

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
DIVISION: GENERAL**

No 95 of 2010

**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

**EIGHTH AFFIDAVIT OF DAMIAN JOHN TEMPLETON**

On 27 May 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 ("**KPMG Australia**") 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, Phillip 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**  
Bourke Place  
Level 50, 600 Bourke Street  
Melbourne VIC 3000

DX 101  
T+ 61 3 9643 4155  
F+ 61 3 9643 5999  
Ref: S Kinsey:MAT  
Matter no: 03-5503-4607

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

3 On 4 March 2010, the Federal Court of Australia made orders (“**SY21 Orders**”) pursuant to which I was appointed together with my partner, Phillip 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**”) and on 27 April 2010 (“**Sixth Templeton Affidavit**”) and on 20 May 2010 (“**Seventh Templeton Affidavit**”) in this proceeding.

#### **Priority Deed between the Receivers and Westpac**

7 On 27 May 2010, the Receivers and Westpac Banking Corporation (“**Westpac**”) have agreed, as between each other, the extent to which the Receivers’ fees, costs and expenses in relation to the Schemes (all of which remain subject to court approval) have priority over Westpac’s secured debt. This agreement is to be recorded in a deed of priority the form of which is now produced and shown to me and marked “**DJT-34**” (“**Priority Deed**”). I have signed the Priority Deed and it is in the process of being signed by Mr Hennessy and Westpac. Counsel will confirm to the Court tomorrow morning that the document has been fully executed.

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

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

before me: )



Signature of authorised witness )

LEANA PAPAELIA )

Name of authorised witness  
(block letters)

LEVEL 50, 600 BOURKE STREET )

MELBOURNE VIC 3000 )

Address of authorised witness )



Signature of deponent

SOLICITOR )

Capacity in which authorised witness takes affidavit

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

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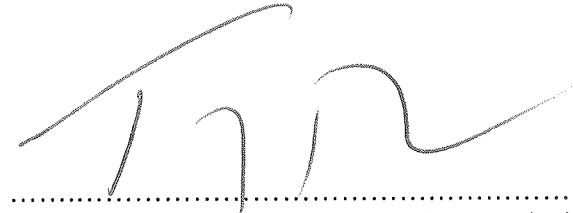
and cross-claimants

CERTIFICATE OF COMPLIANCE

Order 14, rule 5A

I, **MARK ANTHONY TROIANI**, certify to the Court that the affidavit of **DAMIAN JOHN TEMPLETON** sworn on 27 May 2010 filed on behalf of the Receivers complies with Order 14, rule 2 of the Federal Court Rules.

Date: 27 May 2010



Mark Anthony Troiani  
Mallesons Stephen Jaques  
Solicitor for the Receivers

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**AUSTRALIAN SECURITIES AND INVESTMENTS  
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**MARK RONALD LETTEN AND OTHERS  
(as described in the schedule)**

Respondents

**EXHIBIT "DJT-34"**

This is the exhibit marked "DJT-34" referred to in the affidavit of **DAMIAN JOHN TEMPLETON** sworn on 27 May 2010.

Before me:  .....

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

# Deed of Priority

Dated

Damian John Templeton & Phillip Hennessy ("**Receivers**")  
Westpac Banking Corporation (ABN 92 055 513 070) ("**Westpac**")

**Mallesons Stephen Jaques**  
Level 50  
Bourke Place  
600 Bourke Street  
Melbourne Vic 3000  
Australia  
T +61 3 9643 4000  
F +61 3 9643 5999  
DX 101 Melbourne  
[www.mallesons.com](http://www.mallesons.com)

