

30 June 2004

Mr Alistair Sands  
Secretary  
Senate Finance and Public Administration  
Legislation Committee  
Parliament House  
Canberra ACT 2600

Dear Mr Sands

**Senate Questions on Notice PM 34 and 35, Senator Brandis, Finance and Public Administration Legislation Committee, Dated 25 May 2004**

I refer to the Finance and Public Administration Legislation Committee Estimates Hearings dated 25 May 2004, in relation to the Prime Minister and Cabinet Portfolio.

The Australian National Audit Office (ANAO) has been requested by the Department of Prime Minister and Cabinet to respond to question numbers PM 34 and 35 from Senator Brandis in relation to Centenary House.

The ANAO response is attached. Should you wish to discuss any aspect of this response please contact Denzil Bourne on 02 6203 7661.

Yours sincerely

Warren Cochrane  
A/g Deputy Auditor-General

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Portfolio: Prime Minister and Cabinet  
Agency: Australian National Audit Office

Consideration of Budget Estimates: 25 May 2004

<b>Senator:</b>	Senator Brandis
<b>Question on Notice No:</b>	PM 34
<b>Hansard Page:</b>	F&PA 40
<b>Question</b>	Senator Brandis: You can take this on notice if it is more convenient to you, but can you let us know the current rate of the sub tenancy? Is the sub tenancy rental inclusive or exclusive of outgoings.
<p><b>Answer:</b> The contract between Kellog Brown and Root Pty Ltd and the Commonwealth specifies the rental is \$593 340.80 per annum ex GST. Based on a rented work area of approximately 1678 square metres, this equates to an annual rental of \$353.60 per square metre ex GST. This figure excludes car parking for 16 vehicles. There are nine covered places at \$1040.00 ex GST per annum and seven open places at \$780.00 ex GST per annum.</p> <p>The rental is exclusive of outgoings.</p>	

WARREN COCHRANE  
Acting Deputy Auditor-General

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Portfolio: Prime Minister and Cabinet  
Agency: Australian National Audit Office

Consideration of Budget Estimates: 25 May 2004

**Senator:**

Senator Brandis

**Question on Notice No:**

PM 35

**Hansard Page:**

F&PA 41

**Question**

Senator Brandis: But it would be a registered mortgage , so presumably a copy of the document, or at least the title extract , would be available from search of the land title register.

Perhaps you might consider making a fresh search to establish whether I am right -and I am sure I am – there has been an assignment of the mortgage and whether that might put the ANAO in any more favourable position to reconsider its commercial options in dealing with the landlord.

**Answer:** The original mortgage granted by the lessor to Macquarie Bank Limited was discharged on 31 January 2003. The lessor granted a new mortgage to Westpac Banking Corporation (Westpac) on 31 January 2004. Copies of these documents are attached at Attachment A. The mortgage to Westpac refers to a registered Memorandum of Provisions (MOP) number 1101438. Our legal advice confirms that the documents do not evidence any of the commercial terms of the mortgage and there has been no amendment to the standard terms and conditions of the MOP noted in the annexure to the mortgage. A copy of the legal advice is also attached at Attachment B.

The ANAO has written to John Curtin House (JCH), the lessor of Centenary House, requesting, among other things, whether or not the new mortgage provides any practical basis on which to review the current lease rates. We have received a reply from the Secretary of John Curtin House Limited, Mr Tim Gartrell, who advised that as the Centenary House lease is now subject to a judicial inquiry, the company do not consider it to be appropriate to respond to our request at this time. Copies of this correspondence is at Attachment C.

WARREN COCHRANE  
Acting Deputy Auditor-General

# MALLESONS STEPHEN JAQUES

Mr Russell Coleman  
Executive Director  
Corporate Management Branch  
Australian National Audit Office  
Centenary House  
19 National Circuit  
BARTON ACT 2600

**Copy to**  
Mr Arthur Hardy  
Senior Finance Manager  
Australian National Audit  
Office

22 June 2004

**BY COURIER**

Corporate Management  
Rec: 22/6/2004  
No: 63

Dear Russell and Arthur

**ANAO Lease from John Curtin House Pty Limited (Lease) - Centenary House (Property)  
Further Advice**

I refer to our earlier telephone discussions.

I confirm that the original mortgage granted by the lessor to Macquarie Bank Limited was discharged on 31 January 2003. A new mortgage was granted by the lessor to Westpac Banking Corporation (**Westpac**) on 31 January 2003. Both documents were registered on 11 February 2003.

Copies of these documents are enclosed.

The mortgage to Westpac refers to a registered Memorandum of Provisions (**MOP**) number 1101438. A copy of this document is also enclosed.

I confirm that the documents do not evidence any of the commercial terms of the mortgage, and that there has been no amendment to the standard terms and conditions of the MOP noted in the annexure to the mortgage.

I note that our advice dated 17 June 2003 related to the mortgage granted to Macquarie Bank Limited (which was at that time, and still is, a publicly available document), and the impact of the mortgage on the Lease. As noted in that earlier advice, the existence of a mortgage on the title for a commercial property is not unusual, and that the validity of the Lease was not affected by the registered mortgage. These comments apply equally to the mortgage granted to Westpac.

Please call me should you have any questions or wish to discuss any aspect of this letter.

National Capital Office

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DX 5610 Canberra ABN 22 041 424 954 can@mallesons.com www.mallesons.com

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# MALLESONS STEPHEN JAQUES

Australian National Audit Office

22 June 2004

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Yours sincerely



Tracey Fitzpatrick  
Senior Associate  
Direct line +61 2 6217 6064  
Email [tracey.fitzpatrick@malleasons.com](mailto:tracey.fitzpatrick@malleasons.com)

ANAO

DM

LOGGED BY:

Minter Ellison



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1303350

BOX NO: 6

ABN 41 562 230 918



AUSTRALIAN CAPITAL TERRITORY GOVERNMENT  
**DISCHARGE OF MORTGAGE**  
LAND TITLES ACT 1925

**D**

The mortgage in Item 2 is discharged as follows - (Delete whichever is inapplicable)  
. in relation to the land described in item 1  
. in relation to the mortgagor described in Item 3  
. in relation to the mortgagee described in Item 4

1. LAND (insert the identifier/s of the land being discharged)

DISTRICT/DIVISION	SECTION	BLOCK	UNIT	VOL:FOL	INSTRUMENT NO.
Barton	22	5		1236:18	

2. MORTGAGE NO.

783560

3. MORTGAGOR

Macquarie Bank Limited (ACN 008 583 542)

4. MORTGAGEE

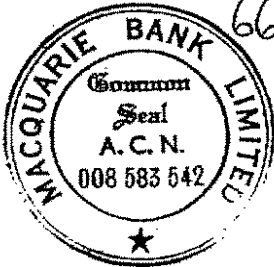
John Curtin House Limited (ACN 008 515 222)

5. DATE

31-Jan-03

6. EXECUTION

SIGNED IN MY PRESENCE BY THE MORTGAGEE.



66/03

THE COMMON SEAL OF MACQUARIE BANK LIMITED WAS HEREUNTO AFFIXED IN ACCORDANCE WITH THE COMPANY'S CONSTITUTION:

*Dennis Leong*  
RECEIVED  
Dennis Leong

Executive Director

Grant Munro

*Andrew Peter Cavill*

ANDREW PETER  
CAVILL

SIGNATURE OF MORTGAGEE.

FULL NAME AND SIGNATURE OF WITNESS.

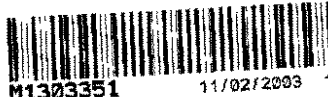
*Handwritten initials*

13 FEB 2003

LODGED BY:

minter ellison

BOX NO: 6.



