

ENTERPRISE AGREEMENT

NO: E.A. 357 /1995

DATE REGISTERED: 23-10-95

PRICE: \$ 28-00

THIS ENTERPRISE AGREEMENT is made in accordance with the provisions of Sections 115 - 142 of the Industrial Relations Act, 1991 this day of 1995

BETWEEN

TOPGRAND PTY LIMITED

ACN 050 931 630

(in this Enterprise Agreement called "the Employer")

AND

The persons more fully described in the First Schedule hereto (in this Enterprise Agreement each is called "Employee" and are collectively referred to as "Employees")

PART I TITLE

This Enterprise Agreement is called the "Topgrand Pty Limited Enterprise Agreement, 1995"

PART II PURPOSE

1. The purpose of this Enterprise Agreement is to set out in writing the terms of employment of the Employees of the Employer.
2. (a) This Enterprise Agreement covers all of the property sales and management staff of the Employer from time to time who are required to hold any licence or a certificate of registration under the Real Estate Stock and Business Agents Act, 1941 and who are covered by or subject to the Real Estate Industry (State) Award 1991. The term "Employee" means each of the sales staff from time to time of the Employer and collectively they are referred to as "Employees".  
(b) In this Enterprise Agreement, "sales staff" means and includes all persons employed by the Employer as sales persons and who would be, if covered by the Real Estate Industry (State) Award 1991 (in this Enterprise Agreement referred to as "the Award"), a salesman within the meaning of the Award.  
(c) This Enterprise Agreement shall completely regulate the terms and conditions of employment of the sales staff previously covered by the Award.
3. (a) This Enterprise Agreement shall have effect for three (3) years from the date of commencement but shall continue to have effect after its expiration until a party gives notice of termination.  
(b) The date of commencement of this Enterprise Agreement is the day on which this Enterprise Agreement is registered.

4. (a) This Enterprise Agreement has been reached as a result of the recognition of the parties of the need for a unique arrangement for the Enterprise Workplace having regard to the high level of service demanded of the Employees by the Employer, the special needs of a real estate industry employer and the need to appropriately remunerate that level of service by reference to productivity rather than to award rates of pay.
- (b) This Enterprise Agreement is the entirety of the agreement between the parties and for the currency hereof, no further claims for improved conditions of employment shall be made by the Employees without the consent of the Employer.
- (c) The parties acknowledge that the Employer is a part of the "Asset Realty" chain of franchised real estate agencies and that this imposes certain conditions in the conduct of the Employer's business. Each Employee shall be responsible for pursuing the Employer's goals of meeting the standards and methods required of the Employer by the franchise agreement which the Employer has with Asset Realty Pty Limited and maximising the returns to both the Employer and the Employee of their joint activity.
- (d) The employees acknowledge that the levels of remuneration provided herein are, for the reasons set out herein, in excess of industry standards for productive employees.

### III TERMS AND CONDITIONS OF EMPLOYMENT

5. (a) The Employer and each Employee shall
  - (i) in the case of existing Employees, within seven (7) days hereof; and
  - (ii) in any other case, prior to the date of commencement of employmentexecute a Memorandum of Contract of Employment in duplicate in the form set forth in the Second Schedule hereto.
- (b) A copy of the Memorandum of Contract of Employment executed by it shall be served by the Employer on the Employee within two (2) business days of the date of commencement of employment and the Employer shall retain the duplicate executed by the Employee.
- (c) A copy of this Enterprise Agreement shall be retained by the Employer and shall be available for inspection to any Employee.

- (d) A copy of any Employee's Memorandum of Contract of Employment shall be made available to that Employee upon request.
- 6.
- (a) Subject to any other provisions hereof the Employer may terminate the employment of an Employee without notice for Serious Misconduct.
  - (b) "Serious Misconduct" means any of the following:-
    - (i) insubordination and abuse; neglect of duty; inefficiency and incompetence; dishonesty; malingering; drunkenness; misbehaviour (e.g. practical jokes, skylarking) and wilful disobedience; and
    - (ii) the Employee becoming of unsound mind;
    - (iii) any breach of this Agreement which, in the reasonable opinion of the Employer, constitutes fraud, dishonesty or wilful disregard for the interests of the Employer;
    - (iv) the Employee being convicted of a serious criminal offence which, in the reasonable opinion of the Employer, might bring the Employer into disrepute if the Employee was to remain an employee.
    - (v) the Employee having any licence (of whatever classification) or Certificate of Registration issued pursuant to the Real Estate Stock and Business Agents Act 1941 cancelled or suspended;
    - (vi) the bankruptcy of the Employee.
- 7.
- (a) An Employee's employment may, subject to Clause 7 (b), be terminated without cause.
  - (b) Where in the opinion of the Employer, an Employee is not giving satisfactory performance of his obligations under this Enterprise Agreement:
    - (i) the Employer shall inform the Employee that he has a complaint about that Employee's performance of that Employee's obligations;
    - (ii) the Employee shall acknowledges the complaint and the Employer's proposed remedy by signing a Memorandum of Complaint substantially in the form of that set forth in the Third Schedule hereto;

and if the Employee's performance of that Employee's obligations fails to improve, the Employer shall inform the Employee of that failure in writing and of the

Employer's intention to terminate the Employee's employment.

