

IN THE MATTER OF THE *CORPORATIONS ACT 2001*

and

IN THE MATTER OF MARK RONALD LETTEN  
(and others described in the Schedule)

AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION

Applicant

MARK RONALD LETTEN AND OTHERS  
(as described in the schedule)

Respondents

**THIRTEENTH AFFIDAVIT OF DAMIAN JOHN TEMPLETON**

On 29 July 2010 I, **DAMIAN JOHN TEMPLETON**, of KPMG, 147 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, make oath and say -

- 1 I am a partner of the Australian KPMG partnership specialising in restructuring and insolvency work. I hold a Bachelor of Business (Accountancy) from the Royal Melbourne Institute of Technology, I am a Member of the Institute of Chartered Accountants in Australia and a Member of the Insolvency Practitioners Association of Australia, I am an official liquidator and have approximately 19 years experience as an insolvency practitioner.
- 2 On 25 February 2010, the Federal Court of Australia made orders (“**Orders**”) that receivers and managers be appointed to each of the schemes listed in Annexure A to the Orders. Pursuant to the Orders, I was appointed together with my partner, Philip Arthur Hennessy, as joint and several receivers and managers of the property of each of the second to sixteenth and eighteenth to forty-fifth defendants in this proceeding (“**Letten Entities**”) and as joint and several receivers and managers of the property of the schemes (each a “**Receiver**” and, collectively, the “**Receivers**”).

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Filed on behalf of the Receivers and Managers by:

**MALLESONS STEPHEN JAQUES**

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Matter no: 03-5503-4607



3 On 4 March 2010, the Federal Court of Australia made orders (“**SY21 Appointment Order**”) pursuant to which I was appointed together with my partner, Philip Arthur Hennessy, as joint and several receivers and managers of the property of the scheme defined in Annexure A to the SY21 Orders to mean “*the funds invested, contributed or deposited by investors for the purpose of acquiring an interest in the project known as SY21 Retail Complex Project*” (“**SY21 Scheme**” and collectively with the schemes listed in Annexure A to the Orders, the “**Schemes**”).

4 I am authorised to swear this affidavit on behalf of the Receivers.

5 Statements in this affidavit are made from my own knowledge or to the best of my knowledge, information and belief.

6 I refer to my affidavits sworn on 22 February 2010 (“**First Templeton Affidavit**”), 23 March 2010 (“**Second Templeton Affidavit**”), 26 March 2010 (“**Third Templeton Affidavit**”), 30 March 2010 (“**Fourth Templeton Affidavit**”), 12 April 2010 (“**Fifth Templeton Affidavit**”), 27 April 2010 (“**Sixth Templeton Affidavit**”), 20 May 2010 (“**Seventh Templeton Affidavit**”) and on 27 May 2010 (“**Eighth Templeton Affidavit**”), 1 June 2010 (“**Ninth Templeton Affidavit**”), 9 June 2010 (“**Tenth Templeton Affidavit**”), 11 June 2010 (“**Eleventh Templeton Affidavit**”) and 28 July 2010 (“**Twelfth Templeton Affidavit**”) in this proceeding and also to the Affidavit of David Michael Charles Willis sworn on 25 June 2010.

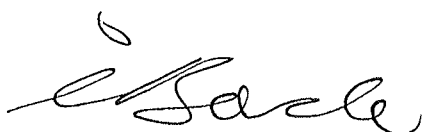
#### **ASIC’s application for orders in respect of Additional Schemes**

7 On 21 July 2010, ASIC applied for orders in relation to a further five alleged unregistered managed investment schemes operated by or on behalf of Mr Letten and/or entities or persons associated with him, namely:

- (a) Tomasetti House Joint Venture;
- (b) Aurora Park Project;
- (c) Moorehouse Shopping Centre Project;
- (d) Cass Bay Spur Project; and
- (e) Mount Hutt Project, (“**Additional Schemes**”).

8 I am informed by ASIC, and I believe, that ASIC has submitted the proposed minutes of order to the Court in relation to the Additional Schemes (“**ASIC’s Proposed Orders**”).

