

**AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION ACT 2001 ("ASIC Act")**

**UNDERTAKING TO THE AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 93A AND  
SECTION 93AA OF THE ASIC ACT**

The commitments in this Enforceable Undertaking ("Undertaking") are offered to the Australian Securities and Investments Commission ("ASIC") by:

Landmark Property Syndicates Ltd ACN 061 586 212  
Level 16, 215 Adelaide Street  
Brisbane QLD 4000



AND

Stephen Peter Diez  
8 Goodwin Street  
Kangaroo Point QLD 4169

AND

McLaughlin Financial Services Ltd ACN 088 647 796  
5-7 Hicks Street  
Southport QLD 4215

**1. Background**

- 1.1 Landmark Property Syndicates Ltd ("Landmark") is a public company and is the responsible entity of managed investment schemes registered under the Corporations Act 2001 ("the Act").
- 1.2 The managed investment schemes in respect of which Landmark is the responsible entity include the Woodlands Shopping Centre Fixed Term Property Trust ("the Woodlands Scheme") ARSN 093 255 700, the 390 Shute Harbour Road Fixed Term Property Syndicate ARSN 093 256 065 ("the 390 Syndicate"), the Landmark Industrial Property Portfolio Syndicate No.4 ARSN 086 842 711 ("Portfolio 4"), the Landmark Property Portfolio Syndicate No.6 ARSN 088 295 014 ("Portfolio 6"), and the Landmark Toowong Corporate Centre Syndicate ARSN 088 295 247 ("the Toowong Syndicate").
- 1.3 Stephen Peter Diez ("the Director") is currently a director of Landmark and was a director of Landmark at the time that Landmark engaged in the conduct described below.
- 1.4 To enable it to act as a responsible entity, Landmark holds a Security Dealers Licence, Number 72497, under the Act.
- 1.5 In relation to the Woodlands Scheme, ASIC has a concern that Landmark has breached the provisions of the Act in that:
  - (a) Landmark initially issued units in the Woodlands Scheme in 1996 to unit holders under a prospectus dated 24 August 1995 ("the 1996 unit holders"). The units were issued in order for Landmark as Responsibility Entity for the Woodlands Scheme to purchase the Woodlands Shopping Centre in Townsville Queensland.
  - (b) The 1996 unit holders voted at meetings on 4 August 2000 and 17 November 2000 to redevelop the Woodlands Shopping Centre and to raise funds pursuant to a new prospectus.

- (c) Landmark issued additional units in the Woodlands Scheme in 2001 to unit holders ("the 2001 unit holders") (which term shall include any holder of the additional units, however so acquired) pursuant to a prospectus lodged with ASIC on 5 January 2001 and a supplementary prospectus on 13 February 2001, (collectively referred to as "the Prospectus") in order to facilitate the redevelopment of the Woodlands Shopping Centre, ("the Shopping Centre Development").
  - (d) Stage Two of the Shopping Centre Development and construction of the new service station, as described in Section 3 of the Prospectus, has been completed and Landmark has examined its actual costings and the forecast costings contained in the Prospectus. Landmark discovered material omissions from and false and misleading statements in the Prospectus.
  - (e) The material omissions and false and misleading statements were:
    - (i) \$700,000 that was provided for as redevelopment costs in Section 3 of the Prospectus was omitted from calculations in respect of the forecasts in section 7;
    - (ii) Section 3 of the Prospectus provided that a fixed sum contract was to be entered into for the construction of the Shopping Centre Development, however, no such contract was entered into and there has been an increase in the costs of the development that cannot be met by additional subscriptions from members; and
  - (f) Due to the increased level of borrowings by Landmark as responsible entity for the Woodlands Scheme to fund the omissions and false and misleading statements set out in sub-paragraphs 1.5(e)(i) and 1.5(e)(ii), the forecast returns in the Prospectus and net tangible asset backing per unit specified in the Prospectus may not be realised within the life of the scheme.
- 1.6 In relation to the other schemes referred to in paragraph 1.2 above, ASIC has a concern that Landmark has breached the provisions of the Act in that:
- (a) On or about 31 October 2000 Landmark as trustee of the 390 Syndicate acquired from Landmark in its own right 282,942 units in Portfolio 6 at a cost of \$1.00 per unit. A sum of \$285,000 was borrowed by Landmark as responsible entity of the 390 Syndicate from the scheme's financier, ("the Financier"), to fund the acquisition. The borrowings and acquisition were made by Landmark without the prior authorisation or knowledge of unit holders in the 390 Syndicate.
  - (b) On or about 31 December 2000 Landmark authorised Portfolio 4 to acquire from Landmark 200,000 units in Portfolio 6 at a cost of \$1.00 per unit. The acquisition was made without the prior authorisation or knowledge of Portfolio 4 unit holders.
  - (c) On or about 17 and 21 May 2002 Landmark purchased back from Portfolio 4, 200,000 units in Portfolio 6 at a cost of \$1.00 per unit.
  - (d) On or about 13 September 2001, Landmark authorised the Toowong Syndicate to purchase from Landmark 200,000 units in Portfolio 4. The acquisition was made without the prior authorisation or knowledge of unit holders in the Toowong Syndicate.
  - (e) On or about 21 May, 27 May, 29 May and 30 May 2002 Landmark purchased back from the Toowong Syndicate these 200,000 units in Portfolio 4 at a cost of \$1.00 per unit.
- 1.7 ASIC has a concern that Landmark is in breach of a condition of its Licence in that:

- (a) ASIC conducted a routine surveillance visit of Landmark in December 2000 and inspected the books and records of Landmark. During the course of this surveillance visit, ASIC formed the view that Landmark was in breach of a special condition of its Licence in that there was inadequate monitoring of its principal property consultant Mr Richard Poppleston and his company Daneborough Holdings Pty Ltd ("the Property Consultant").
  - (b) Landmark agreed to implement additional compliance measures concerning the monitoring of the Property Consultant.
  - (c) Landmark has not complied with the additional compliance measures that it had agreed to implement.
- 1.8 Landmark has volunteered the information referred to in paragraphs 1.5(a)-(f) and 1.6(a)-(e) and acknowledges:
- (a) That it has, by its conduct described in paragraphs 1.5(d) 1.5(e)(i) and 1.5(e)(ii) above breached the provisions of the Act.
  - (b) ASIC has concerns that, by its alleged failure to monitor the Property Consultant it may have breached the terms of its licence condition.
  - (c) That it engaged in the conduct described in paragraphs 1.6(a)-(e) above and that this conduct constitutes a breach of the Act.
- 1.9 Landmark has entered into an agreement with McLaughlin Financial Services Limited whereby Landmark:
- (a) Has agreed to surrender its Dealers License forthwith and thereby will cease to act as responsible entity of the managed investment schemes set out in Schedule 1 to this Undertaking ("the Schedule 1 Schemes");
  - (b) Will consent to the appointment of McLaughlin Financial Services Ltd ("MFS") as the temporary responsible entity of the Schedule 1 Schemes.
- 1.10 Subject to clause 3.8 MFS has agreed that it will, without in any way limiting its obligations under section 601FS of the Act, assume the liabilities and obligations set out in this Undertaking.
- 1.11 ASIC may take enforcement action against Landmark in relation to the above matters, which action may include the taking of civil action, including the taking of injunctive action and /or subject to a hearing, the making a banning orders against Landmark as the holder of a licence either permanently or for a specified time or the imposition of conditions on the Licence.
- 1.12 Landmark acknowledges and agrees:
- (a) that had it intended to continue to operate as a responsible entity, ASIC would have required it to provide the undertakings set out in paragraphs 3.1 to 3.7 below and further would have required an independent report on its compliance systems over the next 24 months.
- MFS, has agreed to provide the undertaking set out in paragraph 3 below. ASIC acknowledges that there has been no wrongdoing on the part of MFS and that MFS has agreed to offer the undertakings set out in paragraph 3 below as a consequence of the agreement referred to in paragraph 1.9 above.

## **2. Undertakings by Landmark**

Landmark undertakes the following for the purposes of sections 93A and 93AA of the ASIC Act.

- 2.1 Landmark will forthwith surrender to ASIC its Securities Dealers License;

- 2.2 Landmark will repay all subscriptions that have been or are received by it from subscribers pursuant to the Landmark Health and Aged Care Prospectus issued on 11 April 2002 and will comply with any other reasonable request from ASIC in relation to that prospectus.
- 2.3 Landmark will account to the 390 Syndicate for any monies received by it in respect of the sale of the 282,942 units held by it as trustee for the 390 Syndicate in Portfolio 6.

### 3. Undertakings by MFS

MFS undertakes the following for the purposes of section 93AA of the ASIC Act.

