**CONSUMER AFFAIRS**

# CONSUMER AFFAIRS VICTORIA

**ENFORCEABLE UNDERTAKING**

Pursuant to section 198 of the *Australian Consumer Law and Fair Trading Act 2012*

**The commitments in this Undertaking are offered to the Director of Consumer Affairs Victoria by:**

**JRW PROPERTY INTERNATIONAL PTY LTD**

**ACN 122 029 725**

of 73 RAILWAY PARADE NORTH, GLEN WAVERLEY VIC 3150

-and-

**DONG PEI REN**

**The Director of Consumer Affairs Victoria**

1. The Director of Consumer Affairs Victoria **("the Director")** is a public official whose office is provided for under section 107 of the *Australian Consumer Law and Fair Trading Act 2012* **("the ACLFTA").**
2. The holder of that office is responsible for the administration of the ACLFTA, together with Victoria's other consumer protection legislation, including the *Estate Agents Act 1980* **("EAA")** and the Australian Consumer Law **("the ACL"),** which has been enacted as a law of Victoria under Part 2.2 of the ACLFTA and known as the Australian Consumer Law (Victoria) **("the ACL (Vic)").**
3. Schedule 1 of the ACLFTA provides that the EAA is a Consumer Act under the ACLFTA.
4. Under section 198 of the ACLFTA, the Director may accept a written Undertaking from a person in connection with:

the ACLFTA;

or

(

b

)

a matter relating to a contravention of any other Consumer

Act.

**Background**

5.

JRW Property International Pty

Ltd

ACN 122 029 725

**(**

**"the Company")**

is

a

licensed estate agent with the licence number

L69294.

6.

The Company's registered office and principal place of business

is

at 73

Railway Parade North Glen Waverley VIC

3150.

7.

Dong Pei Ren (otherwise known as Leo Ren)

**(**

**"Mr Ren")**

is a licensed estate

agent under the EAA with the licence number 073545L and is the sole director

of

the

Company.

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8.

At all material

times,

Mr

Ren

is

the

Officer

in

E

ff

ective

Control

**(**

**"OIEC"**

**)**

of the

estate

agency business of the Company.

9.

Edmund Hoh

**(**

**"Mr Hoh")**

was

employed

as

an agent's representative of the

Company

from

20

 October

2014

until

14

January 2017

, at which time he ceased

employment with the Company

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10.

Yi Lou (also known

as

Andy Lou)

**(**

**"Mr Lou")**

was employed as an agent

’

s

representative by the company from 30 June 2014 until 15 September 2015, on

which date he obtained a licenced estate agent under the EAA with the licence

number 079325L.

Between 15 September 2015 until

7

 December

2016

Mr Lou

was employed by the Company as a licenced estate agent. Thereafter he

ceased employment with the Company.

**Legislation**

11.

On 1 January 2011, the ACL, set out in Schedule 2

to

the

*Competition and*

*Consumer Act*

2010 (

C'th), came into effect. Part 2.2 o

f the ACLFTA applies the

ACL as a law of Victoria, which is known as the ACL

(

Vic

).

12.

Section 18 of the ACL (Vic) provides that a person must not, in trade or

 (a) a matter in relation to which the Director has a power or function under

commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

1. Section 30(1) of the ACL (Vic), inter alia provides that a person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:

(c) make a false or misleading representation concerning the price payable for the land.

1. Section 47C (2) of the EAA prohibits the making of false representation to prospective buyers, whereby in making any statement while marketing the real estate, the agent or representative must not state as his or her estimate of the selling price of the real estate, a price that is less that the estimated selling price, or in the case of a price range, less than the lower limit of that range, stated in the engagement or appointment.

## Consumer Affairs Victoria Investigation

1. On 16 November 2015, the office of the Director received a complaint about the Company. The complainant alleged that an employee of the Company (Mr Hoh) misled potential purchasers by advertising a property the Company had been engaged to sell, located at 952 Waverley Road, Wheelers Hill VIC 3150, at a price which was less than the vendors reserve price, and further that the Company did not act in the best interest of the vendors.
2. Between November 2015 and April 2016, CAV Inspectors conducted a range of enquiries which identified the following:
	* A further five properties in which agent’s representatives employed by the Company had sent emails to prospective purchasers which represented the likely selling prices of the properties as a price under the Estimated Selling Price **("ESP")** on the Authority;
	* Four properties marketed for sale by the Company were advertised on [www.realestate.com.au w](http://www.realestate.com.au/)ith a price under the ESP or Estimated Selling Range **("ESR")** on the Exclusive Sales Authority **("the Authority");**
	* Five properties were advertised [www.realestate.com.au w](http://www.realestate.com.au/)ith a price that

was likely to mislead potential purchasers. In that the Company caused to be displayed (and therefore advertised) within a lower price range than what it is estimated to sell on the ESP. The blind price, otherwise known as non-explicit search price, contains data which is not visible to the public but utilised by an estate agent to populate the display of a property in search results when a consumer utilises a real estate advertising website and searches between a minimum and maximum price. These five properties contained a blind price which was (significantly) less than the lower limit of the ESP on the sales engagement. In instances where a consumer has set a maximum price parameter in their search, the returned search results may contain properties with a higher ESP than the maximum price parameter as set by the consumer, thereby misleading the consumer.

