

# 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

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

## ORDER

**JUDGE:** Justice Gordon  
**DATE OF ORDER:** 25 February 2010  
**WHERE MADE:** Melbourne

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

**AND UPON THE UNDERTAKINGS OF PETER RHYS BATE, A DIRECTOR AND SHAREHOLDER IN THE SEVENTEENTH DEFENDANT, SET OUT IN ANNEXURE D TO THIS ORDER.**

**THE COURT DECLARES THAT:**

1. Save for the schemes numbered 2 (Healesville Walk Shopping Centre Joint Venture), 3 (Howleys Road Joint Venture), 10 (National Boulevard Joint Venture) and 11 (Simms Investment Project) listed in Annexure A to this Order, the schemes listed in Annexure A (the **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 service of the Interlocutory Process filed on 17 February 2010 and the amended Originating Process filed on 23 February 2010 be dispensed with and it be made returnable *instanter*.
3. Pursuant to s 1323(1)(h)(ii) of the Act, and subject to paragraph 21 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 second to sixteenth and eighteenth to forty-fifth defendants (the **Corporate Defendants**) (other than Property that also constitutes Property of a Scheme as defined in Annexure A to this Order) 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.
4. Save for the schemes numbered 2 (Healesville Walk Shopping Centre Joint Venture), 3 (Howleys Road Joint Venture), 10 (National Boulevard Joint Venture) and 11 (Simms Investment Project) in Annexure A to this Order, the Schemes be wound up pursuant to s 601EE(1) of the Act.

5. 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 21 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 Schemes (as defined in Annexure A to this Order) to:
- (a) identify, collect, and secure the Property;
  - (b) identify, and secure the Property in the possession, custody or control of each of the Corporate Defendants;
  - (c) protect the 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 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 11 of these orders;
  - (i) commence the orderly winding up of the Schemes ordered to be wound up pursuant to paragraph 4 of these orders.
6. For the avoidance of doubt, to the extent that Property of the Schemes referred to in paragraph 5 of these Orders is held by any of the Corporate Defendants, the appointment of the Receivers under paragraph 5 of these Orders includes the appointment of the Receivers as receivers and managers of any such Property of each of the Corporate Defendants.
7. For the further avoidance of doubt, subject to paragraph 21 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 Schemes in such manner as they think appropriate in the winding up of the Schemes.

8. Subject to these Orders, including paragraph 21 of these Orders 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 Schemes;
  - (b) all powers necessary to collect the funds referred to in paragraph 5(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 Schemes;
  - (d) the power to apply to the Court for directions or further orders, including orders varying the terms of these Orders.
9. The Receivers may not, until the first directions hearing following the filing of the reports referred to in paragraph 11 and subject to any directions by the Court, determine the timing of the payment of any:
- (a) debts as between the Schemes; and
  - (b) distributions to Investors (as defined in Annexure A of these Orders) in the Schemes.
10. During the period of receivership and management, subject to paragraphs 3 and 21 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.

11. On or before 12 April 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 Schemes (the **Disclosure Reports**) and provide a copy of the Disclosure Reports to the parties to the proceedings as to the following matters:
- (a) the nature and identity of the Property of the Scheme;
  - (b) the claims (actual, contingent and other) of third parties in relation to the Property of the Scheme including, but not limited to, whether the Property of the 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) in relation to the Investors:
    - (i) the identities of the Investors and the nature and extent of their interests;
    - (ii) any payments made to or by Investors in relation to the Scheme;
    - (iii) any money owing to the Investors;
  - (d) the nature and identity of the liabilities of the Scheme including, but not limited to, liabilities to the Investors;
  - (e) the solvency of the Scheme;
  - (f) the most appropriate manner and timing of managing and realising any assets or Property of the Scheme so as to most benefit the Investors; and
  - (g) a recommendation as to the process for recovering all money owing to the Scheme, whether by way of loan or otherwise.
12. The Receivers have such powers as may be necessary to enable them to carry out and complete the inquiry and report referred to in paragraph 11 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 Schemes or any of the Corporate Defendants (saving all just exceptions).
13. The Receivers have access to the documents held by the Plaintiff (**ASIC**) in relation to the Schemes (saving all just exceptions).
14. Each of the defendants (except the 17<sup>th</sup> defendant) 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 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 Schemes in the possession of any one of the defendants (saving all just exceptions); and

