD 4000	01-Aug-2013	17-May-2017	unknown unknown		7E8296775

Administrator of a Company under Administration (2)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Previous	PARK, JOHN RICHARD	19-Mar-2013	01-Aug-2013	unknown		7E5097309

	FTI CONSULTING 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT BUNDALL QLD 4217			unknown	
	MULLER, GINETTE DAWN	19-Mar-2013	01-Aug-2013	unknown	7E5097309
	FTI CONSULTING 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT BUNDALL QLD 4217			unknown	

Share structure

Class:	ORDINARY
Class Code:	ORD
Shares issued:	35
Paid on shares issued:	$ 1,032,012.56 total
Unpaid on shares issued:	$ 0.00 total
ASIC document:	7E2830546

Previous Share structure

Class:	CLASS F SHARES
Class Code:	F
Shares issued:	3
Paid on shares issued:	$ 3.00 total
Unpaid on shares issued:	$ 0.00 total
ASIC document:	07720846H (AR 1997)

Annual returns

Year	Return Due	Extension	AGM due	Extension	AGM held	Outstanding
1997	31-Jan-1998	unknown	31-Dec-1997	unknown	unknown	No
1998	31-Jan-1999	unknown	unknown	unknown	unknown	No
1999	31-Jan-2000	unknown	unknown	unknown	unknown	No
2000	31-Jan-2001	unknown	unknown	unknown	unknown	No
2001	31-Jan-2002	unknown	unknown	unknown	unknown	No
2002	31-Jan-2003	unknown	unknown	unknown	unknown	No

When the table above states "unknown" for a date, the precise date may be available from records taken over on 1 January 1991 and held by the ASIC in paper or microfiche.

Securities (ASIC)

Definition and Notes

As of January 30th 2012 ASIC current securities and charges are no longer available from ASIC due to the Personal Properties Securities Act (PPSA).

29-Jun-2004 : COMMONWEALTH BANK OF AUSTRALIA

ASIC Charge No: 1055857

registered:29-Jun-2004
created:17-Jun-2004

Status: Satisfied

Fixed / Floating: Both Fixed & Floating

Chargees: COMMONWEALTH BANK OF AUSTRALIA
ACN :123123124

ASIC Doc No	Form	Description	Pages	Lodged	Processed
022578527	312	NOTIFICATION OF (A) DISCHARGE	2	30-Nov-2005	13-Dec-2005

12-Jan-2006 : COMMONWEALTH BANK OF AUSTRALIA

ASIC Charge No: 1253327
registered:12-Jan-2006
created:02-Sep-2005

Status: Satisfied

Fixed / Floating: Both Fixed & Floating

Chargees: COMMONWEALTH BANK OF AUSTRALIA
ACN :123123124

ASIC Doc No	Form	Description	Pages	Lodged	Processed
025130507	312	NOTIFICATION OF (A) DISCHARGE	2	13-Jul-2010	03-Aug-2010

27-Jul-2007 : THE TRUST COMPANY (PTAL) LIMITED

ASIC Charge No: 1489699
registered:27-Jul-2007
created:12-Jul-2007

Status: Satisfied

Fixed / Floating: Both Fixed & Floating

Chargees: THE TRUST COMPANY (PTAL) LIMITED
ACN :008412913

ASIC Doc No	Form	Description	Pages	Lodged	Processed
027617168	312	NOTIFICATION OF (A) DISCHARGE	2	28-Jul-2011	22-Aug-2011

27-Oct-2008 : THE TRUST COMPANY (PTAL) LIMITED

ASIC Charge No: 1710979
registered:27-Oct-2008
created:22-Oct-2008

Status: Satisfied

Fixed / Floating: Both Fixed & Floating

Chargees: THE TRUST COMPANY (PTAL) LIMITED
ACN :008412913

ASIC Doc No	Form	Description	Pages	Lodged	Processed
025382062	312	NOTIFICATION OF (A) DISCHARGE	2	24-Feb-2009	25-Feb-2009

24-Feb-2009 : THE TRUST COMPANY (PTAL) LIMITED

ASIC Charge No: 1759452
registered:24-Feb-2009
created:16-Feb-2009
Status: Satisfied
Fixed / Floating: Fixed
Chargees: THE TRUST COMPANY (PTAL) LIMITED
ACN :008412913

ASIC Doc No	Form	Description	Pages	Lodged	Processed
025477873	312	NOTIFICATION OF (A) DISCHARGE	2	23-Mar-2009	24-Mar-2009

23-Mar-2009 : THE TRUST COMPANY (PTAL) LIMITED

ASIC Charge No: 1768753
registered:23-Mar-2009
created:20-Mar-2009
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: THE TRUST COMPANY (PTAL) LIMITED
ACN :008412913

ASIC Doc No	Form	Description	Pages	Lodged	Processed
027651856	312	NOTIFICATION OF (A) DISCHARGE	2	11-Jul-2011	25-Jul-2011

10-Sep-2009 : COMMONWEALTH BANK OF AUSTRALIA

ASIC Charge No: 1850770
registered:10-Sep-2009
created:07-Sep-2009
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: COMMONWEALTH BANK OF AUSTRALIA
ACN :123123124

ASIC Doc No	Form	Description	Pages	Lodged	Processed
025130506	312	NOTIFICATION OF (A) DISCHARGE	2	13-Jul-2010	03-Aug-2010

23-Apr-1999 : AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

ASIC Charge No: 692552
registered:23-Apr-1999
created:15-Mar-1999
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
ACN :005357522

ASIC Doc No	Form	Description	Pages	Lodged	Processed
021213391	312	NOTIFICATION OF (A) DISCHARGE	1	01-Mar-2006	07-Apr-2006

13-Jan-2000 : EQUITY TRUSTEES LIMITED

ASIC Charge No: 732456
registered:13-Jan-2000
created:07-Dec-1999
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: EQUITY TRUSTEES LIMITED
ACN :004031298

ASIC Doc No	Form	Description	Pages	Lodged	Processed
018185734	312	NOTIFICATION OF (A) DISCHARGE	1	07-Oct-2002	07-Oct-2002

31-Jan-2000 : COMMONWEALTH BANK OF AUSTRALIA

ASIC Charge No: 734408
registered:31-Jan-2000
created:19-Jan-2000
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: COMMONWEALTH BANK OF AUSTRALIA
ACN :123123124

ASIC Doc No	Form	Description	Pages	Lodged	Processed
020952408	312	NOTIFICATION OF (A) DISCHARGE	2	14-Jan-2005	14-Jan-2005

12-Oct-2000 : COMMONWEALTH BANK OF AUSTRALIA

ASIC Charge No: 770158
registered:12-Oct-2000
created:02-Oct-2000
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: COMMONWEALTH BANK OF AUSTRALIA
ACN :123123124

ASIC Doc No	Form	Description	Pages	Lodged	Processed
019255683	312	NOTIFICATION OF (A) DISCHARGE	2	15-Oct-2003	15-Oct-2003

06-Jun-2002 : COMMONWEALTH BANK OF AUSTRALIA

ASIC Charge No: 867148
registered:06-Jun-2002
created:29-Apr-2002
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: COMMONWEALTH BANK OF AUSTRALIA
ACN :123123124

ASIC Doc No	Form	Description	Pages	Lodged	Processed
023342173	312	NOTIFICATION OF (A) DISCHARGE	1	09-Mar-2007	09-Mar-2007

01-Jul-2002 : COMMONWEALTH BANK OF AUSTRALIA

ASIC Charge No: 872087
registered:01-Jul-2002
created:12-Jun-2002
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: COMMONWEALTH BANK OF AUSTRALIA
ACN :123123124

ASIC Doc No	Form	Description	Pages	Lodged	Processed
017905730	312	NOTIFICATION OF (A) DISCHARGE	1	04-Jun-2003	04-Jun-2003

30-Sep-2002 : ATLAS TRUST COMPANY JERSEY LIMITED,FAIRBAIRN TRUST COMPANY LIMITED,THE CHRISTINA LEE TRUST,CRISP, PATSY FAY,REX, GM,MCGREGOR, MARGOT MG,MERSON, BRIAN,SCALLAN, GARY ANTON LISHER,SCALLAN, ROY,SCALLAN, PAULINE ANN,SAUNDERS, PYLLIS BEULAH

ASIC Charge No: 892854
registered:30-Sep-2002
created:13-Sep-2002
Status: Satisfied
Fixed / Floating: Both Fixed & Floating
Chargees: ATLAS TRUST COMPANY JERSEY LIMITED
ACN :102363637
FAIRBAIRN TRUST COMPANY LIMITED
ACN :102363655
THE CHRISTINA LEE TRUST
ACN :102363673
CRISP, PATSY FAY
REX, GM
MCGREGOR, MARGOT MG
MERSON, BRIAN
SCALLAN, GARY ANTON LISHER
SCALLAN, ROY
SCALLAN, PAULINE ANN
SAUNDERS, PYLLIS BEULAH

ASIC Doc No	Form	Description	Pages	Lodged	Processed
019255598	312	NOTIFICATION OF (A) DISCHARGE	1	10-Oct-2003	10-Oct-2003

ASIC Documents

Financial Reports

ASIC Doc No	Balance Date	Report Due Date	AGM Held Date	AGM Due Date	Extended AGM Due Date	Outstanding
028208422	30-Jun-2012	31-Oct-2012	Unknown	Unknown	Unknown	No
026442958	30-Jun-2011	31-Oct-2011	Unknown	Unknown	Unknown	No
027353763	30-Jun-2010	31-Oct-2010	Unknown	Unknown	Unknown	No
023417762	30-Jun-2009	31-Oct-2009	Unknown	Unknown	Unknown	No
025509063	30-Jun-2008	31-Oct-2008	Unknown	Unknown	Unknown	No
024088738	30-Jun-2007	31-Oct-2007	Unknown	Unknown	Unknown	No
022755830	30-Jun-2006	31-Oct-2006	Unknown	Unknown	Unknown	No
022718227	30-Jun-2005	30-Nov-2005	Unknown	Unknown	Unknown	No

020698531	30-Jun-2004	31-Oct-2004	Unknown	Unknown	Unknown	No
019791166	30-Jun-2003	31-Oct-2003	Unknown	Unknown	Unknown	No
019168593	30-Jun-2002	31-Oct-2002	Unknown	Unknown	Unknown	No
017705919	30-Jun-2001	31-Oct-2001	Unknown	Unknown	Unknown	No
015964651	30-Jun-2000	31-Oct-2000	Unknown	Unknown	Unknown	No
016010134	30-Jun-1999	31-Oct-1999	Unknown	Unknown	Unknown	No

Document(s)

ASIC Doc No	Form	Description	Pages	Received	Processed	Effective
8E0071298	484	(B) Change to Company Details Change of Registered Address	2	10-Apr-2018	10-Apr-2018	10-Apr-2018
8E0036963	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	3	27-Mar-2018	27-Mar-2018	27-Mar-2018
8E0036963	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	3	27-Mar-2018	27-Mar-2018	27-Mar-2018
501518062	5120	Notice of Exemption Re Managed Investment Scheme	2	15-Mar-2018	15-Mar-2018	15-Mar-2018
501518061	126	Instrument of Exemption From Disclosing Entity Provisions	2	15-Mar-2018	15-Mar-2018	15-Mar-2018
7E9924425	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	7	21-Feb-2018	21-Feb-2018	31-Jan-2018
7E9879600	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	10	07-Feb-2018	07-Feb-2018	10-Jan-2018
7E9748006	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	4	14-Dec-2017	14-Dec-2017	15-Nov-2017
7E9748001	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	4	14-Dec-2017	14-Dec-2017	15-Nov-2017
7E9596480	1500	ANNUAL REPORT TO CREDITORS	9	31-Oct-2017	31-Oct-2017	31-Jul-2017
7E9540373	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	4	13-Oct-2017	13-Oct-2017	13-Oct-2017
7E9540329	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	4	13-Oct-2017	13-Oct-2017	13-Oct-2017
7E9326646	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	7	07-Aug-2017	07-Aug-2017	31-Jul-2017
7E9323009	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	12	04-Aug-2017	04-Aug-2017	10-Jul-2017
030037264	902	Supplementary Document Alters 7E8 619 169	11	31-May-2017	06-Jun-2017	15-Nov-2016
030037263	902	Supplementary Document Alters 7E8 619 155	11	31-May-2017	06-Jun-2017	15-Nov-2016

7E9105252	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	4	31-May-2017	31-May-2017	15-May-2017
7E9105153	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	4	31-May-2017	31-May-2017	15-May-2017
7E9059324	505	(R) NOTIFICATION OF RESIGNATION OR REMOVAL OF LIQUIDATOR/PROVISIONAL LIQUIDATOR	2	17-May-2017	17-May-2017	17-May-2017
029944919	FS67	Order Suspending Afs Licence	1	03-Apr-2017	03-Apr-2017	03-Apr-2017
7E8903471	505	(L) NOTIFICATION OF RECEIVER MANAGER CEASING TO ACT	2	23-Mar-2017	23-Mar-2017	22-Mar-2017
7E8758304	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	13	10-Feb-2017	10-Feb-2017	10-Jan-2017
7E8729133	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	8	01-Feb-2017	01-Feb-2017	31-Jan-2017
7E8619169	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER Altered by 030 037 264	5	14-Dec-2016	14-Dec-2016	15-Nov-2016
7E8619155	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER Altered by 030 037 263	5	14-Dec-2016	14-Dec-2016	15-Nov-2016
7E8533489	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	3	17-Nov-2016	17-Nov-2016	17-Nov-2016
7E8444965	1500	ANNUAL REPORT TO CREDITORS	7	19-Oct-2016	19-Oct-2016	31-Jul-2016
7E8301918	484	(B) Change to Company Details Change of Registered Address	2	31-Aug-2016	31-Aug-2016	31-Aug-2016
7E8301988	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	2	31-Aug-2016	31-Aug-2016	31-Aug-2016
7E8301988	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	2	31-Aug-2016	31-Aug-2016	31-Aug-2016
7E8299488	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	8	31-Aug-2016	31-Aug-2016	31-Jul-2016
7E8296775	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	2	30-Aug-2016	30-Aug-2016	30-Aug-2016
7E8296775	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	2	30-Aug-2016	30-Aug-2016	30-Aug-2016
7E8208339	106	Notice of Cancellation or Revocation of a Lodged Document Cancels 7E8 208 238	2	01-Aug-2016	01-Aug-2016	01-Aug-2016
7E8208403	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	13	01-Aug-2016	01-Aug-2016	10-Jul-2016
7E8208238	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER Cancelled by 7E8 208 339	13	01-Aug-2016	01-Aug-2016	10-Jul-2016
7E8048351	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	5	14-Jun-2016	14-Jun-2016	15-May-2016

7E8048329	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	5	14-Jun-2016	14-Jun-2016	15-May-2016
7E8028043	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	5	06-Jun-2016	06-Jun-2016	06-Jun-2016
7E7732426	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	12	25-Feb-2016	25-Feb-2016	31-Jan-2016
7E7680279	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	14	08-Feb-2016	08-Feb-2016	10-Jan-2016
7E7581574	507	(G) REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/ MANAGER	19	22-Dec-2015	22-Dec-2015	16-Nov-2015
7E7581556	507	(G) REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/ MANAGER	19	22-Dec-2015	22-Dec-2015	16-Nov-2015
7E7576501	507	(F) REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)	13	21-Dec-2015	21-Dec-2015	17-Dec-2015
7E7576493	507	(F) REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)	13	21-Dec-2015	21-Dec-2015	17-Dec-2015
7E7569104	507	(F) REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)	13	18-Dec-2015	18-Dec-2015	11-Dec-2015
7E7569099	507	(F) REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)	13	18-Dec-2015	18-Dec-2015	11-Dec-2015
7E7499219	505	(B) NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER	14	25-Nov-2015	25-Nov-2015	16-Nov-2015
7E7499212	505	(B) NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER	13	25-Nov-2015	25-Nov-2015	16-Nov-2015
029448783	504	(C) NOTIFICATION OF APPOINTMENT OF A BY APPOINTEE RE APPT OF CONTROLLER (OTHER THAN A RECEIVER)	4	25-Nov-2015	11-Dec-2015	16-Nov-2015
029448782	504	(C) NOTIFICATION OF APPOINTMENT OF A BY APPOINTEE RE APPT OF CONTROLLER (OTHER THAN A RECEIVER)	4	25-Nov-2015	11-Dec-2015	16-Nov-2015
7E7405798	1500	ANNUAL REPORT TO CREDITORS	7	22-Oct-2015	22-Oct-2015	31-Jul-2015
7E7226815	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	13	19-Aug-2015	19-Aug-2015	31-Jul-2015
029296876	902	Supplementary Document Alters 7E7 202 909	15	17-Aug-2015	28-Aug-2015	10-Jul-2015
7E7202909	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER Altered by 029 296 876	16	10-Aug-2015	10-Aug-2015	10-Jul-2015
028731665	FS67	Order Suspending Afs Licence	1	10-Apr-2015	10-Apr-2015	10-Apr-2015
7E6754368	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	11	26-Feb-2015	26-Feb-2015	31-Jan-2015
7E6712227	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	15	10-Feb-2015	10-Feb-2015	10-Jan-2015
7E6673956	506	(L) NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	2	23-Jan-2015	23-Jan-2015	23-Jan-2015
7E6483251	1500	ANNUAL REPORT TO CREDITORS	9	30-Oct-2014	30-Oct-2014	31-Jul-2014

7E6312669	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	13	25-Aug-2014	25-Aug-2014	31-Jul-2014
7E6278230	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	13	11-Aug-2014	11-Aug-2014	10-Jul-2014
7E5867779	524	(J) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP	13	26-Feb-2014	26-Feb-2014	31-Jan-2014
7E5824920	524	(N) PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	12	10-Feb-2014	10-Feb-2014	10-Jan-2014
7E5546426	507	(F) REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)	62	30-Sep-2013	30-Sep-2013	26-Sep-2013
7E5494220	507	(G) REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/ MANAGER	21	06-Sep-2013	06-Sep-2013	11-Jul-2013
7E5481607	524	(Z) PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL ACCOUNTS OF ADMINISTRATOR	14	02-Sep-2013	02-Sep-2013	31-Jul-2013
7E5462841	5011	(A) COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	6	23-Aug-2013	23-Aug-2013	31-Jul-2013
7E5436451	5011	(B) COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A	43	13-Aug-2013	13-Aug-2013	01-Aug-2013
1F0478329	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	0	05-Aug-2013		05-Aug-2013
028687053	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	0	02-Aug-2013		02-Aug-2013
7E5415403	505	(J) NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)	2	02-Aug-2013	02-Aug-2013	01-Aug-2013
7E5415398	509D	(A) NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)	2	02-Aug-2013	02-Aug-2013	01-Aug-2013
7E5366580	505	(B) NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER	2	12-Jul-2013	12-Jul-2013	11-Jul-2013
028593214	504	(B) NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER	4	11-Jul-2013	25-Jul-2013	11-Jul-2013
1F0336384	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	3	08-Jul-2013	29-Jul-2013	08-Jul-2013
7E5304606	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	2	20-Jun-2013	20-Jun-2013	20-Jun-2013
7E5217844	FS90	(A) Notice That a Product in a Pds Has Ceased to Be Available - By Afs Licensee	1	15-May-2013	15-May-2013	19-Mar-2013
7E5211783	5011	(A) COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	4	13-May-2013	13-May-2013	26-Apr-2013
028521226	902	Supplementary Document Alters 7E5 149 299	47	01-May-2013	05-Jun-2013	02-Apr-2013
7E5149299	5011	(B) COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES	45	12-Apr-2013	12-Apr-2013	02-Apr-2013

		OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A Altered by 028 521 226				
028227992	FS67	Order Suspending Afs Licence	1	10-Apr-2013	10-Apr-2013	10-Apr-2013
7E5105009	484	(B) CHANGE TO COMPANY DETAILS CHANGE OF REGISTERED ADDRESS	2	22-Mar-2013	22-Mar-2013	22-Mar-2013
7E5097309	505	(U) NOTIFICATION OF APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)	2	19-Mar-2013	19-Mar-2013	19-Mar-2013
020500750	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	1	28-Feb-2013	01-Mar-2013	28-Feb-2013
7E4965053	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	1	17-Jan-2013	17-Jan-2013	16-Jan-2013
7E4885393	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	03-Dec-2012	03-Dec-2012	04-Oct-2012
027957724	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	1	28-Nov-2012	28-Nov-2012	28-Nov-2012
7E4833611	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	07-Nov-2012	07-Nov-2012	07-Nov-2012
7E4824598	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	02-Nov-2012	02-Nov-2012	02-Nov-2012
7E4824597	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	02-Nov-2012	02-Nov-2012	02-Nov-2012
7E4797015	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	22-Oct-2012	22-Oct-2012	22-Oct-2012
028208422	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	44	05-Oct-2012	09-Nov-2012	30-Jun-2012
7E4705266	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	07-Sep-2012	07-Sep-2012	07-Sep-2012
0L0310250	FS02	COPY OF AFS LICENCE	26	07-Sep-2012	07-Sep-2012	07-Sep-2012
7E4701411	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	06-Sep-2012	06-Sep-2012	31-Aug-2012
7E4678949	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	18-Jul-2012
7E4678937	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	16-Aug-2012
7E4678920	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	21-Jun-2012
7E4678906	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	21-Jun-2012
7E4678887	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	18-Apr-2012
7E4678876	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	26-Apr-2012
7E4678848	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	15-Feb-2012
7E4678833	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	05-Dec-2011
7E4677637	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	27-Aug-2012	27-Aug-2012	04-Oct-2011
7E4677593	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	27-Aug-2012	27-Aug-2012	27-Aug-2012
7E4644566	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	09-Aug-2012	09-Aug-2012	09-Aug-2012
7E4588883	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	13-Jul-2012	13-Jul-2012	13-Jul-2012

027956096	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	1	05-Jul-2012	05-Jul-2012	05-Jul-2012
7E4554304	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	29-Jun-2012	29-Jun-2012	29-Jun-2012
7E4554303	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	29-Jun-2012	29-Jun-2012	29-Jun-2012
0L0310084	FS02	COPY OF AFS LICENCE	26	15-Jun-2012	15-Jun-2012	15-Jun-2012
027954654	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	1	04-Jun-2012	04-Jun-2012	04-Jun-2012
027954653	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	1	04-Jun-2012	04-Jun-2012	04-Jun-2012
7E4492354	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	01-Jun-2012	01-Jun-2012	01-Jun-2012
7E4492353	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	01-Jun-2012	01-Jun-2012	01-Jun-2012
7E4492328	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	01-Jun-2012	01-Jun-2012	01-Jun-2012
7E4492327	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	01-Jun-2012	01-Jun-2012	01-Jun-2012
027954594	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	1	30-May-2012	30-May-2012	30-May-2012
7E4479733	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	28-May-2012	28-May-2012	28-May-2012
7E4479732	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	28-May-2012	28-May-2012	28-May-2012
7E4369373	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	30-Mar-2012	30-Mar-2012	30-Mar-2012
7E4369372	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	30-Mar-2012	30-Mar-2012	30-Mar-2012
7E4369337	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	30-Mar-2012	30-Mar-2012	30-Mar-2012
7E4369336	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	30-Mar-2012	30-Mar-2012	30-Mar-2012
7E4367220	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	29-Mar-2012	29-Mar-2012	29-Mar-2012
7E4240825	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	27-Jan-2012	27-Jan-2012	27-Jan-2012
7E4240824	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	27-Jan-2012	27-Jan-2012	27-Jan-2012
7E4240744	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	27-Jan-2012	27-Jan-2012	27-Jan-2012
7E4240743	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	27-Jan-2012	27-Jan-2012	27-Jan-2012
7E4097067	484	(A1) CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	17-Nov-2011	17-Nov-2011	17-Nov-2011
7E4091789	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	15-Nov-2011	15-Nov-2011	15-Nov-2011
7E4091788	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	15-Nov-2011	15-Nov-2011	15-Nov-2011
7E4048590	484	(A1) CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	27-Oct-2011	27-Oct-2011	27-Oct-2011
026442958	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	54	30-Sep-2011	13-Oct-2011	30-Jun-2011
7E3954069	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	16-Sep-2011	16-Sep-2011	16-Sep-2011
7E3954068	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	16-Sep-2011	16-Sep-2011	16-Sep-2011
7E3920692	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	01-Sep-2011	01-Sep-2011	01-Sep-2011
7E3920691	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	01-Sep-2011	01-Sep-2011	01-Sep-2011
7E3819935	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	18-Jul-2011	18-Jul-2011	18-Jul-2011
7E3819934	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	2	18-Jul-2011	18-Jul-2011	18-Jul-2011
7E3682315	FS89	(A) NOTICE OF CHANGE TO FEES AND CHARGES IN A PDS - BY AFS LICENSEE	1	20-May-2011	20-May-2011	20-May-2011

0L0309025	FS02	COPY OF AFS LICENCE	26	30-Mar-2011	30-Mar-2011	30-Mar-2011
020500654	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	1	30-Mar-2011	31-Mar-2011	30-Mar-2011
027320265	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	33	10-Nov-2010	11-Nov-2010	22-Oct-2010
027320264	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	33	10-Nov-2010	11-Nov-2010	22-Oct-2010
027353763	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	63	01-Oct-2010	08-Nov-2010	30-Jun-2010
026641595	350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 025 130 504	3	30-Jul-2010	03-Aug-2010	30-Jul-2010
025130504	309	(A) NOTIFICATION OF DETAILS OF A CHARGE Altered by 026 641 595	36	13-Jul-2010	13-Jul-2010	01-Jul-2010
026600340	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	6	02-Jul-2010	05-Jul-2010	02-Jul-2010
026600337	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	6	02-Jul-2010	05-Jul-2010	02-Jul-2010
026600336	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	3	02-Jul-2010	05-Jul-2010	02-Jul-2010
7E2831759	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	15-Apr-2010	15-Apr-2010	15-Apr-2010
7E2830546	484	CHANGE TO COMPANY DETAILS (O) CHANGES TO SHARE STRUCTURE (G) NOTIFICATION OF SHARE ISSUE	2	15-Apr-2010	15-Apr-2010	15-Apr-2010
1F0292823	484	(A1) CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	3	25-Mar-2010	26-Mar-2010	25-Mar-2010
0L0307664	FS02	COPY OF AFS LICENCE	25	23-Mar-2010	23-Mar-2010	23-Mar-2010
026421806	2205	(B) NOTIFICATION OF RESOLUTION RELATING TO SHARES CONVERT SHARES INTO LARGER OR SMALLER NUMBER	7	17-Mar-2010	19-Mar-2010	30-Sep-2009
7E2762221	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	12-Mar-2010	12-Mar-2010	12-Mar-2010
020500491	5120	NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	7	11-Nov-2009	12-Nov-2009	11-Nov-2009
020500486	5120	NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	0	11-Nov-2009	18-Nov-2009	11-Nov-2009
024981690	350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 025 004 000	2	28-Oct-2009	29-Oct-2009	28-Oct-2009
023417762	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	59	30-Sep-2009	27-Oct-2009	30-Jun-2009
025004000	309	(A) NOTIFICATION OF DETAILS OF A CHARGE Altered by 024 981 690	43	10-Sep-2009	11-Sep-2009	07-Sep-2009
025003998	311	(B) NOTIFICATION OF CHANGE TO DETAILS OF CHARGE	29	10-Sep-2009	11-Sep-2009	04-Sep-2009
025003997	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	3	10-Sep-2009	11-Sep-2009	10-Sep-2009
026070205	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	57	19-Aug-2009	07-Apr-2010	19-Aug-2009
7E2239769	FS89	(A) NOTICE OF CHANGE TO FEES AND CHARGES IN A PDS - BY AFS LICENSEE	1	12-Jun-2009	12-Jun-2009	12-Jun-2009
0L0501962	FS02	COPY OF AFS LICENCE	26	27-May-2009	27-May-2009	27-May-2009
7E2173585	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	3	07-May-2009	07-May-2009	06-May-2009
024672204	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	5	14-Apr-2009	08-May-2009	14-Apr-2009
024672203	5120	NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	5	14-Apr-2009	08-May-2009	14-Apr-2009
025509063	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	56	26-Mar-2009	03-Apr-2009	30-Jun-2008
025477874	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	38	23-Mar-2009	24-Mar-2009	20-Mar-2009
7E2068686	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	1	05-Mar-2009	05-Mar-2009	03-Mar-2009

7E2068666	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	05-Mar-2009	05-Mar-2009	03-Mar-2009
7E2068655	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	05-Mar-2009	05-Mar-2009	03-Mar-2009
7E2068637	FS90	(A) NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	2	05-Mar-2009	05-Mar-2009	03-Mar-2009
025382061	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	34	24-Feb-2009	25-Feb-2009	16-Feb-2009
025421341	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	3	19-Jan-2009	19-Jan-2009	19-Jan-2009
025421340	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	3	19-Jan-2009	19-Jan-2009	19-Jan-2009
024857834	FS89	(A) NOTICE OF CHANGE TO FEES AND CHARGES IN A PDS - BY AFS LICENSEE	6	28-Nov-2008	10-Dec-2008	28-Nov-2008
026070214	878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	63	25-Nov-2008	07-Apr-2010	25-Nov-2008
025167435	FS88	(A) PDS IN-USE NOTICE - BY AFS LICENSEE	6	25-Nov-2008	11-Dec-2008	25-Nov-2008
024506416	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	29	21-Nov-2008	26-Nov-2008	30-Jun-2008
024506415	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	27	21-Nov-2008	26-Nov-2008	30-Jun-2008
024506414	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	26	21-Nov-2008	26-Nov-2008	30-Jun-2008
024506413	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	28	21-Nov-2008	26-Nov-2008	30-Jun-2008
024506412	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	29	21-Nov-2008	26-Nov-2008	30-Jun-2008
025097228	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	30	27-Oct-2008	27-Oct-2008	22-Oct-2008
7E1832692	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	30-Sep-2008	30-Sep-2008	30-Sep-2008
7E1798931	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	09-Sep-2008	09-Sep-2008	09-Sep-2008
7E1698997	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	08-Jul-2008	08-Jul-2008	08-Jul-2008
024846887	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	87	03-Jul-2008	04-Jul-2008	02-Jun-2008
020938302	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	11-Apr-2008	23-Apr-2008	11-Apr-2008
020938301	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	11-Apr-2008	23-Apr-2008	11-Apr-2008
020938300	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	11-Apr-2008	23-Apr-2008	11-Apr-2008
020938299	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	11-Apr-2008	23-Apr-2008	11-Apr-2008
020938298	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	11-Apr-2008	23-Apr-2008	11-Apr-2008
024613754	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	25-Mar-2008	30-Apr-2008	20-Mar-2008
024640294	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	13-Mar-2008	06-Jun-2008	11-Mar-2008
024606607	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	11-Mar-2008	30-Apr-2008	06-Mar-2008
024609560	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	06-Mar-2008	19-Mar-2008	06-Mar-2008
024497435	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	21-Jan-2008	14-Feb-2008	21-Jan-2008

024497434	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	21-Jan-2008	14-Feb-2008	21-Jan-2008
1F0049502	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	3	07-Dec-2007	10-Dec-2007	10-Dec-2007
024084965	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	01-Nov-2007	29-Nov-2007	01-Nov-2007
023083735	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	23	27-Sep-2007	02-Oct-2007	30-Jun-2007
023083733	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	25	27-Sep-2007	02-Oct-2007	30-Jun-2007
023083730	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	23	27-Sep-2007	02-Oct-2007	30-Jun-2007
023083729	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	24	27-Sep-2007	02-Oct-2007	30-Jun-2007
024088738	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	38	26-Sep-2007	09-Oct-2007	30-Jun-2007
023083734	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	24	25-Sep-2007	02-Oct-2007	30-Jun-2007
024142426	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	20-Sep-2007	03-Oct-2007	19-Sep-2007
024067108	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	47	27-Jul-2007	31-Jul-2007	12-Jul-2007
024029365	FS53	(B) NOTIFICATION OF USE OF PDS - BY BODY CORPORATE	11	03-Jul-2007	17-Jul-2007	28-Jun-2007
023858793	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	18-Jun-2007	03-Jul-2007	18-Jun-2007
023858792	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	18-Jun-2007	03-Jul-2007	18-Jun-2007
7E1139324	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	05-Jun-2007	05-Jun-2007	05-Jun-2007
019979889	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	31-May-2007	18-Jun-2007	31-May-2007
023774383	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	08-May-2007	31-May-2007	04-May-2007
023559129	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	21-Mar-2007	17-Apr-2007	19-Mar-2007
7E1014532	484	(A1) CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	21-Feb-2007	21-Feb-2007	21-Feb-2007
1F0093922	484	(A1) CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	3	19-Feb-2007	19-Feb-2007	19-Feb-2007
1E2914414	484	(A1) CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	13-Feb-2007	13-Feb-2007	01-Feb-2007
023637013	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	08-Feb-2007	08-Feb-2007	02-Feb-2007
023071151	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	20-Dec-2006	10-Jan-2007	19-Dec-2006
023530250	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	05-Dec-2006	06-Dec-2006	01-Dec-2006
023297556	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	01-Nov-2006	06-Nov-2006	01-Nov-2006
023297555	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	01-Nov-2006	06-Nov-2006	01-Nov-2006
1F0069214	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	3	06-Oct-2006	06-Oct-2006	06-Oct-2006

022755830	388	(J) FINANCIAL REPORT FINANCIAL REPORT - SMALL PTY CO./SMALL PUB CO. LMGT THAT IS REQUESTED BY ASIC TO PREPARE & LODGE STATEMENTS AND REPORTS	45	02-Oct-2006	09-Oct-2006	30-Jun-2006
021674858	723	(A) RETURN BY MANAGEMENT COMPANY - DISCLOSING ENTITY	29	02-Oct-2006	06-Oct-2006	30-Jun-2006
021674857	723	(A) RETURN BY MANAGEMENT COMPANY - DISCLOSING ENTITY	29	02-Oct-2006	06-Oct-2006	30-Jun-2006
021674856	723	(A) RETURN BY MANAGEMENT COMPANY - DISCLOSING ENTITY	31	02-Oct-2006	06-Oct-2006	30-Jun-2006
021674855	723	(A) RETURN BY MANAGEMENT COMPANY - DISCLOSING ENTITY	31	02-Oct-2006	06-Oct-2006	30-Jun-2006
021674854	723	(A) RETURN BY MANAGEMENT COMPANY - DISCLOSING ENTITY	28	02-Oct-2006	06-Oct-2006	30-Jun-2006
0L0501361	FS02	COPY OF AFS LICENCE	25	18-Aug-2006	18-Aug-2006	18-Aug-2006
1F0109176	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	3	03-Jul-2006	04-Jul-2006	04-Jul-2006
022975741	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	03-Jul-2006	04-Aug-2006	30-Jun-2006
022975740	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	03-Jul-2006	04-Aug-2006	30-Jun-2006
022975739	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	03-Jul-2006	19-Jul-2006	30-Jun-2006
022975738	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	03-Jul-2006	20-Jul-2006	03-Jul-2006
022975737	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	03-Jul-2006	19-Jul-2006	30-Jun-2006
022980760	902	SUPPLEMENTARY DOCUMENT Alters 1E2 232 758	2	28-Jun-2006	30-Jun-2006	12-May-2006
1E2232758	484	CHANGE TO COMPANY DETAILS (I) NOTIFICATION OF SHARE CANCELLATION - CAPITAL REDUCTION (O) CHANGES TO SHARE STRUCTURE (N) CHANGES TO (MEMBERS) SHARE HOLDINGS Altered by 022 980 760	3	23-Jun-2006	30-Jun-2006	12-May-2006
1F0071157	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER Alters 022 952 749	3	22-Jun-2006	04-Jul-2006	22-Jun-2006
022952749	370	NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT Altered by 1F0 071 157	3	08-Jun-2006	08-Jun-2006	08-Jun-2006
022820140	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	31-May-2006	07-Jun-2006	29-May-2006
022820139	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	31-May-2006	07-Jun-2006	29-May-2006
022780888	2205	(E) NOTIFICATION OF RESOLUTION RELATING TO SHARES REDUCTION OF SHARE CAPITAL - SCHEDULE 5	4	17-May-2006	17-May-2006	12-May-2006
019979868	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	24-Apr-2006	24-May-2006	21-Apr-2006
019979867	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	12	24-Apr-2006	24-May-2006	21-Apr-2006
021524344	2560	(B) NOTIFICATION OF REDUCTION IN SHARE CAPITAL DETAILS FOR SELECTIVE REDUCTION	3	19-Apr-2006	27-Apr-2006	19-Apr-2006

019979852	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	06-Apr-2006	12-Apr-2006	05-Apr-2006
022718227	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	38	02-Mar-2006	02-Mar-2006	30-Jun-2005
022722756	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	23-Feb-2006	27-Mar-2006	23-Feb-2006
022348497	350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 022 354 364	1	13-Feb-2006	13-Feb-2006	13-Feb-2006
022599447	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	12-Jan-2006	06-Mar-2006	11-Jan-2006
022354364	309	(A) NOTIFICATION OF DETAILS OF A CHARGE Altered by 022 348 497	29	12-Jan-2006	12-Jan-2006	02-Sep-2005
022331843	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	08-Dec-2005	08-Dec-2005	24-Nov-2005
020699585	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	05-Dec-2005	13-Dec-2005	05-Dec-2005
020699584	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	05-Dec-2005	13-Dec-2005	05-Dec-2005
022285988	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11	12-Oct-2005	27-Oct-2005	12-Oct-2005
020949466	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	31	27-Sep-2005	29-Sep-2005	30-Jun-2005
020949353	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	28	27-Sep-2005	29-Sep-2005	30-Jun-2005
020949352	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	28	27-Sep-2005	29-Sep-2005	30-Jun-2005
020949351	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	29	27-Sep-2005	29-Sep-2005	30-Jun-2005
020949350	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	29	27-Sep-2005	29-Sep-2005	30-Jun-2005
022308168	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	12-Sep-2005	19-Sep-2005	12-Sep-2005
018502117	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	2	09-Aug-2005	09-Aug-2005	09-Aug-2005
018502116	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	2	09-Aug-2005	09-Aug-2005	09-Aug-2005
021653975	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	01-Aug-2005	30-Aug-2005	01-Aug-2005
021425172	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	15-Jun-2005	16-Jun-2005	16-Jun-2005
019971175	5120	NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	1	08-Jun-2005	15-Jun-2005	08-Jun-2005
020703094	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	06-Jun-2005	09-Jun-2005	06-Jun-2005
020703093	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	06-Jun-2005	09-Jun-2005	06-Jun-2005
020703092	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	06-Jun-2005	09-Jun-2005	06-Jun-2005
020703091	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	06-Jun-2005	09-Jun-2005	06-Jun-2005
020703090	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	06-Jun-2005	09-Jun-2005	06-Jun-2005
020703089	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	06-Jun-2005	09-Jun-2005	06-Jun-2005
020703088	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	7	06-Jun-2005	09-Jun-2005	06-Jun-2005

020703087	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	7	06-Jun-2005	09-Jun-2005	06-Jun-2005
021313960	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	30-May-2005	30-May-2005	30-May-2005
020834288	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	15-Nov-2004	17-Nov-2004	15-Nov-2004
020716866	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	4	13-Oct-2004	13-Oct-2004	13-Oct-2004
020698531	388	FINANCIAL REPORT (E) COMPANY - APPOINT CHANGE NAME/ ADDRESS OF AUDITOR (A) FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	34	30-Sep-2004	26-Oct-2004	30-Jun-2004
020670882	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	4	22-Sep-2004	05-Oct-2004	23-Sep-2004
020500022	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	23	17-Sep-2004	21-Sep-2004	30-Jun-2004
020500021	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	22	17-Sep-2004	21-Sep-2004	30-Jun-2004
020500020	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	22	17-Sep-2004	21-Sep-2004	30-Jun-2004
020500019	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	22	17-Sep-2004	21-Sep-2004	30-Jun-2004
020499149	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	22	17-Sep-2004	21-Sep-2004	30-Jun-2004
020580861	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	30-Aug-2004	14-Sep-2004	30-Aug-2004
0L0500809	FS02	COPY OF AFS LICENCE	24	08-Jul-2004	08-Jul-2004	08-Jul-2004
020551600	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	7	01-Jul-2004	07-Sep-2004	01-Jul-2004
019659871	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	26	29-Jun-2004	29-Jun-2004	17-Jun-2004
020086232	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	7	29-Mar-2004	01-Jun-2004	29-Mar-2004
019715622	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	08-Mar-2004	26-Mar-2004	08-Mar-2004
0E9633223	484	CHANGE TO COMPANY DETAILS (O) CHANGES TO SHARE STRUCTURE (N) CHANGES TO (MEMBERS) SHARE HOLDINGS	2	27-Feb-2004	27-Feb-2004	26-Feb-2004
0L0500604	FS02	COPY OF AFS LICENCE	23	20-Feb-2004	20-Feb-2004	20-Feb-2004
019860358	343	NOTICE UNDER SUBSECTION 329(1A) TO REMOVE AUDITOR	1	12-Feb-2004	16-Feb-2004	12-Feb-2004
019860357	315	(B) NOTICE OF RESIGNATION OR REMOVAL OF AUDITOR REMOVAL OF AUDITOR	1	12-Feb-2004	25-Feb-2004	21-Nov-2003
019719590	FS50	PDS OPT-IN NOTICE	4	30-Jan-2004	04-Feb-2004	30-Jan-2004
019682014	FS53	(B) NOTIFICATION OF USE OF PDS - BY BODY CORPORATE	7	28-Oct-2003	22-Dec-2003	24-Oct-2003
019791166	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	34	30-Sep-2003	08-Oct-2003	30-Jun-2003
0L0200439	FS02	COPY OF AFS LICENCE	18	16-Sep-2003	16-Sep-2003	16-Sep-2003
0L0200316	FS02	COPY OF AFS LICENCE	18	16-Sep-2003	16-Sep-2003	16-Sep-2003

019612584	484	(E) CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	7	16-Sep-2003	19-Sep-2003	12-Sep-2003
017914565	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	21	15-Sep-2003	15-Sep-2003	30-Jun-2003
017914564	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	20	15-Sep-2003	15-Sep-2003	30-Jun-2003
017914563	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	21	15-Sep-2003	15-Sep-2003	30-Jun-2003
017914562	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	22	15-Sep-2003	15-Sep-2003	30-Jun-2003
017914561	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	20	15-Sep-2003	15-Sep-2003	30-Jun-2003
017903480	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	5	01-Jul-2003	01-Jul-2003	01-Jul-2003
017914429	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	1	27-Jun-2003	03-Jul-2003	27-Jun-2003
017914428	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	1	27-Jun-2003	03-Jul-2003	27-Jun-2003
017914427	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	1	27-Jun-2003	03-Jul-2003	27-Jun-2003
017914426	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	1	27-Jun-2003	03-Jul-2003	27-Jun-2003
017914425	5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	1	27-Jun-2003	03-Jul-2003	27-Jun-2003
017914422	7021	(B) EXECUTED SUPPLEMENTAL DEED	3	26-Jun-2003	27-Jun-2003	26-Jun-2003
017914418	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	23-Jun-2003	27-Jun-2003	23-Jun-2003
017914417	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	23-Jun-2003	27-Jun-2003	23-Jun-2003
017914416	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	23-Jun-2003	27-Jun-2003	23-Jun-2003
017914415	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	23-Jun-2003	27-Jun-2003	23-Jun-2003
017914414	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	23-Jun-2003	27-Jun-2003	23-Jun-2003
019047523	311	(A) NOTIFICATION OF ASSIGNMENT OF CHARGE	9	19-Jun-2003	19-Jun-2003	29-Apr-2003
019168593	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	34	30-May-2003	01-Jul-2003	30-Jun-2002
018569781	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	5	09-May-2003	21-May-2003	09-May-2003
019016277	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME	6	01-May-2003	01-May-2003	09-May-2003
019016276	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	29	01-May-2003	01-May-2003	09-May-2003
07720846M	316	ANNUAL RETURN (C) CHANGE TO OFFICEHOLDERS (P) CHANGE OF NAME OR ADDRESS OF OFFICEHOLDER (G) ANNUAL RETURN - UNLISTED PUBLIC COMPANY	4	31-Jan-2003	06-Feb-2003	30-Jan-2003
018256817	902	SUPPLEMENTARY DOCUMENT Alters 018 190 182	1	02-Dec-2002	05-Dec-2002	21-Oct-2002
018256741	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	5	21-Nov-2002	26-Nov-2002	18-Nov-2002
017888383	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 017 922 190	4	30-Oct-2002	05-Nov-2002	30-Oct-2002
018190182	FS53	(A) NOTIFICATION OF USE OF PDS - BY AFS LICENSEE Altered by 018 256 817	5	23-Oct-2002	23-Oct-2002	21-Oct-2002

018190172	902	SUPPLEMENTARY DOCUMENT Alters 077 208 46L	2	23-Oct-2002	28-Oct-2002	30-Jan-2002
018185525	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	29	30-Sep-2002	01-Oct-2002	13-Sep-2002
017914114	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	19	26-Sep-2002	02-Oct-2002	30-Jun-2002
017914113	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	19	26-Sep-2002	02-Oct-2002	30-Jun-2002
017914112	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	20	26-Sep-2002	02-Oct-2002	30-Jun-2002
017914111	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	19	26-Sep-2002	02-Oct-2002	30-Jun-2002
017914110	723	(B) RETURN BY MANAGEMENT COMPANY - OTHER	19	26-Sep-2002	02-Oct-2002	30-Jun-2002
017892044	FS50	PDS OPT-IN NOTICE	3	09-Sep-2002	10-Sep-2002	09-Sep-2002
017892043	FS50	PDS OPT-IN NOTICE	3	09-Sep-2002	10-Sep-2002	09-Sep-2002
018193433	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	35	21-Aug-2002	21-Aug-2002	29-Aug-2002
017929175	FS53	NOTIFICATION OF USE OF PDS	30	06-Aug-2002	06-Aug-2002	02-Aug-2002
018187077	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 017 448 360	1	22-Jul-2002	23-Jul-2002	22-Jul-2002
017925211	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME	44	16-Jul-2002	16-Jul-2002	24-Jul-2002
017919706	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	20	01-Jul-2002	01-Jul-2002	12-Jun-2002
017948520	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	37	06-Jun-2002	06-Jun-2002	29-Apr-2002
017922190	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 017 888 383	8	10-May-2002	10-May-2002	18-May-2002
017922189	754H	REPLACEMENT SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Alters 017 932 158	31	10-May-2002	10-May-2002	10-May-2002
017914016	7109	NOTICE OF EXTENSION OF EXPOSURE PERIOD UNDER SECTION 727 Alters 017 932 158	1	19-Apr-2002	19-Apr-2002	27-Apr-2002
017932158	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 017 914 016 Altered by 017 922 189 Altered by 017 922 189	32	12-Apr-2002	07-May-2002	20-Apr-2002
018009561	370	NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT	2	27-Mar-2002	08-Apr-2002	27-Mar-2002
017931212	304	(A) NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	2	19-Feb-2002	19-Feb-2002	12-Feb-2002
07720846L	316	(G) ANNUAL RETURN - UNLISTED PUBLIC COMPANY Altered by 018 190 172	3	31-Jan-2002	11-Feb-2002	30-Jan-2002
016702368	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 016 871 179	2	07-Jan-2002	08-Jan-2002	07-Jan-2002
016702367	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	47	07-Jan-2002	08-Jan-2002	15-Jan-2002
016871592	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 016 871 179	2	20-Dec-2001	24-Dec-2001	20-Dec-2001
017933407	754C	REPLACEMENT PROSPECTUS FOR MANAGED INVESTMENT SCHEME Alters 016 870 977	32	07-Dec-2001	11-Dec-2001	07-Dec-2001
017705919	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	34	23-Nov-2001	10-Dec-2001	30-Jun-2001

016870977	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S) Altered by 017 933 407 Altered by 017 933 407	38	23-Nov-2001	23-Nov-2001	01-Dec-2001
016702301	7107	REVOCATION OF STOP ORDER Alters 016 871 177	1	22-Nov-2001	22-Nov-2001	22-Nov-2001
016702300	754H	REPLACEMENT SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Alters 016 871 177	30	21-Nov-2001	22-Nov-2001	21-Nov-2001
016702298	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 016 869 559	3	16-Nov-2001	20-Nov-2001	16-Nov-2001
016702294	7105	INTERIM ORDER THAT NO SECURITIES BE OFFERED, ISSUED, SOLD ORTRANSFERRED Alters 016 871 177	1	16-Nov-2001	16-Nov-2001	16-Nov-2001
016702288	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 016 869 559	3	09-Nov-2001	12-Nov-2001	09-Nov-2001
016702268	7109	NOTICE OF EXTENSION OF EXPOSURE PERIOD UNDER SECTION 727 Alters 016 871 177	1	06-Nov-2001	06-Nov-2001	14-Nov-2001
016871179	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S) Altered by 016 871 592 Altered by 016 871 592 Altered by 016 702 368	27	30-Oct-2001	02-Nov-2001	07-Nov-2001
016871177	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 016 702 268 Altered by 016 702 294 Altered by 016 702 300 Altered by 016 702 300 Altered by 016 702 301	0	30-Oct-2001	02-Nov-2001	07-Nov-2001
016545958	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 014 877 896	2	04-Oct-2001	04-Oct-2001	04-Oct-2001
014877896	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 016 545 958 Altered by 016 545 958	25	21-Sep-2001	21-Sep-2001	29-Sep-2001
015948002	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 016 869 559	1	19-Sep-2001	19-Sep-2001	19-Sep-2001
017448361	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 014 877 507	5	17-Sep-2001	18-Sep-2001	17-Sep-2001
017448360	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 018 187 077 Altered by 018 187 077 Altered by 018 187 077	29	17-Sep-2001	18-Sep-2001	25-Sep-2001
016545846	7107	REVOCATION OF STOP ORDER Alters 016 869 559	1	01-Aug-2001	01-Aug-2001	01-Aug-2001
016545840	754C	REPLACEMENT PROSPECTUS FOR MANAGED INVESTMENT SCHEME Alters 016 869 559	35	01-Aug-2001	01-Aug-2001	01-Aug-2001
016545807	7105	INTERIM ORDER THAT NO SECURITIES BE OFFERED, ISSUED, SOLD ORTRANSFERRED Alters 016 869 559	1	24-Jul-2001	24-Jul-2001	24-Jul-2001
016869559	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S) Altered by 016 545 807 Altered by 016 545 840 Altered by 016 545 840 Altered by 016 545 846 Altered by 015 948 002 and others.	70	11-Jul-2001	11-Jul-2001	19-Jul-2001
016881364	852	(A) COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER	8	06-Jul-2001	13-Jul-2001	06-Jul-2001

014877507	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 016 545 925 Altered by 016 545 925 Altered by 017 448 361 Altered by 017 448 361 Altered by 017 448 361	31	29-Jun-2001	29-Jun-2001	07-Jul-2001
016545723	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 016 454 351	2	13-Jun-2001	18-Jun-2001	13-Jun-2001
017315310	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	2	04-Apr-2001	11-Apr-2001	04-Apr-2001
017315309	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	2	04-Apr-2001	11-Apr-2001	04-Apr-2001
017315308	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	2	04-Apr-2001	11-Apr-2001	04-Apr-2001
017315307	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	2	04-Apr-2001	11-Apr-2001	04-Apr-2001
07720846K	316	(G) ANNUAL RETURN - UNLISTED PUBLIC COMPANY	3	17-Jan-2001	24-Jan-2001	20-Dec-2000
016545325	766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME Alters 015 340 981	3	22-Dec-2000	28-Dec-2000	22-Dec-2000
016545324	752	DOCUMENT LODGED IN RELATION TO SHORT FORM PROSPECTUS	7	22-Dec-2000	28-Dec-2000	22-Dec-2000
016545322	5147	REVOCATION OF NOTICE OF EXEMPTION OR DECLARATION RE MANAGED INVESTMENT SCHEME	1	22-Dec-2000	02-Jan-2001	22-Dec-2000
015959694	754C	REPLACEMENT PROSPECTUS FOR MANAGED INVESTMENT SCHEME Alters 016 868 003	34	20-Dec-2000	20-Dec-2000	20-Dec-2000
015964651	388	(A) FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	24	18-Dec-2000	09-Jan-2001	30-Jun-2000
016545306	7109	NOTICE OF EXTENSION OF EXPOSURE PERIOD UNDER SECTION 727 Alters 016 868 003	1	13-Dec-2000	19-Dec-2000	20-Dec-2000
015959400	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	46	07-Dec-2000	07-Dec-2000	15-Dec-2000
016868003	764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S) Altered by 016 545 306 Altered by 015 959 694 Altered by 015 959 694	37	05-Dec-2000	05-Dec-2000	13-Dec-2000
016703229	752	DOCUMENT LODGED IN RELATION TO SHORT FORM PROSPECTUS	9	23-Nov-2000	22-Dec-2000	23-Nov-2000
015964420	304	(A) NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	2	23-Nov-2000	23-Nov-2000	17-Nov-2000
016545261	754C	REPLACEMENT PROSPECTUS FOR MANAGED INVESTMENT SCHEME Alters 015 340 981	20	21-Nov-2000	28-Nov-2000	21-Nov-2000
016524206	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	20	12-Oct-2000	12-Oct-2000	02-Oct-2000
015340981	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 016 545 261 Altered by 016 545 325 Altered by 016 545 325	18	11-Aug-2000	11-Aug-2000	19-Aug-2000
015340980	752	DOCUMENT LODGED IN RELATION TO SHORT FORM PROSPECTUS	20	11-Aug-2000	11-Aug-2000	11-Aug-2000
014793868	754C	REPLACEMENT PROSPECTUS FOR MANAGED INVESTMENT SCHEME Alters 016 454 351	24	11-Aug-2000	11-Aug-2000	11-Aug-2000
016096244	852	(A) COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER	7	18-Jul-2000	20-Jul-2000	18-Jul-2000
015340942	5124	NOTICE OF EXTENSION OF TRANSITIONAL PERIOD	2	30-Jun-2000	17-Jul-2000	30-Jun-2000
015340862	5124	NOTICE OF EXTENSION OF TRANSITIONAL PERIOD	1	29-Jun-2000	29-Jun-2000	29-Jun-2000
015340861	5124	NOTICE OF EXTENSION OF TRANSITIONAL PERIOD	1	29-Jun-2000	29-Jun-2000	29-Jun-2000

015340860	5124	NOTICE OF EXTENSION OF TRANSITIONAL PERIOD	1	29-Jun-2000	29-Jun-2000	29-Jun-2000
015340859	5124	NOTICE OF EXTENSION OF TRANSITIONAL PERIOD	1	29-Jun-2000	29-Jun-2000	29-Jun-2000
015340806	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	26-Jun-2000	18-Jul-2000	26-Jun-2000
015340805	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	26-Jun-2000	29-Jun-2000	26-Jun-2000
015340802	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	26-Jun-2000	29-Jun-2000	26-Jun-2000
015340799	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	26-Jun-2000	29-Jun-2000	26-Jun-2000
015340796	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	26-Jun-2000	29-Jun-2000	26-Jun-2000
016092821	852	(A) COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER	5	15-Jun-2000	16-Jun-2000	15-Jun-2000
016454351	764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME Altered by 016 545 723 Altered by 014 793 868 Altered by 014 793 868 Altered by 014 793 868 Altered by 014 793 868	27	30-May-2000	01-Jun-2000	07-Jun-2000
015340619	766A	SUPPLEMENTARY PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	2	20-Apr-2000	28-Apr-2000	20-Apr-2000
014793790	7018	DECLARATION UNDER SUB-SECTION 1084(6) CORP LAW (OFFERING SECURITIES FOR SUBSCRIPTION OR PURCHASE)	1	20-Apr-2000	20-Apr-2000	20-Apr-2000
015340528	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	30	29-Feb-2000	10-Mar-2000	29-Feb-2000
015885035	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	20	31-Jan-2000	31-Jan-2000	19-Jan-2000
015885033	312	(C) NOTIFICATION OF RELEASE OF PROPERTY	1	31-Jan-2000	31-Jan-2000	31-Jan-2000
015818891	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	31	13-Jan-2000	13-Jan-2000	07-Dec-1999
015340354	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S) Altered by 015 340 555	29	12-Jan-2000	17-Jan-2000	12-Jan-2000
015340353	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S) Altered by 015 340 556	29	12-Jan-2000	17-Jan-2000	12-Jan-2000
015340355	766A	SUPPLEMENTARY PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	2	11-Jan-2000	17-Jan-2000	11-Jan-2000
008868250	7072	PROFORMA NOTICE IN RELATION TO UNQUOTED SECURITIES	2	10-Dec-1999	21-Jan-2000	10-Dec-1999
07720846J	316	(G) ANNUAL RETURN - UNLISTED PUBLIC COMPANY	3	30-Nov-1999	04-Jan-2000	22-Nov-1999
014793600	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	31	26-Nov-1999	03-Dec-1999	26-Nov-1999
015883237	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	20	29-Oct-1999	04-Nov-1999	29-Oct-1999
015340088	766A	SUPPLEMENTARY PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	0	26-Oct-1999	27-Oct-1999	26-Oct-1999
015859542	766A	SUPPLEMENTARY PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	9	20-Oct-1999	25-Oct-1999	20-Oct-1999
016010134	388	FINANCIAL REPORT (E) COMPANY - APPOINT CHANGE NAME/ ADDRESS OF AUDITOR (A) FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	19	05-Oct-1999	11-Nov-1999	30-Jun-1999
016010133	315	(A) NOTICE OF RESIGNATION OR REMOVAL OF AUDITOR RESIGNATION OF AUDITOR	1	05-Oct-1999	11-Nov-1999	21-Sep-1999
015465646	852	(A) COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER	5	28-Sep-1999	01-Oct-1999	28-Sep-1999
014793478	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	26	21-Sep-1999	29-Sep-1999	21-Sep-1999

014793393	5126	(A) NOTIFICATION RE RETIREMENT NOTICE - NOTICE OF DECISION TO RETIRE OR REGISTER SCHEME	1	01-Sep-1999	02-Sep-1999	01-Sep-1999
014793245	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793244	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793243	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793242	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793241	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793240	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793239	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793238	5125	NOTICE OF INTENTION TO RETIRE FROM OFFICE OF UNDERTAKING	2	30-Jun-1999	01-Jul-1999	30-Jun-1999
014793208	7018	DECLARATION UNDER SUB-SECTION 1084(6) CORP LAW (OFFERING SECURITIES FOR SUBSCRIPTION OR PURCHASE)	3	29-Jun-1999	29-Jun-1999	29-Jun-1999
014793084	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	30	17-Jun-1999	23-Jun-1999	17-Jun-1999
014793157	766	SUPPLEMENTARY PROSPECTUS - NON-MANAGED INVESTMENT SCHEME(S)	9	16-Jun-1999	21-Jun-1999	16-Jun-1999
015205478	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	20	26-May-1999	07-Jun-1999	26-May-1999
014874942	304	(A) NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	2	19-May-1999	19-May-1999	14-May-1999
014874940	304	(A) NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	2	19-May-1999	19-May-1999	10-May-1999
014808212	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	18-May-1999	28-Jun-1999	18-May-1999
014808211	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	18-May-1999	28-Jun-1999	18-May-1999
014825071	309	(A) NOTIFICATION OF DETAILS OF A CHARGE	19	23-Apr-1999	27-Apr-1999	15-Mar-1999
014808190	764	(C) COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)	21	21-Apr-1999	05-May-1999	21-Apr-1999
014874140	304	(A) NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	2	08-Apr-1999	08-Apr-1999	31-Mar-1999
014834052	852	(A) COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER	5	10-Mar-1999	08-Apr-1999	10-Mar-1999
014808113	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	4	19-Feb-1999	23-Feb-1999	19-Feb-1999
014808112	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	4	19-Feb-1999	23-Feb-1999	19-Feb-1999
014808111	7071	REPLACEMENT PROSPECTUS	23	19-Feb-1999	23-Feb-1999	19-Feb-1999
014808108	7021	(B) EXECUTED SUPPLEMENTAL DEED	11	19-Feb-1999	22-Mar-1999	19-Feb-1999
014808105	7021	(B) EXECUTED SUPPLEMENTAL DEED	11	19-Feb-1999	22-Mar-1999	19-Feb-1999
014805669	7071	REPLACEMENT PROSPECTUS	23	09-Feb-1999	09-Feb-1999	09-Feb-1999
014885355	7072	PROFORMA NOTICE IN RELATION TO UNQUOTED SECURITIES	2	15-Dec-1998	15-Dec-1998	15-Dec-1998
07720846I	316	(G) ANNUAL RETURN - UNLISTED PUBLIC COMPANY	3	09-Dec-1998	14-Dec-1998	07-Dec-1998
014808013	7072	PROFORMA NOTICE IN RELATION TO UNQUOTED SECURITIES	1	08-Dec-1998	15-Dec-1998	08-Dec-1998

014808012	7072	PROFORMA NOTICE IN RELATION TO UNQUOTED SECURITIES	2	08-Dec-1998	15-Dec-1998	08-Dec-1998
014620763	391	(C) FINANCIAL REPORT ANNUAL ACCOUNTS - PUBLIC COMPANY NON DISCLOSING PRE CLRB	13	30-Nov-1998	11-Dec-1998	30-Nov-1998
014562405	7072	PROFORMA NOTICE IN RELATION TO UNQUOTED SECURITIES	3	06-Oct-1998	08-Oct-1998	06-Oct-1998
012122789	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	10-Sep-1998	23-Sep-1998	10-Sep-1998
012122788	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	10-Sep-1998	23-Sep-1998	10-Sep-1998
012122787	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	10-Sep-1998	23-Sep-1998	10-Sep-1998
014574558	7072	PROFORMA NOTICE IN RELATION TO UNQUOTED SECURITIES	31	19-Aug-1998	19-Aug-1998	19-Aug-1998
014236975	205	(A) NOTIFICATION OF RESOLUTION CHANGING COMPANY NAME	1	06-Aug-1998	06-Aug-1998	03-Aug-1998
014298974	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	30-Jun-1998	01-Jul-1998	30-Jun-1998
014298973	7021	(B) EXECUTED SUPPLEMENTAL DEED	4	30-Jun-1998	01-Jul-1998	30-Jun-1998
014298972	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	35	29-Jun-1998	01-Jul-1998	29-Jun-1998
014298971	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	35	29-Jun-1998	01-Jul-1998	29-Jun-1998
014298970	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	35	29-Jun-1998	01-Jul-1998	29-Jun-1998
014298969	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	35	29-Jun-1998	01-Jul-1998	29-Jun-1998
014327618	7021	(A) EXECUTED PRINCIPAL DEED	43	17-Jun-1998	17-Jun-1998	17-Jun-1998
014327616	7021	(A) EXECUTED PRINCIPAL DEED	43	17-Jun-1998	17-Jun-1998	17-Jun-1998
014327614	7021	(A) EXECUTED PRINCIPAL DEED	43	17-Jun-1998	17-Jun-1998	17-Jun-1998
014327612	7021	(A) EXECUTED PRINCIPAL DEED	43	17-Jun-1998	17-Jun-1998	17-Jun-1998
008683894	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683893	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683892	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683891	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683890	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683889	7041	NOTICE THAT PRESCRIBED NET TANGIBLE ASSET REQUIREMENTS DO NOT APPLY TO MANAGEMENT CO OF RELEVANT UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683888	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683887	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683886	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683885	7041	NOTICE THAT PRESCRIBED NET TANGIBLE ASSET REQUIREMENTS DO NOT APPLY TO MANAGEMENT CO OF RELEVANT UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683884	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO	1	16-Jun-1998	16-Jun-1998	16-Jun-1998

		NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST				
008683883	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683882	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683881	7041	NOTICE THAT PRESCRIBED NET TANGIBLE ASSET REQUIREMENTS DO NOT APPLY TO MANAGEMENT CO OF RELEVANT UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683880	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683879	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683878	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	3	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683877	7041	NOTICE THAT PRESCRIBED NET TANGIBLE ASSET REQUIREMENTS DO NOT APPLY TO MANAGEMENT CO OF RELEVANT UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683876	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683875	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	16-Jun-1998	16-Jun-1998	16-Jun-1998
008683855	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683854	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683853	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683849	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	3	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683848	7041	NOTICE THAT PRESCRIBED NET TANGIBLE ASSET REQUIREMENTS DO NOT APPLY TO MANAGEMENT CO OF RELEVANT UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683847	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683846	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683845	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	3	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683844	7041	NOTICE THAT PRESCRIBED NET TANGIBLE ASSET REQUIREMENTS DO NOT APPLY TO MANAGEMENT CO OF RELEVANT UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683843	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO	1	09-Apr-1998	09-Apr-1998	09-Apr-1998

		NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST				
008683842	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683841	7019	DECLARATION THAT COVENANTS NOT REQUIRED FOR DEED	3	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683840	7041	NOTICE THAT PRESCRIBED NET TANGIBLE ASSET REQUIREMENTS DO NOT APPLY TO MANAGEMENT CO OF RELEVANT UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683839	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
008683838	7043	NOTICE THAT PRESCRIBED COVENANTS IN RELATION TO LIQUIDITY DO NOT APPLY TO UNLISTED PROPERTY TRUST	1	09-Apr-1998	09-Apr-1998	09-Apr-1998
012122309	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	36	07-Apr-1998	09-Apr-1998	07-Apr-1998
012122308	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	35	07-Apr-1998	09-Apr-1998	07-Apr-1998
012122307	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	35	07-Apr-1998	09-Apr-1998	07-Apr-1998
012122305	7021	(A) EXECUTED PRINCIPAL DEED	43	07-Apr-1998	14-Apr-1998	07-Apr-1998
012122303	7021	(A) EXECUTED PRINCIPAL DEED	43	07-Apr-1998	14-Apr-1998	07-Apr-1998
012122301	7021	(A) EXECUTED PRINCIPAL DEED	43	07-Apr-1998	14-Apr-1998	07-Apr-1998
008683812	7020	INSTRUMENT OF EXEMPTION UNDER SUB-SECTION 1084(2) (OFFERING SECURITIES FOR SUBSCRIPTION OR PURCHASE)	3	25-Mar-1998	25-Mar-1998	25-Mar-1998
008683822	7025	INSTRUMENT OF APPROVAL OF TRUSTEE OR REPRESENTATIVE	3	06-Mar-1998	25-Mar-1998	06-Mar-1998
012122198	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	35	03-Mar-1998	09-Mar-1998	03-Mar-1998
013799972	7021	(A) EXECUTED PRINCIPAL DEED	43	02-Mar-1998	13-Mar-1998	02-Mar-1998
008625853	852	(A) COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER	2	27-Feb-1998	27-Feb-1998	27-Feb-1998
008692288	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	38	14-Jan-1998	15-Jan-1998	14-Jan-1998
07720846H	316	(G) ANNUAL RETURN - UNLISTED PUBLIC COMPANY	13	24-Dec-1997	09-Jan-1998	22-Dec-1997
013585440	766	SUPPLEMENTARY PROSPECTUS - NON-MANAGED INVESTMENT SCHEME(S)	9	21-Nov-1997	21-Nov-1997	21-Nov-1997
013614819	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	38	23-Sep-1997	03-Oct-1997	23-Sep-1997
011891736	205	(K) NOTIFICATION OF RESOLUTION ALTERING THE ARTICLES	2	11-Sep-1997	11-Sep-1997	04-Sep-1997
011891735	207	NOTIFICATION OF ALLOTMENT OF SHARES	2	11-Sep-1997	11-Sep-1997	04-Sep-1997
012811913	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	53	06-May-1997	13-May-1997	06-May-1997
011941805	764	(B) COPY OF APPLICATION FORM AND PROSPECTUS	75	10-Apr-1997	11-Apr-1997	10-Apr-1997
011878647	304	(A) NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	1	10-Apr-1997	10-Apr-1997	25-Mar-1997
011876596	251	CERTIFICATE OF REGISTRATION ON CONVERSION	1	26-Mar-1997	26-Mar-1997	26-Mar-1997

011876588	205	(C) NOTIFICATION OF RESOLUTION CONVERTING TO A PUBLIC COMPANY	30	26-Mar-1997	26-Mar-1997	04-Mar-1997
010808223	207	NOTIFICATION OF ALLOTMENT OF SHARES	0	07-Feb-1997	07-Feb-1997	31-Jan-1997
010808222	304	(A) NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	1	07-Feb-1997	07-Feb-1997	31-Jan-1997
010807643	215	NOTIFICATION OF INITIAL APPOINTMENT OF OFFICEHOLDERS	1	03-Feb-1997	03-Feb-1997	31-Jan-1997
010807640	370	NOTICE OF RETIREMENT OR RESIGNATION BY DIRECTOR OR SECRETARY	2	03-Feb-1997	03-Feb-1997	03-Feb-1997
010807639	209	NOTICE OF REDEMPTION OF REDEEMABLE PREFERENCE SHARES	1	03-Feb-1997	03-Feb-1997	31-Jan-1997
010807638	203	(A) NOTIFICATION OF CHANGE OF ADDRESS	1	03-Feb-1997	03-Feb-1997	07-Feb-1997
011875440	204	CERTIFICATE OF REGISTRATION DIVISION 1 PT 2.2	1	31-Jan-1997	31-Jan-1997	31-Jan-1997
011664971	201	(C) APPLICATION FOR REGISTRATION AS A PROPRIETARY COMPANY	4	31-Jan-1997	31-Jan-1997	31-Jan-1997
010809012	410	(A) APPLICATION FOR RESERVATION OF A NAME OF A NEW AUSTRALIAN COMPANY	1	23-Jan-1997	23-Jan-1997	23-Jan-1997

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END OF REPORT

LM INVESTMENT MANAGEMENT LIMITED
ACN 077 208 461

AND

THE MEMBERS AS THEY ARE CONSTITUTED
FROM TIME TO TIME OF THE
THE LM MANAGED PERFORMANCE FUND

CONSTITUTION

HICKEY LAWYERS
Level 6, Corporate Centre One
Corner Bundall Road and Slatyer Avenue
BUNDALL QLD 4217

PH: (07) 5574 1000
FAX: (07) 5574 1130

1358-1

DEED made this day of December 2001

BETWEEN: LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 a company duly incorporated in Queensland having its registered office at Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise in the State of Queensland (the"Manager")

AND: All those persons who from time to time apply for Units and are accepted as Unitholders of the Scheme ("the Members")

WHEREAS:

A. The Manager wishes to establish a unit trust called The LM Managed Performance Fund. (the "Scheme")

B. By applying to invest in the Scheme through an Offer Document a person will become a Member and be bound by this Constitution.

