

6/1998

## ENFORCEABLE UNDERTAKING

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

#### SECTION 93AA Australian Securities & Investments Commission Act ("ASIC Act")

This undertaking is made to the Australian Securities and Investments Commission ("ASIC") by:

Treetop Projects Limited  
ACN 081 209 298  
92 Cooper Street  
Cootamundra NSW 2590

and

Australian Rural Group Limited  
ACN 002 635 501  
ARG House  
McLennan Close  
Bathurst NSW 2795

#### Statement of Purpose

This undertaking has been provided because, on the grounds and for the reasons set out below, ASIC has formed the view that amounts paid by investors to the management company, Treetop Projects Limited ACN 081 209 298 ("TPL"), of a scheme known as the Treetop Apples Project for the purpose of having work performed as part of the scheme are at risk. ASIC has sought this undertaking from TPL and TPL has agreed to give this undertaking so as to ensure that the amounts paid by investors, which are represented by loan repayments, are available for the purpose of having the work performed as part of the scheme by TPL at all times that TPL is the management company of the scheme and, in the event that TPL is replaced as management company of the scheme, by the new management company of the scheme.

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**1. Background***The entities*

- 1.1 TPL is a company duly incorporated pursuant to the laws of New South Wales.
- 1.2 Australian Rural Group Limited ACN 002 635 501 ("ARG") is a company duly incorporated pursuant to the laws of New South Wales.
- 1.3 ARG is the trustee or representative, approved pursuant to section 1067(4) of the Corporations Law, for the purpose of the following deeds ("Deeds") that create the following schemes ("Schemes"):
- (a) Deed dated 31 December 1990 that creates Tumut River Orchard Project;
  - (b) Deed dated 26 May 1993 that creates Coonabarabran Orchard Project;
  - (c) Deed dated 24 May 1994 that creates Queensland Orchard Project;
  - (d) Deed dated 18 March 1996 that creates Treetop Plums Project;
  - (e) Deed dated 16 January 1997 that creates Treetop Apples Project; and
  - (f) Deed dated 4 June 1997 that creates Harcourt Vines Scheme.

*Change in management company*

- 1.4 Immediately prior to 30 June 1998 Tumut River Orchard Management Limited ACN 003 501 611 ("TROM") was the management company regarding each of the Schemes.
- 1.5 By deed dated 30 June 1998 TROM resigned as the management company regarding the Schemes, TPL agreed to be the management company regarding the Schemes and ARG appointed TPL as the management company regarding the Schemes.
- 1.6 ASIC has formed the view that the deed dated 30 June 1998 modified the Deeds, that neither paragraph 1069A(7)(a) or paragraph 1069A(7)(b) of the Corporations Law applied and therefore the modification of the Deeds should have occurred in accordance with the procedure set out in subsection 1069A(2) of the Corporations Law.
- 1.7 If the Deeds had been modified in accordance with the procedure set out in subsection 1069A(2) of the Corporations Law the modification, and hence the appointment of TPL as the management company regarding the Schemes, could only have occurred as a consequence of a resolution at a meeting of investors.

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*Undertaking to convene meeting*

- 1.8 ASIC has concluded that in these circumstances, regarding each of the Schemes, ARG should convene a meeting of the respective investors to consider whether TPL should be removed as the management company regarding each Scheme and that the meeting should be held by 31 October 1998.
- 1.9 ARG has provided ASIC undertakings pursuant to section 93AA of the ASIC Act. The undertakings include undertakings made to ASIC by ARG that, for each Scheme, ARG will:
- (a) by sending notice by post of the proposed meeting at least 14 days before the proposed meeting to each investor in the Scheme at the investor's last known address or, in the case of joint holders, to the joint holder whose name appears first in the management company's records, convene a meeting of the investors, on or prior to 31 October 1998, for the purpose of voting on a resolution that TPL be removed as the management company in relation to the Scheme; and
  - (b) if the holders of 50% or more of the value of prescribed interests in the Scheme resolve at the meeting that TPL regarding that Scheme should be removed, request pursuant to sub regulation 7.12.15(6)(g) of the Corporations Regulations that TPL retire as the management company of the Scheme.