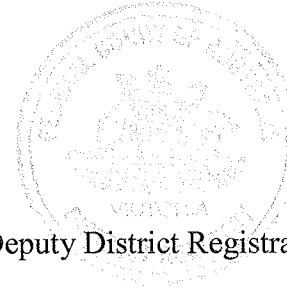
- (b) allow the Receivers to copy any such books, records or other papers.
15. Each of the defendants (except the 17<sup>th</sup> defendant) by their directors, officers, servants and agents answer such questions as the Receivers may reasonably require them to answer as to any of the matters under inquiry (saving all just exceptions).
  16. Within five working days of the date of these orders, the Receivers notify those named in confidential exhibit GC-59 to the affidavit of Glenn Childs sworn on 17 February 2010 (the **Investor Schedules**) as to the making and form of these Orders.
  17. Within five working days of receipt from the first defendant, pursuant to paragraph 23 of these Orders, of the details of the names and addresses of all current and past Investors in each Scheme, the Receivers notify those so identified by the first defendant and who are not named in the Investor Schedules.
  18. Within five working days of finalising the Disclosure Reports in accordance with paragraph 11 of these Orders, the Receivers provide on a "strictly confidential basis: for personal use only" a copy of the Disclosure Reports in respect of a Scheme to the Investors in such Scheme and to each Secured Lender (as defined in Annexure A).
  19. Within 30 days of the Receivers providing copies of the Disclosure Report pursuant to paragraph 18 of these Orders, any party or any Investor may file and serve on the Receivers and on each party to the proceedings any application they wish to make in relation to the future of any of the Schemes. The Receivers shall provide notice of any application filed in accordance with paragraph 19 of these Orders to any Secured Lender.
  20. Subject to paragraph 21 of these Orders, 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 over the Property of each 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 and managers, their partners and staff, at the rates specified in Annexure B to this Order, such fees to be paid out of the assets of the Scheme provided that the Receivers' remuneration and reasonable costs and expenses must not be paid in priority to any debt the payment of which is secured by the Property of the Scheme (including by any floating charge) without the consent in writing of the relevant Secured Lender.
  21. Nothing in these Orders is to affect the rights of any prior encumbrancers of the Property of the Schemes or the Property of the defendants, including the rights of any Secured Lender.

22. Each Secured Lender has liberty to apply to the Court in relation to any matter arising in connection with these Orders upon giving reasonable notice to the parties and to the Receivers.
23. Within 7 days of the date of these Orders, the first defendant provide to ASIC, the Receivers, and the Secured Lenders, details in respect of each of the Schemes, of:
  - (a) The Scheme name;
  - (b) The Scheme property;
  - (c) The names and addresses of the corporate managers of the Scheme; and
  - (d) The names and addresses of all current and past investors in the Scheme.
24. ASIC has leave to give notice of the undertakings set out in Annexure C and D of these Orders to the Land Titles Office, any bank, building society or other financial institution with which the first defendant operates any accounts and any other person or entity holding or controlling property belonging to the defendants:
  - (a) in the case of the Land Titles Office, by delivering a copy of these Orders to a person apparently in its employ at its premises, in Bourke Street, Melbourne;
  - (b) in the case of any bank, building society or other financial institution by delivering a copy of these Orders to a person apparently in the employ of that bank, building society or other financial institution; and
  - (c) in the case of any person or entity, by delivering a copy of these Orders to a person apparently in the employ of that person or entity.
25. Until further order, confidential exhibit GC-59 to the affidavit of Glenn John Childs sworn on 17 February 2010 be placed in a sealed envelope and marked "Confidential: No access without leave of a judge of the Court".
26. Until further order, pursuant to s 50 of the *Federal Court Act 1976 (Cth)*, there be no publication of the contents of confidential exhibit GC-59 to the affidavit of Glenn John Childs sworn on 17 February 2010 other than to ASIC and its legal representatives, the defendants and their legal representatives, judges of the Court, judges' associates and executive assistants and the Receivers and their staff.
27. The hearing of the amended originating process in relation to the 17<sup>th</sup> Defendant be otherwise adjourned until 9:30am on 4 March 2010.
28. The proceedings otherwise be adjourned for further directions at 9:30am on 21 May 2010.

29. All parties, the Receivers and Mr Bate have liberty to apply.

30. Costs reserved.

Date that entry is stamped: 26 February 2010



(per) Deputy District Registrar

## ANNEXURE A

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

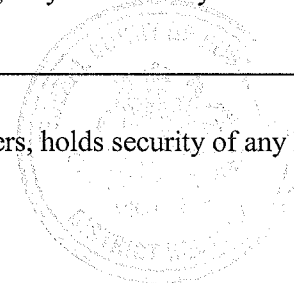
“Property” means all real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of s 1323(2A) of the Act, any property held otherwise than as a sole beneficial owner.