# Deed of Priority

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# Deed of Priority

## Details

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<b>Parties</b>	<b>Receivers and Westpac</b>	
<b>Receivers</b>	Name	<b>Damian John Templeton Phillip Hennessy</b>
	Address	c/- KPMG 147 Collins Street Melbourne VIC 3000
	Attention	Damian Templeton, Partner
<b>Westpac</b>	Name	<b>Westpac Banking Corporation</b>
	ABN	33 007 457 141
	Address	Level 10, 360 Collins Street Melbourne VIC 3000
	Attention	Grant Tanner, Associate Director
<b>Recitals</b>	<b>A</b>	The Receivers have been appointed by the Court to be receivers and managers of the property of the Schemes and the Letten Entities.
	<b>B</b>	Westpac holds the Westpac Securities.
	<b>C</b>	This Deed regulates the priorities as between certain of the Receivers' fees, expenses and costs and the Westpac Secured Debt.
<b>Governing law</b>	Victoria	
<b>Date of deed</b>	See Signing page	

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# Deed of Priority

## General terms

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### 1 Interpretation

#### 1.1 Words and phrases

The following words have these meanings in this deed unless the contrary intention appears.

**Available Assets** in relation to a relevant Letten Entity and/or Scheme has the meaning given in the Letter of Consent relevant to that Letten Entity and/or Scheme.

**25 February Orders** means the orders of the Federal Court of Australia of 25 February 2010 in the Proceeding, as varied from time to time.

**4 March Orders** means the orders of the Federal Court of Australia of 4 March 2010 in the Proceeding, as varied from time to time.

**Approved Costs** means Nicholson Approved Costs, Enmore Approved Costs, Twinview Approved Costs, Glenbelle Approved Costs, Firbank Approved Costs, YVG Approved Costs or Glen Approved Costs each as defined in the Letters of Consent.

**Court** means the Federal Court of Australia.

**Disputed Receivers Priority Costs** has the meaning given to it in clause 5.3(b) of this Deed.

**Escrow Account** means an escrow account established by Westpac for the purposes of clause 5.5(b) of this Deed.

**Ford** means *Ford v Earl of Chesterfield (No 3)* (1856) 52 ER 924.

**Letten Entities** means each of the corporate defendants in the Proceeding except SY21 Retail Pty Ltd.

**Letters of Consent** means the letters of consent issued by Allens Arthur Robinson on 9 March 2010, on behalf of Westpac, in respect of Firbank Arch Pty Ltd (receivers and managers appointed), Yarra Valley Golf Pty Ltd (receivers and managers appointed), The Glen Centre Hawthorn Pty Ltd (receivers and managers appointed), Enmore Enterprises Pty Ltd (receivers and managers appointed), Twinview Nominees Pty Ltd (receivers and managers appointed), Nicholson Street Pty Ltd (receivers and managers appointed) and Glenbelle Pty Ltd (receivers and managers appointed).

**includes** or **including** when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

**Parties** means the Receivers and Westpac.

**person** includes an individual, a firm, a body corporate, an unincorporated association or an authority.

**Priority Debts** means the total at any time of:

- (a) the Receivers' Priority Costs at that time; and
- (b) the Westpac Secured Debt at that time.

**Proceeding** means Federal Court of Australia proceeding number VID95 of 2010.

**Receivership Costs** means, in respect of a Letten Entity or Scheme, reasonable:

- (a) Receivers' fees (calculated at the rates specified in Annexure B to the 25 February Orders less 10%);
- (b) legal costs;
- (c) selling expenses; and
- (d) Receiver Tax Liabilities,

(being of the kind as more particularly described in Annexure A) which are properly incurred in getting in, preserving and realizing the assets of that Letten Entity or Scheme, but (for the avoidance of doubt) not including Approved Costs PROVIDED THAT such fees, legal costs and selling expenses were incurred on or after 25 February 2010 and prior to the date and time specified in any written notice given by Westpac in accordance with clause 2.4.

**Receivers' Priority Costs** means, in respect of a Letten Entity or Scheme all Receivership Costs which the parties agree are Undisputed Receivers' Priority Costs or which are determined by the Court to properly constitute Receivership Costs pursuant to clause 6 of this Deed whether or not the Receivers have the benefit of a lien or other interest in respect of assets of that Letten Entity or Scheme.

**Receiver Tax Liability** means any tax or other government impost which arises or accrues upon the sale of an asset subject to a Westpac Security and in respect of which the Receivers are personally liable.

