

ENFORCEABLE UNDERTAKING

Pursuant to section 46 of the Financial Markets Authority Act 2011

The commitments in this undertaking are offered to the Financial Markets Authority (**FMA**) by

Murray Rex Alcock
Allister Ronald Knight
(the **Directors**)

1. DEFINITIONS

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

Date of Calculation means 26 September 2014

Directors means Murray Rex Alcock and Allister Ronald Knight.

Enforceable Undertakings means the undertakings set out in this document.

Financial Markets Legislation has the same meaning as in section 2 of the FMA Act.

Interest means approximately \$481,357 that SPI Property Fund Limited and the Directors owe to Schedule A Investors as at 26 September 2014, which has been calculated at the rate prescribed by the Regulations made under the Securities Act.

Issuer has the same meaning as in section 2 of the Securities Act.

FMA means a Crown entity established under section 6 of the Financial Markets Authority Act 2011 having its offices at Level 2, 1 Grey Street, Wellington and Level 5, Ernst & Young Building, 2 Takutai Square, Britomart, Auckland.

FMA Act means the *Financial Markets Authority Act 2011*.

Outstanding Principal means \$601,394.12 in principal owing to investors under s 37 of the Securities Act 1978 as a result of the minimum subscription level stated in the Prospectus not being reached.

Prospectus means SPI Property Fund Limited's registered prospectus registered at the New Zealand Companies Office on 28 September 2008.

Registered Office means Level 4, 55 Anzac Avenue, Auckland, New Zealand.

Schedule A Investors means the investors in the SPI Property Fund Limited who are listed in Schedule A to this Enforceable Undertaking. This schedule contains confidential and private information relating to investors and will not be publically disclosed.

Securities Act means the *Securities Act 1978*.

SPI Entities means

- (a) SPI Capital Limited,
- (b) SPI Property Fund Limited,
- (c) SPI Q Fund Limited,
- (d) Treble Investments Limited;
- (e) SPI Assets Limited;

- (f) 66 The Square Syndicate;
- (g) 656 Syndicate;
- (h) Bell Syndicates;
- (i) Gloucester Syndicate;
- (j) HP Syndicate;
- (k) Hunua Syndicate;
- (l) Jade Syndicate; and
- (m) Times House Syndicate;

(together the **SPI Entities**)

Total Outstanding Amount means \$1,082,751 owing to Schedule A Investors, which includes the Outstanding Principal and the Interest owing on that sum.

Waitakere District Court Property means the property at 9-11 Ratanui Street, Henderson.

2. BACKGROUND

- 2.1 Pursuant to section 8 of the FMA Act, FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.
- 2.2 The Directors are or have been directors of the SPI Entities. Within those entities, SPI Property Fund Limited is a property investment fund that aimed to purchase predominately commercial, industrial and retail properties in New Zealand. On 28 September 2007 SPI Property Fund Limited issued the Prospectus inviting prospective investors to invest in a property fund. In addition, SPI Capital Limited was the manager of a number of property syndicates offering participatory securities in New Zealand commercial, industrial and retail properties.
- 2.3 FMA has concerns regarding the Directors' management of investor funds associated with the SPI entities. FMA also has concerns regarding compliance by the SPI Entities and the Directors with financial markets legislation. Those concerns include but are not limited to apparent failures in respect of:
 - (a) compliance with financial reporting requirements;
 - (b) holding of investors subscriptions on trust;

- (c) repayment of subscriptions for SPI Property Fund Limited that are due and owing to investors; and
 - (d) keeping investors adequately informed about the performance of their investments.
- 2.4 FMA has undertaken an investigation into the conduct of the Directors and considers that it is likely that the Directors have breached financial markets legislation. The parties have reached a resolution of the matters that were the subject of FMA's investigation pursuant to which the Directors have offered to provide the Enforceable Undertakings set out below pursuant to s46 of the FMA Act. These Enforceable Undertakings have been accepted by FMA.
- 2.5 FMA is committed to enforcement action that targets conduct which harms or presents the greatest likelihood of harm to the function of fair, efficient and transparent financial markets. This commitment includes ensuring full and accurate financial information is provided to investors by issuers and also that the funds of investors are appropriately managed. Accordingly, these Enforceable Undertakings are intended to facilitate the provision of that financial information and to restrict the Directors' involvement in issuers (and associated entities) that seek and hold investment funds from the public.

