

## ENFORCEABLE UNDERTAKING

### AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ACT SECTION 93AA

The commitments in this undertaking are offered to the Australian Securities & Investments Commission ("ASIC") by:

Rowena Nominees Pty Ltd ACN 008 818 273 of 77 Mill Point Road South Perth ("Rowena");

Graeme Clifford Grubb of Lot 3, Douglas Road, Albany, Western Australia ("Mr Grubb"); and

Margaret Elizabeth Grubb of Lot 3, Douglas Road, Albany, Western Australia ("Mrs Grubb").

(Collectively the "Parties")

#### BACKGROUND

1. Rowena has been carrying on business as a licensed finance broker under the name "Graeme Grubb Finance Broker".
2. Mr and Mrs Grubb are the directors of Rowena and Mr Grubb has been the person in bona fide control of the business of Rowena.
3. ASIC has reason to believe that contraventions of Corporations Law sections 232, 286 and 995 of the Corporations Law and section 48 of the Finance Brokers Control Act 1975 (WA), may have arisen from Rowena's and Mr Grubb's conduct of Rowena's finance broking business, in particular:
  - (a) failing to keep proper records in relation to moneys received into Rowena's trust account number 551075797 with St George Bank ("the Trust Account");
  - (b) paying out trust moneys to persons or for purposes contrary to the lender's authorisation;
  - (c) failing to promptly procure the registration on title of lenders' mortgage interests;
4. The Parties acknowledge ASIC's concerns as set out in clause 3.
5. The Parties wish to wind down their involvement in the finance broking industry.

#### DEFINITIONS

6. In this undertaking the following terms have the following meanings unless the context otherwise requires:

"Independent Accountant" means Mr Mark Conlan of Bird Cameron or such other person appointed with ASIC's prior written consent to replace Mr Conlan, and also includes partners and employees of the Independent Accountant assisting the Independent Accountant.

"Lender" means any person who has lent money pursuant to a loan or mortgage agreement negotiated or arranged by Rowena or Mr Grubb and which loan has not been repaid in full including principal and interest.

"managing mortgages", means:

collecting and/or receiving loan principal repayments, interest payments and others moneys due by a borrower or mortgagor under a loan agreement or mortgage and distributing those moneys to lenders; and acting on behalf of lenders or mortgagees in relation to enforcing loan agreements or mortgages and realising, discharging, transferring or otherwise dealing with mortgages.

"person" includes a body corporate as well as a natural person;

words importing a gender include every other gender;

words in the singular number include the plural and words in the plural number include the singular.

#### UNDERTAKINGS

**Rowena and Grubb to Cease Business**

7. Except to the extent necessary to comply with their other commitments in this undertaking, the Parties will not carry on any further business as a finance broker (as that term is defined in the Finance Brokers Control Act) or carry on a business of managing mortgages, or be in any way (whether directly or indirectly) concerned in or take part in the management of such businesses, whether in their own right or as director, manager, or other officer of any other person carrying on any such business.
8. Without limiting the generality of clause 7, the Parties will not, as principal or agent, negotiate or arrange any new loans as part of the business of Rowena, or solicit, invite, or accept any further loan moneys as part of the business of Rowena. This prohibition extends to not arranging any new loan investment for existing Lenders who may receive payment of outstanding principal or interest from loan investments negotiated or arranged by the Parties.

