

Form 59
Rule 29.02

Affidavit

No VID 95 of 2010

Federal Court of Australia
District Registry: Victoria
Division: General

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

Respondents

Affidavit of: **Damian John Templeton (32nd Affidavit)**
Address: 147 Collins Street, Melbourne, Victoria, 3000
Occupation: Chartered Accountant

Date: 2 November 2011

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| 1 | Affidavit of Damian John Templeton in support of application for directions concerning the trustee indemnity question sworn on 2 November 2011 | — | |
| 2 | Exhibit DJT-170 being a circular to investors dated 16 September 2011 | 4 | 2 |

Signed:



Taken by:

Nick Kelton 2/11/11

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani
Law firm **MALLESONS STEPHEN JAQUES**
Tel +61 3 9643 4508
Email nick.kelton@malleasons.com

Fax + 61 3 9643 5999

Address for service

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia
Ref: N Kelton:MAT: 03-5503-4607

| | | | |
|---|---|----|---|
| 3 | Exhibit DJT-171 being an email from Nick Kelton to Renee Campbell dated 28 September 2011 | 11 | 3 |
| 4 | Exhibit DJT-172 being an email from Nick Kelton to Andrew Kennedy dated 26 October 2011 | 12 | 3 |

I, Damian John Templeton, of 147 Collins Street, Melbourne, Victoria, 3000, Chartered Accountant, make oath and say:

- 1 I am authorised to make this affidavit on behalf of the Receivers.
- 2 Unless otherwise stated, this affidavit is based on my own knowledge.
- 3 Unless otherwise indicated, I adopt the definitions set out in my Thirtieth Affidavit sworn on 29 August 2011. That affidavit also set out the relevant background to my appointment.
- 4 I swear this affidavit in support of the Interlocutory Process dated 29 August 2011 ("**Trustee Indemnity Application**"). The purpose of this affidavit is to report on the Receivers' attempts to locate a contradictor to represent investors' interests in respect of the Trustee Indemnity Application.
- 5 Following the hearing on 14 September 2011, the Receivers sent a circular on 16 September 2011 to all investors alerting them to, amongst other things, the issue concerning the trustee's right of indemnity that had arisen in the context of Twinview and TGCH and advising them that it would be dealt with by the Court on 4 November 2011. The circular indicated that a copy of the Trustee Indemnity Application and other information concerning the matter (including the Receivers' Preliminary Submissions and my Thirtieth Affidavit) was available to investors on the secure website. The circular requested that any investor that wished to be heard on the Trustee Indemnity Application in the capacity of contradictor should contact the Receivers by no later than 21 September 2011.

Now produced and shown to me marked "**DJT-170**" is a copy of the circular.
- 6 As at 21 September 2011, no investor had expressed any interest to the Receivers in acting in the role of contradictor.
- 7 I am informed by Jason Colosimo of KPMG and believe that, on or about 26 September 2011, he went through the Receivers' records in order to form a list of investors who the Receivers had previously dealt with in connection with the receivership of the Schemes and who had legal representation. Mr Colosimo identified the following persons:
 - (a) Howard and Margaret Duncan, who had previously been represented by Turks Legal;
 - (b) Anthony Light, who had previously been represented by Tony Kelly of Counsel;
 - (c) Graham and Diana Smith, who had previously been represented by Justina Knox of Botherway Legal; and

Signed:



Taken by:

Nick Kelton 2/10/11

- (d) Louton Pty Ltd ATF DG Smith Family Trust and Robuck Metals Pty Ltd ATF Thomas Family Trust, represented by Christian Daly-Thomson from Evan Ellis Lawyers (both of whom have submitted proofs of debt in respect of TGCH and Twinview).

8 I am informed by Sarah Donato of KPMG, and believe, that on 28 September 2011 Ms Donato telephoned each of the investors and/or legal advisors identified above to:

- (a) confirm that the investor and/or legal advisor had received and read the circular to investors date 16 September 2011;
- (b) ensure the investor and/or legal advisor was aware of the matter to be heard in court on 4 November 2011;
- (c) ascertain the investor's interest in undertaking the role of contradictor on behalf of all investors;
- (d) inform the investor and/or legal advisor that should the investor wish to undertake the role of contradictor, confirmation was required in writing (by email to Sarah Donato) by close of business 28 September 2011; and
- (e) provide her relevant contact details.

9 I am informed by Ms Donato, and believe, that by close of business 28 September 2011, none of the above investors or their legal advisors had indicated that they were willing to assume the role of contradictor for the Trustee Indemnity Application.

