

**CLAYTON UTZ**

**Execution Version**

## **Facility agreement**

**LM Investment Management Limited in its capacity as responsible entity for  
the LM First Mortgage Income Fund  
Borrower**

**Deutsche Bank AG, Sydney Branch  
Financier**

**Clayton Utz  
Lawyers  
Level 28, Riparian Plaza 71 Eagle Street Brisbane QLD 4000 Australia  
GPO Box 55 Brisbane QLD 4001  
T +61 7 3292 7000 F +61 7 3221 9669**

**[www.claytonutz.com](http://www.claytonutz.com)  
Our reference 17306/17011/80107994**

**Legal\301465383.15**

## Contents

<b>1.</b>	<b>Definitions and Interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation.....	19
1.3	Capacity of Responsible Entity .....	20
1.4	Limitation of Responsible Entity's Liabilities .....	20
1.5	Custodian assets and obligations .....	21
<b>2.</b>	<b>Facility .....</b>	<b>21</b>
2.1	Facility.....	21
2.2	Purpose .....	21
2.3	Termination.....	22
2.4	Financier's Commitments .....	22
2.5	Option to Extend Termination Date .....	22
2.6	Deferred Release Price Review.....	22
<b>3.</b>	<b>Conditions precedent.....</b>	<b>22</b>
3.1	Conditions precedent to the Advance .....	22
<b>4.</b>	<b>Advance.....</b>	<b>22</b>
4.1	Notice.....	22
4.2	Contents of Utilisation Notice.....	22
4.3	Requirements of Utilisation Notice.....	23
4.4	Making of Advance .....	23
4.5	Maximum number of Advance .....	23
<b>5.</b>	<b>Cancellation and reduction of Commitment.....</b>	<b>23</b>
5.1	Commitment .....	23
5.2	Voluntary cancellation or reduction.....	23
5.3	Reduction consequent on repayment or prepayment.....	23
5.4	Limitations.....	24
<b>6.</b>	<b>Repayment and prepayments .....</b>	<b>24</b>
6.1	Voluntary prepayment.....	24
6.2	Mandatory prepayments Disposal of LM Mortgaged Properties.....	24
6.3	Mandatory prepayments - Insurance Proceeds .....	25
6.4	Order of application .....	25
6.5	Date for prepayment .....	25
6.6	General provisions relating to repayment and prepayment .....	26
<b>7.</b>	<b>Interest.....</b>	<b>26</b>
7.1	Interest Periods.....	26
7.2	Calculation of interest .....	26
7.3	Payment of interest.....	26
7.4	Market disruption .....	26
<b>8.</b>	<b>Interest on overdue amounts .....</b>	<b>27</b>
8.1	Payment of interest.....	27
8.2	Accrual of interest .....	27
<b>9.</b>	<b>Fees .....</b>	<b>28</b>
9.1	Establishment fee .....	28
9.2	Commitment fee .....	28
<b>10.</b>	<b>Payments.....</b>	<b>28</b>

10.1	Time and place .....	28
10.2	No set-off, counterclaim or merger .....	28
10.3	Currency for payments .....	28
10.4	Payments in gross .....	29
10.5	Payment on a Business Day.....	29
<b>11.</b>	<b>Taxes .....</b>	<b>29</b>
11.1	No deduction for Taxes.....	29
11.2	Payment net of Taxes.....	29
11.3	Tax saving .....	30
<b>12.</b>	<b>Illegality .....</b>	<b>31</b>
<b>13.</b>	<b>Increased cost .....</b>	<b>31</b>
13.1	Obligation to indemnify .....	31
13.2	Exceptions .....	31
<b>14.</b>	<b>Mitigation.....</b>	<b>32</b>
14.1	Mitigation .....	32
14.2	Costs and expenses .....	32
<b>15.</b>	<b>Representations and warranties .....</b>	<b>32</b>
15.1	General representations and warranties.....	32
15.2	Information representations and warranties .....	34
15.3	Corporate representations and warranties .....	34
15.4	Responsible Entity representations and warranties.....	35
15.5	Specific Portfolio Representations .....	36
15.6	Representations and warranties repeated.....	38
<b>16.</b>	<b>Undertakings.....</b>	<b>39</b>
16.1	Duration and benefit .....	39
16.2	Information and Custody Audits.....	39
16.3	Restrictions on Disposals .....	42
16.4	Liabilities .....	42
16.5	Financial Accommodation.....	42
16.6	Environmental matters.....	43
16.7	Insurance .....	44
16.8	Authorisations .....	46
16.9	Security Property .....	46
16.10	Cash management and application .....	47
16.11	Operation of Managed Cash Account.....	47
16.12	Receivership of Customers.....	49
16.13	Custodian Arrangements .....	49
16.14	General undertakings .....	49
16.15	LM Mortgage Trust undertakings.....	51
16.16	LM Loan Document undertakings.....	53
16.17	Financier's reputation.....	54
16.18	Customer Payments .....	54
16.19	LM Mortgaged Property Taxes .....	54
<b>17.</b>	<b>Default and termination .....</b>	<b>55</b>
17.1	Events of Default .....	55
17.2	Financier's rights on Event of Default .....	59
<b>18.</b>	<b>Indemnities .....</b>	<b>59</b>
<b>19.</b>	<b>Set-off .....</b>	<b>60</b>

<b>20.</b>	<b>Costs, stamp duties and GST.....</b>	<b>61</b>
20.1	Costs.....	61
20.2	Stamp duties.....	61
20.3	GST.....	61
<b>21.</b>	<b>Assignments and confidentiality .....</b>	<b>62</b>
21.1	Successors and assigns.....	62
21.2	Assignments by the Borrower.....	62
21.3	Assignments by Financier.....	62
21.4	No deductions and withholdings or increased costs in certain circumstances:.....	62
21.5	Confidentiality .....	62
<b>22.</b>	<b>Governing law.....</b>	<b>64</b>
22.1	Governing law.....	64
<b>23.</b>	<b>Arbitration .....</b>	<b>64</b>
23.1	Notice of Dispute .....	64
23.2	Negotiations.....	64
23.3	Reference to arbitration .....	64
23.4	General principles.....	64
23.5	Expedited proceedings .....	65
23.6	Consolidation .....	66
23.7	Joinder .....	66
23.8	Award final and binding .....	66
23.9	Effect on Powers.....	66
<b>24.</b>	<b>Miscellaneous .....</b>	<b>66</b>
24.1	Certificate of Financier.....	66
24.2	Notices.....	66
24.3	Continuing obligation .....	68
24.4	Settlement conditional .....	68
24.5	Further acts and documents .....	69
24.6	Attorney .....	69
24.7	Severance.....	69
24.8	Powers cumulative.....	70
24.9	Waiver.....	70
24.10	Consents.....	70
24.11	Indemnities .....	70
24.12	Time of the essence .....	70
24.13	Moratorium legislation.....	70
24.14	Binding on each signatory .....	71
24.15	Counterparts .....	71
24.16	Entire agreement .....	71
<b>25.</b>	<b>No representation by or reliance .....</b>	<b>71</b>
	<b>Schedule 1 - Documentary conditions precedent.....</b>	<b>72</b>
	<b>Schedule 2 - Form of Utilisation Notice and Selection Notice .....</b>	<b>74</b>
	<b>Schedule 3 - LM Loan Schedule .....</b>	<b>75</b>
	<b>Schedule 4 - Release Prices.....</b>	<b>76</b>
	<b>Schedule 5 - New Lending Criteria .....</b>	<b>77</b>

<b>Schedule 6 Financier Authorised Officers .....</b>	<b>78</b>
<b>Schedule 7 - Exceptions to LM Documentation Assumptions .....</b>	<b>79</b>
<b>Schedule 8 - Verification Certificate .....</b>	<b>81</b>
<b>Schedule 9 - Trust Bank Accounts .....</b>	<b>83</b>
<b>Schedule 10 - Managed Cash Accounts .....</b>	<b>84</b>

## **Facility agreement dated**

**Parties**                **LM Investment Management Limited ACN 077 208 461 in its capacity as Responsible Entity for the LM First Mortgage Income Fund (Borrower)**

**Deutsche Bank AG, Sydney Branch (Financier)**

## **Background**

At the request of the Borrower, the Financier has agreed to provide financial accommodation to the Borrower in accordance with the Finance Documents.

## **Operative provisions**

---

### **1. Definitions and interpretation**

#### **1.1 Definitions**

In this agreement:

**Acceptable Bank** means a financial institution who is an authorised deposit taking institution under the Banking Act 1959 carrying on business in Australia which has assigned to it a short term credit rating equal to or higher than "A" by Standard & Poors.

**Accepted Accounting Practices** means the accounting practices and standards generally accepted in Australia from time to time.

**Accounts** means a balance sheet, an income statement, a statement of cash flow and, if for a Financial Year and required by law, a statement of changes in equity for the year, together with any statements, reports (including any directors', Responsible Entity and auditors' reports) and notes attached to or intended to be read with any of them.

**Advance** means any loan made available under the Facility or, where the context requires, the principal amount of that loan or its funding.

**Adversely Affected LM Loans** means, at any time, those LM Loans (other than those permitted under clause 16.5) in respect of which any representation and warranty in clause 15.5 is incorrect.

**Affiliate** means:

- (a) with respect to the Borrower, any person who controls (whether directly or indirectly) or is controlled by (whether directly or indirectly) the Borrower; and
- (b) any other trust or managed investment scheme of which LM Investment is the trustee or responsible entity.

**Alternative Cover Amount** means at any time the aggregate of:

- (a) an amount equal to interest on the Advance calculated in accordance with clause 7.1 and 7.2 in respect of a period of 12 months following the date of calculation; and
- (b) the Projected Principal Amortisation Amount for the applicable Calculation Period less any amount prepaid by the Borrower in respect of the Projected Principal Amortisation Amount for that Calculation Period.

**Alternative Minimum Cash Balance** means the greater of:

- (a) \$6 million Cash or Cash Equivalent Investments; or
- (b) Cash or Cash Equivalent Investments equal to the Alternative Cover Amount.

**Approved Auditors** means PricewaterhouseCoopers, KPMG, Ernst & Young or Deloitte Touche Tohmatsu.

**Auditors** means Ernst & Young.

**Authorisation** means:

- (a) any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing or registration required by any Government Authority or any law; and
- (b) in relation to any act, matter or thing which will be prohibited or restricted either in whole or in part by any law if a Government Authority intervenes or acts in any way within a specified period after lodgement, filing, registration, notification or any other event, the expiry of that period without intervention or action.

**Authorised Officer** means:

- (a) in relation to the Borrower, a person appointed as an authorised officer of the Borrower for the purposes of the Finance Documents by a resolution of the board of directors of the Borrower and in respect of whom the Financier has received a certificate signed by a director of the Borrower:
  - (i) setting out that person's name, position and signature; and
  - (ii) confirming the appointment,provided the Financier has not received notice of revocation of that appointment; and
- (b) in relation to the Financier, any person who is listed in Schedule 6 (or any updated Schedule 6 provided by the Financier to the Borrower from time to time) as being an Authorised Officer of the Financier.

**Availability Period** means the period from and including the date of this agreement to the close of business on the third Business Day following execution of this agreement, or any later date agreed in writing between the Financier and the Borrower on or after the date of this agreement.

**BBSW** for any period means the average bid rate displayed at or about 10.30am (Sydney time) on page BBSW on the Reuters Monitor System on the first day of that period for a tenor equal to (or approximately equal to) that period.

**Biannual Interest Payment** means in respect of any Biannual Interest Payment Date, the amount of interest accrued on the Advance from the proceeding Biannual Interest Payment Date less any interest paid by the Borrower to the Financier for that period.

**Biannual Interest Payment Date** means 31 December 2010 and the last day of each and every successive 6 month period following 31 December 2010, provided the last Biannual Interest Payment Date shall end on the Termination Date.

**Bill** has the meaning given to "bill of exchange" in the Bills of Exchange Act 1909 (Cth), but does not include a cheque or payment order and any reference to the drawing, acceptance, endorsement or other dealing of or with a Bill refers to a drawing, acceptance, endorsement or other dealing within the meaning of that Act.

**Binding Requirement** means:

- (a) any law; or
- (b) any administrative guideline, directive, request or policy of any Government Authority whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible banks or financial institutions.

**Break Costs** means the loss or liability, if any, incurred by the Financier (as determined by it in its sole opinion), because of:

- (a) the liquidation or re-deployment of deposits or other funds acquired or contracted for by the Financier to fund or maintain any Advance or Unpaid Sum; or
- (b) the reversing or termination of any agreement or arrangement entered into by the Financier to hedge, fix or limit its effective cost of funding or maintaining any Advance or Unpaid Sum,

to the extent that loss or liability arises as a result of the prepayment of that Advance or Unpaid Sum on any date other than the last day of an Interest Period for that amount. The amount of Break Costs will be the amount payable in lieu of the interest which would otherwise have been paid if no prepayment had occurred.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for business generally in Brisbane and Sydney.

**Calculation Period** means a period of 6 months from the date the Alternative Cover Amount is calculated.

**Cash** means, at any time, cash denominated in Australian dollars in hand or at bank and (in the latter case) credited to an account in the name of the Borrower or the Custodian with an Acceptable Bank and for so long as:

- (a) that cash is repayable on demand within 90 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of the Borrower or Custodian or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Encumbrance over that cash except for the Encumbrance granted in favour of the Financier; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facilities.

**Cash Equivalent Investment** means:

- (a) bonds, debentures, stock, treasury bills, notes or any other security issued or guaranteed by the Commonwealth of Australia or any government of any State or Territory of the Commonwealth of Australia;



- (b) deposits or certificates of deposit or short term securities which have not more than 90 days to final maturity and are not convertible into any other form of security with, or guaranteed by an entity which has, a short term credit rating of at least Prime-2 from Moody's Investor Services Inc. or A from Standard & Poor's Rating Services; and
- (c) any other investment approved from time to time by the Financier (which approval may be withdrawn at any time provided that any individual investment then held by the Borrower or the Custodian will continue to be a Cash Equivalent whilst it is so held).

**CBA** means Commonwealth Bank of Australia ABN 48 123 123 124.

**CBA Loan** means all of the Borrower's Financial Liability to CBA.

**Certificate of Title** in relation to a LM Mortgaged Property means the Certificate of Title or other documents evidencing title to that LM Mortgaged Property (including, if applicable, the documents forming any abstract of title) or where the certificate of title or other documents have been cancelled due to the computerisation of the register, any original registration confirmation notification or statement which the Custodian has in its files.

**Change** means:

- (a) a change to any Binding Requirement;
- (b) the introduction of a new Binding Requirement; or
- (c) a change in the interpretation or administration of a Binding Requirement,

in any case occurring after the date of this agreement.

**Charge** means the document titled "Fixed & Floating Charge" dated on or about the date of this agreement granted by Borrower and Custodian in favour of the Lender.

**Commitment** means \$90,000,000, to the extent not cancelled or reduced in accordance with the terms of this agreement.

**Compliance Plan** means the compliance plan of the LM Mortgage Trust which has been lodged with ASIC and complies with section 601HA of the Corporations Act.

**Constitution** means, in relation to any person, the replaceable rules, constitution or combination of both (as those terms are used in section 134 of the Corporations Act) of that person (if any).

**Contamination** means the presence in, on or under any land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment.

**Controller** has the meaning given in section 9 of the Corporations Act.

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

**Cost** means any cost, expense, charge, liability or disbursement.

**Credit Legislation** shall mean and include each of the following enactments (including regulations and proclamations pursuant thereto) as may be applicable:

- (a) the National Consumer Credit Protection Act 2009 (Cth);  
the National Credit Code (Cth);
- (b) the *Credit Act* 1987 (Queensland);  
the *Credit Act* 1984 (New South Wales);  
the *Credit Act* 1984 (Victoria);  
the *Credit Act* 1984 (Western Australia);  
the *Credit Ordinance* 1985 (Australian Capital Territory);
- (c) Consumer Credit (New South Wales) Code;  
Consumer Credit (Victoria) Code;  
Consumer Credit (Western Australia) Code;  
Consumer Credit (Queensland) Code;  
Consumer Credit (Tasmania) Code;  
Consumer Credit (South Australia) Code;  
Consumer Credit (Australian Capital Territory) Code; and  
Consumer Credit (Northern Territory) Code;
- (d) any corresponding Act or Ordinance of another State or Territory of Australia which is a recognised State for the purposes of the *Credit Act* 1987 (Queensland) and/or any of the above enactments; and
- (e) any other Act or Ordinance for the regulation of the provision of credit of another State or Territory of Australia which is substantially similar in the opinion of the Mortgagee to the *Credit Act* 1987 (Queensland) or *Consumer Credit Code*.

**Custodian** means the Trust Company (PTAL) Limited ACN 008 412 913 (formerly named Permanent Trustee Australia Limited) or any successor approved by the Financier.

**Custody Agreement** means the agreement dated 4 February 1999 between the Custodian and the Borrower as amended and restated on 14 June 1999, 20 May 1999, 24 May 2000, 18 March 2002, 19 November 2002 and 1 September 2004.

**Customer** in relation to an LM Loan means the person or persons to whom the loan or other financial accommodation has been provided under that LM Loan including any person whom has provided LM Collateral Security in respect of the LM Loan (however arising).

**Customer Information** means any personal information in relation to a Customer that is provided to the Custodian or the Borrower in connection with an LM Loan.

**Default Margin** means initially 3% per annum or, where the Borrower has been in default of any payment obligations under this agreement for six (6) consecutive months, thereafter 5% per annum and in the case of the increased rate such rate shall apply from the Interest Period commencing immediately after such 6th month.

**Deferred Release Price Percentage** means 75% or such other percentage agreed to between the Borrower and the Financier from time to time following a Deferred Release Price Review Event.

**Deferred Release Price Review Event** occurs if on any day the aggregate credit balance of the Trust Bank Accounts is not less than an amount calculated in accordance with the definition of the Alternative Cover Amount on that day except that the Calculation Period is 12 months from the date that the Alternative Cover Amount is calculated.

**Delegate** means any officer, employee, agent or attorney of the Financier.

**Disclosed Litigation** means Supreme Court of New South Wales case number 2009/298727.

**Disposal** means any sale, assignment, transfer, lease or other disposal, or grant of any interest whether:

- (a) in a single transaction or in a series of transactions (whether related or not); or
- (b) voluntarily or involuntarily.

**Distribution** means:

- (a) any dividend, charge, interest, fee, payment or other distribution (whether cash or assets) or redemption, repurchase, defeasance, retirement or repayment on or in respect of any units in the LM Mortgage Trust; or
- (b) any interest payment, any repayment or prepayment of any amount of principal or any other payment in respect of any liability of the Borrower to any holder of a unit in the LM Mortgage Trust (or to any Related Body Corporate of any holder of a unit in the LM Mortgage Trust) at any time in connection with any Financial Liability.

**dollar or \$** means the lawful currency of the Commonwealth of Australia.

**Due Diligence Report** means the due diligence report prepared by the Financier's solicitors, Clayton Utz, dated on or about the date of this agreement.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person.

**Environment** means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) any human made or modified structure or area,

and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (d) of this definition.

**Environmental Law** means any law relating to:

- (a) the Environment (including any law relating to land use, planning, environmental assessment, pollution, Contamination, chemicals, waste, the use or presence of asbestos or dangerous goods or hazardous substances, building regulation, the occupation of buildings, heritage, species, flora and fauna or noise); or
- (b) any aspect of protection of the Environment.

**Event of Default** has the meaning given in clause 17.1.

**Event of Insolvency** means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;

- (c) any application (not withdrawn or dismissed within 7 days (or such longer period agreed to by the Financier) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
- (i) appointing a person referred to in paragraph (a) or (b) of this definition;
  - (ii) winding up or deregistering a person; or
  - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Financier under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act,

unless the Financier is satisfied that the application or the convening of the meeting is frivolous or vexatious;

- (d) any application (not withdrawn or dismissed within 7 days (or such longer period agreed to by the Financier) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
- (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to unless the Financier is satisfied that the application or the convening of the meeting is frivolous or vexatious;

- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person that arises from an event which the Financier in its reasonable opinion considers material;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**Excluded Tax** means any Tax imposed by any jurisdiction on the overall net income of the Financier as a consequence of the Financier being a resident of or organised or doing business in that jurisdiction other than any Tax:

- (a) calculated on or by reference to the gross amount of any payment (without the allowance of any deduction) derived under any Finance Document by the Financier; or

(b) imposed as a result of the Financier being considered a resident of or organised or doing business in that jurisdiction solely as a result of:

- (i) it being a party to any Finance Document; or
- (ii) any transaction contemplated by any Finance Document.

**Existing Financial Accommodation means:**

- (a) the debt due to the Borrower by LM Investment Management Limited in its capacity as trustee for the LM Managed Performance Fund in relation to the assignment of three loans pursuant to deeds of assignment dated on or about the 28 August 2008 (being \$29,527,890 as at the date of this agreement);
- (b) the management fees totalling \$6,000,000 (as at the date of this agreement) which have been prepaid by the Borrower to LM Administration Pty Ltd ACN 055 691 426; and
- (c) the debt due to the Borrower by LM Investment Management Limited in its capacity as Trustee for the LM Managed Performance Fund in relation to the assignment of management fees totalling \$1,752,926.15 (as at the date of this agreement);

provided that:

- (i) any amounts repaid or prepaid will not be re-advanced;
- (ii) any amount advanced is not increased;
- (iii) the Borrower is not obligated to advance any further moneys; and
- (iv) the Borrower will upon request provide the Financier with any information and records relating to the above financial accommodation.

**Facility means** the term loan facility made available under this agreement, as referred to in clause 2.1.

**Finance Document means:**

- (a) this agreement;
- (b) any Security;
- (c) the Securities Custody Deed;
- (d) the Service Provider Side Deed; or
- (e) any other document as agreed by the Borrower and the Financier to be, for the purposes of this agreement, a Finance Document.

**Financial Close means** the date on which the first Advance is made.

**Financial Liability of a person means** any liability or indebtedness (whether present or future, actual or contingent) of that person for or in respect of:

- (a) money borrowed or raised and debit balances at banks or financial institutions;

- (b) its obligations as lessee under any lease which in accordance with Accepted Accounting Practices would be treated as a finance or a capital lease;
- (c) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a bank or financial institution;
- (d) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any Financial Liability (as referred to in any other paragraph of this definition) of another person;
- (e) any amount payable in connection with the redemption of any redeemable preference share issued by that person;
- (f) amounts raised under or in connection with any Bill acceptance, endorsement or discounting arrangement;
- (g) amounts raised under or in connection with any bond, debenture, note, loan stock or similar instrument;
- (h) receivables sold or discounted (other than to the extent they are sold on a non-recourse basis);
- (i) any Treasury Transaction;
- (j) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset; or
- (k) amounts raised under any other transaction or series of transactions having the commercial effect of a borrowing or raising of money.

**Financial Year** means any 12 month period ending on 30 June.

**Good Industry Practice** means the exercise of that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced owner and operator engaged in the same type of business as the Group or any Group Member under the same or similar circumstances.

**Government Authority** means any government or any governmental or semi-governmental entity, authority, agency, commission, corporation or body (including those constituted or formed under any Statute), local government authority, administrative or judicial body or tribunal or stock exchange having authority in the Commonwealth of Australia.

**GST** means any goods and services Tax, consumption Tax, value added Tax or any similar Tax.

**Hedge Provider** means Customs House Currency Exchange (Australia) Pty Limited and HiFX Pty Ltd or any person approved by the Financier.

**Insolvency Provision** means any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Insurance** means any insurance required to be taken out or maintained by the Borrower to comply with the provisions of the Finance Documents.

**Interest Period** means, in relation to an Advance, each period determined in accordance with clause 7.1 and, in relation to an Unpaid Sum, each period determined in accordance with clause 8.2.

**Interest Rate** means:

- (a) for an Interest Period in relation to any amount, 15% per annum; or
- (b) if the Facility is extended pursuant to clause 2.5, 18% per annum.

**Joint Venture** means any form of joint venture, whether a company, unincorporated entity, undertaking, association, partnership or other similar entity.

**know your client procedures** means the identification checks which the Financier is required to undertake under any Binding Requirement to meet its obligations to identify its customers.

**Land** means:

- (a) land (including tenements and hereditaments corporeal and incorporeal and every estate and interest in it whether vested or contingent, freehold or crown leasehold, the term of which lease is expressed to expire not earlier than 5 years after the maturity of the relevant LM Mortgage, and whether at law and equity) wherever situated including any fixture to land; and
- (b) any parcel in any lot, common property and land comprising a parcel within the meaning of the Body Corporate and Community Management Act 1997 (Queensland) or any equivalent legislation in other Australian jurisdiction.

**LM Collateral Security** means in respect of a LM Loan:

- (a) any:
  - (i) Encumbrance; or
  - (ii) guarantee, indemnity or other assurance,which secures or otherwise provides for the repayment or payment of the LM Loan but does not include the LM Mortgage relating to the LM Loan; and
- (b) any mortgage insurance policy and any LM Insurance Policy (both present and future) in respect of the LM Mortgage relating to the LM Loan or the Land secured by that LM Mortgage.