**Scheme** means each Scheme referred to in the 25 February Orders and the 4 March Orders.

**Undisputed Receivers' Priority Costs** has the meaning given to it in clause 5.3(a) of this Deed.

**Unpaid Approved Costs** means, in respect of a Letten Entity or Scheme, all Approved Costs incurred by the Receivers on behalf of the relevant Letten Entity or Scheme, up to a maximum limit equal to the amount of the Available Assets of that Letten Entity as at the date of the first to occur of:

- (a) receipt by the Receivers of a Withdrawal Notice in relation to that Letten Entity; or
- (b) settlement of sale of the assets of that Letten Entity or Scheme.

**Westpac Secured Debt** means, in respect of a Letten Entity or Scheme, all monetary obligations which are secured under a Westpac Security given by (or in relation to the property of) that Letten Entity or Scheme.

**Westpac Securities** means all securities claimed by Westpac in respect of any property of the Letten Entities or the Schemes.

**Withdrawal Notice** has the meaning given in the Letters of Consent.

## **1.2 References to an instrument**

A reference to this Deed or another instrument includes any variation or replacement of it.

## **1.3 References to parties**

A reference to a party includes their substitutes (including persons taking by novation) and assigns.

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## **2 Priorities**

### **2.1 Receivers' Priority Costs**

The Receivers and Westpac agree that the Receivers' Priority Costs have priority over the Westpac Secured Debt.

### **2.2 Unpaid Approved Costs**

Westpac agrees that:

- (a) the Receivers are entitled to be indemnified out of the Available Assets of a Letten Entity and/or Scheme in respect of Unpaid Approved Costs incurred in respect of that Letten Entity and/or Scheme; and
- (b) insofar as the Westpac Secured Debt of a Letten Entity and/or Scheme is secured by the Available Assets of that Letten Entity and/or Scheme, the Receivers' right of indemnity in clause 2.2 has priority over that Westpac Secured Debt.

### **2.3 Consent**

To the extent that Westpac's consent is required, under paragraph 20 of the 25 February Orders or paragraph 15 of the 4 March Orders, in order to give effect to the intention behind clauses 2.1 to 2.2 above, that consent is hereby given.

### **2.4 No Further Priority**

Westpac may at any time give the Receivers written notice that any Receivership Costs incurred by them after the date and time specified in the notice (which shall not be a date and time preceding the service of the notice on the Receivers), will not be afforded priority in accordance with this Deed.

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### **3 Benefit of priority**

The priorities set out in this Deed apply despite anything which might otherwise affect them including:

- (a) a fluctuation in the amount secured by a Westpac Security including because of repayments and the making of further advances;
- (b) any rule of law or equity;
- (c) a notice received by a Party under a Westpac Security;
- (d) a notice received by a Party of a security interest;
- (e) the order of execution or registration of a Westpac Security or anything in a Westpac Security;
- (f) whether or not the Priority Debts are payable;
- (g) the order in which accommodation is provided or liabilities (whether actual or contingent) are incurred;
- (h) the variation or release of a Westpac Security or monetary obligation;
- (i) any failure to enforce a Westpac Security, chose in action or judgment.

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### **4 Assignment or transfer of a security**

#### **4.1 Assignment or dealing**

Westpac may not assign or otherwise deal with a Westpac Security unless:

- (a) the dealing occurs in connection with its enforcement; or
- (b) the relevant assignee or any other party obtaining an interest in the Westpac Security enters into a deed in favour of the Receivers by which it undertakes to be bound by the provisions of this Deed; or
- (c) approval is obtained from the Court.

#### **4.2 Application**

This clause does not apply if:

- (a) Westpac has given notice pursuant to clause 2.4; and
- (b) all of the Receivers' Priority Costs have been paid in full.

---

### **5 Distributions**

#### **5.1 Agreement to co-operate**

The Parties must co-operate with each other in the distribution in accordance with the priorities set out in this Deed of the proceeds of:

- (a) enforcement of each Westpac Security; or
- (b) the sale of any property secured under the Westpac Securities.

