

**AFFIDAVIT**

No. 107316 of 2016

IN THE SUPREME COURT OF NEW SOUTH WALES

DIVISION: EQUITY

REGISTRY: SYDNEY

**IN THE MATTER OF PRIMESPACE PROPERTY INVESTMENT LIMITED  
(IN LIQUIDATION) ACN 107 345 317**

**SHAUN ROBERT FRASER**

First Plaintiff

**ANTHONY GREGORY MCGRATH**

Second Plaintiff


**PRIMESPACE PROPERTY INVESTMENT LIMITED (IN LIQUIDATION)**

Third Plaintiff

Affidavit of: **PAUL JAMES POWDERLY**  
Address: 18 Cobby Street Campbell ACT 2612  
Occupation: Director  
Date: 2 September 2016

I, **Paul James Powderly**, of 18 Cobby Street Campbell ACT 2612, being duly sworn say:

1. I am a director and secretary of IQIT Nominees Pty Limited ACN 605 588 921 (**IQIT Nominees**). IQIT Nominees is the current trustee of the IQ Investment Trust established pursuant to Deed dated 21 December 2012, as varied (**IQIT**).
2. I am a registered real estate agent and valuer and State Chief Executive, ACT, of Colliers International. I am also the President of the Australian Property Institute.
3. In addition to myself, at all material times there have been two other directors of IQIT Nominees, being:
  - (a) Mr Stephen Wayne Brennan; and
  - (b) Mr Micah George Manners.



Filed on behalf of: **IQIT Nominees Pty Ltd as trustee for IQ Investment Trust**


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Our Ref: DSC:BND:103599

4. I confirm that I am authorised to swear this affidavit on behalf of IQIT.
5. Exhibited to me at the time of my swearing of this affidavit and marked "**Exhibit PP-1**" is a bundle of documents which, unless otherwise stated, have either been extracted by me from the books and records of IQIT or extracted from the file maintained by IQIT's solicitors in respect of this matter.
6. In preparing this affidavit I have also been shown a number of documents filed or served by the plaintiffs in these proceedings, including:
  - (a) Affidavit of Shaun Robert Fraser sworn on 8 April 2016 (**First Fraser Affidavit**);
  - (b) Exhibit SF-1 to the First Fraser Affidavit (**Exhibit SF-1**);
  - (c) Affidavit of Shaun Robert Fraser sworn on 12 July 2016 (**Second Fraser Affidavit**);
  - (d) Exhibit SF-2 to the Second Fraser Affidavit (**Exhibit SF-2**);
  - (e) Affidavit of Shaun Robert Fraser sworn on 23 August 2016 (**Third Fraser Affidavit**); and
  - (f) Exhibit SF-3 to the Third Fraser Affidavit (**Exhibit SF-3**).
7. I make reference to some of the documents contained in Exhibits SF-1, SF-2 and SF-3 throughout this affidavit.
8. The summary of events and correspondence set out in this affidavit is not, and is not intended to be, an exhaustive list of all events and communications which have taken place involving IQIT and the liquidators of PrimeSpace Property Investments Ltd (**PPIL**), Mr Shaun Fraser and Mr Anthony McGrath, since their appointment as voluntary administrators to PPIL on 23 April 2015 and subsequent appointment as liquidators of PPIL on 28 May 2015 (**the Liquidators**).
9. Where possible I have not duplicated material contained in Exhibit PP-1 with material that has been put before the Court by the Liquidators.

**A. IQIT**

10. IQIT was established by deed dated 21 December 2012 (**IQIT Constitution**). Pages 1 to 39 of Exhibit PP-1 contain a copy of the IQIT Constitution.
11. Page 40 of Exhibit PP-1 contains a copy of the Register of Holders of unitholders in IQIT, setting out each unitholders' investment in IQIT, the funds of which were subsequently invested in PSNT on or about 1 January 2013.



12. Pages **41** to **47** of Exhibit PP-1 contain a current and historical organisation extract for IQIT Nominees, obtained by my solicitors from the register maintained by the Australian Securities and Investments Commission (**ASIC**) on 3 August 2016.
13. As summarised at paragraphs [22] to [28] of the First Fraser Affidavit:
  - (a) Following the appointment of the Liquidators as voluntary administrators of PPIL on 23 April 2015, on or about 1 May 2015 the unit holders of IQIT unanimously resolved to remove PPIL and to appoint IQIT Nominees as trustee of IQIT;
  - (b) Following some resistance from the Liquidators to the replacement of PPIL as trustee of IQIT, on 1 October 2015 the Liquidators agreed to execute the Deed of Retirement and Appointment.
14. Pages **48** to **55** of Exhibit PP-1 contain a copy of a Deed of Retirement and Replacement of Trustee dated 1 October 2015, removing PPIL as trustee of PSNT and replacing it with IQIT Nominees.
15. IQIT Nominees has been, and continues to be, the trustee of IQIT since 1 October 2015.