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11/02/2003 10:26:29

**1303351**

Approval No.  
476

AUSTRALIAN CAPITAL TERRITORY  
**MORTGAGE**

M

LAND TITLES ACT 1925

The mortgagor mortgages the estate or interest in the land described in item 1 and 4, together with each fixture, structure or improvement on it or fixed to it, for the purpose of securing to the mortgagee the payment of the amount owing.

This mortgage is subject to the mortgages, encumbrances and other instruments affecting the land, including any created by dealings lodged prior to this mortgage.

1. **LAND**

DISTRICT/DIVISION	SECTION	BLOCK	UNIT	VOL:FOL	INSTRUMENT NO.
<b>BARTON</b>	<b>22</b>	<b>5</b>		<b>1236:18</b>	

2. **MORTGAGOR** (FULL NAME AND ADDRESS)

**JOHN CURTIN HOUSE LIMITED** of 19 National Circuit, Barton ACT 2600

3. **MORTGAGEE** (FULL NAME, ADDRESS AND FORM OF TENANCY OF MORTGAGEE)

**WESTPAC BANKING CORPORATION** ACN 007 457 141  
having its registered office at Level 25, 60 martin Place, Sydney, NSW, 2000

4. **ESTATE OR INTEREST AFFECTED** (IE: WHOLE, SHARE, ESTATE / INTEREST)

**Whole**

5. **PRINCIPAL SUM**

**The amount described in Memorandum 1101438**

6. **DETAILS OF REPAYMENT**

**In accordance with Memorandum 1101438**

- **THE COVENANTS IMPLIED AT SECTIONS 115, 116, 118 AND 122 OF THE LAND TITLES ACT 1925 ARE HEREBY NEGATED.**
- **THE PROVISIONS SET FORTH IN MEMORANDUM OF PROVISIONS NO 1101438 FILED IN THE OFFICE OF THE REGISTRAR-GENERAL ARE DEEMED TO BE INCORPORATED HEREIN/AS MODIFIED BY ANNEXURE HERETO.**
- **THE COVENANTS AND CONDITIONS SET OUT IN THE ANNEXURE HERETO ARE DEEMED TO BE INCORPORATED HEREIN (DELETE IF INAPPLICABLE)**



# ANNEXURE

This is annexure "A" to the mortgage

between **WESTPAC Banking Corporation ('Mortgagee')**  
and **JOHN CURTIN HOUSE LIMITED ('Mortgagor')**

dated 31.1.03

1. The Mortgagor mortgages the Land to the Mortgagee subject to any encumbrances noted on this Mortgage and the Register, because the Mortgagee is giving or continuing credit or not exercising rights or agreeing to do so (even conditionally).
2. The Mortgagor acknowledges having read a copy of filed Memorandum registered in the Australian Capital Territory Land Titles Office as number 1101438. It forms part of this Mortgage.

GN

LODGED BY: Westpac Banking Corporation  
 ARBN 007 457 141  
 Canberra ACT  
 BOX NO: 9



**AUSTRALIAN CAPITAL TERRITORY**  
**APPLICATION FORM**  
 LAND TITLES ACT 1925

MOP  
 Document code

THIS FORM MAY BE USED FOR MISCELLANEOUS APPLICATIONS FOR WHICH NO FORM IS PRESCRIBED BY THE LAND TITLES ACT 1925 (eg APPLICATIONS TO CHANGE NAME OF PROPRIETOR, TO CORRECT THE REGISTER, ETC.)

1. LAND

DISTRICT/DIVISION	SECTION	BLOCK	UNIT	VOL/FOL	INSTRUMENT NO.

2. TITLE OF APPLICATION  
 MEMORANDUM OF PROVISIONS

3. NATURE OF APPLICATION (IF INSUFFICIENT SPACE PLEASE ATTACH ANNEXURE)

I LEITH LYON WINTOUR of Level 3 Cnr City Walk and Petrie Plaza in the Australian Capital Territory, Manager Legal ACT Legal Unit of WESTPAC BANKING CORPORATION ARBN 007 457 141 certify that this memorandum comprising 19 pages is lodged on behalf of WESTPAC BANKING CORPORATION and contains provisions that are to be incorporated by reference in such mortgages as refer to this memorandum.

Dated 15th January 1999

*[Signature]*  
 (Signature of applicant)

4. DATE  
 15 January 1999

5. EXECUTION

SIGNED IN MY PRESENCE BY THE APPLICANT.

*Signed for & on behalf of WESTPAC BANKING CORPORATION by LEITH LYON WINTOUR its duly constituted Attorney who is personally known to me.*

*[Signature]*  
 Signature of Witness  
 VANESSA JOY WILLIAMS  
 NAME OF WITNESS (BLOCK LETTERS)

SIGNATURE OF APPLICANT.

WESTPAC BANKING CORPORATION  
 by its Attorney who hereby states that at the time of executing this instrument no notice of revocation has been received of the Power of Attorney registered No. 94222 under the authority of which this instrument has been executed.

*[Signature]*  
 MANAGER LEGAL  
 ACT LEGAL UNIT SIGNATURE OF WITNESS.

## INSTRUCTIONS FOR COMPLETION

- \* The information collected by this form is authorised by the *Land Titles Act 1925*, will be used for the purposes of that Act and will be available for search pursuant to sections 65 and 66 of that Act. It will also be made available to government agencies for statistical and administrative purposes and to non-government persons and organisations concerned with land. A fee may apply to any or all of the above.
- \* Delete where inapplicable.
- \* This document should clearly indicate the identifiers of all land affected.
- \* Complete or rule up all boxes.
- \* Execution of document by-
  - Natural Person- Should be witnessed by an adult person who is not a party to the document.
  - Attorney- If this document is executed by an attorney pursuant to a registered power of attorney, it must set out the full name of the attorney and the form of execution must indicate the source of his/her authority eg "AB by his/her attorney XY pursuant to Power of Attorney A.C.T. registered no .... of which he/she has no notice of revocation".
  - Corporation- If this document is executed by a corporation under seal, the form of execution should include a statement that the seal has been properly affixed. eg in accordance with the articles of association of the corporation, each person attesting the affixing of the seal should state his/her position (eg director/secretary) in the corporation.
- \* Alterations should not be made by erasure but by scoring through with a pen and the words substituted written above them verified by initials in the margin.
- \* Typewriting and handwriting should be clear, legible and in permanent black ink.

### OFFICE USE ONLY

DOCUMENTS LODGED HEREWITH:

CERTIFICATE OF TITLE	CERTIFICATES	OTHER

CERTIFICATE OF REGISTRATION:

EXAMINED:	<i>[Signature]</i>
VOLUME:FOLIO:	
REGISTERED:	<i>[Signature]</i>

DATE:	15 JAN 1999
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## A. READING THIS MEMORANDUM

### A1. USING THIS MEMORANDUM

This memorandum sets out the terms which apply when you sign any of the following (each a "Document") which refers to this memorandum:

- a mortgage (a "Mortgage");
- a charge (a "Charge");
- a security over own deposit (a "Deposit Security");
- any lien, stock mortgage, bill of sale, deed of covenant or other security document (a "Security Document");
- a guarantee and indemnity (a "Guarantee"); or
- a terms and conditions letter or facility agreement (including any facility schedules), (an "Agreement").

This memorandum should be read with your Document and forms part of it.

Where this memorandum conflicts with a Document, the Document will prevail, except as set out in D ("Lender's Powers") below.

### A2. TERMS USED IN THIS MEMORANDUM

*Some terms used in this memorandum or the Document have particular meanings. They are set out above or as follows.*

**"Administration"** includes bankruptcy, administration (including any arising out of insolvency, mental illness or incapacity), compromise or arrangement with creditors, assignment for creditors, receivership, winding up, dissolution or anything similar.

Where used in E ("Conditions of Guarantee") below **"anyone"** includes anyone who signs a Guarantee, the Customer or anyone else who gives Security.