- 3.1 MFS will on or before 20 August 2002 issue letters and disclosure statements, in the form agreed by ASIC, to the 1996 unit holders and the 2001 unit holders giving a full explanation of the matters referred to in paragraph 1.5(e)(i) and (ii) above and disclosing the current position in relation to the actual costing of the Shopping Centre Development and comparing actual costs with the costs forecast in the Prospectus;
- 3.2 MFS will, on or before 20 September 2002, or if not appointed Responsible Entity by 20 September 2002 within 14 days of their appointment as Responsible Entity, provide a written guarantee to 2001 unit holders that with effect from the date from which, under the Prospectus, income distributions under the Woodlands Scheme are payable, they will receive a return on investment of 9% per annum during the life of the scheme;
- 3.3 MFS will, in the event that in any year ending 30 June the 2001 unit holders do not receive a return of 9% for that year, pay to those unit holders from its own monies (and without any recourse to or indemnity from the 1996 and 2001 unit holders) the amount of money required for those unit holders to receive a return of 9%;
- 3.4 MFS will not call upon 2001 unit holders to pay for the cost overruns to the project beyond the maximum amount forecast in the prospectus, that is to say 5% of their initial investment (5% of \$1,301,406 which amounts to \$65,070.30);
- 3.5 MFS will, if within 30 days of the winding up or realisation of the assets of the Woodlands Scheme (whichever shall first occur), the 2001 unit holders do not receive the full amount of their investment, pay, from its own monies, (and without any recourse to or indemnity from unit holders or the Woodlands Scheme) within a further 14 days, to the Woodlands Scheme for distribution to unit holders:
  - (a) Any shortfall up to a limit of \$700,000;
  - (b) and if a deficiency remains notwithstanding the payment of the \$700,000 the whole or so much of the sum of \$369,317.35 (being the difference between the additional development cost of \$434,387.65 and the recoverable amount as set out in sub-paragraph 3.4 above) as is necessary to ensure unit holders receive the full amount of their investment.
- 3.6 MFS will ensure that upon the winding up of the Woodlands Scheme, the interest and principal on the additional amount borrowed (as referred to in paragraph 1.5 (f) above) has been paid by it from its own monies (and without any recourse to or indemnity from unit holders or the Woodlands Scheme) so that unit holders are put in the same position as if that additional amount had not been borrowed;
- 3.7 MFS will, on or before 31 October 2002 or prior to the settlement of the sale of assets in the 390 Syndicate whichever occurs first:

- (a) From its own monies (and without any recourse to or indemnity from unit holders or the 390 Syndicate) purchase back from Landmark as trustee of the 390 Syndicate the 282,942 units in Portfolio 6 at a price of \$1.00 per unit.
- (b) From its own monies (and without any recourse to or indemnity from unit holders or the 390 Syndicate) pay to the 390 Syndicate the sum of \$2,057.50, being the fees incurred by the 390 Syndicate to obtain the loan from Suncorp.
- (c) From its own monies (and without any recourse to or indemnity from unit holders or the 390 Syndicate) pay to the 390 Syndicate a sum of money equal to the difference between the distributions received by the 390 Syndicate from its units in Portfolio 6 and the amount of interest paid by the 390 Syndicate to the Financier pursuant to the loan (the interest differential).

Provided however MFS shall not be obliged to make these payments if the 390 Syndicate has received by 31 October 2002 net proceeds of \$285,000 by reason of the sale of the 282,942 units held by Landmark as trustee for the 390 Syndicate in Portfolio 6 together with an amount equal to the interest differential referred to in subparagraph (c) above.

- 3.8 The undertakings of MFS set out in paragraph 3.1 are subject to MFS becoming the temporary responsible entity of the Woodlands Scheme.
- 3.9 The undertakings set out in paragraphs 3.2 to 3.6 are subject to MFS becoming the responsible entity of the Woodlands Scheme.
- 3.10 The undertakings set in paragraph 3.7 are subject to MFS becoming the temporary responsible entity of the 390 Syndicate.
- 3.11 MFS undertakes to use its best endeavours to become responsible entity for those schemes.

#### **4. Undertaking by the Director**

The Director undertakes the following for the purposes of section 93A and 93AA of the ASIC Act. The Director jointly and severally undertakes to ASIC that:

- 4.1 The Director will provide on or before 20 September 2002, a written guarantee to unit holders that in the event that MFS fails to pay any sum that it is required to pay under sub-paragraphs 3.2 to 3.7 above, the Director will pay such sum to the unit holders.
- 4.2 In the event that MFS fails to pay any sum that it is required to pay under paragraphs 3.2 to 3.7 above the Director will pay such amounts to the unit holders.

