

ENFORCEABLE UNDERTAKING

Australian Securities & Investment Commission Act 2001

Section 93AA

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

Empower Invest Pty Ltd
ACN 091 451 071
C/- Berger Pipers, Suite 4, 286 High Street, Penrith NSW 2750

And

Newcastle Palais Holdings Pty Ltd
ACN 087 709 448
Unit 2, 17 Darby Street, Newcastle NSW2300

And

Kenneth Watson
24 Wright Street, Glenbrook NSW 2773

And

Brien Ernest Cornwell
16 Charlotte Street, Merewether NSW 2291



1. DEFINITIONS

- 1.1. In addition to terms defined elsewhere in the undertaking, the following definitions are also used:

ASIC means Australian Securities and Investments Commission

Companies means Empower Invest Pty Ltd and Newcastle Palais Holdings Pty Ltd.

Cornwell means Mr Brien Ernest Cornwell of 16 Charlotte Street, Merewether NSW 2291, who is a director and secretary of Newcastle Palais Holdings Pty Ltd.

Empower means Empower Invest Pty Ltd, ACN 091 451 071

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NPH means Newcastle Palais Holdings Pty Ltd, ACN 087 709 448

PI Trust means unit trust known as Palais Investment Trust established on 31 January 2006 formed to facilitate investment in the development of the property known as Palais Royale, 684 Hunter Street, Newcastle, New South Wales.

Scheme means the unregistered management investment scheme comprising the Palais Investment Trust and Newcastle Palais Unit Trust.

Unit Trust means unit trust known as the Newcastle Palais Unit Trust established in May 1999.

Watson means Mr Kenneth Watson of 24 Wright Street, Glenbrook NSW 2773, who is a sole director and secretary of Empower Invest Pty Ltd.

2. BACKGROUND

- 2.1. Under s.1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 2.2. NPH is a company carrying on business as a property developer. Cornwell is, and has at all material times been, a director and secretary of NPH.
- 2.3. On or about 21 May 1999 the Unit Trust was established for the purposes of developing commercial and residential premises at the property known as the Palais Royale, 684 Hunter Street, Newcastle in the State of New South Wales ("the Development"). NPH has at all times been the trustee of the Unit Trust and is the legal owner, as trustee for the Unit Trust, of the Palais Royale.
- 2.4. On or about 31 January 2006 the PI Trust was established for the purposes of raising funds from investors for the Development. Empower has at all material times been the trustee of the PI Trust, and has engaged in the business of promoting investment in the Development through the PI Trust. Watson is, and has at all material times been, a director and secretary of Empower.
- 2.5. Investors who invested with the PI Trust were issued units in the PI Trust.
- 2.6. In June 2006 ASIC commenced an investigation into suspected contraventions of the Sections 601ED(5), 911A(1) of the *Corporations Act 2001* ("the Act") and section 12DA(1) of the *Australian Securities and Investments Commission Act 2001* ("the ASIC Act") in relation to the operation and promotion of the Scheme.
- 2.7. On 15 FEBRUARY 2008 ASIC commenced proceedings in the Supreme Court of New South Wales ("the Court Proceedings") alleging that the Companies, Watson and Cornwall had, by operating the Unit Trust and the PI Trust:
 - (a). operated an unregistered managed investment scheme in contravention of section 601ED(5) of the Act; and

- (b). engaged in a financial service business without holding an Australian Financial Services Licence in contravention of section 911A of the Act;

and seeking injunctions.

- 2.8. The Companies, Watson and Cornwall have agreed to resolve the Court Proceedings and ASIC's concerns by:

- (a). Preparing and filing in conjunction with ASIC a Statement of Agreed Facts ("Statement of Agreed Facts");
- (b). consenting to orders being made by the Supreme Court; and
- (c). offering the undertakings set out in this document.

ASIC has agreed to accept the undertakings as part of the overall resolution of the Court Proceedings and its concerns.

- 2.9. The Companies, Watson and Cornwell acknowledge that should ASIC form the view that the Companies, Watson or Cornwell have failed to comply with this undertaking, ASIC may take additional action including (without limitation) seeking court orders under section 93AA of the ASIC Act requiring the Companies, Watson or Cornwell to comply with the terms of this undertaking.