3. ENFORCEABLE UNDERTAKINGS

- 3.1 The Directors acknowledge and confirm they are jointly and severally liable to repay the Total Outstanding Amount to the Schedule A Investors.
- 3.2 Under section 46 of the FMA Act, each of the Directors has offered, and FMA has agreed to accept, the following undertakings. The Directors undertake:
- (a) to jointly or severally repay to the Schedule A Investors the Outstanding Principal as follows:
 - (i) \$60,000 on a *pro rata* basis by 30 November 2014;
 - (ii) the proceeds of the sale of the Directors' interest in 656 Syndicate following any sale of 656 Great South Road, less any properly secured debt over the property and reasonably incurred sale costs, which may be received prior to 29 June 2015 (up to but not exceeding the Total Outstanding Amount owing to the Schedule A Investors) with distributions to be made within 6 weeks of the settlement of the sale of that property; and
 - (iii) the remainder of the Outstanding Principal owing to the Schedule A Investors by 30 June 2015;
 - (b) to use their best endeavours to ensure the remainder of the Total Outstanding Amount, and any additional accrued interest, is repaid by 30 June 2015. For the avoidance of doubt, these Enforceable Undertakings do not in any way affect the

Directors' acknowledged personal liability to repay in full the interest owed to the Schedule A Investors;

- (c) to distribute any proceeds (less any properly secured debt over the property and reasonably incurred sale costs) from the sale of the Waitakere Court House Property to the Schedule A Investors (up to but not exceeding the Total Outstanding Amount owing to Schedule A Investors) and not to apply such proceeds to any other fees, costs or expenses whatsoever until the Schedule A Investors have been repaid the Total Outstanding Amount in full;
- (d) to ensure that the audited financial statements for SPI Capital Limited for the years ending 31 March 2011, 2012 and 2013 are delivered to the Registrar of Companies no later than 31 March 2015;
- (e) not to participate in any way in the business, including management, of the SPI Entities including providing specific property management services, after the dates identified below. These dates are agreed on the basis that the Directors will use their best endeavours to ensure that their non-participation is achieved as soon the administration required to conclude their involvement can be completed, but in any event no later than the dates specified:
 - (i) 31 March 2015: SPI Capital Limited, 66 The Square Syndicate, 656 Syndicate, Bell Syndicates, Gloucester Syndicate, HP Syndicate, Hunua Syndicate, Jade Syndicate, Times House Syndicate;
 - (ii) 30 June 2015: Treble Investments Limited, SPI Q Fund Limited and SPI Assets Limited. The Directors will use their best endeavours to achieve handover to a suitably qualified manager (to be approved by FMA) as soon as possible but no later than 30 June 2015; and
 - (iii) the time of repayment of the Total Outstanding Amount owing to Schedule A Investors or 30 June 2015, whichever is the earlier: SPI Property Fund Limited. This reason for this timing is to enable the Directors to facilitate this repayment. They will otherwise have no involvement with SPI Property Fund Limited from the date of this undertaking.;
- (f) to resign as directors of each of the SPI Entities by the dates outlined above;
- (g) save as provided in clauses 3.1 (a) to (d) above, for the period of 5 years from the date of execution of this undertaking by all parties, they will not act as a director or promoter of a public issuer of securities, or accept appointment or employment as a Chief Executive Officer or Chief Financial Officer (or equivalent position by whatever name called) of a public issuer of securities;
- (h) to use their best endeavours to ensure that that the SPI Entities do not seek further investment from the public; and

- (i) to fully cooperate with any FMA requests for information and/or documentation regarding the progress relating to the repayment of the Total Outstanding Amount, including the sale of assets and the performance of any activities relating to the SPI Entities.

4. ACKNOWLEDGEMENTS

4.1 The Directors acknowledge that:

- (a) The undertakings will be published on FMA's website following execution.
- (b) The Directors are liable to pay the Schedule A Investors the Interest as calculated for the purposes of this undertaking and any additional interest that may accrue from the date of calculation.
- (c) The Directors are able to take actions in their capacity as guarantors or providers of security for lending to SPI Q Fund Ltd and Treble Investments Ltd provided that they first obtain the written approval of FMA for any such action.
- (d) Further audited accounts for SPI Property Limited are not required to be produced or filed as the company's sole function will be to make repayments to Investors in accordance with this undertaking.
- (e) Other than as set out in 3.2(d) above, further audited accounts for SPI Capital Limited are not required to be produced or filed as the company has ceased including its role as a manager of property syndicates.
- (f) The undertakings do not extinguish any rights or claims that investors in the SPI Entities may have in relation to the SPI Entities and the Directors.
- (g) The undertakings do not settle or in any way prejudice the rights of any investors who may have been omitted from Schedule A, or waive any right by any investor to any greater amount that may be owing but not accurately stated in Schedule A.
- (h) The Enforceable Undertakings are legally enforceable at the date this document is executed by the Directors.
- (i) If the Directors breach the undertaking FMA may apply to High Court for a remedy under s 47 of the Financial Markets Authority Act 2011.

Signed by:



Murray Rex ALCOCK

In the presence of :



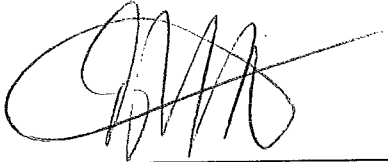
Name : Barbara Yates
Occupation : office Administrator
Address : Auckland .

Signed by:



Allister Ronald KNIGHT

In the presence of :



Name : Barbara Yates
Occupation : office Administrator
Address : Auckland .

Accepted by FMA pursuant to Section 46 of the Financial Markets Authority Act 2011 by its authorised delegate:



Name: Rob Everett
Occupation: Chief Executive
Address: Wellington

Date: 31st October, 2014