**"Banking Day"** means a weekday on which banks are open for business at the place at which payments are to be made as set out in B6 below. A Banking Day ends at 4.00 pm (5.00 pm on Friday) at that address.

**"Customer"** in relation to a Guarantee means the person or entity described as a Customer in the Guarantee.

If there is more than one, it includes any one or more of them.

**"Default Event"** has the meaning given in D2 ("What is a Default Event") below.

**"Group Title"** includes strata title, unit title, community title, company title or similar and **"Group Title Body"** means the relevant plan's proprietors, owners' corporation, body corporate, company or similar.

**"Guaranteed Money"**, in relation to a Guarantee, means anything referred to in respect of the Customer under B1 ("What You Must Pay") below. It includes:

- amounts which now or in the future would have been Guaranteed Money but for some reason as described in E9 ("Indemnity") below; or
- if there is more than one Customer, amounts which any one or more of them owe.

This may be limited as set out in A3 ("Consumer Credit Law") below.

**"Guaranteed Obligation"** in relation to a Guarantee, means any Guaranteed Obligation described in the Guarantee. It includes:

- anything which now or in the future would have been a Guaranteed Obligation but for some reason as described in E9 ("Indemnity") below;
- obligations of any one or more of the Customer owed to the Lender alone or with others now or in the future; and
- at any time, obligations which may arise after that time.

This may be limited as set out in A3 ("Consumer Credit Law") below.

**"Lender"** means the bank, lender or mortgagee referred to on the first page of the Document and its successors and transferees.

**"Lender Arrangement"** means any document, agreement or arrangement (whether existing now or in the future):

- to which any one or more of you are, or become, party with the Lender; or
- under which obligations arise from any one or more of you to the Lender,

in each case, whether or not:

- other parties are involved;
- it arises as a result of an assignment or transfer; or
- it is in writing.

It includes this memorandum and any Document.

This may be limited as set out in A3 ("Consumer Credit Law") below.

**"Property"** means any property mortgaged or charged by a Mortgage or Charge or subject to a Security Document. It includes any part of the property. In the case of a Deposit Security it means any Deposit, as defined in the Deposit Security.

In the case of a Mortgage over land or a lease of land, **Property** includes:

- the land or lease referred to on the front page of the Mortgage;
- the unit or the house and all other buildings, improvements and additions to the land; and
- all rights attaching to the land or lease.

In the case of a Mortgage over shares regarding a company title unit, the **Property** will be taken to include that unit. In the case of a Mortgage over a lease of land the **Property** includes the land the subject of the lease, and the unit or the house and all other buildings or improvements on the land.

A **"representative"** of the Lender includes anyone authorised by it and anyone whose title includes the word "Manager", "Head", "Director", "President" or "Counsel".

**"Security"** means any security (for example, a guarantee, lien, mortgage or charge), claim or

other right held by the Lender from or against you, the Customer or anyone else in relation to obligations under any Lender Arrangement, any Guaranteed Obligation or any Guaranteed Money, now or in the future.

It includes the rights of the Lender against you under any Document or Lender Arrangement.

**"you"** means the person or entity described:

- in a Mortgage, Charge, Security Document or Agreement as a **"Mortgagor"** or **"Borrower"**;
- in a Deposit Security as **"you"**; or
- in a Guarantee, as a **"Guarantor"**.

If there is more than one, it includes any one or more of you.

Where there is more than one of you, each of you is individually liable under the Document for the full amount, except where it provides otherwise. This liability will continue, as regards the others, even where one or more of you has not signed, is not liable or is no longer liable.

\*\*\*\*\*

Where an example is given of something in the Document or in this memorandum, it does not limit what else might be included.

A reference to any party, including you, the Customer or the Lender, includes that party's successors and permitted assigns.

### A3. CONSUMER CREDIT LAW

If a Document is regulated by a consumer credit law, then the Document is limited as follows, but only to the extent it is regulated under that law.

- The Lender's and its representatives' rights and powers under the Document are limited as required by that law.
- The amounts which you are required to pay under the Document, and which are secured by it, will not be more than are allowed under that law.

This applies despite anything in a Lender Arrangement.

*For example, as a result of consumer credit law in force at the time this memorandum was printed, if you are a person or a strata corporation then the following will apply.*

- *Any Guarantee given by you will not secure a Guaranteed Obligation which is a credit contract regulated by that law. B ("Your Payment Obligations") and E ("Conditions of Guarantee") below will not apply to that Guaranteed Obligation or Guaranteed Money owing under that Guaranteed Obligation.*
- *Any Mortgage, Charge, Deposit Security, Security Document or Guarantee will only secure a Lender Arrangement which is a credit contract regulated by that law if you agree that it does so. If you do not agree, B ("Your Payment Obligations") and F ("What Your Mortgage, Charge, Deposit Security or Security Document Secures") below will not apply to that Lender Arrangement.*

*To the extent a Mortgage, Charge, Deposit Security, Security Document or Guarantee does secure a regulated Lender Arrangement, then:*

- *you are not required to pay any of the amounts referred to in B1 ("What You Must Pay") under the heading "Preparation costs and expenses", "Other costs and liabilities", "Stamp Duty" or "Interest", or in B2 ("Break Costs"), B3 ("Tax") and B4 ("Currency") and the second paragraph of B5 ("When You Must Pay"), except to the extent provided in the relevant Lender Arrangement; and*
- *with certain limited exceptions, the Lender may only be able to exercise the powers referred to in D3 ("What Happens on Default?") below if you default under the relevant Document or the relevant Lender Arrangement and have not remedied the default within 30 days of notice.*

This does not affect the Document to the extent it is not regulated (for example because a Mortgage, Charge, Deposit Security, Security Document or Guarantee secures Lender Arrangements or Guaranteed Obligations which are not regulated).

## **B. YOUR PAYMENT OBLIGATIONS**

### **B1. WHAT YOU MUST PAY**

You promise to pay the following amounts to the Lender.

#### **All money**

- All money which you owe to the Lender for any reason; and
- if you give or have given a Guarantee, all money which the Customer owes to the Lender for any reason, under or in relation to the Guaranteed Obligations.

This applies whether the money is or becomes owed:

- now or in the future;
- by any one or more of you or the Customer, alone or together with any one or more others; or
- actually or contingently,

and whether or not it is currently contemplated.

*For example, this may include:*

- *the amount of any loan or accommodation;*
- *interest, fees, costs, liquidated or unliquidated damages, compensation, expenses and charges including government duties and charges;*
- *money owed because of an assignment to the Lender;*
- *liability under a Guarantee or other guarantee or indemnity;*
- *at any time money which will become owing to the Lender by you or the Customer only if particular circumstances occur, even though there may not be an existing obligation at that time to pay that money (for example, where a claim against the Lender by another party may lead to a claim against you or the Customer); and*
- *in relation to a Guarantee, money that would have been owed and what would have been*

*Guaranteed Obligations but for some reason as described in E9 ("Indemnity") below.*

However, under a Guarantee you are only required to pay amounts payable by the Customer if the Customer fails to pay them when due, as described in D3 ("What Happens on Default?") below.

The following paragraphs do not limit anything under "All money" above.

#### **Preparation costs and expenses**

All reasonable amounts which the Lender reasonably spends or incurs in relation to the negotiation, preparation, stamping and completion of the Document or any waiver, amendment, discharge, release or consent of, or under, any of them. This includes legal fees on a full indemnity basis.

#### **Enforcement costs and expenses**

All reasonable amounts which the Lender reasonably pays or incurs:

- in relation to the actual or contemplated enforcement of, or exercise of rights under, the Document or any security for the Document; or
- in preserving or maintaining any Property after a breach occurs.