## **B. Background**

16. On or about 22 May 2013 a document entitled IQ Joint Venture Agreement (located at Tab 8 of Exhibit SF-1) was entered into between Marque Northbourne Limited as trustee for the Marque Northbourne Trust (**MNB**), Worth Street Commercial Pty Ltd (**WSC**) and PSNT (**the IQJV Agreement**). Under the IQJV Agreement, a joint venture was established between the parties involving a development known as the IQ Smart Apartment development (**IQJV**). The respective ownership interests in the IQJV were as follows:
  - (a) PSNT as to 38.74%;
  - (b) MNB as to 40.89%; and
  - (c) WSC as to 20.37%.
17. PSNT was appointed project manager of the IQJV pursuant to a project management agreement dated 22 May 2013 (**IQJV Project Management Agreement**). A copy of the project management agreement is contained at Tab 1A of Exhibit SF-2.
18. On 23 April 2015, the Liquidators were appointed as joint and several voluntary administrators of PPIL.



19. On 24 April 2015, Canberra Finance Group Pty Ltd (**CFG**) purported to exercise an option granted under a deed of option entered into with PS Retail Pty Ltd (**PS Retail**) to purchase from Australian Executor Trustees Limited as custodian for PSNT (**AET**) four (4) apartments (**the Optioned Units**). A copy of the letter from A Backhouse & Associates, solicitors for CFG, to AET dated 24 April 2015 (**CFG Notice of Exercise of Option**) is located at Tab 12 of Exhibit SF-2.
20. Pages **56** to **126** of Exhibit PP-1 contain a copy of a letter dated 24 April 2015 to the Liquidators from Bradley Allan Love Lawyers (**BAL Lawyers**), solicitors for Vienne Pty Ltd (**Vienne**) a creditor of PPIL and a number of other noteholders in PAPF (**the 24 April 2015 BAL Lawyers Letter**). The 24 April 2015 BAL Lawyers Letter contains a number of detailed allegations concerning possible breaches of trust arising from the granting of a corporate guarantee by PPIL as trustee of PrimeSpace Northbourne Trust (**PSNT**) in favour of Canberra Finance Group Pty Limited (**CFG**) securing amounts loaned by CFG to PS Retail.
21. Pages **128** to **132** of Exhibit PP-1 contain a further letter from Bradley Allan Love Lawyers to the Liquidators dated 18 May 2015, providing additional information in relation to the allegations made concerning the CFG transactions.
22. On or about 19 May 2015, the IQJV Project Management Agreement was terminated by written notice given to PPIL as trustee of PSNT by the principals under the IQJV Project Management Agreement. A copy of a letter from Clayton Utz to the Liquidators dated 19 May 2015 attaching the notice of termination of PPIL as project manager under the IQJV is contained at pages **133** to **136** of Exhibit PP-1.
23. On 21 May 2015, the Liquidators in their capacity as voluntary administrators of PPIL issued their report to creditors of PPIL pursuant to section 439A of the *Corporations Act 2001 (Cth)* (**the Act**) dated 21 May 2015 (**the s439A Report**). A copy of the s439A Report is located at Tab 2 of Exhibit SF-1.
24. On 28 May 2015, the Liquidators held the second creditors meeting for PPIL pursuant to section 439A of the Act (**the Second Creditors Meeting**). At this meeting, resolutions were passed including that:
  - (a) PPIL be wound up and placed into liquidation;
  - (b) The Liquidators be appointed liquidators of PPIL; and
  - (c) A committee of inspection be formed in respect of the winding up of PPIL (**the Committee**).

25. On 11 August 2015, the Liquidators wrote to HWL Ebsworth Lawyers, the current solicitors for CFG, setting out an interim proposal to deal with the Optioned Units. A copy of this letter is located behind Tab 14 of Exhibit SF-2 at pages 219 to 220.
26. On 17 August 2015, the solicitors for CFG wrote to the Liquidators in response to their 11 August 2015 Letter seeking clarification of the Liquidators' interim proposal to deal with the Optioned Units. A copy of this letter is located behind Tab 14 of Exhibit SF-2 at pages 221 to 223.
27. Pages **137 to 140** of Exhibit PP-1 contain a copy of a letter dated 26 August 2015 (**the Liquidators 26 August 2015 Letter**) from the Liquidators to members of the Committee.
28. The Liquidators' 26 August 2015 Letter relevantly provided:

*"In accordance with the rights of the other JV partners under the Joint Venture Agreement, PPIL was terminated as the manager of the project. On that basis, PPIL's right to receive a management fee was forfeited. Management of the JV has been assumed by the other JV partners. Although PPIL, PAPF or PSNT have no rights to participate in management decisions as a result of the insolvency, the JV partners have been very cooperative and transparent in their dealings with PPIL." (my emphasis)*

and

- *The JV is continuing to market and realise the remaining unsold IQ Smart Apartments. There are currently circa [66] unsold apartments. The remaining circa [164] apartments have either settled or are under contract.*
- *Subject to the finalisation of sales, the Company [PPIL], in its capacity as trustee of PSNT, will be entitled to its share of net proceeds from the IQ Smart Apartment development. Based on the latest information available from the JV partners, we anticipate that net proceeds from the project to PSNT will total circa \$14m. This estimate remains consistent with the estimates provided to creditors at the second meeting of creditors on 25 May 2015." (my emphasis)*

and

*"We anticipate that there will be sufficient funds realised to enable creditors of PSNT to be paid in full. Following payment of creditors to PSNT and the convertible note held by the IQ Investment Trust, we estimate that there will be a*

surplus of circa \$3m - \$7m (subject to the outcome of the matters discussed below) available to PAPF. (my emphasis)

29. On 27 August 2015, the Liquidators of PPIL as trustee of PSNT received an interim distribution in the sum of \$4,911,555 from the IQJV partners, being an interim distribution of the net proceeds of sales of apartments in the IQ Smart Apartments development managed by the IQJV partners (see page **186 to 190** of Exhibit PP-1 being a letter dated 15 August 2016 from the Liquidators to the Committee (**the 15 August 2016 Committee Circular**)).
30. On 28 August 2015 I had a telephone discussion with Mr Stephen Brennan, fellow director of IQIT Nominees Pty Limited. Mr Brennan relayed to me that, during discussions between him and Mr Fraser earlier that day, Mr Fraser had advised Mr Brennan that he would be paying an interim distribution to IQIT of approximately 65% of the amount owing to IQIT by PSNT and the balance of the amounts owed to IQIT at later point in time once additional units in the IQ Smart Apartment development had been sold. A copy of my handwritten file note of my discussion with Mr Brennan is contained at page **141** of Exhibit PP-1.
31. Between 28 August 2015 and 29 September 2015, I had a number of discussions with Mr Shaun Fraser and his staff concerning the payment of approximately 65% interim distribution to IQIT which was foreshadowed to me by the Liquidators and their staff as to be paid imminently.
32. Page **142** of Exhibit PP-1 contain an email from me to Micah Manners, director of IQIT Nominees, dated 2 September 2015 sent at 5:16pm, which provides:
 

*"We were advised last Friday that [the Liquidators] were going to make an interim distribution (about 65% of what we are owed) and we are hoping to get advice of this today or tomorrow.*

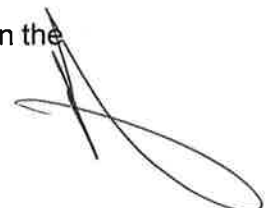
*The balance would be paid when the settlements of some of the sold units occur. We need about another 5-6 units to settle so we get the balance of our money out."*
33. On 17 September 2015, the Liquidators of PPIL as trustee of PSNT received a second interim distribution in the sum of \$968,519 from the IQJV partners, being a further interim distribution of the net proceeds of sales of apartments in the IQ Smart Apartments development managed by the IQJV partners (see page **186 to 190** of Exhibit PP-1 being a copy of the 15 August 2016 Committee Circular).

34. Page **143** of Exhibit PP-1 contains a copy of an email from me to the other unit holders in IQIT dated 29 September 2015 providing an update of my discussions with the Liquidators and the prospect of an interim distribution being paid.
35. On 26 October 2015, the Liquidators of PPIL as trustee of PSNT received a third interim distribution in the sum of \$968,519 from the IQJV partners, being a further interim distribution of the net proceeds of sales of apartments in the IQ Smart Apartments development managed by the IQJV partners (see page **186 to 190** of Exhibit PP-1 being a copy of the 15 August 2016 Committee Circular).
36. On 8 December 2015, CFG served a notice to complete on the Liquidators in respect of the purchase of units by CFG that were the subject of the previous Notice of Exercise of Option dated 24 April 2015. A copy of the notice to complete is contained at Tab 15 of Exhibit SF-2 (**Notice to Complete**).
37. Pages **144 to 145** of Exhibit PP-1 contain a copy of a letter from McGrath Nicol to IQIT dated 24 February 2016 providing an update regarding the status of distributions payable by PSNT to IQIT. In that letter, the Liquidators advised:

*“As a result of actions taken by the director of PPIL prior to my appointment, there is some uncertainty regarding the correct taxation treatment of distributions payable by PSNT to the IQ Investment Trust. In light of this uncertainty, I have instructed my lawyers to seek Court directions to confirm whether payments to the IQ Investment Trust should be characterised as capital or revenue distributions. They will also seek to establish whether the trust is a private trust or a public trust. This will impact how any distribution is paid and where tax is levied.*

*I expect to lodge my application with the Court in the next 2 weeks and to be in a position to make a distribution to the IQ Investment Trust during April (subject to Court dates).* (my emphasis.)