C. This Constitution is made with the intent that the benefits and obligations hereof will enure not only to the Manager but also to the extent provided herein to every person who is or becomes a Member.

IT IS AGREED:

1. DICTIONARY AND INTERPRETATION

1.1 Dictionary of Terms

In this Constitution:

"Accounting Standards" means the accounting standards and practices determined under clause 1.3;

"Applicant" anyone who submits an application for Unit/s in the Scheme in accordance with the Offer Document;

"Application Form" an application in writing for Unit/s in the Scheme attached to the Offer Document.

"Application Money" the amount received from an Applicant when lodging the application in respect of the Unit/s applied for in accordance with the Offer Document;

"ASIC" the Australian Securities and Investments Commission;

"Auditor" means the auditor of the Scheme appointed by the Manager.

"Business Day" any day on which trading banks are open for business on the Gold Coast, Queensland;

"Class" means a class of Units, being Units which have the same rights.

"Constitution" this document including any Schedule, Annexure or Amendments to it

"Distributable Income" means as detailed in Clause 10.3;

"Distribution Period" means the period referred to in Clause 11.1

"Dollars", "A$" and "$" mean the lawful currency of the Commonwealth of Australia;

"Extraordinary Resolution" has the same meaning as in the Law.

"Financial Year" means:

(a) the period from the Commencement Date to midnight on the next 30 June;

(b) each subsequent period of 12 months ending at midnight on each 30 June preceding the Vesting Date; and

(c) the period beginning at midnight on the 30 June immediately preceding the Vesting Date and ending on the Vesting Date;

"Investment Confirmation Statement" means a statement issued by the Manager to a Member pursuant to clause 5.7;

"Issue Price" means the price at which a Unit is issued as detailed in clause 6;

"Law" means the Corporations Act 2001;

"Liabilities" means at any time the aggregate of the following at that time as calculated by the Manager:

(a) Each liability of the Manager in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(b) Each other amount payable out of the Scheme Fund or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(c) Other appropriate provisions in accordance with the applicable Accounting Standards.

"LMA" means LM Administration Pty Ltd ACN 055 691 426

"Manager" means LM Investment Management Limited ACN 077 208 461

"Member" in relation to a Unit, means the person registered as the holder of that Unit (including joint holders).

"Net Fund Value" at any time, means the value of the Scheme Fund less the liabilities at that time;

"Offer Document" means an Offer Document or any Supplementary Offer Document issued by the Manager in relation to the Scheme.

"Power" means any right, power, authority, discretion or remedy conferred on the Manager by this Constitution or any applicable law;

"Redemption Price" means the Redemption Price calculated in accordance with clause 7.4;

"Register" means the register of Members maintained by the Manager under clause 20;

"Scheme" means the trust created by this Deed to be known as The LM Managed Performance Fund;

"Scheme Fund" means assets of the Scheme including but not limited to:

(a) contributions of money or money's worth to the Scheme; and

(b) money borrowed or raised by the Manager for the purposes of the Scheme; and

(c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and

(d) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b) or (c).

"Tax Act" means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);

"**Unit**" means an undivided interest in the Scheme Fund created and issued under this Constitution; and

"Valuation Date" means the date which is the last day of each quarter or any date during each quarter at the Manager's discretion or the date on which the Manager determines there has been a material change in the value of the Scheme Fund.

"Vesting Date" means the date of termination of the Scheme under clause 14.

1.2 **Interpretation**

(a) Reference to:

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) an associate of a person means another person who is associated with that person by application of any of the provisions of Division 2 of Part 1.2 of the *Corporations Act 2001*;

(v) a party includes the party's executors, administrators, successors and permitted assigns;

(vi) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:

- that Statutory Provision as amended or re-enacted from time to time; and
- a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vii) "pay" includes transfer, convey and assign; and

(viii) "income" is not limited to "assessable income" as defined in ITAA.

(b) "Including" and similar expressions are not words of limitation

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(d) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

(e) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(f) A reference to dealing with a Unit includes any subscription, redemption, sale, assignment, encumbrance, or other disposition whether by act or omission and whether affecting the legal or equitable interest in the Unit.

1.3 **Accounting Standards**

In respect of any accounting practice relevant to this Constitution, the following accounting standards apply as if the Scheme were a company:

(a) the accounting standards required under the Law.

(b) if no accounting standard applies under clause 1.3(a), the accounting practice determined by the Manager.

2. ESTABLISHMENT OF SCHEME

2.1 **Appointment of Responsible Entity**

The Manager agrees to act as trustee of the Scheme.

2.2 **Declaration of Trust**

The Manager declares that it holds the Scheme Fund on trust for the Members.

2.3 **Name of Scheme**

The name of the Scheme is The LM Managed Performance Fund or any other name that the Manager may determine from time to time.

2.4 **Initial Issue**

LMA has paid $1.00 to the Manager to establish the Scheme Fund and the Manager has issued LMA or its nominee one Unit in return for that payment.

3. UNITS AND MEMBERS

3.1 **Units**

The beneficial interest in the Scheme Fund will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations of Members under this Constitution.

3.2 **Classes**

Different Classes of Units may be issued. If the Manager determines in relation to particular Units, the terms of issue of those Units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units.

3.3 **Fractions**

Fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit.

3.4 **Equal value**

At any time, all the Units in a Class are of equal value.

3.5 **Interest**

A Unit confers an interest in the Scheme Fund as a whole. No Unit confers any interest in any particular asset of the Scheme Fund.

3.6 **Consolidation and re-division**

(a) Subject to clause 3.6(b) the Manager may at any time divide the Scheme Fund into any number of Units other than the number into which the Scheme Fund is for the time being divided.

(b) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Member to the Units on Issue in the Class.

3.7 **Rights attaching to Units**

(a) A Member holds a Unit subject to the rights and obligations attaching to that Unit.

(b) Each Member agrees not to:

(i) interfere with any rights or powers of the Manager under this Constitution;

(ii) purport to exercise a right in respect of the Scheme Fund or claim any interest in an asset of the Scheme Fund (for example, by lodging a caveat affecting an asset of the Scheme Fund); or

(iii) require an asset of the Scheme Fund to be transferred to the Member.

3.8 **Conditions**

The Manager may impose such conditions on the issue of Units as it determines including that the Member may not give effect to any mortgage, charge, lien, or other encumbrances other than as expressly permitted by the Manager.

4. BINDING ON ALL PARTIES

4.1 This Constitution is binding on the Manager and on all Members of the Scheme as they are constituted from time to time.

4.2 By executing the Application Form attached to the Offer Document or any subsequent document the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

5. ISSUE OF UNITS

5.1 **Offer**

The Manager may at any time:

(a) offer Units for subscription or sale; or

(b) invite persons to make offers to subscribe for or buy Units.

5.2 **Form of Application**

Each Application for Units:-

(a) must be made by Application Form attached to an Offer Document or any subsequent document ; and

(b) must be accompanied by Application Moneys as required by any relevant Offer Document or any subsequent document;

5.3 **Acceptance or rejection**

The Manager may, without giving any reason:

(a) accept an Application;

(b) reject an Application; or

(c) reject part of the Application.

5.4 **Uncleared funds**

Units issued against Application Money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not subsequently cleared.

5.5 **Issue of Units**

Units are taken to be issued when:

(a) the Application Money for the Issue Price is received by the Manager; and

(b) the Manager accepts the Application and the Units are entered in the Register, or at such other time as the Manager determines.

5.6 **Number of Units Issued**

The number of Units issued at any time in respect of an Application for Units will be calculated as follows:

(a) by dividing the Application Moneys paid by the applicable Issue Price at that time;

(b) by rounding down to the nearest unit.

5.7 **Investment Confirmation Statement**

The evidence of a Members holding in the Scheme will be the latest extract from the Register as provided from time to time to a Member by the Manager in a Investment Confirmation Statement.

5.8 Notwithstanding clauses 5.1 - 5.6, the Manager may, in its discretion, allot Units on terms and conditions it thinks fit.

6. ISSUE PRICE

The issue price of a Unit will be calculated as follows:

$$\frac{(\text{Net Fund Value})}{(\text{Number of Units Issued})}$$

calculated on the last Valuation Date prior to the date of issue.

7. TERM OF INVESTMENT AND REDEMPTION OF UNITS

7.1 **Minimum Term and Conditions**

The minimum term of the investment and conditions attaching to the redemption of the Units (withdrawal of funds) are detailed in the Offer Document under which

the Member applied for Units. The minimum term and the minimum notice period for redemption requests may be varied by the Manager from time to time.

7.2 **Notice to Redeem**

Subject to clause 7.1 a Member may request a redemption of all or part of its Units in the manner prescribed by the Offer Document.

7.3 **No Obligation**

(a) Subject to the provisions of clause 7.2 and 7.3(b) the Manager will agree to a Members request for redemption of Units.

(b) The Manager is not obliged to agree to any request for redemption of Units for such periods as it in its sole discretion determines where:-

(i) The Scheme's cash reserves fall below 5% of the value of the Scheme's Issued Units; or

(ii) In any calender month the Manager receives net redemption requests equal to 10% or more of the value of the Scheme's Issued Units; or

(iii) Any other event or circumstances arises which the Manager considers in its absolute discretion may be detrimental to the interests of the Members in the Scheme.

7.4 **Redemption Price**

The Redemption Price of each Unit pursuant to clause 7 shall be calculated as follows:

$$\frac{\text{(Net Fund Value)}}{\text{(Number of Units issued)}}$$

calculated on the last Valuation Date prior to the date of redemption.

7.5 **Redemption by the Manager**

The Manager may redeem any Units at any time without notice of such redemption to the relevant Unit Holders.

7.6 **Payment**

(a) The Manager must pay to the holder of a redeemed Unit so much of the Distributable Income for the Distribution Period as the Manager considers is reasonably attributed to the Unit for the period from the commencement of the then current Distribution Period to the date of the redemption.

(b) The Manager must pay to the holder of the redeemed Units the Redemption Price for each redeemed Unit plus the amount referred to in clause 7.6(a) within one month after the Manager's obligation to pay the Redemption Price under clause 7.7 arises.

7.7 **Cancellation of Units**

Upon the redemption of Units, the Units must be cancelled and the name of the holder must be removed from the Register as a holder of those Units and the Manager's obligation to pay the Redemption Price and the amount referred to in clause 7.6(a) per Unit for each redeemed Unit arises.

8. **TRANSFER OF UNITS**

8.1 **Transferability of Units**

(a) Subject to this Constitution, a Unit may be transferred by instrument in writing, in any form authorised by Law or in any other form that the Manager approves.

(b) A Transferor of Units remains the holder of the Units transferred until the transfer is registered.

8.2 **Registration of Transfers**

(a) The following documents must be lodged for registration at the registered office of the Manager or the location of the Register:

(i) the instrument of transfer; and

(ii) any other information that the Manager may require to establish the transferor's right to transfer the Units.

(b) On compliance with clause 8.2(a), the Manager will, subject to the powers of the Manager to refuse registration, register the transferee as a Member.

8.3 **Where registration may be refused**

Where permitted to do so by Law or this Constitution, the Manager may refuse to register any transfer of Units.

8.4 **Where registration must be refused**

If the transferee is not a Member the Manager must not consent to the registration until the Manager is satisfied that the transferee has read or had the opportunity to read this Constitution and has agreed to be bound by its provisions.

8.5 **Notice of non-registration**

If the Manager declines to register any transfer of Units, the Manager must within 5 Business Days after the transfer was lodged with the Manager give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration.

8.6 **Suspension of transfers**

The registration of transfers of Units may be suspended at any time and for any period as the Manager from time to time decides.

9. **TRANSMISSION OF UNITS**

9.1 Entitlement to Units on death

(a) If a Member dies:

(i) the survivor or survivors, where the Member was a joint holder; and

(ii) the legal personal representatives of the deceased, where the Member was a sole holder,

will be the only persons recognised by the Manager as having any title to the Member's interest in the Units.

(b) The Manager may require evidence of a Member's death and grant of probate as it thinks fit.

(c) This clause does not release the estate of the deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

9.2 **Registration of persons entitled**

(a) Subject to the Bankruptcy Act 1966 and to the production of any information that is properly required by the Manager, a person becoming entitled to a Unit in consequence of the death or bankruptcy (or other legal disability) of a Member may elect to:

(i) be registered personally as a Member; or

(ii) have another person registered as the Member.

(b) All the limitations, restrictions and provisions of this Constitution relating to:

(i) the right to transfer Units;

(ii) the registration of the transfer of Units;

apply to any relevant transfer as if the death or bankruptcy or legal disability of the Unit Member had not occurred and the notice or transfer were a transfer signed by that Member.

9.3 **Distributions and other rights**

(a) If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the Manager, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Member would have been entitled to if the Member had not died or suffered a legal disability.

(b) Where two or more persons are jointly entitled to any Unit as a result of the death of a Member, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit.

10. DISTRIBUTABLE INCOME

10.1 Income of the Scheme Fund

The income of the Scheme Fund for each Financial Year will be determined in accordance with applicable Accounting Standards.

10.2 Expenses and provisions of the Scheme Fund

For each Financial Year:

(a) the Expenses of the Scheme Fund will be determined in accordance with the applicable Accounting Standards; and

(b) provisions or other transfers to or from reserves may be made in relation to such items as the Manager considers appropriate in accordance with the applicable Accounting Standards including, but not limited to, provisions for income equalisation.

10.3 Distributable Income

The Distributable Income of the Scheme Fund is Income of the Scheme Fund less Expenses and provisions of the Scheme Fund.

11. DISTRIBUTIONS

11.1 Distribution Period

The Distribution Period is one calendar month or as otherwise determined by the Manager in its absolute discretion.

11.2 Distributions

(a) The Manager must distribute the Distributable Income relating to each Distribution Period within 7 days of the end of each Distribution Period.

(b) For each Distribution Period a Member is entitled to that proportion of the Distributable Income as is equal to the number of Units held by the Member on the last day of the Distribution Period divided by the number of Units on the Register on that date.

11.3 Present entitlement

Unless otherwise agreed by the Manager and subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the Members on the Register will be presently entitled to the Distributable Income of the Scheme Fund on the last day of each Distribution Period.

11.4 Capital distributions

The Manager may distribute capital of the Scheme Fund to the Members. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Member on a date determined by the Manager divided by the number of Units on the Register on that date. A distribution may be in cash or by way of bonus Units.

11.5 **Grossed up Tax amounts**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Members in proportion to the Distributable Income for a Distribution Period as the case may be, which is referable to a dividend or other income to which they are presently entitled.

11.6 **Reinvestment of Distributable Income**

(a) The Manager may invite Members to reinvest any or all of their distributable income entitlement by way of application for additional Units in the Scheme.

(b) The terms of any such offer of reinvestment will be determined by the Manager in its discretion and may be withdrawn or varied by the Manager at any time.

(c) The Manager may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer.

(d) The Units issued as a result of an offer to reinvest will be deemed to have been issued on the first day of the next Distribution Period immediately following the Distribution Period in respect of which the distributable income being reinvested was payable.

12. NATURE OF MANAGER POWERS

12.1 The Manager has all the powers:

(a) of a natural person to invest and borrow on security of the Scheme Fund;

(b) in respect of the Scheme and the Scheme Fund that it is possible under the Law to confer on a Manager and on a Trustee;

(c) as though it were the absolute owner of the Scheme Fund and acting in its personal capacity; or

(d) necessary for fulfilling its obligations under this Constitution and under the Law.

12.2 Without limiting the generality of clause 12. 1, the Manager may:

(a) purchase, sell, lease, improve, encumber, sub-divide, hire, licence, exchange, develop, grant leases and licenses and enter into any other agreement or dealing including the surrender or termination of any dealing in relation to any property forming or which is to form part of the Scheme Fund, on any terms the Manager thinks fit;

(b) repair, renovate, demolish, build or alter any improvement to any property forming part of the Scheme Fund;

(c) determine any rental to be paid for the use of any property;

(d) exercise all powers and obligations in relation to any investment forming part of the Scheme Fund, including but not limited to:

(i) attending and voting at meetings;

(ii) appointing proxies for meetings;

(iii) taking up a rights issue; and

(iv) paying calls under any contract.

(e) exercise any Power and perform all obligations in relation to any property forming part of the Scheme Fund as if the Manager is the beneficial owner of the property;

(f) accept a conveyance or transfer of any property as part of the Scheme Fund;

(g) enter into possession of and manage any property interests of the Scheme Fund.

12.3 Without limiting the generality of clause 12.1, the Manager may:

(a) invest in any "securities" as defined in Section 92(1) of the Law:

(i) whether or not a trustee could properly acquire the security; and

(ii) on personal credit, with or without security;

(b) invest any money on loan to, or on deposit with, any person (including a Member or Related Corporation):

(i) with or without interest;

(ii) with or without security; and

(iii) repayable on any terms the Manager thinks fit;

(c) enter into swap transactions, futures contracts, forward rate agreements, foreign exchange agreements;

(d) grant or take up an option to acquire property; and

invest in or make a loan to any managed investment fund or scheme, including any managed investment fund or scheme that the Manager is the responsible entity of.

12.4 The Manager may invest any money required to be invested on loan to or on deposit with any Member or Related Corporation on any terms the Manager thinks fit.

12.5 The Manager may:

(a) exchange any investment for any other investment authorised under this Constitution;

(b) vary the terms of any investment or the security given for that investment; and

(c) surrender any investments.

12.6 The Manager may:

(a) use the income or capital of the Scheme Fund to carry on any trade or business, either as a sole trader or in partnership;

(b) engage any managers and other employees;

(c) enter into any arrangement for sharing profits, co-operation, joint venture or reciprocal concessions;

(d) act in relation to the trade or business as if the Manager were beneficially entitled to it;

(e) set aside an amount out of the Scheme Fund which, in the Manager's opinion, is sufficient to meet any debt or obligation;

(f) open and operate an account with any financial institution;

(g) sign, draw, endorse or execute in a manner determined by the Manager:

(i) any cheque or other negotiable or transferable instrument; and

(ii) any receipt for money paid to the Manager;

(h) borrow or raise money with or without giving security over the Scheme Fund or any part of it on any terms including any rate of interest and any fees and expenses as the Manager thinks fit;

(i) make, draw, accept, endorse, discount, sell, purchase, negotiate and otherwise deal with any promissary note, bill of exchange, commercial bill, bill of lading, warrant, debenture, certificate of deposit or other transferable document or financial instrument for any purpose the Manager thinks fit;

(j) encumber the Scheme Fund in favour of any person in relation to any obligation of the Manager on behalf of the Scheme;

(k) to the extent permitted by law:

(i) guarantee the payment of money or the performance of any other obligation; and

(ii) grant any indemnity in respect of any obligation;

to any person whether or not in relation to the obligations of a Member or for the benefit of the Scheme.

12.7 Without limiting the generality of clause 12.1, the Manager may:

(a) make any claim or demand or take any action on behalf of a Member of the Scheme;

(b) refer any dispute affecting the assets of the Scheme to arbitration, other than a dispute involving a Member; and

(c) settle on any terms any matter which arises in relation to the Scheme (if the Manager settles any matter the settlement is binding on all persons interested in the Scheme, including all Members).

12.8 To the extent allowed by law:

(a) any restriction or prohibition imposed upon the Manager in relation to the investment from time to time of the Scheme Fund or any part thereof is hereby excluded from the obligations imposed.

(b) without derogating from the generality of the foregoing this exclusion specifically applies to any "Prudent Person Rule" or the like which may be implied by any future enactment of legislation.

12.9 To the extent allowed by law:

(a) the Manager may borrow or raise money with or without security over the Scheme Fund or any part of it on any terms, including any rate of interest and any fees and expenses as the Manager thinks fit;

(b) the Manager may deal with any property to exercise all the powers of a mortgagee pursuant to the mortgage terms and conditions.

12.10 The Manager may use Scheme Funds to assist it with its working capital requirements.

13. COMPLAINTS PROCEDURES

13.1 Complaints may be made in writing or by telephone to the Compliance Officer of the Manager.

13.2 If, after the expiry of thirty days from the date on which the Member first notified the Compliance Officer of its complaint the Member feels that their Complaint has not been satisfactorily resolved the Compliance Officer will refer the complaint to the Board of the Manager for resolution.

14 TERM OF SCHEME

The Scheme begins on the Commencement Date and is to be wound up on the earlier to occur of:

14.1 the date which is eighty years from the Commencement Date; and

14.2 any earlier date which the Manager, in its absolute discretion may appoint as the Vesting Date.

The Scheme shall only be wound up in accordance with the Law and this Constitution.

15. WINDING UP THE SCHEME

15.1 If the manager wishes to wind up the Scheme pursuant to clause 14, the Manager must give to the Members of the Scheme a notice in writing explaining the proposal to wind up the Scheme.

15.2 The Manager shall not accept any further applications for Units in the Scheme or make any further loans from the Scheme Fund at a time after the Manager has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.

15.3 The Manager shall manage the Scheme until such time as all winding up procedures have been completed.

15.4 Subject to the provisions of this clause 15 upon winding up of the Scheme the Manager must:

(a) realise the assets of the Scheme Fund;

(b) pay all liabilities of the Manager in its capacity as Trustee of the Scheme including, but not limited to, liabilities owed to any Member who is a creditor of the Scheme;

(c) subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 11.4;

(d) The Members must pay the costs and expenses of a distribution of assets under clause 15.4(c) in the same proportion specified in Clause 11.4.

(e) The Manager may postpone the realisation of the Scheme Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.

(f) The Manager may retain for as long as it thinks fit any part of the Scheme Fund which in its opinion may be required to meet any actual or contingent liability of the Scheme.

(g) The Manager must distribute among the Members in accordance with clause 15.6 anything retained under clause 15.4(f) which is subsequently not required.

15.5 If on completion of the winding up of a registered Scheme, the Manager or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the Manager or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to the ASIC to be dealt with pursuant to Part 9.7 of the Law.

15.6 **Capital Guarantee**

(a) Peter Charles Drake has provided a Guarantee to the Manager in its capacity as Trustee for the Members pursuant to which he personally guarantees the payment of each Member's entitlements calculated to the Vesting Date in the event of any shortfall in the assets of the Scheme if the Scheme is wound up. This Guarantee will only apply to Members who are registered as Unit Holders in the Register on the date on which the Scheme is wound up and Peter Charles Drake will only be required to make payment of any claims which are made under the Guarantee on a date 12 months from the Vesting Date of the Scheme.

(b) LM Investment Management Limited ACN 077 208 461 guarantees the payment of each Members entitlements calculated to the Vesting Date in the event of any shortfall in the assets of the Scheme if the Scheme is wound up. This guarantee will only apply to Members who are registered as Unit Holders in the Register on the date on which the Scheme is wound up. LM Investment Management Limited ACN 077 208 461 will ensure that all amounts which are

guaranteed under this clause are paid to qualifying Members within 12 months from the Vesting Date of the Scheme.

16. VALUE OF THE SCHEME FUND

16.1 **Valuation of the Scheme Fund**

The Manager may cause the Scheme Fund to be valued at any time in accordance with the Valuation Policy of the Manager.

17. FEES, TAXES, COSTS AND EXPENSES

17.1 **Taxes:**

The Manager may use the Scheme Fund to pay any Tax or other obligation, liability or expense required by any applicable law in relation to:

(a) this Constitution;

(b) any amount incurred or payable by the Manager;

(c) a gift or settlement effected by this Constitution;

(d) the exercise by the Manager of any Power; or

(e) money or investments held by or on behalf of the Manager under this Constitution.

17.2 **Payment of Debts:**

The Manager may set aside any money from the Scheme Fund which, in the Manager's opinion, is sufficient to meet any present or future obligation of the Scheme Fund.

17.3 **Fees:**

The Manager is entitled to be paid fees from the Scheme Fund in the amounts as detailed in the Offer Document or in any Offer Document and in relation to the performance of its duties as detailed in this Constitution and the Law.

17.4 The Manager shall be entitled to fees for the following duties:

(a) In relation to the subscription and redemption of units;

(b) In relation to the transfer or transmission of Units;

(c) In relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(d) In relation to due diligence enquiries generally;

(e) In relation to the sale of real estate or assets of the Scheme Fund;

(f) In relation to the promotion and management of the Scheme. This fee is payable monthly;

(g) In relation to the winding-up of the Scheme;

(h) In relation to the performance of its duties and obligations pursuant to the Law and this Constitution.

17.5 The Manager is entitled to be paid a success fee calculated in relation to a Distribution Period or Financial Year as the difference between the net profit of the Scheme and the net distribution or forecast to be paid to Members by the Manager during that Distribution Period or Financial Year.

17.6 **Costs and Expenses**

The Manager shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties; including:

(a) Auditor's fees;

(b) Legal fees and outgoings

(c) Barrister/QC - Legal Counsel Fees;

(d) Fees and expenses incurred in respect of any service providers and/or employees of the Scheme;

(e) All costs, charges and expenses incurred in connection with the acquisition, custody, transfer or disposal of any asset of the Scheme Fund or investments (for example commissions, brokerage, legal fees, bank charges and stamp duty);

(f) Independent expert's or consultant's fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners, engineers;

(g) Property report/property consultants fees;

(h) Real estate agent's sales commissions;

(i) Costs of maintenance of any asset of the Scheme Fund;

(j) Outstanding accounts relating to any asset of the Scheme Fund such as council rates;

(k) Locksmith for changing locks of any asset of the Scheme Fund as appropriate;

(l) Insurance (property and contents);

(m) Removalists for removal of borrower's property as appropriate;

(n) Security guards to attend any asset of the Scheme Fund as appropriate;

(o) Building and/or property inspection report fees - i.e. building, town planning experts and the like;

(p) all ASIC charges;

(q) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;

(r) all costs and expenses incurred in producing Offer Documents and Supplementary Offer Documents or any other disclosure document required by the Law;

(s) reasonable costs incurred in protecting or preserving all assets offered as security;

(t) all liability, loss, cost, expense or damage arising from the proper performance of its duties in connection with the Scheme performed by the Manager or by any agent appointed pursuant to the Law;

(u) any liability, loss, cost, expense or damage arising from the lawful exercise by the Manager and the Custodian of their rights under the Power of Attorney contained in clause 19;

(v) Fees and expenses of any agent or delegate appointed by the Manager;

(w) Bank and government duties and charges on the operation of bank accounts;

(x) Costs, charges and expenses incurred in connection with borrowing money on behalf of the Scheme under the Constitution;

(y) Insurances directly or indirectly protecting the Scheme Fund;

(z) Fees and charges of any regulatory or statutory authority;

(aa) Taxes in respect of the Scheme but not Taxes of the Manager [save and except any goods and services or similar tax ("GST")] which are payable by the Manager on its own account;

(bb) Costs of printing and postage of cheques, advices, reports, notices and other documents produced during the management of the Scheme;

(cc) Expenses incurred in connection with maintaining accounting records and registers of the Scheme and of the Scheme Auditors;

(dd) Costs and disbursements incurred in the preparation and lodgement of returns under the Law, Tax Act or any other laws for the Scheme;

(ee) Costs of convening and holding meetings of Members;

(ff) Costs and disbursements incurred by or on behalf of the Manager in connection with its retirement and the appointment of a substitute;

(gg) Costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings;

(hh) Costs of any insurance premiums insuring against the costs of legal proceedings (whether successful or not);

(ii) Costs of advertising the availability of funds for lending;

(jj) Brokerage and underwriting fees;

(kk) If and when the Manager becomes responsible to pay any GST in respect of any services provided to the Scheme or any payments in respect of GST to be made by the Members or the Manager in respect of the Scheme or under the terms of this Constitution then the Manager shall be entitled to be indemnified in respect of such GST from the Scheme Fund;

17.7 In the event that the Manager has not performed its duties, the lack of entitlement to payment of fees pursuant to clause 17.3 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the Manager is not entitled to be paid fees and expenses for work properly performed.

17.8 In the event of any dispute regarding the payment of fees and expenses, the Manager shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the Manager shall be repaid forthwith upon the identification of the overpayment.

17.9 The Manager is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution.

17.10 All fees payable to the Manager include any goods and services tax.

18. INDEMNITY AND LIABILITY

18.1 The following clauses apply to the extent permitted by law:

(a) The Manager is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:

(i) otherwise than in accordance with this Constitution and its duties; and

(ii) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case the liability of the Manager in relation to the Scheme is limited to the Scheme Property, from which the Manager is entitled to be, and is in fact, indemnified.

(b) In particular, the Manager is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

(i) it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Manager;

(ii) it acted as required by Law; or

(iii) it relied in good faith upon any signature, marking or documents.

(c) In addition to any indemnity under any Law, the Manager has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the Manager has acted negligently, fraudulently or in breach of trust.

(d) The Manager is not liable to account to any Member for any payments made by the Manager in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other statutory charges.

19. POWERS OF ATTORNEY

19.1 Each Member by execution of the Application Form or the transfer by which he/she/it acquires Units in the Scheme appoints the Manager and any director officer attorney or substitute nominated by the Manager severally for this purpose as its attorney and agent with the right:

(a) at any time to:

(i) sign any document in relation to any subscription and redemption agreement;

(ii) sign any document in relation to the transfer or transmission of Units;

(iii) sign any variation of this Constitution;

(iv) sign any document required by ASIC to be executed by a Member in respect of the Scheme.

(b) at the request in writing of the Manager the Member must execute separate Powers of Attorney in a form reasonably required by the Manager appointing the Manager as its attorney for the purpose of this clause.

(c) any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;

19.2 Each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under the Power of Attorney.

20. THE REGISTER

20.1 Keeping registers

The Manager must establish and keep a register of Members, and if applicable, the other registers required by the Law.

20.2 Information in registers

To the extent applicable, the registers must be kept in accordance with, and contain the information required by the Law. Otherwise, the Manager may decide what information is included in the registers. If the Law applies, the Manager has the powers conferred under the Law in relation to the register.

20.3 Changes

Every Member must promptly notify the Manager of any change of name or address and the Manager must alter the relevant register accordingly.

21. NOTICES

21.1. A notice or other communication connected with this Constitution has no legal effect unless it is in writing.

21.2. Notices may be:-

(i) sent by post, postage prepaid to the address for the Member in the Manager's register of interests; or

(ii) sent by facsimile to the facsimile number of the Member; or

(iii) sent by email to the email address for the Member in the Managers register of interests; or

(iv) otherwise delivered at the address of the addressee of the Member as is subsequently notified.

21.3 A Notice must be treated as given and received:

(i) if sent by the Manager;

a by post, on the second business day (at the address to which it is posted) after posting;

b by facsimile before 5.00 pm on a business day at the date of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery;

c by email on the date the sending machine indicates that the notice or other document was sent.

(ii) If sent by the Member by post , facsimile or email, upon receipt of such notice by the Manager.

21.4 A Notice sent or delivered by the Manager in a manner provided by clause 21.2 must be treated as validly given to and received by the member even if:

(i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(ii)the notice is returned unclaimed.

21.5 Any Notice by a party may be given and may be signed by the solicitor for the party.

21.6 Any Notice to a Member may be given to the solicitor for the Member by any of the means listed in clause 21.2 to the solicitor's business address , email address or facsimile number as the case may be.

22. LIABILITY OF MEMBERS

22.1 The liability of each Member, whether actual, contingent or prospective, is limited to the unpaid Issue Price of his/her/its Units except if the Manager and the relevant Member agree otherwise in writing that the liability of a Member may be further limited or waived.

22.2 A creditor or other person claiming against the Manager as trustee of the Scheme has no recourse against a Member and no Member is personally liable to indemnify the Manager, any creditor of the Manager or any person claiming against the Manager in respect of any actual, contingent, prospective or other liability of the Manager in relation to the Scheme Fund.

23. APPOINTMENT AND REMOVAL OF TRUSTEE

23.1 **Retirement or Resignation of Trustee**

(a) The Manager may retire upon giving 3 months' notice to the Members of its desire to do so.

(b) The Manager must resign:

(i) if it is removed as provided by law;

(ii) if (being a corporation) it becomes an externally-administered body corporate as defined in the *Corporations Act 2001;* or

(iii) if (being a natural person) he or she is found to be of unsound mind or becomes bankrupt.

23.2 **Unit Holders May Appoint New Trustee**

The holders of not less than 50% of the Units on Issue may by notice in writing appoint a new Manager to fill a vacancy in the office of Manager.

23.3 **Transfer of Records**

Upon the resignation, retirement, or removal of the Manager, the Manager must hand to the new Trustee all books, records, documents and other matters pertaining to the Scheme and at the expense of the Scheme do all things necessary to transfer legal title and the assets of the Scheme to the new Trustee.

23.4 **Deed of Adoption by New Trustee**

The new Trustee appointed under clause 23.2 must execute a deed in a form approved by the holders of not less than 50% of the Units on Issue by which the new Trustee undertakes to the Members to carry out the obligations of the Trustee under this Deed.

24. CHANGING THE CONSTITUTION

24.1 This Constitution may be modified or repealed or replaced with a new Constitution by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Scheme.

24.2 The Manager must send a copy of the Scheme's Constitution to a Member of the Scheme within seven (7) days if the Member:

(a) asks the Manager in writing for the copy; and

(b) pays any fee (up to the prescribed amount) required by the Manager

25. ACCOUNTS

25.1 The accounts of the Scheme must be kept and prepared by the Manager in accordance with applicable Accounting Standards.

25.2 The Manager must prepare and make available to Members the financial statements of the Scheme for each financial year.

25.3 The Manager may make the financial statements available to Members by either publishing the statements on the Manager's internet site, emailing the statements to individual Members or by sending the statements to individual Members by facsimile or prepaid post.

25.4 The Manager is not obliged to have the financial statements audited.

26. OTHER ACTIVITIES AND OBLIGATIONS OF THE MANAGER

26.1 **Other activities**

Subject to the Law, nothing in this Constitution restricts the Manager (or its associates) from:

(a) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity);

(b) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or managed investment scheme or in another capacity) or with any Member or retaining for its own benefit profits or benefits derived from any such contract or transaction; or

(c) acting in the same or similar capacity in relation to any other trust or managed investment scheme.

26.2 Other Obligations All obligations of the Manager which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

27. GOVERNING LAW

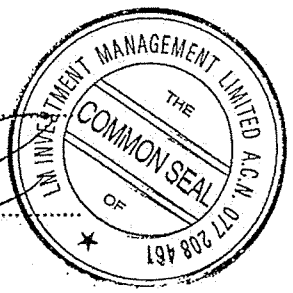
This Deed is governed by the Laws of the State of Queensland.

EXECUTED AS A DEED:

GIVEN under the Common Seal of LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by authority of a resolution of the Board of Directors under the hands of a Director and the Secretary who certify that they are the proper officers to affix this seal)

Director

Director/Secretary



LM INVESTMENT MANAGEMENT LIMITED
ACN 077 208 461

AND

THE MEMBERS AS THEY ARE CONSTITUTED
FROM TIME TO TIME OF THE
THE LM MANAGED PERFORMANCE FUND

DEED OF VARIATION
TO THE CONSTITUTION
DATED 4 DECEMBER 2001

Executed

474801/S1

Queensland Duty Not Payable
Signed: 22/11/02

DEED of Variation made this 11th day of November 2002

BETWEEN: LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 a company duly incorporated in Queensland having its registered office at Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise in the State of Queensland (the"Manager")

AND: All those persons who from time to time apply for Units and are accepted as Unitholders of the Scheme ("the Members")

WHEREAS:

A. By Deed dated 4 December 2001 the Manager established a unit trust called The LM Managed Performance Fund. (the "Scheme").

B. The Deed dated 4 December 2001 is varied by deleting all parts of the Deed other than the parties and replacing it with the terms set out in this Deed of Variation.

C. This Constitution is made with the intent that the benefits and obligations hereof will enure not only to the Manager but also to the extent provided herein to every person who is or becomes a Member.

IT IS AGREED:

1. **DICTIONARY AND INTERPRETATION**

1.1 **Dictionary of Terms**

In this Constitution:

"Accounting Standards" means the accounting standards and practices determined under clause 1.3;

"Applicant" anyone who submits an application for Unit/s in the Scheme in accordance with the Offer Document;

"Application Form" an application in writing for Unit/s in the Scheme attached to the Offer Document.

"Application Money" the amount received from an Applicant when lodging the application in respect of the Unit/s applied for in accordance with the Offer Document;

"ASIC" the Australian Securities and Investments Commission;

"Auditor" means the auditor of the Scheme appointed by the Manager.

"Authorised Investors" means:

(a) Investors who invest a minimum amount of $500,000.00 in the Scheme; or

(b) Investors who invest less than $500,000.00 in the Scheme and provide a certificate from their accountant confirming that their net assets are not less than $250,000.00 or that their net income

exceeds $250,000.00 per annum for each of the last two financial years; or

(c) Offers made through a licenced dealer who certifies that the Investor has sufficient previous experience relating to investments in securities; or

(d) Certain professional Investors such as financial corporations.

"Business Day" any day on which trading banks are open for business on the Gold Coast, Queensland;

"Class" means a class of Units, being Units which have the same rights.

"Constitution" this document including any Schedule, Annexure or Amendments to it

"Distributable Income" means as detailed in Clause 10.3;

"Distribution Period" means the period referred to in Clause 11.1

"Dollars", "A$"** and **"$" mean the lawful currency of the Commonwealth of Australia;

"Extraordinary Resolution" has the same meaning as in the Law.

"Financial Year" means:

(a) the period from the Commencement Date to midnight on the next 30 June;

(b) each subsequent period of 12 months ending at midnight on each 30 June preceding the Vesting Date; and

(c) the period beginning at midnight on the 30 June immediately preceding the Vesting Date and ending on the Vesting Date;

"Investment Confirmation Statement" means a statement issued by the Manager to a Member pursuant to clause 5.7;

"Issue Price" means the price at which a Unit is issued as detailed in clause 6;

"Law" means the Corporations Act 2001;

"Liabilities" means at any time the aggregate of the following at that time as calculated by the Manager:

(a) Each liability of the Manager in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(b) Each other amount payable out of the Scheme Fund or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(c) Other appropriate provisions in accordance with the applicable Accounting Standards.

"**LMM**" means Law Mortgage Management Pty Ltd ACN 055 691 426;

"**Manager**" means LM Investment Management Limited ACN 077 208 461

"**Member**" in relation to a Unit, means the person registered as the holder of that Unit (including joint holders).

"**Offer Document**" means an Offer Document or any Supplementary Offer Document issued by the Manager in relation to the Scheme.

"**Power**" means any right, power, authority, discretion or remedy conferred on the Manager by this Constitution or any applicable law;

"**Register**" means the register of Members maintained by the Manager under clause 20;

"**Scheme**" means the trust created by this Deed to be known as The LM Managed Performance Fund;

"**Scheme Fund**" means assets of the Scheme including but not limited to:

(a) contributions of money or money's worth to the Scheme; and

(b) money borrowed or raised by the Manager for the purposes of the Scheme; and

(c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and

(d) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b) or (c).

"**Special Resolution**" has the same meaning as in the Law.

"**Tax Act**" means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);

"**Transaction Fee**" means:-

(a) when calculating the issue price of a Unit, the Manager's estimate of the total Expenses related to issuing the Units of the Scheme limited to a maximum of 3% of the value of the Units applied for in any one transaction;
(excluding the actual cost of the Units of the Scheme); or

(b) to the extent permitted by the Law if applicable a lesser amount

(including zero) determined by the Manager.

"**Unit**" means an undivided interest in the Scheme Fund created and issued under this Constitution; and

"**Vesting Date**" means the date of termination of the Scheme under clause 14.

1.2 **Interpretation**

(a) Reference to:

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) an associate of a person means another person who is associated with that person by application of any of the provisions of Division 2 of Part 1.2 of the *Corporations Law*;

(v) a party includes the party's executors, administrators, successors and permitted assigns;

(vi) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:

- that Statutory Provision as amended or re-enacted from time to time; and
- a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vii) "pay" includes transfer, convey and assign; and

(viii) "income" is not limited to "assessable income" as defined in ITAA.

(b) "Including" and similar expressions are not words of limitation

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(d) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

(e) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(f) A reference to dealing with a Unit includes any subscription, redemption, sale, assignment, encumbrance, or other disposition whether by act or omission and whether affecting the legal or equitable interest in the Unit.

1.3 **Accounting Standards**

In respect of any accounting practice relevant to this Constitution, the following accounting standards apply as if the Scheme were a company:

(1) the accounting standards required under the Law.

(2) if no accounting standard applies under clause 1.3(a), the accounting practice determined by the Manager.

2. ESTABLISHMENT OF SCHEME

2.1 **Appointment of Responsible Entity**

The Manager agrees to act as trustee of the Scheme.

2.2 **Declaration of Trust**

The Manager declares that it holds the Scheme Fund on trust for the Members.

2.3 **Name of Scheme**

The name of the Scheme is The LM Managed Performance Fund or any other name that the Manager may determine from time to time.

2.2 **Initial Issue**

The Scheme commences at such time when LMM or its nominee pays $1.00 to the Manager to establish the Scheme Fund. The Manager must issue to LMM or its nominee 1 Unit in return for that payment.

3. UNITS AND MEMBERS

3.1 **Units**

The beneficial interest in the Scheme Fund will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations of Members under this Constitution.

3.2 **Classes**

Different Classes of Units may be issued. If the Manager determines in relation to particular Units, the terms of issue of those Units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units.

3.3 **Fractions**

Fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit.

3.4 **Equal value**

At any time, all the Units in a Class are of equal value.

3.5 **Interest**

A Unit confers an interest in the Scheme Fund as a whole. No Unit confers any interest in any particular asset of the Scheme Fund.

3.6 **Consolidation and re-division**

(1) Subject to clause 3.6(b) the Manager may at any time divide the Scheme Fund into any number of Units other than the number into which the Scheme Fund is for the time being divided.

(2) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Member to the Units on Issue in the Class.

3.7 **Rights attaching to Units**

(1) A Member holds a Unit subject to the rights and obligations attaching to that Unit.

(2) Each Member agrees not to:

(1) interfere with any rights or powers of the Manager under this Constitution;

(2) purport to exercise a right in respect of the Scheme Fund or claim any interest in an asset of the Scheme Fund (for example, by lodging a caveat affecting an asset of the Scheme Fund); or

(3) require an asset of the Scheme Fund to be transferred to the Member.

3.8 Conditions

The Manager may impose such conditions on the issue of Units as it determines including that the Member may not give effect to any mortgage, charge, lien, or other encumbrances other than as expressly permitted by the Manager.

4. BINDING ON ALL PARTIES

4.1 This Constitution is binding on the Manager and on all Members of the Scheme as they are constituted from time to time.

4.1 By executing the Application Form attached to the Offer Document the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

5. ISSUE OF UNITS

5.1 Offer

The Manager may at any time:

(1) offer Units for subscription or sale; or

(2) invite persons to make offers to subscribe for or buy Units.

5.2 Form of Application

Each Application for Units:-

(1) must be made by Application Form attached to an Offer Document; and

(2) must be accompanied by Application Moneys as required by any relevant Offer Document;

(3) may only made by an Authorised Investor.

5.3 Acceptance or rejection

The Manager may, without giving any reason:

(1) accept an Application;

(2) reject an Application; or

(3) reject part of the Application.

5.4 Uncleared funds

Units issued against Application Money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not subsequently cleared.

5.5 Issue of Units

Units are taken to be issued when:

(1) the Application Money for the Issue Price is received by the Manager; and

(2) the Manager accepts the Application and the Units are entered in the Register, or at such other time as the Manager determines.

5.6 Number of Units Issued

The number of Units to be issued to an Applicant will be the amount of the Application Money less the Transaction Fee, rounded down to the nearest whole number.

5.7 Investment Confirmation Statement

The evidence of a Members holding in the Scheme will be the latest extract from the Register as provided from time to time to a Member by the Manager in a Investment Confirmation Statement.

5.8 Notwithstanding clauses 5.1 - 5.6, the Manager may, in its discretion, allot Units on terms and conditions it thinks fit.

6. ISSUE PRICE

The issue price of a Unit shall be $1.00.

7. TERM OF INVESTMENT AND REDEMPTION OF UNITS

7.1 Minimum Term and Conditions

The minimum term of the investment and conditions attaching to the redemption of the Units (withdrawal of funds) are detailed in the Offer Document under which the Member applied for Units. The minimum notice period for redemption requests may be varied by the Manager from time to time by written notice to Members.

7.2 Notice to Redeem

Subject to clause 7.1 a Member may request a redemption of all or part of its Units in the manner prescribed by the Offer Document.

7.3 No Obligation

(a) Subject to the provisions of clause 7.2 and 7.3(b) the Manager will agree to a Members request for redemption of Units.

(b) The Manager is not obliged to agree to any request for redemption of Units for such periods as it in its sole discretion determines where:-

(i) The Scheme's cash reserves fall below 5% of the value of the Scheme's Issued Units; or

(ii) In any calendar month the Manager receives net redemption requests equal to 10% or more of the value of the Scheme's Issued Units; or

(iii) Any other event or circumstances arises which the Manager considers in its absolute discretion may be detrimental to the interests of the Members in the Scheme.

7.4 Redemption by the Manager

The Manager may redeem any Units at any time by giving notice of such redemption to the relevant Unit Holders.

7.5 **Payment**

(a) The Manager must pay to the holder of a redeemed Unit so much of the Distributable Income for the Distribution Period as the Manager considers is reasonably attributed to the Unit for the period from the commencement of the then current Distribution Period to the date of the redemption.

(b) The Manager must pay to the holder of the redeemed Units the redemption price of $1.00 per Unit for each redeemed Unit plus the amount referred to in clause 7.5(a) within one month after the Manager's obligation to pay the redemption price under clause 7.6 arises.

7.6 **Cancellation of Units**

Upon the redemption of Units, the Units must be cancelled and the name of the holder must be removed from the Register as a holder of those Units and the Manager's obligation to pay the redemption price and the amount referred to in clause 7.5(a) per Unit for each redeemed Unit arises.

8. **TRANSFER OF UNITS**

8.1 **Transferability of Units**

(1) Subject to this Constitution, a Unit may be transferred by instrument in writing, in any form authorised by Law or in any other form that the Manager approves.

(2) A Transferor of Units remains the holder of the Units transferred until the transfer is registered.

8.2 **Registration of Transfers**

(1) The following documents must be lodged for registration at the registered office of the Manager or the location of the Register:

(1) the instrument of transfer; and

(2) any other information that the Manager may require to establish the transferor's right to transfer the Units.

(2) On compliance with clause 8.2(a), the Manager will, subject to the powers of the Manager to refuse registration, register the transferee as a Member.

8.3 **Where registration may be refused**

Where permitted to do so by Law or this Constitution, the Manager may

refuse to register any transfer of Units.

8.4 **Where registration must be refused**

If:

(1) the Manager has notice that the transferor of Units has entered into any borrowing or other form of financial accommodation to provide all or part of the funds to subscribe for or acquire a Unit and has not received confirmation from the financier that the financier consents to the transfer of those Units; or

(2) the transferor has given a power of attorney in favour of the Manager in the form set out in an application form accompanying the Offer Document and the transferee has not executed and provided to the Manager a similar form of power of attorney (with such adaptations as are necessary) in favour of the Manager, the Manager must refuse to register same and must continue to treat the seller or transferor as the case may be as the registered holder for all purposes and the purported sale, purchase, disposal or transfer shall be of no effect, or

(3) if the transferee is not a Member the Manager must not consent to the registration until the Manager is satisfied that the transferee has read or had the opportunity to read this Constitution and has agreed to be bound by its provisions.

8.5 **Notice of non-registration**

If the Manager declines to register any transfer of Units, the Manager must within 5 Business Days after the transfer was lodged with the Manager give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration.

8.6 **Suspension of transfers**

The registration of transfers of Units may be suspended at any time and for any period as the Manager from time to time decides. However, the aggregate of those periods must not exceed 30 days in any calendar year.

9. TRANSMISSION OF UNITS

9.1 **Entitlement to Units on death**

(1) If a Member dies:

(1) the survivor or survivors, where the Member was a joint holder; and

(2) the legal personal representatives of the deceased, where the Member was a sole holder,

will be the only persons recognised by the Manager as having any title to the Member's interest in the Units.

(2) The Manager may require evidence of a Member's death and grant of probate as it thinks fit.

(3) This clause does not release the estate of the deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

9.2 **Registration of persons entitled**

(1) Subject to the Bankruptcy Act 1966 and to the production of any information that is properly required by the Manager, a person becoming entitled to a Unit in consequence of the death or bankruptcy (or other legal disability) of a Member may elect to:

(1) be registered personally as a Member; or

(2) have another person registered as the Member.

(2) All the limitations, restrictions and provisions of this Constitution relating to:

(1) the right to transfer Units;

(2) the registration of the transfer of Units;

apply to any relevant transfer as if the death or bankruptcy or legal disability of the Unit Member had not occurred and the notice or transfer were a transfer signed by that Member.

9.3 **Distributions and other rights**

(1) If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the Manager, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Member would have been entitled to if the Member had not died or suffered a legal disability.

(2) Where two or more persons are jointly entitled to any Unit as a result of the death of a Member, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit.

10. DISTRIBUTABLE INCOME

10.1 Income of the Scheme Fund

The income of the Scheme Fund for each Financial Year will be determined in accordance with applicable Accounting Standards.

10.2 Expenses and provisions of the Scheme Fund

For each Financial Year:

(1) the Expenses of the Scheme Fund will be determined in accordance with the applicable Accounting Standards; and

(2) provisions or other transfers to or from reserves may be made in relation to such items as the Manager considers appropriate in accordance with the applicable Accounting Standards including, but not limited to, provisions for income equalisation.

10.3 Distributable Income

The Distributable Income of the Scheme Fund is Income of the Scheme Fund less Expenses and provisions of the Scheme Fund.

11. DISTRIBUTIONS

11.1 Distribution Period

The Distribution Period is one calendar month or as otherwise determined by the Manager in its absolute discretion.

11.2 Distributions

(a) The Manager must distribute the Distributable Income relating to each Distribution Period within 7 days of the end of each Distribution Period.

(b) For each Distribution Period a Member is entitled to that proportion of the Distributable Income as is equal to the number of Units held by the Member on the last day of the Distribution Period divided by the number of Units on the Register on that date.

11.3 Present entitlement

Unless otherwise agreed by the Manager and subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the Members on the Register will be presently entitled to the Distributable Income of the Scheme Fund on the last day of each Distribution Period.

11.4 Capital distributions

The Manager may distribute capital of the Scheme Fund to the Members.

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Member on a date determined by the Manager divided by the number of Units on the Register on that date. A distribution may be in cash or by way of bonus Units.

11.5 **Grossed up Tax amounts**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Members in proportion to the Distributable Income for a Distribution Period as the case may be, which is referable to a dividend or other income to which they are presently entitled.

11.6 **Reinvestment of Distributable Income**

(1) The Manager may invite Members to reinvest any or all of their distributable income entitlement by way of application for additional Units in the Scheme.

(2) The terms of any such offer of reinvestment will be determined by the Manager in its discretion and may be withdrawn or varied by the Manager at any time.

(3) The Manager may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer.

(4) The Units issued as a result of an offer to reinvest will be deemed to have been issued on the first day of the next Distribution Period immediately following the Distribution Period in respect of which the distributable income being reinvested was payable.

12. NATURE OF MANAGER POWERS

12.1 The Manager has all the powers:

(1) of a natural person to invest and borrow on security of the Scheme Fund;

(2) in respect of the Scheme and the Scheme Fund that it is possible under the Law to confer on a Manager and on a Trustee;

(3) as though it were the absolute owner of the Scheme Fund and acting in its personal capacity; or

(4) necessary for fulfilling its obligations under this Constitution and under the Law.

12.2 Without limiting the generality of clause 12. 1, the Manager may:

(5) purchase, sell, lease, improve, encumber, sub-divide, hire, licence, exchange, develop, grant leases and licenses and enter into any other agreement or dealing including the surrender or termination of any dealing in relation to any property forming or which is to form part of the Scheme Fund, on any terms the Manager thinks fit;

(6) repair, renovate, demolish, build or alter any improvement to any property forming part of the Scheme Fund;

(7) determine any rental to be paid for the use of any property;

(8) exercise all powers and obligations in relation to any investment forming part of the Scheme Fund, including but not limited to:

(1) attending and voting at meetings;

(2) appointing proxies for meetings;

(3) taking up a rights issue; and

(4) paying calls under any contract.

(9) exercise any Power and perform all obligations in relation to any property forming part of the Scheme Fund as if the Manager is the beneficial owner of the property;

(10) accept a conveyance or transfer of any property as part of the Scheme Fund;

(11) enter into possession of and manage any property interests of the Scheme Fund.

12.3 Without limiting the generality of clause 12.1, the Manager may:

(12) invest in any "securities" as defined in Section 92(1) of the Law:

(1) whether or not a trustee could properly acquire the security; and

(2) on personal credit, with or without security;

(13) invest any money on loan to, or on deposit with, any person (including a Member or Related Corporation):

(1) with or without interest;

(2) with or without security; and

(3) repayable on any terms the Manager thinks fit;

(14) enter into swap transactions, futures contracts, forward rate agreements, foreign exchange agreements;

(15) grant or take up an option to acquire property; and

(16) invest in or make a loan to any managed investment fund or scheme, including any managed investment fund or scheme that the Manager is the responsible entity of.

12.4 Clause 12.3 applies whether the Manager's purpose in making the investment:

(17) is to create a capital accretion or to produce income or other profits;

(18) is partly for a purpose referred to in clause 12.4(a);

(19) is for any other purpose that the Manager considers benefits the Scheme; or

(20) is for any purpose that the Manager considers directly or indirectly benefits any Member,

12.5 The Manager may invest any money required to be invested on loan to or on deposit with any Member or Related Corporation on any terms the Manager thinks fit.

12.6 The Manager may:

(21) exchange any investment for any other investment authorised under this Constitution;

(22) vary the terms of any investment or the security given for that investment; and

(23) surrender any investments.

12.7 Without limiting the generality of clause 12.1, the Manager may:

(24) use the income or capital of the Scheme Fund to carry on any trade or business, either as a sole trader or in partnership;

(25) engage any managers and other employees;

(26) enter into any arrangement for sharing profits, co-operation, joint venture or reciprocal concessions;

(27) act in relation to the trade or business as if the Manager were beneficially entitled to it;

(28) set aside an amount out of the Scheme Fund which, in the Manager's opinion, is sufficient to meet any debt or obligation;

(29) open and operate an account with any financial institution;

(30) sign, draw, endorse or execute in a manner determined by the Manager:

(1) any cheque or other negotiable or transferable instrument; and

(2) any receipt for money paid to the Manager;

(31) borrow or raise money with or without giving security over the Scheme Fund or any part of it on any terms including any rate of interest and any fees and expenses as the Manager thinks fit;

(32) make, draw, accept, endorse, discount, sell, purchase, negotiate and otherwise deal with any promissory note, bill of exchange, commercial bill, bill of lading, warrant, debenture, certificate of deposit or other transferable document or financial instrument for any purpose the Manager thinks fit;

(33) encumber the Scheme Fund in favour of any person in relation to any obligation of the Manager on behalf of the Scheme;

(34) to the extent permitted by law:

(1) guarantee the payment of money or the performance of any other obligation; and

(2) grant any indemnity in respect of any obligation;

to any person whether or not in relation to the obligations of a Member or for the benefit of the Scheme.

12.8 Without limiting the generality of clause 12.1, the Manager may:

(35) make any claim or demand or take any action on behalf of a Member of the Scheme;

(36) refer any dispute affecting the assets of the Scheme to arbitration, other than a dispute involving a Member; and

(37) settle on any terms any matter which arises in relation to the Scheme (if the Manager settles any matter the settlement is binding on all persons interested in the Scheme, including all Members).

12.9 To the extent allowed by law:

(38) any restriction or prohibition imposed upon the Manager in relation to the investment from time to time of the Scheme Fund or any part thereof is hereby excluded from the obligations imposed.

(39) without derogating from the generality of the foregoing this exclusion specifically applies to any "Prudent Person Rule" or the like which may be implied by any future enactment of legislation.

12.10 To the extent allowed by law:

(40) the Manager may borrow or raise money with or without security over the Scheme Fund or any part of it on any terms, including any rate of interest and any fees and expenses as the Manager thinks fit;

(41) the Manager may deal with any property to exercise all the powers of a mortgagee pursuant to the mortgage terms and conditions.

12.11 The Manager may use Scheme Funds to assist it with its working capital requirements.

13. COMPLAINTS PROCEDURES

13.1 Complaints may be made in writing or by telephone to the Compliance Officer of the Manager.

13.2 If, after the expiry of thirty days from the date on which the Member first notified the Compliance Officer of its complaint the Member feels that their Complaint has not been satisfactorily resolved the Compliance Officer will refer the complaint to the Board of the Manager for resolution.

14. TERM OF SCHEME

The Scheme begins on the Commencement Date and is to be wound up on the earlier to occur of:

(a) the date which is eighty years from the Commencement Date; and

(b) any earlier date which the Manager, in its absolute discretion may appoint as the Vesting Date.

15. WINDING UP THE SCHEME

15.1 The Scheme shall only be wound up in accordance with the Law and this Constitution.

15.2 The Manager must wind up the Scheme in the following circumstances:-

(a) if the term of the Scheme as detailed in this Constitution has expired;

(b) the Members pass an Extraordinary Resolution directing the

Manager to wind up the Scheme;

(c) the Court makes an order directing the Manager to wind up the Scheme.

(d) the Members pass an Extraordinary Resolution to remove the Manager but do not at the same time pass an Extraordinary Resolution choosing a company to be the new Manager that consents to becoming the Scheme's Manager;

15.3 (a) If the Manager considers that the purpose of the Scheme:

(1) has been accomplished; or

(2) cannot be accomplished,

it may take steps to wind up the Scheme.

(b) If the Manager wishes to wind up the Scheme pursuant to clause 15.3(a), the Manager must give to the Members of the Scheme a notice in writing;

(i) explaining the proposal to wind up the Scheme, including explaining how the Scheme's purpose has been accomplished or why that purpose cannot be accomplished; and

(ii) informing the Members of their rights to take action under Division 1 of Part 2G.4 of the Law for the calling of a Members' meeting to consider the proposed winding up of the Scheme and to vote on an Extraordinary Resolution Members propose about the winding up of the Scheme; and

(iii) informing the Members that the Manager is permitted to wind up the Scheme unless a meeting is called to consider the proposed winding up of the Scheme within 28 days of the Manager giving the notice to the Members;

(c) if no meeting is called within that 28 days to consider the proposed winding up, the Manager may wind up the Scheme.

15.4 The Manager shall not accept any further applications for Units in the Scheme or make any further loans from the Scheme Fund at a time after the Manager has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.

15.5 The Manager shall manage the Scheme until such time as all winding up procedures have been completed.

15.6 Subject to the provisions of this clause 15 upon winding up of the Scheme the Manager must:

(42) realise the assets of the Scheme Fund;

(43) pay all liabilities of the Manager in its capacity as Trustee of the Scheme including, but not limited to, liabilities owed to any Member who is a creditor of the Scheme;

(44) subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 11.4;

(45) The Members must pay the costs and expenses of a distribution of assets under clause 15.6(c) in the same proportion specified in Clause 11.4.

(46) The Manager may postpone the realisation of the Scheme Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.

(47) The Manager may retain for as long as it thinks fit any part of the Scheme Fund which in its opinion may be required to meet any actual or contingent liability of the Scheme.

(48) The Manager must distribute among the Members in accordance with clause 15.6 anything retained under clause 15.6(f) which is subsequently not required.

15.7 If on completion of the winding up of a registered Scheme, the Manager or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the Manager or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to the ASIC to be dealt with pursuant to Part 9.7 of the Law.

15.8 Capital Guarantee

LM Investment Management Limited ACN 077 208 461 guarantees the payment of each Members entitlements in the event of any shortfall in the assets of the Scheme if the Scheme is wound up where the Member become a Member of the Scheme on or before 4 November 2002. This

guarantee will only apply to Members who are registered as Unit Holders in the Register on 4 November 2002 and remain Members on the date on which the Scheme is wound up. LM Investment Management Limited ACN 077 208 461 will ensure that all amounts which are guaranteed under this clause are paid to qualifying Members within 12 months of the date on which the Scheme is wound up.

16. VALUE OF THE SCHEME FUND

16.1 Valuation of the Scheme Fund

The Manager may cause the Scheme Fund to be valued at any time in accordance with the Valuation Policy of the Manager.

17. FEES, TAXES, COSTS AND EXPENSES

17.1 Taxes:

The Manager may use the Scheme Fund to pay any Tax or other obligation, liability or expense required by any applicable law in relation to:

(a) this Constitution;

(b) any amount incurred or payable by the Manager;

(c) a gift or settlement effected by this Constitution;

(d) the exercise by the Manager of any Power; or

(e) money or investments held by or on behalf of the Manager under this Constitution.

17.2 Payment of Debts:

The Manager may set aside any money from the Scheme Fund which, in the Manager's opinion, is sufficient to meet any present or future obligation of the Scheme Fund.

17.3 Fees:

The Manager is entitled to be paid fees from the Scheme Fund in the amounts as detailed in the Offer Document or in any Offer Document and in relation to the performance of its duties as detailed in this Constitution and the Law.

17.4 The Manager shall be entitled to fees for the following duties:

(49) In relation to the subscription and redemption of units;

(50) In relation to the transfer or transmission of Units;

(51) In relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(d) In relation to due diligence enquiries generally;

(e) In relation to the sale of real estate or assets of the Scheme Fund;

(f) In relation to the promotion and management of the Scheme. This fee is payable monthly;

(g) In relation to the winding-up of the Scheme;

(h) In relation to the performance of its duties and obligations pursuant to the Law and this Constitution.

17.5 The Manager is entitled to be paid a success fee calculated in relation to a reporting period as the difference between the net profit of the Scheme and the net distributor forecast to be paid to Members by the Manager during that reporting period.

17.6 **Costs and Expenses**

The Manager shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties; including:

(52) Auditor's fees;

(53) Legal fees and outgoings

(54) Barrister/QC - Legal Counsel Fees;

(55) Fees and expenses incurred in respect of any service providers and/or employees of the Scheme;

(56) All costs, charges and expenses incurred in connection with the acquisition, custody, transfer or disposal of any asset of the Scheme Fund or investments (for example commissions, brokerage, legal fees, bank charges and stamp duty);

(57) Independent expert's or consultant's fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners, engineers;

(58) Property report/property consultants fees;

(h) Real estate agent's sales commissions;

(i) Costs of maintenance of any asset of the Scheme Fund;

(j) Outstanding accounts relating to any asset of the Scheme Fund such as council rates;

(k) Locksmith for changing locks of any asset of the Scheme Fund as appropriate;

(l) Insurance (property and contents);

(m) Removalists for removal of borrower's property as appropriate;

(n) Security guards to attend any asset of the Scheme Fund as appropriate;

(o) Building and/or property inspection report fees - i.e. building, town planning experts and the like;

(p) all ASIC charges;

(q) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;

(r) all costs and expenses incurred in producing Offer Documents and Supplementary Offer Documents or any other disclosure document required by the Law;

(s) reasonable costs incurred in protecting or preserving all assets offered as security;

(t) all liability, loss, cost, expense or damage arising from the proper performance of its duties in connection with the Scheme performed by the Manager or by any agent appointed pursuant to the Law;

(u) any liability, loss, cost, expense or damage arising from the lawful exercise by the Manager and the Custodian of their rights under the Power of Attorney contained in clause 19;

(v) Fees and expenses of any agent or delegate appointed by the Manager;

(w) Bank and government duties and charges on the operation of bank accounts;

(x) Costs, charges and expenses incurred in connection with borrowing money on behalf of the Scheme under the Constitution;

(y) Insurances directly or indirectly protecting the Scheme Fund;

(z) Fees and charges of any regulatory or statutory authority;

(aa) Taxes in respect of the Scheme but not Taxes of the Manager [save and except any goods and services or similar tax ("GST")] which are payable by the Manager on its own account;

(bb) Costs of printing and postage of cheques, advices, reports, notices and other documents produced during the management of the

Scheme;

(cc) Expenses incurred in connection with maintaining accounting records and registers of the Scheme and of the Scheme Auditors;

(dd) Costs and disbursements incurred in the preparation and lodgment of returns under the Law, Tax Act or any other laws for the Scheme;

(ee) Costs of convening and holding meetings of Members;

(ff) Costs and disbursements incurred by or on behalf of the Manager in connection with its retirement and the appointment of a substitute;

(gg) Costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings;

(hh) Costs of any insurance premiums insuring against the costs of legal proceedings (whether successful or not);

(ii) Costs of advertising the availability of funds for lending;

(jj) Brokerage and underwriting fees;

(kk) If and when the Manager becomes responsible to pay any GST in respect of any services provided to the Scheme or any payments in respect of GST to be made by the Members or the Manager in respect of the Scheme or under the terms of this Constitution then the Manager shall be entitled to be indemnified in respect of such GST from the Scheme Fund;

17.7 In the event that the Manager has not performed its duties, the lack of entitlement to payment of fees pursuant to clause 17.3 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the Manager is not entitled to be paid fees and expenses for work properly performed.

17.8 In the event of any dispute regarding the payment of fees and expenses, the Manager shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the Manager shall be repaid forthwith upon the identification of the overpayment.

17.9 The Manager is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution.

17.10 All fees payable to the Manager are net of any goods and services tax.

18. INDEMNITY AND LIABILITY

18.1 The following clauses apply to the extent permitted by law:

(1) The Manager is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:

(1) otherwise than in accordance with this Constitution and its duties; and

(2) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case the liability of the Manager in relation to the Scheme is limited to the Scheme Property, from which the Manager is entitled to be, and is in fact, indemnified.

(2) In particular, the Manager is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

(1) it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Manager;

(2) it acted as required by Law; or

(3) it relied in good faith upon any signature, marking or documents.

(3) In addition to any indemnity under any Law, the Manager has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the Manager has acted negligently, fraudulently or in breach of trust.

(4) The Manager is not liable to account to any Member for any payments made by the Manager in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other statutory charges.

13. POWERS OF ATTORNEY

13.1 Each Member by execution of the Application Form or the transfer by which he/she/it acquires Units in the Scheme appoints the Manager and any director officer attorney or substitute nominated by the Manager severally for this purpose as its attorney and agent with the right:

(1) at any time to:

(1) sign any document in relation to any subscription and

redemption agreement;

(2) sign any document in relation to the transfer or transmission of Units;

(3) sign any variation of this Constitution;

(4) sign any document required by ASIC to be executed by a Member in respect of the Scheme.

(2) at the request in writing of the Manager the Member must execute separate Powers of Attorney in a form reasonably required by the Manager appointing the Manager as its attorney for the purpose of this clause.