**LM Documentation Assumptions** means:

- (a) the obligations which are expressed to be assumed by each party to an LM Loan Document are legal, valid, binding and enforceable obligations subject to applicable insolvency and other laws affecting creditors' rights generally;
- (b) the entry into and performance by any party of, and the transactions contemplated by, any LM Loan Document do not and will not conflict with:
  - (i) any law or regulation applicable to that party;
  - (ii) the constitutional documents or trust deed of that party;
  - (iii) any agreement or instrument binding upon the Borrower;

- (c) amounts payable under each LM Loan Agreement were advanced in and are payable only in Australian dollars;
- (d) each LM Loan:
  - (i) is secured by a first ranking mortgage over Qualifying Land which is the only first ranking mortgage over the Qualifying Land;
  - (ii) has a variable rate of interest or a fixed rate of interest;
  - (iii) at the time the LM Loan was initially drawn down the Facility to Security Ratio (as defined in the LM Loan Agreement relating to the LM Loan) was complied with; and
  - (iv) satisfied the Borrower's lending policy at the time of origination;
- (e) in respect of each LM Mortgaged Property:
  - (i) the Customer is the legal and beneficial owner of the Land subject to the LM Mortgage; and
  - (ii) on or before the LM Loan was drawn down the LM Mortgaged Property was valued by a qualified valuer;
- (f) each LM Loan Document does not contravene any laws, rules, regulations or Authorisations;
- (g) all payments required to be made by a Customer are payable on the dates shown in the LM Loan Documents and are payable without any set-off or other deduction by the Customer;
- (h) from Financial Close, no LM Loan Document is subject to any Encumbrance other than the Encumbrance in favour of the Financier;
- (i) each LM Loan was originated during the ordinary course of the Borrower's business;
- (j) each LM Loan Document is governed by the laws of an Australian jurisdiction;
- (k) unless otherwise permitted by the Securities Custody Deed, the Custodian holds duly executed originals of each LM Loan Document;
- (l) each LM Loan Document, if required to be stamped, has been stamped with all applicable duty;
- (m) each LM Loan Agreement is not able to be, and will not become able to be, cancelled or avoided by a Customer due to any misrepresentation, breach of warranty or other act or omission by the Borrower or the Custodian;
- (n) each LM Loan Document contains all of the terms and arrangements between the Borrower and the other parties to that document in respect of matters covered by that document and there are no other documents or agreements which have the effect of varying or discharging any LM Loan Document;
- (o) no circumstances existed on the date of execution of any of the LM Collateral Security which would be held by a court of competent jurisdiction to constitute an undervalue transfer or otherwise as preferential, fraudulent or uncommercial transaction; and



- (p) the Borrower is not obliged to provide any further financial accommodation to a Customer under the LM Loan (other than under the terms of a new LM Loan permitted under clause 16.5),

with the exception that the **LM Documentation Assumptions** do not extend to those matters disclosed by the Borrower in Schedule 7.

**LM Insurance Policy** means any insurance policy (whether present or future) other than a mortgage insurance policy, in which the Custodian or Borrower has an interest and which is in force from time to time in respect of the Land the subject of an LM Mortgage or LM Collateral Security.

**LM Loan** means any present or future loan advanced by the Custodian or the Borrower to a Customer pursuant to an LM Loan Agreement other than a loan in respect of a Released LM Mortgaged Property.

**LM Loan Agreement** means each present or future loan agreement entered into between the Custodian and a Customer or the Borrower and a Customer as initially set out in Schedule 3 and includes any agreement, schedule, terms and conditions, application, approval or other document relating to the provision of financial accommodation to a Customer in connection with that LM Loan.

**LM Loan Documents** means in relation to an LM Loan:

- (a) each LM Loan Agreement relating to the LM Loan;
- (b) the original or duplicate LM Mortgage documents in relation to the LM Loan (including any document evidencing any substituted or additional LM Mortgage);
- (c) the Certificate of Title, registration confirmation statement or other indication of title (if any) in respect of the Land the subject of the LM Mortgage in relation to the LM Loan;
- (d) each LM Insurance Policy (or certificate of currency for the LM Insurance Policy) held in respect of the LM Mortgage;
- (e) each deed of priority or its equivalent in writing entered into in connection with the LM Mortgage;
- (f) any LM Collateral Security; and
- (g) any amendment, variation or replacement of or to or any of the foregoing such documents.

**LM Loan Payment** means any payment or series of payments made within a three month period by a Customer in respect of an LM Loan which is not related to a Disposal of a LM Mortgaged Property on account of principal or interest which exceeds an amount equal to 3 months interest on that LM Loan.

**LM Loan Schedule** means the schedule attached as Schedule 3 setting out details in relation to each LM Loan and the LM Mortgaged Property as updated in accordance with clause 16.2(d).

**LM Mortgage** in relation to an LM Loan means each registered mortgage over Land situated in any state or territory of Australia that secures the repayment of the LM Loan and the payment of interest and all other monies in respect of the LM Loan notwithstanding that the terms of the mortgage may secure other liabilities.

**LM Mortgaged Property** in relation to an LM Mortgage means the Land and all other property mortgaged under the LM Mortgage.

**LM Mortgage Trust** means the registered managed investment scheme known as the LM First Mortgage Income Fund ARSN 089 343 288 constituted by the LM Mortgage Trust Constitution.

**LM Mortgage Trust Constitution** means the constitution establishing the LM First Mortgage Income Fund dated 18 September 1999 and as amended and/or replaced on 6 June 2005, 7 July 2006, 31 May 2007 and 10 April 2008.

**Loan Files** in relation to a LM Loan means:

- (a) any correspondence between the Customer and the Borrower or the Custodian in relation to a LM Loan Document; and
- (b) all Customer information and such books, records, paper and electronic files (whether originals or copies) relating to that LM Loan (other than the LM Loan Documents) which the Borrower, the Service Provider or their agents has in its custody.

**Managed Cash Account** means collectively the accounts maintained by the Custodian as set out in Schedule 10 and such other accounts as are approved by the Financier from time to time and excluding any such accounts as are permanently closed by the Custodian from time to time.

**Mandatory Principal Repayment** means at any time:

- (a) if the aggregate credit balance of the Trust Bank Accounts is not less than the Alternative Minimum Cash Balance, an amount not less than the Deferred Release Price Percentage of the Release Price for the LM Mortgaged Property; and
- (b) in all other cases, an amount equal to the Release Price.

**Marketable Securities** has the meaning given to "marketable securities" in section 9 of the Corporations Act.

**Material Adverse Effect** means a material adverse effect on the:

- (a) ability of the Borrower to perform its obligations under any Finance Document to which it is a party; or
- (b) business, assets or financial condition of the Borrower;
- (c) the Trust Property; or
- (d) the validity or enforceability of the Financier's Powers under the Security;
- (e) the validity or enforceability of the Borrower's Power under the LM Mortgages;
- (f) the value or marketability of a LM Mortgaged Property where, at the relevant time, the balance of the Adversely Affected LM Loans exceeds (in aggregate) \$2,000,000;
- (g) the ability of the Custodian to perform its obligations under the Custody Agreement or Securities Custody Deed;

- (h) the ability of the Service Provider (or any replacement successor) to perform its obligations under the Service Agreement.

**Material Authorisation** means in relation to the Borrower, any Authorisation required to be obtained by it in accordance with clause 16.8(a), excluding any Authorisation required under any Environmental Law.

**Minimum Cash Balance** means, subject to clause 16.11, \$6,000,000 in Cash or Cash Equivalent Investments or any lesser amount agreed to by the Financier from time to time in writing.

**Minimum Monthly Interest Payment** means an amount calculated on the basis as if the Interest Rate was 10% per annum.

**Monthly Interest Payment Date** means the last day of each calendar month following the first Utilisation Date but excluding each Biannual Interest Payment Date provided that the last Monthly Interest Payment Date shall be the Termination Date.

**Net Proceeds** means the consideration received by the Borrower in respect of the Disposal of any LM Mortgaged Property but after deduction of:

- (a) all Taxes applicable to the Disposal (including Goods and Services Tax); and
- (b) reasonable agents' fees;
- (c) all other reasonable costs, fees and expenses properly incurred by the Borrower payable to an unrelated third party in arranging and effecting the Disposal.

**New Lending Criteria** means the requirements set out in Schedule 5.

**Obligations** means all the liabilities and obligations of the Borrower to the Financier under or by reason of any Finance Document and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this agreement;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only;
- (f) accrue as a result of any Event of Default; or
- (g) would exist but for an Event of Insolvency affecting any person,

and irrespective of:

- (h) whether the Borrower is liable or obligated solely, jointly or jointly and severally with another person;
- (i) the circumstances in which the Financier comes to be owed each liability or obligation, including any assignment of any liability or obligation; or
- (j) the capacity in which the Borrower and the Financier comes to owe or to be owed that liability or obligation.

**Permitted Disposal means:**

- (a) any Disposal for cash consideration of obsolete plant and equipment not required for the efficient operation of the Borrower's business, on arm's length terms and at fair market value;
- (b) the expenditure of cash in the ordinary course of its ordinary business carried on in compliance with the terms of the Finance Documents;
- (c) the lending of cash in compliance with the terms of the Finance Documents; and
- (d) any Disposal of a LM Mortgaged Property provided that:
  - (i) each Disposal is for cash consideration on arm's length terms and at fair market value; and
  - (ii) the Financier's prior written consent to the Disposal is obtained (if the Net Proceeds of the Disposal of that LM Mortgaged Property is less than the applicable Release Price).

**Permitted Encumbrance means:**

- (a) any Encumbrance created under the Securities;
- (b) any Encumbrance (other than any banker's lien) arising by operation of law, in the ordinary course of ordinary business and which secures an amount (not constituting a Financial Liability) which is either:
  - (i) not yet due; or
  - (ii) being contested in good faith by appropriate proceedings if:
    - A. the Borrower has sufficient financial resources to pay the relevant amount if a legally binding determination is made that payment is required; and
    - B. the enforcement of that Encumbrance is stayed or otherwise suspended during the course of the proceedings; and
- (c) until Financial Close, Encumbrances granted in favour of CBA.

**Permitted Financial Liability means:**

- (a) any Financial Liability incurred under the Finance Documents;
- (b) a Treasury Transaction entered into during the ordinary course of business.

**Permitted Responsible Entity Financial Liabilities** means those Financial Liabilities described in clause 15.4(f).

**Planning Law** means a law regulating (or otherwise relating to) town planning and any plan or regulation made by a Government Authority in relation to the conduct of any activity in relation to the Land.

**Potential Event of Default** means any event or circumstance which, with the giving of notice, expiration of any applicable grace period, satisfaction of a condition or a determination (or any combination of these) would be an Event of Default.

**Power** means any right, power, authority, discretion, remedy or privilege.

**Principal Shortfall** shall have the meaning given to that term in clause 6.2(b)(ii).

**Projected Principal Amortisation Amount** means on any day during the period from Financial Close to 30 June 2012, an amount calculated as follows:

(a) Subject to paragraph (b):

(i)  $(\$1,500,000) \times yz = a$ ; and

(ii)  $(\$1,875,000) \times xy = b$ ,

where:

- $yz$  is the number of months which occur during the Calculation Period and occur before 30 June 2011;
- $xy$  is the number of months which occur during the Calculation Period and occur after 30 June 2011 and end on 30 June 2012; and
- $a + b =$  Projected Principal Amortisation Amount.

(b) If the Borrower does not exercise the option to extend the Facility under clause 2.5

$$a \div 3 = b$$

where:

$a$  is the outstanding Advance as at 1 April 2012

$b$  is the Projected Principal Amortisation Amount

**Qualifying Capital Improvements** means, in relation to an LM Mortgaged Property, any capital improvements approved by the Financier for that LM Mortgaged Property.

**Qualifying Land** means:

- (a) if the Land is freehold, the Customer is the registered owner of an estate in fee simple in the Land;
- (b) there is no unsatisfied judgment, order or writ affecting the Land;
- (c) as at the date of this agreement there are no current or threatened claims, notices or pre-proceedings that may lead to a judgment, order or writ affecting the Land;
- (d) there is no outstanding obligation on the owner of the Land to give notice to the administering authority under the Environmental Protection Act 1994 (Qld) (EPA) (or similar legislation applying in other States and Territories of Australia) of notifiable activity being conducted on the Land;
- (e) the Borrower is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of the EPA;
- (f) no order has been made under Part 11 of the Property Law Act 1974 (Qld) (or similar legislation applying in other States and Territories of Australia) which would operate as a charge on the Land;

- (g) no notice has been issued by a competent authority of proceedings issued instituted in a court pursuant to any statute whereby the interest of the owner of the Land may be rendered liable to forfeiture to the Crown; and
- (h) in respect of which the Customer has obtained all approvals under any Planning Law or otherwise from all relevant Government Authorities required to carry out any works or developments on the Land including any development consent required under any Planning Law or otherwise.

**Receivable means:**

- (a) the receipt of any money by the Borrower which the Borrower is entitled to retain and use for the purposes of its business; and
- (b) an amount payable or paid by a Receiver to the Borrower.

**Receiver** has the meaning given in section 9 of the Corporations Act.

**Receiver and Manager** has the meaning given in section 9 of the Corporations Act.

**Related Body Corporate** has the meaning given in section 9 of the Corporations Act, but on the basis that "subsidiary" for the purposes of that definition has the meaning given to "Subsidiary" in this agreement.

**Release Price** means in relation to an LM Mortgaged Property the amount specified against that LM Mortgaged Property as the Release Price in Schedule 4 provided that the amount specified will be increased by the amount of any Qualifying Capital Improvements expended in respect of that LM Mortgaged Property.

**Released LM Mortgaged Property** means an LM Mortgaged Property which has been Disposed and for which the Net Proceeds of sale have been applied in accordance with the provisions of this Agreement.

**Repeating Representation** means each of the representations set out in clauses 15.1, 15.2, 15.3, 15.4 and 15.5 (other than those in clause 15.2(c), 15.5(g), (l) and (n) or otherwise waived by the Financier).

**Responsible Entity** means LM Investment Management Ltd ACN 007 208 461 or any successor approved by the Financier.

**Right of Indemnity** means the rights of the Responsible Entity to be fully indemnified and reimbursed out of the Trust Property for all liabilities incurred by it in its capacity as responsible entity of the LM Mortgage Trust, including those incurred by it under the Finance Documents to which it is a party.

**Securities Custody Deed** means the securities custody deed to be entered into between the Responsible Entity, the Custodian and the Financier in respect of the custody of the Security.

**Security** means the Charge or any other Encumbrance held by the Financier at any time for the due satisfaction of the Obligations, as amended from time to time.

**Security Property** means any property subject to a Security.

**Service Provider** means LM Administration Pty Ltd ACN 055 691 426 as Trustee for the LM Administration Trust.

**Service Provider Side Deed** means the deed entitled Service Provider Side Deed dated on or about the date of this agreement between the Service Provider, the Borrower and the Financier.

**Services Agreement** means the agreement between the Borrower and the Services Provider dated 1 July 2009 for the provision of services by the Services Provider to the Borrower.

**Standard & Poor's** means Standard & Poor's (Australia) Pty Ltd or any of its Related Bodies Corporate.

**Statute** means any legislation of the Parliament of the Commonwealth of Australia, of any State or Territory of the Commonwealth of Australia or of any other jurisdiction in force at any time and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation and, in each case, any consolidations, amendments, re-enactments and replacements.

**SCO** means the Borrower's Senior Compliance Officer.

**Tax** means any taxes, levies, imposts, deductions, charges and withholdings assessed, imposed, collected or withheld under any legislation and, in each case, all interest, fines, penalties, charges, fees or other amounts in respect of them.

**Termination Date** means the earlier of:

- (a) 30 June 2012 (or 30 June 2013 if the date is extended pursuant to clause 2.5) or any other date agreed in writing between the Financier and the Borrower; and
- (b) any date on which the Facility is terminated or cancelled in accordance with this agreement.

**Treasury Transaction** means any swap or forward exchange agreement in respect of any currency or any similar transaction.

**Trust Bank Accounts** means accounts on terms and conditions acceptable to the Financier maintained by the Borrower or Custodian on behalf of the Borrower with an Acceptable Bank as described in Schedule 9.

**Trust Documents** in respect of the LM Mortgage Trust, means:

- (a) the LM Mortgage Trust Constitution;
- (b) the Custody Agreement; and
- (c) the Compliance Plan.

**Trust Property** means any and all property of the LM Mortgage Trust from time to time held by:

- (a) the Borrower as responsible entity of the LM Mortgage Trust; and
- (b) the Custodian in its capacity as custodian of the LM Mortgage Trust.

**Unpaid Sum** means any sum due and payable by the Borrower under any Finance Document but unpaid.

**Utilisation Date** means the date on which an Advance is made.

**Utilisation Notice** means a notice given under clause 4.1 in the form set out in Part A of Schedule 2.

## 1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) **person** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a Joint Venture and a trust;
  - (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
  - (d) a reference to a document (including any Finance Document) is to that document as varied, novated, ratified, replaced or restated from time to time;
  - (e) a reference to a law includes any law, principle of equity, Statute and official directive of any Government Authority and a reference to a Statute includes consolidations, amendments, re-enactments and replacements of it;
  - (f) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
  - (g) a reference to a party, clause or schedule is a reference to a party, clause or schedule to or of this agreement, and a reference to this agreement includes all schedules to it;
  - (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (i) **includes** in any form is not a word of limitation;
  - (j) all accounting terms used in this agreement have the meaning given to them under Accepted Accounting Practices;
  - (k) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);
  - (l) a reference to a **month** is, where that month is the last month to occur in any period, a reference to a period starting on the relevant date in a calendar month and ending on the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the next calendar month, the period will end on the last Business Day in that calendar month;
  - (m) a reference to **subsists** or any similar expression in relation to an Event of Default or a Potential Event of Default indicates an Event of Default or Potential Event of Default which has not been remedied or waived in accordance with the terms of the Finance Documents; and
  - (n) a time of day is a reference to Sydney time.



### **1.3 Capacity of Responsible Entity**

The Responsible Entity enters into each Finance Document to which it is a party in its capacity as responsible entity or trustee of the LM Mortgage Trust except in relation to clause 15.

### **1.4 Limitation of Responsible Entity's Liabilities**

- (a) A liability of the Responsible Entity arising under or in connection with a Finance Document is limited to the extent to which the liability can be satisfied out of the assets of the LM Mortgage Trust by the Responsible Entity exercising its rights of indemnity out of those assets. This limitation applies despite any other provision of a Finance Document (except the other provisions of this clause 1.4) and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, deed or transaction related to a Finance Document.
- (b) The Financier may not seek to recover any amounts owing to it under any Finance Documents by applying to have the Responsible Entity wound up or placed in administration under Part 5.3A of the Corporations Act, 2001 or by seeking to appoint a receiver or receiver and manager to any of its assets of the Responsible Entity other than a receiver or receiver and manager to, or in respect of, any Trust Property. However, the Financier may:
  - (i) do anything necessary to enforce its rights in connection with the Trust Property; and
  - (ii) take proceeds to obtain:
    - A. an injunction or other order to restrain any breach of any Finance Document by the Responsible Entity or to compel the Responsible Entity to perform any of its obligations at law or under any Finance Document; or
    - B. declaratory relief or other similar judgment or order as to the obligations of the Responsible Entity under any Finance Document.
- (c) The limitation and restrictions in clause 1.4(a) and 1.4(b) do not apply to any obligation or liability of the Responsible Entity to the extent that is not satisfied because under the LM Mortgage Trust Constitution, or other constitutional documents, or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the Trust Property, as a result of the Responsible Entity's fraud, negligence or wilful default or by operation of law;
- (d) The Responsible Entity is not obliged to do or refrain from doing anything under a Finance Document (including incur any liability) unless the Responsible Entity's liability is limited in the manner which is consistent with this clause 1.4 or which is otherwise satisfactory to the Responsible Entity in its absolute discretion;
- (e) A failure by the Responsible Entity to comply with or a breach by the Responsible Entity of any of its obligations under a Finance Document will not be considered to be a fraud, negligence or wilful default by the Responsible Entity if the relevant failure or breach:
  - (i) arose as a result of a breach by a person other than the Responsible Entity where the performance of the action (the non-performance of which gave

rise to such breach) is a precondition to the Responsible Entity performing the said obligation; or

- (ii) was in accordance with a lawful court order or direction or otherwise required by law;
- (f) The limitation of the Responsible Entity's liability under this clause 1.4 is to be disregarded for the purposes of determining when a liability of the Responsible Entity is due and payable, whether an Event of Default has occurred because of a failure by the Responsible Entity to pay an amount payable by it under any Finance Document, whether an Event of Default has occurred or any other reason, for exercising any rights in connection with the Trust Property and in interpreting the definition of Security Property in any Finance Document.
- (g) Paragraphs (a) to (f) of this clause 1.4 are subject to paragraph (g) of this clause 1.4. All of the terms, clauses and conditions of this Agreement are subject to this clause 1.4.

## **1.5 Custodian assets and obligations**

Any reference in this agreement to:

- (a) an obligation owed by the LM Mortgage Trust includes an obligation owed by the Custodian in relation to the LM Mortgage Trust; and
- (b) any rights, assets or undertakings of the LM Mortgage Trust includes the rights, assets or undertakings of the Custodian of the LM Mortgage Trust in relation to the LM Mortgage Trust.

---

## **2. Facility**

### **2.1 Facility**

Subject to the terms of the Finance Documents and in reliance on the representations and warranties set out in clause 15 and in the other Finance Documents, the Financier grants to the Borrower a term loan facility under which the Financier will make an Advance in dollars to the Borrower during the Availability Period in an aggregate amount not greater than the Commitment.

### **2.2 Purpose**

- (a) The Facility may only be used for the following purposes:
  - (i) first, repaying the CBA Loan in full;
  - (ii) secondly, establishing the Minimum Cash Balance;
  - (iii) thirdly, an amount up to \$1,600,000 shall be applied towards paying any Taxes, insurance or statutory charges which are due and unpaid in respect of any LM Mortgage within 30 days of Financial Close; and
  - (iv) fourthly, paying all outstanding fees, costs and expenses due from the Borrower, including under clause 9 or 20.
- (b) The Financier is not bound to monitor or verify the application of any Advance and the Financier will not have any liability to any person arising from a failure by the Borrower to use any Advance for a purpose specified in this clause 2.2.

### **2.3 Termination**

The Facility terminates on the Termination Date.

### **2.4 Financier's Commitments**

The Financier is not obliged to make an Advance if to do so would cause the aggregate of the Advance to exceed the Commitment.

### **2.5 Option to Extend Termination Date**

Provided no Event of Default or Potential Event of Default has occurred and is subsisting, the Borrower will be entitled upon written notice to the Financier given not later than 120 days and not before 180 days prior to 30 June 2012 elect to extend the Termination Date to 30 June 2013.

### **2.6 Deferred Release Price Review**

If a Deferred Release Price Review Event occurs the Financier agrees that it will consider any request by the Borrower to reduce the Deferred Release Price Percentage.

---

## **3. Conditions precedent**

### **3.1 Conditions precedent to the Advance**

The obligation of the Financier to make the Advance available to the Borrower is subject to the Financier being satisfied that on the Utilisation Date:

- (a) **(Documents)** the Financier has received all of the documents listed in Part A of Schedule 1 in form and substance satisfactory to it;
- (b) **(Fees)** all fees, costs and expenses then due from the Borrower, including under clause 9 or 20, have been paid or will be paid on the Utilisation Date;
- (c) **(Representations and warranties true)** the Repeating Representations are true and correct on those dates and will be true and correct immediately after the making of the Advance, in each case, with reference to the facts and circumstances existing at that time; and
- (d) **(No Event of Default)** no Event of Default or Potential Event of Default is subsisting or will result from the making of that Advance.

---

## **4. Advance**

### **4.1 Notice**

The Borrower may request an Advance by giving a Utilisation Notice to the Financier. Only one Utilisation Notice can be issued.

### **4.2 Contents of Utilisation Notice**

The Utilisation Notice will be in the form of Schedule 2 and will specify:

- (a) the proposed Utilisation Date which must be a Business Day before the expiry of the Availability Period;

- (b) the amount of the Advance which must be not less than \$2,000,000 and not more than the Commitment;
- (c) the purpose for which the Advance will be applied;
- (d) payment instructions; and
- (e) any other details as the Financier reasonably requires.

#### **4.3 Requirements of Utilisation Notice**

The Utilisation Notice will be irrevocable and must be:

- (a) received by the Financier 3 Business Days before the proposed Utilisation Date; and
- (b) signed by an Authorised Officer of the Borrower.

#### **4.4 Making of Advance**

The Financier will make the Advance to or to the order of the Borrower in accordance with the provisions of the relevant Utilisation Notice and this agreement.

#### **4.5 Maximum number of Advance**

The Borrower may not deliver more than one Utilisation Notice and the Financier is only required to make one Advance subject to and in accordance with the terms of this agreement.

---

### **5. Cancellation and reduction of Commitment**

#### **5.1 Commitment**

Any part of the Commitment not utilised under this agreement before the expiry of the Availability Period will be cancelled automatically on the expiry of the Availability Period.

#### **5.2 Voluntary cancellation or reduction**

- (a) The Borrower may, on giving not less than 5 Business Days' prior notice to the Financier, cancel or reduce the Commitment in whole or in part (but, if in part, by a minimum of and in multiples of \$2,500,000) without incurring any penalty or other cost, provided that the cancellation or reduction may only be effected to the extent of the amount of the applicable Commitment unutilised on the date of the cancellation or reduction.
- (b) Any notice under clause 5.2(a) will be irrevocable and must be signed by an Authorised Officer of the Borrower and must specify the date on which the cancellation or reduction is to become effective and the amount of the cancellation or reduction.