38. On 1 March 2016, the Liquidators wrote to the former directors of PPIL seeking information about the CFG transaction. A copy of the Liquidators letter to Mr Anthony McDonald, former director of PPIL, is located at Tab 13 of Exhibit SF-2.
39. On 4 April 2016, CFG commenced proceedings in the Supreme Court of NSW seeking leave to commence proceedings against PPIL whilst in liquidation. A copy of the originating process filed by CFG on 4 April 2016 is located at Tab 16 of Exhibit SF-2.
40. On 8 April 2016, the Liquidators commenced their own set of proceedings in the Supreme Court of NSW, being proceedings number 107316 of 2016 (the

**Proceedings**), by filing an originating process dated 8 April 2016 (**Originating Process**) and the First Fraser Affidavit in support. The Originating Process sought directions from the Court as to the appropriate treatment of notes issued to IQIT in PSNT and the appropriate tax treatment of those notes that would flow from those directions sought from the Court.

41. On 11 April 2016 I had a telephone conversation with Shaun Fraser of McGrath Nicol which consisted of words to the following effect:

Me: *"Hi Shaun, can you please provide an updated position for the Northbourne Trust including current account balance, payments made and current liabilities. This will assist me in preparing a paper on the current position for the basis of a payment to IQIT."*

Mr Fraser: *"I'll send you an email."*

42. On 13 April 2016, Mr Paul Green, solicitor acting for IQIT at the time, received by hand a letter from Johnson Winter & Slattery (**JWS**), solicitors for the Liquidators, dated 12 April 2016 enclosing a copy of the Originating Process and the First Fraser Affidavit. A copy of this letter (without enclosures) is contained at page **146** of Exhibit PP-1.
43. Pages **147** to **149** of Exhibit PP-1 contain a copy of a letter received by me from the Liquidators dated 26 April 2016, providing an update in relation to the liquidation of PPIL as trustee for PSNT. In that letter a summary of receipts and payments for PSNT was provided which included that as at the date of the letter, the sum of \$445,177 (incl. GST) had been incurred and paid for legal fees incurred by PSNT. An additional sum of \$105,649 (excl. GST) relating to PSNT had been incurred but not yet paid.
44. On 2 May 2016 I received a telephone call from Jessie McGuire from McGrath Nicol making enquiries about the facilities made by CFG and what documents IQIT had in relation to those facilities. Page **150** of Exhibit PP-1 contains a copy of my file note of that conversation.
45. Pages **151** to **152** of Exhibit PP-1 contain a copy of an email from Jessie McGuire to me dated 2 May 2016 received at 2:56pm following up on our discussion earlier that day regarding circumstances surrounding the transactions that PSNT entered into with CFG.
46. Pages **153** to **156** of Exhibit PP-1 contain a copy of an email letter from Johnson Winter & Slattery (**JWS**), solicitors for the Liquidators, to IQIT dated 11 May 2016 attaching orders made by his Honour Justice Brereton of the Supreme Court of NSW on 9 May 2016.



47. On 15 June 2016, there was a conference call between Mr Fraser, Mr Chris Johnson, Mr Stephen Brennan and Mr Abraham that took place at approximately 3:30pm regarding the position of IQIT. The details of this conversation are summarised in an email subsequently sent by Scott Abraham of ABR Virtus Chartered Accountants to myself, Stephen Brennan and Shaun Fraser on 21 June 2016, a copy of which is contained at page **169** of Exhibit PP-1.
48. Pages **157** to **167** of Exhibit PP-1 contain a copy of an email letter from JWS to IQIT dated 17 June 2016 seeking clarification of IQIT's position in relation to an Amended Originating Process filed in the Proceedings to be heard before his Honour Justice Black in the Supreme Court of New South Wales on 23 June 2016 (**the JWS 17 June 2016 Letter**).
49. Page **168** of Exhibit PP-1 contains a copy of a letter (without its enclosures) from JWS to IQIT dated 20 June 2016 enclosing further materials relevant to the Amended Originating Process circulated under cover of the JWS 17 June 2016 Letter.
50. Pages **170** to **171** of Exhibit PP-1 contain a copy of an email from Mr Paul Green, solicitor for IQIT, to Mr Andreas Piesiewicz of JWS Lawyers dated 22 June 2016 sent at 2:01pm.
51. Pages **172** to **176** of Exhibit PP-1 contain a copy of an email from Stephen Brennan to Shaun Fraser, Chris Johnson and John Gasson dated 12 July 2016 sent at 3:41pm attaching a short summary paper prepared by me and sent to Mr Brennan on 7 July 2016 relating to PSNT and a proposed interim distribution to IQIT.
52. On 12 July 2016, the Liquidators filed an Interlocutory Process dated 12 July 2016 (Interlocutory Process) in these Proceedings, together with the Second Fraser Affidavit in support. A copy of these documents were sent to Mr Paul Green, solicitor for IQIT, sometime on 12 July 2016.
53. Pages **177** to **178** of Exhibit PP-1 contain a copy of a circular to creditors and noteholders of PPIL issued by the Liquidators dated 28 July 2016.
54. On 9 August 2016, Mr Stephen Brennan and I had a telephone call conference with Mr Shaun Fraser and Mr Chris Johnson of McGrath Nicol (**the 9 August 2016 Teleconference**). During the 9 August 2016 Teleconference, a number of matters were discussed including:
- (a) How IQIT was going to be paid the amounts owed to it by PSNT;
  - (b) Mr Fraser advised Mr Brennan and I that the Liquidators now thought that the constitution of PSNT provided that general unsecured creditors had a preference