(3) any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;

13.2 Each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under the Power of Attorney.

14. THE REGISTER

14.1 **Keeping registers**

The Manager must establish and keep a register of Members, and if applicable, the other registers required by the Law.

14.2 **Information In registers**

To the extent applicable, the registers must be kept in accordance with, and contain the information required by the Law. Otherwise, the Manager may decide what information is included in the registers. If the Law applies, the Manager has the powers conferred under the Law in relation to the register.

14.3 **Changes**

Every Member must promptly notify the Manager of any change of name or address and the Manager must alter the relevant register accordingly.

15. NOTICES

15.1 A notice or other communication connected with this Constitution has no legal effect unless it is in writing.

15.2 In addition to any other method of service provided by law, the Notice must be:

(i) sent by post, postage prepaid, to the address for the Member in the Manager's register of interests;

(ii) sent by facsimile to the facsimile number of the Member; or

(iii) otherwise delivered at the address of the addressee of the Member as is subsequently notified.

15.3 A Notice must be treated as given and received:

(i) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;

(ii) if sent by facsimile before 5.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery.

15.4 Despite clause 21.3(ii) a facsimile is not treated as given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

15.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:

(1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(2) the notice is returned unclaimed.

15.6 Any Notice by a party may be given and may be signed by the solicitor for the party.

16.7 Any Notice to a party may be given to the solicitor for the party by any of the means listed in clause 21.2 to the solicitor's business address or facsimile number as the case may be.

16. LIABILITY OF MEMBERS

(a) The liability of each Member, whether actual, contingent or prospective, is limited to the unpaid Issue Price of his/her/its Units except if the Manager and the relevant Member agree otherwise in writing that the liability of a Member may be further limited or waived.

(b) A creditor or other person claiming against the Manager as trustee of the Scheme has no recourse against a Member and no Member is personally liable to indemnify the Manager, any creditor of the Manager or any person claiming against the Manager in respect of any actual, contingent, prospective or other liability of the Manager in relation to the Scheme

Fund.

17. APPOINTMENT AND REMOVAL OF TRUSTEE

17.1 Retirement or Resignation of Trustee

(a) The Manager may retire upon giving 3 months' notice to the Members of its desire to do so.

(b) The Manager must resign:

(i) if it is removed as provided by law;

(ii) if (being a corporation) it becomes an externally-administered body corporate as defined in the *Corporations Law;* or

(iii) if (being a natural person) he or she is found to be of unsound mind or becomes bankrupt.

17.2 Unit Holders May Appoint New Trustee

The holders of not less than 50% of the Units on Issue may by notice in writing appoint a new Manager to fill a vacancy in the office of Manager.

17.3 Transfer of Records

Upon the resignation, retirement, or removal of the Manager, the Manager must hand to the new Trustee all books, records, documents and other matters pertaining to the Scheme and at the expense of the Scheme do all things necessary to transfer legal title and the assets of the Scheme to the new Trustee.

17.4 Deed of Adoption by New Trustee

The new Trustee appointed under clause 23.2 must execute a deed in a form approved by the holders of not less than 50% of the Units on Issue by which the new Trustee undertakes to the Members to carry out the obligations of the Trustee under this Deed.

18. CHANGING THE CONSTITUTION

18.1 This Constitution may be modified or repealed or replaced with a new Constitution by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Scheme.

18.2 The Manager must send a copy of the Scheme's Constitution to a Member of the Scheme within seven (7) days if the Member:

(a) asks the Manager in writing for the copy; and

(b) pays any fee (up to the prescribed amount) required by the

Manager

19. STATEMENTS, ACCOUNTS AND AUDIT

19.1 Appointment of auditors

The Manager must appoint an Auditor to regularly audit the accounts in relation to the Scheme and perform the other duties required of the Scheme's auditors under this Constitution and the Law.

19.2 Retirement of auditors

The Scheme Auditor may retire or be removed in accordance with the Law.

19.3 Remuneration of Auditor

The remuneration of the Scheme Auditor will be fixed by the Manager.

19.4 Accounts and Reports

(a) The accounts of the Scheme must be kept and prepared by the Manager in accordance with applicable Accounting Standards and the Law.

(b) The Manager must prepare and make available to Members the financial statements of the Scheme for each financial year.

(c) The Manager may make the financial statements available to Members by either publishing the statements on the Manager's internet site, emailing the statements to individual Members or by sending the statements to individual Members by facsimile or prepaid post.

19.5 Audit

The Manager will cause the Scheme Auditor to audit and report on the accounts;

20. OTHER ACTIVITIES AND OBLIGATIONS OF THE MANAGER

20.1 Other activities

Subject to the Law, nothing in this Constitution restricts the Manager (or its associates) from:

(a) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity);

(b) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or managed investment scheme or in another capacity) or with any Member or retaining for its own benefit profits or benefits derived from

any such contract or transaction; or

(c) acting in the same or similar capacity in relation to any other trust or managed investment scheme.

20.2 Other Obligations All obligations of the Manager which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

21. **GOVERNING LAW**

This Deed is governed by the Laws of the State of Queensland. The Manager and the Members submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED AS A DEED:

GIVEN under the Common Seal of LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by authority of a resolution of the Board of Directors under the hands of a Director and the Secretary who certify that they are the proper officers to affix this seal)

Director .....

Director/Secretary .....

LM INVESTMENT MANAGEMENT LIMITED A.C.N. 077 208 461 THE COMMON SEAL OF

474801/S20

Lawyers | McCullough Robertson

Deed poll

LM Managed Performance Fund

1784202v2

Version: 1

Level 11 Central Plaza Two 66 Eagle Street Brisbane QLD 4000 | GPO Box 1855 Brisbane QLD 4001 Australia
Telephone 07 3233 8888 | Fax 07 3229 9949 | Ausdoc DX 158 Brisbane
Email info@mccullough.com.au | Web www.mccullough.com.au | ABN 42 721 345 951

Deed poll

Dated 25 November 2009

By

Manager **LM Investment Management Limited ACN 077 208 461**

of Level 4, 9 Beach Road Surfers Paradise, Queensland

In favour of

Members

Background

A The Manager is the trustee of the Scheme.

B Clause 24.1 of the Constitution allows the Manager to modify, repeal or replace the Constitution if the Manager reasonable considers the change will not adversely affect Members' rights.

C The Manager is satisfied the changes contemplated by this supplemental deed do not adversely affect Members' rights. This document is made with the intent that the Manager and each Member will be bound by it.

Agreed terms

1 Amendment

The Constitution is amended by deleting clauses 1, 2.3, 2.4, 3 through to 27 and inserting the provisions in the schedule to this supplemental deed.

2 Trust not Confirmed

(a) Nothing expressly or impliedly contained in this supplemental deed (including the recitals) is effective to confirm, declare or otherwise acknowledge the trust declared under the original constitution, or to impress any new or additional trusts upon property held on trust as at the date of this supplemental deed.

(b) Nothing in this supplemental deed should be interpreted as creating any new or further trust and at all times, the Scheme remains a simple trust.

3 Manager and Members bound

The Manager and the Members are bound by the terms of the Constitution as amended by this supplemental deed.

Schedule

DICTIONARY AND INTERPRETATION

1.1 **Dictionary of Terms**

In this Constitution:

"A Class Unit" means a unit in the Scheme that has its Issue Price and Withdrawal Price calculated in a specific manner;

"B Class Unit" means a unit in the Scheme that has its Issue Price and Withdrawal Price calculated in a specific manner;

"Accounting Standards" means the accounting standards and practices determined under clause 1.3;

"Applicant" anyone who submits an application for Unit/s in the Scheme in accordance with the Information Memorandum;

"Application Form" an application in writing for Unit/s in the Scheme attached to the Information Memorandum;

"Application Money" the amount received from an Applicant when lodging the application in respect of the Unit/s applied for in accordance with the Information Memorandum;

"ASIC" the Australian Securities and Investments Commission;

"Auditor" means the auditor of the Scheme appointed by the Manager;

"Authorised Investors" means:

(1) An investor residing in a jurisdiction other than Australia; or

(2) If the investor resides in Australia:

(a) Investors who invest a minimum amount of $500,000.00 in the Scheme; or

(b) Investors who invest less than $500,000.00 in the Scheme and provide a certificate from their qualified accountant under the Law confirming that their net assets are not less than $2,500,000 or that their gross income is not less than $250,000 per annum for each of the last two financial years; or

(c) Certain professional and sophisticated Investors defined under the Law;

"Business Day" any day on which trading banks are generally open for business on the Gold Coast, Queensland;

"Class" means a class of Units, being Units which have the same rights;

"Commencement Date" means the date the Scheme was first

established;

"Constitution" the trust deed for the Scheme including any Schedule, Annexure or Amendments to it;

"Director" means a person appointed as a director of the Manager;

"Distributable Income" means as detailed in Clause 10.3;

"Distribution Period" means the period referred to in Clause 11.1;

"Dollars", **"A$"** and **"$"** mean the lawful currency of the Commonwealth of Australia;

"Extraordinary Resolution" has the same meaning as in the Law;

"Financial Year" means:

(a) the period from the Commencement Date to midnight on the next 30 June;

(b) each subsequent period of 12 months ending at midnight on each 30 June preceding the Vesting Date; and

(c) the period beginning at midnight on the 30 June immediately preceding the Vesting Date and ending on the Vesting Date;

"Foreign Currency" means a lawful currency other than the currency of the Commonwealth of Australia;

"Information Memorandum" means an Information Memorandum or any Supplementary Information Memorandum issued by the Manager in relation to the Scheme;

"Investment Confirmation Statement" means a statement issued by the Manager to a Member pursuant to clause 5.9;

"Investment Term" means the fixed investment term selected by the Member (initial investment term) when they invest in the Scheme and includes any subsequent fixed term for the investment where the investment is rolled over for that subsequent term but does not include any fixed term under a Savings Plan Option Investment (and the initial fixed investment term and each subsequent fixed term will each be a separate Investment Term, and not a longer combined Investment Term);

"Issue Price" means the price at which a Unit is issued as detailed in clause 6;

"Law" means the Corporations Act 2001;

"**Liabilities**" means at any time the aggregate of the following at that time as calculated by the Manager in accordance with the Accounting Standards:

(a) Each liability, excluding Unit Holder Liability, of the Manager in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability;

(b) Each other amount payable out of the Scheme, excluding Unit Holder Liability or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability; and

(c) Other appropriate provisions in accordance with the applicable Accounting Standards;

"**LMM**" means Law Mortgage Management Pty Ltd ACN 055 691 426;

"**Manager**" means LM Investment Management Limited ABN 68 077 208 461;

"**Member**" in relation to a Unit, means the person registered as the holder of that Unit (including joint holders);

"**Minimum Subscription**" means the amount stated in the Information Memorandum as the Minimum Subscription;

"**Net Fund Value**" means the value of the Scheme Property less the Liabilities on the Valuation Date;

"**Power**" means any right, power, authority, discretion or remedy conferred on the Manager by this Constitution or any applicable law;

"**Register**" means the register of Members maintained by the Manager under clause 20;

"**Savings Plan Option Investment**" means an investment described as the "LM Savings Plan Option" in the Information Memorandum, with terms and conditions as disclosed in the Information Memorandum;

"**Scheme**" means the trust created by this Deed to be known as The LM Managed Performance Fund;

"**Scheme Property**" means assets of the Scheme including but not limited to:

(a) contributions of money or money's worth to the Scheme; and

(b) money borrowed or raised by the Manager for the purposes of the

Scheme; and

(c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and

(d) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b) or (c);

"**Special Resolution**" has the same meaning as in the Law;

"**Subscription Account**" means a bank account holding the Application Money;

"Tax" includes, but is not limited to:

(a) stamp duty, excise and penalties relating to these amounts which are imposed on the Manager in respect of any assets in the Scheme;

(b) taxes and duties and penalties relating to these items imposed as a result of any payment made to or by the Manager under this Constitution;

(c) taxes imposed or assessed upon:

(i) any Application Money;

(ii) distributions of Income to Members, capital gains, profits or any other amounts in respect of the Scheme; or

(iii) the Manager in respect of its capacity as the Manager of the Scheme;

(d) financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Scheme, and every kind of tax, duty, rate, levy, deduction and charge including any GST;

"Tax Act" means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);

"Unit" means an undivided interest in the Scheme Property created and issued under this Constitution and unless the context is clearly otherwise includes A Class Units and B Class Units;

"Unit Holder Liability" means the liability of the Scheme to the Members for their undivided interest in the Scheme Property;

"**Valuation Date**" means the date which is the last day of each month or any date during each month at the Manager's discretion or the date on which the Manager determines there has been a material change in the value of the Scheme Property;

"**Vesting Date**" means the date of termination of the Scheme under clause 14;

"**Withdrawal Notice**" means a notice in writing, given:

(a) at least 90 days before the expiry of the relevant Investment Term; or

(b) for a Savings Plan Option investment, the period commencing 90 days after the first 12 month period of the Savings Plan Option Investment has expired, and continuing throughout the term of the Savings Plan Option Investment. After the initial 12 month investment period, only 2 such notices may be given within any 12 month period, and any notices in excess of this number will not be valid unless otherwise determined by the RE in its discretion; or

(d) any other time period as determined by the Manager;

by a Member and received by the Manager stating the Member's name, the number of Units the Member wishes to have redeemed, and any other information reasonably required by the Manager;

"**Withdrawal Price**" means the price at which a Unit is redeemed as detailed in clause 7.7.

1.2 **Interpretation**

(a) Reference to:

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) an associate of a person means another person who is associated with that person by application of any of the provisions of Division 2 of Part 1.2 of the *Corporations Law*;

(v) a party includes the party's executors, administrators, successors and permitted assigns;

(vi) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:

- that Statutory Provision as amended or re-enacted from time to time; and
- a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vii) "pay" includes transfer, convey and assign; and

(viii) "income" is not limited to "assessable income" as defined in ITAA.

(b) "Including" and similar expressions are not words of limitation

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(d) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

(e) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(f) A reference to dealing with a Unit includes any subscription, withdrawal, sale, assignment, encumbrance, or other disposition whether by act or omission and whether affecting the legal or equitable interest in the Unit.

1.3 **Accounting Standards**

In respect of any accounting practice relevant to this Constitution, the following accounting standards apply as if the Scheme were a company:

(1) the accounting standards required under the Law.

(2) if no accounting standard applies under clause 1.3(a), the accounting practice determined by the Manager.

2. ESTABLISHMENT OF SCHEME

2.1 Appointment of the Manager

[Not Altered not reproduced]

2.2 Declaration of Trust

[Not Altered not reproduced]

2.3 Name of Scheme

The name of the Scheme is The LM Managed Performance Fund or any other name that the Manager may determine from time to time.

2.4 **Initial Issue**

The Scheme commences at such time when LMM or its nominee pays $1.00 to the Manager to establish the Scheme. The Manager must issue to LMM or its nominee 1 Unit in return for that payment.

3. UNITS AND MEMBERS

3.1 **Units**

The beneficial interest in the Scheme will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations of Members under this Constitution.

3.2 **Classes**

Different Classes of Units may be issued. If the Manager determines in relation to particular Units, the terms of issue of those Units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units.

3.3 **Fractions**

Fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit.

3.4 **Equal value**

At any time, all the Units in a Class are of equal value.

3.5 **Interest**

A Unit confers an interest in the Scheme Property as a whole. No Unit confers any interest in any particular asset of the Scheme Property.

3.6 **Consolidation and re-division**

(a) Subject to clause 3.6(b) the Manager may at any time divide the Scheme Property into any number of Units other than the number into which the Scheme Property is for the time being divided.

(b) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Member to the Units on Issue in the Class.

3.7 Rights attaching to Units

(a) A Member holds a Unit subject to the rights and obligations attaching to that Unit.

(b) Each Member agrees not to:

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(i) interfere with any rights or powers of the Manager under this Constitution;

(ii) purport to exercise a right in respect of the Scheme Property or claim any interest in an asset of the Scheme (for example, by lodging a caveat affecting an asset of the Scheme); or

(iii) require an asset of the Scheme to be transferred to the Member.

3.8 **Conditions**

The Manager may impose such conditions on the issue of Units as it determines including that the Member may not give effect to any mortgage, charge, lien, or other encumbrances other than as expressly permitted by the Manager.

4. **BINDING ON ALL PARTIES**

4.1 This Constitution is binding on the Manager and on all Members of the Scheme as they are constituted from time to time.

4.2 By executing the Application Form attached to the Information Memorandum the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

5. **ISSUE OF UNITS**

5.1 **Offer**

The Manager may at any time:

(a) offer Units for subscription or sale; or

(b) invite persons to make offers to subscribe for or buy Units.

5.2 **Minimum subscription**

(a) The Manager may set a Minimum Subscription for the pool of funds of any one currency for the Scheme at its discretion.

(b) The Manager will hold Application Money in a Subscription Account until the Minimum Subscription for the pool of funds is received.

5.3 **Insufficient Application Money received**

The Manager will return or cause to be returned all Application Money to the persons who paid such Application Money, less any taxes and bank charges payable if:

(a) insufficient Application Money to meet the Minimum Subscription stipulated in Clause 5.2, or

(b) the Manager withdraws an Information Memorandum (which the Manager is entitled to do) before sufficient Application Money is received, or

(c) the Manager does not believe there will be sufficient funds available to achieve the aims of the Scheme contemplated in this Constitution or the Information Memorandum.

5.4 Form of Application

Each Application for Units:-

(a) must be made by Application Form attached to an Information Memorandum; and

(b) must be accompanied by Application Moneys as required by any relevant Information Memorandum;

(c) may only made by an Authorised Investor.

5.5 Acceptance or rejection

The Manager may, without giving any reason:

(a) accept an Application;

(b) reject an Application; or

(c) reject part of the Application.

5.6 Uncleared funds

Units issued against Application Money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not subsequently cleared.

5.7 Issue of Units

Units are taken to be issued when:

(a) the Application Money for the Issue Price is received by the Manager; and

(b) the Manager accepts the Application and the Units are entered in the Register, or at such other time as the Manager determines.

5.8 Number of Units Issued

The number of Units to be issued to an Applicant will be the amount of the Application Money, rounded down to the nearest two decimal places.

5.9 Additional Applications

Additional Applications for investment in the Scheme by existing

Members, not made on an Application Form may be accepted:

(a) from a Member;

(b) as a result of an Application;

(c) in accordance with an Arrangement for as long as and on condition that it complies with the requirements of the Manager and the law or ASIC's policy including any relief granted to the Manager from time to time; and

5.9 **Holding Application Money**

All Application Money must be held by the Manager on trust for the Applicants in the Subscription Account in accordance with the rules set out in this Constitution .

5.10 **Interest on Application Money**

The Manager is not required to account to any Member for any interest earned on Application Money held in the Subscription Account.

5.11 **The Manager to return Application Money**

Where the Manager has rejected (in full or in part) an Application, the relevant Application Money (without interest) must be returned to the Applicant within 14 days.

5.12 **Incomplete Application Form**

The Manager will, on receipt of any Application Money which is not accompanied by a completed Application Form, as soon as practicable return the Application Money to the relevant Applicant or-

(a) attempt to obtain the Application Form from the Applicant, and

(b) bank the Application Money.

5.13 **No Application Form received**

If the Manager has not received the Application Form by the time the offer is closed under the Information Memorandum, then the Manager must use its best endeavours to return the Application Money to the Applicant as soon as practicable, less any taxes and bank charges payable.

5.14 **Investment Confirmation Statement**

The evidence of a Members' holding in the Scheme will be the latest extract from the Register as provided from time to time to a Member by the Manager in a Investment Confirmation Statement.

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5.16 Notwithstanding clauses 5.1 - 5.15, the Manager may, in its discretion, allot Units on terms and conditions it thinks fit.

6. ISSUE PRICE

The issue price of a Unit (being an A Class Unit or a B Class Unit (including each B Unit subClass) shall be calculated as at the close of business on the Business Day prior to issue as follows:

$$(A-B)/C = D$$

$$\frac{(D \times E) + F}{E} = G$$

Where:

A = Net Fund Value excluding distributions accrued but not paid to A Class Unit holders since the Valuation Date
B = Distributions credited but not paid to all B Class Unit holders since the Valuation Date
C = Total number of all Units on issue
D = A Class Unit Issue Price
E = total number of B Class Units on issue in that subClass of B Class Unit holders
F = Distributions credited but not paid to B Class Unit holders in that subclass since the Valuation Date
G = B Class Unit Issue Price for that subClass

The purpose of the above calculations is to reflect differential Unit Issue Prices. An A class Unit Issue Price is not intended to reflect accrued but unpaid distributions. A B class Unit Issue Price is intended to reflect accrued but unpaid distributions and adjusted for the unpaid distributions for that subclass of B class Unit holders.

7. TERM OF INVESTMENT AND WITHDRAWAL OF UNITS

7.1 Minimum Term and Conditions

The minimum term of the investment and conditions attaching to the withdrawal of the Units (withdrawal of funds) are detailed in the Information Memorandum under which the Member applied for Units.

7.2 Fixed investment period

When making their Application, all Applicants must invest for one of the Investment Terms specified in the Information Memorandum.

7.3 **Authorised withdrawal**

The Manager may authorise withdrawals by any Member in accordance with the following procedure and as disclosed in the Information Memorandum:

(a) the Information Memorandum may offer fixed Investment Terms to Applicants;

(b) the fixed Investment Terms must be disclosed in the Information Memorandum;

(c) during their fixed Investment Term a Member is not entitled to withdraw (except in the absolute discretion of the Manager);

(d) within the period nominated by the Manager, as disclosed in the Information Memorandum, before the expiry of their fixed Investment Term, the Member must advise the Manager in writing ('Withdrawal Notice') whether the Member is withdrawing from the Scheme.

(e) If the Member fails to complete and return the Withdrawal Notice within the time period nominated by the Manager, as disclosed in the Information Memorandum, before the end of that Member's fixed Investment Term (and any subsequent Investment Term) and:

(i) if the investment is in A Class Units and is made in Australian dollars, the Member will be deemed to have elected to renew their investment in the Scheme for the period of the initial Investment Term in Australian dollars;

(ii) if the investment is in A Class Units and is made in a Foreign Currency the Member will be deemed to have elected to renew their investment in the Scheme for a 3 month Investment Term and applied to hedge their reinvestment in the originally nominated currency .

(iii) if the investment is in B Class Units and is made in Australian dollars the Member will be deemed to have elected to renew their investment in the Scheme for a 12 month Investment Term (unless the initial Investment Term is longer than 12 months in which case the

Member will be deemed to have elected to renew their investment in the Scheme for the initial investment term) in Australian dollars;

(iv) if the investment is in B Class Units and is made in a Foreign Currency the Member will be deemed to have elected to renew their investment in the Scheme for a 12 month Investment Term (unless the initial Investment Term is longer than 12 months in which case the Member will be deemed to have elected to renew their investment in the Scheme for the initial investment term) and applied to hedge their reinvestment in the originally nominated currency.

(f) If the Manager allows a Member to withdraw an investment from the Scheme before the end of an Investment Term, the Manager is also entitled to require the Member to pay:

(i) for investments in Australian dollars a breaking of investment term fee up to 10% of the investment amount;

(ii) for investments in foreign currency a breaking of investment term fee up to 10% of the investment amount and in addition the Manager will also be entitled to require the Member to pay an amount equal to any other fees or charges arising from the early withdrawal (including fees and charges that may be payable to the financial institution which has organised the investment in the relevant currency).

The charges referred to in this clause 7.3(f) will be deducted from the investment being withdrawn, and paid at the time of withdrawal. Such charges will become part of the Scheme Property.

7.4 **No Obligation**

(a) Subject to the provisions of clause 7.3 and 7.4(b) the Manager will agree to a Members request for withdrawal of Units.

(b) The Manager is not obliged to agree to any request for withdrawal of Units for such periods as it in its sole discretion

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determines where:-

(i) The Scheme's cash reserves fall below 5% of the value of the Scheme's Issued Units; or

(ii) In any calendar month the Manager receives net withdrawal requests equal to 10% or more of the value of the Scheme's Issued Units; or

(iii) Any other event or circumstances arises which the Manager considers in its absolute discretion may be detrimental to the interests of the Members in the Scheme.

7.5 **Withdrawal by the Manager**

The Manager may withdraw any Units at any time by giving notice of such withdrawal to the relevant Unit Holders.

7.6 **Payment**

(a) The Manager must pay to the holder of a withdrawn Unit so much of the Distributable Income for the Distribution Period as the Manager considers is reasonably attributed to the Unit for the period from the commencement of the then current Distribution Period to the date of the withdrawal.

(b) The Manager must pay to the holder of the withdrawn Units the withdrawal price as determined in clause 7.8 per Unit for each withdrawn Unit plus the amount referred to in clause 7.6(a):-

(i) for Australian dollar investments within 30 days; or

(ii) for Non-Australian dollar investments within 5 Business Days after the Manager's obligation to pay the withdrawals price under clause 7.7 arises subject to clause 7.4.

7.7 **Cancellation of Units**

Upon the withdrawal of Units, the Units must be cancelled and the name of the holder must be removed from the Register as a holder of those Units and the Manager's obligation to pay the withdrawal price and the amount referred to in clause 7.6(a) per Unit for each redeemed Unit arises.

7.8 **Withdrawal Price**

The Withdrawal Price of each A Class Unit or each B Class Unit (including each B Unit subClass) pursuant to clause 7 shall be calculated in the same manner as the Issue Price.

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8. TRANSFER OF UNITS

8.1 **Transferability of Units**

(a) Subject to this Constitution, a Unit may be transferred by instrument in writing, in any form authorised by Law or in any other form that the Manager approves.

(b) A Transferor of Units remains the holder of the Units transferred until the transfer is registered.

8.2 **Registration of Transfers**

(a) The following documents must be lodged for registration at the registered office of the Manager or the location of the Register:

(i) the instrument of transfer; and

(ii) any other information that the Manager may require to establish the transferor's right to transfer the Units.

(b) On compliance with clause 8.2(a), the Manager will, subject to the powers of the Manager to refuse registration, register the transferee as a Member.

8.3 **Where registration may be refused**

Where permitted to do so by Law or this Constitution, the Manager may refuse to register any transfer of Units.

8.4 **Where registration must be refused**

If:

(a) the Manager has notice that the transferor of Units has entered into any borrowing or other form of financial accommodation to provide all or part of the funds to subscribe for or acquire a Unit and has not received confirmation from the financier that the financier consents to the transfer of those Units; or

(b) the transferor has given a power of attorney in favour of the Manager in the form set out in an application form accompanying the Information Memorandum and the transferee has not executed and provided to the Manager a similar form of power of attorney (with such adaptations as are necessary) in favour of the Manager, the Manager must refuse to register same and must continue to treat the seller or transferor as the case may be as the registered holder for all purposes and the purported sale, purchase, disposal

or transfer shall be of no effect, or

(c) if the transferee is not a Member the Manager must not consent to the registration until the Manager is satisfied that the transferee has read or had the opportunity to read this Constitution and has agreed to be bound by its provisions.

8.5 **Notice of non-registration**

If the Manager declines to register any transfer of Units, the Manager must within 5 Business Days after the transfer was lodged with the Manager give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration.

8.6 **Suspension of transfers**

The registration of transfers of Units may be suspended at any time and for any period as the Manager from time to time decides. However, the aggregate of those periods must not exceed 30 days in any calendar year.

9. TRANSMISSION OF UNITS

9.1 **Entitlement to Units on death**

(a) If a Member dies:

(i) the survivor or survivors, where the Member was a joint holder; and

(ii) the legal personal representatives of the deceased, where the Member was a sole holder,

will be the only persons recognised by the Manager as having any title to the Member's interest in the Units.

(b) The Manager may require evidence of a Member's death and grant of probate as it thinks fit.

(c) This clause does not release the estate of the deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

9.2 **Registration of persons entitled**

(a) Subject to the Bankruptcy Act 1966 and to the production of any information that is properly required by the Manager, a person becoming entitled to a Unit in consequence of the death or bankruptcy (or other legal disability) of a Member may elect to:

(i) be registered personally as a Member; or

(ii) have another person registered as the Member.

(b) All the limitations, restrictions and provisions of this Constitution relating to:

(i) the right to transfer Units;

(ii) the registration of the transfer of Units;

apply to any relevant transfer as if the death or bankruptcy or legal disability of the Unit Member had not occurred and the notice or transfer were a transfer signed by that Member.

9.3 **Distributions and other rights**

(a) If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the Manager, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Member would have been entitled to if the Member had not died or suffered a legal disability.

(b) Where two or more persons are jointly entitled to any Unit as a result of the death of a Member, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit.

10. DISTRIBUTABLE INCOME

10.1 **Income of the Scheme**

The income of the Scheme for each Financial Year will be determined in accordance with applicable Accounting Standards.

10.2 **Expenses and provisions of the Scheme**

For each Financial Year:

(a) the Expenses of the Scheme will be determined in accordance with the applicable Accounting Standards; and

(b) provisions or other transfers to or from reserves may be made in relation to such items as the Manager considers appropriate in accordance with the applicable Accounting Standards including, but not limited to, provisions for income equalisation.

10.3 **Distributable Income**

The Distributable Income of the Scheme is Income of the Scheme less Expenses and provisions of the Scheme.

11. DISTRIBUTIONS

11.1 **Distribution Period**

(a) For A Class Unit holders:

(i) The Distribution Period is one calendar month for Australian dollar investments commencing on the 1st day of each calendar month, or as otherwise determined by the Manager in its absolute discretion.

(ii) The Distribution Period is one calendar month for investments made in non-Australian dollars where distributions are made in Australian dollars commencing on the 1st day of the investment term, or as otherwise determined by the RE in its absolute discretion.

(iii) The Distribution Period is the Investment Term for investments made in non-Australian dollars where distributions are made in non-Australian dollars, commencing on the 1st day of the investment term, or as otherwise determined by the RE in its absolute discretion.

(b) For B Class Unit holders the Distribution Period is one calendar month commencing on the 1st day of each calendar month, or as otherwise determined by the Manager in its absolute discretion.

11.2 **Distributable Income**

The Distributable Income of the Scheme Fund for the Distribution Period will be such amount as the Manager reasonably determines. Distributable Income is paid to Members in their nominated currency (except for non-Australian dollar investments where the investor has chosen to have distributions paid in Australian dollars) after taking into account all direct and indirect costs associated with any currency conversion, and to the extent they have not otherwise been taken into account, any adviser fees or costs associated with individual Members' investments.

11.3 **Distributions**

(a) If the payment for Units is made in Australian dollars the Manager must distribute the Distributable Income relating to each Distribution Period within 10 Business Days of the end of each

Distribution Period except:

(i) on withdrawal of investment where the Distributable Income will be paid in accordance with clause 7.6; or

(ii) if the Manager allows and the member elects to be paid Distributable Income other than at the end of the distribution period the Distributable Income will be paid within 10 Business Days after the end of that nominated period, which must be greater than the distribution period and a duration equivalent to multiples of the distribution period.

(b) If the payment for Units is made in Foreign Currency, which is hedged through a foreign exchange contract by the Scheme, the Distributable Income is paid:

(i) within 10 Business Days of the end of the Distribution Period; or

(ii) where the Investment Term is greater than 12 months, if the Manager allows and the member elects to be paid yearly, the Distributable Income will be paid within 10 Business Days after each 12 monthly anniversary of the investment.

(c) For each Distribution Period a Member is entitled to that proportion of the Distributable Income as is equal to the number of Units held by the Member on the last day of the Distribution Period divided by the number of Units on the Register on that date.

11.4 **Present entitlement**

Unless otherwise agreed by the Manager and subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the Members on the Register will be presently entitled to the Distributable Income of the Scheme on the last day of each Distribution Period.

11.5 **Capital distributions**

The Manager may distribute capital of the Scheme to the Members. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that

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Member on a date determined by the Manager divided by the number of Units on the Register on that date. A distribution may be in cash or by way of bonus Units.

11.6 **Grossed up Tax amounts**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Members in proportion to the Distributable Income for a Distribution Period as the case may be, which is referable to a dividend or other income to which they are presently entitled.

11.7 **Reinvestment of Distributable Income**

(a) The Manager may invite Members to reinvest any or all of their distributable income entitlement by way of application for additional Units in the Scheme.

(b) The terms of any such offer of reinvestment will be determined by the Manager in its discretion and may be withdrawn or varied by the Manager at any time.

(c) The Manager may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer.

(d) The Units issued as a result of an offer to reinvest will be deemed to have been issued on the first day of the next Distribution Period immediately following the Distribution Period in respect of which the distributable income being reinvested was payable.

12. NATURE OF MANAGER POWERS

12.1 The Manager has all the powers:

(a) of a natural person to invest and borrow on security of the Scheme Property;

(b) in respect of the Scheme and the Scheme Property that it is possible under the Law to confer on a Manager and on a Trustee;

(c) as though it were the absolute owner of the Scheme Property and acting in its personal capacity; or

(d) necessary for fulfilling its obligations under this Constitution and under the Law.

12.2 Without limiting the generality of clause 12. 1, the Manager may:

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(a) purchase, sell, lease, improve, encumber, sub-divide, hire, licence, exchange, develop, grant leases and licenses and enter into any other agreement or dealing including the surrender or termination of any dealing in relation to any property forming or which is to form part of the Scheme , on any terms the Manager thinks fit;

(b) repair, renovate, demolish, build or alter any improvement to any property forming part of the Scheme;

(c) determine any rental to be paid for the use of any property;

(d) exercise all powers and obligations in relation to any investment forming part of the Scheme Property, including but not limited to:

(i) attending and voting at meetings;

(ii) appointing proxies for meetings;

(iii) taking up a rights issue; and

(iv) paying calls under any contract.

(e) exercise any Power and perform all obligations in relation to any property forming part of the Scheme as if the Manager is the beneficial owner of the property;

(f) accept a conveyance or transfer of any property as part of the Scheme;

(g) enter into possession of and manage any property interests of the Scheme;

12.3 Without limiting the generality of clause 12.1, the Manager may:

(a) invest in any "securities" as defined in Section 92(1) of the Law:

(i) whether or not a trustee could properly acquire the security; and

(ii) on personal credit, with or without security;

(b) invest any money on loan to, or on deposit with, any person (including a Member or Related Corporation):

(i) with or without interest;

(ii) with or without security; and

(iii) repayable on any terms the Manager thinks fit;

(c) enter into swap transactions, futures contracts, forward rate agreements, foreign exchange agreements;

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(d) grant or take up an option to acquire property; and

(e) invest in or make a loan to any managed investment fund or scheme, including any managed investment fund or scheme that the Manager is the responsible entity of.

12.4 Clause 12.3 applies whether the Manager's purpose in making the investment:

(a) is to create a capital accretion or to produce income or other profits;

(b) is partly for a purpose referred to in clause 12.4(a);

(c) is for any other purpose that the Manager considers benefits the Scheme; or

(d) is for any purpose that the Manager considers directly or indirectly benefits any Member,

12.5 The Manager may invest any money required to be invested on loan to or on deposit with any Member or Related Corporation on any terms the Manager thinks fit.

12.6 The Manager may:

(a) exchange any investment for any other investment authorised under this Constitution;

(b) vary the terms of any investment or the security given for that investment; and

(c) surrender any investments.

12.7 Without limiting the generality of clause 12.1, the Manager may:

(a) use the income or capital of the Scheme to carry on any trade or business, either as a sole trader or in partnership;

(b) engage any managers and other employees;

(c) enter into any arrangement for sharing profits, co-operation, joint venture or reciprocal concessions;

(d) act in relation to the trade or business as if the Manager were beneficially entitled to it;

(e) set aside an amount out of the Scheme Property which, in the Manager's opinion, is sufficient to meet any debt or obligation;

(f) open and operate an account with any financial institution;

(g) sign, draw, endorse or execute in a manner determined by the Manager:

(i) any cheque or other negotiable or transferable instrument; and

(ii) any receipt for money paid to the Manager;

(h) borrow or raise money with or without giving security over the Scheme Property or any part of it on any terms including any rate of interest and any fees and expenses as the Manager thinks fit;

(i) make, draw, accept, endorse, discount, sell, purchase, negotiate and otherwise deal with any promissory note, bill of exchange, commercial bill, bill of lading, warrant, debenture, certificate of deposit or other transferable document or financial instrument for any purpose the Manager thinks fit;

(j) encumber the Scheme Property in favour of any person in relation to any obligation of the Manager on behalf of the Scheme;

(j) to the extent permitted by law:

(i) guarantee the payment of money or the performance of any other obligation; and

(ii) grant any indemnity in respect of any obligation;

to any person whether or not in relation to the obligations of a Member or for the benefit of the Scheme.

12.8 Without limiting the generality of clause 12.1, the Manager may:

(a) make any claim or demand or take any action on behalf of a Member of the Scheme;

(b) refer any dispute affecting the assets of the Scheme to arbitration, other than a dispute involving a Member; and

(c) settle on any terms any matter which arises in relation to the Scheme (if the Manager settles any matter the settlement is binding on all persons interested in the Scheme, including all Members).

12.9 To the extent allowed by law:

(a) any restriction or prohibition imposed upon the Manager in relation to the investment from time to time of the Scheme Property or any part thereof is hereby excluded from the obligations imposed.

(b) without derogating from the generality of the foregoing this

exclusion specifically applies to any "Prudent Person Rule" or the like which may be implied by any future enactment of legislation.

12.10 To the extent allowed by law:

(a) the Manager may borrow or raise money with or without security over the Scheme Property or any part of it on any terms, including any rate of interest and any fees and expenses as the Manager thinks fit;

(b) the Manager may deal with any property to exercise all the powers of a mortgagee pursuant to the mortgage terms and conditions.

12.11 The Manager may use Scheme Property to assist it with its working capital requirements.

13. COMPLAINTS PROCEDURES

13.1 Complaints may be made in writing or by telephone to the Manager.

13.2 The Manager has 30 days to respond to the complaint once it is received. The Manager must attempt to resolve the complaint within a satisfactory time period as determined by the nature of the complaint and the Member's response. If the Member feels that their Complaint has not been satisfactorily resolved it will be referred to a Director or Complaints Manager of the Manager for resolution.

14. TERM OF SCHEME

The Scheme begins on the Commencement Date and is to be wound up on the earlier to occur of:

(a) the date which is eighty years from the Commencement Date; and

(b) any earlier date which the Manager, in its absolute discretion may appoint as the Vesting Date.

15. WINDING UP THE SCHEME

15.1 The Scheme shall only be wound up in accordance with the Law and this Constitution.

15.2 The Manager must wind up the Scheme in the following circumstances:-

(a) if the term of the Scheme as detailed in this Constitution has expired;

(b) the Members pass an Extraordinary Resolution directing the Manager to wind up the Scheme;

(c) the Court makes an order directing the Manager to wind up the Scheme.

(d) the Members pass an Extraordinary Resolution to remove the Manager but do not at the same time pass an Extraordinary Resolution choosing a company to be the new Manager that consents to becoming the Scheme's Manager;

15.3 (a) If the Manager considers that the purpose of the Scheme:

(i) has been accomplished; or

(ii) cannot be accomplished,

it may take steps to wind up the Scheme.

(b) If the Manager wishes to wind up the Scheme pursuant to clause 15.3(a), the Manager must give to the Members of the Scheme a notice in writing;

(i) explaining the proposal to wind up the Scheme, including explaining how the Scheme's purpose has been accomplished or why that purpose cannot be accomplished; and

(ii) informing the Members of their rights to take action under Division 1 of Part 2G.4 of the Law for the calling of a Members' meeting to consider the proposed winding up of the Scheme and to vote on an Extraordinary Resolution Members propose about the winding up of the Scheme; and

(iii) informing the Members that the Manager is permitted to wind up the Scheme unless a meeting is called to consider the proposed winding up of the Scheme within 28 days of the Manager giving the notice to the Members;

(c) if no meeting is called within that 28 days to consider the proposed winding up, the Manager may wind up the Scheme.

15.4 The Manager shall not accept any further applications for Units in the Scheme or make any further loans from the Scheme at a time after the Manager has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.

15.5 The Manager shall manage the Scheme until such time as all winding up

procedures have been completed.

15.6 Subject to the provisions of this clause 15 upon winding up of the Scheme the Manager must:

(a) realise the assets of the Scheme ;

(b) pay all liabilities of the Manager in its capacity as Trustee of the Scheme including, but not limited to, liabilities owed to any Member who is a creditor of the Scheme;

(c) subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 11.4;

(d) The Members must pay the costs and expenses of a distribution of assets under clause 15.6(c) in the same proportion specified in Clause 11.4.

(e) The Manager may postpone the realisation of the Scheme Property for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.

(f) The Manager may retain for as long as it thinks fit any part of the Scheme Property which in its opinion may be required to meet any actual or contingent liability of the Scheme.

(g) The Manager must distribute among the Members in accordance with clause 15.6 anything retained under clause 15.6(f) which is subsequently not required.

15.7 If on completion of the winding up of a registered Scheme, the Manager or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the Manager or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to the ASIC to be dealt with pursuant to Part 9.7 of the Law.

15.8 **Capital Guarantee**

LM Investment Management Limited ACN 077 208 461 guarantees the payment of each Members entitlements in the event of any shortfall in the assets of the Scheme if the Scheme is wound up where the Member became a Member of the Scheme on or before 4 November 2002. This guarantee will only apply to Members who are registered as Unit Holders

in the Register on 4 November 2002 and remain Members on the date on which the Scheme is wound up. LM Investment Management Limited ABN 68 077 208 461 will ensure that all amounts which are guaranteed under this clause are paid to qualifying Members within 12 months of the date on which the Scheme is wound up.

16. **VALUE OF THE SCHEME PROPERTY**

The Manager may cause the Scheme Property to be valued at any time in accordance with the Valuation Policy of the Manager.

17. **FEES, TAXES, COSTS AND EXPENSES**

17.1 **Taxes:**

The Manager may use the Scheme Property to pay any Tax or other obligation, liability or expense required by any applicable law in relation to:

(a) this Constitution;

(b) any amount incurred or payable by the Manager;

(c) a gift or settlement effected by this Constitution;

(d) the exercise by the Manager of any Power; or

(e) money or investments held by or on behalf of the Manager under this Constitution.

17.2 **Payment of Debts:**

The Manager may set aside any money from the Scheme Property which, in the Manager's opinion, is sufficient to meet any present or future obligation of the Scheme.

17.3 **Fees:**

The Manager is entitled to be paid a management fee from the Scheme Property up to 10% per annum of the Net Fund Value in relation to the performance of its duties as detailed in this Constitution and the Law. This fee is to be calculated monthly and paid at such times as the Manager determines.

17.4 The Manager shall be entitled to fees for the following duties:

(a) In relation to the subscription and withdrawal of units;

(b) In relation to the transfer or transmission of Units;

(c) In relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(d) In relation to due diligence enquiries generally;

(e) In relation to the sale of real estate or assets of the Scheme Property;

(f) In relation to the promotion and management of the Scheme. This fee is payable monthly;

(g) In relation to the winding-up of the Scheme;

(h) In relation to the performance of its duties and obligations pursuant to the Law and this Constitution.

17.5 The Manager is entitled to be paid a success fee calculated in relation to a reporting period as the difference between the net profit of the Scheme and the net distributor forecast to be paid to Members by the Manager during that reporting period.

17.6 **Costs and Expenses**

The Manager shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties; including:

(a) Auditor's fees;

(b) Legal fees and outgoings

(c) Barrister/QC - Legal Counsel Fees;

(d) Fees and expenses incurred in respect of any service providers and/or employees of the Scheme;

(e) All costs, charges and expenses incurred in connection with the acquisition, custody, transfer or disposal of any asset of the Scheme or investments (for example commissions, brokerage, legal fees, bank charges and stamp duty);

(f) Independent expert's or consultant's fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners, engineers;

(g) Property report/property consultants fees;

(h) Real estate agent's sales commissions;

(i) Costs of maintenance of any asset of the Scheme ;

(j) Outstanding accounts relating to any asset of the Scheme such as council rates;

(k) Locksmith for changing locks of any asset of the Scheme as appropriate;

(l) Insurance (property and contents);

(m) Removalists for removal of borrower's property as appropriate;

(n) Security guards to attend any asset of the Scheme as appropriate;

(o) Building and/or property inspection report fees - i.e. building, town planning experts and the like;

(p) all ASIC charges;

(q) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;

(r) all costs and expenses incurred in producing Information Memorandums and Supplementary Information Memorandums or any other disclosure document required by the Law;

(s) reasonable costs incurred in protecting or preserving all assets offered as security;

(t) all liability, loss, cost, expense or damage arising from the proper performance of its duties in connection with the Scheme performed by the Manager or by any agent appointed pursuant to the Law;

(u) any liability, loss, cost, expense or damage arising from the lawful exercise by the Manager and the Custodian of their rights under the Power of Attorney contained in clause 19;

(v) Fees and expenses of any agent or delegate appointed by the Manager;

(w) Bank and government duties and charges on the operation of bank accounts;

(x) Costs, charges and expenses incurred in connection with borrowing money on behalf of the Scheme under the Constitution;

(y) Insurances directly or indirectly protecting the Scheme Property;

(z) Fees and charges of any regulatory or statutory authority;

(aa) Taxes in respect of the Scheme but not Taxes of the Manager [save and except any goods and services or similar tax ("GST")] which are payable by the Manager on its own account;

(bb) Costs of printing and postage of cheques, advices, reports, notices and other documents produced during the management of the Scheme;

(cc) Expenses incurred in connection with maintaining accounting records and registers of the Scheme and of the Scheme Auditors;

(dd) Costs and disbursements incurred in the preparation and lodgment of returns under the Law, Tax Act or any other laws for the Scheme;

(ee) Costs of convening and holding meetings of Members;

(ff) Costs and disbursements incurred by or on behalf of the Manager in connection with its retirement and the appointment of a substitute;

(gg) Costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings;

(hh) Costs of any insurance premiums insuring against the costs of legal proceedings (whether successful or not);

(ii) Costs of advertising the availability of funds for lending;

(jj) Brokerage and underwriting fees;

(kk) If and when the Manager becomes responsible to pay any GST in respect of any services provided to the Scheme or any payments in respect of GST to be made by the Members or the Manager in respect of the Scheme or under the terms of this Constitution then the Manager shall be entitled to be indemnified in respect of such GST from the Scheme Property;

17.7 In the event that the Manager has not performed its duties, the lack of entitlement to payment of fees pursuant to clause 17.3 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the Manager is not entitled to be paid fees and expenses for work properly performed.

17.8 In the event of any dispute regarding the payment of fees and expenses, the Manager shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the Manager shall be repaid forthwith upon the identification of the overpayment.

17.9 The Manager is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution.

17.10 All fees payable to the Manager are net of any goods and services tax.

18. INDEMNITY AND LIABILITY

18.1 The following clauses apply to the extent permitted by law:

(a) The Manager is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:

(i) otherwise than in accordance with this Constitution and its duties; and

(ii) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case the liability of the Manager in relation to the Scheme is limited to the Scheme Property, from which the Manager is entitled to be, and is in fact, indemnified.

(b) In particular, the Manager is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

(i) it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Manager;

(ii) it acted as required by Law; or

(iii) it relied in good faith upon any signature, marking or documents.

(c) In addition to any indemnity under any Law, the Manager has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the Manager has acted negligently, fraudulently or in breach of trust.

(d) The Manager is not liable to account to any Member for any payments made by the Manager in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other statutory charges.

19. POWERS OF ATTORNEY

19.1 Each Member by execution of the Application Form or the transfer by which he/she/it acquires Units in the Scheme appoints the Manager and any director officer attorney or substitute nominated by the Manager severally for this purpose as its attorney and agent with the right:

(a) at any time to:

(i) sign any document in relation to any subscription and

withdrawal agreement;

(ii) sign any document in relation to the transfer or transmission of Units;

(iii) sign any variation of this Constitution;

(iv) sign any document required by ASIC to be executed by a Member in respect of the Scheme.

(b) at the request in writing of the Manager the Member must execute separate Powers of Attorney in a form reasonably required by the Manager appointing the Manager as its attorney for the purpose of this clause.

(c) any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;

19.2 Each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under the Power of Attorney.

20. THE REGISTER

20.1 Keeping registers

The Manager must establish and keep a register of Members, and if applicable, the other registers required by the Law.

20.2 Information In registers

To the extent applicable, the registers must be kept in accordance with, and contain the information required by the Law. Otherwise, the Manager may decide what information is included in the registers. If the Law applies, the Manager has the powers conferred under the Law in relation to the register.

20.3 Changes

Every Member must promptly notify the Manager of any change of name or address and the Manager must alter the relevant register accordingly.

21. NOTICES

21.1 A notice or other communication connected with this Constitution has no legal effect unless it is in writing.

21.2 In addition to any other method of service provided by law, the Notice must be:

(a) sent by post, postage prepaid, to the address for the Member in the Manager's register of interests;

(b) sent by facsimile to the facsimile number of the Member; or

(c) otherwise delivered, including via email, at the address of the addressee of the Member as is subsequently notified.

21.3 A Notice must be treated as given and received:

(a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;

(b) if sent by facsimile or electronically before 5.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery.

21.4 Despite clause 21.3(ii) a facsimile is not treated as given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

21.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:

(a) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(b) the notice is returned unclaimed.

21.6 Any Notice by a party may be given and may be signed by the solicitor for the party.

21.7 Any Notice to a party may be given to the solicitor for the party by any of the means listed in clause 21.2 to the solicitor's business address or facsimile number as the case may be.

22. LIABILITY OF MEMBERS

22.1 The liability of each Member, whether actual, contingent or prospective, is limited to the unpaid Issue Price of his/her/its Units except if the Manager and the relevant Member agree otherwise in writing that the liability of a Member may be further limited or waived.

22.2 A creditor or other person claiming against the Manager as trustee of the Scheme has no recourse against a Member and no Member is personally liable to indemnify the Manager, any creditor of the Manager or any person claiming against the Manager in respect of any actual, contingent, prospective or other liability of the Manager in relation to the Scheme.

23. APPOINTMENT AND REMOVAL OF TRUSTEE

23.1 Retirement or Resignation of Trustee

(a) The Manager may retire upon giving 3 months' notice to the Members of its desire to do so.

(b) The Manager must resign:

(i) if it is removed as provided by law;

(ii) if (being a corporation) it becomes an externally-administered body corporate as defined in the *Corporations Act 2001;* or

(iii) if (being a natural person) he or she is found to be of unsound mind or becomes bankrupt.

23.2 Unit Holders May Appoint New Trustee

The holders of not less than 50% of the Units on Issue may by notice in writing appoint a new Manager to fill a vacancy in the office of Manager.

23.3 Transfer of Records

Upon the resignation, retirement, or removal of the Manager, the Manager must hand to the new Trustee all books, records, documents and other matters pertaining to the Scheme and at the expense of the Scheme do all things necessary to transfer legal title and the assets of the Scheme to the new Trustee.

23.4 Deed of Adoption by New Trustee

The new Trustee appointed under clause 23.2 must execute a deed in a form approved by the holders of not less than 50% of the Units on Issue by which the new Trustee undertakes to the Members to carry out the obligations of the Trustee under this Deed.

24. CHANGING THE CONSTITUTION

24.1 This Constitution may be modified or repealed or replaced with a new Constitution by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Scheme.

24.2 The Manager must send a copy of the Scheme's Constitution to a Member of the Scheme within seven (7) days if the Member:

(a) asks the Manager in writing for the copy; and

(b) pays any fee (up to the prescribed amount) required by the Manager

25. ACCOUNTS AND REPORTS

(a) The accounts of the Scheme must be kept and prepared by the Manager in accordance with applicable Accounting Standards and the Law.

(b) The Manager must prepare and make available to Members the financial statements of the Scheme for each financial year.

(c) The Manager may make the financial statements available to Members by either publishing the statements on the Manager's internet site, emailing the statements to individual Members or by sending the statements to individual Members by facsimile or prepaid post.

26 OTHER ACTIVITIES AND OBLIGATIONS OF THE MANAGER

26.1 Subject to the Law, nothing in this Constitution restricts the Manager (or its associates) from:

(a) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity);

(b) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or managed investment scheme or in another capacity) or with any Member or retaining for its own benefit profits or benefits derived from any such contract or transaction; or

(c) acting in the same or similar capacity in relation to any other trust or managed investment scheme.

26.2 Other Obligations All obligations of the Manager which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

27 GOVERNING LAW

This Deed is governed by the Laws of the State of Queensland. The Manager and the Members submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED AS A DEED POLL:

GIVEN under the Common Seal of LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by authority of a resolution of the Board of Directors under the hands of a Director and the Secretary who certify that they are the proper officers to affix this seal)

.....
Director

.....
Director/Secretary

.....
Justice of the Peace/Solicitor

Supplemental Deed Poll

LM Investment Management Limited

Amending the Constitution for LM Managed Performance Fund

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Supplemental Deed Poll

Date	23 October 2012
Party	**LM Investment Management Limited** (ACN 077 208 461) incorporated in Queensland of Level 4, 9 Beach Road, Surfers Paradise, Queensland (the *Manager*).
Recitals	
A	The Manager is the trustee of the trust known as the LM Managed Performance Fund (the ***Trust***).
B	Clause 24 of the Constitution provides that the Constitution may be modified if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Trust.
C	The Manager amends the Constitution to the extent set out in this Supplemental Deed Poll and reasonably considers such amendments will not adversely affect the Members' rights.

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context otherwise requires.

Constitution means the constitution constituting the trust, as amended from time to time.

Effective Time means the date of this Supplemental Deed Poll.

Member means a person registered as a holder of units in the Trust (including persons registered jointly).

1.2 Interpretation

(a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.

(b) Clauses 1.1 and 1.2 of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Manager with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Members jointly and severally.

2. Amendment of Constitution

The Manager amends the Constitution so that, on and from the Effective Time, the Constitution is amended as set out in the schedule.

3. No Resettlement

The Manager confirms that it is not by this Supplemental Deed Poll intending to:

(a) resettle or redeclare the Trust declared under the Constitution; or

(b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

4. Governing Law and Jurisdiction

This Supplemental Deed Poll is governed by the laws of Queensland. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

Executed and delivered as a Deed in Queensland

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited**:

Director Signature

EGHARD VAN DER HOVEN

Print Name

Director/~~Secretary~~ Signature

PETER CHARLES DRAKE

Print Name

Schedule

1. Insert the following definitions immediately after the definition of "B Class Unit" in clause 1.1:

   "**C Class Unit**" means a Unit in the Scheme that the Manager determines is a C Class Unit (and includes all sub-classes of such C Class Units);

   "**D Class Unit**" means a Unit in the Scheme that the Manager determines is a D Class Unit (and includes all sub-classes of such D Class Units);

   "**E Class Unit**" means a Unit in the Scheme that the Manager determines is an E Class Unit (and includes all sub-classes of such E Class Units);

   "**F Class Unit**" means a Unit in the Scheme that the Manager determines is an F Class Unit (and includes all sub-classes of such F Class Units).

2. Delete the words "otherwise includes A Class Units and B Class Units;" in the definition of "Unit" in clause 1.1 and replace with the following "otherwise includes A, B, C, D, E and F Class Units;"

3. In clause 3.2:

   (a) delete the words "each sub Class of A Class Units and sub Class of B Class Units" and replace with "each sub Class of A, B, C, D, E and F Class Units";

   (b) delete the word "difference" and replace with "different";

   (c) delete the words "Without limitation B Class Units" and replace with "Without limitation B, D and F Class Units"; and

   (d) delete the words "Issue Price for the B Class Units" and replace with "Issue Price for the B, D or F Class Units (as the case may be)".

4. Delete clause 6.4 and insert in its place the following new clauses 6.4-6.8:

   "6.4 The issue price of each sub Class of C Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

   $$\frac{(A / B \times D) + E}{D} = F$$

   Where:

   A = Net Fund Value

   B = Total number of all Units on issue

   D = total number of Units on issue in the sub-class of C Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

   E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.5 The issue price of each sub Class of D Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

$$\frac{(A / B \times D) + E}{D} = F$$

Where:

A = Net Fund Value

B = Total number of all Units on issue

D = total number of Units on issue in the sub-class of D Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.6 The issue price of each sub Class of E Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

$$\frac{(A / B \times D) + E}{D} = F$$

Where:

A = Net Fund Value

B = Total number of all Units on issue

D = total number of Units on issue in the sub-class of E Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.7 The issue price of each sub Class of F Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

$$\frac{(A / B \times D) + E}{D} = F$$

Where:

A = Net Fund Value

B = Total number of all Units on issue

D = total number of Units on issue in the sub-class of F Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.8 The purpose of the above calculations is to reflect differential Unit Issue Prices. An A Class Unit Issue Price is not intended to reflect accrued but unpaid distributions. A B, C, D, E and F Class Unit Issue Price is intended to reflect accrued but unpaid distributions for the relevant sub-class of B, C, D, E and F Class Unit holders."

5. In clause 7.3(e)(iii) delete the words "B Class Units" and replace with "B, C, D, E or F Class Units".

6. In clause 7.3(e)(iv) delete the words "B Class Units" and replace with "B, C, D, E or F Class Units".

7. In clause 7.8:

(a) delete the words "A Class Unit or each B Class Unit (including each B Unit sub Class)" and replace with "A, B, C, D, E and F Class Unit (including each sub-Class)"; and

(b) insert the words "for that Class of Unit" immediately after the words "Issue Price" at the end of clause 7.8.

8. Delete clause 11.1(b) and replace with the following:

"(b) For B, D and F Class Unit holders the Distribution Period is one calendar month commencing on the 1st day of each calendar month, or as otherwise determined by the Manager in its absolute discretion. For C and E Class Unit holders the Distribution Period is each quarter (ending on 31 March, 30 June, 30 September and 31 December each year), or as otherwise determined by the Manager in its absolute discretion."

9. In clause 11.3(c) delete the words "For each Distribution Period" and replace with "Subject to the rights, restrictions and obligations attaching to any particular Unit or Class, for each Distribution Period".

10. In clause 17.11 insert immediately at the end of that clause "This includes waiver of such remuneration in favour of certain Members only, or in a manner that benefits certain Members only."

PERMANENT TRUSTEE AUSTRALIA LIMITED

and

LM INVESTMENT MANAGEMENT LTD

CUSTODY AGREEMENT

PERMANENT TRUSTEE AUSTRALIA LIMITED
23-25 O'Connell Street
SYDNEY NSW 2000
DX 383 SYDNEY
Tel: (02) 9321 1600
Fax: (02) 9321 1659
#140216/v2

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CUSTODY AGREEMENT

THIS AGREEMENT is made the 4th day of February 1999 The Trust Company (PTA) Ltd

BETWEEN: **PERMANENT TRUSTEE AUSTRALIA LIMITED** (ACN 008 412 913) a company duly incorporated in New South Wales having its registered office at 23-25 O'Connell Street, Sydney, in the said State, and an office at Level 8, 410 Queen St, Brisbane, Queensland ('Permanent')

AND: **LM INVESTMENT MANAGEMENT LTD** (ACN 077 208 461) a company duly incorporated in Queensland having its registered office at Level 4, RSL Centre, 44A Cavill Avenue Surfers Paradise in the State of Queensland (the 'Client')

OPERATIVE PROVISIONS:

1. INTERPRETATION

1.1 In this agreement, unless the context otherwise requires:

'Austraclear' means the system operated by Austraclear Limited performing the role of central depository for securities traded in the Australian financial market, and which provides a real-time system for clearing and settling corporate and semi-government debt securities and financial derivatives.

'ASIC' means the Australian Securities and Investments Commission or such other government authority that performs the role undertaken by ASIC in relation to managed investment schemes at the date of this agreement.

'Authorised Person' means the persons nominated by each of the Client and Permanent respectively who are authorised to make any written communication or take action on behalf of the Client or Permanent respectively in relation to the performance of the relevant party under this agreement. The Client may nominate as its Authorised Persons any officers or employees of a Manager employed by the Client. A party may impose restrictions on the authority of any Authorised Person by written notice to the other party. The Authorised Persons and any restrictions on authority as at the date of this agreement are specified in schedule 1 and may be varied upon written notice by the respective party to the other party.

'Business Day' means a day on which banks are open for business in Brisbane, but excludes Saturdays, Sundays, public holidays and bank holidays.

'CHESS' stands for 'Clearing House Electronic Subregister System' and means the clearing house established and operated by Securities Clearing House ('SCH') for the clearing, settlement, transfer and registration of securities approved by SCH.

'Custodially Held', in relation to an asset of a Scheme held by or on behalf of Permanent under this agreement means that Permanent or the person holding the asset on Permanent's behalf has one or more of the following:-

(i) legal title to the asset;

(ii) physical possession of the asset;

(iii) direct control of the asset;

(iv) is designated as mortgagee of the asset; or

(v) physical possession or direct control of the essential elements of title of the asset,

where in all the circumstances this results in Permanent or the person holding the asset on Permanent's behalf having effective control of the asset for the purpose of its safekeeping (whether or not Permanent or the person holding the asset on Permanent's behalf, as the case may be, also performs other services in relation to the asset).

'Instructions' has the meaning set out in clause 5.

'Law' means the Corporations Law.

'Manager' means a person appointed by the Client to provide management services in respect of all or part of the Portfolio.

'Portfolio' means property of a Scheme Custodially Held from time to time by Permanent or a Sub-custodian pursuant to this agreement.

'RITS' stands for 'Reserve Bank Information and Transfer System' and means the real time computerised settlement and information system established by the Reserve Bank of Australia for settlements, electronic trading and bidding, and cash transfers for parties with Reserve Bank accounts.

'SCO' means the Client's Senior Compliance Officer.

'Scheme' means those schemes listed in schedule 2 and any other scheme included by mutual agreement in writing between Permanent and the Client.

'Sub-custodian' means any person engaged pursuant to clause 6.1 to Custodially Hold some part or all of the Portfolio on behalf of Permanent.

'SWIFT' stands for 'Society for Worldwide Interbank Financial Telecommunications' and means the international store and forward network system which processes a range of financial transactions relating to, inter alia, bank transfers, foreign exchange, loans, deposits and securities.

'Taxes' means all taxes of whatever nature lawfully imposed, including income tax, recoupment tax, land tax, sales tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, tax on the provision of goods or services, property tax, undistributed profits tax, withholding tax, municipal rates, financial institutions duty, bank account debit tax, stamp duties and other taxes, charges and liens assessed or charged or assessable or chargeable by, or payable to, any national, Federal, State, Territory or municipal taxation or excise governmental agency, including any interest or fee imposed in connection with any such tax, rates, duties, charges or liens.

'Title Documents' means the written evidence of title to or interest in any of the assets forming part of the Portfolio.

1.2 In this agreement, unless the context otherwise requires:

(a) words importing one gender include the other genders;

(b) the singular includes the plural and vice versa;

(c) a reference to a party is a reference also to that party's respective successors or assigns;

(d) a reference to a *person* includes an individual, firm, company, corporation or unincorporated body of persons, or any state or government or any agency thereof (in each case, whether or not having separate legal personality) and reference to a *company* includes a person;

(e) a reference to an *agent* does not include any pricing service or supplier of pricing information used by Permanent for valuation or pricing purposes;

(f) headings are for convenience only and shall not affect interpretation;

(g) mentioning anything after, *include, includes* or *including* does not limit what else may be included;

(h) references to sections, clauses and schedules are references to sections, clauses and schedules of this agreement;

(i) a reference to Permanent or the Client includes, where the context permits a reference to their respective officers, employees and agents or any of them;

(j) a reference to the *knowledge, belief or awareness* of any person in relation to a matter means the knowledge, belief or awareness that the person would have if they had made all reasonable enquiries of others who could reasonably be expected to have information relevant to the matter and, where those enquiries would have prompted a reasonable person to make further enquiries, made those further enquiries;

(k) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued relating to it;

(l) references to dollar and '$' refer to amounts in Australian currency; and

(m) the schedules to this agreement form part of this agreement.

2. APPOINTMENT OF PERMANENT

2.1 The Client appoints Permanent to provide custodial services on the terms of this agreement.

2.2 Permanent accepts its appointment and agrees to provide custodial services to the Client on the terms of this agreement.

2.3 Permanent acknowledges that the Client will assess Permanent's performance on a regular basis in accordance with the methods and standards identified in schedule 3.

3. FUNCTION AND POWERS OF PERMANENT

3.1 Subject to the provisions of this agreement, Permanent agrees to custodially hold the Portfolio and Title Documents as agent for the Client in relation to each Scheme.

3.2 The Client authorises Permanent to:

(a) purchase, acquire, issue, release, sell or dispose of property to form or forming part or all of any Portfolio on receipt of Instructions from the Client and execute all transfers, releases, and assurances and other documents necessary for any such purpose;

(b) receive and hold or procure the receipt and holding of any property so purchased or acquired and any interest, dividend, rent or other income accruing in respect of it and any document of title to it in safe custody;

(c) procure safe custody of property of the Portfolio in bearer form;

(d) procure registration in the name of Permanent or of a Sub-custodian, as the case requires, of property of the Portfolio in a registrable form unless it is otherwise impractical or inconsistent with market practice or otherwise permitted with the consent of the Client; and

(e) provide the custody services and other administrative services as set out in this agreement or as agreed from time to time between Permanent and the Client. In such circumstances Permanent is entitled to receive additional fees as agreed between the parties.

3.3 Permanent may establish an account in the name of the Client designating a Scheme or, if otherwise instructed by the Client, some other name, with any bank or company approved by the Client and operate on the account in accordance with Instructions from the Client.

3.4 Permanent may refuse to purchase, acquire, issue, release, sell, accept the deposit or transfer of a security, document or other property, and the Client must accept a return of the document or transfer of the security or other property at the request of Permanent. In particular, Permanent has no obligation to accept into the Portfolio or acquire any partly paid investment unless the Client has made arrangements satisfactory to Permanent to set aside in the name of Permanent money or other property sufficient to provide for payment of the investment in full.

3.5 The Client agrees that, in relation to property held on a pooled basis or in an omnibus account, the transfer or delivery of property in accordance with this agreement of the same type and number as the property so held will constitute a proper performance by Permanent of its obligations under this agreement.

3.6 Permanent may execute or make on behalf of the Client any certificates, declarations or affidavits which are required to receive into or transfer out of its custody any property of or for any Portfolio.

3.7 The Client agrees that Permanent or any Sub-custodian may hold any property included in a Portfolio on a pooled basis or in an omnibus account in accordance with any class order issued by ASIC or any specific relief from the requirements of section 601FC(1)(i) of the Law granted by ASIC in relation to the relevant Scheme.

3.8 Permanent may appoint or engage at the Client's expense accountants, auditors, barristers, solicitors, advisers, consultants, brokers, counterparties, couriers or other persons (not being persons appointed under clause 6.1) where it reasonably considers their appointment or engagement necessary or desirable for the purposes of exercising its powers or performing its duties under this agreement. Permanent is not liable for any loss, damage or expense suffered or incurred as a result of any act of omission whatever (including a negligent act or omission) of a person appointed or engaged under this clause 3.8.

3.9 Persons appointed or engaged in accordance with clause 3.8 or 6.1 may be related to or associated with Permanent and may be paid and receive their normal fees or commissions.

3.10 Permanent may in the ordinary course of its business, without reference to the Client, effect transactions in which Permanent has directly or indirectly a material interest, or a relationship of any kind with another person, which may involve a potential conflict with Permanent's duty to the Client, and Permanent is not liable to account to the Client for any profit, commission or remuneration made or received in relation to those transactions or any connected transactions. A reference in this clause 3.10 to Permanent includes a Sub-custodian, and Permanent shall in any event act in a bona fide manner in relation to any such transaction.

3.11 Permanent and its Sub-custodians may for convenience or expedience use Austraclear, RITS, CHESS, SWIFT and/or any other electronic funds or assets transfer system whether within Australia or overseas.

3.12 Permanent is authorised to comply with any obligations imposed on it by law.

3.13 Permanent may do any other things which it considers necessary, desirable, incidental to or in furtherance of the matters referred to in this clause 3 or clause 4.

3.14 Subject to this agreement, Permanent has absolute discretion as to the exercise of all powers, authorities and discretion vested in it under this agreement.

4. DUTIES OF PERMANENT

4.1 The Client is responsible for taking all decisions in relation to the Portfolio and properly communicating to Permanent Instructions in relation to the assets of the Portfolio. Subject to this agreement, Permanent must act on the Client's Instructions in relation to any assets of the Portfolio. If Permanent does not have Instructions, Permanent is not required, subject to this agreement, to make any payment or take any other action in relation to any matter concerning any asset in a Portfolio.

4.2 Permanent must promptly forward to or notify the Client or the relevant Manager of all forms of proxy, notices of meetings and other material letters, notices or announcements received by Permanent relating to the assets of a Portfolio.