## **5.2 Receivers to lodge claim for Receivership Costs**

At least 3 business days prior to the settlement of the sale of an asset which is subject to a Westpac Security, the Receivers will give notice to Westpac of the Receivership Costs which the Receivers claim relate to that asset and provide such details and documentation in respect of that claim as Westpac reasonably requires to enable Westpac to determine whether it disputes the claim or any part of it.

## **5.3 Westpac to respond to Receivers' claim**

Prior to settlement of the sale of an asset which is subject to a Westpac Security, Westpac will notify the Receivers of its opinion as to:

- (a) what part (if any) of the amount claimed by the Receivers in respect of the Receivership Costs, pursuant to clause 5.2, properly constitute Receivership Costs (“**Undisputed Receivers' Priority Costs**”); and
- (b) what part (if any) of the amount claimed by the Receivers in respect of the Receivership Costs, pursuant to clause 5.2, do not properly constitute Receivership Costs (“**Disputed Receivers' Priority Costs**”).

## **5.4 Acting reasonably**

In providing notifications under clauses 5.2 and 5.3 above, the Receivers and Westpac will act reasonably and in good faith and in accordance with the principles set out in this Deed.

## **5.5 Settlement of sale of an asset**

Upon settlement of the sale of an asset which is subject to Westpac Security, the proceeds will, subject to order of the Court to the contrary, be distributed as follows:

- (a) First, up to the amount of any Undisputed Receivers' Priority Costs, to the Receivers, to be held by them pending approval of those costs by the Court and applied in accordance with clauses 5.5 (c) and/or (d) below to the extent that those costs are disallowed by the Court.
- (b) Secondly, up to the amount of any Disputed Receivers' Priority Costs, into an Escrow Account pending resolution of the dispute under clause 6 below and, upon resolution of that dispute, to the Receivers to be dealt with pursuant to clause 5.5(a) above (to the extent that the resolution favours the Receivers) and pursuant to clauses 5.5(c) and/or (d) below (to the extent that the resolution favours Westpac).
- (c) Thirdly, to Westpac in reduction or discharge of the amount claimed by Westpac to be secured by the relevant Westpac Security.
- (d) Finally, to the Receivers, to be held by them pending orders or directions of the Court as to its distribution.

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## 6 Dispute resolution

The Parties agree that any dispute in relation to any Disputed Receivers' Priority Costs will be resolved as follows:

- (a) The Parties will negotiate, in good faith, in an attempt to resolve the dispute.
- (b) If the dispute in relation to the Disputed Receivers' Priority Costs remains unresolved, the Receivers may bring an application to the Court for directions in relation to whether the Disputed Receivers' Priority Costs properly constitute Receivership Costs for the purposes of this Deed, and the Receivers will consent to Westpac being heard on that application and will provide Westpac with a copy of the application and any supporting material at least 5 business days before the application is to be heard by the Court.
- (c) If Westpac so requests, the Receivers must bring an application to the Court in accordance with clause 6(b) within 10 business days of such a request being made.
- (d) The Parties will abide by or comply with any direction or ruling issued by the Court as a result of an application being brought pursuant to clause 6(b) above.

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## 7 Reservation of rights

### 7.1 Reservation of rights by Receivers and Letten Entities

The Receivers reserve all of their rights and the rights of the Letten Entities in relation to:

- (a) the validity of the Westpac Securities; and
- (b) the amount secured by the Westpac Securities.

### 7.2 Reservation of rights not affected

The reservation of rights set out in clause 7.1 is not affected by:

- (a) the sale by the Receivers of any of the assets secured by the Westpac Securities;
- (b) the payment to Westpac of any amount claimed by Westpac to be secured by the Westpac Securities; or
- (c) the release, discharge or extinguishment of any of the Westpac Securities.

### 7.3 Reservation of position regarding rule in *Ford*

Nothing in this Deed affects the parties' respective positions in respect of the application of the rule in *Ford* insofar as it concerns fees, costs and expenses incurred (or to be incurred) by the Receivers in ascertaining the persons entitled to the proceeds of sale of an asset which is subject to Westpac Security.