Two handwritten signatures in black ink are located at the bottom right of the page. The signature on the left is more compact and stylized, while the one on the right is larger and more fluid.

in the distribution of funds from PSNT to the amounts owed to IQIT. Mr Fraser advised that we should get our own advice on this issue.

- (c) Mr Fraser advised that this meant that the prospects of payments being made to IQIT could not be resolved until after the CFG Proceedings had been resolved. Mr Fraser advised there was no obligation to pay IQIT any amounts at this time. He repeated that we should get our own advice on this issue;
  - (d) Mr Fraser advised that he was happy to look at the Deed/Constitution of PSNT to consider the prospects of a partial payment being made to IQIT however he was not obliged to do this. Mr Fraser advised he would send us a letter on this issue.
55. A copy of my handwritten file note of the 9 August 2016 Teleconference is contained at page **179** of Exhibit PP-1. As far as I am aware, the first time that I had been advised by the Liquidators that IQIT's claim against PSNT might be subordinated to claims of other unsecured creditors of PSNT, including CFG and the purported undocumented loan from Prime Retail Property Fund (**PAPF**) to PSNT in the sum of \$1.7 million, was at the 9 August 2016 Teleconference.
56. Pages **180** to **182** of Exhibit PP-1 contain a copy of an email from Chris Johnson of the Liquidators' office to Mr Stephen Brennan dated 10 August 2016 sent at 7:17pm, containing a new summary of the Liquidators' estimated financial position of PSNT on the basis that CFG is successful in the CFG Proceedings. Page **182A** of Exhibit PP-1 contains a full copy of the table that appears on page 181.
57. Pages **183** to **184** of Exhibit PP-1 contain a copy of a letter from the Liquidators to IQIT dated 12 August 2016 following up on the matters discussed at the 9 August 2016 Teleconference.
58. Pages **185** to **190** of Exhibit PP-1 contain a copy of an email from Mr Chris Johnson of McGrath Nicol to myself and Mr Brennan dated 22 August 2016 received at 10:28am attaching a copy of a Notice of Committee Meeting sent to members of the Committee of Inspection for PPIL dated 15 August 2016 convening a Committee meeting for Friday, 26 August 2016 at 11:00am.
59. Pages **191** to **194** of Exhibit PP-1 contain a copy of a letter from Bridges Lawyers to JWS dated 24 August 2016 sent at 4:39pm.
60. Pages **195** to **197** of Exhibit PP-1 contain a copy of a letter from JWS to Bridges Lawyers dated 24 August 2016 sent at 6:12pm.
61. On 25 August 2016, the Liquidators' Interlocutory Process was listed for directions before his Honour Justice Black at 9:30am.

62. Pages **198** to **201** of Exhibit PP-1 contain a copy of a letter from Bridges Lawyers to JWS dated 25 August 2016 sent at 5:26pm.
63. Pages **202** of Exhibit PP-1 contains a copy of my file note taken in respect of the Committee meeting held on 26 August 2016.
64. Pages **203** to **206** of Exhibit PP-1 contain a copy of a letter from JWS to Bridges Lawyers dated 29 August 2016 sent at 4:32pm.

**C. Notice of CFG claim and breach of trust allegations given to Liquidators**

65. As set out above:


- (a) On 23 April 2015, the Liquidators were appointed as voluntary administrators of PPIL;
- (b) On 24 April 2015 the Liquidators received CFG's Notice of Exercise of Option;
- (c) On 24 April 2015 the Liquidators received notice of allegations regarding possible breaches of trust arising from the guarantee provided by PSNT or the amount loaned by CFG to PS Retail, as per the 24 April 2015 BAL Lawyers Letter;
- (d) On 21 May 2015, at page 46 of the s439A Report, the Liquidators advised:

*"That estimate reflects the work likely to be undertaken over the next 4-6 weeks which we anticipate will focus on:*

- *working with the IQJV partners to resolve JV issues and complete apartment sales;*
- *investigations and negotiations with CFG in relation to guarantees provided by PSNT and options over apartments in the development;*
- *investigating claims and voidable transactions; and*
- *statutory matters and reporting." (my emphasis)*

66. Based on the above, it is my understanding that the Liquidators were on notice of:

- (a) the CFG claim;
- (b) the allegations concerning the CFG transaction and possible breaches of trust; and
- (c) the need to investigate the veracity of those allegations, since 24 April 2015.