4.3 Permanent is not responsible for reviewing or advising the Client on the Portfolio or any part of it nor for any action or omission pursuant to a decision taken or mistakenly not taken by the Client.

4.4 Permanent disclaims any knowledge of the terms on which securities are issued or the constituent documents of the issuer and the Client undertakes to investigate and satisfy itself as to those matters and to ensure that any Instructions to Permanent are in conformity and reasonable having regard to them.

4.5 Permanent is not responsible for the accuracy or completeness of any information received from third parties and passed to or assessed by the Client or a Manager.

4.6 Permanent is not obliged to institute or defend legal proceedings unless requested by the Client and indemnified by the Client to its satisfaction.

4.7 The services of Permanent under this agreement are not exclusive. Permanent is free to provide similar services to others, and is not obliged to disclose to the Client anything which comes to its notice in the course of providing services to others or otherwise than in the performance of this agreement.

4.8 Permanent is not obliged to see whether, in exercising any of its powers or performing any of its duties under this agreement in accordance with Instructions from an Authorised Person, the Authorised Person is acting in proper exercise or performance of his powers or duties.

4.9 To the extent required by section 601FC(1)(i) of the Law as modified by any relief granted by ASIC, Permanent shall ensure that the assets of each Portfolio are:

(a) clearly identified as property of the respective Scheme; and

(b) held separately from Permanent's own assets, the assets of any other Scheme or any other assets held by Permanent in any other capacity whatsoever.

4.10 Permanent is not responsible for checking or ascertaining the value of any property or whether the price to be paid for any property is proper or reasonable or whether any transaction which it is instructed to effect accords with the constitution, compliance requirements, prospectus, investment policy or limit for the time being established for or in force in relation to the Scheme.

4.11 Permanent must notify the Client in writing immediately if Permanent becomes aware that it no longer satisfies the requirements of ASIC Policy Statement 131 or 133.

4.12 Permanent must provide to the Client at least annually at a time as agreed between the parties a certificate signed by two directors stating that Permanent has met the requirements of ASIC Policy Statements 131 and 133 during that financial year and must (if the Client reasonably requires such certificate) also provide annually at a time as agreed between the parties a certificate signed by Permanent's external auditor confirming that, in the auditor's opinion, Permanent continues to meet the financial requirements of ASIC Policy Statements 131 and 133.

4.13 Subject to clause 4.15, Permanent must not take a charge, mortgage, lien or other encumbrance over, or in relation to, the assets of a Scheme other than in respect of expenses and outlays made within the terms of this agreement.

4.14 Permanent must not exercise any right in the nature of a charge, mortgage, lien, or other encumbrance over or in relation to assets of the Scheme in relation to unpaid custodian fees pursuant to clause 8.1, but otherwise Permanent is entitled to exercise any rights in relation to the assets of the Scheme available to it at law in the nature of a charge, mortgage, lien or other encumbrance and is additionally granted by this agreement rights of lien and set off as against the assets of a Portfolio in relation to any liability, loss, cost, claim or expense incurred or arising on account of the Scheme in the proper performance of Permanent's powers or duties under this agreement. In the exercise of rights pursuant to this clause Permanent may sell any

asset from the relevant Portfolio and enforce its rights under this agreement against the proceeds of such sale.

4.15 If Permanent receives Instructions to take a charge, mortgage, lien or other encumbrance over or in relation to any assets in a Portfolio, Permanent need only act on those Instructions if it is satisfied that its liability pursuant to such charge, mortgage, lien or encumbrance is limited to the assets available to it pursuant to this agreement.

4.16 If the Client instructs Permanent to Custodially Hold any real property pursuant to this agreement, Permanent need not agree to do so unless Permanent is satisfied that its liabilities in relation to the holding of such real property are limited to the assets available to it pursuant to this agreement. In this regard, Permanent may require the Client to effect and maintain insurances identified by Permanent in Permanent's name or to provide additional indemnities to Permanent.

4.17 In the event that Permanent has breached a term of this agreement which entitles the Client to exercise rights against Permanent, the existence of such rights does not entitle the Client to prevent Permanent from relying on the provisions of this agreement to seek indemnification or other rights in order to meet or satisfy any claim or demand made by a third party on Permanent.

4.18 Permanent agrees to compensate a Scheme by making a payment to that Scheme in the event of Permanent being required by law to make such payment if there is a loss to a Scheme as a result of Permanent failing in its obligations under this agreement.

5. INSTRUCTIONS

- Proper Instruction have to act on behalf of the Trustee of an MDF.

5.1 Permanent is authorised to act, or to cause any other person to act, on any Instructions given to it in accordance with this clause 5.

5.2 Permanent is authorised to act on Instructions in writing which bear or purport to bear the signature or a facsimile of the signature of any of the Client's Authorised Persons or Instructions provided by electronic means using security codes or procedures agreed between Permanent and the Client.

5.3 Permanent is not liable for acting on any Instructions which appear to it to have been properly and regularly signed or given and is under no duty to inquire whether any such Instructions have been so signed or given. However, Permanent may require written confirmation from the Client before acting on any Instructions.

5.4 Permanent is not liable for acting on any Instructions given in accordance with this clause 5 which contain any error or ambiguity.

5.5 Nothing in this clause 5 obliges Permanent to obtain Instructions where the other provisions of this agreement do not impose any such obligation.

5.6 Permanent may record electronically telephonic discussions relating to this agreement or any transaction effected under it with the prior consent of the Client for each discussion intended to be recorded.

6. SUB-CUSTODIANS

6.1 Permanent may, where it considers their appointment necessary or desirable for the purpose of exercising its powers or performing its duties under this agreement, appoint Sub-custodians (including any person related to or associated with Permanent) to perform any of its duties under this agreement with any or all of its powers under this agreement, including this power of delegation, and any delegate appointed by the exercise of such power shall be included in the term Sub-custodian. Any appointment of a Sub-custodian by Permanent is not an assignment of Permanents rights or obligations under this agreement.

6.2 Permanent must supply to the Client on request a description of property included in the Portfolio which is held by or registered in the name of a Sub-custodian, together with the name and address of the Sub-custodian.

6.3 Permanent shall be responsible for the actions and omissions of its Sub-custodian appointed by Permanent pursuant to clause 6.1.

7. BOOKS, RECORDS AND STATEMENTS

Permanent must:

(a) properly maintain adequate books and records, accounts of all receipts, disbursements and other transactions relating to the Portfolio in accordance with generally accepted accounting principles to the extent such principles are relevant;

(b) provide the Client with the reports and statements relating to the Portfolio described in schedule 4 at the intervals mentioned in schedule 4; and

(c) provide any auditor of the Client with any reasonably available information in Permanent's possession about the Portfolio which the auditor requires to enable it to perform any audit or investigation involving the Portfolio.

8. FEES AND EXPENSES

8.1 The Client agrees to pay to Permanent during the continuance of this agreement fees in the amounts described and at the time set out in schedule 5.

8.2 Permanent is entitled to recover from the Client the amount of all Taxes and bank charges, and all other liabilities, costs, charges and expenses which it suffers or incurs (including fees and other amounts payable to Sub-custodians) in connection with the performance of its duties and the exercise of its powers under this agreement including, without limitation, settlement, delivery, registration and transaction charges and foreign currency costs and charges including any reasonable expenses incurred as a result of the Client requesting a certificate pursuant to clause 4.1.

8.3 The Client agrees that Permanent may deduct from any part of a Portfolio any amount payable to Permanent under this clause 8 or any other provision of this agreement and with the consent of the Client, the amounts payable under clause 8.1. The Client authorises Permanent in the name of the Client or Permanent to do any thing (including, but not limited to, executing any document) that is required for that purpose. Permanent agrees to record any such deduction in the records maintained under clause 8.

8.4 All monies owing to Permanent including fees under this agreement accrues from day-to-day.

9. INDEMNITIES AND LIMITATIONS OF LIABILITY

9.1 Without limiting any other indemnity or limitation of liability in this agreement, and without prejudice to any indemnity allowed by law, but subject to this agreement and to any law to the contrary, and to the maximum extent permitted by law, it is agreed and declared that:

(a) the Client indemnifies Permanent against any liability, demand, loss, costs, Taxes charges and expenses which may be incurred by Permanent in connection with:

(i) this agreement and the acts and omissions of Permanent in performing services pursuant to this agreement, except those attributable to the negligence or fraud of Permanent.

(ii) all actions, suits, claims and demands which may be brought or threatened against or suffer or sustained by Permanent by reason of Permanent complying with any Instruction by an Authorised Person; and

(iii) neglect or fraud on the part of the Client, any Manager or any of their employees, servants or agents.

(b) Permanent does not incur any liability in respect of any thing done or not done in reliance on any Instruction, notice, resolution, direction, consent, certificate, receipt, affidavit, statement, holding out, certificate for stock, shares or other security, plan or reorganisation, or other document or information which Permanent reasonably believed to be genuine or to have been passed, signed or endorsed by the proper parties, where liability but for this provision would attach because that document or matter was not in fact genuine or so passed, signed or endorsed.

(c) Permanent does not incur any liability in respect of any failure to do any thing which, because of any present or future law or of any order or judgement of any court, it is hindered, prevented or forbidden from doing.

(d) Permanent will not be responsible or have any liability for any obligations imposed on the Client, a Scheme or Permanent as custodian of the Portfolio or any transaction under this agreement by the tax law of Australia or any State or Territory of Australia. Permanent will be kept indemnified by and be without liability to the Client for any such obligations including Taxes (but excluding any income taxes assessable in respect of compensation paid to Permanent pursuant to this agreement), withholding, certification and reporting requirements, claims for exemption or refund, additions for late payment, interest, penalties and other expenses (including legal expenses) that may be assessed against the Client, a Scheme or Permanent as custodian of the Portfolio except those attributable to the negligence or fraud of Permanent.

(e) Permanent may act on the opinion or advice of, statements of or information obtained from barristers, solicitors, bankers, accountants, brokers or other persons believed by it in good faith and on reasonable grounds to be expert in relation to the matters on which they are consulted (whether they are instructed by the Client, Permanent or a third party), and Permanent is not liable for anything done or not done by it in good faith in reliance on that opinion, advice, statements or information.

(f) where Permanent relies in good faith on any opinion, advice, statements or information from any barrister, solicitor or other expert it is not responsible for any misconduct, mistake, oversight, error of judgement, forgetfulness or want of prudence on the part of any such barrister, solicitor or other expert;

(g) in the event of the liquidation, dissolution or bankruptcy of any person, or if for any other reason it becomes impossible or impracticable to carry out the provisions of this agreement in respect of that person or otherwise, Permanent is not liable for anything done or not done by Permanent, where Permanent has acted in good faith;

(h) Permanent is entitled to rely on statements or information from the Client or Manager as to the validity of any signature on any transfer, form of application, request or other document which Permanent reasonably believed to be genuine;

(i) Permanent is not responsible for the loss of any property during transmission between the Client or a Manager and Permanent or Permanent and a third party or fraud on the Client by a third party, nor for the corruption or loss of any data that is transmitted electronically or to which access is given by Permanent to the Client or a Manager or vice versa;

(j) Permanent is not liable for any act or omission that is believed by Permanent to be in accordance with local market practice;

(k) Permanent is not liable for the failure of any person to carry out any agreement or obligation on that person's part;

(l) Notwithstanding any other provision of this agreement, Permanent's liability is limited to the property for the time being comprised in the Portfolio except for a liability arising as a result of Permanent's own negligence or fraud; and

(m) Permanent, is not liable for any loss, damage or expense suffered or incurred as a result of any delay in executing an Instruction where the delay has occurred as a result of Permanent waiting for the receipt of the written confirmation from the Client pursuant to clause 5.3.

9.2 Permanent is not responsible for insuring the Portfolio or any part of it.

10. WARRANTIES AND UNDERTAKINGS BY CLIENT

10.1 The Client represents and warrants to Permanent that:

(a) it has the power to enter into and perform this agreement and has obtained all necessary consents to enable it to do so;

(b) the entry into and performance of this agreement by the Client does not constitute a breach of any obligation (including, but not limited to, any statutory, contractual or fiduciary obligation) or default under any agreement or undertaking by which the Client is bound;

(c) property transferred or delivered by the Client to Permanent from time to time to form part of a Portfolio will be the property of a Scheme the subject of this agreement and,

unless the consent of Permanent is obtained prior to the transfer, free from any mortgage, charge, lien, pledge, encumbrance or other security interest;

(d) the Client will, at all times during the term of this agreement, hold any licences or approvals required to be held by it under any law governing its activities relating to this agreement and comply with all conditions of any such licence or approval;

(e) it is the only responsible entity for each Scheme and no action has been taken or is proposed to remove it as responsible entity of any Scheme;

(f) the copy of each Scheme constitution provided by the Client to Permanent discloses all the terms of each Scheme and it is not in default under the terms of any Scheme constitution or the Law in relation to any Scheme; and

(g) it has a right to be fully indemnified out of the relevant Scheme's assets in respect of all obligations and liabilities which it incurs under this agreement.

10.2 The Client undertakes:

(a) to notify Permanent promptly if the Client appoints or terminates the appointment of a Manager;

(b) to provide Permanent on request with any documents, information or Instructions reasonably required by Permanent to enable it to perform obligations imposed on Permanent under this agreement or by law;

(c) to perform its obligations pursuant to this agreement as soon as reasonably practicable and in accordance with the requirements of any relevant Scheme's constitution and the Law;

(d) to give Permanent notice of any communication from any person including ASIC forthwith upon receipt which relates to the possibility or likelihood of the Client being suspended or removed in relation to a Scheme or that affects or might affect Permanent or any of its Sub-custodians in relation to the performance of their obligations or exercise of their powers under this agreement or otherwise;

(e) to give Permanent prompt notice of any alteration to a Scheme's constitution.

10.3 The Client undertakes on request to provide and certify to Permanent any information in relation to the Client's status or assessibility for taxation purposes in any country which is relevant to the performance of this agreement.

10.4 The Client acknowledges that it enters into this agreement both in its individual capacity and in its capacity as responsible entity for each Scheme and all agreements, warranties and obligations of the Client in this agreement bind the Client in both capacities.

10.5 The Client agrees to inform Permanent promptly if:

(a) the terms of a Scheme are varied;

(b) there is any change of responsible entity of a Scheme;

(c) there is any change of status for taxation purposes of a Scheme; or

(d) when a Scheme is terminated.

11. TERMINATION OF AGREEMENT

11.1 Subject to clauses 11.2, 11.3 and 11.4, this agreement shall continue for the minimum term specified in schedule 6 and after the expiry of the minimum term shall continue on the same terms unless terminated by either party upon giving to the other party notice for no less than the notice period specified in schedule 6.

11.2 A party may terminate this agreement by notice to the other party: -

(a) if a receiver or a receiver and manager of the undertaking (or any part) of the other party is appointed either in relation to the capacity in which it acts pursuant to this agreement or where such receiver or receiver and manager is reasonably likely to affect materially such other party's performance pursuant to this agreement, or

(b) if the other party:-

(i) goes into liquidation (other than for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the other party) either in relation to the capacity in which it acts pursuant to this agreement or where such liquidation is reasonably likely to affect such other party's performance pursuant to this agreement;

(ii) is subject to a scheme of compromise or arrangement with its creditors or has an administrator appointed to its affairs either in relation to the capacity in which it acts pursuant to this agreement or where such scheme or administration is reasonably likely to affect such other party's performance pursuant to this agreement;

(iii) ceases to carry on business in relation to its activities as responsible entity in relation to a Scheme in the case of the Client (in which case Permanent may terminate this agreement in relation to a Scheme) or as a provider of custodial services in the case of Permanent;

(iv) breaches any provision of this agreement in a material respect or fails to observe or perform any representation, warranty, indemnity or undertaking pursuant to this agreement in a material respect **PROVIDED THAT** if the breach or failure is capable of remedy in the reasonable opinion of the party not in default, this agreement may not be terminated unless the party in default is given a period of no less than 14 days within which to remedy the breach or failure and if not remedied within such period the party not in default may terminate this agreement;

(v) sells or transfers or makes any agreement for the sale or transfer of its principal business and undertaking, or of a beneficial interest therein, other than to a related body corporate for the purposes of a corporate reconstruction upon at least 7 days' notice to the other party; or

(c) by Permanent if ASIC or a Court having jurisdiction makes a written order vesting any property of the Client in relation to any Scheme in ASIC or some other body other than the Client.

11.3 The termination of this agreement does not affect any claim which either party may have against the other.

11.4 If after two (2) years from the date of execution of this agreement, the Law and/or ASIC Policy Statements are such that the Client is no longer required to engage the services of a custodian for the Schemes, then the Client may terminate this agreement on not less than three (3) months notice in writing to Permanent.

11.5 Subject to this agreement, on termination of this agreement Permanent must, at the expense of the Client, promptly transfer, or cause any Sub-custodian to transfer, the assets of the Portfolio, to or according to the Instructions of the Client (subject to any contrary direction given to Permanent which has the lawful effect of overriding this provision), and the Client agrees promptly to accept the transfer or give the necessary Instructions for the transfer of those assets. Permanent must also, at the expense of the Client, promptly deliver or cause any Sub-custodian to deliver, any documents evidencing title to those assets which it is holding, to or according to the Instructions of the Client. Notwithstanding the provisions of this clause, Permanent may retain any assets which it is lawfully permitted to retain in the exercise of its rights under this agreement.

11.6 Upon termination of this agreement pursuant to clause 11.2(c), Permanent shall act upon the instructions of ASIC or an entity properly appointed in relation to a Scheme to the exclusion of the rights of the Client and shall deal with the Portfolio and all books, records, or other material held by it in relation thereto in accordance with the instructions of ASIC or such other entity to the exclusion of any orders, requests or directions from the Client.

11.7 Notwithstanding any other provision of this agreement, if ASIC or a Court having jurisdiction has made a written order vesting the property of the Client in relation to a Scheme in another person, Permanent may, upon the receipt of notice of such vesting order, disregard any future Instructions of the Client in relation to a Scheme and any existing Instructions of the Client in relation to a Scheme which have not been fully performed and take instructions in relation to any matter affecting a Scheme from ASIC or such other person.

12. COSTS AND STAMP DUTY

12.1 The Client shall pay Permanent's reasonable professional costs, including external legal expenses in connection with the preparation, execution and completion of this agreement and of other documentation related to this agreement.

12.2 The Client agrees to bear any stamp duty payable or assessed in connection with this agreement and the transfer of any property to Permanent to form part of the Portfolio. The Client must indemnify Permanent on demand against any liability for that stamp duty (including fines and penalties).

13. NOTICES

Any notice under this agreement shall be in writing and:-

(a) may be sent to the address, or facsimile number set out in schedule 7 or to any other address or facsimile number that either party may specify in writing to the other;

(b) is taken to have been given or made:-

(i) (in the case of delivery in person) when delivered to the address set out in schedule 7;

(ii) (in the case of delivery by post) on the second Business Day after posting; or

(iii) (in the case of delivery by facsimile) on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the correct number,

but if the notice is taken to have been given or made on a day which is not a Business Day or is later than 5.00pm (local time) it will be taken to have been duly given at the commencement of the next Business Day.

14. EXERCISE OF RIGHTS

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

15. NO WAIVER

No failure to exercise or any delay in exercising any right, power or remedy under this agreement operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that right or any other right, power or remedy.

16. SURVIVAL OF INDEMNITIES

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement.

17. ENFORCEMENT OF INDEMNITIES

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

18. ASSIGNMENT

A party may not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

19. CONFIDENTIALITY

19.1 All information exchanged between the parties under this agreement or during the negotiations preceding this agreement is confidential to the party supplying the information and may not be disclosed to any person except:-

(a) to employees, legal advisers, auditors and other consultants of either party or its related bodies corporate requiring the information for the purposes of this agreement;

(b) with the consent of the party who supplied the information;

(c) if the information is, at the date this agreement is entered into, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information;

(d) if required for the purposes of implementing transaction, dealing or matter pursuant to this agreement or by law or a stock exchange;

(e) if required in connection with legal proceedings relating to this agreement; or

(f) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.

19.2 A party disclosing information under clause 19.1(a) or clause 19.1(b) must use all reasonable endeavours to ensure that persons receiving confidential information from it do not disclose the information except in the circumstances permitted in clause 19.1.

20. FURTHER ASSURANCES

Each party agrees on the request of the other party to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

21. FORCE MAJEURE

Where a party is unable, wholly or in part, because of any thing which is not reasonably within its control other than lack of funds ('force majeure') to carry out any obligation under this agreement, and it:

(a) gives the other party prompt notice of that force majeure with reasonably full particulars and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and

(b) uses all reasonable endeavours to remove that force majeure as quickly as possible,

that obligation is suspended so far as it is affected by the continuance of that force majeure. Any obligation to pay money is not excused by force majeure, save for any obligation of Permanent to pay money where Permanent is entitled to an indemnity from the Client under this agreement in relation to the Portfolio and there is insufficient money in the relevant Portfolio to pay such money.

22. ENTIRE AGREEMENT

This agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by them or prior agreement between them with respect to its subject matter.

23. AMENDMENT

This agreement may be amended only by another document signed by both the parties.

24. DISPUTES OR CONFLICTING CLAIMS

24.1 Where there is a dispute between Permanent and the Client in relation to any matter under this agreement, then any party may refer the matter for decision to an independent expert agreed to by the parties, and failing agreement, an independent expert nominated by the President of the Queensland Law Society. The costs incurred in the determination of the matter by the expert (including the costs of the appointment of the expert) shall be borne by the party or parties as determined by the expert. The decision of the expert shall be final and binding on the parties.

24.2 If any dispute or conflicting claim is made by any person or persons with respect of any asset Custodially Held, Permanent shall be entitled to refuse to act in respect of that asset until either:

(a) such dispute or conflicting claim has been finally determined by a court of competent jurisdiction or settled by agreement between conflicting parties, and Permanent has received written evidence satisfactory to it of such determination or agreement; or

(b) Permanent has received an indemnity, reasonably satisfactory to it, to hold it harmless from and against any and all loss, liability and expense which Permanent may incur as a result of its actions.

25. SEVERABILITY

Each part of this agreement is severable from the balance of this agreement. If any part of this agreement is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of this agreement.

26. GOVERNING LAW AND JURISDICTION

This agreement is governed by the laws of Queensland. The parties submit irrevocably and unconditionally to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them in relation to any matter or dispute concerning this agreement or the transactions contemplated by this agreement.

27. COUNTERPARTS

This agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

EXECUTED as an agreement.

THE COMMON SEAL of)
PERMANENT TRUSTEE AUSTRALIA)
LIMITED ACN 008 412 913)
is affixed in accordance with)
its articles of association in the presence of:)

A _____ **Director**

A _____ **Secretary/or appointed person**

THE COMMON SEAL of)
LM INVESTMENT MANAGEMENT)
LTD ACN 077 208 461)
is affixed in accordance with)
its constitution in the presence of:)

A _____ **Director**

A _____ **Secretary**

SCHEDULE 1

Authorised Persons
(Clause 1.1)

Client

The Client's Authorised Persons are each of the group "A" signatories and the group "B" signatories appearing on the attached authorised signatories list dated 18 January 1999 and marked "AA" or such later corresponding lists as may be forwarded by the Client to Permanent from time to time.

The Client will clearly identify instructions to Permanent as either Level 1 or Level 2 instructions.

Level 1 - any "A" signatory together with any "B" signatory are authorised to give Level 1 instructions.

Level 2 - any "B" signatory together with any other "B" signatory are authorised to give Level 2 instructions.

Permanent

Permanent's Authorised Persons are each of the group "A" attorneys and the group "B" attorneys appearing on the attached specimen signature list dated 23 September 1998 and marked "BB" or such later corresponding lists as may be forwarded by Permanent to the Client from time to time.

SCHEDULE 2

LIST OF SCHEMES SUBJECT TO THIS AGREEMENT
(Clause 1.1)

1. LM Select Mortgage Income Fund ?
2. LM Mortgage Income Fund – closed
3. LM Cash Performance Fund (LMIM is RE).
4. LM Special Participation Fund ?

SCHEDULE 3

METHODS AND STANDARDS FOR ASSESSING PERMANENT'S PERFORMANCE

(Clause 2.3)

(a) The Client will monitor the performance of Permanent and will ensure that Permanent continues to meet its commitments for holding the Portfolio of each Scheme the subject of this agreement. The Client will ensure that the contractual arrangements with Permanent remain current and reflect the requirements of each Scheme and the law and that Permanent maintains appropriate arrangements with respect to information providers, registries, Sub Custodians and clearing systems (if relevant).

(b) Any or all of the policies and procedures developed by the Client in the monitoring of external service providers may be applied to the monitoring of Permanent.

(c) While Permanent is the custodian of a Scheme, to satisfy these requirements the SCO will meet with an Authorised Person of Permanent on a quarterly basis. In addition to the above matters, in that meeting the SCO will review any other matters with Permanent relating to a Scheme that has arisen in the course of the delivery of services by Permanent.

(d) The SCO will report any matters of concern that arise during the course of discussion with Permanent to the Client's compliance committee.

(e) The Client's compliance auditor will also have regard to the performance of Permanent in its assessment of the performance of the Client in meeting the requirements of its compliance plan. In particular the Client's compliance auditor will assess whether Permanent has appropriate compliance and control systems in place. To do so the Client's compliance auditor will liaise with Permanent's auditors to determine the status and appropriateness of Permanent's compliance and control systems on an ongoing basis.

(f) The Client's compliance auditor will assess whether Permanent has complied with its obligations under this agreement and include the assessment in its annual report to the Client as required by Section 601HG(3)(c) of the Law.

(g) A copy of any report by the SOC or the Client's compliance auditor prepared in accordance with this schedule, will be provided to Permanent.

SCHEDULE 4

REPORTS AND STATEMENTS
(Clause 7(b))

1.	(a)	Bank reconciliation as at each month end	10 days after month end
	(b)	List of any cheques cancelled in the month	10 days after month end
2.		Listing of all assets as at each month end	10 days after month end
3.		Bank reconciliation as at each Friday	The following Monday morning
4.		List of documents outstanding or intransit	10 days after month end
5.		List of insurance policies due to expire	10 days after month end

SCHEDULE 5

FEES
(Clause 8.1)

A Basic custody for mortgage Schemes:

The greater of either:

(a) $400.00 per $1 million of the gross value of the assets of each Scheme (plus GST) per Year; or

(b) $20,000 per Year (plus GST) for each Scheme,

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the relevant Scheme.

PLUS
An execution fee of $20 per Document (excluding this agreement) where Permanent is requested by the Client to execute a Document.

B Basic custody for property Schemes:

The greater of either:

(a) $400.00 per $1 million of the gross value of the assets of each Scheme (plus GST) per Year; or

(b) $15,000 per Year (plus GST) for each Scheme,

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the relevant Scheme.

PLUS
An execution fee of $20 per Document (excluding this agreement) where Permanent is requested by the Client to execute a Document.

C Basic custody for the LM Cash Performance Fund (LMCPF Scheme):

The greater of either:

(a) $300.00 per $1 million of the gross value of the assets of the LMCPF Scheme (plus GST) per Year up to and including $500 million; plus $200.00 per $1 million of the gross value of the assets of the LMCPF Scheme (plus GST) per Year for amounts over $500 million; or

(b) $15,000 per Year (plus GST),

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the LMCPF Scheme.

D **Basic custody for the LM Special Participation Fund:**

(a) $10,000 per Year (plus GST),

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the Scheme.

Where:

Commencement Date means the date that Permanent and the Client agree to include a Scheme in Schedule 2 of this agreement;

Document includes but is not limited to a mortgage, discharge of a mortgage, variation of a mortgage, or a contract of sale;

GST means any goods and services tax or tax on the provision of goods and services assessed or charged or assessable or chargeable by, or payable to, any national, Federal, State, or Territory government agency; and

Year means twelve (12) months commencing on the Commencement Date of each Scheme.

SCHEDULE 6

MINIMUM TERM AND NOTICE PERIOD
(Clause 11.1)

The minimum term is the period five (5) years from the date of execution of this agreement.

After expiry of the minimum term, termination may occur on not less than three (3) months notice by either party.

SCHEDULE 7

ADDRESS AND FACSIMILE DETAILS
(Clause 14)

Permanent's Address:	Level 8, 410 Queen St, BRISBANE QLD 4000
Facsimile:	(07) 3842 7159
Client's Address:	LM INVESTMENT MANAGEMENT LTD Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise QLD 4217
Facsimile:	(07) 55 922 505

140216/v2

Amending Deed

I certify this copy is a true and complete copy of the origina.
dated: 08 / 11 /20 11
Nicole Lee Careless JP(Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

Date: 1 November day of October 2011

Parties: **THE TRUST COMPANY (PTAL) LIMITED** (ACN 008 412 913) of Level 4, 35 Clarence Street, Sydney NSW (**"Permanent"**) and,

LM INVESTMENT MANAGEMENT LTD (ACN 004 027 749) of Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise, Queensland (**"Client"**).

Recitals:

A. The Client and Permanent entered into a Custody Agreement dated 4 February 1999 (the "Custody Agreement").

B. The Custody Agreement appointed Permanent as custodian of the Assets of those Schemes specified in the Custody Agreement.

C. The Custody Agreement was amended by including additional Schemes on 20 May 1999, 24 May 2000, 18 March 2002 , 19 November 2002, 1 September 2004, 26 September 2006 and September 2011.

D. The Client wishes to appoint Permanent as custodian of an additional scheme not included in the Custody Agreement and to the removal of certain schemes or subsequent amendments and Permanent has agreed to accept the appointment in relation to the additional scheme on the terms and conditions of the Custody Agreement

E. Under clause 23 of the Custody Agreement, the Client and Permanent may amend the Custody Agreement by deed. The parties have agreed to amend the Custody Agreement to include the additional appointment as custodian of the **LM Managed Performance Fund** as set out herein.

Terms:

1. In this Deed, the words and phrases shall have the same meaning as in the Custody Agreement.

2. The Custody Agreement is amended by deletion of Schedule 2 and its replacement with the Schedule 2 set out as Annexure "A".

3. The Custody Agreement is amended by deletion of Schedule 5 and its replacement with the Schedule 5 set out as Annexure "B".

4. The amendments set out in this Deed shall take effect on and from the date of this Amending Deed.

5. Except as expressly stated in Clauses 2, 3 and 4 of this Amending Deed, the terms of the Custody Agreement are not amended by this Amending Deed.

Executed as a Deed on the date first stated:

EXECUTED BY LM INVESTMENT MANAGEMENT LTD ACN 077 208 461 in accordance with section 127 (i) of the Corporation Act by the authority of its directors:

.....

Signature of Secretary/~~Director~~

.....

Signature of Director

THE TRUST COMPANY (PTAL) LIMITED A.C.N. 008 412 913
by its Attorney **GEOFFREY FUNNELL** who states that he has no notice of revocation of the Power of Attorney dated 12 July 2010, whereby he executes this deed document or instrument.

Signature.....

State Manager (Corporate & Legal Services) (Qld)

I certify this copy is a true and complete copy of the origina.

..... dated: 08/11/2011

Nicole Lee Careless JP(Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

Annexure "A"

Schedule 2

LIST OF SCHEMES SUBJECT TO THIS AGREEMENT

1. LM First Mortgage Income Fund (formerly LM Mortgage Income Fund) - closed
2. LM Australian Income Fund - Currency Protected - LMIM is RE.
3. LM Managed Performance Fund - LM Calibre - Trustee.

I certify this copy is a true and complete copy of the origina.

..... dated: 08/11/201[

Nicole Lee Careless JP(Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

Annexure "B"

Schedule 5

FEES:
(Clause 8.1)

A **Basic Custody for LM First Mortgage Income Fund;**

The greater of either:

(a)

On First $750 million of GAV	2 basis points
On Next $750 million of GAV	1.75 basis points
On Next $500 million of GAV	1.5 basis points
On amounts over $2.0 billion	1 basis points

or

(b) $20,000 per Year (plus GST) for each Scheme,

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the relevant Scheme.

B **Basic Custody for the LM Australian Income Fund - Currency Protected**
Basic Custody for the LM Managed Performance Fund

I certify this copy is a true and complete copy of the origina.
dated: 08 / 11 /2011
Nicole Lee Careless JP(Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

The greater of either:

(a) 2 basis points

or

(b) $15,000 per Year (plus GST) which is subject to CPI adjustment annually in arrears (pro rated for the first year) with the first adjustment to be in the September quarter

payable quarterly in arrears (and pro rated for the first quarter) from the Commencement Date of the scheme

Where:

Commencement Date means the date that Permanent and the Client agree to include a Scheme in Schedule 2 of this agreement;

GST means any goods and services tax or tax on the provision of goods and services assessed or charged or assessable or chargeable by, or payable to, any National, Federal, State , or Territory government agency; and

Year means twelve (12) months commencing on the Commencement date of each Scheme.

Company Extract Current & Historical for AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD

Request ID:	180717-AN0AL-0028Q	Report Created:	17-Jul-2018 8:41 AM
Charge back no:		ASIC Extract Date:	17-Jul-2018 8:41 AM
Subject:	AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD	File Number:	540546790

This Company Extract Current & Historical report contains all data received in a Company Extract Current & Historical obtained at 17 Jul 2018 8:41 AM, sourced from the Australian Securities and Investment Commission's database under section 1274A of the Corporations Act 2001. This report has been enhanced with on-screen related searching information. To report any errors or omissions regarding this report please contact Equifax.

Identity

ASIC organisation details

Name:	AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD
Name start date:	20-Sep-2002
ABN:	94102261898
ACN :	102261898
Registration date:	20-Sep-2002
Next review date:	20-Sep-2015
Status:	Deregistered
Company Type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Disclosing Entity:	No
Deregistered Date:	16-Feb-2015
Deregistered Reason:	SECTION 601AB

ASIC organisation details (04-Dec-2014 - 15-Feb-2015)

Name:	AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD
Name start date:	20-Sep-2002
ABN:	94102261898
ACN :	102261898
Registration date:	20-Sep-2002
Next review date:	20-Sep-2015
Status:	Strike-Off Action In Progress
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Document Number:	0D0362574
Disclosing Entity:	No

ASIC organisation details (26-Aug-2014 - 03-Dec-2014)

Name:	AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD
Name start date:	20-Sep-2002
ABN:	94102261898

ACN :	102261898
Registration date:	20-Sep-2002
Next review date:	20-Sep-2015
Status:	Registered
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Document Number:	028986509
Disclosing Entity:	No

ASIC organisation details (20-Jun-2013 - 25-Aug-2014)

Name:	AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD
Name start date:	20-Sep-2002
ABN:	94102261898
ACN :	102261898
Registration date:	20-Sep-2002
Next review date:	20-Sep-2015
Status:	** Under External Administration And/Or Controller Appointed **
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Document Number:	028600555
Disclosing Entity:	No

ASIC organisation details (20-Sep-2002 - 19-Jun-2013)

Name:	AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD
Name start date:	20-Sep-2002
ABN:	94102261898
ACN :	102261898
Registration date:	20-Sep-2002
Next review date:	20-Sep-2015
Status:	Registered
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Document Number:	0E7673977
Disclosing Entity:	No

Registered Office

Previous Address(es):

LM INVESTMENT
MANAGMENT LIMITED
LEVEL 4, 44A CAVILL
AVENUE
SURFERS PARADISE
QLD
4217
from:20-Sep-2002
until:16-Feb-2015
Doc No: 0E7673977

Principal Place of Business

Previous Address(es): LM INVESTMENT MANAGMENT LIMITED
LEVEL 4, 44A CAVILL AVENUE
SURFERS PARADISE
QLD
4217
from:20-Sep-2002
until:16-Feb-2015
Doc No: 0E7673977

Contact Address for ASIC use only

Previous Address(es): PO BOX 588
SURFERS PARADISE
QLD
4217
from:16-Dec-2004
until:16-Feb-2015

Section 146A of the Corporations Act 2001 states: 'A contact address is the address to which communications and notices are sent from ASIC to the company'.
This address is recorded for ASIC use only.

Org Structure

Director (1)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Previous	DRAKE, PETER CHARLES 13 ALBATROSS AVENUE NOBBY BEACH QLD 4218	20-Sep-2002	09-Jan-2015	23-Aug-1955 in NEW ZEALAND	37558848	1E2914412

Secretary (1)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Previous	DRAKE, PETER CHARLES 13 ALBATROSS AVENUE NOBBY BEACH QLD 4218	20-Sep-2002	09-Jan-2015	23-Aug-1955 in NEW ZEALAND	37558848	1E2914412

Controller (2)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Previous	THE TRUST COMPANY (PTAL) LIMITED ACN :008412913 LM INVESMENT MANAGEMENT LTD LEVEL 1, 38 CAVILL AVENUE SURFERS PARADISE QLD 4217	20-Jun-2013	26-Aug-2014	unknown in QLD		028600555

LM INVESTMENT MANAGEMENT LIMITED ACN :077208461 LEVEL 1, 38 CAVILL AVENUE SURFERS PARADISE QLD 4217	20-Jun-2013	26-Aug-2014	unknown in QLD	028600611

Previous Share structure

Class:	CLASS A SHARES
Class Code:	A
Shares issued:	100
Paid on shares issued:	$ 0.00 total
Unpaid on shares issued:	$ 0.00 total
ASIC document:	1E0549876

Previous Members(2)

Name	Class	Shares	Beneficially Held	Paid	ASIC Document
LM INVESTMENT MANAGEMENT LIMITED LEVEL 4, 44A CAVILL AVENUE SURFERS PARADISE QLD 4217 ABN:68077208461 ACN :077208461	CLASS A SHARES	100	No	Yes	1E0549876
DRAKE, PETER CHARLES 13B OCEANVIEW EASEMENT NOBBY BEACH QLD 4218	CLASS A SHARES	100	Yes	Yes	10226189M (AR 2002)

For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database.
Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Annual returns

Year	Return Due	Extension	AGM due	Extension	AGM held	Outstanding
2002	31-Jan-2003	unknown	unknown	unknown	unknown	No

When the table above states "unknown" for a date, the precise date may be available from records taken over on 1 January 1991 and held by the ASIC in paper or microfiche.

Securities (ASIC)

Definition and Notes

As of January 30th 2012 ASIC current securities and charges are no longer available from ASIC due to the Personal Properties Securities Act (PPSA).

No Charges Found

ASIC Documents

Document(s)

ASIC Doc No	Form	Description	Pages	Received	Processed	Effective
029081581	524	(T) Presentation of Accounts & Statement Presentation of Final Accounts of Controller (Other Than Receiver or Managing Controller)	10	12-Sep-2014	16-Sep-2014	26-Aug-2014
028986510	505	(X) Notification of Cessation of Controller (Other Than Receiver Or Managing Controller)	5	28-Aug-2014	01-Sep-2014	26-Aug-2014
028986509	505	(X) Notification of Cessation of Controller (Other Than Receiver Or Managing Controller)	8	28-Aug-2014	29-Sep-2014	26-Aug-2014
029016212	524	(S) Presentation of Accounts & Statement Presentation Of Accounts of Controller (Other Than Receiver or Managing Controller)	10	07-Jul-2014	15-Aug-2014	19-Jun-2014
028834784	524	(S) Presentation of Accounts & Statement Presentation Of Accounts of Controller (Other Than Receiver or Managing Controller)	9	21-Jan-2014	30-Jan-2014	19-Dec-2013
028600611	505	(T) Notification of Appt of Controller (Other Than Receiver/managing Controller)	4	25-Jun-2013	15-Jul-2013	20-Jun-2013
028600610	504	(C) Notification of Appointment of a By Appointee Re Appt Of Controller (Other Than a Receiver)	4	25-Jun-2013	01-Jul-2013	20-Jun-2013
028694196	504	(D) Notification of Appointment of a By Controller of Appt Of Controller (Other Than as Receiver)	4	24-Jun-2013	22-Jul-2013	20-Jun-2013
028600555	505	(T) Notification of Appt of Controller (Other Than Receiver/managing Controller)	4	24-Jun-2013	28-Jun-2013	20-Jun-2013
7E4207286	311	(A) Notification of Assignment of Charge	3	11-Jan-2012	11-Jan-2012	01-Nov-2011
025315811	309	(A) Notification of Details of a Charge	31	11-Dec-2008	11-Dec-2008	30-Nov-2008
1E2914412	484	(A1) Change to Company Details Change Officeholder Name Or Address	2	13-Feb-2007	13-Feb-2007	01-Feb-2007
015970451	309	(A) Notification of Details of a Charge	29	07-Jun-2005	07-Jun-2005	12-Apr-2005
1E0549876	484	Change to Company Details (O) Changes to Share Structure (N) Changes to (Members) Share Holdings	3	23-Dec-2004	23-Dec-2004	21-Dec-2004
10226189M	316	(L) Annual Return Annual Return - Proprietary Company	3	29-Jan-2003	25-Mar-2003	23-Jan-2003
0E7673977	201	(C) Application For Registration as a Proprietary Company	3	20-Sep-2002	20-Sep-2002	20-Sep-2002

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END OF REPORT

Company Extract Current & Historical for AALTO APARTMENTS PTY LTD

Request ID:	180717-AN0AL-0027R	Report Created:	17-Jul-2018 8:39 AM
Charge back no:		ASIC Extract Date:	17-Jul-2018 8:39 AM
Subject:	AALTO APARTMENTS PTY LTD	File Number:	742051533

This Company Extract Current & Historical report contains all data received in a Company Extract Current & Historical obtained at 17 Jul 2018 8:39 AM, sourced from the Australian Securities and Investment Commission's database under section 1274A of the Corporations Act 2001. This report has been enhanced with on-screen related searching information. To report any errors or omissions regarding this report please contact Equifax.

Identity

ASIC organisation details

Name:	AALTO APARTMENTS PTY LTD
Name start date:	04-Aug-2011
ABN:	70152486630
ACN :	152486630
Registration date:	04-Aug-2011
Next review date:	04-Aug-2015
Status:	Deregistered
Company Type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Disclosing Entity:	No
Deregistered Date:	18-Jan-2015
Deregistered Reason:	SECTION 601AB

ASIC organisation details (07-Nov-2014 - 17-Jan-2015)

Name:	AALTO APARTMENTS PTY LTD
Name start date:	04-Aug-2011
ABN:	70152486630
ACN :	152486630
Registration date:	04-Aug-2011
Next review date:	04-Aug-2015
Status:	Strike-Off Action In Progress
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Document Number:	0D0356597
Disclosing Entity:	No

ASIC organisation details (04-Aug-2011 - 06-Nov-2014)

Name:	AALTO APARTMENTS PTY LTD
Name start date:	04-Aug-2011
ABN:	70152486630
ACN :	152486630
Registration date:	04-Aug-2011

Next review date:	04-Aug-2015
Status:	Registered
Company type:	Australian Proprietary Company
Class:	Limited By Shares
Subclass:	Proprietary Company
Registered in:	QLD
Document Number:	1E7633516
Disclosing Entity:	No

Registered Office

Previous Address(es):
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE
QLD
4217
from:04-Aug-2011
until:18-Jan-2015
Doc No: 1E7633516

Principal Place of Business

Previous Address(es):
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE
QLD
4217
from:04-Aug-2011
until:18-Jan-2015
Doc No: 1E7633516

Contact Address for ASIC use only

Previous Address(es):

PO BOX 588
SURFERS PARADISE
QLD
4217
from:17-Feb-2012
until:18-Jan-2015

PO BOX 315
SURFERS PARADISE
QLD
4217
from:16-Dec-2011
until:17-Feb-2012

Section 146A of the Corporations Act 2001 states: 'A contact address is the address to which communications and notices are sent from ASIC to the company'.
This address is recorded for ASIC use only.

Org Structure

Director (1)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Previous	DRAKE, PETER CHARLES 13 ALBATROSS AVENUE NOBBY BEACH QLD 4218	04-Aug-2011	18-Jan-2015	23-Aug-1955 in WHANGARA, NEW ZEALAND	37558848	1E7633516

Secretary (1)

	Name	Appointed	Ceased	DOB	File Number	ASIC Document
Previous	DRAKE, PETER CHARLES 13 ALBATROSS AVENUE NOBBY BEACH QLD 4218	15-Dec-2011	18-Jan-2015	23-Aug-1955 in WHANGARA, NEW ZEALAND	37558848	7E4165467

Previous Share structure

Class:	ORDINARY SHARES
Class Code:	ORD
Shares issued:	100
Paid on shares issued:	$ 100.00 total
Unpaid on shares issued:	$ 0.00 total
ASIC document:	1E7633516

Previous Members(1)

Name	Class	Shares	Beneficially Held	Paid	ASIC Document
DRAKE, PETER CHARLES 13 ALBATROSS AVENUE NOBBY BEACH QLD 4218	ORDINARY SHARES	100	Yes	Yes	1E7633516

For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database.
Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Securities (ASIC)

Definition and Notes

As of January 30th 2012 ASIC current securities and charges are no longer available from ASIC due to the Personal Properties Securities Act (PPSA).

No Charges Found

ASIC Documents

Document(s)

ASIC Doc No	Form	Description	Pages	Received	Processed	Effective
7E4165467	484	(E) Change to Company Details Appointment or Cessation of A Company Officeholder	2	16-Dec-2011	16-Dec-2011	16-Dec-2011
1E7633516	201	(C) Application For Registration as a Proprietary Company	3	04-Aug-2011	04-Aug-2011	04-Aug-2011

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END OF REPORT

LOAN AGREEMENT

LM INVESTMENT MANAGEMENT LTD ACN 077 208 461 AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND ("LENDER")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 ("BORROWER")

LM Investment Management Ltd
Level 4
9 Beach Road
Surfers Paradise Q 4217

This **LOAN AGREEMENT** is made the 19 day of January 2005

PARTIES:

LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Lender")

Australian International Investment Services Pty Ltd ACN 102 261 898 of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Borrower")

INTRODUCTION:

A. The Borrower has requested the Loan from the Lender.

B. The Lender has agreed to make the Loan available to the Borrower on the terms and conditions of this Agreement.

IT IS AGREED:

1. **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Unless the context otherwise requires:

(a) **"Advance"** means any drawing under this Deed and where appropriate the amount of each Advance;

(b) **"Advance Date"** means in respect of each Advance the date on which that Advance is made;

(c) **"Approved Purpose"** means the Purpose described in Item 1 of the Schedule;

(d) **"Borrower"** means the party named in Item 2 of the Schedule;

(e) "**Business Day**" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

(f) **"Commencement Date"** means the date in Item 4 of the Schedule;

(g) "**Event of Default**" means any event or occurrence mentioned in clause 9;

(h) **"Expiry Date"** means the date in Item 5 of the Schedule;

(i) **"Interest Rate"** means the interest rate as set out in Item 6 of the Schedule;

(j) **"Lender"** means the party named in Item 7 of the Schedule;

(k) **"Loan"** means the sum listed in Item 8 of the Schedule which may be drawn down by way of one or more Advances;

(l) **"Schedule"** means the Schedule attached to this agreement;

(m) "**Secured Money**" includes the Loan and all other money which the Borrower agrees to pay under any provision of this agreement including interest.

1.2 Interpretation

(a) Reference to:

(i) one gender includes each other gender;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) a party includes the party's executors, administrators, successors and permitted assigns;

(v) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes :

(1) that Statutory Provision as amended or re-enacted from time to time; and

(2) a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vi) any document or agreement (including this agreement) includes the document or agreement as amended, novated, supplemented or replaced from time to time; and

(vii) "month" means a calendar month.

(b) All monetary amounts are in Australian dollars, unless otherwise stated.

(c) If a party consists of more than one person, this agreement binds them jointly and each of them severally.

(d) Headings are for convenience only and do not form part of this agreement or affect its interpretation.

(e) "Including" and similar expressions are not words of limitation.

(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(g) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

(h) A "corporation" or a "related body corporate" has the meaning given to it in the *Corporations Act 2001.*

(i) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

2. PROVISION OF THE LOAN

When Loan to be Provided

So long as an Event of Default has not occurred, and subject to the provisions of this agreement, the Lender will provide the Loan, on or after the Commencement Date. If the parties agree, the Loan may be provided in two or more instalments.

3. PAYMENT OF INTEREST

3.1 Interest to be Paid on the Expiry Date

(a) The Borrower must pay interest to the Lender on each Advance at the Interest Rate on the Expiry Date.

(b) Without prejudice to the obligation to pay, if the Borrower fails to pay any money on the due date or if the Lender pays money or incurs cost or expense in relation to this deed, the Borrower must pay interest to the Lender on that amount computed from the due date or the date the Lender pays the money or incurs the cost or expense whichever first occurs. Interest will accrue on daily balances at the Interest Rate.

3.2 Computation of Interest

Interest on Advances drawn will accrue from day to day and will be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

3.3 Rate of Interest Payable on Judgment

If the Borrower's liability to pay or repay the Secured Money becomes merged in any judgment, order, deed or other thing, the Borrower must pay interest on the amount owing from time to time under that judgment, order, deed or other thing at the higher of the rates:

(a) payable under this agreement; or

(b) fixed by or payable under that judgment, order, deed or other thing.

4. REPAYMENT

4.1 Of Loan on Expiry Date

The Borrower must repay the Loan on the Expiry Date.

4.2 Early Repayment of Loan

The Borrower may, on 1 month's written notice to the Lender, and with the consent of the Lender, repay the Loan in full before the Expiry Date.

4.3 Effect on Later Repayment Instalments

A repayment earlier or larger than provided by this agreement does not affect the obligation of the Borrower to pay subsequent Repayment Instalments of the amount and at the times provided by this agreement, but only accelerates the date by which the full amount of the Loan is repaid.

4.4 Of Other Secured Money

The Borrower must pay all Secured Money other than the Loan on demand or if demand is not made on the Expiry Date.

5. NO DEDUCTIONS

All money payable by the Borrower must be paid in full without any deduction on account of any income or other taxes or charges present or future. If the Borrower is compelled by law to deduct any taxes or charges the Borrower must pay to the Lender such further sum as will result in the receipt by the Lender of the full amount payable.

6. GENERAL COVENANTS BY BORROWER IN RELATION TO LOAN

6.1 Borrower to Provide Financial Information

The Borrower must deliver to the Lender all financial and other information which the Lender requires from time to time.

6.2 Borrower to Reimburse the Lender

The Borrower must pay to the Lender on demand:

- any costs and outlays which were incurred by the Lender to establish this Loan Facility; and
- any money which the Lender may see fit to pay to remedy any default of the Borrower.

6.3 Use of Loan

The Borrower may only use the Loan for the Approved Purpose.

7. APPLICATION OF MONEY

Money received by the Lender from the Borrower may be applied towards interest or other Secured Money at the Lender's discretion.

8. WARRANTIES

The Borrower warrants that:

(a) it has fully disclosed in writing to the Lender all facts relating to the Borrower, its related bodies corporate, and anything in connection with them that are material to the assessment of the nature and amount of the risk undertaken by the Lender in entering into this agreement;

(b) no action, proceeding or arbitration is pending or threatened against the Borrower before any court, administrative tribunal or arbitrator which could or might result in any material adverse change in the business assets or credit of the Borrower; and

(c) all financial statements and information furnished by the Borrower to the Lender are complete and correct and there are no other material facts or considerations the omission of which would render any of the information misleading.

9. DEFAULT

9.1 Lender's Rights on Default

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice:

(a) all of the Secured Money immediately becomes payable; and

(b) the Lender may decline to provide any part of the Loan which has not already been provided.

9.2 Events of Default

The following are Events of Default:

(a) The Borrower fails to request the Lender in writing for the full amount of the Loan;

(b) the Borrower fails to pay any of the Secured Money when due;

(c) the Borrower breaches a term of:

(i) this agreement; or

(ii) any other agreement, instrument or document between the Borrower and the Lender;

(d) any warranty or representation made or deemed to have been made under this agreement or any other written agreement between the Lender and the Borrower proves to have been untrue or misleading when made or deemed to have been made;

(e) this agreement becomes wholly or partly void, voidable or unenforceable;

(f) an order for payment is made or a judgment is entered against the Borrower, any related body corporate of the Borrower or any guarantor of the Secured Money or any part of it and is not satisfied within 7 days;

(g) any creditor of the Borrower levies, or attempts to levy, any distress or execution against any property of the Borrower;

(h) the Borrower or any guarantor, being a body corporate, becomes an externally-administered body corporate under the *Corporations Act 2001*;

(i) steps are taken by any person towards making the Borrower or any guarantor an externally-administered body corporate;

(j) the Borrower is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;

(k) a person holding a security interest in assets of the Borrower enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or

(l) the Borrower dies or becomes lunatic or insane or a protected person within the meaning of any relevant legislation in that behalf.

10. TRUST PROVISIONS

10.1 Borrower

Where a Borrower has executed this agreement in its capacity as trustee of a trust ("**Trust**"), whether or not the fact that the Borrower is a trustee is disclosed to the Lender, the Borrower acknowledges that this agreement is binding on the Borrower personally and in its capacity as trustee of the Trust and that the Lender's right of recourse extends to both the assets of the Borrower personally and the assets of the Trust.

10.2 Lender

(a) The Lender enters into this agreement, and the Borrower acknowledges it is aware that the Lender enters into this agreement, only in its capacity as trustee of the LM Managed Performance Fund ("**the Fund**"), pursuant to the Constitution of the Fund ("**the Constitution**") and in no other capacity and the Borrower is aware of the limited scope of the Lender's obligations and powers under such Trust.

(b) A liability arising under or in connection with this agreement is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this agreement.

(c) The parties other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of or affecting the Lender.

(d) The provisions of this clause 10.2 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution or other constitution documents, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of that Fund, as a result of the Lender's fraud, negligence or wilful default.

(e) Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or default under this document.

(f) The Lender's determination as to whether an obligation otherwise imposed upon it under this document is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 10.2(d).

(h) The Lender is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

(i) A failure by the Lender to comply with or a breach by the Lender of any of its obligations under this agreement will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(i) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(ii) was in accordance with a lawful court order or direction or otherwise required by law.

(j) All of the terms, clauses and conditions of this agreement are subject to this clause 10.2.

11. MISCELLANEOUS PROVISIONS

11.1 Inconsistencies

So far as is possible, this agreement must be read together with any and all other agreements or documents entered into in connection with this agreement and, in the event of inconsistency, the provision most favourable to or which confers the greatest benefit on the Lender prevails.

11.2 Certificates

A certificate purporting to be signed by the Lender or an officer of or agent for the Lender stating:

(a) the amount owing or contingently owing by the Borrower at a certain date under this agreement;

(b) the rate or rates of interest which are applicable to the Secured Money or any part of it;

(c) that a particular Event of Default has occurred; or

(d) any other act matter or thing arising under this agreement

is for all purposes prima facie evidence of the facts stated in the certificate.

11.3 Lender's Power to Assign

The Lender may assign the benefit of this agreement.

11.4 Time of the Essence

Time is of the essence of the Borrower's obligations under this agreement unless otherwise agreed in writing by the Lender.

11.5 Further Assurance

The Borrower must promptly at the Borrower's own cost do all things (including executing all documents) necessary or desirable to give full effect to this agreement.

11.6 Severability

If anything in this agreement is unenforceable, illegal or void then it is severed and the rest of this agreement remains in force.

11.7 Entire Agreement

This agreement represents the entire agreement between the parties and all prior or contemporaneous representations, statements and agreements (if any) made by the Lender or the Lender's representatives are merged in this agreement.

11.8 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

11.9 Waiver Excluded

(a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

(c) A waiver is not effective unless it is in writing.

(d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

11.10 Costs and Expenses

The Borrower must pay or reimburse the Lender on demand for:

(a) the costs, charges and expenses of the Lender in connection with the negotiation, preparation, execution, stamping and completion of this agreement and of any forms required by any statute or regulation to be lodged with any registry;

(b) the costs, charges and expenses of the Lender or any attorney of the Lender in connection with :

(i) any consent, exercise or non-exercise of any rights, waiver, variation, release or discharge in connection with or of this agreement; and

(ii) the contemplated or actual enforcement or preservation of any rights under this agreement including, without limitation, any expenses incurred in retaining any independent consultant or other person to evaluate any matter of concern and in the case of the Lender its administration costs in connection with those events; and

(c) stamp duty and other taxes payable in connection with this agreement or in connection with any payment, receipt or other transaction contemplated by this agreement;

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

11.11 Notices

(a) A notice or other communication connected with this agreement ("**Notice**") has no legal effect unless it is in writing and:

(i) delivered; or

(ii) sent by post, postage prepaid

to the address of the addressee set out in this agreement or subsequently notified from time to time.

(b) A Notice is deemed given and received:

(i) if delivered, upon delivery; or

(ii) if mailed, on the expiration of 2 Business Days (at the address to which it is mailed) after mailing.

(c) A Notice by the Lender may be given by any officer or agent of the Lender.

12. **GOVERNING LAW AND JURISDICTION**

12.1 This agreement is governed by the laws of Queensland.

12.2 The parties submit to the non-exclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia.

EXECUTED as a deed on 2004.

EXECUTED by **Australian International Investment Services Pty Ltd ACN 102 261** 898 as Borrower in accordance with Section 127 of the Corporations Law with the authority of the Sole Director and Secretary)

.....
Sole Director & Secretary

.....
Witness

EXECUTED by **LM Investment Management Ltd ACN 077 208** 461 as Lender in accordance with Section 127 of the Corporations Law with the authority of the Directors)

.....
Director

.....
Director/Secretary

.....
Witness

SCHEDULE

Item 1: **Approved Purpose**

Purchase and development of land described as Block 1, Section 22, District/Division of Phillip, Volume 1541 Folio 73 Australian Capital Territory

Item 2: **Borrower**

Australian International Investment Services Pty Ltd ACN 102 261 898

Item 3: Intentionally blank

Item 4: **Commencement Date**

23 December 2004

Item 5: **Expiry Date**

22 December 2008

Item 6: **Interest Rate**

10%

Item 7: **Lender**

LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund

Item 8: **Loan**

$1,140,000

Item 9: Intentionally blank

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
("the Borrower")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
("the Lender")

Deed Of Variation Of Loan Agreement And Consent By Guarantor

LM INVESTMENT MANAGEMENT LTD
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE (07) 5584 4500
FAX (07) 5592 2505

THIS DEED OF VARIATION is made on the date specified in **Item 1** of the **Schedule**

BETWEEN: **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461**
as Trustee for the LM Managed Performance Fund
Of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland
("the Lender")

AND: The Party or Parties named and described in Item 2 of the Schedule ("the Borrower")

AND: The Party or Parties named and described in Item 3 of the Schedule ("the Guarantor")

RECITALS:

A. In the construction of this Deed or any covenant or other provision contained or provided herein, the following expressions shall have the meanings respectively assigned to them unless the context otherwise requires:

(a) "the Principal Security" shall mean the Loan Agreement described in Item 4 of the Schedule;

(b) "the Guarantee" shall mean the Deed of Guarantee and Indemnity described in Item 5 of the Schedule;

(c) "the Schedule" shall mean the Schedule contained in this Deed;

(d) any expression contained in the Principal Security and used in this Deed shall have the same meaning as is ascribed to that expression in the Principal Security, save as is varied and/or amended herein.

B. Pursuant to the provisions of the Principal Security, the Lender has agreed to provide to the Borrower a loan facility on the terms and subject to the covenants and conditions therein set forth.

C. The Borrower and the Guarantor have requested the Lender to vary the terms of the Principal Security in the manner set forth in this Deed; and

D. The Lender has agreed to accede to the abovementioned request SUBJECT TO the provisions hereof and CONDITIONAL UPON (inter alia) the execution and delivery of these presents by the Borrower and the Guarantor.

ALL OF WHICH THE BORROWER AND THE GUARANTOR DO HEREBY ACKNOWLEDGE AND ADMIT

NOW THIS DEED WITNESSES that **IN CONSIDERATION** of these presents, the Borrower and the Guarantor **DO HEREBY COVENANT AND AGREE** with the Lender as follows:-

1. VARIATION OF PRINCIPAL SECURITY:

The Borrower and the Guarantor **HEREBY JOINTLY AND SEVERALLY ACKNOWLEDGE AGREE AND CONSENT** to the Principal Security being **VARIED** in the manner specified in Item 6 of the Schedule.

2. AFFIRMATION OF AGREEMENTS:

The Borrower **HEREBY REAFFIRMS ITS AGREEMENTS AND OBLIGATIONS** to the Lender under and pursuant to the Principal Security as are varied by this Deed **AND** shall duly and punctually pay to the Lender all moneys due, owing and payable under the Principal Security and all securities collateral to the Principal Security at the times and in the manner provided for therein and as amended by this Deed **AND** shall duly and punctually observe and perform all the covenants, conditions and obligations expressed or implied in the Principal Security or in any security or other instrument now or hereafter expressed to be collateral to the Principal Security **AND** it is **HEREBY DECLARED** that each covenant, condition and obligation contained in the Principal Security is to be incorporated in and to form part of this Deed as if each covenant, condition and obligation thereof had been set out in full in this Deed.

3. COSTS AND CHARGES:

The Borrower shall pay to the Lender forthwith on demand the legal costs on a Solicitor and own client basis of and incidental to the negotiation, preparation, execution, registration, enforcement and attempted enforcement of this Deed, the Principal Security and all securities collateral to the Principal Security **AND** further agrees with the Lender to indemnify and keep indemnified the Lender against any duty payable in connection with any advances made or to be made under the Principal Security or this Deed from time to time.

4. SUPPLEMENTARY AGREEMENT:

(a) This Deed shall be deemed to be collateral with and supplemental to the Principal Security;

(b) Nothing contained in this Deed shall be deemed to prejudice or affect any of the rights, powers and remedies of the Lender under the Principal Security and under all or any other securities and documents collateral thereto and they and each of them shall remain in full force and effect except to the extent that same are hereby expressly varied; and

(c) The provisions of the Principal Security shall apply mutatis mutandis to this Deed.

5. GUARANTOR'S CONSENT AND COVENANTS:

(a) **IN CONSIDERATION** of these presents, the Guarantor **HEREBY CONSENTS** to the variation of the Principal Security as provided by this Deed; and

(b) The Guarantor **HEREBY COVENANTS AND AGREES** with the Lender that the liabilities and obligations of the Guarantor pursuant to the Guarantee shall also extend and apply to the liabilities and obligations hereunder of the Borrower in the same manner and to the same extent as if the terms and covenants of this Deed had originally been contained in the Principal Security **AND** nothing herein contained shall abrogate or otherwise detract from the liability of the Guarantor pursuant to the Guarantee or otherwise prejudicially affect any provision contained therein.

6. SEVERANCE:

In the event that any provision or provisions of this Deed are invalid for whatever reason, the provisions of this Deed shall remain in full force and effect except only to the extent of such invalidity and this Deed shall be deemed to have been amended so as to remove such invalid provision. In the further event that any right, power or privilege of the Lender created hereunder shall at any time be exercisable only upon compliance with the provisions of any Act, then any such right, power or privilege of the Bank shall be exercisable upon due compliance with the provisions of such Act notwithstanding that same shall be inconsistent with the provisions of this Deed which, except only to the extent of such inconsistency, shall remain in full force and effect in all respects.

7. JOINT AND SEVERAL OBLIGATIONS:

Every covenant expressed or implied in this Deed by which more persons than one covenant shall, unless the contrary intention is expressed, bind such persons and every two or greater number of them jointly and each of them severally.

8. TIME OF THE ESSENCE:

In this Deed, the Borrower and the Guarantor **ACKNOWLEDGE AND AGREE** that time is of the essence insofar as it relates to the obligations and agreements of the Borrower and/or the Guarantor respectively to the Lender.

9. RECEIPT OF DOCUMENTS:

The Borrower and the Guarantor and each of them severally **HEREBY ACKNOWLEDGE** having received a copy of this Deed at the date of execution hereof **AND FURTHER ACKNOWLEDGE** that they have read and understand the nature and effect of this Deed.

10. INCONSISTENCY:

If there is any inconsistency between the provisions of this Deed and the Principal Security, then the provision of this Deed shall prevail to the extent of such inconsistency.

11. LIMIT OF LIABILITY – LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461

(a) LM Investment Management Limited ACN 077 208 461 ("LM") enters into this agreement and each other Security (if any), only in its capacity as Trustee for the LM Managed Performance Fund, pursuant to the Constitution of the Trust ("the Constitution") and in no other capacity and the Borrower is aware of the limited scope of LM's obligations and powers under such Trust;

(b) A liability arising under or in connection with this agreement is limited to and can be enforced against LM only to the extent to which it can be satisfied out of property of the Trust out of which LM is actually indemnified for the liability. This limitation of LM's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this agreement.

(c) The parties other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of or affecting LM.

(d) The provisions of this clause do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Trust's Constitution or other constitution documents, or by operation of law there is a reduction in the extent of LM's indemnification out of the assets of that Trust, as a result of LM's fraud, negligence or wilful default.

(e) Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or default under this document.

(f) LM's determination as to whether an obligation otherwise imposed upon it under this document is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause (d).

(h) LM is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

(i) A failure by LM to comply with or a breach by LM of any of its obligations under this agreement will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

a. arose as a result of a breach by a person other than LM where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or

b. was in accordance with a lawful court order or direction or otherwise required by law.

(j) All of the terms, clauses and conditions of this agreement are subject to this clause. .

SCHEDULE

ITEM

1. The Date ..... 11 April 2005

2. The Borrower:

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898 of C/- Level 4, 9 Beach Road, Surfers Paradise 4217

3. The Guarantor:
Not applicable

4. The Principal Security:

Loan Agreement dated 19 January 2005

5. The Guarantee:

Not applicable

6. Variation of Principal Security:

The Principal Security is **HEREBY VARIED** as follows:

(a) That the Loan Amount specified in Item 4 of the Schedule to the Principal Security is hereby increased to Four Million Two Hundred Thousand Dollars ($4,200,000.00)

(b) That in all other respects the Borrower will observe and perform its obligations under the terms, conditions, covenants and stipulations contained in the Principal Security at the times and in the manner provided for therein or as otherwise varied or provided by this Deed;

(c) That the variation to the Principal Security contained in this Deed will be effective as and from the 11 day of April 2005.

IN WITNESS WHEREOF the parties hereto have executed this Deed on the day and year hereinbefore wr

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director/Secretary

.....
Full name of Director/Secretary

.....
Signature of Director

PETER CHARLES DRAKE
Full name of Director

PD ONLY

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director/Secretary

Peter Charles Drake
Full name of Director/Secretary

.....
Signature of Director

Lisa Maree D'Arcy
Full name of Director

PD
LD

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
("the Borrower")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
("the Lender")

Deed Of Variation Of Loan Agreement And Consent By Guarantor

LM INVESTMENT MANAGEMENT LTD
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE (07) 5584 4500
FAX (07) 5592 2505

THIS DEED OF VARIATION is made on the date specified in **Item 1** of the **Schedule**

BETWEEN: **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461**
as Trustee for the LM Managed Performance Fund
Of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland
("the Lender")

AND: The Party or Parties named and described in Item 2 of the Schedule ("the Borrower")

AND: The Party or Parties named and described in Item 3 of the Schedule ("the Guarantor")

RECITALS:

A. In the construction of this Deed or any covenant or other provision contained or provided herein, the following expressions shall have the meanings respectively assigned to them unless the context otherwise requires:

(a) "the Principal Security" shall mean the Loan Agreement described in Item 4 of the Schedule;

(b) "the Guarantee" shall mean the Deed of Guarantee and Indemnity described in Item 5 of the Schedule;

(c) "the Schedule" shall mean the Schedule contained in this Deed;

(d) any expression contained in the Principal Security and used in this Deed shall have the same meaning as is ascribed to that expression in the Principal Security, save as is varied and/or amended herein.

B. Pursuant to the provisions of the Principal Security, the Lender has agreed to provide to the Borrower a loan facility on the terms and subject to the covenants and conditions therein set forth.

C. The Borrower and the Guarantor have requested the Lender to vary the terms of the Principal Security in the manner set forth in this Deed; and

D. The Lender has agreed to accede to the abovementioned request SUBJECT TO the provisions hereof and CONDITIONAL UPON (inter alia) the execution and delivery of these presents by the Borrower and the Guarantor.

ALL OF WHICH THE BORROWER AND THE GUARANTOR DO HEREBY ACKNOWLEDGE AND ADMIT

NOW THIS DEED WITNESSES that **IN CONSIDERATION** of these presents, the Borrower and the Guarantor **DO HEREBY COVENANT AND AGREE** with the Lender as follows:-

1. VARIATION OF PRINCIPAL SECURITY:

The Borrower and the Guarantor **HEREBY JOINTLY AND SEVERALLY ACKNOWLEDGE AGREE AND CONSENT** to the Principal Security being **VARIED** in the manner specified in Item 6 of the Schedule.

