

# Order Entered

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION

No: (P)VID95/2010

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION  
Plaintiff

MARK RONALD LETTEN  
First Defendant  
(and others according to the attached schedule)

## ORDER TWO

**JUDGE:** Justice Gordon

**DATE OF ORDER:** 30 July 2010

**WHERE MADE:** Melbourne

**UPON THE UNDERTAKINGS OF THE FIRST DEFENDANT SET OUT IN ANNEXURE C TO THIS ORDER:**

**THE COURT DECLARES THAT:**

1. Save for the schemes numbered 17 (Tomasetti House Joint Venture) and 18 (Aurora Park Project) listed in Annexure A to these Orders, the schemes listed in Annexure A (“**the Additional Schemes**”) are managed investment schemes which are and were required to be registered under the *Corporations Act 2001* (Cth) (“**the Act**”) but were not registered.

**THE COURT ORDERS THAT:**

2. The plaintiff have leave to amend its amended originating process in the manner shown in the draft further amended originating process which is exhibit “GC-84” to the affidavit of Glenn John Childs sworn on 21 July 2010 subject to the further proposed amendment in relation to schemes numbered 17 and 18.
3. Service of the further amended originating process which is exhibit GC-84 to the affidavit of Glenn John Childs sworn on 21 July 2010 be dispensed with and it be made returnable *instanter*.
4. Pursuant to s 1323(1)(h)(ii) of the Act, and subject to paragraph 30 of these Orders and any further or other order of the Court, Mr Damian Templeton and Mr Phillip Hennessy of KPMG (“**the Receivers**”), be appointed, without giving security, as joint and several receivers and managers of the Property (as defined in Annexure A to these Orders) of each of the forty-sixth

- to fifty-fourth defendants (“**the Corporate Defendants**”) (other than Property that also constitutes Property of an Additional Scheme as defined in Annexure A to these Orders) with all of the powers provided in ss 420(1) and (2) of the Act, except the power of sale, for the purposes of identifying and securing all of the assets of the Corporate Defendants.
5. Save for the schemes numbered 17 (Tomasetti House Joint Venture) and 18 (Aurora Park Project) listed in Annexure A to these Orders, the Additional Schemes be wound up pursuant to s 601EE(1) of the Act.
  6. Pursuant to s 601EE(2) of the Act, alternatively ss 1323(1)(h) and (3) of the Act, and Order 26 of the Federal Court Rules, and subject to paragraph 30 of these Orders and any further or other order of the Court, the Receivers be appointed, without giving security, as joint and several receivers and managers of the Property of the Additional Schemes (as defined in Annexure A to these Orders) to:
    - (a) identify, collect, and secure the Property of the Additional Schemes;
    - (b) identify, and secure the Property in the possession, custody or control of each of the Corporate Defendants;
    - (c) protect that Property in the interests of persons to whom the Corporate Defendants are liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for securities, or other Property;
    - (d) ascertain the amount of the funds received, or paid out, by each of the Corporate Defendants in consequence of promoting, offering and/or operating the Additional Schemes;
    - (e) identify any dealings with, payments of, or distributions by or uses made of the funds referred to in (d) of this paragraph by each of the Corporate Defendants;
    - (f) identify any Property purchased or acquired with the funds referred to in (d) of this paragraph;
    - (g) recover funds referred to in (d) of this paragraph;
    - (h) provide reports to the Court as referred to in paragraph 12 of these Orders;
    - (i) commence the orderly winding up of the Additional Schemes ordered to be wound up pursuant to paragraph 5 of these Orders.
  7. For the avoidance of doubt, to the extent that Property of the Additional Schemes referred to in paragraph 6 of these Orders is held by any of the second to fifty-fourth Defendants, the appointment of the Receivers under paragraph 6 of these Orders includes the appointment of the Receivers as receivers and managers of any such Property of each of the second to fifty-fourth Defendants.
  8. For the further avoidance of doubt, subject to paragraph 30 of these Orders and any further or other order of the Court, the Receivers shall have the power to conduct the business and

management of the Additional Schemes in such manner as they think appropriate in the winding up of the Additional Schemes.