#### **5.3 Reduction consequent on repayment or prepayment**

- (a) The Commitment will be reduced by the amount of any repayment or prepayment of an Advance made under clauses 6.1, 6.2 or 6.3.
- (b) The Commitment will be reduced by the amount of any other prepayment of an Advance made under any other provision of this agreement.

#### **5.4 Limitations**

- (a) Any Commitment reduced, cancelled or otherwise extinguished under this agreement may not be reinstated.
- (b) The Commitment may only be reduced, cancelled or otherwise extinguished as expressly provided under this agreement.

---

### **6. Repayment and prepayments**

#### **6.1 Voluntary prepayment**

- (a) The Borrower may prepay an Advance, in whole or in part (but, if in part, by a minimum of and in multiples of \$1,000,000), on giving not less than 5 Business Days' prior notice to the Financier.
- (b) Any notice of prepayment given by the Borrower is irrevocable and the Borrower is bound to prepay in accordance with the notice.
- (c) The Borrower may not voluntarily prepay any Advance except in accordance with this clause 6.1.

#### **6.2 Mandatory prepayments Disposal of LM Mortgaged Properties**

- (a) Subject to clause 6.2(b), if there is a Disposal of any of the LM Loans or LM Mortgaged Property or any LM Loan Payment is made, the Borrower agrees that the Net Proceeds will be applied as follows:
  - (i) firstly, payment to the Financier of any fees or Costs which are due and payable by the Borrower to the Financier under the Finance Documents;
  - (ii) secondly, in payment to the Financier of any accrued interest or Unpaid Sums;
  - (iii) thirdly, in payment to the Financier of any indemnity payments payable under the Finance Documents;
  - (iv) fourthly, in payment to the Financier of an amount equal to any Principal Shortfall (which shall be applied by the Financier in repayment of Advance);
  - (v) fifthly, an amount equal to the Mandatory Principal Repayment is applied from the Net Proceeds in or towards prepayment of the Advance in accordance with this clause 6. The prepayment will, subject to clause 6.5, be made immediately on the relevant Disposal occurring;
  - (vi) sixthly, any third party costs incurred by the Borrower in:
    - A. exercising or enforcing any LM Mortgage or Collateral Security; and
    - B. paying any land tax, rates, body corporate fees or insurance payable but unpaid by a Customer in respect of a LM Mortgaged Property; and
  - (vii) lastly, provided the Minimum Cash Balance is maintained, the balance, if any, may be paid to or retained by the Borrower.

- (b) If the Net Proceeds of an LM Mortgaged Property are less than the Mandatory Principal Repayment then:
- (i) an amount equal to the Net Proceeds shall be paid in accordance with clause 6.2(a); and
  - (ii) the difference between the Release Price and the Net Proceeds (such difference being a Principal Shortfall) shall be paid within 90 days of the Principal Shortfall occurring in or towards repayment of the Advance from the Net Proceeds of any subsequent sale of any LM Mortgaged Property in accordance with clause 6.2(a) provided that at no time will the Principal Shortfall exceed \$3,000,000; and
  - (iii) to the extent that the Principal Shortfall is not discharged it shall be carried forward and discharged from any subsequent sale of a LM Mortgaged Property.

### **6.3 Mandatory prepayments - Insurance Proceeds**

If:

- (a) as a result of making a claim under an insurance policy (other than in relation to any public liability, directors' and officers' liability, workers' compensation or any other third party liability) the Borrower receives or recovers any proceeds then the Borrower will, unless the Financier agrees to the contrary, apply the insurance proceeds as follows:
- (i) first, to the costs of restoring or replacing the property for which the insurance proceeds are received;
  - (ii) second, to compensate the Financier for any diminution of the value of the Financier's Security as reasonably determined by the Financier; and
  - (iii) the balance, if any, to the Borrower.
- (b) the Borrower receives any proceeds of insurance in respect of an LM Mortgaged Property, the Borrower will, unless the Financier agrees to the contrary, pay the insurance proceeds or an amount equal to those insurance proceeds in or towards prepayment of the Advance in accordance with this clause 6. The prepayment will, subject to clause 6.5, be made immediately on the relevant amount being received by the Borrower.

### **6.4 Order of application**

Subject to clause 6.2 any amount paid by the Borrower to the Financier will be applied in discharge of the obligations in such order as the Financier determines notwithstanding any direction or appropriation by the Borrower.

### **6.5 Date for prepayment**

If any prepayment is required under clause 6.2 or 6.3, the prepayment will be made on the last day of the Interest Period relating to the Advance to be prepaid and pending the prepayment must be retained in the Managed Cash Account. All interest earned in respect of the prepayment account is for the account of the Borrower.

## **6.6 General provisions relating to repayment and prepayment**

- (a) Amounts repaid or prepaid in respect of any Advance under any provision of this agreement may not be re-utilised.
- (b) Any repayment or prepayment of any amount under this agreement will be made together with interest and fees accrued on the amount repaid or prepaid and any amount required to be paid in accordance with clause 18 but otherwise without premium or penalty.

---

## **7. Interest**

### **7.1 Interest Periods**

- (a) The Interest Period for each Advance (other than the first) will be one month's duration.
- (b) The first Interest Period in relation to any Advance is the period commencing on the first Utilisation Date for that Advance and ending on the last day of the month in which that Utilisation Date falls. Any subsequent Interest Period in relation to an Advance will commence on the last day of the immediately preceding Interest Period.
- (c) Notwithstanding any other provision of this clause 7.1, the term of each Interest Period is subject to any adjustment as the Financier in its discretion determines so that:
  - (i) the first and last days of it are Business Days;
  - (ii) no Interest Period expires later than the Termination Date.
- (d) The Financier will promptly notify the Borrower of any adjustment made by the Financier to any Interest Period determined in accordance with this clause 7.1.

### **7.2 Calculation of interest**

- (a) Interest on each Advance accrues daily and is to be computed on the basis of the actual number of days elapsed and a year of 365 days.
- (b) The rate of interest for each Advance for each Interest Period is the Interest Rate in relation to that Interest Period for that Advance.

### **7.3 Payment of interest**

- (a) On each Monthly Interest Payment Date the Borrower will pay to the Financier interest in relation to each Advance in an amount not less than the Minimum Monthly Interest Payment. Any interest which has accrued and is not paid shall be capitalised and form part of that Advance.
- (b) On each Biannual Interest Payment Date the Borrower will pay to the Financier interest in relation to each Advance in an amount not less than the Biannual Interest Payment.

### **7.4 Market disruption**

- (a) The Financier may determine whether a Market Disruption Event has occurred in relation to an Advance during an Interest Period. If the Financier determines that a

Market Disruption Event has occurred, it will as soon as practicable and in any event no later than the Business Day before interest is due to be paid in respect of that Interest Period, notify the Borrower of the rate that expresses as a percentage rate per annum either:

- (i) aggregated BBSW and 5% per annum;
  - (ii) if BBSW is not quoted, the aggregate of the cost to the Financier of funding that Advance plus 5% per annum from whatever source or sources it may reasonably select for the relevant Interest Period.
- (b) The Financier will determine the rate notified by it under clause 7.4(a) in good faith. The rate so notified, and any notification under clause 7.4(a), will be conclusive and binding on the parties in the absence of manifest error.
- (c) In this agreement a Market Disruption Event occurs if, as a result of market circumstances not limited to the Financier (whether or not those circumstances, or their effect on the Financier's cost of funds, subsist on the date of this agreement), the cost to it of funding that Advance exceeds the cost to the Financier on the date of this agreement.

---

## **8. Interest on overdue amounts**

### **8.1 Payment of interest**

The Borrower will pay to the Financier interest on any Unpaid Sum, including any interest payable under clause 7 and this clause 8.

### **8.2 Accrual of interest**

- (a) Default interest will accrue on all Unpaid Sums from day to day:
- (i) from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment; and
  - (ii) (subject to clause 8.2(b)) at the Interest Rate plus the Default Margin commencing on the date of default.
- (b) If an Unpaid Sum consists of all or any part of an Advance that has become due and payable before the last day of an Interest Period for that Advance, then in respect of that Unpaid Sum:
- (i) its first Interest Period will be the unexpired portion of the relevant Interest Period for that Advance;
  - (ii) during its first Interest Period, default interest will accrue at a rate equal to Default Margin above the rate which would have been payable if that Unpaid Sum had not become due and payable; and
  - (iii) after its first Interest Period, default interest will accrue at a rate calculated in accordance with clause 8.2(a)(ii).
- (c) Default interest accruing under this clause 8.2 will be immediately payable by the relevant the Borrower on demand. Default interest (if unpaid) arising on any Unpaid Sum will be compounded with that Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.



---

## **9. Fees**

### **9.1 Establishment fee**

- (a) The Borrower will pay to the Financier a non-refundable establishment fee in dollars computed at the rate of 1.5% on the aggregate of the Commitment. The establishment fee will be payable in full on Financial Close.
- (b) The Financier acknowledges that it has received from the Borrower, prior to the date of this agreement, a non-refundable fee in the amount of 0.5% on the aggregate of the Commitment which it shall apply towards part payment of the establishment fee referred to in clause 9.1(a) on Financial Close.

### **9.2 Commitment fee**

- (a) The Borrower will pay to the Financier an unused commitment fee in dollars computed at the rate of 6% per annum on the daily unutilised balance of the aggregate of the Commitment during the Availability Period.
- (b) The accrued commitment fee will be payable quarterly in arrears from the date of this agreement and also on any date on which the Commitment is terminated.
- (c) The commitment fee will accrue from day to day and be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

---

## **10. Payments**

### **10.1 Time and place**

All payments by the Borrower under any Finance Document are to be made to the Financier in dollars or any other currency specified in the relevant Finance Document in immediately available funds not later than 11.00 am in the place of payment on the due date to the account that the Financier from time to time designates.

### **10.2 No set-off, counterclaim or merger**

- (a) All payments by the Borrower under any Finance Documents will be without any set-off or counterclaim and the Borrower irrevocably waives any right of set-off or counterclaim which it may have against the Financier.
- (b) If the liability of the Borrower to pay any money, the payment or repayment of which forms part of the Obligations, becomes merged in any judgment or order, the Borrower will as an independent obligation pay to the Financier interest at the rate which is the higher of that payable under the Finance Documents and that fixed by or payable under the judgment or order.

### **10.3 Currency for payments**

- (a) Except as otherwise expressly provided in any Finance Document:
  - (i) each payment due from the Borrower in respect of Costs or Taxes will be made in the currency in which the Costs or Taxes are incurred; and
  - (ii) all other payments due from the Borrower under any Finance Document will be made in dollars.

- (b) If any amount to be applied in satisfaction of the Obligations is in a currency (Foreign Currency) other than the currency in which that amount is required to be paid under the Finance Documents (Due Currency), the Financier in its absolute discretion may accept application in that Foreign Currency.
- (c) If any application of an amount in a Foreign Currency is accepted by the Financier as contemplated by clause 10.3(b), or if any amount is recovered by the Financier under any Finance Document in a Foreign Currency (whether as a result of any judgment or order, the winding up of the Borrower or otherwise), the Financier in its absolute discretion may actually or notionally convert that amount to the Due Currency at any time or times as it sees fit and at any rate or rates as it is, or considers it would be, able to obtain in the relevant foreign currency market at the time of that conversion. The amount of the Due Currency actually or notionally received after conversion will be applied in reduction of the Obligations.
- (d) The Borrower will pay to the Financier all commissions and Costs incurred by the Financier in connection with the actual or notional conversion of any Foreign Currency into the Due Currency on the terms contemplated by clause 10.3(c).

#### **10.4 Payments in gross**

All amounts received or recovered by the Financier on account of the Obligations will be treated as payments in gross without any right on the part of the Borrower to claim the benefit of any amount received or recovered by the Financier under any Finance Document, until the Obligations have been fully and finally satisfied.

#### **10.5 Payment on a Business Day**

When any payment under a Finance Document would otherwise be due on a day which is not a Business Day, the due date for payment shall be the immediately preceding Business Day but the amount payable shall not be adjusted as a result of the change of the due date.

---

### **11. Taxes**

#### **11.1 No deduction for Taxes**

All payments by the Borrower under any Finance Document, whether of principal, interest or other amounts, will be without deduction or withholding for any present or future Taxes unless the Borrower is compelled by law to deduct or withhold the same.

#### **11.2 Payment net of Taxes**

If:

- (a) the Borrower is compelled by law to make any deduction or withholding from any payment under any Finance Document on account of Taxes; or
- (b) the Financier is obliged to pay any Taxes in respect of a payment made or to be made by the Borrower under the Finance Documents,

then:

- (i) the Borrower will promptly notify the Financier if it becomes aware of any event referred to in clauses 11.2(a) to 11.2(b);
- (ii) the Borrower will on demand by the Financier pay to the Financier any additional amounts necessary to ensure that the Financier receives a net

amount equal to the full amount which it would have been entitled to receive and retain had the deduction or withholding not been made or had the payment been free and clear of Taxes or had the Financier not been obliged to pay any Taxes in respect of the payment; and

- (iii) where clause 11.2(a) applies the Borrower compelled to make the deduction or withholding will:
  - A. pay to the appropriate Government Authority any amount deducted or withheld in respect of Taxes within the time allowed and in the minimum amount required by law; and
  - B. within 20 Business Days after making the deduction or withholding, provide to the Financier evidence satisfactory to the Financier of that payment having been made.

### **11.3 Tax saving**

- (a) If the Borrower is required under clause 11.2 to pay Taxes or to pay any additional amount in respect of Taxes and as a result the Financier (in its absolute discretion and based on its own interpretation of any relevant laws):
  - (i) receives or is granted a credit against or remission for or deduction from or in respect of any Tax payable by it; or
  - (ii) will obtain any other relief in respect of Tax,

(referred to as a saving), the Financier will, to the extent that it can do so without prejudice to the retention of the saving, pay to the Borrower an amount that the Financier in its absolute discretion concludes to be the amount or value of the saving.
- (b) If after any payment is made to the Borrower under clause 11.3(a) the Financier is not able to obtain the benefit of the saving or the saving is subsequently disallowed or cancelled, the Borrower will, within 5 Business Days of demand by the Financier, refund the payment made to it in respect of the saving or the relevant part.
- (c) Nothing in this agreement will:
  - (i) interfere with the right of the Financier to arrange its Tax and other affairs in whatever manner it thinks fit; or
  - (ii) require the Financier to:
    - A. disclose to the Borrower or any other person any details of its Tax or other affairs;
    - B. claim relief from Tax on its corporate profits, or from any similar Tax liability, in respect of the Tax referred to above; or
    - C. claim relief in priority to any other claims, reliefs, credits or deductions available to it.

- (a) attributable to a deduction or withholding on account of Tax required to be made by law;
- (b) compensated for by clause 11.2 or would have been but for an exception in that clause; or
- (c) attributable to the wilful breach of any law by the Financier.

---

## **14. Mitigation**

### **14.1 Mitigation**

If circumstances arise which would, or on the giving of notice would, result in the operation of clauses 11, 12 or 13:

- (a) the Financier will promptly notify the Borrower on becoming aware of the applicable circumstances (provided that a failure to provide notice in accordance with this clause 14.1(a) will not prejudice the rights of the Financier under clauses 11, 12 or 13);
- (b) the Financier will, on request by the Borrower, enter into discussions with the Borrower to determine what mitigating action might be taken by the Financier including discussion of the possibility of a change in the office through which it provides the Facilities, a change in the method of funding Advance or a transfer of the Commitment to another person; and
- (c) at the request of the Borrower, the Financier will enter into discussions with the Borrower to determine what mitigating action might be taken by the Financier with respect to the administration of this agreement,

provided that nothing in this clause 14.1 will oblige the Financier to incur any Costs or to take any action or refrain from taking any action or affect the obligations of the Borrower under clauses 11, 12 or 13.

### **14.2 Costs and expenses**

Any costs and expenses reasonably incurred by the Financier under this clause 14 will be paid by the Borrower within 5 Business Days after receipt of a demand specifying the costs and expenses in reasonable detail.

---

## **15. Representations and warranties**

### **15.1 General representations and warranties**

The Borrower and the Responsible Entity in its personal capacity represents and warrants to the Financier that:

- (a) **(Legally binding obligation)** each Finance Document to which it is a party constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
- (b) **(Execution, delivery and performance)** the execution, delivery and performance of each Finance Document to which it is a party and each transaction contemplated by those Finance Document does not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;

(c) **(Authorisation)** all Authorisations required:

- (i) to be obtained by it in connection with the execution, delivery and performance of each Finance Document to which it is a party, the transactions contemplated by those Finance Documents and the legality, validity and enforcement of each of those Finance Documents;
- (ii) for it or for any agents employed by the Borrower to carry on business and which are material; and
- (iii) in the case of the Responsible Entity, for the LM Mortgage Trust to be established,

have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Authorisations or aware of any fact or circumstance which may cause any of those Authorisations to be suspended, forfeited, cancelled or rendered void;

- (d) **(No litigation)** other than the Disclosed Litigation, no litigation, arbitration, criminal or administrative proceedings are current, pending or to its knowledge threatened which, if determined adversely to it, is reasonably likely to have a Material Adverse Effect;
- (e) **(No Event of Default)** no Event of Default has occurred which is subsisting;
- (f) **(Laws)** it has complied with all laws (except to the extent that the non-compliance is not material);
- (g) **(Financial Liabilities)** is not in default in the payment of any amount, or in the satisfaction of any obligation in respect of any Financial Liability and no event has occurred which with the giving of notice, lapse of time or other condition could constitute a default in respect of any such Financial Liability and require its prepayment;
- (h) **(Solvency)** no Event of Insolvency has occurred in relation to it;
  - (i) **(No financial assistance or benefit to related party)** the execution and delivery by it of any Finance Document to which it is a party or the participation by it in any transaction in connection with any Finance Document to which it is a party will not contravene Part 2J.3 or Chapter 2E of the Corporations Act;
  - (ii) **(Environmental matters)** all Authorisations required by it under any Environmental Law in order for it or to carry on business have been obtained and are valid and subsisting and it has at all times complied in all material respects with the terms and conditions of those Authorisations;
- (i) **(Tax liabilities)**
  - (i) no claims are being or are reasonably likely to be asserted against it with respect to Taxes which are reasonably likely to be determined adversely to it;
  - (ii) is not overdue in the filing of any Tax returns or other information required to be filed by it with any relevant Tax authority to ensure compliance with any obligation to pay Tax; and

- (iii) has paid all Taxes due and payable by it by the due date (except to the extent that the payment of any Tax is being contested in good faith where the Borrower has sufficient financial resources to pay that Tax if a legally binding determination is made and that payment is required); and
- (j) **(Immunity from suit)** it does not enjoy immunity from suit or execution in relation to its obligations under any Finance Document.

## 15.2 Information representations and warranties

The Borrower and the Responsible Entity in its personal capacity represents and warrants to the Financier that:

- (a) **(No misrepresentation)** all information relating to the Borrower and the Finance Documents provided by it (or on its behalf) to the Financier (or any advisor of the Financier in connection with any Finance Document) was at the time it was provided or as at the date (if any) at which it was stated true in all material respects and was not, by omission or otherwise, misleading in any material respect at that time;
- (b) **(Accounts)** the Borrower's most recent Accounts delivered to the Financier under clause 16.2(a):
  - (i) have been prepared in accordance with applicable laws and Accepted Accounting Practices consistently applied except to the extent disclosed in the Accounts;
  - (ii) if audited, give a true and fair view of or, if unaudited, fairly represent the financial condition of the Borrower for the period to which those Accounts relate and of the results of the operations of the Borrower for that period and since the last date of that accounting period there has been no material adverse change in the financial condition of the Borrower as shown in those Accounts; and
  - (iii) all material Financial Liabilities and other material contingent liabilities of the Borrower are disclosed in those Accounts; and
- (c) **(Documents)** the documents delivered to the Financier under clause 3.1(a) were genuine or, in the case of copy documents, were true, complete and accurate copies of originals which, in each case, have not been amended, varied, supplemented or superseded in any way.

## 15.3 Corporate representations and warranties

The Responsible Entity in its personal capacity represents and warrants to the Financier that:

- (a) **(Existence and power)** it:
  - (i) is duly registered and remains in existence; and
  - (ii) has the power to act as responsible entity of the LM Mortgage Trust;
- (b) **(No violation)** its execution, delivery and performance of each Finance Document to which it is a party does not (and the transactions contemplated by those Finance Documents do not) violate the LM Mortgage Trust Constitution;

- (c) **(Power)** it has the corporate power to enter into, deliver and perform each Finance Document to which it is a party and to carry out the transactions contemplated by those Finance Documents;
- (d) **(Due authority)** it has taken all corporate action required to enter into, deliver and perform each Finance Document to which it is a party and to carry out the transactions contemplated by those Finance Documents; and
- (e) **(Corporate benefit)** the entry into and the performance of its obligations under each Finance Document to which it is a party is for its corporate benefit.

#### **15.4 Responsible Entity representations and warranties**

The Responsible Entity in its personal capacity represents and warrants to the Financier that:

- (a) **(General representations & warranties)** in relation to the LM Mortgage Trust:
  - (i) **(Responsible entity)** it has power to enter into the Finance Documents in its capacity as responsible entity of the LM Mortgage Trust;
  - (ii) **(LM Mortgage Trust validly created)** the LM Mortgage Trust has been validly created and is in existence at the date of this agreement;
  - (iii) **(Responsible entity and Custodian validly appointed)**
    - A. it has been validly appointed as responsible entity of the LM Mortgage Trust and is presently the sole responsible entity of the LM Mortgage Trust; and
    - B. the Custodian has been validly appointed as custodian of the LM Mortgage Trust and is the sole custodian of the LM Mortgage Trust;
  - (iv) **(Trust Documents)**
    - A. no Trust Document is void, voidable or otherwise unenforceable;
    - B. the LM Mortgage Trust is solely constituted by the LM Mortgage Trust Constitution, a true copy of which was provided to the Financier before the date of this agreement;
    - C. the Custody Agreement provided to the Financier before the date of this agreement discloses all of the terms of the custody arrangements between it and the Custodian in respect of the LM Mortgage Trust (except to the extent those arrangements are affected by the Securities Custody Deed); and
    - D. the Services Agreement provided to the Financier before the date of this agreement discloses all of the terms of the services arrangements between it and the Service Provider in respect of the LM Mortgage Trust (except to the extent those arrangements are affected by the Service Provider Side Deed);
  - (v) **(Rights of indemnity and exoneration against Trust property)** as responsible entity of the LM Mortgage Trust, it has valid Rights of Indemnity against the Trust Property, which rights are available for

satisfaction of all liabilities and other obligations incurred under the Finance Documents to which it is a party;

- (vi) **(Due constitution of Trust)** the LM Mortgage Trust has been duly constituted and the LM Mortgage Trust Constitution is not void, voidable or otherwise unenforceable, and the LM Mortgage Trust Constitution (and the Compliance Plan if any) complies in all material respects with applicable requirements of the Corporations Act;
- (vii) **(Legal owner of Trust Property)** subject to the LM Mortgage Trust, it or the Custodian is the legal owner of all of the Trust Property and all undertakings in relation to the LM Mortgage Trust carried on by it, in each case, free from any Encumbrance other than a Permitted Encumbrance; and
- (viii) **(No action for removal)** no action has been taken or proposed to:
  - A. remove it as responsible entity of the LM Mortgage Trust of which it is aware; or
  - B. remove the Custodian as custodian for the LM Mortgage Trust;
- (b) **(Commercial benefit)** it has carefully considered the purpose of the Finance Documents to which it is a party and considers that its entry into the Finance Documents (and the grant of the Securities) is for the benefit and in the interests of the LM Mortgage Trust;
- (c) **(Licences)** it holds and will maintain all licences and authorisations as are necessary to lawfully perform its obligations under the LM Mortgage Trust Constitution and any applicable law relating to its obligations as responsible entity of the LM Mortgage Trust;
- (d) **(AFS licence)** it has complied and will continue to comply with the conditions of its Australian Financial Services licence;
- (e) **(Insolvency)** there is no reasonable grounds to suspect that the LM Mortgage Trust will not be able to pay its debts as and when they become due and payable;
- (f) **(Financial Liabilities)** other than Financial Liabilities (i) in respect of guarantees given by the Responsible Entity in its personal capacity in respect of certain audit and accounting liabilities of each of LM FZE, LM Investment Management New Zealand Ltd, LM Investment Management International Ltd and LM Investment Management UK Ltd or (ii) owed or owing to the Service Provider for an amount not exceeding \$500,000, it has no Financial Liabilities in its personal capacity (and for the avoidance of doubt, this does not extend to any Financial Liabilities that LM Investment Management Limited may have as trustee or responsible entity of any other trust scheme).

