

PEARLFISHER

17th December 2018

The Directors
Everest Central Investment Limited

Sent by E-mail

Dear Neil and Vinod

FIRST MORTGAGE DEVELOPMENT FACILITY TO ASSIST WITH FINANCING THE COMMERCIAL DEVELOPMENT AT 156 CENTRAL PARK DRIVE, HENDERSON, AUCKLAND.

We are pleased to outline indicative loan terms ("Indicative Offer") for the above applicant subject to the completion of due diligence and obtaining formal credit approval on the overriding terms and conditions outlined below.

Lender:	Pearlfisher Trustee Limited. The Lender may syndicate its participation in the Loan to one or more other lenders at any time.
Borrower:	Everest Central Investment Limited (the "Borrower").
Guarantors:	All obligations unlimited guarantee from Vinod Kumar, Magson's Investments Limited.
Arranger:	Pearlfisher Capital Limited ("Pearlfisher")
Facility Agent:	Pearlfisher Capital Limited
Security Trustee:	Pearlfisher Trustee Limited
Finance Parties:	The Facility Agent, the Security Trustee, the Arranger and the Lenders.
Loan Amount:	\$25,075,000 (plus capitalised interest and fees) ("the Facility").
Proposed Drawdown Date:	Tranche A: \$10,000,000 Initial Draw down under the Facility is expected to occur on or before the 31st of March 2019 : <u>31st APRIL 2019</u> . Tranche B: \$15,075,000 Tranche B is to be advanced on a cost to complete monthly drawdown basis subject to quantity surveyor certification expected to commence from 20 th July 2019 until completion on or before 31 st December 2019.
Facility Repayment Date:	16 months following the initial draw down under the Facility, with the specific periods of the Facility defined as follows; <u>Construction Term:</u> 10 months <u>Investment Term:</u> 6 months – two 3-month options
Repayment:	On or before the Facility Repayment Date.


----- Initials

Purpose:	To assist with funding the settlement of the land and commercial development of the Property consisting of approximately 25,825 sqm of leasable area comprising 19,000 sqm retail area, 4,613 sqm of warehouse/loading area, 1,642 sqm office area, and 570 sqm of café amenity with 630 carparks located at 156 Central Park Drive, Henderson, Auckland ("the "Development").	
Interest Rate:	<u>Construction Term:</u>	12.5% per annum
	<u>Investment Term:</u>	8.0% per annum
Method of Interest Calculation:	<u>Construction Term:</u>	Calculated daily, capitalised to the loan on the last day of each month during the term of the Facility.
	<u>Investment Term:</u>	Calculated daily, and payable monthly in arrears on the last day of each month during the term of the Facility.
Financial Arrangement Fee:	\$260,000 (GST Exempt) is payable upon Pearlfisher issuing a Formal Offer (to be deducted from the Loan on the initial draw down, or, if the loan is not drawn down by the Withdrawal of Offer Date, to be payable to the Arranger on written demand).	
Establishment Fee:	<u>Construction Term:</u> \$500,000 (GST exempt) payable upon acceptance of the Formal Offer by or on behalf of the Borrower (and capitalised to the Facility on the day of the initial advance). In the event the Facility is not drawn down by the Withdrawal of Offer Date, the Establishment Fee will be payable on written demand by the Lender.	
	<u>Investment Term:</u> An initial Fee of \$500,000 (GST exempt) for the first 3-month period of the Investment Term and a second Fee of \$500,000 (GST exempt) for an additional 3-month period, (payable and capitalised to the Facility on the first day of the Investment Term and again on the third month anniversary of the Investment Term respectively). These respective fees will not be payable if the Facility is repaid prior to these respective payment dates.	
Financial Management Fees:	A monthly Financial Management Fee of \$2,000 plus GST will be payable to the Lender during the term of the Facility and be funded through the Development budget.	
Late repayment Fee:	Notwithstanding the Lenders right to charge penalty interest, if the Borrower has not repaid the Facility on or before the Facility Repayment Date, and the Lender and the Borrower have not agreed alternative terms to the contrary, an additional fee equal to 0.5% per month of the Loan balance as at the Repayment Date will be payable, added to the Loan and accrue interest at the Interest Rate (including Penalty Rate if applicable).	
Holding fee:	In the event there has not been an initial drawing under the Facility by 30 April 2019, a holding fee of 1% of the Loan Amount will be payable each calendar month that the Facility remains undrawn until the Withdrawal of Offer date.	