2. AFFIRMATION OF AGREEMENTS:

The Borrower **HEREBY REAFFIRMS ITS AGREEMENTS AND OBLIGATIONS** to the Lender under and pursuant to the Principal Security as are varied by this Deed **AND** shall duly and punctually pay to the Lender all moneys due, owing and payable under the Principal Security and all securities collateral to the Principal Security at the times and in the manner provided for therein and as amended by this Deed **AND** shall duly and punctually observe and perform all the covenants, conditions and obligations expressed or implied in the Principal Security or in any security or other instrument now or hereafter expressed to be collateral to the Principal Security **AND** it is **HEREBY DECLARED** that each covenant, condition and obligation contained in the Principal Security is to be incorporated in and to form part of this Deed as if each covenant, condition and obligation thereof had been set out in full in this Deed.

3. COSTS AND CHARGES:

The Borrower shall pay to the Lender forthwith on demand the legal costs on a Solicitor and own client basis of and incidental to the negotiation, preparation, execution, registration, enforcement and attempted enforcement of this Deed, the Principal Security and all securities collateral to the Principal Security **AND** further agrees with the Lender to indemnify and keep indemnified the Lender against any duty payable in connection with any advances made or to be made under the Principal Security or this Deed from time to time.

4. SUPPLEMENTARY AGREEMENT:

(a) This Deed shall be deemed to be collateral with and supplemental to the Principal Security;

(b) Nothing contained in this Deed shall be deemed to prejudice or affect any of the rights, powers and remedies of the Lender under the Principal Security and under all or any other securities and documents collateral thereto and they and each of them shall remain in full force and effect except to the extent that same are hereby expressly varied; and

(c) The provisions of the Principal Security shall apply mutatis mutandis to this Deed.

5. GUARANTOR'S CONSENT AND COVENANTS:

(a) **IN CONSIDERATION** of these presents, the Guarantor **HEREBY CONSENTS** to the variation of the Principal Security as provided by this Deed; and

(b) The Guarantor **HEREBY COVENANTS AND AGREES** with the Lender that the liabilities and obligations of the Guarantor pursuant to the Guarantee shall also extend and apply to the liabilities and obligations hereunder of the Borrower in the same manner and to the same extent as if the terms and covenants of this Deed had originally been contained in the Principal Security **AND** nothing herein contained shall abrogate or otherwise detract from the liability of the Guarantor pursuant to the Guarantee or otherwise prejudicially affect any provision contained therein.

6. SEVERANCE:

In the event that any provision or provisions of this Deed are invalid for whatever reason, the provisions of this Deed shall remain in full force and effect except only to the extent of such invalidity and this Deed shall be deemed to have been amended so as to remove such invalid provision. In the further event that any right, power or privilege of the Lender created hereunder shall at any time be exercisable only upon compliance with the provisions of any Act, then any such right, power or privilege of the Bank shall be exercisable upon due compliance with the provisions of such Act notwithstanding that same shall be inconsistent with the provisions of this Deed which, except only to the extent of such inconsistency, shall remain in full force and effect in all respects.

7. JOINT AND SEVERAL OBLIGATIONS:

Every covenant expressed or implied in this Deed by which more persons than one covenant shall, unless the contrary intention is expressed, bind such persons and every two or greater number of them jointly and each of them severally.

8. TIME OF THE ESSENCE:

In this Deed, the Borrower and the Guarantor **ACKNOWLEDGE AND AGREE** that time is of the essence insofar as it relates to the obligations and agreements of the Borrower and/or the Guarantor respectively to the Lender.

9. RECEIPT OF DOCUMENTS:

The Borrower and the Guarantor and each of them severally **HEREBY ACKNOWLEDGE** having received a copy of this Deed at the date of execution hereof **AND FURTHER ACKNOWLEDGE** that they have read and understand the nature and effect of this Deed.

10. INCONSISTENCY:

If there is any inconsistency between the provisions of this Deed and the Principal Security, then the provision of this Deed shall prevail to the extent of such inconsistency.

11. LIMIT OF LIABILITY – LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461

(a) LM Investment Management Limited ACN 077 208 461 ("LM") enters into this agreement and each other Security (if any), only in its capacity as Trustee for the LM Managed Performance Fund, pursuant to the Constitution of the Trust ("the Constitution") and in no other capacity and the Borrower is aware of the limited scope of LM's obligations and powers under such Trust;

(b) A liability arising under or in connection with this agreement is limited to and can be enforced against LM only to the extent to which it can be satisfied out of property of the Trust out of which LM is actually indemnified for the liability. This limitation of LM's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this agreement.

(c) The parties other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of or affecting LM.

(d) The provisions of this clause do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Trust's Constitution or other constitution documents, or by operation of law there is a reduction in the extent of LM's indemnification out of the assets of that Trust, as a result of LM's fraud, negligence or wilful default.

(e) Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or default under this document.

(f) LM's determination as to whether an obligation otherwise imposed upon it under this document is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause (d).

(h) LM is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

(i) A failure by LM to comply with or a breach by LM of any of its obligations under this agreement will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

a. arose as a result of a breach by a person other than LM where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or

b. was in accordance with a lawful court order or direction or otherwise required by law.

(j) All of the terms, clauses and conditions of this agreement are subject to this clause. .

SCHEDULE

ITEM

1. The Date 30 November 2008

2. The Borrower:

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
C/- Level 4, 9 Beach Road, Surfers Paradise 4217

3. The Guarantor:
Not applicable

4. The Principal Security:

Loan Agreement dated 19 January 2005 as varied by Deed of Variation of Loan Agreement dated 11 April, 2005.

5. The Guarantee:

Not applicable

6. Variation of Principal Security:

The Principal Security is **HEREBY VARIED** as follows:

(a) That the Expiry Date specified in Item 5 of the Schedule to the Principal Security is hereby varied from 22 December 2008 to 1 May 2009;

(b) That the Borrower will provide to the Lender as additional security for this loan:

a. A Second Registered Fixed and Floating Charge by Australian International Investment Services Pty Ltd A.C.N. 102 261 898 as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of Australian International Investment Services Pty Ltd A.C.N. 102 261 898 of whatsoever nature and kind and wheresoever situated, present and future.

b. A Second Registered Mortgage intended to be executed on the same date as this Agreement by Australian International Investment Services Pty Ltd ACN 102 261 898 as the mortgagor and the Lender as the Mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(c) That in all other respects the Borrower will observe and perform its obligations under the terms, conditions, covenants and stipulations contained in the Principal Security at the times and in the manner provided for therein or as otherwise varied or provided by this Deed;

(d) That the variation to the Principal Security contained in this Deed will be effective as and from the 22nd day of December 2008.

IN WITNESS WHEREOF the parties hereto have executed this Deed on the day and year hereinbefore written.

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director

PETER CHARLES DRAKE, Sole Director
Full name of Director

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director/Secretary

Peter Charles Drake
Full name of Director/Secretary

.....
Signature of Director

Lisa Maree D'Arcy
Full name of Director

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
("the Borrower")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 as Trustee of the LM Managed Performance Fund
("the Lender")

Deed Of Variation Of Loan Agreement And Consent By Guarantor

LM INVESTMENT MANAGEMENT LTD
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE (07) 5584 4500
FAX (07) 5592 2505

THIS DEED OF VARIATION is made on the date specified in **Item 1** of the **Schedule**

BETWEEN: **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461**
as Trustee for the LM Managed Performance Fund
Of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland
("the Lender")

AND: The Party or Parties named and described in Item 2 of the Schedule ("the Borrower")

AND: The Party or Parties named and described in Item 3 of the Schedule ("the Guarantor")

RECITALS:

A. In the construction of this Deed or any covenant or other provision contained or provided herein, the following expressions shall have the meanings respectively assigned to them unless the context otherwise requires:

(a) "the Principal Security" shall mean the Loan Agreement described in Item 4 of the Schedule;

(b) "the Guarantee" shall mean the Deed of Guarantee and Indemnity described in Item 5 of the Schedule;

(c) "the Schedule" shall mean the Schedule contained in this Deed;

(d) any expression contained in the Principal Security and used in this Deed shall have the same meaning as is ascribed to that expression in the Principal Security, save as is varied and/or amended herein.

B. Pursuant to the provisions of the Principal Security, the Lender has agreed to provide to the Borrower a loan facility on the terms and subject to the covenants and conditions therein set forth.

C. The Borrower and the Guarantor have requested the Lender to vary the terms of the Principal Security in the manner set forth in this Deed; and

D. The Lender has agreed to accede to the abovementioned request SUBJECT TO the provisions hereof and CONDITIONAL UPON (inter alia) the execution and delivery of these presents by the Borrower and the Guarantor.

ALL OF WHICH THE BORROWER AND THE GUARANTOR DO HEREBY ACKNOWLEDGE AND ADMIT

NOW THIS DEED WITNESSES that **IN CONSIDERATION** of these presents, the Borrower and the Guarantor **DO HEREBY COVENANT AND AGREE** with the Lender as follows:-

1. **VARIATION OF PRINCIPAL SECURITY:**

The Borrower and the Guarantor **HEREBY JOINTLY AND SEVERALLY ACKNOWLEDGE AGREE AND CONSENT** to the Principal Security being **VARIED** in the manner specified in Item 6 of the Schedule.

2. **AFFIRMATION OF AGREEMENTS:**

The Borrower **HEREBY REAFFIRMS ITS AGREEMENTS AND OBLIGATIONS** to the Lender under and pursuant to the Principal Security as are varied by this Deed **AND** shall duly and punctually pay to the Lender all moneys due, owing and payable under the Principal Security and all securities collateral to the Principal Security at the times and in the manner provided for therein and as amended by this Deed **AND** shall duly and punctually observe and perform all the covenants, conditions and obligations expressed or implied in the Principal Security or in any security or other instrument now or hereafter expressed to be collateral to the Principal Security **AND** it is **HEREBY DECLARED** that each covenant, condition and obligation contained in the Principal Security is to be incorporated in and to form part of this Deed as if each covenant, condition and obligation thereof had been set out in full in this Deed.

3. **COSTS AND CHARGES:**

The Borrower shall pay to the Lender forthwith on demand the legal costs on a Solicitor and own client basis of and incidental to the negotiation, preparation, execution, registration, enforcement and attempted enforcement of this Deed, the Principal Security and all securities collateral to the Principal Security **AND** further agrees with the Lender to indemnify and keep indemnified the Lender against any duty payable in connection with any advances made or to be made under the Principal Security or this Deed from time to time.

4. **SUPPLEMENTARY AGREEMENT:**

(a) This Deed shall be deemed to be collateral with and supplemental to the Principal Security;

(b) Nothing contained in this Deed shall be deemed to prejudice or affect any of the rights, powers and remedies of the Lender under the Principal Security and under all or any other securities and documents collateral thereto and they and each of them shall remain in full force and effect except to the extent that same are hereby expressly varied; and

(c) The provisions of the Principal Security shall apply mutatis mutandis to this Deed.

5. **GUARANTOR'S CONSENT AND COVENANTS:**

(a) **IN CONSIDERATION** of these presents, the Guarantor **HEREBY CONSENTS** to the variation of the Principal Security as provided by this Deed; and

(b) The Guarantor **HEREBY COVENANTS AND AGREES** with the Lender that the liabilities and obligations of the Guarantor pursuant to the Guarantee shall also extend and apply to the liabilities and obligations hereunder of the Borrower in the same manner and to the same extent as if the terms and covenants of this Deed had originally been contained in the Principal Security **AND** nothing herein contained shall abrogate or otherwise detract from the liability of the Guarantor pursuant to the Guarantee or otherwise prejudicially affect any provision contained therein.

6. SEVERANCE:

In the event that any provision or provisions of this Deed are invalid for whatever reason, the provisions of this Deed shall remain in full force and effect except only to the extent of such invalidity and this Deed shall be deemed to have been amended so as to remove such invalid provision. In the further event that any right, power or privilege of the Lender created hereunder shall at any time be exercisable only upon compliance with the provisions of any Act, then any such right, power or privilege of the Bank shall be exercisable upon due compliance with the provisions of such Act notwithstanding that same shall be inconsistent with the provisions of this Deed which, except only to the extent of such inconsistency, shall remain in full force and effect in all respects.

7. JOINT AND SEVERAL OBLIGATIONS:

Every covenant expressed or implied in this Deed by which more persons than one covenant shall, unless the contrary intention is expressed, bind such persons and every two or greater number of them jointly and each of them severally.

8. TIME OF THE ESSENCE:

In this Deed, the Borrower and the Guarantor **ACKNOWLEDGE AND AGREE** that time is of the essence insofar as it relates to the obligations and agreements of the Borrower and/or the Guarantor respectively to the Lender.

9. RECEIPT OF DOCUMENTS:

The Borrower and the Guarantor and each of them severally **HEREBY ACKNOWLEDGE** having received a copy of this Deed at the date of execution hereof **AND FURTHER ACKNOWLEDGE** that they have read and understand the nature and effect of this Deed.

10. INCONSISTENCY:

If there is any inconsistency between the provisions of this Deed and the Principal Security, then the provision of this Deed shall prevail to the extent of such inconsistency.

11. LIMIT OF LIABILITY – LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461

(a) LM Investment Management Limited ACN 077 208 461 ("LM") enters into this agreement and each other Security (if any), only in its capacity as Trustee for the LM Managed Performance Fund, pursuant to the Constitution of the Trust ("the Constitution") and in no other capacity and the Borrower is aware of the limited scope of LM's obligations and powers under such Trust;

(b) A liability arising under or in connection with this agreement is limited to and can be enforced against LM only to the extent to which it can be satisfied out of property of the Trust out of which LM is actually indemnified for the liability. This limitation of LM's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this agreement.

(c) The parties other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of or affecting LM.

(d) The provisions of this clause do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Trust's Constitution or other constitution documents, or by operation of law there is a reduction in the extent of LM's indemnification out of the assets of that Trust, as a result of LM's fraud, negligence or wilful default.

(e) Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or default under this document.

(f) LM's determination as to whether an obligation otherwise imposed upon it under this document is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause (d).

(h) LM is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

(i) A failure by LM to comply with or a breach by LM of any of its obligations under this agreement will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

a. arose as a result of a breach by a person other than LM where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or

b. was in accordance with a lawful court order or direction or otherwise required by law.

(j) All of the terms, clauses and conditions of this agreement are subject to this clause. .

SCHEDULE

ITEM

1. **The Date** 22/12/ 2009

2. **The Borrower:**

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
C/- Level 4, 9 Beach Road, Surfers Paradise 4217

3. **The Guarantor:**
Not applicable

4. **The Principal Security:**

Loan Agreement dated 19 January 2005 as varied from time to time.

5. **The Guarantee:**

Not applicable

6. **Variation of Principal Security:**

The Principal Security is **HEREBY VARIED** as follows:

(a) That the Expiry Date specified in Item 5 of the Schedule to the Principal Security is hereby varied from 1 May 2009 to 1 May 2010;

(b) That the Loan Amount specified in Item 8 of the Schedule to the Principal Security is hereby increased to FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS ($5,500,000.00);

(c) That in all other respects the Borrower will observe and perform its obligations under the terms, conditions, covenants and stipulations contained in the Principal Security at the times and in the manner provided for therein or as otherwise varied or provided by this Deed;

(d) That the variation to the Principal Security contained in this Deed will be effective as and from the 22 day of December 2009.

IN WITNESS WHEREOF the parties hereto have executed this Deed on the day and year hereinbefore written.

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director

PETER CHARLES DRAKE, Sole Director

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director

Peter Charles Drake

.....
Signature of Director

Lisa Maree D'Arcy

DEED OF VARIATION

LM INVESTMENT MANAGEMENT LTD ACN 077 208 461 AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898

MONAGHAN LAWYERS

PO Box 315, Surfers Paradise Qld 4217
Level 4, 9 Beach Road, Surfers Paradise Qld 4217
P 5584 4550 F 5592 2505
E admin@monaghanlawyers.com.au

This **DEED OF VARIATION** is made the 6 day of October 2010

PARTIES:

LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund **("Lender")**

Australian International Investment Services Pty Ltd ACN 102 261 898 **("Borrower")**

BACKGROUND:

A. The Lender agreed to lend certain monies to the Borrower on the terms of the Loan Agreement;

B. The Borrower has provided the Security in support of the Borrower's obligations under the Loan Agreement;

C. The Borrower has requested the Lender to consent to an amendment of the Loan Agreement;

D. The Lender has agreed to the requested amendment on the terms of this Deed.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising, whether present or future, fixed or unascertained, actual or contingent, known or unknown and whether at law, in equity, under statute or otherwise.

Effective Date means the date of this Deed.

Facility means the loan facility and security arrangement recorded in and evidenced by the Loan Agreement and the Security and every other document between the Lender and the Borrower relating to or incidental to the facility that is provided under the Loan Agreement and the Security.

Fund means the LM Managed Performance Fund ACN 077 208 461

Liabilities means all liabilities, debts, costs, expenses or obligations, whether actual or contingent, present or future, quantified or unquantified.

Loan Agreement means the Loan Agreement dated 19 January 2005 (as amended from time to time) between the Borrower and the Lender.

Loss means all loss, Liabilities, damages, costs, expenses, claims, demands, suits, actions and causes of actions, including attorneys' fees, other professionals' and experts' fees, and court or arbitration costs.

Schedule 1 means Schedule 1 to this Deed of Variation.

Security means the security that is described in Schedule 1.

Words and expressions which are defined in the Loan Agreement have the same meanings when used in this Deed.

1.2 Interpretation

Reference to:-

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate; and

(iv) a party includes the party's executors, administrators, successors and permitted assigns.

Headings are for convenience only and do not form part of this Deed or affect its interpretation.

Terms defined in the Loan Agreement have a corresponding meaning when used in this Deed.

1.3 Parties:-

(a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(b) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

(c) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. CONDITIONS PRECEDENT

2.1 This Deed of Variation is subject to and conditional upon:-

(a) the Lender being satisfied in its absolute discretion with the results of its enquiries and searches in relation to the Borrower and the Security; and

(b) this Deed of Variation and all supplementary documentation that the Lender requires being provided in support of this Deed being executed by the relevant parties.

3. VARIATION OF LOAN DEED

3.1 Subject to clause 2, the Loan Agreement is amended with effect at and from the Effective Date to read as set out in Annexure "A".

4. REPRESENTATIONS, WARRANTIES AND EVENTS OF DEFAULT

4.1 The Borrower hereby represents and warrants to the Lender that no Event of Default or Potential Event of Default subsists under the Loan Agreement or the Security or will result from clause 3.1 taking effect.

4.2 The Borrower hereby confirms and repeats each of the representations and warranties made by it in the Loan Agreement and the Security with reference to the facts and circumstances subsisting as at the date of this Deed.

5. GENERAL CONFIRMATIONS AND RATIFICATIONS

5.1 The Borrower hereby unconditionally and irrevocably:-

(a) ratifies and confirms to the Lender its continuing obligations under the Loan Agreement and the Security as supplemented or amended by this Deed; and

(b) acknowledges and agrees that the provisions of the Loan Agreement (as amended by this Deed) and the Security shall in all respects remain in full force and effect and continue to apply.

5.2 The Borrower confirms and acknowledges that:-

(c) it has not executed the Loan Agreement, the Security or this Deed as a result of any dealings, promise, representation, warranty, statement or information of any kind given or offered by or on behalf of the Lender or any officer or employee of the Lender whether in answer to an enquiry by or on behalf of the Borrower or not;

(d) it has not, and will not in future, rely on any promise, representation, statement, information or dealings with the Lender or any officer or employee of the Lender unless it has been produced in writing;

(e) any promise, representation, statement, information or dealings made by any officer or employee of the Lender (even if in writing) is subject to formal approval by the Lenders investment approval committee and cannot be relied upon; and

(f) any broker or other person that introduces the Borrower to the Lender or arranges or negotiates the Loan with the Lender:-

(i) is not acting as the broker or agent or in any capacity for the Lender and is acting solely in its capacity as broker or agent for the Borrower;

(ii) has no authority to buy or in any way act on behalf of or make any statements or representations on behalf of the Lender. The Borrower will not rely on any actual statement by the broker that purports to bind the Lender.

6. RELEASE

6.1 With effect from the date of this Deed, the Borrower releases and forever discharges and indemnifies the Lender from all action, suites, Claims, demand, costs, liabilities and/or Loss of any nature whatsoever which they now or at any time may have, or, but for the execution of the Deed, could or might have had, against each of the Lender and any of their respective officers, agents, representatives or employees, in connection with or incidental to the Facility and the Security.

7. FURTHER ASSURANCES

7.1 The Borrower shall immediately on demand by the Lender at the entire cost and expense of the Borrower, execute, do, perform and provide all such further acts, Deeds, assurances, contracts, deeds, documents, guarantees, indemnities, instruments, matters and things as the Lender shall require to perfect or improve the rights and powers afforded or created or intended to be a afforded or created by this Deed or any of the documents or transactions contemplated in this Deed.

8. SEVERABILITY

8.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

9. ENTIRE DEED

9.1 This Deed, read together with the Loan Agreement and Security constitutes the full and entire Deed between the parties with respect to the subject matter of it and prevails over all prior negotiations, proposals and Deeds whether oral or written.

10. COSTS

10.1 The Borrower must pay the Lender's costs of preparing and executing this Deed.

11. RECITALS

11.1 The recitals form part of this Deed and are binding on the parties.

12. COUNTERPARTS

12.1 This Deed may be executed in any number of counterparts (including by way of facsimile) and all such counterparts taken together shall constitute one and the same instrument.

13. GOVERNING LAW AND JURISDICTION

13.1 The law of Queensland governs this Deed.

13.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

14. LM INVESTMENT MANAGEMENT LIMITED LIMITATION OF LIABILITY

14.1 Lender – the Lender enters into this Deed, the Loan Agreement and each other Security and the other parties to this Deed acknowledge that they are aware that the Lender enters into this Deed, the Loan Agreement and each other Security only, in its capacity as the Custodian of the Fund's Trust Deed and the other parties to this Deed are aware of the limited scope of the Lender's obligations and powers under the Fund's Trust Deed.

14.2 Liability Limited - A liability arising under or in connection with this Deed is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of the property of the Fund out of which the Lender is actually indemnified for the particular liability. This limitation of the Lender's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

14.3 No Right to Appoint or Prove - The parties to this Deed other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of, or affecting, the Lender.

14.4 Limit of Liability Not to Apply - The provisions of this clause 14 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Trust Deed or other constituent documents, or by operation of law, there is a reduction in the extent of the Lender's indemnification out of the assets of the Fund, as a result of the Lender's fraud, negligence or wilful default.

14.5 Inconsistency with the Fund's Trust Deed - Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Fund's Trust Deed will not amount to a breach of or a default under this Deed. The Lender's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Fund's Trust Deed is final and binding on all parties.

14.6 Future Limitations - the Lender is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

14.7 Agents - No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed, the Deed of Cross Collateralisation and each other Security (if any) or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 14.4.

14.8 Failure by the Lender - A failure by the Lender to comply with, or a breach by the Lender of any of its obligations under this Deed and each other Security (if any) will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(a) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

14.9 Override Provision - All of the terms, clauses and conditions of this Deed are subject to this clause 14.

EXECUTED as a Deed on 6 October 2010

EXECUTED BY AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 in accordance with section 127 of the Corporations Act 2001 (Cth) as Guarantor:

.....
Signature of Sole Director/Secretary

.....
Full name of Sole Director/Secretary

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director/Secretary

Peter Charles Drake
Full name of Director/Secretary

.....
Signature of Director

Lisa Maree D'Arcy
Full name of Director

SCHEDULE 1

Type of Security	Date
Fixed and Floating Charge Number 1733340	30 November 2008
Mortgage No 1611828	30 November 2008

ANNEXURE 'A'

LOAN AGREEMENT

LOAN AGREEMENT

LM INVESTMENT MANAGEMENT LTD ACN 077 208 461 AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND ("LENDER")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 ("BORROWER")

LM Investment Management Ltd
Level 4
9 Beach Road
Surfers Paradise Q 4217

This **LOAN AGREEMENT** is made the day of 20

PARTIES:

LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Lender")

Australian International Investment Services Pty Ltd ACN 102 261 898 of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Borrower")

INTRODUCTION:

A. The Borrower has requested the Loan from the Lender.

B. The Lender has agreed to make the Loan available to the Borrower on the terms and conditions of this Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

(a) **"Advance"** means any drawing under this Deed and where appropriate the amount of each Advance;

(b) **"Advance Date"** means in respect of each Advance the date on which that Advance is made;

(c) **"Approved Purpose"** means the Purpose described in Item 1 of the Schedule;

(d) **"Borrower"** means the party named in Item 2 of the Schedule;

(e) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

(f) **"Commencement Date"** means the date in Item 4 of the Schedule;

(g) **"Event of Default"** means any event or occurrence mentioned in clause 9;

(h) **"Expiry Date"** means the date in Item 5 of the Schedule;

(i) **"Interest Rate"** means the interest rate as set out in Item 6 of the Schedule;

(j) **"Lender"** means the party named in Item 7 of the Schedule;

(k) **"Loan"** means the sum listed in Item 8 of the Schedule which may be drawn down by way of one or more Advances;

(l) **"Schedule"** means the Schedule attached to this agreement;

(m) **"Secured Money"** includes the Loan and all other money which the Borrower agrees to pay under any provision of this agreement including interest.

1.2 Interpretation

(a) Reference to:

(i) one gender includes each other gender;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) a party includes the party's executors, administrators, successors and permitted assigns;

(v) a statute, regulation or provision of a statute or regulation **("Statutory Provision")** includes:

(1) that Statutory Provision as amended or re-enacted from time to time; and

(2) a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vi) any document or agreement (including this agreement) includes the document or agreement as amended, novated, supplemented or replaced from time to time; and

(vii) "month" means a calendar month.

(b) All monetary amounts are in Australian dollars, unless otherwise stated.

(c) If a party consists of more than one person, this agreement binds them jointly and each of them severally.

(d) Headings are for convenience only and do not form part of this agreement or affect its interpretation.

(e) "Including" and similar expressions are not words of limitation.

(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(g) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

(h) A "corporation" or a "related body corporate" has the meaning given to it in the *Corporations Act 2001.*

(i) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

2. **PROVISION OF THE LOAN**

When Loan to be Provided

So long as an Event of Default has not occurred, and subject to the provisions of this agreement, the Lender will provide the Loan, on or after the Commencement Date. If the parties agree, the Loan may be provided in two or more instalments.

PAYMENT OF INTEREST

3.1 Interest to be Paid on the Expiry Date

(a) The Borrower must pay interest to the Lender on each Advance at the Interest Rate on the Expiry Date.

(b) Without prejudice to the obligation to pay, if the Borrower fails to pay any money on the due date or if the Lender pays money or incurs cost or expense in relation to this deed, the Borrower must pay interest to the Lender on that amount computed from the due date or the date the Lender pays the money or incurs the cost or expense whichever first occurs. Interest will accrue on daily balances at the Interest Rate.

3.2 Computation of Interest

Interest on Advances drawn will accrue from day to day and will be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

3.3 Rate of Interest Payable on Judgment

If the Borrower's liability to pay or repay the Secured Money becomes merged in any judgment, order, deed or other thing, the Borrower must pay interest on the amount owing from time to time under that judgment, order, deed or other thing at the higher of the rates:

(a) payable under this agreement; or

(b) fixed by or payable under that judgment, order, deed or other thing.

REPAYMENT

4.1 Of Loan on Expiry Date

The Borrower must repay the Loan on the Expiry Date.

4.2 Early Repayment of Loan

The Borrower may, on 1 month's written notice to the Lender, and with the consent of the Lender, repay the Loan in full before the Expiry Date.

4.3 Effect on Later Repayment Instalments

A repayment earlier or larger than provided by this agreement does not affect the obligation of the Borrower to pay subsequent Repayment Instalments of the amount and at the times provided by this agreement, but only accelerates the date by which the full amount of the Loan is repaid.

4.4 Of Other Secured Money

The Borrower must pay all Secured Money other than the Loan on demand or if demand is not made on the Expiry Date.

NO DEDUCTIONS

All money payable by the Borrower must be paid in full without any deduction on account of any income or other taxes or charges present or future. If the Borrower is compelled by law to deduct any taxes or charges the Borrower must pay to the Lender such further sum as will result in the receipt by the Lender of the full amount payable.

6. GENERAL COVENANTS BY BORROWER IN RELATION TO LOAN

6.1 Borrower to Provide Financial Information

The Borrower must deliver to the Lender all financial and other information which the Lender requires from time to time.

6.2 Borrower to Reimburse the Lender

The Borrower must pay to the Lender on demand:

- any costs and outlays which were incurred by the Lender to establish this Loan Facility; and
- any money which the Lender may see fit to pay to remedy any default of the Borrower.

6.3 Use of Loan

The Borrower may only use the Loan for the Approved Purpose.

7. APPLICATION OF MONEY

Money received by the Lender from the Borrower may be applied towards interest or other Secured Money at the Lender's discretion.

8. WARRANTIES

The Borrower warrants that:

(a) it has fully disclosed in writing to the Lender all facts relating to the Borrower, its related bodies corporate, and anything in connection with them that are material to the assessment of the nature and amount of the risk undertaken by the Lender in entering into this agreement;

(b) no action, proceeding or arbitration is pending or threatened against the Borrower before any court, administrative tribunal or arbitrator which could or might result in any material adverse change in the business assets or credit of the Borrower; and

(c) all financial statements and information furnished by the Borrower to the Lender are complete and correct and there are no other material facts or considerations the omission of which would render any of the information misleading.

9. DEFAULT

9.1 Lender's Rights on Default

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice:

(a) all of the Secured Money immediately becomes payable; and

(b) the Lender may decline to provide any part of the Loan which has not already been provided.

9.2 Events of Default

The following are Events of Default:

(a) The Borrower fails to request the Lender in writing for the full amount of the Loan;

(b) the Borrower fails to pay any of the Secured Money when due;

(c) the Borrower breaches a term of:

(i) this agreement; or

(ii) any other agreement, instrument or document between the Borrower and the Lender;

(d) any warranty or representation made or deemed to have been made under this agreement or any other written agreement between the Lender and the Borrower proves to have been untrue or misleading when made or deemed to have been made;

(e) this agreement becomes wholly or partly void, voidable or unenforceable;

(f) an order for payment is made or a judgment is entered against the Borrower, any related body corporate of the Borrower or any guarantor of the Secured Money or any part of it and is not satisfied within 7 days;

(g) any creditor of the Borrower levies, or attempts to levy, any distress or execution against any property of the Borrower;

(h) the Borrower or any guarantor, being a body corporate, becomes an externally-administered body corporate under the *Corporations Act 2001;*

(i) steps are taken by any person towards making the Borrower or any guarantor an externally-administered body corporate;

(j) the Borrower is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001;*

(k) a person holding a security interest in assets of the Borrower enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or

(l) the Borrower dies or becomes lunatic or insane or a protected person within the meaning of any relevant legislation in that behalf.

10. TRUST PROVISIONS

10.1 Borrower

Where a Borrower has executed this agreement in its capacity as trustee of a trust **("Trust"),** whether or not the fact that the Borrower is a trustee is disclosed to the Lender, the Borrower acknowledges that this agreement is binding on the Borrower personally and in its capacity as trustee of the Trust and that the Lender's right of recourse extends to both the assets of the Borrower personally and the assets of the Trust.

10.2 Lender

(a) The Lender enters into this agreement, and the Borrower acknowledges it is aware that the Lender enters into this agreement, only in its capacity as trustee of the LM Managed Performance Fund **("the Fund"),** pursuant to the Constitution of the Fund **("the Constitution")** and in no other capacity and the Borrower is aware of the limited scope of the Lender's obligations and powers under such Trust.

(b) A liability arising under or in connection with this agreement is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this agreement.

(c) The parties other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of or affecting the Lender.

(d) The provisions of this clause 10.2 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution or other constitution documents, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of that Fund, as a result of the Lender's fraud, negligence or wilful default.

(e) Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or default under this document.

(f) The Lender's determination as to whether an obligation otherwise imposed upon it under this document is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 10.2(d).

(h) The Lender is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

(i) A failure by the Lender to comply with or a breach by the Lender of any of its obligations under this agreement will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(i) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(ii) was in accordance with a lawful court order or direction or otherwise required by law.

(j) All of the terms, clauses and conditions of this agreement are subject to this clause 10.2.

11. MISCELLANEOUS PROVISIONS

11.1 Inconsistencies

So far as is possible, this agreement must be read together with any and all other agreements or documents entered into in connection with this agreement and, in the event of inconsistency, the provision most favourable to or which confers the greatest benefit on the Lender prevails.

11.2 Certificates

A certificate purporting to be signed by the Lender or an officer of or agent for the Lender stating:

(a) the amount owing or contingently owing by the Borrower at a certain date under this agreement;

(b) the rate or rates of interest which are applicable to the Secured Money or any part of it;

(c) that a particular Event of Default has occurred; or

(d) any other act matter or thing arising under this agreement

is for all purposes prima facie evidence of the facts stated in the certificate.

11.3 Lender's Power to Assign

The Lender may assign the benefit of this agreement.

11.4 Time of the Essence

Time is of the essence of the Borrower's obligations under this agreement unless otherwise agreed in writing by the Lender.

11.5 Further Assurance

The Borrower must promptly at the Borrower's own cost do all things (including executing all documents) necessary or desirable to give full effect to this agreement.

11.6 Severability

If anything in this agreement is unenforceable, illegal or void then it is severed and the rest of this agreement remains in force.

11.7 Entire Agreement

This agreement represents the entire agreement between the parties and all prior or contemporaneous representations, statements and agreements (if any) made by the Lender or the Lender's representatives are merged in this agreement.

11.8 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

11.9 Waiver Excluded

(a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

(c) A waiver is not effective unless it is in writing.

(d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

11.10 Costs and Expenses

The Borrower must pay or reimburse the Lender on demand for:

(a) the costs, charges and expenses of the Lender in connection with the negotiation, preparation, execution, stamping and completion of this agreement and of any forms required by any statute or regulation to be lodged with any registry;

(b) the costs, charges and expenses of the Lender or any attorney of the Lender in connection with:

(i) any consent, exercise or non-exercise of any rights, waiver, variation, release or discharge in connection with or of this agreement; and

(ii) the contemplated or actual enforcement or preservation of any rights under this agreement including, without limitation, any expenses incurred in retaining any independent consultant or other person to evaluate any matter of concern and in the case of the Lender its administration costs in connection with those events; and

(c) stamp duty and other taxes payable in connection with this agreement or in connection with any payment, receipt or other transaction contemplated by this agreement;

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

11.11 Notices

(a) A notice or other communication connected with this agreement **("Notice")** has no legal effect unless it is in writing and:

(i) delivered; or

(ii) sent by post, postage prepaid

to the address of the addressee set out in this agreement or subsequently notified from time to time.

(b) A Notice is deemed given and received:

(i) if delivered, upon delivery; or

(ii) if mailed, on the expiration of 2 Business Days (at the address to which it is mailed) after mailing.

(c) A Notice by the Lender may be given by any officer or agent of the Lender.

12. **GOVERNING LAW AND JURISDICTION**

12.1 This agreement is governed by the laws of Queensland.

12.2 The parties submit to the non-exclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia.

EXECUTED as a deed on

EXECUTED BY **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898** in accordance with section 127 of the Corporations Act 2001 (Cth) as Guarantor:

.....
Signature of Director/Secretary

.....
Full name of Director/Secretary

.....
Signature of Director

.....
Full name of Director

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director/Secretary

Peter Charles Drake
Full name of Director/Secretary

.....
Signature of Director

Lisa Maree D'Arcy
Full name of Director

SCHEDULE

Item 1: **Approved Purpose**

Purchase and development of land described as Block 1, Section 22, District/Division of Phillip, Volume 1541 Folio 73 Australian Capital Territory

Item 2: **Borrower**

Australian International Investment Services Pty Ltd ACN 102 261 898

Item 3: Intentionally blank

Item 4: **Commencement Date**

23 December 2004

Item 5: **Expiry Date**

1 May 2011

Item 6: **Interest Rate**

10% increasing to 12% with effect from 23 August 2010

Item 7: **Lender**

LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund

Item 8: **Loan**

$7,500,000.00

Item 9: Intentionally blank

14/8/12

DEED OF VARIATION

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 ("LENDER")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461("LM")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 ("BORROWER")

LM INVESTMENT MANAGEMENT LIMITED
PO Box 485, Surfers Paradise Qld 4217
Level 4, 9 Beach Road, Surfers Paradise Qld 4217
P 5584 4500 F 5538 1965
E tfenwick@LMaustralia.com

This **DEED OF VARIATION** is made the 14 day of August 2012

PARTIES:

The Trust Company (PTAL) Limited ACN 008 412 913
("Lender")

LM Investment Management Limited ACN 077 208 461
("LM")

Australian International Investment Services Pty Ltd ACN 102 261 898
("Borrower")

BACKGROUND:

A. LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund lent certain monies to the Borrower on the terms of the Loan Agreement.

B. Following settlement of loan, The Trust Company (PTAL) Limited ACN 008 412 913 was appointed as custodian to the Fund and LM Investment Management Limited as trustee for the LM Managed Performance Fund assigned the legal interest in the Loan Agreement and the Security to The Trust Company (PTAL) Limited ACN 008 412 913.

C. The Borrower acknowledges and consents to the assignment by LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund of its legal interest in the Loan Agreement and the Security to The Trust Company (PTAL) Limited ACN 008 412 913.

D. The Borrower has requested the Lender to consent to an amendment of the Loan Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising, whether present or future, fixed or unascertained, actual or contingent, known or unknown and whether at law, in equity, under statute or otherwise.

Custody Deed means the custody Deed between the Lender and LM dated 4 February 1999.

Effective Date means 1 July 2011.

Facility means the loan facility and security arrangement recorded in and evidenced by the Loan Agreement and the Security and every other document between the Lender, LM, the Borrower and any Guarantor relating to or incidental to the facility that is provided under the Loan Agreement and the Security.

Fund means the LM Managed Performance Fund.

Liabilities means all liabilities, debts, costs, expenses or obligations, whether actual or contingent, present or future, quantified or unquantified.

Loan Agreement means the Loan Agreement dated 19 January 2005 (as amended from time to time) between Australian International Investment Services Pty Ltd ACN 102 261 898 (as Borrower) and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM

Managed Performance Fund (as Trustee or "LM") under which the LM agreed to loan an amount of $1,140,000.00 (one million one hundred and forty thousand dollars) to the Borrower.

Loss means all loss, Liabilities, damages, costs, expenses, claims, demands, suits, actions and causes of actions, including attorneys' fees, other professionals' and experts' fees, and court or arbitration costs.

Schedule 1 means Schedule 1 to this Deed of Variation.

Security means the security that is described in Schedule 1.

Security Providers means a party who has provided a Security in support of the Borrower's obligations under the Loan Agreement.

Words and expressions which are defined in the Loan Agreement have the same meanings when used in this Deed.

1.2 Interpretation

Reference to:-

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate; and

(iv) a party includes the party's executors, administrators, successors and permitted assigns.

Headings are for convenience only and do not form part of this Deed or affect its interpretation.

Terms defined in the Loan Agreement have a corresponding meaning when used in this Deed.

1.3 Parties:-

(a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(b) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

(c) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. CONDITIONS PRECEDENT

2.1 This Deed of Variation is subject to and conditional upon:-

(a) the Lender and LM being satisfied in their sole and absolute discretion with the results of their enquiries and searches in relation to the Borrower, and the Security; and

(b) this Deed of Variation and all supplementary documentation that the Lender requires being provided in support of this Deed being executed by the relevant parties.

4. VARIATION OF LOAN DEED

4.1 Subject to clause 2, the Loan Agreement is amended with effect at and from the Effective Date to read as set out in Annexure "A".

5. REPRESENTATIONS, WARRANTIES AND EVENTS OF DEFAULT

5.1 The Borrower hereby represents and warrants to the Lender that no Event of Default or Potential Event of Default subsists under the Loan Agreement or the Security or will result from clause 4.1 taking effect.

5.2 The Borrower hereby confirms and repeats each of the representations and warranties made by it in the Loan Agreement and the Security with reference to the facts and circumstances subsisting as at the date of this Deed.

6. GENERAL CONFIRMATIONS AND RATIFICATIONS

6.1 The Borrower hereby unconditionally and irrevocably:-

(a) ratifies and confirms to the Lender its continuing obligations under the Loan Agreement and the Security as supplemented or amended by this Deed; and

(b) acknowledges and agrees that the provisions of the Loan Agreement (as amended by this Deed) and the Security shall in all respects remain in full force and effect and continue to apply.

6.2 The Borrower confirms and acknowledges that:-

(a) it has not executed the Loan Agreement, the Security or this Deed as a result of any dealings, promise, representation, warranty, statement or information of any kind given or offered by or on behalf of the Lender or any officer or employee of the Lender whether in answer to an enquiry by or on behalf of the Borrower or not;

(b) it has not, and will not in future, rely on any promise, representation, statement, information or dealings with the Lender or any officer or employee of the Lender unless it has been produced in writing;

(c) any promise, representation, statement, information or dealings made by any officer or employee of the Lender (even if in writing) is subject to formal approval by the Lenders investment approval committee and cannot be relied upon; and

(d) any broker or other person that introduces the Borrower to the Lender or arranges or negotiates the Loan with the Lender:-

(i) is not acting as the broker or agent or in any capacity for the Lender and is acting solely in its capacity as broker or agent for the Borrower;

(ii) has no authority to buy or in any way act on behalf of or make any statements or representations on behalf of the Lender. The Borrower will not rely on any actual statement by the broker that purports to bind the Lender.

7. FURTHER ASSURANCES

7.1 The Borrower shall immediately on demand by the Lender at the entire cost and expense of the Borrower make, execute, do, perform and provide all such further acts, Deeds, assurances, contracts, deeds, documents, guarantees, indemnities, instruments, matters and things as the Lender shall require to perfect or improve the rights and powers afforded or created or intended to be a afforded or created by this Deed or any of the documents or transactions contemplated in this Deed.

8. SEVERABILITY

8.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and

valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

9. ENTIRE DEED

9.1 This Deed, read together with the variation, letter of offer, Loan Agreement and Security constitutes the full and entire Deed between the parties with respect to the subject matter of it and prevails over all prior negotiations, proposals and Deeds whether oral or written.

10. COSTS

10.1 The Borrower must pay the Lender's costs of preparing, executing and stamping this Deed.

11. RECITALS

11.1 The recitals form part of this Deed and are binding on the parties.

12. COUNTERPARTS

12.1 This Deed may be executed in any number of counterparts (including by way of facsimile) and all such counterparts taken together shall constitute one and the same instrument.

13. GOVERNING LAW AND JURISDICTION

13.1 The law of Australian Capital Territory governs this Deed.

13.2 The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia.

14. THE TRUST COMPANY (PTAL) LIMITED LIMITATION OF LIABILITY

14.1 The Lender enters into this Deed, the Loan Agreement and each other Security, and the other parties to this Deed acknowledge that they are aware that the Lender enters into this Deed and each other Security, only in its capacity as custodian of the Fund pursuant to the Custody Deed and in no other capacity and the other parties to this Deed are aware of the limited scope of the Lender's obligations and powers under the Custody Deed.

14.2 A liability arising under or in connection with this Deed, the Loan Agreement and each Security is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of the property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this Deed, the Loan Agreement or any other Security and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed, the Loan Agreement and each other Security.

14.3 The parties to this Deed other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of, or affecting, the Lender.

14.4 The provisions of this clause 14 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution, the Custody Deed, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of the Fund, as a result of the Lender's fraud, negligence or wilful default.

14.5 Despite any other provision of this Deed, if any obligation otherwise imposed upon the Lender under this Deed is, in the Lender's opinion, inconsistent with, or beyond the scope of the Lender's obligations or powers under the Custody Deed, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Lender's obligations or powers under the Custody Deed, must be performed by LM in its capacity as Trustee of the Fund.

14.6 Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Deed will not amount to a breach of or a default under this Deed. The Lender's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Deed is final and binding on all Parties.

14.7 Future Limitations - the Lender is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

14.8 Agents - No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed, the Loan Agreement and each other Security or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 14.4.

14.9 A failure by the Lender to comply with, or a breach by the Lender of any of its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(a) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

14.10 Override Provision - All of the terms, clauses and conditions of this Deed are subject to this clause 14.

15. LM INVESTMENT MANAGEMENT LIMITED LIMITATION OF LIABILITY

15.1 LM enters into this Deed, the Loan Agreement and each other Security and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, the Loan Agreement and each other Security, in its capacity as Trustee of the Fund, pursuant to the Constitution of the Fund ("the *Constitution*") and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Fund.

15.2 A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

15.3 The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

15.4 The provisions of this clause 15 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

15.5 Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed

upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

15.6 LM is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

15.7 No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed, the Loan Agreement and each other Security (if any) or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause 15.4.

15.8 A failure by LM to comply with, or a breach by LM of any of its obligations under this Deed, the Loan Agreement and each other Security (if any) will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

(a) arose as a result of a breach by a person other than LM where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

15.9 Override Provision - All of the terms, clauses and conditions of this Deed are subject to this clause 15.

EXECUTED as a Deed on 14 AUGUST 2012

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 by its Attorney pursuant to Power of Attorney registration number 0138336 who states that he has had no notice of revocation.

Attorney

John Newby
Head of Property and Infrastructure Custody Services

Witness

INGE KARTIKA

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of Director/Secretary

EGHARD VAN DER HOVEN
Full name of Director/Secretary

Signature of Director

GRANT PETER FISCHER
Full name of Director

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....

Signature of Sole Director

PETER CHARLES DRAICE

Full name of Sole Director

SCHEDULE ONE

SECURITY

Type of Security	Date
Fixed and floating charge number 1733340	30 November 2008
Mortgage number 1611828	30 November 2008

ANNEXURE 'A'

LOAN AGREEMENT

LOAN AGREEMENT

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 ("LENDER")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND ("LM")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 ("BORROWER")

LM INVESTMENT MANAGEMENT LIMITED
PO Box 485, Surfers Paradise Qld 4217
Level 4, 9 Beach Road, Surfers Paradise Qld 4217
P 5584 4500 F 5538 1965
E tfenwick@LMaustralia.com

This **LOAN AGREEMENT** is made the day of

PARTIES:

The Trust Company (PTAL) Limited ACN 008 412 913 c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Lender")

Australian International Investment Services Pty Ltd ACN 102 261 898 of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Borrower")

LM Investment Management Limited ACN 077 208 461 of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("LM")

INTRODUCTION:

A. The Borrower has requested the Loan from the Lender.

B. The Lender has agreed to make the Loan available to the Borrower on the terms and conditions of this Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

(a) **"Advance"** means any drawing under this Deed and where appropriate the amount of each Advance;

(b) **"Advance Date"** means in respect of each Advance the date on which that Advance is made;

(c) **"Approved Purpose"** means the Purpose described in Item 1 of the Schedule;

(d) **"Borrower"** means the party named in Item 2 of the Schedule;

(e) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

(f) **"Commencement Date"** means the date in Item 4 of the Schedule;

(g) **"Custody Deed"** means the custody Deed between the Lender and LM dated 4 February 1999.

(h) **"Event of Default"** means any event or occurrence mentioned in clause 9;

(i) **"Expiry Date"** means the date in Item 5 of the Schedule;

(j) **"Facility"** means the loan facility that is contemplated in this Agreement;

(k) **"Interest Rate"** means the interest rate as set out in Item 6 of the Schedule;

(l) **"Land"** means the land described as Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(m) **"Lender"** means the party named in Item 7 of the Schedule;

(n) **"LM"** means LM Investment Management Limited ACN 077 208 461.

(o) **"Loan"** means the sum listed in Item 8 of the Schedule which may be drawn down by way of one or more Advances;

(p) **"Schedule"** means the Schedule attached to this agreement;

(q) **"Secured Money"** includes the Loan and all other money which the Borrower agrees to pay under any provision of this agreement including interest;

(r) **"Security"** means the security that is described in Item 3 of the Schedule.

(s) **"Transaction Document"** means:

(i) this Agreement;

(ii) the Security (including the Security specified in Item 3);

(iii) each document the Borrower and the Lender agree is a Transaction Document

(iv) and any document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above. It includes an undertaking by or to a party or its lawyers under or in relation to any of the above.

1.2 Interpretation

(a) Reference to:

(i) one gender includes each other gender;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) a party includes the party's executors, administrators, successors and permitted assigns;

(v) a statute, regulation or provision of a statute or regulation **("Statutory Provision")** includes:

(1) that Statutory Provision as amended or re-enacted from time to time; and

(2) a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vi) any document or agreement (including this agreement) includes the document or agreement as amended, novated, supplemented or replaced from time to time; and

(vii) "month" means a calendar month.

(b) All monetary amounts are in Australian dollars, unless otherwise stated.

(c) If a party consists of more than one person, this agreement binds them jointly and each of them severally.

(d) Headings are for convenience only and do not form part of this agreement or affect its interpretation.

(e) "Including" and similar expressions are not words of limitation.

(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(g) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

(h) A "corporation" or a "related body corporate" has the meaning given to it in the

Corporations Act 2001.

(i) No rule of construction applies to the disadvantage of a party because that

(j) party was responsible for the preparation of this document.

2. PROVISION OF THE LOAN

When Loan to be Provided

So long as an Event of Default has not occurred, and subject to the provisions of this agreement, the Lender will provide the Loan, on or after the Commencement Date. If the parties agree, the Loan may be provided in two or more instalments.

3. SECURITY

3.1 The obligations of the Lender under this Agreement are subject to and conditional upon the Borrower and/or the Security Provider:

(a) providing the Transaction Documents in such form and containing such provisions as are satisfactory to the Lender;

(b) maintaining the Transaction Documents for so long as any Money Secured is outstanding; and

(c) as and when required by the Lender, causing to be entered into and executed in favour of the Lender, any such securities, instruments, deeds and/or agreements in writing as the Lender shall require and immediately after the execution of such additional Transaction Document delivering to the Lender such documents together with all such other instruments and doing or causing to be done such further acts or things as may be necessary for the additional Transaction Document to be duly registered in such registry or registries as the Lender shall require. The document or documents referred to in this clause shall be prepared by the solicitors for the Lender and shall contain all such covenants terms conditions and provisos as the Lender may require.

3.2 The Borrower acknowledges that the Transaction Documents are charged with payment of the Money Secured.

3.3 All of the covenants conditions terms stipulations and provisos contained in the Transaction Documents are to be observed performed and fulfilled by the Borrower and / or the Security Provider and all the rights powers and remedies conferred upon the Lender under the Security shall with necessary changes be read into and form part of this Agreement in the same manner as if the same were fully set forth herein and vice versa.

3.4 The Borrower covenants and agrees with the Lender that:

(a) for the purpose of determining the value of the Principal Security, the Borrower will permit the Lender or any person authorised by the Lender (including specifically the Valuer), to enter upon any property the subject of the Principal Security at all reasonable times or upon two days notice to inspect the state and condition of the property for the purpose of valuing or revaluing the same; and

(b) the Lender shall be entitled to revalue the property, the subject of the Principal Security, annually at the expense of the Borrower during the Term of the Facility.

4. PAYMENT OF INTEREST

Nil.

5. REPAYMENT

5.1 Of Loan on Expiry Date

The Borrower must repay the Loan on the Expiry Date.

5.2 Early Repayment of Loan

The Borrower may, on 1 month's written notice to the Lender, and with the consent of the Lender, repay the Loan in full before the Expiry Date.

5.3 Effect on Later Repayment Instalments

A repayment earlier or larger than provided by this agreement does not affect the obligation of the Borrower to pay subsequent Repayment Instalments of the amount and at the times provided by this agreement, but only accelerates the date by which the full amount of the Loan is repaid.

5.4 Of Other Secured Money

The Borrower must pay all Secured Money other than the Loan on demand or if demand is not made on the Expiry Date.

6. NO DEDUCTIONS

All money payable by the Borrower must be paid in full without any deduction on account of any income or other taxes or charges present or future. If the Borrower is compelled by law to deduct any taxes or charges the Borrower must pay to the Lender such further sum as will result in the receipt by the Lender of the full amount payable.

7. GENERAL COVENANTS BY BORROWER IN RELATION TO LOAN

7.1 Borrower to Provide Financial Information

The Borrower must deliver to the Lender all financial and other information which the Lender requires from time to time.

7.2 Borrower to Reimburse the Lender

The Borrower must pay to the Lender on demand:

(a) any costs and outlays which were incurred by the Lender to establish this Loan Facility; and

(b) any money which the Lender may see fit to pay to remedy any default of the Borrower.

7.3 Use of Loan

The Borrower may only use the Loan for the Approved Purpose.

8. APPLICATION OF MONEY

Money received by the Lender from the Borrower may be applied towards interest or other Secured Money at the Lender's discretion.

9. WARRANTIES

9.1 The Borrower warrants that:

(a) it has fully disclosed in writing to the Lender all facts relating to the Borrower, its related bodies corporate, and anything in connection with them that are material to the assessment of the nature and amount of the risk undertaken by the Lender in entering into this agreement;

(b) no action, proceeding or arbitration is pending or threatened against the Borrower before any court, administrative tribunal or arbitrator which could or might result in any material adverse change in the business assets or credit of the Borrower; and

(c) all financial statements and information furnished by the Borrower to the Lender are complete and correct and there are no other material facts or considerations the omission of which would render any of the information misleading.

10. DEFAULT

10.1 Lender's Rights on Default

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice:

(a) all of the Secured Money immediately becomes payable; and
(b) the Lender may decline to provide any part of the Loan which has not already been provided.

10.2 Events of Default

The following are Events of Default:

(a) The Borrower fails to request the Lender in writing for the full amount of the Loan;

(b) the Borrower fails to pay any of the Secured Money when due;

(c) the Borrower breaches a term of:

(i) this agreement; or

(ii) any other agreement, instrument or document between the Borrower and the Lender;

(d) any warranty or representation made or deemed to have been made under this agreement or any other written agreement between the Lender and the Borrower proves to have been untrue or misleading when made or deemed to have been made;

(e) this agreement becomes wholly or partly void, voidable or unenforceable;

(f) an order for payment is made or a judgment is entered against the Borrower, any related body corporate of the Borrower or any guarantor of the Secured Money or any part of it and is not satisfied within 7 days;

(g) any creditor of the Borrower levies, or attempts to levy, any distress or execution against any property of the Borrower;

(h) the Borrower or any guarantor, being a body corporate, becomes an externally-administered body corporate under the *Corporations Act 2001;*

(i) steps are taken by any person towards making the Borrower or any guarantor an externally-administered Body Corporate

(j) the Borrower is taken to have failed to comply with a statutory demand within

(k) the meaning of section 459F of the *Corporations Act 2001;*

(l) a person holding a security interest in assets of the Borrower enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or

(m) the Borrower dies or becomes lunatic or insane or a protected person within the meaning of any relevant legislation in that behalf.

11. TRUST PROVISIONS

11.1 Borrower

Where a Borrower has executed this agreement in its capacity as trustee of a trust **("Trust"),** whether or not the fact that the Borrower is a trustee is disclosed to the Lender, the Borrower acknowledges that this agreement is binding on the Borrower personally and in its capacity as

trustee of the Trust and that the Lender's right of recourse extends to both the assets of the Borrower personally and the assets of the Trust.

11.2 Lender

(a) The Lender enters into this agreement, and the Borrower acknowledges it is aware that the Lender enters into this agreement, only in its capacity as trustee of the LM Managed Performance Fund **("the Fund")**, pursuant to the Constitution of the Fund **("the Constitution")** and in no other capacity and the Borrower is aware of the limited scope of the Lender's obligations and powers under such Trust.

(b) A liability arising under or in connection with this agreement is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this agreement.

(c) The parties other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of or affecting the Lender.

(d) The provisions of this clause 10.2 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution or other constitution documents, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of that Fund, as a result of the Lender's fraud, negligence or wilful default.

(e) Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or default under this document.

(f) The Lender's determination as to whether an obligation otherwise imposed upon it under this document is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 10.2(d).

(h) The Lender is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

(i) A failure by the Lender to comply with or a breach by the Lender of any of its obligations under this agreement will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(i) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(ii) was in accordance with a lawful court order or direction or otherwise required by law.

(j) All of the terms, clauses and conditions of this agreement are subject to this clause 10.2.

12. MISCELLANEOUS PROVISIONS

12.1 Inconsistencies

So far as is possible, this agreement must be read together with any and all other agreements or documents entered into in connection with this agreement and, in the event of inconsistency, the provision most favourable to or which confers the greatest benefit on the Lender prevails.

12.2 Certificates

A certificate purporting to be signed by the Lender or an officer of or agent for the Lender stating:

(a) the amount owing or contingently owing by the Borrower at a certain date under this agreement;

(b) the rate or rates of interest which are applicable to the Secured Money or any part of it;

(c) that a particular Event of Default has occurred; or

(d) any other act matter or thing arising under this agreement

is for all purposes prima facie evidence of the facts stated in the certificate.

12.3 Lender's Power to Assign

The Lender may assign the benefit of this agreement.

12.4 Time of the Essence

Time is of the essence of the Borrower's obligations under this agreement unless otherwise agreed in writing by the Lender.

12.5 Further Assurance

The Borrower must promptly at the Borrower's own cost do all things (including executing all documents) necessary or desirable to give full effect to this agreement.

12.6 Severability

If anything in this agreement is unenforceable, illegal or void then it is severed and the rest of this agreement remains in force.

12.7 Entire Agreement

This agreement represents the entire agreement between the parties and all prior or contemporaneous representations, statements and agreements (if any) made by the Lender or the Lender's representatives are merged in this agreement.

12.8 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

12.9 Waiver Excluded

(a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

(c) A waiver is not effective unless it is in writing.

(d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

12.10 Costs and Expenses

The Borrower must pay or reimburse the Lender on demand for:

(a) the costs, charges and expenses of the Lender in connection with the negotiation, preparation, execution, stamping and completion of this agreement and of any forms required by any statute or regulation to be lodged with any registry;

(b) the costs, charges and expenses of the Lender or any attorney of the Lender in connection with:

(i) any consent, exercise or non-exercise of any rights, waiver, variation, release or discharge in connection with or of this agreement; and

(ii) the contemplated or actual enforcement or preservation of any rights under this agreement including, without limitation, any expenses incurred in retaining any independent consultant or other person to evaluate any matter of concern and in the case of the Lender its administration costs in connection with those events; and

(c) stamp duty and other taxes payable in connection with this agreement or in connection with any payment, receipt or other transaction contemplated by this agreement;

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

12.11 Notices

(a) A notice or other communication connected with this agreement **("Notice")** has no legal effect unless it is in writing and:

(i) delivered; or

(ii) sent by post, postage prepaid

to the address of the addressee set out in this agreement or subsequently notified from time to time.

(b) A Notice is deemed given and received:

(i) if delivered, upon delivery; or

(ii) if mailed, on the expiration of 2 Business Days (at the address to which it is mailed) after mailing.

(c) A Notice by the Lender may be given by any officer or agent of the Lender.

13. THE TRUST COMPANY (PTAL) LIMITED LIMITATION OF LIABILITY

13.1 The Lender enters into this Agreement, and the other parties to this Agreement acknowledge that they are aware that the Lender enters into this Agreement, only in its capacity as custodian of the Fund pursuant to the Custody Deed and in no other capacity and the other parties to this Agreement are aware of the limited scope of the Lender's obligations and powers under the Custody Deed.

13.2 A liability arising under or in connection with this Agreement, the Loan Agreement is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of the property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of

this Agreement, the Loan Agreement and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement, the Loan Agreement.

13.3 The parties to this Agreement other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of, or affecting, the Lender.

13.4 The provisions of this clause 12 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution, the Custody Deed, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of the Fund, as a result of the Lender's fraud, negligence or wilful default.

13.5 Despite any other provision of this Agreement, if any obligation otherwise imposed upon the Lender under this Agreement is, in the Lender's opinion, inconsistent with, or beyond the scope of the Lender's obligations or powers under the Custody Deed, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Lender's obligations or powers under the Custody Deed, must be performed by LM in its capacity as Trustee of the Fund.

13.6 Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Deed will not amount to a breach of or a default under this Agreement. The Lender's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Custody Deed is final and binding on all Parties.

13.7 Future Limitations - the Lender is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

13.8 Agents - No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement, the Loan Agreement or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 12.4.

13.9 A failure by the Lender to comply with, or a breach by the Lender of any of its obligations under this Agreement will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(a) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

13.10 Override Provision - All of the terms, clauses and conditions of this Agreement are subject to this clause 12.

14. LM INVESTMENT MANAGEMENT LIMITED LIMITATION OF LIABILITY

14.1 LM enters into this Agreement, the Loan Agreement and the other parties to this Agreement acknowledge that they are aware that LM enters into this Agreement, the Loan Agreement, in its capacity as Trustee of the Fund, pursuant to the Constitution of the Fund ("the Constitution") and the other parties to this Agreement are aware of the limited scope of LM's obligations and powers under such Fund.

14.2 A liability arising under or in connection with this Agreement is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of

the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement.

14.3 The parties to this Agreement other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

14.4 The provisions of this clause 13 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

14.5 Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Agreement. LM's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

14.6 LM is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

14.7 No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement, the Loan Agreement and each other Security (if any) or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause 13.4.

14.8 A failure by LM to comply with, or a breach by LM of any of its obligations under this Agreement, the Loan Agreement will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

(a) arose as a result of a breach by a person other than LM where the performance of the action (the non performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

14.9 Override Provision - All of the terms, clauses and conditions of this Agreement are subject to this clause 13.

15. LM's AUTHORITY TO ACT FOR LENDER

15.1 The parties acknowledge that LM may on behalf of the Lender exercise all of the rights, powers, consents, controls and approvals pursuant to or under this Agreement and each other Transaction Document and all actions taken by LM shall be deemed to have been authorised by the Lender without any Security Provider or any other person dealing with LM being concerned to enquire as to the authority of LM to act on behalf of the Lender in respect of this Agreement and each other Transaction Document or any matter or thing arising in relation thereto.

(a) For the purposes of this Agreement and each other Transaction Document:

(i) all payments to be made by the Borrower or a Security Provider under this Agreement and each other Transaction Document may be made to LM on behalf of and for the account of the Lender;

(ii) all demands upon a Security Provider may be made by LM;

(iii) all documents, notices, consents or approvals to be given to or by the Borrower or a Security Provider under this Agreement and each other Transaction Document may be given to or by LM;

(iv) all rights conferred upon the Lender under this Agreement and each other Transaction Document may be exercisable by LM;

(v) all communications in relation to this Agreement and each other Transaction Document or any transaction contemplated by this Agreement and each other Transaction Document shall be directed by any Security Provider to LM on behalf of the Lender;

(vi) a receipt issued by LM shall as against any Security Provider constitute a good and valid discharge on behalf of the Lender to any person dealing with the Lender.

16. GOVERNING LAW AND JURISDICTION

16.1 This agreement is governed by the laws of Queensland.

16.2 The parties submit to the non-exclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia.

EXECUTED as an Agreement on day of 2012

EXECUTED BY **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898** in accordance with section 127 of the Corporations Act 2001 (Cth) as Guarantor:

.....
Signature of Director/Secretary

.....
Full name of Director/Secretary

.....
Signature of Director

.....
Full name of Director

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director

.....
Full name of Director

.....
Signature of Director

.....
Full name of Director

SCHEDULE

Item 1: Approved Purpose

(a) Purchase and development of the Land;

(b) Payment of interest on the Facility;

(c) Payment of interest due by the Borrower to The Trust Company (PTAL) Limited ACN 008 412 913 as Custodian for The LM First Mortgage Income Fund ARSN 089 343 288 pursuant to a Loan Agreement dated 22 December 2009 under which The Trust Company (PTAL) as Custodian for The LM First Mortgage Income Fund ARSN 089 343 288 agreed to lend an initial amount of $7,800,000.00 (as amended from time to time) to the Borrower.

(d) Towards payment of the "AIIS Entitlement" as that term is defined in a Land Availability Agreement entered into between Australian International Investment Services Pty Ltd ACN 102 261 898 and Aalto Apartments Pty Ltd ACN 152 486 630 on or about 30 June, 2011.

Item 2: Borrower

Australian International Investment Services Pty Ltd ACN 102 261 898

Item 3: Security

(a) A second registered fixed and floating charge granted by Australian International Investment Services Pty Ltd ACN 102 261 898 in favour of LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund over all of the property, assets and undertakings of Australian International Investment Services Pty Ltd ACN 102 261 898 of whatsoever kind and nature and wheresoever situated present and future.

(b) A second registered mortgage by Australian International Investment Services Pty Ltd ACN 102 261 898 as mortgagor and LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund as mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73.

(c) And each and every document, agreement or other security that is provided from time to time which secures or provides for the payment of the Secured Money or the performance of obligations of the Borrower or a party who provides Security which made be executed or provided by the party providing the security or any other person (including this Agreement, and those documents described in Item 3 of the Schedule and any additional security provided in accordance with this Agreement).

Item 4: Commencement Date

23 December 2004

Item 5: Expiry Date

1 September 2012

Item 6: Interest Rate

Nil

Item 7: Lender

The Trust Company (PTAL) Limited ACN 008 412 913

Item 8: Loan

$16 800 000.00 (Sixteen million eight hundred thousand dollars)

Item 9: Intentionally blank

MPF
1-2-13

DEED OF VARIATION

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 ("LENDER")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461("LM")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 ("BORROWER")

LM INVESTMENT MANAGEMENT LIMITED
PO Box 485, Surfers Paradise Qld 4217
Level 4, 9 Beach Road, Surfers Paradise Qld 4217
P 5584 4500 F 5538 1965
E tfenwick@LMaustralia.com

This **DEED OF VARIATION** is made the day of 2013

PARTIES:

The Trust Company (PTAL) Limited ACN 008 412 913
("Lender")

LM Investment Management Limited ACN 077 208 461
("LM")

Australian International Investment Services Pty Ltd ACN 102 261 898
("Borrower")

BACKGROUND:

A. LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund lent certain monies to the Borrower on the terms of the Loan Agreement.

B. Following settlement of loan, The Trust Company (PTAL) Limited ACN 008 412 913 was appointed as custodian to the Fund and LM Investment Management Limited as trustee for the LM Managed Performance Fund assigned the legal interest in the Loan Agreement and the Security to The Trust Company (PTAL) Limited ACN 008 412 913.

C. The Borrower acknowledges and consents to the assignment by LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund of its legal interest in the Loan Agreement and the Security to The Trust Company (PTAL) Limited ACN 008 412 913.

D. The Borrower has requested the Lender to consent to an amendment of the Loan Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising, whether present or future, fixed or unascertained, actual or contingent, known or unknown and whether at law, in equity, under statute or otherwise.

Custody Deed means the custody Deed between the Lender and LM dated 4 February 1999.

Effective Date means 1 December 2012.

Facility means the loan facility and security arrangement recorded in and evidenced by the Loan Agreement and the Security and every other document between the Lender, LM, the Borrower and any Guarantor relating to or incidental to the facility that is provided under the Loan Agreement and the Security.

Fund means the LM Managed Performance Fund.

Liabilities means all liabilities, debts, costs, expenses or obligations, whether actual or contingent, present or future, quantified or unquantified.

Loan Agreement means the Loan Agreement dated 19 January 2005 (as amended from time to time) between Australian International Investment Services Pty Ltd ACN 102 261 898 (as Borrower) and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM

Managed Performance Fund (as Trustee or "LM") under which the LM agreed to loan an amount of $1,140,000.00 (one million one hundred and forty thousand dollars) to the Borrower.

Loss means all loss, Liabilities, damages, costs, expenses, claims, demands, suits, actions and causes of actions, including attorneys' fees, other professionals' and experts' fees, and court or arbitration costs.

Schedule 1 means Schedule 1 to this Deed of Variation.

Security means the security that is described in Schedule 1.

Security Providers means a party who has provided a Security in support of the Borrower's obligations under the Loan Agreement.

Words and expressions which are defined in the Loan Agreement have the same meanings when used in this Deed.

1.2 Interpretation

Reference to:-

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate; and

(iv) a party includes the party's executors, administrators, successors and permitted assigns.

Headings are for convenience only and do not form part of this Deed or affect its interpretation.

Terms defined in the Loan Agreement have a corresponding meaning when used in this Deed.

1.3 Parties:-

(a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(b) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

(c) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. CONDITIONS PRECEDENT

2.1 This Deed of Variation is subject to and conditional upon:-

(a) the Lender and LM being satisfied in their sole and absolute discretion with the results of their enquiries and searches in relation to the Borrower, and the Security; and

(b) this Deed of Variation and all supplementary documentation that the Lender requires being provided in support of this Deed being executed by the relevant parties.