## 15.5 Specific Portfolio Representations

The Borrower and the Responsible Entity in its personal capacity represents and warrants that:

- (a) **(LM Documentation Assumptions):** each LM Documentation Assumption is true and correct and has been satisfied and complied with;



- (b) **(priority arrangements):** where there is a second or other mortgage in existence over Land the subject of an LM Mortgage, the Borrower has (other than as disclosed in Schedule 7) ensured (by way of a priority agreement with the subsequent mortgagee or otherwise) that the LM Mortgage will rank in priority to the second or other mortgage on enforcement for an amount not less than the principal amount (plus accrued but unpaid interest) outstanding on the LM Loan;
- (c) **(Customer not insolvent):** at the time that the LM Loan was approved, the Borrower had not received any notice of the insolvency of the Customer or that the Customer did not have the legal capacity to enter into the LM Mortgage relating to the LM Loan;
- (d) **(Custodian and Borrower sole legal and beneficial owner):** the Custodian and the Borrower are the sole legal and beneficial owners of the LM Loan Documents and (other than as disclosed in Schedule 7) no prior ranking Encumbrance exists in relation to their right, title and interest in any LM Loan Document
- (e) **(LM Loan not discharged):** the LM Loan has not been satisfied, cancelled, discharged or rescinded (other than where Net Proceeds are applied in accordance with this agreement or except as disclosed in Schedule 7) and the Land relating to each relevant LM Mortgage has not been released from the security of that LM Mortgage except for the Released LM Mortgaged Property;
- (f) **(hold all documents necessary to enforce):** except as disclosed (in Schedule 7) or as released in accordance with the Securities Custody Deed, the Custodian holds all LM Loan Documents and documents it should hold to enforce the provisions of any security created by the LM Loan Documents;
- (g) **(no notice of security interests):** other than in respect of priorities granted by statute or as disclosed in Schedule 7 (or as otherwise notified by the Borrower to the Financier following Financial Close), the Borrower has not received and the Custodian has not received notice from any person that it claims to have an Encumbrance ranking in priority to or equal with the Encumbrance held by the Borrower or Custodian and constituted by any LM Mortgage;
- (h) **(all licences and consents):** the Borrower and Custodian holds all consents, licences, approvals, authorisations and exemptions from any Governmental agency required for, or in connection with, performance and enforceability in respect of any LM Loan Document;
- (i) **(Loan Files complete):** the LM Loan Documents in the Loan Files are either originals or, if originals are unavailable, true copies of the documents or materials that they purport to be, all Customer information included in the Loan Files is correct at the time of its inclusion, and neither the Borrower nor the Custodian has knowingly omitted to include in the Loan Files any material agreement, document or other material in its possession or control;
- (j) **(no LM Loan Document):** neither the Borrower nor the Custodian has breached any of its representations, warranties, obligations, or covenants under any LM Loan Document;
- (k) **(value of mortgaged property):** except as disclosed in Schedule 7:
  - (i) neither the Borrower nor Custodian has received any notice of any pending or threatened compulsory acquisition, execution, attachment, levy or similar proceedings affecting any LM Mortgaged Property that

may have a material adverse effect upon the value of that LM Mortgaged Property;

- (ii) no material portion of any LM Mortgaged Property has been damaged or destroyed;
- (l) **(no litigation):** except as disclosed in Schedule 7 (or as otherwise notified by the Borrower to the Financier following Financial Close), no litigation, administration proceedings or arbitration is pending against the Borrower or Custodian with respect to any LM Loan Document which would adversely affect the value or marketability of the LM Loan or the related LM Mortgaged Property;
- (m) **(loan schedule information accurate):** the data relating to the LM Loans and LM Loan Documents as set out in the LM Loan Schedule is accurate in all material respects;
- (n) **(no notice of invalidity):** except as disclosed in Schedule 7 (or as otherwise notified by the Borrower to the Financier following Financial Close) the Borrower has not received and is not aware of any notice, assertion, claim or demand, and is not otherwise aware, that:
  - (i) any LM Loan Document or any part thereof is subject to any impairment or is invalid or void; or
  - (ii) LM Collateral Security is or might be invalid or is void or voidable whether as a preference or fraudulent transfer or otherwise;
- (o) **(no rights of set-off or defence):** except as disclosed in Schedule 7 any amounts payable under any LM Loan Document will be payable without set-off or counterclaim and no Customer has any valid defence or counterclaim to payment in full of the LM Loan and all amounts shown in the LM Loan Schedule are due and owing with respect to that LM Loan;
- (p) **(no consumer credit loan):** no LM Loan is regulated by the Credit Legislation and nothing in an LM Loan Document shall be construed as securing or purporting to secure the payment of any moneys or the performance of any obligation by a Customer (whether as principal debtor, guarantor, surety or otherwise) under or in connection with any credit contract or mortgage to which any Credit Legislation applies; and
- (q) **(use):** from Financial Close (except in respect of a LM Loan funded by cash available to the Borrower under clause 6.2(a)(vii)) any amount drawdown by a Customer under a LM Loan will not be used by the Customer to discharge any liability owed to an Affiliate.

## **15.6 Representations and warranties repeated**

Each Repeating Representation will be repeated on the date of each Utilisation Notice, each Utilisation Date and the last day of each Interest Period, in each case, with reference to the facts and circumstances then subsisting.

---

## **16. Undertakings**

### **16.1 Duration and benefit**

The undertakings in this agreement are given for the benefit of the Financier and will remain in force on and from the date of this agreement for the period any amount is or may be outstanding under any Finance Document or any Commitment is in force.

### **16.2 Information and Custody Audits**

- (a) **(Financial information)** The Borrower will provide to the Financier:
  - (i) as soon as practicable and in any event no later than 90 days after the end of each Financial Year, a copy of the audited Accounts for the LM Mortgage Trust for that Financial Year, certified as correct by an auditor approved by the Financier;
  - (ii) as soon as practicable and in any event no later than 45 days after the end of the first half of each Financial Year, a copy of the unaudited Accounts for the LM Mortgage Trust for that half year and, if certified as correct by an Authorised Officer of the Borrower; and
  - (iii) promptly, any further information regarding its financial condition and business operations or the financial condition and business operations of the Borrower as the Financier, acting reasonably, requires from time to time.
- (b) **(Compliance with Accepted Accounting Practices)** The Borrower will ensure that the Accounts delivered to the Financier under clause 16.2(a):
  - (i) are prepared in accordance with applicable laws and Accepted Accounting Practices consistently applied except to the extent disclosed in them;
  - (ii) if audited, give a true and fair view of or, if unaudited, fairly represent the financial condition of the LM Mortgage Trust for the period to which those Accounts relate and of the results of the operations of the LM Mortgage Trust for that accounting period; and
  - (iii) disclose all material Financial Liabilities and other material contingent liabilities of the LM Mortgage Trust.
- (c) **(Custody Information)** The Borrower will promptly upon receipt deliver to the Financier:
  - (i) a copy of any report given by the SCO to the Borrower pursuant to the Custody Agreement;
  - (ii) a copy of the Auditor's report given to the Borrower pursuant to the Custody Agreement including any assessment of compliance as required by section 601HG(3)(c) of the Corporations Act.
- (d) **(LM Loan Schedule)** The Borrower will provide to the Financier within 5 Business Days of the end of each month an updated and current LM Loan Schedule in respect of the preceding month.

- (e) **(Know your client procedures)** The Borrower will promptly provide to the Financier any documentation and other evidence which is from time to time:
  - (i) required by the Financier to comply with its know your client procedures; and
  - (ii) which has not already been made available to the Financier by the Borrower.
- (f) **(Provision of further information)** The Borrower will provide to the Financier:
  - (i) **(Special resolutions)** promptly after the date on which the notice is issued, a copy of any notice calling an extraordinary general meeting of it or, in the case of the Responsible Entity, the members of the LM Mortgage Trust or proposing any resolutions of persons entitled to vote, in any case, for consideration by its shareholders or, in the case of the Responsible Entity, the members of the LM Mortgage Trust. The Borrower undertakes that the Financier or a representative of the Financier will be entitled to attend a meeting of members of the LM Mortgage Trust;
  - (ii) **(Reports to members)** in the case of the Responsible Entity only, promptly after the date on which the report or other item is issued, a copy of all reports, accounts, notices and circulars issued by it to any of its shareholders of the Responsible Entity or, in the case of the Responsible Entity, the beneficiaries of the LM Mortgage Trust; and
  - (iii) **(Evidence of compliance)** as and when required by the Financier, evidence to the reasonable satisfaction of the Financier, acting reasonably, proving that the Borrower is complying with the Obligations and, if applicable, taking steps to remedy any subsisting Event of Default or Potential Event of Default.
- (g) **(Notification of certain events)** The Borrower will immediately notify the Financier in writing if it becomes aware of the occurrence of:
  - (i) **(Event of Default)** any Event of Default or Potential Event of Default;
  - (ii) **(Litigation)** any litigation, arbitration, criminal or administrative proceedings which are current, pending or to its knowledge threatened relating to it or any Trust Property and which involve, in aggregate, claims against the Borrower in excess of \$500,000 (or the equivalent in any other currency) or which, if determined adversely, could have a Material Adverse Effect;
  - (iii) **(Authorised persons)** any change in its Authorised Officers, giving evidence of the authority of any newly appointed Authorised Officer as required under paragraph (a) of the definition of "Authorised Officer" in clause 1.1;
  - (iv) **(LM Loans Litigation)** any litigation, administrative proceedings or arbitration against the Borrower or Custodian with respect to any LM Loan Document which could adversely affect the value or marketability of the LM Loan or the related LM Mortgaged Property;
  - (v) **(LM Loan Document Void)** any notice, assertion, claim or demand that any LM Loan Document or any part thereof is invalid or void;

- (vi) **(Competing Interests)** any notice from any person that it claims to have an Encumbrance ranking in priority to or equal with the Encumbrance held by the Borrower or Custodian and constituted by any LM Mortgage;
- (h) **(Portfolio information)** The Borrower must no later than the last day of each month provide to the Financier an electronic listing containing:
  - (i) a list of all of the offices at which the LM Loan Documents are retained, showing the street address and telephone number of the relevant office;
  - (ii) the name and address of the Customer under each LM Loan;
  - (iii) the street address of the Land which is subject of the LM Mortgage relating to each LM Loan;
  - (iv) a brief description of the LM Collateral Security; and
  - (v) such other information in respect of the LM Loans which is reasonably requested by the Financier.
- (i) **(Document custody audit report)** The Borrower must retain the Auditor to conduct periodic reviews (at the times reasonably requested by the Financier in respect of the Custodian's role as Custodian of the LM Loan documents) and, in doing so:
  - (i) the Auditor must review:
    - A. the Custodian's procedures adopted by the Custodian; and
    - B. the accuracy of information in respect of the LM Loan obtained on electronic listing provided to the Financier pursuant to clause 16.2(h) and the Borrower must instruct the Auditor that its review should consist of reporting whether in respect of the LM Loan Documents:
      - 1) the LM Loan Documents are capable of identification and are distinguishable from the other assets of the Custodian or Borrower;
      - 2) controls exist such that those LM Loan Documents may not be removed or tampered with except with appropriate authorisation; and
      - 3) an appropriate tracking system is in place such that the location of those LM Loan Documents can be detected at any time;
  - (ii) the Borrower must instruct the Auditor to confirm, after having conducted the reviews referred to in clause 16.2(h) and this clause 16.2(h), the accuracy of information in respect of the electronic listing provided to the financier pursuant to clause; and
  - (iii) the Borrower must instruct the Auditor to prepare a document custody audit report immediately after delivery of the electronic listing referred to in clause 16.2(h) and on 31 March and 30 September of each year thereafter.

### **16.3 Restrictions on Disposals**

- (a) **(Restriction on Encumbrances)** The Borrower will not create, purport or attempt to create or permit to exist, any Encumbrance however ranking over any of its assets.
- (b) **(Transactions similar to security)** The Borrower will not:
  - (i) sell or otherwise Dispose of any of its assets on terms which permit or require those assets to be leased to or re-acquired by the Borrower;
  - (ii) sell or otherwise Dispose of any of its receivables on recourse terms or securities its receivables; or
  - (iii) purchase any asset on terms providing for a retention of title by the vendor or on conditional sale terms or on terms having a similar substantive effect.
- (c) **(Disposals)** The Borrower will not enter into or make any Disposal of any other part of its assets or undertaking, unless the Disposal is a Permitted Disposal. The Financier will release from the Securities any asset Disposed of as permitted by this clause 16.3(c).
- (d) **(Permitted Encumbrances)** clauses 16.3(a), 16.3(b) and 16.3(c) do not apply to Permitted Encumbrances.

### **16.4 Liabilities**

- (a) **(Financial Liabilities of the Borrower)** The Borrower will not incur any Financial Liabilities other than the Permitted Financial Liabilities.
- (b) **(Restriction on guarantees)** The Borrower will not enter into any bond, guarantee or indemnity in favour of any person other than:
  - (i) under the Finance Documents; or
  - (ii) as permitted under clause 16.4(a).
- (c) **(Treasury Transactions)** The Borrower will ensure and procure that:
  - (i) any loss or liability in respect of any Treasury Transactions is and will be subordinated and subject to right of payment and repayment to all monies payable by the Borrower to the Financier under the Finance Documents; and
  - (ii) the maximum principal amount of all Treasury Transactions does not exceed \$10,000,000.
- (d) **(Financial Liabilities of the Responsible Entity)** The Responsible Entity in its personal capacity will not incur any Financial Liabilities other than the Permitted Responsible Entity Financial Liabilities (but for the avoidance of doubt, this does not extend to any Financial Liabilities that LM Investment Management Limited may have as trustee or responsible entity of any other trust scheme).

### **16.5 Financial Accommodation**

- From Financial Close the Borrower shall not provide any financial accommodation to any person unless:

- (a) no Default or Potential Event of Default is subsisting; and
- (b) such financial accommodation is:
  - (i) provided:
    - A. from moneys available to the Borrower pursuant to clause 6.2(a)(vii); or
    - B. in respect of moneys available to the Borrower from Net Proceeds because the Trust Bank Accounts are not less than the Alternative Minimum Cash Balance and provided the Financier is satisfied the New Lending Criteria is or will be satisfied (or the Financier otherwise consents);
  - (ii) provided in the ordinary course of the Borrower's business and on arm's length and on commercial terms;
  - (iii) not provided to any employee, director, shareholder of the Responsible Entity or to any Related Body Corporate of the Responsible Entity; and
  - (iv) secured by a first ranking mortgage over Land which is the only mortgage over the relevant Land.

The Financier acknowledges that this clause does not apply to any Existing Financial Accommodation.

## 16.6 Environmental matters

- (a) (Environmental Law) The Borrower will:
  - (i) obtain all Authorisations required under any Environmental Law in order for it to carry on business;
  - (ii) ensure that each of those Authorisations is valid and subsisting;
  - (iii) comply in all material respects with the terms and conditions of those Authorisations;
  - (iv) ensure that no act or omission occurs in connection with its business which would:
    - A. entitle a Government Authority to make a declaration, or to issue a notice, direction or order, under any Environmental Law;
    - B. give rise to a nuisance; or
    - C. give rise to any Contamination the investigation and remediation of which would require any material expenditure; and
  - (v) ensure that it:
    - A. has in place an appropriate environmental management system for the operation of its business; and

B. monitors and audits compliance with all Environmental Laws which are relevant to its business, whether as part of its environmental management system or otherwise.

(b) **(Notice)** The Borrower will, promptly on receipt, notify the Financier of any claim, notice or other communication received by it in respect of any breach or alleged breach of, or any liability under, any Environmental Law.

(c) **(Indemnity)** The Borrower will indemnify the Financier and the Delegates (together the **Indemnified Parties**) against any Cost, loss, damage, claim, demand or action (including any legal costs on a full indemnity basis) suffered or incurred by an Indemnified Party (except, in the case of any Indemnified Party, if caused by its own gross negligence or wilful default) which arises directly or indirectly from:

(i) any actual or alleged breach of any Environmental Law; or

(ii) any Contamination associated with the past or present facilities or operations.

## 16.7 Insurance

(a) **(Insurances)** The Borrower will insure its business and assets, and keep its business and assets insured, with insurance companies approved by the Financier against any risks and liabilities to which the business of the Borrower is exposed and to the extent as is commercially reasonable/appropriate having regard to those risks and liabilities. Without limiting this obligation, the Borrower must effect and maintain the following insurances:

(i) insurance of the Security Property against loss, theft, damage or destruction;

(ii) insurance against business interruption, loss of profits, consequential and advanced consequential loss, product liability, professional indemnity (or, if appropriate, civil liability), pollution, Contamination, loss of key executives and public liability;

(iii) insurance required by any law; and

(iv) any other specific insurance.

(b) **(Terms)** No later than 30 days following Financial Close, the Borrower will unless it is not commercially practicable to obtain insurance on such terms:

(i) ensure that all Insurances (other than employers' liability, professional indemnity and workers' compensation insurance policies) will have the Financier named as an insured and as the sole loss payee;

(ii) ensure that all Insurances (other than employers' liability, professional indemnity and workers' compensation insurance policies) include clauses in which the insurer agrees:

A. to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;

B. that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had



been issued to each of them (subject always to the overall sum insured not being increased as a result); and

- C. that any non-disclosure, breach of any duty or act or omission by one insured under any Insurance does not prejudice the right of any other insured to claim under that Insurance;
- (iii) ensure that all Insurances will where applicable, insure the Financier's insurable interests; and
- (iv) ensure that all Insurances will be for the amounts, cover the risks and contain the terms and conditions as the Financier, acting reasonably, requires unless it is not commercially practicable to obtain insurance on such terms in respect of a particular loss.
- (c) **(Full replacement value)** All Insurances against loss, theft, damage or destruction of the Security Property will be for the full replacement value of the Security Property from time to time.
- (d) **(Policies)** The Borrower must deliver to the Financier:
  - (i) certificates of currency and receipts for the payment of each premium immediately on renewal of any Insurance; and
  - (ii) any other documents relating to the Insurances (including the policies, endorsement slips and all other money payable in respect of any policy) immediately upon request by the Financier.
- (e) **(Maintenance of Insurances etc)** The Borrower will:
  - (i) duly and punctually pay or cause to be paid all premiums and other money payable under, and perform and observe the terms of, all Insurances; and
  - (ii) ensure that every policy of Insurance contains an agreement by the insurer that, notwithstanding the lapse of that policy (except because of expiration in accordance with its terms) or any right of cancellation of the insurer or any cancellation by the Borrower (whether voluntary or involuntary), that policy will continue in force for the benefit of the Financier for at least 30 days after notice of cancellation has been sent by certified mail to the Financier and that no reduction in limits or coverage in that policy in whole or part or other material change to the terms of that policy will be effected except with the Financier's prior consent.
- (f) **(No liability)** The Financier will not incur any liability to any person arising out of a failure by any insurer to meet any claim, for any reason, under any Insurance.
- (g) **(Option as to payments)** Except as provided in clause 6.3, each sum received under any Insurance will be applied towards the replacement or repair of the property insured or to discharge the relevant liability or to make good the relevant loss covered by the sum received.
- (h) **(LM Mortgaged Properties)** The Borrower must:
  - (i) ensure and procure that the LM Mortgaged Property is insured in accordance with the provisions of each LM Loan Agreement; and

- (ii) deliver to the Financier upon request any certificates of currency and other documents relating to any insurance in respect of a LM Mortgaged Property.

## **16.8 Authorisations**

The Borrower will:

- (a) **(Obtain)** obtain all Authorisations required:
  - (i) in connection with the execution, delivery and performance of each Finance Document to which it is a party, the transactions contemplated by those Finance Documents and the legality, validity and enforcement of each of those Finance Documents;
  - (ii) for it to carry on business and which are material; and
  - (iii) in the case of the Responsible Entity, for the LM Mortgage Trust to be established;
- (b) **(Renew)** on or before the time and in the manner prescribed by any law, procure the renewal of each of its Material Authorisations and pay or cause to be paid the fees and other sums required in respect of each of its Material Authorisations (including in connection with any renewal) within the time allowed and in the manner prescribed by any applicable law;
- (c) **(Production)** on request by the Financier, provide to the Financier a copy of each of its Material Authorisations;
- (d) **(No cancellation)** not do, fail to do or consent to any act, matter or thing as a result of which any of its Material Authorisations is or may be suspended, forfeited, withdrawn, cancelled, refused or rendered void or by which it is disqualified permanently or temporarily from receiving or continuing to hold any of its Material Authorisations; and
- (e) **(No transfer)** not surrender or, without limiting clause 16.3(c), consent to the transfer of any of its Material Authorisations.

## **16.9 Security Property**

The Borrower will:

- (a) **(Good repair)** maintain the Security Property in good repair and condition and in good working order;
- (b) **(Operation)** diligently operate its assets in accordance with Good Industry Practice;
- (c) **(Not to prejudice)** not do, fail to do or consent to any act, omission or thing as a result of which any part of the Security Property becomes or could become liable to surrender, forfeiture or cancellation or becomes or could become prejudiced in any manner or the value of any Security as a security to the Financier becomes or could become lessened;
- (d) **(Protection of Security Property)** at the request of the Financier take or defend all legal proceedings that the Financier, acting reasonably, considers necessary or desirable for the preservation, protection or recovery of the Security Property; and

- (e) **(Documents of title and other securities)** upon request by the Financier, lodge with the Financier all:
  - (i) certificates, scrip and other indicia of title or interest in any Marketable Securities forming part of the Security Property;
  - (ii) negotiable instruments other than cheques forming part of the Security Property;
  - (iii) certificates of title to land forming part of the Security Property; and
  - (iv) other documents of title to the Security Property.

#### **16.10 Cash management and application**

- (a) The Borrower undertakes that it will ensure and procure that:
  - (i) within 30 days of receipt all Receivables (except for amounts payable by Customers under LM Loan Agreements which will be paid directly to the Managed Cash Account) will, where possible, be paid directly into the Managed Cash Account or upon receipt be paid into the Managed Cash Account;
  - (ii) Net Proceeds of the sale of any LM Mortgaged Property will be promptly paid directly into the Managed Cash Account and that such Net Proceeds will be applied in accordance with clause 6.2.
- (b) If the Responsible Entity is a responsible entity of another trust, it will not use or distribute any Trust Property whether by way of loan or otherwise to that trust or any Related Body Corporate or Affiliate of the Borrower.
- (c) Following Financial Close the Borrower and the Financier shall consult with each other in good faith to ascertain the most efficient manner in which to operate the Managed Cash Account.

#### **16.11 Operation of Managed Cash Account**

- (a) The Borrower must ensure and procure that the Financier has internet access to view the Managed Cash Account.
- (b) The Borrower must maintain the Minimum Cash Balance in the Managed Cash Account. If the balance in the Managed Cash Account is less than (or following any proposed withdrawal, will be less than) the Minimum Cash Balance, the Borrower must not withdraw funds from the Managed Cash Account unless such withdrawal is in accordance with clause 16.11(c) to (g) or with the prior written consent of the Financier.
- (c) Provided there is no subsisting Event of Default or Potential Event of Default or an Unpaid Sum, the Borrower may request the Financier to release an amount from the Managed Cash Account to be used in connection with Treasury Transactions, and the Financier will consent to that request provided:
  - (i) the Financier is satisfied that the amount to be withdrawn will be used by the Borrower to meet the Borrower's (and not any feeder funds) cash cover obligations to a Hedge Provider under a Treasury Transaction; and

- (ii) aggregate draws for this purpose do not exceed \$2,000,000 from the Managed Cash Account or the Alternative Minimum Cash Balance which is ever applicable; and
  - (iii) the amount withdrawn or any greater amount is deposited to the Managed Cash Account if the Borrower is no longer required to maintain that cash cover.
- (d) Provided there is no subsisting Event of Default or Potential Event of Default or an Unpaid Sum, the Financier will consent to withdrawals from the Managed Cash Account provided such amounts are required in respect of and are applied for one of the purposes specified in clause 6.2(a)(vi) (Permitted Drawings) and:
  - (i) subject to clause 16.11(e), the Permitted Drawings do not exceed \$500,000 in total (Maximum Drawings); and
  - (ii) as soon as practicable after the Maximum Drawings have been made, the Borrower will provide to the Financier a report showing details of the amounts withdrawn and how they were applied by the Borrower.
- (e) If:
  - (i) the Financier has been provided with the report referred to in clause 16.11(d)(ii), together with any other information reasonably requested by the Financier; and
  - (ii) the Financier has notified the Borrower that it has no objections to the report and the disbursement of the Permitted Drawings,
  - (iii) then the current level of Permitted Drawings shall be reduced to zero and the Borrower shall be able to make further withdrawals from the Managed Cash Account in accordance with the provisions of clause 16.11(d).
- (f) The Financier will consent to withdrawals from the Managed Cash Account even if the withdrawal would result in the credit balance of the Managed Cash Account being less than the Minimum Cash Balance provided that:
  - (i) the amount withdrawn is applied for any of the purposes specified in clause 6.2(a)(i) to 6.2(a)(vi) inclusive; and
  - (ii) within 90 days from the date the credit balance of the Managed Cash Account is less than the Minimum Cash Balance the Borrower will deposit such monies to ensure that the credit balance of the Managed Cash Account is not less than the Minimum Cash Balance.
- (g) Provided there is no subsisting Event of Default or Potential Event of Default or an Unpaid Sum, the Borrower may, with the Financier's consent, withdraw amounts from the Managed Cash Account provided that such amounts are required for and are applied in respect of those Qualifying Capital Improvements even if the withdrawal would result in the credit balance of the Managed Cash Account being less than the Minimum Cash Balance.
- (h) If the Financier agrees that the Minimum Cash Balance may in any month be less than \$6,000,000, the Borrower will ensure that within 90 days the Minimum Cash Balance will be restored.

- (i) Notwithstanding anything to the contrary in this clause 16.11, any withdrawal from the Managed Cash Account that is or is intended to be applied for the purpose or in the manner described in clause 16.11(d) to (f) and that is for a single item of expenditure in excess of \$250,000 shall require the prior written consent of the Financier.
- (j) Provided there is no subsisting Event of Default or Potential Event of Default or an Unpaid Sum, the Financier will consent to the Borrower withdrawing amounts from the Managed Cash Account, provided that the Minimum Cash Balance is maintained in the Managed Cash Account following such withdrawal and:
  - (i) the provisions of clause 6.2, 6.3 and 6.5 have been, and will at the next Monthly Interest Payment Date be, complied with; and
  - (ii) the withdrawal would not result in a breach of any other provision of this clause 16.11.