*For example:*

- *outgoings (for example, rates and taxes), insurance premiums and other amounts paid by the Lender, any of its representatives or any receiver or receiver and manager under or in relation to the Document;*
- *amounts claimed against the Lender and its representatives or any receiver or receiver and manager;*
- *real estate agents', brokers' and auctioneers' commissions and fees, advertising expenses and valuers' fees; and*
- *legal fees on a full indemnity basis (even if a court does not specifically award costs on that basis).*

#### **Other costs and liabilities**

All other losses, costs, liabilities and expenses which:

DJL0137D.DOC

- the Lender or any of its representatives; or
  - any receiver or receiver and manager under a Mortgage, Charge or Security Document;
- suffers or incurs as a direct or indirect result of:
- a Default Event;
  - any proceedings, enquiry or order (including any subpoena or order to produce documents) relating wholly or partly to you, anything done under the Document, the Property, or any of your business or activities; or
  - its interest in, or control or power with respect to, you or the Property, including under any law relating in any way to planning, the environment or health.

This may include anything of the kind referred to in the examples under the previous heading.

#### **Stamp duty**

All stamp, transaction and similar duties and charges in relation to the Document, any security for it, and any further document, transaction, payment or receipt under it. This includes:

- financial institutions duty and debits tax; and
- any fines and penalties unless they result from a failure by the Lender to lodge a document or return for stamping in sufficient time, having received from you the amount of duty in good time.

#### **Interest**

Interest on all amounts payable by you under this part B ("Your Payment Obligations") (including interest).

Where an applicable Lender Arrangement provides for interest on an amount, interest will accrue on that amount as provided in the Lender Arrangement. Interest will accrue on all other amounts from day to day at the Lender's Indicator Lending Rate plus 4% per annum.

Interest accrues both before and after any judgement or court order to pay an amount.

Unless it debits your account more often, the Lender will be taken to have debited your account with accrued interest under this paragraph each

month or other period selected by the Lender. That interest will then itself bear interest.

## B2. BREAK COSTS

You will promise to pay the Lender's break costs if you have a fixed rate facility of any type or a floating rate cash advance facility under an Agreement where the rate is set for certain periods, and for any reason:

- you do not fully draw it after having given a drawdown notice; or
- all or any part of the facility is, or is required to be, repaid or terminated during a period for which interest rates are set. This is called a prepayment.

Break costs are in addition to any prepayment administration fee.

**Break costs** are the amount which the Lender determines is its cost or loss resulting from:

- liquidation or re-employment of deposits or other funds required or contracted for by it to fund the facility; or
- termination or reversing any agreement or arrangement entered into to fix, hedge or limit its effective costs.

The Lender funds itself on a portfolio basis. It may not enter into specific transactions relating to the facility to fix or hedge its cost in relation to your transaction or in relation to your prepayment or termination. If so, it may instead determine **break costs** with the use of a formula. **Break costs** will be the amount so determined.

The formula is available on request and is a pre-estimate of the Lender's loss in the value at the time of prepayment or termination of receiving payments early when compared to the value, at that time, of payments it would have received had the prepayment not occurred.

### Switching of facilities

A switching fee may also apply if you switch from one facility to another. If you switch from a fixed rate facility you also promise to pay break costs as if you had prepaid the amount switched.

## B3. TAX

If you are required by law to deduct any tax, charge or duty from any payment (except a tax on the Lender's overall net income), then:

- you must pay that amount to the appropriate authority and promptly give the Lender evidence of payment; and
- the amount payable is increased so that (after deducting that tax, charge or duty and paying any tax, charge or duty on the increased amount) the Lender receives the same amount that it would have received had no deduction been made.

You will pay any goods and services tax or similar tax on any amount which you have to pay the Lender. Where you have to indemnify the Lender against an amount or reimburse the Lender for any amount, that amount will be inclusive of any goods and services tax or other tax payable by the Lender.

## B4. CURRENCY

You will indemnify the Lender against any exchange loss if any amount payable under or in connection with any Lender Arrangement is received in a currency which is different from that in which it is required to be paid under the Lender Arrangement.

This indemnity applies whatever the reason for receipt of the amount in a different currency.

## B5. WHEN YOU MUST PAY

Except where a Lender Arrangement says otherwise all amounts are payable on demand or when the Lender debits your account for them.

In any event, if you die or any person dies who has given any Security for any Lender Arrangement, the Lender may require you or your estate to pay to the Lender all principal and all other amounts which you promise to pay under this part B. You or your estate must immediately pay them even if they are not yet otherwise payable.

Where a payment falls due on a day which is not a day on which the Lender is open for business in the place of payment, you must make the payment on the preceding day on which the Lender is open.



You may also be required to make a payment as set out in D10 ("Review by Lender") or D11 ("Top-up Requirements") below.

## **B6. HOW YOU MUST PAY**

Amounts are payable at the address given in the Document or as otherwise specified by the Lender, in cleared funds and without any deduction except as set out in B3 ("Tax") above. If no address is given or specified by the Lender, then the address will be the address given in the covering letter for the Document.

The Lender may debit any of your accounts for any amount payable under a Lender Arrangement.

## **C. YOUR OTHER OBLIGATIONS**

### **C1. WHAT YOU TELL THE LENDER**

You tell the Lender the following. You are taken to repeat these statements each time you use a facility. You should check they are true. These are warranties which means the Lender can sue you if they are not true.

#### **Ownership**

If you give a Mortgage, a Charge, a Deposit Security or a Security Document, you own the Property alone or will do so on completion of your purchase. You do not own it as trustee except as you have told the Lender in writing.

No one else has any:

- interest in; or
- rights over or to use,

the Property, except:

- as set out in the Mortgage or noted on the titles register;
- as you have told the Lender in writing; and
- where the Property is a company title unit. In that case the relevant company owns the unit, but you have an exclusive right to occupy the unit.

#### **Documents binding**

Each Lender Arrangement:

- is binding and enforceable against you;

- does not breach any obligation binding on you; and
- is effective security over any properties which it is expressed to cover, with the priority (if any) stated in it.

#### **Property complies with law**

The Property, its acquisition and everything built or done on it or with it, or proposed to be built or done on it or with it, complies with the promises in C2 ("Your Other Obligations") below.

#### **Environmental and other claims**

There is and has been nothing relating to you, any Property or your business or assets, (*for example, any contamination*) which, under any law including any relating in any way to the environment, planning or health:

- has given rise to substantial expenditure by you or to a requirement that you cease or substantially alter a material activity; or
- may give rise to such expenditure or requirement (including any claim).

#### **Defaults**

No Default Event has occurred.

#### **Solvency**

You are not insolvent. You have not committed an act of bankruptcy.

#### **Information**

All information you have given the Lender is true and complete. It is not misleading, by omission or otherwise.

#### **Schedule**

The statements applicable to you in the Schedule are true.

## C2. YOUR OTHER OBLIGATIONS

You promise to do all of the following at all times.

### Lender Arrangements

Comply with each Lender Arrangement. Ensure that everything you tell the Lender in a Lender Arrangement, or in connection with one, is true and not misleading or deceptive.

### Maintenance

Look after any Property - protect and maintain it and its value.

### Building

Make sure all building work on any Property is completed properly.

### Business

Make sure any business or other activity carried on by you anywhere, or by anyone on or with the Property, is carried out properly and efficiently.

### Records

Keep proper records and accounts. Prepare accounts in accordance with the law and current accounting practice and, if the Lender or the law so requires, have them audited. The auditor must be a qualified person approved by the Lender.

### Information

Give the Lender promptly any information it reasonably requests.

Give the Lender copies of your financial statements (including the notes), within 120 days of the end of each of your financial years.

### Notices of default and other events

Notify the Lender promptly of any Default Event, any actual or material litigation affecting you or anything else the Lender requires notice of.

### Outgoings

Pay when due all your tax. Pay when due all outgoing and other amounts relating to any Property. *For example:*

- council rates, water rates and land tax;

- rent (if the Property is leasehold); and
- levies, calls, fees and other amounts payable to a corporation, an association or a Group Title Body.