*Treetop Apples Project*

- 1.10 To invest in the Treetop Apples Project investors entered into a "package" of three contracts with TROM as detailed below:
- (a) All investors in the Treetop Apples Project entered into a Licence Deed with TROM under which TROM granted the investor for 17 years a right to occupy a Farming Allotment and grow fruit on the Farming Allotment. Paragraph 3 of the Licence Deed required an investor to pay TROM as consideration for the right to occupy a Farming Allotment and grow fruit on the Farming Allotment \$500 on the date of execution of the Licence Deed for the first financial year (1 July 1997 to 30 June 1998) and \$500 payable on or before 30 June 1998 for the second financial year (1 July 1998 to 30 June 1999) and further amounts that in the ordinary course of events would be payable from harvest proceeds.
  - (b) All investors in the Treetop Apples Project entered into a Farming Agreement with TROM under which TROM undertook to perform work and provide services on an investor's Farming Allotment. Paragraph 20 of the Farming Agreement required an investor to pay TROM as consideration for performing the work and providing the

services \$16,000 on or before the date of the Farming Agreement and \$13,000 on or before 30 June 1998 and further amounts that in the ordinary course of events would be payable from harvest proceeds.

- (c) About 98% of investors in the Treetop Apples Project entered into an Investor Loan Agreement with TROM under which TROM agreed to advance to the investor a Principal Sum of \$30,000 (\$16,500 on or before 30 June 1997 and \$13,500 on or before 30 June 1998) per Farming Allotment and the investor authorised TROM to remit the Principal Sum to ARG to be applied by ARG towards any obligation of the investor to make payments under the Licence Deed and Farming Agreement.

- 1.11 At sometime between 28 May 1998 and 31 July 1998 TROM transferred to TPL the rights of TROM under the Investor Loan Agreements entered into with investors in the Treetop Apples Project, and other rights under loan agreements, cash and equipment in consideration for TPL assuming the duties and obligations of TROM under the Deeds, such duties and obligations including those set out in the Licence Deed and Farming Agreement entered by TROM with investors in the Treetop Project Limited.
- 1.12 Regarding each Farming Allotment in the Treetop Apples Project TROM has received \$1,000 as consideration for the right (for a period of two years) to occupy a Farming Allotment and grow fruit on the Farming Allotment under the Licence Deed and has received \$29,000 as consideration for performing (some of) the work and providing (some of) the services under the Farming Agreement, either directly from an investor or indirectly by entering an Investor Loan Agreement under which TROM advanced \$30,000 for the investor and required the investor to repay that amount.
- 1.13 Regarding each Farming Allotment in the Treetop Apples Project TPL has received adequate consideration ("Adequate Consideration") for assuming those duties and obligations of TROM as set out in the Licence Deed and Farming Agreement entered by TROM with investors in the Treetop Project Limited for which TROM received \$30,000 as consideration ("Duties and Obligations").
- 1.14 Regarding several Farming Allotments in the Treetop Apples Project TPL is still to perform some of the Duties and Obligations.
- 1.15 If TPL was removed as the management company for the Treetop Apples Project any entity assuming the role of (for instance ARG) or appointed as the management company for the Treetop Apples Project would be subject to the duties and obligations of the management company as set out in the deed dated 16 January 1997 that creates the Treetop Apples Project. Those duties and obligations include the Duties and Obligations for which investors have already paid consideration.