#### **16.12 Receivership of Customers**

- (a) The Borrower will ensure that the terms of appointment of any Controller to a Customer will contain the following provisions:
 

*"The Appointee may, without prejudice to any or all other rights and remedies it may have under this deed or applicable law, terminate this deed by giving 7 days written notice to the Controller. The Controller must formally retire by executing an appropriate deed of retirement prior to the end of the notice period given by the Appointor".*
- (b) The Borrower agrees that if the Financier in its absolute discretion is not satisfied with the identity, conduct or otherwise of any Receiver, Receiver and Manager or Controller appointed by the Borrower to a Customer, then the Borrower will, upon notice from the Financier, terminate the appointment of that Receiver and after consultation with the Financier appoint a Receiver which is acceptable to the Financier.

#### **16.13 Custodian Arrangements**

The Borrower shall:

- (a) monitor the performance of the Custodian in accordance with the methods and standards set out in Schedule 3 of the Custody Agreement;
- (b) promptly advise the Financier if it believes the Custodian is in breach of its obligations under the Custody Agreement; and
- (c) upon receipt provide the Financier with the reports and statements described in Schedule 4 of the Custody Agreement at the intervals mentioned in that Schedule.

#### **16.14 General undertakings**

- (a) **(Corporate existence)** The Responsible Entity will do all things necessary to maintain its corporate existence.
- (b) **(Change of business)** The Responsible Entity will not make or threaten to make any material change in the nature of its business as conducted at the date of this agreement or, if later, the date it became a party to this agreement.

- (c) **(Mergers, etc)** The Borrower will not enter into any merger or consolidation or make any acquisition of any other person or business or incorporate or any interest in a Joint Venture or acquire any shares or other Marketable Securities.
- (d) **(Business of the Borrower)** The Borrower will not carry on any business other than investing in a diversified portfolio of Australian registered first mortgages over commercial, residential, industrial, retail and vacant land, interest bearing cash investments and at call securities.
- (e) **(Amendments to constitutional documents)** Neither the Borrower nor the Responsible Entity will not agree to amend its Constitution or the LM Mortgage Trust Constitution in any way which would be likely to adversely affect the Financier's interests under the Finance Documents.
- (f) **(Compliance with constitutional documents)** The Borrower will comply with the LM Mortgage Trust Constitution and the Responsible Entity will comply with its Constitution.
- (g) **(Comply with laws)** The Borrower and the Responsible Entity will comply with all laws applicable to it (except to the extent that non-compliance is not material).
- (h) **(Taxes)** The Borrower and the Responsible Entity will:
  - (i) file all Tax returns and other information required to be filed by it with any relevant Tax authority to ensure that it complies with all of its obligations to pay Tax;
  - (ii) provide to the Financier all Tax returns and information referred to in clause 16.14(h)(i) above immediately after such Tax returns and information has been filed; and
  - (iii) pay all Taxes due and payable by it by the due date (except to the extent that payment of any Taxes is being contested in good faith.
- (i) **(Auditors)** On request from the Financier, the Borrower will instruct its auditors to:
  - (i) discuss the Borrower's financial position and operations with the Financier; and
  - (ii) disclose to the Financier any information which the Financier, acting reasonably, requests regarding the financial condition and operations of the Borrower and the Customers' obligations under the LM Loan Documents including the status of any actual or threatened enforcement or recovery actions.
- (j) **(Access)** On reasonable notice being given by the Financier, the Borrower will procure that any Delegate or professional advisor of the Financier is allowed (at the Financier's expense) to enter any land or buildings subject to a LM Mortgage or owned or occupied by the Borrower and to have access during normal business hours to the assets, books and records of the Borrower or Customer and to inspect the same in each case for the purposes of monitoring compliance with the Finance Documents.
- (k) **(Application of proceeds)** The Borrower undertakes to use each Advance only in accordance with clause 2.2.

- (l) **(Commercial dealings)** The Borrower will not deal in any way with any person except at arm's length in the ordinary course of business for valuable commercial consideration.
- (m) **(Bank accounts)** The Borrower will not (either in its or the Customer's name) maintain any bank account other than the Managed Cash Accounts and the Trust Bank Accounts unless the prior written consent of the Financier is first obtained.
- (n) **(Distribution)** While an Event of Default or Potential Event of Default is subsisting or will result from the making of the Distribution or there is an Unpaid Sums, not declare or make any Distributions without the prior written consent of the Financier (which may be withheld in its absolute discretion).

#### **16.15 LM Mortgage Trust undertakings**

The Borrower undertakes that it will:

- (a) **(Trust Documents)**
  - (i) other than to the extent that it would cause an Event of Default or a Potential Event of Default, or be a breach of an undertaking under a Finance Document, comply with all of its obligations as responsible entity under each Trust Document and at law and take all action reasonably required to enforce and preserve its rights under each Trust Document;
  - (ii) ensure that no waiver, revocation, amendment or variation of any term of any Trust Documents is made, whether formally or by conduct, without the prior written consent of the Financier other than:
    - A. an amendment or variation which is minor or immaterial or is a change of a technical nature which would not be likely to adversely affect the interests of the Finance Parties under the Finance Documents; or
    - B. in respect of the Compliance Plan, any modification required to be made by ASIC under section 601HE(2) of the Corporations Act);
  - (iii) not take nor fail to take and will procure that the Custodian as custodian of the LM Mortgage Trust does not take nor fails to take any action which would or could result in the termination, repudiation, rescission or revocation of any Trust Document to which it is a party; and
  - (iv) comply with its Compliance Plan;
- (b) **(Custodian)**
  - (i) procure that the Custodian complies with (and performs) all of its obligations as custodian of the LM Mortgage Trust under each Trust Document to which it is a party and at law;
  - (ii) not to instruct, or consent to, the Custodian doing anything which would constitute or result in an Event of Default or Potential Event of Default; and

- (iii) not to do anything (or permit anything to be done) which could (except with the prior written consent of the Financier) effect or facilitate the resignation, retirement, removal or replacement of the Custodian as custodian of the LM Mortgage Trust or the appointment of an additional custodian of the LM Mortgage Trust;
- (c) **(General)** not to do anything (or permit anything to be done) which:
  - (i) results or may result in the deregistration of the LM Mortgage Trust under section 601PB or Part 5C.10 of the Corporations Act;
  - (ii) restricts or limits the Borrower's:
    - A. Right of Indemnity out of the Trust Property; or
    - B. power under the LM Mortgage Trust Constitution or ability to observe its obligations under the Finance Documents to which it is a party;
  - (iii) restricts or limits the Financier's right of subrogation in connection with the Responsible Entity's Right of Indemnity or lien over the Trust Property;
  - (iv) causes its lien over any Trust Property to be restricted or limited or not to have priority over the rights of the beneficiaries of the LM Mortgage Trust; and
  - (v) effects or facilitates:
    - A. the termination of the LM Mortgage Trust or the termination, rescission or revocation of any Trust Documents to which it is a party;
    - B. the resettlement of any Trust Property; or
    - C. (except with the prior written consent of the Financier) the resignation, retirement, removal or replacement of LM Investment Management Limited as responsible entity of the LM Mortgage Trust; or
  - (vi) determines, alters, shortens or fixes the vesting date of the LM Mortgage Trust under the LM Mortgage Trust Constitution;
- (d) **(Guarantee)** not provide or incur any liability or indebtedness for or in respect of any guarantee, indemnity, letter of credit or any other similar assurance in connection with any Financial Liability (other than Financial Liability arising under the Finance Documents);
- (e) **(Determination of Trust)** notify the Financier immediately in writing if:
  - (i) the LM Mortgage Trust is determined or for any other reason ceases to exist, or it is required or directed by any of the beneficiaries of the LM Mortgage Trust to do any act or thing in relation to the LM Mortgage Trust or the trust funds of the LM Mortgage Trust; and
  - (ii) it proposes to retire or it otherwise ceases to be the responsible entity or trustee of the LM Mortgage Trust;



**(f) (Responsible Entity / Manager fees)**

- (i)** except with the prior written consent of the Financier, not receive, nor pay (as the context may require) any management fees or other amounts in the nature of management fees in respect of its role as the responsible entity of the LM Mortgage Trust, unless at the time that the payment is to be made or received, no Event of Default is subsisting and no fees, charges or interest or principal payable under or in connection with the Finance Documents are due and payable and remain to be paid and the Borrower undertakes to procure the recovery of all such sums paid in breach of this clause immediately upon request of the Financier, and to apply such sums in satisfaction of the relevant fees, charges and / or interest then payable under or in connection with the Finance Documents; and
- (ii)** the Borrower, in its role as Responsible Entity agrees:
  - A.** to waive any claims for management fees which may have accrued but are unpaid as at Financial Close;
  - B.** that any claim for management fees is and will be subordinated and subject in right of payment and repayment to all monies payable by the Borrower to the Financier under the Finance Documents; and
  - C.** that it will not pay any fees to any agent or Service Provider if an Event of Default is subsisting and any amount due and payable to the Financier under the Finance Documents is unpaid; and

- (g) (Hedging)** not alter the hedging strategy disclosed to the Financier and will not amend or vary that strategy without the Financier's prior written consent.

**16.16 LM Loan Document undertakings**

The Borrower must ensure and procure, unless the Financier otherwise consents, that it or the Custodian (as applicable) will in respect of each LM Document:

- (a)** punctually comply with and perform its obligations under each LM Loan Document;
- (b)** subject to all applicable laws, licences, approvals and authorisations regulating the enforcement of the Borrower's and/or the Custodian's rights under the LM Loan Documents, take all commercially reasonable action (including as reasonably required by the Financier) to enforce, and in the event of such enforcement:
  - (i)** while an Event of Default subsists, it must exercise those Powers in accordance with the directions (if any) of the Financier and, in relation to any dispute, it must act in accordance with those directions unless it believes in good faith that to do so will cause it to breach any law; and
  - (ii)** at all other times it must consult with the Financier in relation to the exercise of those powers or any disputes below:
- (c)** not amend, vary, replace or consent or agree to any change in, or not waive, vary or replace any requirement of;

- (d) not terminate, rescind or discharge (except by performance);
- (e) not assign, transfer or novate any interest in; or
- (f) not waive, (expressly or impliedly) or extend or grant time or indulgence in respect of, or do anything which would or would be likely to release another party from any obligation under, and
- (g) (Caveat) upon request by the Financier, at its own cost and expense, use its best endeavours to obtain a consent caveat from each Customer in respect of the Land subject to each LM Mortgage.

#### **16.17 Financier's reputation**

- (a) The Borrower will at all times conduct itself in a way which in no way damages or, in the Financier's reasonable opinion, may damage or adversely affect the Financier's reputation.
- (b) Without limiting clause 16.17(a) above, and other than in the case of legal proceedings or similar action, the Borrower undertakes to refrain at all times during and subsequent to the termination of this agreement from making or issuing any derogatory remark or statement regarding the Financier, its personnel or its business.
- (c) The Borrower will use its best endeavours to procure that the Service Provider and any of its agents and attorneys will conduct themselves in a manner which is consistent with clauses 16.17(a) and 16.17(b) above.

#### **16.18 Customer Payments**

The Borrower will ensure and procure that all payments made by a Customer under an LM Loan Agreement are paid directly by the Customer to the Managed Cash Account and shall as soon as practicable following Financial Close give notice to the Customers of such requirement and the specific details of the Managed Cash Account into which all payments are to be made.

#### **16.19 LM Mortgaged Property Taxes**

The Borrower undertakes:

- (a) promptly following Financial Close it will pay all arrear Taxes, land taxes, rates, body corporate fees, and other statutory charges (LM Mortgage Charges) payable in respect of any property the subject of a LM Mortgage; and
- (b) to ensure and procure that within:
  - (i) 30 days of Financial Close it will apply not less than \$1,600,000 of the Advance towards satisfying LM Mortgage Charges in arrears and
  - (ii) no later than 90 days after Financial Close all outstanding LM Mortgage Charges, which are not already the subject of a payment plan and that plan is being complied with, will be paid up to date and no LM Mortgage Charges will be in arrears or unpaid on the due date through to the Termination Date.

---

## **17. Default and termination**

### **17.1 Events of Default**

Each of the events set out in this clause 17.1 is an Event of Default, whether or not the cause is beyond the control of the Borrower or any other person:

- (a) **(Failure to pay)** the Borrower does not pay any amount payable by it at or before the due time on the due date and in the manner specified in any Finance Document unless that default is caused by a technical or administrative error by a bank or financial institution in the transmission of funds and is not remedied within 2 Business Days of its occurrence;
- (b) **(Failure to comply)** the Borrower, Custodian or Service Provider defaults in performing or observing any provision of any Finance Document (other than a provision requiring the payment of money as contemplated by clause 17.1(a) or any other provision specifically referred to in this clause 17.1), and if that default is capable of remedy it has not been remedied by the later of:
  - (i) 10 Business Days after the date of its occurrence; and
  - (ii) 10 Business Days after the date on which when the Borrower, Custodian or Service Provider becomes aware of the failure;
- (c) **(Untrue warranty)** any representation, warranty or statement made, repeated or taken to be made or repeated in any Finance Document or in any document, of any nature, issued under any Finance Document is proved to be untrue in any material respect when made or repeated or taken to be made or repeated, as the case may be (a Misrepresentation) and if the circumstances causing the Misrepresentation are capable of remedy those circumstances have not been remedied within the later of:
  - (i) 10 Business Days after the date of the occurrence of the Misrepresentation; and
  - (ii) 10 Business Days after the date of the Borrower, Custodian or Service Provider becomes aware of the occurrence.
- (d) **(Breach of undertaking)** the Borrower, Custodian or Service Provider breaches any undertaking given at any time to the Financier or fails to comply with any condition imposed by the Financier in agreeing to any matter (including any waiver);
- (e) **(Default under other transactions)**
  - (i) any Financial Liability of the Borrower exceeding \$500,000 becomes or becomes capable of being declared, prematurely due and payable as a result of a default, an event of default or a review event, however described;
  - (ii) any Financial Liability of the Borrower or any sum payable in respect of it is not paid when due or within any originally applicable grace period; and
  - (iii) any Encumbrance relating to any asset of the Borrower becomes capable of enforcement;

- (f) **(Event of Insolvency)** an Event of Insolvency occurs in relation to the Borrower, the Custodian or the Service Provider;
- (g) **(Cessation of business)** the Borrower, the Service Provider or the Custodian ceases, or threatens to cease, to carry on all or a material part of its business;
- (h) **(Void or voidable)** any Finance Document is, becomes or is claimed by the Borrower, Custodian or Service Provider to be invalid, void, voidable, unenforceable or of limited force and effect, either in whole or in part;
- (i) **(Security)** any Security does not create the Encumbrance it purports to create;
- (j) **(Repudiation)** the Borrower, the Custodian or Service Provider repudiates, or evidences an intention to repudiate, any Finance Document;
- (k) **(Change in control)** effective control of the Responsible Entity is altered from that subsisting at the date of this agreement. For the purpose of this clause 17.1(k) a person or persons has effective control of the Borrower if that person or those persons (acting jointly):
  - (i) control the composition of the board of directors of the Responsible Entity;
  - (ii) are in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the Responsible Entity; or
  - (iii) hold more than one-half of the issued share capital of the Responsible Entity excluding any part of that issued share capital which carries no right to participate beyond a specified amount in the distribution of either profits or capital;
- (l) **(Illegality)** at any time it is unlawful for the Borrower, the Custodian or Service Provider to perform any of its obligations under any Finance Document;
- (m) **(Breach of LM Mortgage Trust provisions)**
  - (i) the Responsible Entity defaults in performing or observing any provision of clause 16.15;
  - (ii) the Responsible Entity ceases to be the sole trustee of the LM Mortgage Trust; and
  - (iii) the LM Mortgage Trust terminates or the capital the LM Mortgage Trust vests in any beneficiary of the LM Mortgage Trust or any other person (other than where it vests solely as a result of a person becoming a beneficiary of the LM Mortgage Trust);
- (n) **(Material Adverse Effect)** any event or series of events whether related or not occurs which has or could reasonably have a Material Adverse Effect;
- (o) **(Auditors)** the Auditor's appointment is terminated for whatever reason and is not replaced by an Approved Auditor;
- (p) **(Borrower ceases to be responsible entity)** the Responsible Entity retires or otherwise ceases to be the responsible entity or trustee of the LM Mortgage Trust or any resolution is passed at a meeting to replace LM Investment Management

Limited or other person as responsible entity or trustee of the LM Mortgage Trust, in any case without the Financier's prior written consent;

- (q) **(Order for removal as responsible entity)** an application or order is made in any court for:
  - (i) removal of the Responsible Entity as responsible entity or trustee of the LM Mortgage Trust; or
  - (ii) any Trust Property to be brought into court or administered by the court or under its control,and the Financier is not satisfied with the replacement or additional or proposed replacement or additional responsible entity or trustee;
- (r) **(Restrict right of indemnity)** the Responsible Entity's Right of Indemnity from the Trust Property in respect of obligations incurred by the Responsible Entity under the Finance Documents is materially restricted or materially lost other than a restriction imposed under the Corporations Act;
- (s) **(Termination of Trust)**
  - (i) the LM Mortgage Trust terminates or the capital of the LM Mortgage Trust vests for any reason whatsoever; or
  - (ii) without the Financier's prior written consent, there occurs:
    - A. any resettlement of the Trust Property; or
    - B. any vesting of any Trust Property; or
- (t) **(Deregistration of Trust)** an application is made for deregistration of the LM Mortgage Trust or a notice is given under section 601PB(2) of the Corporations Act or the LM Mortgage Trust is or becomes deregistered under Part 5C.10 of the Corporations Act;
- (u) **(Variation of Compliance Plan)** any Compliance Plan is varied in a material respect without the prior written consent of the Financier and that variation has a Material Adverse Effect and that default is not remedied within 10 Business Days of notice from the Financier;
- (v) **(Custody arrangements):**
  - (i) the Custodian ceases to be the sole custodian of the LM Mortgage Trust unless replaced by a person and on terms acceptable to the Financier within 30 days;
  - (ii) the Custodian breaches the Custody Agreement and such breach is not remedied within 10 Business Days (or such other longer period as is consented to by the Financier, such consent not to be unreasonably withheld or delayed) of its occurrence.
- (w) **(Meetings under 601FL and 601FM)** in respect of the LM Mortgage Trust either:
  - (i) a meeting is called under section 601FL without the Financier's prior written consent; and/or

- (ii) a resolution is passed at a meeting called under section 601FM of the Corporations Act;
- (x) **(Application for or appointment of temporary responsible entity)** an application is made under sections 601FL(3) and/or 601FN for the appointment of a temporary responsible entity to the LM Mortgage Trust or a temporary responsible entity is appointed under section 601FP of the Corporations Act to the LM Mortgage Trust, except where such temporary responsible entity has been approved in writing by the Financier;
- (y) **(Winding up of Trust)** in respect of the LM Mortgage Trust :
  - (i) a resolution of members is passed at a meeting is called under section 601NB of the Corporations Act to wind up the LM Mortgage Trust;
  - (ii) a notice is given under section 601NC of the Corporations Act; or
  - (iii) an application is made in any court under section 601FQ(5) and/or 601ND of the Corporations Act,

in any case without the Financier's prior written consent;
- (z) **(Action under section 601MA)** an action is commenced against the Responsible Entity under section 601MA of the Corporations Act and such action has, or could reasonably likely have, a Material Adverse Effect;
- (aa) **(Minimum principal repayments)** the Borrower fails to reduce the principal amount owing in respect of Advance:
  - (i) by an amount of \$7,000,000 on or before 31 December 2010;
  - (ii) by a further amount of \$11,000,000 on or before 30 June 2011;
  - (iii) by a further amount of \$9,000,000 on or before 31 December 2011; and
  - (iv) where the Termination Date is extended to 30 June 2013 by the Borrower validly exercising the option pursuant to clause 2.5 by a further amount of \$13,500,000 on or before 30 June 2012.
- (bb) **(Key man)** Peter Drake ceases any involvement in the conduct of the business of the Borrower, of the Service Provider and the Borrower's Affiliates;
- (cc) **(Services Agreement):**
  - (i) the Services Agreement is terminated and not replaced by a services agreement acceptable to the Financier or the Borrower fails to satisfy the Financier that it can provide the services referred to in the Services Agreement;
  - (ii) the Service Provider ceases to be LM Administration Pty Ltd or such other person approved by the Financier;
  - (iii) the Service Agreement is amended, varied or supplemented without the Financier's prior written consent;
  - (iv) the Service Provider fails to provide the "services" (as defined in the Service Agreement); and

- (v) the Service Provider breaches the Service Agreement and such breach is not remedied with 10 Business Days of its occurrence.
- (dd) (New lending) the Alternative Minimum Cash Balance is not maintained while any new LM Loan provided under clause 16.5(b)(i)B remains outstanding.
- (ee) (LM Loan Documents):
  - (i) any LM Loan Document or any part thereof is invalid, unenforceable or void;
  - (ii) any LM Mortgage or LM Collateral Security is set aside as a preference, transaction at an under value or fraudulent transfer or otherwise;
  - (iii) as a result of any litigation, administrative proceedings or arbitration made with respect to any LM Loan Document the value or marketability of the LM Loan or the related LM Mortgaged Property is adversely affected; or
  - (iv) notice is received from a person that claims to have an Encumbrance ranking in priority to or equal with the Encumbrance held by the Borrower or Custodian and constituted by any LM Mortgage and such notice is not withdrawn within 10 Business Days of receipt (or the Financier is otherwise satisfied that the claim will not succeed),

where (in respect of any matter described in sub-clauses 17.1(ee)(i) to (ee)(iv)) the balance of the Adversely Affected LM Loans exceeds (in aggregate) \$1,000,000 at that time.

## 17.2 Financier's rights on Event of Default

If any Event of Default occurs then during the period it subsists the Financier may by notice to the Borrower take any one or more of the following actions:

- (a) declare that an Event of Default has occurred;
- (b) declare that all of the Commitment and any other obligations of the Financier to the Borrower will be cancelled immediately and all fees payable in relation to the Commitment will become immediately due and payable, and those amounts will become immediately due and payable;
- (c) declare the Advance, interest on the Advance and all other money the payment or repayment of which forms part of the Obligations immediately due and payable, and those amounts will become immediately due and payable; and
- (d) at the cost of the Borrower, appoint a firm of independent accountants or other experts to review and report to the Financier on the affairs, financial condition and business of the Borrower or Responsible Entity.

---

## 18. Indemnities

- (a) The Borrower will on demand by the Financier indemnify the Financier against any Cost, loss, damage or claim which the Financier may sustain or incur as a consequence of:
  - (i) any sum payable by the Borrower under any Finance Document not being paid when due (including as a result of any Advance not being

prepaid in accordance with a notice of prepayment given by the Borrower);

- (ii) the occurrence of any Event of Default or Potential Event of Default;
- (iii) an Advance requested in a Utilisation Notice not being provided for any reason including failure to fulfil any condition precedent but excluding any default by the Financier;
- (iv) any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to any transaction contemplated by any Finance Document;
- (v) the Financier acting on any fax or other notice or on any direct oral or telephone instructions or request reasonably believed by the Financier to originate from the Borrower or an Authorised Officer of the Borrower; or
- (vi) the Financier receiving payments of principal other than on the last day of an Interest Period for any reason including prepayment in accordance with a Finance Document.

These Costs, losses, damages and claims will include the amount determined by the Financier as being any Break Costs suffered or incurred by that Financier by reason of the liquidation or re-employment of deposits or other funds acquired or contracted for by the Financier to fund or maintain any Advance.

- (b) The Financier must, as soon as reasonably practicable after demand by the Borrower, provide a certificate to the Borrower verifying the amount of its Break Costs claimed under clause 18(a).

---

## **19. Set-off**

- (a) The Borrower authorises the Financier, at any time after an Event of Default has occurred and is subsisting, to apply without prior notice any credit balance (whether or not then due) to which the Borrower is at any time entitled on any account and in any currency at any office of the Financier in or towards satisfaction of any sum then due and unpaid from the Borrower to the Financier under any Finance Document.
- (b) The Borrower further authorises the Financier, at any time after an Event of Default has occurred and is subsisting, to set-off without prior notice any amount owing (whether present or future, actual, contingent or prospective) by the Borrower to the Financier under any Finance Document against any liability (whether present, future, actual, contingent or prospective) of the Financier to the Borrower under any Finance Document or on any other account.
- (c) The Financier will not be obliged to exercise any of its rights under this clause 19, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).



---

## **20. Costs, stamp duties and GST**

### **20.1 Costs**

- (a) The Borrower must reimburse the Financier on demand for, and indemnifies the Financier against, all Costs including legal fees, costs and disbursements (on a full indemnity basis and determined without taxation, assessment or similar process) incurred in connection with:
  - (i) **(Preparation)** negotiating, preparing and executing the Finance Documents and any subsequent consent, agreement, approval, waiver or amendment relating to the Finance Documents; and
  - (ii) **(Enforcement)** exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any Power under the Finance Documents, including any Costs incurred in the evaluation of any matter of material concern to the Financier or the investigation of any matter which the Financier determines, acting reasonably, may be an Event of Default or Potential Event of Default.