**Contraventions of the Act**

**Section 18 and 30 of ACL (Vic)**

**Email representations** - **952 Waverley Road, Wheelers Hill**

1. The Company was engaged to sell the property located at 952 Waverley

Road, Wheelers Hill on 17 August 2015. An authority was completed by

Mr Hoh of the company on that day with an ESR of $1,300,000 -

$1,430,000. The vendor set a reserve price on that day of $1,500,000.

1. Mr Hoh was the contact for this sale and in email correspondence with prospective purchasers made the following representations about the sale price of the Waverley road property:
	* + On 16 September 2015, Mr Hoh, in response to a query regarding the likely sale price responded *" ... recent sales of properties around the area indicate the price range to be around 1.1+mil onwards."* o On 18 September 2015, Mr Hoh, in response to a contact about the Waverley Road property responded *"But the recent sales of properties around the area indicate the price range to be around 900+k to 1+mi/."*
		+ On 3 October 2015, Mr Hoh again responded to a query about the likely price range for the Waverley Road property *"But the recent sales of properties around the area indicate the price range to be around 800+ to 900+k."* o - Whereas in fact, at the time of the representations made, Mr Hoh knew that the vendors of the property were not prepared to sell for a price that was in the range set out in the emails above, and did not have reasonable grounds to make the representations of the price range.
2. By reason of the matters set out in paragraph 17 to 18 above, the Director considers that the Company has, in trade or commerce, engaged in conduct that was misleading and deceptive or likely to mislead or deceive contrary to section 18 of the ACL (Vic).
3. Further the Director considers the Company, through the representations outlined in paragraph 18 above has in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land made false or misleading representations concerning the price payable for the land, in contravention of section 30 (1) of the ACL (Vic).

**Representations on** [**www.realestate.com.au**](http://www.realestate.com.au/)

1. CAV's investigation identified that the Company routinely advertised properties it was engaged to sell on the online classifieds platform [www.realestate.com .au.](http://www.realestate.com.au/) CAV is aware that in posting a property for sale on this platform an agent has the sole responsibility for uploading content and setting the search price or price range at which the property will appear, even if the property is advertised without an explicit price.
2. The following properties, listed by the Company, were advertised with a nonexplicit search price, which results in the property appearing in a list of properties generated by an internet search for properties within a particular price range, nominated by consumers. This conduct is likely to result in consumers who set a 'max price' parameter in their search being presented with search results that actually have a higher ESP, without being informed of that fact. This implied representation is likely to mislead consumers, in contravention of section 30 of the ACL (Vic).

* + **472 Springvale Rd Glen Waverley**

ESR: $950,000 to $1,045,000

ADVERTISED WITH NON-EXPLICIT SEARCH PRICE: $800,000

* + **21 Avendon Boulevard Glen Waverley**

ESR: $1,850,000 to $2,000,000

ADVERTISED WITH NON-EXPLICIT SEARCH PRICE: $1,500,000

###  • 36A Kerrie Road, Glen Waverley

ESP: $1,300,000 (Single figure)

ADVERTISED WITH NON-EXPLICIT SEARCH PRICE: $900,000

 • **952 Waverley Road, Wheelers Hill**

ESR: $1,300,000 - $1,430,000

ADVERTISED WITH NON-EXPLICIT SEARCH PRICE: $950,000

###  • 24 Kennedy Street, Glen Waverley

ESP: $2,350,000

ADVERTISED WITH NON-EXPLICIT SEARCH PRICE: $1,800,000

23. CAV also identified that the Company had, in relation to the above properties it had been engaged to sell during the period 8 December 2014 to 6 December 2015 expressed a price range for the sale of the real estate published in online advertisements or in email correspondence, which was less than the ESP or ESR on the sale authorities held by the Company in respect of those properties, which may constitute or does constitute a breach of section 47C (2) of the EAA.

## Acknowledgment of the Contraventions

1. Mr Ren, personally, and on behalf of the Company, acknowledges that by engaging in the conduct referred to in paragraphs 17 to 22 above, the Company contravened sections 18 and 30 (1) of the ACL (Vic).
2. Mr Ren, personally, and on behalf of the Company, acknowledges that by engaging in the conduct referred to in paragraph 23 above, the Company contravened section 47C(2) of the EAA.
3. The Company and Mr Ren, in his capacity as OIEC, seek to address these contraventions by offering this Enforceable Undertaking to the Director.