10 I am informed by Mr Colosimo that he has contacted Mr Kennedy of ABK Group Pty Ltd (an alleged creditor of TGCH who has submitted a proof of debt) on 22 and 28 September 2011 in order to ascertain whether Mr Kennedy was prepared to assume the role of contradictor. As per my Thirtieth Affidavit, Mr Kennedy's company has submitted a proof of debt in TGCH which appears to be an investor damages claim. According to Mr Colosimo, Mr Kennedy indicated he was reluctant to assume the role of formal contradictor in the absence of a guarantee from the Receivers that his legal costs would be reimbursed. Mr Kennedy did indicate, however, that he was prepared to assist the Receivers informally and without legal representation.

11 I am informed by Nick Kelton of Mallesons, and believe that he sent an email to the Court on 28 September 2011 reporting on the above matters. I believe the email provides an accurate report of the Receivers' attempts to identify contradictors. I note that Mr Kelton's report was copied to Mr Kennedy, amongst others.

Now produced and shown to me marked "DJT-171" is a copy of the email from Mr Kelton to Ms Campbell dated 28 September 2011.

12 I am informed by Mr Kelton, and believe, that on 26 October 2011 he sent an email to Mr Kennedy attaching copies of the submissions filed by the Receivers and Bridgehead and seeking confirmation that Mr Kennedy was not proposing to appear or otherwise participate in the application.

Signed:



Taken by:

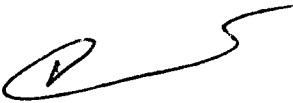
Nick Kelton 2/11/11

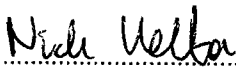
Now produced and shown to me marked "DJT-172" is a copy of the email from Mr Kelton to Mr Kennedy dated 26 October 2011.

13 I am informed by Mr Kelton, and believe, that on 28 October 2011 he received a telephone call from Mr Kennedy during which Mr Kennedy confirmed that he did not intend to appear at the hearing on 4 November 2011.

SWORN by the deponent
at Melbourne
in Victoria
on 2 November 2011.
Before me:

)
)
)
)
)


.....
Signature of deponent


.....
Signature of witness

NICK KELTON
600 Bourke Street
Melbourne Vic 3000

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

Federal Court of Australia
District Registry: Victoria
Division: General

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

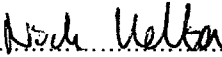
Applicant

Mark Ronald Letten and others

Respondents

EXHIBIT "DJT-170"

This is the exhibit marked "DJT-170" referred to in the affidavit of **DAMIAN JOHN TEMPLETON** sworn
2 November 2011

Before me:..........

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

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email nick.kelton@mallesons.com

Address for service

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607



Advisory
147 Collins Street
Melbourne Vic 3000

GPO Box 2291U
Melbourne Vic 3001
Australia

ABN: 51 194 660 183
Telephone: +61 3 9288 5555
Facsimile: +61 3 9288 6666
DX: 30824 Melbourne
www.kpmg.com.au

TO THE INVESTOR AS ADDRESSED

Our ref 12570885_1

16 September 2011

Dear Sir/Madam

The Unregistered Managed Investment Schemes detailed at Annexure A and associated Companies detailed at Annexure B (“the Letten Schemes”) to which Receivers and Managers are appointed and Companies detailed at Annexure C to which Liquidators are also appointed.

We refer to our circular to Investors dated 10 June 2011 on progress being made in the winding up of the Letten Schemes and now provide Investors with a further update. This includes updates on:

- Realisations
- Investigations
- Distributions to proper trust creditors for certain schemes
- Distributions to Investors
- Remuneration of the Receivers and Managers

Realisation Update

Nicholson Street Joint Venture (Receivers and Managers Appointed)

Investors were previously advised that the property located at 127-137 Nicholson Street, Brunswick East (“Nicholson Street Property”) had been sold via an expression of interest process in line with the requirements of the Federal Court of Australia (“the Court”) for \$14.3 million. Settlement of the Nicholson Street Property occurred on 30 June 2011.

As previously advised, the sale price achieved for the Nicholson Street Property was sufficient to pay the costs of realisation and the debt owing to the secured creditor. As a result there is expected to be funds available for proper trust creditor claims, pending direction from the Court (refer below).

Therefore, subject to directions of the Court, it is expected that funds will be available to be included in the common fund for Investors in accordance with the pooling Orders made by the Court on 11 November 2010.