67. As set out in the 15 August 2016 Committee Circular, interim distributions were received by the Liquidators of PPIL as trustee for PSNT as follows:

<b>Date</b>	<b>Amount (\$)</b>
27 August 2015	\$4,911,555
17 September 2015	\$968,519
26 October 2015	\$968,519
<b>Total</b>	<b>6,848,593</b>

68. The Liquidators:

- (a) were on notice of the allegations concerning the CFG transactions since 24 April 2015;
- (b) were aware of the fact that there was a likely surplus of funds in PSNT (even taking into account the claims made by CFG, IQIT and PAPF) of between \$3 million and \$7 million (See s439A Report at Tab 2 of Exhibit SF-2);
- (c) were in receipt of significant cash distributions potentially available to fund any public examinations by 27 August 2015,

69. On 1 March 2016, the Liquidators wrote to the former directors of PPIL seeking information about the CFG transactions.

**D. Accrual of interest on claims since Liquidators' appointment**

*D1. Accrual of interest on IQIT Claim*

70. As at 23 April 2015, the date of appointment of the Liquidators as voluntary administrators of PPIL, IQIT's claim against PPIL as trustee for PSNT was \$6,417,219, comprising of:

- (a) Principal investment of \$4,070,000; plus
- (b) Interest of \$2,347,219 (which under the terms of the Constitution of PSNT, continues to accrue daily at 25% per annum, being an accruing daily interest rate of \$2,787.67).

See Tab 2 of Exhibit SF-2 at page 63.

71. As at 31 August 2016, IQIT had claims against PSNT in the sum of \$7,799,904, comprising of:

- (a) Principal investment of \$4,070,000; plus

- (b) Interest of \$3,729,904 (which under the terms of the Constitution of PSNT, continues to accrue daily at 25% per annum, being an accruing daily interest rate of \$2,787.67).

See paragraph [16] of the Third Fraser Affidavit and Tab 2 of Exhibit SF-2 at page 63.

72. Between the date of the Liquidators Appointment on 23 April 2015 and 31 August 2016, IQIT's claim against PSNT has increased by \$1,382,685 by virtue of interest accrued during that period.

*D2. Accrual of interest on CFG Claim*

73. I have reviewed the CFG loan documents contained in Exhibit SF-1 at Tabs 5, 8, 9 and 10, together with my solicitors. Annexed hereto and marked "A" is a schedule prepared by my solicitors, and reviewed by me, setting out a quantification summary of the CFG claim against PSNT as I understand it (**CFG Loan Calculation Schedule**).

74. Based on the calculations contained in the CFG Loan Calculation Schedule:

- (a) as at 18 December 2014, being the date that the CFG loan to PS Retail was said to become repayable, CFG's claim against PPIL as trustee for PSNT was approximately \$2,743,972, comprising of:
- (i) Principal investment of \$1,950,000; plus
  - (ii) Interest of \$793,972 (based on 25% per annum payable prior to any event of default).
- (b) as at 23 April 2015, the date of the Liquidator's appointment to PPIL, CFG's claim against PPIL as trustee for PSNT was approximately \$2,945,917, comprising of:
- (i) Principal investment of \$1,950,000; plus
  - (ii) Interest of \$995,917 (based on interest calculated at 25% per annum up to 18 December 2014 and a default interest rate of 30% per annum from 18 December 2014 to 23 April 2015 ).
- (c) as at 31 August 2016, CFG's claim against PPIL as trustee for PSNT was approximately \$3,740,876, comprising of:
- (i) Principal investment of \$1,950,000; plus
  - (ii) Interest of \$1,790,876 (based on interest calculated at 25% per annum up to 18 December 2014 and a default interest rate of 30% per annum from 18 December 2014 to 31 August 2016).

75. In summary, and based on the calculations set out in the CFG Loan Calculation Schedule, since the appointment of the Liquidators as voluntary administrators of PPIL on 23 April 2015 up to 31 August 2016, interest has accrued on the CFG claim against PSNT by approximately \$794,958.

*D3. Total accrual of interest on CFG and IQIT claims against PSNT since 23 April 2015*

76. The total amount of interest that has accrued on each of the claims made by CFG and IQIT against PSNT since the date of the Liquidators Appointment on 23 April 2015 to 31 August 2016 is \$2,177,643, being the sum of:

- (a) \$1,382,685 in respect of interest accrued on IQIT's claims against PSNT during that period; and
- (b) \$794,958 in respect of interest accrued on IQIT's claims against PSNT during that period.

