

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY
AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE
INCOME FUND

AND

Second Respondent: THE MEMBERS OF THE LM FIRST MORTGAGE
INCOME FUND ARSN 089 343 288

AND

Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

AFFIDAVIT OF DAVID WHYTE

I, DAVID WHYTE of Level 10, 12 Creek Street, Brisbane in the State of Queensland, Official Liquidator, state on oath:

1. I am an Official Liquidator and a partner of the firm BDO. I am an affiliate member of the Institute of Chartered Accountants of Australia and an associate member of the Australian

Page 1

Signed:

Witnessed by:

AFFIDAVIT:
Form 46, R.431

TUCKER & COWEN
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15 Adelaide Street
Brisbane, Qld, 4000.
Tele: (07) 300 300 00
Fax: (07) 300 300 33

Filed on behalf of the Applicant, Mr David Whyte

Restructuring, Insolvency and Turnaround Association (formerly known as the Insolvency Practitioners Association of Australia).

2. Now produced and shown to me and marked "DW-1" is a bundle of documents to which I refer subsequently in this affidavit (giving their pagination in that bundle).
3. By order of this honourable Court made on 21 August, 2013, I was appointed:
 - (a) pursuant to section 601NF(1) of the *Corporations Act 2001* (C'th) (the **Act**), to take responsibility for ensuring that the LM First Mortgage Income Fund ARSN 089 343 288 (the "**FMIF**") is wound up in accordance with its constitution; and
 - (b) pursuant to section 601NF(2) of the Act, as the receiver of the property of the FMIF.

A copy of the order of 21 August, 2013 is at pages 1 to 4 of exhibit "DW-1".

4. In the performance of my duties as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, I have had, and continue to have, access to books and records of the FMIF. The statements made by me concerning the FMIF in this affidavit are known to me on the basis of my inspection and knowledge of those books and records.
5. The FMIF was registered as a managed investment scheme on 28 September, 1999. At pages 5 to 12 of exhibit "DW-1" is a copy of a search of the records of the Australian Securities and Investments Commission ("**ASIC**") for the FMIF, and at pages 13 to 76 of that exhibit is a copy of the constitution of the FMIF as lodged with ASIC on 11 April 2008, together with later amendments made to the constitution.
6. LM Investment Management Limited (receivers and managers appointed) (in liquidation) ACN 077 208 461 ("**LMIM**") is the responsible entity of the FMIF, and has been since its inception. At pages 77 to 87 of exhibit "DW-1" is a copy of a search of the records of ASIC for LMIM.

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Witnessed by:



7. LMIM is also the responsible entity of a number of other managed investment schemes to which I have not been appointed, including the LM Australian Income Fund, the LM Structured Products Fund, the LM Cash Performance Fund, the LM Currency Protected Australian Income Fund, the LM Institutional Currency Protected Australian Income Fund. LMIM is also the trustee of the LM Australian Income Currency Protected Fund, and the former trustee of the LM Managed Performance Fund.
8. The FMIF has over 4,500 members.
9. The members of the FMIF subscribed capital for investment purposes. FMIF's investment activities consisted of advancing funds to borrowers under loan agreements on the security of first registered mortgages over real property. The assets of the FMIF consist of its rights against borrowers under these loan agreements and mortgages.
10. The assets of the FMIF are held by The Trust Company (PTAL) Limited ("PTAL") as custodian pursuant to the terms of a Custody Agreement between LMIM, and PTAL (then named Permanent Trustee Australia Limited) and dated 4 February, 1999. A copy of the Custody Agreement is at pages 88 to 124 of exhibit "DW-1".
11. The name of the fund described in Schedule 2 to the agreement as "LM Mortgage Income Fund" was changed to "LM First Mortgage Income Fund" – that is, the FMIF - from 31 May, 2007.
12. I have seen a number of documents by which the Custody Agreement has been amended since 4 February, 1999. The tenor of the amendments has been to include various managed investment schemes in, or to remove them from, the application of the Custody Agreement. None of the amending documents has altered clauses 4 or 5 of the Custody Agreement.
13. I am aware from my inspection of certain books and records of the FMIF that:
 - (a) the FMIF was closed for new investments in about March, 2009; and