#### **5. Acknowledgments**

5.1 Landmark, the Director and MFS acknowledge that ASIC:

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

5.2 Further, Landmark, the Director and MFS acknowledges that:

- (a) this Undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this Undertaking.
- (b) ASIC's acceptance of this Undertaking does not affect ASIC's powers to investigate a contravention arising from past or future conduct, or to pursue a criminal prosecution or its powers to lay charges or seek a pecuniary civil order or to pursue civil remedies including injunctive relief) or to pursue administrative remedies including licensing or banning orders in relation to past or future conduct (including the conduct described in this undertaking).
- (c) the Undertaking has no operative force until accepted by ASIC.

The Common seal of  
**LANDMARK PROPERTY SYNDICATES LTD** )  
 ACN 061 586 212 )  
 Was affixed in the presence of: )

*[Signature]*  
 Witness **SECRETARY**

Dated

SIGNED by Stephen Peter Diez

*[Signature]*  
 Witness

Dated

The Common seal of  
**McLAUGHLINS FINANCIAL SERVICES LTD** )  
 ACN 088 647 796 )  
 Was affixed in the presence of: )

*[Signature]*  
 Witness

Dated

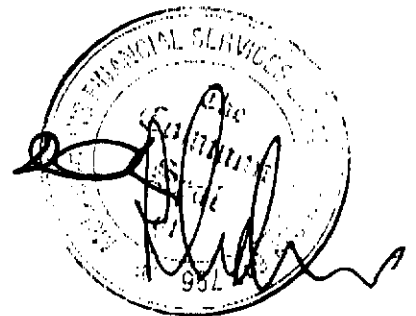
ACCEPTED by the AUSTRALIAN )  
 SECURITIES AND INVESTMENTS )  
 COMMISSION pursuant to Section 93A )  
 of the Australian Securities and Investments )  
 Commission Act 2001 by its duly authorised )  
 Delegate )

*[Signature]*  
 Michael Burnett **JAN SPELES** ASSISTANT DIRECTOR  
 General Counsel, Enforcement

Dated 8 August 2002



*[Signature]*  
 Stephen Peter Diez



DAVID MARK ANDERSON  
 PHILIP WILLIAM ADAMS

## Schedule 1

ARSN	Name
085 115 242	Landmark Industrial Property Portfolio - Syndicate no. 1
085 115 368	Landmark Industrial Property Portfolio - Trust no. 1
086 455 610	Landmark Industrial Property Portfolio - Syndicate no. 3
086 456 493	Landmark Industrial Property Portfolio - Trust no. 3
086 842 711	Landmark Industrial Property Portfolio - Syndicate no. 4
086 843 021	Landmark Industrial Property Portfolio - Trust no. 4
087 130 701	Landmark Auckland Creek Shopping Centre Syndicate
087 130 836	Landmark Auckland Creek Shopping Centre Trust
087 757 462	Landmark Property Portfolio - Trust no. 7
087 757 524	Landmark Property Portfolio - Syndicate no. 7
087 757 355	Landmark Industrial Property Portfolio - Trust no. 5
087 757 435	Landmark Industrial Property Portfolio - Syndicate no. 5
088 294 900	Landmark Property Portfolio Trust no. 6
088 295 014	Landmark Property Portfolio Syndicate no. 6
088 295 247	Landmark Toowong Corporate Centre Syndicate
088 295 372	Landmark Toowong Corporate Centre Trust
093 255 700	Woodlands Shopping Centre Fixed Term Property Trust
093 255 782	Landmark Fixed Term Commercial Property Trust no. 1
093 255 924	Landmark Morningside Industrial Park Fixed Term Property Trust
093 256 163	Landmark Yatala Industrial Park Property Syndicate
093 255 282	The Yeerongpilly Industrial Property Trust
093 255 415	Dimmeys Shopping Centre Fixed Term Property Trust
093 255 479	Central Park Industrial Estate Fixed Term Property Trust
093 255 577	The Mackay Lands Building Property Trust
093 256 001	122 Walker St Fixed Term Property Trust
093 256 065	390 Shute Harbour Rd Fixed Term Property Syndicate
093 256 207	Landmark Yatala Industrial Park Property Trust
097 563 025	Landmark Diversified Portfolio no. 8 Syndicate
097 562 966	Landmark Diversified Portfolio no. 8 Trust