**E. Management of the IQ Apartments Joint Venture and sale of units**

77. Pages 207 to 215 of Exhibit PP-1 contain the costs agreement between Meyer Vandenberg Lawyers on the one hand and MNT, PSNT and WSC on the other hand dated 3 June 2013, relating to Meyer Vandenberg's engagement as solicitors acting on the sales of units in the IQJV.

78. As set out in this affidavit above,:

- (a) PPIL was removed as project manager of the IQJV on 19 May 2015;
- (b) The JV partners to the IQJV took over the management of the IQ Apartments Joint Venture thereafter.

79. In relation to the sales of the units in the IQ Smart Apartments development:

- (a) As at 26 April 2015, being a few days after the date of appointment of the Liquidators of PPIL on 23 April 2015:
  - (i) There were 230 residential units and 15 commercial units in the IQ Smart Apartments development;
  - (ii) Of the 230 residential units:
    - 1. 190 residential units had been either sold, were the subject of exchanged contracts for sale, or were to remain in the name of one or more of the IQJV partners under the terms of the IQ Smart Apartments JV Agreement;
    - 2. 40 residential units remained unsold and not under contract.

(iii) Of the 15 commercial units:

1. 8 commercial units had been either sold or were the subject of exchanged contracts for sale;
2. 7 commercial units remained unsold and not under contract.

(b) As at 28 August 2016:

(i) Of the 230 residential units:

1. 219 residential units had been either sold, were the subject of exchanged contracts for sale, or were to remain in the name of one or more of the IQJV partners under the terms of the IQ Smart Apartments JV Agreement;
2. 11 residential units remained unsold and not under contract.

(ii) Of the 15 commercial units:

1. 8 commercial units had been either sold or were the subject of exchanged contracts for sale;
2. 7 commercial units are currently unsold and not under contract.

80. Pages **216** to **222** of Exhibit PP-1 contain copies of sales summary reports prepared for the benefit of the IQJV for various periods of time over the past eighteen (18) months.

81. Further, all interim distributions made to the Liquidators of PPIL as trustee of PSNT have been net of costs paid out of the settlement proceeds of each unit sold in the IQ Smart Apartment development, including :

- (a) legal fees paid to Meyer Vanderberg;
- (b) agent's commission;
- (c) Other fees, costs and adjustments made on the sale of each unit including project management fees.

82. By way of example, pages **223** to **228** of Exhibit PP-1 contain a copy of two separate settlement sheets prepared for the sale of units within the IQ Smart Apartments development on 8 January 2016 and 20 July 2016 respectively.

83. Further, in this respect:

- (a) Pages **229** to **231** of PP-1 contain a copy of the general ledgers of expenses for the IQJV for the period 1 July 2014 to 30 June 2015; and

- (b) Pages 232 to 233 of PP-1 contain a copy of the general ledger of expenses for the IQJV for the period 1 July 2015 to 30 June 2016.

**(the IQJV Expenses General Ledgers)**

84. Each of the costs and expense identified in the IQJV Expenses General Ledgers have been paid prior to any interim distribution to the Liquidators of PPIL as trustee for PSNT as a member of the IQJV.
85. Page 234 of Exhibit PP-1 contains a summary schedule of the costs and expenses of IQJV for the financial years ended 30 June 2015 and 30 June 2016 prepared by Scott Abraham of ABR Virtus (accountant for the IQJV).

**F. Priority of claims against PSNT and possible subordination of IQIT**

86. Page 30 of the s439A Report contained a table containing the Liquidators' estimate of likely returns to creditors of PPIL (including PSNT). Note 2 in that table provides:

*"Priority of IQIT's units, CFG (in the low case) and general unsecured creditors of PSNT would rank equally." (my emphasis added).*

87. At all material times up until the 9 August 2016 Teleconference with Mr Fraser, I believed that IQIT's claim against PSNT ranked equally to other unsecured creditors of PSNT (including CFG's claim).
88. Whilst I expressly reserve IQIT's position on this issue, if it is correct, then based on the estimates contained in the Liquidators' 10 August 2016 Email, IQIT is now looking at a substantial shortfall in the amounts owing to it by PSNT.
89. As I understand it, the risks associated with the proposed course of action proposed by the Liquidators include but are not limited to:
- (a) there is substantial risk in the Liquidators' proposed defence of the CFG Proceedings, including:
- (i) the Liquidators' costs and expenses of the proposed public examinations (estimated to be \$200,000 including legal fees);
- (ii) the Liquidators' costs and expenses of defending the CFG proceedings and commencement of cross-claims in those proceedings (the costs of which have so far not been the subject of any estimates in the evidence provided by the Liquidators on this application but appear from the Liquidators' 10 August 2016 Email to be estimated to be in the vicinity of an additional \$500,000;



- (iii) Possible adverse costs orders being made in the CFG proceedings in the event that the Liquidators are unsuccessful in their defence of the CFG Proceedings (which based on the Liquidators 10 August 2016 Email are estimated to be in the vicinity of \$500,000);
  - (iv) Additional interest accruing on the CFG claim at a rate of \$1,602.74 per day;
  - (v) Additional interest accruing on IQIT's claim at \$2,787.67 per day.
- (b) if the correct legal position is that IQIT's claims against PSNT rank behind all other unsecured creditors of PSNT (but before any distribution is paid to ordinary unitholders of PSNT), then all amounts presently being incurred by the Liquidators in investigating the CFG claims via public examinations and the proposed defence of the CFG Proceedings, will be effectively borne 100% by IQIT through the diminution of proceeds available to be paid to it from PSNT.