Pay all amounts due under other mortgages or charges over any Property.

### Law

Comply with the law.

Make sure everything built or done with or on any Property (or any land on which any Property is built) complies with the law and any legal requirements.

This includes any licensing requirement, the terms of any licence, consent or approval, the local council's requirements and all laws relating in any way to the environment, planning or health.

Make sure there is nothing on or relating to any Property or your business which might lead to a claim against you or the Lender. *(For example, you will ensure there is no contamination which could give rise to a claim for the damage it causes or requiring its clean-up.)*

If requested by the Lender, maintain procedures which in its opinion are necessary to monitor this.

Give the Lender any soil or other samples it reasonably requests.

### No dealings

Not:

- let any Property for more than one year (You will not have power to let the Property except for leases of a year or less than a year);
- sell or otherwise dispose of any Property or any interest in it (except sale of Property subject to a floating charge, in the ordinary course of your business);
- give anyone an interest in or a right over or to use any of the Property;
- consent to a caveat over the Property;
- give or allow another mortgage, charge, pledge or lien or other security arrangement over any Property or anything grown on it

(except as stated below in relation to Queensland); or

- in the case of a Deposit Security, withdraw the Deposit,

unless the Lender first gives its consent.

If any Property is in Queensland, you may give or allow a second or subsequent mortgage or charge over the Property to any other party, but before you do, you must make sure the other party signs and gives to the Lender a priority agreement as required by the Lender.

### Insurance

Make sure at all times you have public risk and worker's compensation insurance to the satisfaction of the Lender.

Make sure all insurable Property (including all buildings which are on any Property or include any Property) is insured at all times to the Lender's satisfaction:

- against fire, storm and tempest and other risks required by the Lender; and
- for an amount at least equal to its full replacement cost.

All insurance must be to a level and on terms specified by the Lender on the advice of valuers and/or insurance brokers or, in the absence of any specification, as a prudent person with your business and assets would insure against.

Each insurance policy with respect to Property must:

- be with an Australian insurer approved by the Lender; and
- have the Lender named as an insured (unless the Property is Group Title and the policy is taken out by the Group Title Body).

Give the Lender a certificate of currency or a copy of each insurance policy. Before each policy expires you will renew or replace it and tell the Lender you have done so.

Hold any proceeds of the policy for the Lender and pay them to the Lender. You are to direct the insurer to pay proceeds to the Lender. Unless the

law requires otherwise, the Lender will, at its choice:

- apply them towards payment of the money secured by the mortgage over the Property, including principal even though it is not yet due for payment; or
- pay them into an interest bearing account from which you can apply them (and interest credited to the account) in restoring the Property.

### Protect security

Do whatever the Lender reasonably asks (including signing anything):

- to secure a Document better; and
- to maintain, preserve and protect:
  - any Property and its value; and
  - your title and the Lender's rights and interest.

*For example, if the Property is Crown land or a lease from the Crown, this may include converting it to freehold and giving a mortgage over the freehold.*

Not do or allow anything which may reduce or destroy the Property's value without the prior written consent of the Lender (*for example vote for, or fail to vote against, a direct or indirect change in the rights forming all or part of the Property or attaching to it.*)

### Other obligations

Comply with all obligations which comprise or relate to any Property or your interest in it.

*For example, this might include:*

- *(where the Property is Group Title) by - laws or rules;*
- *any franchise or licensing arrangement;*
- *any other mortgage or charge over the Property;*
- *(where the Property includes shares) any constitution of a corporation; and*

- (where all or part of the Property is leasehold) the lease. In that case also you will:

- \* not do anything which would bring the lease to an end or allow someone else to bring it to an end; and
- \* not allow the lease to expire without renewing it.

#### Leases and other agreements and rights

Enforce any lease or other right or agreement which form part of or relate to any Property. Use reasonable efforts to ensure the lessee or other party complies. Not end or change any such lease, right or agreement or waive any term in it.

#### Documents

Deposit with the Lender all of the following which you have or may receive at any time:

- any certificates or other title documents for any Property;
- any other document relating to the Property which a purchaser of it might reasonably require; and
- if the Property is constituted by a document (for example, a bill of exchange or promissory note), that document.

#### CHESS holdings

If any shares or other securities forming part of the Property are registered on a CHESS sub-register, enter into a sponsorship agreement required by the Lender with Westpac Custodian Nominees Limited or a non-broker participant approved by the Lender.

Not remove any shares or other securities which form part of the Property from the CHESS sub-register or the control of the non-broker participant, unless they are disposed of as permitted by the relevant Mortgage, Charge or Security Document.

#### Vote

Vote, or respond to any request for consent:

- at any meeting of any issuer of any Property or any Group Title Body; or

- concerning any Property, in the way the Lender directs.

## D. THE LENDER'S POWERS

### D1. GENERALLY

The Lender and any representative of the Lender may do any one or more of the following at any time at your cost.

- Inspect any Property or your books and records, and obtain a valuation or an environmental audit (when the Lender thinks advisable).
- Do what you promise to do but fail to do.  
*For example, this might include taking out insurance or paying insurance premiums, rates and taxes and other amounts.*
- Pay amounts which it understands to be due under other mortgages or charges over any Property and other liabilities relating to any Property.
- Pay any loan or loans to be made under the Lender Arrangements as your solicitor, agent or conveyancer directs the Lender.
- Complete any Document and fill in any blanks (for example, the date, title details, other interests noted on the title, your address and your interest in the Property).
- Give any information about you and any Lender Arrangement to anyone who gives a Security.

### D2. WHAT IS A DEFAULT EVENT?

A *Default Event* occurs if any one or more of you or anyone who gives a Security:

- do not pay the Lender any amount due under, or breach, any Lender Arrangement or any Security;
- have given or do give misleading or incorrect information to the Lender;

- commit an act of bankruptcy or enter into any assignment, arrangement or composition with any creditors;
- is or are a corporation, partnership or other entity, or trustee of a trust, and
  - an administrator, receiver, receiver and manager, liquidator or similar officer is appointed;
  - is or are placed under Administration, terminated, wound up or dissolved or steps are taken towards this (*for example, a resolution is passed or an application is made to a court*);
  - there is in the opinion of the Lender a substantial change (direct or indirect) in your or its management, ownership or control; or
  - you or it reduces share or other capital, buys back shares or other capital or gives financial assistance for the acquisition of your or its shares or units in shares, or resolves to do so or to approve doing so;
- do not pay when due any debt owed to a financier (including in respect of money borrowed or raised) or is, or under the relevant document could be, required to pay any such debt in advance of its stated maturity; or
- are insolvent or are taken, presumed or assumed under law to be insolvent.

A **Default Event** also occurs if:

- a creditor or secured creditor enforces or takes out a distress or execution against any asset of you or anyone who gives a Security;
- for any reason, all or a material part of a Lender Arrangement or Security is terminated or of no or limited force and effect, or you or anyone who gives a Security alleges that it is so;
- any court, government or governmental agency does anything (*for example giving an order resuming any Property, or revoking any licence or approval*) which, in the opinion of the Lender may materially adversely affect the

Lender's security or your ability to perform the Lender Arrangements;

- in relation to the property the subject of any Security, any Group Title Body has or incurs a significant liability for which it does not hold adequate reserves or insurance in the opinion of the Lender;
- in the opinion of the Lender there is a material adverse change in or affecting any Security, or the business, capital, assets or financial condition of any one or more of you or anyone who gives a Security; or
- anything else occurs which you agree is a **Default Event**, or which is described as an event of default or default event or similar in any Lender Arrangement.

If you give or have given a Guarantee or guarantee and indemnity to the Lender there will also be a **Default Event** if any of the above (in this part D2) occurs with respect to the person whose obligations you guarantee (including a Customer), in which case "Lender Arrangements" will refer to the Guaranteed Obligations or other obligations guaranteed.