9 The Receivers have proposed amendments to ASIC’s Proposed Orders which set out proposed interlocutory steps in relation to the distribution of property of the Schemes and the Additional Schemes.



10 I make this affidavit in support of the Receivers' proposed amendments to ASIC's Proposed Orders, which I am informed by my solicitors have been agreed with ASIC and which will be submitted to the Court together with this affidavit.

**Impact of ASIC's Proposed Orders on the distribution of property of the Schemes**

11 On 6 May 2010, the Federal Court of Australia made orders in relation to the following matters, among others:

- (a) the proposed realisation of the property of the Letten Property Schemes and the Letten Operating Business Schemes;
- (b) the preparation, filing and service by the Receivers of the LGH Companies' Report;
- (c) the filing by investors of submissions in relation to the distribution of the property of the Schemes by 5 July 2010;
- (d) the filing of written submissions by the Receivers and the parties in relation to the distribution of property of the Schemes by 23 July 2010; and
- (e) the further hearing of this matter on 30 July 2010 ("**6 May Orders**").

12 The LGH Companies' Report has been filed with the Court and distributed to investors in accordance with the 6 May Orders. The LGH Companies Report is contained as Exhibit DJT-37 to the Tenth Templeton Affidavit.

13 At paragraph 14 of the Tenth Templeton Affidavit, I conclude that:

*"As set out in the LGH Companies' Report, on the basis of the investigations conducted to date, the Receivers are of the view that it is not practically possible to wind up each of the Schemes separately. Therefore, the Receivers recommend that no further tracing of investor contributions to the Schemes be attempted. Rather, as set out in the LGH Companies' Report, the Receivers recommend that the "scheme property" of each of the Schemes be distributed to Investors, in effect, on a pooled basis."*

14 I have read the Third Affidavit of Glen John Childs sworn on 21 July 2010 in support of ASIC's Proposed Orders. There is nothing in this affidavit which causes me to believe that there are any grounds upon which the conduct of the Additional Schemes differs substantially from the conduct of the Schemes. On that basis, I believe that the question of the distribution of the property of the Schemes ought to be considered together with the question of the distribution of the property of the Additional Schemes.

15 I believe that the investors in the Additional Schemes ought to be provided with an opportunity to make submissions to the Court in relation to the distribution of the property of the Additional Schemes and the Schemes. I am aware that some of the investors in the Schemes are also investors in the Additional Schemes and, therefore, these investors have already been provided





with the LGH Companies' Report and have also been provided with an opportunity to make submissions in relation to the distribution of property of the Schemes. However, based on the information currently available to me in relation to the identity of the investors in the Additional Schemes, I believe that there is a significant number of the investors in the Additional Schemes who are not also investors in one or more of the Schemes and who have not, therefore, been provided with the LGH Companies' Report or with an opportunity to make submissions in relation to the distribution of the property of the Schemes and/or the Additional Schemes.

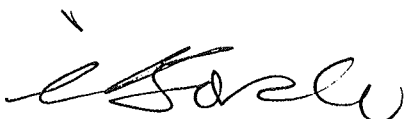
#### **Other investors**

- 16 In the LGH Companies' Report, I also identify various amounts which appear to have been raised by the LGH Companies from investors directly (refer to pages 11 and 33 of the LGH Companies' Report and also page 46 for details of funds raised by LGHA in respect of the War Chest and page 48 for details of the funds raised by LGHA in respect of the Project Reserve Bond). These investors' contributions do not appear to be specific to any of the Schemes. On that basis, the investors who provided funds directly to the LGH Companies, unless they are also investors in one or more of the Schemes (which I expect a number of them will be) have not received a copy of any of the disclosure reports or the LGH Companies' Report and these investors have not been provided with an opportunity to make submissions in relation to the distribution of property of the Schemes.
- 17 I believe that the funds contributed by these investors represent some of the monies that are practically unable to be traced into specific assets; yet they contributed to the acquisition or improvement of those assets or the payment of interim distributions to other investors. On that basis, based on information currently available, I believe that these investors ought to be entitled to share rateably in the distribution of the property of the Schemes. I also believe that these investors (to the extent they have not already been provided with them) ought to be provided with a copy of the Overview Report and the LGH Companies' Report and to be provided with an opportunity to make submissions in relation to the distribution of property of the Schemes and the Additional Schemes.