### **20.2 Stamp duties**

The Borrower:

- (a) must promptly pay all stamp duty, transaction, registration and similar Taxes, including fines and penalties which may be payable to, or required to be paid by, any appropriate Government Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of the Finance Documents or any payment, receipt or other transaction contemplated by them; and
- (b) indemnifies the Financier against any loss or liability incurred or suffered by it as a result of the delay or failure by the Borrower to pay any Taxes as required in accordance with clause 20.2(a).

### **20.3 GST**

- (a) The consideration payable for any supply made by or through the Financier under or in connection with any Finance Document does not include GST.
- (b) If GST is payable in respect of any supply made by or through the Financier under or in connection with any Finance Document (**GST Liability**) then:
  - (i) where consideration is provided by the Borrower in relation to that supply, the Borrower will pay an additional amount to the Financier equal to the full amount of the GST Liability; and
  - (ii) except where clause 20.3(b)(i) applies, the Borrower will indemnify and keep the Financier indemnified for the full amount of the GST Liability.

If required by law, the Financier will provide to the Borrower a tax invoice complying with the relevant law relating to any payment made to it in accordance with this clause 20.3(b).

- (c) Any payment or reimbursement required to be made to the Financier under any Finance Document that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or other amount less the amount of any

input tax credit or other credit to which the Financier is entitled for the acquisition to which the Cost or other amount relates.

---

## **21. Assignments and confidentiality**

### **21.1 Successors and assigns**

This agreement is binding on and enures to the benefit of each party to it and its respective successors and permitted assigns.

### **21.2 Assignments by the Borrower**

The Borrower cannot assign, novate or otherwise transfer any of its rights or obligations under any Finance Document without the prior written consent of the Financier.

### **21.3 Assignments by Financier**

The Financier may assign all or any of its rights or transfer all or any of its rights or obligations under the Finance Documents to any person it determines at any time provided that with effect from such assignment clause 15 shall be deemed to have been amended so that references to the "Responsible Entity" in its personal capacity are deleted in regard to the representations in clause 15 without in any way limiting any breaches of such representations that may have occurred prior to the assignment

### **21.4 No deductions and withholdings or increased costs in certain circumstances:**

- (a) If:
  - (i) the Financier assigns or transfers any of its rights or obligations under the Finance Documents or changes the office through which it provides the Facility; and
  - (ii) the Borrower would be obliged to make a payment to the New Financier or Financier acting through its new office under clause 11 or clause 13,

then the New Financier or Financier acting through its new office is only entitled to receive payment under those clauses to the same extent as the existing Financier or Financier acting through its previous office would have been if the assignment, transfer or change had not occurred.

- (b) A Financier may not assign or transfer any of its rights or obligations under the Finance Documents or change the office through which it provides the Facility, if the New Financier or the Financier acting through its new office would be entitled to exercise any rights under clause 12 as a result of circumstances existing at the date the assignment, transfer or change is proposed to occur.
- (c) A Financier must bear its own costs and expenses (including legal fees) in connection with any such assignment or transfer.

### **21.5 Confidentiality**

- (a) Subject to clause 21.5(b), the Financier will not disclose any confidential or unpublished information or documents supplied by the Borrower in connection with the Finance Documents.

(b) The Financier will be entitled to disclose any confidential information or documents referred to in clause 21.5(a) or otherwise relating to the Borrower or the Finance Documents:

- (i) in any proceeding arising out of or in connection with any Finance Document to the extent that the disclosure is deemed by the Financier necessary to protect its interests;
- (ii) where the information is in the public domain other than as a result of a breach of this clause 21.5;
- (iii) if required to do so under a binding order of any Government Authority or any procedure for discovery in any proceedings;
- (iv) if required to do so under any Binding Requirement;
- (v) to ratings agencies, to the extent required by them;
- (vi) otherwise as required or permitted by any Finance Document;
- (vii) to its Related Bodies Corporate, its legal advisors and its consultants as long as disclosure is made on a confidential basis;
- (viii) to a proposed assignee or transferee of any rights or obligations under any Finance Document or to any sub-participant or other person with whom any other transaction may be entered into under which payments may be made by reference to any Finance Document or the Borrower so long as disclosure is made on a confidential basis; or
- (ix) with the Borrower's prior written consent.

(c) The Borrower will ensure and procure that it, its directors, employees or any Related Body Corporates (Related Persons) will treat the terms of this agreement and the involvement of the Financier as confidential information and no announcement or communications relating to the negotiations of the parties, to the Financier's role as lender or to the existence, subject matter or terms of the Finance Documents may be made or authorised by the Borrower or Related Persons unless:

- (i) in any proceeding arising out of or in connection with any Finance Document to the extent that the disclosure is deemed by the Borrower necessary to protect its interests;
- (ii) where the information is in the public domain other than as a result of a breach of this clause 21.5;
- (iii) if required to do so under a binding order of any Government Authority or any procedure for discovery in any proceedings;
- (iv) to its Related Bodies Corporate, its legal advisors and its consultants as long as disclosure is made on a confidential basis;
- (v) if required to do so under any Binding Requirement;
- (vi) to inform investors in the LM Mortgage Trust, or any feeder fund of the LM Mortgage Trust, in relation to the affairs of the LM Mortgage Trust or the relevant feeder fund;

- (vii) in response to a request from any Government Authority, or to inform any Government Authority, in relation to the affairs of the LM Mortgage Trust, or any feeder fund of the LM Mortgage Trust; or
- (viii) with the Financier's prior written consent.
- (d) This clause 21.5 will survive only until the third anniversary of the date on which all Advance are fully and finally repaid.

---

## **22. Governing law**

### **22.1 Governing law**

This agreement is governed by the law applying in Queensland.

---

## **23. Arbitration**

### **23.1 Notice of Dispute**

If any dispute or difference arises between the parties, directly or indirectly based upon, arising out of, relating to or in connection with this agreement (including but not limited to any question relating to the existence, validity or termination of this agreement) ("*Dispute*"), either party may give a notice in writing to the other party, adequately identifying and providing details of the Dispute.

### **23.2 Negotiations**

The parties agree that they will attempt to resolve the Dispute through good faith negotiations within ten (10) Business Days after the date of receipt of the Notice of Dispute, or such longer period as is agreed in writing between the parties ("*Negotiation Period*")

### **23.3 Reference to arbitration**

- (a) If the Dispute is not resolved during the Negotiation Period, the Dispute shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (b) The seat of the arbitration will be Sydney.
- (c) The number of arbitrators will be 1.
- (d) The language of the arbitration will be English.

### **23.4 General principles**

The parties further agree to the following general principles relating to the procedure of the arbitration:

- (a) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
- (b) that any arbitration conducted pursuant to this clause shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;

- (c) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
  - (i) how many written submissions will be allowed;
  - (ii) where appropriate, the length of written submissions;
  - (iii) the extent of document discovery permitted, if any;
  - (iv) the consolidation of arbitration proceedings, when requested;
  - (v) the joinder of parties or the consolidation of proceedings, when requested;
  - (vi) the length of any hearing; and
  - (vii) the number of experts, if any, each party is allowed to appoint; and
- (d) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

### **23.5 Expedited proceedings**

- (a) The parties agree that the arbitral tribunal will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.
- (b) All evidence in chief will be in writing, unless otherwise ordered by the arbitrator.
- (c) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (d) After consultation with the parties the arbitral tribunal will determine whether to conduct the proceedings on the basis of documents and other materials only or whether an oral hearing will be held. In doing so the arbitral tribunal shall have particular regard to the parties' request for an expedited procedure and the rules of natural justice.
- (e) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:
  - (i) the duration of the oral hearings shall be fixed by the arbitral tribunal;
  - (ii) unless otherwise ordered by the arbitral tribunal, the oral hearing shall be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party shall have the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties;
  - (iii) oral evidence in chief at the hearing shall be permitted only with the permission of the arbitral tribunal for good cause;
  - (iv) not less than 14 days prior to the date fixed for the oral hearing, or any other period of time specified by the arbitrator, each party shall give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination;

- (v) in exceptional circumstances the arbitrator may extend the time for the oral hearing set pursuant to sub-paragraph (i) above.

## **23.6 Consolidation**

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply.

## **23.7 Joinder**

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this agreement hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

## **23.8 Award final and binding**

Any award will be final and binding upon the parties.

## **23.9 Effect on Powers**

The Borrower agrees that notwithstanding this clause 23, the Financier will be entitled to exercise any Power under its Security if the Financier determines in its sole discretion that the exercise of the Power is necessary or desirable to protect the Financier's interests under the Finance Documents, and any exercise of the Power shall be unaffected by the existence of any Dispute, provided that the Financier agrees that its exercise or purported exercise of the Power will not preclude the Borrower seeking injunctive relief and/or damages arising from the Financier's exercise or purported exercise of the Power.

---

## **24. Miscellaneous**

### **24.1 Certificate of Financier**

A certificate or determination in writing signed by the Financier or an Authorised Officer of the Financier certifying:

- (a) an exchange rate, a rate of interest or an amount payable by the Borrower under any Finance Document is sufficient evidence of the matters to which it relates; and
- (b) any other act, matter or thing relating to any Finance Document is sufficient evidence of those matters unless the contrary is proved.

### **24.2 Notices**

- (a) Except as otherwise specified in any other Finance Document, each communication (including each notice, consent, approval, request or demand) under or in connection with any Finance Document:
  - (i) must be legible and in writing or, subject to clause 24.2(c), dispatched by electronic communication;
  - (ii) must be addressed or dispatched by electronic communication to the following address or facsimile number (or as otherwise notified, in the case of the Borrower, to the Financier and, in the case of the Financier, to the Borrower, from time to time or when it becomes a party to the Finance Documents):

**Borrower**

Address: Level 4, RSL Centre, 9 Beach Road,  
Surfers Paradise, Qld, 4217  
Fax: +61 7 5592 2505  
Email: stickner@lmaustralia.com  
For the attention of: Simon Tickner

**Financier**

Address: 126 Philip St., 14th Floor  
Sydney, NSW  
Australia  
Fax: + 61 2 8258 3632  
Email: lm1@db.com  
For the attention of: George Wong

*with a copy to:*

Address: 55/F Cheung Kong Center  
2 Queen's Road Central  
Hong Kong  
Fax: +852 2203 7224  
Email: beaux.pontak@db.com  
For the attention of: Beaux Pontak, Deutsche Bank AG, Hong  
Kong Branch

- (iii) must be signed, or in the case of electronic communication dispatched, by the sender or by an Authorised Officer of the sender;
  - (iv) must be delivered by hand or posted by prepaid post to the address, dispatched by electronic communication or sent by fax to the facsimile number, in each case, provided for in accordance with clause 24.2(a)(ii);
  - (v) is taken to be received by the addressee:
    - A. (in the case of prepaid post) on the second Business Day after the date of posting;
    - B. (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
    - C. (in the case of delivery by hand) on delivery; and
    - D. (in the case of electronic communication) on the electronic communication entering a system outside the control of the sender, or the first of those systems where the electronic communication enters successively 2 or more systems.
- (b) Subject to clause 24.2(c), if under any provision of any Finance Document any notice or other communication is required to be in writing that requirement is taken to have been satisfied if the person giving the notice or other communication gives that notice or other communication by electronic communication in accordance with this clause 24.2.

- (c) Despite any other provision of any Finance Document:
  - (i) each Utilisation Notice and Selection Notice; and
  - (ii) any notice or other communication which must be given, served or made under or in connection with clause 17.1(bb) or if not given, served or made under a Finance Document may give rise to an Event of Default, must be in writing in order to be valid.
- (d) Each communication sent in accordance with this clause 24.2 may be relied on by the recipient if the recipient, acting reasonably, believes the communication to be genuine and if it appears to be executed by or on behalf of the sender in accordance with clause 24.2(a)(iii) (or as otherwise required in accordance with any other Finance Document) or to have been sent from the email address of an Authorised Officer of the sender (without the need for further enquiry or confirmation).
- (e) Any communication sent or received by the Borrower in accordance with this clause 24.2 will be taken to have been sent or received by the Borrower.

#### **24.3 Continuing obligation**

Each Finance Document constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing until a final discharge has been given to the Borrower.

#### **24.4 Settlement conditional**

If:

- (a) (i) the Financier has at any time released or discharged:
  - A. the Borrower from its obligations under any Finance Document; or
  - B. any assets of the Borrower from a Security,
 in either case in reliance on a payment, receipt or other transaction to or in favour of the Financier; or
- (ii) any payment, receipt or other transaction to or in favour of the Financier has the effect of releasing or discharging:
  - A. the Borrower from its obligations under any Finance Document; or
  - B. any assets of the Borrower from a Security; and
- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and



(c) that claim is upheld or is conceded or compromised by the Financier,  
then:

- (i) the Financier will immediately become entitled against the Borrower to all rights (including under any Finance Document) as it had immediately before that release or discharge;
- (ii) the Borrower must, to the extent permitted by law:
  - A. immediately do all things and execute all documents as the Financier may, acting reasonably, require to restore to the Financier all those rights; and
  - B. indemnify the Financier against all Costs and losses suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

#### **24.5 Further acts and documents**

The Borrower must promptly do all further acts and execute and deliver all further documents (in form and content satisfactory to the Financier, acting reasonably, and at the entire Cost of the Borrower) required by law or requested by the Financier, acting reasonably, to give effect to each Finance Document or to perfect or improve the Powers afforded or created, or intended to be afforded or created, by any Finance Document.

#### **24.6 Attorney**

The Borrower irrevocably appoints:

- (a) the Financier; and
- (b) each Authorised Officer of the Financier,

jointly and severally the attorney of the Borrower, in the Borrower's name and on the Borrower's behalf, at any time and in any manner as the Financier in its absolute discretion thinks fit to do all acts necessary or proper to:

- (i) further or fully assure any Finance Document to the Financier; and
- (ii) perfect the Powers afforded or created, or intended to be afforded or created, by any Finance Document.

Each attorney may exercise its powers under this clause 24.6 notwithstanding that this may result in a conflict between the duty of that attorney to the Borrower and either the interests of that attorney or any Related Body Corporate or other related person of that attorney or another duty of that attorney.

#### **24.7 Severance**

If at any time any provision of any Finance Document is or becomes illegal, invalid, void or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability:

- (a) in that jurisdiction of any other provision of that Finance Document; or

- (b) under the law of any other jurisdiction of that or any other provision of that Finance Document.

#### **24.8 Powers cumulative**

The Powers conferred by each Finance Document on the Financier are cumulative and in addition to all other Powers available to the Financier by law or under any other Finance Document.

#### **24.9 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power provided by law or under any Finance Document by the Financier does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power provided by law or under any Finance Document.
- (b) A waiver or consent given by the Financier under any Finance Document is only effective and binding on the Financier if it is given or confirmed in writing by the Financier.
- (c) No waiver of a breach of a term of a Finance Document operates as a waiver of another breach of that term or of a breach of any other term of any Finance Document.

#### **24.10 Consents**

A consent required under any Finance Document from the Financier may be given or withheld, or may be given subject to any conditions, as the Financier (in its absolute discretion) thinks fit, unless the Finance Document expressly provides otherwise.

#### **24.11 Indemnities**

- (a) Each indemnity in each Finance Document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Finance Documents.
- (b) It is not necessary for the Financier to incur any expense or to make any payment before enforcing a Right of Indemnity conferred by any Finance Document.

#### **24.12 Time of the essence**

Time is of the essence in respect of the Borrower's obligations under the Finance Documents.

#### **24.13 Moratorium legislation**

To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to:

- (a) lessen or affect in favour of the Borrower any obligation under any Finance Document; or
- (b) delay or otherwise prevent or prejudicially affect the exercise by the Financier of any Power under any Finance Document or otherwise,

are expressly waived.

#### **24.14 Binding on each signatory**

Each Finance Document binds and is enforceable against each party despite:

- (a) any other person not executing a Finance Document or its execution being defective in any way; or
- (b) any obligation or liability of any other party under a Finance Document not being binding or enforceable against that party for any reason.

#### **24.15 Counterparts**

- (a) Any Finance Document may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of that Finance Document, and all together constitute one document.
- (b) A party who has executed a counterpart of any Finance Document may exchange that counterpart with another party by faxing it to that other party and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party. However, the validity of that Finance Document is not affected if the party who has faxed the counterpart delays in delivering or does not deliver it by hand or by post.

#### **24.16 Entire agreement**

To the extent permitted by law, in relation to their subject matter, the Finance Documents:

- (a) embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) supersede any prior written or other agreement of the parties.

---

### **25. No representation by or reliance**

The Borrower acknowledges that:

- (a) the Financier does not have any duty to supply it with information in relation to or affecting the Financier before the date of this agreement or during the currency of any Finance Document;
- (b) it has relied on its own inquiries as to the nature and extent of its entire relationship with the Financier (whether or not recorded in the Finance Documents) and the nature and effect of the Finance Documents; and
- (c) it does not enter into any Finance Document in reliance on any representation, promise, statement, conduct or inducement by or on behalf of the Financier except for any inducement expressly set out in the Finance Documents.

## **Schedule 1 - Documentary conditions precedent**

### **A. Conditions precedent to be delivered before the first Advance**

1. A verification certificate substantially in the form of Schedule 8 from each of the Borrower, the Responsible Entity and the Service Provider.
2. A certified extract of the resolutions of the directors of the Responsible Entity:
  - (a) approving the Facilities;
  - (b) confirming that it is in the Borrower's best interests to enter into those Finance Documents;
  - (c) authorising the execution by the Borrower of those Finance Documents and the performance by it of its obligations under those Finance Documents; and
  - (d) appointing an Authorised Officer or Authorised Officers.
3. If any Finance Document will be executed by any party under power of attorney, the original or a duly certified copy of that power of attorney or those powers of attorney, duly executed and, in respect of the Custodian, appropriate evidence of the Custodian having been instructed by the Borrower to execute the Transaction Documents to which it is party.
4. The Finance Documents duly executed by all parties and, if necessary, stamped and in registrable form (or if not stamped the Financier is satisfied it has received from the Borrower sufficient funds to pay the estimated stamp duty).
5. Replies to all requisitions of the Financier and its solicitors relating to the Facilities and the Finance Documents.
6. A copy of all Authorisations required for the entry into or performance of the Finance Documents by the Borrower or the Responsible Entity including for the avoidance of doubt each Material Authorisations.
7. An opinion, addressed to the Financier, of the legal advisors to the Financier as to all matters relating to the Borrower, and the Finance Documents as the Financier may require.
8. Evidence that any Encumbrances in respect of any of the assets of the Trust Property which are not permitted by the Finance Documents have been released by the person in whose favour they were granted and in particular the Encumbrances granted in favour of the Commonwealth Bank of Australia.
9. Without limiting the following obligation, a settlement statement issued by the Commonwealth Bank of Australia setting out details of all amounts that are or will be due to it from the Borrower as at Financial Close and evidence that all Financial Liabilities of the Borrower which are not permitted by the Finance Documents have been fully and finally repaid.
10. Due Diligence Report.
11. All documentation and other evidence requested by the Financier to comply with its know your client procedures in respect of the Borrower.
12. The Financier being satisfied that no instruction can be given to the Custodian without the Financier being a co-signatory to that instruction.

For the purposes of this Schedule 1, "certified" means certified by a director of the Borrower in the form required by the Financier.

## Schedule 2 - Form of Utilisation Notice and Selection Notice

### A. Form of Utilisation Notice

To: Deutsche Bank AG, Sydney Branch A (Financier)

From: LM Investment Management Limited ABN 68 077 208 461 in its capacity as Responsible Entity for the LM First Mortgage Income Fund ARSN 089 343 288 (Borrower)

Date: [ ]

#### UTILISATION NOTICE

Facility agreement dated [ ] (Facility Agreement)

Dear Sirs

Unless otherwise defined, expressions used in this notice have the meaning given to them in the Facility Agreement.

This is a Utilisation Notice and is irrevocable.

We give you notice under clause 4.1 of the Facility Agreement that the Borrower requires an Advance as follows:

Utilisation Date:	[date]
Amount:	[\$[amount]]
Purpose:	[purpose]
Interest Period:	[one, month]
Payment Instructions:	[insert]

We confirm that:

1. each Repeating Representation is true and correct on the date of this Utilisation Notice and will be true and correct on the proposed Utilisation Date (both before and after the Advance is made) in each case with reference to the facts and circumstances existing at that time; and
2. no Event of Default or Potential Event of Default is subsisting or will result from the making of the Advance<sup>1</sup>.

Yours faithfully

[Insert name of Authorised Officer]

For and on behalf of [ ]

<sup>1</sup> Delete as appropriate

---

**Schedule 3 - LM Loan Schedule**

Schedule	Investor ID	Loan ID	Borrower name	Balance	Security
	113387	100112374	Beezina Developers Pty Ltd IOR & ATF the Jindabyne Unit Trust	47,196,754	Please refer to Release price Schedule
	119202	100161496	Northshore Bayview St Pty Ltd IOR & ATF the Northshore Bayview No. 1 Unit Trust	46,891,258	Please refer to Release price Schedule
	115366	100128602	Redland Bay Leisure Life Pty Ltd A.C.N. 108 932 916	24,590,113	Please refer to Release price Schedule
	123630	100202357	Redland Bay Leisure Life Development Pty Ltd A.C.N. 112 002 383 IOR & ATF the Redland Bay Leisure Life Development Partnership	22,837,466	Please refer to Release price Schedule
	109181	10007949	Belpac Pty Ltd	44,279,535	Please refer to Release price Schedule
	116712	100139773	St Crispin's Property Pty Ltd IOR ATF the St. Crispin's Property Trust	37,434,970	Please refer to Release price Schedule
	109563	10008223 & 100257674	Young Land Corporation Pty Ltd A.C.N. 102 989 886	36,922,056	Please refer to Release price Schedule
	121443	100181787	Brambleton Pty Ltd	26,258,859	Please refer to Release price Schedule
	115151	100127000	Eden Apartments Pty Ltd A.C.N. 113 612 418	21,054,884	Please refer to Release price Schedule
	117331	100144914	Lot 111 Pty Ltd IOR & ATF the Garigal Trust	23,362,707	Please refer to Release price Schedule
	125149	100217520	Graystones Projects Pty Ltd A.C.N. 119 783 470	21,980,303	Please refer to Release price Schedule
	124234	100208388	Glendinning Developments Pty Limited A.C.N. 119 218 174	15,060,365	Please refer to Release price Schedule
	109178	100221373	OVST Pty Ltd A.C.N. 103 216 771 IOR & ATF the Ocean View South Tweed Partnership	10,389,195	Please refer to Release price Schedule
	109178	100185016	OVST Pty Ltd A.C.N. 103 216 771 IOR & ATF the Ocean View South Tweed Partnership	8,486,671	Please refer to Release price Schedule
	121007	100177146	Carrington Management Pty Ltd A.C.N. 068 513 048 IOR & ATF the Carrington Discretionary Trust	19,211,730	Please refer to Release price Schedule
	109139	10007932	Bridgewater Lake Estate Ltd	16,433,880	Please refer to Release price Schedule
	124213	100208198	Townsville Commercial Pty Ltd IOR and ATF The Townsville Hotel Trust	15,650,418	Please refer to Release price Schedule
	127230	100239166	Source Developments No 1 Pty Ltd A.C.N. 129 999 871	13,124,895	Please refer to Release price Schedule
	124178	100207936	Source Student Lodge Pty Ltd IOR & ATF Source Student Unit Trust	12,671,486	Please refer to Release price Schedule
	115350	100128496	Green Square Property Development Corporation Pty Ltd A.C.N. 104 248 053	8,997,822	Please refer to Release price Schedule
	127056	100237015	Coulter Developments Pty Ltd & Rocola Pty Ltd	11,460,175	Please refer to Release price Schedule
	113549	100113635	Tall Trees Tanah Merah A.C.N. 119 785 672 as nominee for the Tanah Merah Village Partnership	9,205,360	Please refer to Release price Schedule
	114498	100121383	Australian International Investment Services Pty Ltd A.C.N. 102 261 898	7,849,804	Please refer to Release price Schedule
	118648	100158157	Kingdon Pty Ltd A.C.N. 009 225 576	6,628,258	Please refer to Release price Schedule
	109659	10008292	Trinity Project Developments Pty Ltd A.C.N. 074 173 443	5,966,669	Please refer to Release price Schedule
	118584	100155597	Camero Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 088 955 296	3,516,014	Please refer to Release price Schedule
	122849	100195163	U-Own Storage (Southbank) Pty Ltd A.C.N. 005 753 391	3,730,685	Please refer to Release price Schedule
	119114	100160480	Madras Properties Pty Ltd ATF the Madras 32-34 Kingscliff Trust, Lee Developments Pty Ltd ATF the JAL Trust PWB Properties ATF the Brinsmead 32-34 Marine Parade, Kingscliff Trust trading as the 32-34 Marine Parade, Kingscliff Partnership	3,636,802	Please refer to Release price Schedule
	110366	10008970	Magnolia Grove Investments Pty Ltd A.C.N. 108 145 824 IOR & ATF the Magnolia Grove Unit Trust	3,401,435	Please refer to Release price Schedule
	123546	100201755	Young Land Corporation Pty Ltd A.C.N. 102 989 886 IOR & ATF Cavill Park Unit Trust	2,890,967	Please refer to Release price Schedule
	130940	100258266	LM Investment Management Limited A.C.N. 077 208 461 and LM Managed Performance Fund (Bushtland Beach)	2,203,197	Please refer to Release price Schedule
	109133	10007926	Anoor Holdings Pty Ltd A.C.N. 083 248 009	826,119	Please refer to Release price Schedule
	109152	10007950	Greenleaf Lifestyle Resorts Pty Ltd A.C.N. 104 485 074	496,862	Please refer to Release price Schedule
	112880	100108119	Beestly Pty Ltd A.C.N. 104 936 558	481,134	Please refer to Release price Schedule
	119466	100154657	Luna Park Sydney Pty Ltd	1,116,317	Please refer to Release price Schedule
		Total		536,203,009	