SY21 Retail Complex Project (Receivers and Managers Appointed) ("SY21 Scheme")

Investors were previously advised that they (via the SY21 Scheme) do not have any direct proprietary interest in the Chapel Street property, which is owned by SY21 Retail Pty Ltd ("SY21 Retail"). Rather, the asset of the SY21 Scheme is a 50 percent shareholding in SY21 Retail together with moneys owing by SY21 Retail to LGH Holdings Ltd (Receivers and Managers Appointed) (In Liquidation) ("LGHH").

The Chapel Street property has now been sold by the director of SY21 Retail and settlement of the property occurred on 3 August 2011. As a result an interim dividend has been paid by SY21 Retail to both shareholders (including the SY21 Scheme) in the amount of \$200,000. Further distributions may be made in the future. Discussions with the director of SY21 Retail are continuing with respect to repayments of loan funds owed to LGHH.

Investors will be updated in due course on whether there is likely to be a contribution to the common fund from the SY21 Scheme.

Cass Bay Spur Project (Receivers and Managers Appointed)

The New Zealand based Liquidators of the company that owns the property located at 60 Governors Bay Road, Cass Bay, Lyttelton Harbour, New Zealand ("Cass Bay Property") has advised the Cass Bay Property has been sold at auction by the secured creditor.

Based on the sales price achieved and information currently available, insufficient funds have been realised on the sale of the Cass Bay Property to repay the debt owed to the secured creditor.

**Yarra Valley Golf Pty Ltd and Yarra Valley Golf Joint Venture ("YVG")
Glenbelle Pty Ltd and Glenbelle Project ("Glenbelle")
(All Receivers and Managers Appointed)**

YVG Golf Assets and Glenbelle Retreat & Spa and Various Properties

Investors were previously advised of the Receivers and Managers' application to the Court to seek approval for the sale of selected property and business of YVG and Glenbelle ("YVG and Glenbelle Assets"). Following this application the Court ordered on 17 May 2011 that the Receivers' application be approved and that settlement of the YVG and Glenbelle Assets occur. In accordance with the orders of the Court, settlement of the sale of the YVG and Glenbelle Assets occurred on 15 July 2011.

As previously advised insufficient assets were realised from this sale to repay the secured creditor and allow for a distribution to proper trust creditors or contribute to the common fund for Investors.



Glenbelle – Management Lot

Investors have previously been advised that the Management Lot (being an asset of Glenbelle) was sold by public auction earlier this year.

We continue to work with the purchaser of the Management Lot to meet certain conditions precedent to the contract and make the required application for Court approval of the sale. Investors will be notified of this application once it is filed with the Court.

YVG – Botanica Townhouses

As previously advised, at the time of our appointment on 25 February 2010 (“Appointment Date”), the assets owned by YVG included double storey two and three bedroom townhouses known as the ‘Botanica’ townhouses located at The Heritage Golf and Country Club (“the Botanicas”).

In total 35 townhouses (numbered Lots 601-635 on Plan of Subdivision 415064K) were developed on the YVG site. As at the Appointment Date YVG had completed and settled the initial two stages of the Botanica development (17 townhouses numbered Lots 618 – 635) with the exception of two individual townhouses which failed to settle (Lots 625 and 626).

At the Appointment Date, the remaining Botanicas were at the following stages of completion:

- Lots 601-610 – Construction was completed and the Occupancy Permits had been issued. We approached the Court in late March 2010 to request the power to settle and complete the sale of these properties in line with the pre-existing contracts
- Lots 611-618 – Construction was yet to be completed and no Occupancy Permit had been issued. We submitted a request to the Court in June 2010 to request funding from the secured lender to enable completion of the construction work, issuance of the Occupancy Permit and settlement and completion of the pre-existing contracts

By Orders of the Court dated 31 March 2010 and 4 June 2010, we were granted the power to settle the Botanicas subject to pre-existing sale contracts (“the Pre-sold Properties”).

We confirm the following in relation to the Pre-sold Properties:

- 14 of the properties were settled in accordance with their contract of sale; and
- 4 properties did not settle and we remain in possession of the properties (“the Remaining Botanicas”).

On 5 August 2011 the Court granted us the power to sell the Remaining Botanicas and two additional Botanicas that were not subject to a sale contract on the Appointment Date (collectively “the Unsold Botanica Properties”). A copy of the Order is available for review through the secure data room at www.kpmg.com.au/lettenschemes.



TO THE INVESTOR AS ADDRESSED
16 September 2011

The Unsold Botanica Properties will be sold in the coming months through the Court ordered sale process:

- The Unsold Botanica Properties will be marketed for sale by Fletchers and Philip Webb, who were selected as the most appropriate agents based on proposals submitted by 4 qualified sales agents;
- Two of the Unsold Botanica Properties will be sold by a public Auction on 8 October 2011, by the marketing agents preceded by a 4 week marketing campaign (which has commenced); and
- Based on the outcome of the first 2 sale campaigns, and in consultation with the respective agents, a decision will be made in relation to the most appropriate method and time frame to sell the remaining properties.