3. UNDERTAKINGS

- 3.1. The Companies will, within 21 days of the date of this undertaking, send a letter by ordinary pre-paid post to each person who has invested in the Scheme ("the Investors") in the form of Annexure A to this undertaking.
- 3.2. If, after receiving the letter referred to in 3.1 above, any of the Investors request a refund of monies they invested in the Scheme, the Companies will refund all monies invested by that investor within 28 days of receiving notification from the Investor.
- 3.3. The Companies undertake to provide ASIC within 3 months of the date of this undertaking, and each three months thereafter until the obligations set out in this undertaking are discharged, a report signed by a director of the Companies containing the details of the Companies, Watson and Cornwell's compliance with the obligations set out in this undertaking including:
- (a). details of letters sent to the Investors in accordance with 3.1 above;
- (b). details of all requests for refunds made by any of the Investors; and
- (c). details of all refunds paid to any of the Investors.

- 3.4. Watson undertakes to use his best endeavours to ensure that Empower complies with its undertakings at paragraph 3.1 to 3.3 above.
- 3.5. Cornwell undertakes to use his best endeavour to ensure that NPH complies with its undertaking at paragraph 3.1 to 3.3 above.

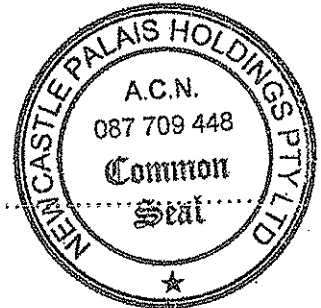
4. ACKNOWLEDGMENTS

- 4.1. The Companies, Cornwell and Watson acknowledges that ASIC:
- (a). may issue a media release on execution of this undertaking referring to its terms and to 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.
- 4.2. Further, the Companies, Cornwell and Watson acknowledge that:
- (a). ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of the background section of this enforceable undertaking or arising from future conduct;
 - (b). this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.
- 4.3. The Company acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraphs 3.1 to 3.5 above.
- 4.4. The Company acknowledges that this undertaking has no operative force until accepted by ASIC, and the Company and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.
- #### 5. MISCELLANEOUS PROVISIONS
- 5.1. The Companies, Watson and Cornwell, including their employees and servants whilst acting in the course of their duties, will do all acts reasonably necessary to ensure compliance with this undertaking and refrain from doing any acts which are inconsistent with the terms and objectives of this undertaking.
- 5.2. The Companies will take all practicable steps to ensure that its subsidiaries, associates, related parties, contractors and agents or any other persons acting on the instructions of the Companies do all acts reasonably necessary to ensure the

Companies' compliance with this undertaking and refrain from doing any acts which are inconsistent with the terms and objectives of this undertaking.

5.3. Without limiting the generality of the previous paragraph, a reference to acts which are inconsistent with the terms and objectives of this undertaking includes publishing or making any statement which is derogatory of, denigrates or trivialises the terms, objectives or any other aspect of this undertaking.

THE COMMON SEAL of NEWCASTLE PALAIS HOLDINGS PTY LTD was affixed in accordance with the Corporations Act 2001 in the presence of:



[Handwritten Signature]
.....
Sole Director/ Secretary

THE COMMON SEAL of EMPOWER INVEST PTY LTD was affixed in accordance with the Corporations Act 2001 in the presence of:

.....
Sole Director/ Secretary

EXECUTED by KENNETH WATSON)
On 2007)
In the presence of :

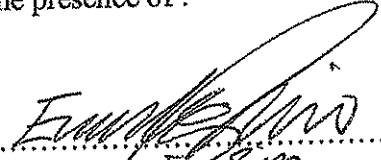
.....
Kenneth Watson

Witness name:
Witness address:

EXECUTED by BRIEN ERNEST
CORNWELL)

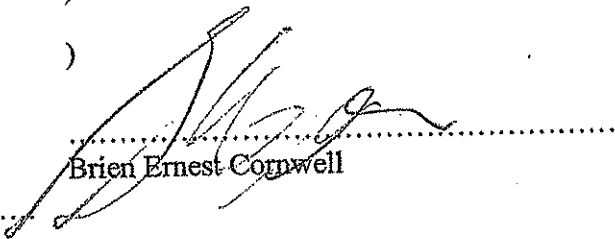
On 14-12 2007)

In the presence of :

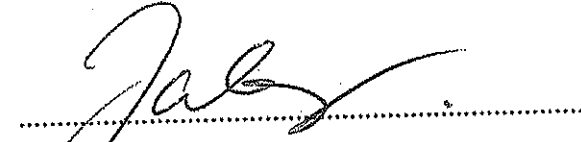

.....