#### **Schedule 4 - Release Prices**

Description of LM Mortgaged Property Release Price















65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008	1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026	1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044	1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062	1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080	1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098	1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116	1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134	1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152	1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170	1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188	1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206	1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	1217	1218	1219	1220	1221	1222	1223	1224	1225	1226	1227	1228	1229	1230	1231	1232	1233	1234	1235	1236	1237	1238	1239	1240	1241	1242	1243	1244	1245	1246	1247	1248	1249	1250	1251	1252	1253	1254	1255	1256	1257	1258	1259	1260	1261	1262	1263	1264	1265	1266	1267	1268	1269	1270	1271	1272	1273	1274	1275	1276	1277	1278	1279	1280	1281	1282	1283	1284	1285	1286	1287	1288	1289	1290	1291	1292	1293	1294	1295	1296	1297	1298	1299	1300	1301	1302	1303	1304	1305	1306	1307	1308	1309	1310	1311	1312	1313	1314	1315	1316	1317	1318	1319	1320	1321	1322	1323	1324	1325	1326	1327	1328	1329	1330	1331	1332	1333	1334	1335	1336	1337	1338	1339	1340	1341	1342	1343	1344	1345	1346	1347	1348	1349	1350	1351	1352	1353	1354	1355	1356	1357	1358	1359	1360	1361	1362	1363	1364	1365	1366	1367	1368	1369	1370	1371	1372	1373	1374	1375	1376	1377	1378	1379	1380	1381	1382	1383	1384	1385	1386	1387	1388	1389	1390	1391	1392	1393	1394	1395	1396	1397	1398	1399	1400	1401	1402	1403	1404	1405	1406	1407	1408	1409	1410	1411	1412	1413	1414	1415	1416	1417	1418	1419	1420	1421	1422	1423	1424	1425	1426	1427	1428	1429	1430	1431	1432	1433	1434	1435	1436	1437	1438	1439	1440	1441	1442	1443	1444	1445	1446	1447	1448	1449	1450	1451	1452	1453	1454	1455	1456	1457	1458	1459	1460	1461	1462	1463	1464	1465	1466	1467	1468	1469	1470	1471	1472	1473	1474	1475	1476	1477	1478	1479	1480	1481	1482	1483	1484	1485	1486	1487	1488	1489	1490	1491	1492	1493	1494	1495	1496	1497	1498	1499	1500	1501	1502	1503	1504	1505	1506	1507	1508	1509	1510	1511	1512	1513	1514	1515	1516	1517	1518	1519	1520	1521	1522	1523	1524	1525	1526	1527	1528	1529	1530	1531	1532	1533	1534	1535	1536	1537	1538	1539	1540	1541	1542	1543	1544	1
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	---





[illegible]

Lot	Plan	Area	Use	Notes	Owner	Value	Rate	Amount	Due	Payable	Comments
101	101/1	101.1	Residential	101/1	101/1	101.1	101.1	101.1	101.1	101.1	101.1
102	102/1	102.1	Residential	102/1	102/1	102.1	102.1	102.1	102.1	102.1	102.1
103	103/1	103.1	Residential	103/1	103/1	103.1	103.1	103.1	103.1	103.1	103.1
104	104/1	104.1	Residential	104/1	104/1	104.1	104.1	104.1	104.1	104.1	104.1
105	105/1	105.1	Residential	105/1	105/1	105.1	105.1	105.1	105.1	105.1	105.1
106	106/1	106.1	Residential	106/1	106/1	106.1	106.1	106.1	106.1	106.1	106.1
107	107/1	107.1	Residential	107/1	107/1	107.1	107.1	107.1	107.1	107.1	107.1
108	108/1	108.1	Residential	108/1	108/1	108.1	108.1	108.1	108.1	108.1	108.1
109	109/1	109.1	Residential	109/1	109/1	109.1	109.1	109.1	109.1	109.1	109.1
110	110/1	110.1	Residential	110/1	110/1	110.1	110.1	110.1	110.1	110.1	110.1
111	111/1	111.1	Residential	111/1	111/1	111.1	111.1	111.1	111.1	111.1	111.1
112	112/1	112.1	Residential	112/1	112/1	112.1	112.1	112.1	112.1	112.1	112.1
113	113/1	113.1	Residential	113/1	113/1	113.1	113.1	113.1	113.1	113.1	113.1
114	114/1	114.1	Residential	114/1	114/1	114.1	114.1	114.1	114.1	114.1	114.1
115	115/1	115.1	Residential	115/1	115/1	115.1	115.1	115.1	115.1	115.1	115.1
116	116/1	116.1	Residential	116/1	116/1	116.1	116.1	116.1	116.1	116.1	116.1
117	117/1	117.1	Residential	117/1	117/1	117.1	117.1	117.1	117.1	117.1	117.1
118	118/1	118.1	Residential	118/1	118/1	118.1	118.1	118.1	118.1	118.1	118.1
119	119/1	119.1	Residential	119/1	119/1	119.1	119.1	119.1	119.1	119.1	119.1
120	120/1	120.1	Residential	120/1	120/1	120.1	120.1	120.1	120.1	120.1	120.1
121	121/1	121.1	Residential	121/1	121/1	121.1	121.1	121.1	121.1	121.1	121.1
122	122/1	122.1	Residential	122/1	122/1	122.1	122.1	122.1	122.1	122.1	122.1
123	123/1	123.1	Residential	123/1	123/1	123.1	123.1	123.1	123.1	123.1	123.1
124	124/1	124.1	Residential	124/1	124/1	124.1	124.1	124.1	124.1	124.1	124.1
125	125/1	125.1	Residential	125/1	125/1	125.1	125.1	125.1	125.1	125.1	125.1
126	126/1	126.1	Residential	126/1	126/1	126.1	126.1	126.1	126.1	126.1	126.1
127	127/1	127.1	Residential	127/1	127/1	127.1	127.1	127.1	127.1	127.1	127.1
128	128/1	128.1	Residential	128/1	128/1	128.1	128.1	128.1	128.1	128.1	128.1
129	129/1	129.1	Residential	129/1	129/1	129.1	129.1	129.1	129.1	129.1	129.1
130	130/1	130.1	Residential	130/1	130/1	130.1	130.1	130.1	130.1	130.1	130.1
131	131/1	131.1	Residential	131/1	131/1	131.1	131.1	131.1	131.1	131.1	131.1
132	132/1	132.1	Residential	132/1	132/1	132.1	132.1	132.1	132.1	132.1	132.1
133	133/1	133.1	Residential	133/1	133/1	133.1	133.1	133.1	133.1	133.1	133.1
134	134/1	134.1	Residential	134/1	134/1	134.1	134.1	134.1	134.1	134.1	134.1
135	135/1	135.1	Residential	135/1	135/1	135.1	135.1	135.1	135.1	135.1	135.1
136	136/1	136.1	Residential	136/1	136/1	136.1	136.1	136.1	136.1	136.1	136.1
137	137/1	137.1	Residential	137/1	137/1	137.1	137.1	137.1	137.1	137.1	137.1
138	138/1	138.1	Residential	138/1	138/1	138.1	138.1	138.1	138.1	138.1	138.1
139	139/1	139.1	Residential	139/1	139/1	139.1	139.1	139.1	139.1	139.1	139.1
140	140/1	140.1	Residential	140/1	140/1	140.1	140.1	140.1	140.1	140.1	140.1
141	141/1	141.1	Residential	141/1	141/1	141.1	141.1	141.1	141.1	141.1	141.1
142	142/1	142.1	Residential	142/1	142/1	142.1	142.1	142.1	142.1	142.1	142.1
143	143/1	143.1	Residential	143/1	143/1	143.1	143.1	143.1	143.1	143.1	143.1
144	144/1	144.1	Residential	144/1	144/1	144.1	144.1	144.1	144.1	144.1	144.1
145	145/1	145.1	Residential	145/1	145/1	145.1	145.1	145.1	145.1	145.1	145.1
146	146/1	146.1	Residential	146/1	146/1	146.1	146.1	146.1	146.1	146.1	146.1
147	147/1	147.1	Residential	147/1	147/1	147.1	147.1	147.1	147.1	147.1	147.1
148	148/1	148.1	Residential	148/1	148/1	148.1	148.1	148.1	148.1	148.1	148.1
149	149/1	149.1	Residential	149/1	149/1	149.1	149.1	149.1	149.1	149.1	149.1
150	150/1	150.1	Residential	150/1	150/1	150.1	150.1	150.1	150.1	150.1	150.1
151	151/1	151.1	Residential	151/1	151/1	151.1	151.1	151.1	151.1	151.1	151.1
152	152/1	152.1	Residential	152/1	152/1	152.1	152.1	152.1	152.1	152.1	152.1
153	153/1	153.1	Residential	153/1	153/1	153.1	153.1	153.1	153.1	153.1	153.1
154	154/1	154.1	Residential	154/1	154/1	154.1	154.1	154.1	154.1	154.1	154.1
155	155/1	155.1	Residential	155/1	155/1	155.1	155.1	155.1	155.1	155.1	155.1
156	156/1	156.1	Residential	156/1	156/1	156.1	156.1	156.1	156.1	156.1	156.1
157	157/1	157.1	Residential	157/1	157/1	157.1	157.1	157.1	157.1	157.1	157.1
158	158/1	158.1	Residential	158/1	158/1	158.1	158.1	158.1	158.1	158.1	158.1
159	159/1	159.1	Residential	159/1	159/1	159.1	159.1	159.1	159.1	159.1	159.1
160	160/1	160.1	Residential	160/1	160/1	160.1	160.1	160.1	160.1	160.1	160.1
161	161/1	161.1	Residential	161/1	161/1	161.1	161.1	161.1	161.1	161.1	161.1
162	162/1	162.1	Residential	162/1	162/1	162.1	162.1	162.1	162.1	162.1	162.1
163	163/1	163.1	Residential	163/1	163/1	163.1	163.1	163.1	163.1	163.1	163.1
164	164/1	164.1	Residential	164/1	164/1	164.1	164.1	164.1	164.1	164.1	164.1
165	165/1	165.1	Residential	165/1	165/1	165.1	165.1	165.1	165.1	165.1	165.1
166	166/1	166.1	Residential	166/1	166/1	166.1	166.1	166.1	166.1	166.1	166.1
167	167/1	167.1	Residential	167/1	167/1	167.1	167.1	167.1	167.1	167.1	167.1
168	168/1	168.1	Residential	168/1	168/1	168.1	168.1	168.1	168.1	168.1	168.1
169	169/1	169.1	Residential	169/1	169/1	169.1	169.1	169.1	169.1	169.1	169.1
170	170/1	170.1	Residential	170/1	170/1	170.1	170.1	170.1	170.1	170.1	170.1
171	171/1	171.1	Residential	171/1	171/1	171.1	171.1	171.1	171.1	171.1	171.1
172	172/1	172.1	Residential	172/1	172/1	172.1	172.1	172.1	172.1	172.1	172.1
173	173/1	173.1	Residential	173/1	173/1	173.1	173.1	173.1	173.1	173.1	173.1
174	174/1	174.1	Residential	174/1	174/1	174.1	174.1	174.1	174.1	174.1	174.1
175	175/1	175.1	Residential	175/1	175/1	175.1	175.1	175.1	175.1	175.1	175.1
176	176/1	176.1	Residential	176/1	176/1	176.1	176.1	176.1	176.1	176.1	176.1
177	177/1	177.1	Residential	177/1	177/1	177.1	177.1	177.1	177.1	177.1	177.1
178	178/1	178.1	Residential	178/1	178/1	178.1	178.1	178.1	178.1	178.1	178.1
179	179/1	179.1	Residential	179/1	179/1	179.1	179.1	179.1	179.1	179.1	179.1
180	180/1	180.1	Residential	180/1	180/1	180.1	180.1	180.1	180.1	180.1	180.1
181	181/1	181.1	Residential	181/1	181/1	181.1	181.1	181.1	181.1	181.1	181.1
182	182/1	182.1	Residential	182/1	182/1	182.1	182.1	182.1	182.1	182.1	182.1
183	183/1	183.1	Residential	183/1	183/1	183.1	183.1	183.1	183.1	183.1	183.1
184	184/1	184.1	Residential	184/1	184/1	184.1	184.1	184.1	184.1	184.1	184.1
185	185/1	185.1	Residential	185/1	185/1	185.1	185.1	185.1	185.1	185.1	185.1
186	186/1	186.1	Residential	186/1	186/1	186.1	186.1	186.1	186.1	186.1	186.1
187	187/1	187.1	Residential	187/1	187/1	187.1	187.1	187.1	187.1	187.1	187.1
188	188/1	188.1	Residential	188/1	188/1	188.1	188.1	188.1	188.1	188.1	188.1
189	189/1	189.1	Residential	189/1	189/1	189.1	189.1	189.1	189.1	189.1	189.1
190	190/1	190.1	Residential	190/1	190/1	190.1	190.1	190.1	190.1	190.1	190.1
191	191/1	191.1	Residential	191/1	191/1	191.1	191.1	191.1	191.1	191.1	191.1
192	192/1	192.1	Residential	192/1	192/1	192.1	192.1	192.1	192.1	192.1	192.1
193	193/1	193.1	Residential	193/1	193/1	193.1	193.1	193.1	193.1	193.1	193.1
194	194/1	194.1	Residential	194/1	194/1	194.1	194.1	194.1	194.1	194.1	194.1
195	195/1	195.1	Residential	195/1	195/1	195.1	195.1	195.1	195.1	195.1	195.1
196	196/1	196.1	Residential	196/1	196/1	196.1	196.1	196.1	196.1	196.1	196.1
197	197/1	197.1	Residential	197/1	197/1	197.1	197.1	197.1	197.1	197.1	197.1
198	198/1	198.1	Residential	198/1	198/1	198.1	198.1	198.1	198.1	198.1	198.1
199	199/1	199.1	Residential	199/1	199/1	199.1	199.1	199.1	199.1	199.1	199.1
200	200/1	200.1	Residential	200/1	200/1	200.1	200.1	200.1	200.1	200.1	200.1
201	201/1	201.1	Residential	201/1	201/1	201.1	201.1	201.1	201.1	201.1	201.1
202	202/1	202.1	Residential	202/1	202/1	202.1	202.1	202.1	202.1	202.1	202.1
203	203/1	203.1	Residential	203/1	203/1	203.1	203.1	203.1	203.1	203.1	203.1
204	204/1	204.1	Residential	204/1							





## **Schedule 5 - New Lending Criteria**

For clarity, the restrictions below only apply to release price allocations for new lending and not to lending from unrestricted cash.

### **Acceptable Loan Types:**

- Subject: Real Property
- Property Type: Office, Retail, Apartment
- Specific prohibitions: land / construction loans, manufacturing
- Seniority: Senior, sole first charge on subject property
- Syndications: None

### **Acceptable Loan Size:**

- Minimum size: A\$10m
- Maximum size: A\$20m
- Loan-to-value:  $\leq 60\%$  Loan-to-Value
- Loan-to-Income:  $\leq 6.5\times$  last 12 mos net income
- Loan-to-Income:  $\leq 6.5\times$  passing and stabilized net income
- DSCR: Passing and stabilized net income  $\geq 150\%$

### **3<sup>rd</sup> Party Reporting Standards:**

- Appraisal, Engineering, Environmental
- Appraisal Firms: CBRE, Savills, Jones Lang, Colliers
- Engineering & Enviro Firms:  $>50$  subject professionals

### **Acceptable Terms & Conditions:**

- Minimum interest rate: 10%, paid monthly
- Maximum Term: 3 years
- Australian market standard documents, terms & conditions

### **Independent Nature:**

- Must be 3<sup>rd</sup> party, arm's length in nature
- Unrelated to existing borrowers of any LM associated party
- Unrelated to current or former LM associated parties
- Fees and expenses to LM associated parties must be approved

All receipts under the new loan must be applied to the settlement of outstanding deferred release prices utilized for new lending under this clause.

Financier has option to veto new loans within 5 business days of receiving an agreed upon FMIF lender pack (including key information on the underlying collateral, description of material terms of the loan, applicable 3<sup>rd</sup> party reports and certification of Independent Nature of the facility from LM).

## **Schedule 6 Financier Authorised Officers**

**George Wong**

**Beaux Pontak**

## **Schedule 7 - Exceptions to LM Documentation Assumptions**

Note: Headings are for convenience only and do not affect interpretation

### **LM Documentation Assumption (d)(i): clause 15.5(b)**

Commonwealth Bank of Australia has a first ranking mortgage on the LM Mortgaged Property for the LM Loan known as Tall Trees.

### **LM Documentation Assumption (h): clause 15.5(d)**

A solicitor's lien may apply where LM Loan Documents are held by solicitors. See schedule below for amounts owed to solicitors where a lien may apply.

### **LM Documentation Assumption (k): clause 15.5(f)**

Certain LM Loan Documents are held by solicitors as follows:

<b>Solicitors</b>	<b>LM Loan Documents</b>	<b>Amounts owed to solicitors</b>
Allens Arthur Robinson, Brisbane	Bellpac	Approx \$180K
Norton Rose, Sydney	Green Square, Lot 111	Nominal amounts only
Holman Webb, Sydney	Beetil, Glendenning, Greenleaf, OVST, Anpor	Nominal amounts only

All of the above documents are held by the solicitors for the benefit of the Borrower.

### **LM Documentation Assumption (p)**

The Borrower may be obliged to provide further financial accommodation on the following LM Loans:

- Tall Trees - the Borrower considers it is not obliged to provide funding, however funding of two months interest plus operational costs is likely to be provided (approx \$50K/fortnight);
- Coulter - the Borrower considers it is not obliged to provide funding, however funding of \$400K - \$450K is likely to be provided; and
- Trinity - \$400K - \$500K is required to be provided, less amount of bonds recovered from council.

### **Clause 15.5(l)**

The Disclosed Litigation, relating to the LM Loan known as Bellpac, is disclosed for clause 15.5(l).

### **Clause 15.5(n)**

The following assertion is disclosed for clause 15.5(n):



It was also resolved at that meeting that entering into the Finance Documents is in the Borrower's best interests and for its benefit. The benefit being obtained by the Borrower is [TBI].

The resolutions referred to in paragraphs (a) and (b) were duly passed at a properly convened and properly held meeting of duly appointed directors of the Borrower at which a quorum of directors entitled to vote was present and acting.

All provisions in the Corporations Act 2001 (Cth) and the constitution of the Borrower relating to the declaration of directors' interests and the powers of interested directors to vote were duly observed at or before the meeting.

4. **Solvency**

The Borrower is able to pay all its debts as and when they become due and payable and there are no grounds for suspecting that it will not continue to be able to do so after entering into the Finance Documents.

5. **Related party transactions**

Chapters 2E and 2J.3 of the Corporations Act 2001 (Cth) do not apply to the transactions contemplated by the Finance Documents or, if either applies, it has not been breached.

Dated:

---

Signature of Director

Title:

---

Signature of Director

Title:

# **Schedule 9 - Trust Bank Accounts**

Account Name	Account Type	Bank	BSB	Account Number	Currency	Opening Balance 15/06/10	Notes
PTAL acf LM FMIF - Beetil	Premium Business Account	CBA	604000	12593774.00	AUD	\$ -	Controller a/c
PTAL acf LM FMIF - Greenl	Premium Business Account	CBA	604000	12593782.00	AUD	\$ -	Controller a/c
PTAL acf LM FMIF - Harves	Premium Business Account	CBA	604000	12593790.00	AUD	\$ -	Controller a/c
PTAL acf LM FMIF - Vitalli	Premium Business Account	CBA	604000	12593803.00	AUD	\$ -	Controller a/c
PTAL acf LM FMIF - YlandCav1	Premium Business Account	CBA	604000	12639517.00	AUD	\$3,371.66	Controller a/c
PTAL acf LM FMIF - YlandCav2	Premium Business Account	CBA	604000	12639533.00	AUD	\$ -	Controller a/c
PTAL acf LM FMIF - Bridgewater	Premium Business Account	CBA	604000	12639568.00	AUD	\$281,003.98	Controller a/c
PTAL acf FMIF - Edens Controller A/C	Business Investment Acct	Suncorp	484799	03470475	AUD	\$1,865.66	Controller a/c
PTAL acf FMIF - Bezzina Controller A/C	Business Investment Acct	Suncorp	484799	034843355	AUD	\$64.12	Controller a/c
PTAL acf FMIF - Source Devel Controller A/C	Business Investment Acct	Suncorp	484799	034843398	AUD	\$65.14	Controller a/c
PTAL acf FMIF - U-Own Storage	Business Investment Acct	Suncorp	484799	034848802	AUD	\$10.10	Controller a/c
PTAL acf FMIF - Brambleton Controller A/C	Business Investment Acct	Suncorp	484799	034850572	AUD	\$113.12	Controller a/c
PTAL acf FMIF - Resort Controller Acc	Business Investment Acct	Suncorp	484799	034857909	AUD	\$877.79	Controller a/c
PTAL acf FMIF - Magnolia Controller	Business Investment Acct	Suncorp	484799	034857895	AUD	\$71.25	Controller a/c

### Schedule 10 - Managed Cash Accounts

Account Name	Bank	BSB	Account Number	Currency
PTAL acf FMIF - MAIN WORKING ACCOUNT	SUNCORP	484799	49726640	AUD
PTAL acf FMIF - FX CURRENCY A/C	SUNCORP	484799	34701216	AUD
PTAL acf LM FMIF Deposit	CBA	602000	13564303	AUD
PTAL acf LM FMIF Working	CBA	602000	13564346	AUD
PTAL ACF FMIF-CAD	CBA	N/A	100642778CAD115601	CAD
PTAL ACF FMIF-EUR	CBA	N/A	100642778EUR115601	EUR
PTAL ACF FMIF-GBP	CBA	N/A	100642778GBP115601	GBP
PTAL ACF FMIF-HKD	CBA	N/A	100642778HKD115601	HKD
PTAL ACF FMIF-SGD	CBA	N/A	100642778SGD115601	SGD
PTAL ACF FMIF-THB	CBA	N/A	100642778THB115601	THB
PTAL ACF FMIF-USD	CBA	N/A	100642778USD115601	USD


**Signed** as an agreement.

**Borrower**

**Executed by LM Investment Management Limited ABN 68 077 208 461 in its capacity as Responsible Entity for the LM First Mortgage Income Fund in accordance with section 127 of the Corporations Act 2001 (Cth):**

  
\_\_\_\_\_  
Signature of director

LISA MARGEE DARCY  
\_\_\_\_\_  
Full name of director

  
\_\_\_\_\_  
Signature of company secretary/director

PETER CHARLES DRAKE  
\_\_\_\_\_  
Full name of company secretary/director

**Financier**

**Signed for and on behalf of Deutsche Bank AG, Sydney Branch by its attorneys under a sub-power of attorney dated 31 July 2009 registered in NSW Book No. 4577 No. 122 in the presence of:**

\_\_\_\_\_  
Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

\_\_\_\_\_  
Full name of attorney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of attorney

**EXECUTION VERSION**

## **Override Deed**

**LM Investment Management Limited in its capacity as responsible entity for  
the LM First Mortgage Income Fund**

**Borrower**

**Deutsche Bank AG, Sydney Branch**

**Financier**

**Clayton Utz Lawyers  
Level 18 333 Collins Street Melbourne VIC 3000 Australia  
DX 38451 333 Collins VIC  
T + 61 3 9286 6000 F + 61 3 9629 8488**

**[www.claytonutz.com](http://www.claytonutz.com)**

**Our reference 17306/18128/80107994**

**Legal\308959550.10**

## Contents

<b>1.</b>	<b>Definitions and Interpretation .....</b>	<b>2</b>
1.1	Definitions .....	2
1.2	Defined terms .....	4
1.3	Finance Document .....	4
1.4	Interpretation .....	4
<b>2.</b>	<b>Conditions .....</b>	<b>4</b>
2.1	Conditions Precedent .....	4
2.2	Waiver of conditions precedent .....	4
<b>3.</b>	<b>Acknowledgment of indebtedness .....</b>	<b>5</b>
<b>4.</b>	<b>Override of Facility .....</b>	<b>5</b>
4.1	Existing Facility Agreement .....	5
4.2	Override of Facility Agreement .....	5
4.3	Option to Extend Override Facility Termination Date .....	7
4.4	Interest Rate payable during the Initial Extended Term .....	7
4.5	Interest rate payable during the Option Term .....	7
4.6	Default Margin .....	8
<b>5.</b>	<b>Default .....</b>	<b>8</b>
<b>6.</b>	<b>Further Assurances .....</b>	<b>8</b>
<b>7.</b>	<b>Timing .....</b>	<b>8</b>
<b>8.</b>	<b>General confirmations and ratifications .....</b>	<b>8</b>
8.1	Continuing obligations .....	8
8.2	Preservation of existing rights .....	8
<b>9.</b>	<b>Miscellaneous .....</b>	<b>9</b>
9.1	Governing Law .....	9
9.2	Counterparts .....	9
	<b>Schedule 1 - Verification Certificate .....</b>	<b>10</b>
	<b>Schedule 2 - Managed Cash Accounts .....</b>	<b>12</b>

**Override Deed made at**

on 21 December 2012

**Parties**            **LM Investment Management Limited ACN 077 208 461 in its capacity as Responsible Entity for the LM First Mortgage Income Fund (Borrower)**

**Deutsche Bank AG, Sydney Branch (Financier)**

**Recitals**

- A.        The Facility has been extended and currently expires on 30 June 2013.
- B.        The Borrower has requested that the Financier further extend the Facility to the Override Facility Termination Date.
- C.        The Parties have agreed to enter into this deed in order to, *inter alia*, extend the Facility to the Override Facility Termination Date on the terms set out in this deed.