Investors will be updated on the progress of the above sale campaigns in due course, however, it is not anticipated the sale of the Unsold Botanica Properties will enable the YVG secured creditor to be repaid in full and no proceeds are expected to be available for creditors and Investors.

YVG – Henley Lots 6 & 7

We are continuing to work towards settlement of the sale of Lots 6 & 7 that were subject to contracts of sale on the Appointment Date. We shall update Investors once the sale of these properties are completed. It is expected that any excess proceeds will not enable the secured creditor to be repaid in full and no proceeds are expected to be available for creditors or Investors.

YVG – Henley Lot 8

Settlement of the sale of Lot 8 occurred on 16 August 2011 which was subject to a contract of sale at the time of our appointment. The excess funds received from settlement were distributed to the secured creditor and were not sufficient to repay the secured debt.

Forster Development Co Pty Ltd (In Liquidation) (“Forster”)

On 30 August 2011 the shareholders of Forster, a company associated with Mark Letten, resolved to place it into liquidation. This company is the registered proprietor of 4-6 Penny Lane, South Yarra which is the former residential property of Mr Letten and his family. The liquidator has advised that it is his intention to realise the assets of Forster.

We have advised the Liquidator of the Letten Schemes’ claim against any surplus proceeds coming from the realisation of 6 Penny Lane after repayment of the debt owed to the secured creditor, National Australia Bank. In addition we have submitted a claim, on behalf of LGH



TO THE INVESTOR AS ADDRESSED
16 September 2011

Administration Pty Ltd (Receivers and Managers Appointed) (In Liquidation) as an unsecured creditor of Forster.

The quantum of any return from Forster is not currently known and Investors will be advised in due course.

Moorhouse Shopping Centre Project

Investors will recall this scheme does not have a direct interest in the Moorhouse Shopping Centre in Christchurch, New Zealand but rather an interest in the New Zealand registered company that owns this property. The New Zealand based liquidators had sold the balance of the project's landholding by public auction with settlement scheduled to occur shortly after the Christchurch earthquake on 22 February 2011. As a result of the earthquake, settlement did not occur.

The purchaser has confirmed that he may wish to proceed with the purchase, on renegotiated terms, after completion of a full engineering assessment of the site. Due to the level of damage suffered by all buildings in central Christchurch this process has not yet been completed. Further, the New Zealand based liquidators are continuing their discussions with the company's insurer regarding the ability of the relevant policy to meet the costs of any damage that occurred.

It is not known when, or if, the sale of this asset will be completed or the ultimate realisation amount. Investors will be updated in due course as progress is made.

Investigations

We are continuing our investigations into other assets recoverable for the benefit of Investors. These include the payment of monies prior to the Appointment Date to Mark Letten and individuals, companies and trusts associated with him that might be recoverable. These investigations require review of substantial records in our possession. This work is continuing.

We are also aware that ASIC has undertaken an investigation into this matter and its investigations are continuing.

Investors will be advised the outcome of these investigations in due course.

Distribution to Proper Trust Creditors

As previously advised, the Liquidators previously notified all known and potential creditors of The Glen Centre Hawthorn Pty Ltd (Receivers and Managers Appointed) (In Liquidation) ("The Glen") and Twinview Nominees Pty Ltd (Receivers and Managers Appointed) (In Liquidation) ("Twinview") of their intention to declare a dividend on 28 July 2011.



TO THE INVESTOR AS ADDRESSED
16 September 2011

During the proof of debt process certain claims were received whereby the Liquidators consider it unclear whether they are proper trust creditors and are uncertain of the ability of the trustees of the relevant schemes to rely on their indemnity against trust assets to meet these claims.

In order to resolve these issues, the Receivers & Managers of the Glen Centre Joint Venture and the Twinview Joint Venture have applied to the Court for directions.

A directions hearing to consider the application occurred on 14 September 2011. At that hearing, amongst others, the following Orders were made:

- The Receivers are to identify contradictors in respect of the application and notify the Court in writing as to basis of their selection; and
- The matter is to be heard by the Court on 4 November 2011 at 9.30am.

The purpose of appointing a contradictor is to nominate an appropriate party to effectively argue on behalf of all Investors their opinion in respect of the matters before the Court. Any Investor wishing to undertake this role is requested to contact this office as soon as possible and by no later than 21 September 2011. The application involves a number of complex legal issues relating to trust law. However, Investors should note that any contradictors in this matter may be required to bear their own legal costs.