9. Subject to these Orders including paragraph 30 and any further or other order of the Court, the Receivers shall have:
  - (a) all powers necessary to identify, and secure the Property of each of the Additional Schemes;
  - (b) all powers necessary to collect the funds referred to in paragraph 6(d) of these Orders;
  - (c) without limiting sub-paragraph (a) and (b), the powers set out in ss 420(1) and (2) of the Act, provided that the Receivers may not exercise the power to dispose of any Property of the Additional Schemes;
  - (d) the power to apply to the Court for directions or further orders, including orders varying the terms of these Orders.
10. The Receivers may not, until the first directions hearing following the filing of the reports referred to in paragraph 12 and subject to any directions by the Court, determine the timing of the payment of any:
  - (a) debts as between the Additional Schemes; and
  - (b) distributions to Investors (as defined in Annexure A of these Orders) in the Additional Schemes.
11. During the period of receivership and management, subject to paragraph 4 of these Orders and any further or other order of the Court:
  - (a) the Receivers shall assume the management of the Corporate Defendants and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the Corporate Defendants;
  - (b) the provisions of the Act relating to the keeping of accounts, the appointment and re-appointment of auditors and the rights and duties of auditors shall continue to apply in relation to the Corporate Defendants, and in the application of those provisions to and in relation to the Corporate Defendants a reference to the directors of any one of the Corporate Defendants shall be read as a reference to the Receivers as receivers and managers of that company; and
  - (c) there shall be no stay of any action or other civil proceedings by or against any of the Corporate Defendants in any court or other tribunal nor shall there be any restraint upon the commencement or prosecution of any action or other civil proceedings by or against any of the Corporate Defendants in any court or other tribunal. In all or any of such actions or civil proceedings or otherwise the Receivers shall have authority to bring or defend such actions or civil proceedings in the name of any of the Corporate Defendants.

12. On or before 27 August 2010 or such other date as the Court allows, the Receivers prepare and file with the Court a separate report in relation to each of the Additional Schemes (“**the Further Disclosure Reports**”) and provide a copy of the Further Disclosure Reports to the parties to the proceedings as to the following matters:
  - (a) the nature and identity of the Property of the Additional Scheme;
  - (b) the claims (actual, contingent and other) of third parties in relation to the Property of the Additional Scheme including, but not limited to, whether the Property of the Additional Scheme has been given as security for any debt or liability and if so, the nature of the security and the debt or liability so secured;
  - (c) the identities of the Investors and the nature and extent of their interests;
  - (d) the solvency of the Additional Scheme;
  - (e) the most appropriate manner and timing of managing and realising any assets or Property of the Additional Scheme so as to most benefit the Investors;
  - (f) a recommendation regarding the distribution of the property of the Additional Scheme (after payment of amounts due to any relevant Secured Lenders and other priority creditors); and
  - (g) identification of circumstances which might render the Receivers’ recommendations regarding distribution of Scheme assets inappropriate for the Additional Scheme.
13. The Receivers have such powers as may be necessary to enable them to carry out and complete the inquiry and reports referred to in paragraph 12 of these Orders. In particular, they shall be entitled to inspect at any reasonable time any books (as defined in s 9 of the Act) in relation to the Additional Schemes or any of the Corporate Defendants (saving all just exceptions).
14. The Receivers have access to the documents held by the Plaintiff (“**ASIC**”) in relation to the Additional Schemes (saving all just exceptions).
15. Each of the Corporate Defendants by its officers, agents and/or employees immediately:
  - (a) make available to, and allow inspection by, the Receivers during business hours of any books (as defined in s 9 of the Act), records and other papers relating to the Additional Schemes not delivered to ASIC including, but not limited to, all books (as defined in s 9 of the Act), records and other papers relating to the Additional Schemes in the possession of any one of the defendants (saving all just exceptions); and
  - (b) allow the Receivers to copy any such books, records or other papers.
16. Each of the Corporate Defendants by their directors, officers, servants and agents answer such questions as the Receivers may reasonably require them to answer as to any of the matters under inquiry (saving all just exceptions).
17. Within three working days of receipt from the first defendant, pursuant to paragraph 31 of these Orders, of the details of the names and addresses of all current and past Investors in each