8. An Employee shall during all ordinary hours of employment and any overtime the Employee may be required to work apply him- or herself to the work he or she is directed to do by the Employer and he or she shall personally attend at such places and times as the Employer may reasonably require. If he or she is unable to attend work and it is possible for the Employee to notify the Employer, the Employee shall forthwith do so. The Employee shall give such reasons for the Employee's inability to attend as the Employer may reasonably require.
9. (a) All listings, documents and records used in the Employer's business shall remain the property of the Employer; and  
(b) Except in the proper course of business an Employee shall not divulge to any person any information concerning the business, finances, listings, documents or other records of the Employer.
10. (a) The Employer shall keep accurate records relating to each Employee of:
  - (i) the personal details of each Employee;
  - (ii) remuneration earned by that Employee and the manner by which that remuneration has been calculated;
  - (iii) income and other tax paid by the Employer on behalf of that Employee;
  - (iv) holidays, holiday pay, sick leave, sick pay, long service leave and long service pay taken and paid to that Employee
  - (v) details of superannuation payments made by the Employer on behalf of the Employee
  - (vi) days and hours worked by the Employee.  
(b) The Employer shall make available to the Employee at all reasonable times that Employee's records kept in accordance with this Clause.  
(c) Unless required by law, or by Clause 10 (b), to do so, the Employer shall not disclose to any person the information contained in the records kept under this Clause.

#### PART IV REMUNERATION

11. (a) The Employee shall be paid the rate of pay for all

ordinary hours fixed by the Real Estate Industry (State) Award 1991 but unless elsewhere herein otherwise specified shall not be entitled to any other allowance, including, without limiting the generality of the expression, any allowance for locomotion, telephone or uniform.

- (b) In addition, the Employee shall be paid in the manner required any superannuation contributions required to be made pursuant to law.
  - (c) In this Enterprise Agreement, payments to be made under this Clause and under Clause 13 are called "wages".
  - (d) This clause, and Clauses 11 and 12, apply to staff employed as salespersons.
12. (a) The Employer may set off against the amount of wages to be paid the amount of Commission paid by the Employer to the Employee.
- (b) (i) Entitlement to payment of wages shall subject to Clause 12 (b) (iii) hereof, be calculated and made on the last day of every month in arrears (in the case of payments under Clause 11) or at the time they become due and payable (in the case of payments under Clause 13).
  - (ii) Where the amount of wages and other Award entitlements payable under this Enterprise Agreement from the date of commencement of this Enterprise Agreement or the date of commencement of the Employee's employment (as the case may be) up to and including the end of any month or the date on which the payment is to be made exceeds the amount of commission paid or payable for the same period, the Employer may set-off those wages and other Award entitlements against commission.
  - (iii) Wages payable pursuant to this Enterprise Agreement shall be paid in money payable, unless the Employee shall make demand for more frequent payment, monthly in arrears. No employee shall be entitled to demand payment more frequently than 14 days in arrears.
- (c) In this Enterprise Agreement the term "Commission" means the share of the Employer's commissions from the sale of real estate to which the Employee is entitled which shall be calculated in accordance with the formula in the Fourth Schedule to this Enterprise Agreement.
  - (d) Commission is payable to an Employee as soon as practicable after the Employer receives it on his own account

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- (e) By memorandum, the Employer may agree to make additional payments to any Employee and such memoranda shall operate to vary this Enterprise Agreement for the period during which the parties agree such additional payments should be made.
  - (f) Otherwise than pursuant to this Clause and Clauses 11 and 13 hereof, the Employees shall not be entitled to receive any other remuneration.
13. In addition to payments made under Clause 11, the Employee shall be entitled to be paid and take:
- (a) One (1) week's sick leave for each full year of service (but this shall not accumulate);
  - (b) Long Service Leave in accordance with the Long Service Leave Act, 1955;
  - (c) Holiday Pay in accordance with the Annual Holidays Act, 1944;
  - (d) Other payments, not earlier in this Clause or Clause 11 specified, required by the law to be paid by an employer to his employees, including but not limited to payments under the Employment Protection Act, 1983 to which the employee may be entitled.
14. Staff employed as property managers or as support staff of sales managers shall be paid weekly at rates prescribed by the award.