Copies of the interlocutory process and all other information relating to this issue are available at www.kpmg.com.au/lettenschemes should Investors wish to participate in the legal process.

Investors will be advised of the outcome of the hearing in due course.

Distribution to Investors

As previously advised, subject to the outcome of the creditor adjudication process for The Glen and Twinview, the Investor interim distribution process was expected to commence in August 2011. However, as Court directions are required to resolve the issues outlined above the proposed interim dividend and formal proof of claim process for Investors has not yet occurred pending the outcome of the Court hearing.

We are seeking to resolve the issue before the Court as soon as possible to enable a distribution to be made to Investors. We encourage all investors to continue to visit www.kpmg.com.au/lettenschemes for regular updates.

We have also previously advised our estimated return to Investors. This estimate will be updated and reported to Investors following resolution of the application to Court in respect of the Proper Trust Creditors of The Glen and Twinview.

Investors will recall that in estimating the return to Investors we assumed, amongst other things, no capital gains tax was payable by us on the sale of any scheme asset. Our discussions with the Australian Taxation Office ("ATO") in this regard are ongoing. Should the ATO form the view that capital gains tax is payable this will materially reduce any return to Investors. We are unable to advise, at this time, of the ATO's position.



TO THE INVESTOR AS ADDRESSED
16 September 2011

Investors will be updated once the ATO's final position is known.

Remuneration of the Receivers and Managers

On 12 September 2011 the Court delivered its judgement and reasons in respect of the Receivers and Managers' application for approval of its fees and disbursements for the period 25 February 2010 to 2 July 2010.

The Court undertook a detailed assessment of the fees sought and has ruled that the Receivers and Managers' claim for remuneration be reduced by 5%. This is in addition to the 10% reduction already provided by the Receivers and Managers. A copy of the Order is attached as Annexure D and the reasons of the Court are available for inspection by all Investors in the secure section of the Investors' website.

The Receivers expect to shortly file with the Court a further remuneration application for later periods. Investors will be advised when this has occurred.

Should you have any further queries in relation to this matter please send an email to lettenschemes@kpmg.com.au or call the Investor hotline on 1800 882 944 (Australia) or +61 3 9838 4238 (International).

Yours faithfully

Damian Templeton
Receiver and Manager



TO THE INVESTOR AS ADDRESSED

16 September 2011

Annexure A: KPMG Partners Damian Templeton and Philip Hennessy have been appointed Receivers and Managers to the following schemes:

| Scheme | Description of property |
|--|--|
| Reef House Resort | 99 Williams Esplanade Palm Cove, Qld – The Sebel Reef House Resort |
| Twinview Joint Venture | 167 Flinders Lane, Melbourne, Victoria |
| The Glen Centre Joint Venture | 673–681 Glenferrie Road, Hawthorn, Victoria |
| Nicholson Street Joint Venture | 127-137 Nicholson Street, East Brunswick, Victoria |
| Low Head Joint Venture | 136 Low Head Road George Town, Tasmania, 142 Low Head Road, George Town, Tasmania & 40 Gunn Parade, George Town, Tasmania |
| George Street Joint Venture | 34 George Street, Launceston, Tasmania |
| Cimitiere House Joint Venture | 113 Cimitiere Street, Launceston, Tasmania |
| 211 Wellington Road Joint Venture | 211 Wellington Road, Mulgrave, Victoria |
| Yarra Valley Golf Joint Venture | St John of God's Seminary and Henley Farm, Chirnside Park, Victoria |
| Glenbelle Project | Sebel Heritage Lodge Management Lot, Yarra Valley Golf Course, Chirnside Park, Victoria |
| Healesville Walk Shopping Centre Joint Venture | 251-263 Maroondah Highway, Healesville, Victoria |
| Howleys Road Joint Venture | 40-48 Howleys Road, Notting Hill, Victoria |
| Queen Street Joint Venture | 118 Queen Street, Melbourne, Victoria |
| Simms Investment Project | 626 Pittwater Road, Brookvale, NSW |
| National Boulevard Joint Venture | 144 National Boulevard, Campbellfield, Victoria |
| SY21 Retail Complex Project | The Court has found that the asset of the SY21 Scheme is the 50 percent shareholding in SY21 Retail Pty Ltd together with moneys owing by SY21 Retail Pty Ltd to LGH Holdings Ltd. |
| Tomasetti House Joint Venture | 277-279 Flinders Lane, Melbourne, Victoria |
| Aurora Park Project | 443-447 Warringah Road, Frenchs Forest, New South Wales |
| Moorhouse Shopping Centre Project | 343-359 Moorhouse Avenue, Christchurch, New Zealand |
| Cass Bay Spur Project | 60 Governors Bay Road, Cass Bay, Lyttelton Harbour, New Zealand |
| Mount Hutt Project | McLennans Bush Road, Methven, New Zealand |