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Witnessed by:



- (b) redemption of units in the FMIF was suspended in October, 2009, other than redemptions allowed under hardship provisions and certain payments to feeder funds.
14. On 19 March, 2013, John Park and Ginette Muller of FTI Consulting were appointed voluntary administrators of LMIM.
15. On 11 July, 2013, Deutsche Bank AG ("DB"), a secured creditor of the FMIF, appointed Joseph Hayes and Anthony Connelly of McGrathNicol (the "DB receivers") as receivers and managers of the assets and undertakings of the FMIF. A copy of the deed of appointment of the DB Receivers is at pages 125 to 132 of exhibit "DW-1". .
16. On 1 August, 2013, Mr Park and Ms Muller were appointed liquidators of LMIM.

Retirement Villages

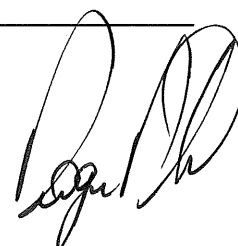
17. The assets of the Fund include loans made to a number of companies, in the name of PTAL as mortgagee and chargee (and in its capacity as custodian under the Custody Agreement). The borrower companies were, at the time when the loans were made, operating or constructing retirement living and aged care accommodation facilities (which I will refer to collectively as "retirement villages" in this affidavit).
18. The loans just mentioned were made in respect of five retirement villages. Two of the retirement villages are situated in Queensland, and there is one other such village in each of the states of New South Wales, Victoria and Tasmania.
19. All borrowers have been in default in meeting their repayment obligations under the loans for some time now.
20. In consequence of these defaults:
- (a) PTAL has entered into possession of the retirement villages;

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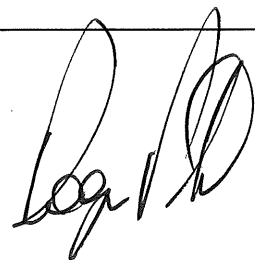
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- (b) PTAL has appointed LMIM (in its own right) to be its agent for the purposes of exercising rights and powers which PTAL has under the mortgages and charges that it holds from the borrowers (and entered into deeds of indemnity with LMIM in respect of each of these appointments).

21. A summary of the retirement village assets over which PTAL holds security is as follows:

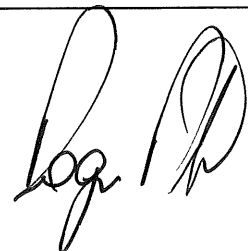
Name of Retirement Village	Location of Retirement Village	Description of Asset	Date LMIM appointed agent
Bridgewater Lake Retirement Estate ("Bridgewater Lake")	9 Wedgewood Road, Roxburgh Park, Victoria	It comprises 61 independent living units and 9 such units under construction. There is the potential for a further 128 such units to be built.	1 April, 2010
Cameo Estates Lifestyle Village ("Cameo Estates")	30 Janefield Street, Mowbray Heights, Launceston	It comprises 26 independent living units. There is the potential for a further 18 such units to be constructed.	9 February, 2011
Tall Trees Caboolture ("Caboolture")	23 Adelaide Drive, Caboolture South, Queensland	It comprises 64 independent living units. There is the potential for a further 76 such units to be built.	21 January, 2014
Tall Trees Ocean View Retirement Community ("Ocean View")	2-4 Terranora Road, Banora Point, New South Wales	It comprises 83 independent living units.	29 October, 2010
Tall Trees Redland Bay ("Redland Bay")	35 Weinam Street, Redland Bay	It comprises 37 independent living units. The balance of the land, on which stand 7 detached	8, 9 February, 2011



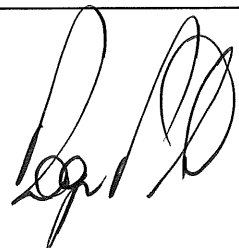
Name of Retirement Village	Location of Retirement Village	Description of Asset	Date LMIM appointed agent
		dwellings, has the potential to be subdivided into up to 100 small dwelling lots.	