#### **Appointment of Independent Accountant**

9. The Parties shall forthwith engage the Independent Accountant to undertake, at the cost of the Parties, the following work ("the Tasks"):
  - a) to reconcile the Trust Account and to audit the Trust Account in accordance with the requirements of the Finance Brokers Control Act ;
  - b) to determine what amounts should be in the Trust Account and who is entitled to those amounts;
  - c) to determine what moneys are due to Lenders in respect of each loan and mortgage arranged through Rowena;
  - d) to oversee the proper receipt and payment of any funds to and from the Trust Account;
  - e) to determine whether Lenders have valid and enforceable security, in particular, whether Lenders' security interests have been registered appropriately;
  - f) to advise Lenders of the state of their Trust Account balances and what moneys are due to the Lenders in respect of their loans;
  - g) to determine what further or better staff, facilities or other resources, including external service providers, the Parties may require in order to efficiently carry out Rowena's remaining business and comply with this undertaking;
  - h) to oversee compliance by the Parties with this undertaking and to report to ASIC on the progress of such compliance;
  - i) to report to ASIC any non-compliance, or suspected non-compliance, with this undertaking by the Parties of which the Independent Accountant becomes aware;
  - j) to report to ASIC any suspected contraventions of the Corporations Law of which the Independent Accountant becomes aware in the course of carrying out the other Tasks;
  - k) to provide such reports as ASIC may reasonably require about the finalisation of the business of Rowena and the Independent Accountant's progress in carrying out the other Tasks.
10. The Parties shall continue to engage the Independent Accountant to perform the Tasks, and shall not terminate his engagement, or vary the terms of his engagement, without the prior written consent of ASIC.
11. The Parties shall provide the Independent Accountant with all such assistance and co-operation as he may request from time to time in order to carry out the Tasks, including access to Rowena's business premises and facilities, books, records, computer systems and staff.
12. Without limiting the generality of clause 11, the Parties shall disclose to the Independent Accountant such information as he may request from time to time in order to carry out the Tasks, including answering such questions as he may from time to time put to the Parties or their officers, employees or agents.
13. The Parties consent to the Independent Accountant disclosing to ASIC at any time any information the Independent Accountant may obtain, and any opinions he may form, in the course of carrying out the Tasks. The Parties will not take any action against the Independent Accountant in relation to any statements he may make to ASIC or any other person in good faith for the purpose of carrying out the Tasks.

#### **Continuation and winding down of existing business**

14. The Parties will, as soon as reasonably practicable:

- a) advise each Lender that Rowena is ceasing the business of finance broking and winding down its mortgage management business; and
  - b) procure, that the management of each mortgage and loan agreement is transferred to another person, being such person as the Lender may agree or direct.
15. The Parties will not recommend or suggest any person as new manager to any Lender unless the Parties have reasonable grounds to believe, and do actually believe, that the proposed manager is appropriately qualified and authorised and will manage that Lender's mortgage honestly and efficiently.
  16. The Parties will not accept or receive any repayment of principal by any borrower, except to the extent of any fees or cashflow guarantee repayments to which Rowena is entitled. The Parties will ensure that any repayments of principal are paid to the appropriate Lender or to such person as the Lender may direct.
  17. Rowena may continue to receive interest payments on behalf of a Lender and such fees and commissions as may have been agreed between Rowena and the Lender, until such time as the management agreement between Rowena and the Lender has been terminated.
  18. For such time as the Parties continue to manage any mortgage for a Lender, or continue to receive moneys on behalf of a Lender in respect of a mortgage, the Parties will manage the mortgage in the best interests of the Lender and with reasonable care and diligence.