#### **Estimated timing of realisation of property of the Schemes**

- 18 Since the Court made orders in this proceeding on 25 May 2010 and 4 June 2010 granting the Receivers the power of sale in respect of the Letten Property Schemes (as defined in the 6 May Orders) and the Letten Operating Business Schemes (as defined in the 6 May Orders) respectively, the Receivers have proceeded to prepare the relevant assets for sale and to commence the marketing and sale process in respect of the relevant assets.

Now produced and shown to me and marked "DJT-38" is a detailed report which sets out the Receivers' progress in relation to the preservation and realisation of the assets of the Letten Property Schemes and the Letten Operating Business Schemes and the Receivers' current



estimates of the timing of the realisation of assets going forward (“**Realisation Progress Report**”).

19 On the basis of the matters set out in the Realisation Progress Report, I have prepared, with the assistance of my staff, a table which summarises the Receivers’ current estimates of the timing of the realisation of the assets of the Schemes going forward. This table is contained on page 41 of the Realisation Progress Report. The final row of this table sets out the key steps in ASIC’s Proposed Orders and the Receivers’ proposed interlocutory steps in relation to the distribution of the property of the Schemes and the Additional Schemes (as set out in the Receivers’ proposed amendments to ASIC’s Proposed Orders).

20 On the basis of the matters set out in DJT-38, the Receivers do not expect to receive the proceeds of sale of any assets of the Schemes until 9 September 2010 at the earliest.

21 Therefore, I do not believe that a postponement of the substantive hearing in relation to the distribution of the property of the Schemes until late September 2010 will substantially delay any distribution of the proceeds of sale to investors in the Schemes.

22 On the basis of all of the matters set out in this affidavit, I believe that:

- (a) the question of the distribution of the property of the Schemes ought to be considered by the Court together with the question of the distribution of the property of the Additional Schemes;
- (b) the investors in the Additional Schemes and the direct investors in the LGH Companies may be prejudiced unless the substantive hearing in relation to the distribution of assets of the Schemes is delayed for a period of time which is sufficient to provide those investors with an opportunity to make submissions in relation to the distribution of assets of the Schemes and the Additional Schemes; and
- (c) the investors in the Schemes will not suffer any prejudice if the substantive hearing in relation to the distribution of the property of the Schemes is delayed.

23 Therefore, I respectfully request this Honourable Court to make the Receivers’ proposed amendments to ASIC’s Proposed Orders.

5  




SWORN by the deponent at Melbourne in the State )  
of Victoria )

before me: )



..... )  
*Signature of authorised witness* )

..... )  
*Name of authorised witness* )  
*(block letters)* )

..... )  
*Address of authorised witness* )

Isabelle Border  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.

..... )  
*Capacity in which authorised witness takes affidavit* )



..... )  
*Signature of deponent* )

**SCHEDULE OF DEFENDANTS**

**Mark Ronald Letten**  
First Defendant

**LGH Holdings Limited ACN 077 191 943**  
Second Defendant

**211 Wellington Road Pty Ltd ACN 092 663 860**  
Third Defendant

**Bluemist Holdings Pty Ltd ACN 097 306 922**  
Fourth Defendant

**Dellwood Holdings Pty Ltd ACN 098 505 803**  
Fifth Defendant

**Enmore Enterprises Pty Ltd ACN 082 158 487**  
Sixth Defendant

**Firbark Arch Pty Ltd ACN 059 464 381**  
Seventh Defendant

**Glenline Pty Ltd ACN 098 532 364**  
Eighth Defendant

**Gerling Holdings Pty Ltd ACN 091 726 457**  
Ninth Defendant

**LGH Administration Pty Ltd ACN 077 165 069**  
Tenth Defendant

**LGH Finance Pty Ltd ACN 078 859 248**  
Eleventh Defendant

**Low Head Village Pty Ltd ACN 091 731 958**  
Twelfth Defendant

**Nicholson Street Pty Ltd ACN 069 104 089**  
Thirteenth Defendant

**Holloway Crest Pty Ltd ACN 091 731 967**  
Fourteenth Defendant

**Roseberry Enterprises Pty Ltd ACN 091 826 229**  
Fifteenth Defendant

**Simms Investments Pty Ltd ACN 093 504 511**  
Sixteenth Defendant

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Filed on behalf of the Receivers and Managers by:  
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**SY21 Retail Pty ACN 107 874 564**  
Seventeenth Defendant