Additional Scheme, the Receivers notify those so identified by the first defendant as to the making and form of these orders.

18. Within three working days of finalising the Further Disclosure Reports in accordance with paragraph 12 of these Orders, the Receivers provide to the Investors in such Additional Scheme and to each relevant Secured Lender (as defined in Annexure A) on a “strictly confidential basis: for personal use only”, copies of:
- (a) the Further Disclosure Reports in respect of the Additional Scheme or Schemes in which those Investors and/or Secured Lenders have invested;
  - (b) the Overview Report;
  - (c) the LGH Companies’ Report (as described in paragraph 11 of the orders made on 6 May 2010); and
  - (d) submissions filed by the Receivers in relation to distribution of the Schemes the subject of the 25 February 2010 Orders, as required by Order 17 of the Orders made on 6 May 2010.

**(“the Confidential Documents”)**

Nothing in this paragraph shall prevent an Investor or a Secured Lender from disclosing, on a confidential basis, the contents of the Confidential Documents provided to them by the Receivers to their professional advisers for the purpose of obtaining advice or assistance in relation to their position as an Investor in the relevant Additional Scheme or as a Secured Lender to the defendant(s) involved in the Additional Scheme.

19. Until further order, it shall be sufficient compliance with paragraph 18 of these Orders if the Receivers provide copies of:
- (a) the Further Disclosure Reports to the Investors in the Additional Schemes:
    - (i) by uploading each of the Further Disclosure Reports onto a secure page of the KPMG website so that each Further Disclosure Report is accessible only to investors in the Additional Scheme to which the Further Disclosure Report relates by use of a password;
    - (ii) by sending a letter to each of the known Investors in the Additional Schemes notifying Investors that the Further Disclosure Reports are contained on the KPMG website and providing Investors with a password so that they may access the Further Disclosure Reports for the Additional Scheme in which they are investors and informing Investors that they may request a hard copy of the relevant reports by the following method:
      - A. email in respect of Investors who have notified the Receivers that email is their preferred method of communication;
      - B. post in respect of all other known Investors;

- (b) the other Confidential Documents in the manner described in paragraph 13 of the Orders made on 6 May 2010.
20. The Receivers shall comply with any reasonable request by an Investor to provide hard copies of any of the Confidential Documents to that Investor.
21. At the same time as providing copies of the Confidential Documents pursuant to paragraph 19 of these Orders, the Receivers send to all Investors identified by the Receivers to be investors in any of the Additional Schemes, the circular attached to these Orders as Annexure 1.
- The Receivers may send the circular by:
- (a) email in respect of Investors who have notified the Receivers that email is their preferred method of communication; and
- (b) post in respect of all other Investors.
22. Within 14 days of the provision by the Receivers to the investors in the Additional Schemes of:
- (a) the Confidential Documents referred to in paragraph 18; and
- (b) the circular referred to at paragraph 21 and attached to these Orders as Annexure 1;
- the Additional Investors may make any application they wish to make in relation to the realisation of the assets of the Additional Schemes and the distribution of the property of the Schemes and the Additional Schemes collectively (after payment of amounts due to any relevant Secured Lenders and other priority creditors). For the purposes of these Orders, “**Additional Investors**” means those investors in the Additional Schemes and any investors (including investors in any of the Additional JV Projects as referred to in the affidavit of Glenn John Childs sworn on 29 July 2010) who, for whatever reason, have not previously received a disclosure report from the Receivers in relation to any of the Schemes.
23. An application referred to in paragraph 22 may be made by an investor by filing with the Federal Court Registry a written submission that is in the form of the Schedule to Annexure 1 to these Orders.
24. ASIC and the Receivers, the parties to the proceeding, each Secured Lender and Investors have leave to inspect the court file and to copy any submissions filed by Investors pursuant to paragraphs 22 and 23.
25. Within 4 days of the due date for the filing of Additional Investor applications in accordance with paragraph 22, the Receivers shall file with the Court and serve on the parties, the Secured Lenders and any investors who have filed submissions:
- (a) draft minutes of order in relation to the proposed realisation of the property of the Additional Schemes;
- (b) any written submissions which the Receivers wish to make in relation to the realisation of the property of the Additional Schemes;