90. In contrast, as I understand it the potential benefits of the proposed public examinations into the CFG transactions and proposed defence of the CFG Proceedings in the event that the Liquidators were successful appear to be:

- (a) To set aside the corporate guarantee provided by CFG thereby causing CFG's claim against PSNT to be set aside in full insofar as it relates to PSNT;
- (b) IQIT would be entitled to be paid out such amounts that had accrued on its claim in the interim at 25% per annum;
- (c) The ordinary unitholders in PSNT, being PAPF as to 100%, would likely receive an equity distribution (however I cannot say how much that would be),

subject to the necessary adjustments of costs incurred by the Liquidators in the process and their ability to recover those costs on behalf of PSNT

91. IQIT is concerned that:

- (a) the Liquidators are asking the Court to approve IQIT effectively funding the proposed course of action by the Liquidators, with all of the risk being assumed by IQIT going forward;
- (b) to my knowledge, none of the persons who stand to benefit from the proposed course of action by the Liquidators (being creditors of PAPF as the ultimate beneficiary of 100% of the ordinary units in PSNT) have been asked nor are being asked to contribute towards the cost of the Liquidators' proposed course of action;

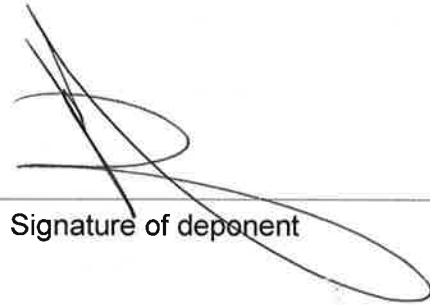
(c) the interests of ordinary unitholders in IQIT are being preferred to the prior ranking interests of IQIT in that:


- (i) currently, IQIT is in a position to imminently have its claim paid out in full without any risk and the ordinary unitholders in PSNT will likely receive NIL;
- (ii) whereas, in the event that the Liquidators' are unsuccessful in the CFG proceedings, IQIT stands to lose a significant amount of the sum owing to it by PSNT and the ordinary unit holders will again receive NIL.

(d) It is not clear whether the Liquidators have had proper regard to the overall commerciality of the proposed course of action set out in the Interlocutory Process including weighing up:

- (i) the cost and expense associated with their proposed course of action;
- (ii) the ongoing interest amounts being incurred in relation to both the CFG claim and the IQIT claim;
- (iii) the risks associated with the proposed course of action; and
- (iv) the potential benefits of the proposed course of action.


Sworn by the deponent )  
 at Sydney Canberra )  
 in New South Wales Australian Capital Territory )  
 on 2 September 2016 before me: )  
 )

  
 \_\_\_\_\_  
 Signature of deponent

  
 \_\_\_\_\_  
 Name of witness Alfonso del Rio  
 Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1. I saw the face of the deponent.
- 2. #I have known the deponent for at least 12 months.
- ~~#I have confirmed the deponent's identity using the following identification document:~~

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




This is Annexure "A" to the affidavit of Paul  
 James Powderly sworn before me on  
 2 September 2016



Alfonso del Rio  
 Solicitor

Annexure "A" to the Affidavit of Paul Powderly sworn 2 September 2016

CFG Loan Interest Calculation Schedule

Advance / (Repayment)	Cumulative balance of Loan	Start Date	End Date	No. of Days	Interest rate	Daily Interest Rate	Interest For Period	Cumulative Interest	Total Principal plus Cumulative Interest
\$1,200,000	\$1,200,000	18/12/2012	27/03/2013	100	25.00%	\$821.92	\$82,191.78	\$82,191.78	\$1,282,191.78
\$300,000	\$1,500,000	28/03/2013	26/05/2014	425	25.00%	\$1,027.40	\$436,643.84	\$518,835.62	\$2,018,835.62
\$450,000	\$1,950,000	27/05/2014	18/12/2014	206	25.00%	\$1,335.62	\$275,136.99	\$793,972.60	\$2,743,972.60
	\$1,950,000	19/12/2014	23/04/2015	126	30.00%	\$1,602.74	\$201,945.21	\$995,917.81	\$2,945,917.81
	\$1,950,000	24/04/2015	31/08/2016	496	30.00%	\$1,602.74	\$794,958.90	\$1,790,876.71	\$3,740,876.71