“Scheme” means the schemes listed in the following table:

|     | <b>Scheme</b>                                  | <b>Description of property</b>  | <b>Joint venture manager/s</b>   |
|-----|--|---|--|
| 1.  | 211 Wellington Road Joint Venture              | 211 Wellington Road, Mulgrave, Victoria   | 211 Wellington Road Pty Ltd – Third Defendant  |
| 2.  | Healesville Walk Shopping Centre Joint Venture | 251-263 Maroondah Highway, Healesville, Victoria  | Bluemist Holdings Pty Ltd – Fourth Defendant   |
| 3.  | Howleys Road Joint Venture                     | 40-48 Howleys Road, Notting Hill, Victoria  | Dellwood Holdings Pty Ltd – Fifth Defendant  |
| 4.  | George Street Joint Venture                    | 34 George Street, Launceston, Tasmania  | Enmore Enterprises Pty Ltd – Sixth Defendant   |
| 5.  | Cimitiere House Joint Venture                  | 113 Cimitiere Street, Launceston, Tasmania  | Enmore Enterprises Pty Ltd – Sixth Defendant   |
| 6.  | Reef House Resort                              | 99 Williams Esplanade Palm Cove, Qld – The Sebel Reef House Resort  | Firbank Arch Pty Ltd – Seventh Defendant<br>Glenline Pty Ltd – Eighth Defendants   |
| 7.  | Queen Street Joint Venture                     | 118 Queen Street, Melbourne, Victoria   | Gerling Holdings Pty Ltd – Ninth Defendant   |
| 8.  | Low Head Joint Venture                         | 136 Low Head Road George Town, Tasmania,<br>142 Low Head Road, George Town, Tasmania &<br>40 Gunn Parade, George Town, Tasmania | Low Head Village Pty Ltd – Twelfth Defendant   |
| 9.  | Nicholson Street Joint Venture                 | 127-137 Nicholson Street, East Brunswick, Victoria  | Nicholson Street Pty Ltd – Thirteenth Defendant<br>Holloway Crest Pty Ltd – Fourteenth Defendant<br>Rosebery Enterprises Pty Ltd – Fifteenth Defendant   |
| 10. | National Boulevard Joint Venture               | 144 National Boulevard, Campbellfield, Victoria   | Rosebery Enterprises Pty Ltd – Fifteenth Defendant   |
| 11. | Simms Investment Project                       | 626 Pittwater Road, Brookvale, NSW  | Simms Investments Pty Ltd – Sixteenth Defendant  |
| 12. | THIS ROW HAS BEEN LEFT BLANK INTENTIONALLY     |   |  |
| 13. | The Glen Centre Joint Venture                  | 673–681 Glenferrie Road, Hawthorn, Victoria   | The Glen Centre Hawthorn Pty Ltd – Eighteenth Defendant<br>Castello Holdings Pty Ltd – Nineteenth Defendant  |
| 14. | Twinview Joint Venture                         | 167 Flinders Lane, Melbourne, Victoria  | Twinview Nominees – Twentieth Defendant  |
| 15. | Yarra Valley Golf Joint Venture                | St John of God's Seminary and Henley Farm, Chirnside Park, Victoria   | Yarra Valley Golf Pty Ltd – Twenty-First Defendant<br>Adina Rise Pty Ltd – Twenty-Second Defendant<br>Albright Investments Pty Ltd – Twenty-Third Defendant<br>Ashfield Rise Pty Ltd – Twenty-Fourth Defendant<br>Bradfield Corporation Pty Ltd – Twenty-Fifth Defendant |

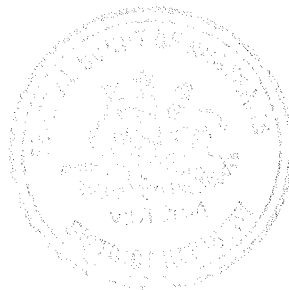
|     | Scheme            | Description of property   | Joint venture manager/s   |
|-----|-------------------|---|---|
|     |                   |   | Copeland Enterprises Pty Ltd – Twenty-Sixth Defendant<br>Devlin Way Pty Ltd – Twenty-Seventh Defendant<br>First Hazelwood Pty Ltd – Twenty-Eighth Defendant<br>Glenbelle Pty Ltd – Twenty-Ninth Defendant<br>Glenvale Way Pty Ltd – Thirtieth Defendant<br>Greenview Lane Pty Ltd – Thirty-First Defendant<br>Hallmark Corporation Pty Ltd – Thirty-Second Defendant<br>Moorleigh Holdings Pty Ltd – Thirty-Third Defendant<br>Norton Ridge Pty Ltd – Thirty-Fourth Defendant<br>Raleigh Glen Pty Ltd – Thirty-Fifth Defendant<br>Redcrest Holdings Pty Ltd – Thirty-Sixth Defendant<br>Suri Corporation Pty Ltd – Thirty-Seventh Defendant<br>Sutton Rise Pty Ltd – Thirty-Eighth Defendant<br>The Virtual Milmer Pty Ltd – Thirty-Ninth Defendant<br>Tivendale Pty Ltd – Fortieth Defendant<br>Tulloch Downes Pty Ltd – Forty-First Defendant<br>Maining Pty Ltd – Forty-Second Defendant<br>Topglen Pty Ltd – Forty-Third Defendant<br>Allblue Pty Ltd – Forty-Fourth Defendant<br>Aranbay Pty Ltd – Forty-Fifth Defendant |
| 16. | Glenbelle Project | Sebel Heritage Lodge Management Lot, Yarra Valley Golf Course, Chirnside Park, Victoria | Glenbelle Pty Ltd – Twenty-Ninth Defendant<br>Redcrest Holdings Pty Ltd – Thirty-Sixth Defendant  |

“Secured Lender” means any financier who, as at the date of these orders, holds security of any kind over Property of a Scheme or Property of a Corporate Defendant.