- (c) draft minutes of order in relation to the proposed distribution of the property of the Schemes and the Additional Schemes collectively (after payment of amounts due to any relevant Secured Lenders and other priority creditors); and
  - (d) any further written submissions which the Receivers wish to make in relation to the distribution of the property of the Schemes and the Additional Schemes collectively (after payment of amounts due to any relevant Secured Lenders and other priority creditors).
26. It shall be sufficient compliance with paragraph 25 of these Orders insofar as it relates to Investors, if the Receivers provide copies of the draft minutes of order and submissions in the same manner described in paragraphs 19 and 20 of these Orders.
27. Within 7 days of the due date for the filing by the Receivers of their draft minutes of order and submissions in accordance with paragraph 25, the parties and any relevant Secured Lenders may file any written submissions that they wish to make in relation to:
- (a) the realisation of the property of the Additional Schemes; and
  - (b) the distribution of property of the Schemes and the Additional Schemes collectively (after payment of amounts due to any Secured Lender and other priority creditors).
28. Save for any investor who has filed an application or submission in accordance with the orders of 6 May 2010 and any Additional Investor who has filed an application or submission in accordance with these Orders, no other investor is entitled, without the leave of the Court, to appear before the Court at the hearing of this matter which is scheduled to take place on 29 September 2010 in relation to:
- (a) the realisation of the property of the Additional Schemes; and
  - (b) the distribution of property of the Schemes and the Additional Schemes collectively (after payment of amounts due to any Secured Lender and other priority creditors).
29. Subject to paragraph 30, the Receivers shall be entitled to reasonable remuneration and reasonable costs and expenses properly incurred in the performance of their duties and the exercise of their powers as receivers and managers of the Property of each Additional Scheme, as may be fixed by the Court on the application of the Receivers, such sum to be calculated on the basis of the time reasonably spent by the Receivers, their partners and staff, at the rates specified in Annexure B to these Orders and paid, as directed by the Court (on notice to any Secured Lender), out of the Property of the Additional Schemes.
30. Nothing in these Orders is to affect the rights of any prior encumbrancers of the Property of the Additional Schemes or the Property of the Corporate Defendants, including the rights of any Secured Lender.
31. Within 7 days of the date of these Orders, the first defendant provide to ASIC and the Receivers details in respect of each of the Additional Schemes, of:

- (a) The Additional Scheme name;
  - (b) The Additional Scheme Property;
  - (c) The names and addresses of the corporate managers of the Additional Scheme; and
  - (d) The names and addresses of all current and past Investors in the Additional Scheme.
32. The hearing of the further amended originating process in relation to the forty-sixth to fifty-fourth defendants be otherwise adjourned until 10:00am on 29 September 2010.
33. All parties, the Receivers and the Secured Lenders have liberty to apply upon giving reasonable notice to each other.
34. Costs reserved.