22. LMIM has, as PTAL's agent, entered into a number of agreements (copies of which I have seen) relating to the operation of the retirement villages, including:

- (a) a consultancy, marketing and management services agreement, dated 1 June, 2010, and a sales service agreement, dated 1 September, 2011, each with Independent Management Group Pty Ltd and relating to Bridgewater Lake;
- (b) a deed of variation of these two agreements, dated 5 October, 2011, made with Independent Management Group Pty Ltd and Coast and Country Villages Pty Ltd and relating to Bridgewater Lake;
- (c) a consultancy agreement and a sales and marketing agreement, each dated 1 July, 2011, with Tall Trees Corporate Pty Ltd and relating to Ocean View;
- (d) similar agreements with Tall Trees Corporate Pty Ltd, and each dated 1 July, 2011, relating to Redland Bay;
- (e) an agreement, dated 1 February, 2012, with Coast and Country Villages Pty Ltd for the provision by that company of consultancy, management and marketing services in relation to Cameo Estates;
- (f) 10 building contracts, dated between January, 2014 and May, 2014, with EWH Construction Pty Ltd in relation to Bridgewater Lake; and



- (g) a building contract, dated 3 June, 2014, with J & C Dykman Pty Ltd in relation to Cameo Estates.
23. Since the end of July, 2014 (and as I discuss in more detail subsequently in this affidavit):
- (a) the liquidators of LMIM have provided the DB Receivers with a Deed of Indemnity in their favour (which the DB Receivers have passed to me), and have stated that they require all of us to sign the deed in order for the liquidators to continue to serve as PTAL's agent in connection with the operation and the marketing for sale of the retirement villages;
 - (b) I have considered this deed and I am unwilling to sign it, given that I believe it has the potential to impose a personal liability upon me, extending beyond available assets of the FMIF;
 - (c) I understand from discussions with the DB Receivers that they too are unwilling to sign this deed;
 - (d) as a result of these discussions, the DB Receivers and I have come to the view that it would be appropriate to have PTAL terminate the appointments of LMIM as its agents in relation to the retirement villages and to appoint me and one of my business partners, Andrew Fielding (a registered insolvency practitioner) to be appointed as PTAL's agents in place of LMIM.
24. I believe that this may be done pursuant to the Custody Agreement, as follows:
- (a) that agreement provides for PTAL's acting upon written instructions from nominated "Authorised Persons" associated with LMIM;
 - (b) I became an "Authorised Person" for the purposes of the agreement on or about 21 August, 2013; and
 - (c) as such, I am in a position to instruct PTAL to terminate its appointments of LMIM as its agent in respect of each of the retirement villages mentioned earlier, and to further



instruct PTAL to appoint me and Mr Fielding as its agents in respect of those retirement villages in place of LMIM.

25. I have received a letter from the DB Receivers, dated 1 September, 2014 in which they state that:

- (a) they are unwilling to sign the deed of indemnity mentioned above;
- (b) they will not oppose my taking steps to bring about the appointment, by PTAL of me and one of my business partners, as PTAL's agent in relation to the retirement villages.

A copy of this letter is at pages 133 and 134 of exhibit "DW-1".

26. Both Mr Fielding and I are willing to accept appointment as PTAL's agents in respect of each of the retirement villages mentioned earlier.

27. I comment further upon the indemnity just mentioned at paragraphs 68 and 69 of this affidavit.

28. Before dealing at greater length with the knowledge about the retirement villages which I (in my court-appointed roles) and staff of BDO have gained since my appointment, I set out some additional information about each of those villages.

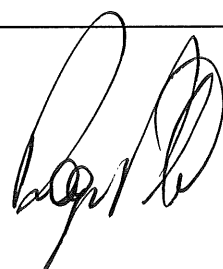
Bridgewater Village

29. The owner of the land upon which Bridgewater Lake stands is Bridgewater Lake Estate Limited (in liquidation) (Managing Controller appointed) ("**Bridgewater**"). At pages 135 to 167 of exhibit "DW-1" is a copy of a company search for Bridgewater extracted from the records of ASIC.

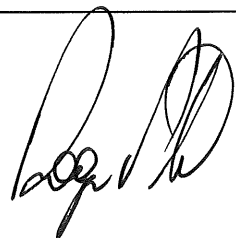
30. The FMIF advanced certain funds to Bridgewater ("**the Bridgewater Facility**").