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- 1.16 In these circumstances, TPL agrees that it:
- (a) holds loan repayments from investors in the Treetop Apples Project made under Investor Loan Agreements on trust for the purpose of reimbursing TPL, unless it is removed as the management company for the Treetop Apples Project in which case any entity assuming the role of or appointed as the management company for the Treetop Apples Project, ("Current Management Company") regarding expenses incurred in performing the balance of the Duties and Obligations; and
  - (b) will make available an amount to be held in trust by ARG and accessed by the Current Management Company for the purpose of financing the performance of the balance of the Duties and Obligations and paying an overseer fee.
- 1.17 In determining what amount should be made available to be held in trust by ARG ASIC has had regard to budgets prepared by TPL that show budgeted direct costs and an acceptance in business that an overseer of a development project, which in this case would be the management company, is entitled to a fee ("fee") in addition to reimbursement of direct costs.
- 1.18 ASIC is of the view that the Fee should be 15% of direct costs.
- 1.19 Should a balance be held in trust after all Duties and Obligations have been performed the balance is to be paid to TPL.
- 1.20 ARG is prepared to hold the amount made available by TPL in trust to be accessed for the purpose of enabling the financing of performance of the balance of the Duties and Obligations and paying to the overseer a fee.
- 2. Undertakings**
- 2.1 TPL hereby undertakes to ASIC that, from the date it executes this enforceable undertaking, regarding the Treetop Apples Project:
- (a) it will receive and hold loan repayments ("Loan Repayments") from investors in the Treetop Apples Project made under Investor Loan Agreements on trust for the purpose of reimbursing the Current Management Company regarding expenses incurred in performing the balance of the Duties and Obligations and paying the Current Management Company an overseer fee equal to 15% of the amount that the Current Management Company is entitled to be reimbursed; and

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- (b) it will deposit ("A Deposits") 50% of all Loan Repayments directly into the Trust Account opened under paragraph 2.2(a) of this enforceable undertaking commencing from the date set out in column 1 and will continue to make such deposits until total deposits from the commencement date exceed the corresponding amount set out in column 2:

| <u>Column 1</u>   | <u>Column 2</u> |
|---|-----------------|
| The date that TPL executes this enforceable undertaking | \$1,235,000     |

- (b) it will deposit ("B Deposits") all Loan Repayments directly into the Trust Account opened under paragraph 2.2(a) of this enforceable undertaking commencing from the date set out in column 1 and will continue to make such deposits until total deposits from the commencement date exceed the corresponding amount set out in column 2:

| <u>Column 1</u>   | <u>Column 2</u> |
|---|-----------------|
| 1 October 1998 or until A Deposits and B Deposits made total \$1,235,000, whichever is the later  | \$ 150,000      |
| 1 November 1998 or until A deposits and B Deposits made total \$1,385,000, whichever is the later | \$ 150,000      |
| 1 December 1998 or until A Deposits and B Deposits made total \$1,535,000, whichever is the later | \$ 150,000      |
| 1 January 1998 or until A Deposits and B Deposits total \$1,685,000, whichever is the later       | \$ 150,000      |
| 1 February 1998 or until A Deposits and B Deposits total \$1,835,000, whichever is the later      | \$ 150,000      |
| 1 March 1998 or until A Deposits and B Deposits total \$1,985,000, whichever is the later         | \$ 150,000      |

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1 April 1998 or until A Deposits  
and B Deposits total \$2,135,000,  
whichever is the later \$ 150,000

1 May 1998 or until A Deposits  
and B Deposits total \$2,285,000,  
whichever is the later \$ 150,000

1 June 1998 or until A Deposits  
and B Deposits total \$2,435,000,  
whichever is the later \$ 150,000

1 July 1999 or until A Deposits  
and B Deposits total \$2,585,000,  
whichever is the later \$ 475,000

- (d) advise ASIC immediately by facsimile to ASIC, (02) 6250 3811 marked "Attention Graeme Plath" of any:
- (i) fact or circumstance that would prevent compliance by ARG or TPL with this enforceable undertaking; and
  - (ii) any fact or circumstance that constitutes a non-compliance by ARG or TPL with this enforceable.

2.2 ARG hereby undertakes to ASIC that, from 21 September 1998, or as soon as possible thereafter, it will:

- (a) open and keep open a separate trust account ("Trust Account") for receipt of amounts ("Amounts") referred to in paragraph 2.1(b);
- (b) enable TPL to deposit the Amounts into the Trust Account by providing TPL with a deposit book;
- (c) pay the Current Management Company within seven days of a request being made by the Current Management Company, an amount equal to any reasonable expense ("Reasonable Expense") for the purpose of meeting any reasonable expense that ARG is satisfied has been incurred or will be incurred within a period of one month by the Current Management Company as a consequence of performing some of the balance of the Duties and Obligations;
- (d) in determining what is a Reasonable Expense all expenses ("Identified Expenses") concerning the Treetop Apples Project identified in the budgets for the Treetop Apples Project for the period 1 September 1998 to 30 June 2000 that are reproduced at attachment A to this enforceable undertaking, consider such Identified Expenses to be Reasonable Expenses;