Date that entry is stamped: 4 August 2010

Deputy District Registrar

## ANNEXURE 1

### Circular to investors in the Additional Schemes and Schemes regarding applications following disclosure reports

[Date]

**Private & Confidential**

Dear Investor

#### **Letten Group - Additional Schemes – Receivers and Managers appointed**

As you are aware, Receivers and Managers (Damian Templeton and Philip Hennessey of KPMG) have been appointed to various companies and joint venture schemes associated with Mark Letten, namely:

- 211 Wellington Road Joint Venture
- Healesville Walk Shopping Centre Joint Venture
- Howleys Road Joint Venture
- George Street Joint Venture
- Cimitiere House Joint Venture
- Queen Street Joint Venture
- Low Head Joint Venture
- Nicholson Street Joint Venture
- SY21 Retail Complex
- National Boulevard Joint Venture
- Simms Investment Project
- The Glen Centre Joint Venture
- Twinview Joint Venture
- Yarra Valley Golf Joint Venture
- Reef House Resort
- Glenbelle Project (“**the Initial Schemes**”)

You will have received access to disclosure reports prepared by the Receivers and Managers in relation to the Initial Schemes if you have invested in one or more of the Initial Schemes. You will have also received access to the disclosure reports prepared by the Receivers and Managers in respect of one or more of the following Additional Schemes if you have invested in one or more of the those schemes:

- Tomasetti House Joint Venture
- Aurora Park Project

- Moorhouse Shopping Centre Project
- Cass Bay Spur Project
- Mount Hutt Project (“**Additional Schemes**”).

The Orders of the Federal Court of Australia made on [30 July] 2010 provide that you, as an investor, are entitled to make an application to the Court in respect of the future of the Additional Scheme(s) in which you have invested.

On [30 July] 2010, the Court also made orders to clarify the way in which an application can be made, and how any applications or written submissions will be dealt with. This is explained in the questions and answers below.

You are not required to do anything, however if you wish to make a written submission to the Court, please note the following.

**1. Sale of Additional Scheme property - What kind of submissions can I make?**

You may make written submissions to the Court in respect of the proposals set out in the Reports that the property of the Additional Scheme(s) (if any), in which you are an investor, is to be sold.

You are entitled to make a formal legal application to the Court, however, given that written submissions can be made and will be considered (as explained in Question 5 below), this is not necessary.

The Court has already made orders in respect of the realisation of the property of the Initial Schemes. The property of the Initial Schemes is in the process of being sold.

**2. Sale of Additional Scheme property - How do I make a submission?**

You should complete the form attached as the Schedule this letter.

**3. Sale of Additional Scheme property -What is the cut-off date for my submission?**

Your submissions must be received by the Court by no later than **4pm on 15 September 2010**.

**4. Sale of Additional Scheme property - Who do I send my submission to?**

Your submissions should be sent to the Court at the following address:

The Registrar  
 Federal Court of Australia  
 Victoria District Registry  
 305 William Street  
 Melbourne VIC 3000  
 Fax: (03) 8600 3351

## **5. Sale of Additional Scheme property - How will the Court deal with my submission?**

The Court, ASIC, the Receivers and Managers, any relevant Secured Lenders and the parties to the Court Proceedings will read the submissions filed with the Court. Based on the submissions, as well as any submissions made by ASIC, the Receivers and Managers, the Secured Lenders and the parties to the Court Proceedings, the Court will make orders in relation to the sale of the property of the Additional Schemes.

## **6. Sale of Additional Scheme property - Can I appear before the Court to support my submission?**

You (or your legal representative) will only be entitled to appear before the Court at the hearing in relation to the sale of the property of the Additional Schemes if you have filed a written submission, or a formal application, before the cut-off date. You are not required to do so – your submissions will be read and considered in any event – but you may do so if you wish. That hearing has been set for [29 September] 2010.

If you (or your legal representative) intend to appear at the hearing on [29 September] 2010 you must notify the Court by completing the relevant sections of the Schedule.

## **7. How will I know the outcome of the court hearing?**

The Receivers and Managers will post the results of the hearing on its website as soon as orders are made.