TO THE INVESTOR AS ADDRESSED
16 September 2011

Annexure B: KPMG Partners Damian Templeton and Philip Hennessy have been appointed Receivers and Managers to the following companies:

| | |
|---|--|
| LGH Holdings Limited ACN 077 191 943 | Glenbelle Pty Ltd ACN 097 306 646 |
| 211 Wellington Road Pty Ltd ACN 092 663 860 | Glenvale Way Pty Ltd ACN 088 287 021 |
| Bluemist Holdings Pty Ltd ACN 097 306 922 | Greenview Lane Pty Ltd ACN 093 505 312 |
| Dellwood Holdings Pty Ltd ACN 098 505 803 | Hallmark Corporation Pty Ltd ACN 083 180 812 |
| Enmore Enterprises Pty Ltd ACN 082 158 487 | Moorleigh Holdings Pty Ltd ACN 088 287 058 |
| Firbank Arch Pty Ltd ACN 059 464 381 | Norton Ridge Pty Ltd ACN 078 821 066 |
| Glenline Pty Ltd ACN 098 532 364 | Raleigh Glen Pty Ltd ACN 088 204 380 |
| Gerling Holdings Pty Ltd ACN 091 726 457 | Redcrest Holdings Pty Ltd ACN 100 836 486 |
| LGH Administration Pty Ltd ACN 077 165 069 | Suri Corporation Pty Ltd 093 505 321 |
| LGH Finance Pty Ltd ACN 078 859 248 | Sutton Rise Pty Ltd ACN 088 204 399 |
| Low Head Village Pty Ltd ACN 091 731 958 | The Virtual Mlmer Pty Ltd ACN 065 374 665 |
| Nicholson Street Pty Ltd ACN 069 104 089 | Tivendale Pty Ltd ACN 093 505 349 |
| Holloway Crest Pty Ltd ACN 091 731 967 | Tulloch Downes Pty Ltd ACN 078 895 048 |
| Rosebery Enterprises Pty Ltd ACN 091 826 229 | Mainking Pty Ltd ACN 100 790 485 |
| Simms Investments Pty Ltd ACN 093 504 511 | Topglen Pty Ltd ACN 096 857 564 |
| The Glen Centre Hawthorn Pty Ltd ACN 089 906 543 | Maywood Investments Pty Ltd ACN 091 599 218 |
| Castello Holdings Pty Ltd ACN 088 204 175 | Aranbay Pty Ltd ACN 098 532 319 |
| Twinview Nominees Pty Ltd ACN 097 307 278 | Melville Corporation Pty Ltd ACN 091 911 045 |
| Yarra Valley Golf Pty Ltd ACN 066 632 479 | Tilley Lane Pty Ltd ACN 086 136 361 |
| Adina Rise Pty Ltd ACN 083 181 122 | Allblue Pty Ltd ACN 100 836 388 |
| Albright Investments Pty Ltd ACN 088 204 166 | Acetrain Pty Ltd ACN 100 820 282 |
| Ashfield Rise Pty Ltd ACN 093 504 806 | Sage Bay Pty Ltd ACN 097 306 628 |
| Bradfield Corporation Pty Ltd ACN 088 204 371 | Tobago Holdings Pty Ltd ACN 093 504 520 |
| Copeland Enterprises Pty Ltd ACN 093 504 824 | HPSC Pty Ltd ACN 059 930 139 |
| Devlin Way Pty Ltd ACN 088 264 813 | Jensdale Pty Ltd ACN 098 367 974 |



TO THE INVESTOR AS ADDRESSED
16 September 2011

Annexure C: KPMG Partners Damian Templeton and Philip Hennessy have been appointed Joint and Several Liquidators to the following companies:

| |
|---|
| LGH Holdings Limited ACN 077 191 943 |
| 211 Wellington Road Pty Ltd ACN 092 663 860 |
| Bluemist Holdings Pty Ltd ACN 097 306 922 |
| Dellwood Holdings Pty Ltd ACN 098 505 803 |
| Enmore Enterprises Pty Ltd ACN 082 158 487 |
| Gerling Holdings Pty Ltd ACN 091 726 457 |
| LGH Administration Pty Ltd ACN 077 165 069 |
| Simms Investments Pty Ltd ACN 093 504 511 |
| The Glen Centre Hawthorn Pty Ltd ACN 089 906 543 |
| Castello Holdings Pty Ltd ACN 088 204 175 |
| Twinview Nominees Pty Ltd ACN 097 307 278 |
| Melville Corporation Pty Ltd ACN 091 911 045 |
| Tilley Lane Pty Ltd ACN 086 136 361 |
| HPSC Pty Ltd ACN 059 930 139 |
| Jensdale Pty Ltd ACN 098 367 974 |
| Oakdale Rise Pty Ltd ACN 091 598 908 |
| Maywood Investments Pty Ltd ACN 091 599 218 |
| Acetrain Pty Ltd ACN 100 820 282 |
| Sage Bay Pty Ltd ACN 097 306 628 |
| Tobago Holdings Pty Ltd ACN 093 504 520 |
| (All Receivers and Managers Appointed) (All In Liquidation) |

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

VID 95 of 2010

IN THE MATTER OF THE *CORPORATIONS ACT* 2001

and

IN THE MATTER OF MARK RONALD LETTEN (and others)

**AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

APPLICANT

MARK RONALD LETTEN AND OTHERS

RESPONDENTS

DEPUTY REGISTRAR: PRINGLE R
DATE: 12 SEPTEMBER 2011
PLACE: MELBOURNE

THE COURT ORDERS AND DIRECTS THAT:

For the purposes of fixing the remuneration sought by the Receivers in the Remuneration Application for the period 25 February 2010 to 2 July 2010 (the **Relevant Period**) and to which the Receivers are properly entitled and the costs and expenses they properly incurred in the performance of their duties and the exercise of their powers (as required by paragraph 4 of the Order of Justice Gordon dated 22 December 2010):

1. The Receivers' remuneration for the Relevant Period be fixed at \$5,200,582.83 (excluding GST).
2. Within 7 days of the date of this Order, the Receivers are to serve upon all investors identified by the Receivers to be investors in any of the Schemes (**Investors**) and the Secured Lender:
 - (a) a copy of these orders;

(b) a cover letter which informs them that a copy of the Reasons of Registrar Pringle dated 12 September 2011 are available on the secure section of the Investors' website (www.kpmg.com.au/lettenschemes).

3. Service of the documents referred to in paragraph 2 of this Order be effected in the same manner as required by paragraph 6 of the Order of Justice Gordon dated 22 December 2010.

NOTE: For the purpose of this order:

- (a) **Receivers** and **Secured Lender** have the meanings ascribed to those terms in the Orders of Justice Gordon made in this proceeding on 25 February 2010 (Appointment Order) and 4 March 2010 (SY21 Appointment Order);
- (b) **Remuneration Application** means the application of the Receivers by interlocutory process dated 30 November 2010 for approval of their remuneration, costs and expenses in respect of the the Relevant Period.

Federal Court of Australia
District Registry: Victoria
Division: General

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

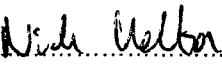
Applicant

Mark Ronald Letten and others

Respondents

EXHIBIT "DJT-171"

This is the exhibit marked "DJT-171" referred to in the affidavit of **DAMIAN JOHN TEMPLETON** sworn
2 November 2011

Before me:..... 

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

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email nick.kelton@mallesons.com

Address for service

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

Kelton, Nick

From: Kelton, Nick
Sent: Wednesday, 28 September 2011 4:16 PM
To: 'Renee Campbell'
Cc: 'Tony Tsiavis'; 'Schwartz, Anna'; 'Andrew Brown'; 'Wolff, Alex (Melbourne)'; 'Royan, Naomita'; 'Joyce, Helen'; 'a.kennedy@amlbtv.com'; 'Anna.Skreiner@asic.gov.au'
Subject: ASIC v Letten - trustee indemnity application

Dear Ms Campbell

On 14 September 2011 Justice Gordon ordered that Receivers were to confirm in writing to the Court who will be the contradictor(s) in respect of the above application and the basis of their selection. I set out a short report on this below.