**The Enforceable Undertakings**

## Compliance program

1. The Company and its OIEC, hereby undertakes to the Director, pursuant to section 198 of the ACLFTA, that it will, at its own expense, establish within three (3) months of the date of the execution of the undertaking, a compliance program which meets the requirements in **Annexure "A"** and maintain the compliance program for three

(3) years from the date on which it is established.

1. The Company provide to the Director, within three months of signing this undertaking, a signed affidavit from the OIEC, verifying that it has implemented the compliance program.

### Publication of Notice

29. Mr Ren, personally and on behalf of the company, undertakes to the Director, pursuant to section 218 of the ACL, that they will, within 14 days of the commencement of this Undertaking, cause to be displayed prominently and conspicuously for a continuous period of 3 months at or near each the reception desk in each of its existing or new premises from which it carries on real estate services, a Notice in the form of **Annexure "B"** below to this Undertaking. Each such Notice:

1. be a minimum size of 21 cm x 29.7 cm (A4 size);

1. use a minimum type size of 12 point Times New Roman or equivalent; and

1. be in full colour.

#### Contribution to the Victorian Consumer Law Fund

1. The Company, undertakes, that it will pay the sum of **$75,000** to the Victorian Consumer Law Fund, created under section 134 of the ACLFTA, in eight instalments, as follows:
	1. a first instalment of $5,000 payable by 31 July 2017;
	2. a second instalment of $7,000 payable by 31 August 2017;
	3. a third instalment of $8,000 payable by 30 September 2017;
	4. a fourth instalment of $10,000 payable by 31 October 2017;
	5. a fifth instalment of $10,000 payable by 30 November 2017;
	6. a sixth instalment of $10,000 payable by 31 December 2017; (g) a seventh instalment of $10,000 payable by 31 January 2018; and

 (h) an eighth and final instalment of $15,000 payable by 28 February 2018.

1. If the Company fails to pay any of the instalment amounts by the due date, the full amount of the outstanding amount (not just the instalment amount) becomes immediately due and payable and must be paid by the Company within 30 days of receiving a letter from the Director, or the Director’s staff, requesting or demanding the amount outstanding.

#### Commencement and Duration of the Undertaking

1. This Enforceable Undertaking comes into effect when:
	1. it is executed by Mr Leo Ren personally and on behalf of the Company, and
	2. it is accepted by the Director; and
	3. Notice is given, in writing, by the Director’s staff to JRW Property International Pty Ltd or their legal representative, Rankin and Co of the happening of the matters contained in paragraph 30(b).

1. The term of the Enforceable Undertaking shall be for a period of 3 years from the date the Enforceable Undertaking is accepted by the Director.

#### Public Nature of Undertaking

34. The Company and Mr Leo Ren acknowledge that:

1. The Director will register this Enforceable Undertaking in the Register of Undertakings and make this Enforceable Undertaking available for public inspection pursuant to section 200 of the ALCFTA;
2. the Director and/or the Minister for Consumer Affairs Victoria may, from time to time, publicly refer to this Enforceable Undertaking;
3. this Enforceable Undertaking in no way derogates from the rights and remedies available to the Director arising from any conduct described in this Enforceable Undertaking that arises from conduct outside the relevant period or from future conduct (including the right to pursue compensation for or in the name of any consumer);
4. this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity (including any other regulatory agency) arising from any conduct described in this Enforceable Undertaking that arises from conduct outside the relevant period or from future conduct; and
5. this Enforceable Undertaking in no way derogates from the obligation of the Company, its officers, employees, and agents to fully comply with the provisions of the Act and associated regulations.

## EXECUTION

### JRW PROPERTY INTERNATIONAL PTY LTD ACN 122 029 725

Signed by: ………………………………………………..

 (PRINT NAME) \_\_

Mr DONG PEI REN personally and in his capacity as OIEC and Director of JRW Property International Pty Ltd.

In the presence of: Witness: .......................................................................

 (PRINT NAME) \_\_

**Accepted by:**

The Director of Consumer Affairs Victoria, pursuant to section 198 of the ACLFTA.

Dated: 2017

...................................................