**The Glen Centre Hawthorn Pty Ltd ACN 089 906 543**  
Eighteenth Defendant

**Castello Holdings Pty Ltd ACN 088 204 175**  
Nineteenth Defendant

**Twinview Nominees Pty Ltd ACN 097 307 278**  
Twentieth Defendant

**Yarra Valley Golf Pty Ltd ACN 066 632 479**  
Twenty-First Defendant

**Adina Rise Pty Ltd ACN 083 181 122**  
Twenty-Second Defendant

**Albright Investments Pty Ltd ACN 088 204 166**  
Twenty-Third Defendant

**Ashfield Rise Pty Ltd ACN 093 504 806**  
Twenty-Fourth Defendant

**Bradfield Corporation Pty Ltd ACN 088 204 371**  
Twenty-Fifth Defendant

**Copeland Enterprises Pty Ltd ACN 093 504 824**  
Twenty-Sixth Defendant

**Devlin Way Pty Ltd ACN 088 264 813**  
Twenty-Seventh Defendant

**First Hazelwood Pty Ltd ACN 093 505 303**  
Twenty-Eighth Defendant

**Glenbelle Pty Ltd ACN 097 306 646**  
Twenty-Ninth Defendant

**Glenvale Way Pty Ltd ACN 088 287 021**  
Thirtieth Defendant

**Greenview Lane Pty Ltd ACN 093 505 312**  
Thirty-First Defendant

**Hallmark Corporation Pty Ltd ACN 083 180 812**  
Thirty-Second Defendant

**Moorleigh Holdings Pty Ltd ACN 088 287 058**  
Thirty-Third Defendant

**Norton Ridge Pty Ltd ACN 078 821 066**  
Thirty-Fourth Defendant

**Raleigh Glen Pty Ltd ACN 088 204 380**  
Thirty-Fifth Defendant

**Redcrest Holdings Pty Ltd ACN 100 836 486**  
Thirty-Sixth Defendant

**Suri Corporation Pty Ltd ACN 093 505 321**  
Thirty-Seventh Defendant

**Sutton Rise Pty Ltd ACN 088 204 399**  
Thirty-Eighth Defendant

**The Virtual Mlmer Pty Ltd ACN 065 374 665**  
Thirty-Ninth Defendant

**Tivendale Pty Ltd ACN 093 505 349**  
Fortieth Defendant

**Tulloch Downs Pty Ltd ACN 078 895 048**  
Forty-First Defendant

**Maining Pty Ltd ACN 100 790 485**  
Forty-Second Defendant

**Topglen Pty Ltd ACN 096 857 564**  
Forty-Third Defendant

**Allblue Pty Ltd ACN 100 836 388**  
Forty-Fourth Defendant

**Aranbay Pty Ltd ACN 098 532 319**  
Forth-Fifth Defendant

AUSTRALIAN SECURITIES AND INVESTMENTS  
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Applicant

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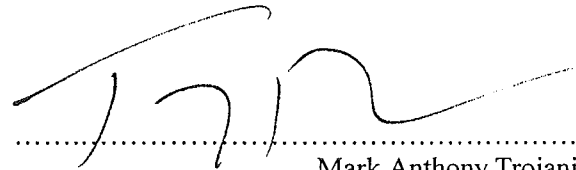
Respondents

CERTIFICATE OF COMPLIANCE

Order 14, rule 5A

I, **MARK ANTHONY TROIANI**, certify to the Court that the affidavit of **DAMIAN JOHN TEMPLETON** sworn on 29 July 2010 filed on behalf of the Receivers complies with Order 14, rule 2 of the Federal Court Rules.

Date: ..... 29 July 2010 .....



Mark Anthony Troiani  
Mallesons Stephen Jaques  
Solicitor for the Receivers