PART V HOURS OF WORK

15. (a) The Employee's ordinary hours of work shall not exceed forty (40) hours per week when calculated over a 52 week period. In this Enterprise Agreement, these hours of work are called "the ordinary hours of employment".
- (b) Subject to Clause 11 (a), the Employee shall work during such hours on such days (including weekends and public holidays) as the Employer may direct.
16. (a) Employees shall be entitled to an unpaid meal break of one (1) hour for each five hours of work. Meal breaks shall otherwise be taken at the direction of the Employer.
- (b) Employees shall be entitled to an unpaid rest break of ten minutes two hours after the commencement of work on any day and again two hours after the recommencement of work after a meal break.

PART VI LEAVE

17. Save as provided herein, an Employee shall not be entitled to paid or unpaid leave without the consent of the employer.
18. Payments for paid leave shall be made in accordance with Clauses 11 & 12 hereof.

PART VII GRIEVANCES

19. (a) The Employer and Employee agree to consult and discuss on all matters affecting the Employees' employment with a view to
  - (i) identify areas of possible conflict or difficulty in the relationship and resolve any dispute;
  - (ii) co-operation to improve the Employer's business (which the parties agree is in the best interests of both parties).
- (b) The parties acknowledge that the Enterprise Workplace employs less than twenty persons and have agreed (otherwise than by following the principles embodied in Subclause (a) to do without any formal procedure for the resolution of grievances).

PART VIII GENERAL

20. (a) The Employer may require an Employee to supply, at the Employee's own cost:
    - (i) a reliable, modern motor vehicle which shall be kept clean on the interior and exterior at all times and otherwise in good condition; and
    - (ii) a telephone at the Employee's place of residence and a mobile telephone at which the Employee can be contacted during all ordinary hours of employment.
  - (b) For all periods during which an Employee is on Jury Service, that Employee shall be entitled to ordinary rates of pay (calculated in accordance with the provisions of this Agreement) as if the Employee had worked, for each day or part of a day on which the Employee is on jury service, the Employee's usual hours of work.
21. The Employer may give an Employee lawful directions as to:
    - (a) the manner in which the Employee is to conduct himself in and about the Employer's business;



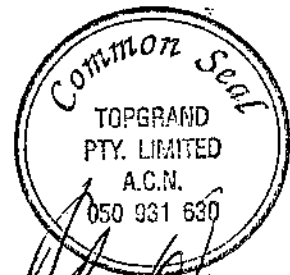
- (b) the manner of the Employee's dress and style and cut of hair ;
- (c) matters of the Employee's personal hygiene and cleanliness.

PART IX DECLARATION

24. By their execution hereof the Parties agree that this Enterprise Agreement has not been entered into under duress by any party.

THE PARTIES SIGNED THIS AGREEMENT ON THE DATE FIRST MENTIONED ABOVE.

THE COMMON SEAL of TOPGRAND PTY LIMITED ACN 050 931 630 was hereunto affixed pursuant to authority of the Board of Directors in the presence of:



Director

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Secretary

Signed by the employees in the presence of the witness whose signature appears opposite the signature of the respective employee:

Witness

*[Handwritten Signature]*  
 .....  
*Solicitor, Sydney*  
 .....  
 .....  
 .....

Employee's signature

*[Handwritten Signature]*  
 .....  
*[Handwritten Signature]*  
 .....  
 .....  
 .....

FIRST SCHEDULE

Name of Employee

VINCENT EDWIN O'NEILL  
107 Pentecost Avenue  
TURRAMURRA NSW 2074

WALTER GILBERT BAKHOYS  
31 Mathews Street  
DAVIDSON NSW 2085

ADA SUN  
16 Florey Avenue  
PYMBLE NSW 2073

SECOND SCHEDULE

Memorandum of Contract of Employment

[To be completed in duplicate]

This Memorandum is made between TOPGRAND PTY LIMITED ('the Employer') and ('the Employee').

1. This is a Memorandum of Contract of Employment referred to in Clause of the Topgrand Pty Limited Enterprise Agreement ('the Agreement').
2. For the purposes of the Agreement, the date of commencement of the employment of the Employee is
3. The parties acknowledge that the terms and conditions of employment of the Employee is governed by the Topgrand Pty Limited Enterprise Agreement, a copy of which has been made available by the Employer to the Employee.

Entered into on:

Signed for and on behalf  
the Employer by

in the presence of:

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Signed by the Employee  
in the presence of:

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THIRD SCHEDULE

Memorandum of Complaint

1. This is a Memorandum of Complaint for the purposes of Clause 7 (c) (ii) of the Topgrand Pty Limited Enterprise Agreement ('the Agreement').
2. The Employee is notified and acknowledges that the Employer has a complaint about the Employee's performance under the Agreement. The general nature of that complaint is set out below.
3. The Employee is invited to remedy the complaint by taking the action set out below.
4. The Employee is invited to comment on the complaint and the proposed remedy.
5. The Employee understands that if the cause of the complaint should persist, this may give the Employer grounds for termination of the Employee's employment.

