

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

### Section 93AA

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

Mr Scott Melville Whiddett  
c/- Moore Stephens Sydney  
Level 7, 20 Hunter Street  
Sydney NSW 2000

#### 1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth);

**Corporations Act** means the *Corporations Act 2001* (Cth).

#### 2. ASIC's role

2.1 Under section 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 ASIC is also responsible for the registration of company auditors. Registered auditors must satisfy specified educational and practical experience standards, and in forming an opinion about whether financial statements audited by them comply with Australian Accounting Standards and present a true and fair view, must comply with Australian Auditing Standards and Professional Conduct Standards.

2.2 ASIC is empowered to bring disciplinary proceedings in the Companies Auditors and Liquidators Disciplinary Board ("CALDB") against registered company auditors who have failed to adequately and properly carry out the duties of an auditor.

#### 3. Role of Mr Whiddett

3.1 Scott Melville Whiddett ("SMW" or "Mr Whiddett") is a registered company auditor (Registration No. 162766), having first obtained registration on 22 May 1996 pursuant to section 1279 of the *Corporations Act*.

3.2 SMW is currently a partner in the accounting practice Moore Stephens Sydney ("MSS"), which is an independent member of the Moore Stephens Australia network.

- 3.3 The principal place of practice of MSS is at Level 7, 20 Hunter Street Sydney NSW 2000.
- 3.4 Section 307A of the *Corporations Act* provides that if an individual auditor conducts an audit of the financial report for a financial year, the lead auditor for the audit must ensure that the audit is conducted in accordance with Australian Auditing Standards.
- 3.5 SMW was, for the period ending 30 June 2005, the lead auditor of Estate Property Group Limited (ACN 089 187 548) ("EPG"), and its subsidiaries including Estate on Miller Pty Limited (ACN 111 961 132) ("EOM").
- 3.6 SMW was also the lead auditor of EPG and its subsidiaries including EOM and Australian Capital Reserve Limited (ACN 089 187 502) ("ACR") for the period ending 30 June 2006.
- 3.7 SMW is the MSS partner who had conduct of the following three (3) audits:
- i) Estate on Miller Pty Limited for the financial year ended 30 June 2005;
  - ii) Estate Property Group Limited for the financial year ended 30 June 2005; and
  - iii) Australian Capital Reserve Limited for the financial year ended 30 June 2006.
- 3.8 SMW was the signing partner of the unqualified audit opinions given on 31 October 2005, 31 October 2005 and 27 October 2005, respectively, in respect of the financial reports for the financial years of the companies as referred to in paragraph 3.7.

#### 4. EPG/ACR background

- 4.1 EPG was incorporated on 23 August 1999. The company was previously known as Castle Investment Company Limited and changed its name to EPG on 12 September 2006.
- 4.2 EPG's principal activity was the investment in wholly owned subsidiaries and the provision of vertically integrated real estate activities.
- 4.3 At 30 June 2006, EPG was the parent entity of 19 subsidiary companies including Australian Capital Reserve Limited ("ACR"), which acted as the group's fund raising vehicle. Subsidiaries of EPG were engaged in various property developments.
- 4.4 ACR was incorporated on 24 August 1999.
- 4.5 ACR's principal activity for the year ending 30 June 2006 was financing and providing loans to its parent company EPG, EPG's subsidiaries and associates to fund their activities.

#### 5. ASIC's concerns

- 5.1 ASIC conducted an investigation under section 13(1) of the *ASIC Act* in relation to the audit of EPG and its subsidiaries for the financial years ending 2005 and 2006.
- 5.2 ASIC has concerns that SMW as lead auditor of the audit of ACR's 2006 Financial Report and the audit of ACR's Revised 2006 Financial Report (collectively referred to as the "ACR 2006 Audit"), failed to ensure that the ACR 2006 Audit, was conducted in accordance with Australian Auditing Standards as required by section 307A of the

*Corporations Act*. Specifically, Mr Whiddett failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292(1)(d)(i) of the *Corporations Act* in relation to the ACR 2006 Audit, in that as lead auditor, he failed:

**5.2.1 In respect of audit work completed relating to the going concern basis on which the 2006 Financial Report was prepared:**