Initials

Prepayment Fee (Construction
Term only):

The Borrower will have the right to fully prepay or refinance the Facility on any date ("Prepayment Date") subject to payment of all outstanding fees and capitalised interest on the amount of principal being repaid and subject to payment of a Prepayment Fee equal to:

$$PF = MI \text{ less } CI$$

where

- PF = Prepayment Fee;
- MI = The amount of interest that would have capitalised to the Loan Amount if the principal amount drawn of the Loan Amount had been fully drawn for a period of 10 months;
- CI = The amount of interest actually capitalised to the Loan Amount as at the Prepayment Date.

No Prepayment Fee shall apply if prepayment occurs during the Investment Term.

Penalty Interest Rate for Default
or Late Payment:

7.50% above Interest Rate.

Security:

Subject to further due diligence, the following security will be granted in favour of the Security Trustee, prior to the first drawdown:

1. A registered first ranking General Security Agreement over the assets and undertakings of the Borrower;
2. A registered first mortgage over the property located at 156 Central Park Drive, Henderson, Auckland ("Property") – 618171, Lot 2 DP 464917;
3. A Tripartite Agreement between the Borrower, Vijay Holdings Limited ("Vijay"), and Pearlfisher, to be agreed on terms satisfactory to Pearlfisher providing Pearlfisher a minimum priority sum of \$30.000 million (including capitalised interest & fees) and completed by all stakeholders and provide Pearlfisher with cure and step-in rights under the Construction Agreement through Vijay;
4. A Specific Security Deed for the respective Resource Consent and development plans;
5. A Specific Security Deed over all existing and future lease agreements with respect to the Property;
6. All obligations guarantee from Vinod Kumar, and Magson's;
7. A Specific Security Deed over the Development Agreement between the Borrower, Magson's, and Vijay;


----- Initials

8. A security trust deed pursuant to which the Security Trustee holds the above security documents as security trustee for the Lenders; and
9. Any other security required following completion of due diligence.

Such other security and sundry documents as the Facility Agent and its Solicitors may require as a result of searches and enquiries made by them in documenting the loan and securities.

Documentation:

The Facility Agent's solicitors will prepare all legal documentation necessary for the Facility. Such documentation to be in a form acceptable in all respects to the Finance Parties.

The Borrower will be required to pay the costs of preparation of this documentation which may include the procurement of specialised professional advice, irrespective of whether the Facility is ever drawn down.

Withdrawal of Offer:

The Lender reserves the right to vary or withdraw the Facility offer (whether or not previously accepted) in the event:

1. That information on which the Lender has relied on in assessing the application is found to be or becomes incorrect in a material respect at the Lender's sole discretion; or
2. An initial drawdown under the Facility has not occurred on or before 30th of April 2019.

Conditions Precedent to Drawdown:

The following in form and substance acceptable to the Facility Agent shall be Conditions Precedent to the making of a drawdown under the Facility:

1. Jones Lang LaSalle Limited ("JLL") are to provide a valuation addressed to the Lender. The JLL valuation will show a minimum 'as is' value for the Property of approximately \$21.000 million (plus GST if any) and a minimum 'on completion' value of \$59.000 million (plus GST if any).

Further JLL will provide a 'vacant possession' valuation for the Property at a minimum of \$38.900 million (plus GST if any).

2. Current signed financial statements of position for each of the guarantors to be provided and be acceptable in all respects;
3. Bell Gully on behalf of Pearlfisher is to complete a review of the agreement to lease (to the satisfaction of the Bell Gully and Pearlfisher). The agreement to lease is to set out any tenant or land lord contributions to fit out or incentives provided over the initial lease period and confirm a minimum rental of \$4.10 million net of GST and outgoings with a minimum initial term of 15 years;

 Initials

4. The Lender is to be satisfied with the Development Manager to undertake the role on behalf of the Borrower;
5. Copies of all key Development documents relating to the Development;
6. All environmental, planning and geotechnical reports are to be provided for the Development and are to be acceptable to the Lender;
7. Confirmation satisfactory to the Lender that each Guarantor has obtained independent legal advice in relation to the Finance Documents to which they are party;
8. Central Park Property Investments Limited to provide confirmation and satisfactory evidence that it either holds or has made equity contributions to the project for a minimum combined sum of \$26.150 million;
9. Maat Property Group to provide Pearlfisher with its Product Disclosure Statement ("PDS") for Central Park Property Investments Limited, to the satisfaction of Pearlfisher;
10. Prior to the initial drawdown of the Facility the Lenders QS, acting for the Facility Agent, is to provide a report, acceptable to the Lenders, confirming:
 - a) A final development budget which is to confirm that the Facility, \$22.775 million (excluding dividend & issue costs) of Central Park Property Investments Limited capital and Magson's equity of \$11.150 million is sufficient to complete the Development;
 - b) Contractors all risk insurance has been taken out with the Security Trustee noted on the policy;
 - c) The resource consent, building consent plans, construction contract and the plans attached to the standard form of sale and purchase agreement for the on-sale of the Property are in alignment;
 - d) A construction contract that is in a form that is appropriate for the type of Development;
 - e) All consents required to complete the Development have been issued, or if not, outline the risks of the remaining consents not being issued in a timely manner to the extent they could impact on the development programme;