31. PTAL holds various securities which were granted to it by Bridgewater to secure the repayment of the Bridgewater Facility, including:

- (a) fixed and floating charge over the assets and undertakings of Bridgewater;



- (b) mortgage dated 29 April, 2003 over land comprised in Certificates of Title volume 10667, folio 791, volume 10667, folio 793 and volume 10718, folio 486;
 - (c) mortgage dated 1 September, 2004 over land comprised in Certificate of Title volume 10667, folio 794;
 - (d) mortgage dated 10 September, 2004 over land comprised in Certificate of Title volume 10823, folio 288;
 - (e) mortgage dated 22 December, 2004 over land comprised in Certificate of Title volume 10846, folio 917; and
 - (f) mortgage dated 23 August, 2005 over land comprised in Certificate of Title volume 10848 folio 918,
(“the Bridgewater Securities”).
32. Copies of the documents comprising the Bridgewater Securities (including the memoranda of common provisions incorporated into the various mortgages) are at pages 168 to 201 of exhibit “DW-1”.
33. The Bridgewater Facility has expired. The loan has not been repaid.
34. On or about 1 April, 2010:
- (a) PTAL, by deed and as mortgagee and charge under the Bridgewater Securities, appointed LMIM to be its agent to exercise all of the rights, powers, privileges, benefits, discretions and authorities conferred on PTAL under the Bridgewater Securities and by law. A copy of the deed of appointment is at pages 202 to 206 of exhibit “DW-1”; and
 - (b) PTAL agreed to indemnify LMIM for liabilities incurred by it as a result of the exercise of any of the rights, powers, discretions or authorities vested in it by virtue of its appointment as agent. A copy of the indemnity agreement is at pages 207 to 213 of exhibit “DW-1”.



35. As at the date of my swearing this affidavit, the amount owing by Bridgewater to the FMIF is approximately \$45,400,000.

Cameo Village

36. The owner of the land upon which Cameo Estates stands is Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (receivers and managers appointed) (Managing Controller appointed) ("**Cameo**"). A copy of a company search for Cameo extracted from the records of ASIC is at pages 214 to 222 of exhibit "DW-1".

37. The FMIF advanced certain funds to Cameo ("**the Cameo Facility**").

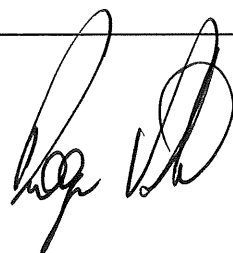
38. PTAL holds, as security for the repayment of the loan, a fixed and floating charge dated 16 December, 2005 over the assets and undertakings of Cameo. A copy of the charge is at pages 223 to 250 of exhibit "DW-1".

39. The Cameo Facility has expired. The loan has not been repaid.

40. On or about 9 February, 2011:

- (a) PTAL, by deed and as chargee of Cameo, appointed LMIM to be its agent to exercise all rights, powers, privileges, benefits, discretions, and authorities conferred on PTAL under the charge and by law. Copies of the deed of appointment, one signed for PTAL and the other for LMIM. Are at pages 251 to 260 of exhibit "DW-1"; and
- (b) PTAL agreed to indemnify LMIM for liabilities incurred by it as a result of the exercise of any of the rights, powers, discretions, or authorities vested in it by virtue of its appointment as agent. Copies of the indemnity agreement, one signed for PTAL and the other for LMIM are at pages 261 to 272 of exhibit "DW-1".