- a) to ensure compliance with AUS 708 Going Concern, paragraphs .10 and .20, in respect of obtaining sufficient appropriate audit evidence that the going concern basis, on which the ACR 2006 Financial Report and the ACR Revised 2006 Financial Report (collectively referred to as the "ACR 2006 Financial Statements") were prepared was appropriate; and/or
- b) to ensure that sufficient appropriate audit evidence was obtained as required by AUS 502 Audit Evidence, paragraph .02; and/or
- c) in the event that there existed alleged significant uncertainty regarding the appropriateness of the Going Concern basis as at 30 June 2006 which was not disclosed in the Financial Report and the Financial Report did not adequately describe the matters noted in AUS 708.32(b)(i) and (ii), to ensure that an "except for" opinion or an adverse opinion was expressed (under AUS 708.33) on the basis of lack of disclosure in accordance with AUS 702.
- d) In the alternative, in the event that consideration of mitigating factors had a significant effect upon the auditor in forming the opinion that the going concern basis was appropriate, to ensure that a qualified opinion was expressed on the basis of the lack of disclosure in the financial report of matters such as:
  - (i) the principal conditions which initially caused the auditor to question the going concern basis, including as appropriate, management's evaluation of their significance and possible effects; and
  - (ii) management plans and other mitigating factors including as appropriate, relevant prospective financial information;
 in accordance with AUS 708.30 and AUS 702; or
- e) in the alternative to paragraphs a) to d), to ensure documentation of matters which were required to support the audit opinion and evidence that the audit was carried out in accordance with Australian Auditing Standards as required by AUS 208 Audit Documentation, paragraphs .02, .05 and/or .06.

**5.2.2 In respect of audit work completed relating to valuations of properties securing loan advances performed by an external valuer:**

- a) to ensure that the audit obtained sufficient appropriate audit evidence as required by AUS 502 Audit Evidence paragraph .02 that the loans receivable balance as at 30 June 2006 was not materially mis-stated or alternatively failed to ensure documentation of any evidence that was obtained as required by AUS 208 Audit Documentation paragraphs .02, .05 and/or .06;
- b) to ensure that the requirements of AUS 606 Using the Work of an Expert were met when the audit relied upon the valuation;

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- c) to ensure that the audit conducted further audit procedures in accordance with AUS 406 The Auditor's Procedures in Response to Assessed Risks paragraph .07 that addressed the risks of material mis-statements in relation to recoverability of the loans receivable by EPH Church Street and Larkin Developments after it had been noted that these developments had been delayed; and/or
- d) to ensure that the audit obtained sufficient appropriate audit evidence as required by AUS 502 Audit Evidence paragraph .02 that the audit testing for LVR obtained and applied an estimate of the percentage of completion of each development from an independent quantity surveyor or registered valuer or alternatively failed to ensure documentation of any evidence that was obtained as required by AUS 208 Audit Documentation paragraphs .02, .05 and/or .06;
- e) in the alternative to paragraphs a) to d), to ensure documentation of matters which were required to support the audit opinion and evidence the audit was carried out in accordance with Australian Auditing Standards as required by AUS 208 Audit Documentation paragraphs .02, .05 and/or .06.

**5.2.3 With respect to work performed on the interest income and interest expense account balance:**

- a) to ensure that the audit investigated and obtained adequate explanations and/or appropriate corroborative evidence, for variances noted in its analytical analysis of interest income and expense, in accordance with AUS 512 Analytical Procedures paragraph .17; and/or
- b) to ensure that the audit obtained sufficient appropriate audit evidence that the interest received and interest expense account balances were not materially mis-stated as required by AUS 502 Audit Evidence paragraph .02;
- c) in the alternative to paragraphs a) and b) to ensure documentation of matters which were required to support the audit opinion and evidence that the audit was carried out in accordance with Australian Auditing Standards as required by AUS 208 Audit Documentation paragraphs .02, .05 and/or .06.

5.3 ASIC also has concerns that Mr Whiddett as lead auditor of the audit of EOM's 2005 Financial Report ("**the EOM 2005 Audit**") failed to ensure that the EOM 2005 Audit, was conducted in accordance with Australian Auditing Standards as required by section 307A of the *Corporations Act*. Specifically, Mr Whiddett failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292(1)(d)(i) of the *Corporations Act* in relation to the EOM 2005 Audit, in that as lead auditor, he failed:

**5.3.1 In respect of the work completed relating to the sale of an investment property by EOM on 30 June 2005:**

- a) in the absence of resolving, with management, the matter of the non-compliance of the EOM 2005 Financial Report with AASB 1004, paragraph 6, with respect to the recognition of revenue in the EOM 2005 Financial Report, to ensure that a qualified audit opinion was issued in

accordance with AUS 702 The Audit Report on a General Purpose Financial Report, paragraph .45; and/or

- b) to ensure that sufficient appropriate audit evidence was obtained as required by AUS 502 Audit Evidence, paragraph .02; or
- c) in the alternative to paragraph b), to ensure documentation of matters which were required to support the audit opinion and evidence that the audit was carried out in accordance with Australian Auditing Standards as required by AUS 208 Audit Documentation, paragraphs .02; 05 and/or .06.