4. VARIATION OF LOAN DEED

4.1 Subject to clause 2, the Loan Agreement is amended with effect at and from the Effective Date to read as set out in Annexure "A".

5. REPRESENTATIONS, WARRANTIES AND EVENTS OF DEFAULT

5.1 The Borrower hereby represents and warrants to the Lender that no Event of Default or Potential Event of Default subsists under the Loan Agreement or the Security or will result from clause 4.1 taking effect.

5.2 The Borrower hereby confirms and repeats each of the representations and warranties made by it in the Loan Agreement and the Security with reference to the facts and circumstances subsisting as at the date of this Deed.

6. GENERAL CONFIRMATIONS AND RATIFICATIONS

6.1 The Borrower hereby unconditionally and irrevocably:-

(a) ratifies and confirms to the Lender its continuing obligations under the Loan Agreement and the Security as supplemented or amended by this Deed; and

(b) acknowledges and agrees that the provisions of the Loan Agreement (as amended by this Deed) and the Security shall in all respects remain in full force and effect and continue to apply.

6.2 The Borrower confirms and acknowledges that:-

(a) it has not executed the Loan Agreement, the Security or this Deed as a result of any dealings, promise, representation, warranty, statement or information of any kind given or offered by or on behalf of the Lender or any officer or employee of the Lender whether in answer to an enquiry by or on behalf of the Borrower or not;

(b) it has not, and will not in future, rely on any promise, representation, statement, information or dealings with the Lender or any officer or employee of the Lender unless it has been produced in writing;

(c) any promise, representation, statement, information or dealings made by any officer or employee of the Lender (even if in writing) is subject to formal approval by the Lenders investment approval committee and cannot be relied upon; and

(d) any broker or other person that introduces the Borrower to the Lender or arranges or negotiates the Loan with the Lender:-

(i) is not acting as the broker or agent or in any capacity for the Lender and is acting solely in its capacity as broker or agent for the Borrower;

(ii) has no authority to buy or in any way act on behalf of or make any statements or representations on behalf of the Lender. The Borrower will not rely on any actual statement by the broker that purports to bind the Lender.

7. FURTHER ASSURANCES

7.1 The Borrower shall immediately on demand by the Lender at the entire cost and expense of the Borrower make, execute, do, perform and provide all such further acts, Deeds, assurances, contracts, deeds, documents, guarantees, indemnities, instruments, matters and things as the Lender shall require to perfect or improve the rights and powers afforded or created or intended to be a afforded or created by this Deed or any of the documents or transactions contemplated in this Deed.

8. SEVERABILITY

8.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

9. ENTIRE DEED

9.1 This Deed, read together with the variation, letter of offer, Loan Agreement and Security constitutes the full and entire Deed between the parties with respect to the subject matter of it and prevails over all prior negotiations, proposals and Deeds whether oral or written.

10. COSTS

10.1 The Borrower must pay the Lender's costs of preparing, executing and stamping this Deed.

11. RECITALS

11.1 The recitals form part of this Deed and are binding on the parties.

12. COUNTERPARTS

12.1 This Deed may be executed in any number of counterparts (including by way of facsimile) and all such counterparts taken together shall constitute one and the same instrument.

13. GOVERNING LAW AND JURISDICTION

13.1 The law of Australian Capital Territory governs this Deed.

13.2 The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia.

14. THE TRUST COMPANY (PTAL) LIMITED LIMITATION OF LIABILITY

14.1 The Lender enters into this Deed, the Loan Agreement and each other Security, and the other parties to this Deed acknowledge that they are aware that the Lender enters into this Deed and each other Security, only in its capacity as custodian of the Fund pursuant to the Custody Deed and in no other capacity and the other parties to this Deed are aware of the limited scope of the Lender's obligations and powers under the Custody Deed.

14.2 A liability arising under or in connection with this Deed, the Loan Agreement and each Security is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of the property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this Deed, the Loan Agreement or any other Security and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed, the Loan Agreement and each other Security.

14.3 The parties to this Deed other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of, or affecting, the Lender.

14.4 The provisions of this clause 14 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution, the Custody Deed, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of the Fund, as a result of the Lender's fraud, negligence or wilful default.

14.5 Despite any other provision of this Deed, if any obligation otherwise imposed upon the Lender under this Deed is, in the Lender's opinion, inconsistent with, or beyond the scope of the Lender's obligations or powers under the Custody Deed, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Lender's obligations or powers under the Custody Deed, must be performed by LM in its capacity as Trustee of the Fund.

14.6 Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Deed will not amount to a breach of or a default under this Deed. The Lender's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Deed is final and binding on all Parties.

14.7 Future Limitations - the Lender is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

14.8 Agents - No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed, the Loan Agreement and each other Security or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 14.4.

14.9 A failure by the Lender to comply with, or a breach by the Lender of any of its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(a) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

14.10 Override Provision - All of the terms, clauses and conditions of this Deed are subject to this clause 14.

15. LM INVESTMENT MANAGEMENT LIMITED LIMITATION OF LIABILITY

15.1 LM enters into this Deed, the Loan Agreement and each other Security and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, the Loan Agreement and each other Security, in its capacity as Trustee of the Fund, pursuant to the Constitution of the Fund ("the *Constitution*") and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Fund.

15.2 A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

15.3 The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

15.4 The provisions of this clause 15 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents,

or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

15.5 Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

15.6 LM is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

15.7 No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed, the Loan Agreement and each other Security (if any) or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause 15.4.

15.8 A failure by LM to comply with, or a breach by LM of any of its obligations under this Deed, the Loan Agreement and each other Security (if any) will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

(a) arose as a result of a breach by a person other than LM where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

15.9 Override Provision - All of the terms, clauses and conditions of this Deed are subject to this clause 15.

EXECUTED as a Deed on 1 February 2013

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 by its Attorney pursuant to Power of Attorney registration number 0138336 who states that he has had no notice of revocation.

Attorney

Trent Franklin
Manager Property and Infrastructure Custody Services

Witness VICKI SKODRAS

~~**EXECUTED** by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461**~~ in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director/Secretary

.....
Full name of ~~Director/Secretary~~

.....
Signature of Director

.....
Full name of Director

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by its Attorneys pursuant to Power of Attorney dated 15 January 2013, registered number .....

.....
Signature of Attorney

CHARLO VAN DER HOVEN
Full name of Attorney

.....
Signature of Attorney

SHELLEY LEANNE CHALMERS
Full name of Attorney

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898** in accordance with section 127 of the Corporations Act 2001 (Cth):

X .....
Signature of Sole Director

PETER CHARLES DORICE
Full name of Sole Director

SCHEDULE ONE

SECURITY

Type of Security	Date
Fixed and floating charge number 1733340	30 November 2008
Mortgage number 1611828	30 November 2008

ANNEXURE 'A'

LOAN AGREEMENT

"A"

LOAN AGREEMENT

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 ("LENDER")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND ("LM")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 ("BORROWER")

LM INVESTMENT MANAGEMENT LIMITED
PO Box 485, Surfers Paradise Qld 4217
Level 4, 9 Beach Road, Surfers Paradise Qld 4217
P 5584 4500 F 5538 1965
E tfenwick@LMaustralia.com

This **LOAN AGREEMENT** is made the day of

PARTIES:

The Trust Company (PTAL) Limited ACN 008 412 913 c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Lender")

Australian International Investment Services Pty Ltd ACN 102 261 898 of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("Borrower")

LM Investment Management Limited ACN 077 208 461 of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland ("LM")

INTRODUCTION:

A. The Borrower has requested the Loan from the Lender.

B. The Lender has agreed to make the Loan available to the Borrower on the terms and conditions of this Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

(a) **"Advance"** means any drawing under this Deed and where appropriate the amount of each Advance;

(b) **"Advance Date"** means in respect of each Advance the date on which that Advance is made;

(c) **"Approved Purpose"** means the Purpose described in Item 1 of the Schedule;

(d) **"Borrower"** means the party named in Item 2 of the Schedule;

(e) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

(f) **"Commencement Date"** means the date in Item 4 of the Schedule;

(g) **"Custody Deed"** means the custody Deed between the Lender and LM dated 4 February 1999.

(h) **"Event of Default"** means any event or occurrence mentioned in clause 9;

(i) **"Expiry Date"** means the date in Item 5 of the Schedule;

(j) **"Facility"** means the loan facility that is contemplated in this Agreement;

(k) **"Interest Rate"** means the interest rate as set out in Item 6 of the Schedule;

(l) **"Land"** means the land described as Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(m) **"Lender"** means the party named in Item 7 of the Schedule;

(n) **"LM"** means LM Investment Management Limited ACN 077 208 461.

(o) **"Loan"** means the sum listed in Item 8 of the Schedule which may be drawn down by way of one or more Advances;

(p) **"Schedule"** means the Schedule attached to this agreement;

(q) **"Secured Money"** includes the Loan and all other money which the Borrower agrees to pay under any provision of this agreement including interest;

(r) **"Security"** means the security that is described in Item 3 of the Schedule.

(s) **"Transaction Document"** means:

(i) this Agreement;

(ii) the Security (including the Security specified in Item 3);

(iii) each document the Borrower and the Lender agree is a Transaction Document

(iv) and any document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above. It includes an undertaking by or to a party or its lawyers under or in relation to any of the above.

1.2 Interpretation

(a) Reference to:

(i) one gender includes each other gender;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) a party includes the party's executors, administrators, successors and permitted assigns;

(v) a statute, regulation or provision of a statute or regulation **("Statutory Provision")** includes:

(1) that Statutory Provision as amended or re-enacted from time to time; and

(2) a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vi) any document or agreement (including this agreement) includes the document or agreement as amended, novated, supplemented or replaced from time to time; and

(vii) "month" means a calendar month.

(b) All monetary amounts are in Australian dollars, unless otherwise stated.

(c) If a party consists of more than one person, this agreement binds them jointly and each of them severally.

(d) Headings are for convenience only and do not form part of this agreement or affect its interpretation.

(e) "Including" and similar expressions are not words of limitation.

(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(g) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

(h) A "corporation" or a "related body corporate" has the meaning given to it in the

Corporations Act 2001.

(i) No rule of construction applies to the disadvantage of a party because that

(j) party was responsible for the preparation of this document.

2. PROVISION OF THE LOAN

When Loan to be Provided

So long as an Event of Default has not occurred, and subject to the provisions of this agreement, the Lender will provide the Loan, on or after the Commencement Date. If the parties agree, the Loan may be provided in two or more instalments.

3. SECURITY

3.1 The obligations of the Lender under this Agreement are subject to and conditional upon the Borrower and/or the Security Provider:

(a) providing the Transaction Documents in such form and containing such provisions as are satisfactory to the Lender;

(b) maintaining the Transaction Documents for so long as any Money Secured is outstanding; and

(c) as and when required by the Lender, causing to be entered into and executed in favour of the Lender, any such securities, instruments, deeds and/or agreements in writing as the Lender shall require and immediately after the execution of such additional Transaction Document delivering to the Lender such documents together with all such other instruments and doing or causing to be done such further acts or things as may be necessary for the additional Transaction Document to be duly registered in such registry or registries as the Lender shall require. The document or documents referred to in this clause shall be prepared by the solicitors for the Lender and shall contain all such covenants terms conditions and provisos as the Lender may require.

3.2 The Borrower acknowledges that the Transaction Documents are charged with payment of the Money Secured.

3.3 All of the covenants conditions terms stipulations and provisos contained in the Transaction Documents are to be observed performed and fulfilled by the Borrower and / or the Security Provider and all the rights powers and remedies conferred upon the Lender under the Security shall with necessary changes be read into and form part of this Agreement in the same manner as if the same were fully set forth herein and vice versa.

3.4 The Borrower covenants and agrees with the Lender that:

(a) for the purpose of determining the value of the Principal Security, the Borrower will permit the Lender or any person authorised by the Lender (including specifically the Valuer), to enter upon any property the subject of the Principal Security at all reasonable times or upon two days notice to inspect the state and condition of the property for the purpose of valuing or revaluing the same; and

(b) the Lender shall be entitled to revalue the property, the subject of the Principal Security, annually at the expense of the Borrower during the Term of the Facility.

4. PAYMENT OF INTEREST

Nil.

5. REPAYMENT

5.1 Of Loan on Expiry Date

The Borrower must repay the Loan on the Expiry Date.

5.2 Early Repayment of Loan

The Borrower may, on 1 month's written notice to the Lender, and with the consent of the Lender, repay the Loan in full before the Expiry Date.

5.3 Effect on Later Repayment Instalments

A repayment earlier or larger than provided by this agreement does not affect the obligation of the Borrower to pay subsequent Repayment Instalments of the amount and at the times provided by this agreement, but only accelerates the date by which the full amount of the Loan is repaid.

5.4 Of Other Secured Money

The Borrower must pay all Secured Money other than the Loan on demand or if demand is not made on the Expiry Date.

6. NO DEDUCTIONS

All money payable by the Borrower must be paid in full without any deduction on account of any income or other taxes or charges present or future. If the Borrower is compelled by law to deduct any taxes or charges the Borrower must pay to the Lender such further sum as will result in the receipt by the Lender of the full amount payable.

7. GENERAL COVENANTS BY BORROWER IN RELATION TO LOAN

7.1 Borrower to Provide Financial Information

The Borrower must deliver to the Lender all financial and other information which the Lender requires from time to time.

7.2 Borrower to Reimburse the Lender

The Borrower must pay to the Lender on demand:

(a) any costs and outlays which were incurred by the Lender to establish this Loan Facility; and

(b) any money which the Lender may see fit to pay to remedy any default of the Borrower.

7.3 Use of Loan

The Borrower may only use the Loan for the Approved Purpose.

8. APPLICATION OF MONEY

Money received by the Lender from the Borrower may be applied towards interest or other Secured Money at the Lender's discretion.

9. WARRANTIES

9.1 The Borrower warrants that:

(a) it has fully disclosed in writing to the Lender all facts relating to the Borrower, its related bodies corporate, and anything in connection with them that are material to the assessment of the nature and amount of the risk undertaken by the Lender in entering into this agreement;

(b) no action, proceeding or arbitration is pending or threatened against the Borrower before any court, administrative tribunal or arbitrator which could or might result in any material adverse change in the business assets or credit of the Borrower; and

(c) all financial statements and information furnished by the Borrower to the Lender are complete and correct and there are no other material facts or considerations the omission of which would render any of the information misleading.

10. DEFAULT

10.1 Lender's Rights on Default

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice:

(a) all of the Secured Money immediately becomes payable; and
(b) the Lender may decline to provide any part of the Loan which has not already been provided.

10.2 Events of Default

The following are Events of Default:

(a) The Borrower fails to request the Lender in writing for the full amount of the Loan;

(b) the Borrower fails to pay any of the Secured Money when due;

(c) the Borrower breaches a term of:

(i) this agreement; or

(ii) any other agreement, instrument or document between the Borrower and the Lender;

(d) any warranty or representation made or deemed to have been made under this agreement or any other written agreement between the Lender and the Borrower proves to have been untrue or misleading when made or deemed to have been made;

(e) this agreement becomes wholly or partly void, voidable or unenforceable;

(f) an order for payment is made or a judgment is entered against the Borrower, any related body corporate of the Borrower or any guarantor of the Secured Money or any part of it and is not satisfied within 7 days;

(g) any creditor of the Borrower levies, or attempts to levy, any distress or execution against any property of the Borrower;

(h) the Borrower or any guarantor, being a body corporate, becomes an externally-administered body corporate under the *Corporations Act 2001;*

(i) steps are taken by any person towards making the Borrower or any guarantor an externally-administered Body Corporate

(j) the Borrower is taken to have failed to comply with a statutory demand within

(k) the meaning of section 459F of the *Corporations Act 2001;*

(l) a person holding a security interest in assets of the Borrower enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or

(m) the Borrower dies or becomes lunatic or insane or a protected person within the meaning of any relevant legislation in that behalf.

11. TRUST PROVISIONS

11.1 Borrower

Where a Borrower has executed this agreement in its capacity as trustee of a trust **("Trust"),** whether or not the fact that the Borrower is a trustee is disclosed to the Lender, the Borrower acknowledges that this agreement is binding on the Borrower personally and in its capacity as

trustee of the Trust and that the Lender's right of recourse extends to both the assets of the Borrower personally and the assets of the Trust.

11.2 Lender

(a) The Lender enters into this agreement, and the Borrower acknowledges it is aware that the Lender enters into this agreement, only in its capacity as trustee of the LM Managed Performance Fund **("the Fund"),** pursuant to the Constitution of the Fund **("the Constitution")** and in no other capacity and the Borrower is aware of the limited scope of the Lender's obligations and powers under such Trust.

(b) A liability arising under or in connection with this agreement is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this agreement.

(c) The parties other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of or affecting the Lender.

(d) The provisions of this clause 10.2 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution or other constitution documents, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of that Fund, as a result of the Lender's fraud, negligence or wilful default.

(e) Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or default under this document.

(f) The Lender's determination as to whether an obligation otherwise imposed upon it under this document is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 10.2(d).

(h) The Lender is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

(i) A failure by the Lender to comply with or a breach by the Lender of any of its obligations under this agreement will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(i) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(ii) was in accordance with a lawful court order or direction or otherwise required by law.

(j) All of the terms, clauses and conditions of this agreement are subject to this clause 10.2.

12. MISCELLANEOUS PROVISIONS

12.1 Inconsistencies

So far as is possible, this agreement must be read together with any and all other agreements or documents entered into in connection with this agreement and, in the event of inconsistency, the provision most favourable to or which confers the greatest benefit on the Lender prevails.

12.2 Certificates

A certificate purporting to be signed by the Lender or an officer of or agent for the Lender stating:

(a) the amount owing or contingently owing by the Borrower at a certain date under this agreement;

(b) the rate or rates of interest which are applicable to the Secured Money or any part of it;

(c) that a particular Event of Default has occurred; or

(d) any other act matter or thing arising under this agreement

is for all purposes prima facie evidence of the facts stated in the certificate.

12.3 Lender's Power to Assign

The Lender may assign the benefit of this agreement.

12.4 Time of the Essence

Time is of the essence of the Borrower's obligations under this agreement unless otherwise agreed in writing by the Lender.

12.5 Further Assurance

The Borrower must promptly at the Borrower's own cost do all things (including executing all documents) necessary or desirable to give full effect to this agreement.

12.6 Severability

If anything in this agreement is unenforceable, illegal or void then it is severed and the rest of this agreement remains in force.

12.7 Entire Agreement

This agreement represents the entire agreement between the parties and all prior or contemporaneous representations, statements and agreements (if any) made by the Lender or the Lender's representatives are merged in this agreement.

12.8 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

12.9 Waiver Excluded

(a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

(c) A waiver is not effective unless it is in writing.

(d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

12.10 Costs and Expenses

The Borrower must pay or reimburse the Lender on demand for:

(a) the costs, charges and expenses of the Lender in connection with the negotiation, preparation, execution, stamping and completion of this agreement and of any forms required by any statute or regulation to be lodged with any registry;

(b) the costs, charges and expenses of the Lender or any attorney of the Lender in connection with:

(i) any consent, exercise or non-exercise of any rights, waiver, variation, release or discharge in connection with or of this agreement; and

(ii) the contemplated or actual enforcement or preservation of any rights under this agreement including, without limitation, any expenses incurred in retaining any independent consultant or other person to evaluate any matter of concern and in the case of the Lender its administration costs in connection with those events; and

(c) stamp duty and other taxes payable in connection with this agreement or in connection with any payment, receipt or other transaction contemplated by this agreement;

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

12.11 Notices

(a) A notice or other communication connected with this agreement **("Notice")** has no legal effect unless it is in writing and:

(i) delivered; or

(ii) sent by post, postage prepaid

to the address of the addressee set out in this agreement or subsequently notified from time to time.

(b) A Notice is deemed given and received:

(i) if delivered, upon delivery; or

(ii) if mailed, on the expiration of 2 Business Days (at the address to which it is mailed) after mailing.

(c) A Notice by the Lender may be given by any officer or agent of the Lender.

13. THE TRUST COMPANY (PTAL) LIMITED LIMITATION OF LIABILITY

13.1 The Lender enters into this Agreement, and the other parties to this Agreement acknowledge that they are aware that the Lender enters into this Agreement, only in its capacity as custodian of the Fund pursuant to the Custody Deed and in no other capacity and the other parties to this Agreement are aware of the limited scope of the Lender's obligations and powers under the Custody Deed.

13.2 A liability arising under or in connection with this Agreement, the Loan Agreement is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of the property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of

this Agreement, the Loan Agreement and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement, the Loan Agreement.

13.3 The parties to this Agreement other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of, or affecting, the Lender.

13.4 The provisions of this clause 12 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution, the Custody Deed, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of the Fund, as a result of the Lender's fraud, negligence or wilful default.

13.5 Despite any other provision of this Agreement, if any obligation otherwise imposed upon the Lender under this Agreement is, in the Lender's opinion, inconsistent with, or beyond the scope of the Lender's obligations or powers under the Custody Deed, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Lender's obligations or powers under the Custody Deed, must be performed by LM in its capacity as Trustee of the Fund.

13.6 Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Deed will not amount to a breach of or a default under this Agreement. The Lender's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Custody Deed is final and binding on all Parties.

13.7 Future Limitations - the Lender is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

13.8 Agents - No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement, the Loan Agreement or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 12.4.

13.9 A failure by the Lender to comply with, or a breach by the Lender of any of its obligations under this Agreement will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

(a) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

13.10 Override Provision - All of the terms, clauses and conditions of this Agreement are subject to this clause 12.

14. LM INVESTMENT MANAGEMENT LIMITED LIMITATION OF LIABILITY

14.1 LM enters into this Agreement, the Loan Agreement and the other parties to this Agreement acknowledge that they are aware that LM enters into this Agreement, the Loan Agreement, in its capacity as Trustee of the Fund, pursuant to the Constitution of the Fund ("the Constitution") and the other parties to this Agreement are aware of the limited scope of LM's obligations and powers under such Fund.

14.2 A liability arising under or in connection with this Agreement is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of

the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement.

14.3 The parties to this Agreement other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

14.4 The provisions of this clause 13 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

14.5 Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Agreement. LM's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

14.6 LM is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

14.7 No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement, the Loan Agreement and each other Security (if any) or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause 13.4.

14.8 A failure by LM to comply with, or a breach by LM of any of its obligations under this Agreement, the Loan Agreement will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

(a) arose as a result of a breach by a person other than LM where the performance of the action (the non performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

14.9 Override Provision - All of the terms, clauses and conditions of this Agreement are subject to this clause 13.

15. LM's AUTHORITY TO ACT FOR LENDER

15.1 The parties acknowledge that LM may on behalf of the Lender exercise all of the rights, powers, consents, controls and approvals pursuant to or under this Agreement and each other Transaction Document and all actions taken by LM shall be deemed to have been authorised by the Lender without any Security Provider or any other person dealing with LM being concerned to enquire as to the authority of LM to act on behalf of the Lender in respect of this Agreement and each other Transaction Document or any matter or thing arising in relation thereto.

(a) For the purposes of this Agreement and each other Transaction Document:

(i) all payments to be made by the Borrower or a Security Provider under this Agreement and each other Transaction Document may be made to LM on behalf of and for the account of the Lender;

(ii) all demands upon a Security Provider may be made by LM;

(iii) all documents, notices, consents or approvals to be given to or by the Borrower or a Security Provider under this Agreement and each other Transaction Document may be given to or by LM;

(iv) all rights conferred upon the Lender under this Agreement and each other Transaction Document may be exercisable by LM;

(v) all communications in relation to this Agreement and each other Transaction Document or any transaction contemplated by this Agreement and each other Transaction Document shall be directed by any Security Provider to LM on behalf of the Lender;

(vi) a receipt issued by LM shall as against any Security Provider constitute a good and valid discharge on behalf of the Lender to any person dealing with the Lender.

16. GOVERNING LAW AND JURISDICTION

16.1 This agreement is governed by the laws of Queensland.

16.2 The parties submit to the non-exclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia.

EXECUTED as an Agreement on day of 2013

EXECUTED BY AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD ACN 102 261 898 in accordance with section 127 of the Corporations Act 2001 (Cth) as Guarantor:

.....
Signature of Sole Director

.....
Full name of Director

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Signature of Director

.....
Full name of Director

.....
Signature of Director

.....
Full name of Director

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by its Attorneys pursuant to Power of Attorney dated 15 January 2013, registered number .....

.....
Signature of Attorney

.....
Full name of Attorney

.....
Signature of Attorney

.....
Full name of Attorney

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 by its Attorney pursuant to Power of Attorney registration number 0138336 who states that he has had no notice of revocation.

_____

Attorney

Witness_____

SCHEDULE

Item 1: Approved Purpose

(a) Purchase and development of the Land;

(b) Payment of interest on the Facility;

(c) Payment of interest due by the Borrower to The Trust Company (PTAL) Limited ACN 008 412 913 as Custodian for The LM First Mortgage Income Fund ARSN 089 343 288 pursuant to a Loan Agreement dated 22 December 2009 under which The Trust Company (PTAL) as Custodian for The LM First Mortgage Income Fund ARSN 089 343 288 agreed to lend an initial amount of $7,800,000.00 (as amended from time to time) to the Borrower.

(d) Towards payment of the "AIIS Entitlement" as that term is defined in a Land Availability Agreement entered into between Australian International Investment Services Pty Ltd ACN 102 261 898 and Aalto Apartments Pty Ltd ACN 152 486 630 on or about 30 June, 2011.

Item 2: Borrower

Australian International Investment Services Pty Ltd ACN 102 261 898

Item 3: Security

(a) A second registered fixed and floating charge granted by Australian International Investment Services Pty Ltd ACN 102 261 898 in favour of LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund over all of the property, assets and undertakings of Australian International Investment Services Pty Ltd ACN 102 261 898 of whatsoever kind and nature and wheresoever situated present and future.

(b) A second registered mortgage by Australian International Investment Services Pty Ltd ACN 102 261 898 as mortgagor and LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund as mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73.

(c) And each and every document, agreement or other security that is provided from time to time which secures or provides for the payment of the Secured Money or the performance of obligations of the Borrower or a party who provides Security which made be executed or provided by the party providing the security or any other person (including this Agreement, and those documents described in Item 3 of the Schedule and any additional security provided in accordance with this Agreement).

Item 4: Commencement Date

23 December 2004

Item 5: Expiry Date

1 September 2013

Item 6: Interest Rate

Nil

Item 7: Lender

The Trust Company (PTAL) Limited ACN 008 412 913

Item 8: Loan

$24 000 000.00 (Twenty Four million dollars)

Item 9: Intentionally blank

PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913
("First Lender" or "Custodian")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
("the Responsible Entity")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
AS TRUSTEE FOR LM MANAGED PERFORMANCE FUND
("Second Lender")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
("Mortgagor")

Priority Deed

LM INVESTMENT MANAGEMENT LTD
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500
FAX: 07 5592 2505

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SCHEDULE

EXECUTION CLAUSES

THIS PRIORITY DEED is made on the date specified in **item 1** of the **Schedule**

BETWEEN **PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913 ("PTAL", "First Lender" or "Custodian")**

AND **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 ("LM" or "the Responsible Entity")**

AND **THE PARTIES NAMED AND DESCRIBED IN ITEM 2 OF THE SCHEDULE ("Second Lender")**

AND **THE PERSON OR PERSONS NAMED AND DESCRIBED IN ITEM 3 OF THE SCHEDULE ("Mortgagor")**

RECITALS

A. The Mortgagor proposes to execute or has executed in favour of the First Lender the First Lender's Security.

B. The Mortgagor proposes to execute or has executed in favour of the Second Lender the Second Lender's Security.

C. The Mortgagees have at the request of the Mortgagor and for valuable consideration agreed to enter into this document to set out their respective rights and priorities.

IT IS AGREED

1. INTERPRETATION

A. Definitions

In this document unless the context otherwise requires:

"Australian Dollars" and "AUD" means the lawful currency of Australia;

"Authorised Representative" means in relation to any party:

(a) If that party is a corporation:

(i) an employee of such corporation whose title contains the words "director" or "manager";
(ii) a person performing the functions of any of them; and
(iii) a lawyer acting for such corporation; and

(b) a person appointed by that party to act as an Authorised Representative for the purpose of this document whose appointment is notified in writing by the appointor to the other party and a specimen of whose signature is given to the other party;

"Break costs" means the costs, loss or damage (direct or indirect) which a party incurs due to:

(a) that party terminating or cancelling part or all of a facility which it made available at a fixed rate of interest under a Finance Document ("the loan facility") before the expiration date of the loan facility ; or
(b) that party receiving payments of principal (for any reason, including prepayment) in respect of any loan facility, before either the expiration date of the loan facility or other due date for repayment.

In particular losses which that party incurs due to an event set out in (a) and (b) ("Event") include any shortfall between:

(c) the return which that party ought to have achieved, but for the occurrence of the Event; and

(d) The return which that party actually achieves upon its re-investment or re-lending of the amount received or repaid (or prepaid) to that party, as a result of the occurrence of the Event.

"Business Day" means a day which is not a Saturday, Sunday or public or bank holiday in the state or territory specified in item 8 of the Schedule;

"Costs" means:

(a) Break costs;
(b) legal (on a solicitor and own client basis) or other consultants expenses;
(c) All costs, expenses, damages, liquidated damages and compensation a Lender is entitled to under the terms of its Security;
(d) GST;
(e) All other amounts expended or incurred by a Mortgagee under its Security with a view to protecting or maintaining or enforcing its Security and which the relevant Mortgagee is entitled under provisions of its Security to so spend or incur; or
(f) Any amounts to be paid, expended or incurred by the relevant Mortgagee, the Responsible Entity or any receiver or manager appointed by the relevant Mortgagee or the Responsible Entity to complete any development on the Relevant Property to the standard acceptable to the Responsible Entity acting reasonably and which is certified by a qualified quantity surveyor as a cost properly incurred in connection with the development;

"Custody Agreement" means the custody agreement between PTAL and LM dated 4 February 1999.

"Disposal" includes transfer, assignment, creation of a lien over or other dealing with and "Dispose" has a corresponding meaning;

"Encumbrance" includes mortgage, charge or lien and "Encumber" has a corresponding meaning;

"Finance Document" means:

(a) Any of the First Lender's Finance Documents
(b) Any of the Second Lender's Finance Documents

"First Priority Amount" means the amount referred to in item 5 of the Schedule;

"First Lender's Security" means each of the securities described in item 4 of the Schedule;

"Fund" means the LM Mortgage Income Fund ARSN 089 343 288.

"Interest" in respect of a Security means all interest, (whether calculated at ordinary, higher, lower, acceptable or other rates and whether in the nature of capitalised or compounded interest), discounts, acceptance and endorsement charges and all other fees and charges secured by that Security;

"Mortgagee" means either of the First Lender or the Second Lender;

"Notice" includes any communication;

"Priority Amount" means either of the First Priority Amount or the Second Priority Amount;

"Receiver" means a receiver or receiver and manager of the Mortgagor or the Relevant Property appointed by any Mortgagee under a Security;

"Relevant Property" means property subject to both the First Lender's Security and the Second Lender's Security;

"Second Lender's Security" means each of the securities described in item 6 of the Schedule.

"Second Priority Amount" means the amount referred to in item 7 of the Schedule;

"Security" means the First Lender's Security or the Second Lender's Security and includes any Encumbrance now or hereafter held by a Mortgagee over property which is or includes the Relevant Property;

B. Construction

In this document, unless the context otherwise requires:

(a) words importing:

(i) the singular include the plural and vice versa; and
(ii) any gender includes the other genders;

(b) an agreement, representation, warranty, undertaking or covenant on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

(c) if a word or phrase is defined cognate words and phrases have corresponding definitions;

(d) a reference to:

(i) a person includes a firm, unincorporated association, corporation and governmental or semi-governmental authority;
(ii) a person includes the legal personal representatives, successors, assigns and substitutes (including, without limitation, persons taking by novation) of that person;
(iii) this or any other document includes the document as varied or replaced, and notwithstanding any change in the identity of the parties;
(iv) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
(v) time is to local time in the state or territory specified in item 8 of the Schedule; and
(vi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

C. Headings

Headings shall be ignored in construing this document.

2. WAIVER AND CONSENT

Each Mortgagee consents to the execution of each Security of each other Mortgagee. Each Mortgagee waives any breach or default under any provision of any Security of that Mortgagee arising by virtue of the Mortgagor executing any other Securities or this document or by virtue of the priority hereby given and agrees that no Security of that Mortgagee shall thereby become unenforceable.

3. ORDER OF PRIORITY

3.1. The order of priority in which the Security and the moneys secured thereby shall rank in respect of the Relevant Property they have in common shall be as follows:

(a) first the First Lender's Security to the extent of all money secured by it up to a total of the amount of the First Priority Amount plus Interest and Costs;
(b) second the Second Lender's Security to the extent of all money secured by it up to a total amount of the Second Priority Amount plus Interest and Costs;
(c) third the First Secured Lender's Security to the extent of any money secured by it in excess of the First Priority Amount;

(d) fourth the Second Secured Lender's Security to the extent of any money secured by it in excess of the Second Priority Amount;

and to the extent necessary at law to give effect to the above priorities the Second Lender postpones the priority and operation of the Second Lender's Security.

3.2. Where in applying clause 3.1 property subject to a Security includes property other than Relevant Property the proceeds of enforcement and realisation of the Security shall be apportioned between the Relevant Property and the other property pro rata according to the respective values thereof.

4. **MATTERS NOT AFFECTING PRIORITY**

The priority conferred by clause 3 shall apply notwithstanding any of the following:

(a) the order of creation or registration of Securities or the time when liability for any of the money secured by a Security is incurred and/or becomes payable;
(b) that a Mortgagee has notice of any Security of any other Mortgagee;
(c) that a Security is expressed to be subject to any other Security;
(d) that the liability for any money secured by a Security is any one of the following - present, future, actual, contingent, limited or unlimited, continuing, varying or on current or any other account, liquidated or unliquidated, in the nature of damages or any form of credit;
(e) that any money secured by a Security is from time to time during the continuance of any other Security wholly or partly paid, varied, or reduced and subsequently increased or vice versa;
(f) that a Security or any agreement or arrangement relating thereto is varied or further moneys become secured thereby;
(g) that dealings or transactions on any account or of any kind take place between the Mortgagor and any Mortgagee;
(h) any other mortgage, charge, lien or encumbrance affecting any Relevant Property now or hereafter created by the Mortgagor; or
(i) any other event or circumstance whatsoever (save an agreement between Mortgagees) which but for this clause 4(i) would affect the order of priorities.

5. **ACKNOWLEDGMENTS**

A. **Receiver**

Moneys received by a Receiver in connection with the Relevant Property shall be applied in accordance with the terms of clause 3.

B. **Mortgagees's Rights and Powers**

Nothing contained in this document:

(a) requires any Mortgagee to provide any accommodation to the Mortgagor; or
(b) as between the Mortgagor and any Mortgagee, affects or prejudices any rights or remedies of the Mortgagee under its Security, which shall remain in full force and effect as effective security for all moneys, liabilities and obligations therein mentioned.

C. **Purchasers**

No purchaser dealing with either Mortgagee or any Receiver shall be concerned in any way with the provisions of this document but shall assume that the Mortgagee or any such Receiver (as the case may be) are acting in accordance with the provisions of this document.

6. **INSURANCE**

Any moneys received by any of the parties hereto, prior to the enforcement of any Security in respect of any insurance covering any of the Relevant Property shall be applied in accordance with the First Lender's Security.

7. **OTHER SECURITY INTERESTS**

Nothing contained in this document shall prejudice or affect the rights of either of the Mortgagees under any Encumbrance (other than a Security) now or hereafter held by it in respect of any moneys, obligations or liabilities thereby secured and so that each Mortgagee may apply any moneys in or toward payment or satisfaction of any money, obligation or liability now or hereafter

due owing or incurred by it other than or in excess of the Priority Amount of that Mortgagee or may hold such moneys in a suspense account for such period as it may in its absolute discretion think fit.

8. ASSIGNMENT

8.1. Consent to Assignment

The Mortgagees agree not to Encumber or Dispose of their respective Securities or any interest therein or permit or suffer the same to be Encumbered or Disposed of without the prior written consent of the other Mortgagee which consent will not be unreasonably withheld.

8.2. Undertaking by Assignee

Without limiting the discretion of the other Mortgagee, such consent may at the option of the other Mortgagee include a condition that every person intended to obtain an interest in the relevant Security enters into a deed with the other Mortgagee undertaking to be bound by the provisions of this document (including this clause) mutatis mutandis. This clause is not for the benefit of the Mortgagor and does not confer any rights on the Mortgagor.

9. EXERCISE OF POWERS

9.1. Exercise

Subject to clause 9.2 and clause 10 each Mortgagee shall be at liberty to exercise such Mortgagee's respective rights, powers and remedies under such Mortgagee's Security and to recover payment of the money secured thereby as such Mortgagee thinks fit.

9.2 Trust

Each Mortgagee shall hold any proceeds of the enforcement and realisation of that Mortgagee's Security on trust to be applied in accordance with clause 3 and the Mortgagees shall account to each other accordingly.

9.3 Content of Priority Amount

If the total liability of the Mortgagor to either Mortgagee exceeds that Mortgagee's Priority Amount, that Mortgagee shall be entitled conclusively to determine what part of such total liability shall be deemed to be comprised in that Mortgagee's Priority Amount and which part shall not be deemed to be so comprised.

10. NOTICE OF EXERCISE OF POWERS

The Mortgagees agree that a Mortgagee shall not exercise any of such Mortgagee's powers of appointment of a receiver or a receiver and manager, entry into possession, sale or foreclosure without first giving written notice thereof to the other Mortgagee.

11. INFORMATION

Each Mortgagee shall be at liberty to give to the other Mortgagee information relating to the Mortgagor, the state of accounts of the Mortgagor with the Mortgagee, any Security, the Relevant Property and the operation of this document.

12. MORTGAGOR'S CONSENT

The Mortgagor joins in this document as a party for the purpose of:

(a) acknowledging and consenting to the priorities created by this document;
(b) undertaking with each of the Mortgagees to observe the provisions fo this document at all times and not in any way to prejudice or effect the enforcement of such provisions or to do or permit to be done anything which would be a breach of this document;
(c) acknowledging that the liabilities and obligations of the Mortgagor contained in the Security shall not be abrogated, impaired or diminished by this document (other than as expressly provided) or by the failure of a Mortgagee to comply with any of the terms of this document; and
(d) authorising the Mortgagees to provide to each other any information referred to in clause 11.

13. PREVIOUS AGREEMENTS

This document replaces any previous deed or agreement entered into between the Mortgagees or any of them relating to the priority of the Securities with respect to Relevant Property.

14. COSTS AND STAMP DUTY

The Mortgagor shall pay to each Mortgagee all that Mortgagee's legal costs and expenses of and incidental to the preparation, execution and stamping of this document and all stamp duty thereon.

15. COUNTERPARTS

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

16. LAW

This document shall be governed by and construed in accordance with the law of the state or territory described in item 8 of the Schedule and the parties agree to submit to the non exclusive jurisdiction of any Court of competent jurisdiction of the state or territory described in item 8 of the Schedule.

17. NOTICES

17.1 Any notice, demand or other communication under this document:

(a) shall be given in writing and in the English language; and
(b) may be given by an Authorised Officer of the sender.

17.2. In addition to any means authorised by law any communication may be given by:

(a) being personally served on a party;
(b) being left at the party's current address for service;
(c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or
(d) by telex or facsimile to the party's current numbers for service.

17.3 The addresses and numbers for service are initially set out in item 9 of the Schedule.

17.4 A party may from time to time change its address or numbers for service by notice to the other party.

17.5 A communication given by post shall be deemed received:

(a) if posted within Australia to an Australian address, on the third Business Day after posting; and
(b) in any other case, on the tenth Business Day after posting.

17.6 A communication sent to facsimile shall be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number and shall be deemed given in the form transmitted unless the message is not fully received in a legible form and the addressee immediately notifies the sender of that fact.

17.7 If a communication to any party is received by it:

(a) after 5.00pm; or
(b) on a day which is not a Business Day;

it will be deemed to have been received on the next Business Day.

18. LIMIT OF LIABILITY – PTAL

(a) **Custodian**

PTAL enters into this Agreement and each other Security, and the other parties to this Agreement acknowledge that they are aware that PTAL enters into this Agreement and each other Security, only in its capacity as custodian of the Fund pursuant to the Custody Agreement

and in no other capacity and the other parties to this Agreement are aware of the limited scope of PTAL's obligations and powers under the Custody Agreement.

(b) **Liability Limited**
A liability arising under or in connection with this Agreement and each Security is limited to and can be enforced against PTAL only to the extent to which it can be satisfied out of the property of the Fund out of which PTAL is actually indemnified for the liability. This limitation of PTAL's liability applies despite any other provision of this Agreement or any other Security and extends to all liabilities and obligations of PTAL in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement and each other Security.

(c) **No Right to Appoint or Prove**
The parties to this Agreement other than PTAL may not sue PTAL personally or seek the appointment of a liquidator, administrator, receiver or similar person to PTAL or prove in any liquidation, administration or arrangement of, or affecting, PTAL.

(d) **Limit of Liability Not to Apply**
The provisions of this clause 18 do not apply to any obligation or liability of PTAL to the extent that it is not satisfied because under the Fund's Constitution, the Custody Agreement, or by operation of law there is a reduction in the extent of PTAL's indemnification out of the assets of the Fund, as a result of PTAL's fraud, negligence or wilful default.

(e) **Scope of the Custody Agreement**
Despite any other provision of this Agreement, if any obligation otherwise imposed upon PTAL under this Agreement is, in PTAL's opinion, inconsistent with, or beyond the scope of PTAL's obligations or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of PTAL's obligations or powers under the Custody Agreement, must be performed by LM in its capacity as the Responsible Entity of the Fund.

(f) **Inconsistency with the Custody Agreement**
Any failure by PTAL to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or a default under this Agreement. PTAL's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all Parties.

(g) **Future Limitations**
PTAL is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless PTAL's liability is limited in the manner satisfactory to PTAL in its absolute discretion.

(h) **Agents**
No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement and each other Security or otherwise has authority to act on behalf of PTAL in a way which exposes PTAL to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of PTAL for the purpose of clause 18 (d).

(i) **Failure by PTAL**
A failure by PTAL to comply with, or a breach by PTAL of any of its obligations under this Agreement will not be considered to be fraud, negligence or wilful default by PTAL if the relevant failure or breach:

i. arose as a result of a breach by a person other than PTAL where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to PTAL performing the said obligation; or
ii. was in accordance with a lawful court order or direction or otherwise required by law.

(j) **Override Provision**

All of the terms, clauses and conditions of this Agreement are subject to this clause 18.

19. Limit of Liability – LM

(a) **Responsible Entity and Trustee**

To the extent that LM enters into this Deed in its capacity as the responsible entity of the Fund, clauses 19(b) to 19(f) and clauses 19(l) to (m) shall apply. To the extent that LM enters into this Deed in its capacity as the trustee of the Trust, clauses 19(g) to (m) shall apply.

(b) **Responsible Entity**

LM enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the responsible entity of the Fund, pursuant to the constitution of the Fund (the ***Constitution***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Fund.

(c) **Liability Limited**

A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(d) **No Right to Appoint or Prove**

The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(e) **Limit of Liability Not to Apply**

The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

(f) **Inconsistency with the Constitution**

Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) **Trustee**

LM also enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the trustee of the Trust, pursuant to the constitution of the Trust (the ***Trust Deed***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Trust.

(h) **Liability Limited**

A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Trust out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(i) **No Right to Appoint or Prove**

The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(j) **Limit of Liability Not to Apply**
The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Trust's Trust Deed or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Trust, as a result of LM's fraud, negligence or wilful default.

(k) **Inconsistency with the Trust Deed**
Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Trust Deed will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Trust Deed is final and binding on all parties.

(l) **Future Limitations**
LM is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

(m) **Override Provision**
All of the terms, clauses and conditions of this Deed are subject to this clause 19.

20. LM ACTS FOR FIRST AND SECOND LENDER

(a) The Mortgagor acknowledges that LM shall on behalf of the First and Second Lenders exercise all of the rights, powers, consents, controls and approvals pursuant to or under each Security and all actions taken by LM shall be deemed to have been authorised by the First and Second Lenders without any Security Provider or any other person dealing with LM being concerned to enquire as to the authority of LM to act on behalf of the First and Second Lenders in respect of any Security or any matter or thing arising in relation thereto.

(b) For the purposes of each Security:

a. all payments to be made by a Security Provider under any Security shall be made to LM on behalf of and for the account of the First and Second Lender;

b. all demands upon a Security Provider shall be made by LM;

c. all documents, notices, consents or approvals to be given to or by a Security Provider under any Security shall be given to or by LM;

d. all rights conferred upon the First and Second Lender under any Security shall be exercisable by LM;

e. all communications in relation to a Security or any transaction contemplated by a Security shall be directed by any Security Provider to LM on behalf of the First and Second Lender;

f. a receipt issued by LM shall as against any Security Provider constitute a good and valid discharge on behalf of the Lender to any person dealing with the First and Second Lender.

SCHEDULE

Item 1 (Date) This 30th day of November 2008

Item 2
(Second Lender)
LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR LM MANAGED PERFORMANCE FUND

Item 3
(Mortgagor)

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898 of C/- Level 4, 9 Beach Road, Surfers Paradise 4217

Item 4
(First Lender's Security)

(a) Loan agreement dated 8 April, 2005 as varied by Deeds of Variation dated 19 June 2007, 12 December 2007 , Letter of Variation dated 14 April, 2008 and Letter of Variation / Deed of Variation dated ..... November 2008 entered into between the First Lender, the Responsible Entity, Australian International Investment Services Pty Ltd A.C.N. 102 261 898 and Space Developments Pty Ltd A.C.N. 097 627 355;

(b) First registered Mortgage Number 1416794 over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(c) Deed of Guarantee and Indemnity given by Peter Charles Drake, Goran Adzic, Peter John Bowyer and Murray George Bowyer in favour of the First Lender;

(d) First Registered Fixed and Floating Charge No 1167534 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the First Lender over all the property, assets and undertaking of **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** of whatsoever nature and kind and wheresoever situated, present and future.

(e) First Registered Fixed and Floating Charge No 1472009 given by **SPACE DEVELOPMENTS PTY LIMITED A.C.N. 097 627 355** in favour of the First Lender over all the property, assets and undertaking of **SPACE DEVELOPMENTS PTY LIMITED A.C.N. 097 627 355** of whatsoever nature and kind and wheresoever situated, present and future.

Item 5
(First Priority Amount) Seven Million Eight Hundred Thousand Dollars ($7,800,000.00)

Item 6
(Second Lender's Security)

(a) Loan Agreement dated 19 January 2005 as varied by Deed of Variation of Loan Agreement dated 11 April, 2005 and 30 November 2008 entered into between the Second Lender, and Australian International Investment Services Pty Ltd A.C.N. 102 261 898;

(b) Second registered Mortgage No ..... Given (or to be given by) by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as the mortgagor and the Second Lender as the Mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

item 7
(Second Priority Amount) Four Million Two Hundred Thousand Dollars ($4,200,000.00)

item 8
(State or Territory) Australian Capital Territory

item 9
(Addresses for Service)

In respect of the First Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Second Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Mortgagor:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

EXECUTED as a deed.

PERMANENT TRUSTEE AUSTRALIA LIMITED ACN 008 412 913 by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2 June 1993, whereby they execute this deed document or instrument.

Power of Attorney No ..... 76125 .....

.....
Group A Attorney Geoffrey Funnell

.....
Group B Attorney Susan Davis

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** As Responsible Entity for the LM Mortgage Income Fund and its capacity as Second Lender in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Peter Charles Drake - Director

.....
Lisa Maree Darcy – Director

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as Mortgagor in accordance with section 127 of the Corporations Act 2001 (Cth) in the presence of :

.....
Director (signature)

PETER CHARLES DRAKE
Sole Director

22/12/09.

PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913
("First Lender" or "Custodian")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
("the Responsible Entity")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
AS TRUSTEE FOR LM MANAGED PERFORMANCE FUND
("Second Lender")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
("Mortgagor")

Priority Deed

LM INVESTMENT MANAGEMENT LTD
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500
FAX: 07 5592 2505

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SCHEDULE

EXECUTION CLAUSES

THIS PRIORITY DEED is made on the date specified in **item 1** of the **Schedule**

BETWEEN **PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913 ("PTAL", "First Lender" or "Custodian")**

AND **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 ("LM" or "the Responsible Entity")**

AND **THE PARTIES NAMED AND DESCRIBED IN ITEM 2 OF THE SCHEDULE ("Second Lender")**

AND **THE PERSON OR PERSONS NAMED AND DESCRIBED IN ITEM 3 OF THE SCHEDULE ("Mortgagor")**

RECITALS

A. The Mortgagor proposes to execute or has executed in favour of the First Lender the First Lender's Security.

B. The Mortgagor proposes to execute or has executed in favour of the Second Lender the Second Lender's Security.

C. The Mortgagees have at the request of the Mortgagor and for valuable consideration agreed to enter into this document to set out their respective rights and priorities.

IT IS AGREED

1. INTERPRETATION

A. Definitions

In this document unless the context otherwise requires:

"Australian Dollars" and "AUD" means the lawful currency of Australia;

"Authorised Representative" means in relation to any party:

(a) If that party is a corporation:

(i) an employee of such corporation whose title contains the words "director" or "manager";
(ii) a person performing the functions of any of them; and
(iii) a lawyer acting for such corporation; and

(b) a person appointed by that party to act as an Authorised Representative for the purpose of this document whose appointment is notified in writing by the appointor to the other party and a specimen of whose signature is given to the other party;

"Break costs" means the costs, loss or damage (direct or indirect) which a party incurs due to:

(a) that party terminating or cancelling part or all of a facility which it made available at a fixed rate of interest under a Finance Document ("the loan facility") before the expiration date of the loan facility ; or
(b) that party receiving payments of principal (for any reason, including prepayment) in respect of any loan facility, before either the expiration date of the loan facility or other due date for repayment.

In particular losses which that party incurs due to an event set out in (a) and (b) ("Event") include any shortfall between:

(c) the return which that party ought to have achieved, but for the occurrence of the Event; and

(d) The return which that party actually achieves upon its re-investment or re-lending of the amount received or repaid (or prepaid) to that party, as a result of the occurrence of the Event.

"Business Day" means a day which is not a Saturday, Sunday or public or bank holiday in the state or territory specified in item 8 of the Schedule;

"Costs" means:

(a) Break costs;
(b) legal (on a solicitor and own client basis) or other consultants expenses;
(c) All costs, expenses, damages, liquidated damages and compensation a Lender is entitled to under the terms of its Security;
(d) GST;
(e) All other amounts expended or incurred by a Mortgagee under its Security with a view to protecting or maintaining or enforcing its Security and which the relevant Mortgagee is entitled under provisions of its Security to so spend or incur; or
(f) Any amounts to be paid, expended or incurred by the relevant Mortgagee, the Responsible Entity or any receiver or manager appointed by the relevant Mortgagee or the Responsible Entity to complete any development on the Relevant Property to the standard acceptable to the Responsible Entity acting reasonably and which is certified by a qualified quantity surveyor as a cost properly incurred in connection with the development;

"Custody Agreement" means the custody agreement between PTAL and LM dated 4 February 1999.

"Disposal" includes transfer, assignment, creation of a lien over or other dealing with and "Dispose" has a corresponding meaning;

"Encumbrance" includes mortgage, charge or lien and "Encumber" has a corresponding meaning;

"Finance Document" means:

(a) Any of the First Lender's Finance Documents
(b) Any of the Second Lender's Finance Documents

"First Priority Amount" means the amount referred to in item 5 of the Schedule;

"First Lender's Security" means each of the securities described in item 4 of the Schedule;

"Fund" means the LM Mortgage Income Fund ARSN 089 343 288.

"Interest" in respect of a Security means all interest, (whether calculated at ordinary, higher, lower, acceptable or other rates and whether in the nature of capitalised or compounded interest), discounts, acceptance and endorsement charges and all other fees and charges secured by that Security;

"Mortgagee" means either of the First Lender or the Second Lender;

"Notice" includes any communication;

"Priority Amount" means either of the First Priority Amount or the Second Priority Amount;

"Receiver" means a receiver or receiver and manager of the Mortgagor or the Relevant Property appointed by any Mortgagee under a Security;

"Relevant Property" means property subject to both the First Lender's Security and the Second Lender's Security;

"Second Lender's Security" means each of the securities described in item 6 of the Schedule.

"Second Priority Amount" means the amount referred to in item 7 of the Schedule;

"Security" means the First Lender's Security or the Second Lender's Security and includes any Encumbrance now or hereafter held by a Mortgagee over property which is or includes the Relevant Property;

B. Construction

In this document, unless the context otherwise requires:

(a) words importing:

(i) the singular include the plural and vice versa; and
(ii) any gender includes the other genders;

(b) an agreement, representation, warranty, undertaking or covenant on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

(c) if a word or phrase is defined cognate words and phrases have corresponding definitions;

(d) a reference to:

(i) a person includes a firm, unincorporated association, corporation and governmental or semi-governmental authority;
(ii) a person includes the legal personal representatives, successors, assigns and substitutes (including, without limitation, persons taking by novation) of that person;
(iii) this or any other document includes the document as varied or replaced, and notwithstanding any change in the identity of the parties;
(iv) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
(v) time is to local time in the state or territory specified in item 8 of the Schedule; and
(vi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

C. Headings

Headings shall be ignored in construing this document.

2. WAIVER AND CONSENT

Each Mortgagee consents to the execution of each Security of each other Mortgagee. Each Mortgagee waives any breach or default under any provision of any Security of that Mortgagee arising by virtue of the Mortgagor executing any other Securities or this document or by virtue of the priority hereby given and agrees that no Security of that Mortgagee shall thereby become unenforceable.

3. ORDER OF PRIORITY

3.1. The order of priority in which the Security and the moneys secured thereby shall rank in respect of the Relevant Property they have in common shall be as follows:

(a) first the First Lender's Security to the extent of all money secured by it up to a total of the amount of the First Priority Amount plus Interest and Costs;
(b) second the Second Lender's Security to the extent of all money secured by it up to a total amount of the Second Priority Amount plus Interest and Costs;
(c) third the First Secured Lender's Security to the extent of any money secured by it in excess of the First Priority Amount;

(d) fourth the Second Secured Lender's Security to the extent of any money secured by it in excess of the Second Priority Amount;

and to the extent necessary at law to give effect to the above priorities the Second Lender postpones the priority and operation of the Second Lender's Security.

3.2. Where in applying clause 3.1 property subject to a Security includes property other than Relevant Property the proceeds of enforcement and realisation of the Security shall be apportioned between the Relevant Property and the other property pro rata according to the respective values thereof.

4. **MATTERS NOT AFFECTING PRIORITY**

The priority conferred by clause 3 shall apply notwithstanding any of the following:

(a) the order of creation or registration of Securities or the time when liability for any of the money secured by a Security is incurred and/or becomes payable;
(b) that a Mortgagee has notice of any Security of any other Mortgagee;
(c) that a Security is expressed to be subject to any other Security;
(d) that the liability for any money secured by a Security is any one of the following - present, future, actual, contingent, limited or unlimited, continuing, varying or on current or any other account, liquidated or unliquidated, in the nature of damages or any form of credit;
(e) that any money secured by a Security is from time to time during the continuance of any other Security wholly or partly paid, varied, or reduced and subsequently increased or vice versa;
(f) that a Security or any agreement or arrangement relating thereto is varied or further moneys become secured thereby;
(g) that dealings or transactions on any account or of any kind take place between the Mortgagor and any Mortgagee;
(h) any other mortgage, charge, lien or encumbrance affecting any Relevant Property now or hereafter created by the Mortgagor; or
(i) any other event or circumstance whatsoever (save an agreement between Mortgagees) which but for this clause 4(i) would affect the order of priorities.

5. **ACKNOWLEDGMENTS**

A. **Receiver**

Moneys received by a Receiver in connection with the Relevant Property shall be applied in accordance with the terms of clause 3.

B. **Mortgagees's Rights and Powers**

Nothing contained in this document:

(a) requires any Mortgagee to provide any accommodation to the Mortgagor; or
(b) as between the Mortgagor and any Mortgagee, affects or prejudices any rights or remedies of the Mortgagee under its Security, which shall remain in full force and effect as effective security for all moneys, liabilities and obligations therein mentioned.

C. **Purchasers**

No purchaser dealing with either Mortgagee or any Receiver shall be concerned in any way with the provisions of this document but shall assume that the Mortgagee or any such Receiver (as the case may be) are acting in accordance with the provisions of this document.

6. **INSURANCE**

Any moneys received by any of the parties hereto, prior to the enforcement of any Security in respect of any insurance covering any of the Relevant Property shall be applied in accordance with the First Lender's Security.

7. **OTHER SECURITY INTERESTS**

Nothing contained in this document shall prejudice or affect the rights of either of the Mortgagees under any Encumbrance (other than a Security) now or hereafter held by it in respect of any moneys, obligations or liabilities thereby secured and so that each Mortgagee may apply any moneys in or toward payment or satisfaction of any money, obligation or liability now or hereafter

due owing or incurred by it other than or in excess of the Priority Amount of that Mortgagee or may hold such moneys in a suspense account for such period as it may in its absolute discretion think fit.

8. ASSIGNMENT

8.1. Consent to Assignment

The Mortgagees agree not to Encumber or Dispose of their respective Securities or any interest therein or permit or suffer the same to be Encumbered or Disposed of without the prior written consent of the other Mortgagee which consent will not be unreasonably withheld.

8.2. Undertaking by Assignee

Without limiting the discretion of the other Mortgagee, such consent may at the option of the other Mortgagee include a condition that every person intended to obtain an interest in the relevant Security enters into a deed with the other Mortgagee undertaking to be bound by the provisions of this document (including this clause) mutatis mutandis. This clause is not for the benefit of the Mortgagor and does not confer any rights on the Mortgagor.

9. EXERCISE OF POWERS

9.1. Exercise

Subject to clause 9.2 and clause 10 each Mortgagee shall be at liberty to exercise such Mortgagee's respective rights, powers and remedies under such Mortgagee's Security and to recover payment of the money secured thereby as such Mortgagee thinks fit.

9.2 Trust

Each Mortgagee shall hold any proceeds of the enforcement and realisation of that Mortgagee's Security on trust to be applied in accordance with clause 3 and the Mortgagees shall account to each other accordingly.

9.3 Content of Priority Amount

If the total liability of the Mortgagor to either Mortgagee exceeds that Mortgagee's Priority Amount, that Mortgagee shall be entitled conclusively to determine what part of such total liability shall be deemed to be comprised in that Mortgagee's Priority Amount and which part shall not be deemed to be so comprised.

10. NOTICE OF EXERCISE OF POWERS

The Mortgagees agree that a Mortgagee shall not exercise any of such Mortgagee's powers of appointment of a receiver or a receiver and manager, entry into possession, sale or foreclosure without first giving written notice thereof to the other Mortgagee.

11. INFORMATION

Each Mortgagee shall be at liberty to give to the other Mortgagee information relating to the Mortgagor, the state of accounts of the Mortgagor with the Mortgagee, any Security, the Relevant Property and the operation of this document.

12. MORTGAGOR'S CONSENT

The Mortgagor joins in this document as a party for the purpose of:

(a) acknowledging and consenting to the priorities created by this document;
(b) undertaking with each of the Mortgagees to observe the provisions fo this document at all times and not in any way to prejudice or effect the enforcement of such provisions or to do or permit to be done anything which would be a breach of this document;
(c) acknowledging that the liabilities and obligations of the Mortgagor contained in the Security shall not be abrogated, impaired or diminished by this document (other than as expressly provided) or by the failure of a Mortgagee to comply with any of the terms of this document; and
(d) authorising the Mortgagees to provide to each other any information referred to in clause 11.

13. PREVIOUS AGREEMENTS

This document replaces any previous deed or agreement entered into between the Mortgagees or any of them relating to the priority of the Securities with respect to Relevant Property.

14. COSTS AND STAMP DUTY

The Mortgagor shall pay to each Mortgagee all that Mortgagee's legal costs and expenses of and incidental to the preparation, execution and stamping of this document and all stamp duty thereon.

15. COUNTERPARTS

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

16. LAW

This document shall be governed by and construed in accordance with the law of the state or territory described in item 8 of the Schedule and the parties agree to submit to the non exclusive jurisdiction of any Court of competent jurisdiction of the state or territory described in item 8 of the Schedule.

17. NOTICES

17.1 Any notice, demand or other communication under this document:

(a) shall be given in writing and in the English language; and
(b) may be given by an Authorised Officer of the sender.

17.2. In addition to any means authorised by law any communication may be given by:

(a) being personally served on a party;
(b) being left at the party's current address for service;
(c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or
(d) by telex or facsimile to the party's current numbers for service.

17.3 The addresses and numbers for service are initially set out in item 9 of the Schedule.

17.4 A party may from time to time change its address or numbers for service by notice to the other party.

17.5 A communication given by post shall be deemed received:

(a) if posted within Australia to an Australian address, on the third Business Day after posting; and
(b) in any other case, on the tenth Business Day after posting.

17.6 A communication sent to facsimile shall be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number and shall be deemed given in the form transmitted unless the message is not fully received in a legible form and the addressee immediately notifies the sender of that fact.

17.7 If a communication to any party is received by it:

(a) after 5.00pm; or
(b) on a day which is not a Business Day;

it will be deemed to have been received on the next Business Day.

18. LIMIT OF LIABILITY – PTAL

(a) Custodian

PTAL enters into this Agreement and each other Security, and the other parties to this Agreement acknowledge that they are aware that PTAL enters into this Agreement and each other Security, only in its capacity as custodian of the Fund pursuant to the Custody Agreement

and in no other capacity and the other parties to this Agreement are aware of the limited scope of PTAL's obligations and powers under the Custody Agreement.

(b) **Liability Limited**
A liability arising under or in connection with this Agreement and each Security is limited to and can be enforced against PTAL only to the extent to which it can be satisfied out of the property of the Fund out of which PTAL is actually indemnified for the liability. This limitation of PTAL's liability applies despite any other provision of this Agreement or any other Security and extends to all liabilities and obligations of PTAL in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement and each other Security.

(c) **No Right to Appoint or Prove**
The parties to this Agreement other than PTAL may not sue PTAL personally or seek the appointment of a liquidator, administrator, receiver or similar person to PTAL or prove in any liquidation, administration or arrangement of, or affecting, PTAL.

(d) **Limit of Liability Not to Apply**
The provisions of this clause 18 do not apply to any obligation or liability of PTAL to the extent that it is not satisfied because under the Fund's Constitution, the Custody Agreement, or by operation of law there is a reduction in the extent of PTAL's indemnification out of the assets of the Fund, as a result of PTAL's fraud, negligence or wilful default.

(e) **Scope of the Custody Agreement**
Despite any other provision of this Agreement, if any obligation otherwise imposed upon PTAL under this Agreement is, in PTAL's opinion, inconsistent with, or beyond the scope of PTAL's obligations or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of PTAL's obligations or powers under the Custody Agreement, must be performed by LM in its capacity as the Responsible Entity of the Fund.

(f) **Inconsistency with the Custody Agreement**
Any failure by PTAL to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or a default under this Agreement. PTAL's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all Parties.

(g) **Future Limitations**
PTAL is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless PTAL's liability is limited in the manner satisfactory to PTAL in its absolute discretion.

(h) **Agents**
No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement and each other Security or otherwise has authority to act on behalf of PTAL in a way which exposes PTAL to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of PTAL for the purpose of clause 18 (d).

(i) **Failure by PTAL**
A failure by PTAL to comply with, or a breach by PTAL of any of its obligations under this Agreement will not be considered to be fraud, negligence or wilful default by PTAL if the relevant failure or breach:

i. arose as a result of a breach by a person other than PTAL where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to PTAL performing the said obligation; or
ii. was in accordance with a lawful court order or direction or otherwise required by law.

(j) **Override Provision**

All of the terms, clauses and conditions of this Agreement are subject to this clause 18.

19. Limit of Liability – LM

(a) **Responsible Entity and Trustee**

To the extent that LM enters into this Deed in its capacity as the responsible entity of the Fund, clauses 19(b) to 19(f) and clauses 19(l) to (m) shall apply. To the extent that LM enters into this Deed in its capacity as the trustee of the Trust, clauses 19(g) to (m) shall apply.

(b) **Responsible Entity**
LM enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the responsible entity of the Fund, pursuant to the constitution of the Fund (the ***Constitution***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Fund.

(c) **Liability Limited**
A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(d) **No Right to Appoint or Prove**
The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(e) **Limit of Liability Not to Apply**
The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

(f) **Inconsistency with the Constitution**
Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) **Trustee**
LM also enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the trustee of the Trust, pursuant to the constitution of the Trust (the ***Trust Deed***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Trust.

(h) **Liability Limited**
A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Trust out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(i) **No Right to Appoint or Prove**
The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(j) **Limit of Liability Not to Apply**
The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Trust's Trust Deed or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Trust, as a result of LM's fraud, negligence or wilful default.

(k) **Inconsistency with the Trust Deed**
Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Trust Deed will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Trust Deed is final and binding on all parties.

(l) **Future Limitations**
LM is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

(m) **Override Provision**
All of the terms, clauses and conditions of this Deed are subject to this clause 19.

20. LM ACTS FOR FIRST AND SECOND LENDER

(a) The Mortgagor acknowledges that LM shall on behalf of the First and Second Lenders exercise all of the rights, powers, consents, controls and approvals pursuant to or under each Security and all actions taken by LM shall be deemed to have been authorised by the First and Second Lenders without any Security Provider or any other person dealing with LM being concerned to enquire as to the authority of LM to act on behalf of the First and Second Lenders in respect of any Security or any matter or thing arising in relation thereto.

(b) For the purposes of each Security:

a. all payments to be made by a Security Provider under any Security shall be made to LM on behalf of and for the account of the First and Second Lender;

b. all demands upon a Security Provider shall be made by LM;

c. all documents, notices, consents or approvals to be given to or by a Security Provider under any Security shall be given to or by LM;

d. all rights conferred upon the First and Second Lender under any Security shall be exercisable by LM;

e. all communications in relation to a Security or any transaction contemplated by a Security shall be directed by any Security Provider to LM on behalf of the First and Second Lender;

f. a receipt issued by LM shall as against any Security Provider constitute a good and valid discharge on behalf of the Lender to any person dealing with the First and Second Lender.

SCHEDULE

item 1 This .....22..... day of ..December 2009
(Date)

item 2
(Second Lender)
LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR LM MANAGED PERFORMANCE FUND

item 3
(Mortgagor)

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898 of C/- Level 4, 9 Beach Road, Surfers Paradise 4217

item 4
(First Lender's Security)

(a) Loan agreement dated 8 April, 2005 as varied by Deeds of Variation dated 19 June 2007, 1[illegible] December 2007 , Letter of Variation dated 14 April, 2008, Letter of Variation dated 31 October 2009, Deed of Release dated ...22.12.... 2009 entered into between the First Lender, the Responsible Entity, Australian International Investment Services Pty Ltd A.C.N. 102 261 898 and Space Developments Pty Ltd A.C.N. 097 627 355 and (Re-Stated) Loan agreement dated .....22.12.-2009 entered into between the First Lender, the Responsible Entity and Australian International Investment Services Pty Ltd A.C.N. 102 261 898;

(b) First registered Mortgage Number 1416794 over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(c) Deed of Guarantee and Indemnity given by Peter Charles Drake in favour of the First Lender;

(d) First Registered Fixed and Floating Charge No 1167534 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the First Lender over all the property, assets and undertaking of **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** of whatsoever nature and kind and wheresoever situated, present and future.

item 5
(First Priority Amount) Seven Million Eight Hundred Thousand Dollars ($7,800,000.00)

item 6
(Second Lender's Security)

(a) Loan Agreement dated 19 January 2005 as varied by Deed of Variation of Loan Agreement dated 11 April, 2005 Letter of Variation dated 31 October 2009 and Deed of Variation of Loan Agreement dated . 22.12. 2009 entered into between the Second Lender and Australian International Investment Services Pty Ltd A.C.N. 102 261 898;

(b) Second registered Mortgage No 1611828 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as the mortgagor and the Second Lender as the Mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(c) Second Registered Fixed and Floating Charge No 1733340 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the First Lender over all the property, assets and undertaking of **AUSTRALIAN INTERNATIONAL**

INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898 of whatsoever nature and kind and wheresoever situated, present and future.

Item 7
(Second Priority Amount) Five Million Five Hundred Thousand Dollars ($5,500,000.00)

Item 8
(State or Territory) Australian Capital Territory

Item 9
(Addresses for Service)

In respect of the First Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Second Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Mortgagor:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

EXECUTED as a deed.