### D3. WHAT HAPPENS ON DEFAULT?

At any time after a Default Event which has not been waived (whether or not it is continuing) the Lender can do any one or more of the following, to the extent permitted by law, but it need not do so.

- Require you to pay to the Lender all principal and all other amounts which you promise to pay under part B ("Your Payment Obligations") above. You must immediately pay them even if they are not yet otherwise payable.
- Convert into Australian dollars on its usual terms any money you owe in another currency, in which case you will owe the amount in Australian dollars.
- Appoint an investigating accountant at your cost, with whom you must co-operate.
- Take legal action (*for example, sue you for any money which you have not paid when due*).

- In the case of a Mortgage, a Charge or a Security Document:
  - take possession of the Property;
  - sell the Property in one or more lots or with other Property;
  - do anything you could do in relation to all or part of the Property, *for example:*
    - \* *letting it, improving it, sub-dividing it, and demolishing it;*
    - \* *paying amounts;*
    - \* *voting at meetings;*
    - \* *carrying on any business or other activity;*
    - \* *acquiring assets or taking them on lease;*
    - \* *if the Property includes uncalled capital and premiums, calling them;*
    - \* *collecting rent and other amounts;*
    - \* *surrendering or exchanging it;*
    - \* *dealing with leases and other rights and agreements (for example, performing them, exercising rights under them, enforcing them, giving consents, or ending or changing them);*
    - \* *signing or executing any document or agreement;*
    - \* *making, defending, enforcing, paying and settling insurance or other claims;*
    - \* *dedicating it to a government or authority; and*
    - \* *delegating any powers including delegation; or*
  - appoint one or more receivers or receivers and managers, remove or replace any one or more of them, and fix their remuneration.

They alone or together may do anything the Lender can do as set out above or anything else a receiver or receiver and manager may do at law.

To the extent the law permits, a receiver or receiver and manager will be your agent, and need not comply with requirements imposed on mortgagees.

Despite anything in any Lender Arrangement, if a Default Event occurs the Lender need not make a loan or provide any other form of finance under or secured by any document.

#### **D4. POWER OF ATTORNEY**

For valuable consideration each of you appoints each of the Lender, any receiver or receiver and manager and any representative of the Lender as your attorney to do anything in D1 ("The Lender's Powers Generally") or D3 ("What Happens on Default?") above. You cannot revoke this power.

#### **D5. SET OFF**

If any one or more of you have any money in any account with the Lender, the Lender can use it to pay amounts secured under this document, but need not do so.

To the maximum extent allowed by law you give up any right to set off any amounts the Lender owes you (*for example credit balances in your accounts or any deposit subject to a Deposit Security*) against amounts you owe under the Lender Arrangements.

#### **D6. USE OF MONEY**

The Lender may apply any money it receives or recovers in any way in respect of money you owe, in paying whatever of the money you owe, it chooses (despite any direction to the contrary) but may first pay anyone who the Lender believes ranks ahead of the Lender.

Where the Lender receives or recovers money to cover an amount contingently owing, a loan or other amount before it is payable, or an unmatured bill of exchange, then the Lender will deposit it in an interest bearing account under its control.

- If the amount becomes actually owing, the loan or other amount becomes payable or the bill matures, the Lender will apply the money in the account in payment of your liability to it.
- If it ceases to be contingently owing, the Lender will pay the balance of the money in the account to you.

An amount is *contingently owing* if it may become owing if something happens or is discovered, (*for example, your obligations under a guarantee or indemnity*).

The Lender may do the same with insurance proceeds which it does not use for restoring the Property.

#### **D7. RIGHTS AND POWERS SEPARATE**

The Lender can, but need not, do anything under a Document, even after a delay, or more than once.

The Lender can exercise all other rights and powers it has under law even if they overlap with any in the Document.

If the Lender does not do something when it is entitled to, that does not mean it is giving up that right and cannot do it later.

#### **D8. TRANSFER**

The Lender can transfer to someone else any Lender Arrangement and any debt owing under or secured by any Lender Arrangement.

If it does, the Lender Arrangement will apply to the transferee as if it was the Lender.

To the maximum extent allowed by law, any transfer will be free of any set off, equity or cross claim which you would have had against the Lender or transferees but for this paragraph.

If the Lender wants to transfer a Security, Lender Arrangement or debt it can give anyone all information that privacy legislation allows it to give.

#### **D9. DELEGATION OF POWERS**

The Lender may delegate some or all of its powers, including delegation, to someone else (the *Delegate*). If it does, then anything done by the

Delegate or its representative will be effective as if done by the Lender or its representative.

A representative of the Delegate will be regarded as a representative of the Lender.

#### **D10. REVIEW BY THE LENDER**

The Lender may conduct scheduled reviews as set out in an Agreement, or unscheduled reviews at any time having given notice to you.

After a review, if the Lender determines there has been or will be a change in its credit risk, it may notify you.

In that notice the Lender can either change the conditions of a facility, or, if the Agreement states a facility is provided subject to scheduled reviews and does not have a specified termination date, terminate the facility.

The changes in the notice will be effective automatically at the end of the period stated in the notice. That period will be at least 30 days unless you agree otherwise.

If you notify the Lender within that period that you do not accept the changes, the facility will be repayable on demand by the Lender.

Unless you have agreed, or a default as described in D2 ("What is a Default Event") above has occurred, the Lender may not alter any specified termination date for a facility, or any fixed rate then current.

#### **D11. TOP-UP REQUIREMENTS**

Where, in the reasonable opinion of the Lender:

- the value of Property subject to a Mortgage, Charge or Security Document has declined; or
- the amount secured by the Mortgage, Charge or Security Document has increased for any reason (*for example, because currencies have fluctuated*),

so that the ratio of the Property value to the amount secured has declined, the Lender may require you immediately to pay sufficient of the amount secured to ensure the ratio of the amount secured to that value is satisfactory to the Lender or is as agreed in the relevant Lender Arrangement.

However, you need not pay that amount if within the period specified by the Lender, you provide additional security which is:

- satisfactory to the Lender; and
- sufficient to ensure in the reasonable opinion of the Lender that the ratio of the value of the Property and the additional security to the amount secured is satisfactory to the Lender, or is as agreed in the relevant Lender Arrangement.

For this part D11, the value of anything is as reasonably determined by the Lender.

#### **D12. VARIATION OF FEES AND CHARGES**

The Lender may vary any fees and charges, introduce any new fees and charges or vary the frequency or time for payment of fees and charges by:

- notice in writing to you; or
- advertising the change in a major metropolitan newspaper,

on or before the change taking effect.

The Lender will provide you on request with information on current fees and charges.

#### **D13. CONSENTS AND OPINIONS**

The Lender may give or withhold approvals and consents, may be satisfied or unsatisfied, may form opinions, may make determinations or variations, and may exercise its rights and powers, at its absolute discretion (unless otherwise expressly provided) to the extent permitted by law.

### **E. CONDITIONS OF GUARANTEE**

*This applies in relation to any Guarantee.*

#### **E1. GUARANTEE**

You guarantee to the Lender that the Customer will, on time:

- pay to the Lender all the Guaranteed Money; and
- perform the Guaranteed Obligations.

If the Customer does not pay an amount of the Guaranteed Money when it is due, the Lender may demand that you pay that amount. You must then immediately pay that amount to the Lender. The Lender can make any number of demands and demand can be made:

- for all or part of the Guaranteed Money;
- even if the Lender does not take action to recover the Guaranteed Money from anyone.