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## **8 Governing law**

This Deed is governed by the law in force in the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Victoria and the Federal Court of Australia and courts of appeal from them.

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## **9 Counterparts**

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**EXECUTED** as a deed

# Deed of Priority

## Annexure A: Receivership Costs

**Note:** The lists below may not be comprehensive and is subject to clause 7.3 of this Deed of Priority. To the extent that a claim is made in respect of other work, the correct characterisation of that work is to be agreed between the Receivers and Westpac and, failing agreement, to be determined pursuant to clause 6 of this Deed.

- 1 The categories of work which **are not** included in the Receivership Costs include:
  - (a) investigations conducted for the purposes of preparation of the disclosure reports (apart from work required to develop and document the realisation plans);
  - (b) preparation of the reports themselves;
  - (c) dealing with investor queries - as to 80% of fees and costs incurred to 30 April 2010 and as to 100% of the fees and costs incurred after that date; and
  - (d) dealing with directors and other stakeholders (other than the Bank) on issues associated with the investigations (except to the extent it relates to identification and realisation of assets subject to Westpac's security).
- 2 The categories of work which **are** included in the Receivership Costs:

Phase	Tasks
1. Assets	<ul style="list-style-type: none"><li>• Identifying and taking necessary steps to protect and preserve assets of the various schemes, including:<ul style="list-style-type: none"><li>– Taking possession of the assets</li><li>– Ensuring adequate security arrangements exist</li><li>– Reviewing current insurance policies and where appropriate, placing further or amending existing policies through our insurance brokers, Willis Australia Limited;</li></ul></li><li>• Conducting searches of public databases including, land and title searches, vehicle and vessel searches throughout Australia to identify any unrecorded assets;</li><li>• Convening and attending meetings with current Letten and related personnel with knowledge of the respective assets to gain an understanding of the asset specific issues that may affect values, saleability etc;</li><li>• Discussions with various property agents to obtain up to date</li></ul>