PERMANENT TRUSTEE AUSTRALIA LIMITED ACN 008 412 913 by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2 June 1993, whereby they execute this deed document or instrument.

Power of Attorney
No ..... 76825 .....

.....
Group A Attorney Geoffrey Funnell

.....
Group B Attorney Susan Davis

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** As Responsible Entity for the LM Mortgage Income Fund and its capacity as Second Lender in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Peter Charles Drake - Director

.....
Lisa Maree Darcy – Director

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as Mortgagor in accordance with section 127 of the Corporations Act 2001 (Cth) in the presence of :

.....
Director (signature)

PETER CHARLES DRAKE
Sole Director

PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913
("First Lender" or "Custodian")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
("the Responsible Entity")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
AS TRUSTEE FOR LM MANAGED PERFORMANCE FUND
("Second Lender")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
("Mortgagor")

Priority Deed

LM INVESTMENT MANAGEMENT LTD
LEVEL 4, 9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500
FAX: 07 5592 2505

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SCHEDULE

EXECUTION CLAUSES

THIS PRIORITY DEED is made on the date specified in **item 1** of the **Schedule**

BETWEEN **PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913 ("PTAL", "First Lender" or "Custodian")**

AND **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 ("LM" or "the Responsible Entity")**

AND **THE PARTIES NAMED AND DESCRIBED IN ITEM 2 OF THE SCHEDULE ("Second Lender")**

AND **THE PERSON OR PERSONS NAMED AND DESCRIBED IN ITEM 3 OF THE SCHEDULE ("Mortgagor")**

RECITALS

A. The Mortgagor proposes to execute or has executed in favour of the First Lender the First Lender's Security.

B. The Mortgagor proposes to execute or has executed in favour of the Second Lender the Second Lender's Security.

C. The Mortgagees have at the request of the Mortgagor and for valuable consideration agreed to enter into this document to set out their respective rights and priorities.

IT IS AGREED

1. INTERPRETATION

A. Definitions
In this document unless the context otherwise requires:

"Australian Dollars" and "AUD" means the lawful currency of Australia;

"Authorised Representative" means in relation to any party:

(a) If that party is a corporation:

(i) an employee of such corporation whose title contains the words "director" or "manager";
(ii) a person performing the functions of any of them; and
(iii) a lawyer acting for such corporation; and

(b) a person appointed by that party to act as an Authorised Representative for the purpose of this document whose appointment is notified in writing by the appointor to the other party and a specimen of whose signature is given to the other party;

"Break costs" means the costs, loss or damage (direct or indirect) which a party incurs due to:

(a) that party terminating or cancelling part or all of a facility which it made available at a fixed rate of interest under a Finance Document ("the loan facility") before the expiration date of the loan facility ; or
(b) that party receiving payments of principal (for any reason, including prepayment) in respect of any loan facility, before either the expiration date of the loan facility or other due date for repayment.

In particular losses which that party incurs due to an event set out in (a) and (b) ("Event") include any shortfall between:

(c) the return which that party ought to have achieved, but for the occurrence of the Event; and

(d) The return which that party actually achieves upon its re-investment or re-lending of the amount received or repaid (or prepaid) to that party, as a result of the occurrence of the Event.

"Business Day" means a day which is not a Saturday, Sunday or public or bank holiday in the state or territory specified in item 8 of the Schedule;

"Costs" means:

(a) Break costs;
(b) legal (on a solicitor and own client basis) or other consultants expenses;
(c) All costs, expenses, damages, liquidated damages and compensation a Lender is entitled to under the terms of its Security;
(d) GST;
(e) All other amounts expended or incurred by a Mortgagee under its Security with a view to protecting or maintaining or enforcing its Security and which the relevant Mortgagee is entitled under provisions of its Security to so spend or incur; or
(f) Any amounts to be paid, expended or incurred by the relevant Mortgagee, the Responsible Entity or any receiver or manager appointed by the relevant Mortgagee or the Responsible Entity to complete any development on the Relevant Property to the standard acceptable to the Responsible Entity acting reasonably and which is certified by a qualified quantity surveyor as a cost properly incurred in connection with the development;

"Custody Agreement" means the custody agreement between PTAL and LM dated 4 February 1999.

"Disposal" includes transfer, assignment, creation of a lien over or other dealing with and "Dispose" has a corresponding meaning;

"Encumbrance" includes mortgage, charge or lien and "Encumber" has a corresponding meaning;

"Finance Document" means:

(a) Any of the First Lender's Finance Documents
(b) Any of the Second Lender's Finance Documents

"First Priority Amount" means the amount referred to in item 5 of the Schedule;

"First Lender's Security" means each of the securities described in item 4 of the Schedule;

"Fund" means the LM Mortgage Income Fund ARSN 089 343 288.

"Interest" in respect of a Security means all interest, (whether calculated at ordinary, higher, lower, acceptable or other rates and whether in the nature of capitalised or compounded interest), discounts, acceptance and endorsement charges and all other fees and charges secured by that Security;

"Mortgagee" means either of the First Lender or the Second Lender;

"Notice" includes any communication;

"Priority Amount" means either of the First Priority Amount or the Second Priority Amount;

"Receiver" means a receiver or receiver and manager of the Mortgagor or the Relevant Property appointed by any Mortgagee under a Security;

"Relevant Property" means property subject to both the First Lender's Security and the Second Lender's Security;

"Second Lender's Security" means each of the securities described in item 6 of the Schedule.

"Second Priority Amount" means the amount referred to in item 7 of the Schedule;

"Security" means the First Lender's Security or the Second Lender's Security and includes any Encumbrance now or hereafter held by a Mortgagee over property which is or includes the Relevant Property;

B. Construction

In this document, unless the context otherwise requires:

(a) words importing:

(i) the singular include the plural and vice versa; and
(ii) any gender includes the other genders;

(b) an agreement, representation, warranty, undertaking or covenant on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

(c) if a word or phrase is defined cognate words and phrases have corresponding definitions;

(d) a reference to:

(i) a person includes a firm, unincorporated association, corporation and governmental or semi-governmental authority;
(ii) a person includes the legal personal representatives, successors, assigns and substitutes (including, without limitation, persons taking by novation) of that person;
(iii) this or any other document includes the document as varied or replaced, and notwithstanding any change in the identity of the parties;
(iv) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
(v) time is to local time in the state or territory specified in item 8 of the Schedule; and
(vi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

C. Headings

Headings shall be ignored in construing this document.

2. WAIVER AND CONSENT

Each Mortgagee consents to the execution of each Security of each other Mortgagee. Each Mortgagee waives any breach or default under any provision of any Security of that Mortgagee arising by virtue of the Mortgagor executing any other Securities or this document or by virtue of the priority hereby given and agrees that no Security of that Mortgagee shall thereby become unenforceable.

3. ORDER OF PRIORITY

3.1. The order of priority in which the Security and the moneys secured thereby shall rank in respect of the Relevant Property they have in common shall be as follows:

(a) first the First Lender's Security to the extent of all money secured by it up to a total of the amount of the First Priority Amount plus Interest and Costs;
(b) second the Second Lender's Security to the extent of all money secured by it up to a total amount of the Second Priority Amount plus Interest and Costs;
(c) third the First Secured Lender's Security to the extent of any money secured by it in excess of the First Priority Amount;

(d) fourth the Second Secured Lender's Security to the extent of any money secured by it in excess of the Second Priority Amount;

and to the extent necessary at law to give effect to the above priorities the Second Lender postpones the priority and operation of the Second Lender's Security.

3.2. Where in applying clause 3.1 property subject to a Security includes property other than Relevant Property the proceeds of enforcement and realisation of the Security shall be apportioned between the Relevant Property and the other property pro rata according to the respective values thereof.

4. MATTERS NOT AFFECTING PRIORITY

The priority conferred by clause 3 shall apply notwithstanding any of the following:

(a) the order of creation or registration of Securities or the time when liability for any of the money secured by a Security is incurred and/or becomes payable;
(b) that a Mortgagee has notice of any Security of any other Mortgagee;
(c) that a Security is expressed to be subject to any other Security;
(d) that the liability for any money secured by a Security is any one of the following - present, future, actual, contingent, limited or unlimited, continuing, varying or on current or any other account, liquidated or unliquidated, in the nature of damages or any form of credit;
(e) that any money secured by a Security is from time to time during the continuance of any other Security wholly or partly paid, varied, or reduced and subsequently increased or vice versa;
(f) that a Security or any agreement or arrangement relating thereto is varied or further moneys become secured thereby;
(g) that dealings or transactions on any account or of any kind take place between the Mortgagor and any Mortgagee;
(h) any other mortgage, charge, lien or encumbrance affecting any Relevant Property now or hereafter created by the Mortgagor; or
(i) any other event or circumstance whatsoever (save an agreement between Mortgagees) which but for this clause 4(i) would affect the order of priorities.

5. ACKNOWLEDGMENTS

A. Receiver

Moneys received by a Receiver in connection with the Relevant Property shall be applied in accordance with the terms of clause 3.

B. Mortgagees's Rights and Powers

Nothing contained in this document:

(a) requires any Mortgagee to provide any accommodation to the Mortgagor; or
(b) as between the Mortgagor and any Mortgagee, affects or prejudices any rights or remedies of the Mortgagee under its Security, which shall remain in full force and effect as effective security for all moneys, liabilities and obligations therein mentioned.

C. Purchasers

No purchaser dealing with either Mortgagee or any Receiver shall be concerned in any way with the provisions of this document but shall assume that the Mortgagee or any such Receiver (as the case may be) are acting in accordance with the provisions of this document.

6. INSURANCE

Any moneys received by any of the parties hereto, prior to the enforcement of any Security in respect of any insurance covering any of the Relevant Property shall be applied in accordance with the First Lender's Security.

7. OTHER SECURITY INTERESTS

Nothing contained in this document shall prejudice or affect the rights of either of the Mortgagees under any Encumbrance (other than a Security) now or hereafter held by it in respect of any moneys, obligations or liabilities thereby secured and so that each Mortgagee may apply any moneys in or toward payment or satisfaction of any money, obligation or liability now or hereafter

due owing or incurred by it other than or in excess of the Priority Amount of that Mortgagee or may hold such moneys in a suspense account for such period as it may in its absolute discretion think fit.

8. ASSIGNMENT

8.1. Consent to Assignment

The Mortgagees agree not to Encumber or Dispose of their respective Securities or any interest therein or permit or suffer the same to be Encumbered or Disposed of without the prior written consent of the other Mortgagee which consent will not be unreasonably withheld.

8.2. Undertaking by Assignee

Without limiting the discretion of the other Mortgagee, such consent may at the option of the other Mortgagee include a condition that every person intended to obtain an interest in the relevant Security enters into a deed with the other Mortgagee undertaking to be bound by the provisions of this document (including this clause) mutatis mutandis. This clause is not for the benefit of the Mortgagor and does not confer any rights on the Mortgagor.

9. EXERCISE OF POWERS

9.1. Exercise

Subject to clause 9.2 and clause 10 each Mortgagee shall be at liberty to exercise such Mortgagee's respective rights, powers and remedies under such Mortgagee's Security and to recover payment of the money secured thereby as such Mortgagee thinks fit.

9.2 Trust

Each Mortgagee shall hold any proceeds of the enforcement and realisation of that Mortgagee's Security on trust to be applied in accordance with clause 3 and the Mortgagees shall account to each other accordingly.

9.3 Content of Priority Amount

If the total liability of the Mortgagor to either Mortgagee exceeds that Mortgagee's Priority Amount, that Mortgagee shall be entitled conclusively to determine what part of such total liability shall be deemed to be comprised in that Mortgagee's Priority Amount and which part shall not be deemed to be so comprised.

10. NOTICE OF EXERCISE OF POWERS

The Mortgagees agree that a Mortgagee shall not exercise any of such Mortgagee's powers of appointment of a receiver or a receiver and manager, entry into possession, sale or foreclosure without first giving written notice thereof to the other Mortgagee.

11. INFORMATION

Each Mortgagee shall be at liberty to give to the other Mortgagee information relating to the Mortgagor, the state of accounts of the Mortgagor with the Mortgagee, any Security, the Relevant Property and the operation of this document.

12. MORTGAGOR'S CONSENT

The Mortgagor joins in this document as a party for the purpose of:

(a) acknowledging and consenting to the priorities created by this document;
(b) undertaking with each of the Mortgagees to observe the provisions of this document at all times and not in any way to prejudice or effect the enforcement of such provisions or to do or permit to be done anything which would be a breach of this document;
(c) acknowledging that the liabilities and obligations of the Mortgagor contained in the Security shall not be abrogated, impaired or diminished by this document (other than as expressly provided) or by the failure of a Mortgagee to comply with any of the terms of this document; and
(d) authorising the Mortgagees to provide to each other any information referred to in clause 11.

13. PREVIOUS AGREEMENTS

This document replaces any previous deed or agreement entered into between the Mortgagees or any of them relating to the priority of the Securities with respect to Relevant Property.

14. COSTS AND STAMP DUTY

The Mortgagor shall pay to each Mortgagee all that Mortgagee's legal costs and expenses of and incidental to the preparation, execution and stamping of this document and all stamp duty thereon.

15. COUNTERPARTS

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

16. LAW

This document shall be governed by and construed in accordance with the law of the state or territory described in item 8 of the Schedule and the parties agree to submit to the non exclusive jurisdiction of any Court of competent jurisdiction of the state or territory described in item 8 of the Schedule.

17. NOTICES

17.1 Any notice, demand or other communication under this document:

(a) shall be given in writing and in the English language; and
(b) may be given by an Authorised Officer of the sender.

17.2. In addition to any means authorised by law any communication may be given by:

(a) being personally served on a party;
(b) being left at the party's current address for service;
(c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or
(d) by telex or facsimile to the party's current numbers for service.

17.3 The addresses and numbers for service are initially set out in item 9 of the Schedule.

17.4 A party may from time to time change its address or numbers for service by notice to the other party.

17.5 A communication given by post shall be deemed received:

(a) if posted within Australia to an Australian address, on the third Business Day after posting, and
(b) in any other case, on the tenth Business Day after posting.

17.6 A communication sent to facsimile shall be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number and shall be deemed given in the form transmitted unless the message is not fully received in a legible form and the addressee immediately notifies the sender of that fact.

17.7 If a communication to any party is received by it:

(a) after 5.00pm; or
(b) on a day which is not a Business Day;

it will be deemed to have been received on the next Business Day.

18. LIMIT OF LIABILITY – PTAL

(a) Custodian

PTAL enters into this Agreement and each other Security, and the other parties to this Agreement acknowledge that they are aware that PTAL enters into this Agreement and each

other Security, only in its capacity as custodian of the Fund pursuant to the Custody Agreement and in no other capacity and the other parties to this Agreement are aware of the limited scope of PTAL's obligations and powers under the Custody Agreement.

(b) **Liability Limited**
A liability arising under or in connection with this Agreement and each Security is limited to and can be enforced against PTAL only to the extent to which it can be satisfied out of the property of the Fund out of which PTAL is actually indemnified for the liability. This limitation of PTAL's liability applies despite any other provision of this Agreement or any other Security and extends to all liabilities and obligations of PTAL in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement and each other Security.

(c) **No Right to Appoint or Prove**
The parties to this Agreement other than PTAL may not sue PTAL personally or seek the appointment of a liquidator, administrator, receiver or similar person to PTAL or prove in any liquidation, administration or arrangement of, or affecting, PTAL.

(d) **Limit of Liability Not to Apply**
The provisions of this clause 18 do not apply to any obligation or liability of PTAL to the extent that it is not satisfied because under the Fund's Constitution, the Custody Agreement, or by operation of law there is a reduction in the extent of PTAL's indemnification out of the assets of the Fund, as a result of PTAL's fraud, negligence or wilful default.

(e) **Scope of the Custody Agreement**
Despite any other provision of this Agreement, if any obligation otherwise imposed upon PTAL under this Agreement is, in PTAL's opinion, inconsistent with, or beyond the scope of PTAL's obligations or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of PTAL's obligations or powers under the Custody Agreement, must be performed by LM in its capacity as the Responsible Entity of the Fund.

(f) **Inconsistency with the Custody Agreement**
Any failure by PTAL to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or a default under this Agreement. PTAL's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all Parties.

(g) **Future Limitations**
PTAL is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless PTAL's liability is limited in the manner satisfactory to PTAL in its absolute discretion.

(h) **Agents**
No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement and each other Security or otherwise has authority to act on behalf of PTAL in a way which exposes PTAL to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of PTAL for the purpose of clause 18 (d).

(i) **Failure by PTAL**
A failure by PTAL to comply with, or a breach by PTAL of any of its obligations under this Agreement will not be considered to be fraud, negligence or wilful default by PTAL if the relevant failure or breach:

i. arose as a result of a breach by a person other than PTAL where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to PTAL performing the said obligation; or
ii. was in accordance with a lawful court order or direction or otherwise required by law.

(j) **Override Provision**
All of the terms, clauses and conditions of this Agreement are subject to this clause 18.

19. Limit of Liability – LM

(a) **Responsible Entity and Trustee**

To the extent that LM enters into this Deed in its capacity as the responsible entity of the Fund, clauses 19(b) to 19(f) and clauses 19(l) to (m) shall apply. To the extent that LM enters into this Deed in its capacity as the trustee of the Trust, clauses 19(g) to (m) shall apply.

(b) **Responsible Entity**
LM enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the responsible entity of the Fund, pursuant to the constitution of the Fund (the ***Constitution***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Fund.

(c) **Liability Limited**
A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(d) **No Right to Appoint or Prove**
The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(e) **Limit of Liability Not to Apply**
The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

(f) **Inconsistency with the Constitution**
Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) **Trustee**
LM also enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the trustee of the Trust, pursuant to the constitution of the Trust (the ***Trust Deed***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Trust.

(h) **Liability Limited**
A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Trust out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(i) **No Right to Appoint or Prove**

The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(j) **Limit of Liability Not to Apply**
The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Trust's Trust Deed or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Trust, as a result of LM's fraud, negligence or wilful default.

(k) **Inconsistency with the Trust Deed**
Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Trust Deed will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Trust Deed is final and binding on all parties.

(l) **Future Limitations**
LM is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

(m) **Override Provision**
All of the terms, clauses and conditions of this Deed are subject to this clause 19.

20. LM ACTS FOR FIRST AND SECOND LENDER

(a) The Mortgagor acknowledges that LM shall on behalf of the First and Second Lenders exercise all of the rights, powers, consents, controls and approvals pursuant to or under each Security and all actions taken by LM shall be deemed to have been authorised by the First and Second Lenders without any Security Provider or any other person dealing with LM being concerned to enquire as to the authority of LM to act on behalf of the First and Second Lenders in respect of any Security or any matter or thing arising in relation thereto.

(b) For the purposes of each Security:

a. all payments to be made by a Security Provider under any Security shall be made to LM on behalf of and for the account of the First and Second Lender;

b. all demands upon a Security Provider shall be made by LM;

c. all documents, notices, consents or approvals to be given to or by a Security Provider under any Security shall be given to or by LM;

d. all rights conferred upon the First and Second Lender under any Security shall be exercisable by LM;

e. all communications in relation to a Security or any transaction contemplated by a Security shall be directed by any Security Provider to LM on behalf of the First and Second Lender;

f. a receipt issued by LM shall as against any Security Provider constitute a good and valid discharge on behalf of the Lender to any person dealing with the First and Second Lender.

SCHEDULE

Item 1 This .....12th..... day of October 2010
(Date)

Item 2
(Second Lender)
LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR LM MANAGED PERFORMANCE FUND

Item 3
(Mortgagor)

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898 of C/- Level 4, 9 Beach Road, Surfers Paradise 4217

Item 4
(First Lender's Security)

(a) Loan agreement dated 8 April, 2005 as varied by Deeds of Variation dated 19 June 2007, 12 December 2007 , Letter of Variation dated 14 April, 2008, Letter of Variation dated 31 October 2009, Deed of Release dated 8 December 2009 entered into between the First Lender, the Responsible Entity, Australian International Investment Services Pty Ltd A.C.N. 102 261 898 and Space Developments Pty Ltd A.C.N. 097 627 355 and (Re-Stated) Loan agreement dated 22 December 2009 entered into between the First Lender, the Responsible Entity and Australian International Investment Services Pty Ltd A.C.N. 102 261 898 as varied from time to time;

(b) First registered Mortgage Number 1416794 over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(c) Deed of Guarantee and Indemnity given by Peter Charles Drake in favour of the First Lender;

(d) First Registered Fixed and Floating Charge No 1167534 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the First Lender over all the property, assets and undertaking of **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** of whatsoever nature and kind and wheresoever situated, present and future.

Item 5
(First Priority Amount) Seven Million Eight Hundred Thousand Dollars ($7,920,000.00)

Item 6
(Second Lender's Security)

(a) Loan Agreement dated 19 January 2005 entered into between the Second Lender and Australian International Investment Services Pty Ltd A.C.N. 102 261 898 as varied from time to time;

(b) Second registered Mortgage No 1611828 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as the mortgagor and the Second Lender as the Mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(c) Second Registered Fixed and Floating Charge No 1733340 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the First Lender over all the property, assets and undertaking of **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** of whatsoever nature and kind and wheresoever situated, present and future.

Item 7 Seven
(Second Priority Amount) ~~Five~~ Million Five Hundred Thousand Dollars ($7,500,000.00)

Item 8
(State or Territory) Australian Capital Territory

Item 9
(Addresses for Service)

In respect of the First Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Second Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Mortgagor:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

EXECUTED as a deed.

PERMANENT TRUSTEE AUSTRALIA LIMITED ACN 008 412 913 by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2 June 1993, whereby they execute this deed document or instrument.

Power of Attorney
No 76125

.....
Group A Attorney Geoffrey Funnell

.....
Group B Attorney Susan Davis

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** As Responsible Entity for the LM Mortgage Income Fund and its capacity as Second Lender in accordance with section 127 of the Corporations Act 2001 (Cth):

.....
Peter Charles Drake - Director

.....
Lisa Maree Darcy – Director

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as Mortgagor in accordance with section 127 of the Corporations Act 2001 (Cth) in the presence of :

.....
Director (signature)

PETER CHARLES DRAKE
Sole Director

("First Lender")

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
("the Responsible Entity")

THE TRUST COMPANY PTAL LIMITED A.C.N. 008 412 913 AS CUSTODIAN FOR THE LM
MANAGED PERFORMANCE FUND
("Second Lender")

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898
("Mortgagor")

Priority Deed

LM INVESTMENT MANAGEMENT LIMITED
PO Box 485, Surfers Paradise Qld 4217
Level 4, 9 Beach Road, Surfers Paradise Qld 4217
P 5584 4500 F 5538 1965
E tfenwick@LMaustralia.com

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SCHEDULE

EXECUTION CLAUSES

THIS PRIORITY DEED is made on the date specified in **item 1** of the **Schedule**

BETWEEN **The parties named and described in Item 1 of the Schedule ("First Lender")**

AND **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 ("LM" or "the Responsible Entity")**

AND **THE PARTIES NAMED AND DESCRIBED IN ITEM 2 OF THE SCHEDULE ("Second Lender")**

AND **THE PERSON OR PERSONS NAMED AND DESCRIBED IN ITEM 3 OF THE SCHEDULE ("Mortgagor")**

RECITALS

A. The Mortgagor proposes to execute or has executed in favour of the First Lender the First Lender's Security.

B. The Mortgagor proposes to execute or has executed in favour of the Second Lender the Second Lender's Security.

C. The Mortgagees have at the request of the Mortgagor and for valuable consideration agreed to enter into this document to set out their respective rights and priorities.

IT IS AGREED

1. INTERPRETATION

A. **Definitions**
In this document unless the context otherwise requires:

"Australian Dollars" and "AUD" means the lawful currency of Australia;

"Authorised Representative" means in relation to any party:

(a) If that party is a corporation:

(i) an employee of such corporation whose title contains the words "director" or "manager";
(ii) a person performing the functions of any of them; and
(iii) a lawyer acting for such corporation; and

(b) a person appointed by that party to act as an Authorised Representative for the purpose of this document whose appointment is notified in writing by the appointor to the other party and a specimen of whose signature is given to the other party;

"Break costs" means the costs, loss or damage (direct or indirect) which a party incurs due to:

(a) that party terminating or cancelling part or all of a facility which it made available at a fixed rate of interest under a Finance Document ("the loan facility") before the expiration date of the loan facility ; or
(b) that party receiving payments of principal (for any reason, including prepayment) in respect of any loan facility, before either the expiration date of the loan facility or other due date for repayment.

In particular losses which that party incurs due to an event set out in (a) and (b) ("Event") include any shortfall between:

(c) the return which that party ought to have achieved, but for the occurrence of the Event; and

(d) The return which that party actually achieves upon its re-investment or re-lending of the amount received or repaid (or prepaid) to that party, as a result of the occurrence of the Event.

"Business Day" means a day which is not a Saturday, Sunday or public or bank holiday in the state or territory specified in item 8 of the Schedule;

"Costs" means:

(a) Break costs;
(b) legal (on a solicitor and own client basis) or other consultants expenses;
(c) All costs, expenses, damages, liquidated damages and compensation a Lender is entitled to under the terms of its Security;
(d) GST;
(e) All other amounts expended or incurred by a Mortgagee under its Security with a view to protecting or maintaining or enforcing its Security and which the relevant Mortgagee is entitled under provisions of its Security to so spend or incur; or
(f) Any amounts to be paid, expended or incurred by the relevant Mortgagee, the Responsible Entity or any receiver or manager appointed by the relevant Mortgagee or the Responsible Entity to complete any development on the Relevant Property to the standard acceptable to the Responsible Entity acting reasonably and which is certified by a qualified quantity surveyor as a cost properly incurred in connection with the development;

"Custody Agreement" means the custody agreement between PTAL and LM dated 4 February 1999.

"Disposal" includes transfer, assignment, creation of a lien over or other dealing with and "Dispose" has a corresponding meaning;

"Encumbrance" includes mortgage, charge or lien and "Encumber" has a corresponding meaning;

"Finance Document" means:

(a) Any of the First Lender's Finance Documents
(b) Any of the Second Lender's Finance Documents

"First Priority Amount" means the amount referred to in item 5 of the Schedule;

"First Lender's Security" means each of the securities described in item 4 of the Schedule;

"Fund" means the LM Mortgage Income Fund ARSN 089 343 288.

"Interest" in respect of a Security means all interest, (whether calculated at ordinary, higher, lower, acceptable or other rates and whether in the nature of capitalised or compounded interest), discounts, acceptance and endorsement charges and all other fees and charges secured by that Security;

"Land Availability Agreement" means an agreement entered into between Australian International Investment Services Pty Ltd ACN 102 261 898 and Aalto Apartments Pty Ltd ACN 152 486 630 on or about 30 June, 2011 under which Australian International Investments Services Pty Ltd has agreed to make the property situated at 7 Irving Street, Phillip, ACT 2606 ("Property") available to Aalto Apartments Pty Ltd to enable Aalto Apartments Pty Ltd to develop the Property at Aalto Apartment Pty Ltd's own risk and for its own benefit.

"Mortgagee" means either of the First Lender or the Second Lender;

"Notice" includes any communication;

"Priority Amount" means either of the First Priority Amount or the Second Priority Amount;

"Receiver" means a receiver or receiver and manager of the Mortgagor or the Relevant Property appointed by any Mortgagee under a Security;

"Relevant Property" means property subject to both the First Lender's Security and the Second Lender's Security;

"Second Lender's Security" means each of the securities described in item 6 of the Schedule.

"Second Priority Amount" means the amount referred to in item 7 of the Schedule;

"Security" means the First Lender's Security or the Second Lender's Security and includes any Encumbrance now or hereafter held by a Mortgagee over property which is or includes the Relevant Property;

"Trust" means the LM Managed Performance Fund

B. Construction

In this document, unless the context otherwise requires:

(a) words importing:

(i) the singular include the plural and vice versa; and
(ii) any gender includes the other genders;

(b) an agreement, representation, warranty, undertaking or covenant on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

(c) if a word or phrase is defined cognate words and phrases have corresponding definitions;

(d) a reference to:

(i) a person includes a firm, unincorporated association, corporation and governmental or semi-governmental authority;
(ii) a person includes the legal personal representatives, successors, assigns and substitutes (including, without limitation, persons taking by novation) of that person;
(iii) this or any other document includes the document as varied or replaced, and notwithstanding any change in the identity of the parties;
(iv) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
(v) time is to local time in the state or territory specified in item 8 of the Schedule; and
(vi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

C. Headings

Headings shall be ignored in construing this document.

2. WAIVER AND CONSENT

2.1 Each Mortgagee consents to the execution of each Security of each other Mortgagee. Each Mortgagee waives any breach or default under any provision of any Security of that Mortgagee arising by virtue of the Mortgagor executing any other Securities or this document or by virtue of the priority hereby given and agrees that no Security of that Mortgagee shall thereby become unenforceable.

2.2 Each Mortgagee and LM consents to the Mortgagor entering into the Land Availability Agreement.

3. ORDER OF PRIORITY

3.1. The order of priority in which the Security and the moneys secured thereby shall rank in respect of the Relevant Property they have in common shall be as follows:

(a) first the First Lender's Security to the extent of all money secured by it up to a total of the amount of the First Priority Amount plus Interest and Costs;
(b) second the Second Lender's Security to the extent of all money secured by it up to a total amount of the Second Priority Amount plus Interest and Costs;

(c) third the First Secured Lender's Security to the extent of any money secured by it in excess of the First Priority Amount;
(d) fourth the Second Secured Lender's Security to the extent of any money secured by it in excess of the Second Priority Amount;

and to the extent necessary at law to give effect to the above priorities the Second Lender postpones the priority and operation of the Second Lender's Security.

3.2. Where in applying clause 3.1 property subject to a Security includes property other than Relevant Property the proceeds of enforcement and realisation of the Security shall be apportioned between the Relevant Property and the other property pro rata according to the respective values thereof.

4. MATTERS NOT AFFECTING PRIORITY

The priority conferred by clause 3 shall apply notwithstanding any of the following:

(a) the order of creation or registration of Securities or the time when liability for any of the money secured by a Security is incurred and/or becomes payable;
(b) that a Mortgagee has notice of any Security of any other Mortgagee;
(c) that a Security is expressed to be subject to any other Security;
(d) that the liability for any money secured by a Security is any one of the following - present, future, actual, contingent, limited or unlimited, continuing, varying or on current or any other account, liquidated or unliquidated, in the nature of damages or any form of credit;
(e) that any money secured by a Security is from time to time during the continuance of any other Security wholly or partly paid, varied, or reduced and subsequently increased or vice versa;
(f) that a Security or any agreement or arrangement relating thereto is varied or further moneys become secured thereby;
(g) that dealings or transactions on any account or of any kind take place between the Mortgagor and any Mortgagee;
(h) any other mortgage, charge, lien or encumbrance affecting any Relevant Property now or hereafter created by the Mortgagor; or
(i) any other event or circumstance whatsoever (save an agreement between Mortgagees) which but for this clause 4(i) would affect the order of priorities.

5. ACKNOWLEDGMENTS

A. Receiver

Moneys received by a Receiver in connection with the Relevant Property shall be applied in accordance with the terms of clause 3.

B. Mortgagees's Rights and Powers

Nothing contained in this document:

(a) requires any Mortgagee to provide any accommodation to the Mortgagor; or
(b) as between the Mortgagor and any Mortgagee, affects or prejudices any rights or remedies of the Mortgagee under its Security, which shall remain in full force and effect as effective security for all moneys, liabilities and obligations therein mentioned.

C. Purchasers

No purchaser dealing with either Mortgagee or any Receiver shall be concerned in any way with the provisions of this document but shall assume that the Mortgagee or any such Receiver (as the case may be) are acting in accordance with the provisions of this document.

6. INSURANCE

Any moneys received by any of the parties hereto, prior to the enforcement of any Security in respect of any insurance covering any of the Relevant Property shall be applied in accordance with the First Lender's Security.

7. OTHER SECURITY INTERESTS

Nothing contained in this document shall prejudice or affect the rights of either of the Mortgagees under any Encumbrance (other than a Security) now or hereafter held by it in respect of any moneys, obligations or liabilities thereby secured and so that each Mortgagee may apply any moneys in or toward payment or satisfaction of any money, obligation or liability now or hereafter due owing or incurred by it other than or in excess of the Priority Amount of that Mortgagee or may hold such moneys in a suspense account for such period as it may in its absolute discretion think fit.

8. ASSIGNMENT

8.1. Consent to Assignment

The Mortgagees agree not to Encumber or Dispose of their respective Securities or any interest therein or permit or suffer the same to be Encumbered or Disposed of without the prior written consent of the other Mortgagee which consent will not be unreasonably withheld.

8.2. Undertaking by Assignee

Without limiting the discretion of the other Mortgagee, such consent may at the option of the other Mortgagee include a condition that every person intended to obtain an interest in the relevant Security enters into a deed with the other Mortgagee undertaking to be bound by the provisions of this document (including this clause) mutatis mutandis. This clause is not for the benefit of the Mortgagor and does not confer any rights on the Mortgagor.

9. EXERCISE OF POWERS

9.1. Exercise

Subject to clause 9.2 and clause 10 each Mortgagee shall be at liberty to exercise such Mortgagee's respective rights, powers and remedies under such Mortgagee's Security and to recover payment of the money secured thereby as such Mortgagee thinks fit.

9.2 Trust

Each Mortgagee shall hold any proceeds of the enforcement and realisation of that Mortgagee's Security on trust to be applied in accordance with clause 3 and the Mortgagees shall account to each other accordingly.

9.3 Content of Priority Amount

If the total liability of the Mortgagor to either Mortgagee exceeds that Mortgagee's Priority Amount, that Mortgagee shall be entitled conclusively to determine what part of such total liability shall be deemed to be comprised in that Mortgagee's Priority Amount and which part shall not be deemed to be so comprised.

10. NOTICE OF EXERCISE OF POWERS

The Mortgagees agree that a Mortgagee shall not exercise any of such Mortgagee's powers of appointment of a receiver or a receiver and manager, entry into possession, sale or foreclosure without first giving written notice thereof to the other Mortgagee.

11. INFORMATION

Each Mortgagee shall be at liberty to give to the other Mortgagee information relating to the Mortgagor, the state of accounts of the Mortgagor with the Mortgagee, any Security, the Relevant Property and the operation of this document.

12. MORTGAGOR'S CONSENT

The Mortgagor joins in this document as a party for the purpose of:

(a) acknowledging and consenting to the priorities created by this document;
(b) undertaking with each of the Mortgagees to observe the provisions fo this document at all times and not in any way to prejudice or effect the enforcement of such provisions or to do or permit to be done anything which would be a breach of this document;
(c) acknowledging that the liabilities and obligations of the Mortgagor contained in the Security shall not be abrogated, impaired or diminished by this document (other than as expressly provided) or by the failure of a Mortgagee to comply with any of the terms of this document; and
(d) authorising the Mortgagees to provide to each other any information referred to in clause 11.

13. PREVIOUS AGREEMENTS

This document replaces any previous deed or agreement entered into between the Mortgagees or any of them relating to the priority of the Securities with respect to Relevant Property.

14. COSTS AND STAMP DUTY

The Mortgagor shall pay to each Mortgagee all that Mortgagee's legal costs and expenses of and incidental to the preparation, execution and stamping of this document and all stamp duty thereon.

15. COUNTERPARTS

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

16. LAW

This document shall be governed by and construed in accordance with the law of the state or territory described in item 8 of the Schedule and the parties agree to submit to the non exclusive jurisdiction of any Court of competent jurisdiction of the state or territory described in item 8 of the Schedule.

17. NOTICES

17.1 Any notice, demand or other communication under this document:

(a) shall be given in writing and in the English language; and

(b) may be given by an Authorised Officer of the sender.

17.2. In addition to any means authorised by law any communication may be given by:

(a) being personally served on a party;

(b) being left at the party's current address for service;

being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or

(d) by telex or facsimile to the party's current numbers for service.

17.3 The addresses and numbers for service are initially set out in item 9 of the Schedule.

17.4 A party may from time to time change its address or numbers for service by notice to the other party.

17.5 A communication given by post shall be deemed received:

(a) if posted within Australia to an Australian address, on the third Business Day after posting; and

(b) in any other case, on the tenth Business Day after posting.

17.6 A communication sent to facsimile shall be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number and shall be deemed given in the form transmitted unless the message is not fully received in a legible form and the addressee immediately notifies the sender of that fact.

17.7 If a communication to any party is received by it:

(a) after 5.00pm; or

(b) on a day which is not a Business Day;

it will be deemed to have been received on the next Business Day.

18. LIMIT OF LIABILITY – THE TRUST COMPANY (PTAL) LIMITED

(a) **Custodian of the Fund and the Trust**

To the extent that the Trust Company (PTAL) Limited enters into this Deed in its capacity as the custodian of the Fund, clauses 18(b) to 18(k) shall apply. To the extent that The Trust Company (PTAL) Limited enters into this Deed in its capacity as custodian of the Trust, clauses 22(l) to 22(u) shall apply.

(b) **Custodian – LM FMIF**

The Trust Company (PTAL) Limited enters into this Deed, and the other parties to this Deed acknowledge that they are aware that Trust Company (PTAL) Limited enters into this Deed, only in its capacity as custodian of the Fund pursuant to the Custody Agreement and in no other capacity and the other parties to this Deed are aware of the limited scope of Trust Company (PTAL) Limited 's obligations and powers under the Custody Agreement.

(c) **Liability Limited**

A liability arising under or in connection with this Deed is limited to and can be enforced against Trust Company (PTAL) Limited only to the extent to which it can be satisfied out of the property of the Fund out of which Trust Company (PTAL) Limited is actually indemnified for the liability. This limitation of Trust Company (PTAL) Limited 's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of Trust Company (PTAL) Limited in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(d) **No Right to Appoint or Prove**

The parties to this Deed other than Trust Company (PTAL) Limited may not sue Trust Company (PTAL) Limited personally or seek the appointment of a liquidator, administrator, receiver or similar person to Trust Company (PTAL) Limited or prove in any liquidation, administration or arrangement of, or affecting, Trust Company (PTAL) Limited.

(e) **Limit of Liability Not to Apply**

The provisions of this clause 18 do not apply to any obligation or liability of Trust Company (PTAL) Limited to the extent that it is not satisfied because under the Fund's Constitution, the Custody Agreement, or by operation of law there is a reduction in the extent of Trust Company (PTAL) Limited's indemnification out of the assets of the Fund, as a result of Trust Company (PTAL) Limited's fraud, negligence or wilful default.

(f) **Scope of the Custody Agreement**

Despite any other provision of this Deed, if any obligation otherwise imposed upon Trust Company (PTAL) Limited under this Deed is, in Trust Company (PTAL) Limited 's opinion, inconsistent with, or beyond the scope of Trust Company (PTAL) Limited 's obligations or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of Trust Company (PTAL) Limited 's obligations or powers under the Custody Agreement, must be performed by LM in its capacity as the Responsible Entity of the Fund.

(g) **Inconsistency with the Custody Agreement**

Any failure by Trust Company (PTAL) Limited to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or a default under this Deed. Trust

Company (PTAL) Limited 's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all Parties.

(h) **Future Limitations**

Trust Company (PTAL) Limited is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless Trust Company (PTAL) Limited 's liability is limited in the manner satisfactory to Trust Company (PTAL) Limited in its absolute discretion.

(i) **Agents**

No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed and each other Security or otherwise has authority to act on behalf of Trust Company (PTAL) Limited in a way which exposes Trust Company (PTAL) Limited to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of Trust Company (PTAL) Limited for the purpose of clause 22.5.

(j) **Failure by Trust Company (PTAL) Limited**

A failure by Trust Company (PTAL) Limited to comply with, or a breach by Trust Company (PTAL) Limited of any of its obligations under this Deed will not be considered to be fraud, negligence or wilful default by Trust Company (PTAL) Limited if the relevant failure or breach:

(a) arose as a result of a breach by a person other than Trust Company (PTAL) Limited where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to Trust Company (PTAL) Limited performing the said obligation; or

(b) was in accordance with a lawful court order or direction or otherwise required by law.

(k) **Override Provision**

All of the terms, clauses and conditions of this Deed are subject to this clause 18.

(l) **Custodian – LM MPF**

The Trust Company (PTAL) Limited enters into this Deed, and the other parties to this Deed acknowledge that they are aware that Trust Company (PTAL) Limited enters into this Deed, only in its capacity as custodian of the Trust pursuant to the Custody Agreement and in no other capacity and the other parties to this Deed are aware of the limited scope of Trust Company (PTAL) Limited 's obligations and powers under the Custody Agreement.

(m) **Liability Limited**

A liability arising under or in connection with this Deed is limited to and can be enforced against Trust Company (PTAL) Limited only to the extent to which it can be satisfied out of the property of the Trust out of which Trust Company (PTAL) Limited is actually indemnified for the liability. This limitation of Trust Company (PTAL) Limited 's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of Trust Company (PTAL) Limited in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(n) **No Right to Appoint or Prove**

The parties to this Deed other than Trust Company (PTAL) Limited may not sue Trust Company (PTAL) Limited personally or seek the appointment of a liquidator, administrator, receiver or similar person to Trust Company (PTAL) Limited or prove in any liquidation, administration or arrangement of, or affecting, Trust Company (PTAL) Limited.

(o) **Limit of Liability Not to Apply**

The provisions of this clause 18 do not apply to any obligation or liability of Trust Company (PTAL) Limited to the extent that it is not satisfied because under the Trust's Constitution, the Custody Agreement, or by operation of law there is a reduction in the extent of Trust Company (PTAL) Limited's indemnification out of the assets of the Trust, as a result of Trust Company (PTAL) Limited's fraud, negligence or wilful default.

(p) **Scope of the Custody Agreement**

Despite any other provision of this Deed, if any obligation otherwise imposed upon Trust Company (PTAL) Limited under this Deed is, in Trust Company (PTAL) Limited 's opinion, inconsistent with, or beyond the scope of Trust Company (PTAL) Limited 's obligations or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of Trust Company (PTAL) Limited 's obligations or powers under the Custody Agreement, must be performed by LM in its capacity as the Responsible Entity of the Trust.

(q) **Inconsistency with the Custody Agreement**

Any failure by Trust Company (PTAL) Limited to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or a default under this Deed. Trust Company (PTAL) Limited 's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all Parties.

(r) **Future Limitations**

Trust Company (PTAL) Limited is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless Trust Company (PTAL) Limited 's liability is limited in the manner satisfactory to Trust Company (PTAL) Limited in its absolute discretion.

(s) **Agents**

No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed and each other Security or otherwise has authority to act on behalf of Trust Company (PTAL) Limited in a way which exposes Trust Company (PTAL) Limited to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of Trust Company (PTAL) Limited for the purpose of clause 18(o).

(t) **Failure by Trust Company (PTAL) Limited**

A failure by Trust Company (PTAL) Limited to comply with, or a breach by Trust Company (PTAL) Limited of any of its obligations under this Deed will not be considered to be fraud, negligence or wilful default by Trust Company (PTAL) Limited if the relevant failure or breach:

arose as a result of a breach by a person other than Trust Company (PTAL) Limited

where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to Trust Company (PTAL) Limited performing the said obligation; or

(a) was in accordance with a lawful court order or direction or otherwise required by law.

(u) **Override Provision**

All of the terms, clauses and conditions of this Deed are subject to this clause 18.

19. Limit of Liability – LM

(a) **Responsible Entity and Trustee**

To the extent that LM enters into this Deed in its capacity as the responsible entity of the Fund, clauses 19(b) to 19(f) and clauses 19(l) to (m) shall apply. To the extent that LM enters into this Deed in its capacity as the trustee of the Trust, clauses 19(g) to (m) shall apply.

(b) **Responsible Entity**

LM enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the responsible entity of the Fund, pursuant to the constitution of the Fund (the ***Constitution***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Fund.

(c) **Liability Limited**

A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(d) **No Right to Appoint or Prove**

The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(e) **Limit of Liability Not to Apply**

The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Fund's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

(f) **Inconsistency with the Constitution**

Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Constitution is final and binding on all parties.

(g) **Trustee**

LM also enters into this Deed, and the other parties to this Deed acknowledge that they are aware that LM enters into this Deed, in its capacity as the trustee of the Trust, pursuant to the constitution of the Trust (the ***Trust Deed***) and the other parties to this Deed are aware of the limited scope of LM's obligations and powers under such Trust.

(h) **Liability Limited**

A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Trust out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

(i) **No Right to Appoint or Prove**

The parties to this Deed other than LM may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

(j) **Limit of Liability Not to Apply**

The provisions of this clause 19 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Trust's Trust Deed or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Trust, as a result of LM's fraud, negligence or wilful default.

(k) **Inconsistency with the Trust Deed**

Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Trust Deed will not amount to a breach of or a default under this Deed. LM's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Trust Deed is final and binding on all parties.

(l) **Future Limitations**

LM is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

(m) **Override Provision**

All of the terms, clauses and conditions of this Deed are subject to this clause 19.

20. LM ACTS FOR FIRST AND SECOND LENDER

(a) The Mortgagor acknowledges that LM shall on behalf of the First and Second Lenders exercise all of the rights, powers, consents, controls and approvals pursuant to or under each Security and all actions taken by LM shall be deemed to have been authorised by the First and Second Lenders without any Security Provider or any other person dealing with LM being concerned to enquire as to the authority of LM to act on behalf of the First and Second Lenders in respect of any Security or any matter or thing arising in relation thereto.

(b) For the purposes of each Security:

a. all payments to be made by a Security Provider under any Security shall be made to LM on behalf of and for the account of the First and Second Lender;

b. all demands upon a Security Provider shall be made by LM;

c. all documents, notices, consents or approvals to be given to or by a Security Provider under any Security shall be given to or by LM;

d. all rights conferred upon the First and Second Lender under any Security shall be exercisable by LM;

e. all communications in relation to a Security or any transaction contemplated by a Security shall be directed by any Security Provider to LM on behalf of the First and Second Lender;

f. a receipt issued by LM shall as against any Security Provider constitute a good and valid discharge on behalf of the Lender to any person dealing with the First and Second Lender.

SCHEDULE

(Date) This 15 day of AUGUST ~~July 2012~~ 2012

Item 1
(First Lender)

THE TRUST COMPANY PTAL LIMITED ACN 008 412 913 AS CUSTODIAN FOR THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288

Item 2
(Second Lender)

THE TRUST COMPANY PTAL LIMITED AS CUSTODIAN FOR THE LM MANAGED PERFORMANCE FUND

Item 3
(Mortgagor)

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898 of C/- Level 4, 9 Beach Road, Surfers Paradise 4217

Item 4
(First Lender's Security)

(a) Loan agreement dated 8 April, 2005 as varied by Deeds of Variation dated 19 June 2007, 12 December 2007 , Letter of Variation dated 14 April, 2008, Letter of Variation dated 31 October 2009, Deed of Release dated 8 December 2009 entered into between the First Lender, the Responsible Entity, Australian International Investment Services Pty Ltd A.C.N. 102 261 898 and Space Developments Pty Ltd A.C.N. 097 627 355 and (Re-Stated) Loan agreement dated 22 December 2009 entered into between the First Lender, the Responsible Entity and Australian International Investment Services Pty Ltd A.C.N. 102 261 898 as varied from time to time;

(b) First registered Mortgage Number 1416794 over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(c) Deed of Guarantee and Indemnity given by Peter Charles Drake in favour of the First Lender;

(d) First Registered Fixed and Floating Charge No 1167534 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the First Lender over all the property, assets and undertaking of **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as varied from time to time of whatsoever nature and kind and wheresoever situated, present and future.

Item 5
(First Priority Amount)

Eight Million Two Hundred and Ninety Five Thousand Dollars ($8,295,000.00)

Item 6
(Second Lender's Security)

(a) Loan Agreement dated 19 January 2005 between the Second Lender and Australian International Investment Services Pty Ltd A.C.N. 102 261 898 as varied from time to time;

(b) Loan Agreement dated on or about the date of this Priority Deed entered into between the Second Lender, **AALTO APARTMENTS PTY LTD ACN 152 486 630** and others as varied from time to time;

(c) Second registered Mortgage No 1611828 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as the mortgagor and the First Lender as the Mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 and being all that land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(d) Mortgage dated on or about the date of this Priority Deed (intended to be a third registered mortgage) given by Australian International Investment Services Pty Ltd A.C.N. 102 261 898 as Mortgagor and the Second Lender and Mortgagee over property situated at 7 Irving Street, Phillip ACT 2606 and being all land contained in Block 1 Section 22 Deposit Plan 2329 Division of Phillip Volume 1541 Folio 73;

(e) Second Registered Fixed and Floating Charge No 1733340 given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the Second Lender over all the property, assets and undertaking of **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** of whatsoever nature and kind and wheresoever situated, present and future.

(f) General Security Deed dated on or about the date of this Priority Deed given by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** in favour of the Second Lender.

(g) General Security Deed dated on or about the date of this Priority Deed given by **AALTO APARTMENTS PTY LTD A.C.N. 152 486 630** in favour of the Second Lender.

Item 7
(Second Priority Amount)

Eighteen Million Eight Hundred Dollars ($18,800,000.00)

Item 8
(State or Territory)

Australian Capital Territory

Item 9
(Addresses for Service)

In respect of the First Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Second Lender:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

In respect of the Mortgagor:

Address: C/- LM Investment Management Limited, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: 07 5592 2505

EXECUTED as a deed.

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 as First Lender, by its Attorney who states that it has had no notice of revocation of the Power of Attorney dated 12 July 2010, registration number 713351029)

.....
Attorney

John Newby
Head of Property and Infrastructure Custody Services

.....
Signature of Witness

INGE KARTIKA
.....
Name of Witness

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913 as Second Lender, by its Attorney who states that it has had no notice of revocation of the Power of Attorney dated 12 July 2010, registration number 713351029)

.....
Attorney

John Newby
Head of Property and Infrastructure Custody Services

.....
Signature of Witness

INGE KARTIKA
.....
Name of Witness

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** As Responsible Entity for the LM Mortgage Income Fund in accordance with section 127 of the Corporations Act 2001 (Cth):)

.....
Director

.....
Director

EXECUTED by **AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD A.C.N. 102 261 898** as Mortgagor in accordance with section 127 of the Corporations Act 2001 (Cth) in the presence of :)

.....
Director (signature)

PETER CHARLES DRAKE
Sole Director

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

ORDER

Before: Daubney J

Date: 26 August 2015

Initiating document: Originating Application filed 29 May 2015

THE ORDER OF THE COURT IS THAT:

1. Subject to Order 2:

1.1 Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) ("**LMIM**") for the relief claimed in the Claim and Statement of Claim filed in Supreme Court of Queensland proceeding number 8032/14 ("**First Proceeding**").

1.2 Pursuant to section 96 of the *Trusts Act*, the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LMIM for the relief

SUPREME COURT OFFICE BRISBANE

ORDER

Filed on behalf of the Applicant

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference NYB DOB 407747729

Form 59 Rule 661

claimed in the Claim and Statement of Claim filed in Supreme Court of Queensland proceeding number 8034/14 ("**Second Proceeding**").

2. Each of Orders 1.1 and 1.2 is conditional upon there being filed in each of the First Proceeding and the Second Proceeding respectively a Deed Poll executed by IMF Bentham Limited ("IMF") by which IMF agrees to pay adverse costs orders made against the Applicant in each proceeding during the term of a litigation funding agreement made between the Applicant and IMF and to give the defendant(s) in each proceeding written notice of any termination of the litigation funding agreement within 7 days of such termination.

3. The Applicant serve the Claim and Statement of Claim in the First Proceeding within 14 days of this order.

4. The Applicant serve the Claim and Statement of Claim in the Second Proceeding within 14 days of this order.

5. The costs and expenses of and incidental to the application (including any reserved costs) of each of the Applicant, the Respondent Liquidators of LMIM and the Respondent David Whyte (receiver of the property of the LM First Mortgage Income Fund and the person appointed to take responsibility for the winding up of that fund) be paid on the indemnity basis out of the LM Managed Performance Fund.

6. The following documents handed up to the Court be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court":

   (a) the joint memorandum of advice of Counsel in the First Proceeding;

   (b) the joint memorandum of advice of Counsel in the Second Proceeding;

   (c) the confidential submissions on the merits;

   (d) the confidential summary of the main commercial terms of the proposed funding agreement;

   (e) the confidential draft of the proposed funding agreement.

7. The affidavit of Ashley John Tiplady sworn 23 July 2015 and filed by leave on 18 August 2015 be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court".

AND IT IS FURTHER DIRECTED that the Applicant forthwith make application for each of the First Proceeding and the Second Proceeding to be placed on the Commercial List.

Signed: _____
Deputy Registrar

SUPREME COURT OFFICE
BRISBANE

SUPREME COURT OF QUEENSLAND

CITATION:	*Kordamentha Pty Ltd v LM Investment Management Limited (Receivers & Managers Appointed); Re: Kordamentha Pty Ltd* [2015] QSC 376
PARTIES:	**In 5329 of 2015:** **KORDAMENTHA PTY LTD AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND** (applicant) **DAVID WHYTE IN HIS CAPACITY AS COURT-APPOINTED RECEIVER OF THE PROPERTY OF THE LM FIRST MORTGAGE INCOME FUND** (not a party to the application) **In 8032 of 2014 and 8034 of 2014:** **KORDAMENTHA PTY LTD AS TRUSTEE OF THE LM MANAGED PERFORMANCE TRUST** (plaintiff/applicant) **v** **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461** (defendant/respondent)
FILE NO/S:	8032 of 2014 8034 of 2014 5329 of 2015
DIVISION:	Trial Division
PROCEEDING:	Civil Hearing
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	26 August 2015 (*ex tempore*)
DELIVERED AT:	Brisbane
HEARING DATE:	18 August 2015; written submissions on 20 August 2015
JUDGE:	Daubney J
ORDER:	**1. Subject to Order 2:** **1.1. Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("Trusts Act"), the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LM Investment Management Limited (Receivers and Managers**

Appointed) (In Liquidation) (ACN 077 208 461) ("LMIM") for the relief claimed in the Claim and Statement of Claim filed in the Supreme Court of Queensland proceeding number 8032/14 ("First Proceeding").

1.2. Pursuant to section 96 of the *Trusts Act*, the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LMIM for the relief claimed in the Claim and Statement of Claim filed in the Supreme Court of Queensland proceeding number 8034/14 ("Second Proceeding").

2. Each of Orders 1.1 and 1.2 is conditional upon there being filed in each of the First Proceeding and the Second Proceeding respectively a Deed Poll executed by IMF Bentham Limited ("IMF") by which IMF agrees to pay adverse costs orders made against the Applicant in each proceeding during the term of a litigation funding agreement made between the Applicant and IMF and to give the defendant(s) in each proceeding written notice of any termination of the litigation funding agreement within 7 days of such termination.

3. The Applicant serve the Claim and Statement of Claim in the First Proceeding within 14 days of this order.

4. The Applicant serve the Claim and Statement of Claim in the Second Proceeding within 14 days of this order.

5. The costs and expenses of and incidental to the application (including any reserved costs) of each of the Applicant, the Respondent Liquidators of LMIM and the Respondent David Whyte (receiver of the property of the LM First Mortgage Income Fund and the person appointed to take responsibility for the winding up of that fund) be paid on the indemnity basis out of the LM Managed Performance Fund.

6. The following documents handed up to the Court be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court":

(a) the joint memorandum of advice of Counsel in the First Proceeding;

(b) the joint memorandum of advice of Counsel in the Second Proceeding;

(c) the confidential submissions on the merits;

(d) the confidential summary of the main commercial terms of the proposed funding agreement;

(e) the confidential draft of the proposed funding agreement.

7. The affidavit of Ashley John Tiplady sworn 23 July 2015 and filed by leave on 18 August 2015 be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court".

AND IT IS FURTHER DIRECTED that the Applicant forthwith make application for each of the First Proceeding and Second Proceeding to be placed on the Commercial List.

CATCHWORDS: EQUITY – TRUSTS AND TRUSTEES – APPLICATIONS TO COURT FOR ADVICE AND AUTHORITY – PETITION FOR SUMMONS OR ADVICE – GENERALLY – where there is an application for directions with respect to whether or not a proceeding should be brought against the respondents – where the statement of facts gives rise to a justiciable case – where the likely legal costs of the proceedings are significant – where there is a litigation funder – where the litigation funder will effectively assume liability for adverse costs orders made against the trustee – whether the proceedings should be pursued in the best interests of the trust estate – whether the liquidators should be indemnified out of the trust estate in respect of costs incurred on the application under s 96 of the *Trusts Act* 1973

PROCEDURE – COMMENCING PROCEEDINGS – where the defendant is subject to voluntary liquidation – where leave to proceed against a company in liquidation was not obtained at the time that proceedings were instituted – whether leave to proceed under s 500 of the *Corporations Act* 2001 should be granted

Trusts Act 1973 (Qld), s 96

Corporations Act 2001 (Cth), s 500

Federal Republic of Brazil v Durant International Corporation [2015] UKPC 35

Glassock v The Trust Company (Aust) Pty Ltd [2012] QSC 15

Coore v Coore [2013] QSC 196

KordaMentha Pty Ltd & Calibre Capital Ltd v LM Investment Management Ltd (in liquidation) & Anor [2015] QSC 4

Macedonian Orthodox Community Church St Petka Incorporated v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand (2008) 249 ALR 250

COUNSEL: In 5329 of 2015:

A Crowe QC with E Goodwin for the applicant
M Luchich for David Whyte in his capacity as court-appointed receiver of the property of the LM First Mortgage Income Fund

In 8032 of 2014 and 8034 of 2014:

A Crowe QC with E Goodwin for the applicant
J Peden for the respondent

SOLICITORS: In 5329 of 2015:

Minter Ellison for the applicant
Tucker & Cowan for David Whyte in his capacity as court-appointed receiver of the property of the LM First Mortgage Income Fund

In 8032 of 2014 and 8034 of 2014:

Minter Ellison for the applicant
Russells for the respondent

[1] Until the 12th of April 2013, LM Investment Management Ltd, (Receivers and Managers Appointed) (In Liquidation) ("LMIM") was the trustee of a unit trust called the LM Managed Performance Fund ("MPF"). On that date de Jersey CJ ordered that the present applicant, KordaMentha Pty Ltd ("the Trustee") replace LMIM as trustee of the MPF.

[2] LMIM was placed into voluntary administration on the 23rd of March 2013, and since the 1st of August 2013, has been administered under a voluntary winding up with Mr Park and Ms Muller ("the liquidators") as liquidators.

[3] LMIM also was (and remains) the responsible entity for a particular registered managed investment scheme called LM First Mortgage Income Fund ("FMIF"). On 21 August 2013, Mr David Whyte ("Mr Whyte") was appointed, *inter alia*, as Court appointed receiver to the FMIF.

[4] Relevant for present purposes is the fact that the Trustee has issued two sets of proceedings against LMIM. In respect of each proceeding, the Trustee seeks directions under s 96 of the *Trusts Act* as to whether it would be justified in prosecuting each proceeding. Moreover, leave to proceed against a company in liquidation was not obtained at the time that proceedings were instituted, and an application is now made for the necessary orders under s 500 of the *Corporations Act.*

[5] For quite a number of years, LMIM carried on business as a professional trustee for reward, in which capacity it created and managed both registered and unregistered investment schemes. It has been the responsible entity of the FMIF since 28 September 1999. FMIF is registered under s 601EB of the *Corporations Act*, and LMIM holds the property of the FMIF on trust for its members.

[6] The trust company PTAL Ltd ("PTAL") (formerly known as Permanent Trustee Australia Limited) is a professional corporate trustee which, under the terms of the custody agreement dated 4 February 1999:

(a) custodially holds the portfolio of title documents as agent for LMIM in relation to, amongst others, the FMIF;

(b) was required to act on LMIM's instructions in relation to any asses of the portfolio (including the assets of the FMIF).

[7] Whilst PTAL held legal title to various assets, it did not carry out any discretionary management functions.

[8] In argument before me, the two relevant proceedings were referred to as "the first proceeding" (being proceeding S8032 of 2014), and "the second proceeding" (being proceeding S8034 of 2014). Both proceedings were filed on 27 August 2014. It is convenient to adopt that terminology for present purposes.

[9] The following summary of the nature of each of the first proceeding and the second proceeding, as set out in the trustee's written submissions, was uncontentious:

Nature of the First Proceeding.

22. *The business of both LMIM ATF the MPF and LMIM ATF the FMIF was to use funds obtained from members by entering into property investment and structured loan transactions for the purchase and/or development of Australian real property for the eventual benefit of members.*

23. *The essence of the trustee's complaint is that LMIM ATF the MPF entered into a deed of assignment pursuant to which PTAL, in its capacity as Custodian of the FMIF, assigned existing loans and securities to LMIM ATF the MPF in exchange for payment of a settlement sum, in circumstances where the value of the securities received were significantly less than settlement sum paid.*

24. *The trustee's complaint is that, by entering into the deed of assignment (and subsequent deeds of variation), LMIM:*

(a) *breached the duty that it owed to the beneficiaries (i.e., unitholders of the MPF) not to place itself in a position of conflict of duty, in that the duties that it owed to the beneficiaries of the MPF conflicted with the duties it owed to the beneficiaries of FMIF; and*

(b) *breached the duty it owed pursuant to s 22 of the Trusts Act to exercise the care, diligence and skill a prudent person engaged in that profession, business, or employment would exercise in managing the affairs of other persons when exercising a power of investment.*

25. *The principal relief claimed in the first proceeding is:*

(a) *equitable compensation;*

(b) *a declaration that LMIM ATF the FMIF holds the amount of $9,731,662.76 paid as the settlement sum pursuant to the Assignment Deed as varied on constructive trust of the trustee.*

26. *However, the final quantum awarded after a successful trial will likely be affected by a number of other factors mentioned further below.*

Nature of the second proceeding

27. *The essence of the Trustee's complaint is that LMIM ATF the MPF entered into a Deed of Assignment pursuant to which PTAL, in its capacity as custodian of the FMIF, assigned an existing loan and securities to LMIM ATF the MPF in consideration for a Settlement Sum where the value of the securities received were, at the date of the assignment deed, and will be at the time of the proposed proceeding, significantly less than the Settlement Sum paid pursuant to the deed.*

28. *The trustee's complaint is that by entering into the Deed of Assignment and subsequent Deeds of Variation, LMIM:*

(a) *breached the duty that it owed to the beneficiaries of the MPF not to place itself in a position of conflict of duty, in that the duties that it owed to the beneficiaries of the MPF conflicted with the duties it owed to the beneficiaries of the FMIF; and*

(b) *breached the duty it owed pursuant to s 22 of the Trusts Act to exercise the care, diligence, and skill a prudent person engaged in that profession, business, or employment would exercise in managing the affairs of other persons when exercising a power of investment.*

29. *The principal relief proposed to be claimed in the proceeding is:*

(a) *equitable compensation; and*

(b) *a declaration that LMIM holds the amount of $19,551,800.65 paid as a Settlement Sum pursuant to the Assignment Deed (as varied) on constructive trust of the Trustee.*

30. *As with the first proceeding, the final quantum awarded after a successful trial will likely be affected by a number of other factors mentioned further below.*

[10] Whilst, as is apparent from this summary, and indeed as is apparent from a review of the statement of claim in each of the first proceeding and the second proceeding, the claims are presently framed to seek equitable compensation and relief of a proprietary nature, it became clear from argument that the trustee also proposes pursuing a tracing claim in each proceeding. In so doing, it will be seeking to identify not merely specific assets still held by LMIM over which it has a direct proprietary claim, but also will seek to trace (if it can) the value of its claim into other assets of LMIM. In pursuing its tracing remedy in that regard by seeking to follow value, and not just cash, the Trustee drew support from the very recent advice of the Privy Council in *Federal Republic of Brazil v Durant International Corporation* [2015] UKPC 35.

[11] The bulk of the argument before me was directed to the applications under s 96 of the *Trusts Act*. That section relevantly provides for the Court, in effect, to give private judicial advice to a trustee. The consequence of giving such advice is that personal protection is afforded to the trustee in pursuing a proceeding and the giving of the advice operates to protect the interests of the trust. The principles relevant to consideration of an application under s 96 have recently been essayed by Boddice J in *Glassock v The Trust Company (Aust) Pty Ltd* [2012] QSC 15 and by Atkinson J in *Coore v Coore* [2013] QSC 196. The relevant passages of those judgments were set out at length in the judgment of Martin J in *KordaMentha Pty Ltd & Calibre Capital ltd v LM Investment Management Ltd (in liquidation) & Anor* [2015] QSC 4. I respectfully adopt those statements of principle without setting them out at length.

[12] It was not in issue before me that Mr Whyte was a proper interested party to be heard on the present applications. Mr Whyte's attitude was that he did not oppose the directions sought by the Trustee, but considered it appropriate to put before the Court some matters which went to the Court's consideration as to the appropriateness of making the directions. In particular, the information provided by Mr Whyte went to the Court's consideration of the likely return if the Trustee as successful in the proceedings.

[13] For the liquidators, it was properly conceded that the information before the Court demonstrated in each proceedings that there is a *prima facie* legal case underpinning each proceeding. Arguments advanced on behalf of the liquidators in opposing the making of the directions went to questioning the true value of the claims, particularly in the context of the cost of pursuing each proceeding.

[14] Counsel for the liquidators accepted that if there were an insurance policy that responded to the claims, then the liquidators would accept that the proceedings could be justified. The situation, on the material before me, is that an insurer has declined to respond in respect of the claims which are the subject of the first proceeding and the second proceeding. I was informed by counsel for the liquidators that his current instructions from the liquidators are that LMIM does not presently intend to challenge the refusal of coverage; counsel for the liquidators further informed me that this was not to be taken to be a concession that there was no policy, nor an assertion that the liquidators abandoned any claim on such policy.

[15] Apart from a significant quantity of material filed in open court in respect of each of the claims made in the first proceeding and the second proceeding, I was provided, as is conventional on applications of this sort, with material on a confidential basis. That

material included advices by counsel and confidential submissions by counsel for the Trustee, which were directed particularly to the benefits of prosecuting the first proceeding and the second proceeding. I was also provided, on a confidential basis, with details of the proposed funding arrangements for the first proceeding and the second proceeding from a litigation funder, IMF Bentham. Subject to one matter to which I will refer specifically later, it is not appropriate for me to refer in any detail to those funding arrangements, save to record that I have had regard to the terms of the currently proposed funding agreement for the purposes of forming a view as to the appropriateness or otherwise of giving directions under s 96.

[16] Moreover, in response to particular concerns raised on behalf of the liquidators, an affidavit has now been filed on behalf of the Trustee which confirms that the litigation funder has been informed that the insurer has declined cover in respect of the claims made in the first proceeding and the second proceeding, and the litigation funder has also been provided with copies of the material put before me which raised questions as to the availability of assets to meet the claims made in the first proceeding and the second proceeding. The affidavit confirms that, at the present time, the offer of litigation funding remains open, and further that the litigation funder is still reviewing the documentation filed before me which went to the question of the availability of assets to meet the claims made in the proceedings.

[17] In reaching my conclusion with respect to the appropriateness of making directions under s 96, I expressly do so on the basis that litigation funding will be provided on terms which are identical to those put before me in the confidential information. Should that situation change, and it be the case that the litigation funder will only provide funding on terms different from those put before me, then I consider that this would be a circumstance which would require the legal advisers for the Trustee, in proper discharge of their obligations as officers of the Court, to bring these matters back before the Court for further consideration.

[18] After counsel for the Trustee informed the Court of the information which had been provided to the litigation funder, counsel for the liquidators took instructions as to the liquidators' attitude with respect to the application under s 96. Counsel for the liquidators was then able to advise the Court to the effect that if, on receiving the confidential information, I was satisfied as to the appropriateness of the litigation funding arrangements proposed to be entered into then, as with their attitude with respect to insurance, the liquidators would properly concede that this would be an issue which would be taken into account in justifying the making of directions under s 96.

[19] I turn then to the matters with which I need to be concerned on the applications under s 96.

[20] First, I note that each application has been made "upon a written statement of facts". As I have already noted, there was no real issue before me that the facts, as stated, give rise to justiciable cases to be pursued in the first proceeding and the second proceeding.

[21] Secondly, I am satisfied that service has been effected on "all persons interested in the application". In that regard, on 29 May 2015 an order was obtained from Peter Lyons J regarding the mode of service on the approximately 4,500 unitholders of MPF. There was no issue that service has been effected in accordance with that order.

[22] The real issue in respect of whether I ought accede to the applications for directions came down to, in effect, an assessment of the likely costs to be incurred in the proceedings, and the prospective benefit to be obtained for MPF from the proceedings.