41. As at the date of swearing this affidavit, the amount owing by Cameo to the FMIF is approximately \$10,800,000.



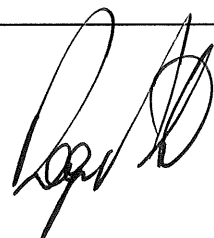
Caboolture Village

42. The owner of the land upon which Caboolture stands is Pinevale Villas Morayfield Pty Ltd as trustee under Instrument 709597321 (in liquidation) (Controller acting) (“Pinevale”). A copy of a company search for Pinevale extracted from the records of ASIC is at pages 273 to 278 of exhibit “DW-1”.
43. The FMIF advanced certain funds to Carrington Management Pty Ltd in its own right and as trustee for the Carrington Discretionary Trust (“the Caboolture Facility”).
44. PTAL holds various securities which were granted to it by Pinevale to secure the repayment of the Caboolture Facility, including:
- (a) mortgage registered on 16 May, 2006 over land described as Lot 2 on SP 140132;
 - (b) fixed and floating charge dated 12 May, 2006 over the assets and undertakings of Pinevale (then known as Adelaide Street Properties Pty Ltd);
- (“the Pinevale Securities”).
45. Copies of the Pinevale Securities (including the standard terms document incorporated into the mortgage and a registration number search certificate and attachment certificates under section 174 of the *Personal Property Securities Act 2009*) are at pages 279 to 383 of exhibit “DW-1”.
46. The Caboolture Facility has expired. The loan has not been repaid.
47. On or about 21 January, 2014:
- (a) PTAL, by deed and as mortgagee and charge, appointed LMIM, as responsible entity of the FMIF, to be its agent to exercise all of the rights, powers, privileges, benefits, discretions, and authorities conferred on PTAL under the Pinevale Securities, and by law. A copy of the deed of appointment is at pages 384 to 388 of exhibit “DW-1”; and

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Witnessed by:



- (b) PTAL agreed to indemnify LMIM for liabilities incurred by it as a result of the exercise of any of these rights, powers, discretions or authorities vested in it by virtue of its appointment as PTAL's agent. A copy of the indemnity agreement is at pages 389 to 394 of exhibit "DW-1".

48. As at the date of swearing this Affidavit, the amount owing by Pinewale to the FMIF pursuant to the guarantee that it provided is approximately \$33,000,000.

Ocean View Village

49. The owner of the land upon which Ocean View stands is OVST Pty Ltd (Controller appointed) (in liquidation) ("OVST"). A copy of a company search for OVST extracted from the records of ASIC is at pages 395 to 403 of exhibit "DW-1".

50. The FMIF advanced certain funds to OVST ("the OVST Facility").

51. PTAL holds the following securities granted by OVST to secure the repayment of the OVST Facility:

- (a) registered mortgage, Dealing No. AA 391989, given by OVST Pty Ltd to LMIM and subsequently transferred to PTAL as mortgagee by registered transfer, Dealing No. AA 518433;
- (b) registered mortgage, Dealing No. AA 893065, given by OVST Pty Ltd to PTAL; and
- (c) fixed and floating charge given by OVST Pty Ltd, dated 6 February, 2004 and registered with the Australian Securities and Investments Commission,

("the OVST Securities").

52. Copies of the OVST Securities are at pages 404 to 474 of exhibit "DW-1".

53. The OVST Facility has expired. The loan has not been repaid.

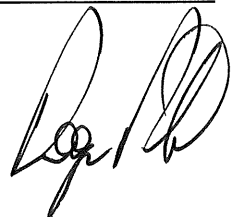
54. On or about 29 October, 2010:

Page 12

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Witnessed by:



- (a) PTAL, by deed and as mortgagee and charge, appointed LMIM (in its own right) to be its agent to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on PTAL by the OVST Securities and by law. A copy of the deed of appointment is at pages 475 to 479 of exhibit "DW-1"; and
- (b) PTAL agreed to indemnify LMIM for liabilities incurred by it as a result of the exercise of these rights, powers and the like vested in it by virtue of its appointment as agent. A copy of the indemnity agreement is at pages 480 to 486 of exhibit "DW-1".

55. As at the date of swearing this affidavit, the amount owing by OVST to the FMIF is approximately \$47,100,000.

Redland Bay Village

56. The owner of the land upon which Redland Bay stands is Redland Bay Leisure Life Pty Ltd (Managing Controller appointed) (in liquidation) ("RBLL"). A copy of a company search for RBLL extracted from the records of ASIC is at pages 487 to 498 of exhibit "DW-1".

57. The FMIF advanced funds to:

- (a) RBLL; and
- (b) Redland Bay Leisure Life Development Pty Ltd ("RBLLD") (in liquidation) in its own right and as trustee for the Redland Bay Leisure Life Development Partnership. A copy of a company search for RBLLD extracted from the records of ASIC is at pages 499 to 510 of exhibit "DW-1".