	<p>property information (tenancy reports, capital expenditure requirements, repair and maintenance schedules etc);</p> <ul style="list-style-type: none"> <li>• Reviewing and progressing pre-existing contracts of sale for certain property assets of the schemes and assessment and quantification of sale incentives for valuation and marketing purposes;</li> <li>• Preparation of court applications, as necessary, in relation to realisations of assets subject to Westpac Securities;</li> <li>• Preliminary investigation work in records of LGH Administration to seek to identify any flow of funds to Letten related entities;</li> <li>• Instructing Mallesons to lodge a caveat over 6 Penny Lane;</li> <li>• Liaising with property valuers, including obtaining submissions for the property portfolio to be valued, appointing valuers and undertaking appropriate inspections of the properties and providing information to the valuers for the valuation reports to be completed;</li> <li>• Addressing asset specific issues on a case by case basis having regard to funding position, potential valuation uplift and statutory and legal requirements. Such issues would include: <ul style="list-style-type: none"> <li>- The Nicholson Street redevelopment process</li> <li>- Certificate of occupancy at Cimitiere House (including car park and rectification issues)</li> </ul> </li> <li>• Requesting, receiving and reviewing submissions for the marketing and realisation of the properties from a number of real estate agencies;</li> <li>• Development of realisation strategies for each of the assets of the schemes, in consultation with our appointed valuers and KPMG Real Estate Advisory personnel, in line with obligations pursuant to section 420A of the Corporations Act (the Act);</li> <li>• Liaising with interested parties and maintenance of an interested parties register.</li> <li>• Attending to subdivision of Henley land at Yarra Valley Golf site;</li> <li>• Oversight of building works at Botanica and Yarraview properties.</li> <li>• All things necessary to resolve issues with the Yarra Valley Golf waste water treatment plant.</li> <li>• All work reasonably necessary to effect sale of assets subject to Westpac Securities.</li> <li>• Legal costs associated with any of the above matters.</li> <li>• Any tax or other government impost which arises or accrues upon</li> </ul>
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	<p>the sale of an asset subject to a Westpac Security and in respect of which the Receivers are personally liable (and the attending to payment thereof).</p> <ul style="list-style-type: none"> <li>• Selling agents fees and expenses, as pre-approved by Westpac.</li> </ul>
2. Creditors	<ul style="list-style-type: none"> <li>• Correspondence to creditors providing notification of appointment, requesting closure of existing trading accounts and opening of new receivership accounts, and further setting out the processes to be adopted with regard to ongoing supply to the entities during the receivership period;</li> <li>• Correspondence and meetings with Westpac and its advisors;</li> <li>• Reporting to secured lenders on a weekly basis on trading performance, and other matters relevant to the banks security interests on an as required basis, including: <ul style="list-style-type: none"> <li>- Budget to actual performance reports</li> <li>- Property and asset specific issues</li> <li>- Proposed realisation strategies</li> </ul> </li> <li>• Dealing with unsecured and priority claims against the respective entities, including dealing with retention of title claims as they arose;</li> <li>• Liaising with hire purchase and lease companies regarding the ongoing requirement and use of financed equipment.</li> <li>• Legal costs associated with any of the above matters.</li> </ul>
3. Employees	<ul style="list-style-type: none"> <li>• Addressing employee issues immediately following the appointment specifically regarding the impact of the appointment on ongoing employment arrangements;</li> <li>• Initial correspondence with employees, providing formal notification of the appointment of receivers and managers to the respective entities and outlining details of ongoing employment arrangements and processes during the receivership period;</li> <li>• Work in assessing and quantifying pre-appointment employee entitlements owing at the date of appointment (detailed calculations have not yet been made);</li> <li>• Legal costs associated with any of the above matters.</li> </ul>
4. Trading	<ul style="list-style-type: none"> <li>• Establishing financial and operational controls for all trading businesses and properties immediately following the appointment, including: <ul style="list-style-type: none"> <li>- Assuming management control of each of the respective</li> </ul> </li> </ul>

	<p>entities;</p> <ul style="list-style-type: none"> <li>- Implementation of a purchase order system to ensure only authorised (by Receivers and Managers or nominees) purchases are made during the receivership period;</li> <li>- Assuming control of all bank accounts, including freezing pre-existing accounts, establishing receivership accounts including online banking facilities and sweeping funds as required;</li> <li>• Immediate assessment of ongoing viability with regard to financial and operational ability to continue trading the businesses and properties throughout the receivership period;</li> <li>• Regular preparation of 13-week cashflow forecasts;</li> <li>• Monitoring of weekly cashflow performance compared to forecast;</li> <li>• Preparation of three-way forecasts for each project to forecast and monitor cash and accrued liability positions of the entities throughout the receivership period;</li> <li>• Receipt and payment processing, including: <ul style="list-style-type: none"> <li>- Employee payroll</li> <li>- Supplier payments</li> <li>- Cash, credit and EFT transactions through the entities merchant facilities</li> <li>- Reconciliation of receivership bank accounts</li> <li>- Ongoing liaising with suppliers regarding day to day operational supply for the businesses</li> </ul> </li> <li>• Attendance to ongoing ATO requirements, including preparation and lodgement of BAS and IAS statements;</li> <li>• Review, prepare and submit employee payroll for payment processing, including payment of superannuation obligations of the respective entities;</li> <li>• Corresponding with Westpac Bank Ltd and St George Bank Ltd to obtain necessary funding to allow the continued trading of the respective businesses and asset holding schemes;</li> <li>• Court application seeking Orders allowing the receivers to seek funding for ongoing scheme operational matters;</li> <li>• Addressing business specific trading issues arising during the course of the receiverships. Such issues included: <ul style="list-style-type: none"> <li>- Liaising with members at the Heritage Golf and Country Club</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>- Body corporate disputes</li> <li>- Liquor licensing issues at the Heritage Golf and Country Club and Sebel Reef House</li> <li>- Tenancy issues (arrears, vacancies etc)</li> <li>- Urgent capital rectification and maintenance works</li> <li>- Negotiation with tenants on rental and lease incentive issues;</li> <li>- Putting in place new property leases;</li> <li>- Dealing with managing agents with respect to all day-to-day trading issues associated with the properties;</li> <li>• Obtaining legal advice as required;</li> <li>• Legal costs associated with any of the above matters.</li> </ul>
5. Statutory Obligations	<ul style="list-style-type: none"> <li>• Notifications of the appointment of receivers and managers to various regulatory authorities, including: <ul style="list-style-type: none"> <li>- Australian Taxation Office</li> <li>- Australian Securities and Investments Commission</li> <li>- State Revenue Authority</li> <li>- Advertisement of appointment in the Australian Government Gazette</li> </ul> </li> <li>• Corresponding to all directors of the relevant entities providing formal notification of the appointment of Receivers and Managers, and requesting the completion and submission of a Report as to Affairs (“RATA”) for each of the corporate defendants;</li> <li>• Receipt, review and lodgement of the directors’ RATA’s with the ASIC, together with the Receivers and Managers’ commentary on the RATA’s pursuant to section 429(2)(c) of the Act;</li> <li>• Preparation and lodgement of controllers’ RATA’s for each of the respective entities, pursuant to section 421A of the Act;</li> <li>• Discussions with ASIC including responding to notices to produce documents;</li> <li>• Legal costs associated with any of the above matters.</li> </ul>