## **8. Other investigations and reporting by Receivers and Managers**

On 6 May 2010, the Court made orders that the Receivers and Managers provide a report to the Court and to investors in relation to LGH Administration Pty Ltd, LGH Holdings Pty Ltd and LGH Finance Pty Ltd (“**LGH Companies’ Report**”). This has been provided to investors in the Initial Schemes and investors in the Additional Schemes. This report sets out, amongst other things, the results of the Receivers and Managers’ investigations into the flow of funds between the entities in the Letten Group and the “War Chest” and the Receivers’ and Managers’ recommendations as to the distribution of the property of the Schemes.

The Receivers recommended at that time in the LGH Companies’ Report that the property of the Initial Schemes be distributed on a pooled basis. The Receivers are of the opinion that this recommendation should also extend to the distribution of the net proceeds from the sale of the property of the Additional Schemes.

This report is relevant to your consideration of how the sale proceeds of the Additional Schemes in which the investors have invested (after payment of amounts due to any secured lender or other priority creditor) should be distributed.

The Receivers believe that the LGH Companies' Report is also relevant to investors in the Additional Schemes.

**9. Distribution of property of Additional Schemes and the Initial Schemes - What kind of submission can I make?**

The Court has ordered that investors may make any application they wish to make in relation to the distribution of property of the Additional Schemes and the Initial Schemes by filing with the Registry a written submission on or before [15 September 2010].

**10. Distribution of property of the Additional Schemes and the Initial Schemes - Can I appear before the Court to support my submission?**

The Court has ordered that a hearing take place in relation to the issue of the distribution of property of the Initial Schemes and the Additional Schemes on [29 September 2010].

You (or your legal representative) will only be entitled to appear before the Court at that hearing if you have filed a written submission, or a formal application, before the cut-off date. You are not required to do so – your submissions will be read and considered in any event – but you may do so if you wish.

**11. Distribution of property of Additional Schemes and the Initial Schemes - How can I make a submission?**

If you (or your legal representative) intend to appear at the hearing on [29 September] 2010 you must notify the Court by completing the relevant sections of the Schedule.

\* \* \* \* \*

If you require any further information, please contact [insert the Receivers and Managers contact].

Yours faithfully

**Damian Templeton & Phillip Hennessy**  
**Receivers and Managers**

## SCHEDULE

Notice of submission in respect of the Letten Schemes and Additional Schemes – Realisation of property

Filed in Victoria District Registry

**IN THE MATTER OF MARK RONALD LETTEN & OTHERS**

**No. VID 95 of 2010**

**To:   The Registrar  
      Federal Court of Australia  
      Victoria District Registry  
      305 William Street  
      Melbourne VIC 3000  
      Fax: (03) 8600 3351**

I, \_\_\_\_\_, wish to make submissions in respect of the following Additional Scheme(s) and/or Schemes in which I am an investor:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

My submissions in relation to **the realisation of property** of the Additional Scheme(s) are as follows [Set out in the space below the submissions you wish to make. Attach additional pages as necessary]:

My submissions in relation to **the distribution of property** of the Additional Scheme(s) and/or Schemes are as follows [Set out in the space below the submissions you wish to make. Attach additional pages as necessary]:

(Tick as appropriate)

I intend to appear before the Court at the hearing of this matter on [30 September] 2010.

I will appear on my own behalf.

I will be represented by a lawyer.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone no: \_\_\_\_\_

Email address: \_\_\_\_\_

Date: \_\_\_\_\_

**ANNEXURE A**

“Additional Schemes” means the schemes listed in the following table:

	<b>Scheme</b>	<b>Description of property</b>	<b>Joint venture manager/s</b>
17.	Tomasetti House Joint Venture	277-279 Flinders Lane Melbourne  Victoria	Melville Corporation Pty Ltd - Forty-Sixth Defendant
18.	Aurora Park Project	443-447 Warringah Road Frenchs Forest  New South Wales	Tilley Lane Pty Ltd - Forty-Seventh Defendant  Maywood Investments Pty Ltd - Fifty-First Defendant  Acetrain Pty Ltd - Fifty-Second Defendant  Sage Bay Pty Ltd - Fifty-Third Defendant  Tobago Holdings Pty Ltd - Fifty-Fourth Defendant
19.	Moorhouse Shopping Centre Project	343-359 Moorhouse Avenue  Christchurch  New Zealand	HPSC Pty Ltd - Forty-Eighth Defendant
20.	Cass Bay Spur Project	60 Governors Bay Road  Cass Bay  Lyttelton Harbour  New Zealand	Jensdale Pty Ltd - Forty-Ninth Defendant
21.	Mount Hutt Project	McLennans Bush Road  Methven  New Zealand	Oakdale Rise Pty Ltd – Fiftieth Defendant

“**Disclosure Report**” has the meaning ascribed to it in the orders of Justice Gordon in this proceeding made on 25 February 2010.

“**Investor**” means a person or entity who has, directly or indirectly, contributed moneys in respect of a Scheme.

“**Property**” means all real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of s 1323(2A) of the Act, any property held otherwise than as a sole beneficial owner.

“**Schemes**” has the meaning ascribed to it in the orders of Justice Gordon in this proceeding made on 25 February 2010.

“**Secured Lender**” means, in respect of an Additional Scheme or other Property of a Corporate Defendant, any financier who, as at the date of these Orders, holds security of any kind over that Property.

**ANNEXURE B**

	<b>\$ (excluding GST)</b>
Partner	595
Director	520
Associate Director	475
Manager	420
Assistant Manager	320
Senior Analyst	280
Analyst	210
Administration	140

## ANNEXURE C

### UNDERTAKING OF MARK RONALD LETTEN

In this Undertaking:

**“Proceeding”** means Federal Court of Australia Proceeding No. VID 95 of 2010 brought by ASIC as plaintiff against the defendants as described in the Schedule attached to the Further Amended Originating Process dated 30 July 2010 filed pursuant to the orders of the Honourable Justice Gordon made on 30 July 2010 (**“the 30 July 2010 Orders”**).

**“Existing Sale Contract”** means any contract of sale relating to Property of the Schemes or of the Second to Forty-fifth defendants in the Proceeding that has been executed prior to the date of the Orders made on 25 February 2010 (**“the 25 February 2010 Orders”**) in the ordinary course of business and which has not been completed as at the date of the 25 February 2010 Orders or any contract of sale relating to Property of the Additional Schemes or of the Second to Fifty-fourth defendants in the Proceeding that has been executed prior to the date of the 30 July Orders in the ordinary course of business and which has not been completed as at the date of the 30 July 2010 Orders.

**“Schemes”** has the meaning given in Annexure A to the 25 February 2010 Orders.

**“Additional Schemes”** has the meaning given in Annexure A to the 30 July 2010 Orders.

**“Property”** means all real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of section 1323(2A) of the *Corporations Act* 2001 (Cth) (**“the Act”**) any property held otherwise than as sole beneficial owner.

#### RECITALS

- A. On 25 February 2010 and 28 May 2010, Mark Ronald Letten provided certain undertakings to the Court in the Proceeding (**“the Letten undertakings”**).
- B. The Letten undertakings lapsed on 30 July 2010.
- C. For the avoidance of doubt, nothing in this undertaking prevents Mark Ronald Letten from taking steps to place Tosswill Limited, Cass Bay Spur Limited or Moorehouse Avenue 343 Limited into liquidation.