**ANNEXURE B**

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



## ANNEXURE C

### UNDERTAKING OF MR LETTEN

In this Undertaking:

**“Existing Sale Contract”** means any contract of sale relating to Property of the Schemes or of the second to forty-fifth defendants that has been executed prior to the date of these Orders in the ordinary course of business and which has not been completed as at the date of these Orders.

**“Schemes”** has the meaning given in Annexure A to these 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.

**I, MARK RONALD LETTEN**, undertake to:

1. Forthwith:
  - (a) resign as a director of SY21 Retail Pty Ltd (ACN 107 874 564), the Seventeenth Defendant;
  - (b) deliver up the books and records of SY21 Retail Pty Ltd to Mills Oakley, the solicitors for Mr Bate;
  - (c) take all steps necessary to facilitate my removal as a signatory to any bank account in the name of SY21 Retail Pty Ltd.
2. From the date of this Undertaking until 24 May 2010 refrain, whether by myself or through the officers, servants, employees or agents of the Second to Forty-fifth 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) subject to paragraph 1 above, 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 Forty-fifth defendants or jointly with any other person, company or entity or in the names of nominees or trustees of any of the Second to Forty-fifth defendants; 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 these proceedings;
- (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 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 Forty-fifth defendants (jointly, severally, or, jointly and severally);
- (iii) the completion of the Existing Sale Contracts.
3. 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 Forty-fifth defendants; 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 Forty-fifth defendants.
4. Refrain from, whether by myself my agents or servants or otherwise howsoever from:
- (a) further promoting or operating any one of the 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;
- (c) from receiving, soliciting or disposing of any funds in connection with the Schemes;
- (d) subject to subject to paragraph 1 above, 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.

**ANNEXURE D**

**UNDERTAKING OF PETER RHYS BATE**

**DEFINITIONS**

In this Undertaking:

“**ASIC**” means Australian Securities and Investments Commission.

“**Bank Accounts**” means any and all accounts with a bank held in the name of SY21.

“**Peter Bate**” means Peter Rhys Bate of Level 3, 167 Flinders Lane, Melbourne, a director and contributory of SY21.

“**Proceeding**” means Proceeding No. 95 of 2010 brought by ASIC as plaintiff against the defendants as described in the Schedule attached to the Amended Originating Process given in court to the Honourable Justice Gordon on 23 February 2010, including SY21.

“**Property**” means the property known registered in the name of SY21 and situate at 720-760 Chapel Street, South Yarra, Victoria more particularly described in volume 10768 folio 918.

“**SY21**” means SY21 Retail Pty Ltd ACN 107 874 564, the 17<sup>th</sup> Defendant in the Proceeding.

From the date of this undertaking until 24 May 2010, **PETER RHYS BATE**, undertakes as follows:

1. To apply any money to the credit of the Bank Accounts from time to time and all rent and any other income from the Property in payment only of:
  - (a) interest payable to Westpac Banking Corporation (“**Westpac**”) pursuant to the facility between SY21 and Westpac for the purchase and development of the Property;
  - (b) water rates, council rates, owner’s corporation fees, land tax and any other similar taxes or imposts levied against SY21 in respect of the Property;
  - (c) insurances payable by SY21 in respect of the Property;
  - (d) the cost of maintenance and repairs as reasonably required to the Property from time to time; and
  - (e) any other expenses incurred by SY21 in respect of the Property as approved in writing by ASIC.
2. To provide to ASIC every two weeks commencing on 16 March 2010 a bank reconciliation in respect of the period of 14 days ending not less than 7 days before the reconciliation is submitted, together with a copy of the bank statement and all receipts, tax invoices and statements in respect of expenses paid as shown in the bank reconciliation.

3. To refrain from:

- (a) 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
- (b) otherwise dealing with or disposing of, or causing or permitting to be sold, charged, mortgaged or otherwise howsoever dealt with or disposed of,

the Property or, subject to these undertakings, any other property of SY21, whether or not such property is real or personal, 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) any property held otherwise than as a sole beneficial owner.

4. To provide to ASIC any documents, records or other information reasonably requested, and available to him, in relation to SY21.