<p>6. Administration and Risk</p>	<ul style="list-style-type: none"> <li>• Obtaining copies of all related books and records, including obtaining forensic images of related IT equipment, both at Letten's offices and offsite storage facilities, and the respective properties;</li> <li>• Negotiation of a protocol with Letten to access images of records obtained;</li> <li>• Attendance to various administrative tasks arising during the course of the receivership, including maintenance of receivership files, reporting checklists;</li> <li>• Internal planning, team management and strategy meetings with regard to the receiverships generally;</li> <li>• Legal costs associated with any of the above matters.</li> </ul>
<p>7. Investors (as to 20% of fees and costs incurred to 30 April 2010 only)</p>	<ul style="list-style-type: none"> <li>• Notification of appointment to all known investors in each of the respective schemes, including a mail out and media release;</li> <li>• Establishing a dedicated website to assist in providing information to investors;</li> <li>• Establishing a 1800 investor hotline and addressed investor queries as they arose;</li> <li>• Circularised all known investors requesting completion of an investment confirmation form and supporting documentation;</li> <li>• Collation and recording of all investor details, including investment amounts, scheme details, rolled over investments etc from scheme records, investor confirmation forms and source documentation;</li> <li>• Establishment of an investor database and reconciliation of investment confirmation forms, company MYOB records and JV agreements;</li> <li>• Legal costs associated with any of the above matters.</li> </ul>

# Deed of Priority

## Signing page

DATED: \_\_\_\_\_

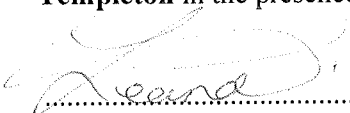
**SIGNED, SEALED AND  
DELIVERED** by **Grant Tanner** as  
attorney for **Westpac Banking  
Corporation** in the presence of:

.....  
Signature of witness

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

.....  
Grant Tanner

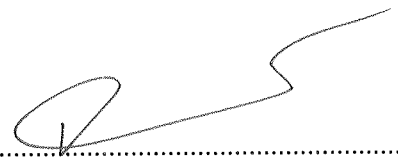
**SIGNED, SEALED AND  
DELIVERED** by **Damian John  
Templeton** in the presence of:

  
.....  
Signature of witness

**LEANA PAPAELIA**  
.....  
Name of witness (block letters)

Leana Papaalia

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

  
.....  
Signature of Damian John Templeton

**SIGNED, SEALED AND  
DELIVERED** by **Phillip Hennessy** in  
the presence of:

.....  
Signature of witness

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

.....  
Signature of Phillip Hennessy

## 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

**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

**Mainking 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