Employee: \_\_\_\_\_

General nature of complaint:

Employer's proposed remedy:

Employee's comments:

\_\_\_\_\_  
(Employee)

FOURTH SCHEDULE

SALESPERSONS', COMMISSION DURING EMPLOYMENT

Manner of calculation of Commission:

The "Employee" shall be remunerated for his/her/their services on a commission basis which shall be calculated in accordance with the policy for remuneration by commission of sales staff of franchisees of Asset Realty Pty Limited as set out in the Company Manual (copy of which is enclosed) and as varied from time to time so that the Employee shall be entitled to receive a minimum of thirty-eight per centum (38%) of the amount of commission to which the Employer is entitled for any particular transaction where the Employee is entitled to receive a commission.

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*[Handwritten signature]*

A.S.

# COMPANY POLICY

## COMMISSION SHARING ARRANGEMENTS

The following commission structures are applicable but may be reviewed by the Company from time to time as it sees fit, provided that the Franchisee shall not be affected differently from any other Franchisee or officer of the Company as a result of any such commission review.

All listings will be interchanged between the Company's Franchisees and the listing office will receive the commission fee to be paid in the event of a sale promptly upon the conclusion of the sale.

Commission on conjunction sales (being sales where the listing agent is a Franchisee and the selling agent is another Franchisee, or involving in any way a company office) will be split on the following basis:

1. Open listings - 70% of the gross commission to the selling office and 30% of the gross commission to the listing office.
2. Exclusive Agency - 60% of the gross commission to the selling office and 40% of the gross commission to the listing office. (An Exclusive Agency and its period of duration must be recorded in the Group's Computer System immediately upon listing or conversion. The exclusive period post-auction (if not sold before or on the day) must also be recorded in the Computer System.)
3. Auction - 40% of the gross commission to the selling office and 60% of the gross commission to the listing office in the case where the purchaser exchanges contracts prior to, at, or up to 14 days after the auction day. Thereafter the split is as per paragraph 1 or 2.
4. All signed Auction Authorities must have a date of auction, otherwise the commission to the lister will only be 40%.
5. "Preliminary" or "Pre-Auction" properties must have a date for Auction recorded, via the Administration office on the computer, even though advertisements may not, otherwise paragraph 1 above will apply.
6. If any auction property is "withdrawn" or "postponed", the 14 days Sole Agency protection for the lister's 60% will be calculated from the gazetted day of auction. Thereafter, paragraph 1 will apply unless another firm auction date is notified.
7. When a property is converted to auction or exclusive agency the original lister reverts to 50% of the original listing fee and the converter gets the balance of the listing fee. When there is any change in the status of the listing thereafter, the listing fee will be split 50/50 between the original lister and the converter. Furthermore, the converter is not required to consult the original lister prior to conversion and the converter conducts the auction campaign.

The Franchisee of the listing office must consent to the conversion of any open listing to either Auction or Exclusive Agency where an associate or other Franchisee is converting a listing and is not the original lister. Common sense would dictate that such consent not be unreasonably withheld.

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## COMPANY POLICY

### COMMISSION SHARING ARRANGEMENTS (cont.)

8. a) Where blocks of nine or more units, villas, duplexes or townhouses are listed on open authority, the commission split will be 20% to the lister, 80% to the seller.

The intent and impact of this action is to give a more attractive incentive to sales personnel to work on medium density property. It is imperative that listers of blocks keep information updated and promote the blocks to other Asset sales staff so that our image as promoters and sellers of units, townhouses, investments, etc will increase. Then all sales staff can promote Asset as a unique collective project-marketing team, and may obtain exclusive promotional rights on future listings.

b) Listers of development blocks have 7 days in which to get the entire block into the listing system or they may be liable to forfeit the listing.

9. Where a project (defined as a vendor funded medium density development of 4 or more units/villas/duplexes/townhouses, etc on an exclusive agency with an office of the Asset group) is being marketed, the commission split will be 50% to the lister and 50% to the seller. Listers should be cognisant with points 8 b) and 12) of the group's commission sharing arrangements.
10. Where any purchaser is introduced to a property prior to the commencement of any Exclusive or Auction Agency period and a sale is effected during the Exclusive or Auction Agency period, then commission shall be split in accordance with paragraphs 1,2 and 3 above.
11. The gross selling commission referred to above shall be the commission agreed to by the vendor, and noted on the Agency agreement.
12. A rebate of advertising expenses (i.e. commission less a dollar amount) is only applicable on properties offered for sale by auction and must appear on both the Authority to Sell form and the listing itself.
13. The lister is only entitled to the commission that is noted on the listing in the listing book, unless he/she agrees to a changed amount with the franchisee of the selling office, irrespective of whether the renegotiated commission is higher or lower.

As amended 6th March 1995