----- Initials



- f) Reviewed the geotech report and liaised with the engineer and architect to ensure that the foundation design is reflective of the anticipated ground conditions;
- g) The Development Manager has the experience and ability to complete the proposed works within the construction program;
- h) A term of 16 months is sufficient time to complete the Development including a 6-month trading period for the tenant allowing sufficient time to refinance Pearlfisher's Facility;
- i) The contingency provision for the Development is adequate; and
- j) The fees, incidentals and other Development expense provisions will be sufficient to complete the Development.

Ongoing Conditions:

During the term of the Facility the Borrower is required to provide ongoing information and perform certain obligations to the Lender in respect of the Property. Such information and obligations are to include, but not be limited to:

1. Any cost overruns incurred in the completion of the Property are to be met and paid for by the Borrower and/or the Guarantors as and when they fall due;
2. The Borrower is to attend monthly project control group meetings to be held between; Maat Property Group Limited, Magson's, Pearlfisher and the financier's reporting QS;
3. The Borrower is precluded from amending the agreement to lease without the prior written consent of the Lender;
4. Any material changes in, or termination of, any of the Development documentation is subject to approval by the Lender;
5. Material variations under the Construction Contract will require the prior approval of the Lender. A Material Variation shall mean any single variation of greater than \$50,000 or variations greater than \$150,000 in aggregate;
6. The Investment Term will be available post the later of; the completion of the Development or issuance of the Code of Compliance Certificate/Certificate for Public Use;
7. Any material changes in the legal or beneficial ownership or control of the Borrower or Guarantor(s) to be subject to approval by the Lender;


----- Initials

8. In the event that the Borrower wishes to take up the Investment Term it will advise the Lender one month prior to the maturity of the Construction Term;
9. The Borrower and Guarantors agree to not to sell or assign its interests in the Project outside of the approved structure without the prior written consent of the Lender; and
10. The Borrower agrees that the Lender shall not require the Borrower's consent to sell or assign its interest in the Facility.

Governing Law:

This Letter and the Facility shall be governed by New Zealand law.

Indemnity:

The Borrower shall indemnify the Facility Agent against any loss, cost or expense the Facility Agent may suffer or incur as a result of any part of the Facility not being drawn down on the date requested, the transaction not being completed within the time limits as advised by the Borrower, any Event or Default occurring or any prepayment of a Drawing other than on an Interest Payment Date.

Costs & Expenses:

All costs, expenses and disbursements required for the documentation, drawdown and administration of the Facility will be met by the Borrower who will pay all charges, fees, and expenses relating to the preparation of security and Facility documentation by the Arranger's and Lender's solicitors, including enforcement or any other legal costs incurred by a Finance Party in connection with the Facility.

If this *Indicative Offer* is in order, can you please sign the duplicate copy indicating your acceptance and return it to our offices no later than Wednesday the 19th of December 2018.

Yours sincerely

PEARLFISHER CAPITAL LIMITED


Jarrod Bruce
DIRECTOR


Jarrod Bruce

Everest Central Investment Limited

Acceptance:


The foregoing terms and conditions are duly acknowledged and accepted and receipt of a copy of this Indicative Offer is acknowledged by each party signing below.

Signed for and on behalf of the Borrower Everest Central Investment Limited


Neil James Tuffin / 12/2018
Director

The Guarantors set out in this letter do guarantee the obligations of the Borrower set out in this Formal Offer and agree to guarantee the obligations of the Borrower in the Securities prepared pursuant to the terms within the Facility:

Signed by the Guarantor Vinod Kumar


Vinod Kumar / 12/2018
Guarantor 18/1/2019.

FOR THE AVOIDANCE OF DOUBT,
THIS INDICATIVE OFFER SUPERSEDES
THE AGREEMENT SIGNED ON THE
19th OCTOBER 2018.