5.4 ASIC further has concerns that Mr Whiddett as lead auditor of the audit of EPG's 2005 Financial Report ("**the EPG 2005 Audit**") failed to ensure that the EPG 2005 Audit, was conducted in accordance with Australian Auditing Standards as required by section 307A of the *Corporations Act*. Specifically, Mr Whiddett failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292(1)(d)(i) of the *Corporations Act* in relation to the EPG 2005 Audit, in that as lead auditor, he failed:

**5.4.1 In respect of the work completed relating to the recognition of revenue received from the sale of an investment property by EOM as consolidated in EPG's 30 June 2005 Financial Report:**

- a) in the absence of resolving, with management, the matter of the non-compliance of the EPG 2005 Financial with AASB 1004, paragraph 6, with respect to the recognition of revenue by the subsidiary EOM in the EPG 2005 Financial Report, to ensure that a qualified audit opinion was issued in accordance with AUS 702 The Audit Report on a General Purpose Financial Report, paragraph .45; and/or
- b) to ensure that sufficient appropriate audit evidence was obtained as required by AUS 502 Audit Evidence, paragraph .02; or
- c) in the alternative to paragraph b), to ensure documentation of matters which were required to support the audit opinion and evidence that the audit was carried out in accordance with Australian Auditing Standards in accordance with AUS 208 Audit Documentation, paragraphs .02; 05 and/or .06.

**6. Acknowledgement of concerns**

6.1 Whilst Mr Whiddett disagrees with ASIC's concerns, he acknowledges that ASIC has those concerns and has offered, and ASIC has agreed to accept, the commitments in this enforceable undertaking ("Undertaking") as an alternative to ASIC making an application to CALDB for an order under section 1292 the *Corporations Act*.

**7. Undertakings**

7.1 Under section 93AA of the *ASIC Act*, Mr Whiddett has offered, and ASIC has agreed to accept the following undertakings:

- (a) that for a period of twelve months from the date of acceptance of this Undertaking ("period of suspension"), he will not perform any duty or function which requires

registration as an auditor under the *Corporations Act*;

- (b) that after the conclusion of the suspension period referred to in paragraph 7.1(a) in respect of his next five audits which require registration as an auditor under the *Corporations Act* the audit work and conclusions will be submitted by him for review by another registered company auditor approved in advance by ASIC, who is to provide to ASIC a statement in writing whether in that person's opinion the five audits in question have been conducted in all material respects in accordance with all applicable Australian Auditing Standards and the MSS Audit Manual effective as at the date of any such audit;
- (c) to participate in an additional fifteen hours Continuing Professional Education (CPE) on audit related matters during the period of suspension in addition to the mandatory CPE requirements imposed upon him as a consequence of him being a member of the Institute of Chartered Accountants in Australia; and
- (d) to provide all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the undertakings in paragraphs (a) to (c) within 7 days of receiving the request.

## 8. Acknowledgements

### 8.1 Mr Whiddett 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.

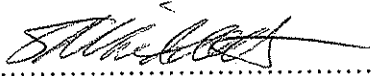
### 8.2 Further, Mr Whiddett acknowledges that:

- (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 ASIC's concerns in this enforceable undertaking or arising from future conduct; and
- (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.

### 8.3 Mr Whiddett acknowledges that this Undertaking has no operative force until accepted by ASIC, and Mr Whiddett and ASIC acknowledge that the date of the Undertaking is the date on which it is accepted by ASIC.

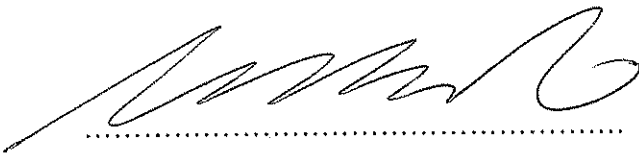
### 8.4 Any written notification to ASIC pursuant to this undertaking is to be provided to the Senior Executive Leader, Accountants and Auditors Team, ASIC, Level 18, No. 1 Martin Place Sydney NSW 2000.

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**Scott Melville Whiddett**

Dated: 23 December 2009



**Glen Unicomb**

Delegate of Australian Securities and Investments Commission

Dated: 23 December 2009