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- (e) pay the Current Management Company at the end of every period of three months ("Period of Three Months"), commencing on the date that ARG executes this enforceable undertaking, an overseer fee equal to 15% of the total paid to the Current Management Company in the period of three months under paragraph 2.2(c) of this enforceable undertaking;
- (f) prepare for each Period of Three Months, within seven days of the end of the Period of Three Months, accounts ("Accounts") for the Trust Account that show:
  - (i) opening balance;
  - (ii) receipts;
  - (iii) payments;
  - (iv) for each payment the payee and nature of the payment; and
  - (v) closing balance;
- (g) send the Accounts by post within five days of the Accounts being prepared to:
  - (i) ASIC, GPO Box 9827, Canberra City, Australian Capital Territory, 2601;
  - (ii) TPL at its registered address; and
  - (iii) if TPL is not the management company of the Troctop Projects Limited, the management company at its registered address.
- (h) on the balance of the Duties and Obligations being performed in full:
  - (i) prepare final Accounts;
  - (ii) pay the balance in the Trust Account, including accrued interest; to TPL; and
  - (iii) close the Trust Account; and
- (j) advise ASIC immediately by facsimile to ASIC, (02) 6250 3811 marked "Attention Graeme Plath" of any:
  - (i) fact or circumstance that would prevent compliance by ARG or TPL with this enforceable undertaking; and



- (ii) any fact or circumstance that constitutes a non-compliance by ARG or TPL with this enforceable.

3. Acknowledgments

- 3.1 ASIC acknowledges that TPL, while it is the management company for the Treetop Apples Project, is able to request and have paid to TPL, by ARG, an amount equal to any reasonable expense that ARG is satisfied has been incurred by TPL for the performance of the balance of the Duties and Obligations.
- 3.2 TPL and ARG acknowledge that ASIC:
  - (a) may issue a media release on execution of this undertaking referring to its terms, the concerns of ASIC which led to its execution, and the cooperation of TPL regarding its drafting and execution;
  - (b) may from time to time publicly refer to this undertaking; and
  - (c) will make this undertaking available for public inspection.
- 3.4 TPL and ARG acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this undertaking.
- 3.5 TPL and ARG acknowledge that this undertaking has no operative force until accepted by ASIC.

The Common Seal of )  
 Treetop Projects Limited )  
 ACN 081 209 298 was affixed to )  
 this undertaking in the presence of: )



*[Handwritten Signature]*  
 \_\_\_\_\_  
 Director

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Director/Secretary

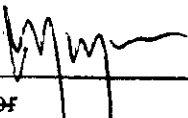
*RICHARD MOODY*  
 \_\_\_\_\_  
 Name (Print)

*ANDREW PURCELL*  
 \_\_\_\_\_  
 Name (Print)

This 21st day of September 1998



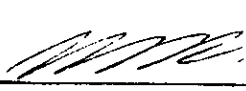
The Common Seal of )  
 Australian Rural Group Limited )  
 ACN 002 635 501 was affixed to )  
 this undertaking in the presence of: )

  
 \_\_\_\_\_  
 Director

**TONI LEIGH RYAN**  
**AUTHORISED SIGNATORY**

\_\_\_\_\_  
 Name (Print)


This     day of September 1998

  
 \_\_\_\_\_  
 Director/Secretary

**THERESE KATHLEEN MELVILLE**  
**COMPANY SECRETARY**

\_\_\_\_\_  
 Name (Print)

**ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS  
 COMMISSION PURSUANT TO SECTION 93AA OF THE ASIC LAW BY ITS  
 DULY AUTHORISED DELEGATE**

  
 \_\_\_\_\_  
 Ronald James Lachay  
 Director Operations

This ~~Day~~ day of September 1998