Signed by the Guarantor Magson's Investments Limited


Vinod Kumar / 12/2018
Director 18/1/2019

AS PER THE CONVERSATION
HAD BETWEEN VINOD KUMAR &
CHAI SAO (25/1/2019 @ 10.30 AM)

EVEREST CENTRAL INVESTMENT LIMITED
UNDERSTANDS TO EXCLUSIVELY PARTNER WITH
PEARL FISHER CAPITAL LIMITED TO ARRANGE THE
DEBT LENDING FOR THE DEVELOPMENT, UNTIL
FRIDAY 22 FEBRUARY 2019 AS PER THIS TEAM
SHEET DATED MONDAY 17 DECEMBER 2018.


25/1/19


25-1-19


Initials

Schedule

All fees referred to in this term sheet are not refundable. The Lenders are only obliged to allow a fee to be deducted from the Loan or capitalised (as applicable) if the Loan is drawn down on or before the Withdrawal of Offer Date.

All fees referred to in this term sheet shall be allocated between the Finance Parties as the Finance Parties agree from time to time.

Interest will be calculated daily during the term of the Facility, accrue at the Interest Rate and be payable on the Repayment Date. Where interest is stated to be capitalised, it will be capitalised to the loan on the last day of each month.

All costs, expenses and disbursements (including any specialist professional advice required by a Finance Party) required for the documentation, drawdown and administration of the Facility will be met by the Borrower, whether or not the Facility is documented and/or drawn down.

In addition to the specific conditions precedent contained in the term sheet, the facility agreement will include usual conditions precedent including:

- Conditions Precedent usual for facilities of this type (including no events of default, receipt of legal opinions, evidence of authorisations, consents, resolutions, receipt of specimen signatures, stamping and registration of documents and other relevant matters) and incorporating but not limited to, execution, delivery and where appropriate, registration of the facility and security documents.
- The Facility Agent's solicitor confirming the legal effectiveness and enforceability of the ownership, borrowing and security structure.
- The Facility Agents solicitor undertaking a review of the certificate of title for the Property and confirm there are no onerous encumbrances or covenants registered against the titles that may affect access or salability of the Property;
- The Facility Agent's solicitors undertaking a review of the standard form sale and purchase agreement and the certificate of title for the Property (and confirm there are no onerous encumbrances or covenants registered against the titles that may affect access or salability of the Property).
- The Lender shall be entitled at all reasonable times during the term of the loan to go directly to Valuers, Quantity Surveyors, Engineers and other consultants and request updates/new reports that it may reasonably require relating to the Property, the securities provided by the Borrower or the Borrower's business activities. The Borrower shall pay the costs of all such reports, and shall irrevocably authorise such consultants to provide such reports at the cost of the Borrower in all respects;
- All costs including legal, quantity surveyor and valuation are for the account of the Borrower.
- The Facility Agent is to be provided with evidence of adequate insurance for the Property with the Security Trustee's interest to be noted as an interested party on the policy document;
- The Borrower, Guarantors or any beneficial or controlling party are required to provide a certified copy of their passports and proof of address together with any other information deemed necessary to satisfy the requirements of the Anti-Money Laundering and Counter Financing of Terrorism Act;

The Facility Agent's solicitors will prepare all legal documentation necessary for the Facility.


Initials

The facility agreement will include usual terms for a facility of this nature relating to gross-up, yield protection, change of law and increased cost.

This Letter and the Facility shall be governed by New Zealand law.

The obligation of the Borrower to pay the Financial Arrangement Fee, the Establishment Fee and all Costs & Expenses are binding on the Borrower from the date for payment of the respective fees as set out in this Indicative Offer.

By signing this term sheet, the Borrower and each Guarantor unconditionally agrees to grant in favor of the Security Trustee (as trustee for each Finance Party) a mortgage of any and all real property owned by the Borrower as security for the Financial Arrangement Fee, Establishment Fee and all Costs & Expenses payable by the Borrower. The Borrower and each Guarantor agrees that the Security Trustee may at any time after 30 April 2019 if draw down has not occurred by that date register a caveat against 165 Central Park Drive, Henderson, Auckland, in support of this agreement to mortgage.

By signing this term sheet, each Guarantor guarantees and indemnifies the Finance Parties for the obligations of the Borrower, including its payment obligations.

Each Finance Party is entitled to enforce against the Borrower and Guarantors each provision of this term sheet that confers a benefit on a Finance Party.

The Lender reserves the right to vary or withdraw the Facility offer (whether or not previously accepted) in the event that information on which the Lender has relied on in assessing the application is found to be or becomes incorrect in a material respect at the Lender's sole discretion or in the event that the loan drawdown does not occur on or before the Withdrawal of Offer Date specified in this term sheet.


----- Initials