Witness name: E. Sim

Witness address: No 1 Martin Place
Sydney NSW


.....
Brien Ernest Cornwell

Accepted by the Australian Securities & Investments Commission under the ASIC Act
section 93AA by its duly authorised delegate:


.....

Jan Redfern

Delegate of the Australian Securities & Investments Commission

Dated

9/5/08

ANNEXURE A

Date

Address

Dear

**NEWCASTLE PALAIS UNIT TRUST;
PALAIS INVESTMENT TRUST;
PALAIS ROYALE, 684 HUNTER STREET NEWCASTLE NSW**

We are writing to you because the above two trusts ("the Scheme") involving the property development at Palais Royale, Newcastle ("Palais Royale Development"), have been a subject of investigation by Australian Securities and Investment Commission ("ASIC")

We are now working with ASIC to address the concerns raised by ASIC's investigation and we have consented to a number of orders being made by the Supreme Court of New South Wales as well as providing an enforceable undertaking to ASIC.

The following are the concerns raised by ASIC in relation to the Scheme.

Requirement for registration of the scheme.

ASIC is concerned that the Scheme is a managed investment scheme under the Corporations Act 2001(Cth) ("the Act") that is required to be registered with ASIC. Currently, the Scheme is not registered with ASIC.

Being registered provides investors with a number of protections. In particular, a registered managed investment scheme must:

- (a) be operated by a public company that is licensed by ASIC and which is subject to a number of duties and obligations set out in the Act;
- (b) have a constitution and compliance plan which protect key rights of members of the scheme; and
- (c) be audited by a registered company auditor

Requirement for Australian Financial Services Licence

Under the Act, it is necessary for us to hold an Australian Financial Services Licence before we can promote, advise or deal with the Scheme.

None of Newcastle Palais Holdings Pty Ltd, Brien Cornwell, Empower Invest Pty Ltd and Kenneth Watson are the holders of an Australian Financial Services Licence, and neither of them is an authorised representative of a licence holder.

This means that any dealing, selling, offering or giving of advice in relation to the Scheme by Newcastle Palais Holdings Pty Ltd, Brien Cornwell, Empower Invest Pty Ltd and Kenneth Watson, is unlawful.

Further Disclosure

We are also obliged to disclose to you that the Ken Watson, Megan Watson and Sharlene Johns each have been issued with one unit in the Palais Investment Trust, for nil consideration (i.e. for free).

This means that Ken Watson, Megan Watson and Sharlene Johns will receive the pro rata share of the profit made in the Scheme, despite not having paid anything for their unit entitlement in Palais Investment Trust.

What are we doing about this?

The Court orders we have agreed to do not prevent the Palais Royale Development continuing. The Scheme will remain unregistered, however no further interests in the Scheme will be issued to investors.

In relation to your investment in the Scheme, you have the following options.

Option 1

If you do not want to continue with your investment in the Scheme, we will fully refund all money you have invested towards the Scheme.

You may exercise this option by responding to us in writing within next 10 days.

Should you choose to seek a refund of moneys invested in the Scheme, we will organise payment of all moneys you have paid toward the Scheme in its entirety within 14 days.

Option 2

If you want to continue with your investment in the Scheme, you do not need to do anything.

You should be aware that if you remain in the Scheme you will not have the protections associated with a registered managed investment scheme.

You may wish to seek independent advice when considering the options above.

For further information and any enquiries, you may also contact Australian Securities and Investments Commission, by telephoning Eunice Sim, lawyer, at ASIC on (02) 9911 2147.

Yours faithfully

Newcastle Palais Holdings Pty Ltd
Empower Invest Pty Ltd
Brien Cornwell
Kenneth Watson

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