#### **E2. EXTENT OF THE GUARANTEE**

The Guarantee is a guarantee for the full amount of the Guaranteed Money and the Guaranteed Obligations. However, where a limit is set out in the Guarantee as a dollar amount, the total amount which you may be required to pay under the Guarantee will not be more than:

- that limit; plus
- 12 months interest on that amount; plus
- any other amount in relation to the Guarantee referred to in B1 ("What You Must Pay") above under the heading "Preparation costs and expenses", "Enforcement costs and expenses", "other costs and liabilities" or "Stamp duty"; plus
- interest on any amount demanded from you and not paid.

#### **E3. CONTINUING GUARANTEE**

Your obligations under the Guarantee are continuing and, except where the Lender agrees in writing, irrevocable. Even though the Lender receives payments from, or makes arrangements with, anyone you are still liable for the Guaranteed Money and the Guaranteed Obligations now and in the future (subject to any agreed limit, if there is one).

#### **E4. ADMINISTRATION**

If anyone goes into Administration and the Lender receives or recovers money in relation to the Guaranteed Money in the Administration or from anyone, it may set aside that money in a suspense account.



It need not use that money to pay the Guaranteed Money until it has received enough in respect of the Guaranteed Money to pay all of the Guaranteed Money. Until that happens, you are fully liable for the Guaranteed Money as if the Lender had not received the money set aside.

You will not make a claim or lodge a proof in any Administration of the Customer until the Guaranteed Money and Guaranteed Obligations have been paid and satisfied in full.

#### **E5. APPROPRIATION**

Any money paid to the Lender to reduce the Customer's debts to the Lender may be used to pay off any part of the Customer's debts to the Lender which the Lender chooses.

#### **E6. VARIATION OF GUARANTEED OBLIGATIONS**

The Guarantee applies automatically to all dealings between the Lender and the Customer in relation to the Guaranteed Money or the Guaranteed Obligations whether or not:

- those dealings increase your liability; or
- the Lender notifies you or obtains your consent, including a change in the Guaranteed Obligations, or new or replacement Guaranteed Obligations (see the definition of Guaranteed Obligations in A1 ("Using this Memorandum") above).

#### **E7. NATURE OF LIABILITY**

Your liability under the Guarantee is unconditional. It is not affected by anything which otherwise might release you from all or part of your obligations including if:

- the Lender does not or is slow to exercise any of its security or rights against anyone;
- the Lender makes any arrangement, transaction or compromise with anyone, including one which varies, takes away or limits its security or rights, or its freedom to exercise them;
- the Lender gives anyone a full or partial discharge or release, time to pay or any other concession;

- the Guarantee or any other document or Security is temporarily or permanently unenforceable, is not taken by the Lender, is lost, is not signed by anyone or is not binding on anyone intended to give a Guarantee or Security (including any of you);
- there is a change in the nature or constitution of anyone including its members;
- anyone dies, becomes insolvent or incapacitated, or goes into some form of Administration; or
- anyone has a claim against the Lender.

#### **E8. REFUND OF PAYMENTS**

For some reason (*for example, a law about Administration, trusts or directors' duties*) the Lender may have to refund or give up any money which it recovers in any way.

If that happens, you owe the Lender all the money that you would have owed if the amount refunded or given up had never been paid to or received by the Lender.

You will do everything you can to restore to the Lender any rights against you or your property which the Lender had before it received the money which it later had to refund or give up.

#### **E9. INDEMNITY**

If for any reason (*for example, lack of capacity or authority, Administration, illegality or inadequate or improper execution or stamping*) at any time:

- the Lender has no legal right to recover an amount of the Guaranteed Money from the Customer or enforce the Guaranteed Obligations;
- the Customer is not bound by obligations (or what would have been obligations) that otherwise would have been Guaranteed Obligations; or
- the Customer does not owe an amount which would otherwise would have been included in the Guaranteed Money,

the amount will be taken to be part of the Guaranteed Money. You will pay it to the Lender whenever the Lender demands. The obligations will be taken to be part of the Guaranteed Obligations.

This applies even if the Lender knew or should have known of the problem, and even if, because of the problem, the Customer could never have been required to pay the Lender the amount.

This is a principal and independent obligation.

#### **E10. OTHER SECURITY**

Any other Security for all or part of the Guaranteed Money or Guaranteed Obligations is independent of the Guarantee. The Guarantee is independent of it.

Nothing affecting any Security will affect the Guarantor's liability under the Guarantee. The Lender can enforce the Guarantee and any Security in any order it wishes, or can choose not to enforce any Security at all.

Until the Guaranteed Money is paid in full, you can not claim the benefit of, and have no right to, the Security.

#### **E11. RELIANCE**

The Lender is not required to do anything in relation to, or tell you anything concerning, the Customer's financial and business condition and affairs or its transactions with the Lender except as expressly set out in a Guarantee.

This does not limit the acknowledgement in part I ("What You Acknowledge") below.

#### **E12. MULTIPLE GUARANTORS**

The terms of a Guarantee apply to each of you individually and to all of you as a group. Each of you is individually liable for the full amount of the Guaranteed Money even if one or more of the others:

- has not signed the Guarantee or is not bound by it; or
- in the future stops being liable (*for example, because the Lender releases that person*).

The Lender can demand and recover payment from one or more of you without demanding it from the others.

#### **F. WHAT YOUR MORTGAGE, CHARGE, DEPOSIT SECURITY OR SECURITY DOCUMENT SECURES**

Except where a Document or A3 ("Consumer Credit Law") provides otherwise, each Mortgage, Charge, Deposit Security or Security Document secures all amounts referred to in B1 ("What You Must Pay"), B2 ("Break Costs"), B3 ("Tax"), B4 ("Currency") and B5 ("When You Must Pay"). If there is more than one of you, it includes amounts owed by any one or more of you (either alone or with others).

It also secures the Australian dollar equivalent of any amount in another currency, if it is necessary that amount be specified in Australian dollars to ensure it is secured.

#### **G. DISCHARGE**

The Lender will discharge a Mortgage, Charge, Deposit Security, Security Document, Guarantee or other Security at your request but only when the Lender is satisfied that you have irrevocably paid everything which is or may foreseeably become secured by it. This is subject to the Code of Banking Practice and to any applicable consumer credit law.

#### **H. GENERAL**

##### **H1. NOTICES**

Any representative of the Lender can give a demand or notice for the Lender.

A notice or demand under a Document will be served on you if:

- it is served personally;
- it is left at the Property or your last address known to the Lender;
- it is sent by mail to the Property or your last address known to the Lender; if so it is to be regarded as having been delivered in the ordinary course of post, even if it never arrives; or

the amount will be taken to be part of the Guaranteed Money. You will pay it to the Lender whenever the Lender demands. The obligations will be taken to be part of the Guaranteed Obligations.

This applies even if the Lender knew or should have known of the problem, and even if, because of the problem, the Customer could never have been required to pay the Lender the amount.

This is a principal and independent obligation.

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A notice or demand under a Document will be served on you if:

- it is served personally;
- it is left at the Property or your last address known to the Lender;
- it is sent by mail to the Property or your last address known to the Lender; if so it is to be regarded as having been delivered in the ordinary course of post, even if it never arrives; or

- it is sent by facsimile transmission or other electronic means to any number or address you give to the Lender.

The Lender may serve court documents on you in the same way.

You must send all notices or correspondence relating to a Document to the Lender at the address given in the Document or as otherwise specified by the Lender. If no address is given or specified by the Lender, then the address will be the address given in the covering letter for the Document.

## **H2. EFFECT OF LAW**

The Document is subject to laws limiting the Lender, to the extent they cannot be excluded.

Otherwise all laws which limit the Lender's power or require notices to be given are excluded. This includes in New South Wales s57 of the Real Property Act 1900 and s111 of the Conveyancing Act 1919.

Where a law which cannot be excluded requires a period of default, or a period of notice, to be given, or both, before enforcement but allows the period to be specified or changed, then that period is one day.