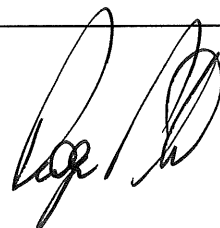
(**"the Redland Bay Facilities"**).

58. PTAL holds various securities which were granted to it by RBLL to secure the repayment of the Redland Bay Facilities, including:

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Witnessed by:



- (a) mortgage registered on 17 June, 2005 over land described as Lot 2 on RP 95747, Lot 11 on CP SL1595, Lot 2 on RP 48270, Lots 16, 17, 24 and 25 on RP 30555, and Lot 3 on RP 90361;
 - (b) mortgage registered on 14 June, 2007 over Lot 1 on RP 48270; and
 - (c) fixed and floating charges dated 2 June, 2005 and 7 February, 2007 over the assets and undertakings of RBLL and RBLLD,
- (“the RBLL Securities”).

59. Copies of the documents comprising the RBLL Securities are at pages 511 to 571 of exhibit “DW-1”.

60. On or about 8 February, 2011:

- (a) PTAL, by deed and as mortgagee, appointed LMIM, pursuant to the terms of the RBLLD Security, to be its agent to exercise all of the rights, powers, privileges, benefits, discretions and authorities conferred on PTAL under the terms of the fixed and floating charge from RBLLD and by law. A copy of the deed of appointment is at pages 572 to 576 of exhibit “DW-1”; and
- (b) PTAL agreed to indemnify RBLLD for liabilities incurred by it as a result of the exercise of any of the rights, powers, discretions or authorities vested in it by virtue of its appointment as agent. A copy of the indemnity agreement is at pages 577 to 582 of exhibit “DW-1”.

61. On or about 9 February, 2011:

- (a) PTAL, by deed and as mortgagee, appointed LMIM, pursuant to the terms of the RBLL Securities, to be its agent to exercise all of the rights, powers, privileges, benefits, discretions, and authorities conferred on PTAL under the terms of the RBLL Securities



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Page 14

Witnessed by:



and by law. A copy of the deed of appointment is at pages 583 to 587 of exhibit "DW-1"; and

(b) PTAL agreed to indemnify RBLL for liabilities incurred by it as a result of the exercise of any of the rights, powers, discretions, or authorities vested in it by virtue of its appointment as agent. A copy of the indemnity agreement is at pages 588 to 594 of exhibit "DW-1".

62. Subsequently, on or about 1 August, 2011, PTAL and LMIM became managing controllers of property comprised in the RBLL Securities. Copies of records of their appointment are at pages 595 to 604 of exhibit "DW-1".

63. As at the date of swearing this affidavit, the amount owing under the terms of the Redland Bay Facilities is approximately \$83,750,000.

Familiarity with Retirement Villages

64. Since my appointment in August, 2013, I have been assisted in the carrying out of my responsibilities by several employees of BDO. In the course of that, I and they have carried out a substantial amount of work in connection with the retirement villages and, in consequence, we have acquired extensive knowledge of the operations and financial performance of each of the retirement villages, and of ideas and plans for the expansion and sale of the villages.

65. The performance of this work (a summary of which I set out below) means, in my opinion, that the transition from LMIM's agency to the new agency will not be the cause of any impediment to the continued operations of any of the retirement villages, or any increased cost to be borne (ultimately) by Fund investors.

66. Should I and Mr Fielding become PTAL's new agents, I would propose to have the employees just mentioned perform necessary work in connection with the retirement villages.

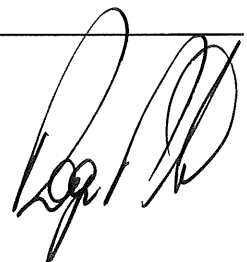
67. The work related to the retirement villages which I and BDO employees have carried out since my appointment includes, but is not limited to, the following:

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Witnessed by:



- (a) I, and a number of BDO employees, have visited each of the retirement villages to see the facilities on offer to members of the public; and, during such visits, we have had discussions with on-site managers about the day to day to day operations of the villages, the financial performance of the villages, the manner in which the accommodation and services on offer have been promoted, the construction of more residential units (in some cases) and steps that might be taken to sell the villages as a going concern;
- (b) BDO employees and I have reviewed numerous documents relating to each of the retirement villages, including the mortgages and charges mentioned earlier in this affidavit, agreements for the management of the villages, agreements relating to the marketing and promotion of the villages, agreements with residents of the villages, suites of agreements and other documents to be provided to incoming residents (which include lease agreements and loan agreements), a number of building contracts (some for remedial work, others for the construction of new residential units) and public disclosure statements required by legislation in some States to be made available to members of the public (the management agreements, agreements with prospective residents and public disclosure statements were reviewed to check their compliance with applicable statutory requirements, and they appeared to be compliant);
- (c) BDO employees and I have also examined and analysed financial reports prepared by operators of the retirement villages, and other financial records and information of the villages, in order to prepare financial models relating to the operation of the villages, to assess the reasonableness of marketing budgets prepared by village operators, to prepare accounts for the villages for the years ended 30 June, 2012, 30 June, 2013 and 30 June, 2014, and to determine a sales strategy for each of the villages; and
- (d) based on the preceding work, BDO employees and I have prepared an internal memorandum about the available options for disposal of each of the five retirement villages in the manner likely (in my opinion) to bring about the most favourable result for investors in the Fund.

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Witnessed by:



Correspondence relating to indemnity

68. Since 30 May, 2014, correspondence (initiated by the DB Receivers) has passed between the Liquidators of LMIM and the DB Receivers about the issue of LMIM's role as PTAL's agent. I have been provided with copies of that correspondence, which is as follows (and the final document mentioned, the Deed of Indemnity, was passed on to me by the DB Receivers):

Date	Communication
30.05.14	Letter from DB Receivers to LMIM Liquidators
13.06.14	Letter from LMIM Liquidators to DB Receivers
28.07.14	Copy Deed of Indemnity presented by LMIM liquidators

Copies of all of these documents are at pages 605 to 621 of exhibit "DW-1".

69. As I mentioned earlier, I am unwilling to sign this deed of indemnity. That is because, having read the document, the proposed indemnity appears to me:

- (a) not to be limited to the assets of the FMIF, but to cast a potential personal liability upon the DB Receivers and me;
- (b) to impose an obligation to indemnify upon all of the receivers, regardless of which of the receivers provided instructions which gave rise to a liability the subject of the indemnity;
- (c) to be able to be called upon without the liquidators' first being obliged to seek to satisfy an incurred liability or expense from the assets of the FMIF, or by having LMIM make demand upon PTAL pursuant to one of the indemnities given at the time of the appointment of LMIM as agent; and
- (d) to apply to professional fees of and legal fees incurred by Mr Park and Ms Muller, without any requirement for those fees to be reasonably incurred and reasonable in amount.

Signed:

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Witnessed by:



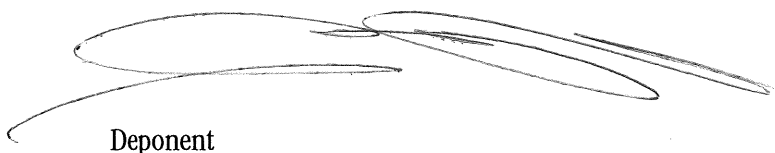
70. I seek directions from this honourable Court to the effect set out in the application filed on 4 September, 2014. Those directions, if made, will involve:

- (a) my instructing PTAL to terminate each of its appointments of LMIM as an agent in respect of its powers as mortgagee and chargee of the five retirement villages mentioned earlier;
- (b) my instructing PTAL to appoint me and my BDO partner, Andrew Fielding, as such agents in place of LMIM; or
- (c) alternatively to this last request, should the Court not consider it appropriate that I accept such an appointment, my instructing PTAL to appoint Mr Fielding and another BDO partner, Gerry Collins, as such agents.


71. Each of Mr Fielding and Mr Collins is willing to accept appointment as such an agent of PTAL, and has signed a form of consent to their appointment in that regard. Copies of forms of consent signed by each of these gentlemen are at pages 622 and 623 of exhibit "DW-1".

72. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

Sworn by **DAVID WHYTE** on the 9th day of September 2014 at Brisbane in the presence of:



Deponent



A Justice of the Peace
JP Quah 70956