**Simon Cohen Director, Consumer Affairs Victoria**

## Annexure "A"

**COMPLIANCE PROGRAM**

The Company will establish a Compliance Program that complies with each of the following requirements:

**Appointments**

1. The Company will:

* + 1. appoint a Director or a Senior Manager with suitable qualifications or experience in corporate compliance as **Compliance Officer** with responsibility for ensuring the **Compliance Program** is effectively designed, implemented and maintained;
		2. appoint a qualified, internal or external, compliance professional with expertise in the Australian Consumer Law (Victoria) **(the Compliance Advisor).** The Company shall instruct the Compliance Advisor to conduct a risk assessment in accordance with 1 (b) (i) to (iii) below to:

 i. identify the areas where the Company is at risk of breaching:

* + - * 1. section 18 of Part 2-1 (Misleading or deceptive conduct) and section 30 of Part 3-1, Division 1 (False or misleading representations) of the ACL (Vic); and
				2. sections 47A – 47D of the EAA (as amended by the *Estate Agents Amendment (Underquoting) Act 2016*, and including new sections 47AB – 47AF of the EAA)

* + - 1. identify where there may be gaps in the Company's existing procedures for managing these risks; and
			2. provide recommendations for action having regard to the assessment.

1. The Company will issue a policy statement outlining the Company's commitment to trade practices compliance (Compliance Policy). The Compliance Policy is:
	* 1. is written in plain language;
		2. contains a statement of commitment to compliance with the ACLFTA (including the ACL (Vic) and EAA;
		3. contains a strategic outline of how commitment to compliance will be realized within the Company;
		4. contains a requirement for all staff to report any Compliance Program related issues concerns to the Compliance officer;
		5. contains a guarantee that whistle-blowers will not be prosecuted or disadvantaged in any way for making a genuine report and that their reports will be kept confidential and secure; and
		6. contains a clear statement that the Company will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the applicable legislation administered by Consumer Affairs Victoria (including the ALC (Vic) and EAA) and will not indemnify them.

**Complaints Handling System**

1. The Company will ensure that the Compliance Program includes a complaints handling system. The Company shall use its best endeavours to ensure this system is consistent with AS/NZS **10002:2014 Guidelines for complaint management in organizations,** though tailored to the Company's circumstances. The Company will ensure that staff and customers are made aware of the complaints handling system.
2. The Company will ensure that the Compliance Program provides for regular (at least once a year) and practical training for all directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene:
	1. section 18 of Part 2-1 (Misleading or deceptive conduct); and

* 1. section 30 of Part 3-1, Division 1 (False or misleading representations) of the ACL

(Vic); and iii. sections 47A – 47D of the EAA (as amended by the *Estate Agents Amendment*

*(Underquoting) Act 2016*, and including new sections 47AB – 47AF of the EAA)

1. The Company must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in the ACL (Vic) and the EAA and is updated regularly to address any legislative amendments.
2. The Company will ensure that the Compliance Program includes a requirement that awareness of ACL(Vic) and EAA compliance issues forms part of the induction of all new directors, officers, representatives and agents, whose duties could result in them being concerned with conduct that may contravene:
	1. section 18 of Part 2-1 (Misleading or deceptive conduct); and
	2. section 30 of Part 3-1, Division 1 (False or misleading representations) of the ACL

(Vic); and

* 1. sections 47A – 47D of the EAA (as amended by the *Estate Agents Amendment (Underquoting) Act 2016*, and including new sections 47AB – 47AF of the EAA).

1. The Company shall, at its own expense, within 3 months of the date of the execution of this Undertaking, cause to be produced and provided to the Director copies of each of the documents constituting the Compliance Program and implement promptly and with due diligence any recommendations that the Applicant may make that are reasonably necessary to ensure that the Company maintains and continues to implement the Compliance Program in accordance with the requirements of the undertaking.

### Annexure "B"

(Notice to be displayed)

|  |
| --- |
| **IMPORTANT PUBLIC NOTICE** **JRW Property International Pty Ltd ACN 122 029 725** acknowledges that it has contravened the misleading and deceptive conduct and the false or misleading representations concerning price of land provisions of the Australian Consumer Law and the underquoting provisions of *the Estate Agents Act* 1980. **JRW Property International Pty Ltd** admits to contravening the law by:  * Making representations to prospective purchasers about the sale price of real estate when JRW Property International Pty Ltd knew that the vendors would not sell for the advertised price or within the advertised price range.
* Advertising properties on the website realestate.com.au with a price that was likely to mislead potential purchasers by causing the properties to be displayed and therefore advertised within a lower price range than the selling price, on the sales authority held by the Company, in respect of those properties.
* Expressing a price range for the sale of the real estate published in online advertisements or in email correspondence, which was less than the Estimated Selling Price on the sale authorities held by the Company in respect of those properties.

  **JRW Property International Pty Ltd** has agreed to implement a compliance program designed to ensure no further contraventions of these provisions of the Australian Consumer Law (Victoria) occur; and to make a contribution of **$75,000** to the Victorian Consumer Law Fund.  This Notice is published and paid for by **JRW Property International** in accordance with an Enforceable Undertaking accepted by the Director of Consumer Affairs Victoria on X date.  |

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