## **H3. READING DOWN DOCUMENT**

A provision of a Document which is prohibited or is unenforceable in any jurisdiction is only ineffective in that jurisdiction to the extent it is prohibited or unenforceable, without affecting the remaining provisions, or its effect in any other jurisdiction.

Further:

- a Mortgage, Charge or Security Document will not include an asset so long as and to the extent that inclusion of that asset would make ineffective the security given by that Document; and
- a Mortgage, Charge, Deposit Security, Security Document or Guarantee will not secure a liability so long as and to the extent that inclusion of that liability would render ineffective the Document or the security under it,

but you will use your best efforts to ensure that asset is included or that liability is secured as soon as possible.

## **H4. GOVERNING LAW AND JURISDICTION**

The Document is governed by the law of the state or territory in which the Property is, or, if none or more than one, the address of the Lender in the Document, but the consumer credit legislation of other states or territories may still apply.

You accept the jurisdiction of its courts and agree to any court in its capital city.

## **H5. STATEMENTS**

A written statement by a representative of the Lender as to amounts owing under the Document is sufficient evidence against you unless you prove it is wrong.

## **H6. FINANCE**

The Lender will provide finance when it is obliged to do so.

## **I. WHAT YOU ACKNOWLEDGE**

### **No reliance on Lender's enquiries and checks**

You know that if the Lender or its representative inspects any building work on any Property, it is doing so for itself and not you. You should not rely on that inspection.

The Lender and its representatives are not responsible to you if any building work has not been properly done, even if the Lender or the representative has said it is satisfied as to the work, and the Lender lends against the work.

The same applies to any search, enquiry, review, inspection or valuation which is checked, carried out or obtained by the Lender or its representatives with respect to any other aspect of any Property or your business or affairs.

In particular, if you are buying any Property, you are responsible for making sure you get good title. If you have one, your lawyer or conveyancer should do this. You should not rely on the Lender or its representatives.

### **No reliance generally**

You acknowledge that you did not sign any Document on reliance or as a result of any conduct of the Lender including any promises, advice or statements except as expressly set out in writing on behalf of the Lender. The only terms which apply to a Document are contained in it and this memorandum, except for terms which are required by law and cannot be excluded.

## SCHEDULE

### FOR TRUSTEES

*This part only applies to those of you who are a trustee and sign a Document as trustee of a trust.*

- The Document and any Lender Arrangement will bind you both personally and as trustee of the trust. However, to the extent any Mortgage, Charge, Deposit Security or Security Document covers assets of the trust, it will not secure obligations you owe in your own right and not as trustee.

Where you sign a Document as trustee, as trustee you are not liable to pay amounts you owe in your own right and not as trustee. B1 ("What You Must Pay") only includes amounts you owe as trustee.

- You confirm the following.
  - The trust is validly formed. Any relevant trust document is valid and complies with the law.
  - Any copy of the trust document you have given the Lender is a true and complete copy and discloses everything about the trust.
  - You are properly appointed as sole trustee of the trust (with anyone else who signs the Document as trustee).
  - You have always fully complied with the terms of the trust, and your duties and powers. No one has said that you have not done so.
  - You have a full right of indemnity from the trust assets in respect of the Document and any Lender Arrangement.
  - You have properly signed the Document and any Lender Arrangement under the terms of the trust and your duties and powers as trustee, or if there is any doubt and all beneficiaries have full legal capacity, you have obtained their consent.

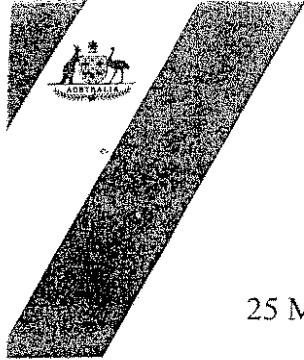
- The Documents, any Lender Arrangement and the transactions entered into under them are for proper trust purposes.
- You have done everything required under the trust document to enter into the Document and any Lender Arrangement and the transactions they contemplate.
- None of the trust assets have been re-settled or set aside.
- The trust has not terminated nor has any event for the vesting of the assets occurred.
- You promise the following.
  - You will comply with the terms of the trust and your duties as trustee of the trust.
  - You will use all funds raised under the Document and any Lender Arrangement exclusively for proper trust purposes.
  - You will not do anything which may result in the loss of your right of indemnity from the trust assets or the termination of the trust.
  - You will remain sole trustee of the trust (with anyone else who signs the Document as trustee).
  - If, despite the above, you are replaced or joined as trustee, you will make sure the new trustee becomes bound to the Lender's satisfaction by the Document and any Lender Arrangement or a document and arrangement of identical effect.
  - You will not re-settle, set aside or distribute any of the assets of the trust without the Lender's consent unless compelled to do so by the current terms of the trust document.

**FOR CORPORATIONS**

*This part only applies to those of you who are a corporation.*

You confirm the following.

- Your directors and secretary have complied with all the requirements of your constitution and the Corporations Law to enter into and execute the Documents and carry out the transactions they contemplate. You have the corporate power to do so.
- The names of your directors and the secretary are as disclosed to the Lender in writing.
- You are not a subsidiary of, nor controlled by, a public company within the meaning of the Corporations Law.
- You will obtain a commercial benefit from entering into the Documents and the transactions they contemplate, which your directors have resolved to enter into in good faith for your benefit and for proper purposes.
- The person(s) who sign(s), or witness(es) the fixing of your common seal to, a Document or a power of attorney under which the Document is executed, are two of your directors or a director and a secretary or your sole director and secretary.
- The Documents are duly executed on your behalf.



25 May 2004

Mr Tim Gartrell  
Secretary  
John Curtin House Limited  
PO Box 6222  
Kingston ACT 2604



Dear Mr Gartrell

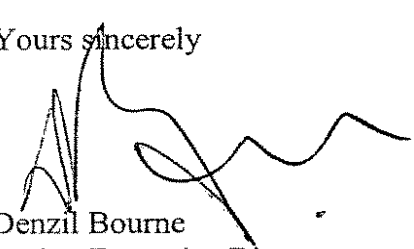
I refer to your letter to Russell Coleman dated 21 May 2004 and the Senate Finance and Public Administration Committee Budget Estimates session held today. In the Estimates Hearing, Senator Brandis stated, among other things, that the mortgage on John Curtin House Limited (JCH) had recently been re-assigned to another party. This has since been confirmed in conversations between Denzil Bourne from the Australian National Audit Office (ANAO) and Paul Wilkinson from John Curtin House Limited on 25 May 2004.

We note in your letter of 21 May 2004 that you consider JCH would be in breach of its financial commitments if you acceded to the ANAO request for a review of existing lease arrangements. To clarify the situation and assist us to fully understand the existing arrangements, would you please confirm whether or not you were referring to the previous mortgage or the recently re-assigned mortgage. I would also appreciate if you would provide the date of the re-assignment of the mortgage and to whom the mortgage was re-assigned.

Finally, if you were referring to the previous mortgage arrangement in your letter of 21 May 2004, does the re-assigned mortgage provide any practical basis on which to review the current lease rates?

I look forward to hearing from you in due course. In the meantime, should you wish to discuss any aspect of this request please do not hesitate to contact Denzil Bourne on 02 6203 7661.

Yours sincerely



Denzil Bourne  
Acting Executive Director  
Corporate Management Branch



# John Curtin House Limited

(Incorporated in the ACT)  
ACN 008 515 222

PO Box 6222 Kingston, ACT 2604  
Centenary House 19 National Circuit Barton ACT 2600  
Telephone (02) 6120 0800 Facsimile (02) 6120 0801

25 June 2004

Mr Denzil Bourne  
Acting Executive Director  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Mr Bourne

Thank you for your inquiry dated 25 May 2004.

Given the Centenary House lease is now subject to a judicial inquiry, we do not consider it appropriate to respond to your request at this time.

Yours sincerely



Tim Gartrell  
Secretary