I am instructed as follows:

- On 16 September 2011, the Receivers sent a circular to investors advising them of the orders made on 14 September 2011, and the need to identify contradictors for the hearing on 4 November 2011. The circular called for expressions of interest to fill the contradictor role for investors. The application, supporting affidavit and preliminary submissions were also uploaded onto the investor secure data room on 16 September 2011 and further updated on 21 September 2011.
- The Receivers have this week spoken directly to 5 investors (or representatives of investors) who have previously been known to the Receivers to have had legal representation (through the pooling application, amongst other reasons) and thus would be best placed to make submissions on complicated aspects of trust law. While official responses from some of those investors is still pending, the feedback to date indicates that no investor will be prepared to undertake the formal contradictor role. The one exception to this is Mr Andrew Kennedy (a representative of ABK Group Pty Ltd ("ABK") who has submitted a proof of debt in the winding up of The Glen Centre Hawthorn Pty Ltd ("TGCH"). Mr Kennedy has offered to assist either formally as a contradictor or informally. His strong preference is to undertake this role without legal representation given that there is no security for his legal costs. As it appears, on its face, that ABK's proof of debt has elements of an investor damages claim, it would appear Mr Kennedy would be arguing from the narrow perspective that such claims should be admitted as proper trust creditor claims. The Receivers have no objection to ABK making submissions in support of this position so that the issue can be resolved.

In addition to the above, at the hearing on 14 September 2011, and in subsequent correspondence, Bridgehead Properties Pty Ltd has signalled its intention to be a contradictor from the perspective of proper trust creditors. The Receivers consider Bridgehead is the ideal candidate for this role given:

- (1) it is the biggest creditor of TGCH and Twinview;
- (2) it has background in the various complex issues through its involvement in the pooling application; and
- (3) it has legal representation.

ASIC has advised that it has not yet formed a view on the application, but it anticipates it will be able to do so once it knows who the contradictor(s) will be and once it has had the opportunity to consider the submissions and evidence of the contradictor(s). ASIC has further advised that, to the extent that it is able to assist the Court, it will endeavour to do so.

Given no contradictor has emerged who can argue in the interests of the broader investor pool that:

- (1) the trustee's right of indemnity is not available; and/or
- (2) the trustee's right of indemnity has been effectively wiped out by the operation of the clear accounts rule,

the Receivers propose to make submissions in support of those positions to ensure the investors' interests are advanced and the Court is properly advised as to the merits of both sides of the argument.

To summarise, at this stage the following parties will play the role of contradictors:

26/10/2011

Bridgehead Properties Pty Ltd - who will argue that the right of indemnity is available to proper trust creditors (but not investors)

Receivers - who will argue in the interests of the broader investor pool that there is no right of indemnity available or, alternatively, it has been effectively wiped out by operation of the clear accounts rule.

Additionally, **ABK** may also seek to make submissions from the perspective of investor damages claimants.

Please let me know if Justice Gordon requires any further information. In the meantime, to the extent that any other viable contradictors emerge in the near future, we will advise the Court as soon as possible.

Kind regards

Nick Kelton | Senior Associate

Mallesons Stephen Jaques

Level 50, Bourke Place, 600 Bourke Street, Melbourne VIC 3000

T +61 3 9643 4508 | M +61 409 776 179 | F +61 3 9643 5999

nick.kelton@mallesons.com | www.mallesons.com

Federal Court of Australia
District Registry: Victoria
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In the matter of the Corporations Act 2001

and

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Australian Securities and Investments Commission

Applicant

Mark Ronald Letten and others

Respondents

EXHIBIT "DJT-172"

This is the exhibit marked "DJT-172" referred to in the affidavit of **DAMIAN JOHN TEMPLETON** sworn
2 November 2011

Before me: Nick Kelton

Nicholas James Kelton
Level 50, 600 Bourke Street, Melbourne, Vic. 3000
An Australian legal practitioner within the meaning
of the Legal Profession Act 2004.

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email nick.kelton@mallesons.com

Address for service

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

Kelton, Nick

From: Kelton, Nick
Sent: Wednesday, 26 October 2011 5:24 PM
To: 'a.kennedy@amlbtv.com'
Cc: Troiani, Tony
Subject: ASIC v Letten: trustee indemnity application
Attachments: img-X121559-0001.pdf; 10889121_1 Letten - trustee indemnity submissions.DOCX;
10849897_1 Letten - trustee indemnity question submissions.DOCX

Dear Mr Kennedy

I refer to our recent communications and your communications with the Receivers regarding the trustee indemnity question which is to be heard by the Court on 4 November 2011 at 9.30am.

I attach a complete set of the submissions that have now been filed in respect of this application.

I would be grateful if you could please confirm whether you intend to appear at the hearing or otherwise participate in the application.

Regards

Nick Kelton | Senior Associate
Mallesons Stephen Jaques
Level 50, Bourke Place, 600 Bourke Street, Melbourne VIC 3000
T +61 3 9643 4508 | M +61 409 776 179 | F +61 3 9643 5999
nick.kelton@mallesons.com | www.mallesons.com



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