#### **Dealing with the Trust Account and making good Deficiencies**

19. No moneys shall be paid from the Trust Account without the written authorisation of the Independent Accountant.
20. If the Independent Accountant determines, in his absolute discretion, that there should be funds in the Trust Account held on behalf of, or for the benefit of, any person ("the Beneficiary"), but those funds are not in the Trust Account ("Deficiency") then the Parties shall be jointly and severally liable to the Beneficiary to make good the Deficiency and the Parties shall procure the amount of the Deficiency to be paid to the Beneficiary within 7 days of the Independent Accountant notifying the Parties of the Deficiency.
21. Without limiting in any way the remedies which ASIC or any other person may pursue for the purpose of enforcing this undertaking, the Parties agree that ASIC may sue the Parties or any of them for payment of any such Deficiency for which the Parties are liable in accordance with clause 20 above
22. In addition to their obligations to make good any Deficiency, the Parties shall pay, within 14 days, the sum of \$500,000 into an account ("the Deficiency Account") to be operated by the Independent Accountant. The funds in this account are to be available for:
  - a) meeting Rowena's legal obligations (if any) to Lenders under any "cashflow guarantee";
  - b) for use in making good any Deficiencies; and
  - c) for paying the Independent Accountant's fees and expenses.
23. For the avoidance of doubt, the liability of the Parties to make good any Deficiency, or to pay the Independent Accountant's fees and expenses, is not limited to the sum of \$500,000 referred to in clause 22.
24. The Parties authorise the Independent Accountant to transfer funds from the Deficiency Account to the Trust Account to make good any Deficiency.

#### **Registration of Lenders' Interests**

25. The Parties shall take all reasonable steps to ensure that, as soon as reasonably practicable, the mortgage interest of every Lender is registered on the appropriate Certificate of Title in accordance with the loan agreement made between the Lender and Rowena on behalf of the borrower.

#### **Obtaining further staff and resources**

26. The Parties shall procure and maintain, at their cost, such further or better staff, facilities or other resources, including external service providers, as the Independent Accountant may decide is necessary for Rowena to carry out efficiently its remaining business in accordance with this undertaking.

#### **Mr and Mrs Grubb's obligations to ensure compliance by Rowena**

27. Mr and Mrs Grubb shall ensure that Rowena complies with this undertaking.

**ASIC Checks**

28. ASIC may from time to time make such checks as it sees fit to determine whether the Parties are complying with this undertaking. The Parties must take all reasonable steps to assist ASIC in carrying out any such checks. Such assistance may include reasonable access to Rowena's business premises and facilities, books, records, computer systems and staff and answering such questions as ASIC staff may put to the Parties or their employees or agents.

**ACKNOWLEDGMENTS**

29. The Parties acknowledge that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

30. The Parties 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.

31. The Parties acknowledge that this undertaking has no operative force until accepted by ASIC.

32. The Parties acknowledge that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from past or future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order, or re-commence liquidation or provisional liquidation proceedings against Rowena.

33. Each of the Parties acknowledges that this undertaking may be executed in counterparts and that this undertaking is binding on the Party even if one or both of the other Parties has not given the undertaking.

The Common Seal of  
Rowena Nominees  
Pty Ltd was affixed to this )  
undertaking in the presence of )



*David Durr*  
Director

*Margaret Anne Elizabeth Grubb*  
Director/Secretary

Graeme Clifford Grubb  
Name (Print)

MARGARET ANNE ELIZABETH GRUBB  
Name (Print)

Signed by Graeme Clifford Grubb  
in the presence of:

*David Durr*

Signed *Tim Petalack*  
Name in print: TIM PETALACK

Signed by Margaret Elizabeth Grubb)  
in the presence of:

*Margaret Anne Elizabeth Grubb*

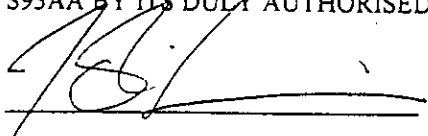
*Tim Petalack*  
TIM PETALACK

Signed Tim Decker

Name in print: Tim Decker

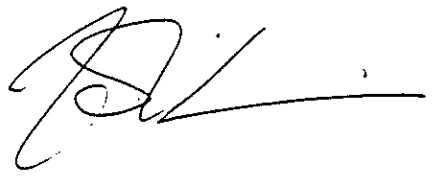
This day of May 1999

ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION PURSUANT TO ASIC ACT S93AA BY ITS DULY AUTHORISED DELEGATE:



Jamie Ogilvie  
Regional Commissioner WA  
This 19th day of May 1999

I sign this original as confirmation of undertakings accepted by me in their terms on 4 May 1999 and signed by me on that date.



19/5/99