**Operative Provisions**

---

**1.        Definitions and Interpretation**

**1.1       Definitions**

In this deed:

**Capital Works** shall have the meaning as defined in clause 4.2(o).

**Capital Works Account** means the account listed as the "Capital Works Account" in Schedule 2 maintained by PTAL.

**Capital Works Plan** shall have the meaning as defined in clause 4.2(o).

**Conditions Precedent** means those conditions precedent set out at clause 2.1.

**Current Amount** shall have the meaning as defined in clause 3(a).

**Debt** means the total of all of the amounts for which the Borrower is liable to the Financier from time to time pursuant to the Facility Agreement, together with all accrued interest, fees and costs and other amounts for which the Borrower is liable to the Financier on any account whatsoever.

**Default Amount** has the meaning as described in clause 4.5(b).

**Effective Date** means the later of the date of this deed and the date by which all of the Conditions Precedent are satisfied.

**Extended Term** means the period beginning on 1 July 2012 and ending on the Override Facility Termination Date.

**Facility Agreement** means the facility agreement dated 1 July 2010 between the Borrower and the Financier as amended from time to time including pursuant to the letter from the Financier to the Borrower dated 21 September 2010.

**Full Margin** means the total amount of all interest to be paid by the Borrower to the Financier pursuant to the Facility Agreement at the relevant interest rate as determined by the Financier in accordance with the Facility Agreement during the Extended Term.

**Fund** means the LM First Mortgage Income Fund ABN 13 089 343 288.

**Fund Security** means the Deed of Charge insofar as it relates to the Fund.

**Initial Amortisation Payment** means such amount as is necessary to bring the Debt to an amount not exceeding \$28,000,000.00 to be paid by the Borrower to the Financier as a Condition Precedent pursuant to clause 2.1(e).

**Initial Extended Term** shall have the meaning as defined in clause 4.4(b).

**Option Term** means, provided that the option is exercised pursuant to Clause 4.3, the period beginning on 1 July 2014 and ending on 30 June 2015.

**Override Facility Termination Date** means, subject to Clause 4.3, 30 June 2014.

**Party** means a party to this deed.

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

**PPSR** means the Personal Property Securities Register established under the PPSA.

**Preparation Fee** means \$25,477.00 plus GST being the agreed legal costs of the Financier in respect of the preparation, negotiation and execution of this Deed.

**PTAL** means The Trust Company (PTAL) Limited ACN 008 412 913 formerly named Permanent Trustee Australia Limited as trustee for the LM First Mortgage Income Fund ABN 13 089 343 288.

**Restricted Accounts** means those accounts listed as "Restricted Accounts" in Schedule 2 maintained by PTAL and such other accounts as are approved by the Financier from time to time excluding any such accounts as are permanently closed by PTAL including any Unrestricted Accounts that are deemed to be Restricted Accounts pursuant to the defined term "Unrestricted Accounts".

**Restructuring Fee** means an amount equal to 1% of the Current Amount.

**Revoked Qualifying Capital Improvements** shall have the meaning as defined in clause 4.2(f).

**Scheduled Amortisation Payment** means the minimum monthly payment of \$500,000.00 to be paid by the Borrower to the Financier at the times and in the manner set out in clause 4.2(c).

**Side Letter** means the capital works account side letter from the Financier to the Borrower dated 24 June 2011.

**Suncorp** means Suncorp-Metway Ltd ABN 66 010 831 722.

**Unrestricted Accounts** means those accounts listed as "Unrestricted Accounts" in Schedule 2 maintained by PTAL and such other accounts as are approved by the Financier from time to time excluding any such accounts as are permanently closed by PTAL unless and until an Event of Default or Potential Event of Default has occurred and is subsisting whereupon the Unrestricted Accounts will be deemed to be Restricted Accounts.

**Verification Certificate** means a certificate substantially in the form of Schedule 1.

**Voluntary Prepayment** means any prepayment made by the Borrower to the Financier after the Effective Date other than a payment made:

- (a) pursuant to clause 4.2(g); or
- (b) during such time as an Event of Default or Potential Event of Default has occurred and is subsisting.



**Voluntary Prepayment Amount** means, in respect of any Voluntary Prepayment, the amount of that Voluntary Prepayment.

## **1.2 Defined terms**

- (a) Unless otherwise defined in this deed, expressions used in this deed have the meanings given to them in or for the purposes of the Facility Agreement.
- (b) For the avoidance of doubt the Parties agree that terms defined in this deed are to apply to this deed only.

## **1.3 Finance Document**

This deed is a Finance Document for the purposes of the Facility Agreement.

## **1.4 Interpretation**

In this document:

- (a) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (b) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (c) where the day on which or by which any act, matter or thing is to be done under this document is not a Business Day, that act, matter or thing will be done on the immediately preceding Business Day;
- (d) "includes" in any form is not a word of limitation; and
- (e) a reference to "\$" or "dollar" is to Australian currency.

---

## **2. Conditions**

### **2.1 Conditions Precedent**

The override of the Facility Agreement as contemplated by this deed is of no force and effect until the following conditions precedent are satisfied:

- (a) **(Registration):** the Fund Security has been registered on the PPSR;
- (b) **(Verification Certificate):** the Financier has received a Verification Certificate from the Borrower;
- (c) **(Restructuring Fee):** the Restructuring Fee has been paid by the Borrower to the Financier;
- (d) **(Preparation Fee):** the Preparation Fee has been paid by the Borrower to the Financier; and
- (e) **(Initial Amortisation Payment)** the Initial Amortisation Payment has been made in full.

### **2.2 Waiver of conditions precedent**

- (a) The Financier may waive any one or more of the Conditions Precedent or determine that any such condition has been satisfied.

- (b) Any waiver of a Condition Precedent by the Financier under clause 2.2(a) is subject to such conditions as the Financier determines, and such conditions may include making a Condition Precedent a condition subsequent to be satisfied by a later date.

---

### **3. Acknowledgment of Indebtedness**

The Borrower agrees and acknowledges by executing this deed that:

- (a) it is indebted to the Financier for the full amount of the Debt, which, as at 18 December 2012, was \$29,409,489.00 (Current Amount);
- (b) it has no dispute, counterclaim, set-off or any other claim which would otherwise reduce the Current Amount of the Debt or negatively affect or impact upon its enforceability in any way;
- (c) the Security is and continues to be valid and fully enforceable by the Financier in accordance with its terms; and
- (d) all amounts payable by the Borrower under or pursuant to this deed shall form part of the secured obligations secured by the Security.

---

### **4. Override of Facility**

#### **4.1 Existing Facility Agreement**

On and from the Effective Date, the Parties agree and acknowledge that:

- (a) the Facility Agreement is, to the extent necessary, overridden and deemed varied, so as to be read consistently with this deed; and
- (b) to the extent of any inconsistency between this deed and the Facility Agreement, this deed prevails.

#### **4.2 Override of Facility Agreement**

On and from the Effective Date, the Parties agree and acknowledge that:

- (a) the Facility shall be extended to, and expire on, the Override Facility Termination Date;
- (b) no further financial accommodation (including by way of redraw) shall be provided by the Financier to the Borrower;
- (c) the Borrower shall make six Scheduled Amortisation Payments on a monthly basis on the Monthly Interest Payment Date following the Initial Amortisation Payment;
- (d) clause 6.2(a)(v) of the Facility Agreement shall be deemed to be deleted and shall have no further force and effect;
- (e) the following wording shall be added to the start of clause 6.2(b) of the Facility Agreement: "Unless otherwise agreed by the Financier in writing,";
- (f) the Financier may at any time, and in its absolute discretion, revoke its approval with respect to any one or more Qualifying Capital Improvements that have previously been approved by the Financier pursuant to the Side Letter (Revoked Qualifying Capital Improvements), by notice to the Borrower and, without limiting clause 4.2(h), require all or any credit balances in the Capital Works Account that relate to the Revoked Qualifying Capital Improvements to be

immediately transferred to the relevant Restricted Account. However, nothing in this clause 4.2(f) will:

- (i) require the Borrower to reimburse the Capital Works Account for any amounts previously agreed to by the Financier and applied by the Borrower for the purpose of any Qualifying Capital Improvements; or
  - (ii) limit the Financier's rights provided for in the Side Letter, including the right of the Financier to terminate the Capital Works Account in its absolute discretion, pursuant to the Side Letter;
- (g) provided no Event of Default or Potential Event of Default has occurred and is subsisting, the Financier shall be authorised at all times and in its absolute discretion to apply all or any part of any credit balance of the Restricted Accounts (but not including the Capital Works Account) towards the reduction of the Debt;
- (h) if an Event of Default or Potential Event of Default has occurred and is subsisting, the Financier shall be authorised at all times and in its absolute discretion to apply all or any part of any credit balance of the Managed Cash Accounts towards the reduction of the Debt;
- (i) despite any Voluntary Prepayment, the Borrower will remain liable to pay to the Financier the Full Margin in respect of the Voluntary Prepayment Amount:
  - (i) at the time and in the manner described in the Facility Agreement and on the basis that the Voluntary Prepaid Amount had been drawn for the duration of the Extended Term; or
  - (ii) where all amounts outstanding under the Facility are prepaid prior to the expiry of the Extended Term, on the date that all amounts (other than the Full Margin) under the Facilities are discharged and satisfied in full;
- (j) any reference to \$6,000,000, with respect to the Minimum Cash Balance, in the definition of "Minimum Cash Balance" and in clause 16.11(h) of the Facility Agreement, shall be deemed to be a reference to \$3,000,000.00;
- (k) if, in any month, the Minimum Cash Balance falls below \$3,000,000.00, the Financier shall be authorised, in its absolute discretion, to apply all or any part of any credit balance of the Unrestricted Accounts towards recapitalising the Restricted Accounts;
- (l) notwithstanding the Side Letter, the Capital Works Account must be capitalised with a minimum balance of \$2,000,000.00 on the Effective Date and increased to \$3,000,000.00 by way of equal six equal monthly instalments of \$166,667.00 commencing on the first Interest Payment Date following the Effective Date and thereafter to be made monthly on each Monthly Interest Payment Date;
- (m) without limiting the Borrower's obligations under clause 4.2(l), to the extent that any funds standing to the credit of the Capital Works Account are applied by the Financier in accordance with clause 4.2(h), the Borrower must ensure that the amount applied is reimbursed to the Capital Works Account within 60 days of such application; and
- (n) any repayment of any amount under any provision of this deed will be made together with interest and fees accrued on the amount repaid or prepaid and any amount required to be paid in accordance with the Facility Agreement.
- (o) notwithstanding the Side Letter, the Borrower will provide the Financier with a capital works plan (the Capital Works Plan and the proposed works being the

Capital Works that are referred to in the Side Letter) in respect of each project to which the Capital Works Plan applies setting out in full detail the proposed utilisation of the funds that are to be applied in respect of the Capital Works in sufficient detail necessary to allow the Financier to determine whether to approve the relevant Capital Works.

#### **4.3 Option to Extend Override Facility Termination Date**

Provided no Event of Default or Potential Event of Default has occurred and is subsisting, the Borrower will be entitled, upon written notice to the Financier given not later than 120 days and not before 180 days prior to 30 June 2014, require the Financier to agree to an extension of the Override Facility Termination Date to 30 June 2015.

#### **4.4 Interest Rate payable during the Initial Extended Term**

- (a) Subject to clause 4.4(b) and clause 4.6, interest during the Initial Extended Term will be payable at the rate of 15% per annum.
- (b) If an Event of Default has occurred and is subsisting during the Extended Term but before 30 June 2014 (Initial Extended Term), in addition to the obligation of the Borrower to pay interest for the period of the Initial Extended Term as described in clause 4.4(a), additional interest calculated at an amount equal to the difference between the amount of interest payable by the Borrower under the Facility during the Initial Extended Term as described in clause 4.4(a), and the amount payable by the Borrower during the Initial Extended Term from the date of the Event of Default to:
  - (i) the date that the Event of Default is remedied to the satisfaction of the Financier; or
  - (ii) if the Event of Default is not remedied to the satisfaction of the Financier, 30 June 2014,

at the Default Margin will accrue pursuant to the Facility and shall be immediately due and payable.

#### **4.5 Interest rate payable during the Option Term**

- (a) Subject to clause 4.5(d) and clause 4.6, interest during the Option Term will be payable at the rate of 15% per annum.
- (b) The Borrower acknowledges that an amount equal to the difference between the amount of interest payable by the Borrower under the Facility during the Option Term at the relevant interest rate and the amount payable by the Borrower during the Option Term at the Default Margin will accrue pursuant to the Facility (Default Amount).
- (c) Provided there is no Event of Default during the Option Term, and the Facility is repaid in full or refinanced on or prior to the 30 June 2015, the Default Amount will not be payable by the Borrower at any time.
- (d) However, if an Event of Default has occurred and is subsisting during the Option Term, in addition to the obligation of the Borrower to pay interest for the period of the Option Term as described in clause 4.5(a), additional interest calculated at an amount equal to the difference between the amount of interest payable by the Borrower under the Facility during the Option Term as described in clause 4.5(a), and the amount payable by the Borrower during the Option term from the date of the Event of Default to:

- (i) the date that the Event of Default is remedied to the satisfaction of the Financier; or
- (ii) if the Event of Default is not remedied to the satisfaction of the Financier, 30 June 2015,

at the Default Margin (being part or all of the Default Amount) will accrue pursuant to the Facility and shall be immediately due and payable.

#### **4.6 Default Margin**

Nothing in this clause 4 shall prohibit the Financier from applying a Default Margin of 5% to any outstanding Debt pursuant to the Facility in circumstances where the Borrower has been in default of any payment obligations under the Facility or this deed for six consecutive months. If applicable, pursuant to the Facility, the increased rate shall apply from the Interest Period commencing immediately after such 6th month.

---

#### **5. Default**

The Financier may terminate and demand repayment of the Facility (including any amounts payable pursuant to clause 4.4(b) and (provided that the Borrower has exercised the option pursuant to clause 4.3), any amounts payable pursuant to clause 4.5(d) immediately upon (or at any time after) an Event of Default in any Finance Document has occurred.

---

#### **6. Further Assurances**

The Borrower will, on demand by the Financier and at the cost of the Borrower, perform or procure the performance of all such acts and execute all such agreements, assurances and other documents and instruments as the Financier requires to document and/or perfect the rights, arrangements and powers contemplated by this deed.

---

#### **7. Timing**

Time is of the essence with respect to the performance of the Borrower's obligations under this deed.

---

#### **8. General confirmations and ratifications**

##### **8.1 Continuing obligations**

The Borrower unconditionally and irrevocably:

- (a) ratifies and confirms to the Financier its continuing obligations under the Facility Agreement (as amended by this deed) and the other Finance Documents; and
- (b) acknowledges and agrees that except to the extent of the variations effected by the provisions of this deed, the Facility Agreement and Finance Documents shall in all respects continue to apply.

##### **8.2 Preservation of existing rights**

Except to the extent expressly contemplated by this deed, this deed does not in any way limit, reduce or affect any right, entitlement or remedy of the Financier under the Finance Documents (or any of them) arising prior to, or after, the Effective Date which rights, entitlements and remedies are hereby expressly reserved.

---

**9. Miscellaneous**

**9.1 Governing Law**

This deed is governed by and will be construed according to the laws of Queensland.

**9.2 Counterparts**

This document may be executed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

## Schedule 1 - Verification Certificate

To: Deutsche Bank AG, Sydney Branch

### Override deed (the "deed")

Capitalised terms used in this Certificate and not otherwise defined have the same meaning as that given to them in the deed.

I, Eghard Van Der Hoven of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland hereby certify that:

### Director

1. I am a director of LM Investment Management Limited (the "Company") and am duly authorised to sign this Certificate on behalf of the Company;

### Constitution

2. the copy of the Company's Constitution previously provided to the Financier remains a true, complete and up to date copy of the Company's Constitution;

### Resolutions

3. attached hereto as Annexure B is a true copy of an extract of the minutes of a meeting of the Board of Directors of the Company duly called, convened and held on 20<sup>th</sup> December 2012 resolving, among other things, to enter into and execute the deed.
4. the resolutions of the Company set out in the minutes marked as Annexure B were duly passed at a properly convened meeting of duly appointed Directors of the Company at which a quorum was present and acting throughout;
5. all provisions contained in the Corporations Act and any other applicable equivalent law, and the Constitution of the Company, relating the declaration of directors' interests and the powers of interested directors to vote at that meeting were duly observed;
6. the resolutions set out in those minutes have not been amended, modified or rescinded and remain in full force and effect;

Date: this 20 day of December 2012

Signature

Eghard van Hoven

Name

Director of Company

**Annexure A Constitution [if applicable]**

---

**Annexure B Extract of Minutes of Meeting**

---



## **RESOLUTION OF THE BOARD OF DIRECTORS**

**LM Investment Management Ltd ABN 68 077 208 461**

---

**Dated: 20/12/2012**

The following resolution has been proposed:

### **To agree a restructure and extension of the existing LM FMIF debt facility with Deutsche Bank AG**

The LM First Mortgage Income Fund has an existing finance facility with Deutsche Bank AG (DB). The term of the current facility expired on 30<sup>th</sup> June 2013.

Negotiations with DB have been finalised to provide for an extension of the facility until 30<sup>th</sup> June 2014. At that time LM has an exclusive option to extend the loan term by a further 12 months to 30<sup>th</sup> June 2015.

Re-documentation has been achieved by way of an Override Deed revising the terms of the original agreement where required. Whereas certain commercial terms of the agreement have been revised the overall intent of the original agreement has been retained.

In summary the material revised terms are as follows:-

- Interest rate to remain at 15% (+3% Default rate for first 6 months of subsisting default and 5% thereafter)) with a 1% Re-structuring Fee.
- Should LM exercise the option to extend the loan facility by 12 months then a 15% interest rate remains payable. However should an event of default occur during the 12 month extended term the higher rate (18%) will be deemed due and payable.
- The current requirement for facility amortisation to occur in a pre-determined manner linked to asset sales ("Release Price" mechanism) will become redundant.
- The facility will be reduced from its current balance of c. \$29.4m to \$25m by the end of May 2014 with a first reduction to \$28m as a condition precedent and subsequent minimum monthly repayments of \$500k. From that time there will be no fixed repayment requirements.
- Any balances repaid by LM to DB prior to 30<sup>th</sup> June 2014 will require a "make good" payment equivalent to the interest applicable to those amounts during the term. This will naturally exclude the payment noted above and also any "Sweep" by DB as noted below.
- DB will be entitled to "Sweep" any cash proceeds created during each month's sales activity at their discretion up to the balance of the Restricted Cash Accounts. Cash from previous settlements achieved in prior months and transferred to Unrestricted Cash or Capital Works Account will not be able to be swept.  
(In discussion with DB we are advised this is not likely to be actively applied unless in circumstances where for example the balance of security within the Fund changes significantly during the term of the facility).
- The Fund's minimum cash balance will be reduced to \$3m. Any balances above \$3m in restricted cash accounts following each month end may be transferred to unrestricted cash or to Operational Works Account at LM's discretion and upon instruction to DB. The Operational Works account will have an initial minimum cash balance of \$2m increasing progressively over a 6 month period to \$3m as development activity increases. Both accounts will have replenishment requirements should the balances drop below agreed minimums.
- Works to be undertaken and funded from the Capital Works Account will be treated as per the current terms of the loan agreement relating to such works.
- LM intends to continue with the strategy that all assets are sold at or above their nominated Release Prices as defined in the original loan agreement where possible.

**THE BOARD RESOLVED** to accept the terms of the revised loan agreement as it was determined to be in the best interests of scheme members as it provides for both an acceleration of return of capital to investors and additionally the ability to accelerate further capital works expenditure on those Fund assets identified for further works prior to sale and help achieve the optimum return of capital to investors

Each of the Directors accepts the resolution as signed below.

We, the undersigned, being the Directors of LM Investment Management Ltd, state that we are in favour of the resolution.



Peter Drake

Date:

20/12/11

Eghard van der Höven

Date:

20/12/11



Francene Mulder

Date:

20/12/12

Katy Phillips

Date:

## RESOLUTION OF THE BOARD OF DIRECTORS

LM Investment Management Ltd ABN 68 077 208 484

---

Dated: 20/12/2012

The following resolution has been proposed:

### To agree a restructure and extension of the existing LM FIMF debt facility with Deutsche Bank AG

The LM First Mortgage Income Fund has an existing finance facility with Deutsche Bank AG (DB). The term of the current facility expired on 30<sup>th</sup> June 2013.

Negotiations with DB have been finalised to provide for an extension of the facility until 30<sup>th</sup> June 2014. At that time LM has an exclusive option to extend the loan term by a further 12 months to 30<sup>th</sup> June 2015.

Re-documentation has been achieved by way of an Override Deed revising the terms of the original agreement where required. Whereas certain commercial terms of the agreement have been revised the overall intent of the original agreement has been retained.

In summary the material revised terms are as follows:-

- Interest rate to remain at 15% (+3% Default rate for first 6 months of subsisting default and 5% thereafter) with a 1% Re-structuring Fee.
- Should LM exercise the option to extend the loan facility by 12 months then a 15% interest rate remains payable. However should an event of default occur during the 12 month extended term the higher rate (18%) will be deemed due and payable.
- The current requirement for facility amortisation to occur in a pre-determined manner linked to asset sales ("Release Price" mechanism) will become redundant.
- The facility will be reduced from its current balance of a \$29.4m to \$25m by the end of May 2014 with a first reduction to \$28m as a condition precedent and subsequent minimum monthly repayments of \$500k. From that time there will be no fixed repayment requirements.
- Any balances repaid by LM to DB prior to 30<sup>th</sup> June 2014 will require a "make good" payment equivalent to the interest applicable to those amounts during the term. This will naturally exclude the payment noted above and also any "Sweep" by DB as noted below.
- DB will be entitled to "Sweep" any cash proceeds created during each month's sales activity at their discretion up to the balance of the Restricted Cash Accounts. Cash from previous settlements achieved in prior months and transferred to Unrestricted Cash or Capital Works Account will not be able to be swept.  
(In discussion with DB we are advised this is not likely to be actively applied unless in circumstances where for example the balance of security within the Fund changes significantly during the term of the facility).
- The Fund's minimum cash balance will be reduced to \$3m. Any balances above \$3m in restricted cash accounts following each month end may be transferred to unrestricted cash or to Operational Works Account at LM's discretion and upon instruction to DB. The Operational Works account will have an initial minimum cash balance of \$2m increasing progressively over a 6 month period to \$3m as development activity increases. Both accounts will have replenishment requirements should the balances drop below agreed minimums.
- Works to be undertaken and funded from the Capital Works Account will be treated as per the current terms of the loan agreement relating to such works.
- LM intends to continue with the strategy that all assets are sold at or above their nominated Release Prices as defined in the original loan agreement where possible.

**THE BOARD RESOLVED** to accept the terms of the revised loan agreement as it was determined to be in the best interests of scheme members as it provides for both an acceleration of return of capital to investors and additionally the ability to accelerate further capital works expenditure on those Fund assets identified for further works prior to sale and help achieve the optimum return of capital to investors

Each of the Directors accepts the resolution as signed below.

We, the undersigned, being the Directors of LM Investment Management Ltd, state that we are in favour of the resolution.

\_\_\_\_\_  
Peter Drake

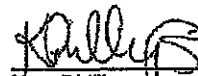
Date:

\_\_\_\_\_  
Eghard van der Hoven

Date:

\_\_\_\_\_  
Francene Mulder

Date:

\_\_\_\_\_  


Katy Phillips

Date: 20/12/12

## Schedule 2 - Managed Cash Accounts

<u>Account Name</u>	<u>Bank</u>	<u>BSB</u>	<u>Account Number</u>
<b>Restricted Accounts</b>			
PTAL - Restricted Working Account	Suncorp	484 799	451081276
PTAL - Restricted Deposit Account	Suncorp	484 799	451081420
PTAL - Capital Works Account	Suncorp	484 799	451085980
<b>Unrestricted Accounts</b>			
PTAL - FMIM Deposit Account Unrestricted	Suncorp	484 799	602037866
PTAL - FMIM Working Account Unrestricted	Suncorp	484 799	049726640
<b>Other Accounts</b>			
PTAL - New Zealand Distribution Account	Suncorp	484 799	600810410
PTAL - Working Account (NZ dollar account)	Australia and New Zealand Banking Group	408 547	01-0102-0856678-000

## Execution Page

### Executed as a deed

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing them.

### Borrower

Executed by LM Investment Management Limited ABN 68 077 208 461 in its capacity as Responsible Entity for the LM First Mortgage Income Fund in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

EDWARD VAN NUYEN

Signature of company secretary/director

Full name of company secretary/director

Francene Mulder

### Financier

Signed for and on behalf of Deutsche Bank AG, Sydney Branch by its attorneys under a sub-power of attorney dated 31 July 2009 registered in NSW Book No. 4577 No. 122 in the presence of:

Signature of witness

Full name of witness

Martin Thomas

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

DAVID IRVING