[23] Each of the first proceeding and the second proceeding is a significant piece of litigation. The estimate put before me was that the Trustee's total legal costs of separately prosecuting both proceedings will be in the order of $1.8 million. As was said by counsel for the Trustee, it ought be possible to reduce those costs if the first proceeding and the second proceeding are tried at the same time, or at least sequentially, by the same judge. Be that as it may, there will undoubtedly be significant costs and outlays incurred in prosecuting the proceedings.

[24] As against that, questions are being raised, particularly by Mr Whyte, as to the quantum of monies which actually would be available to meet any judgments obtained in the proceedings. So, for example, the Trustee points to a large value (approximately $40 million) which it contends was transferred from the MPF to the FMIF and which, it would argue, represents value into which it can trace for the purposes of recovery on its claim. Mr Whyte, however, points to facts which would call into question whether such transfers, or transfers of that value, actually occurred. He says, for example, that within that alleged transfer of value of some $40 million, there were cash payments only amounting to some $9.5 million, and of those cash payments at least 40 per cent were not attributable to the transactions which are the subject of the first proceeding and the second proceeding. Indeed, Mr Whyte says that, as at the date of appointment of voluntary administrators, the only amount which then remained in FMIF over which any constructive trust might be declared for the benefit of MPF was in the order of $1.6 million.

[25] Despite having properly raised these questions, Mr Whyte also properly acknowledged the relevance to my consideration of the details of the litigation funding (details of which remained confidential).

[26] Counsel for the liquidators was also anxious to ensure that I had regard to the serious questions which had been raised as to the availability of assets to meet the potential claims under the first proceeding and the second proceeding, and also assisted considerably by pointing me to particular matters which might be of relevance when considering the terms of the proposed litigation funding agreement.

[27] It is, of course, neither appropriate nor possible on an application such as the present to descend into making findings as to the true quantum and extent of the assets which will properly be available to meet any judgment in the proceedings. It is, however, completely appropriate for me to have cognisance of the issues which have been raised on behalf of Mr Whyte and the liquidators, acknowledging also that the issues that they have raised will inevitably contribute to the complexity (and cost) of the litigation to be pursued. It cannot, I think, be said on any fair reading of the material before me

that either the first proceeding or the second proceeding would be fruitless. On the other hand, it can equally be said that it is apparent that pursuit of the proceedings will be costly for all parties concerned. That is why it has been particularly relevant for me to have regard to the terms of the proposed litigation funding agreement.

[28] As I have said, the terms of that proposed litigation funding agreement are confidential, and, save for one respect, it is inappropriate for the details of that proposed agreement to be publicised in this judgment. It is sufficient to record that the terms of the proposed litigation funding agreement have been put before me, and, having reviewed those terms and considered those in the commercial context of the relief claimed in each proceeding and also the prospective limitations on recovery which have been flagged by counsel to the liquidators and counsel for Mr Whyte, I have reached the view that it is in the best interests of the trust estate of MPF that, with the proposed litigation funding agreement in place, each of the first proceeding and the second proceeding should be pursued.

[29] The one particular matter which arises out of the proposed funding agreement is this, namely that in each of the first proceeding and the second proceeding, the litigation funder will be required to file in Court a deed poll (in the form provided to me on a confidential basis) the effect of which will be that the litigation funder effectively assumes liability for adverse cost orders made against the Trustee in those proceedings. In view of the complexities of the litigation to which I have already referred, and the limitations on the MPF funds for recourse in the event of adverse costs orders being made, it seems to me that the provision of such a deed poll in each of the first proceeding and the second proceeding is necessary. Indeed, the approval I give under s 96 in respect of each of the proceedings will be conditioned on such a deed poll being filed in each of the proceedings.

[30] It is also necessary for me to deal with the applications which have been made under s 500 of the *Corporations Act*. LMIM is subject to voluntary liquidation. The relief sought in each of the proceedings is outside the scope of the usual proof of debt procedure – this is particularly the case insofar as proprietary claims are pursued. It seems to me to be clearly appropriate for there to be leave to proceed in each case under s 500, and such leave shall be granted *nunc pro tunc*.

[31] As to the costs of the s 96 application, I accept, as was said by Martin J in his KordaMentha judgment at [28], that in applications of this type the Trustee's costs are ordinarily ordered to be paid out of the trust estate on the indemnity basis.

[32] The Trustee, however, resisted orders that the liquidators and Mr Whyte be similarly idemnified. It was argued that it would be inappropriate for either of those parties, effectively representing the interest of LMIM as they do, to have their costs now in circumstances where each of the first proceeding and the second proceeding is founded on allegations of breach of trust by LMIM. It was contended that an allegedly defaulting trustee should only have its costs out of a trust fund after the proceeding has been resolved in its favour.

[33] In the present case, however, there are a number of considerations to be taken into account.

[34] First, an application under s 96 is not a regular adversarial proceeding. Rather, it is the procedure by which a trustee obtains advice from the Court in relation to the management or administration of trust property. An important legal and a practical consequence of an order being made is that a trustee who acts on the direction of the Court is taken, as regards its own liability, to have discharged its duty as trustee so long as the trustee, has not been guilty of fraud, wilful concealment or misrepresentation in obtaining the direction – see *Coore v Coore* [2013] QSC 196 at [6]. The making of an order is important for the trust, because the Court would necessarily have had regard to the proper use of the trust assets, and it is important for the Trustee, because of the practical protection which the making of the order provides for the trustee. So the nature of an application under s 96 is quite different – as has been said by the High Court in the *Macedonian Church* case, it represents an exception to the Court's ordinary function of deciding disputes between competing litigants.[1]

[35] Secondly and consequentially, it was appropriate in the present case to hear from the liquidators and Mr Whyte. Moreover, the liquidators and Mr Whyte provided the Court with information and assistance which was highly relevant to my considerations as to whether or not to make the orders sought. That assistance particularly went to the questions concerning the availability of assets to meet any prospective judgment in the first proceeding and the second proceeding, and also relevant issues to which I needed to turn my mind when considering the appropriateness or otherwise of the litigation funding agreement.

[36] In all of the circumstances, I have decided that it is appropriate, in this particular case, for each of the liquidators and Mr Whyte to be indemnified out of the MPF in respect of the costs they have incurred on the present application under s 96.

[37] The costs incurred in respect of the applications under s 500 of the *Corporations Act*, in my view, fall into a different category. Given the circumstances of the present case, and the particular nature of the allegations made, it seems to me that those are costs which should abide the event. Accordingly, the parties' costs in respect of the applications under s 500 shall be reserved costs in the first proceeding and the second proceeding respectively.

[38] Finally, it became clear in the course of argument that there will be issues which will need to be addressed early in the course of each of the proceedings. Not the least of these will be to identify the parties which will have carriage of the defences for LMIM. In any event, each proceeding is patently of such complexity as to warrant active case management. Accordingly, I will be directing the applicant to move immediately to have each proceeding placed on the commercial list.

[1] See *Macedonian Orthodox Community Church St Petka Incorporated v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand* (2008) 249 ALR 250 at [64].

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

ORDER

Before: Justice Boddice

Date: 7 June 2018

Initiating document: Application filed 4 May 2018

THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), the Applicant is directed that it would be justified in discontinuing proceedings against the defendants to the relief claimed in the Claim and Third Further Amended Statement of Claim filed in Supreme Court of Queensland proceeding BS8032/14.

2. Pursuant to section 96 of the Trusts Act, the Applicant is directed that it would be justified in discontinuing proceedings against the defendants to the relief claimed in the Claim and Third Further Amended Statement of Claim filed in Supreme Court of Queensland proceeding BS8034/14.

ORDER

Filed on behalf of the applicant

SUPREME COURT OF QUEENSLAND BRISBANE

Form 59 Rule 661

ME_148190935_1

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference NYB DOB 407747729

3. The costs and expenses of the applicant, LM Investment Management Limited (Receivers and Managers Appointed (In Liquidation) and Mr David Whyte in his capacity as court appointed receiver of the property of the LM First Mortgage Income Fund of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

Signed:

Deputy Registrar

- 1 AUG 2018

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 8032/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

First Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

AND

Second Defendant: **DAVID WHYTE IN HIS CAPACITY AS COURT APPOINTED RECEIVER OF THE PROPERTY OF THE LM FIRST MORTGAGE INCOME FUND**

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the Plaintiff discontinues the whole of the claim against the First Defendant and the Second Defendant.

The Plaintiff does not represent any other person in the proceeding.

The Plaintiff has not yet been served with the first defence of either defendant.

Signed:

Description: MinterEllison, solicitors for the Plaintiff

Dated: 7 June 2018

NOTICE OF DISCONTINUANCE

Filed on behalf of the Plaintiff

Form 27 Rule 304

ME_147643526_1

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 Brisbane

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien
@minterellison.com
Reference DOB 407747729

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 8034/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

First Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

AND

Second Defendant: **DAVID WHYTE IN HIS CAPACITY AS COURT APPOINTED RECEIVER OF THE PROPERTY OF THE LM FIRST MORTGAGE INCOME FUND**

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the Plaintiff discontinues the whole of the claim against the First Defendant and the Second Defendant.

The Plaintiff does not represent any other person in the proceeding.

The Plaintiff has not yet been served with the first defence of either defendant.

Signed:

Description: MinterEllison, solicitors for the Plaintiff

Dated: 7 June 2018

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 Brisbane

Filed on behalf of the Plaintiff

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien
@minterellison.com
Reference DOB 407747729

BRISBANE SUPREME COURT OFFICE

Tucker&CowenSolicitors.

Level 15. 15 Adelaide St. Brisbane. Qld. 4000 / GPO Box 345. Brisbane. Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

Partners.
David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Geoff Hancock.

Associates.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Our reference: Mr Schwarz / Mr Nase

Your reference: Mr O'Brien / Mrs Braad

3 May 2018

Minter Ellison Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane QLD 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Dear Colleagues

KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund ("*MPF*") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceeding No 12716/15

We refer to the above matter.

We note that it has been over one year since your client took a step in this proceeding and your client must give one month's notice before proceeding.

We also note that your client has agreed to give our client, and LMIM, 28 days' notice before any defence is required.

It seems to our client that your client ought to either take steps to progress its claim in the proceeding or alternatively, discontinue the proceeding.

This is particularly so when the winding up of both the FMIF, and the MPF, cannot be completed until the various legal proceedings on foot are concluded.

We would be grateful if you could let us know your client's intention with respect to this proceeding within seven days.

Yours faithfully

Alex Nase
Tucker & Cowen

Direct Email: anase@tuckercowen.com.au
Direct Line: (07) 3210 3503

Individual liability limited by a scheme approved under Professional Standards Legislation.

Tucker&CowenSolicitors.
TCS Solicitors Pty. Ltd. / ACN 610 321 509

Level 15. 15 Adelaide St. Brisbane. Qld. 4000 / GPO Box 345. Brisbane. Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

Principals.
Richard Cowen.
David Schwarz.
Justin Marschke.
Daniel Davey.

Consultant.
David Tucker.

Special Counsel.
Geoff Hancock.
Alex Nase.
Brent Weston.

Associates.
Marcelle Webster.
Emily Anderson.
James Morgan.
Scott Hornsey.
Robert Tooth.

Our reference: Mr Schwarz / Mr Nase 14 May 2018

Your reference: Mr O'Brien / Mrs Braad

Minter Ellison Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane Qld 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Dear Colleagues

KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund ("*MPF*") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) - Supreme Court of Queensland Proceeding No 12716/15

We refer to the above matter, and to our letter to you dated 3 May 2018 (copy attached for ease of reference).

We note that our letter requested a reply by 10 May 2018; however, no reply has been received.

May we please have a reply to our letter?

Yours faithfully

Alex Nase
Tucker & Cowen

Direct Email: anase@tuckercowen.com.au
Direct Line: (07) 3210 3503

Encl.

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MinterEllison

28 May 2018

BY EMAIL

Mr David Schwarz and Mr Alex Nase
Tucker & Cowen
Level 15
15 Adelaide Street
BRISBANE QLD 4000

Dear Colleagues

KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceeding No BS12716/15

We refer to your letters dated 3 and 10 May 2018.

We accept that our client must give each of the defendants 28 days' notice before any defence is required to be filed.

Our client has no present intention of giving such a notice.

You have asked our client to either prosecute BS12716/15 or discontinue it because the winding up, relevantly of FMIF cannot be completed until various legal proceedings including BS12716/15 are concluded.

Amongst these legal various proceedings are BS12317/14, BS2166/15, BS11560/16 and BS13534/16, all of which have been commenced by your client, are complex, are seeking remedies involving tens of millions of dollars each and will take years to complete. There is no prospect in the near term of your client being in a position to complete the winding up of FMIF due to the actions he has commenced.

Our client is the eighth defendant in action BS12317/14, and has decided to concentrate its available trust funds in defending that action. If it is successful in doing so, it will likely deploy the significant costs your client will be obliged to pay it, in prosecuting action BS12716/15.

Therefore, your client will not suffer the prejudice it points to by action BS12716/15 remaining in its current state.

We trust this letter answers your request to let your know our clients intention with respect to proceeding BS12176/15.

Yours faithfully
MinterEllison

Contact: David O'Brien T: +61 7 3119 6159
F: +61 7 3119 1159 david.obrien@minterellison.com
Partner: David O'Brien T: +61 7 3119 6159
OUR REF: DOB 407747963

Tucker&CowenSolicitors.

Level 15. 15 Adelaide St. Brisbane. Qld. 4000 / GPO Box 345. Brisbane. Qld. 4001.
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Geoff Hancock.

Associates.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Our reference: Mr Schwarz / Mr Nase

Your reference: Mr O'Brien / Mrs Braad

4 June 2018

Minter Ellison Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane Qld 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Dear Colleagues

KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund ("*MPF*") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") – Supreme Court of Queensland Proceeding No 12716/15 ("AIIS Proceeding")

We refer to your letter dated 28 May 2018, which responded to our letters to you of 3 and 14 May 2018.

Your client's continuing delay in prosecuting the AIIS Proceeding

Our client remains of the view that your client's continued delay in this proceeding is unjustified, and that your client ought to either take steps to expeditiously progress its claim or discontinue the proceeding.

As you are aware, rule 5(3) of the *Uniform Civil Procedure Rules* provides that a party impliedly undertakes to the Court to proceed in an expeditious way. In our client's view, that implied undertaking requires that your client not delay further in progressing the AIIS proceeding.

The Claim in the AIIS Proceeding was filed on 16 December 2015, your client has not taken any step in the proceeding since service of the Claim and Statement of Claim on LMIM on or about 28 November 2016 and has not required a defence, or given notice that a defence is required.

Your letter suggests that this ongoing delay is justified because (as we understand the explanation) your client has not yet decided whether it will prosecute the AIIS Proceeding, does not presently have the resources to do so, and may only have sufficient resources if your client is successful in defending the proceedings commenced by LMIM (at the instigation of our client) against it, and in obtaining a substantial costs order against our client. With respect, these matters suggest that your client considers it appropriate to commence proceedings and then prosecute them at leisure, without any direction of the Court that it is justified in doing so, and in the meantime leaving them as a form of 'sword of Damocles' hanging over LMIM and the LM First Mortgage Income Fund ("FMIF"). Our client does not consider that to be in any way appropriate or consistent with the implied undertaking under Rule 5.

We further observe that the approach suggested in your letter is inconsistent with what was said by Mr Villani in his affidavit filed in support of your client's application for leave to proceed against LMIM in the AIIS Proceeding. At paragraphs 53 to 58 of that affidavit, Mr Villani deposed to his reasons for seeking a direction that the defendant (LMIM) not be obliged to file a notice of intention to defend and defence until 28 days after your client gives notice to LMIM requiring a defence to be filed.

In the result, Daubney J made orders on 22 November 2016 which included a direction in those terms, but also in terms that your client give notice to our client as receiver of the FMIF, by notice to this firm.

Mr Villani's reasons, as explained in his affidavit, were that:-

1. There were settlement negotiations underway at the time;

2. If there were to be a settlement, then the settlement would likely be the subject of applications for approval;

3. There may be some controversy, for a time, as to who (as between LMIM's liquidators and our client) would be responsible for the carriage of the defence of the AIIS Proceeding; and

4. Your client had not yet obtained a direction from the Court under section 96 of the *Trusts Act 1973* (Qld) that it is justified in prosecuting the AIIS Proceeding.

Mr Villani's reasons, as explained in his affidavit, did not include any mention of the resources available to your client.

Since your client's application for leave to proceed, it has become apparent that the settlement negotiations mentioned in the affidavit have been unsuccessful. To the extent (if any) to which there might be some controversy as to the representation on the defendant's side of the record, we note that our client has had the carriage of the defence of two other proceedings commenced by your client for similar relief (namely, Supreme Court of Queensland proceedings 8032/14 and 8034/14) under Orders made by the Court joining our client as the second defendant in each proceeding. We anticipate a similar regime would address any issue of representation in the AIIS Proceeding.

Your client has not made any application for directions under section 96 of the *Trusts Act*, nor has your client indicated when it intends to do so, notwithstanding that Mr Villani deposed to an intention to make that application in the first half of 2017; at least a year ago.

In the circumstances, our client does not accept that any further delay in your client's prosecution of the AIIS Proceeding is warranted.

Suggestion of lack of prejudice to the FMIF

We are instructed that our client does not accept that it will necessarily take years to bring proceedings BS12317/14, BS2166/15, BS11560/16 and BS13534/16 to a conclusion. We are instructed that Supreme Court proceeding BS12317/14 is likely to be listed for trial early next year. BS11560/16 may not ultimately be defended. It is also possible that one or more of the proceedings may settle.

In any case, even if it does take some time for those other proceedings to be determined or resolved, that does not justify delay by your client in this proceeding.

Your client's suggestion that, if it succeeds in its defence of BS12317/2014 and obtains a costs order in its favour, it will use the funds paid pursuant to such costs order to fund its prosecution of this proceeding, does not appear to our client to withstand closer scrutiny.

Your client pleads the 'clear accounts rule' in its defence of BS12317/2014 and refers to, *inter alia*, the claims made in this proceeding (the AIIS Proceeding) in support of that defence. However, the application of the clear accounts rule cannot be determined in the abstract, without consideration of, and factual findings as to whether, the alleged breaches of trust (the countervailing claims) are made out. A party relying upon the clear accounts rule, must prove the alleged breaches of trust

and the losses suffered as a result thereof, either in the proceeding in which the defence is pleaded, or in a separate proceeding. Presently, your client's Defence in BS12317/2014 simply refers to the claims pleaded in other proceedings (including the AIIS Proceeding) as a basis for invoking the clear accounts rule.

Of those claims mentioned in the Defence:-

1. two (BS8032/14 and BS8034/14) are the subject of your client's application for directions as to whether your client is justified in discontinuing the proceedings;

2. one is a proceeding in which LMIM is the defendant, but that does not concern the FMIF (in that no relief is sought against the property of the FMIF). We are not aware of any step having been taken in that proceeding following your client obtaining leave to proceed by Order of Atkinson J on 1 February 2018; we understand that the leave granted was conditional upon your client giving notice to the defendant in that proceeding by 31 January 2019, requiring a notice of intention and defence to be filed, failing which the leave to proceed would be revoked;

3. The only remaining proceeding, pleaded in the Defence to BS12317/2014 as providing grounds to invoke the clear accounts rule, is the AIIS Proceeding.

It may be the case that, before your client's defence based on the clear accounts rule in BS12317/2014 could be determined, your client would, in any event, have to run its claim in this proceeding, in which case your client may not in fact be able to obtain a costs order in BS12317/2014 and use the funds paid to it under the costs order, to fund its prosecution of this proceeding. Your client cannot, in any event, litigate at leisure.

Our client again requests that your client either takes steps to progress, or discontinue, this proceeding.

Issues in relation to the Statement of Claim

Our client considers it desirable to draw your client's attention to certain key issues relating to its Statement of Claim, at an early stage, so as to enable your client to consider its position, before substantial costs are incurred.

We note that in the Statement of Claim, your client seeks:-

1. equitable compensation against LMIM in the sum of $16,820,356.30 ("Equitable Compensation Claim");

2. a declaration that LMIM as trustee of the FMIF holds the amount of $3,905,721.81 on constructive trust for your client ("Constructive Trust Claim"); and

3. declarations to the effect that your client is entitled to be indemnified out of assets of the FMIF in respect of the alleged liability the subject of the proceeding, in respect of the amount of $3,905,721.81, and that it is entitled to be subrogated to LMIM's alleged rights of indemnity ("Indemnity Claim").

Of these claims, only the Constructive Trust Claim and the Indemnity Claim are claims against assets of the FMIF. The Equitable Compensation Claim may, of itself, be of no practical utility.

Constructive Trust Claim

The Constructive Trust claim appears at paragraphs 115 to 117 of the Statement of Claim.

In those paragraphs, it is alleged that:-

1. LMIM as trustee of the MPF held assets of the MPF on Trust for the beneficiaries of the MPF;

2. LMIM was aware that the payments to itself atf the FMIF, or alternatively, to PTAL as custodian of the FMIF, of $3,905,721.81 were made in breach of trust;

3. In so far as PTAL "may" hold in its capacity as custodian of the FMIF, the sum of $3,905,721.81, or assets representing "the value it received" from the payments of $3,905,721.81, it holds those assets as agent for LMIM as RE of the FMIF;

4. LMIM holds those assets on constructive trust for the Plaintiff in its capacity as trustee of the MPF.

Significantly, there is no pleading of any material facts in support of any tracing process or any identifiable assets into which the payments of $3,905,721.81, allegedly made to LMIM as Responsible Entity ("RE") of the FMIF in breach of duty, can be traced.

In the absence of a pleading of such material facts, our client would respectfully suggest that the Constructive Trust Claim is bound to fail and ought to be abandoned by your client.

Indemnity Claim

Our client wishes to raise the following issues in relation to the Indemnity Claim:

1. Firstly, the clear accounts rule may provide a defence to the claim; and

2. Secondly, the Indemnity Claim appears to be unsustainable by reason of s 601FH(b) of the *Corporations Act* 2001 ("the Act").

On 18 April 2018, we sent a detailed letter to you about both of these issues in the context of BS8032/14 and BS8034/14. We refer to that letter; in particular, the authorities cited therein in relation to the clear accounts rule, and the observations therein as to the purpose and intended effect of s s 601FH(b). We will therefore endeavour to deal with these issues, and their relevance to this proceeding, briefly.

Clear Accounts Rule

As you know:-

1. a trustee's right of indemnification is subject to the rule known as the clear accounts rule;

2. in essence, the clear accounts rule is that a trustee who has committed breaches of duty is not entitled to exercise any right of indemnity out of the trust fund, until the trustee has first made good any loss arising out of the previous breaches of trust. In effect, the clear accounts rule requires a set-off between the trustee's right of indemnity and its liability for the previous breaches of trust. If there is doubt about whether the trustee has committed a breach of trust by reason of claims made in another proceeding, the right of indemnity may be suspended until the other proceeding is resolved: see judgment of Justice Jackson in *Park & Muller (Liquidators of LM Investment Management Ltd v Whyte No 3* [2017] QSC 230 at [134] to [143];

3. our client, in the name of LMIM as RE of the FMIF, has filed an Amended Claim and Statement of Claim in BS11560/16 ("the Breach of Trust Proceeding"), making claims against LMIM for various breaches of trust.

We are instructed to convey to you that:

1. if joined as a defendant to this proceeding (the AIIS Proceeding), our client intends to rely upon the clear accounts rule and the claims made in the Breach of Trust Proceeding in defence of the claims made in this proceeding against assets of the FMIF;

2. the quantum of the claims made in the Breach of Trust Proceeding are presently estimated at in excess of $30 million plus interest and costs, which, if successful, will be more than sufficient to overwhelm the claims made by your client against FMIF assets in this proceeding; and

3. therefore, your client's ability to be afforded monetary relief against assets of the FMIF with respect to the claims the subject of this proceeding, if they are otherwise successful, will likely depend upon the outcome of the Breach of Trust Proceeding.

We are therefore instructed to again give your client notice that it may have an interest in the Breach of Trust Proceeding being defended, and ask that you advise us of your client's position in this regard within seven days.

Statutory exclusion of creditor's right of subrogation

As you know, section 601FH(b) of the Act, relevantly provides as follows:

> *If the company that is a registered scheme's responsible entity is being wound up, is under administration or has executed a deed of company arrangement that has not terminated:*
>
> ...
>
> *(b) a right of the company to be indemnified out of the scheme property may only be exercised by the liquidator or the administrator of the company or the deed.*

It seems to our client, for reasons explained in our correspondence to you dated 18 April 2018 in relation to BS8032/14 and BS8034/14, that the purpose and effect of section 601FH(b) of the Act is to exclude any right that might otherwise be exercisable by a creditor of a registered scheme to be subrogated to the responsible entity's right to be indemnified (by exoneration) from the scheme's assets.

If that is correct, it seems to us that:

1. section 601FH(b) of the Act operates as a statutory bar to your client's purported exercise of a right to be subrogated to LMIM's alleged rights of indemnity from the assets of the FMIF; and

2. while your client might pursue relief against LMIM, it must rely on LMIM to exercise such rights of indemnity as may be available to it against the assets of the FMIF, subject to the operation of the clear accounts rule.

In light of this, we ask that your client clarify or confirm its position as to how it intends to overcome the effect and the operation of section 601FH(b) of the Act or why it asserts that s 601FH(b) does not have the effect suggested in this letter, within seven days.

Joinder of Mr Whyte

We note that our client is not presently a party to this proceeding.

As you are aware, our client was appointed, pursuant to Orders of Dalton J dated 21 August 2013, as the person responsible for ensuring that the FMIF is wound up in accordance with its Constitution, and as receiver of the property of the FMIF.

Our client intends to apply to Court for directions as to whether he would be justified in seeking to be joined as a defendant to this proceeding in his capacity as Court Appointed Receiver of the property of the FMIF, to defend the claims made against FMIF assets in the proceeding and for orders joining him as a defendant.

You would recall that a similar application was made by our client in BS8032/14 and BS8034/14, and our client was joined as a defendant.

Would you please advise whether your client consents to our client being joined as a defendant to this proceeding, within seven days of the date of this letter.

Conclusion

Would you please provide us with your client's response to this letter within seven days.

In the absence of a satisfactory response within that timeframe, we reserve our client's right to apply to Court to be joined as a defendant, or to take such others steps as he may be advised, without further notice.

If you have any queries about any of the issues raised by this correspondence, please do not hesitate to contact us.

We reserve all of our client's rights.

Yours faithfully

David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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Tucker&CowenSolicitors.

TCS Solicitors Pty. Ltd. / ACN 610 321 509

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Scott Hornsey.
Robert Tooth.

Our reference: Mr Schwarz / Mr Nase

Your reference: Mr O'Brien / Mrs Braad

13 June 2018

Minter Ellison Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane Qld 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Dear Colleagues

KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund ("*MPF*") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("*LMIM*") – Supreme Court of Queensland Proceeding No 12716/15 ("*AIIS Proceeding*")

We refer to our letter to you dated 4 June 2018 (copy attached).

We note that no reply to our letter was received within the requested timeframe.

We are instructed to request that you reply to our letter by no later than close of business on Friday, 15 June 2018.

We reserve all of our client's rights.

Yours faithfully

Alex Nase
Tucker & Cowen

Direct Email: anase@tuckercowen.com.au
Direct Line: (07) 3210 3503

Individual liability limited by a scheme approved under Professional Standards Legislation.

MinterEllison

25 June 2018

BY HAND

Mr David Schwarz and Mr Alex Nase
Tucker & Cowen
Level 15
15 Adelaide Street
BRISBANE QLD 4000

Dear Colleagues

KordaMentha Pty Ltd ("KM") in its capacity as trustee of the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceeding No BS12716/15

We refer to our letter dated 28 May 2018, and to your letter dated 4 June 2018.

You complain in your letter that Mr Villani in his affidavit sworn on 17 November 2016, did not mention that the MPF's limited resources were an impediment to KM (MPF) prosecuting proceeding BS12716/15. At the time Mr Villani swore his affidavit, he had a reasonable expectation that proceeding BS12317/14 which was then the subject of settlement negotiations, would settle. Such a settlement would not only have ended the considerable drain upon the MPF of defending proceeding BS12317/14, but was expected to yield for the MPF a settlement sum. These expectations were not fulfilled because negotiations with the directors of LMIM broke down in December 2017; and, with your client earlier this year. That is to say, the position outlined in our letter of 4 June 2018, is the current position.

To accommodate our respective client's current positions, our client proffers the following undertaking:

> If Mr Whyte succeeds after all appeals (if any) are exhausted in obtaining the relief he seeks against the eighth defendant ("KM (MPF)") in proceeding BS12317/14, KM (MPF) will, subject to obtaining a direction pursuant to section 96 of the *Trusts Act* 1973 (Qld), ("S 96 Application") that it would be justified in discontinuing proceeding BS12716/15, forthwith discontinue proceeding BS12716/15.
>
> KM (MPF) also undertakes to:
>
> (a) prosecute diligently any S 96 Application; and
>
> (b) give your client notice of any S 96 application.

Please advise in writing by 9 July 2018 if your client accepts our client's undertaking.

Our client reserves its right to respond to the balance of your letter dated 4 June 2018, should that become necessary. Further, our client reserves its rights generally.

Yours faithfully
MinterEllison

Contact: David O'Brien T: +61 7 3119 6159
F: +61 7 3119 1159 david.obrien@minterellison.com
Partner: David O'Brien T: +61 7 3119 6159
OUR REF: DOB 407747963

Tucker&CowenSolicitors.
TCS Solicitors Pty. Ltd. / ACN 610 321 509

Level 15. 15 Adelaide St. Brisbane. Qld. 4000 / GPO Box 345. Brisbane. Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

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Richard Cowen.
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Consultant.
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Special Counsel.
Geoff Hancock.
Alex Nase.
Brent Weston.

Associates.
Marcelle Webster.
Emily Anderson.
James Morgan.
Scott Hornsey.
Robert Tooth.

Our reference: Mr Schwarz / Mr Nase

Your reference: Mr O'Brien / Mrs Braad

26 June 2018

Minter Ellison Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane Qld 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Dear Colleagues

KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund ("*MPF*") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("*LMIM*") – Supreme Court of Queensland Proceeding No 12716/15 ("*AIIS Proceeding*")

We refer to your letter dated 25 June 2018.

Our client does not accept the undertaking offered by your client.

The proposed undertaking is unsatisfactory, because the winding up of the FMIF cannot be completed until the remaining legal proceedings are concluded.

Indeed, at a recent Court hearing, His Honour Boddice J observed to the effect that there ought to be a timeline for the resolution or determination of the remaining legal proceedings.

Our client is considering applying to Court for an order that he be joined as a defendant to the proceeding, and for directions with respect to the future conduct of the proceeding.

Our letter to you dated 4 June 2018 requested that you let us know within seven days whether your client consents to our client being joined as a defendant to the proceeding. No response to that request has been received.

Would you please let us know whether your client consents to our client being joined as a defendant to this proceeding, by no later than close of business on Friday, 29 June 2018.

Yours faithfully

Alex Nase
Tucker & Cowen
Direct Email: anase@tuckercowen.com.au
Direct Line: (07) 3210 3503

Individual liability limited by a scheme approved under Professional Standards Legislation.

MinterEllison

3 July 2018

BY EMAIL

Mr David Schwarz and Mr Alex Nase
Tucker & Cowen
Level 15
15 Adelaide Street
BRISBANE QLD 4000

Dear Colleagues

KordaMentha Pty Ltd ("KM") in its capacity as trustee of the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceeding No BS12716/15

We refer to your letter dated 26 June 2018.

Our client has decided to discontinue this proceeding if so directed by the Court acting pursuant to section 96 of the *Trusts Act* 1973 (Qld).

In these circumstances, it is unnecessary for your client to become a party to this proceeding.

We will keep you informed of the progress of our client's application.

Yours faithfully,
MinterEllison

Contact: David O'Brien T: +61 7 3119 6159
F: +61 7 3119 1159 david.obrien@minterellison.com
Partner: David O'Brien T: +61 7 3119 6159
OUR REF: DOB 407747963

Cc: Mr Mark Waller
Clayton Utz

MinterEllison

5 July 2018

BY EMAIL

Mr David Schwarz and Mr Alex Nase
Tucker & Cowen
Level 15
15 Adelaide Street
BRISBANE QLD 4000

Dear Colleagues

KordaMentha Pty Ltd ("KM") in its capacity as trustee of the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceeding No BS12716/15

We refer to our letter dated 3 July 2018.

We **attach** for your information, but not by way of service, two applications filed today.

Yours faithfully
MinterEllison

Contact: David O'Brien T: +61 7 3119 6159
F: +61 7 3119 1159 david.obrien@minterellison.com
Partner: David O'Brien T: +61 7 3119 6159
OUR REF: DOB 407747963

Cc: Mr Mark Waller
Clayton Utz

SUPREME COURT OF QUEENSLAND

REGISTRY	Brisbane
NUMBER	12716/15

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

APPLICATION

TAKE NOTICE that KordaMentha Pty Ltd (ACN 100 169 391) as trustee of the LM Managed Performance Fund ("plaintiff") is applying to the Court for the following orders:

1. Directions pursuant to section 96 of the *Trusts Act* 1973 (Qld), as to whether the plaintiff would be justified in discontinuing this proceeding against the defendant.

2. The plaintiff's costs and expenses of and incidental to this proceeding be paid on the indemnity basis out of the LM Managed Performance Fund.

3. Such further and other orders or directions as this Honourable Court deems appropriate.

This application for directions will be heard by the Court at Brisbane on: Thursday 9 August 2018 at 10.00am.

BRISBANE SUPREME COURT OF QUEENSLAND

ORIGINATING APPLICATION

Filed on behalf of the Applicant

Form 5 Rules Rule 26

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email: qlit@minterellison.com
Reference: NYB DOB 407747963

ME_150901394_1

Filed on 5 July 2018

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the hearing of the application for directions the plaintiff intends to rely on the following material:

1. Affidavit of Jarrod Villani to be filed;

2. Affidavit of David Thomas O'Brien to be filed;

3. Statement of Facts pursuant to section 96(1) of the *Trusts Act* 1973 (Qld) to be filed.

THE PLAINTIFF ESTIMATES THE HEARING OF THE APPLICATION FOR DIRECTIONS SHOULD BE ALLOCATED 1.5 HOURS

Signed: Mt E/L.

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 5 July 2018

This application is not intended to be served on any person.

Notice of this application will be given to:

The defendant, LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)

AND TO

Mr David Whyte in his capacity as court appointed receiver of the property of the LM First Mortgage Income Fund

Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO THE INVESTOR AS ADDRESSED

29 June 2018

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')

1. Executive Summary

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I now provide my 22nd update to investors, which provides details of the progress made in the winding up of the Fund since my last report to investors dated 29 March 2018. This report should be read in conjunction with my previous reports, which are available on the website www.lmfmif.com.

There has been significant progress made since my last report dated 29 March 2018 in the following respects:

- Two of the three proceedings commenced by the MPF against the Fund's assets for total claims of $24.1m plus interest have been discontinued and I am taking steps for the third to be either prosecuted by the MPF or discontinued (refer section 2.1);
- I am in discussions with the Receivers and Managers (McGrathNicol) regarding their retirement and they have advised that they expect to retire within one month;
- The proceedings against the Feeder Funds have been progressed with court orders being made on 13 June 2018 which included the granting of leave to proceed against LMIM (being a company in liquidation), placing the proceedings on the commercial list and directing the parties to undertake mediation by 28 September 2018 (refer section 2.6);
- Prior to the mediation of the Feeder Fund claim, I intend applying to court to seek orders to correct the member register relating to foreign currency investors where I have identified errors in the management of same (refer section 4.2);
- Should the Receivers and Managers have resigned, the Feeder Fund claims are settled at mediation and the proof of debt process has been completed by FTI as set out at section 2.7.2 of this report, I intend applying to court to allow an interim distribution to investors. An update will be provided in my next report to investors by 30 September 2018;

A summary of the other matters covered in this report is as follows:

- Cash at bank as at 31 May 2018 was $70,209,210;
- The estimated return to investors is currently 13.0 to 14.2 cents per unit as detailed at Section 4.1 below and before taking into account future costs and recoveries from legal proceedings on foot;

BDO Business Restructuring Pty Ltd ABN 90 134 036 507 is a member of a national association of independent entities which are all members of BDO Australia Ltd ABN 77 050 110 275, an Australian company limited by guarantee. BDO Business Restructuring Pty Ltd and BDO Australia Ltd are members of BDO International Ltd, a UK company limited by guarantee, and form part of the international BDO network of independent member firms. Liability limited by a scheme approved under Professional Standards Legislation, other than for the acts or omissions of financial services licensees.

- The claim against the directors, LMIM and MPF for $15.5M plus interest, has not settled and the matter is now being progressed towards a trial which is likely to be held in the first half of 2019 (refer section 2.3);
- Orders for progressing the claim against the former auditors were made by the Court on 29 May 2018. The effect of these orders was to set a timetable for further progressing the matter. Further details are provided in Section 2.4 below;
- Settlement of the Bellpac Liquidator's $8M Bonds litigation has progressed however, the remaining condition precedent to settlement has been further extended to 31 August 2018. This is expected to realise $6.3M for the benefit of investors (refer section 2.5).

2. Position of the Secured Creditor, the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ('MPF') and claims filed against the Fund

2.1 Proceedings by the Trustee of the MPF against LMIM and the Fund

2.1.1 Assigned Loans Claims

I refer to my previous updates to investors in relation to these proceedings, in which the Trustee of the MPF (MPF) is the plaintiff, and the defendants are LMIM, and myself as Receiver of the property of the FMIF.

The relief claimed by the Trustee of the MPF in these proceedings included equitable compensation against LMIM and claims against the assets of the FMIF in the total sum of about $24.1 million plus interest.

The MPF Trustee applied to the Court for directions as to whether it would be justified discontinuing the proceedings, and on 7 June 2018 the Court directed it would be. Notices of discontinuance have accordingly been filed in both proceedings.

2.1.2 AIIS Loan Claim

I refer to my previous updates to investors in relation to this proceeding in which the MPF is the plaintiff, and LMIM is the defendant.

The MPF has claimed approximately $16.82 million as equitable compensation against LMIM and relief against the assets of the FMIF for approximately $3.9 million (this may be increased to $4.1 million) being alleged interest paid by the MPF to the FMIF in respect of the loan made by the FMIF to AIIS in 2005.

This claim was filed on 16 December 2015 and the Statement of Claim was served on 28 November 2016. Since then no steps have been taken in the proceeding, and the MPF has not required a defence. I therefore took steps to request that the MPF either expeditiously progress its claim or discontinue the proceeding, failing which I intend to apply to Court to be joined as a defendant, to defend the claims made against assets of the FMIF, and then actively seek to bring the matter to closure.

2.2 Position of the Secured Creditor

Following the discontinuance of the two proceedings brought by the MPF for claims totalling $24.1m plus interest, I have been in discussions with the DB Receivers about their retirement. They have recently advised that they expect to retire within one month.

2.3 Proceedings against the MPF, LMIM and the Directors of LMIM

I refer to my previous updates to investors in relation to a statement of claim I caused to be filed in the Supreme Court of Queensland, against a number of parties, including the MPF Trustee, in respect of loss allegedly suffered by the FMIF as a result of an amount paid to the MPF in the Bellpac litigation matter. The claim is for approximately $15.5M plus interest.

While attempts to settle the proceedings had been continuing in relation to these proceedings and those proceedings referred to in section 2.1.1 above, I continued to take steps to progress the proceedings including:

- As at 6 April 2018 all director defendants, except for John Francis O'Sullivan and LMIM in its own right have filed Amended Defences;
- I have filed Replies to the Amended Defences received and made requests for further particulars which have all been responded to;
- Obtaining orders enabling me to disclose for the purposes of these proceedings relevant transcripts obtained during the public examinations and documents produced for the public examinations by the former auditors.

As previously advised, the proceedings have not settled following settlement discussions. Accordingly, I am now progressing these proceedings to a trial. Progress on the steps set out in the timetable following the review hearing held on 14 March 2018, are as follows:

- An Amended Defence of the 1st director defendant (being Peter Drake) was filed and served by 23 March 2018. This has been completed.;
- The Replies to the further Amended Defences of the 3rd and 4th defendants were to be filed and served on 29 March 2018. This has been completed;
- The Reply to the Amended Defence of the 1st defendant was filed and served by 6 April 2018. This has been completed;
- Replies to the Amended Defences of the 2nd, 6th and 8th defendants were to be filed and served by 20 April 2018. This has been completed;
- Further disclosure was required to be undertaken by myself, the 1st, 2nd, 3rd, 4th, 6th and 8th defendants by 20 April 2018. The 1st defendant made minor further disclosure on 20 April 2018. I also made minor further disclosure on 20 April 2018. The other defendants did not make any further disclosure;
- The Draft Trial Index has been completed, bar a few minor matters and the Assigned Loans matter which has now been added to the replies to the defendants;
- The Draft Trial Index was forwarded to the defendants on 1 June 2018, with a response requested by 27 July 2018;

- The next review hearing date is set for 16 August 2018 when it is hoped a trial date can be set for the first half of 2019.

As the proceedings are ongoing, an update will be provided to investors in relation to this matter in my next report.

2.4 Claim Against the Former Auditors

I refer to my previous updates to investors and briefly summarise the background as follows:

- A public examination (PE) of the former auditors and certain directors and former directors (Directors) of LM Investment Management Limited (In Liquidation) was conducted in 2015;
- Following the PEs, a further amended statement of claim was filed by me and served on the former auditors of the Fund on 14 April 2016;
- The former auditors lodged and served on me a strike-out application and supporting affidavit on 27 April 2016 (amended on 15 December 2016) seeking orders to strike-out certain parts of the statement of claim;
- At the hearing of the former auditors' strike out application, the Court granted my application and placed the proceedings on the commercial list and reserved its decision on the auditor's strike out application;
- The reserved decision from the hearing of the strike out application was handed down on 8 May 2017. Orders were made that the statement of claim be amended to delete certain causes of action and to include details of the quantification of loss;
- In accordance with the Court's judgment, the parties were required to agree the form of orders including a timetable for the filing of a further amended statement of claim and the costs of the former auditors' strike-out application;
- The amended statement of claim was filed on 20 November 2017 and served on the former auditors. Details of the loss has been included in the amended statement of claim which has been calculated (at its highest) in excess of $200 million. A significant amount of work has been undertaken in this regard, including quantifying the loss at 6 monthly hypothetical winding up dates between 1 July 2009 and 1 January 2013 being the estimated additional costs and expenses incurred by the Fund as a consequence of the alleged delay in winding up the Fund;
- I have received a number of requests pursuant to Rule 222 of the Court Rules (Rules) from the former auditors to provide documents referred to in the amended statement of claim which requests have been responded to.

I summarise developments since my last update to investors as follows:

- On 29 May 2018 the Court handed down the following orders:
    - The parties' costs of the defendants' application filed 27 April 2016 and of the defendants' amended application filed 15 December 2016 are reserved;
    - The defendants serve any request for further and better particulars of the Third Further Amended Statement of Claim, other than paragraphs 121 and 123, by 15 June 2018. This has been done;

- The plaintiff respond to the defendants request for further and better particulars by 10 August 2018;
- The plaintiff file and serve its application to amend its claim, and any Fourth Further Amended Statement of Claim, by 15 June 2018;
- The defendants advise the plaintiff whether they consent to or oppose the plaintiff's application to amend its claim by 29 June 2018;
- If the defendants oppose the plaintiff's application:
  - The defendants file and serve any evidence in response to the plaintiff's application by 13 July 2018;
  - The plaintiff file and serve its written submissions in support of its application by 27 July 2018;
  - The defendants file and serve their written submissions in opposition to the plaintiff's application by 10 August 2018.
- The matter is listed for a Review and for hearing of the plaintiff's application, on a date to be fixed on or after 20 August 2018;

- On 15 June 2018, in accordance with the Order dated 29 May 2018, I caused the application for leave to amend the Claim and the supporting affidavit to be filed in the Court. I will respond appropriately to the balance of the timetable handed down by the Court.

The proceedings are ongoing and an update will be provided to investors in relation to this matter in my next report.

2.5 Bellpac Proceedings

In addition to the claim filed and served against the MPF in relation to a loss suffered by the Fund from litigation pertaining to the Bellpac loan noted at item 1 above, there is another matter relating to Bellpac that has been progressed during the Period, as detailed below.

Wollongong Coal Ltd (WCL) - $10 million Convertible Bonds

I refer to my previous updates to investors and provide a brief summary as follows:

- The liquidator of Bellpac has received the settlement amount of $2 million from WCL in relation to the claim for redemption of the $2 million Bonds held in WCL;
- The defendants' appeal of the decision of the Court which acknowledged that Bellpac (under the control of a liquidator) is the true owner of the $8 million convertible bonds was unsuccessful;
- In January 2016, the Bellpac Liquidator applied for the conversion of the $8 million Bonds to shares. As WCL did not issue all of the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds converted to shares outside of the required time;
- The Bellpac liquidator and WCL have entered into a binding heads of agreement (HOA) which relates to the settlement of the litigation commenced against WCL. The terms of the heads of agreement include that WCL will pay to Bellpac a settlement sum of $6.3 million in return for certain releases and Bellpac returning or cancelling the WCL shares issued to Bellpac;

- The conditions precedent to the settlement with WCL include obtaining necessary approvals to undertake the settlement transactions. In this regard:
    - The Bellpac Liquidator has obtained creditor approval to enter into the settlement with WCL;
    - The Court declined to exercise its discretion on WCL's application for approval to acquire and or cancel Bellpac's holding of WCL shares. WCL is now preparing to seek shareholder approval.
- The Trustees of the MPF (MPF) have demanded from the Liquidator circa $680K plus interest out of the proceeds of the Bonds for repayment of funding the MPF allegedly made for the Bonds litigation from late 2010 to early 2013. The MPF has also reserved its rights in relation to claiming 35% of the funds realised from the successful Bonds proceedings.

Developments since my last update to investors are as follows:

- The sunset date of the HOA to complete the condition precedent to obtain approval from the Court or shareholders was further extended by agreement to 31 August 2018 to provide more time for WCL to obtain the required documents needed for submission to their shareholders prior to the meeting of shareholders;
- In relation to the MPF claim for reimbursement for funding as referred to above, I have written to the Liquidator and I am currently awaiting a response to my recent correspondence regarding the monies held by him. The Bellpac Liquidator has confirmed he will not take any step adverse to either the MPF or FMIF without first giving the parties 7 days' notice.

I will provide investors with an update in relation to the claim by MPF and the settlement of the $8M bonds litigation with WCL in my next report.

2.6 Redemptions and Distributions paid to Class B Unit Holders (Feeder Funds)

I refer to my previous updates to investors and summarise the background as follows:

Investigations have been undertaken via the PE conducted in 2015 and subsequent thereto in relation to redemptions and distributions paid to the Class B unit holders (Feeder Funds) when the Fund had suspended redemptions and distributions to other classes of members;

The Feeder Funds are the LM Currency Protected Australian Income Fund (CPAIF), the LM Institutional Currency Protected Australian Income Fund (ICPAIF) and the LM Wholesale First Mortgage Income Fund (WMIF);

On 28 July 2017, I caused to be filed an amended statement of claim against LMIM and the Feeder Funds and the claim was then formally served on the parties. The relief sought in the claim includes declarations to withhold from distributions or payments otherwise payable from the Fund to:

- CPAIF in the sum of $40,583,109.06 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the CPAIF would otherwise have been entitled as referred to in the amended statement of claim;

- ICPAIF in the sum of $5,044,118.30 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the ICPAIF would otherwise have been entitled as referred to in the amended statement of claim;
- WMIF in the sum of $9,432,090.76 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the WMIF would otherwise have been entitled as referred to in the amended statement of claim.

- In October 2017, I caused to be filed an application under Section 59 of the Trusts Act (1973) (QLD)to seek directions in relation to how the differing interests of LMIM are to be represented in the proceedings and an application under Section 500 of the Corporations Act (2001) to seek leave to proceed against LMIM (which is required because it is in liquidation) (the Applications);
- The receivers for the CPAIF and ICPAIF (Grant Thornton) advised they would not consent to my Section 59 application unless orders are made:
  - that their reasonable costs and fees be fixed by the Court and paid out of the FMIF up to them preparing and filing a defence and considering any Reply filed by me;
  - that I disclose to them certain books and records as requested by them.
- The parties consented to adjourn the hearing of the Applications (which was originally set down on 8 December 2017) to a date to be fixed.

I summarise developments since my previous update to investors as follows:

- A Commercial List Application and Statement was filed with the Court on 23 April 2018
- On 24 April 2018 the Court proposed that the Commercial List Application and the leave to proceed application be listed for hearing on 29 May 2018.
- At the hearing on 29 May 2018, the Court indicated it was content for:
  - The proceeding to be placed on the Commercial List; and
  - That the proceeding be referred to mediation.
- However, the Court noted that the final form of the orders to be issued by it would be required to take into account how the individual members of the Feeder Funds were to be notified of the proceeding and with that, given the opportunity to apply to the Court to be heard in the proceeding or represented in the mediation.
- Following the hearing on 29 May 2018, the draft orders were circulated by my solicitors and agreed to. The matter was then re-listed for a hearing on 13 June 2018 in order for the final form of the Orders to be reviewed by the Court.
- On 13 June 2018, the Court made Orders including the following:
  - The proceeding be placed on the Commercial List;
  - The plaintiff has leave to proceed pursuant to Section 500(2) of the Corporations Act 2001 to proceed against LMIM in liquidation;
  - How the differing interests of LMIM are to be represented pursuant to section 59 of the Trusts Act 1973 (QLD);

- That The Trust Company Limited ACN 004 027 749 as custodian of the property of the LM WFMIF (second defendant) is joined to the proceeding, as the fifth defendant;
- The plaintiff has leave to file and serve a Further Amended Claim;
- FTI are to provide a complete and up to date copy of the registers of members of the CPAIF and ICPAIF to the Receivers for the CPAIF and ICPAIF (Grant Thornton) and to me, by 22 June 2018. This has been done;
- The plaintiff is to provide the Receivers for the CPAIF and ICPAIF (Grant Thornton) and the RE of the WMIF (Trilogy) specified categories of documentation, by 29 June 2009;
- The plaintiff and FTI are required to give notice to members of the CPAIF and the ICPAIF of this proceeding, the Further Amended Claim, the Second Further Amended Statement of Claim and the form of notice attached to the Orders issued by the Court. This has been done;
- The plaintiff is required to give notice to all members of the CPAIF and ICPAIF of further documents filed in these proceedings by posting the documents to www.lmfmif.com;
- The parties are directed to attend a mediation to be completed by 28 September 2018.

In summary if the Court grants the relief sought against the Feeder Funds and putting aside any other recoveries for the benefit of investors:

- the CPAIF and ICPAIF are not likely to receive any distribution in the winding up of the FMIF;
- the WMIF is likely to receive a smaller distribution than it otherwise would have been entitled, subject to the outcome of litigation against the FMIF and future operating costs of the FMIF;
- the FMIF can use the funds which otherwise would have been paid to the Feeder Funds for distributions to investors generally instead and, as a result, the return to other investors (Class A and Class C) is likely to increase.

I will keep investors updated as to the progress of this claim.

2.7 Liquidators of LMIM (FTI Consulting)

2.7.1 Remuneration claim

As advised in my previous reports to investors, the orders handed down in relation to FTI's ongoing role and extent of their powers and responsibilities set out, amongst other things, the process for me to adjudicate on claims made by LMIM for indemnity against the property of the FMIF in respect to any expense or liability of, or claim against, LMIM in acting as Responsible Entity of the FMIF.

The judgement regarding FTI's remuneration and orders made in relation to FTI's remuneration claim and indemnity claim are available on the websites www.lmfmif.com and www.lminvestmentadministration.com.

As the judgement had been handed down, I requested FTI to provide details of any additional remuneration and costs incurred subsequent to the remuneration claimed in the above mentioned court application.

FTI has informed me that for the period since late 2015 and up to 30 April 2018 they have incurred additional remuneration and expenses of $363,929 plus GST. FTI have advised that they propose to make application to the court for the approval of the remuneration shortly.

FTI have provided me with these figures so that the Fund may properly record the expenses in the management accounts and provide an updated estimated return to investors. I have yet to receive details of these amounts claimed and FTI have advised these amounts are subject to change based on the formulation of its application for court approval.

Discussions with FTI have been ongoing, however no further formal steps in the proceeding have been taken since my last report to investors.

2.7.2 Proof of debt process

If a debt or claim is admitted by FTI in the winding up of LMIM and a claim for indemnity out of the FMIF with respect to such debt or claim is identified, I summarise the process as outlined in the Court Orders as follows:

- FTI must notify me within 14 days of the claim for indemnity against the assets of the Fund;
- Within 14 days I may seek further information in relation to the claim;
- Within 30 days of receipt of the claim from FTI or from receipt of further information I have requested, I am required to:
    - Accept the claim, or
    - Reject the claim, or
    - Accept part of it and reject part of the claim; and
    - To give FTI written notice of the decision;
- I am required to give FTI written reasons for rejecting any part of a claim within 7 days after giving notice of my decision including those claims identified through the proof of debt process mentioned above;
- Within 28 days of receiving a notice of rejection, FTI may apply to the Court for directions in relation to the rejection and advise the creditor of my decision and other specified matters.

Following agreement with FTI as to the proposed amendment to the court order which will be submitted to the court for approval, I am hopeful that this process can be undertaken in the near future so the quantum of any creditor claims against the Fund can be ascertained and dealt with as soon as possible. These claims may be subject to the "clear accounts rule" as described in previous reports to investors, and if so, a set off against that claim may be able to be made.

2.7.3 Claim filed against LMIM

I refer to my previous report to investors and summarise the background as follows:

- In November 2016, I caused LMIM as RE of the FMIF to commence a proceeding against LMIM in relation to certain transactions to avoid possible expiry of the statutory limitation periods for making the claims;
- This claim alleges that, *inter alia*, LMIM breached its duties to members of the FMIF by:

- causing to be paid out of assets of the FMIF management fees in advance of it becoming entitled to payment of same;
- overpaying management fees to itself out of assets of the FMIF;
- causing to be paid to LMA additional fees purportedly for loan management and controllership services;
- directing payments to be made by the MPF, purportedly in satisfaction of liabilities owed by the MPF to the FMIF, to be paid to itself as RE of the feeder funds;

- Following further investigations, an amended claim and statement of claim and consolidated particulars have been filed and served on LMIM;
- Steps have been taken to prepare an application under Section 59 of the Trusts Act (1973) (QLD) for directions of the Court in relation to how the differing interests of the parties (LMIM as RE of the FMIF, and LMIM in its personal capacity) are to be represented in the proceedings and an application under Section 500 of the Corporations Act to seek leave to proceed against LMIM (the Applications) and supporting Affidavits.

Since my last report to investors, further work has been undertaken to quantify the claim for lost interest on the pre-paid management fees, and further instructions have been provided to Counsel to enable affidavit material in support of the directions application to be settled.

Subject to any directions that may be made by the Court, if the claims made in this proceeding are successful, they may be able to be relied upon as a set-off against certain claims made by LMIM for indemnity out of assets of the FMIF, including those claims identified through the proof of debt process mentioned above or claims made by other parties seeking to subrogate to LMIM's alleged rights of indemnity.

I will keep investors updated as to the progress of this claim.

3. Management Accounts

As advised in my previous report, the management accounts for the half year ending 31 December 2017 are available on the website www.lmfmif.com.

The management accounts for the year ending 30 June 2018 will be uploaded to the website www.lmfmif.com by 30 September 2018.

4. Investor Information

4.1 Estimated Return to Investors

I provide an estimated return to Investors of between 13.0 cents and 14.2 cents per unit as at 31 May 2018, calculated as follows:

Description	$ Low	$ High
Cash at bank	70,209,210	70,209,201
Other assets (interest receivable, foreign currency accounts and amount for security for litigation costs)	350,848	1,389,677
Estimated Assets Position	70,560,058	71,598,888
Less:		
Other unsecured creditors (includes remuneration approved but not paid)	7,230,339	2,501,274
FTI Fees & legal expenses advised (subject to approval) - refer to Section 2.7 for further details – maximum amount shown	694,756	694,756
Receivers and Managers' fees (DB Receivers)	75,262	75,262
Receiver's fees & outlays (BDO) (including controllerships)	246,103	246,103
Receiver's legal fees (BDO)	274,627	274,627
Total Liabilities	**8,521,088**	**3,792,023**
Estimated net amount available to investors as at 31 May 2018	**62,038,970**	**67,806,865**
Total investor units (as at 31 December 2016)	478,100,386	478,100,386
Estimated return in the dollar	**0.130**	**0.142**

Please note that the estimate and prior estimates do not take into account future operating costs and future Receiver's fees or any legal recoveries against borrowers, valuers or other third parties. Should the claims against the Feeder Funds be successful this would materially affect the return to the Feeder Funds (negatively) and other investors (positively).

In calculating the estimated return to investors, I have also not provided any provision for the claim filed by the MPF Trustee with respect to the AIIS loan as the prospects of a successful claim against the Fund is unknown, however, as detailed earlier in this report, I am hopeful that all claims relating to the MPF matters will be brought to a conclusion shortly.

4.2 Investments made in Foreign Currencies

Investigations undertaken by BDO have identified that the number of units held by investors who invested in foreign currencies appears to be incorrectly recorded in the membership records of the FMIF.

It appears that when LMIM transferred the member records of the FMIF to a new database in 2010 the number of units of investors who invested in a foreign currency were incorrectly recorded in the new database, by allocating to the investors concerned one unit in the FMIF for each unit of foreign currency invested, rather than one unit in the FMIF for each $1AUD invested (after the foreign currency amount invested had been converted to AUD at the applicable exchange rate) in accordance with the PDS and Constitution.

I am currently calculating the effect of these errors on each of the foreign currency investors and intend applying to court seeking orders to rectify the register of members before 30 September 2018.

4.3 Distributions to Investors

Once the DB Receivers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the auditor claim and Bellpac litigation.

I am also required to seek the directions of the Court before proceeding with the next distribution.

Prior to making the application to court, I will require to correct the members register for the foreign currency investors and resolve the proceedings against the Feeder Funds and where a mediation is to be held by 28 September 2018.

4.4 Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor in the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if investors could nominate an email address as their preferred method to receive correspondence. Investors may update their details as outlined in Section 4.5 below. For those investors that do not have an email address, correspondence will continue to be sent to you via post.

My next report to investors will be issued by 30 September 2018.

4.5 Investors Queries

For any changes to investors details, please review the Useful Forms/Procedures tab on the website www.lmfmif.com which includes information regarding the following procedures:

- Change of Contact Address/Bank Account Details
- Change of Contact Address/Bank Accounts Details of a Deceased Estate
- Change of Trustee of Self-Managed Super Fund
- Transfer of Unit Holding from a Super Fund/ Trustee Company to Personal Name(s)
- Transfer of Unit Holding from a Deceased Estate to a Sole Survivor

- Transfer from a Deceased Estate to a Beneficiary of an Estate

It is a requirement that advisors or other third parties acting on behalf of Unit Holders are doing so pursuant to a relevant Authority/Power of Attorney. Please ensure that a relevant Authority/Power of Attorney accompanies the abovementioned documents as necessary (if an Authority/Power of Attorney has not previously been provided).

It is preferable that all questions about the winding up, or communications are sent via email to enquiries@lmfmif.com with original documents to be mailed as required to:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227

5. Receiver's Remuneration and Expenses

There have been nine applications to Court to date to approve my remuneration from the date of my appointment on 8 August 2013 until 30 April 2018.

The ninth application for the approval of my remuneration for the period 1 November 2017 to 30 April 2018 was heard on 21 June 2018. The Court ordered that my remuneration for this period be fixed in the amount of $1,041,907.90 (inclusive of GST). In addition, the Court approved my remuneration sought of $22,306.90 (inclusive of GST) in respect of work undertaken on the controllerships.

A copy of all documentation in relation to my applications can be found on the website www.lmfmif.com.

In addition to the remuneration previously approved by the Court and the ninth application set out above, I calculate that, on a time basis, I have incurred further remuneration of $227,274.50 plus outlays of $1,203.66 plus GST from 1 May 2018 to 31 May 2018 plus work undertaken in respect of the controllerships for the retirement village assets of $7,027.50 plus GST as detailed in the table below and attached summaries.

Remuneration incurred for May 2018	Remuneration $ (GST excl.)	Outlays $ (GST excl.)
LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed)	227,274.50	1,203.66
OVST Pty Ltd (In Liquidation) (Controllers Appointed)	2,102.00	-
Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)	-	-
Bridgewater Lake Estate Ltd (In Liquidation) (Controllers Appointed)	4,081.00	-
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd	569.50	
Redland Bay Leisure Life Ltd (In Liquidation) (Controllers Appointed)	133.50	-

Redland Bay Leisure Life Development Ltd (In Liquidation) (Controllers Appointed)	141.50	-
Total	**234,302.00**	**1,203.66**

The key matters addressed during the period 1 May 2018 to 31 May 2018 were:

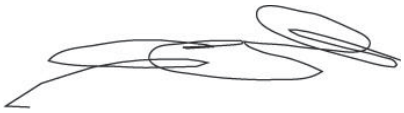
- Work undertaken in relation to the litigation matters detailed in Sections 2, which among other things, include:
    - Progressing the claim against the former auditors regarding the financial statements and compliance plan audits.;
    - Providing assistance to the Liquidator of Bellpac regarding the $8M bond claim including progressing the settlement with WCL;
    - Progressing the claim against the MPF and others;
    - Progressing the claim against the Feeder Funds in relation to redemptions and distributions paid to Class B unitholders;
    - Progressing claims against guarantors;
    - Negotiations with FTI to resolve various outstanding issues relating to FTI's proceedings and the winding up of the FMIF;;
    - Progressing the claim against LMIM;
    - Dealing with the proceedings by the Trustee of the MPF against LMIM in which relief is sought against assets of the Fund.
- Liaising with various parties in relation to the potential for the DB Receiver's retirement;
- Maintaining the management accounts of the Fund;
- Undertaking the investor management function for approximately 4,500 investors including answering queries on the winding up of the Fund and maintaining the investment database, including any change in details or transfer of units;
- Progressing the investigation of the AX files to determine the alternatives to resolving the incorrect conversion of foreign investors units into AX;
- Preparing affidavit and supporting material for an application to Court for approval of the receiver's remuneration for the period 1 November 2017 to 30 April 2018; and
- Finalising outstanding residual matters from the sale of five retirement villages, including tax compliance issues.

6. Queries

Should unit holders wish to advise of any changes in details or require further information, please contact BDO as follows:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely



David Whyte
Receiver

Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
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REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 May 2018 to 31 May 2018

LM First Mortgage Income Fund (Receivers & Managers Appointed)

			Totals		Task Area									
					Assets		Creditors		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	580	60.1	34,858.00	30.0	17,400.00	8.0	4,640.00	2.2	1,276.00			19.9	11,542.00
Clark Jarrold	Partner	580	71.1	41,238.00	71.1	41,238.00								
Gerry Collins	Consultant	580	0.9	522.00	0.9	522.00								
Craig Jenkins	Partner	515	3.6	1,854.00	3.6	1,854.00								
Arthur Taylor	Senior Manager	470	153.0	71,910.00	83.2	39,104.00	2.4	1,128.00	3.8	1,786.00			63.6	29,892.00
Samuel Alexander	Manager	450	0.6	270.00					0.6	270.00				
Chris Demeyere	Manager	430	0.3	129.00	0.3	129.00								
Julie Pagcu	Senior Manager	400	79.6	31,840.00	79.6	31,840.00								
Ainsley Watt	Senior Accountant I	350	64.6	22,610.00	15.9	5,565.00	23.8	8,330.00	2.8	980.00	7.2	2,520.00	14.9	5,215.00
Antoinette Fielding	Accountant II	215	26.5	5,697.50			26.0	5,590.00			0.5	107.50		
George Lethbridge	Undergraduate	175	30.1	5,267.50			25.2	4,410.00			2.7	472.50	2.2	385.00
Ryan Whyte	Undergraduate	175	56.9	9,957.50	3.6	630.00	26.5	4,637.50	1.3	227.50	16.2	2,835.00	9.3	1,627.50
Moira Hattingh	Team Assistant	95	11.8	1,121.00									11.8	1,121.00
		TOTALS	559.1	227,274.50	288.2	138,282.00	111.9	28,735.50	10.7	4,539.50	26.6	5,935.00	121.7	49,782.50
		GST		22,727.45										
		TOTAL INC GST		250,001.95										
		AVERAGE HOURLY RATE		407		480		257		424		223		409

Note: All amounts exclude GST unless otherwise noted

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Disbursements for the period 1 May 2018 to 31 May 2018

LM First Mortgage Income Fund (Receivers & Managers Appointed)

Expense Type	Amount ($ ex GST)
Airfares	444.66
Search Fee	751.81
Postage	7.19
TOTAL	**1,203.66**
GST	**120.37**
TOTAL INC GST	**1,324.03**

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REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 May 2018 to 31 May 2018

Bridgewater Lake Estate Pty Limited (Controllers Appointed)

			Totals		Task Area			
					Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$
Leisa Rafter	Partner	680	0.3	204.00	0.3	204.00		
David Whyte	Partner	580	0.1	58.00	0.1	58.00		
Samuel Alexander	Manager	450	1.1	495.00	1.1	495.00		
Ainsley Watt	Senior Accountant I	350	4.1	1,435.00	1.1	385.00	3.0	1,050.00
Reuben Tham	Senior Consultant II	280	3.9	1,092.00	3.9	1,092.00		
George Lethbridge	Undergraduate	175	4.5	787.50			4.5	787.50
Moira Hattingh	Team Assistant	95	0.1	9.50			0.1	9.50
		TOTALS	14.1	4,081.00	6.5	2,234.00	7.6	1,847.00
				GST 408.10				
				TOTAL INC GST 4,489.10				
				AVERAGE HOURLY RATE 289		344		243

Note: All amounts exclude GST unless otherwise noted

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REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 May 2018 to 31 May 2018

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
					Administration	
			hrs	$	hrs	$
Ainsley Watt	Senior Accountant I	350	0.1	35.00	0.1	35.00
George Lethbridge	Undergraduate	175	3.0	525.00	3.0	525.00
Moira Hattingh	Team Assistant	95	0.1	9.50	0.1	9.50
		TOTALS	3.2	569.50	3.2	569.50
				GST	56.95	
				TOTAL INC GST	626.45	
				AVERAGE HOURLY RATE	178	178

Note: All amounts exclude GST unless otherwise noted

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REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 May 2018 to 31 May 2018

OVST Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area			
					Trade On		Administration	
			hrs	$	hrs	$	hrs	$
Samuel Alexander	Manager	450	0.6	270.00	0.6	270.00		
Ainsley Watt	Senior Accountant I	350	1.2	420.00			1.2	420.00
Reuben Tham	Senior Consultant II	280	3.1	868.00	3.1	868.00		
George Lethbridge	Undergraduate	175	3.0	525.00			3.0	525.00
Moira Hattingh	Team Assistant	95	0.2	19.00			0.2	19.00
		TOTALS	8.1	2,102.00	3.7	1,138.00	4.4	964.00
		GST		210.20				
		TOTAL INC GST		2,312.20				
		AVERAGE HOURLY RATE		260		308		219

Note: All amounts exclude GST unless otherwise noted

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REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 May 2018 to 31 May 2018

Redland Bay Leisure Life Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
					Administration	
			hrs	$	hrs	$
Ainsley Watt	Senior Accountant I	350	0.2	70.00	0.2	70.00
George Lethbridge	Undergraduate	175	0.2	35.00	0.2	35.00
Moira Hattingh	Team Assistant	95	0.3	28.50	0.3	28.50
		TOTALS	0.7	133.50	0.7	133.50
				GST 13.35		
				TOTAL INC GST 146.85		
				AVERAGE HOURLY RATE 191		191

Note: All amounts exclude GST unless otherwise noted

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REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 May 2018 to 31 May 2018

Redland Bay Leisure Life Development Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
					Administration	
			hrs	$	hrs	$
Ainsley Watt	Senior Accountant I	350	0.2	70.00	0.2	70.00
George Lethbridge	Undergraduate	175	0.3	52.50	0.3	52.50
Moira Hattingh	Team Assistant	95	0.2	19.00	0.2	19.00
		TOTALS	0.7	141.50	0.7	141.50
				GST	14.15	
				TOTAL INC GST	155.65	
				AVERAGE HOURLY RATE	202	202

Note: All amounts exclude GST unless otherwise noted