## UNDERTAKINGS

I, MARK RONALD LETTEN, undertake to:

1. From the date of this Undertaking until 5:00pm on 29 September 2010 refrain, whether by myself or through the officers, servants, employees or agents of the Second to Fifty-fourth defendants in this Proceeding, or otherwise howsoever from:
  - (a) removing from Australia, or causing, procuring, assisting, or permitting to be removed from Australia;
  - (b) selling, charging, mortgaging, encumbering, securing, diminishing, disposing of, parting with possession, making any declaration of trust in relation to, exercising any power to vary or modify any trust deed or interest under any trust in relation to, removing from their present locations; or
  - (c) otherwise dealing with or disposing of, or causing or permitting to be sold, charged, mortgaged or otherwise howsoever dealt with or disposed of - all or any of their respective assets or property, whether such property be held in the name of any of the Second to Fifty-fourth defendants in the Proceeding or jointly with any other person, company or entity or in the names of nominees or trustees of any of the Second to Fifty-fourth defendants in the Proceeding;  
PROVIDED that this Undertaking will not prevent:
    - (i) me from:
      - A. paying ordinary living expenses up to an amount of \$2,500 per week; and
      - B. paying my reasonable costs of and incidental to instructing and obtaining legal advice from and representation by solicitors and counsel in the Proceeding;
    - (ii) any bank, building society or financial institution from exercising any right under any security it holds over Property of the Schemes or Property of the Additional Schemes or Property of the defendants, including without limitation any mortgage registered on the title of any real estate registered before the date of this application in the name of any of the Second to Fifty-fourth defendants in the Proceeding (jointly, severally, or, jointly and severally);
    - (iii) the completion of the Existing Sale Contracts.
2. Refrain from, whether by myself, my agents or servants or otherwise howsoever from:

- (a) dealing in any way, whether directly or indirectly, with any funds or moneys standing to the credit or under the control of any of the Second to Fifty-fourth defendants in the Proceeding; and
  - (b) dealing in any way, whether directly or indirectly, with any property, real or personal, acquired wholly or partially with funds of any of the Second to Fifty-fourth defendants in the Proceeding.
3. Refrain from, whether by myself my agents or servants or otherwise howsoever from:
- (a) further promoting or operating any one of the Schemes or the Additional Schemes or any other Managed Investment Scheme that is required to be registered under s 601ED(1)(b) of the Act, but is not so registered;
  - (b) from doing any act in furtherance of or in connection with any of the Schemes or the Additional Schemes;
  - (c) from receiving, soliciting or disposing of any funds in connection with the Schemes or the Additional Schemes;
  - (d) from disposing of, destroying, amending, altering, parting with possession of, removing from their present location, or causing, procuring, assisting or permitting to be disposed of, destroyed, amended, altered, possession parted with or removed from their present location, all and any books, papers, records, books of account, ledgers, journals, banking records, computer records or other documents of any type whatsoever recording or evidencing any dealings of the defendants in relation to any of the Schemes or the Additional Schemes.

## Schedule of Parties

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

FIRBANK 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

ROSEBERY ENTERPRISES PTY LTD (ACN 091 826 229)  
Fifteenth Defendant

SIMMS INVESTMENTS PTY LTD (ACN 093 504 511)  
Sixteenth Defendant

SY21 RETAIL PTY LTD (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 DOWNES 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)  
Forty Fifth Defendant

MELVILLE CORPORATION PTY LTD (ACN 091 911 045)  
Forty Sixth Defendant

TILLEY LANE PTY LTD (ACN 086 136 361)  
Forty Seventh Defendant

HPSC PTY LTD (ACN 059 930 139)  
Forty Eighth Defendant

JENSDALE PTY LTD (ACN 098 367 974)  
Forty Ninth Defendant

OAKDALE RISE PTY LTD (ACN 091 598 908)  
Fiftieth Defendant

MAYWOOD INVESTMENTS PTY LTD (ACN 091 599 218)  
Fifty First Defendant

ACETRAN PTY LTD (ACN 100 820 282)  
Fifty Second Defendant

SAGE BAY PTY LTD (ACN 097 306 628)  
Fifty Third Defendant

TOBAGO HOLDINGS PTY LTD (ACN 093 504 520)  
Fifty Fourth Defendant